

Question: **What is the definition of civil disobedience? Do you think it can ever be justified?**

1. **Definition:**

'... public, nonviolent, conscientious act contrary to law usually done with the intent to bring about change in the policies or laws of the government ... where arrest and punishment are expected and accepted without resistance.'

John Rawls

Is it always

- a) **non-violent?**
- b) **public?** -- peace protests against taxes raised to pay for nuclear weapons are made in private
- c) **Arrest and punishment** expected and accepted without resistance?

2. CD often thought to be **justified** when:

- a) government actions appear to **lack legitimacy** in the sense that they disregard popular opinion

e.g. autocratic regimes – interests of the majority might be sacrificed unjustly to promote the interests of a privileged minority

e.g. South Africa under apartheid – CD aimed at breaking laws that uphold apartheid, like the Pass Laws

- b) government's actions = **legitimate** (majority will) but

(i) **Tyrannize a minority:**

e.g. Germany 1930s the democratically elected Nazi Government passed the Nuremberg Laws 1935

e.g. Civil Rights Movement – USA 1960s – Martin Luther King – segregation

(ii) Individual **conscience** – moral considerations forbid compliance with the law:

e.g. Quakers refusal to pay proportion of income tax, representing what government will spend on nuclear weapons

e.g. **Henry David Thoreau** -- dictates of conscience always hold sway over obligations to the state

Even though socially necessary reforms brought about by such CD – danger = may allow individuals to pick and choose what laws they will and won't obey -- therefore **weakens the Rule of Law**

3. **Conscience** = most difficult case to justify:

a) **Liberal democracies** – claimed that the grounds for CD =

(i) **extent** of government – when governments are thought to extend their powers too far

(ii) conflict between legal and moral obligations – which takes **precedence?**

Re. Mill's principle of insulation – question of harm

b) **Extent** – when can it be argued governments have extended their powers too far?

(i) **Harm to oneself** – over your own affairs?

e.g.s. crash helmet legislation – seat belts – drug addiction

(ii) **Harm to others:**

I. **Physical harm?**

e.g.s. passive smoking – assault -- DUI

II. **Psychological harm?**

e.g.s. discrimination – race/age/sex – Skokie

III. **Economic harm?**

e.g.s. free enterprise vs monopolies

ownership of property (re. Locke)

labour laws and redundancy legislation that

restricts the freedom of employers to sack workers

IV. **Moral harm?**

e.g. freedom of speech v pornography laws

c) **Precedence** – where there is a conflict between our moral conscience and our obligation to obey the law, which should take precedence?

(i) **Authoritarian answer:**

-- no case for CD – man's primary obligation = to obey the law from which all morality derives:

I. Hobbes – *The Leviathan*

II. Machiavelli – *The Prince*

III. Devlin – *The Enforcement of Morals*

IV. Euthyphro problem

But unconditional obedience to authority:

I. Allows for capricious, arbitrary rule

II. Ignores individual's moral sense -- we act as *tho* we were moral e.g. Euthyphro problem

III. Nothing preventing authority being used to satisfy revenge, etc., -- endangers principles of justice

(ii) **Anarchist answer:**

-- law= illegitimate if it fails to reflect prevailing **moral consensus** – primary obligation = moral conscience

But:

I. **Rule of Law** – endangered if individuals can pick and choose those laws they will obey – therefore disorder and instability

II. No longer one **objective arbiter** ensuring equality and justice before the law

4. Solutions:

a) utilitarian/empirical:

e.g. Hume and Bentham

- (i) government has authority to the **extent that it enjoys the allegiance of its subjects**
- (ii) **reasons** for our allegiance are more important than any promise we are said to have made by way of a social contract
- (iii) Reasons = **ethical** – as long as the government continues successfully to pursue these we have every reason to give it our allegiance
- (iv) But such an obligation = **only a prima facie obligation** (re. Locke's notion of trust) – whatever our reasons for obeying the law, there may be stronger reasons against doing so in particular cases

But:

- (i) **allegiance = only provisional** – depends on circumstances – means individuals are free to withdraw it whenever it seems they can better pursue moral objectives by doing so
- (ii) government's obligation = promote the greater good whenever it sees the possibility and by whatever means – therefore can lead to governments with very **extensive powers** with only a limited obligation to protect individual and minority rights

b) Social contract:

-- individual must comply with the law irrespective of moral conscience, because individual has implicitly agreed to the social contract by **accepting the benefits of society** e.g. education and security

e.g. Plato – *Crito*

But:

- (i) **presupposes we all have freedom to accept or reject** the contract – natural-born citizens have never made such a deliberate choice
- (ii) binds the **next generation** – never voluntarily agreed
- (iii) mere acquiescence leaves us with the problem that **acquiescence doesn't imply a promise** as consent

does – therefore it is difficult to see how it can impose an obligation i.e. failure to protest = not enough

- (iv) **contract involves the giving of reasons** – we accept certain obligations in return for certain anticipated benefits
- (v) **misconceives modern power relations** i.e. not a contract between equal partners i.e. the individual and the state:

- I. Struggle for influence = **ideological** – between organised social, professional and political groups

- II. These are **insider groups** with far more influence than individuals

- III. Only recourse for individuals = raise funds and **form their own pressure groups**, but,
 - unlikely to compete successfully with established groups with links with officials
 - Macpherson: an effective liberal democracy should not depend upon requiring individuals to commit themselves beyond what is reasonable