

Militant Morality: Civil Disobedience and Bioethics

by Carl Cohen

A morally right act is one that ought to be done. A morally good agent is one who generally does what he believes he ought to do. But there may be a great difference between the act a person ought to do in a given circumstance, and the act that person earnestly believes he ought to do. In passing judgment on civil disobedience, therefore, we should bear in mind the distinction between rightness of action and goodness of character. When civil disobedients deliberately break the law, in public conscientious protest, we want to know whether their acts are morally right.

The target of the disobedient's protest may be itself a law, or it may be a policy or a practice of government or of private parties. Targets differ, but in every case the disobedient is utterly convinced that the object of his protest is so plainly evil, so patently unconscionable and intolerable, as to demand action that would be unjustifiable under other circumstances. There is usually little doubt about the subjective integrity of the protesters. Is their disobedience objectively justifiable?

The serious difficulties encountered in providing such justifications are exhibited in the essays that follow. In them the deliberate violation of law is defended as a protest against what is believed to be: the brutal murder of babies [Leber, representing Operation Rescue, and Nathanson]; the abridgement of reproductive rights, including the right to abortion [Davis, representing Women's Health Action and Mobilization (WHAM!)]; the deliberate governmental refusal to assist those suffering from AIDS [Spiers, representing ACTUP, and Novick]; and the intolerable abuse of the rights of animals [Siegel, representing Trans-Species Unlimited; Jackson, representing People for the Ethical Treatment of Animals; and Singer]. These authors are morally certain that the wrongs they protest do justify

Carl Cohen is professor of philosophy at the Medical School and the Residential College, The University of Michigan, Ann Arbor, MI.

deliberate law-breaking. Against those alleged atrocities they express nothing short of moral fury. They are outraged.

Of course what outrages some does not outrage others. Peter Singer, a distinguished moral philosopher, remarks that the violation of law (which he finds sometimes defensible on behalf of animals) is "misguided" when undertaken to protest the termination of prenatal human life (Singer, p. 43). Others may doubt that the American government's policies regarding AIDS constitute "passive genocide" (Spiers, p. 34) and justify civil disobedience. And of course, what Leber and Nathanson regard as disobedient self-sacrifice to save the lives of innocent babies is viewed by Davis (p. 33) as a "terror crusade."

But suppose that there are some cases of objectively justifiable civil disobedience. What form will the moral justification take? What principles apply? Some of the thorniest questions in political philosophy, regarding the limits of state authority and the duties of citizens, are inescapably raised here. Two points are likely to meet with general agreement: first, different kinds of disobedience call for different justifications, and second, what one believes an adequate justification depends in part upon the kind of moral theory held.

Direct Civil Disobedience

For some disobedient protesters, the appeal will be to a higher law of some description—the laws of God, or of Nature—having an indubitable authority that simply overrides the authority of the state. On this view there are "unchanging reference points...decreed by our Creator and found in His book" (Leber, p. 27) and therefore when one deliberately violates a law of the state to comply with God's law the act is not one of disobedience at all, but "biblical obedience" (p. 27).

Higher-law justifications of civil disobedience encounter perennial difficulties: the source, authority, and content—and even the meaning—of such laws, if there are any, are matters of unending dispute. Higher-law claims by earnest and adamant protesters conflict even with one another, and are as difficult to prove false as to verify. Such difficulties do not trouble those who are morally certain they know the higher law, and who break the state's law in obedience to it—but their profound conviction has little persuasive and no probative force.

Higher-law justification is most appealing when the law broken is itself the target of the protest, when the disobedience is *direct*. If the law of the state requires what Divine command forbids, the choice of the believer is clear. Many who conscientiously violated the segregation statutes of southern

states in the 1950s and 60s acted in this religious spirit, appealing to God's law in urging disobedience. Of the Fugitive Slave Law of 1850 Emerson said, with a literal force many of us can share: "By God, I will not obey it!"

But when the object of moral concern is not a law that is within the power of the protester to break—legalized abortion for example, or research using animals—direct disobedience is simply not an available option. Then civil disobedience must take other forms, requiring other justifications. Two options remain for one determined to break the law in protest: He may engage in disobedience that is *indirect*, deliberately violating some law that is not the object of protest but is symbolically related to it, or he may engage in *direct action*, unlawfully interfering with the allegedly immoral practice. (And he may consistently do both.)

Indirect Civil Disobedience

Writing in defense of disobedience for the sake of animals one author says "Blocking an entrance to a building...is largely a symbolic act; it will not directly help animals..." (Jackson, p. 38); and another writes "...we will find ourselves violating ordinances that have nothing to do with our actual targets" (Seigel, p. 41). The irrelevance of the law broken to the law defended— "snarling rush-hour traffic in the [NY] City Hall area and blocking entrances to the Brooklyn Bridge for over an hour" (Davis, p. 33)—is in some cases an instrument of prideful defiance. But symbolic violations are difficult to justify as obedience to higher law. If God commands us to oppose what is evil, He does not thereby demand that our tactics incorporate deliberate symbolic law-breaking. So the justification of indirect symbolic disobedience is generally utilitarian in form. Agitation, it is thought, will bring public education and eventual legislative reform. Disobedient acts, "bring AIDS political issues to the fore and serve to justify, implicitly, the violation of property rights..." (Spiers, p. 34). And again, "civil disobedience...gives voice to energetic and creative supporters and has exposed the indifference of America's institutions" (Novick, p. 36).

All the problems utilitarianism is heir to will confront such an argument, of course. But in this context it is particularly difficult to determine whether, all things considered, the goods actually achieved by the disobedience *really* will outweigh the negatives. One defender correctly observes: "Someone considering breaking the law might ask herself: Will my action directly help animals? Will it attract media attention?...What risks might be imposed on others? Could it be counterproductive?"

(Jackson, p. 38). But because the defenders are utterly convinced that the practice opposed is plainly evil, they have no doubt that "[d]rawing media attention" (Nathanson, p. 28) is a very good thing. In fact their arguments often depend upon quite uncertain estimates of what the actual consequences of the disobedient acts will be. And the utilitarian defender may err in calculating those consequences. Such errors would be likely to have damaging effects upon the justification proposed.

Thus, for example, deeply committed protesters are tempted to overestimate the effectiveness of what they do, crediting to their disobedience every change in the desired direction. In one essay, the expediting of clinical trials of new drugs and the rapid development of community-based trials of experimental drugs for AIDS are presented as "[a]mong the most prominent results" of civil disobedience (Novick, p. 36). And there will be much angry opposition to their acts, as the protesters fully realize. But they contend that "pressuring the system" (Siegel, p. 41) through disobedience more than compensates for this negative. At times real damage will be done to others by the disobedient act. "The destruction of property such as furs and laboratory equipment could become commonly approved as a viable mainstream tactic" (Siegel, p. 41). Any such damage, they argue, will be outweighed by the enormity of the abuses being protested. It may. But in doing these utilitarian calculations, what should be balanced against what? Against damage done by the disobedience we may not fairly weigh the good of eliminating the entire (alleged) injustice (since that is not the likely outcome) but rather the estimated amount of (alleged) good achieved toward that end by the damaging disobedient act. That may be little. Estimating utilities and disutilities accurately is very hard.

Direct Action

The third form of civil disobedience bears resemblance to both direct and indirect disobedience, but differs from both. Here the protester, acting in a way that deliberately breaks the law, seeks to block the doing of the wrong he protests. "[W]e must take our bodies down to the abortion mills and peacefully and prayerfully place ourselves between the killer and his intended victim" (Nathanson, quoting Randall Terry, p. 28). Hence the name: Operation Rescue. In direct action the disobedience is more than symbolic, because its aim is to avert particular wrongs. If abortion is the killing of babies, then even a single abortion not performed is a baby whose precious life has been rescued.

Direct action is not direct disobedience, however,

since the law broken is not itself what is protested. Thus the appeal to a higher-law justification, although attractive to the practitioner of direct action, remains for him problematic. The disobedient who chooses to "storm into research facilities to film laboratory conditions or liberate animals" (Jackson, p. 37) will have some difficulty in claiming that he does so in obedience to the laws of God. Singer is correct when he says that the means chosen to achieve our goals "is a matter of strategy, not of ethics" (Singer, p. 43).

But the defender of direct action has an auxiliary argument to present. Suppose, as Singer suggests, one assumes, "for the sake of argument, that they [the means chosen] were the *only* possible means of achieving those goals in a reasonable period of time..." Then, depending upon the worthiness of the goals, those means may indeed be justified.

But under this defense of disobedience its moral justification depends upon *both* the truth of the claim that there is no other means of effectively advancing the disobedient's cause, and the correctness of the disobedient's judgment of the enormity of the evil he protests.

That there is no other course remaining open to him the disobedient concludes from the fact that, although legislators have been lobbied, and vigorous lawful protests repeatedly undertaken, his cause has not yet won the day. Since he believes he cannot be wrong about the evil, it must be that the system is in this sphere incapable of responding to the normal pressures of democratic process. If that process could work, he argues, it would have worked by now. But it hasn't, so it can't. (An argument in this form could be used by most actively participating citizens whose objectives, morally important to them, have not yet been given the force of law.)

Regarding the monstrous evil that is the object of their disobedient protest, the disobedients themselves have no doubts whatever. But if the public defense of direct action is to succeed, the enormity of that evil must be established in some objective way.

And so we are brought again to the contrast of subjective and objective obligation. Suppose the evils [of abortion, of animal use, of AIDS policy] are as monstrous as these defenders of civil disobedience believe them to be. And suppose their estimates of the consequences of public disobedience are correct, and their judgments of the fruitlessness of other strategies also accurate. Then the deliberate violations of law they urge may indeed be morally justified. But the suppositions here are at least questionable. Many will conclude after deliberation that the premises of such arguments are seriously mistaken. Even those who largely share the moral

convictions of the protesters may reach different moral decisions after reflecting upon the probable consequences of disobedience. And those who pursue the protesters' objectives, but do so in more moderate spirit, having committed themselves to abide with the democratic process even when its outcomes are unsatisfactory and frustrating, will find the proffered justifications of deliberate disobedience without merit.

Three final remarks about these pieces: First, the essays concern civil disobedience in the world of bioethics. But other goals—concerning international relations, nuclear power, ethnic minorities—may also serve as the focus of conscientious, disobedient protest. Each defender of disobedience is accountable only for the law-breaking he holds to be justified by his goals. But the theoretical problems of providing a satisfactory moral justification apply generally.

Second, those who engage in civil disobedience are commonly persons of peaceable spirit, with keen social conscience and respect for fellow citizens. Violence is thought by many to be precluded in civil disobedience, perhaps even by definition. But others say that they "must refuse to accept limits being placed on the lengths to which we will go" (Siegel, p. 41), and say candidly of violence that it "cannot be ruled out" (Spiers, p. 35). Violence in this arena has certainly not been forsworn. And the more violent the law-breaking, the more difficult its justification. From the tone, as well as from the literal meaning of the essays below, and from many recently reported events, it seems clear that some disobedients are fully prepared to destroy property. If the evils opposed are truly as monstrous and intolerable as they contend, arguments very similar to theirs might well be thought to justify some violence to persons as well.

Finally, we are all likely to agree that the values of democratic process—patient and rational debate, compromise, and a commitment to bear with the outcome of the fairly expressed community will so long as it is bearable—are much to be prized. Deliberate violation of law to win the day may do injury to that social fabric on occasion. But it would be wrong to say that there are no occasions, no circumstances under which the deliberate violation of law is justifiable, even in a decent society. There *are* times when one must say no to the state. But the justification of deliberate law-breaking is never easy, and in a reasonably healthy democracy it is exceedingly difficult. Which, if any, of the defenders of civil disobedience below have succeeded in this task of justification remains for the reader to judge.