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Guilty Bystanders

Chad Flanders[†]

There is a part of Martin Luther King, Jr.'s *Letter from Birmingham Jail* that always catches me up short, and which I now think of as at the heart of the essay: not King's civil disobedience, not his claim that an unjust law is not a law, but his anger at the character he termed the "white moderate."¹ It was bad, King said, when the public called him and his allies "niggers" and when the police hosed them down in the street. But what really pained King was that so many well-meaning whites stood by and did nothing. In fact, it was to these people that King was really addressing his letter.

I remembered this part of King's letter again when reflecting on the AutoAdmit controversy—another controversy not without its share of racial epithets. I was pretty much a bystander to the whole thing. I wasn't the target of any vicious postings; I wasn't threatened, not personally, nor was my race or gender targeted. I didn't post anything on autoadmit.com myself (vicious, virtuous, or otherwise). Indeed, I hadn't really heard of AutoAdmit before the controversy erupted.

For most of the drama, then—from the initial outrage, to the e-mail discussions and the meetings (none of which I attended) and then to the various scattered but coordinated responses—I was off to the side and off the stage, neither a victim nor an author of the threats. I felt happy playing that role, happy to let things pass me by.

But then I thought again about the white moderate. And I saw how the white moderate played a role in the civil rights movement akin to the role I played in the AutoAdmit controversy. They were bystanders, and so am I. The situations are not exactly the same, but the parallels are sobering: Had I been in that generation I might have been a white moderate, and I might today be a white moderate of a different, but related, sort.

King, to put it mildly, did not like the white moderate.

The white moderate was the person who stood by and was sympathetic, who agreed with the goals of the civil rights movement, but who felt that the whole thing was a little too rash, maybe even a little embarrassing. Couldn't

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1. MARTIN LUTHER KING, JR., *Letter from Birmingham Jail*, in *WHY WE CAN'T WAIT* 64, 72 (Signet Classic 2000) (1964).

there be some other, more reasonable, *slower*, and less, well, confrontational way of getting things accomplished? "I have almost reached the regrettable conclusion," King wrote in anger mixed with disappointment,

that the Negro's great stumbling block in his stride toward freedom is not the White Citizen's Counciler or the Ku Klux Klanner, but the *white moderate*, who is more devoted to "order" than to justice; who prefers a negative peace which is the absence of tension to a positive peace which is the presence of justice²

In the AutoAdmit controversy, as in the Kiwi Camara controversy that dogged Yale Law School last year,³ I comfortably and rather too easily fell into the role of the "white moderate." I am sympathetic with those who have been the target of the postings and am outraged and more than a little embarrassed by the postings themselves. But not much more than this. I wish the whole thing would go away and blow over and that people would move on. I fervently wish even more that the whole thing had never happened. I wonder if this reflects, in King's words, a "shallow understanding" of the situation. I wonder if this shows my preference for a "negative peace which is the absence of tension to a positive peace which is the presence of justice."⁴

I do not think I am the only one who risks moderation. Consider, in this regard, the academic blog response to the AutoAdmit controversy. Many bloggers have instinctively reached back to the older tradition of talking about how to conduct oneself in public. They ask the site's administrators to consider standards of "good taste and decency"⁵ and suggest that the site strips away the legal profession's "mask of civility."⁶ Jack Balkin, one of the more sensitive writers on Internet social norms, wrote recently on his blog, "The real question is whether the site administrators should, as a matter of common decency, work to change social norms or to change the code on their site to prevent the site from being used to harass people and invade their privacy."⁷ Balkin concludes that the administrators at AutoAdmit are "shirking responsibility."⁸

Such sentiments are surely well meaning, but so were the sentiments of the white moderate. Talking about civility and standards and decency may be a

2. *Id.* at 72-73 (emphasis added).

3. See Muslim Law Students Ass'n et al., Correspondence, 115 YALE L.J. 2212, 2212-14 (2006) (printing letter from student organizations protesting the invitation of Kiwi Camara to speak on campus); Yale Black Law Students Ass'n, Correspondence, 115 YALE L.J. 2211, 2211-12 (2006) (same). There was no printed apology from the board of The Yale Law Journal.

4. KING, *supra* note 1, at 73.

5. Brian Leiter, Penn Law Student, Anthony Ciolli, Admits to RuMing Prelaw Discussion Board Awash in Racist, Anti-Semitic, Sexist Abuse, Leiter Reports, Mar. 11, 2007, http://leiterrepons.typepad.com/blog/2005/03/penn_law_studen.html.

6. Dave Hoffman, Xoxohth, Civility, and Prestige: Part I, Concurring Opinions, Oct. 30, 2006, http://www.concurringopinions.com/archives/2006/10/xoxohth_civilit.html.

7. Jack Balkin, The Autoadmit Controversy: Some Notes about Social Software, Code, and Norms, Balkinization, Mar. 9, 2007, <http://balkin.blogspot.com/2007/03/autoadmit-controversy-some-notes-about.html>.

8. *Id.*

way of covering up, of asking people to save appearances and behave themselves. The white moderate believes in the value of hypocrisy. (I almost want to say he believes in it above all.) It is a good thing, says the white moderate, if we just fake our respect for women, or gays, or blacks, because that is the way we get along.

But this is what King disliked-it is probably not too wrong to say that it is what he hated-about the white moderates. This was their "shallow understanding" of the civil rights situation, which made them think that all they needed to do was behave themselves and be careful not to cross any lines, because if everyone just behaved decently and didn't ask for too much everything would be fine. But for King, the "[s]hallow understanding from people of good will [was] more frustrating than absolute misunderstanding from people of ill will."⁹ The white moderates did not see that justice demanded something much more radical than simply keeping up appearances.

I remember sitting in a criminal law class many years ago (not at Yale) where the professor asked if any women in the class were afraid of being raped.¹⁰ A number of hands went up (surprising, as this certainly took courage). I remarked silently to myself that these were people who traveled in relatively affluent circles, kept pretty good company, and yet were afraid that they might be raped not only by strangers, but by people they thought they knew. To see the kind of posts that show up on AutoAdmit with some regularity, and even worse, to see the fervor with which rape fantasies are pursued online, is to see that the fears of those women in that class were not without foundation. It is to see that the idea that we live in a "rape culture" may be more reality than fantasy.

The white moderate does not view autoadmit.com in this way. He sees it as an aberration; he sees it as boys behaving badly, getting carried away, and who need to be told to shape up and to be civil and decent. He does not see what some people see, which is that being told to be civil does not get at the root of things. For he does not see how talk of being civil or decent can be another way of saying, "Think what you like, even do what you like, just don't do it out in the open where everyone can see, because that's embarrassing to the rest of us." The white moderate does not see how the peace brought by civility might be (in King's words) merely an "obnoxious negative peace"¹¹ rather than a "substantive and positive peace, in which all men [sic] will respect the dignity and worth of human personality."¹²

9. KING, *supra* note 1, at 73.

10. The context of the question was a reading from SANFORD H. KADISH & STEPHEN J. SCHULHOFER, *CRIMINAL LAW AND ITS PROCESSES* 313 (7th ed. 2001), that discussed women's fears and experiences of rape.

11. KING, *supra* note 1, at 73.

12. *Id.*

The white moderate, of which I count myself as one, wishes the whole AutoAdmit thing had never happened, but second to that he wishes it would all blow over and that the people who have been targeted would simply get on with their lives. (The white moderate, who is also presumably male, has of course never been targeted.) In his less kind moments, the white moderate thinks that those who have been targeted are mostly going to fancy law schools, and will likely get a good job, temporary setbacks notwithstanding. They will get over it. Life goes on.

What the white moderate does not see, or refuses to see, is that the function of the AutoAdmit posts is to say that no matter how educated, how talented, how good of a job you have, to some people you will always be a cunt, a nigger, a kike.

The AutoAdmit controversy is not Jim Crow and segregation. The white moderate can take some solace in this. He is not being asked to take sides in the same way. But he is being asked to take sides. He is being asked to decide whether this is just some mistake, something that got out of hand, or whether this is in fact a glimpse into the norm for how society treats blacks, women, Jews, and minorities more generally. He is being asked whether he can muster up more than embarrassment (and perhaps shame) for the pain and humiliation these groups feel not only occasionally, but as part of their daily lives. The white moderate is being asked, in short, to think about whether the only way he can pursue justice (the justice he says he favors) is by ceasing to be merely moderate.

