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2003-2004 Nationals Topic



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Resolved: civil disobedience in a democracy is morally justified.

Topic Overview – Adam Chilton.....1
Topic Overview – Jon Cruz6
Topic Overview – Greg Miller.....11
Topic Overview – Stephen Babb15
Topic Overview – Justin Eckstein20
Definitions25
The Obligation to Obey the Law37
The Morality of Civil Disobedience57

By Stephen Babb, Adam Chilton, John Cruz, Sam DUBY, Justin Eckstein, Frances Haugen, Victor Jih, Greg Miller

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Topic Overview – Adam Chilton

Adam Chilton was last years NFL National Champion in LD. While competing for Mountain View High School in Arizona, Adam placed 8th at nationals as a junior, as well as winning four individual state championships. Adam is now a philosophy student at Yale University. As a member of the Yale Debate Association, Adam now competes in parliamentary debate in the American Parliamentary Debate Association. Adam was recently the first place novice speaker at nationals and was also named the APDA novice of the year.

Resolved: civil disobedience in a democracy is morally justified.

I have now been thinking for a few weeks on how to advise debaters to be successful at Nationals. The truth is, I am having a very hard time coming up with easy answers. The only easy solution I can think of is talking my coach Josh Deahl out self imposed retirement to law school, because the man gets results. But since that probably isn't an option, I'm going to try and jot down a few of the lessons I picked up over the last few years.

In my district, Nat's was considered the biggest tournament of the year. Only a handful of debaters a year travel out of the state, so no one really cared at all about TOC bids or other measures of excellence. As a result, we took NFL's very seriously. Over the two weeks leading into Nationals, my coach Josh moved into my house so we could prepare better.¹ We then worked on debate every day for several hours. We made constant trips to the library, each read about 10 books on the topic, and re-wrote my cases nearly every single day. Also, we met and worked with Professor of law and philosophy Jeffery Murphy, who had written *Punishment and Rehabilitation*, *Forgiveness and Revenge*, *A Marxist Theory of Retribution*, *Two Cheers for Vindictiveness*, and a plethora of other relevant books on the topic. Then before the tournament, I arranged practice rounds with a number of debaters competing at the tournament. By the time the competition finally started, I felt like I knew everything I possibly could on the subject.

I think that's the best way to do well at any tournament, but especially Nationals. Last year, former NFL champ Steve Davis wrote an overview for Victory Briefs on how to debate well at Nat's. I think he was right on the money. Steven explained that he knew so much on the topic, that he could often end the round in cross-x. He explained how he never heard an argument that he hadn't already considered, and consequently, already knew the response. He also explained that he was making complex, scholarly arguments when many of his opponents were just saying things that came off of the top of their head. My goal going into Nationals was to be that ready, and I agree with Steven, that's what works. As you can probably guess, I would highly recommend tracking down that overview. I'm sure you can find it online, or harass Sam DUBY into finding it for you.

Of course, my advice so far as been "be smarter than your opponent." Sadly, there is a little more to success than just that. So I'm going to now turn my attention to addressing a few topics that should hopefully be at least moderately helpful and then end by a brief discussion on Civil Disobedience.

JUDGING AND STYLE

Often the biggest complaint about NFL's is the judging pool. Everyone hears about people that they read about all year winning big tournaments dropping in the seventh or eighth round, and then screams about the bad judges from Arkansas, Missouri, or whatever state they feel like talking trash about. I think there are several problems with this view, but I'll leave those for another discussion. Fortunately though, NFL decisions are usually very very predictable (that doesn't mean they aren't wrong sometimes, but they are predictably wrong). Judges at NFL have a picture in their mind of the ideal LD debater. A debater that is articulate, persuasive, intelligent, friendly, and rational. Remember, these are the same people that created TT debate because LD had gone astray. They expect a certain style, and aren't going to let a negative debater run a kritik, four off case positions, no value, then make 5 responses to everything case side. But, since it's so predictable, it's really easy to adapt.

¹ I should note, this is also because Josh was a college student without a place to stay after the school year ended. I'm not advocating having your 40-year-old DOF move into your kid sister's room.

First and foremost, the NFL tournament is very traditional in respect to style. That said, what does it mean to debate in a traditional/Nationals style. Well, five things really:

1. Only speak at a conversational pace. Judges typically hate seeing “spreading” or “speed” in rounds. The favorite line of judges is always, “I don’t judge policy for a reason.” Although debaters think it’s because of small brain capacity, judges claim it’s the pace of the debate. Either way, never speak above a conversation pace or it will be reflected on both speaker points and ballots.
2. Stick to a few well thought out arguments. Reading a block or pre-written spread is really considered just a waste of time. Instead, simply say a few well explained arguments. Judges will prefer this and think it stays closer to what the debate format was intended to be.
3. Avoid debate buzz words. Judges at Nat’s hate jargon being used, even if they know what it means - and many do not. Instead of harping about drops, extensions, and cross applications, say everything in English. So say, “they failed to respond to” instead of “they cold dropped.” Specifically avoid the words “cards” and “standards.” “Cards” have a negative connotation, and is thought to be left only to policy. Never say it. People hate it. Repeat. Never use the word “cards.” Say evidence, statistic or quote, not card. I cannot stress that enough. Second, people just won’t know what you mean if you say standard. In many states, criterion is used exclusively as the word for a standard. Even the most TOC savvy judges will know what you mean by criterion, but not every judge will understand “the standards debate.” So, why not use the term that everyone understands. Even if you think its dumb, humor them.
4. Favor analytical over empirical arguments. In some states, arguments based entirely on pragmatics and evidence are the norm. At nationals, the opposite is true. People feel that evidence based debate is solely policy, and LD is meant to be about philosophy. This doesn’t mean all real world examples should be excluded, but it does mean that a “card” will get you no further than a good idea (not that you would call it a “card”).
5. Appeal to common sense. Often debaters will try to run interesting arguments, for the sake of being tricky and elusive (see half of policy debate); avoid this. Instead, make arguments that would make sense to your parents, without the need of some author to back you up. Just because you have evidence saying promoting democratic ideals lead to genocide, doesn’t mean judges will buy it. Instead stick with arguments that make sense without the need of well warranted cards to prove it. However, warrants are still necessary for all arguments. That said, never use the word *warrant* in a round.²

That said, it seems that only very rarely anyone champions the virtues of this style of debate anymore in the LD community. Based on what I read in online forums and conversations I have at tournaments, it seems like the widely accepted view is that young, intelligent people that know what’s going on all are just correct when they champion a more progressive style.

Before moving on, let me clarify something. I ran a sub-standard and a counter-plan in national finals. I ran a lot of innovative and “progressive” positions. Never did I spend any time debating “social welfare” against “morality” at the top of the flow. But, I still don’t understand why speaking fast with a ton of arguments and evidence has become synonymous with good debate. The inverse of this, of course, is that slower debate with less evidence is worse.

So, I just want to quickly throw my lot in with this style of debate. The goal of debate should be to teach transitive skills. That is, skills that will help in college, the job market, and the real world. Those skills range from strong reasoning to persuasion, but all are important. The truth of the matter is, when things are all said and done, kids that debate in the “National Style” are more likely to convince a room full of people about a position later in life. I have a college seminar with a few ex-debaters in it that make arguments like “this is untrue for 4 reasons” then proceed to

² When I talk to people (everyone from my mother to my professors), they use the word reason; “There is no reason this is true.” I’m just saying this because “they have no warrant” has become a very common response to any argument in LD, and it’s time that goes. Instead, I think its better when people talk in English, and say “they don’t offer a clear reason why affirming will lead to this conclusion.”

list them off spending about two sentences on each. After they finish, the former debater sits and thinks about how awesome he is while the rest of the room thinks, “what the hell is he talking about?” The truth of the matter is, it takes time to make a compelling argument, and there just isn’t time in a 4-minute speech for 20 good arguments. When a ton of arguments are made, it just turns into a game of cross applications and extensions. I think debate is much better when people stick to a few arguments, everyone answers those arguments, and that’s what the round is judged on. I know most people reading this disagree with me on this, but that’s why I want to say it.

CROSS-EXAMINATION

This will, hopefully, be very brief. Cross-ex has several purposes, no news there. If you need to clarify something, go ahead and do it. No shame there. But, if you do need to ask for a tagline or the re-explanation of an argument, do it at the end of CX. If you start off asking clarification questions, judges zone out, so save stuff like that for the end.

The bigger thing I want to say is, cross-x becomes a little silly when it turns into “you say x, but isn’t y in fact true?” Most cross-x ends up being something along those lines. “You’re first contention is that there will be no chilling affect, but isn’t it true that there will be a chilling affect because of X.” This just gives you opponent a chance to preempt the response you were planning to make, and turns into, “but isn’t my side actually the correct one?” Instead, I think cross-x should be used to challenge your opponents basic assumptions, challenge their impacts, make them explain what they are saying in plain English and how it would play out in the real world, find out what they are really advocating. I think I won most of my rounds by the end of cross-x at nationals, so I think it’s important to take seriously.

POSITIONS

At Nationals, whether it’s good or bad, you can beat yourself before the round even begins. There are some arguments that judges just will not buy, and some case positions that will never work. For positions, run a traditional case. I know how fun it can be to run a kritik or to try and get away without a value because it’s boring to talk about “societal welfare,” but I would avoid it if you want to do well at NFL. Judges are looking for the same things they coach their students to do. A value, a criterion, then a few contentions. This applies specifically to the negative. Run a case. Do not just run a K, a few overviews, then go to refutation. I don’t care if you are running a progressive negative. I think it can often be very interesting, but its not going to do well at nationals. Once again, it’s very predictable, so don’t be shocked when these positions lose rounds that they shouldn’t.

THE TOPIC

I’m going to start by giving a little commentary on why this topic was picked (warning, this will be rant-esque, self-indulgent, and not at all helpful). Every year at Nationals we vote as a community on what we should debate in the following year. Everyone votes on ten potential topics, and the top five are then used in the following calendar year. The most voted for topic is the topic for the following nationals. Last year on the ballot, there was race based admissions, media monopolization, the forced spread of democratic ideals, and a number of other very relevant topics. So far this year, we have debated environment v economics in the developing world (a topic that we debated two years ago), the individual v the community (a topic used constantly, or at least the same themes are), and coming up is, Civil Disobedience. There are two problems with Civil Disobedience. First, it favors the aff to a ridiculous degree, and is perhaps the most lopsided topic I have ever seen. I would hate to be negative in national finals this year, because the affirmative has probably already won. And secondly, this topic has already been debated several times in the LD community. The reason I am saying this is, I think there is a lot of value in getting the smartest kids in the country together to talk about interesting relevant issues. Let’s talk about spreading democratic ideals a year after Iraq and Afghanistan. Let’s talk about race based admissions a year after the Michigan Case. So this year, when we vote on topics, let’s vote for interesting things that we haven’t already debated.

CIVIL DISOBEDIENCE

*Civil Disobedience – a public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government.*³

Like I already mentioned, this is a very difficult topic to win on the negative. I think the only way that the debate can be fair at all is by defining democracy in such a way to allow for good debate. Democratic peace theory literature has spent a lot of time working on this endeavor, and I think that it is a good place to start to look for a good definition of democracy.

Most definitions are going to say something along these lines: to be a democracy, a nation must be just, tolerant, and have completely universal systems of rights and access to government. In other words the United States may have called itself a democracy in 1953, but it most certainly was not. Instead, it was a representative republic with some democratic leanings, or something along those lines. At this point, it's contentious to say whether or not the United States is now a democracy, or if there are any true democracies in the world at all. I would bite the bullet for this debate, and say that it's possible that there are not any true democracies in the world. But, it's still fair to use this definition, because the framers of this resolution added the word democracy for a reason. They didn't want kids to talk about oppressive countries that technically have popular voting. I can't imagine how anyone could expect the negative to get up and say that Martin Luther King jr. was wrong in his actions (especially a year after finals was conducted from his church in Atlanta). Instead, this debate has to be, if the country was totally just in every way – that is, everyone has the same influence on the political process, and no group is systematically oppressed – should individuals still be allowed to engage in non-violent protest. I think this is the only way the debate can be at all meaningful. So, I really think debaters should run overviews on what it means to be a democracy along these lines.⁴

AFFIRMATIVE

First, I think it would be a little abusive, and probably would make for a terrible debate, if affirmatives are unwilling to accept a definition of democracy like I just outlined. I know it's not in the AFF's interest in a purely strategic sense, but I really do believe that judges value fairness and affirmatives that set out to build an open framework that provides good debate. Secondly, I really think that everyone should avoid just going off about civil rights movements of the 1950's and 1960's, and how that these groups had no other means, and look what they accomplished. I really would keep that sort of argumentation to an absolute minimum, if not avoiding it entirely. It's just making for a terrible debate if you expect the negative to disagree with you on it.

That said, there are a lot of really well articulated justifications of civil disobedience that could easily be the basis for any affirmative position. I would recommend two specifically. First, go read Ronald Dworkin, "Taking Rights Seriously." The book is such a great debate resource, and has a very good chapter on justifying civil disobedience. Second, read John Rawls, "Theory of Justice." The sixth chapter of the book is just on this topic and outlines this entire debate. Rawls assumes a near just society for his argumentation, so it fits perfectly within my framework.

Either way, this side is so easy, I'm sure you guys can all figure it out. Minority opinions and group members need to have a recourse to check back the actions of those in power. Civil disobedience allows these individuals to call attention to actions and policies that might otherwise be unnoticed by those not affected by them. This is a legitimate political tool to do so, since the rest of the political process is majoritarian. Anyway, aff looks something like that.

³ Bedau, H.A. "On Civil Disobedience," Journal of Philosophy, vol. 58 (1961), pp. 653-661.

⁴ The discussion of arguments is going to be really short for a few reasons. (a) you can get arguments from the other VB guys, I wanted to spend my pages talking about debating at nationals. (b) I have very little to say on this subject (the truth comes out).

NEGATIVE

First, I would definitely run an overview like I already suggested on what it means to be democracy. Also, go to Democratic peace theory to find this information.⁵

Also, there is a good case position that can be lifted straight from democratic peace theory. I think that the resolution is interesting because civil disobedience claims are generally made as contingencies — that is, their legitimacy is dependent on empirical conditions being true. Democratic peace arguments come in several forms. One is the ‘cultural’ form— which holds that internal mechanisms are externalized to the effect of achieving greater peace. In other words, our democratic institutions and procedures domestically manifest themselves in the way we conduct business internationally. These norms would entail marketplace of ideas, pluralism, etc. So the story would be that if we see these effects externalized, they must exist internally to begin with. So, if democratic peace theory is true, democratic institutions must be internal, which means the conditions for civil disobedience cannot exist.⁶ This is very confusing, I’m having a lot of trouble articulating it, but, I think there still maybe something to this literature.

The rest of the negative positions that come to mind are much simpler (so here is a laundry list). Basically, the idea is that in a democracy we have certain obligations and duties. We agree to the system, and participate within it. If we lose or come up with the short end of a stick, that’s just the risk we ran. People that lose elections should run again next term, and people that don’t like policies should use the political process. As a result, there are a large number of other means arguments. That is, there are civil structures and institutions through which we can levy complaints. The courts and the legislature are perfect examples, and that’s where efforts should be directed. Plus, even if non-violent civil disobedience still hurts people (property, delay, reputation), which is unfair in a democratic system. Additionally, there is always a chance that you are wrong, the law makers may have more information, and it shouldn’t be justified to break a law just because you don’t like it. Finally, there are some good arguments about the intrinsic value of laws, and the importance of deference to them.⁷

⁵ Affirming democratic peace:

Doyle, M.W. (1983). Kant, liberal legacies, and foreign affairs. *Philosophy and Public Affairs*, 12(3), 205-235.

Russett, B. (1993). *Grasping the Democratic Peace: Principles for a Post-Cold War World*. Princeton.

Levy, J.S. (1989). Domestic politics and war. In R.I. Rotberg and T.K. Rabb (Ed.). *The Origin and Prevention of Major Wars*. Cambridge.

Starr, H. (1997). Democracy and integration: Why democracies don’t fight each other. *Journal of Peace Research*, 34:2, 153-162.

⁶ Here are some good articles against democratic peace theory:

Elman, M.F. (1997). (Ed). *Paths to Peace: Is Democracy the Answer?* Cambridge. (this is a good overview, especially the intro)

Rosato, S. (2003). The flawed logic of the democratic peace theory. *American Political Science Review*, 97:4, 585+.
Layne, C. (1994). Kant or cant: The myth of democratic peace. *International Security*, 19:2, 5-49.

⁷ I want to thank friends that gave input on this: Josh for encouraging me to rant on a few subjects, Ryan Davis for his advice on the neg., Dylan Gadek and Adam Jed for content suggestions, and Kyle Fleegeer, Radhika Sen, and the rest of the Desert Vista crew for suggestions on what people want to know about nationals.

Topic Overview – John Cruz

Jon is a junior at Vassar College, where he majors in history. He debated for four years at Great Neck South High School in New York and accumulated many awards on his local and regional circuits; as team president, he led his team to its full debut on the national circuit. Now an active judge on the national circuit, Jon founded and is the director of both the Vassar Invitational and the Vassar Round Robin. He has coached numerous debaters to success this season, including to the final rounds of Lexington and Vassar as well as elimination rounds at the Westchester Classic, Newark Science, and Hendrick Hudson. He will be serving as a lab leader at this summer's VBI. After graduation, Jon plans to coach a team and pursue a career in academia or opinion-making.

Resolved: civil disobedience in a democracy is morally justified.

INTRODUCTION

Congratulations on qualifying for the NFL National Tournament!

You have much to be proud of, and I hope you are reveling in your success. For those who do not travel to tournaments on the national circuit, this is one of the only chances you have to debate with a pool comprised of debaters from across the country. For those of you who do, this will be a chance to debate against a pool of even greater geographic and stylistic diversity. No matter what your background in debate, you should be proud of yourself.

In this overview, rather than give a detailed explanation of one particular approach (as I did in my discussion of cultural relativism and the work of Ruth Benedict in our packet for the March/April resolution), or specify exact case positions for the affirmative and negative, I'd like to discuss what it is that you'll be discussing.

Breaking down the resolution and giving some thoughts along the way—both affirmative and negative—should be an effective way for you, dear reader, to grapple with the concepts you'll be debating. (Something you should do before deciding case positions in the first place.) I would just like to say, for the record, that I hope Scarsdale's Mike Mencher approves of the format. (I think he will.)

CIVIL DISOBEDIENCE

Civil disobedience is a form of protest in which individuals purposefully and deliberately violate a law.

It might be important to consider the laws themselves that are being broken. Generally, protesters violate the law itself that they are protesting—laws directly relating to segregation, the draft, sexism, homophobia, or the like. Sit-downs in segregated restaurants during the height of Martin Luther King, Jr.'s campaign for racial equality would fall into this category.

But, just as importantly, civil disobedience also encompasses violation of laws that one finds unobjectionable. This is an important point to keep in mind. Protesters against United States treaties with the World Trade Organization, for example, frequently violate traffic laws: there is, of course, no objection to those laws, but it is a conscious tactic to garner attention for their cause.

Both sides might want to keep this in mind when designing cases or blocks. As a general principle, activists who perform civil disobedience are conscientiously *nonviolent*. They also willingly accept legal penalties because, of course, an arrest for breaking unjust laws brings further attention to those laws or, in the case of WTO protesters, an arrest might bring attention to the cause.

Ronald Dworkin, for example, argues that civil disobedience is justified, but the punishment that those actions entail is also justified.

Ronald Dworkin, Professor of Philosophy and Law, New York University. *Taking Rights Seriously*. London: Duckworth, 1977, 186-187.

In a democracy...each citizen has a general moral duty to obey all the laws, even though he would like some of them changed. He owes that duty to his fellow citizens, who obey laws that they do not like, to his benefit. But this general duty cannot be an absolute duty, because even a society that is in principle just may produce unjust laws and policies, and a man has duties other than his duties to the state. A man must honour his duties...to his conscience, and if these conflict with his duty to the state, then he is entitled, in the end, to do what he judges to be right. If he decides that he must break the law, however, then he must submit to the judgment and punishment that the state imposes, in recognition of the fact that his duty to his fellow citizens was overwhelmed but not extinguished by his...moral obligations.

Most protesters who embrace civil disobedience would not deny this argument, even if their rationale for the value of their arrest is different.

Another definition of civil disobedience might not defend only nonviolent civil disobedience. The affirmative could preempt the negative argument that disruption of laws will only lead to violence by embracing such violent resistance. If laws are patently unjust, they might have emanated from a corrupt state that will not respect the pacifistic ends of some protesters. (In the early years of the Great Depression, a large group of World War I veterans violated the law to camp out on the Mall in Washington, D.C. to demand immediate payment of pensions to alleviate the extreme poverty they were experiencing. Herbert Hoover, then President, responded by sending in the military to retaliate against its own veterans [nonviolent ones at that].) The aff could argue that, if the state will necessarily be violent in its response to protesters, a response of violence is justified, perhaps even required.

Many negatives will want to capitalize on the violence, and not just its effects, but its inevitability. A discussion on the impacts of violence is an obvious route to take; analysis of why such violence is inevitable tends to fall on the wayside in such debates. Consider a psychological approach, particularly one that discusses not only cause, but effect:

Morris I. Leibman, *Civil Disobedience: Aid or Hindrance to Justice?* Washington, D.C.: American Enterprise Institute for Public Policy Research, 1972, 24-25

The effects of violence have been nothing short of tragic in every instance where violence has been employed. The burned-out areas of Watts, Detroit, Washington and Chicago provide eloquent witness of that tragedy. And who can measure the invisible costs of polarization, fear and hatred?

Civil disobedience accordingly appeals to those aspects of human nature which are basest and most easily aroused. Violence is not unnatural to man. The baser aspect of human nature crosses all lines of race, religion, geography, color and national origin... And Dr. Alfred M. Messer, professor of psychology at Emory University, has said: "But consider the nature of the human condition. Mankind is given to fits of impulsivity and wild emotions. During an angry range, the line between verbal expression and physical action may be very thin." n11

These kinds of discussions can give a solid story for a negative right on the top of your analysis. The negative should want a very clear story about what violence on the affirmative will lead to in the real world.

DEMOCRACY

One thing to be careful of is the "United States" assumption, a problem that comes up frequently on local circuits. *Nowhere in this resolution is the United States of America specified.* Your impacts, indeed your underlying analysis, must go back to a standard or conceptual framework that is broad enough to encompass America, Britain, Japan, ancient Greece: these are all examples of democracies. If you want to limit the scope of the debate — something that must be done carefully at a tournament such as NFL Nationals — make your analysis clear and thorough from the start. Careful, logical analysis at the top of your case will save you from a definitional battle later in the round. (I guarantee that such a battle will prejudice you from many judges in the pool, and will lead only to frustration by all involved.) Agree on the terms and go with them.

As the aff, one argument you might consider doing away with is the frequent claim that civil disobedience becomes justified as a “last resort.” “Justice delayed,” King wisely noted, “is justice denied.” Frankly, legal recourse—writing letters to Parliament or Congress, voting in elections, appearing in the media—has no end. You can always write another letter to your senator, and so, critics of the protesters’ aims can always claim that they “jumped the gun” and didn’t exhaust the possibilities. Thoreau further noted that legal channels can often take so long that protesters will never receive justice in their own lifetimes. “They take too much time, and a man’s life will be gone,” he noted sternly in *Civil Disobedience*. “I have other affairs to attend to.”

King also reminded us that it is important to not treat democracy as a shining beacon of perfection; like any form of government, it is susceptible to corruption, to flaws, and to internal issues. Legal channels, often open in theory, are frequently closed to minorities. (If not closed, they are often obstructed; almost everyone would define the United States as a “democracy” from the start, even though there were established codes and laws that prevented legal recourse from blacks in many regions of the country.) Thus, even in a democracy, the system does not preclude the necessity of civil disobedience.

Burton Zwiebach, Professor at Queens College, *Civility and Disobedience*. Cambridge: Cambridge University Press, 1975, 166-167.

The existence of repression may be a sign that the democratic process is breaking down, particularly if we associate certain rights with democratic government. A democracy is not a democracy because its constitution says so, but because its actions make it so. The existence of repression or the invasion of rights is at least a sign of democratic failure. In that case, the course of wisdom is not to demand unquestioned loyalty to a faltering process; it is to see how the failure may be redressed.... At any rate, it would be foolish to argue that, in principle, disobedience is wrong at this point, for that would mean we have no recourse but to trust that the process which has worked to deny a right may be counted upon to retrieve it.

Indeed, the most basic negative cases will probably be predicated in a social contract argument, but an astute affirmative will note that John Locke, the most cited (and frequently misconstrued) of the social contract philosophers, *encourages* disobedience in his theory if the state is in violation of its part of the contract. Passing unjust, oppressive laws is such a violation, and Locke permits disobedience to the point of revolt as a response.

(An aside: those who cringe at “name-dropping” quotes from people such as King, Gandhi, Jefferson, Thoreau, and the like—and I confess I fall into this category, as I often find the quotes to be simple rhetoric or acts of pandering to the audience—might be interested to know that many of the classical texts of civil disobedience contain clearly warranted arguments from which analysis and cards could be culled. They are also peppered with solid evidence, and any moral question, as has been noted before, cannot exist in a vacuum; real-world examples and real-world impacts are necessary at *whatever* circuit or tournament you are competing.)

Furthermore, the affirmative could argue that *civil disobedience often assists in legal recourse of unjust laws*. When people challenge laws, it leads to lawsuits, criminal cases, and other actions that, in many societies, can lead to an act of judicial review by courts, overturning the laws. How else is a court going to hear about an unjust statute or system?

As a final rejoinder to the claims that democracy makes civil disobedience unnecessary, many of the worlds leading democracies—the Allied Powers in World War II—helped to pass down the decisions of the Nuremberg Trials (decisions that the Allies endorsed); these decisions *required* that citizens of a nation disobey laws, orders, and codes that were in violation of international law. The legal decisions faulted Nazi officers who followed laws that endorsed oppression and genocide, even though those were the laws of their nation. Granted, Nazi Germany was not a democracy, but the decisions were supposed to be a universal rule. Thus, the governments who signed onto Nuremberg—and the nations that led the tribunals were democracy—recognized this overriding obligation to respect justice in any government, even a democracy.

Negatives ought to be familiar with critical arguments against social contract theory. There are many, and the best debaters will not take blanket, under-analyzed ideas like “Locke,” “Rousseau,” “tacit consent,” and “social contract” for granted.

Negatives can take multiple approaches, but most negatives will want to at least touch upon the structural foundations of democracy. So, when constructing, you might want to address ways of changing the government aside from civil disobedience or, more fundamentally, why civil disobedience is inconsistent with democracy. For example,

Morris I. Leibman, *Civil Disobedience: Aid or Hindrance to Justice?* Washington, D.C.: American Enterprise Institute for Public Policy Research, 1972, 12-14.

Like most slogans devised or resurrected for their propaganda value, the phrase [civil disobedience] obscures rather than promoted analysis. In particular the adjective “civil” is both misleading and contradictory. In democratic societies, any violation of the law is an uncivil act. This is true notwithstanding the motives of the violators. The violation is an assault on civil and social cohesion, the very basis of the peaceful interaction of men as “political animals.” Such an act is always disruptive and to describe it as “civil” is a contradiction in terms.

The “law and order” theme on the negative can also serve as a nice way to counter any aff claims that those who commit acts of civil disobedience do so with a willingness to be arrested, and this somehow justifies their course of action.

George F. Kennan, diplomat and Professor at the Institute for Advanced Study at Princeton University. *Democracy and the Student Left*. New York: Bantam Books, 1968, 16.

Respect for the law is not an obligation which is exhausted or obliterated by willingness to accept the penalty for breaking it.

To hold otherwise would be to place the privilege of lawbreaking preferentially in the hands of the affluent, to make respect for law a commercial proposition rather than a civic duty and to deny authority of law independent of the sanctions established against its violation. It would then be all right for a man to create false fire alarms or frivolously to pull the emergency cord on the train, or to do any number of things that endangered or inconvenienced other people, provided only he was prepared to accept the penalties of so doing.

Explore sources (primary and secondary) to develop your argument for the necessity (and prior recognition) of political obligations on either side. As always, the best-researched debater is the best-prepared one. The cards in this packet are, as always, an excellent start. Use them, but also consult the sources to which they point you. As I’ve stressed, consider primary source research as well. If you want to move beyond the “classics” (or “basics”), such as Gandhi, King, and Thoreau—and I highly recommend that you do—try looking for document collections of lesser-known proponents and analyses from the time of major acts of civil disobedience. One source you might want to consult is:

Weber, David R., ed. *Civil Disobedience in America: A Documentary History*. Ithaca, New York: Cornell University Press, 1978.

For discussions of democracy and obligations in general, two excellent sources are:

Pateman, Carole. *The Problem of Political Obligation: A Critical Analysis of Liberal Theory*. Chichester, United Kingdom: John Wiley & Sons, 1979.

Steinberg, Jules. *Locke, Rousseau, and the Idea of Consent: An Inquiry Into the Liberal-Democratic Theory of Political Obligation*. Westport, Connecticut: Greenwood Press, 1978.

MORALLY JUSTIFIED

“Morality” and “justice” are two of the most thrown around terms in LD, and often, their meanings are disappointingly vague. It makes matters worse when one is used to qualify the other...and that’s the case with this resolution. Morality can refer to a code of conduct that, given specified conditions, would be put forward by all rational persons (that is, something normative), or it can refer descriptively to a particular code put forward by an individual, a society, or some other group.

There are tremendous amounts of literature on morality and justice, from classical times to the modern. The truth is, I’d guarantee most people will undercover this area of the resolution. These terms are, unfortunately, often taken for granted, and have been for some time. For debaters who like empirics, it’s hard to find a desire to concentrate on the nature of “moral justification,” and frankly, for many philosophy-debaters, the time constraints and frequent use of the term have made it easy for people to fail to debate its meaning or its application.

If you want to take a philosophical angle on the case, I suggest taking the term seriously and deconstructing it. A philosophy-based case will devolve into empty rhetoric unless the term posited by the resolution is taken seriously. Make the standard clear and, given the rich history that ties into this resolution—plus the tremendous amounts of secondary literature—evidence is necessary. (You should always have evidence in a case, even if your cases are philosophically grounded, but here it is particularly important.) Philosophically -based case or not, you want to set a clear standard for the round.

For those looking to critique civil disobedience without taking on a pro-government stance, you might want to engage in a radical critique of the underlying philosophy of civil disobedience itself and condemn its passive acceptance of the existing political framework. (This could be grounds for a kritik, or it could be run as a standard case.) You might want to expose flaws in the “philosophy” and question if there is any link to justice or morality at all. Is civil disobedience a philosophy of social change deeply embedded in ideas of justice and morality. Or is it simply a means or a tactic to be utilized?

These are all questions to ponder while you do your casing and blocking, but they are questions worthy of a national qualifier. I’ll be at Nationals coaching, judging, taking pictures for Victory Briefs Daily, and, no doubt, gravitating around the VBI table. Come find me and say hello so I can congratulate you in person for this most impressive accomplishment!

Good luck, and see you in Salt Lake City!

Topic Overview – Greg Miller

Greg debated for Vestavia Hills High School in Alabama for four years. While competing, he broke at the Glenbrooks three years in a row, and was the top seed and top speaker his senior year. He cleared to late outrounds at St. Mark's and Emory his junior and senior years, and was invited to both the MBA and Greenhill Round Robins. He qualified to the TOC twice and was third speaker his junior year. He has taught at the Marquette University Debate Institute since 2002 and at VBI since 2003. While attending college at Rice University, Greg has helped coach students to demos at both the MBA and Greenhill Round Robins, as well as having a student break to outrounds at the TOC.

Resolved: civil disobedience in a democracy is morally justified.

DEBATING AT NATIONALS

Before I begin talking about the topic you'll be debating, a few words need to be said about the tournament you'll be competing in. Nationals is the most unique tournament you will compete at. You may well find yourself debating in front of a two incredibly different judges from different coasts. That being said, nationals is about an equitable balance of the 'circuit' and more 'traditional views of LD.

What does that mean to you as a debater?

First, rhetoric matters. Your cases should have opening quotes, eloquent summations of the positions you will be debating. Simply saying 'I negate' and proceeding to spew out the VP an Criterion will hurt you more than they help. Do your best to make sure that you are articulating your positions as clearly and as persuasively as possible. Don't be afraid to bring the folks in and read your case. If your parents can't understand the point you making, chances are a lot of judges won't either. Also, don't be afraid to have your coach/English teacher look at your cases and see if your using the most persuasive phrases possible.

Second, take the common sense position. If I learned anything at TOCs, it's that debaters tend to 'race to the impacts' often while ignoring the heart of the topic. So, you're modus operandi for selecting arguments should be simple. What would the average person find to be true on this topic? In terms of your judging pool, that question would be, what does the average democrat believe? So, don't rely on the third card in the second half of your third contention, pick the arguments that are intuitive. Third, present yourself well. That means keeping your hair well kempt, speaking clearly with inflection, and looking like you care. You want to be a credible advocate. Make yourself someone the judges want to vote for, not just someone they *have* to vote for based on the arguments.

OUTLINING THE TERMS OF THE RESOLUTION

Civil Disobedience

Wow, this one is the subject of some debate among authors in 'the literature.' Well my good friend dictionary.com tells us that civil disobedience is a "refusal to obey civil laws in an effort to induce change in governmental policy or legislation, characterized by the use of passive resistance or other nonviolent means." What does this mean?

Well, it means we're not talking about the Earth Liberation Front. People who use civil disobedience are breaking laws as a means of protest. Here are three points that may be of some contention. Are the laws they are breaking unjust? Some people will say that they are defending the breaking of unjust laws and that the action is acceptable because the law disobeyed is unjust. However, nearly every act of civil disobedience I can think of doesn't work this way. Yes, the sit-ins did challenge unjust laws directly, but Thoreau's refusal to pay taxes, Iraq War protestors laying in the streets, and most other acts are ones in which people are arrested while protesting rather than breaking that specific law in order to protest.

Second, does civil disobedience mean violence? Well, I think that this is up for more debate. While I think it's indisputable that the intent of civil disobedients is not to cause violence, history teaches us differently. The hoses were turned on marchers in Birmingham, the WTO protests broke down into violence, etc. So, to be discussed more on the negative, protests do not begin with the intent of being violent, but may become so.

Third, do civil disobedients consent to arrest? I think it's pretty fair to say that the majority of civil disobedients will consent to arrest. This is why in *Letter from a Birmingham Jail*, Martin Luther King told the protestors to not resist arrest. The key with civil disobedients is that they consent to their punishment in order to draw more attention and attempt to keep their protest seem legitimate.

You will need to be ready to defend whatever definition of the topic you take. So read the literature, pick your definition, and be prepared to defend it as the fairest interpretation.

Democracy

Wow, I guess we're only gonna talk about Ancient Greece. Jokes about the topic aside, the key is that we are dealing with a "government by the people, exercised either directly or through elected representatives." Well, dictionary.com gives you the general sense. The government that the resolution is concerned with is one in which the election process legitimates the government's policies.

What this means to you as debaters is that Gandhi ain't resolutional. There are two things this adds to the debate. One, it points to the concerns of the society. Two, it tells you what other recourses disobedients have.

First, a democracy has certain values that it ascribes, some support one side and some support the other. A democracy ultimately believes in a basic level of equality, that's why we have one person one vote. We have the voting process to insure that everyone is given an equal say in how the government ought to operate. But a democracy also believes in freedom. The voting process also serves as a signal that the people consent to the government because we want to insure that people are free to live under the government of their choosing. So, a democracy also believes in individual freedom. Finally, a democracy is concerned with the integrity of its process. The democratic process is often held up as an ideal. This is because a democratic society believes in fairness. The rules can't be changed when someone doesn't like the outcome of the game. This is the reason why we simply couldn't have a recount in Bush Gore 2000. A democracy is supposed to maintain its process because keeping those rules clear makes sure that the government is held to a clear standard.

Second, a democracy means that civil disobedients have other options. Unlike Gandhi, who was facing a colony that would not recognize Indian freedom, in a democracy there are a lot of other ways to have ones point heard. We'll talk about this more on the negative side, but the key is that when someone uses civil disobedience, they are forgoing other 'legitimate' avenues that exist in a democracy.

Morally Justified

This part of the resolution points us to what normative goal the debate strives for, but what does it mean? Well, I don't think it means you have to talk about morality every round, but it does set up the value consideration of the resolution. If something is morally justified, it adheres to a set of ethical principles. That being said, the words 'moral' and 'just' in the resolution mean you're going to be talking about morality and justice.

UNDERSTANDING THE CONFLICT PROPER

Interpreting the words in the resolution is really a means to framing the question this topic is asking. The resolution is a principle. It asks us the following question: given that we are in a democracy, is civil disobedience a legitimate recourse for the disenfranchised? So, the issue you will try to decide is whether or not this principle is consistent with the ideals of democratic society. This will mean that you will have to ask whether the good things this principle justifies outweigh the problems it allows. When you view the topic as a principle to be affirmed or negated, it opens up and frames the debate fairly.

CONSIDERING THE AFFIRMATIVE

Affirming the topic will probably be the easier job. Your position is simple. Civil disobedience is a necessary check on the democratic process. The reason that we have ‘one person one vote’ is because every citizen in a democracy is entitled to equal protection under the law. However, the problem with a democracy is that the process it uses often ignores the minority. When individuals don’t have access to the political powers that be, their only recourse is the most effective means of calling attention to their plight.

This is where civil disobedience comes in. By breaking what they perceive to be unjust laws, or by violating other laws in their protest, civil disobedients can effectively force the government to pay attention to the issues they face. Letters to congressman, lobbying, and appeals to the courts are slow and often ineffective means of garnering attention. If individuals are willing to accept the consequences of their actions (jail), then they ought to use civil disobedience as a form of democratic discourse. They are not subverting the system, they’re introducing a new aspect to the dialogue. Civil disobedience is a ballot for the people whose ballot doesn’t matter.

When you sell this as another means of lobbying you’ve done half your job. The other half is explaining why this is still okay in a democracy. This shouldn’t be too hard. The reason why it’s okay for people to break the law is because it is that system of law that has disenfranchised these people. If the majority hadn’t passed Jim Crow laws, disenfranchised blacks, and systemically oppressed them, then they never would have had to deal with the Civil Rights movement. The price of civil disobedience is the price the majority has to pay for how it treats its minority. If we take the rights of homosexuals to marry away, we have to deal with the consequences of doing so. Remember, you’re defending those who have no other defense. Make an impassioned argument and you’ll be fine.

HOW YOU NEGATE

Negating isn’t so much about saying Martin Luther King was wrong as it is about explaining why the resolution would cause more problems overall than it would help. That being said, here are a few tools to have at your disposal.

First, there are other ‘legitimate avenues.’ Plenty of minority movements have found incredible success without civil disobedience. Lobbying congress, marching, and the use of the courts have all been successfully used by minority groups. I think the courts are the best avenue for you to push. In my new home state of Texas, a homosexual group recently won a huge victory in the Supreme Court, overturning the States’ anti-sodomy laws. Lawrence v Texas won a huge victory for Queer Rights without shutting down a city, getting police arrested, or causing other problems. Courts now present a much more favorable avenue than they did in MLK Jr.’s day.

Second, the principle the resolution supports makes no distinction for what is legitimate or illegitimate civil disobedience. We all like to think it’s great that African Americans won their freedom through civil disobedience, but what about other causes. If we affirm the resolution, who’s to say what causes do not deserve to use civil disobedience. The Klan raised hell about marching in Skokie and there’s nothing to say that civil disobedience might be used for evil purposes as well.

Third, civil disobedience can be counterproductive for a movement. By breaking the law, a movement can make itself look illegitimate by causing major problems. We may think the protests against Iraq are all well and good, but when the protestors draw our kids out of school and lay in front of our cars, how much empathy do we have? Impatiently breaking the laws can undermine the credibility of the movement.

Fourth, civil disobedience undermines the democratic process. Like it or not, violating the rule of law does more harm than good. When civil disobedients break the law, they undermine the will of the community in which they live. If there are more legitimate means of persuading the majority, civil disobedients shouldn’t cause a greater harm for the democratic process. Overall, be prepared to attack the affirmative’s claim that civil disobedience is necessary. If you can prove that it’s unnecessary/ineffectual, then it becomes very easy to explain why it isn’t justified.

EVALUATING THE VALUES

In the end, this resolution is about how a democracy should operate. Choose your values accordingly. The affirmative will want to center more on equality based values. Remember, we're all given one ballot for a reason. There needs to be a check not just on the majority, but the system that privileges the majority. Principles such as equality, or effective representation will carry you far. For the negative, utility will be the major consideration. The process is fundamentally good, it does work. Values such as maintaining a stable social framework, or protecting the integrity of the democratic process are the overarching principles the negative must embrace.

Look at the heart of the topic, carve out your ground, and debate as well as you can. Good luck.

Topic Overview – Stephen Babb

Stephen is a junior at Baylor University, majoring in Business Management and aspiring to be a lawyer. He was a co-director of the LD institute at VBI this past summer. Debate successes include breaking at NFL Nationals three years in a row, finishing in the top 29, 4th, and 9th respectively. Other achievements include being the Texas State Champion, advancing in out rounds at Greenhill and Emory in both sophomore and senior years, and receiving invitations to the Gulf Coast Memorial Round Robin, the Greenhill Round Robin, the Montgomery Bell Academy Round Robin, and the Flatirons Round Robin (where Stephen took first).

Resolved: civil disobedience in a democracy is morally justified.

This is a pretty neat topic. Before I address the topic itself, I thought I'd say a few introductory words about NFL Nationals. Now if you want to know what it takes to win the tournament, you should talk to my good friends Adam Preiss and Oscar Shine. But if you are content to settle for various rankings in the Top 10, I'm your man. We all know it's lonely at the top anyway, so try shooting for 4th best or something like that.

NFL Nationals feels kind of like a really long marathon, but without the great feeling of having actually accomplished something. Endurance is a must; prepare yourself physically and mentally. Eat well, keep your fluids up, get sleep. You think I'm joking, but this tournament will test your ability to stay focused and mentally acute more than any other. It is drawn out for a long time. Be ready!

Also, the judging is... diverse. You will encounter everyone under the sun, sometimes in the same round. There is no easy way to deal with a round in which you're attempting to adapt to two very different kinds of judges. Your best bet is to write several cases on each side, including one that has both broad appeal and strategic advantage. Write something that different kinds of judges will all agree is intelligent, well thought out, and cogently argued. You will not succeed with gimmicks or arguments that rest on 'debate theory'. Remember, a lot of your judges are smart people; but they aren't all gung ho debate fanatics. Do alienate them (but don't dumb yourself down either).

Finally, don't get discouraged. When I was a sophomore at NFLs, I lost my first three ballots and won my next nine in order to break. Usually, you can afford to lose four ballots and still get to at least the bubble round. Judges often do not disclose, so you may think you did poorly in a round that you actually won. That happened to me several times. If you get to elims, be prepared for a truly grueling process. You can drop twice, but you should treat every round as if it's your last. And once you get the first, know that you can stay in it for quite some time. I received both of my losses my junior year to that year's champion, the esteemed Adam Preiss. But the first loss came early on in elims, and the second loss wasn't until semis. You can make it for some time even with that first drop, but it is tempting to feel out of it. That said, enjoy Utah... I'm not sure what's in Utah, but I'm sure the National Forensic League would never have Nationals anywhere but the most desirable destinations. Take my senior year for instance... when we ventured to the lovely NORMAN, OKLAHOMA. Yahhhhh...

THERE'S A NEW TOPIC!

I usually go on and on about topic wording, but not this time. This time, I'm going to go on and on about how to negate. And when you have to affirm, I think you should try to trick your judges and opponent into thinking it's your turn to negate. You should never bother to affirm this topic... or really any topic. Negating is much easier, and this topic is especially easy to negate. After all, you have seven minutes to make arguments. How can you lose? Most judges admit their paradigm is 'vote neg' anyway, so why buck the trend?

Anyway, it is worth mentioning that this topic is situated in a democracy. I have written at some length in previous overviews about democratic values and so on; so you should go back and read those. At any rate, your arguments should assume that the potential civil disobedience is taking place in a democratic structure with ostensibly democratic values. It may be most useful here to caution against taking too much for granted from this context; we sometimes have a tendency to idealize democracy as some kind of utopian fairy-world where everyone gets her way and people enjoy life by mere virtue of the fact that they can vote and own guns. In reality, people don't bother to vote half the time. We assert our basic liberties in outrageous ways and turn valuable institutions into corporate puppets or meaningless figureheads. Things go wrong in democracy all the time. To the extent that your debates consider the empirical consequences of disobedience within a democracy, I would simply recommend that you not

be naïve. Democracy does not thrive on civil disobedience any more than it thrives upon debates between Lincoln and Douglas.

I think it's actually really easy to affirm this topic. The AC burden is super light and the AC story is intuitive. The AC isn't advocating anything particularly extreme; it's just saying it's OK sometimes to break the law when the law is no longer a friend to Lady Liberty. I don't know what that means, but it sounds delightful.

AFFUNKIFIED

The AC story should be simple. The AC burden is not to contend people are obligated to support or perform acts of civil disobedience. The AC burden is not to claim that civil disobedience should somehow be legal (I'm not sure that's definitionally possible!). The AC only needs to prove that in general it's morally justified for people to break the law in relatively harmless ways. Before reading anything else, you might look through the work of Hannah Arendt for guidance on issues like citizenship and civil resistance. She's a great philosopher and phenomenologist, and makes quite articulate arguments on the subject.

So if the AC story is simple, and if the burden is indeed light, what shape does the argument itself take? The AC should first claim that civil disobedience is in and of itself not morally problematic, that it falls within the sphere of tactics that are morally appropriate. This serves two strategic purposes: first, it may be articulated as a general defensive posture and preempt various negative stories; and second, this claim can proactively affirm the topic, albeit it only weakly (given the weaker definition of 'morally justified' as meaning morally permissible). I am guessing that proving civil disobedience to be morally permissible would be enough to affirm for many judges. I'm not sure I would stop there, however.

The next step would be to portray civil disobedience as a particularly good tactic for challenging bad policy or law. Civil disobedience avoids costs to innocent life while taking political speech a step further and into presumably more efficacious territory. People pay attention when the status quo is disrupted. Disrupting the status quo may be the best way to begin rearranging the symbolic schemes that prefigure everything bad in the world — from problematic power structures to patriarchy to blatant oppression to annoying policy decisions... whatever there may be. The structures we object to enjoy protected status because of their ability to orchestrate their own symbolic viability. People accept those structures because of the way they appear to us. To the extent that civil disobedience can interrupt this appearance and disrupt the simulations they generate, we may yet have hope at making this world a better place. I know, I feel warm and fuzzy about it too!

I think that any AC can get some yardage through the concept of micro-political resistance; it is currently a fashionable topic among post-colonial types and those wanting to undermine Empire, etc. The typical theme is that Empire (and the laws, policies thereof) is taking over the world and destroying difference; it totalizes its way into positions of cultural, geopolitical, and economic hegemony. There is a big machine (Global Capitalism) that creates the illusion of its own disunity only to more stealthily colonize the world. It is at once ninja smooth (internationalized trade, WTO, IMF) and sumo strong (Western colonization of the Middle East). It permeates every corner of our mechanized consumer routine; the clothes you wear and the coffee you drink are the fingerprints of this unstoppable force.

And yet, people living in democracies everywhere seem to have become increasingly aware of Empire. It is discussed and berated commonly in academic circles. It seems that the dialogue gets us nowhere ("Where's all this talkin' got us baby?"-Live, *Throwing Copper*). Perhaps the only way we can bring attention to Empire is by following the example set by Gandhi is disrupting the British Empire. We must regain control of our symbolic world — only then can we seriously call into question the structures that Empire has built into and around the life of the masses. Watch *Fight Club*; read some Hardt and Negri. You'll be fine.

If you want something slightly more vanilla, just whine about how hard it is to change bad laws and policies without calling attention to them through public disturbance. It's all basically the same thing.

BEYOND CIVIL DISOBEDIENCE

I suspect that one reason civil disobedience is not justified is indeed that it fails to go far enough. If something in the status quo is truly abhorrent enough for one to transgress the law, why ought we stop short of truly reshaping and transforming the status quo through any means necessary. Why ought we stop short of revolution? To be sure, opponents will suggest that the unique value of disobedience lies in its non-violent disposition. But of course herein also lies its unique propensity for failure. Proponents end up pointing to all of two or three instances of success; but how many more cases exist in which the sword became a necessary response to a powerful and dangerous systemic threat?

There are several advantages to this position. First of all, it precludes the affirmative suggestion that civil disobedience is justified even if revolution is better. This move is a critical one, however: civil disobedience operates as a façade for change and countercultural achievement. Much like its well-touted counterpart, “micro-political resistance,” civil disobedience creates an illusion of change from below. It captures headlines and spurs a media driven simulation of change. The structural realities, however, remain unflinching and constant; they merely sink deeper into a subterranean power locus always more than happy to co-opt highly publicized civil unrest. Look at the unrest—it wants to say—here is democracy at work! After all, if civil disobedience appears effective, the extreme Left and radical Right will remain pacified. They witness superficial change and count it as success. The Michael Moore gadflies of the world are no more than illusions of the system’s vulnerability; a documentary here and there that “exposes” corporate America does no more than further entrench corporate America under a simulation of change and progress. When, in *Bowling for Columbine*, Michael Moore succeeds in having a store chain stop selling bullets, viewers and Moore are deceived into believing that “small” victories are in any way victories at all... that they have some larger revolutionary meaning in the task at hand. This is indeed the unmistakable impotence of the academia-driven Left; we shall talk about change and revel in the fruitless mirage of our own labored construction.

This is a strategically astute position as well. To the extent that affirmative debaters stress the importance of overturning status quo injustices, this alternative will do so much more swiftly and with greater finality. The negative must illustrate that these injustices (or whatever) thrive deep within the structure of the capitalist world; minor disturbances have little effect. The uniqueness of the negative position, however, lies in illustrating that civil disobedience *makes the problem worse* through its simulation of efficacy. The idea that we can take small steps to victory is a myth that saturates democratic thinking. Until the legislature uses an instance of civil disobedience to go ahead and roll back capitalism, the marginalized and oppressed are pooh out of luck. So on the one hand, civil disobedience pacifies potential revolutionaries and operates unwittingly as a tool of the system. One is reminded of the phenomena of consumer feedback; its value lies not in the possibility of helping a business make consumer-centered changes, but instead in making the consumer think the business gives a pooh. The dollar is clever, yes?

On the other hand, we also have a general cheapening of radicalism. It is most fashionable for college students to take up “causes” and subvert popular trends via what are ultimately realized to be no more than... less popular trends. Here, we think about an effect distinctly nuanced from the simulation of change. The simulation will deceive the gadflies; but more importantly, it also deceives the moderate public. Clearly racism has been solved because of MLK and Rosa Parks; sure their disobedience helped effect legislative change. But the power structures remain basically the same, and they remain the same in large part *because* of that legislative change and its declaration of: “problem solved!” But the cheapening of radicalism is an altogether separate phenomena (though similarly tending to eliminate the possibility for change). Civil disobedience creates an enclave of fashionable and self-righteous outcasts, eager to pretend as though they have done their part (“however small”). We find similar situations with protest, ‘dialogue’, and a host of other subversions popular amongst those on the far Left and Right. Radicalism becomes an alternative club whose membership consists primarily of entertainers (Tim Robbins, Sean Penn), university professors, and college students. When Sean Penn went to Iraq to take photographs, it did not appear to impede to impending invasion. But these events are symbols around which the underground club rallies and claims success. Has revolution come to this? Photography? The AC will claim a quaint nobility in the notion of dropping one’s guns and picking up a camera, but it will be cheapening the thrust of resistance in the process. Now resistance is a comparably easy affair—pick up a sign and stand in front of Starbucks, and you my friend have joined the club! Now you can feel good about yourself. But as long as the insurgents are only interested in the appearance of subversion and finding membership in the open arms some righteously angry campus club, our hopes for revolution and real change dwindle by the second. While the deception of the masses ensures that the margins

will be small, the cheapening of the radicals ensures that the margins will be diluted and weak. Civil disobedience, then, feeds both of these trends.

It is of some amusement that civil disobedience finds its home in the civilized West. One can imagine the insurgents in Iraq or the suicide bombers of Palestine changing their tactics and instead having coffee groups that whine about the Man. Who needs explosives? We'll drink our non-corporate lattes instead, and maybe hold up some signs at Israel's really big new wall. No one will be able to see them on the other side, but hopefully we'll get on the news and then throw an after party. The system is absolutely adept at turning cerebral and symbolic resistance on its head; it has, with no effort whatsoever, convinced moderates that moderate change is sufficient while letting the margins lose all potency as a group of self-righteous and laughable extremists. Only decisive and violent acts of revolution will reverse the trend of polite civil disobedients digging their own grave of uselessness.

And it goes without saying that on a much more practical level, civil resistance prevents successful revolution because all the potential revolutionaries are jailed without a fight.

In case any of you are wondering, I think violent revolution is perverse and evil and in no way endorse it in any manifestation. But as long as we are making arguments from the sidelines, this is one to think about.

THE SYSTEM IS STRONG

It may also be worth maintaining that civil disobedience is simply ineffective. One need not endorse a more radical alternative to suggest this particular option is fruitless. If it is our goal to change the system (however slowly) through civil disobedience, we would hope such change is actually possible. Affirmatives would be smart to maintain that an act is "justified" regardless of its efficacy. Our most basic freedoms, after all, are considered justified regardless of the *effects* they ultimately have. Political speech is protected not because it necessarily radicalizes the marketplace of ideas, but simply because it is something to which we as citizens are procedurally entitled. But civil disobedience appears to be something else, something distinct from the array of core liberties we hold central. It is definitionally against the law; that is, it is definitionally outside our sphere of protected rights. Otherwise, it would be anything but disobedient. But does this beg the question? Aren't we trying to decide what ought to be included in this protected sphere in the first place? As the negative, I would contest this. We are provided numerous ways in which we might express ourselves politically, artistically, and so on. We are allowed to carry on open and dissenting dialogues; we are free to gather in ways of our choosing with persons of our choice; we are indeed free to practice religion as we see fit. To say that there is such a thing as civil disobedience is not to outline yet another category of behavior that may or may not belong along side these legitimate rights — it is instead the *very act* of drawing a line beyond which these rights are no longer legitimate. In other words, it isn't that speech and disobedience are two entirely different kinds of expression; disobedience simply refers to that expression which goes too far (and of course, it can refer to more than merely expression). It seems then, that by **definition**, civil disobedience is not inherently justified or legitimate. It is the concept we use to denote that which is inherently not legitimate, that which transgresses the codified norm and interferes with those things that such a norm is designed to protect. As long as there are other legitimate avenues for expression, civil disobedience seems to mean breaking the law in order to simply break the law... unless of course, civil disobedience provides some kind of important or utilitarian gain. And so here we return to the question: can the system be changed at all by civil disobedience, given that such change is all that could truly justify such transgression. Gandhi believed that the value in civil resistance was its symbolic effect and its propensity to change things. This negative position would merely confront Gandhi and tell him quite matter of factly that he was delusional. There are, to be sure, historical instances in which civil resistance seems to have had some effective (though almost always in conjunction with other powerful historical events — like WWII in the case of British India). It is another thing entirely to believe civil resistance is productive as a general rule. Empire and oppressive regimes have become much more effective machines. No longer do they need to respond to resistance with an opposing force; they merely need to channel resistance. And it is through the very same symbolic world in which civil resisters operate that the system reacts, primarily through a corporately owned media juggernaut interested in "infotainment" as a recent author suggests. Civil disobedience is either not given news attention, discursively portrayed as extremist, or perhaps presented in a positive but quaint and insignificant light. If there were any contemporary instance of success by civil insurgents against Empire, one would look to the WTO protests in Seattle (which got rather rowdy). But even here, we see little to no actual effect on Empire. The protests were a particular historical event with no effect on the processes they hoped to rearrange. Indeed, whatever symbolic product they hoped to generate was simply reconstructed into a scene in which a few

unruly college students lamented the advances of the New World Order. The possibility of lawlessness is always more likely to generate news than ordinary political speech, but it is how the lawlessness is depicted that matters. And of course, when the media is more interested in the entertainment value of an event, it is the lawlessness itself that receives attention instead of the message on whose behalf it was executed.

Optimists will again want to point to examples like MLK or Rosa Parks. But to attribute the successes of these legends to civil disobedience is entirely myopic and useless in a debate round. I don't think anyone actually believes the key to civil rights progress was the 'disobedience' part. But it certainly makes for a more dreamy history.

THE EASY NEG

The most straightforward position is to contend that civil disobedience has unintended and problematic consequences. Laws are effective on the one hand because they carry with them the threat of force. But, they are also effective because they tend to convey some comprehensive sense of legitimate or moral behavior. Those behaviors the law endorses (and those correspondingly sanctioned) may or may not indeed be as legitimate as the law suggests. There are of course bad laws. But it is unlikely that civil disobedience will succeed in only trivializing those bad laws. It is not a precisely articulated affront to the law. Typically, such disobedience will involve breaking one law in order to protest another. What we are left with is a symbolic affront to the Law itself. To whatever extent this affront is successful, we are no better off. Our scheme of order and civilization is simply jeopardized. No one really wants that.

Another easy argument: it depends! Civil disobedience cannot be any more 'morally justified' than an act like 'researching small pox'. These kinds of actions are in and of themselves without any kind of moral status. Some people research small pox to learn how to fight it; others so that they might use it as a vicious weapon. Clearly, we would embrace the defensive research as morally justified while being outraged at some terrorist goon looking to end the world. Such is the case with civil disobedience—sometimes laws are good, sometimes they're bad. A law may be broken peacefully and in a way organized into a public message, but that does not mean the law being broken is a bad one or that the targeted policy is a bad policy. Surely the destruction of good laws through collective symbolic efforts isn't especially justified. I don't know why anyone would want to say that a campaign against good stuff is a good campaign.

But is this particular methodology *morally justified*? At some point, we become hung up on the meaning of 'morally justified'. If the phrase means only that the act in question is in and of itself not morally problematic, then the affirmative debater can make the case that whatever the ultimate goal is, the use of civil disobedience should not be considered morally off limits. But it seems to me that the term 'morally justified' is slightly more loaded, that it means something more than, "not inherently bad." If this is the case, then the AC is left with an impossible task: to assign moral legitimacy to an act that is in and of itself morally irrelevant. The AC might as well contend that driving is morally justified. These are things that lack moral status outside of a particular context with particular objectives.

Run with that! Good luck.

Topic Overview – Justin Eckstein

Justin Eckstein debated for 4 years at La Cueva High School. Justin participated at the Stanford, Iowa, ASU, Southwest showdown round robins, and attended the Flat Irons round robin where he was the champion. He now attends Denver University where he is a double major in International Business and International Studies.

Resolved: civil disobedience in a democracy is morally justified.

INTRODUCTION

Before I start my overview on the topic I just wanted to give mad ups to all those going to nationals; good job! This time's theme is *Family Guy*.

“THAT’S THE SAME THING YOU SAID ABOUT GETTING CLOUD INSURANCE, BUT JUST LOOK AT THEM SITTING UP THERE PLOTTING.” – SOME GENERAL THOUGHTS AND PHILOSOPHICAL RAMBLINGS.

Before moving onto the substantive arguments lets evaluate a pretty important term in the resolution, “Morally Justified.” This term, although in a lot of LD debate topics, is incredibility loaded. Consider what the two terms mean. Morals refer to a codified individual system (or categorical system depending on which school of philosophy you prescribe too) of decision making. Meaning you do something because it is the moral or the “right” thing to do. Justice refers to the fulfillment of contractual/reciprocal obligations. The delineation between the two terms, morality and justice, is best explained through an old analogy:

Your very good friend lends you her/his knife early today so you can cut up an apple. Your friends only request is that you give the knife back whenever s/he asks for it. Later in the night you see your friend at a party; when you see her/him, s/he looks very upset and angry. After conversing with your friend you discover s/he is very up set because some one else was all up in her/his “kool aid,” and s/he wants the knife back so s/he can stab the other person. You are now faced with a dilemma while it may be just to give the knife back (since you formed a contract with your friend about it) it wouldn't necessarily be moral because you know your friend is going to stab someone else with it.

I think this is an interesting observation, so while some affirmatives may prove that it is moral, like good according to a code of ethics doesn't necessarily mean its justified. Also, even if you prove its reciprocal doesn't necessarily mean its moral. For example, if I hire a hit man to kill Duby, and the hit man follows through it would be just because the hit man is following through with the contractual obligation, but not moral, because its not consistent with our puritanical moral paradigm.

Another assumption debaters are going to make is that the democratic model the resolution is referring too is that it's the United States conception of democracy. Nowhere in the resolution does it say the United States, and no words in the resolution hint at it either. This means that the ground in the resolution has exploded. Impacts of civil disobedience in ancient Greece are a lot different than the United States.

“I WAS GOING TO SELL YOU SOME HANDSOME CREAM, BUT IT SEEMS LIKE YOU HAVE ALREADY BOUGHT OUT THE WHOLE STORE” – AFFIRMING

I think there are a lot of different aff arguments that can be made on this topic. Since others will cover the more traditional arguments, I am going to talk about more “obscure” arguments on this topic.

First (I am going to start with the simplest argument), the resolution involves a question of tactics —choosing how we should respond to the violation of liberties, or freedoms? I would argue that pacifistic (or tacitly consenting to the injustice by not doing anything) is counterproductive. Tacitly consenting to harm allows it to further occur. Resistance to the oppression is the only avenue for liberation. The accession to the struggle is critical. Now smart negatives will get up and argue you offer a false dichotomy and say there are different options to change the government (voting for example). So, when constructing the case I would address the different ways of changing the government besides civil disobedience.

The obvious option in a democracy is to vote. Many theorists, however, argue that voting is not necessarily an adequate safeguard. There are inherent difficulties in voting. First there is the dilemma of the collective choice. Voting does not always reflect what the collective or the majority actually want.

Schutt, Randy. Vernal Project. 08 Oct. 2001. 1 Apr. 2004

<<http://www.vernalproject.org/Papers/Democracy-95W.pdf>>.

How should society collectively make choices in a fair and democratic way? In the decision making system used most often in the United States, citizens periodically express their sentiment by voting for a candidate or measure. Whichever alternative receives the most votes (a plurality) is chosen. It is a simple decision system — easy to understand and seemingly fair. Unfortunately, it is often not fair at all. For example, an election in a liberal community might have three candidates, two of whom are liberal, the third a conservative. If the liberal voters in the community split their votes between the two liberal candidates, then the conservative may win — with perhaps votes totaling 35% and 25% for the two liberal candidates and 40% for the conservative. So even though 60% of the people prefer a liberal to represent them, the conservative candidate wins the election. The decision system determines a winner, but it does not do it in a way that seems fair or democratic.

Schutt, Randy. Vernal Project. 08 Oct. 2001. 1 Apr. 2004

<<http://www.vernalproject.org/Papers/Democracy-95W.pdf>>.

To overcome this problem, the decision system can be expanded slightly to require the winner to garner more than half the votes. If there are more than two alternatives and none receives a majority in the first election, then another (runoff) election is held between the top two vote getters. But this system can also be problematical. For example, let's assume there are three alternatives: X, Y, and Z and that voters prefer one alternative to another in the following way:

18% X > Y > Z

17% X > Z > Y

13% Y > X > Z

21% Y > Z > X

19% Z > X > Y

12% Z > Y > X

(This notation means 18% of the voters prefer X to both Y and Z, and these 18% also prefer Y to Z.)

In the initial election, X would receive 35% of the vote, Y would receive 34%, and Z would receive 31%. In the runoff election with the top vote-getter, X, pitted against the runner-up, Y, those who initially voted for Z would now vote for either X or Y. In this runoff election, X would receive 54% and Y would receive 46% of the total vote. X would seem to be the clear winner. But in this case, 52% of the voters actually prefer Z to X (the sum of the bottom three groups). If Y had not been an option, Z would have won in the initial election.

Schutt, Randy. Vernal Project. 08 Oct. 2001. 1 Apr. 2004

<<http://www.vernalproject.org/Papers/Democracy-95W.pdf>>.

Under these circumstances, it is quite possible that people might have the preferences shown above. In fact, because there are so many issues, so many ways of perceiving the issues, and so many proposed solutions to these issues, this situation actually arises quite often. The majority vote/runoff process has another prominent problem: it encourages voters to vote strategically (manipulatively). For example, in the case shown above, those 21% of voters who prefer Y to Z to X may realize that X (their least favorite candidate) will win if they vote in the initial election according to their preference and vote for Y. But they see that if they initially vote for Z, Z will receive 52% and win. These voters therefore have an incentive to vote their second choice rather than their first in order to ensure their last choice does not win.

Altering the voting system to better reflect the collective interest does not eliminate the problem.

Schutt, Randy. Vernal Project. 08 Oct. 2001. 1 Apr. 2004
<<http://www.vernalproject.org/Papers/Democracy-95W.pdf>>.

In the Rank Order Method of Voting, voters rank their first few choices. Options are then assigned a certain number of points for each time they are a first choice, a smaller number of points for being a second choice, and an even smaller number of points for being a third choice. Unfortunately, this system also can lead to strange results. Consider the case of 100 voters choosing among four candidates, A, B, C, and D. Assume these voters have the following preferences:

40 A > B > C > D
35 B > C > A > D
25 C > A > D > B

For the sake of simplicity, assume no voter has any of the 21 other preference possibilities. Let's also assume that in this election first choice candidates receive 3 points, second choice candidates receive 2 points, and third choice candidates receive 1 point. Under these circumstances the vote count would be as follows:

A would receive $(40 \times 3) + (35 \times 1) + (25 \times 2) = 210$
B would receive $(40 \times 2) + (35 \times 3) + (25 \times 0) = 195$
C would receive $(40 \times 1) + (35 \times 2) + (25 \times 3) = 185$
D would receive $(25 \times 1) = 25$

Candidate A would easily outscore the others and win the election. But what if Candidate D realized he had no chance of winning and dropped out of the race? This should not matter since D is least preferred by 75 of the voters and is low on the list of the other 25. But in this case, Candidate B would then pick up an additional $(25 \times 1) = 25$ points from the third group of voters making her the winner with 220 points.

Or consider another variation: Assume that the group of 25 voters in the last line actually preferred D to A in their preference ranking (their preference ranking was C > D > A > B instead of C > A > D > B). This change should have no effect on the election since in either case D would lose the election by a large margin. But this change would reduce the number of points A would garner by 25 (to 185), making B the winner with 195 points.

If you like these kinds of arguments that voting doesn't work look up Kenneth Arrow and his *Impossibility Theorem*, where he argues that democracy can never mathematically work.

So, now the question arises what about grass roots movements? Why can't people who do not like the law simply work together and change the law?

One more non-conventional way to preempt this argument is to look to the Critical Legal Studies (CLS) school of thought. I know going to nationals the last thing you want to hear is the word "critical." The argument you're going to want to make is using the system to fix problems legitimizes it's structure. For example, lets say I want to upraise against the candy industry for making me fat. If I contact the company and they put me on weight watchers and I lose weight, the candy industry would look legitimate because they helped me get over the problem they created. However, it would not stop them from getting others fat to continue making money and leading a rash of diabetes. Moreover, you're ultimately dependent that those in power are willing to give up their power and have the similar belief system. This is highly unlikely.

The negative may argue that civil disobedience will just encourage violence. Some affirmatives might question whether this is illegitimate. The state is violent and this demands violence.

Churchill 01(Ward, Professor of Ethnic Studies and Coordinator of American Indian Studies at University of Colorado, Pacifism as Pathology pg 44, 2001)

Absurdity clearly abounds when suggesting that the state will refrain from using all necessary physical force to protect against undesired forms of change and threats to its safety. Nonviolent tacticians imply that the “immoral state” which they seek to transform will some how exhibit exactly the same sort of superior morality they claim for themselves.

The second aff argument is what I’ll refer to as “discursive democracy.” Again, I know, NFL nationals’ judges don’t want to hear the word discourse. The premise of the argument is that when you are being disobedient, you’re acting outside the legal structure. Hence civil disobedience breaks laws (I think this premise is pretty easy to win); being outside the legal structure makes you outside the government. Dryzek breaks this up into the state and civil society. He argues that this exclusion from the state--being “outside”—creates a tension that leads to discourse between opposed groups and results in better democratic polices.

Dryzek, Johns S. *Deliberative Democracy and Beyond: Liberals, Critics, Contestations*. Oxford University Press: 2000

“Democratic theorists who advocate a strategy of progressive inclusion as many groups as possible in the state fail to recognize that the conditions for authentic as opposed to symbolic inclusion here are quite demanding. When these criteria are not met then inclusion in the polity beyond the state is more appropriate. These are times when benign inclusion in the state can occur, but I will conclude that any such inclusive move should also produce exclusions that both facilitate future democratization and guard against any reversal of democratic commitment in state and society. The dynamics of democratization turn out to reveal a subtle interplay between inclusion and exclusion, the state and civil society.”

An oppositional civil society is better than an inclusive state. This is because you have different voices challenging the established government. Allowing the government to coopt different groups and their voices will result in no external check on the government.

Dryzek, Johns S. *Deliberative Democracy and Beyond: Liberals, Critics, Contestations*. Oxford University Press: 2000

“It is important to distinguish between inclusion in politics and inclusion in the state. I will attempt to show that democrats, including deliberative democrats, should generally favor a state that is in important aspects exclusive, for exclusion properly arranged can actually benefit democracy and democratization, even from the point of view of those excluded...an examination of the history of democratization indicates that pressure for greater democracy almost always emanate from insurgency in oppositional civil society, rarely or never from the state itself...Women’s suffrage was in the pioneer cases the culmination of a long struggle by women themselves, organized into suffragette movements. If a group leaves the oppositional sphere to enter the state then dominate classes and public officials have less to fear in the way of public protest. There may be democratic gain in this entry, but there is also democratic loss in terms of less discursively vital civil society, the erosion of some existing democratic accomplishments, and a reduced likelihood of further democratization in future.

Here is a good solvency card that talks about how the increase in opposition correlates to a better democracy, because all voices are heard.

Dryzek, Johns S. *Deliberative Democracy and Beyond: Liberals, Critics, Contestations*. Oxford University Press: 2000

Why should civil society often be more attractive than the state as a site for democratization, and deliberative democratization in particular? The answer is that it is relatively unconstrained....Thus deliberation need not be muffled in the interests of strategic advantage. In addition, goals and interest need not be compromised or subordinated to the pursuit of office or access, and there is less reason to repress the contributions to debate of embarrassing troublemakers. Perhaps most important of all, the indeterminacy of outcome inherent in democracy need not be subordinated to reasons of state. Given that deliberative democratic authenticity consists of communication that induces reflection on preferences in noncoercive fashion there are therefore several coercive agents of distortion less pervasive in civil society than in the state.

Public spheres are often relatively egalitarian and authentically discursive politics in their internal workings. They do not pursue power as interest groups or through electorally oriented parties; yet they are of concerned with public affairs. Often this concern cases them in opposition to the state and prominent economic actors.

“TOUCHÉ SALESMAN” – NEGATING

I am not going to spend too much time on the negative. The arguments are pretty stock and intuitive. Basically, if you're part of a real democracy you should be bound to whatever decision the democracy makes because you decided to join that society and participate in the system. The logic is predicated on contractual obligations. Other people follow the mandates that you agree with, thus you have to follow mandates others create. It's a give and take relationship. Further there is no objective moral code so there is no way to determine the legitimacy of any law. Anyone can break any law at any time and consider it civil disobedience (i.e. murder can be a form of civil disobedience). Basically, anarchy will ensue.

Have fun at Nationals!

Definitions

- I. Civil Disobedience
- II. Democracy
- III. Morally Justification

* * * * *

I. Civil Disobedience

It is very important in these debates for there to be a well-understood definition of what civil disobedience is. Both debaters should strive to a fair, common-sense definition in order to create clash in the round, and to avoid the round becoming a definitions debate. There may be tactical advantages to be gained depending on the definition—and the contours of the definition should be fully explored—but strive to do so in a substantive way.

Rex Martin, “Civil Disobedience,” Professor of Philosophy at the University of Kansas, *Ethics*, Vol. 80, No. 2 (January 1970), 126.

What then is civil disobedience? Civil disobedience is the deliberate and public violation of the command of an authorized and accepted political superior on the ground that this decree is unjust, immoral, unconstitutional, contrary to good public policy, etc. Sometimes the objection is lodged not against a special command (law, decree) but against some policy of the government with which the law is connected. And sometimes the connection between the law violated and the policy protested is remote, and the act of protest or defiance becomes largely symbolic. In any case, the law is broken as a way of “getting at” the policy—to somehow frustrate the government through disobedience in order to get it to modify its policies. We should be able to count acts of lawbreaking as civil disobedience so long as the ground of action is the claim that the government’s policy is unwise, unjust, immoral, or unconstitutional. And, in either case, there is a claim, explicit or implicit, that the act of disobedience is justifiable.

Elliot Zashin, *Civil Disobedience and Democracy*. New York: Free Press, 1971, p. 118.

[DEFINITION OF CIVIL DISOBEDIENCE] A knowing violation of public norm (considered binding by local authorities but which may ultimately be invalidated by the courts) as a form of protest: it is non-revolutionary, public, and nonviolent (i.e. there is no use of physical violence except self-defensively when participants are physically attacked, and no resistance to arrest if made properly and without undue force).

Carl Cohen, professor of philosophy at the University of Michigan, *Civil Disobedience, Tactics and the Law*. New York: Columbia University Press, 1971, 11.

Mere knowledge of the unlawfulness does not make it civil disobedience.... [T]he civil disobedient must do more than knowingly break the law. Absolutely essential is the further element of protest.

The Columbia Electronic Encyclopedia, 6th Edition. New York: Columbia University Press, 2003.

[DEFINITION] refusal to obey a law or follow a policy believed to be unjust. Practitioners of civil disobedience basing their actions on moral right and usually employ the nonviolent technique of passive resistance in order to bring wider attention to the injustice. Risking punishment, such as violent retaliatory acts or imprisonment, they attempt to bring about changes in the law. In the modern era, civil disobedience has been used in such events as street demonstrations, marches, the occupying of buildings, and strikes and other forms of economic resistance.

Civil disobedience is oxymoronic, reflecting both the positive and negative aspects of the concept.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003
"Article: Civil Disobedience And The U.S. Constitution." Southwestern University Law Review. 32 Sw. U. L. Rev. 677

Let us begin by decoding the term "civil disobedience" and its hidden meanings. Civil disobedience is a non-violent act of breaking the law openly and publicly, without harming others, and accompanied by a willingness to accept punishment. n56 The term "civil [*685] disobedience" is built on an oxymoron that reflects the positive and negative aspects of the concept. Strict law and order proponents take the view that the term "civil disobedience" is "semantically inaccurate" n57 because disobedience cannot be civil (i.e. acceptable in a civilized society): "In democratic societies any violation of the law is an uncivil act." n58 Opponents of civil disobedience claim that civil disobedient actually flaunt their lack of civility. n59 In other words, civil disobedience is about disobeying the law, and disobeying the law simply cannot be deemed "civil" in a society that values order and stability.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003; "Article: Civil Disobedience And The U.S. Constitution." Southwestern University Law Review. 32 Sw. U. L. Rev. 677

The positive connotations of the act of civil disobedience are reflected in the connotations rather than the denotations of the term "civil." The first meaning of the term "civil" refers to that which relates to the state or to its citizenry, such as "civil rights," or that [*687] which relates to private rights and remedies that are sought by lawsuits, as distinct from criminal proceedings, n72 such as "civil litigation." The term "civil" also refers to any of the modern legal systems derived from Roman law, like that of France or Louisiana's civil-law jurisdiction derived from the Napoleonic Code. n73 But the term "civil" also relates to the concept of "civility," politeness, behavior characterized by civilized society, and the civilized way of dealing with other human beings. Ironically, civility is the antithesis of anarchy or lawlessness or chaos, the very thing those engaging in civil disobedience have been accused of producing. n74 The relationship of the term "civil" to "civility" adds a positive connotation to the otherwise negative concept of civil disobedience which is grounded in an impermissible violation of the law.

Civil disobedience involves violation of law on grounds of moral or political principle, in an attempt to change the prevailing opinion and the law. It is typically nonviolent.

Kayla Starr, Civil Disobedience Activist, Summer 1998 "The Role of Civil Disobedience in Democracy." The Civil Liberties Monitoring Project. Online.

Civil Disobedience is the act of disobeying a law on grounds of moral or political principle. It is an attempt to influence society to accept a dissenting point of view. Although it usually uses tactics of nonviolence, it is more than mere passive resistance since it often takes active forms such as illegal street demonstrations or peaceful occupations of premises. The classic treatise on this topic is Henry David Thoreau's "On the Duty of Civil Disobedience," which states that when a person's conscience and the laws clash, that person must follow his or her conscience. The stress on personal conscience and on the need to act now rather than to wait for legal change are recurring elements in civil disobedience movements. The U.S. Bill of Rights asserts that the authority of a government is derived from the consent of the governed, and whenever any form of government becomes destructive, it is the right and duty of the people to alter or abolish it.

Three criteria for civil disobedience.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003; "Article: Civil Disobedience And The U.S. Constitution." Southwestern University Law Review. 32 Sw. U. L. Rev. 677

John Rawls defined civil disobedience as acts that are "public, non-violent, n95 conscientious yet political[,] ... done with the aim of bringing about a change in the law or policies of government." n96 The key elements missing in Rawls' definition are the word "illegal" and the expectation by those who engage in civil disobedience to be punished for their illegal act. Rawls defined three conditions that a movement must meet to practice civil disobedience in a reasonably [*690] just society. The first is to determine "whether the object of protest is appropriate for civil disobedience." n97 The second is to prove that the political process failed, even though "normal appeals to the political majority have already been made in good faith." n98 The third condition arises when "the natural duty of justice requires a certain restraint." n99 Society can absorb only so much civil disobedience, or serious disorder could follow and disrupt "the efficacy of the just constitution." n100 Rawls assumes that civil disobedience has a limit because if it goes too far, it may lead to a breakdown in the respect for law. For Rawls, as well as for Justice Fortas, there is a need to balance one's constitutional right to protest with one's duty of civility in society, which prohibits the use of violence even to accomplish a just purpose. n101

Civil disobedience can be distinguished from typical crime.

Rex Martin, "Civil Disobedience," Professor of Philosophy at the University of Kansas, Ethics, Vol. 80, No. 2 (January 1970), 126.

Acts of civil disobedience may be distinguished from typical crime in two ways. First, they are characterized by publicity, whereas typical cases of crime are characterized by concealment. An act of civil disobedience breaches the law openly in the course of a public protest against some offending statute, decree, verdict, or practice. The breach may be planned or not, it may or may not be a necessary part of the protest, but it must be open. People demonstrating against a court order to desegregate the school may not plan to disturb the peace, and disturbing it may in fact harm their cause. Nonetheless, if they do disturb it and openly defy a court order to disperse, they have committed acts of civil disobedience. The breach may, of course,

Civil disobedience can involve the breaking of laws in two ways.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003; "Article: Civil Disobedience And The U.S. Constitution." Southwestern University Law Review. 32 Sw. U. L. Rev. 677

There are two kinds of civil disobedience practiced by Martin Luther King Jr.: one kind is protest in the form of a refusal to obey a law which the disobedient seeks to have overturned; this form of civil disobedience is protest against the law itself. n75 The other form of civil disobedience is the violation of laws which the protester does not challenge because of their own terms or effect. n76 In other words, the laws are not the subject of attack in this form of civil disobedience; here dissenters violate the laws in order to turn attention to a greater cause. n77

Civil Disobedience is defined by resistance.

Dr Tim Anderson Professor of Political Economy @ the University of Sydney, November 8, 2002 "Civil Disobedience Today." Research Initiative on International Activism. Online. <<http://www.international.activism.uts.edu.au/civildis/pdfs/civildisobediencetoday.pdf>>

Civil disobedience is a tactic, a tactic of resistance, not a theory or a religion. It is probably a necessary part of any strategy of resistance, and may help us focus on the type of society we, as citizens, wish to help build.

Examples of civil disobedience often involve resistance to an unrighteous power.

Fredrik Bendz, Professor of Philosophy at Uppsala University, Sweden, 1997
"Civil Disobedience: Introduction." Online.
<<http://www.update.uu.se/~fbendz/philo/disobey.htm>>

The basis for civil disobedience is to resist an unrighteous power. If the people don't obey the rulers, if laborers lay down their work, if drivers block the roads, etc, it will become impossible for the government to rule the country. Some large scale examples of this are the Spanish Syndic lists who resisted General Franco for several years, the pacifist freedom struggle of India led by Mahatma Gandhi, and lately the strikes in Serbia against the regime of Slobodan Milosevic.

Civil disobedience is non-compliance with the intention of change.

Penny O'Donnell, Professor of Journalism, at the University of Technology Sydney, November 8, 2002; "Civil Disobedience Today." Research Initiative on International Activism. Online.
<<http://www.international.activism.uts.edu.au/civildis/pdfs/civildisobediencetoday.pdf>>

As we've heard, civil disobedience is a form of political protest that emerged in the Western liberal democratic tradition. It is based on a belief in the rule of law, and involves public political acts that are designed to demonstrate non-compliance with existing laws in a bid to reform them.

Civil disobedience is the act of putting alternative politics in the public space, of creating new spaces.

Paula Abood, leader of anti-racist movements in Australia, November 8, 2002
"Civil Disobedience Today." Research Initiative on International Activism. Online.
<<http://www.international.activism.uts.edu.au/civildis/pdfs/civildisobediencetoday.pdf>>

In an essay titled, 'On defiance and taking positions', Palestinian writer and activist Edward Said affirms that 'the role of the intellectual is not to consolidate authority, but to understand, interpret, and question it: this is another version of the notion of speaking the truth to power' (Said 2000: 502). This idea of speaking truth to power lies at the heart of what we might call civil disobedience. It is not just the act of nay saying, it is also the act of putting an alternative politics in the public space, of intervening, of disrupting power, of dislodging the dogma, of creating spaces of freedom. No more so has this been crucial than in anti-racist resistance work and conscious activism around the globe.

Civil disobedience is the protest against a tyrannical state.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003; "Article: Civil Disobedience And The U.S. Constitution." Southwestern University Law Review. 32 Sw. U. L. Rev. 677

Mahatma Gandhi defined civil disobedience more broadly than King. Gandhi's civil disobedience has two different forms: (1) King's form of civil disobedience, which is non-violent disobedience of unjust laws in order to reform the law, and (2) disobedience of the law, not in order to protest the law but purely as a symbolic gesture of revolt against a corrupt or tyrannical state. n93 Gandhi was a great proponent of violating laws in order to "publicize a protest and bring pressure on the public or the government to accomplish purposes which had little to do with the law that was breached." n94

Civil disobedience involves the deliberate, discriminate violation of law. It's intent is "always to close the gap between law and justice."

Howard Zinn, former professor at Boston University, 1968

"Seven guidelines for civil disobedience." *Disobedience and Democracy: Nine Fallacies on Law and Order*. pp. 119-122 Online. <<http://www.worldpolicy.org/globalrights/usa/1968-Zinn-civil%20disobedience.html>>

Civil disobedience is the deliberate, discriminate, violation of law for a vital social purpose. It becomes not only justifiable but necessary when a fundamental human right is at stake, and when legal channels are inadequate for securing that right. It may take the form of violating an obnoxious law, protesting an unjust condition, or symbolically enacting a desirable law or condition. It may or may not eventually be held legal, because of constitutional law or international law, but its aim is always to close the gap between law and justice, as an infinite process in the development of democracy.

Civil disobedience is the breaking of civil laws to follow higher laws.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003; "Article: Civil Disobedience And The U.S. Constitution." *Southwestern University Law Review*. 32 Sw. U. L. Rev. 677

But civil disobedience is more than just about disobeying the law. It is a means by which the disobedient can accomplish a higher moral or political purpose, such as petitioning lawmakers for necessary legislative enactment or reform. Civil disobedience is about disobeying man-made laws that the disobedient believes are unjust or unconstitutional. Civil disobedient disobey invalid law in order to obey a higher law. n61 Martin Luther King Jr. believed that one has a moral duty to disobey unjust law, n62 and King defined unjust laws by using the words of St. Thomas Aquinas, who extolled the virtues of civil disobedient: "an unjust law is a human law that is not rooted in eternal and natural law." n63 King not only justified the illegal acts of civil disobedience but raised civil disobedient to the level of near sainthood: "I submit that an individual who breaks a law that conscience tells him is unjust, and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for law." n64

Civil disobedience protests against non-"innocent" laws.

Rex Martin, "Civil Disobedience," *Professor of Philosophy at the University of Kansas, Ethics*, Vol. 80, No. 2 (January 1970), 125.

Civil disobedience should be distinguished from certain acts of disobedience to law which one can claim to be both nonrevolutionary and justifiable. An instance of what I mean is supplied by Brandt. He says: "Consider the following real-life example. In the Commonwealth of Pennsylvania it is unlawful to operate a motor vehicle that has not been inspected. The penalty is high—perhaps \$25, more or less, depending on the whims of the magistrate. But the action is unlawful. Now suppose an undisputed car is the only vehicle available for transporting an ill person to a hospital for urgently needed bed.

Although the act of disobedience in question was nonrevolutionary and apparently justifiable, I am disinclined to call any such act a case of civil disobedience. My reason is that the law violated was admittedly "innocent"; there was no claim against the law disobeyed to the effect that the law itself was unjust, contrary to good morals, or against good policy. In fact there was no claim against the law at all, nor was the law violated to frustrate some undesirable public policy.

Rawl's definition of civil disobedience.

Dr James Goodman, Professor of Social Inquiry @ the University of Technology Sydney, November 8, 2002
 "Civil Disobedience Today." Research Initiative on International Activism. Online.
 <<http://www.international.activism.uts.edu.au/civildis/pdfs/civildisobediencetoday.pdf>>
 Thoreau was a political liberal, and liberal philosophers, such a John Rawls, continue to wrestle with this ideas. Rawls defines civil disobedience as a 'public non-violent conscientious act contrary to law done with the intent to bring about change' where arrest or punishment are expected and accepted without resistance. People engaging in civil disobedience believe in the rule of law, and expect to be arrested for breaking it. They also believe in moral principles, political conscience, and in the public good. They act on those principles, for the public good, and are prepared to suffer the consequences.

Dr Tim Anderson Professor of Political Economy @ the University of Sydney, November 8, 2002
 "Civil Disobedience Today." Research Initiative on International Activism. Online.
 <<http://www.international.activism.uts.edu.au/civildis/pdfs/civildisobediencetoday.pdf>>
 Rawls theorized civil disobedience as "a form of political action within the limits of fidelity to the rule of law", and as a last resort tactic which was morally justified after all the mechanisms of liberal democracy had been given their full chance to resolve an injustice.

Although Rawls views civil disobedience as an act of the last resort, not all people agree that this is part of the definition.

Dr Tim Anderson Professor of Political Economy @ the University of Sydney, November 8, 2002
 "Civil Disobedience Today." Research Initiative on International Activism. Online.
 <<http://www.international.activism.uts.edu.au/civildis/pdfs/civildisobediencetoday.pdf>>
 But this is not the only, and not even necessarily the best, way to view civil disobedience. Radical civil disobedience - based on stronger notions of participatory democracy - has been created by dissenters, rather than liberal philosophers, and is not so tortured about 'last resort' tactics. This is because the 'rule of law' does not have the same initial legitimacy as described by Rawls. Many laws, after all, are designed specifically to repress activism and dissent - such as the laws passed to ban industrial assemblies in NSW, to block the original Aboriginal tent embassy and East Timor pickets in the ACT and to create new forms of political 'trespass' in Tasmania (see the Activists Rights Handbook 1993). There have also been laws banning solidarity activism and strikes, and special laws against the Olympic protests. Activists engaged in a wider range of direct democracy do not share the liberal or conservative fear of the 'dangers of anarchy' (e.g. as described by Rawls), because 'anarchy' to many radicals does not mean 'chaos', but is rather another name for participatory democracy.

John Rawl's explains the definition of civil disobedience himself.

John Rawls, "Civil Disobedience" in Philosophy of Law, edited by Joel Feinberg and Hyman Gross (1991), p. 105 (a reprint from the original publication in A Theory of Justice by John Rawls, 1971).
 "I shall begin by defining civil disobedience as a public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government. By acting in this way one addresses the sense of justice of the majority of the community and declares that in one's considered opinion the principles of social cooperation among free and equal men are not being respected."

John Rawls, "Civil Disobedience" in *Philosophy of Law*, edited by Joel Feinberg and Hyman Gross (1991), p. 105-106 (a reprint from the original publication in *A Theory of Justice* by John Rawls, 1971).

"A preliminary gloss on this definition is that it does not require that the civilly disobedient act breach the same law that is being protested. It allows for what some have called indirect as well as direct civil disobedience. And this a definition should do, as there are sometimes strong reasons for not infringing on the law or policy held to be unjust. Instead, one may disobey traffic ordinances or laws of trespass as a way of presenting one's case. Thus, if the government enacts a vague and harsh statute against treason, it would not be appropriate to commit treason as a way of objecting to it, and in any event, the penalty might be far more than one should reasonably be ready to accept. In other cases there is no way to violate the government's policy directly, as when it concerns foreign affairs, or affects another part of the country."

John Rawls, "Civil Disobedience" in *Philosophy of Law*, edited by Joel Feinberg and Hyman Gross (1991), p. 106 (a reprint from the original publication in *A Theory of Justice* by John Rawls, 1971).

"A second gloss is that the civilly disobedient act is indeed thought to be contrary to law, at least in the sense that those engaged in it are not simply presenting a test case for a constitutional decision; they are prepared to oppose the statute even if it should be upheld. To be sure, in a constitutional regime, the courts may finally side with the dissenters and declare the law or policy objected to unconstitutional. It often happens, then, that there is some uncertainty as to whether the dissenters' action will be held illegal or not. But this is merely a complicating element. Those who use civil disobedience to protest unjust laws are not prepared to desist should the courts eventually disagree with them, however pleased they might have been with the opposite decision."

John Rawls, "Civil Disobedience" in *Philosophy of Law*, edited by Joel Feinberg and Hyman Gross (1991), p. 106 (a reprint from the original publication in *A Theory of Justice* by John Rawls, 1971).

"It should also be noted that civil disobedience is a political act not only in the sense that it is addressed to the majority that holds political power, but also because it is an act guided and justified by political principles, that is, by the principles of justice which regulate the constitution and social institutions generally. In justifying civil disobedience one does not appeal to principles of personal morality or to religious doctrines, though these may coincide with and support one's claims; and it goes without saying that civil disobedience cannot be grounded solely on group or self-interest. Instead one invokes the commonly shared conception of justice that underlies the political order."

John Rawls, "Civil Disobedience" in *Philosophy of Law*, edited by Joel Feinberg and Hyman Gross (1991), p. 106 (a reprint from the original publication in *A Theory of Justice* by John Rawls, 1971).

"It is assumed that in a reasonably just democratic regime there is a public conception of justice by reference to which citizens regulate their political affairs and interpret the constitution. The persistent and deliberate violation of the basic principles of this conception over any extended period of time, especially the infringement of the fundamental equal liberties, invites either submission or resistance. By engaging in civil disobedience a minority forces the majority to consider whether it wishes to have its actions construed in this way, or whether, in view of the common sense of justice, it wishes to acknowledge the legitimate claims of the minority."

John Rawls, "Civil Disobedience" in Philosophy of Law, edited by Joel Feinberg and Hyman Gross (1991), p. 106 (a reprint from the original publication in A Theory of Justice by John Rawls, 1971).

"A further point is that civil disobedience is a public act. Not only is it addressed to public principles, it is done in public. It is engaged in openly with fair notice; it is not covert or secretive. One may compare it to public speech, and being a form of address, an expression of profound and conscientious political conviction, it takes place in the public forum. For this reason, among others, civil disobedience is nonviolent. It tries to avoid the use of violence, especially against persons, not from the abhorrence of the use of force in principle, but because it is a final expression of one's case. To engage in violent acts likely to injure and to hurt is incompatible with civil disobedience as a mode of address."

Some observe that civil disobedience has NO universal definition.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003; "Article: Civil Disobedience And The U.S. Constitution." Southwestern University Law Review. 32 Sw. U. L. Rev. 677

Civil disobedience is an oxymoron that reflects a basic duality inherent in its meaning because civil disobedience falls somewhere on the continuum between blind obedience to the law, the right to resistance, and total revolution. The concept is confusing and has no universally-accepted definition. n106 Some consider civil disobedience to be a permissible form of dissent, protest, speech or expressive conduct, a last ditch effort to be used when the courts and Congress have failed to reform unjust law or failed to create necessary, legal protections for minorities. Others consider civil disobedience to be impermissible lawlessness, the road to anarchy, and even if the conduct is non-violent and done for a moral purpose, civil disobedience is per se illegal in a society built on the principles of the rule of law.

There are ultimately many different interpretations of civil disobedience.

Peter Suber, Professor of Philosophy @ Earlham College, Richmond, Indiana, 1999
Christopher B. Gray (ed.), Philosophy of Law: An Encyclopedia, Garland Pub. Co, 1999, II.110-113

Civil disobedience is a form of protest in which protestors deliberately violate a law. Classically, they violate the law they are protesting, such as segregation or draft laws, but sometimes they violate other laws which they find unobjectionable, such as trespass or traffic laws. Most activists who perform civil disobedience are scrupulously non-violent, and willingly accept legal penalties. The purpose of civil disobedience can be to publicize an unjust law or a just cause; to appeal to the conscience of the public; to force negotiation with recalcitrant officials; to "clog the machine" (in Thoreau's phrase) with political prisoners; to get into court where one can challenge the constitutionality of a law; to exculpate oneself, or to put an end to one's personal complicity in the injustice which flows from obedience to unjust law —or some combination of these. While civil disobedience in a broad sense is as old as the Hebrew midwives' defiance of Pharaoh, most of the moral and legal theory surrounding it, as well as most of the instances in the street, have been inspired by Thoreau, Gandhi, and King. In this article we will focus on the moral arguments for and against its use in a democracy.

II. Democracy

WordNet 2.0, "democracy" – Overview for "democracy"
 The noun "democracy" has 3 senses in WordNet.

1. democracy -- (the political orientation of those who favor government by the people or by their elected representatives)
2. democracy, republic, commonwealth -- (a political system in which the supreme power lies in a body of citizens who can elect people to represent them)
3. majority rule, democracy -- (the doctrine that the numerical majority of an organized group can make decisions binding on the whole group)

"democracy." A Glossary of Parliamentary Words Online.
 <<http://www.aph.gov.au/find/glossary.htm>>
 Democracy:

1. a way of governing a country in which the people elect representatives to form a government on their behalf
2. a country with such a government
3. the idea that everyone in a country has equal rights

Joan Spero and Jeffrey Hart, "Democracy." The Politics of International Economic Relations. Online. <<http://www.indiana.edu/~ipe/glossry.html>>
 Literally, the term means power of the people (combining the Greek words demos, meaning "the people," and kratien, meaning "to rule"). It is usually used to describe a political system where the legitimacy of exercising power stems from the consent of the people. Accordingly, a democratic polity is often identified by the existence of constitutional government, where the power of the leaders is checked and restrained; representative institutions based on free elections, which provide a procedural framework for the delegation of power by the people; competitive parties, in which the ruling majority respects and guarantees the rights of minorities; and civil liberties, such as freedoms of speech, press, association, and religion.

People use the word democracy very loosely without truly understanding what it even means.

Albert Jay Nock, "What is Democracy?" American Mercury, Vol. XLI (January, 1939), p. 85.
 "There must be as many different kinds of democracy in this country as there are of Baptists, or even more. ... Press-agencies must keep half a hundred assorted encomiums on democracy in standing type, like Western Union's canned messages for Mother's Day. ... Every time one of our first-string publicists opens his mouth, a 'democracy' falls out; and every time he shuts it, he bites one in two that was trying to get out."

Democracy is widely believed in, but actually there is no clear understanding on what that means and hence no clear agreement on definition.

Austin Ranney, University of Illinois, Willmoore Kendall, Yale University, Democracy and the American Party System, 1956, p. 2.
 "Most of us, then, 'believe in ' democracy. We can pay a social institution we like no higher compliment than to call it 'democratic.' We can cast no greater slur upon an attitude or an institution we dislike than to brand it 'undemocratic.' This is not, however, a sign of democracy's triumph in the United States; for -- let us face it -- Americans do not have any clearly understood and generally accepted notion of what democracy is. Our apparent agreement upon the desirability of 'democracy' masks considerable disagreement about what the word means."

Authors consider the disagreement and pluralism behind even the definition of democracy is part of its strength.

The Education of Free Men in American Democracy, Educational Policies Commission, National Education Association (Washington, 1941), p. 25-26.

"Democracy prizes diversity. The complexity, the richness, and, to a degree, even the vagueness of the democratic tradition are counted in ordinary times as among its glories. That these qualities lead to a certain measure of disagreement is not regarded as a liability but rather as an opportunity for forging a progressive and wholesome social order."

There are several principles of democracy that Ranney and Kendall identify.

Austin Ranney, University of Illinois, Willmoore Kendall, Yale University, Democracy and the American Party System, 1956, p. 23.

"Most writers on democracy, whatever else they may insist must be present in order for a government to be called a 'democracy,' are, as we noted in the preceding chapter, committed to the view that it must exhibit the following minimum characteristics: (1) Those who hold office in it must stand ready, in some sense, to do whatever the people want them to do, and to refrain from doing anything the people oppose; (2) each member of the 'community' for which it acts should have, in some sense, as good a chance as his fellows to participate in the community's decision making -- no better and no worse; and (3) it must operate in terms of an understanding that when the enfranchised members of the community disagree as to what ought to be done, the last word lies, in some sense, with the larger number and never the smaller -- i.e., the majority of the electorate and no the minority should carry the day. So much, we repeat, seems to be pretty well agreed on all sides."

Austin Ranney, University of Illinois, Willmoore Kendall, Yale University, Democracy and the American Party System, 1956, p. 23.

"Anyone who carefully analyzes the above three minima will find that the conception as a whole breaks down into four, not three, principles. These are (a) popular sovereignty, (b) political equality, (c) popular consultation, and (d) majority rule."

Some authors go further and argue that protection of minority voices and rights is also an inherent part of democracy.

Austin Ranney (University of Illinois) and Willmoore Kendall (Yale University), Democracy and the American Party System, 1956, p. 24-25.

"We must notice at once, however, that the notion that popular sovereignty is fundamental to democracy is highly unpalatable to certain present-day writers. Of special importance in this connection are the writers, mentioned in the preceding chapter, who proclaim that in a true democracy there can be no unlimited power -- that a State is democratic only so long as certain individual rights are entirely removed from the power of any governmental agency, whether popularly controlled or not. To them 'limited government' or 'constitutional government' is an essential attribute of democracy. Such a position, of course, is difficult to square with the assertion that popular sovereignty is a basic element of democracy."

III. Moral Justification

First, what does it mean to be moral?

Morality must be other-regarding.

Joan C. Callahan, *Ethical Issues in Professional Life*, 1988, p. 11-12.

“In a certain clear way, we all understand that morality puts constraints on merely self-interested behavior. That is, morality takes us beyond mere self-interest by requiring that we take the rights and interests of others into account when we act.”

Then there is the concept of justification.

American Heritage® Dictionary of the English Language, Fourth Edition

“Justify.” Houghton Mifflin Company. 2000.

1. To demonstrate or prove to be just, right, or valid: justified each budgetary expense as necessary; anger that is justified by the circumstances.
2. To declare free of blame; absolve.
3. To free (a human) of the guilt and penalty attached to grievous sin. Used of God.
4. Law.
 - b. To demonstrate sufficient legal reason for (an action taken).
 - a. To prove to be qualified as a bondsman.

WordNet. 2.0 “Justify.” Online.

<<http://www.cogsci.princeton.edu/cgi-bin/webwn?stage=1&word=justify>>

1. justify, warrant -- (show to be reasonable or provide adequate ground for; "The emergency does not warrant all of us buying guns"; "The end justifies the means")
2. justify, vindicate -- (show to be right by providing justification or proof; "vindicate a claim")
3. apologize, apologies, excuse, justify, rationalize, rationalize -- (defend, explain, clear away, or make excuses for by reasoning; "rationalize the child's seemingly crazy behavior"; "he rationalized his lack of success")
4. absolve, justify, free -- (let off the hook; "I absolve you from this responsibility")
5. justify -- (adjust the spaces between words; "justify the margins")

So what does “moral justification” mean? Some authors define it redundantly.

Joshua Dressler, Wayne State University Law School, Law Professor, “New Thoughts About the Concept of Justification in the Criminal Law: A Critique of Fletcher’s Thinking and Rethinking” in *UCLA Law Review*, Vol. 32, 1984, p. 98.

“Specifically, I have argued that conduct is, or ought to be, justified, without consideration of an actor’s character, whenever the conduct is morally good or tolerable, whether deontologically or teleologically based.”

Notice: Dressler defines “justified” as meaning either “morally good” or “tolerable” as in “permissible.” Which one you choose drastically affects the affirmative burden in the round.

George P. Fletcher, Professor of Law, Columbia University School of Law, “The Right and the Reasonable” in *Harvard Law Review*, Vol. 98, 1985, p. 954.

“Claims of justification concern the rightness, or at least the legal permissibility, or an act that nominally violates the law.”

We also must not confuse “justification” with “excuse.” We can excuse actions in certain circumstances because we can understand why they happen. When we justify an action, however, we say that it is right.

George P. Fletcher, Professor of Law, Columbia University School of Law, “The Right and the Reasonable” in Harvard Law Review, Vol. 98, 1985, p. 954-955.

“Claims of justification direct our attention to the propriety of the act in the abstract; claims of excuse, to the blameworthiness of the actor in the concrete situation.”

Justification implies universality.

Michael D. Bayles, Reconceptualizing Necessity and Duress, Wayne’s Law Review, Vol. 33, 1987, p. 1203.

“Justifications focus on acts. Thus, if an act is justifiable for one person, it is justifiable for anyone else in the same circumstances.”

M.J. Willoughby, “Rendering Each Woman Her Due: Can a Battered Woman Claim Self-Defense When She Kills Her Sleeping Batterer?” in Kansas Law Review, Vol. 38, 1989, p. 188.

“Because society encourages justified conduct, any other actor engaging in the same conduct under the same objective circumstances as the original ‘justified’ actor must be similarly justified.”

The Obligation to Obey the Law

- I. The Importance of Law and Order
- II. The Duty (or Lack of Duty) to Obey Law
- III. The Special Moral Status of Democratic Law
- IV. The Moral Content of Law
- V. The Importance of Legal Process

* * * * *

I. The Importance of Law and Order

Social order is a prerequisite to other values.

Roy & Srivastara, Ramashrup & R.K., Dialogue on Development, 1986, p. 25.
 “To achieve self-fulfillment it is necessary to satisfy the needs rooted in our being. The purposes and the means of their realization must be determined by each of us. Our purposes and goals are given. Their realization depends on the relevance and efficacy of the social order.”

William R. McKercher, Freedom and Authority, 1989, p. 35.
 “To Mill, law is the guarantor of a progressive and civilized State.”

Wayne B. Hanewicz, Moral Issues in Police Work, ed. by Frederick A. Elliston & Michael Feldberg, 1985, p. 47.
 “The general need for order, and these particular forms, are not just things we would like. They do not merely make life nicer or more palatable. They are necessary for us to live in the manner to which we have become accustomed, and in a form that both feeds on and results from our culture.”

Barry Goldwater, “The Politics of Morality,” Congress and Conscience, edited by John B. Anderson, 1970, p. 79.
 “And order is an absolutely essential cornerstone of civilization. It stands to reason that a disorderly society cannot survive.”

Barry Goldwater, “The Politics of Morality,” Congress and Conscience, edited by John B. Anderson, 1970, p. 79.
 “When order flees a civilization, the law of the jungle takes over.”

Louis Lasky, Columbia Law School, By What Right?, 1975, p. 122.
 “The cardinal duty of the government is to preserve civil order, and violent opposition to lawful authority cannot be tolerated.”

Sir Henry Sumner Maine, Popular Government, 1909, p. 61.
 “Thus in the very first place, Democracy, like Monarchy, like Aristocracy, like any other government, must preserve the national existence. The first necessity of a State is that it should be durable.”

Justice Jackson, dissenting opinion, Terminiello v. Chicago, 337 U.S. 1, 1947.
 “The choice is not between order and liberty. It is between liberty with order and anarchy without either.”

Jovan Brkie, Prof. of Philosophy, North Dakota State University, Norm and Order, 1970, p. 108.
“It is a historical fact that no human society has existed without some sort of normative order.”

Simon Lee, Law and Morals, Oxford University Press, New York, 1986, p. 15.
“Moving beyond basic survival, the whole edifice of liberal society depends on the existence of law.”

Patrick Devlin, Fellow of the British Academy, The Enforcement of Morals, 1965, p. 101.
“In the end we are all of us slaves to the law, for that is the condition of our freedom.”

Social order is a prerequisite for justice.

Norman Bowie and Robert Simon, The Individual and the Political Order, 1986, p. 173.
“Aristotle’s own solution was a stable body of law, especially a constitution, which would establish correct procedures of law and rule out other procedures as legally illegitimate. In other words, a body of law is a practical check on human passions and prejudice, making it less likely that miscarriages of justice will occur.”

Emil Brunner, Justice and the Social Order, 1945, p. 175.
“In a state of anarchy, no justice is possible, since ‘the devoutest of men cannot live in peace if his wicked neighbor does not so desire.’ But under a unified coercive power, however little it may trouble about justice, justice is at any rate possible since the mutual use of force by individuals is eliminated by the State monopolization of power.”

Legal systems — whether democracies or not— seek to achieve certain values. Or at least they ought to. Gebbia-Pinetti tries to catalogue these baseline values, and identifies at least eight “legal system values.”

Karen M. Gebbia-Pinetti, “Statutory Interpretation, Democratic Legitimacy and Legal-System Values,” *Seton Hall Legislative Journal*, v. 21, 1997, p. 240-42.
Law is the foundational mechanism of social interaction and the reflection of how a society organizes itself. A legal system will be “good,” “just,” “fair,” or “workable” only if it structures societal relations and resolves disputes well enough to earn the respect and adherence of the public and, thereby, to prevent societal collapse. Throughout history, and across legal systems, theorists have employed similar, functional meta-principles as criteria by which to measure how well law accomplishes these tasks. These criteria, which I term “legal-system values,” are that law be predictable, replicable, vertically coherent across time, horizontally coherent across related areas of law, responsive to societal needs and values, responsive to changes in society and in societal values, influential in fostering individual and societal growth and shaping values or morals, and fair and just in individual cases.

Karen M. Gebbia-Pinetti, “Statutory Interpretation, Democratic Legitimacy and Legal-System Values,” *Seton Hall Legislative Journal*, v. 21, 1997, p. 248-49.
“Responsivity,” or “social congruence,” requires that law be responsive to society and to societal change. The law should embody society’s customs, choices, values, or morals, and address society’s needs. For example, the statute prohibiting dogs in the city park might serve society’s need for a safe and clean environment. The statute prohibiting dogs in the forest might serve to prevent the spread of rabies from the forest’s wolves to the local dogs.

Karen M. Gebbia-Pinetti, "Statutory Interpretation, Democratic Legitimacy and Legal-System Values," *Seton Hall Legislative Journal*, v. 21, 1997, p. 249-50.

The law also must adapt to changes in society (such as new technology) and in social values (such as evolving views on controversial or divisive issues). For example, at some time in the past many persons with physical disabilities were "cared for" (at home, in institutions, or by personal assistants). Today's independent living movement, however, emphasizes giving persons with disabilities the tools to live independently outside of institutional care settings. As society's understandings and attitudes change, an old law prohibiting all dogs in the park may be amended to exempt guide dogs.

Karen M. Gebbia-Pinetti, "Statutory Interpretation, Democratic Legitimacy and Legal-System Values," *Seton Hall Legislative Journal*, v. 21, 1997, p. 250-52.

Some theorists also argue that the law is, or should be, used to create a dialogue that will foster individual and societal growth (economic, psychological or moral), and shape social values and morals, particularly in times of political or social turmoil. By definition, there is a tension between using law as a mirror to reflect society's current values and using law as a magnet to pull society forward toward new and "better" values advocated by a minority of the citizens. This tension may be expressed (in somewhat oversimplified terms) as a matter of timing. For example, viewing law as a mirror, advocates of a minority view might first seek to change society's understanding of disabilities (or, to use a historic example, of racial segregation), then seek to change the law to reflect society's changed views. Alternatively, viewing law as a magnet, advocates of a minority view might instead demand changes in the law, hoping that the debate will change society's views, but recognizing that the laws they demand will force society to accommodate the needs of persons with disabilities (or to desegregate) before a majority of citizens has come to accept these values. It is, of course, impossible to know in advance what values are desirable or whether society's views will change to reflect the minority's views.ⁿ⁴⁹ These tensions, and the difficulty of relying exclusively upon the mirror or the magnet, are apparent when individuals' or groups' values match the majority's view on some issues and the minority's view on others. For example, at one end of the moral-political spectrum, a minority demands laws prohibiting abortion, even though polls show that a majority of Americans favor reproductive choice. At the other end of the spectrum, a minority demands recognition of same-sex marriages, even though polls show that a majority of citizens oppose same-sex marriage. Religious groups may argue that moral criteria show that the majority is correct in opposing same-sex marriage, but wrong in favoring reproductive freedom, whereas civil rights groups may argue that individual freedom and equal rights criteria show that the majority is correct in favoring reproductive freedom, but wrong in opposing same-sex marriage.

Karen M. Gebbia-Pinetti, "Statutory Interpretation, Democratic Legitimacy and Legal-System Values," *Seton Hall Legislative Journal*, v. 21, 1997, p. 252-53.

Finally, society expects the law to produce results that are fair and just in individual cases. For purposes of this discussion, "fairness" is defined primarily by procedural standards such as notice and due process. A procedural view of fairness emphasizes that, if the law's consequences are known and the laws are applied neutrally, persons affected can take steps to avoid violating the law. Thus, the "no dogs" statute is fair if it is applied without bias to anyone bringing a dog into the park. Procedural fairness may not, however, ensure substantive "justice," which, for purposes of this discussion, focuses on consequences. The distinction between fairness and justice is particularly important if the law or legal processes themselves might be biased or non-neutral in operation. This is, of course, one issue raised by critical legal scholars, who do not trust procedure to work in a fair and unbiased fashion to achieve substantive justice. In the "no dogs" hypothetical, the law seems to be neutral (it simply prohibits all dogs) and seems to be capable of unbiased application. If the law is applied to prohibit guide dogs, however, non-neutrality may arise from the law's disparate impact on persons with disabilities. Although the law creates a mere inconvenience for able-bodied citizens, it may impair a blind person's freedom to live without assistance, particularly if that person must walk through the park several times each day to travel from one area of the city to another in the course of her job.

The rule of law is important.

Noel B. Reynolds, "Grounding the Rule of Law," *Ratio Juris*, v. 2, no. 1, March 1989, p. 5.

The rule of law is a solution to a problem, and as the classical tradition has always recognized, the problem is tyranny – the social relationship in which some people can command the lives and property of others at will and in pursuit of discretionary ends. Tyranny is almost universally recognized to be undesirable; it is maintained against the will of its victims through violence, deception and coercion.

Noel B. Reynolds, "Grounding the Rule of Law," *Ratio Juris*, v. 2, no. 1, March 1989, p. 5.

The problem can also be described in more politically neutral and abstract terms. Human nature seems inadequate to realize its highest aspirations. Men are radically individuals as defined by the boundaries of their bodies and their minds; pains, pleasures and reasons can be addressed only to individuals. And men are also radically social; the welfare of their bodies is dependent on other men in countless ways. Their ability to reason and discourse is largely a function of their social experience and their mastery of languages and ideas borrowed from other men. As individuals and as collectivities, men act in a mixed variety of altruistic and selfish ways. Furthermore, even when men are generously motivated, they never know for sure what the consequences of alternative actions might be. And even when they have correct information about the world, they are not capable of using it to reach reliably error free decisions for action.

Noel B. Reynolds, "Grounding the Rule of Law," *Ratio Juris*, v. 2, no. 1, March 1989, p. 5.

If this widely accepted Humean account of human nature is correct, human relationships cannot be controlled and directed in accordance with abstract moral truth. Unpredictable and frequent errors of will, cognition, and reason will combine endlessly to frustrate or destroy our romantic visions of life as it ought to be. And our individual failures will be magnified at the group level.

Noel B. Reynolds, "Grounding the Rule of Law," *Ratio Juris*, v. 2, no. 1, March 1989, p. 5.

Political philosophers have long recognized these limitations of human beings, who, in spite of rising sporadically to splendid heights, often sink to unmentionable depths. But they have also noticed that though human nature must in and of itself be relatively uniform in all times and places, its negative effects are far more visible in some societies seem to somehow encourage the most positive manifestations. Understanding and explaining these differences is a major function for political philosophy.

The classical tradition mentioned above brings legal and political philosophy together with its basic thesis that it is by the institution of law that the defects of human nature are best subordinated to its virtues.

Noel B. Reynolds, "Grounding the Rule of Law," *Ratio Juris*, v. 2, no. 1, March 1989, p. 5.

Law addresses the problem of human nature at two levels. It provides authoritarian rules of conduct for all to observe in the pursuit of their own ends, rules which provide order in that they establish legitimate expectations for such conduct. Furthermore, these procedures and other official structures can be consciously constructed in ways that discourage inventive self-seekers from perverting the designedly neutral process of law to private advantage.

Peter Ingram, "Maintaining the rule of law," *Philosophical Quarterly*, v. 35, no. 141, p. 359.

The rule of *law* is to be understood first and foremost in contrast to the rule of *men*.

Peter Ingram, "Maintaining the rule of law," *Philosophical Quarterly*, v. 35, no. 141, p. 359.

Of course, legal rules themselves are by no means permanent; and they are created, changed and abolished by people. They can reflect biases, embody misguided values, and express their intent wrongly or ambiguously; and they are subject to error in interpretation and execution. Nevertheless, as general rules, laws strive to be independent of personal whims. More, they are not so much set apart from people as – ideally – set above them. The rule of law is not merely an alternative to the rule of men; more importantly it stands for the principle that law is above men. Once laws are created they acquire from their creators an authority of their own, which is to a significant degree independent.

Peter Ingram, "Maintaining the rule of law," *Philosophical Quarterly*, v. 35, no. 141, p. 360.

A commitment to the rule of law is an acceptance of a requirement to respect the rules and put them fully into effect. The claim on which this paper is founded can be summarily stated: a legal system consists typically (although not exclusively) of rules asserting a general applicability, the applicability of a rule as decisive in an appropriate kind of case is acknowledged, and with its applicability recognized it is applied in practice to this or that actual case.

II. The Duty (or Lack of Duty) to Obey Law

There are many reasons philosophers have come up with for why people have a duty to obey the law.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003; "Article: Civil Disobedience And The U.S. Constitution." *Southwestern University Law Review*. 32 Sw. U. L. Rev. 677

There is much opposition to civil disobedience. For the past two thousand years, philosophers have asked themselves whether one has an obligation to obey a law that is unjust. Scholars have grounded an obligation to obey unjust laws in six different legal theories. n123 These [*694] include the duty to obey the law out of gratitude to an existing legal system (i.e. Socrates and Plato's *Crito*); the duty to obey the law because of the individual's contractual agreement or consent to obey (i.e. John Locke and Jean-Jacques Rousseau); the duty to obey because of the negative consequences of disobedience; the duty to obey out of fairness; the duty to obey in order to support just institutions (i.e. H.L.A. Hart and John Rawl's theory), and the duty to obey in order to support your community (i.e. Ronald Dworkin's theory). n124

A moral motive does not justify disobedience.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003; "Article: Civil Disobedience And The U.S. Constitution." *SOUTHWESTERN UNIVERSITY LAW REVIEW*. 32 SW. U. L. REV. 677

Another argument, based on the Machiavellian principle that laudable ends do not justify purely illegal means, is often used by law and order supporters who refuse to consider the benign motivation of civil disobedient. They argue that to legitimize civil disobedience is contrary to a system governed by respect for the rule of law. n138 Erwin Griswold, cited by Dworkin, believes that it is of the essence of law that it is equally applied to all, that it binds all alike, irrespective of personal motive. For this reason, one who contemplates civil disobedience out of moral conviction should not be surprised and must not be bitter if a criminal conviction ensues ... organized society cannot endure on any other basis. n139

Good motivations do not make dangerous free speech alright.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003; "Article: Civil Disobedience And The U.S. Constitution." Southwestern University Law Review. 32 Sw. U. L. Rev. 677

There are limitations on the right to free speech. For example, the state has been known to require a permit for mass meetings or demonstrations, n154 or to prescribe reasonable regulations as to when and where to assemble a crowd. Justice Oliver Wendell Holmes made it clear that no one may falsely cry "fire" in a crowded theatre and cause a panic, even though that person may be motivated by good intentions. Good motives do not excuse action which will injure some and diminish the rights of others. n155

People will always disagree about the law. There is no consistent standard for what law is good, and people should not have the license to disobey when they disagree.

Joseph Raz, Professor of the Philosophy of Law at Colombia Law School, 2003
"About Morality And The Nature Of Law." The American Journal of Jurisprudence. 48 Am. J. Juris. 1

Two innocent truisms about the law lie behind much of the difficulty we have in understanding the relations between law and morality. The law can be valuable, but it can also be the source n1 of much evil. Not everyone agrees to these truisms, and there is nothing inappropriate in challenging them, or examining their credentials. They are, however, truisms in being taken by most people to be obviously true and beyond question. In other words, they express many people's direct reactions to or understanding of the phenomena, an understanding which is open to theoretical challenge, but has to be taken as correct absent a successful theoretical challenge.

Necessity demands an obligation to obey.

Joseph Raz, Professor of the Philosophy of Law at Colombia Law School, 2003
"About Morality And The Nature Of Law." The American Journal of Jurisprudence. 48 Am. J. Juris. 1

Some writers claim, of course that there are other types of necessary connections between law and morality, which have greater significance for an understanding of their relations. Here are a few examples of such claimed or alleged necessary connections which appear to be of a kind, to belong together:

1. Necessarily, everyone has a duty to obey the law of his country.
2. Necessarily, everyone has a reason to obey the law of his country.
3. Necessarily, if the law is just all its subjects have a duty to obey it (or, alternatively, a reason to obey it).
4. Necessarily, if the government of a country is democratic all its subjects have a duty to obey its law (or, alternatively, a reason to obey its law).
5. Necessarily, one has an obligation to support just legal systems.

Joseph Raz, Professor of the Philosophy of Law at Colombia Law School, 2003
"About Morality And The Nature Of Law." The American Journal of Jurisprudence. 48 Am. J. Juris. 1

This does not mean that (1) claims that any legal duty adds to the number of things one has a moral duty to do. Just as one may promise to act as one morally ought to act in any case, so the law may impose a legal, and therefore a moral, duty to do what one ought to do, or has a moral duty to do, anyway. In saying that every new law creating a legal duty creates a new moral duty we mean only that the obligation to act in the required way acquires a new ground, one which will remain in force even if the others do not exist, or if they cease to exist. n11

The Thomist case for a duty to obey.

Joseph Raz, Professor of the Philosophy of Law at Columbia Law School, 2003
“About Morality And The Nature Of Law.” The American Journal of Jurisprudence. 48 Am. J. Juris. 1

The case for the moral character of the law, understood as a quest for its systemic moral properties, rather than for the moral properties of each and all its binding standards, is the moral case for having legal authorities, of the law-making and law-applying varieties.

There is such a case. It is a Thomist case. Versions of it have been expressed in recent time by various writers. n17 Broadly speaking, it goes thus:

First, human life goes better when subjected to governance by (conscientious) authority. There is, in other words, a job to be done, a task to be discharged, a need for authority to regulate interactions in human societies.

Second, whoever is in a position to discharge that job has the moral authority to do so. That is, whoever has de facto political power and legal control has legitimate power. For, on the one hand, only those with de facto political power and legal control can perform the job. Only they can meet the moral need for human societies to be governed by authority. And, on the other hand, possession of de facto power is sufficient to make them able to perform that job.

Citizens have a general duty to obey.

M. B. E. Smith, Professor of Philosophy at Smith College, 1996
“The Duty To Obey The Law.” From D. Patterson, ed., COMPANION TO THE PHILOSOPHY OF LAW AND LEGAL THEORY, 465-74 (Oxford: Blackwell, 1996).

Few issues in jurisprudence have received so much attention in recent years as whether citizens have a distinctive moral duty to obey the law. Yet the differences among the disputants might well seem slender to the unprofessional eye. No one holds that the duty is absolute: even its most passionate advocates allow that it is sometimes morally permissible to disobey the law, as when abolitionists aided runaway slaves before the American Civil War. But neither does anyone advocate open or frequent disobedience. Those who doubt the supposed duty yet hold that we very often have a strong moral reason to do what the law requires independently of its commands, e.g., not to assault, cheat or rob others. The doubters allow that we are obligated to obey whenever the law has established patterns of conduct that are dangerous to depart from, such as driving to the left in Great Britain. They believe that disobedience is permissible only when there is no independent moral reason to obey or when the weight of independent reasons favors disobedience; and they do not suppose that in reasonably just societies these conditions obtain often. Finally, those who are skeptical about the duty of obedience nonetheless prize the great social benefits that quite obviously can only be achieved through government; and they believe that one which is reasonably just deserves its citizens' cooperation and support. It therefore seems probable that the putative duty's advocates and disbelievers alike would virtually always agree in their judgments of particular illegal conduct—or at least that any differences between them would not flow from their disagreement about the philosophical issue.

Citizens have a duty to obey because they receive the benefits of the nation.

M. B. E. Smith, Professor of Philosophy at Smith College, 1996
“The Duty To Obey The Law.” From D. Patterson, ed., COMPANION TO THE PHILOSOPHY OF LAW AND LEGAL THEORY, 465-74 (Oxford: Blackwell, 1996).

Thus . . . the duty of obeying the laws of one's country arises partly (as Socrates contends in the Crito) from the duty of gratitude for the benefits one has received from it; partly from the implicit promise to obey which seems to be involved in permanent residence in a country whose laws we know we are expected to obey, and still more clearly involved when we ourselves invoke the protection of its laws . . . ; and partly (if we are fortunate in our country) from the fact that its laws are potent instruments for the general good.

A common argument against civil disobedience is given by Socrates in the Crito. Citizens agree to obey.

Rex Martin, "Civil Disobedience," Professor of Philosophy at the University of Kansas, Ethics, Vol. 80, No. 2 (January 1970), 127-128.

Let us consider the argument that civil disobedience represents the violation of a tacit "agreement" with the state and is morally wrong (since it is morally wrong to break one's agreement). This is the unambiguous argument of Socrates in the Crito. (It is also, possibly, found in John Locke's Second Treatise and, in a curious way, in Hobbes's Leviathan.)

What, specifically, is the agreement to which Socrates referred in his argument? Is it that, upon reaching manhood, a citizen by the very fact of staying in a country agrees to abide by the following rule: If one cannot dissuade the authorities from an unjust law then one obeys. Now it should be evident why Socrates' position disallows morally justifiable disobedience to unjust laws. The reason is that one has agreed, barring the removal of the law through dissuasion, to obey any and all laws, just or unjust. Hence, the unjust character of a law can never be a justifiable ground for disobedience—given the agreement in question. There is, in terms of the agreement, no such thing as justifiable disobedience; rather, any disobedience to the law is a breaking of the fundamental agreement and, hence, ipso facto unjust. n4

Citizens of lawful governments are obligated to obey the laws of said governments.

Carl Cohen, professor of philosophy at the University of Michigan, Civil Disobedience, Tactics and the Law. New York: Columbia University Press, 1971, 5-6.

Breaking laws is wrong. It isn't merely culpable in some technical or legal sense, [although] it is that too; more deeply it is wrong because (excluding for the present the possibility of a cruel and tyrannical government) every citizen has more than a legal obligation to obey the laws. His obligation is a general and moral duty arising out of his role as citizen. And that duty is specially compelling in a democracy, where citizens participate, or have a right to participate, in making the laws of their community.... Every citizen of a lawful government, then, has a most important duty to obey its laws. That is true whatever the form of government, providing the authorities have been duly constituted and their laws and administration of them are reasonably just. Where each citizen has a proportionate voice in the making and the framing of laws (either directly or through representatives), his acceptance of this role as partial legislator commits him yet more strongly to abide the laws of that body.

BUT ON THE OTHER HAND ...

Socrates' argument against civil disobedience does not necessarily question if the act is morally justified.

Rex Martin, "Civil Disobedience," Professor of Philosophy at the University of Kansas, Ethics, Vol. 80, No. 2 (January 1970), 128.

We can do something with Socrates' argument; we can shift his point. For we might regard Socrates' "agreement" as satisfying, not the idea of morality, but the idea of "good citizenship." Thus we could say: the good citizen is one who abides by his country's laws; if he cannot dissuade the authorities from a law then he obeys it. Such a role of action is part of what we mean by good citizenship, even though it is not part of what we mean by morality.

In any event, the obligation to obey must be viewed as conditional. For example, governments which accomplish what they have been charged to do have legitimate authority. Query whether the democratic nature of a government is enough to satisfy this condition.

Joseph Raz, Professor of the Philosophy of Law at Colombia Law School, 2003
“About Morality And The Nature Of Law.” The American Journal of Jurisprudence. 48 Am. J. Juris. 1

Any obligation to obey the law that it can establish must be doubly qualified. First, since it derives the authority of the state or the government from the fact that it can fulfill a job which needs doing, that authority must be limited to a government which discharges the job successfully. The authority of the government cannot derive from its ability to discharge the needed job; rather, it must depend on success (or the likelihood of success) in doing so. Second, the legitimacy of the government which derives from its success (actual or likely) in performing a job which needs doing must be confined to its actions aimed at discharging this job. The argument cannot endow governments with a general authority, an authority to do whatever they see fit, as it must if it is to vindicate a general obligation to obey as in (1).

A general promise to obey the law does not mean we have a duty to obey all laws.

Joseph Raz, Professor of the Philosophy of Law at Colombia Law School, 2003
“About Morality And The Nature Of Law.” The American Journal of Jurisprudence. 48 Am. J. Juris. 1

It does not follow that all promises bind. n20 Promises given by incompetent agents (say young children, or incapacitated people) are not binding, nor are promises given under duress, or those in which the promise undertakes to perform morally impermissible acts, and there are many others. Just as in the case of the law, we cannot infer from the systemic property of the promising practice (i.e. that it is a valuable moral practice) specific obligations to perform all promises. But needless to say, the very proposition that the practice of promising is a morally valuable practice asserts a necessary connection between promising and morality.

A duty to obey the law out of “gratitude” to society or the government is unfounded for three reasons .

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003; “Article: Civil Disobedience And The U.S. Constitution.” Southwestern University Law Review. 32 Sw. U. L. Rev. 677

Proponents of the argument to obey unjust laws out of a debt of gratitude to our legal system have met with three oppositions. Firstly, citizens of the state arguably receive benefits involuntarily, and therefore the citizens do not need to show gratitude to the state by obeying unjust laws. n125 Secondly, obedience to the law does not necessarily represent the only appropriate way in which to express gratitude to the law. n126 Thirdly, a benefactor must operate from altruistic motives in order to deserve the beneficiary's gratitude, and the state is not necessarily altruistic. n127

Social contract arguments are flawed, and do not create a duty to obey.

Peter Suber, Professor of Philosophy @ Earlham College, Richmond, Indiana, 1999
Christopher B. Gray (ed.), Philosophy of Law: An Encyclopedia, Garland Pub. Co, 1999, II.110-113

Objection: We must obey the law under a contract with other members of our society. We have tacitly consented to the laws by residing in the state and enjoying its benefits.

Reply: Obviously this objection can be evaded by anyone who denies the social contract theory. But surprisingly many disobedient activists affirm that theory, making this an objection they must answer. Socrates makes this objection to Crito who is encouraging him to disobey the law by escaping from prison before he is executed. Thoreau and Gandhi both reply (as part of larger, more complex replies) that those who object deeply to the injustices committed by the state can, and should, relinquish the benefits they receive from the state by living a life of voluntary simplicity and poverty; this form of sacrifice is in effect to revoke one's tacit consent to obey the law. Another of Thoreau's replies is that consent to join a society and obey its laws must always be express, and never tacit. But even for Locke, whose social contract theory introduces the term "tacit consent," the theory permits disobedience, even revolution, if the state breaches its side of the contract. A reply from the natural law tradition, used by King, is that an unjust law is not even a law, but a perversion of law (Augustine, Aquinas). Hence, consent to obey the laws does not extend to unjust laws. A reply made by many Blacks, women, and native Americans is that the duty to obey is a matter of degree; if they are not fully enfranchised members of American society, then they are not fully bound by its laws.

Notions of implied consent are flawed. Residence should never be considered consent.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003; "Article: Civil Disobedience And The U.S. Constitution." Southwestern University Law Review. 32 Sw. U. L. Rev. 677

Proponents of the argument to obey unjust laws out of implied consent to obey the law have been challenged on the theory that citizens did not knowingly "agree" to obey the laws of their community and one can not infer consent to obey the laws of a place just from continued residence in that location. n128

Utilitarian justifications for a duty to obey the law are also unfounded.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003; "Article: Civil Disobedience And The U.S. Constitution." Southwestern University Law Review. 32 Sw. U. L. Rev. 677

Theorists also criticize the argument that it is necessary to obey unjust laws because to do otherwise would have negative consequences. n129 "Undesirable consequences do not flow from every act of disobedience." n130 Thus, the argument from negative consequences is insufficient to justify a general obligation to obey the law. n131 The negative consequence theory is even more fallacious when applied to obedience to "bad laws." Bad law might be the very cause of the negative consequences rather than the act of disobedience of the law.

Slippery slope arguments are flawed.

Peter Suber, Professor of Philosophy at Earlham University. "Civil Disobedience." 19 November 2003. <<http://www.earlham.edu/~peters/writing/civ-dis.htm>>

Utilitarians observe that disobedience and obedience may both be harmful. The slippery slope objection falsely assumes that the former sort of harm always outweighs the latter. In the case of an iniquitous law, the harm of disobedience can be the lesser evil. This utilitarian reply is sometimes found to coexist with a complementary...reply.... [O]ne simply must not lend one's weight to an unjust cause.

Individuals are not obligated to obey out of fairness because it is not possible to always identify the relevant institutions.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003; "Article: Civil Disobedience And The U.S. Constitution." Southwestern University Law Review. 32 Sw. U. L. Rev. 677

Critics of the duty to obey unjust law based on a fairness theory [*695] argue that fairness "does not supply a ground for an obligation to obey the law." n132 John Rawls argues that an individual's duty to support just institutions requires that individuals "comply with and ... do their share in just institutions." n133 Opponents argue that individuals have difficulty determining when institutions apply to them. Moreover, a "natural duty" to support institutions does not tie political obligations to the particular community to which individuals have an obligation to belong. n134

Obligations to justice override communal obligations that contravene justice.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003; "Article: Civil Disobedience And The U.S. Constitution." Southwestern University Law Review. 32 Sw. U. L. Rev. 677

Professor Ronald Dworkin argues that the obligations that "attach to familial relationships and to friendships do not arise from free choice." n135 The obligation to obey the law derives from the same source as do communal obligations. n136 Dworkin, like Rawls, believes that individuals have natural duties towards justice that override any communal obligation in contravention to justice.

Systems of law based on an overriding duty to obey law are morally defective.

Joseph Raz, Professor of the Philosophy of Law at Colombia Law School, 2003
"About Morality And The Nature Of Law." The American Journal of Jurisprudence. 48 Am. J. Juris. 1

John Finnis and Dworkin n14, both espousers of a general obligation to obey all law, emphasized the possibility of marginal cases of law to which the duty does not apply. There is, however, yet another way in which the law of a country may do evil even if there is a general duty to obey all its laws. That way is open to those who support the duty to obey by content-independent moral reasons. These are reasons which depend not on the claim that each and every one of the laws of all legal systems is morally meritorious in a way which imposes a duty of obedience on all its subjects, rather they depend on general virtues and moral properties of legal systems as a whole, which justify a duty to obey each of their laws, just because they are laws of that system. If that is the foundation of the general obligation to obey then it is compatible with considerable moral failings. It is compatible with many of the laws of the system and many of its institutions being morally defective, or worse.

A duty to obey fails to appreciate the horrors that evil law can do.

Joseph Raz, Professor of the Philosophy of Law at Colombia Law School, 2003
"About Morality And The Nature Of Law." The American Journal of Jurisprudence. 48 Am. J. Juris. 1

The fact that the general duty to obey may depend on systemic features of the law does not, of course, show that it is compatible with a proper conception of how evil the law can be, and of how much injustice and oppression, etc., it may cause. It is unlikely that the systemic moral qualities of the law are entirely independent of, entirely unaffected by, the moral qualities of the content of the law, that is, of the moral content of the laws which constitute it. How are we, then, to assess the claim that there is a general obligation to obey?

At best, any duty to obey must be limited.

Joseph Raz, Professor of the Philosophy of Law at Colombia Law School, 2003
"About Morality And The Nature Of Law." The American Journal of Jurisprudence. 48 Am. J. Juris. 1

Let us say for the sake of argument that governments have power to keep the peace, enforce a fair system of property and contractual rights, and make sure that no one suffers (non-voluntarily) from serious deprivation. Arguably, this does not cover the regulation of the consumption of tobacco or its advertising (those who do not eat in smoke-filled restaurants will avoid them, etc.). It would follow that governments which do regulate the consumption and advertising of tobacco exceed their authority, and there is no obligation to obey the laws they make without authority.

III. The Special Moral Status of Democratic Law

The whole point of a democracy is for the majority viewpoint to prevail. Democracy places the majority above the minority.

Austin Ranney (University of Illinois) and Willmoore Kendall (Yale University), Democracy and the American Party System, 1956, p. 7.

"Democracy vests ruling power in all members of the community; often, however, issues arise that divide the community into a majority and a minority; and when this happens the democratic rule is for the majority's view to prevail over that of the minority."

In a democracy, all actions (indeed, all beliefs) must be justified in accordance to what the majority wills.

Austin Ranney (University of Illinois) and Willmoore Kendall (Yale University), Democracy and the American Party System, 1956, p. 29.

"For we believe that a model democratic government must always be able to justify its action on the grounds that they accord with the wishes of the majority of the enfranchised members of the community. Or, to put it another way, we believe that when there are two opinions among the members of a democratic community as to whether the government should perform any given action, the opinion of the larger group, which for most purposes we can usefully think of as one-half of the enfranchised members plus at least one, ought to prevail."

Professor Willmoore Kendall uses John Locke to argue that all members in a democratic society agree to obey the laws enacted by the majority. When we consented to join society, we consented to be ruled by the majority.

Willmoore Kendall, Univ. of Dallas, John Locke and the Doctrine of Majority Rule, 1965, p. 108.

"The society can come into existence only by unanimous approval of its members; but subsequently, by making a revolution, the people (no longer represented as strictly unanimous) may change the society's character in any way they see fit, and require of the individual (e.g. the individual member of the legislative they have turned out) the same duty of obedience which he owed before the revolution. The people have, in short, consented unanimously to something less than unanimity as an ultimate criterion of right; and Locke is evidently asserting that such consent is valid."

The legitimate government decision goes with the greater numbers.

Willmoore Kendall, Univ. of Dallas, John Locke and the Doctrine of Majority Rule, 1965, p. 108.
"Here are a group of people united together in order to enjoy the benefits of just and reasonable government. A difference arises amongst them as to what is just and reasonable, and investigation reveals that the opposing factions consist of one individual, on the one side, and the remainder of the community, on the other side. Does either have a right to impose its view of what is just and reasonable upon the other? Can either judge impartially in what is, by definition, its own cause? Locke's theory of popular sovereignty obliges him to answer the second question in the affirmative, and the first with the words, Yes, the rest of the community has such a right. And, since the only difference between the two (the community minus one of its members, and the individual) which leaps to the eye is that the one is many individuals and the latter is only one, he is obliged to say that numbers guarantee impartiality."

The majority can conclude the rest of society in its judgment.

John Locke, Second Treatise of Government, 1690, vii, 95.
"When any number of men have ... consented to make one community or government ... the majority have a right to act and conclude the rest."

Majority rule is necessary for community life.

Willmoore Kendall, Univ. of Dallas, John Locke and the Doctrine of Majority Rule, 1965, p. 112.
"Wherever men live in community with one another, he is saying, the relations between them can be described in terms of an agreement which, in addition to assigning to the whole community that unlimited power which we have examined in the preceding section, assigns to its numerical majority a right to make decisions (regarding the use of that power) which are binding upon the minority. The majority-principle is, in a word, implicit in the logic of community life."

The individual, once consented to live in society, has an irrevocable obligation to obey the majority's ruling.

Willmoore Kendall, Univ. of Dallas, John Locke and the Doctrine of Majority Rule, 1965, p. 112-113.
"We shall greatly clarify our problem, too, by facing at once the implications of Locke's proposition about the right of the majority with regard to the questions dealt with in the preceding sections. The individual has, as we have seen, an irrevocable obligation to obey the community of which he is a member; but the majority has the right to act for the community; and the individual's irrevocable duty of obedience thus turns out to be an irrevocable duty to obey the majority. The inalienable rights of the individual are, as we have seen, such rights as may be compatible with the public good of his society, and, as we have further seen, that public good is merely that which the 'opinion' and 'humour' of the people designate as good; but since the majority of those people have a right to conclude the rest, the inalienable rights of the individual prove to be merely those which the majority of the people have not yet seen fit to withdraw."

If the majority could not conclude the rest of the community then there could be no community. In the following card by Kendall, all of the quotes are from Locke and can be found at viii. 98.

Willmoore Kendall, Univ. of Dallas, John Locke and the Doctrine of Majority Rule, 1965, p. 114.

"If the minority refused to be concluded by the majority, the society would speedily disintegrate; for, he insists, the only alternative is the unanimity-principle (= 'nothing but the consent of every individual can make anything to be the act of the whole'); and both because it is frequently impossible to consult everybody and because 'variety of opinions and contrariety of interests ... unavoidably happen in all collections of men,' such a principle would deprive the society of the strength it needs in order to fulfill the purposes for which it was created. In short, 'where the majority cannot conclude the rest, there they cannot act as one body, and consequently will be immediately dissolved again.'"

The majority can conclude the rest because it represents more consents.

Willmoore Kendall, Univ. of Dallas, John Locke and the Doctrine of Majority Rule, 1965, p. 117.

"Individual consents being, in any case, the only rightful title to the exercise of power, the right of the majority flows as a matter of course from the fact that it can point to more consents than the minority."

Once you allow a million to conclude one, you have to let 51 people conclude 49.

Willmoore Kendall, Univ. of Dallas, John Locke and the Doctrine of Majority Rule, 1965, p. 118.

"If one million persons have a right to conclude one because they are a million and he is only one, then there is no logical escape from the conclusion that five hundred thousand and one persons have a right to conclude five hundred thousand persons, and if one does not like the conclusion one must revise one's notions regarding the premise."

The key to the Second Treatise is to realize that while the majority is not always right, when establishing a political system, the first principle is to have the majority decide what is right, because there is no better alternative.

Willmoore Kendall, Univ. of Dallas, John Locke and the Doctrine of Majority Rule, 1965, p. 133.

"What, then, is the key to the riddle of the Second Treatise? It is, in the opinion of the present writer, to be found in the fact that, while the proposition 'right is that which the majority wills' is by no means identical with the proposition 'the majority always wills that which is right,' the two propositions nevertheless come to precisely the same thing when considered as first principles of politics -- since it follows from both that a good political system is one which lodges ultimate power in the hands of the majority."

Locke, then, like Rousseau, assumes that the majority rule will in general be the best approximation of the Natural Law. Trusting individuals or minority groups to act in the Natural Law is too naïve.

Willmoore Kendall, Univ. of Dallas, John Locke and the Doctrine of Majority Rule, 1965, p. 134.

"Now Locke, together, perhaps, with most of the majority-rule democrats, did believe (as we have seen in the opening sections of this chapter) in the existence of objective moral standards, and he did reveal, in several pages of the Second Treatise, a conviction that the majority of any commonwealths can be trusted, not only to arrive at and fight for and impose its will, but to arrive at and fight for and impose a right will."

F. J. C. Hearnshaw, *Democracy and the British Empire*, 1920, p. 201.

"The faith of a democrat requires him to believe that in the long run the majority of the people finds its way to the truth, and that in the long run it tries to do the right."

Now let's look more to Locke's text directly. This next quote substantiates the idea that the majority can conclude the minority because it has more consents. Moreover, if the majority could not conclude the minority, there could be no community.

John Locke, *Second Treatise of Government*, 1690, viii. 96.

"For when any number of men have, by the consent of every individual, made a community, they have thereby made that community one body, with a power to act as one body, which is only by the will and determination of the majority: for that which acts any community, being only the consent of the individuals of it, and it being necessary to that which is one body to move one way; it is necessary the body should move that way whither the greater force carries it, which is the consent of the majority: or else it is impossible it should act or continue one body, one community, which the consent of every individual that united into it, agreed that it should; and so every one is bound by that consent to be concluded by the majority."

John Locke, *Second Treatise of Government*, 1690, viii. 95.

"When any number of men have so consented to make one community or government, they are thereby presently incorporated, and make one body politic, wherein the majority have a right to act and conclude the rest."

The majority acts for the whole community.

John Locke, *Second Treatise of Government*, 1690, viii. 96.

"And therefore we see, that in assemblies, empowered to act by positive laws, where no number is set by that positive law which empowers them, the act of the majority passes for the act of the whole, and of course determines, as having, by the law of nature and reason, the power of the whole."

If the minority were not concluded by the majority, there could be no community or sovereign.

John Locke, *Second Treatise of Government*, 1690, viii. 97.

"And thus every man, by consenting with others to make one body politic under one government, puts himself under an obligation, to every one of that society, to submit to the determination of the majority, and to be concluded by it; or else this original compact, whereby he with others incorporates into one society, would signify nothing, and be no compact., if he be left free, and under no other ties than he was in before in the state of nature."

Individuals give up all power to the majority.

John Locke, *Second Treatise of Government*, 1690, viii. 99.

"Whosoever therefore out of a state of nature unite into a community, must be understood to give up all the power, necessary to the ends for which they unite into society, to the majority of the community, unless they expressly agreed in any number greater than the majority."

Familiar readers of Locke will now make the most compelling objection to this interpretation of Locke: what happens to the right to revolt? The argument has gone as follows 1) in the state of nature, there was inconvenience such as disagreement about what natural rights existed, 2) we entered society to get those things decided and clear, 3) in society the majority has a right to conclude the rest otherwise no society would be possible and we would be back to the state of nature, 4) the minority has a moral obligation to go with what the majority says is the law and obey it. But if the minority is to be concluded by the majority, what happens to Locke's idea that people have the right to revolt when the government is oppressive and not supporting rights.

According to Professor Kendall, Locke does allow for revolt against the GOVERNMENT. But Locke never allows revolt against DEMOCRATIC MAJORITY RULE. How does this make sense? Locke's right to revolt is a right of the majority. Locke emphasizes the point that no single person can successfully revolt against a government and that this is good in order to avoid anarchy.

Willmoore Kendall, Univ. of Dallas, John Locke and the Doctrine of Majority Rule, 1965, p. 132.

"Locke can, to be sure, be quoted as saying that 'where the body of the people, or any single man, are deprived of their right, or are under the exercise of a power without right, ... they have a liberty to appeal to Heaven whenever they judge the cause of sufficient moment,' and we have so quoted him. He can be quoted ... as saying that the right to judge whether or not to appeal to Heaven is something which the individual cannot part with ... But it is in this same passage that he says that the principle in question 'operates not till the inconvenience be so great that the majority ... find a necessity to have it amended!' And it is only a few pages later that he defends the people's (= the majority's) right to revolution in terms of the fact that 'the examples of particular injustice or oppression of here and there an unfortunate man moves them not.'"

The passages quoted by Kendall above can be found in Locke, xiv. 168 and xix. 230.

Discontent has to grow general in order for revolution to apply.

John Locke, Second Treatise On Government, 1690, xix. 230.

"It is true, such men may stir, whenever they please; but it will be only to their own just ruin and perdition: for till the mischief be grown general, and the ill designs of the rulers become visible, or their attempts sensible to the greater part, the people, who are more disposed to suffer than right themselves by resistance, are not apt to stir. The examples of a particular injustice, or oppression of here and there an unfortunate man, moves them not."

The people as a group shall be the judge of when to revolt and change the government.

John Locke, Second Treatise On Government, 1690, xix. 240.

"Who shall be judge, whether the prince or legislative act contrary to their trust? ... To this I reply, The people shall be the judge: for who shall be judge whether his trustee or deputy acts well, and according to the trust reposed in him, but he who deposes him, and must, by having deputed him, have still a power to discard him, when fails in his trust?"

The right to revolt is a collective right found in society (majority) and not the individual.

John Locke, Second Treatise on Government, 1690, xix. 243.

"To conclude, the power that every individual gave the society, when he entered into it, can never revert to the individuals again, as long as the society lasts, but will always remain in the community; because without this there can be no community, no common-wealth, which is contrary to the original agreement: so also when the society hath placed the legislative in any assembly of men, to continue in them and their successors, with direction and authority for providing such successors, the legislative can never revert to the people whilst that government lasts;; because having provided a legislative with power to continue for ever, they have given up their political power to the legislative, and cannot resume it. But if they have set limits to the duration of their assembly, and made this supreme power in any person, or assembly, only temporary; or else, when by the miscarriages of those in authority, it is forfeited; upon the forfeiture, or at the determination of the time set, it reverts to the society, and the people have a right to act as supreme, and continue the legislative in themselves; or erect a new form, or under the old form place it new hands, as they think good."

Remember that this is only Willmoore Kendall's interpretation of Locke. Indeed, it is only my interpretation of Willmoore Kendall's interpretation of Locke. Don't be satisfied with Cliff Notes. Read the stuff for yourself and be prepared to challenge not only the logic, but even the interpretation. READ. It's the only way to be a champion.

BUT ON THE OTHER HAND ...

The principle of majority rule does not have any inherent ethical validity, but is merely a practical device.

W.S. Carpenter, *The Development of American Political Thought* (Princeton: Princeton University Press: 1930), p. 163.

"The principle of majority rule is therefore a device, which, although it contains no inherent ethical validity, affords a practical means whereby groups of people may reach decisions."

The majority is not always right.

Willmoore Kendall, professor University of Dallas, *John Locke and the Doctrine of Majority Rule*, 1965, p. 12.

"Indeed, Plato is almost ready to say that where moral judgments are concerned the many are necessarily wrong: 'In questions of just and unjust, fair and foul, good and evil, which are the subjects of our present consultation, ought we to follow the opinion of the many and to fear them; or the opinion of the one man who has understanding? You being in error when you advise that we should regard the opinion of the many about just and unjust, good and evil, honorable and dishonorable.'"

The above quote by Kendall also quotes a passage from Plato. That passage is from the *Crito*, p. 47-48. The problem is that the majority can tyrannize the minority.

Plato, *Laws*, i. 627.

"Citizens who ... live in the same cities, may unjustly conspire, and having the superiority in numbers may overcome and enslave the few just; and when they prevail, the state may be truly called its own inferior and therefore bad; and when they are defeated, superior and therefore good."

The people in the majority are still people and are just as likely to use power selfishly.

Willmoore Kendall, professor University of Dallas, *John Locke and the Doctrine of Majority Rule*, 1965, p. 53-54.

"One of the central difficulties of his position (as we present it) will be shown to lie in the fact that, having asserted that subjection to personal authority is illegitimate, he subsequently ignores the truth that majorities, no less than minorities and dynasties, are made up of persons, who do not, *ceteris paribus*, by becoming members of a majority divest themselves of the (all too human) tendency to use their power (over individuals and minorities) selfishly."

Thus, the majority does not always produce the right decision. Just look at history.

Elias Berg, *Democracy and the Majority Principle: A Study in Twelve Contemporary Political Theories*, 1965, p. 157.

"If democracy is seen as a political system that tends to produce substantively 'right' decisions, the majority principle, at least when applied to the whole citizenry, is hardly a suitable instrument. Such a substantive concept of democracy therefore cannot be used to justify the majority principle."

Majority rule has a tendency to tyranny.

Elias Berg, *Democracy and the Majority Principle: A Study in Twelve Contemporary Political Theories*, 1965, p. 27-28.

"It is true that the use of the majority principle implies a formal right to express a preference on the issues to be decided; to that extent, it implies the legitimacy of opposition. Yet as we have seen above, majority decisions may be regarded as ipso facto 'right' and thereby, once they have been made, as sacrosanct and exempt from criticism. The use of the majority principle is therefore compatible with a majority dictatorship in which the minority's formal right of opposition is only of temporary duration. Moreover, even if all the citizens have the right to criticize as well as to take part in the making of decisions, some citizens may be permanently in the minority and may be constantly overruled by a majority refusing to make any concessions to their demands; the use of the majority principle does not necessarily preclude majority tyranny." as harmless and permissible or be regarded as obstructive and thereby as illegitimate."

Majority rule amounts to nothing more than might makes right.

Elias Berg, *Democracy and the Majority Principle: A Study in Twelve Contemporary Political Theories*, 1965, p. 21.

"The majority principle, says Kelsen, cannot be justified by reference to the greater total weight of the greater number: from the negative premise that one human will is no more valid than any other, we cannot positively deduce the validity of the majority's will. To derive the majority principle solely from the idea of equality would give it a purely mechanical character: it would become the formal expression of the fact that the many are stronger than the few, and would thereby imply that might makes right."

Elias Berg, *Democracy and the Majority Principle: A Study in Twelve Contemporary Political Theories*, 1965, p. 57.

"But Barker also -- and primarily -- rejects the counting-of-heads justification on ethical grounds and maintains that while minority rule must be prevented (and therefore the qualified majority rule is unacceptable), the majority should not decide 'just because it is a majority and superior in quantity'; instead, 'each human being, as such,' should be taken into account in decision-making."

Majority rule does not take into account the intensity of preferences, leading to minority oppression. In other words, a huge majority who really don't care that much about policy X might pass it over the intense objection of a minority. This objection is found in Robert A. Dahl, *A Preface to Democratic Theory* (1956). Here I will use analysis from Elias Berg about Robert Dahl.

Majority rule does not reflect intensity of preferences and thus can result in a modern form of tyranny.

Elias Berg, *Democracy and the Majority Principle: A Study in Twelve Contemporary Political Theories*, 1965, p. 75.

"Dahl points out that the majority principle can be criticized 'on the ground that it does not adequately reflect intensities of desire.' Dahl maintains that 'intensity is almost a modern psychological version of natural rights' and suggests that 'a modern Madison might argue that government should be designed to inhibit a relatively apathetic majority from cramming its policy down the throats of a relatively intense minority,' i.e., to prevent majority rule from becoming a 'modern analogue' of Madison's majority 'tyranny.'"

Dahl notes that intensity can be the grounding for a defense of rights. An apathetic majority should not be able to cram a policy down the throats of a REALLY INTENSE minority. Rights supposedly protect any individual's most intense interests. And nothing should overcome that intense interest except other intense interests -- i.e. the rights of the majority. But general majority rule should not rule by numbers and ignore intensities. Ethically, intensity should matter.

Elias Berg, *Democracy and the Majority Principle: A Study in Twelve Contemporary Political Theories*, 1965, p. 75.

"The intensity problem, he says, is important for two reasons. The first reason is largely 'ethical': many people would say that if two individuals disagree over policy alternatives, the individual whose preference is the more intense should (other things being equal, which they often are not) 'get his way.'"

Taking into account intensities also matters for the stability of the regime.

Elias Berg, *Democracy and the Majority Principle: A Study in Twelve Contemporary Political Theories*, 1965, p. 75-76.

"The second reason, says Dahl, is the relation between preference intensity and the stability of democratic government. If large groups of the people intensely oppose each other's favorite policy alternatives, and each group regards its opponents' victory as a threat to its own most cherished values, it can be regarded as beyond the 'capacities' of 'polyarchy' to bring about a reconciliation. Dahl therefore concentrates his attention on another type of situation which may menace the stability of a 'polyarchy' without necessarily cause it to break down. This is the situation in which a majority with weak preferences is opposed by a minority with strong preferences."

IV. The Moral Content of Law

Joan C. Callahan, *Ethical Issues in Professional Life*, 1988, p. 11.

"We are all aware that morality is not reducible to law. This is just to say that finding out what the law permits or requires is not necessarily to find out what is morally right. We know, for example, that the law permits many immoralities, including disloyalties to friends, breaking of promises that do not have the stature of legal contracts, and a great variety of deceptions. In short, the law permits many actions that will not bear moral scrutiny. ... It is also the case that the law sometimes requires gross immoralities. In the United States, for example, the Fugitive Slave Law of 1850 required that citizens help in the return of runaway slaves to their masters. Such laws were given further support by the Supreme Court's infamous Dred Scott decision in 1857, which made clear not only that slaves or those whose ancestors were sold as slaves were not (and could not be) citizens, but also that slaves were property, no different from any other property."

Joan C. Callahan, *Ethical Issues in Professional Life*, 1988, p. 11.

"Finally, we all know that sometimes morality may permit or require breaking a just law. For example, speeding laws are not by their nature unjust laws. But if there is an emergency, for example, the need to get someone to the hospital for lifesaving care, we generally would not think a driver immoral for going at, say, seventy-five or eighty miles an hour on a dry, open highway with little traffic, even though the speed limit is sixty-five miles an hour."

Joan C. Callahan, *Ethical Issues in Professional Life*, 1988, p. 11.

"So, we cannot settle moral questions by settling the legal questions. The law may permit immoral behavior, the law may require immoral behavior, or the law may be morally justified but circumstances may be such that transgressing the law is permissible or even morally required. This is not to say that what the law requires is of no moral import. What the law permits or requires is often a morally relevant consideration if for no reason other than that breaking the law can have serious consequences for the liberty and well-being of the agent. But it is to say that we cannot simply assume that the law is the whole of the moral story. The law itself is always subject to moral scrutiny and moral criticism; and the question of whether one should obey the law is always, in principle, an open one."

Law cannot be valued for its own sake. It is not inherently moral. Law is valuable only in that it promotes valuable ends. Law for the sake of law is not just.

Howard Zinn, former professor at Boston University, 1968

“Seven guidelines for civil disobedience.” *Disobedience and Democracy: Nine Fallacies on Law and Order*. pp. 119-122 Online. <<http://www.worldpolicy.org/globalrights/usa/1968-Zinn-civil%20disobedience.html>>

There is no social value to a general obedience to the law, any more than there is value to a general disobedience to the law. Obedience to bad laws as a way of inculcating some abstract subservience to “the rule of law” can only encourage the already strong tendencies of citizens to bow to the power of authority, to desist from challenging the status quo. To exalt the rule of law as an absolute is the mark of totalitarianism, and it is possible to have an atmosphere of totalitarianism in a society which has many of the attributes of democracy. To urge the right of citizens to disobey unjust laws, and the duty of citizens to disobey dangerous laws, is of the very essence of democracy, which assumes that government and its laws are not sacred, but are instruments, serving certain ends: life, liberty, happiness. The instruments are dispensable. The ends are not.

Any obligation to obey the law depends on that law’s content.

Joel Feinberg, “Civil Disobedience in the Modern World” in *Philosophy of Law*, edited by Joel Feinberg and Hyman Gross (1991), p. 123 (reprinted from *Humanities in Society*, Vol. 2, No. 1, Winter 1979, pp. 37-60).

“According to the natural law theory, the validity of humanly made coercive laws depends in part on their *content*, that is, on what they require or prohibit. If they are, in the appropriate way, arbitrary, unjust, cruel, pointless, or immoral, then they have no authority or force of law whatever, in which case there is no more moral obligation to obey them than there is to comply with any pseudolaw or mere masquerade as law.”

The Morality of Civil Disobedience

- I. The Right/Duty to Disobey
- II. Civil Disobedience Leads to Social Change
- III. Civil Disobedience Enhances Democratic Institutions
- IV. Civil Disobedience is Undemocratic
- V. The Problem of Legitimacy
- VI. The Duty to Use Other Means
- VII. The Problem of Violence

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I. The Right/Duty to Disobey

There are many reasons why protestors choose civil disobedience.

Kayla Starr, Civil Disobedience Activist, Summer 1998 "The Role of Civil Disobedience in Democracy." The Civil Liberties Monitoring Project. Online.

The decision to non-cooperate is a difficult choice to make, since it subjects those who choose it to greater possibilities for pain and punishment, and many times is misunderstood by law enforcement. In addition, it poses a dilemma for protestors who would prefer to communicate with the arresting officer, making it more difficult to communicate while being dragged across the ground.

Reasons some protestors choose non-cooperation:

- 1) Moral conviction: It would be wrong to be an accomplice to a procedure that supports what is morally unacceptable.
- 2) To increase the likelihood that all protestors are treated equally: Refusing to give names so that everyone committing the same act will be treated equally and fairly in jail and in sentencing. Refusing citation, bail, fines or probation keeps protestors together, increasing the potential for collective bargaining.
- 3) To extend the action: Going limp at arrest impedes the removal of the protestors, prolonging the disruption of business as usual.
- 4) To demonstrate that the criminal justice system is part of the problem: It may be a corporation that is damaging the environment, jeopardizing all our lives and our children's future, but it is the criminal justice system that is legitimizing and supporting it.

Individuals must resist unjust laws. People cannot simply wait for change to "just happen."

Henry David Thoreau, Philosopher and American Hero, 1849
"Civil Disobedience." Online. <<http://www.cs.indiana.edu/statecraft/civ.dis.html>>

Unjust laws exist: shall we be content to obey them, or shall we endeavor to amend them, and obey them until we have succeeded, or shall we transgress them at once? Men, generally, under such a government as this, think that they ought to wait until they have persuaded the majority to alter them. They think that, if they should resist, the remedy would be worse than the evil. But it is the fault of the government itself that the remedy is worse than the evil. It makes it worse. Why is it not more apt to anticipate and provide for reform? Why does it not cherish its wise minority? Why does it cry and resist before it is hurt? Why does it not encourage its citizens to put out its faults, and do better than it would have them? Why does it always crucify Christ and excommunicate Copernicus and Luther, and pronounce Washington and Franklin rebels?

Resistance must carry into daily life, into the streets.

Dr Tim Anderson Professor of Political Economy @ the University of Sydney, November 8, 2002
"Civil Disobedience Today." Research Initiative on International Activism. Online.
<<http://www.international.activism.uts.edu.au/civildis/pdfs/civildisobediencetoday.pdf>>

Resistance to bad laws does not begin and end with the lobbying of parliament and parliamentary committees, it carries on in daily life, in the streets and in the courts. We deny our basic rights as citizens and our status as a democratic society if we do not recognize this.

International law recognizes that individuals are morally responsible for their behavior, and therefore must resist unjust laws.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003; "Article: Civil Disobedience And The U.S. Constitution." Southwestern University Law Review. 32 Sw. U. L. Rev. 677

King goes so far as to say that one has a moral duty to disobey unjust laws that are man-made. n117 King's moral argument reflects the legal [*693] reasoning of the Nuremberg Tribunal and the London Agreement of August 8, 1945, establishing the International Military Tribunal that conducted trials of Nazis. The London Agreement and the Nuremberg trials established the principle that an individual is legally and personally responsible for carrying out unjust laws, even if the individual claims to have merely obeyed superior orders. n118 King claims all people have a moral and a "legal obligation to obey just laws," but they have an equally important moral obligation to disobey unjust laws in order to obey a higher, natural, or divine law whose authority preempts man-made laws. n119

Action must be taken if a wrong occurs.

Henry David Thoreau, Philosopher and American Hero, 1849
"Civil Disobedience." Online. <<http://www.cs.indiana.edu/statecraft/civ.dis.html>>

How can a man be satisfied to entertain and opinion merely, and enjoy it? Is there any enjoyment in it, if his opinion is that he is aggrieved? If you are cheated out of a single dollar by your neighbor, you do not rest satisfied with knowing you are cheated, or with saying that you are cheated, or even with petitioning him to pay you your due; but you take effectual steps at once to obtain the full amount, and see to it that you are never cheated again. Action from principle, the perception and the performance of right, changes things and relations; it is essentially revolutionary, and does not consist wholly with anything which was. It not only divided States and churches, it divides families; ay, it divides the individual, separating the diabolical in him from the divine.

We retain as much power as we refuse to relinquish to the government.

Kayla Starr, Civil Disobedience Activist, Summer 1998 "The Role of Civil Disobedience in Democracy." The Civil Liberties Monitoring Project. Online.

Gandhi, who profoundly influenced nonviolent disobedience movements in the 20th century, stated that "Non-cooperation with evil is as much a duty as cooperation with good." Non-cooperation is not intended as a hostile act against police officers and jail guards. An understood theoretical basis is that nonviolent protest draws its strength from open confrontation and non-cooperation, i.e., civil disobedience. We retain as much power as we refuse to relinquish to the government. Non-cooperation is a form of resistance that is used to reaffirm our position that we are not criminals and that we are taking positive steps toward freeing the world of oppression and environmental suicide.

People have a thoroughly established right to revolution.

Marjorie E. Kornhauser, Professor of Law Tulane Law School, Fall, 2002
“Legitimacy And The Right Of Revolution: The Role Of Tax Protests And Anti-Tax Rhetoric In America.” Buffalo Law Review, 50 Buffalo L. Rev. 819

The right of revolution, evidenced in these nineteenth century tax protests, was also expressed more soberly. In [*858] mid-nineteenth century, for example, Henry David Thoreau stated "all men recognize the right of revolution; that is, the right to refuse allegiance to, and to resist, the government, when its tyranny or its inefficiency are great and unendurable." n105 Although the Civil War might be viewed as the ultimate defeat of the right of rebellion, the latter half of the century contained evidence of its continued existence. In 1874, for example, the Pennsylvania Supreme Court interpreted the state's constitutional provision giving the people the "right to alter, reform or abolish their government" as including the right of revolution. n106 Even the great nineteenth century jurist Thomas Cooley believed that "should the contingency ever arise when it would be necessary for the people to make use of the arms in their hands for the protection of constitutional liberty, the proceeding, so far from being revolutionary, would be in strict accord with popular right and duty." n107 On the other hand, the Iowa Supreme Court in 1883 articulated the dominant, tamed version of the right. Although it recognized that the people as sovereigns retain a natural right of revolution, the court concluded, citing Cooley, that the government could only be legitimately altered through those peaceful means previously agreed to in the constitution. n108

Right to revolution encompasses civil disobedience.

Marjorie E. Kornhauser, Professor of Law Tulane Law School, Fall, 2002
“Legitimacy And The Right Of Revolution: The Role Of Tax Protests And Anti-Tax Rhetoric In America.” Buffalo Law Review, 50 Buffalo L. Rev. 819

[*860] The right of revolution is also inherent in civil disobedience, an honored tradition in the United States dating back to Colonial times, because it recognizes that even in a democracy, the state's sovereignty is bound by the moral authority of the individual, who is morally obligated to resist immoral laws. n112 This resistance does not necessarily lead to violence, and in fact most people who believe and practice civil disobedience do not advocate violence. n113 Yet it is a potential consequence of civil disobedience, and indeed it occurred during the civil rights movement. n114

Civil Disobedience is justified disobedience because those who blindly follow the law are no more than machines.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003; “Article: Civil Disobedience And The U.S. Constitution.” Southwestern University Law Review. 32 Sw. U. L. Rev. 677

Ronald Dworkin refers to civil disobedience as "justifiable disobedience" n112 because the conduct is morally motivated. Henry David Thoreau, in his famous essay on Civil Disobedience, reminds his readers that all men have the right of revolution, the right to rebel, and the right to refuse allegiance to and to resist the government, when its tyranny or its inefficiency are great and unendurable. n113 Thoreau goes on to say that men who blindly obey the law are "not as men mainly, but as machines." n114 Thoreau advocates breaking the law rather than waiting for the slow process of the majority to alter unjust laws. n115 King, in his famous Letter from the Birmingham Jail, written while he was in prison for violating a permit to parade and demonstrate, adopts many of Thoreau's radical theories, refuses to wait any longer for the constitutional and God-given rights of Blacks, and espouses his own form of legal relativism.

Western thought has a history of obeying higher law over man made law.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003; "Article: Civil Disobedience And The U.S. Constitution." Southwestern University Law Review. 32 Sw. U. L. Rev. 677

Those who argue that civil disobedience is protected or should be protected by the Constitution find the origins of this argument in conflicts-of-law theory which purports that civil disobedient are torn between obedience to man-made law and obedience to a higher natural law. This argument has deep roots in the history of Western thought: Cicero, Aquinas, Grotius, Locke, even Thomas Jefferson who inscribed on the Great Seal of the United States: "Rebellion against tyrants is obedience to God." n120 St. Thomas Aquinas declared that human law does not bind a man in conscience, and if it conflicts with the higher law, human law should not be obeyed. n121 Aquinas is claiming that natural law preempts man-made law. "The difficulty inherent in the conflicts-of-law argument is the vagueness of natural law, the impossibility to codify natural law or to determine what natural law" requires or prohibits, and therefore the inapplicability of natural law to concrete cases. n122

Civil disobedience is a human right and the basis of other human rights .

Dr Sergio Fiedler, Professor of Social Inquiry at the University of Technology Sydney, November 8, 2002; "Civil Disobedience Today." Research Initiative on International Activism. Online. <<http://www.international.activism.uts.edu.au/civildis/pdfs/civildisobediencetoday.pdf>>

We could approach the question of civil disobedience from a number of perspectives. Within the liberal-democratic tradition, civil disobedience can be considered as a fundamental part of the right to rebel against unfair laws and tyrannical government. By giving a radical twist to this argument, it is possible to argue that civil disobedience, as dimension of the right to rebel constitutes a fundamental human right. Even more, I would like to argue that the right to rebel is not simply another human right, but the most important human right we have. In fact, without acknowledging the existence of a right to rebel, the very idea of human rights ceases to make any sense. We need to remember that the dominant discourse of human rights emerged out of the mass rebellions of the American and French Revolutions. Within modern society, it was the exercise of the right to rebel the one that opened the possibility for us to contemplate today the very notion of human rights. The right to rebel underwrites and creates the foundation for every human right to exist, its full exercise therefore becoming the only effective avenue of political defiance when those rights are under attack by conservative forces.

Some have argued that this should translate into a constitutional right to civil disobedience.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003; "Article: Civil Disobedience And The U.S. Constitution." Southwestern University Law Review. 32 Sw. U. L. Rev. 677

Among the founding fathers of the United States of America, Jefferson best typifies the duality inherent in the right of resistance and revolution. Jefferson believed rebellion was a protection of freedom, a "medicine necessary for the sound health of government." n19 Among the founding fathers, Thomas Jefferson was the least fearful of the right of resistance and revolution, and he supported populist rebellions like Shays' Rebellion and the effectiveness of a threat of rebellion like the Virginia and Kentucky Resolutions. n20 Jefferson was an ardent supporter of the French [*680] Revolution, and he maintained his support after the Terror and after his presidency. n21 Jefferson also continued to support the radical natural rights philosophy enunciated in the Declaration of Independence, and he implied in a letter to Edmund Randolph in 1799 that the nation retains the right of revolution because it is the people's will "which creates or annihilates the organ which is to declare and announce it." n22 Jefferson is most remembered for his revolutionary statements: "The tree of liberty must be refreshed from time to time with the blood of patriots and tyrants, and if the happiness of the mass of the people can be secured at the expense of a little tempest now and then, or even a little blood, it will be a precious purchase." n23

The state must protect even those who are protesting against it.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003; "Article: Civil Disobedience And The U.S. Constitution." Southwestern University Law Review. 32 Sw. U. L. Rev. 677

However, the U.S. Constitution also provides U.S. citizens with the right to criticize, to protest, and to peaceably assemble, and the states must respect these rights and refrain from punishing the citizens from exercising their rights. The state is required, if necessary, to send out state troopers or police to protect a mass march of people who are protesting against the state itself. This occurred in Selma, Alabama.

Utilitarian analysis supports a right to civil disobedience.

Peter Suber, Professor of Philosophy @ Earlham College, Richmond, Indiana, 1999
Christopher B. Gray (ed.), Philosophy of Law: An Encyclopedia, Garland Pub. Co, 1999, II.110-113

Utilitarians observe that disobedience and obedience may both be harmful. The slippery slope objection falsely assumes that the former sort of harm always outweighs the latter. In the case of an iniquitous law, the harm of disobedience can be the lesser evil. This utilitarian reply is sometimes found to coexist with a complementary deontological reply, for example in Thoreau: one simply must not lend one's weight to an unjust cause.

Ronald Dworkin replies, in effect, that the descriptive version of the argument is false and the normative version irrelevant. There is no evidence that civil disobedience, even when tolerated by legal officials, leads to an increase in lawlessness. Moreover, rights trump utility. Since (for Dworkin) there is a strong right to disobey certain kinds of unjust laws, and since the slippery slope argument points only to the disutility of disobedience, this is a case of a right in conflict with utility; hence the right to disobey must prevail.

Moral agency requires an ability to question the law.

Joan C. Callahan, Ethical Issues in Professional Life, 1988, p. 13.

"A moral agent always retains the right to question commands if there is *any* reason to believe that those commands involve an unjustifiable infringement of rights or will lead to harm to persons or other sentient beings. Again, genuine morality involves maintaining moral autonomy; it involves more than mere unreflective obedience to external authority."

Joan C. Callahan, Ethical Issues in Professional Life, 1988, p. 13.

"Moral agents always retain not only the right, but the obligation to evaluate the moral appropriateness of any order they might be given as well as the right and duty to resist if, after *careful* reflection, they are convinced that they are being instructed to do something that will not bear moral scrutiny. As we have already seen, in moral matters not to decide is equivalent to deciding. To blindly obey orders is itself to make a decision in favor of what the orders require. And that is a decision for which one is morally accountable."

John Rawls, "Civil Disobedience" in Philosophy of Law, edited by Joel Feinberg and Hyman Gross (1991), p. 117 (a reprint from the original publication in A Theory of Justice by John Rawls, 1971).

"In a democratic society, then, it is recognized that each citizen is responsible for his interpretation of the principles of justice and for his conduct in light of them. There can be no legal or socially approved rendering of these principles that we are always morally bound to accept, not even when it is given by a supreme court or legislature."

Erich Fromm, "Disobedience as a Psychological and Moral Problem," in *Morality and the Law*, edited by Robert M. Baird and Stuart E. Rosenbaum (1988) p. 95 (reprint originally published in *On Disobedience and Other Essays*, 1981).

"All martyrs of religious faiths, of freedom and of science have had to disobey those who wanted to muzzle them in order to obey their own consciences, the laws of humanity and of reason. If a man can only obey and not disobey, he is a slave; if he can only disobey and not obey, he is a rebel (not a revolutionary); he acts out of anger, disappointment, resentment, yet not in the name of a conviction or a principle. However, in order to prevent a confusion of terms an important qualification must be made. Obedience to a person, institution or power (heteronomous obedience) is submission; it implies the abdication of my autonomy and the acceptance of a foreign will or judgment in place of my own. Obedience to my own reason or conviction (autonomous obedience) is not an act of submission but one of affirmation. My conviction and my judgment, if authentically mine, are part of me. If I follow them rather than the judgment of others, I am being myself."

BUT ON THE OTHER HAND ...

Choosing which laws to obey is morally dangerous.

Leon Jaworski, "The United States Faces Today A Serious Threat to Her Continued Existence as a Free People" in *Morality and the Law*, edited by Robert M. Baird and Stuart E. Rosenbaum (1988) p. 87 (reprint originally published in the *Baylor Line*, January-February 1968: 14-18).

"One of the most appalling and frightening of the trends in recent years is the self-serving practice of choosing which laws or court orders to obey and which to defy. The preachments that generate this attitude are cancerously dangerous to our system of government under law. To rest upon or hide behind the claim that if one's conscience speaks to the contrary, justification exists for ignoring laws or decrees is but to say that the rule of law is not to be the governing yardstick of our society's conduct."

Leon Jaworski, "The United States Faces Today A Serious Threat to Her Continued Existence as a Free People" in *Morality and the Law*, edited by Robert M. Baird and Stuart E. Rosenbaum (1988) p. 87 (reprint originally published in the *Baylor Line*, January-February 1968: 14-18).

"If the civil rights leader, for example, in 'good conscience' disobeys a law or court decree because it offends his moral belief of what is right, then why should not his antagonist also be free to exercise this prerogative?"

Civil disobedience fails the moral test of universality.

Peter Suber, Professor of Philosophy @ Earlham College, Richmond, Indiana, 1999
Christopher B. Gray (ed.), *Philosophy of Law: An Encyclopedia*, Garland Pub. Co, 1999, II.110-113

What if everybody did it? Civil disobedience fails Kant's universalizability test. Most critics prefer to press this objection as a slippery slope argument; the objection then has descriptive and normative versions. In the descriptive version, one predicts that the example of disobedient will be imitated, increasing lawlessness and tending toward anarchy. In the normative version, one notes that if disobedience is justified for one group whose moral beliefs condemn the law, then it is justified for any group similarly situated, which is a recipe for anarchy.

Civil disobedience cannot be constitutionally protected because the punishment is part of the act or resistance.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003; "Article: Civil Disobedience And The U.S. Constitution." Southwestern University Law Review. 32 Sw. U. L. Rev. 677

Breaking the law can be a forceful means of expression and can have effective social value if the violation ultimately accomplishes a reform of bad law. However, the free speech clause of the First Amendment does not protect this form of expressive conduct, even if breaking the law is done for a good purpose. The fact that a particular criminal's purpose in breaking the law is to publicize an injustice is no defense to the prosecution. n151 Accepting the penalty is part of the dissident's speech. n152 Thus, the U.S. Constitution does not protect civil disobedient from imposition of punishment for their crimes, and to do otherwise would "subvert the rule of law upon which the United States constitutional democracy is based." n153

Also, there is a difference between free speech and lawless actions, which the constitution does not protect.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003; "Article: Civil Disobedience And The U.S. Constitution." Southwestern University Law Review. 32 Sw. U. L. Rev. 677

Constitutional First Amendment theory divides protected speech [*698] into two categories: speech or pure speech covering expressions through verbal or written words, and conduct. The line between speech and conduct is sometimes hazy. n156 Conduct is either expressive (i.e. communicates a message and is understood by an audience) or non-expressive. n157 Another way to analyze free speech issues is not to classify different types of "speech" or "conduct" but to classify kinds of government restrictions on such speech or conduct. The question then becomes whether the government restriction is aimed at the expressive content of the behavior or whether the government restriction is content neutral.

The Court will apply a three-pronged test to determine if government restrictions on expressive conduct are permissible: whether the action is within the government's power, whether the action serves an important or substantial governmental purpose, and whether the incidental restriction of speech is no greater than necessary to serve the government's purpose. n158 The inquiry is similar to the deferential rational basis standard. n159 If government action restricting speech is directed at the content of the message, then a strict scrutiny standard applies, unless the government is regulating speech on its own property that it has not opened for expression or unless the content of the speech falls within one of the categories that the Court had determined to be entirely unprotected or less protected than most speech. n160

II. Civil Disobedience Leads to Social Change

Civil Disobedience is a legitimate means to effect change.

Marjorie E. Kornhauser, Professor of Law Tulane Law School, Fall, 2002
"Legitimacy And The Right Of Revolution: The Role Of Tax Protests And Anti-Tax Rhetoric In America." Buffalo Law Review, 50 Buffalo L. Rev. 819

[*861] Some people believe that disorder, violence, and even chaos can occasionally be valuable. Among them are some anarchists who do not even consider destruction of property to be violence. n115 But supporters of disorder are not limited to anarchists. Even in 1969, the Task Force on Violence stated:

We take the position that the growth of this country has occurred around a series of violent upheavals and that each one has thrust the nation forward. The Boston Tea Party was an attempt by a few to alter an oppressive system of taxation without representation. The validation of these men rested on their attempts to effect needed social change. If the Boston Tea party is viewed historically as a legitimate method of producing such change, then present-day militancy, whether by blacks or students, can claim a similar legitimacy. n116

Civil disobedience is an important tool for opposition groups.

Paul F. Power, "Civil Disobedience as Functional Opposition," *The Journal of Politics*, Vol. 34, No. 1 (February, 1972), 45.

Civil disobedience may be of possible utility to conventional oppositional groups in several ways: (1) Civil disobedience communicates to other opponents demands that they were unaware of or that they may have agreed to overlook—either among themselves or with that regime. (2) A conceivable result of (1) is that one or more of the opponents becomes uncomfortable and begins to perform an adversary role with the regime. (3) On the assumption that oppositions are already acting as adversaries against the regime, civil disobedience causes them to enter a tacit or express coalition among themselves, thereby increasing their combined adversary power over the sum of their previous, individual strengths. (4) Civil disobedience pluralizes a highly unified, oppositional pattern—a functional benefit if this kind of result is conducive to oppositional effectiveness vis à vis the regime. (5) Civil disobedience provokes conventional opponents of the regime to reexamine their constituency bases to determine how they have failed to represent those dissenters who have chosen rule breaking over ordinary means of criticism; it compels them to take remedial action to regain the sympathy and voting power of these dissenters and their followers.

Paula Abood, leader of anti-racist movements in Australia, November 8, 2002
"Civil Disobedience Today." Research Initiative on International Activism. Online.
<<http://www.international.activism.uts.edu.au/civildis/pdfs/civildisobediencetoday.pdf>>

The problem with the term civil disobedience though is that there is an in-built assumption that we all have civil rights before the law. That we are all equal at the point we might engage in acts that are counter to unbridled State power. What does civil disobedience mean for radicalized communities, particularly Indigenous communities, where the law has historically been mobilized to take away every human right (let alone civil right) imaginable? For some communities, the notion of civil disobedience is not so useful, most especially when you are positioned as non-citizen and outside the parameters of so-called civil society. And for those non-citizens who are locked up because they are deemed 'unauthorized arrivals' - a government term no less - for them, resistance to the obscene abuse of State power is a more useful term, as they hardly inhabit the so-called paradise of 'the civil society'. For one, they do not have access to all the tools of the civil society, a society it seems set aside for a particular group of English-speaking peoples only.

The heroes of civil disobedience.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003
"Article: Civil Disobedience And The U.S. Constitution." *Southwestern University Law Review*. 32 Sw. U. L. Rev. 677

Civil disobedient are not just lawbreakers. n65 Some of our greatest [*686] heroes violated the laws: Socrates, Thoreau, Gandhi, and King. Some of our finest leaders, like George Washington, Benjamin Franklin, Alexander Hamilton, Thomas Jefferson, and Samuel Adams, were civil disobedients who were deemed traitors by some and patriots by others. n66 United States Supreme Court Justice Abe Fortas said that civil disobedience is an act of courage, even though each of us is subject to the law and each of us is duty bound to obey it:

But if I had lived in Germany in Hitler's days, I hope I would have refused to wear an armband, to Heil Hitler, to submit to genocide ... If I had been a Negro living in Birmingham or Little Rock or Plaquemines Parish, Louisiana, I hope I would have disobeyed the state laws that said that I might not enter the public waiting room in the bus station reserved for "Whites' ... I hope I would have had the courage to disobey, although the segregation ordinances were presumably law until they were declared unconstitutional. n67

Examples of social change effected by civil disobedience.

Kayla Starr, Civil Disobedience Activist, Summer 1998 "The Role of Civil Disobedience in Democracy." The Civil Liberties Monitoring Project. Online.

Throughout the history of the U.S., civil disobedience has played a significant role in many of the social reforms that we all take for granted today. Some of the most well known of these are:

1) The Boston Tea Party -- citizens of the colony of Massachusetts trespassed on a British ship and threw its cargo (tea from England) overboard, rather than be forced to pay taxes without representation to Britain. This was one of the many acts of civil disobedience leading to the War for Independence, establishing the United States of America as a sovereign state.

2) Anti-war movements have been a part of U.S. history since Thoreau went to jail for refusing to participate in the U.S. war against Mexico in 1849. More recent examples were the nationwide protests against the war in Viet Nam, U.S. involvement in Nicaragua and Central America, and the Gulf War. Actions have included refusal to pay for war, refusal to enlist in the military, occupation of draft centers, sit-ins, blockades, peace camps, and refusal to allow military recruiters on high school and college campuses.

3) The Women's Suffrage Movement lasted from 1848 until 1920, when thousands of courageous women marched in the streets, endured hunger strikes, and submitted to arrest and jail in order to gain the right to vote.

4) Abolition of slavery -- including Harriet Tubman's underground railway, giving sanctuary, and other actions which helped to end slavery.

5) The introduction of labor laws and unions. Sit-down strikes organized by the IWW, and CIO free speech confrontations led to the eradication of child labor and improved working conditions, established the 40-hour work week and improved job security and benefits.

6) The Civil Rights Movement, led by Martin Luther King, Jr. and others, included sit-ins and illegal marches which weakened segregation in the south.

7) The Anti-Nuclear Movement, stimulated by people like Karen Silkwood and the Three Mile Island nuclear power accident, organized citizens throughout the country into direct action affinity groups, with consensus decision making and Gandhian nonviolence as its core. Massive acts of civil disobedience took place at nuclear power facilities across the country, followed by worldwide protests against first-strike nuclear weapons, occupying military bases, maintaining peace camps, interfering with manufacture and transport of nuclear bombs and devices, marching, sitting in, blockading and otherwise disrupting business as usual at nuclear sites.

8) Environmental and forest demonstrations, with acts of civil disobedience such as sit-ins, blockades, tree sits and forest occupations, have emerged in the last decade, prompted by the continuing mass clear cuts and destruction of the forest ecosystem and widespread environmental consequences.

In all of these struggles, citizens had reached the conclusion that the legal means for addressing their concerns had not worked. They had tried petitioning, lobbying, writing letters, going to court, voting for candidates that represented their interests, legal protest, and still their views were ignored.

Historically, civil disobedience leads to social progress.

Dr James Goodman, Professor of Social Inquiry @ the University of Technology Sydney, November 8, 2002; "Civil Disobedience Today." Research Initiative on International Activism. Online. <<http://www.international.activism.uts.edu.au/civildis/pdfs/civildisobediencetoday.pdf>>

Civil disobedience breaks laws but it also makes laws. Non-violent actions have been at the heart of many of the great social and environmental advances in modern historical times, from freedom of speech to women's right to vote. For the Greens peaceful, constructive protest is seen as crucial to bringing about social change. So we welcome any opportunity to discuss the history and philosophy of civil disobedience.

Even moderate change requires confrontation at the beginning.

Dr Sergio Fiedler, Professor of Social Inquiry at the University of Technology Sydney, November 8, 2002; "Civil Disobedience Today." Research Initiative on International Activism. Online. <<http://www.international.activism.uts.edu.au/civildis/pdfs/civildisobediencetoday.pdf>>

Making the antagonism between an oppressive social order and the multitude visible might not end up in a revolution, but it can have important social and political repercussions. As Verity Burgmann argues, even the success of moderate demands and actions depend on groups of activists making "unreasonable" proposals.¹ Civil disobedience is, therefore, about being realistic by demanding the impossible. What is truly real always lies within the impossible.² Civil disobedience is to make a point by standing on the performative power of the outrageous, where the most unreasonable position becomes the only guarantee for the survival of the ethical act. In other words, civil disobedience is an act of political intervention that seeks to change the field of meaning of what is considered possible. "When the stick is bent in the wrong way—as it is the case today— it is necessary, in order to put the world back on track, to hold it and bend it in the opposite direction until the stick is right".

Civil Disobedience makes possible new worlds of free interaction.

Dr Sergio Fiedler, Professor of Social Inquiry at the University of Technology Sydney, November 8, 2002; "Civil Disobedience Today." Research Initiative on International Activism. Online. <<http://www.international.activism.uts.edu.au/civildis/pdfs/civildisobediencetoday.pdf>>

What a profound act of dignity and civility were the fences of Woomera falling down in the middle of desert last March. This action was an extraordinary because it was encounter of two vastly distinct and multiple cultural worlds creating a third space for inter-cultural communication, that was far more legitimate and effective than the bland discourse of official multiculturalism. Woomera 2002 highlights what is, at least for me, the most important dimensions of civil disobedience. Civil disobedience opens the possibility for the "enacted utopia" of the anti-statist and anti-capitalist public sphere. Following Slavoj Zizek, it is possible to argue that civil disobedience is the radical political act where a world inclusive of many worlds is not simply a distant promise, but the suspension of the oppressive temporality of the existing social order through which the possibility of that new world manifests itself in the actual moment of civil disobedience.

Civil disobedience is necessary to attack rights abuses . Dr. Tim Anderson talks about the example of Australia.

Dr Tim Anderson Professor of Political Economy @ the University of Sydney, November 8, 2002 "Civil Disobedience Today." Research Initiative on International Activism. Online. <<http://www.international.activism.uts.edu.au/civildis/pdfs/civildisobediencetoday.pdf>>

First, resistance (including civil disobedience) is desperately needed to the war and war crimes - openly planned by the Australian Government in collaboration with the US Government. IN conscience, citizens faced with complicity in their government's planed atrocities MUST find ways to dissociate themselves and isolate our own 'rogue regime'.

Second, resistance (including civil disobedience) is required to the plans by various Australian Governments and government agencies to censor freedom of speech, including freedom of speech on the Internet. This includes suggested censorship of discussion of disruptive or 'violent' protest, because no government can be allowed to pick and choose which discussion it wants to censor.

Third, resistance (including civil disobedience) is called for in response to the bewildering array of laws which seek to deny the basic right of free assembly, free association and peaceful protest. This includes resistance to the banning of assemblies or of organizations, under federal law. Nor can the banning of solidarity activism be tolerated.

BUT ON THE OTHER HAND ...

Although Thomas Jefferson believed in the right to revolt, he didn't actually believe in carrying out the resistance/revolution, but only to use the threat of rebellion as a bargaining chip.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003; "Article: Civil Disobedience And The U.S. Constitution." Southwestern University Law Review. 32 Sw. U. L. Rev. 677

However, despite Jefferson's continued belief in the right of revolution, he was not willing to see the American constitutional system destroyed by rebellion and resistance. n24 Jefferson was suspicious of revolt by the masses or the mob, and ideally, Jeffersonian revolts probably would have been led by the natural aristocrats. n25 To resolve the tension between the right of resistance and the right to live in a safe, orderly system of government, Jefferson actually preferred the use of alternatives to revolution such as elections, amending threats of revolution, and partial rebellion. n26 Although Jefferson continued to talk in terms of real revolution, he actually used rebellion and the threat of revolution as a persuasive tool of reform. n27 Even though Jefferson "incorporated civil disobedience into the constitutional structure, he actually relied far more on limited rebellions that are short and contained rather than on the checks and balances of the constitutional system" for the preservation of minority rights. n28

III. Civil Disobedience Enhances Democratic Institutions

Democratic governments work better with less than full compliance of the populace.

Joseph Raz, Professor of the Philosophy of Law at Columbia Law School, 2003
"About Morality And The Nature Of Law." The American Journal of Jurisprudence. 48 Am. J. Juris. 1

The second rejoinder, that the conditions of the government being just or democratic do not suffice to establish an obligation to obey, is more plausible. The problem is that being just, or being democratic, when they are systemic properties of the law, are consistent with individual laws being unjust, or pointless, or oppressive. The question is: is there an obligation to obey such a law, for if there is not there is no obligation to obey the law generally. One answer, and obviously there are many others which I will just have to ignore here, is that it is necessary to support a just institution, a just government and legal system. This is again an empirical question, and I believe that there is plenty of evidence that the better argument is different. Just governments and legal systems, generally speaking, work better with less than perfect compliance. This statement should not be misread. I do not mean that a few murders are better than none. I mean that there are many laws regarding which occasional breach by their subjects, and the occasional turning of a blind eye by the authorities make them achieve their goals with fewer injustices, and less friction with resisting populations. Besides, though here one's sense of justice may cloud one's impressionistic empirical judgment, a population ready to defy pointless, unjust and oppressive laws does more to preserve the just character of governments and their laws than a docile population willing to eat whatever it is dished out.

In a world decreasing channels of consultation, civil disobedience is essential to democracy.

Dr Sergio Fiedler, Professor of Social Inquiry at the University of Technology Sydney, November 8, 2002; "Civil Disobedience Today." Research Initiative on International Activism. Online. <<http://www.international.activism.uts.edu.au/civildis/pdfs/civildisobediencetoday.pdf>>

In the age of the "war on terror" and neo-liberalism, when transnational military and economic organizations are making decision affecting the vast majority of people in the planet without creating avenues of consultation (and in fact suppressing democracy and civil liberties), the right to rebel and civil disobedience ought to be nurtured as one of our most important political choices.

Democracies need civil disobedience.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003; "Article: Civil Disobedience And The U.S. Constitution." Southwestern University Law Review. 32 Sw. U. L. Rev. 677

Carl Cohen claims that open [*692] and uninhibited political criticism is of such fundamental importance in a democracy that such conduct will be protected, even when it may appear otherwise rightly unlawful. n110 Martha Minow argues persuasively that the legal system itself needs people willing to break the law for political reasons: "The legitimacy of the system itself requires confrontation with disobedience defended by individuals who view compliance as immoral or by individuals seeking to persuade lawful officials to change."

Western liberal democracy was built on civil disobedience.

Dr James Goodman, Professor of Social Inquiry @ the University of Technology Sydney, November 8, 2002; "Civil Disobedience Today." Research Initiative on International Activism. Online. <<http://www.international.activism.uts.edu.au/civildis/pdfs/civildisobediencetoday.pdf>>

Ironically, today's political institutions have their origins in civil disobedience. The entire edifice of western liberal democracy 'from democratic rights, to representative parliament, to freedom of speech' rests on previous acts of civil disobedience. The American anti-colonialists in the 1770s asserting 'no taxation without representation'; the French revolutionaries in the 1780s demanding 'liberty equality fraternity'; the 10 English Chartists in the 1830s demanding a "People's Charter"; the Suffragettes of the 1900s demanding "votes for women"; the Gandhian disobedience movement from the 1920s calling for "Swaraj" / self-government; all of these were movements of civil disobedience, and have shaped the political traditions that we live with today.

Civil disobedience makes antagonisms visible, which heightens democratic discourse.

Dr Sergio Fiedler, Professor of Social Inquiry at the University of Technology Sydney, November 8, 2002; "Civil Disobedience Today." Research Initiative on International Activism. Online. <<http://www.international.activism.uts.edu.au/civildis/pdfs/civildisobediencetoday.pdf>>

Here the logic of civil disobedience is not simply about breaking the law, but breaking the law in order to make the antagonisms that exist obscured and hidden within our society visible. When demonstrators blockaded the ACM offices last year and denied people entry to it, they were not about promoting violence but signifying in both a physical and symbolic way the violence of incarceration suffered by thousands of refugees in Australia; it was about bringing for a brief moment the reality of the detention camps to the "respectable" space of Sydney's CBD. Moreover, acts of civil disobedience like this become real schools of political science. By making social antagonism visible, people not only learn about their ability and power to work together and enact change collectively, but also about the role of the media, the police and government in managing or suppressing dissent.

Labeling dissent "anti-social" or "immoral" hurts democracy.

Penny O'Donnell, Professor of Journalism, at the University of Technology Sydney, November 8, 2002; "Civil Disobedience Today." Research Initiative on International Activism. Online. <<http://www.international.activism.uts.edu.au/civildis/pdfs/civildisobediencetoday.pdf>>

It is easier to silence political debate when political dissent is framed as anti-social rather than 'different'. This has largely been the case, for example, with the asylum-seekers: protesting against mandatory detention is discursively linked to queue-jumping by politicians and journalists, both are condemned as un-Australian activities, and there is, it seems, nothing more that needs to be said. But is that really the end of the so-called 'border protection' story?

Dissent should be encouraged, because democracy cannot thrive without it.

Penny O'Donnell, Professor of Journalism, at the University of Technology Sydney, November 8, 2002; "Civil Disobedience Today." Research Initiative on International Activism. Online. <<http://www.international.activism.uts.edu.au/civildis/pdfs/civildisobediencetoday.pdf>>

As Jim Cairns' biographer Paul Strange recently noted, the Australian news media do not frame or explain civil disobedience protests in terms of this country's civil disobedience tradition (Strangio 2002). As leader of the anti-conscription movement in the 1970s, Cairns was a key spokesperson for the case that robust democracies need citizens who are prepared to directly challenge their governments if they make bad laws. Political dissent was not a recipe for anarchy, in his view, but a challenge to the prevailing 'democratic lassitude' and to the ordinary person's reluctance to change. It was an opportunity to explore and evaluate different political points of view (Strangio 2002).

Traditionally, it is the powerful who fear civil disobedience rising among the powerless.

Dr James Goodman, Professor of Social Inquiry @ the University of Technology Sydney, November 8, 2002; "Civil Disobedience Today." Research Initiative on International Activism. Online. <<http://www.international.activism.uts.edu.au/civildis/pdfs/civildisobediencetoday.pdf>>

Those who reject civil disobedience believe that the current system 'the political status quo' is as good as it gets. They tend to see mass disobedience as a threat to the political order, not as an essential part of it. They tend to be those who are in power, rather than out of power.

It is useful to think of law and the legal system—even in a democracy—in terms of power relations.

Dr Sergio Fiedler, Professor of Social Inquiry at the University of Technology Sydney, November 8, 2002; "Civil Disobedience Today." Research Initiative on International Activism. Online. <<http://www.international.activism.uts.edu.au/civildis/pdfs/civildisobediencetoday.pdf>>

It is necessary, on the other hand, to recognize the inadequacies of this liberal-democratic perspective on civil disobedience. By focusing on individual rights, liberal-democratic approaches often tend to obscure the fact that "unfair" and "unjust" laws function to benefit a dominant corporate elite or political class within society. It also fails to recognize that a complex network of institutions and ideologies politically supports "unfair" laws. To make sense of civil disobedience not simply as an expression of liberal moral outrage, "unfair" laws need therefore to be understood in terms of the social antagonisms and power relations providing the foundation of their legal existence. They also need to be understood in terms of the institutions and ideologies attempting to create the impression that we live in a peaceful and democratic society without contradictions and inequalities.

Civil disobedience is necessary for the preservation of democracy.

Rex Martin, "Civil Disobedience," Professor of Philosophy at the University of Kansas, Ethics, Vol. 80, No. 2 (January 1970), 136-137.

But there is good reason to consider...the ability to provide laws and policies which commend themselves to the reflective judgment of citizens. It is, perhaps, the breakdown of authority in this...sense that has made disobedience to law seem plausible in our time.

The fact that authority can fail in these respects is...good reason to provide to provide suitable procedural safeguards: not just to safeguard the judgment and conscience of the individual in matters of substance, but also to safeguard democratic authority itself.

Civil disobedience in the United States—a democracy—has a long tradition and has been responsible for promoting and preserving American democracy.

Howard Zinn, "The Role of Civil Disobedience in Promoting US Democracy." Peacework, 1999. <<http://www.afsc.org/pwork/0299/029904.htm>>

There is a long and honorable tradition in the US of citizen actions of civil disobedience—that is, of technical violations of law to serve important social values. Either at the time these actions took place, or later, in the judgment of history, they became recognized as justified because they served a vital purpose for society....

The acts of civil disobedience in the period preceding the Revolutionary War are quite well known, but often ignored when contemporary acts are judged, not by standards of justice, but by narrow technical standards of war....

There were many violations of the Fugitive Slave Law of 1850, in which groups of white and black abolitionists rescued, or attempted to rescue, escaped slaves....

The occupation of factories in 1936 and 1937—the famous "sit-down strikes"—were illegal, but resulted in the recognition of unions and the betterment of working conditions....

In short, American history sustains the idea that civil disobedience—the violation of laws on behalf of human rights, against starvation and sickness—should be distinguished from criminal disobedience, where a law is violated for individual gain. Civil disobedience therefore is not to be punished because it is a technical violation of law, but to be honored as part of the American tradition, enhancing democracy.

There is an important free speech component to civil disobedience. In a democracy, individuals have a right to freedom of speech because we must seek the truth.

Dr Kath Gelber, Professor of Politics and International Relations @ University of New South Wales, November 8, 2002; "Civil Disobedience Today." Research Initiative on International Activism. Online. <<http://www.international.activism.uts.edu.au/civildis/pdfs/civildisobediencetoday.pdf>>

The 'argument from truth' reflects the perception that free and open discussion is essential to the search for 'truth'. Engagement in speech, in the sense of the exchange of ideas via communicative expression, is considered important because of its outcome. According to the argument from truth, it is possible and even necessary that discussion may result in the acquisition of 'truth' via dissemination of new information and/or knowledge (Schauer 1982: 15).

Although it may seem a little old hat, part of the importance of academic research is to understand and acknowledge where your ideas come from. It was John Stuart Mill who presented some of the most powerful arguments in 1859 for the preservation of free speech. He argued there were reasons for the special protection of freedom of speech (1991: Chapter 2). These include that no individual is infallible. Therefore, if an opinion is silenced the effect may be to silence a 'truth', or element of knowledge, of which we had previously been unaware or unconvinced but which may be more 'true' or credible than the knowledge we currently possess.

Civil Disobedience must be allowed because to risk silencing debate is to risk silencing the 'Truth.'

Dr Kath Gelber, Professor of Politics and International Relations @ University of New South Wales, November 8, 2002
"Civil Disobedience Today." Research Initiative on International Activism. Online. <<http://www.international.activism.uts.edu.au/civildis/pdfs/civildisobediencetoday.pdf>>

This means that to stifle debate is to risk silencing or repressing a 'truth', even a partial one. Mill advised us that we need to protect dissent and difference, and in particular that we must not let majority opinion obscure dissent and difference. Instead, it is important to allow a collision of diverse opinions to occur. Because it is only by allowing an opinion to be tested out against other ideas that we are able to discover which idea is more correct, or more credible.

Civil disobedience fosters beliefs based on moral conviction, and not just emotion and tradition.

Dr Kath Gelber, Professor of Politics and International Relations @ University of New South Wales, November 8, 2002
"Civil Disobedience Today." Research Initiative on International Activism. Online.
<<http://www.international.activism.uts.edu.au/civildis/pdfs/civildisobediencetoday.pdf>>
Just as importantly, even if we are right belief requires contestation. For Mill, it was crucial that individuals hold their ideas based on conviction and reason, not simply due to prejudice or emotion. The holding of an idea due to prejudice stagnates both the idea (which may not forever be the most true) and the holder of that idea, who limits their opportunities for self-development. A 'living truth' must be 'fully, frequently, and fearlessly discussed' (Mill 1991: 40) in order to be held rationally. If any belief is not contested it exerts a stagnating influence over the mind and denies the progression of ideas and knowledge.

Civil disobedience is justified because all people have an inherent right to free speech.

Dr Kath Gelber, Professor of Politics and International Relations @ University of New South Wales, November 8, 2002; "Civil Disobedience Today." Research Initiative on International Activism. Online.
<<http://www.international.activism.uts.edu.au/civildis/pdfs/civildisobediencetoday.pdf>>
The third reason why free speech is important is a right-based argument, the idea that as human beings we have an intrinsic right to free speech. Free speech is considered so central to what it means to be human that it may not be abridged, because to do so would be to rob us of a capacity which is inherently human and which is inalienable and universal.

Civil defense is justified because dialog and free speech are necessary for democracy. The government has obligation to engage in dialogue. A failure to do so demands civil disobedience.

Stephen Carter, William Nelson Cromwell Professor of Law at Yale University, 1998
The Dissent of the Governed: A Meditation on Law, Religion, and Loyalty. Cambridge, MA: Harvard University Press. Online. <http://www.csp.org/chrestomathy/dissent_governed.html>
As a legal theorist, as a citizen of a democracy, and as a Christian, I believe, deeply, in dissent, not simply as a right, but often as a responsibility. Our moral progress demands richer understandings of the world, and nobody has yet invented a better or more democratic source of those understandings than dialogue among free and equal citizens. Dialogue suggests differences of opinion, when an individual or a group differs with the opinion of the majority as reflected in law or custom, the opportunity for dissent presents itself. As the reader will quickly discover, I believe that dialogue is what the Declaration of Independence is all about, and that the refusal to engage in dialogue - most particularly when it is the state that does the refusing - is itself a manifest injustice that demands correction.

IV. Civil Disobedience is Undemocratic

Civil disobedience is undemocratic because it permits a small, righteous group to trump the will of society.

Fredrik Bendz, Professor of Philosophy at Uppsala University, Sweden, 1997
"Civil Disobedience: Introduction." Online.
<<http://www.update.uu.se/~fbendz/philo/disobey.htm>>
Disobedience is a forceful way of having society do things your way. Even a small group of citizens can, with only a little effort, cause great destruction on the infrastructure of a country. The problem with this is that a small terror group without any mandate from the rest of the population may consider themselves to be the righteous ones. Some Anarchists even think that they are acting in the best interest of society, even though the people sympathize neither with their ends nor their means. These people seem to think that they are somehow superior, and that the others don't know their own best. This is a kind of elitist thinking that I cannot accept.

Decisions are made by the people in a democracy.

Fredrik Bendz, Professor of Philosophy at Uppsala University, Sweden, 1997
"Civil Disobedience: Introduction." Online.
<<http://www.update.uu.se/~fbendz/philo/disobey.htm>>

There are plenty of problems with this view. First, in democracies we have representative democracy, which means that even though we may dislike a decision made by the politicians they were still made in a process where we had both the right and the possibilities to influence our politicians with rational arguments. And if we are not satisfied with their ruling, we can vote for somebody else in the next election. In a dictatorship civil disobedience is a necessity for the common man to achieve his goals, whereas in a democracy, at least theoretically, the decisions are made by the people.

Democracy means that individuals must recognize when the majority will is different than their own personal good.

F.C. DeCoste, Professor of Law, University of Alberta, April, 2002
"Redeeming the Rule of Law: Constitutional Justice: A Liberal Theory of the Rule of Law, T.R.S. Allan." Alberta Law Review. 39 Alberta L. Rev. 1004

That rules and policies must be 'shown' to be justified in turn entails government by consent for it is the citizen that is the addressee of this demonstration. "The law seeks the citizen's acceptance of its demands as morally justified: he is invited to acknowledge that obedience is the appropriate response in light of his obligation to further the legitimate needs of the common good." n88 In consequence, "the rule of law is ultimately an ideal of government by consent of the governed, in which the law invokes the assent of the individual by appeal to a morally accepted view of the common good." n89

Civil disobedience is not guarded by the constitution. There are no checks.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003
"Article: Civil Disobedience And The U.S. Constitution." Southwestern University Law Review. 32 Sw. U. L. Rev. 677

However, there are occasions when a person may feel morally justified in resorting to impermissible methods of dissent, such as a direct disobedience of a law. The use of impermissible means of dissent is an act of civil disobedience which is done intentionally and for moral purposes, and the disobedient, believing there is no other [*697] alternative to accomplish the moral aim, expects to be punished for the unlawful act, irrespective of the noble motivation. United States Supreme Court Justice Abe Fortas insisted that a punishable offense will not, and should not, be excused unless the law which is violated (such as a law segregating a public library) is unconstitutional or invalid. n149 If the right to protest or to assemble peaceably is exercised for the purpose of violating valid laws that are reasonably designed to avoid interference with others, the Constitution's guarantees will not shield the protester. n150

V. The Problem of Legitimacy

It is hard for us to imagine problems like a “crisis of legitimacy” because we live in the United States. But there are many democratic governments that have problems with governmental continuity, stability, and legitimacy. Think about the newly forming government in Iraq. Or think about democracies with financial difficulties. The United States may be able to withstand flagrant challenges to law and order and the democratic process, but these other governments may not. Civil disobedience questions whether people can trust the democratic process. We can handle it. But can every government?

Civil disobedience challenges the legitimacy of democratic process.

Marjorie E. Kornhauser, Professor of Law Tulane Law School, Fall, 2002
“Legitimacy And The Right Of Revolution: The Role Of Tax Protests And Anti-Tax Rhetoric In America.” Buffalo Law Review, 50 Buffalo L. Rev. 819

3. Legitimacy as Process. In a widely heterogeneous country such as the United States, legitimacy cannot easily rest solely on agreement about principles. Although Americans express support for broad principles such as liberty, equality and opportunity for all, the diverse populace interprets them differently and supports a disparate array of more particular policies. This difficulty in agreeing on particular substance can undermine the government's legitimacy because it means that there is often dissatisfaction with the results of government action. In this situation, process becomes an important buttress for legitimacy. If people cannot agree on results, they can still accept them if they believe in the legitimacy of the process under which they were reached. Process in American democracy focuses on efficiency, equity, and accountability. Efficiency is concerned with arriving at decision in the quickest and least costly manner; equity focuses on neutrality and access to the process; accountability involves openness (transparency) to the public and responsibility. n143 Process (means) and policy (ends) are difficult to separate [*871] and indeed may merge. n144 As a consequence, some theoreticians believe that the public's perception of the procedural efficiency and equity in reaching a decision is more important than the policy itself. n145

Democracy is like sausage – People often like the outcome but not the process .

Marjorie E. Kornhauser, Professor of Law Tulane Law School, Fall, 2002
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Hibbing and Theiss-Morse describe this situation as causing Americans to want "stealth democracy." n147 More commonly, the American attitude towards democracy is likened to that held about sausages: we like the product but not the process. Regardless of the analogy, the consequence of this ambivalence is an inherent instability to the legitimacy of American institutions. If we cannot, for example, agree on the precise substantive parameters of a "fair" tax, we at least want the tax to be procedurally fair in its enactment and enforcement. Fair enactment, of course, means that the method by which the legislature enacts the [*872] tax is equitable and based on policy and principle rather than politics. The more we see Congress in action, however, the less we like its process and the less fair we think that process is. Media and scholarly attention on the tax legislative process highlights how lobbyists obtain special provisions that provide tax benefits to narrow special interests and results in a tax code perceived as unfairly burdening some taxpayers and favoring others. n148

Democracy is only democracy if people voluntarily follow the law. Otherwise, it's not sustainable.

F.C. DeCoste, Professor of Law, University of Alberta, April, 2002
"Redeeming the Rule of Law: Constitutional Justice: A Liberal Theory of the Rule of Law, T.R.S. Allan." Alberta Law Review. 39 Alberta L. Rev. 1004

The justification requirement, then, entails standards of legitimacy and conditions of consent, and these together, Allan argues, make "the ideal of deliberative democracy ... the central aspiration of the rule of law." n90 The rule of law "requires a mode of governance designed to elicit voluntary compliance on the basis of conscientious moral judgment" of the justification proffered for public rules and policies. n91 The rule of law demands, that is "that governmental action should be capable of justification in terms of an explicit conception of the common good ... reflecting the status of each citizen as an independent moral agent." n92 With this final calculation, Allan has wrought very much indeed from the procedural core of rule of law.

Democracy is built on the consent of the governed

Marjorie E. Kornhauser, Professor of Law Tulane Law School, Fall, 2002

"Legitimacy And The Right Of Revolution: The Role Of Tax Protests And Anti-Tax Rhetoric In America." Buffalo Law Review, 50 Buffalo L. Rev. 819

United States political theory and popular belief both hold that the government's authority (that is, its legitimacy) rests on the consent of the governed. This consent derives from social contract, but it is not the traditional contract between the governing and the governed. Rather, the consent is amongst the people who agreed to form a government for their mutual benefit. n40 Consequently, when the government no longer acts for the benefit of the people, the people have the right, as the Declaration of Independence states, to alter or even abolish it. n41 The United States' federal constitution, established by [*841] "We, the People," reflects this idea of sovereignty in several places, such as the first amendment rights of petition and assembly and the ninth and tenth amendments, both of which refer to rights reserved to the people. Most state constitutions also formally acknowledge this right of popular sovereignty by containing a provision declaring that because political power inheres in the people and the government is founded for their benefit, the people have the right to alter, to reform, and in some state constitutions, to abolish the government. n42 This provision is sometimes called "the right of revolution" in recognition of its historical roots in the revolutionary struggle and of the belief in the inherent right of the people - retained upon formation of their governments - to revolt. n43 This linkage to the original [*842] revolution highlights how deeply intertwined taxation is with American notions of legitimacy and sovereignty. Participants in that original revolution focused so intently on tax issues that many believed that the only source of conflict was the authority to tax. n44 This entanglement has continued throughout American history up to the present.

Marjorie E. Kornhauser, Professor of Law Tulane Law School, Fall, 2002

"Legitimacy And The Right Of Revolution: The Role Of Tax Protests And Anti-Tax Rhetoric In America." Buffalo Law Review, 50 Buffalo L. Rev. 819

Legitimacy justifies and transforms the power of government through a moral authority derived from the consent of both the governed and the governing to both the existence and justness of the existing order. n19 Legitimacy is, [*831] therefore, an essential aspect of a regime's stability because this moral authority forms the basis of its legal and political authority. Legitimacy persuades the majority of people to accept the status quo: to follow laws enacted by the government, to generally acquiesce to its decisions, and to act on its "behalf" by voting, for example. n20 Consequently, any substantial challenge to a government's legitimacy potentially threatens its

[*832] Since legitimacy ultimately rests on the populace's beliefs and attitudes, rhetoric is instrumental in the creation, maintenance, and destruction of legitimacy. Rhetoric, which influences beliefs and attitudes generally, plays an essential role in legitimizing authority for several reasons. First, as Daniel T. Rodgers has explained, words

People must voluntarily submit to the laws for governments to retain power. That's why legitimacy is so important.

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Legitimacy and a steady source of revenue provide the twin foundations of any enduring government. Although groups may gain control of government through illegal seizures of power, they seek legitimization by the populace in order to obtain a stability that mere coercion never can yield. Even legitimate governments, however, lack durability if they have no reliable flow of money to support their functioning. n4 Governments most commonly obtain this [*821] steady source of revenue through a combination of three methods: ownership of the wealth itself, borrowing, and taxation. In the long run, taxation is the most successful method, n5 but only if the government collects the tax efficiently, that is, with a minimum of effort and expense. A necessary condition of efficiency is that people pay their taxes voluntarily. Thus, the growing unwillingness to pay taxes that occurs in any serious tax revolt, including the current American tax revolt triggered in 1978 by California's Proposition 13, potentially threatens a government's viability by jeopardizing both the legitimacy of its laws and its source of income.

Words can topple governments – Civil disobedience is an attack against the state.

Marjorie E. Kornhauser, Professor of Law Tulane Law School, Fall, 2002
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Legitimize the outward frame of politics; they create those pictures in our heads which make the structures of authority tolerable and understandable. Thus human beings come to talk of the sacredness of the king's body, the sovereignty of the people, or the destiny of nations - word pictures all, tissues of metaphor... . Many of the most powerful words in the lexicon of politics are of this sort... . But of all the functions of political talk, the superimposition of some believable sense and enduring legitimacy on top of the chaotic motions of day-to-day power is the least dispensable. Let the citizens believe that the law is a thing of logic (rather than the whim of men called judges), that their government is a democracy (though only a fraction of the people rule), that human beings were born with rights (though it is plain that they are born to the powerlessness of infancy), and their words have consequences. n22

"Justifying" or "de-justifying" action may seem like semantics, but words matter in the battle for legitimacy.

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"Legitimacy And The Right Of Revolution: The Role Of Tax Protests And Anti-Tax Rhetoric In America." Buffalo Law Review, 50 Buffalo L. Rev. 819

Since words are so vital to legitimizing authority, politicians battle over the right to claim certain words and phrases that, because of their connection to the political culture, carry great affective as well as cognitive weight. By associating these words with themselves, and by claiming these words for their particular stance on an issue, the speakers control the meanings of the words as well as acquire the positive attitudes and the power of legitimacy that people associate with them. n33 Throughout the history of the United States, there have only been a small number of words and phrases that have served as key organizing concepts - words such as individualism, freedom, and equality. n34 They symbolize fundamental elements of the American democratic ideology, such as "consent, accountability, limited or constitutional government, representation, majority rule, minority rights, the principle of political opposition, freedom of thought, speech, press, and assembly, equality of opportunity, religious toleration, equality before the law, the rights of juridical defense, and individual self determination over a broad range of personal affairs." n35 Politicians and political parties therefore [*838] struggle for "ownership" of these words and concepts because whoever owns them controls their meaning and derives legitimacy from them.

Alienation erodes the legitimacy of the government

Marjorie E. Kornhauser, Professor of Law Tulane Law School, Fall, 2002

“Legitimacy And The Right Of Revolution: The Role Of Tax Protests And Anti-Tax Rhetoric In America.” Buffalo Law Review, 50 Buffalo L. Rev. 819

Second, rhetoric serves as a unifying mechanism, especially for a diverse population. In contradiction to the widespread negative view of rhetoric as substantively meaningless words whose purpose is more to conceal than to elucidate, n23 some rhetoric is both necessary and good. It [*833] fosters legitimacy by helping to build communities and commonalties. It also helps limit people's frustration with government and general feelings of alienation that can erode legitimacy. The rhetoric of elected officials is especially powerful in this respect because citizens believe that officials have more information than they do. Moreover, they view elected officials as the representation of the people's will. n24

Rhetoric's appeal to the listener's emotions and beliefs - the very characteristic that gives rhetoric a bad name - is necessary in politics because politics are neither simply a matter of reason, nor of personal taste. n25 "Men act not simply in response to some kind of objective reality but to the meaning they give to that reality." n26 Rhetoric is one of [*834] the ways that people give meaning and shape to that reality. Even rhetoric's tendency to conceal has a positive aspect. By blurring differences, it helps build communities and commonalties that create both a sense of national identity and the ability to act communally even when the diverse groups want contradictory things. n27 "Rhetoric, in this sense, does not manipulate us into cooperation, it embodies cooperation. It is the common ground[.]" n28

Distrust in the government spirals downward – Civil Disobedience chips away at the government’s perceived legitimacy.

Marjorie E. Kornhauser, Professor of Law Tulane Law School, Fall, 2002

“Legitimacy And The Right Of Revolution: The Role Of Tax Protests And Anti-Tax Rhetoric In America.” Buffalo Law Review, 50 Buffalo L. Rev. 819

4. Crisis in Legitimacy. Although Americans have an innate distrust of government, as described in I.B.2, this distrust has increased over the past thirty five years among all demographic segments and regardless of economic prosperity. n150 This increased distrust is an acute example of widespread feelings of alienation and distrust of government in democracies around the world. This trend has been so profound that some have called it a crisis in [*874] legitimacy. n151 Whether this crisis, if it exists, matters, is not clear. Theory suggests that the more trust the populace has in its government, the more the populace will voluntarily comply with its laws. There is, however, little empirical evidence that this is true on a day to day level, except in regards to taxation. In this area, studies indicate that a belief in fairness does increase tax compliance. n152 Contemporary evidence of widespread tax evasion and aggressive tax avoidance lends anecdotal support to this connection. n153 [*875] Consequently, given the evidence of the connection among fairness, trust, tax compliance and the centrality of taxation to government, it seems foolish to ignore any marked decline in confidence.

Even the staunch revolutionaries of the revolutionary war came to appreciate respect for the state.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003

“Article: Civil Disobedience And The U.S. Constitution.” Southwestern University Law Review. 32 Sw. U. L. Rev. 677

Following the revolution, American leaders both accepted and feared the spirit of resistance. Thomas Jefferson, who never completely renounced the right of revolution, included the doctrine of nullification and implied threat of secession when writing the Virginia and Kentucky Resolutions. n9 Jefferson won his election to the Presidency of the United States in 1800 partially on his continued belief in the right of revolution, even though he actually assumed an anti-revolutionary stance during his term of office.

Too much resistance threatens stable governance.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003
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After the Revolution, when mobs turned against the newborn American government, many American leaders began to question the appropriateness of the old "spirit of resistance." At this point in time, resistance clashed with the need for a stable, strong government in a new republic. n13 Upon the founding of the United States of America as one nation, even the radical Bostonian, Samuel Adams, once the most vocal proponent of resistance and revolution, n14 revised his views about the right to revolt. n15 He now saw the inherent dangers of too much resistance leading to a breakdown of the rule of law in society. n16 James Madison, who did not renounce the right of revolution and originally included it as one of the rights protected by the Bill of Rights, actually feared revolution. n17 And George Washington, the father of the United States, prayed that God "would incline the hearts of the citizens to cultivate a spirit of subordination and obedience to government." n18

Democracies are especially vulnerable to crises of illegitimacy. For example, for more economically challenged governments, the gap between economic growth and growth of freedom makes governments vulnerable.

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A second reason that tension exists between these two fundamental American goals is that economic growth no longer automatically expands freedom and human rights. The goals may become unlinked for several reasons. First, one cost of economic growth may be the loss of certain freedoms for everyone, such as decreased privacy. The linkage between economic growth and freedom is also severed when economic growth leaves some people mired in poverty. Poverty restricts the freedom and rights of people and leads to their exclusion and alienation from society. This tension is exacerbated by the fact that members of minority groups that are already more susceptible to discrimination are disproportionately poor. n159

Globalization makes democratic governments vulnerable.

Marjorie E. Kornhauser, Professor of Law Tulane Law School, Fall, 2002
"Legitimacy And The Right Of Revolution: The Role Of Tax Protests And Anti-Tax Rhetoric In America." Buffalo Law Review, 50 Buffalo L. Rev. 819

According to many scholars, this crisis results partly from globalization, which increases alienation and distrust, enlarges wealth and income inequalities, and also makes those inequalities more visible to individuals. n154 The social and political consequences of these phenomena are particularly acute in the United States, especially in connection with taxation. One reason for the heavier impact [*876] in the United States is that the growth in inequality has been particularly large in this country. n155 Additionally, the increased impact results from the political and philosophical relationship between concentration of wealth and income to American democracy, a democracy that was theoretically built on principles of equality, and a democracy that helped to unify a very heterogeneous population.

VI. The Duty To Use Other Means

The ends cannot justify the means.

Aldous Huxley, *Ends and Means*, 1937, p. 10.

“Good ends, as I have frequently to point out, can be achieved only by the employment of appropriate means. The end cannot justify the means, for the simple and obvious reason that the means employed determine the nature of the ends produced.”

Daniel S. Howard, *Social Welfare: Values, Means and Ends*, 1969, p. 68.

“During the 1960 Presidential campaign in the United States, John F. Kennedy said it was ‘nonsense’ to argue (As did his opponent) that they agreed on goals but differed only as to means. ‘The goal is meaningless,’ said Kennedy, if one ‘refuses to take the only road that will reach it.’ Whether any given road is indeed the ‘only’ one would, of course, be subject to debate. Nevertheless, the inseparability of ends and means seems clear.”

Daniel S. Howard, *Social Welfare: Values, Means and Ends*, 1969, p. 68.

“Ends are of course inseparable from the means to their attainment.”

There are many better avenues to change within a democratic society

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003; “Article: Civil Disobedience And The U.S. Constitution.” *Southwestern University Law Review*. 32 Sw. U. L. Rev. 677

The First Amendment of the U.S. Constitution guarantees us the right to dissent, to protest, to assemble peaceably, to criticize a law or government, and to oppose a law. n144 The more difficult question is how one may permissibly dissent if a person's first legal and moral imperative is to obey the law. Using means of opposition and dissent that are permissible under the U.S. system of law will not subject a dissenter to punishment by the state. The right to dissent may be exercised by the use of written and spoken words, by acts or conduct such as picketing, "peaceable" mass assembly, sit-ins n145 and demonstrations, which are referred to as "symbolic speech." The basic means of permissible protest under the U.S. system is the right to vote, "the right to organize and to elect new officials to enact and administer the law." n146 Burning the American flag has been defended as a permissible form of protest and protected as symbolic speech. n147 Burning one's draft card was found not to be protected because it interfered with the record keeping function of the U.S. government. n148

Civil Disobedience is reckless and should be used as a last resort.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003; “Article: Civil Disobedience And The U.S. Constitution.” *Southwestern University Law Review*. 32 Sw. U. L. Rev. 677

Judge Robert H. Bork believes that civil disobedience is pure lawlessness, n140 political anarchy, and "there is no reason for courts to protect any advocacy of law violation since that is merely advocacy of a piecemeal overthrow of the democratic system. n141 Critics of civil disobedience as a means of legal reform remind us that under the U.S. [*696] "system a person is entitled to challenge the validity of a law being applied against that person by resisting its enforcement in court on a plea of invalidity, and that lawful resistance to law is a cornerstone of our liberties." n142 Civil disobedience should only be a last resort after negotiation, conciliation, the courts, and Congress have failed. n143

BUT ON THE OTHER HAND ...

Forcing dissenters to exhaust every legal option is nothing more than a way to delay justice.

Peter Suber, Professor of Philosophy @ Earlham College, Richmond, Indiana, 1999
Christopher B. Gray (ed.), Philosophy of Law: An Encyclopedia, Garland Pub. Co, 1999, II.110-113

Objection: Even if civil disobedience is sometimes justified in a democracy, activists must first exhaust the legal channels of change and turn to disobedience only as a last resort.

Reply: Legal channels can never be "exhausted". Activists can always write another letter to their congressional delegation or to newspapers; they can always wait for another election and cast another vote. But justice delayed, King proclaimed, is justice denied. After a point, he argued, patience in fighting an injustice perpetuates the injustice, and this point had long since been passed in the 340 year struggle against segregation in America. In the tradition which justifies civil disobedience by appeal to higher law, legal niceties count for relatively little. If God trumps Caesar to justify disobedience to unjust law, then God can trump Caesar to permit this disobedience sooner rather than later. In this tradition, A.J. Muste argued that to use legal channels to fight unjust laws is to participate in an evil machine, and to disguise dissent as conformity; this in turn corrupts the activist and discourages others by leading them to underestimate the numbers of their congeners.

The democratic system is overrated, and is no guarantor of justice. Working within the system is not always a good idea or effective.

Peter Suber, Professor of Philosophy @ Earlham College, Richmond, Indiana, 1999
Christopher B. Gray (ed.), Philosophy of Law: An Encyclopedia, Garland Pub. Co, 1999, II.110-113

Objection: Civil disobedience cannot be justified in a democracy. Unjust laws made by a democratic legislature can be changed by a democratic legislature. The existence of lawful channels of change makes civil disobedience unnecessary.

Reply: Thoreau, who performed civil disobedience in a democracy, argued that sometimes the constitution is the problem, not the solution. Moreover, legal channels can take too long, he argued, for he was born to live, not to lobby. His individualism gave him another answer: individuals are sovereign, especially in a democracy, and the government only holds its power by delegation from free individuals. Any individual may, then, elect to stand apart from the domain of law. Martin Luther King, Jr., who also performed civil disobedience in a democracy, asks us to look more closely at the legal channels of change. If they are open in theory, but closed or unfairly obstructed in practice, then the system is not democratic in the way needed to make civil disobedience unnecessary. Other activists have pointed out that if judicial review is one of the features of American democracy which is supposed to make civil disobedience unnecessary, then it ironically subverts this goal; for to obtain standing to bring an unjust statute to court for review, often a plaintiff must be arrested for violating it. Finally, the Nuremberg principles require disobedience to national laws or orders which violate international law, an overriding duty even in (perhaps especially in) a democracy.

Asking people to “stay within the system” when they are being oppressed is not always reasonable.

Darnell Rucker, *The Moral Grounds of Civil Disobedience*, as printed in *Ethics*, 1966, p. 142-143.

“Men are, of necessity, social beings; they are not thereby automatically chattels of whatever sort of society they happen to find themselves in. Moral persuasion and orderly political processes are obviously the preferably means for a man to use to change those things he finds wrong in his society. But moral persuasion, to be effective, requires in those to be persuaded a social set of conditions which may be entirely beyond the control of the man attempting the persuasions. And use of the legal machinery for social change requires a certain amount of political power and a particular leverage in order to make that power felt in the right places. If the morally acceptable defenses of the individual citizen against laws he finds unacceptable are restricted to moral persuasion and legal processes, then the man who can find no audience and who has no power is left with no moral resource within the structure of the society, and his own recourse is violence-rebellion or crime. Moral persuasion is an empty phrase to the Negro in Mississippi who is effectively disenfranchised and virtually unprotected by the law. Orderly legal change is an impossibility for the man without a semblance of legal right or power.”

VII. The Problem of Violence

There is a difference between positive and negative acts of civil disobedience.

Fredrik Bendz, Professor of Philosophy at Uppsala University, Sweden, 1997

“Civil Disobedience: Introduction.” Online.

<<http://www.update.uu.se/~fbendz/philo/disobey.htm>>

Strikes and peaceful blockades of goods are voluntary actions between people, who are fed up with the system and therefore decides to abandon it and no longer be wheels in the machinery. This is a negative action (omission to act) and thus distinguishable from violence which is a positive action (not meaning that it is good). Undermining a system that you no longer support, by leaving it is not the same thing as forcing others to obey your decision.

The threat of jail does not check against danger of violent civil disobedience.

Howard Zinn, former professor at Boston University, 1968

“Seven guidelines for civil disobedience.” *Disobedience and Democracy: Nine Fallacies on Law and Order*. pp. 119-122 Online. <<http://www.worldpolicy.org/globalrights/usa/1968-Zinn-civil%20disobedience.html>>

If a specific act of civil disobedience is a morally justifiable act of protest, then the jailing of those engaged in that act is immoral and should be opposed, contested to the very end. The protester need be no more willing to accept the rule of punishment than to accept the rule he broke. There may be many times when protesters choose to go to jail, as a way of continuing their protest, as a way of reminding their countrymen of injustice. But that is different than the notion that they must go to jail as part of a rule connected with civil disobedience. The key point is that the spirit of protest should be maintained all the way, whether it is done by remaining in jail, or by evading it. To accept jail penitently as an accession to “the rules” is to switch suddenly to a spirit of subservience, to demean the seriousness of the protest.

Violence invites retaliation.

Fredrik Bendz, Professor of Philosophy at Uppsala University, Sweden, 1997
"Civil Disobedience: Introduction." Online.
<<http://www.update.uu.se/~fbendz/philo/disobey.htm>>

In a parliamentary system like ours it may be justified to violate immoral laws, if they were made without the consent of the people. It is not the process of disobeying laws I oppose, it is the systematic use of violence to do it. Violence which, in their eyes, gives your opponents a right to retaliate. If there is no objective way of judging morality you, by using violence, seem to think that you have the right to force your ideals on others, and they will think they have an equal right to defend themselves. This leads to a war of "every man against every man" where "might makes right".

Lack of respect for stability leads to chaos.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003
"Article: Civil Disobedience And The U.S. Constitution." Southwestern University Law Review. 32 Sw. U. L. Rev. 677

In the eighteenth century, the French Revolution and its aftermath convinced Americans of the need to limit popular sovereignty in order to avoid the chaos and anarchy that consumed [*681] France after its Revolution. Everyone in the United States knew that after the French Revolution, France "groaned under the tyranny of the mob." n29 In France, government became anarchy, and violence replaced law and order. n30 The French drafted, ratified, and then abrogated constitutions with alarming frequency. n31 They formed illegal assemblies which usurped the powers of existing French legislatures. n32 The Americans looked at France and feared that popular sovereignty unbridled in the United States could lead to a similar state of chaos. The leaders in the United States sought to establish a balance between the right to dissent and the need to maintain a stable government. The right to revolution and rebellion became obsolete in this climate, and the right to resistance needed careful limitations.

Civil disobedience risks anarchy.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003
"Article: Civil Disobedience And The U.S. Constitution." Southwestern University Law Review. 32 Sw. U. L. Rev. 677

Professor Jacobs asserts that civil disobedience should not be judged according to the traditional free speech model summarized above. n173 Rather, Professor Jacobs argues in favor of the adoption of a different "free speech model that would include the public value of civil disobedience and the harms it necessarily causes." n174 Since civil disobedience is intentional lawbreaking done for the purpose of [*700] expression and under circumstances where it is likely to be understood, civil disobedience should be viewed as expressive conduct. However, since civil disobedience is different from the broad class of "lawbreaking" and also different from n175 the other broad class of "expressive conduct," Professor Jacobs believes that civil disobedience requires a free speech analysis all on its own. Nevertheless, Professor Jacobs realizes that lawbreaking as a protected form of expression could lead to anarchy, and, therefore, she reasons that civil disobedience cannot be protected under the First Amendment. The United States Supreme Court decided in 1993 that physical assault cannot be "expressive conduct protected by the First Amendment." n176 This decision brings to mind the example that one cannot conceive of political assassination as constitutionally protected expression. Although Professor Jacobs rightly concludes that civil disobedient should be subject to penalty, she argues persuasively that civil disobedient should not be subject to enhanced penalties. n177

Too much civil disobedience threatens society.

Harris G. Mirkin, *Rebellion, Revolution, and the Constitution: Thomas Jefferson's Theory of Civil Disobedience*

These doctrines of civil disobedience have been eroding our civilization in recent years. In action they have led to what I call brinkmanship. In other words, they have encouraged people to express discontent - with the system, with the laws, with government officials and policies, and with ideas - by organizing mass groups that create the potential for violence and law-breaking. This severely strains the necessary function of social order almost to the breaking point.

Every law is considered immoral by somebody. Thus, anything could be protested, leading to anarchy.

Joseph Raz, Professor of the Philosophy of Law at Columbia Law School, 2003
"About Morality And The Nature Of Law." *The American Journal of Jurisprudence*. 48 Am. J. Juris. 1

There is no conflict between the truisms. People and much else in the world can be the source of both good and evil. Trouble begins when we ask ourselves whether it is entirely contingent whether the law is the source of good or ill in various societies, or how much good and how much evil there is in it. There has, of course, been enthusiastic and persisting support for claiming that the connection between law and morality is not contingent. The support comes from contradictory directions. Some strands in political anarchism claim that it is of the essence of law to have features which render it inconsistent with morality. Hence the law is essentially immoral. n2 A clear example of this in recent times has been Robert Paul Wolff's argument that the law in its nature requires obedience regardless of one's judgment about the merit of the obeying conduct, and that this is inconsistent with people's moral autonomy which requires them to take responsibility for their actions and to act only on their own judgment on the merit of their actions. n3 Diametrically opposed to this variant of anarchism is, e.g., a variety of Thomist natural law views which regard the law as good in its very nature. n4

BUT ON THE OTHER HAND ...

People participating in civil disobedience must willingly submit to punishment.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003; "Article: Civil Disobedience And The U.S. Constitution." *Southwestern University Law Review*. 32 Sw. U. L. Rev. 677

Martin Luther King Jr.'s definition of civil disobedience clearly reflects the duality inherent in the term civil disobedience. King advocated both obedience and disobedience of the law. n82 He implored his followers to obey just laws, on the one hand, and encouraged them to engage in open, public, non-violent direct action in violation of unjust laws that are out of harmony with what he called the "moral laws." n83 Understanding the publicity value of incarceration, King fully expected to be punished for the unlawful act of civil disobedience: "One who breaks an unjust law must do so openly, lovingly, and with a willingness to accept the penalty." n84

Civil disobedience is inherently not violent.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003; "Article: Civil Disobedience And The U.S. Constitution." Southwestern University Law Review. 32 Sw. U. L. Rev. 677

The term "civil disobedience," like the current term "terrorism,"ⁿ⁷⁸ has been misapplied in recent years.ⁿ⁷⁹ Civil disobedience is not an effort to overthrow the government. Civil disobedience is a person's refusal to obey a law which that person believes to be unconstitutional or immoral. Civil disobedience is not the use of violence to compel the government to grant autonomy to a specific group. Unlike [*688] rebellion or revolution, the aim is to seek change by destroying the system. King and other civil disobedient sought reform within the established order.

Accepting punishment key to social change.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003; "Article: Civil Disobedience And The U.S. Constitution." Southwestern University Law Review. 32 Sw. U. L. Rev. 677

Both Justice Fortas and Reverend King opposed violence, and both sought legislative reform within the established order.ⁿ⁸⁶ Susan B. Anthony, the legendary American suffragette, is a perfect example of this form of civil disobedience. She committed voter fraud twice,ⁿ⁸⁷ and willingly refused bail in order to go to jail, simply in order to have her day in court to challenge the women's right to vote.ⁿ⁸⁸ Ironically, Anthony's own lawyer deprived her of her right to appeal to the U.S. Supreme Court on a petition for habeas corpus because her lawyer [*689] posted a bond, against her wishes, thereby liberating her from prison.ⁿ⁸⁹ Her case is one of the most egregious examples of due process violations in history. At trial, her case was decided not by a jury but by a judge. She was denied the right to speak during the trial because she was a woman; the judge declared her to be "incompetent" to testify on her own behalf.ⁿ⁹⁰ The judge ultimately decided by directed verdict in her criminal trial (a violation of due process) that she was guilty of illegal voting.ⁿ⁹¹ He fined her \$ 100 and refused to give her a jail sentence because he did not want her to become a martyr for the cause of women's right to vote.ⁿ⁹² This refusal to incarcerate Anthony reflects the importance of punishment for civil disobedience and why it is necessary to accept punishment in order to achieve results.

Violence against property is different than violence against people.

Howard Zinn, former professor at Boston University, 1968
"Seven guidelines for civil disobedience." Disobedience and Democracy: Nine Fallacies on Law and Order. pp. 119-122 Online. <<http://www.worldpolicy.org/globalrights/usa/1968-Zinn-civil%20disobedience.html>>

Those who engage in civil disobedience should choose tactics which are as nonviolent as possible, consonant with the effectiveness of their protest and the importance of the issue. There must be a reasonable relationship between the degree of disorder and the significance of the issue at stake. The distinction between harm to people and harm to property should be a paramount consideration. Tactics directed at property might include (again, depending on efficacy and the issue): depreciation (as in boycotts), damage, temporary occupation, and permanent appropriation. In any event, the force of any act of civil disobedience must be focused clearly, discriminately on the object of protest.

Civil disobedience is no where near as violent as the actions it protests .

Dr Tim Anderson Professor of Political Economy @ the University of Sydney, November 8, 2002
"Civil Disobedience Today." Research Initiative on International Activism. Online.
<<http://www.international.activism.uts.edu.au/civildis/pdfs/civildisobediencetoday.pdf>>

This democracy might be untidy, it might be rude, it might be at times inconvenient – but in an era where thousands of people are incinerated, bombed and suffocated by US and Australian special forces in Afghanistan (see footnote), and as these same forces prepare to do the same in Iraq - don't bother telling me that rude or disruptive demonstrators in Australia are 'violent'.

Civil disobedience is a safe alternative to revolution.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003; "Article: Civil Disobedience And The U.S. Constitution." Southwestern University Law Review. 32 Sw. U. L. Rev. 677

Jefferson's "spirit of resistance" refers to both the right of revolution and the right of civil disobedience. Non-violent resistance is a compromise, a way to safely vent emotion about unjust laws, a middle ground between blind obedience to tyrannical rulers or unjust laws and outright revolution. n5 Before the American Revolution, the founding fathers reasoned that resistance to unlawful acts could not be deemed per se "illegal," but they also understood that resistance and revolution were not legally available to them within the judicial procedure for redress of grievances set up by the British government. n6 Even after the Revolution, the spirit of resistance continued and was particularly noticeable in Massachusetts, where throughout the 1780s citizens organized committees and conventions to protest high taxes and to urge reform of the state constitution. n7 When the committees failed, the people turned to mob action and actually closed down the state courts in the famous Shays' Rebellion of 1786-87. n8

Civil disobedience is inherently different than crime.

Susan Tiefenbrun, Associate Professor Of Law At Thomas Jefferson School Of Law In San Diego, California, 2003; "Article: Civil Disobedience And The U.S. Constitution." Southwestern University Law Review. 32 Sw. U. L. Rev. 677

The term "civil disobedience" has a fixed composite structure which requires the adjective "civil" to be linked to the term "disobedience." The word "civil" is a necessary element in the concept and reflects the duality inherent in the act of civil disobedience. What is so "civil" about "civil disobedience?" The word "civil" conjures up notions of "civility" and "civilization," both of which lend a positive connotation to the otherwise unacceptable act of disobeying the law in a society that believes in the rule of law. Civil disobedience is a deliberate but nonviolent act of law-breaking designed to call attention to a particular law or set of laws of questionable legitimacy or morality. n68 Civil disobedience is thought to be a morally justifiable violation of the law, n69 and thus an act of obedience to natural law. Civil disobedience is conduct that is distinguishable from ordinary disobedience and from crime itself. n70 That is why it is called "civil." Civil disobedience, like social protest, serves the law's need for growth and reform. n71

The problem of violent civil disobedience is overstated. The media overplays the drama.

Penny O'Donnell, Professor of Journalism, at the University of Technology Sydney, November 8, 2002; "Civil Disobedience Today." Research Initiative on International Activism. On line.
<<http://www.international.activism.uts.edu.au/civildis/pdfs/civildisobediencetoday.pdf>>

All the acts of civil disobedience mentioned at the start of this paper were extensively reported in the news media. At first glance, that suggests that getting noticed is not such a problem, that political dissent is newsworthy. However, on closer inspection, the news coverage is predominantly negative. News stories focus on the disruptive and/or violent nature of the activists' actions. In doing so, they obey the media logic mentioned earlier. A good news story has drama, action, conflict. It is well established in studies of news access that when journalists name or stigmatize activists as violent/anti-social, they are likely to frame their interpretations of these actions in terms of illegitimate, marginal and/or unwelcome political demands (Cottle 2000). In this way they are often trivialized and robbed of credibility in the public domain.

The police often initiate the violence that takes place.

Jesse Wynhausenl, Globalization Protestor and protest organizer, November 8, 2002
"Civil Disobedience Today." Research Initiative on International Activism. Online.
<<http://www.international.activism.uts.edu.au/civildis/pdfs/civildisobediencetoday.pdf>>

While almost all organizations and individuals involved in protests in Australia officially and personally endorse the vague principle of non-violence, the reality of protesting on the street often means physical confrontations with police. While it would be naive to suggest that protesters never provoke police violence, there is an overwhelming amount of evidence that the vast majority of violence at protests is initiated and perpetrated by police. In these situations the line between non-violence and violence is blurred; What is self-defense? When (if at all) is it acceptable to engage in physical confrontations with police? Are there useful links to be made between this question and those surrounding armed struggles of liberation?

The state is the one who often initiates the violence.

Paula Abood, leader of anti-racist movements in Australia, November 8, 2002
"Civil Disobedience Today." Research Initiative on International Activism. Online.
<<http://www.international.activism.uts.edu.au/civildis/pdfs/civildisobediencetoday.pdf>>

Civil disobedience is mostly situated as non-violent action, though more often than not, non-violent civil disobedience has generated violent responses from law enforcement authorities. While government is first to criticize any acts of violence perpetrated in the name of ideology by activists, the violence of state and federal law enforcement agencies and individuals goes largely without scrutiny. This reality is crucial for people of color to consider as they are doubly at risk in a radicalized society that targets dissenters, in a society that imposes its racial order through the brute force of white authority. The experiences of people of color before the law are testimony to this reality. When Rosa Parks refused to get off the bus in a dangerously violent white supremacist America, her courageous act became iconic. What she was doing as a person of color, was putting her person in danger. This is what must also be considered because, while in theory, civil disobedience is a crucial strategy of acting out rights at particular times in history, it can also double as risk for people of color, for radicalized communities who are likely targets of State sanctioned violence.

Anarchy is not necessarily bad.

Peter Suber, Professor of Philosophy @ Earlham College, Richmond, Indiana, 1999
Christopher B. Gray (ed.), *Philosophy of Law: An Encyclopedia*, Garland Pub. Co, 1999, II.110-113

The first reply, offered in seriousness by Thoreau and Gandhi, is that anarchy is not so bad an outcome. In fact, both depict anarchy as an ideal form of society. However, both are willing to put off the anarchical utopia for another day and fight in the meantime for improved laws; consequently, this strand of their thinking is often overlooked.

Anarchy is better than despotism.

Peter Suber, Professor of Philosophy @ Earlham College, Richmond, Indiana, 1999
Christopher B. Gray (ed.), *Philosophy of Law: An Encyclopedia*, Garland Pub. Co, 1999, II.110-113

Another reply is a variation on the first. Anarchy may be bad, but despotism is worse (Locke instead of Hobbes). If we face an iniquitous law, then we may permissibly disobey, and risk anarchy, in order to resist the tendency toward the greater evil of despotism. A.J. Muste extended this line of thinking to turn the slippery slope objection against itself. If we let the state conscript young men against their wills to fight immoral wars, then what will the state do next? For Muste, conscription puts us on a slippery slope toward despotism, and obedience would bring us to the bottom.

Civil disobedience does not inspire general lawlessness because the cost is high.

Peter Suber, Professor of Philosophy @ Earlham College, Richmond, Indiana, 1999
Christopher B. Gray (ed.), *Philosophy of Law: An Encyclopedia*, Garland Pub. Co, 1999, II.110-113

King had a second reply, inspired by Gandhi: he deliberately made his example difficult to imitate. He pressed for negotiation before turning to disobedience; he underwent self-purification before every disobedient action; he accepted blows from police without retaliation; he accepted arrest and punishment. These tactical features of his actions had other purposes as well, but there is little doubt that they prevented onlookers from thinking that here was a criminal getting away with murder whose example could be imitated with profit.

In the long run, civil disobedience increases order in society.

Peter Suber, Professor of Philosophy @ Earlham College, Richmond, Indiana, 1999
Christopher B. Gray (ed.), *Philosophy of Law: An Encyclopedia*, Garland Pub. Co, 1999, II.110-113

One direct response, then, to the descriptive version held by Waldman and Storing comes from Rawls, who argued that civil disobedience can actually help to stabilize a community. It can be destabilizing if a very large number of people do it, but this rarely happens, and when only a few do it, it can have the beneficial and stabilizing effect of nudging a society closer to its shared vision of justice.

Few will follow the example of disobedience anyway, so any lawlessness will be contained.

Peter Suber, Professor of Philosophy @ Earlham College, Richmond, Indiana, 1999
Christopher B. Gray (ed.), *Philosophy of Law: An Encyclopedia*, Garland Pub. Co, 1999, II.110-113

Thoreau and Wasserstrom argue that while many in fact might be morally justified in disobeying, few in fact will actually disobey. For Thoreau and A.J. Muste, this inertia and docility in the general population are far larger problems than incipient anarchy.

Civil disobedience is not the same thing as acts of political revolution.

Rex Martin, "Civil Disobedience," Professor of Philosophy at the University of Kansas, *Ethics*, Vol. 80, No. 2 (January 1970), 125.

[C]ivil disobedience is not to be confused with revolutionary political action. There are many acts of revolution that are not acts of civil disobedience. And it should be clear that an act can be one of civil disobedience without being a revolutionary act. For civil disobedience can have the more modest goal of frustrating specific laws of existing governments rather than replacing one system of government with another.

Those who engage in civil disobedience act according to conscience and are not seeking to withdraw from the body politic, but seek to change it for the better.

Rex Martin, "Civil Disobedience," Professor of Philosophy at the University of Kansas, *Ethics*, Vol. 80, No. 2 (January 1970), 135.

If we view civil disobedience as a moral and a political act, we can say that the civilly disobedient citizen acts according to conscience but does not put his individual judgment above society—he puts it against society. He remains within the body politic, in particular through his willingness to accept punishment. If disobedience to law were simply a moral matter, then it could be argued that the citizen could make his judgments absolute: he would not consider himself subject to punishment, and the state could not justifiably punish him. Without the political dimension, the moral claim is absolutized: the result is anarchy and moral fanaticism.

Rex Martin, "Civil Disobedience," Professor of Philosophy at the University of Kansas, *Ethics*, Vol. 80, No. 2 (January 1970), 135-136.

Civil disobedience, politically conceived, puts the dissident man or group in opposition to society but not above it; he remains, the group remains, within the boundaries of acceptable civic conduct. Such civil disobedient action has as its goal the clarification and improvement of civil life, in its standards and in its practices.

Civil disobedience ultimately upholds and affirms the social order.

Darnell Rucker, *The Moral Grounds of Civil Disobedience*, as printed in *Ethics*, 1966, p. 145.

"Men are peculiar beings who by necessity live under conditions such that they are at once parts - cogs, if you will- in a social machinery *and* persons whose highest responsibility is to themselves as moral, intelligent, and aesthetic beings. A theory that makes the individual supreme over all other considerations is a theory for anarchy and the destruction of man. Likewise, a theory that the community supreme over all individual considerations is a theory for despotism and the snuffing out of humanity. Civil disobedience is a conception that uniquely recognizes both demands of man's nature: the right of the individual to choose what he shall do and the obligation of the individual to abide by whatever legal consequence may be imposed upon him as a result of his choice."

Darnell Rucker, *The Moral Grounds of Civil Disobedience*, as printed in *Ethics*, 1966, p. 143.

"Civil disobedience cannot rightly be called a military tactic, since it is not directed at the destruction (violent or non-violent) of law as such nor does it offer any resistance to the officers of that law. The rebel and the anarchist aim at the overthrow of the state; the civil dissenter acts strictly in recognition of the law and of its authority."

Good luck at Nationals!

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In Book 2, Victory Briefs explore UN authority in Iraq, assistance for AIDS, Afghanistan, and other new and existing operations.

"...Most world powers understand that nation-building is difficult ..."

Negative Positions – Book 1

In this book, Victory Briefs explores several key negative strategies, including counterplans (consultation and international actors), disadvantages (hegemony and multilateralism, Europe, UN credibility), topicality, and comprehensive politics links.

"...The inability of the UN to deal with the Iraqi dictatorship was symbolic of its broader failure to address the rising global threat posed by international terrorism and rogue states. The credibility of the United Nations was largely shattered by the security council's failure to address the Iraqi threat. Instead of acting as an effective mechanism for advancing global security, the security council became a barrier to progress. ..."

Negative Positions – Book 2

This book focuses on the more important kritiks, including capitalism, feminism, realism, and imperialism.

"... Realism, at this time, came to signify a state of mind that permeated university and government sectors. ... In this situation the real world was one in which states were involved in an unending struggle with each other. ... Power was necessary to survive in it or continue to fight; all states were potential enemies ... Power politics ... helps bring about war..."

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Lincoln Douglas



Last year's top labs included:

Stephanie Bell (IA)
Chris Bentley (MN)
Thomas Brugato (CA)
Diane Cheng (CA)
Neil Conrad (TX)
Tatiana Cottam (CA)
Jonathan Detzel (FL)
Jed Glickstein (MN)
Elizabeth Hadaway (TX)
Tanya Horlick (WA)
Larry McGrath (CA)
John McKay (CA)
John McNeil (MN)
Andrew Meyer (MN)
Ryan O'Hara (FL)
Will Palmer (TX)
Sam Pryor (MN)
Lauren Rosenberg (FL)
Max Stevens (NV)
Adam Wheeler (MD)

As of November 2003, VBI Alumni have already won:

2003 TOC Championship
2003 Greenhill Tournament
2003 Greenhill Round Robin
2003 Grapevine Tournament
2003 Apple Valley Tournament
2003 Long Beach Tournament
2003 Manchester Tournament
2003 St. Mark's Tournament
2003 Harker Tournament
2003 Valley Tournament

VBI has quickly become one of the most preeminent summer debate programs in the country. Over the past two years, over 300 students have chosen VBI for their summer debate instruction. Our curriculum is designed for both new and advanced debaters. It is noteworthy that many VBI attendees return for multiple years. Moreover, last summer, many of the country's top debaters chose VBI. While we do not claim to make champions, we are the place champions chose to go. The result is a challenging, inspiring, and exciting environment for all students.

We all know that debate isn't solely concerned with success; but, we all (at least most of us) also know the frustration of not meeting those goals we set for ourselves. These goals may vary a great deal, from breaking at local tournaments to winning NFL Nationals, but in some form or another we have all had them. It is, after all, the nature of competition to often compete against one's self... growing and maturing in whatever activity one finds meaningful. At the Victory Briefs Institute, we aspire to teach debaters who continue to *push* themselves to new heights and improve with consistency and a passion for the activity. But we also know with great familiarity the struggle that such improvement entails. Becoming a better debater, meeting your own goals, and getting more educationally out of this pursuit requires time, effort, determination, and of course a helping hand from those who have something to offer.

While the majority of that formula is something that you the debater must provide, the last part has inspired Victory Briefs to do more with regard to its educational role in the debate community. This summer's institute at UCLA marks the invigorated return of a winning formula. But, more exciting than Victory Briefs' track record as a reliable name in debate education is what we're doing right now to advance the opportunities debaters have to hone their skills and embrace a more educationally valuable debate experience. VBI not only has something to offer you in your pursuit of goals; it has something unique that we think debaters are calling for.

First of all, VBI will provide an extensive focus on strategy, adaptation, and a number of other essential components for being able to do in-round what you hope for before the tournament even begins. Technique isn't just something that happens upon you—the best learn it from somewhere, and we think the staff we've put together at VBI is a group with proven mastery of the very skills that will bring you closer to reaching your goals. The reason the names on our staff were the names that consistently won the nation's most challenging and reputable tournaments is that each one understood the debate climate clearly, knowing what works and what doesn't. Those very same names continue to judge extensively throughout the nation, meaning they know better than anyone why the people who wins rounds keep winning them. And those very same names also coach, teach at debate institutes across the country, and do lots of reading, researching, and writing for Victory Briefs. In other words, VBI's experienced and talented staff combines with an emphasis on the 'how-to' of winning rounds so that your two weeks of camp are worth the money spent.

Another advantage to spending two weeks at UCLA this summer is the unprecedented return to what debate is really all about: communicating in an educational format. Instead of letting our students linger in lecture after lecture, we want to use the lecture format to a minimum. In its place will be more time spent in small lab groups. To be sure, though, these groups will *not* just be smaller lectures—they will be an opportunity for you to contribute ideas, get feedback, work on what you feel needs to be improved, and take a proactive role in your steps forward as an effective debater. And of course, there will be lots and lots of practice rounds. After all, talking about debate isn't half as meaningful as *doing* debate... and doing it a bit better with every try.

Likewise, our approach to philosophy, future topics, and becoming a critical thinker who can develop arguments independently will center around the belief that while all these facets of a camp experience are valuable, they are *especially* valuable when taught in the context of how they may be applied to actual rounds. Your high school history class can give you the synopsis on what John Locke was all about; VBI will give you the tools to integrate such great minds into your debating with precision and analytical eloquence.

Even more importantly, we want to cater to *your* needs. That means if it's time for you to understand Hobbes, so be it. If you have already been there, then we will challenge you with newer ideas that keep debate moving. And as you get closer and closer to your very own goals, you will be the one keeping debate moving.

About Session 2

This year, we are pleased to announce the addition of a second, smaller session to the VBI Summer Institute, designed to accommodate students who prefer to attend debate camp in the second half of the summer, and students who have already attended another camp (including VBI Session 1).

Session 2, however, is not simply another version of Session 1. Session 1 focuses on what it takes to be a strategic debater (focusing on larger, more universal strategies), with the benefit of the full Victory Briefs staff. Session 2 is a smaller camp with an entirely different focus. Session 2 will focus on the resolutions for September/October and November/December. The debate season, for many, starts off with very important invitationals. Coupled with the demands of school, proper preparation for these early tournaments can be quite difficult to accomplish. We will provide students with a catalog of strategies, case positions, and topic analysis to guarantee preparedness for our students. Our staff will lead in-depth lectures, seminars and discussions on any, and all of the possible resolutions for 2004. Once the Sept/Oct resolution is released, our focus will shift to exclusive emphasis on this resolution.

Moreover, unlike the traditional top lab/varsity lab/jv lab/novice lab model that most debate camps (including VBI Session 1) is based on, students in Session 2 will choose between two specialized programs:

VBI Novice Program. This program focuses the resources and attention of our staff on the beginning or first-year debater (fewer than 20 rounds). Our goal is to help students learn the intricacies of debate in the context of a resolution they will be debating in the 2004 season. Our staff will provide a great-deal of hand's-on attention to these students to walk them through each of the steps from topic analysis to rebuttal redos. Our focus will be on the fundamentals.

VBI Thinkers Program. For debaters who know how to debate and are committed to an intense institute experience, this track is not for individuals hoping to "learn through osmosis." In addition to work on the topics for the upcoming school year (including the Sept/Oct topic), this program focuses on increased critical thinking, reading, philosophy, and advanced case positions. The goal of this track is to have students broaden the scope of their typical philosophical and political inquiries to build case positions that are not only strategically strong but academically relevant. The dominant teaching unit will be based on reading and discussion groups. This program is not for the debater who is still learning how to debate, or who is just beginning to refine their advanced debating strategies. Rather, the focus of this program is to develop the advanced thinking skills vital for success on the Sept/Oct topic and at the highest levels of debate competition.



"I had a great time at VBI. The kids were really friendly, and the instructors were fantastically knowledgeable about LD theory, political theory, and philosophical theory. VBI does its best to stay right with the trends in both philosophy and the philosophies used in LD. The instructors' enthusiasm about exploring new and interesting ideas, especially critical theory and postmodernism, caused me to go out and read a lot of the texts mentioned in the lectures. Besides, it's in sunny Los Angeles. Location just doesn't get much better than that!"

- Stephanie Bell, IA

The Victory Briefs Institute is taught by a group of experienced educators and ex-competitors in the activity. Victory Briefs' staff are selected for their geographic diversity, their competitive success, and their proven teaching effectiveness. Victory Briefs' staff are also selected to serve as advisors and counselors for the students, and thus are selected for their commitment to a clean, safe, educational, and productive residential environment.

Staff

Last year's instructors included:

Victor Jih (CA) - Coach at Archer School for Girls
Mike Bietz (MN) - LD Coach at Edina High School
Stacy Thomas (TX) - Coach at Stephen F. Austin High School
Michelin Massey (MN) - Coach at Hopkins High School
Clay Calhoun (OK, MA) - Policy Champion NDCA Tournament
Jordan Pietzsch (TX, MA) - Policy Champion TOC
Leah Halvorson (MN) - 1996 Bronx Champion, Ass't Coach at Archer
Tammy Jih (CA) - Stanford Champ, Speaking Instructor at Stanford
Adam Preiss (CA) - 2000 National Champion, Ass't Coach at Logan
Oscar Shine (CA) - 2002 National LD Debate Champion
Stephen Babb (TX) - Texas Champ, Ass't Coach at Highland Park
Jesse Nathan (KS) - 2000 National Foreign Extemp Champion
Andy O'Connell (WA) - Glenbrooks LD Champion
Josh Anderson (WA) - Stanford LD Champion
Tommy Clancy (TX) - St. Mark's Champ, Ass't Coach at Westlake
Joey Seiler (TX) - 2001 Semifinalist TOC, Ass't Coach at S.F. Austin
Andrew Swan (CA, OR) - Stanford Extemp Champ, State Champion
Seamus Donovan (OK) - TOC Lincoln-Douglas Debate Champion
Tim Fletcher (IA) - Iowa State Champion LD; Glenbrooks Finalist
Frances Schendle (TX) - Semifinalist LD Valley and St. Mark's
Orijit Ghoshal (TX) - Semifinalist National LD Championships
Steve Clemmons (CA) - LD Coach at Leland High School, CA
Kelly Congdon (TX) - Coach at Westwood TX
Sam Duby (TX) - Champion of St. Mark's and the Greenhill Round Robin
Nick Green (MN) - Champion of Greenhill, Glenbrooks, Iowa Caucus
Merve Emre (NY) - Greenhill (Top Speaker, Second Place)
Andrew Garvin (CA) - 2003 TOC Champion
Vikrum Aiyer (CA) - National Debater from Mission San Jose, CA
Tyler Bexley (TX) - National Debater from Churchill, TX
Daryl Pinto (TX) - National Debater from Highland Park, TX
Jon Squires (FL) - 2000 Wake Forest Champion in LD
David Vivero (FL, MA) - 2000 Greenhill LD Champion
Rana Yared (FL) - Barkley Forum Extemp Champion
Pat Fitch (MD) - Coach at Catonsville High School
Sarah Smith (TX) - Ass't Coach at Kincaid High School; TX Champion

Victory Briefs is in the process of finalizing staff rosters for the 2004 Institute, and is in the process of bringing on additional teachers with extensive experience and proven effectiveness. We do expect most of the 2003 staff to return, and we firmly believe that no other speech and debate institute can offer such breadth and depth of quality teaching. In fact, many of our teachers have taught or also teach at the other major institutes; VBI, however, is able to bring the best of all of those institutes to one place. The latest staff lists will be posted online at www.victorybriefs.com.



Spotlight on Mike Bietz, Co-Curriculum Director for LD

Mike Bietz is the current head Lincoln-Douglas debate coach at Edina High School in Minneapolis, MN. Prior to Edina, he was the head policy coach at Apple Valley High School (MN) as well as the assistant LD coach at Hopkins High School (MN). In 1999, Mike founded the LD program at Edina High School. Since then, the Edina LD team has quickly become one of the elite teams in the country. By 2003, in addition to clearing more students than any other schools at most invitationals, Edina students closed out the final round of The Edie Holiday Classic hosted by The Blake School, The Mid-America Cup at West Des Moines Valley, The Iowa Caucus, The Greenhill Classic, and The Glenbrooks - a feat that has never before been accomplished. Away from the national circuit, his debaters have remained successful on the highly competitive local Minnesota circuit. Mr. Bietz is the only coach to ever coach back-to-back Minnesota LD State Champions. In the last decade, no coach has had as many teams in the final round of the Minnesota State Tournament. We are proud to have Mike Bietz as core faculty for both Session 1 and 2.

- When:** Session 1 - July 4 to July 17, 2004 (LD, Policy, and Extemp)
Session 2 - August 8 to August 21, 2004 (LD)
- Where:** @ University of California at Los Angeles (fly into LAX)
- Who:** The camp is open to students who will be in grades 8 through 12 beginning Fall 2004. The camp is specifically designed for both brand new competitors and elite national competitors. There will also be special sessions for repeating students.
- Cost:** \$1600 for either Session 1 or 2 [\$2850 for both Sessions]
(\$250 due with the application; another \$700 due by May 1, 2004; balance due by June 1, 2004)
- Included:** Tuition, Room and Board (3 meals a day/7 days a week), Library privileges, Lab Materials
- Deadline:** Apply by May 1, 2004.

Applications received by February 15, 2004 will receive a \$150 discount. Apply early to guarantee space.
- Financial Aid:** Victory Briefs recognizes that not every student can afford the luxury of an institute experience. Accordingly, we have a combination of needs-based and merit-based financial aid to rival any other camp. To apply, send an email application to vbi@victorybriefs.com stating: (1) the amount of need requested, (2) an explanation of the circumstances and reasons for the application; and (3) a copy of the latest federal tax returns for the students' parents/guardians. Available financial aid depends on enrollment and may be limited, so apply early. Financial aid applications must be submitted by March 1, 2004.
- Events:** During Session 1, Victory Briefs Institute offers programs in lincoln-douglas debate, policy debate, and extemporaneous speaking. Each of these programs are full-scheduled programs, with separate curricula and staff. Every student is asked to commit to one of these programs. To the extent a particular student wants to participate in some of the activities of other programs, they are welcome to do so, and Victory Briefs is happy to try to accommodate those requests -- at no additional charge. We do ask that students commit to one primary program, however. Thus, for example, if a policy debater wants to take advantage of the extemp staff while at camp, that debater can participate in some of the extemp activities as well -- as a secondary event. The policy debater is nonetheless primarily committed to the policy program. During Session 2, Victory Briefs Institute is only offering a lincoln-douglas debate program. If you have any questions about the various programs, please do not hesitate to contact us.
- Schools:** Last year, many schools decided to send multiple students to the Victory Briefs Institute. We are pleased, this year, to offer a special 10% discount to all schools that send more than five students to the Victory Briefs Institute (the students do not need to be in the same division -- i.e., six students can participate in lincoln-douglas debate, extemp, or policy debate), nor do they have to attend the same session -- i.e., some of the students can come in July and the others in August. Last year, individual coaches also asked to attend the camp. Although Victory Briefs does not have an official coaches program, Victory Briefs is happy to make special arrangements/accommodations for interested coaches, and can offer free room/board/tuition for those accompanying large contingents of students.
- To Enroll:** Send in a completed application with \$250 payable to Victory Briefs. You will then receive confirmation of your acceptance by email (if provided), or mail. We recommend purchasing plane tickets as soon as possible in order to take advantage of low rates. Fly into Los Angeles International Airport (LAX) so you arrive early afternoon on Sunday, July 4, 2004 for Session 1 or early afternoon on Sunday, August 8, 2004 for Session 2. You can plan on departing after lunch on the last Saturday for each Session. Additional information packets will be mailed to confirmed students after the May 1, 2004 deadline.
- Information:** Updated information will be posted at www.victorybriefs.com or email vbi@victorybriefs.com. Or you can contact us at Victory Briefs, 2718 Wilshire Blvd., Santa Monica, CA 90403. Phone (310) 453-1681. Fax (208) 248-9801. To speak to a live person, call between 9:30 a.m. and 3:30 p.m. Pacific. Otherwise, leave a message.

vbi@ucla 2004 Application

Name: _____

Gender: M F Date of Birth: ____/____/____ Grade (Fall 2004): 8 9 10 11 12

Address: _____

Phone Number: (____) ____ - ____ Student Email: _____

Parent: _____ Parent Email: _____

School Name: _____

Address: _____

Name of Speech/Debate Coach: _____

Phone Number for Speech/Debate Coach: (____) ____ - ____

Select Division:

- LD Session 1 - July 4 to 17, 2004 [Students will be grouped into top, varsity, jv, and novice labs.]
- LD Session 2 - August 8 to 21, 2004 [Select: __ VBI Novice Program or __ VBI Thinkers Program]
- Policy Debate Session 1 - July 4 to 17, 2004
- Extemporaneous Speaking Session 1 - July 4 to 17, 2004

Briefly describe your competitive experience:

Please return this application with \$250 to Victory Briefs, 2718 Wilshire Blvd., Santa Monica, California 90403. If you have questions, check www.victorybriefs.com or call (310) 453-1681.