

Civil disobedience and political obligation



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Civil Disobedience and Political Obligation – Can the two coexist?

How can we justify from a moral point of view an act of civil disobedience?

Do we justify it when the act itself finds a moral justification from the political obligation point of view or when it infringes on the life of the individual?

Or does it not find justification no matter the consequences it entails?

What should the response of the law makers be to such acts of civil disobedience? And where does political obligation fit in this entire scheme, since political obligation refers directly to the counter of civil disobedience, that is, to the moral obligation to obey the laws of one's country?

I will venture to say that here the crux of the matter is the means through which one acquire such an obligation, and the number of individuals that have ventured to abide by all the demands necessary to acquire it. Also political obligation seems to be more closely related to being a member of a country, group, regional club, and so on, than of fulfilling certain acts (i. e. doing something per se). Thus the question arises, since political obligation is related to being part of something rather than doing something, does it lead from here that civil disobedience falls out of the sphere of influence of the above mentioned obligation?

Philosophers debated the issue of civil disobedience focusing on two main problematical aspects:

1. Reflecting on what makes a breach of law an act of civil disobedience (for example the Rosa Parks – the Montgomery Bus Boycott – case in the US) and

2. Reflecting on what could morally justify such a breach of law (again, using the example of the Rosa Parks case, the justification could have been the search for equal treatment).

Focusing on the latter aspect, and looking at what might entail to have a moral justification for certain acts that could be seen as disobedience towards the laws of a country, one must primarily seek to identify if that particular act attempts to fight inequality amongst individuals for:

“ Treating a person appropriately and respectfully may well require certain sorts of emotional and/or cognitive responses: sensitivity to her needs and values, empathy for her suffering, and the like. But if these responses are pictured as the results of positive traits or attributes (and not simply as, say, the result of a lack of bias or prejudice), then it is not clear that merely being impartial between persons is sufficient to guarantee that one will possess and display the necessary sensitivities.”

So given the above, and referring solely to cases similar in scope to the Montgomery Buss Boycott case, one could imply automatically that those aiming for a globalized world and impartiality when it comes to nationals or non-nationals while engaging in civil disobedience acts, are morally justified in pursuing such goals.

On the other hand, focusing on the former aspect, the aim of this paper is to highlight what makes civil disobedience justifiable from a moral point of view and thus different from acts of radical protest, mainly acts of terrorism.

Percy Shelly wrote following the Peterloo massacre of 1819 (when the cavalry charged into a crowd of 60, 000-80, 000 people gathered to protest),
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the political poem “ The Mask of Anarchy” and later Thoreau and Gandhi (in Satyagraha) used it as a starting point and justification for their protests – not only that, Gandhi would often quote “ The Masque of Anarchy” to his audiences during his protest campaign to free India.

Thoreau’s 1849 essay *Civil Disobedience* (the original title being *Resistance to Civil Government*) , from which the initial term was coined, expands on the idea of self-reliance, and he implies that fight against the government need not be necessarily physical as long as it is in essence a form of protest against unjust laws. He goes on to argue that individuals should not allow governments to overrule or bypass their consciences, since they have a duty not to permit such submission and thus be transformed by the governments in their own personal puppets that they can move around as they please.

From here stems the first and most important feature of civil disobedience, as philosophers see it, *conscientiousness* . For many of those engaging in civil disobedience this act of breaking the law is demanded of them not only by their h3 belief in their own moral reasoning but also by a compliance with moral consistency and by their perception of the interests of the society they are part of. Hence, they come to believe that with such acts they draw attention to laws or policies that they believe are in need of reassessment or that simply ought to be striped of their lawful quality.

Even if most of the literature on this particular feature sees it as primordial justification for such acts, I tend to disagree. The mere fact that one does not agree with certain laws and demands made by either society or the government doesn’t automatically imply that conscious individuals should

engage in acts of peaceful and non-violent protest. I do not want to imply here that tacit compliance is the key, in the hope that things will eventually change. But just based on this feature I find it hard to distinguish clearly between forms of civil disobedience and other forms of dissent – even more so, radical forms of dissent – since one can easily attempt to justify, with logical arguments, absurd demands made to governments.

The second feature of civil disobedience, as highlighted by the literature, refers to the level of *communication* – more specifically, to the forward-looking and backward-looking aims of such acts, as the individual focuses on both showing condemnation of a law or policy (this being the backward-looking aspect), but also desires to draw the attention of the legislators and of his fellow citizens on the issue at hand, thus seeking a change in that law or policy (this being the forward-looking aspect). But I wonder if this should necessarily be seen as achievable only through civil disobedience. I would venture to argue that through mechanisms of political obligation one also has implicitly granted the power to question the laws and, thus, to propose changes, through petition, for example, rather than dissent.

Linked to the idea of communication I believe resides also the nature of civil disobedience acts and their scope: thus the features of *violence* (should it be exclusively non-violent protests and if not to what extent should one employ violence) and that of *effectiveness* should also be treated here.

With regards to the idea of *violence* and *non-violence*, Rawls points out that “indeed any interference with the civil liberties of others tends to obscure the civilly disobedient quality of one’s act,” thus no form of physical threat to

another's integrity is seen as accepted; yet does this extend only to the protesters or also to the authorities against whom they protest?

Even though paradigmatic protesters like Gandhi or Martin Luther King Jr. portrayed exactly this form of disobedience that Rawls presents, I would challenge this view first, on the basis of the lack of a workable, clear-cut definition of what violence is (to self, to property, or minor violence against others?) and second on what posing harm would actually entail (a simple, yet powerful example would be that, a strike of the employees of hospitals could, even if it is in essence completely non-violent, lead to serious peril to the lives of certain critical patients that would suddenly be deprived of the basic medical care they would need).

This is therefore, one of the main reasons for which I propose petitioning the government (even if it implies a certain level of 'blackmailing' and threat of strike) as a solution to civil disobedience – since, even while attempting to protest peacefully, in a non-violent manner, all the harmful after-marks cannot be foreseen and thus countered.

While turning now to the matter of *effectiveness*, I believe that given the examples mentioned subsequently (footnote 7), the question still remains: to what extent can these acts of disobedience have an efficient end – that is, end with a positive solution for the protesters? Therefore, I would venture to argue that only in democracies (and even here there is still a question mark as to efficiency – see the Black Civil Movement in the US in the 50's and 60's that were countless times suppressed violently by the police) can these type of protests hope to find a positive solution.

Lastly, I would like to focus on a third feature of civil disobedience, that of *publicity*, since here I agree with Rawls that civil disobedience is never “covert or secretive, that it is done in a public and open manner and that it should grant a fair notice to legal authorities.” Though, on this note, Hugo A. Bedau points out (and I again agree) that usually it is essential to the purpose of those employing civil disobedience as a means of change, that both the government and the public, know what the intentions of that particular action be. Yet, I don’t necessarily see the point of a “fair notice to the legal authorities” as Rawls points out, since this might at times – even in democracies – prove to be a detrimental action towards the entire process of protest,[7] therefore one would have to avoid *publicity* of the kind Rawls defends.

Still, even given the above these acts of civil disobedience can still be regarded as ‘open’ when followed soon after by an acknowledgment of the act and the reasons for acting as such (I acknowledge the peril this statement entails, since terrorist acts mostly fall under this category; and a counter argument to this might be that publicity ante factum, even at the cost of having the protest halted, offers proof that those undertaking it show a willingness to deal fairly with authorities).

The literature on this topic argues that one should see civil disobedience as engaging in an active refusal to abide by certain laws of one’s country or demands by one’s government while at the same time avoiding any form of violence. Putting it in other words, it could be seen as nonviolent resistance towards oppressing or limiting laws and demands.

“ Some of the most impressive cases of nonviolent resistance have come in North Africa. The 1919 revolution in Egypt consisted of months of civil disobedience against the British occupation, centered in Cairo and Alexandria, and strikes by students and lawyers, as well as postal, telegraph, tram and railway workers, and, eventually Egyptian government personnel. The result of this nonviolent movement was the British recognition of limited Egyptian independence.” But all these examples are of actions undertaken at the turn of the century, when democracies were either too weak or not even present yet in those particular countries, thus a need for such actions might have been understood as a necessary means to insure the type of government that would afterwards provide the framework needed for citizens to have their rights and obligations more equally met.

As mentioned above, one of the most widely accepted account of civil disobedience (presented by Rawls as well) is that of “ a public, non-violent and conscientious breach of law undertaken with the aim of bringing about a change in laws or government policies.”

He departs from two premises; that civil disobedience is only possible in a just society and that individuals rebel against unjust laws with the declared aim of replacing them for the better.

What I will further propose, based on a general dissent to these previously listed reasons for accepting civil disobedience, is another approach to the theory based on the assumption that it is not completely compatible with the theories of political obligation. I assume that, while accepting one as legitimate – the morality of political obligation – an individual cannot fully

engage in acts of civil disobedience since it precludes the very moral foundations of the former.

Here I must state that while I do not fully support Hobbes' view of the social contract (and hence his stance on political obligation) – even if he implies (with reference to the term “sovereignty by acquisition”) that conquerors or governments might allow those subject to their rule to go about their business -, I agree that when subjects consent to obey those who have effective power over them, whether the subjects have a choice in who holds power or not, the right to dissent is diminished by the mere compliance with the rule. Because they consent, it derives from here that they acquire an obligation to obey the sovereign, irrespective of the fact that the said sovereign has an instituted or acquired sovereignty. Therefore, the most pressing question from this stance is what should an individual that consented to being ruled by a certain type of democratic government do, especially if he lives in a liberal constitutional democracy where the rule of law not only exists but where his rights and liberties are protected? Since one cannot infer that there are perfect democracies ruled by perfect governments, even the most just societies (from Rawls' point of view) might at times, sometimes unwillingly or undesirably, engage in unjust practices. Can there be a justification for civil disobedience in these situations?

I would venture to say no.

I acknowledge that Locke and other philosophers dealing with the matter of political obligation and the social contract are right in countering Hobbes on two accounts: that of the nature of the contract (is it historical or

hypothetical?) since here the most sticking problem would be to prove how and when individuals entered into such a contract and given their consent, or as Dworkin put it, if the contract is hypothetical, then it “is no contract at all.” The other account refers to the way Hobbes deals with tacit consent, since here only an explicit statement of agreement would count as consent, thus every individual could argue that he didn’t give his consent to be ruled by a said government and as such making the political obligation to obey void, and the justifiability of civil disobedience would be moral. Against this point I would argue that, in fact, tacit consent in today’s world is replaced by electoral consent and thus claims that the ruling government was not accepted by each individual runs the risk of being overruled by the mere mentioning that: *if you don’t like the way you are governed, go and vote for changing the leaders during the next elections.*

I would furthermore argue that consent should not really be seen as the paramount argument for political obligation, for we do not live today in the type of society Hobbes envisioned in his theory – a society where the upshot is that once individuals gave their consent, they have an obligation to obey anyone who can maintain order -, yet one can partially derive from here the idea that once consent has been given, to the extent that the government chosen is not dictatorial, obedience should be granted at least until the following elections.

In my defense of such an argument, I would argue that individuals have a pro tanto obligation to follow the law (or at least those laws that are not excessively unjust), thus, from here follows that they have a pro tanto obligation to use the proper legal channels of political participation –

petitioning the government not to breach its promises and, in the end, elections to overthrow such governments that constantly and shamelessly override their law given boundaries – before resorting to disobedience and protests, be those peaceful or not.

Another argument in support of this might be the lack of clarity when it comes to claims of exhausting all other means of lawfully protesting against breaches of law by the government. How could we account for that? When can we indeed say: *yes, this has been a last resort measure, since we exhausted all other means of persuading the government?*

Here another question also rises, since Rawls argues that only the achievement of good consequences should justify engaging in forms of civil disobedience, and if yet one stipulates that it is the right of the individual to peaceful protest, the question is how can one distinguish between outcomes and thus censure some forms of protest while allowing for others, still keep an egalitarian society? In response to these challenges, one might question the empirical claims that civil disobedience is divisive and that it has the consequence of leading others to use disobedience to achieve changes in policy.

Also it is interesting to note that it might be important to look at the reasons that motivate individuals in fighting for the right cause and engaging in acts of civil disobedience, for even if the morality of the cause is more than just, – fighting for rights of equality of whites and blacks, in the US, in the 60's, for example – individuals might endorse it for selfish and wrong reasons, therefore deeming the entire justification void.

Consequently, to sum up the previous assumptions and to thus to agree with Raz (who states that it is a misunderstanding of the nature of rights to restrict them to morally right actions), should we endorse morally wrong actions (for from the point of view of political obligation civil disobedience appears as a wrong action and there can be no right reason – one cannot be morally required – to perform a morally wrong action)?

There seems to be no legitimacy to civil disobedience actions depending on the rightfulness of the cause (depending on the regime in which the individuals performing that act resides – Raz argues that only in an illiberal regime do certain individuals have a right to civil disobedience and by contrast, in a liberal state the rights of individuals to political activity are, by law, protected; accordingly there cannot be any moral ground that will allow for actions of civil disobedience).

Conclusion

To sum up all the listed arguments against civil disobedience, I will divide them into two broad categories.

Firstly, I argued that the most important reason against acts of civil disobedience, at least in today's society, is the fact that protesters seem to use such actions to place themselves above the law, by implying that their own moral judgment on certain issues is the correct one and the democratic decision-making process and rule of law of their respective country is the flawed one.

Here I would also address the *communicative* feature of civil disobedience, since it could be said it only leads to an aggravation of the situation by

placing pressure on the authority through the publicity feature and, on top of that, it gives rise to feelings of insecurity among the general population by spreading a wave of demand for actions to be undertaken (if the legislators allow for such breaches to pass, then this might further send a weakness message to the individuals and, thus, their authority will furthermore be undermined). Secondly, I indirectly argued that such acts might lead to an escalating effect – it could directly or indirectly incite for further and unjustified instances of violence. Consequently, it is in its turn pushing for a response from the part of authorities, response which may be harsher than it would have in the case of political activism, petitioning and so on.

Ultimately, it may incite to an automatic negative response from the part of the authorities on a matter that otherwise they would have agreed to make additions or changes to.

Hence, given all of the above, I will conclude (as others theorists like Raz do) that civil disobedience seems in today's world at least, an outdated, not necessarily morally justified notion that reflects very poorly on the current forms of political activism, or other methods of engagement.

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1. Stanford encyclopedia of philosophy, source: <http://plato.stanford.edu/entries/impartiality/#MorImp>, 2002, revised 2006.
2. It begins with the powerful images of the unjust forms of authority of his time – and then imagines the stirrings of a radically new form of social action. It is perhaps the first modern statement of the principle of nonviolent protest (<http://www.artofeurope.com/shelley/she5.htm>).
3. Henry Thoreau, *Civil Disobedience*, <http://thoreau.eserver.org/civil.html>.
4. Rawls, John, “A Theory of Justice”, Harvard University Press, 1971, p. 366.
5. Rawls, John, “A Theory of Justice”, Harvard University Press, 1971, p. 366.
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7. I say this since there are numerous examples (it is true that the vast majority of them in non-democratic regimes but not only) when peaceful protests that can be listed as civil disobedience (through non-violence means) have ended in harsh reprimands from the part of the governments; examples of such actions – reprimanded or not – range from the 19th century until 2005: nonviolent resistance movements in India (Gandhi’s campaigns for independence from the British Empire), in Czechoslovakia, the Velvet Revolution and in East Germany or Eastern Europe in 1989 to oust their communist dictatorships, in South Africa in the fight against apartheid, in the American Civil Rights Movement, in the Singing Revolution to bring independence to the

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