Civil Disobedience  
Resolutional Analysis by Drew Magness

  
Police and protesters on the Edmund Pettus Bridge (1965).

NSDA’s Novice Resolution

“Resolved: Civil disobedience in a democracy is morally justified.”

“Government of the people, by the people, and for the people shall not perish from the earth.” We all agree with Abraham Lincoln in the Gettysburg Address that Governments are meant for the people. Not the other way around. But what happens when the people disagree with government?

When people disagree with government, they tend to react the same way as when they disagree with their parents. They disobey. We call this nonviolent resistance of law. In other words, “civil disobedience.”

In your home, your parents can tell you to clean your room, and if you find this command unjust you can choose not to. That’s civil disobedience. Obviously, this term takes more meaningful connotations when we talk about it in relation to government. When Rosa Parks refused to sit in the place reserved for his race on a bus, that was civil disobedience. When Susan B. Anthony illegally voted to protest voting restrictions on women, that was civil disobedience.

We typically see these historical examples of civil disobedience as right and helpful to society. They weren’t seen that way at the time, perhaps like how some see today’s acts of civil disobedience. Either way, they are still civil disobedience. When Occupy protesters took over public parks to “occupy” them, that was civil disobedience. When the activist group Black Lives Matter blocked streets to protest suspected police brutality, that was civil disobedience. When Kim Davis refused to issue a marriage license to a gay couple, that was civil disobedience. When the Westboro Baptist Church disturbs the peace by picketing soldier’s funerals, that’s civil disobedience.

The conundrum with civil disobedience is the fact that it requires individuals to make moral judgments on the laws of a nation. And as James Madison said, “If **men** were **angels**, no government would be necessary.”

This is what you’ll be debating in this membership overview. *Resolved: Civil disobedience in a democracy is morally justified.* To prepare you for your debate, you will have to accomplish the following:

1. Understand what civil disobedience is.
2. Take a look at 3 paths for each side of the resolution.
3. Study model cases, affirming and negating the resolution.

The third will be done in coming weeks. As a Monument Member, you will receive an affirmative and negative case to model. The first two we will accomplish now.

Understanding the Resolution

It is helpful to start your understanding of the resolution by defining the terms. Consider:

1. Civil Disobedience. According to West’s Encyclopedia of American Law, Civil Disobedience is, *“a symbolic, non-violent violation of the law, done deliberately in protest against some form of perceived injustice. Mere dissent, protest, or disobedience of the law does not qualify. The act must be nonviolent, open and visible, illegal, performed for the moral purpose of protesting an injustice, and done with the expectation of being punished.”[[1]](#footnote-1)* Examples could include breaking the law directly, but also could be disobedience in unlawful picketing or refusing to pay taxes that help fund the protested law. A couple notable points:
   1. Civil Disobedience is **a protest.** You can’t just decide one day that you want to steal in order to eat a yummy snickers bar and call it civil disobedience. Unless you’re protesting the legitimacy of thievery laws, you’re not committing an act of civil disobedience, just an act of criminality.
   2. Civil Disobedience is **nonviolent.** You can’t burn down someone’s house and lynch them for your beliefs and call it civil disobedience.
   3. Civil Disobedience is **public.** You can’t decide not to pay taxes, not tell anyone, and call it civil disobedience. That ruins the point.
2. Democracy. There are several political interpretations of what a “democracy” is, but the important concept to grasp for this membership overview is that a democracy is a form of government that consists of the will of the people. Whether through representation or direct participation, the idea is that a democracy is a “government by the people” (Dictionary.com).
3. Morally Justified. Morality is brought into the debate here. Webster’s Dictionary calls morality “beliefs about what is right behavior and what is wrong behavior.” The “right behavior” for the affirmative would be civil disobedience, and for the negative civil disobedience would be “wrong behavior.” It is or isn’t “justified.”

Paths for the Affirmative:

Here, we will examine some paths for you to walk down as you explore this resolution over the next couple of months. We use the word paths because I find it indicative of how you should treat sourcebook resources. Let them be your guide as to where to find a path to walk down. We’ll show you some key places to start exploring, but it’s up to you to fully explore them. If we just gave you EVERYTHING, then there’d be no reason for you to debate at all! Do the legwork yourself and view our resources as starting you on the correct path.

Path 1: Tyranny isn’t fun

Civil Disobedience is disobeying what is seen to be an unjust law. Most of the time, we tend to be for this! In fact, it could be argued that the first recorded form of civil disobedience was in the book of Exodus when the Pharaoh of Egypt decreed that two Egyptian midwives kill baby Moses. Instead of killing the child as instructed, the midwives set him adrift on a basket to be discovered by Egyptian royalty and then saved.

We’re most comfortable with civil disobedience as a response to tyranny. However, this resolution presents a problem for that paradigm. That problem is the word “democracy.” We’re not talking about if Germans should have hid Jews in their homes during the holocaust. There was no democracy in place in Nazi Germany.

However, there is an argument to be made that civil disobedience prevents democracies from spiraling into tyranny. A democracy is based around principles of majority rule. Yes, some democracies have checks and balances on the majority rule to ensure it doesn’t go bad, but what a democracy boils down to is that if 60% of the people want something, they should get it.

The poet, Henry David Thoreau, coined the term civil disobedience in his essay, “Civil Disobedience.” Here’s an excerpt where he touches on the principle of majority rule:

“But government in which the majority rule in all cases cannot be based on justice, even as far as men understand it.”

Majority rule is really nice!....If you’re in the majority. For the minority, it can be negative. Civil disobedience can be justified when a minority is being oppressed by a democracy. For example, Martin Luther King Jr. used civil disobedience to stage sit-ins, marches, and protests. Yet, he was arrested. In this way, democracies can be tyrannical.

If you take a path of looking at how civil disobedience keeps democracies from becoming tyrannical, these values and criterions would be a good starting point:

* Stability
* Anti-Value of Tyranny
* Human Rights
* Freedom
* Liberty
* Human Dignity

Look into Thoreau’s essay, “Civil Disobedience,” MLK Jr.’s “Letter from Birmingham Jail,” the underground railroad, and the Israeli protesters Moshe Feiglin and Shmel Sackett. These are great examples to use.

Path 2: Justice

St. Augustine said, “An unjust law is no law at all.” Even when it comes to tyranny, many protestors act as a form of protest against the government as a whole for justice. But the distinction between these two paths is clear.

In the first path, those disobeying are doing so in order to prevent a tyrannical government from oppressing them. This path instead argues that if people see an unjust law, it is morally justified for them to disobey it. You’re not necessarily stopping people from being oppressed; that could happen! But it’s not the point.

The point is what St. Augustine said, “An unjust law is no law at all.” That means you don’t have an obligation to obey a law that is unjust. Therefore, you are justified in disobeying it.

To fully understand this position, we have to understand the very nature of laws.

George Washington said, “The true administration of justice is the firmest pillar of good government.” The most important reason we have laws in the first place is to administer justice. That’s why we don’t have laws that determine what kind of burger you can buy. That interaction has no impact upon the justice of our nation. Even laws that are controversial like abortion or gay marriage, are based upon ideals of justice from both sides. Advocates for abortion say it’s justified because it’s unjust to not allow a woman to have rights to her own body. Those who argue against abortion say it’s unjust to kill an innocent child. Gay marriage advocates say it’s unjust to deny people marriage simply because they’re marrying someone different than you’d like. Gay marriage opponents say it’s unjustified because it’s unjust to force your way of living life against others.

Law revolves around justice.

Therefore, if one of these laws is unjust, it has no bearing on the citizenry. They elected a government to uphold justice. If the government isn’t doing that, the laws don’t have to be obeyed.

A couple values/criterions to explore:

* Justice (obviously)
* Government Legitimacy
* Human Dignity
* Autonomy

Examples of this can again be found in the works of Thoreau, Martin Luther King Jr. and Mahatma Gandhi. Look at conscientious objectors to the draft as well as people who abstained from taxes. Sondhi Limthongkul of Thailand participated in quite a few forms of civil disobedience that would be prudent to examine as well.

Path 3: Social Contract

The social contract theory is one of the bedrocks of Western civilization. A simple version of it is the idea that men voluntarily give up some rights to a sovereign government in order to receive benefits from that government.

This philosophy says that there is an implicit contract between men and governments. Governments are to protect and serve the citizens and the citizens are to obey the laws, pay taxes, serve jury duty, and be willing to keep the society alive.

Now, you’re probably thinking that the social contract is used to say that civil disobedience is BAD. After all, if citizens have a duty to obey laws, then aren’t they violating the social contract when they disobey laws they find unjust?

Some say yes. Some say no.

John Locke, one of the first philosophers to form a coherent social contract ideology would say “no.” A Lockean social contract espouses the idea that government is established to protect the rights of its citizenry. Therefore, when the government violates the rights of citizens, GOVERNMENT is violating the social contract and citizens have no obligation to obey that government.

This idea is shown in the Declaration of Independence. “That to secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed, That whenever any Form of Government becomes destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government…”

Our founders believed that when our government didn’t respect rights, the people should be able to alter or abolish it. They should then DEFINITELY be able to disobey that government civilly.

When one party violates a contract, the other party no longer has to obey that contract. It’s been nullified.

Here’s some good values/criterions:

* Government Legitimacy
* Social Contract
* Natural Rights
* Human Rights

For examples of this, check out our founders’ writings on government legitimacy in the Constitution, Declaration of Independence, and the Federalist Papers. John Locke’s writings, especially his Second Treatise on Government would also be helpful.

# Paths for the Negative:

Path 1: Anarchy isn’t fun.

This is the inverse of the “tyranny isn’t fun” path from the affirmative side. While proponents of civil disobedience argue that it’s necessary to prevent tyranny, opponents of civil disobedience venture to the other side of the spectrum and argue that civil disobedience creates anarchy.

Think about it. The main idea behind civil disobedience is that you don’t have to obey laws you don’t like. That’s it. Sure, most of the time people disobeyed bad laws. But what if you had a moral belief that the government shouldn’t be allowed to force you to drive a certain speed? What if you thought it was a little weird that you had to pay such a high tax rate, so you didn’t? What if you felt it was unjust for the government to control the roads, so you just sat on them.

Society would crumble.

Even past these rather extreme examples, this is a time-tested idea. Countries rest on the foundation of the rule of law. If we just decide to disobey it at will, we create an anarchical society. Instead, it is more prudent to work through the legal means for changing our world. Abraham Lincoln put it this way,

"Let every American, every lover of liberty, every well-wisher to his posterity swear by the blood of the Revolution never to violate in the least particular the laws of the country…. Let every man remember that to violate the law is to trample on the blood of his father, and to tear the charter of his own and his children’s liberty. Let reverence for the laws be breathed by every American mother to the lisping babe that prattles on her lap; let it be taught in schools, in seminaries, and in colleges; let it be written in primers, spelling-books, and in almanacs; let it be preached from the pulpit, proclaimed in legisla­tive halls and enforced in courts of justice. And in short, let it be­come the political religion of the nation; and let the old and the young, the rich and the poor, the grave and the gay of all sexes and tongues and colors and con­ditions, sacrifice unceasingly upon its altars."*[[2]](#footnote-2)*

Rule of law is the foundation for our democracy. If we shred it, we shred order and justice. In democracies, this is especially true. When people can change the laws of a government, yet they choose to neglect this power for a more brutish force, they don’t deserve to achieve their goals.

Maybe in an authoritarian apocalypse, civil disobedience would be morally justified. But in a democracy, where people are equally represented? Absolutely not.

Some good values/criterions:

* Rule of Law
* Stability
* Social Function
* General Welfare
* Order

For examples of this, look at pro-life advocates who have blocked roads to abortion clinics, Black Lives Matter protestors who have broken laws, conscientious objectors to the draft, and people who have refused to pay taxes.

Path 2: Justice/Social Contract

Remember the social contract? Well, this approach argues that since it’s unjust to disobey the rules that an authority puts in place, it violates the social contract. This idea has two subsets:

**Subset 1: Universalizability**

This is one of my new favorite words in the English language: *Universalizability*. It’s a concept established by Immanuel Kant. He said that one of the ways you could discover if something was moral or not was to ask this question, “Would it be okay if everyone did this?” If the answer is no, the action is not morally justified.

Civil disobedience fails the universalizability test. Imagine if EVERYONE just refused to obey the laws they didn’t like. Taxes wouldn’t be paid. Speed limits would be a joke. Stoplights would be useless.

Sure, sometimes civil disobedience might be a good idea. But if EVERYONE did it? Our society would fall apart. You don’t get to be special. If you think everyone else should obey the laws, you have to do it too.

This applies to the social contract because the social contract is how we decide laws. It is based on what the most people would like. There’s always going to be people who disagree with the majority. But that doesn’t mean those people are justified in disobeying the law of the majority. Democracy could never function under that paradigm.

**Subset 2: Contracts are compromises**

No one is going to like every freedom they have to give up or enjoy every benefit they could hypothetically receive in the social contract. Contracts are compromises. In a democracy, it’s assumed that people tacitly consent to the laws because they elect representatives that choose the laws. We didn’t leave Britain because taxes were too high. We left because they taxed us without allowing representation.

Since democracies have representation and legal room for change, it’s unjustified to disobey laws that you don’t like. That’s not how social contracts or democracies work at all.

Good values and criterions:

* Social Contract
* Stability
* Rule of Law
* Justice
* Liberty
* Universalizability

For some examples, explore Immanuel Kant’s idea of Universalizability as well as Thomas Hobbes’ ideas on the social contract.

Conclusion:

This article has several paths to consider, but many more will surface throughout your competition. Make sure you are familiar with the WIDE variety of examples that can pop up under this resolution. Think about all the different paths and explore them to allow you to have the most experience in this resolution possible.

1. Civil Disobedience. (n.d.) West's Encyclopedia of American Law, edition 2. (2008). Retrieved June 23 2017 from <http://legal-dictionary.thefreedictionary.com/Civil+Disobedience>

   [↑](#footnote-ref-1)
2. <https://fee.org/articles/civil-disobedience-a-threat-to-our-law-society/> Morris I. Leibman, December 9th 1964, “Civil Disobedience: A threat to our law society” [↑](#footnote-ref-2)