

Uncle Bill's

Bathroom Reader

The More You Go, The More You Know

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The 3.5% Rule and the Power of the Intralegal Approach to Change

On October 10, 2017, in honor of Constitution Day, Dean of Berkeley Law Erwin Chemerinsky held a talk at Berkeley Law School about free speech on campus. After describing the foundational cases and principals that underly free speech jurisprudence and the importance of balancing absolute free speech with the fostering of a healthy environment for students, Chemerinsky was asked by a student if he believed people should take extralegal and potentially violent means to change the law. Chemerinsky responded, "I am a lawyer, a law professor, the dean of a law school. I went to law school because I believed that law was the most powerful tool for social change. Social change seems much more difficult today than when I chose to go to law school 40 years ago, but I still believe it's the most powerful tool for social change. I believe once people start taking the law into their own hands for the greater good, I'm not sure that it's going to come out the way they want it to come out. So, my answer is to encourage using legal means to bring about social change."

Not only is Chemerinsky's concern about violent means to change the law well-founded for many obvious reasons, Erica Chenoweth, a political scientist at Harvard University,

researched the outcomes of violent and nonviolent campaigns and found that nonviolent campaigns are twice as likely to achieve their goals as compared to violent campaigns. Unlike violent campaigns, nonviolent campaigns do not require militants and can operate in the open, where they have a greater chance of receiving broad support from the public and also from the police and military, which the government generally relies on to bring about order. A nonviolent campaign, however, must still reach critical mass.

That critical mass is 3.5% of the population actively participating in the campaign. Chenoweth found that none of the protests that had reached this 3.5% critical mass failed. While 3.5% may not seem like a large portion of the population, in reality, such a level of active participation is suggestive that a far broader amount of the population agrees with the cause. In the end, the success of nonviolent approaches to change serves as a continued testament to the power of intralegal activism.

Law is the embodiment of the moral sentiment of the people. - Blackstone

Laws like clocks, they must be occasionally cleansed, and wound up, and set to a true time. - Henry Beecher

