

## 11. Civil Disobedience as a Democratic Argument Form

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Although there has been considerable research into protest and demonstration, civil disobedience as a distinct form of protest has been neglected by argumentation scholars. We contend that civil disobedience is a distinct form of argument important in a democratic society. By providing a theoretical account of civil disobedience as a form of argument, we have a stronger basis for assessing disobedient acts and examining their roles in public discourse.

### **The Nature of Civil Disobedience**

Rarely addressed as argumentation, civil disobedience nevertheless has received considerable attention in academic and non-academic fields. This broad treatment has meant that the term “civil disobedience” has been used inconsistently. Herein, we adopt what is “now commonly considered ‘the traditional view’” of civil disobedience (Welchman, 2001, p. 99), specifically the definition formulated by John Rawls (1999)<sup>1</sup>: civil disobedience is “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” (p. 320). Civil disobedience is thus a form of protest distinct from “legal demonstrations and infractions of the law designed to raise test cases before the courts to militant action and organized resistance” (p. 319).

The definition highlights three important features of civil disobedience. First, civil disobedience is a political act motivated by some perceived injustice. Rawls (1999) noted that civil disobedience assumes “a nearly just society, one that is well-ordered for the most part but in which some serious violations of justice nevertheless do occur” (p. 319).<sup>2</sup> It is an attempt to remedy an injustice in an otherwise just society, not to establish a just society in the place of an unjust one. This would be revolutionary action, not civil disobedience. Second, it necessarily entails a deliberate violation of law. As Cohen (1971) noted, no matter how “vehement, radical, or extraordinary one’s protest is, if he does not break the law he has not been disobedient” (p. 4). Finally, and most importantly, civil disobedience is a nonviolent, public act. Protestors who engage in civil disobedience do so in order to “provoke or speed ... community action” and “demonstrate his conviction that a gross injustice is being done” (p. 16). Rawls (1990) likens civil disobedience to “a public speech, and being a form of address, an expression of profound

and conscientious political conviction [which] takes place in the public forum” (p. 321). Civil disobedience, with this understanding, is inherently rhetorical. Extending Rawls’s analysis, we can demonstrate that civil disobedience is not only rhetorical in nature, but a distinctive form of argument.

According to Parsons (1996), an argument consists of a claim supported by reasons or premises in the context of assumptions about the world and rules of inference. Civil disobedience can be interpreted as an argument to the degree that these three basic elements are discursively or non-discursively present: claim, premises, and setting.

Starting with the third element, an argument’s *setting* includes both the “set of statements that are taken for granted; the set of assumptions” and the “set of inference rules that are taken as acceptable for the purposes of reasoning” (Parsons, 1996, p. 167). In the case of civil disobedience, this setting includes at least two assumptions without which the practice would be logically incoherent. First, since the civilly disobedient act is a violation of law, it will necessarily bring some harm to those who commit the act, such as fines, imprisonment, and the very real potential for police violence (Boghossian, 2007). Second, it assumes a “commonly shared conception of justice which underlies the political order” by which “citizens regulate their political affairs” (Rawls, 1999, p. 321). This shared understanding of justice makes a social contract possible in spite of the reasonable pluralism of beliefs which is “a basic feature of democracy” (Rawls, 1997, para. 1). If there is no sense of justice to which protesters can appeal, they have no basis for their appeal to those in power.<sup>3</sup>

Within the setting, the second element concerns whether or not civil disobedience makes a claim.<sup>4</sup> Civil disobedience is motivated by the protesters’ conviction that an injustice exists and the expression of this injustice is the starting point for their argument. More important than the existence of the injustice, however, is the protesters’ sense that the injustice threatens the social contract. When injustice is great enough or persistent enough, as Rawls (1999) noted, it “invites either submission or resistance” (p. 321) and thus the impact of the protesters’ claim is that the social contract itself is in jeopardy.

Third, the reasoning structure rests upon the civilly disobedient actors’ willingness to get arrested. The subjugation to authority is a symbolic act. Since arrest necessarily means that harm will come to the protesters, their “willingness to accept the legal consequences of [their] conduct” (Rawls, 1999, p. 322) demonstrates the strength of the protesters’ convictions. As Deluca (1999) has observed, protesters’ bodies offer arguments that reject the dominant world view as constitutive rhetoric (Hauser, 1999). The subjugation of the body to harm is a performance which engenders a simple but clear hypothetical syllogism:

*People willing to suffer harm for their beliefs have a high level of commitment to those beliefs.*

*These protesters are willing to suffer harm for their beliefs.*

*These protesters have a high level of commitment to those beliefs.*

Moreover, given the assumptions of a democratic social contract, the following hypothetical syllogism logically proceeds from the first:

*If there is a group with a conviction of injustice so deeply held that the group in*

*power's rejection of it threatens the social contract, the group in power should act in such a way as to address the other's sense of injustice.*

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Let us suppose, for example, that a group of students at Campus University decide they can no longer tolerate animal testing in the university science labs and have chosen to engage in civil disobedience as a means of ending the perceived injustice. For their action to be successful at all, it must be public. The protesters would alert the media, issue press releases clarifying their intentions, and otherwise act in such a way as to make their goals known by seeking publicity and influencing the discursive frame within which their actions are interpreted. Experienced protesters would probably organized a legal protest to occur at the same time, such as demonstrators with signs in front of the laboratory building which attract crowds and generate attention, making the target of their argument known to the widest possible audience: "We, as members of the Campus University community, find animal testing intolerable."

Second, to make the argument that the injustice threatens the social contract, they would engage in civil disobedience, such as occupying the main offices of the laboratory or similar nonviolent actions which would lead to their arrest. The performance of the argument is consummated by the arrival of the police, escorting of handcuffed protestors from the building, loading the protestors into police cars, and the display of both their resistance to the injustice and subjugation to the law. The protestors would attempt to keep the arrest proceedings as public as possible and draw them out as long as possible in order to keep the community's attention. Publicizing the act of civil disobedience from beginning to end would further the persuasiveness of the argument, extending it to an "acquiescent and uninformed public" (Bedau, 1961, p. 658).

The audiences for civilly disobedient arguments are those members of a public who are what Bitzer (1968) called the "rhetorical audience" or "those persons who are capable of being influenced by discourse and of being mediators of change" (p. 8). As members of a public (see Hauser, 1999), who are attentive to the issue in the public discourse and media, would ask themselves why is it that people are willing to accept such harms. This rhetorical audience is encouraged to seek information and learn about the issue for themselves. Willingness to be arrested and subjected to harm thus acts as a "mode of altering reality, not by the direct application of energy to objects"-- which would be direct action and not civil disobedience-- "but by the creation of discourse which changes reality through the mediation of thought and action" (Bitzer, 1968, p. 4). Thus, civil disobedience, as an argument, can alter the "public conversation" on an issue, discursively reshape public opinion (Hauser, 2001), and lead to change.

Although a single demonstration would not likely lead to structural changes, such as shutting down the laboratory, the success of civilly disobedient argument should not be measured solely in these sorts of terms. The relative strength of the civilly disobedient argument depends on a number of factors. Publicity of the performance depends on garnering media attention, so more dramatic events (Delicath & DeLuca, 2003; DeLuca, 1999), greater size and scope of the protest for instance, would make the argument and issue more publicly salient. There is also a question of the degree of harm: the greater the

harm to which the protesters willing subject themselves, the greater the expression of commitment to their beliefs. If the protesters at Campus University knowingly face expulsion, their acts express a greater commitment than if they would be punished by small fines. As is true of arguments generally, civil disobedience becomes more persuasive through repetition and other public discourse that builds upon the civilly disobedient argument, expands the rhetorical audience, and furthers the public conversation.

Although civil disobedience has been, as Bedau (1961) noted, “open to the charge of ineffectiveness and absurdity” (p. 658), such criticisms are often founded on an overly restrictive definition of success which considers anything less than an immediate change in the law a failure. As a counter position, successful changes to public discourse and the public opinion that results from it (Hauser, 1999) occur over a longer timeframe. As Clark, Vontz, and Barikmo (2008) state, “Historically, civil disobedience has been an effective method of influencing and ameliorating unjust laws” (p. 51).<sup>5</sup>

### **Civil Disobedience and Democracy**

Although the historical record provides ample evidence to counter claims that civil disobedience is ineffective, there have been more serious charges leveled at the practice. For example, civil disobedience is inherently wrong because it violates the law and, especially in a democratic society in which laws are enacted with the consent of the governed. Not only is the violation of law thought to be wrong in and of itself, but critics argue that “civil disobedience tends to encourage anarchy...because respect for the law may be weakened in the public at large” (Bedau, 1961, p. 659). Keeping in mind Suber’s (1999) observation that “there is no evidence that civil disobedience, even when tolerated by legal officials, leads to an increase in lawlessness” (p. 112), we further submit that it is an inherently democratic argument form that ultimately supports democratic ideals.

First, as we have already noted, civil disobedience presupposes a democratic regime. This is not only requisite in the definition, but as a pragmatic essential for communicative action.<sup>6</sup> In a thoroughly unjust system or a system in which the presence of a deeply committed opposition group posed no challenge to the legitimacy of the law, civil disobedience is simply not pragmatic. Rhetorical acts that seek systemic change, as noted above, are revolutionary, even if they meet the non-contextual features of a civilly disobedient argument. Civil disobedience entails a subjugation of the self to the punishment of the law as a display of commitment to the proposition that the social contract is in jeopardy. As such the argument assumes the legitimacy of the social contract and its importance to a just society. Furthermore, the sacrifice to the law is not a rejection of the law and assumes a controlled and measured punishment. Repression of protests in nondemocratic regimens stands out for its excessive or unrestrained violence. In a nearly just society, violent responses to civil protests lead to argument justifying and condemning excessive force or brutality. The 1989 repression of the Tiananmen Square demonstrations, for instance, did not spark a critique, at least in China, of the extent of force used by the government.

Second, civil disobedience not only belongs within the tradition of protest and dissent essential to a democratic society, it is supportive of a just democracy. It is a truism that “genuine democracy demands dissent, thrives on protest” (Cohen, 1971, p. 13). To the degree that civil disobedience is a persuasive rather than coercive act, which

is to say that its function is communicative and symbolic rather than a means of force, its purpose is to challenge the society to address the perceived faults that have brought a group to the point of violating the law to restore justice to the social contract. Civil disobedience does not challenge the legitimacy of majority rule or the underlying principle of justice upon which the social contract rests. Thus, for Rawls, “the public and nonviolent nature of the act [and] the willingness to accept the legal consequences” are ultimately an expression of fidelity to the law. Civil disobedience is an attempt to make a persuasive argument to those in power: although it has not yet been abandoned, the boundaries of fidelity to the law have been reached. Civil disobedience, then, is an appeal of last resort in a democratic society. By subjecting the body to harm, the actors attempt to give the fullest demonstration of both their commitment to the belief that an injustice has become intolerable and their faith in the overall justness of the society.

Civil disobedience is situated between lawful protest and other more rebellious and potentially violent forms of dissent. John F. Kennedy’s famous maxim that “those who make peaceful revolution impossible will make violent revolution inevitable” is in fact borne out by the research. Lichback’s (1987) analysis supports the proposition that “[a]n increase in government's repression of nonviolence may decrease the nonviolent activities of an opposition group but increase its violent activities” (p. 268). Therefore, civil disobedience acts as an important check on violent disruptions. It also suggests that we should look at violent and riotous dissent--such as anti-WTO rioting that took place in Seattle in 1999--in a new light. Had demonstrators had the opportunity to express their point of view in the public sphere and had been given the sense that their concerns were part of the discourse, there might never have been a “Battle in Seattle.”

## Conclusion

Understanding civil disobedience as a mode of argument that is important in a democratic society has some important implications for both those who engage in civil disobedience and those who study it. As this essay has demonstrated, civil disobedience is an argument with the following features: 1) it is a public and purposeful act; 2) it is a conscientiously performed violation of the law, which 3) seeks to reshape the public discourse on an issue.

Those who chose civil disobedience as means of influencing public discourse must bear in mind that their actions are persuasive. The purpose of the act is not simply to be arrested but to make an argument. Groups who chose to engage in civil disobedience must do more than just make sure the target or claim is clear; the public to whom civilly disobedient actors communicate must also be made aware of the risks and harms to which civilly disobedient actors *willingly* subject themselves. As Dimock and Orcholski (2009) noted, the public is often unaware that being arrested is an intentional and conscientiously taken act. If the public before whom the civilly disobedient actors are arguing perceive the arrest and detention as incidental or irrational, the act ceases to function as part of an argument structure. It also blurs the important distinction between civil disobedience as a democratic argument form and direct action that entails a rejection of the underlying social structure.

It is all too easy for mainstream mass media to dismiss those who engage in civil disobedience as “anarchist/narcissists” (Coleman, 2008, p. 7S). Moreover, groups whose members engage in civil disobedience need to do a better job of bringing excessive

punishments, police violence, and other harms to the public's attention before engaging in civil disobedience. For instance, during a civil disobedience action that occurred during the 2008 Republican National Convention, many groups criticized the excessive police violence: tear gas, pepper spray, rubber bullets, and other forms of violence, against demonstrators who were marching without a permit (Glass Bead Collective, 2008). The argument would have been more effective, however, if protestors established beforehand that they were choosing to violate the law with the foreknowledge of this likely police response. If the harms suffered by civil dissidents are not freely and consciously chosen, then those harms have no rhetorical dimension. Worse, it perpetuates the assumption that *all* protest is merely disruptive. This assumption has the negative consequences of keeping silent those who support the protesters but fear arrest and of justifying excessive and intimidating police actions.

Understanding civil disobedience as an argument form also has important implications for researchers. Academic study of civil disobedience must develop a clear vocabulary with which researchers can differentiate between those forms of protest which are rhetorical and those which involve direct action taken against oppressive institutions. The terminological imprecision of the language of dissent, such as protest, demonstration, civil disobedience, direct action, and others, inhibits clear understanding of the phenomenon and influences how lay audiences understand and misunderstand issues. If we do not draw clear distinctions between those forms of protest which assume a relatively just democracy and those which reject the underlying conception of justice on which the society is based, how can we expect lay audiences to appreciate the distinction? Finally, we need remember that when we are studying civil disobedience, we are studying an argument form which can be understood and analyzed in terms of its target, reasoning structure, and setting.

## Notes

1. In the interest of conserving space we have elected to focus on Rawls, because he is one of the most influential and widely cited theorists (see Blieker, 2002; Welchman, 2001).
2. We recognize that some would take issue with this claim of relative justness, pointing to examples such as the 1989 protests in Tiananmen Square and even the more recent mass demonstrations in Iran. It is important to bear in mind, however, that not all nonviolent protest is civil disobedience. If the acts aim at bringing about fundamental changes in the underlying social and political structure, they are revolutionary not merely disobedient.
3. Rawls's treatment of civil disobedience presupposes a majority-minority dialectic in which the majority holds power and the minority engages in civil disobedience. We believe that it is entirely possible, even in a mostly just state that is generally democratic, for a minority group hold power in some respects and for civil disobedience to function as a tool for majorities. For example, in educational institutions such as colleges and universities, power is held in the hands of administrators who are clearly a minority.
4. Because the civil disobedience is a non-discursive argument form, much of the argument is enthymematic, or in Parsons (1996) words, "the text contains one or more steps ... not overtly present in the text" and thus prone to equivocation, or giving "rise naturally to more than one refined argument" (p. 166). Rather than a weakness, this non-

discursiveness means that civil disobedience is a polysemous argument form that enables it to speak to multiple audiences simultaneously. In the interests of conserving space, we have focused on one clear argument present in the performance as text. The polysemous nature of civil disobedience is a subject upon which we hope to expand in future treatments of the topic.

5. Such an assumption is articulated in the Declaration of Independence: “That whenever any form of government becomes destructive to these ends, it is the right of the people to alter or to abolish it.”

6. Considering argumentation as a communicative action (see van Eemeren et al., 1993), the cooperative principle assumes that the civilly disobedient argument is designed as a purposeful response to the situation. Such a response can only be intelligible in the context of the nearly just society since it assumes an audience that shares basic assumptions on the justice of the social contract.

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