

AFFIRMATIVE CASE

The history of democracy is rich with stories of civil disobedience. The affirmative case argues that when laws are unjust, it is immoral for individuals to comply with them. Just as the Nuremberg Trials found that merely “following orders” is an insufficient justification for bad acts, so too does the affirmative argue that a person’s obligation to justice and morality is more important than their obligation to blindly obey the state.

VALUE: JUSTICE

WE HAVE A NATURAL DUTY TO UPHOLD JUSTICE

John Rawls, Professor of Philosophy at Harvard University, THE JUSTIFICATION OF CIVIL DISOBEDIENCE, Civil Disobedience, 1969, p. 245. The two chief virtues of social institutions are justice and efficiency, where by the efficiency of institutions I understand their effectiveness for certain social conditions and ends the fulfillment of which is to everyone’s advantage. We should comply with and do our part in just and efficient social arrangements for at least two reasons: first of all, we have a natural duty not to oppose the establishment of just and efficient institutions (when they do not yet exist) and to uphold and comply with them (when they do exist); and second, assuming that we have knowingly accepted the benefits of these institutions and plan to continue to do so, and that we have encouraged and expect others to do their part, we also have an obligation to do our share when, as the arrangement requires, it comes our turn.

CRITERION: THE DIFFERENCE PRINCIPLE

INEQUALITY IS JUST ONLY IF IT ASSISTS THE MOST DISADVANTAGED

William E. Forbath, JD at UT-Austin, CONSTITUTIONAL WELFARE RIGHTS: A HISTORY, CRITIQUE, AND RECONSTRUCTION, Fordham Law Review, April 2001.

The difference principle, you'll recall, states that institutionalized inequalities must be justified by dint of being in the interests of the least advantaged. Inequalities that do not redound to the benefit of those at the bottom are illegitimate. For Rawls, this principle is not cashed out through income standards or transfer payments alone; it must imbue the general "organization of the economy," and the distribution of wealth, power and authority as well as income.

THE DIFFERENCE PRINCIPLE IS THE FUNDAMENTAL MEASURE OF JUSTICE

John Rawls, Professor of Philosophy at Harvard University, POLITICAL LIBERALISM, 1993, p. 5-6.

Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value. Social and economic inequalities are to satisfy two conditions: (a) They are to be attached to positions and offices open to all under conditions of fair equality of opportunity; and (b), they are to be to the greatest benefit of the least advantaged members of society.

CONTENTION ONE: MORAL PEOPLE HAVE A DUTY TO PEACEFULLY DISOBEY UNJUST LAWS

A. CIVIL DISOBEDIENCE MUST BE PEACEFUL

Frances Olson, JD at UCLA, PEACE, CIVIL DISOBEDIENCE, AND ANTI-DISCRIMINATION LAW: A CRITICAL APPRAISAL OF REASON AND POLITICS, University Of Miami Law Review, April 2003, p.993.

Civil disobedience is active and non-violent. Many of the British and American suffragists demanding that women be allowed to vote engaged in non-violent civil disobedience quite effectively. Moving to the present day, some of the Israeli women trying to end the occupation and bring peace to the Middle East have begun engaging in civil disobedience. During the winter of 2002, women from Europe non-violently removed roadblocks in the Occupied Territory. This is one way to counter the increasing aggression of the war camp without resorting to violence.

B. IT IS MORALLY WRONG TO OBEY AN UNJUST LAW

Martin Luther King, Jr., civil rights leader and minister, THE AUTOBIOGRAPHY OF MARTIN LUTHER KING JR., 2001, ch. 2.

During my student days I read Henry David Thoreau's essay "On Civil Disobedience" for the first time. Here, in this courageous New Englander's refusal to pay his taxes and his choice of jail rather than support a war that would spread slavery's territory into Mexico, I made my first contact with the theory of nonviolent resistance. Fascinated by the idea of refusing to cooperate with an evil system, I was so deeply moved that I reread the work several times. I became convinced that noncooperation with evil is as much a moral obligation as is cooperation with good. No other person has been more eloquent and passionate in getting this idea across than Henry David Thoreau. As a result of his writings and personal witness, we are the heirs of a legacy of creative protest. The teachings of Thoreau came alive in our civil rights movement; indeed, they are more alive than ever before. Whether expressed in a sit-in at lunch counters, a freedom ride into Mississippi, a peaceful protest in Albany, Georgia, a bus boycott in Montgomery, Alabama, these are outgrowths of Thoreau's insistence that evil must be resisted and that no moral man can patiently adjust to injustice.

CONTENTION TWO: CIVIL DISOBEDIENCE CREATES A MORE JUST SOCIETY FOR THE LEAST WELL-OFF

A. CIVIL DISOBEDIENCE HAS EMPIRICALLY FAVORED THE RIGHTS OF THE MOST DISADVANTAGED

William P. Quigley, Professor of Law at Loyola New Orleans, THE NECESSITY DEFENSE IN CIVIL DISOBEDIENCE CASES: BRING IN THE JURY, New England Law Review, Fall 2003, p. 21-24.

In 1846, Henry David Thoreau was jailed for refusing to pay his poll tax in protest of both slavery and the Mexican-American war and wrote his famous and influential essay, "On the Duty of Civil Disobedience." Since the early 1800s, groups of laborers walked off their jobs, conducted sit-ins, strikes, boycotts, and pickets in the efforts to gain recognition and bargaining power for unions, for living wages, and for safe working conditions. Advocates of women's suffrage, and later women's rights, used "direct action, civil disobedience, public disruptions and passive resistance" in order to fight for their rights. In 1872, Susan B. Anthony was convicted for the crime of voting and in 1917, over two hundred women were arrested for illegally protesting in front of the White House. There was significant public opposition to America's involvement in World War I. People were convicted for speaking against the war and for refusing to be inducted into the military - including seventeen men who were sentenced to death and another 142 who were given life sentences. During World War II, there was an active peace movement that protested and lobbied; tens of thousands of men refused to kill in the military, thousands of whom were imprisoned for their actions. The civil rights experiences, however, constitute the most powerful examples of civil resistance and civil disobedience. During the 1960s, sit-ins resulted in over 3,000 prosecutions for criminal violations of civil disobedience.

B. DISOBEDIENCE IS MORE EFFECTIVE THAN VIOLENCE AT EFFECTING SOCIAL CHANGE

David Lyons, Professor of Philosophy and Law at Boston University, MORAL JUDGMENT, HISTORICAL REALITY, AND CIVIL DISOBEDIENCE, Philosophy And Public Affairs, Vol. 27, No. 1, Winter 1998, p. 40.

Thoreau, Gandhi, and King believed, with good reason, that their systems required fundamental change. They did not regard themselves as morally bound to obey unjust laws. No such notion framed the dilemmas they confronted when contemplating unlawful resistance. Their acceptance of legal sanctions signified a strategic, not a moral, judgment. Gandhi's and King's rejection of violence reflected both moral scruples and prudent judgment, not an outlook favoring modest reform. Violence was not a promising means of effecting the sort of social changes they sought, which included the support of those who were bound to lose their privileged status in a more equitable society.

1AR RESPONSES TO THE NEG VIOLENCE/LAWLESSNESS ARG

1. Those partaking in civil disobedience are not aiming to break all of the laws at once. Typically, small scale actions are taken to communicate to officials an injustice has occurred, all of which are non-violent.

2. The end goal of civil disobedience is not to promote anarchy. It instead aims to show that laws are invalid and ought be changed. Different movements aim to fix oppression, not overthrow governments.

Civil disobedience does not promote anarchy; rather, it facilitates a view that laws are invalid and propose a solution.

Amy Farris, JD American University Washington School of Law, 2012, "Dworkin's Civil Disobedience: Strength in Conscience,"

<http://sites.temple.edu/amyfarris/essays/philosophy/civil-disobedience-a-necessary-and-just-component> (accessed 9/6/15)

Seemingly, the general consensus is that if we (being the government) do not prosecute civil disobedients, we (as a society) will be subject to anarchy and essentially dismantle as a democracy. Dworkin counters this perspective, illustrating that civil disobedience not only causes minimal harm to the public, but it is also rare enough to become a frequent issue. Tying into the notion that if said disobedience were to be frequent, this would infer the laws of such a society were possibly not as valid as appeared, for the members of this society would have felt such injustice as to consistently disobey them. Furthermore, prosecutors continually use their discretion as applied to prosecuting persons, thus, lenience as applied to acts of disobedience would not be necessarily detrimental in any fashion.

3. Anarchy is not inevitable. Particularly when civil disobedience is successful, governments will shift policies to fix oppression. Even when it is large scale, civil disobedience is never aimed at deteriorating the social order; it only aims to spread a message.

Anarchy and chaos are not inevitable when civil disobedience is employed.

Martin C. Loesch, JD University of Notre Dame, 1991. Motive Testimony and Civil Disobedience Justification, p. 1112-1113 Judge Northrop's assumption, though popularly supported, is flawed. He is correct in so far as he claims that it is "axiomatic" that civilized society could not survive if every citizen always followed only what laws fit his or her fancy. As pointed out by Dworkin, however, while it is surely true that society cannot endure "if it tolerates all disobedience; it does not follow, nor is there evidence, that it will collapse if it tolerates some" (emphasis added). Carl Cohen says, "As a resident and an observer of a municipality in which civil disobedience has been several times employed in recent years, I would report that so far as I can tell, its practice has had little or no tendency to encourage disrespect for law or to cause a general deterioration of the social order." Even Justice Fortas, an outspoken critic of civil disobedience, warns that "[t]he danger of serious national consequences from massive civil disobedience may easily be exaggerated."

Aff Speaker Script

Prepare your Speech

On your flowsheet in the 1A Column—Flow your Value-Criteria and Contentions.

Your First Speech

Read your case. ***See the case in the previous pages.*** Read it to express the meaning. Read it loud and clearly.

Answer Questions

For 3 minutes, answer the negative speaker's questions. Try to answer without pausing. Try to answer by restating strong arguments and citing sources (memorize them) to back up your answer. Avoid answering in ways that give your opponent a strategic advantage.

Flow the First Neg Speech

Prepare Responses to the Neg Case (Follow the 90% rule!) **See the responses in the previous pages.**

Prepare Defenses of your Aff Case (Follow the 90% rule!)

Remember that you will only have 4 minutes to respond—so you need to be concise and to hit the most important points

Be thinking of questions you can ask.

Ask Questions

For 3 minutes, ask the negative speaker questions. Try to ask questions that show weaknesses in their arguments. Focus on asking questions about the evidence they presented. "Where in your evidence does it show/say ____." Avoid asking open ending questions that let your opponent talk about their best points. Avoid asking in ways that give your opponent a strategic advantage.

Your First Affirmative Rebuttal Speech

BE CONCISE. BALANCE YOUR TIME! 2 MINUTES AGAINST THEIR CASE. 2 MINUTES DEFENDING YOUR CASE.

"Again ____ in one short sentence state your strongest argument and why you should win ____"

"Against their value-criteria, first ____, second ____"

"Against their first contention, first ____, second ____" (do same for additional contentions)

"Now, go to my case. My value-criteria showed _____. They are wrong about ____ (a 2-3 word abbreviation of their argument) _____ because _____. So my ____ value-criteria _____ is still how the topic should be judged."

"My First Contention shows _____. They are wrong because _____. This contention's impact is _____ and thus meets the ____ value-criteria _____. " (do same for additional contentions)

"Vote Affirmative."

Flow the Neg Rebuttal

Prepare Reasons on why your Responses to the Neg Case should win (Follow the 90% rule!)

Prepare Reasons on why your Aff Case Value-Criteria and Contentions should win (Follow the 90% rule!)

Remember that you will only have 3 minutes to make your case—so you need to be concise and to hit the most important points.

Your Second Affirmative Rebuttal Speech

BE CONCISE.

BALANCE YOUR TIME! YOU HAVE 3 MINUTES TO WIN YOUR CASE AND DEFEAT THEIR CASE!

"Again ____ in one short sentence state your strongest argument and why you should win ____"

"I've defeated their value-criteria because I showed first ____, second ____"

"I've defeated their first contention because I showed first ____, second ____" (do same for additional contentions)

"Now, go to my case. I've won my value-criteria because I showed ____."

"I've won my First Contention because I showed ____." (do same for additional contentions)

"Vote Affirmative."

Have Time? Try to get this time—it is important.

WEIGH THE ARGUMENTS IN THE DEBATE: "My contentions have more impact/importance because ____."

NEGATIVE CASE

All examples of justified civil disobedience throughout history have been concerning people attempting to subvert tyrannical, dictatorial, or oppressive governments. Democratic societies, which protect minority rights, should not tolerate uses of civil disobedience as an excuse for mob rule. Democracies are governments constructed to allow for representation of citizens; therefore, citizens should show their protest of their government by voting or other legal methods of change. Participating in civil disobedience in a democratic society only operates to hurt your neighbors.

VALUE AVOIDING VIOLENT DISORDER IS KEY

A. Disturbing the community with disobedience creates a real threat of violence

Eisenhower Foundation, 1968, Report of the National Advisory Commission on Civil Disorders," The Eisenhower Foundation, <http://www.eisenhowerfoundation.org/docs/kenner.pdf> (accessed 9/6/15)

Disorder did not erupt as a result of a single "triggering" or "precipitating" incident. Instead, it was generated out of an increasingly disturbed social atmosphere, in which typically a series of tension-heightening incidents over a period of weeks or months became linked in the minds of many in the Negro community with a reservoir of underlying grievances. At some point in the mounting tension, a further incident—in itself often routine or trivial—became the breaking point and the tension spilled over into violence. "Prior" incidents, which increased tensions and ultimately led to violence, were police actions in almost half the cases; police actions were "final" incidents before the outbreak of violence in 12 of the 24 surveyed disorders.

B. Acts of civil disobedience can make state violence inevitable. When oppressive states see civil disobedience, they tend to incur further violence against its people. It is difficult to overthrow a dictator, which makes the status quo more preferable to civil disobedience.

I. CIVIL DISOBEDIENCE INEVITABLY LEADS TO VIOLENCE AND CONFLICT

A. Civil disobedience in theory is not supposed to need violence but in actual practice, most acts of civil disobedience result in violence. Protests attract individuals willing to conduct acts of violence, which escalates conflict.

Civil disobedience can easily transform into more radical means of dealing with injustice, like violence against the innocent.

Vinit **Haksar**, Fellow of the Royal Society of Edinburgh and an Honorary Fellow, School of Philosophy, Summer/Fall 2003, The Right to Civil Disobedience, p. 412

Of course the mere presence of substantial injustice does not imply that people should resort to civil disobedience. There may be less radical ways of dealing with the injustice, such as the reform of laws and legal protests. There may be more radical ways of dealing with the injustice, such as those that involve violence against the perpetrators of injustice but not against the innocent, and still more extreme ways, such as terrorism, that include violence against the innocent. Whether one should resort to civil disobedience in particular cases depends partly upon ethical considerations and partly on a judgment of its efficacy and its costs in terms of suffering and resources compared to that of the alternatives available

B. Acts of non-violence often incur police intervention. When tensions rise, that intervention can become violent, as officers use tear gas and rubber bullets against protestors.

Protests turn violent, even when they are intended to be non-violent.

The Nation's Editors, November 25, 2014, "Why Ferguson Burns," The Nation, <http://www.thenation.com/article/why-ferguson-burns/> (accessed 9/6/15)

Immediately after St. Louis prosecutor Robert McCulloch announced that a grand jury had failed to indict Police Officer Darren Wilson in the killing of Michael Brown, an unarmed black teenager, waves of unrest roiled the city. A dozen buildings were torched and looted, and two police cars were set ablaze. As President Obama appeared on TV urging calm, cops in Ferguson fired rounds of tear-gas canisters into crowds and deployed armored vehicles with gun turrets that were built for our wars in Afghanistan and Iraq. They eventually arrested sixty-one people. In cities across the country, Americans spontaneously took to the streets, shutting down highways and bridges in acts of civil disobedience.

NEGATIVE RESPONSES TO AFF MORAL DUTY CONTENTION

1. There is no morality in increasing violence—killing and hurting people. There is no morality in failing our communities.

2. Justice is best achieved through the court system. Trying to circumvent the courts with civil disobedience only wastes time. When the courts are called upon, actual policy becomes enforced, guaranteeing rights for all.

The court system is an integral part of maintaining rights for the populous; labor unions prove.

Paul **Frymer**, Assistant Professor of Sociology and the Law and Society Program, University of California San Diego, August 2003, "Acting When Elected Officials Won't: Federal Courts and Civil Rights Enforcement in U.S. Labor Unions," Marquette Law Review, Volume 97, pp. 673-689, https://www.princeton.edu/~pfrymer/pfrymer/Welcome_files/APSR%2097.pdf (accessed 9/6/15)

Using the racial integration of national labor unions as a case study, I find that courts played an important and meaningfully autonomous role in integrating unions while elected officials largely failed to act. Courts, unlike elected officials, offered civil rights groups relatively easy access to the legal agenda. In response to thousands of cases in federal courts, judges rewrote key civil rights statutes, oversaw the implementation of their rulings, and used attorneys' fees and damage awards to impose significant financial costs on resistant unions. Court power was the product of multiple and historically contingent forces that involved the interaction of elected officials, civil rights activists, and the legal community. Elected officials delegated to the courts the power to enforce civil rights laws and tacitly endorsed procedural changes that augmented the courts' institutional powers and the legal community's professional influence. In response, judges and lawyers promoted and implemented a civil rights agenda far beyond the endorsement of elected officials. An historical-institutional approach helps explain how courts achieved and wielded independent power and the consequences of their action for civil rights, labor unions, and the American state.

3. Looking to the government and legislative body can improve our moral situation. In order for a community problem to be addressed, change must happen in government.

The legal system can better our moral obligations and improve our moral situation.

Mark **Greenberg**, Professor of Law and Associate Professor of Philosophy, UCLA, March 2014, "The Moral Impact Theory of Law," The Yale Law Journal, Volume 123, <http://www.yalelawjournal.org/essay/the-moral-impact-theory-of-law>, (accessed 9/5/15)

I have just sketched a way in which the Moral Impact Theory makes a difference at a relatively practical level—with respect to our understanding of statutory interpretation. Before concluding this Introduction, I would also like to indicate how the theory relates to a larger understanding of law's nature and, in particular, of what law, by its nature, is supposed to do or is for. Often our moral situation is worse than it could be in a particular way—namely, that it would be better if our moral obligations (and powers, and so on) were different from what they in fact are. For example, consider a situation in which a community faces a problem, and there are many different ways to go about solving the problem. For a variety of reasons—for instance, because one person's efforts toward any given solution would not make a difference without participation by many others—it is not the case that anyone has a specific obligation to participate in a particular solution. But it would be better if everyone did have such an obligation. The legal system can change the moral situation for the better by changing the circumstances so that everyone does have the obligation to participate in a particular solution. Although I will not argue for it here, my view is that it is part of the nature of law that a legal system is supposed to change our moral obligations in order to improve our moral situation

NEGATIVE RESPONSES TO AFF JUSTICE CONTENTION

1. Civil Disobedience fails. Civil disobedience fosters resentment and rage both from legislators and the populous. It does NOT work; it does not achieve justice.

María José Falcón y Tella, Professor of Philosophy of Law Complutense University of Madrid, 2004, Civil Disobedience, p. 189-190

To this is added that the practice of civil disobedience goes contrary to its own proper ends; for, although the objectives might be deliberate illegally, which it causes creates a sentiment of rage and resentment in both the law-makers and the people, and thus produces a reaction completely at odds with the one sought for; it creates enemies rather than friends.

2. Civil disobedience cannot guarantee protections. The legal system, not protest, is crucial to obtaining justice. Laws can only be changed through the legal system.

Laws have a purpose; legal rules are unlikely to change unless the state decides as they protect people from direct harm through preemption.

Danny **Rosenthal**, Associate, James & Hoffman, **2011**, Assessing Digital Preemption (and the Future of Law Enforcement), p. 607

Yet, there are many areas in which the law is not “doubtful.” In these areas, legal rules are supported by established norms and seem unlikely to change; there are few suggestions that different rules might be more just or efficient. For example, laws prohibiting theft of property are well settled. So too are laws prohibiting physical violence and drunk driving. Perhaps this helps explain why locks, metal detectors, and ignition interlock systems seem more acceptable than other forms of preemption. Even in cyberspace, many laws are fairly settled. For example, prohibitions on identity theft are not typically challenged. Certainly, even well-settled rules might naturally change over time. But given the low likelihood of this and the existence of alternative, if less effective, routes of change, the state can use preemption in these areas with little risk. For example, stasis will not be much of a problem when preemption is used to enforce laws that protect people or property from direct harm.

Neg Speaker Script

Prepare your Speech

On your flowsheet in the 1N Column—Flow your Value-Criteria and Contentions. Remember—your case should be 3.5 to 4 minutes maximum so you can spend AT LEAST 3 minutes responding to the aff case.

Flow the First Aff Speech

Prepare Responses to the Aff Case (Follow the 90% rule!)

Be thinking of questions you can ask.

Ask Questions

For 3 minutes, ask the affirmative speaker questions. Try to ask questions that show weaknesses in their arguments. Focus on asking questions about the evidence they presented. "Where in your evidence does it show/say _____. " Avoid asking open ending questions that let your opponent talk about their best points. Avoid asking in ways that give your opponent a strategic advantage.

Your First Speech

3.5 to 4 minutes: Read your case. Read it to express the meaning. Read it loud and clearly. ***See the Case in the previous pages.***

3 to 3.5 minutes: Respond to the aff case. You should read several pieces of evidence against their case. ***See the responses in the previous pages.*** To do this:

"Against their value-criteria, first ____, second ____"

"Against their first contention, first ____, second ____" (do same for additional contentions)

"Vote Negative."

Answer Questions

For 3 minutes, answer the affirmative speaker's questions. Try to answer without pausing. Try to answer by restating strong arguments and citing sources (memorize them) to back up your answer. Avoid answering in ways that give your opponent a strategic advantage.

Flow the First Affirmative Rebuttal Speech

Prepare Defenses of your Neg Case (Follow the 90% rule!)

Prepare Defenses of your responses to the Aff Case (Follow the 90% rule!)

Your Negative Rebuttal Speech

Start with: "____ in one short sentence state your strongest argument and why you should win ____"

"Against their value-criteria, I showed first ____, second ____"

"Against their first contention, I showed first ____, second ____" (do same for additional contentions)

"Now, go to my case. My value-criteria showed ____."

"My First Contention shows ____." (do same for additional contentions)

"Vote Affirmative."

Have Time? Try to get this time—it is important.

WEIGH THE ARGUMENTS IN THE DEBATE: "My contentions have more impact/importance because ____."

Flow the Second Affirmative Rebuttal Speech

Could you have made stronger arguments so this affirmative rebuttal speech would be less persuasive?