

Intro

- This is a sample Aff case on the topic “Resolved: In a democracy, civil disobedience is morally justified.”
- We chose this topic because it’s a frequently debated novice topic, especially on the East coast.
- This was a case written by a novice, which enhances its simplicity. Notice the different parts of the case—try to be conscious of the different portions here to learn from it.

Case

I affirm: Civil Disobedience in a democracy is morally justified.

Black's Law Dictionary defines civil disobedience as

Citation: What is Civil Disobedience." *The Law Dictionary.org.*, Black's Law Dictionary 2nd Edition. Web..

<http://thelawdictionary.org/civil-disobedience/>

The term used to describe **the refusal to obey a law because it is thought to be unfair or undesirable. It is usually non-violent behaviour**

Black's Law Dictionary defines democracy as

Citation: What is Democracy? *The Law Dictionary.org* Black's Law Dictionary 2nd Edition. Web

<http://thelawdictionary.org/democracy/>

That form of **government in which the** sovereign **power** resides in and is **exercised by** the whole body of free **citizens**; as distinguished from a monarchy, aristocracy, or oligarchy. According to the theory of a pure democracy, every citizen should participate directly in the business of governing and the legislative assembly should comprise the whole people. But the ultimate lodgment of the sovereignty being the distinguishing feature, the introduction of the representative system does not remove a government from this type. However, a government of the latter kind is sometimes specifically described as a "representative democracy." SEP 2017

Morally justified is defined as being true to the morals that an individual holds.

My value is **Morally Justified Action**, defined ethically permissible conduct. Since morally justified action requires respecting each individual's moral autonomy through allowing

citizens to decide live their lives in as moral a way as possible, my criterion is **protecting negative rights**. Protecting Negative Rights means upholding the entitlements all people have at birth, such as life, liberty, and property.

Prefer this criterion because:

First, it precludes all other standards. In any democracy, the purpose of laws is to protect negative rights. The reason that people leave the state of nature and enter into a society is for rights protection. Rights protections are important because they help guarantee basic freedoms and rights. Rights are important because they ensure that all people have the same basic protections in a society.

Second, rights are the metric we use to measure all other democratic goods. The specific purpose democracies serve is to represent people's interests. All interests require some level of rights protection. Otherwise, people wouldn't be able to act on their goals and desires, which would defeat the purpose of representation.

My thesis is that all individuals are due the ability to follow their own conscience. By forcing citizens to become slaves to the state, negating denies the existence of negative rights and morality.

My first contention is that by letting people follow their moral judgment, Civil Disobedience preserves negative rights, and is thus morally justified for two reasons.

First, because they're run by people, democracies are inherently fallible. Consequently, laws aren't automatically just simply because they're the product of democratic decision-making. Civil Disobedience thus needs to be available as a check on government power. Even if it doesn't successfully change unjust laws, it forces the government to reevaluate its policies so that they conform to the overall moral judgment of its people, supporting Negative Rights. Indeed, a government that constantly re-evaluates its policies is likelier to be just.

Norman Bowie and Robert Simon 1 write:

Citation: Bowie, Norman and Simon, Robert; *The Individual and The Political Order*; Rowman & Littlefield Publishers, Inc. (1998),

Given that the purpose of the state is to prove justice, a civil disobedient who succeeds in pointing out an injustice in civil procedures is a good citizen and not an ordinary lawbreaker. Even if the civil disobedient should fail in the attempt to convince the state that an injustice has been done, the disobedient still fills the role of good citizen. Because of such disobedience, **[T]he state is forced to reexamine its policies and to be ever vigilant against situations where state activities** ^{due} **create injustice. A state that is constantly challenged is more likely to be a just one.** ^{As} **[R]igid patterns of thought need to be challenged and reexamined if the best kinds of intellectual activity are to prevail, so** ^{must} **the patterns of the state [must] be challenged if the ideal of justice is to be approached.**

Further, the existence of legal means of protest doesn't guarantee that minority voices will be heard. During the Jim Crow era, laws ensured that Black people couldn't easily vote or have access to equal public facilities. Thus, unjust regimes are often *designed* to make legal means ineffective for those they directly impact. By removing the option of civil disobedience, negating forces people to accept such unjust laws without an effective check, violating rights and morality.

Second, civil disobedience lets individuals retain their moral conscience instead of being made agents of injustice. The fact that an action is legally required doesn't make it justified; the excuse of "just following orders" didn't exempt Nazis from moral judgment during Hitler's regime, and doesn't work in a democracy, either. In fact, citizens have a moral duty to reject laws that force them to actively commit unjust acts, such as segregation laws that required white restaurant owners to discriminate against black patrons.

Howard Zinn writes:

Citation: Zinn, Howard; *Disobedience and Democracy: Nine Fallacies on Law and Order*; New York: Random House, (1968), pp. 119-122

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.

Thus, to respect negative rights, individuals must retain a moral check on the state rather

than abdicating all agency to the government.

My second contention is that by repairing a broken Social Contract, civil disobedience protects negative rights and achieves morally justified action in three ways.

First, if the government fails to acknowledge citizens' negative rights, they're no longer bound to obey its version of the Social Contract. The initial agreement between citizens and state is based on the idea that leaders will protect people's rights, which is the reason individuals grant authority to the government. Failure to meet that basic obligation renders the contract null and void on both sides.

Bowie and Simon 2 write:

Citation: Bowie, Norman and Simon, Robert; *The Individual and The Political Order*; Rowman & Littlefield Publishers, Inc. (1998),

“The individual citizen may also be excused from obeying the contract when the state has failed to live up to the provisions in the contract. that apply to it. After all, [A] contract places responsibilities and obligations on both [parties]contractors. The systematic failure of one party to carry out its obligation removes the moral obligation on the other[.] party.”

In other words, a state that passes unjust laws breaks its end of the Social Contract, making it permissible for citizens to renege on their duty to follow laws.

Second, by willingly accepting punishment for their actions, civil disobedients actively use the democratic process to render change and repair a broken contract. Unlike vigilantes, disobedients show respect for the system as a whole by willingly going to jail.

Nicolas Buttle notes:

Citation:Buttle, Nicolas; *Civil Disobedience and Punishment*; American Bar Association Journal, Vol. 55, No. 2 (FEBRUARY 1969), pp. 123-126

“One issue, in particular, which will be considered here is the relationship between civil disobedience and punishment. If an agent is prepared to engage[s] in acts of civil disobedience, should he [should] also be prepared to accept punishment for his disobedience and, further, is punishment for disobedience morally justified? The obligation on the part of the disobedient to accept punishment for his conduct may be defended on either logical or ethical grounds. Logically, the obligation may be seen as part of the nature of civil disobedience itself, so it is meaningless to ask whether civil disobedience ought to possess such an obligation. Ethically, the obligation may arise from moral commitments which the disobedient acknowledges or ought to acknowledge.”

Disobedients thus create a check on anarchy or random law-breaking, limiting harm to others and respecting negative rights.

Third, Civil Disobedience prevents harms attained while waiting for Legal Means to work, minimizing rights violations. Legal Means may be inexhaustible, but that

doesn't make them effective or efficient. By analogy, there may be an infinite number of ways to get to the moon, but none of them matter if I don't have a rocket. Instead of writing letters to Congress that will never be read, disobedients attempt to actually achieve change. A democracy's prima facie duty is to minimize rights violations, and Civil Disobedience achieves this in a more efficient manner. *Hy of Law: An Encyclopedia*, Garland Pub. Co, 1999, II.110-113

Peter Suber writes: Christopher B. Gray (ed.), *Philosophy of Law*

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 **people**

were] 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 **legal means] are**

open in theory, but closed or unfairly obstructed in practice, then the system is not

democratic in the **[a] way** needed to **[that would] make civil disobedience unnecessary.** Other

activists have pointed out that **[Also,] 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.

The only way to appear in a court is to have legal standing. Civil Disobedience is the

most effective way to gain said standing. Civil Disobedience is the only realistic way of facilitating change in the most efficient manner. This minimizes rights violations and ensures the protection of negative rights. Joe Smith sending a letter to Congress didn't get the Civil Rights Act passed; Martin Luther King, Jr.'s marches did.

Thus, civil disobedience creates the greatest chance of protecting negative rights and achieving morally justified action.