Justifying civil disobedience and direct action

This handout follows the one on ‘Defining direct action and civil disobedience’. You should read that handout first.

CIVIL DISOBEEDIENCE

Because civil disobedience involves breaking the law, many philosophers have argued that it needs special justification. However, we can argue that this only applies when we have an obligation to obey the law. If, for example, the state is not legitimate or very unjust, then perhaps we don’t have political obligation. If we aren’t obliged to obey the law, we do not need a special justification for breaking it. This doesn’t automatically mean civil disobedience would always be justified, but that justifying it is no different from justifying other actions.

The background assumption in most discussions, and in what follows, is that the state is ‘reasonably’ just, enough to give us political obligation. The fact that we are breaking the law itself counts as a reason against civil disobedience if there is political obligation. In addition, of course, many laws are supported by independent moral reasons. To justify civil disobedience, we also need to provide a justification that outweigh these moral reasons as well. In Plato’s Crito, Socrates argues that it is never right to break the law, even if the law treats you wrongly. He argues that we have an obligation to keep the law in return for all the benefits the state provides, and suggests that by living under the state, he has agreed to abide by its laws.

But we can respond that it can sometimes be right to break an obligation for the sake of some greater moral value. In A Theory of Justice, John Rawls argues that if the aims of an act of civil disobedience are important enough, then the act can be justified on certain conditions. One of these is that all legal attempts to change the law have failed. Civil disobedience must be a ‘last resort’. Second, civil disobedience must be non-violent. The most important interest that the law protects is our safety. To threaten this is to act unjustifiably, says Rawls, because the aim of civil disobedience cannot be more important than the protection against violence. Furthermore, if we compare the consequences of violent and non-violent action, we see how the consequences of non-violence are better than violence. Non-violence doesn’t encourage the use of violence in other situations in which it would be wrong. Non-violence does not antagonise those opposed to the civil disobedience as much as violence, so it is less divisive of society.

We can object to both conditions. They may help, but are they always necessary? In an emergency, when there is no time to wait for legal means to fail, perhaps civil disobedience could be used straight away. Or, a different objection, how is the judgment that legal means have been exhausted to be made? One can always go on campaigning… Regarding violence, we may argue that the issue should not be violence v. non-violence, but whether the consequences of the action are justified by its aim. Sometimes the consequences of non-violence can be just as bad as violence, e.g. ambulance drivers going on strike. And sometimes, it may be that limited, directed violence can make a point where non-violence would not succeed, e.g. when the civil disobedience occurs in an unjust state.
A RIGHT TO CIVIL DISOBEDIENCE?

Some philosophers argue that we have a right to civil disobedience as part of our democratic rights. For example, Ronald Dworkin argues that whenever the law wrongly violates one’s rights, then one has a right to civil disobedience. This right, he argues, is entailed by our other rights, the ones the law has violated. The conditions Rawls lists – conscientious, public, non-violent, addressing the sense of justice – could count as a description of the type of illegal action we have the right to do when we consider the law unjust. On the other hand, any action which does not have these features will not count as civil disobedience, and we will not have the right to do it.

But do we have a right to civil disobedience? Certainly, we have a right to political participation; and if political obligation rests on consent, then we must also have a right to dissent for consent to be meaningful (see the handout on ‘Dissent’). But it is not obvious that a right to express one’s dissent guarantees a right to civil disobedience. It may only give us the right to legal protest. For example, we can argue that when we have political obligation, e.g. in a liberal or just state that protects the right to dissent legally and perhaps also the right of conscientious objection, then there is no right to civil disobedience as well.

This doesn’t mean that civil disobedience cannot be justified. It means that its justification must be ‘exceptional’. A right gives a standard, regular, well-defined ground for justification (the right to non-violent, public action, but not to violence, etc.). Justifying civil disobedience, by contrast, will have no ‘normal’ form, but will need to be very sensitive to the individual circumstances of the action we are trying to justify.

ANOTHER ATTEMPT

To justify civil disobedience, we need to look at the nature of the action, its consequences and the motivation of the protestor. As we looked at two features of action previously – that civil disobedience must be a last resort and it must be non-violent – we will focus here on consequences and motivation.

Consequences

Civil disobedience exposes society to harm – it can be divisive, it may encourage disrespect for the law, it could increase political instability, and in serious cases, it may even lead to reprisals on people who do not support the aims of the protestors. To undertake it without a good chance of gaining the desired change in the law or policy would be irresponsible. The aim can only help justify the action if it has a realistic chance of being achieved.

Furthermore, a number of the features of civil disobedience help mitigate these dangers. The willingness to submit to punishment makes clear the protestors’ general respect for the authority of the law, and so will minimise any encouragement of unjustified disobedience or general disrespect for the law. It also indicates the protestors’ strength of feeling and the fact that they are not acting for personal gain – both these will diminish the antagonism and resentment that others feel if they disagree with the protestors.
Of course, these are empirical claims, and we can argue over whether a particular act of civil disobedience really does carry the risks of bad consequences listed above. This will make a difference to whether we think it is justified or not.

**Motivation**
It is part of the definition of civil disobedience that it is motivated by a genuine sense of the law being morally wrong. However, this may not be enough. Rawls argues that protestors must seek to address society’s sense of justice specifically. This is because he argues that justice is the most important and fundamental value in political society. People may legitimately disagree about other moral values, and so these cannot be the basis for laws or changing laws. Laws should be based on justice, and arguments about laws should therefore refer to justice. Many philosophers disagree with Rawls, and argue that politics can be about other values as well. If so, then civil disobedience does not need to be motivated by or appeal to a sense of justice alone.

Rawls also argues that what motivates civil disobedience must be a clear and substantial injustice, as only such a serious wrong could justify the serious act of breaking the law. However, we can respond that the issue is really one of making sure the means is proportional to the end. If a group of parents illegally block a street as part of a campaign to have a crossing installed for their children, is this obviously unjustified, since the issue is not socially ‘substantial’? A small protest for a small aim is not obviously wrong.

Generalizing the point, we may argue that the protestors must have given careful thought to the appropriateness of the action. And this depends on a sensitivity to the social and political context. How unjust is the government generally? How unjust is the law? How much protest can society take? These questions cannot be answered in general.

Mill argued that instead of becoming annoyed with people who contest an accepted view, we should be grateful to them. They help open our minds, and they are doing what we should be doing – thinking for ourselves and aiming to get at the truth. We can argue a similar case for justified civil disobedience, that instead of looking at it as an irritant and disruptive to the smooth running of society, it is essential for the political health of the state and therefore a demonstration of good citizenship by the protestors.

**JUSTIFYING DIRECT ACTION**
If direct action is legal, it needs no special justification; if it takes the form of civil disobedience, it falls under the discussion above. But what about direct action that is neither of these? Is it possible to justify direct action that is covert, or in which the protestors do not submit to arrest and punishment, or which works through violence? (We are not here discussing revolutionary action that seeks to overthrow the state, only discussing direct action that aims at some change in law or policy.)

Most people hold the view that you cannot justify violence that is directed against people who are innocent. Even in war, targeting non-combatants is not (usually) justified. Some people disagree – if the end is important enough, it is justifiable to kill people who do not cause the injustice one is protesting against. At this point, though, direct action comes very close to, or even a form of, terrorism.

Most people engaged in violent and covert direct action want to distance themselves from this accusation. They argue that direct action is justifiable if it attacks only people
who involved in causing the injustice. Two significant recent examples involve the use and threat of violence against people who carry out abortions and against people who carry out experimental research on animals. In both cases, part of the defence is that what these people are doing itself involves violence and death – death of the foetuses and of the animals. If anything can justify violence, it is the prevention of violence against creatures that have done nothing wrong.

These debates raise complicated moral issues which we cannot resolve here. From a political point of view, they are a reminder of the point of law and the state – to provide a way that we can live together peacefully even though we disagree about what is right and wrong. According to Hobbes and Locke, the most important value that the state protects is security. Therefore, to violate this value by using violence when one disagrees with the law is to challenge the very foundations of the state, to take back the right to decide for oneself individually, rather than together with society as a whole, when violence is justified. And so such a decision will be very hard to justify politically.