Supplement: Civil Disobedience

Civil disobedience is disobeying laws of the government for a higher, moral purpose. In the Declaration of Independence Thomas Jefferson claimed that people can have a right to disobey the law, a right to rebel (“alter or abolish”). Socrates seems to have disagreed.

A famous painting (1787) depicts the death of Socrates in 399 B.C. His self-execution was not wanted by anyone. But he carried it out by drinking poison, in obedience to a legal sentence based on trumped-up charges. Ironically, he was free to escape from jail and flee. The artist symbolizes Socrates’ freedom by showing his unshackled ankle, and the unlocked chain on the floor below. The man nearest Socrates in the scene, his friend Crito, implored him to escape. But he argued forcefully that it would not be right. He explained to Crito that citizens ought to obey the law. Even if someone was wrong to convict him, he said, it would still be wrong for him to break the law and escape. Two wrongs do not make a right. (The French artist is Jacques-Louis David.)

The attached reading selection entitled “Crito” is a short selection from one of Plato’s writings, where he presents Socrates’ three-part argument why it would be wrong from him to disobey the law.

More modern thinkers have disagreed with Socrates. Henry David Thoreau, and American writer from the 19th century, urged people to disobey the government when its policies are unjust—otherwise, they would be unjust to obey. Thoreau himself went to jail for delinquent taxes, which he refused to pay in support of the unjust government. In the attached selection from his famous essay on civil disobedience, he condemned the US government for protecting the institution of slavery, and for an unjust “land-grab” war with México, which increased the size of our country by about one-fourth. Thoreau argued against a utilitarian named William Paley, who insisted that civil disobedience would be wrong unless—no surprise—it produces greater “utility” (Paley used the word, “expediency”). Thoreau insisted that sometimes we must even sacrifice our own lives in order to refrain from injustice, as in his essay’s example of wrestling a plank from a drowning man.

More familiar to us today is Dr. Martin Luther King, Jr. He practiced non-violent civil disobedience as a way of forcing American society, and the government, to recognize the equal rights of African Americans (“Negroes,” as he called them). In 1963 he was arrested in Birmingham, AL, for leading a march in the city center when he had been denied a permit. Surprisingly, several clergymen then wrote letters to the newspaper arguing that Dr. King was wrong to disobey the parade-permit law. Would he want everyone to break any law they disliked? Did he think he was above the law, entitled to pick and choose the laws he would obey? Shouldn’t citizens respect the law, above all else, lest the rule of law break down in society? King replied to their arguments in a famous letter from the Birmingham jail. The short selection from the letter included with the lecture notes summarizes his position on how civil disobedience can be right. Not all of his points are very good, although some are excellent, as you’ll see. The full letter is a literary classic, not to be missed.

This part of the course aims at presenting the social contract theory as the best explanation of our rights. The theory shows easily how there can be a right to civil disobedience, which no alternative theories can do.
Civil Disobedience

People are sometimes convinced that their government has passed laws that are immoral, or unjust. They feel they must therefore disobey those laws.

Civil Disobedience is disobeying laws for a higher, moral purpose. But it is not obvious that civil disobedience can ever be right. Some moral philosophers and legal theorists have explained that there cannot be any higher purpose that justifies disobeying the law.

Socrates: the case against civil disobedience

Socrates died by capital punishment, in Athens, in 399 B.C., although no one believed that he deserved it. Yet he maintained that since the law required it, his punishment must be carried out; because it would be wrong to disobey the law. He even passed up a number of opportunities to escape from jail, and flee the city.

Socrates gave his life to uphold the principle that citizens must always obey the law.

Plato, who was a student of Socrates, wrote a small book about the death of his teacher—a book entitled Crito. There he listed three reasons why Socrates believed that disobeying the law would be wrong:

1. The laws made it possible for his parents to be married, so that he was born a citizen.

2. The laws provided for his education.

3. He believed he was in an “implied contract” with the laws: by choosing to live in Athens, he had agreed to obey its laws.

Thoreau: a case for civil disobedience

Henry David Thoreau (1817-62), an American Transcendentalist writer from Massachusetts, was jailed for non-payment of taxes. He refused to support the government he considered unjust. He objected to legal slavery, and to the Mexican-American war.

In his famous essay “Civil Disobedience,” Thoreau disagreed with the English utilitarian thinker William Paley, who said that civil disobedience is right or wrong depending upon the “rule of expediency.” That is, it is wrong unless it will produce more good than harm. But Thoreau disagreed. Justice must be done, he said, regardless of the cost—regardless of “expediency.”
There are unjust laws, according to Thoreau. Socrates did not see how the government’s laws could be unjust. The laws not only provide benefits for citizens, but because of the social contract, the citizens consent to abide by the laws, making them just.

King: civil disobedience, a moral responsibility

While struggling for the civil rights of all citizens in the 1960s, Dr. Martin Luther King, Jr. became frustrated with laws that denied equal rights to minorities. He therefore chose to disobey certain laws, in order to bring about the desired changes. But for this he faced criticism from some who felt that civil disobedience is wrong.

In his Letter from a Birmingham Jail, King addressed this criticism as follows:

1. It is possible for laws to be either just or unjust.
2. Laws are unjust when they are:
   a. contrary to God’s law; or
   b. contrary to the moral law; or
   c. degrading to human personality; or
   d. imposed by a majority, but not binding on that majority.
3. Whenever laws are unjust, citizens have a moral responsibility to disobey them.
4. Therefore, it is right to disobey unjust laws: civil disobedience can be justified.

One of the strongest objections to Dr. King’s civil disobedience was that such actions would encourage disrespect for law and order, which are essential to society.

But King offered this reply: by agreeing that he should be punished for his disobedience he was showing the highest respect for law and order.

Civil Disobedience and the Social Contract Theory

Most people have been persuaded by Dr. King's reasoning. If he is right about civil disobedience, then an adequate theory of rights should explain how civil disobedience can be justified.

The social contract theory provides a simple explanation. It says that we ought to obey the law because as rational members of society we promise one another to do so, in order to receive the benefits of social living. But if those benefits are not provided—if we are prevented in society from enjoying equal opportunities to share them—then the promise is broken, and we have no reason to obey the law.