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PROCEDURAL JUSTIFICATION OF CIVIL DISOBEDIENCE

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ABSTRACT

Civil disobedience has a long history as a manner in which members of a state or institution act in a way contrary to law or rules which govern them in order to express any number of sentiments of discontentment. This discontent may be the desire for changes to the law, an expression of distrust or concern with those in political or influential offices, a call to action to other persons of similar status, or an appeal by an underrepresented minority to a majority, etc. However, civilly disobedient behavior also has an equally long history in terms of being extremely problematic in social, political, and philosophical thought. Often contextualized within what we may term a liberal-democratic state, the difficulty of civil disobedience arises in understanding what causes citizens to resort to civil disobedience in order to attempt the enactment of the changes they desire, and if this sort of behavior is justifiable. If laws in a democracy can be changed by popular will, how can intentional law-breaking possibly be justified in social and political life? This then leads to further questions regarding civil disobedience, such as, its exact definition, what types or forms exist, which of these types or forms may be justified over others, and how the state or law should treat disobedients. This project will take up these types of problems as considered by social and political philosophy, and address certain theoretical or actual examples of civil disobedience in relation to the arguments being made. The result of these considerations will be that civil disobedience, understood in a very general way, may be justified through what we will term Procedural Justification. Procedural Justification will require that the justification of any given disobedient action falls upon the disobedients themselves, who must approach their particular situations with a broad and clear understanding of their own actions and the consequences they are likely to suffer. In committing an act of civil disobedience, one must realize the drastic nature of this act and express in full why and how this act is understandable in relation to their social status, subculture, beliefs, etc. The multifariousness of civil disobedience makes it impossible to justify *ex ante*, as has been attempted in political philosophy; instead, as philosophers, we must demonstrate to those considering civil disobedience the difficulties inherent and actions required for the disobedients to justify their actions to the public and use civil disobedience to attain the objectives of their cause.

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1. Introduction

General introduction

Throughout the history of political philosophy, and especially in the past half a century, civil disobedience has been a very interesting, complex, and problematic act. An act of civil disobedience occurs when a person or group acts in a way which is typically illegal in order to demonstrate their concerns over a law or policy. The applications and examples needed for a broad understanding of civil disobedience are incredibly widespread, but often in philosophical literature the exact types of acts which may be considered civil disobedience are often far more limited. One can find an immense number of articles and books on every aspect of civil disobedience, whether on the different acts that each philosopher considers to be or not to be civil disobedience, whether one has a right to commit civil disobedience, whether civil disobedience is justified, how the public and state should view such acts, etc.

In many ways, it seems that political philosophy has created many of its own problems in its varied attempts at comprehending and justifying civil disobedience. This is not to say that these problems are menial, but instead, that the theoretical treatment of civil disobedience sometimes seems to fail to address civil disobedience as an act for which those who commit it must themselves take responsibility. To clarify, if a philosopher attempts to justify civil disobedience as she understands it within her own system, there seems to remain a certain disconnect with the application of such a justification in relation to actual cases of civil disobedience. Whether or not a philosopher argues that civil disobedience, defined in such and such a way, is justified or right within his or her particular system will likely have little bearing on those who consider and pursue this type of social and political behavior.

With this said, should political philosophy simply cease in its attempt to come to terms with this problematic act? This is certainly not what we are trying to say. In fact, the opposite is

true. A new approach to the problem of justification may be precisely what is required to clear up some of the issues that currently exist.

What exactly is our primary concern with justification? In the existing literature, attempts have been made to justify civil disobedience *ex-ante*, before the facts of the particular case is known. We may roughly understand these arguments as attempting to provide certain legal, political, and moral criteria, and saying that if a given act of civil disobedience meets these criteria or follows these steps, it will necessarily be justified. What we wish to argue, though, is that civil disobedience may not be justified in this *ex-ante* manner.

Each particular case of disobedience must be treated uniquely and justified on its own. We do not, however, intend to provide this justification through the granting of necessary criteria which must be met. Instead, what we shall provide are legal, political, and moral parameters which may be expected to affect the justification, as shown through an analysis of both hypothetical and real cases of civil disobedience. Furthermore, although we may grant the parameters which are likely to be essential in the justification of a civilly disobedient act, the decision for, defense of, and justification for any act of civil disobedience must ultimately come from the disobedients themselves. If a citizen feels compelled to commit an act of civil disobedience for certain moral or political reasons, she must be sure of the soundness of her position not only for herself, but in relation to the values held by the state and society. In this manner she is best suited to display to few fellow citizens and to the state the moral grounding for her decision, and why she feels to be correct in asserting that a certain change in law or policy is necessary and beneficial for everyone involved.

We must note that, in comparing attempts at *ex-ante* justification and our own arguments, what we have termed criteria in the prior and parameters in the latter will often coincide, and in

many cases may bear an exact resemblance to one another. This difference must be stressed because, even if it at first seems to be simply terminological squabbling, what we are attempting to provide is vastly different. The use of criteria implies that there are certain, specific requirements that if met can guarantee the justification of an act. Even if the parameters we offer bear a resemblance to criteria in that they demonstrate an expectation that such and such conditions are met for the act to be justified (for example, publicity would be considered a criteria for *ex-ante* justification, and would also be considered a parameter within our model), the difference lies in that our parameters do not guarantee success or justification, but are rather a guideline which we, as political philosophers, offer as a way to understand how certain parameters for justification may vary and uniquely apply to different situations.

Before proceeding, we must add one point of clarification that will be important throughout this piece. Following in the tradition of nearly all the works which have been referenced and cited for this paper, our discussion of civil disobedience will, for the most part, be considered within the context of a liberal-democratic government. We also may understand the majority of our examples to be taking place within a state which has a liberal-democratic constitution, which guarantees the citizens certain rights and protections. As said, this is the case for most of literature we will reference, and the procedural model for justification may be most easily understood and defended within the confines of a liberal-democratic state. In such a state, disobedients may strengthen their own case for the justification of their act through a reference to those very principles which are guaranteed by arguing that such principles are being undermined by the law or policy, or that a modification to a law or policy will bring the law and state closer to that which is constitutionally promised. While we proceed with this as a basis, we will sometimes also reference acts by Gandhi in India, for example, where a liberal-democratic state

was not in place. The procedural model may certainly be applied to cases of civil disobedience occurring in non-liberal-democratic states, but without these principles to fall back upon in their defense, any disobedients in such states may find themselves in a far more difficult position.

The procedural model for justifying civil disobedience

The purpose of this piece is to argue for what we may term the procedural justification of civil disobedience. This method, which we shall also refer to the procedural model, is not intended to provide a hard ‘yes’ or ‘no’ answer as to whether each particular case of civil disobedience is justified or not. Instead, our goal is to note how various and particular the situations and circumstances surrounding each case of disobedience may be, and provide a method for justification which depends almost entirely upon the actions of the disobedients themselves. The heart of the procedural model can be simply stated as so: In deciding to commit an act of civil disobedience, for whatever reasons, the burden of justification for the act rests upon those very disobedients who decide that civil disobedience is the method they wish to pursue in order to achieve their specific goals.

More precisely, what this means is that, due to the multifarious nature of and reasoning for civil disobedience, we feel that attempts to justify civil disobedience *ex-ante*, before the act itself takes place, prove too problematic to be of use in actual circumstances. Such attempts may be interesting and raise valuable questions about what must occur in the justification of civil disobedience, but ultimately, the reasoning for any given act of disobedience will be so widespread and different from case to case that any attempt to justify acts of civil disobedience before the conditions are presented seems lacking.

One may ask, however, in what sense are we using the term justification? Here, we

intend justification as a necessary defense for particular actions, a defense which demonstrates that the actions which have been committed were proper and necessary given the conditions and circumstances. In this sense, we require that justification be provided by disobedients calling upon other citizens to understand their perspective and reasons for acting through an appeal to the moral and political values which hold among the majority of the citizens and public officials.

Here, a clarification in our terminology will be of great importance, which is the separation of a right and a justification. As shall be shown, we defend the idea that a philosophical right to civil disobedience exists. What this means is that, we necessarily grant that there are cases where civil disobedience is not only a possible, but morally or politically viable course of action which may be pursued in order to call for changes to law or policy, thus allowing disobedients to take an active part in enacting such changes. The right to civil disobedience as we understand here applies to civil disobedience as a concept, however, instead of to any particular case of civil disobedience.

What we do not grant is that justification for civil disobedience may be given in this same, widespread fashion. Instead, justification relates to each particular case and its given circumstances, whatever they may be. Such justification must arise through the acts of the disobedients themselves and the manner in which they present their case to the state and public. With a general right to civil disobedience demonstrated by political philosophy, what the civil disobedient must pursue is a particular right to civil disobedience. The disobedient-to-be must ask herself questions about her own moral and political values and how these values align with other citizens and with the rights expressed by the liberal-democratic state in the constitution. She must decide if, after deciding that she feels morally correct in acting civilly disobediently, she has strong case which may be presented to the public and the state in defense of her actions.

Not only is this essential in her decision to act, but so are any personal considerations she may have. This will be elaborated later on, but for now we should state that civil disobedience will almost always require some type of personal sacrifice by those committing it. She must weigh the costs of acting (personal safety, family well-being, career) against the costs of not acting (allowing an unjust law or policy to go unchallenged). For many people, the costs of action may be too high, even if the injustice or immorality of the law is great. For others, however, the cost of not acting is too great, and thus they feel compelled to commit civil disobedience in an attempt to correct certain social or political ills.

In short, the right to civil disobedience *in general* may be granted philosophically, while the right to civil disobedience *in particular*, rests upon the disobedients themselves. The right to a particular act of civil disobedience must be defended by the disobedient, and in this way, demonstrates justification for the act. The obvious question then becomes, if this is so, how does one justify her act of civil disobedience? The answer to this question correlates to our reasoning for shifting the burden of justification off of philosophy and onto the civilly disobedient actors. The justification for any given act is necessarily contingent upon the circumstances surrounding that particular case. These circumstances will vary from case to case, and thus so will the justification for each particular case. This is why justification may not be philosophically derived through a simple criteria format as previously mentioned. Instead, the procedural model aims to provide a basic groundwork for justification that takes into consideration a wide array of parameters in each case, while then calling upon the disobedients in any given case to justify their own acts through a defense of their right to commit civil disobedience.

Our intent here is to go into more detail about the parameters of and manners in which a variety of different cases may be justified in our analysis of the various types of disobedience

themselves (chapter 2 of this piece). While all of the following claims will be addressed more fully later on, we must obviously provide a general outline, however, which we shall now do. The justification for a particular act of civil disobedience must arise through the act itself and its portrayal to the state and the public. The first condition of success here comes before the act itself. Any disobedients-to-be, prior to committing disobedience or even choosing disobedience as the proper means of addressing a given issue, must weigh all options before them. Civil disobedience is, by its very nature, a contentious act, and despite our granting of a philosophical right to such an act, this right comes with certain stipulations which will be important. There are numerous avenues of legal redress which are possible for any issue that may arise within the polity. If some type of legal redress is still an option which has not been exhausted, this may be of greater value to the disobedients-to-be than to immediately choose civil disobedience, but we will not state as a rule that *all* legal options be exhausted. If all legal options are in fact exhausted, or if these options are not realistic given the circumstances of the case, then civil disobedience seems a much more plausible means for calling for a certain reform or change. In some cases, civil disobedience may prove to be insufficient - then the case may require more drastic types of disobedience, be it violent or revolutionary, but this is beyond our current discussion.

If civil disobedience seems to be a plausible and realistic means for calling for and enacting the changes a group feels necessary, the next step involves the ‘what’, ‘where’, and ‘when’ of the act. This step may be understood as the strategy of the act. The most important of these three considerations is the ‘what’ – what law is to be broken, and in what way is it broken. As for the ‘where’ and ‘when’ - there may very well be certain places and times that would be considered optimal for the group to break this law in a way that best suits their needs regarding

justification. Additionally, the ‘who’ is important, and must be considered by the group. Should every member of the group take part in the act and possibly suffer the consequences, or is the overall goal best served by only a certain member or members of the group committing the act while others hold back for certain reasons.

If our hypothetical case is still on track – civil disobedience has been decided upon as a plausible and valuable action, and the strategizing has taken place surrounding the particulars of the action – next comes the action itself. The act is obviously a pivotal moment in the whole process of committing civil disobedience, but may be understood in different ways. In cases of planned disobedience, where the group has a clear strategy that they are following, the act itself may even be seen as a formality in comparison to the planning for and justification of the act. To explain by way of metaphor: the car has fuel in the tank, air in the tires, and the route is planned, but the person cannot drive anywhere unless they actually turn the car on. While there can obviously not be justification for disobedient acts without any actual act of disobedience, what we mean to stress here is that, if the disobedients have a clear goal in mind which is the reason for the act, the act itself is merely a step in terms of, more importantly, achieving this goal.

This cannot always be the case, however, as not all types of civil disobedience are planned out prior to the act. Sometimes civil disobedience is a spur of the moment decision because of unforeseen circumstances which force an immediate choice upon the disobedient. This unplanned disobedience will be elaborated upon later regarding what Dworkin calls integrity-based disobedience. Even if this is so, the steps which follow should be roughly the same for both planned and unplanned disobedience.

With everything that has just been said in place, now begins the actual process of justifying the act. In most cases, with exceptions to be noted later on, the disobedients want their

act itself to be public, and they must also publicly claim responsibility for the act. Within the procedural model, the public nature of the act cannot be stressed enough. Again, while certain exceptions do exist and may still prove justifiable, we may assert that the publicity of an act of disobedience, in both senses noted above, often proves to be the most important parameter which is likely to aid in the overall success of the act and result in justification for it.

Acting publicly and claiming responsibility for this act is a statement being made by the disobedients to their state and fellow citizens. In this way, the disobedients are saying: “This issue is of extreme importance and urgency to us (us being either the group who is acting or the whole of the population), and we have acted in this way because this issue requires everyone’s immediate attention.” Any act of civil disobedience is an attempt to force others to see a view which may be underrepresented or not fully understood. Publicity must be understood by the disobedients as a dual-edged sword, however, especially regarding media that may challenge the disobedients positions on any given chance. In this way, publicity can be stated as an often necessary but always tricky aspect of disobedience.

After the act has been committed, the disobedients now face the challenge of justifying this act. Depending upon the particulars of the case, this justification may take place in the media or in the courtroom, and may address either the public or the state. In a planned case of civil disobedience, those who have acted and taken responsibility for their actions must now demonstrate the circumstances which have led up to this point. This may roughly be done by explaining why this group feels that they had a right to commit civil disobedience as opposed to other courses of action (including any legal actions which have either been exhausted or unused, depending upon the case), and by explaining the strategy of their action. For an unplanned case of civil disobedience, their reasoning in defense of the action will largely revolve around their

moral situation at the time of the decision. “I committed this act because, when forced to make an immediate legal or illegal act, the illegal act was the greater moral choice at the time.”

In essence, the procedural justification of civil disobedience places the burden of proof upon the disobedients to demonstrate the circumstances which led to their act, and what they hope to have achieved by this act. If they are to successfully do this, they must force the state and public to take their perspective on this particular issue or range of issues. The better they can achieve this, the more successful their act is likely to be.

At this point, the reader is likely to have some very valid concerns about what has been said thus far. Such concerns may be, “what time frame is allowed for justification?” and “how are we to measure success or that the act has been justified?” The most we may ask is that the reader postpones such concerns until the end of this piece, where they will be addressed more fully. This is so that we may approach such important considerations with a more full understanding of what the procedural model is, after our analysis of the different types of civil disobedience and the manner in which the procedural model applies to each of these.

Plan of argumentation

To this point, our claims as to what the procedural justification of civil disobedience is have been very general, but thus far we have only attempted to loosely demonstrate what exactly the procedural model calls for and how it may best be understood in entirely hypothetical situations. This is very much intentional, however, as the reasoning behind the procedural model is precisely that the justification for each given case of disobedience is almost entirely dependent upon the particulars of that case. A more expansive understanding of what the procedural model is and its applications regarding particular cases will be demonstrated in the sections that follow.

To this point it should suffice to say again that the procedural model requires justification which is dependent upon the particular case, and this justification is derived from the manner in which the disobedients act and defend their act to the state and public.

It must be said that the procedural model of justification in no way can guarantee an act of civil disobedience will in fact be justified, but this should be obvious given our previous reasoning. Instead, our hope here is to more fully sketch out what the procedural model is, how it may be understood in relation to past examples of civil disobedience and the types of disobedience to be discussed shortly. Through the course of elaborating upon the definition and boundaries of civil disobedience and the way in which the procedural model applies, we may hope to create an understanding of the greater complexities and necessities which arise if a group hopes to successfully utilize civil disobedience as a means for achieving their goals. The procedural model will apply differently to different cases, and in this way, disobedients must also understand that how they go about defending and justifying their act will be contingent upon the particularities of their specific case and circumstances.

We shall begin this process with the following section, which will provide a more concrete framework for our discussion through an analysis of some past definitions of civil disobedience. As will become immediately apparent, Hugo Bedau's article, "On Civil Disobedience," has been a huge inspiration for the procedural model. In fact, we may even say that the procedural model is directly an attempt at addressing the concerns which Bedau raises regarding the problems of justification. For this reason, his definition of civil disobedience and the reasoning he provides for this will continuously be in the background of our discussion.

With a definition of civil disobedience on the table, we will next move onto an analysis of each aspect of this definition, drawing upon multiple other philosophers as well. Each aspect

will be considered separately, with both real and theoretical examples provided which serve to further elucidate why it is important to our overall understanding of disobedience. Furthermore, in each of these considerations that we shall provide of these different aspects of civil disobedience and the examples thereof, we shall also categorize the different types of disobedience which exist, and how all of this relates to the procedural model. By following this method, we hope to simultaneously achieve multiple goals. Such goals are as follows: a greater understanding of civil disobedience and the boundaries of what this term includes; how each type, category, and aspect of civil disobedience relates to the others; and finally, how our procedural model considers each of these cases.

In our third chapter, we shall consider a variety of concerns that have been raised regarding the justification of civil disobedience. Such concerns include the circumstances which allow for disobedience, whether or not a moral obligation to obey law truly exists or not, and finally, the moral framework which exists to serve as a basis for justification. In these sections we hope to further explain the manner in which the procedural model may respond to such concerns in the justifying of civilly disobedient acts. Here we shall be aided to a great extent by Joel Feinberg's article, "Civil Disobedience in the Modern World," in demonstrating our previous claim that a general right to civil disobedience does in fact exist, contrary to some who argue that there exists a moral obligation to obey law. While we will agree with Feinberg that a moral obligation to obey law does not exist simply because it is law, this discussion will further serve to elaborate what types of considerations will be crucial for disobedients in their attempt to justify their actions. This will then bring us back to Bedau, where we will discuss the moral grounding which will play an important role in justification as well.

Finally, we will conclude by reemphasizing different aspects of the procedural model and

by addressing any lingering concerns. Such concerns, some of which have been raised earlier, surround the types of criticisms which may be brought forth against the procedural model of justification. We hope to sufficiently respond to such criticisms and concerns, and, in doing so, demonstrate the strengths of the procedural model. We must also preface any further discussion of civil disobedience with the fact that, despite what should prove to be a lengthy analysis of a variety of topics, much will remain unsaid that could also be of importance. The literature that exists on the philosophy of civil disobedience is so extensive that it would be impossible to consider each and every aspect of this topic. Despite this necessary fault, by the end of this piece we should have in place the groundwork for what will be shown to be a different and interesting new way of approaching the topic of justifying civil disobedience.

2. Definitions, Boundaries, and Examples of Civil Disobedience

Hugo Bedau's "On Civil Disobedience"

In his article, "On Civil Disobedience," Hugo Bedau provides a definition of civil disobedience, and lays out many of the problems which arise in defining civil disobedience and in justifying its implementation as a tool in social and political life. Bedau's article, while from 1961, is a good starting point for this analysis as its main purpose is to provide an understanding of the basic components of civil disobedience in political philosophy. Also, Bedau ends by briefly turning to the problems that arise in attempts to justify civil disobedience. This will provide us with the framework we need to continue an analysis of these issues and address the concerns in justifying civil disobedience that remain in contemporary political philosophy.

First, we shall introduce Bedau's final definition of civil disobedience, and a related definition which is offered by John Rawls. Then, we shall move through Bedau's article piece by piece so that we may analyze the arguments that lead to this conclusion. Finally, we will end this section on Bedau by addressing some of the concerns he raises regarding the problematic aspects of justifying civil disobedience. Throughout this process, we shall begin to introduce some of the problems which will be essential in understanding the procedural justification of civil disobedience currently being proposed. Eventually, we will see how the issues that Bedau raises directly correlate to the types of problems the procedural justification of civil disobedience attempts to address.

Before we may discuss these issues, we must begin with Bedau's definition of civil disobedience, and then work backwards through his argumentation. Throughout his article, Bedau looks at civil disobedience from a variety of perspectives, discussing nuances and clarifying his own views. He eventually lands on a definition of civil disobedience, which is as

follows: “Anyone commits an act of civil disobedience if and only if he acts illegally, publicly, nonviolently, and conscientiously with the intent to frustrate (one of) the laws, policies, or decisions of his government” (Bedau 661). This definition is not groundbreaking in any specific way, especially considering that it follows the traditional conception of civil disobedience fairly closely. It is very useful, however, in how concise and direct it is. Bedau is very explicit here about what can be considered civil disobedience, and while we will not share this definition exactly, analyzing the way in which Bedau comes to these conclusions will allow us to specify the ways in which we shall both agree and disagree.

This definition of civil disobedience is extremely similar to that which Rawls provides in *A Theory of Justice*, there stated as “a public, non-violent, 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” (368). The wording is almost identical at points, which is of little surprise considering that in his article, “The Justification of Civil Disobedience,” Rawls cites the same article by Bedau regarding the definition we previously referenced (*Collected Papers*, 181). If nothing else, this seems to be a strong statement about the influence Bedau’s article has had upon other prominent political philosophers.

Now, we shall work through this definition piece by piece in order to understand Bedau’s conclusion, while also drawing upon other philosophers and their own arguments, emphasizing the ways in which they are similar or different to Bedau’s, and how this effects our own particular project.

Illegal act

First, for Bedau, a citizen commits civil disobedience when he or she acts illegally with

the action being directed towards concerns with a law or government policy (Bedau 654). He separates these illegal acts into positive acts, the doing of something prohibited by law, and negative acts, the refusal to do something demanded by law. Bedau's example of a positive act is trespassing on government property, while other examples from American history would be the Civil Rights era lunch counter sit-ins and the Boston Tea Party. Examples of negative acts would be Thoreau's famous refusal to pay taxes and Vietnam War draft-dodging. Each of these cases, however, raises questions about the boundaries of what qualifies as civil disobedience or what is considered a different act, but we shall return to this later on.

The necessity of illegality for an act of civil disobedience is a fairly reasonable expectation, as the illegality of the act is what gives civil disobedience its force in political life and makes it such a contentious issue in philosophy and law. One could perhaps argue that the breaking of social rules or expectations could be considered civil disobedience, but this argument carries little force unless the social rule is also expressed in some form in law. The breaking of a law already means that civil disobedience runs counter to the social expectation of following the laws and decisions of the state, but people act contrary to social norms on a regular basis without breaking any laws. The only perceivable case that could be made to include as civil disobedience legal acts which break social rules would be in a scenario where the community or cultural rules are explicit, extremely strict, and carry the type of force that laws do for most others. If this is so, acting against them would be akin to subjecting oneself to severe punishment by the community or ostracization from the community. Unless this is the case, civil disobedience must be illegal, as the consequences for illegal action tend to be far more severe than could be expected for an act which is simply socially frowned upon.

Public and civic act

In addition to its illegality, Bedau argues that civil disobedience must be a public and civic act (655). With certain exceptions, the publicity of the act is one of the pivotal parameters in the determining the success and justification for acts of civil disobedience. If one commits civil disobedience in order to express the desire that a law be abolished or reworked, or public policy be modified, the disobedient usually wants to make her case well known to other citizens and to public officials. In many cases, any media attention that an act of civil disobedience can create is crucial in attempting to make a minority position known, demonstrate the urgency of an issue, or express the views of a subculture or community that is often underrepresented otherwise. Also, a disobedient typically wants to take credit for the act they have committed in order to differentiate the act from simply breaking the law for one's personal gain. The disobedient wants the public and the state to know who she is, what her beliefs and positions are, and why she has chosen civil disobedience in order to demonstrate her conviction regarding an issue.

The publicity of a civilly disobedient act can work against the disobedient, however. Once the act is committed, the disobedient has little control over the ways in which the media present the act to the public at large. For example, a disobedient with a past criminal record may easily be dismissed as a petty lawbreaker. An interesting case in terms of the publicity of civil disobedience would also be the Occupy movements occurring through the United States over the past year. While some in the media have praised those involved and the beliefs being expressed, others have dismissed them as naïve, young, uneducated, etc. The reaction that can be expected from the media and public regarding an act of civil disobedience should play an important role in a disobedient decided upon the course of action which will best aid in justifying her position.

As for civil disobedience being a civic act, Bedau claims it is “an act that properly belongs to the public life of the community” (656). Again, this is essential in separating disobedience from simple law breaking, which is a self-serving act. Perhaps the disobedient is serving herself and her beliefs by resorting to civil disobedience, but it is not selfish in the way that a crime such as theft would be. Even if the act can be seen as self-serving, it must be shown that her actions align with the beliefs of several others who are not being properly represented, and overall the change in law or policy that is desired is not simply for her own sake, but for the sake of all others in similar position. In breaking a law and making this act public, she is attempting to achieve a goal, but only through a long term struggle which will likely require some sort of suffering, be it at the hands of the public, media, or legal system.

Civil disobedience is a sacrifice of a citizen’s self and livelihood in order to make changes that she feels are necessary or important to the community and public at large. In making her act public, the disobedient must clearly demonstrate why her act is a civic act and is not meant to be mere troublemaking. If she can show the public and the state that her intentions are not self-serving in an immediate way, but are instead directed towards the long term benefit of the state and community, she will greatly aid her efforts at gathering support and sympathy for the cause at hand.

A certain difficulty arises, however, in attempting to distinguish if a civilly disobedient act is meant to benefit the society as a whole, or a certain community, subculture, or minority exclusively. If the latter, the disobedient’s case becomes harder to justify, unless she is capable of clearly expressing how achieving her goal for a subculture truly does benefit the whole of society. This seems a simple enough point to make, but it cannot be stressed enough in the actual implementation of civil disobedience if those participating wish to achieve their goals.

If the purpose which the disobedient expresses with her act comes off as too narrow, or that she is simply attempting to achieve benefits for her subculture at the expense of the majority, she will struggle to find the support which is required to make her case strong. Here, she must understand that the way she goes about presenting her case is key to success.

What if a disobedient feels that she is performing a civic act, but does not make it public (in the sense that she takes responsibility and accepts the consequences)? For instance, a group sneaks onto government property to sabotage government equipment that will be used for a controversial project, or uses spray paint to graffiti political messages on a government building. They may feel that they are performing a civic duty which would benefit the society, but their purposes are not best served by being detained and going to court.

Joel Feinberg refers to this type of disobedience as conscientious evasion. He considers it a borderline case of civil disobedience because, in many ways, the end goals are the same in terms of acting on moral ground and with an eye towards justice, but the fact that the disobedients avoid detection creates a difficulty. For this reason, conscientious evasion can be seen in some ways as a common crime. For the disobedient, however, the avoidance of detection is not meant as an act of personal gain such as in common crimes. Instead, “he thinks that he can do more good for the cause of justice by remaining free to violate the iniquitous law some more than by making a martyr of himself” (Feinberg 130).

Conscientious evasion raises an important consideration on the importance of the public nature of civil disobedience. While there may certainly be cases that qualify as civil disobedience without necessarily being public, the disobedients must again keep in mind the importance of their public image throughout this process. When a crime is committed in the name of civil disobedience without anyone taking responsibility for the act, the disobedients

become a cause without a face. This then becomes much easier for public officials or those in the media who oppose such actions to dismiss as law breaking. What is intended to be a noble act of civil disobedience easily becomes an act of hooliganism, or even in some cases, terrorism. A disobedient has a stronger case if she is willing to face the public herself and clarify her or her group's actions and positions. On the other hand, if she does not make herself known to the public and accept responsibility, the act - even if it is a part of a worthwhile cause - is much easier distorted and taken out of context by any opposition.

As this case alludes to, the publicity of an act of civil disobedience can be understood in a twofold sense. The first sense of the publicity of civil disobedience is that the act itself is performed in public, within the view of other citizens and the state. The state and media may even be made aware of the possibility of the act beforehand, in order to further draw attention to the disobedients' purposes. The second sense of publicity relates to the fact that typically, (despite the example provided above), the disobedient publicly declares that she is the person who has committed this act, and she takes responsibility for it. Often these two senses of publicity go hand in hand, but this is not always the case, as in our example of spray painting political messages on a government building but avoiding detention. Here, perhaps a group admits responsibility without any individuals coming forward. The opposite may hold as well, in that a group calls publicity to something they have done without specifying what exactly the particular act is. In this case, however, such covert actions may be equated with more extreme forms of disobedience or terrorism. As a result, both aspects of the publicity of civil disobedience, the publicity of the act and the disobedient taking public responsibility for the act, will each in their own right play an important role in the manner in which the act is portrayed.

Let us return to the idea of conscientious evasion for a moment, however, to further

clarify another difficult aspect of the publicity of civil disobedience. Both Joel Feinberg and Ronald Dworkin refer to white northerners aiding escaped slaves despite the Fugitive Slave Acts, which were incredibly controversial laws that existed in the United States prior to the Civil War. These acts demanded that citizens notify authorities of any escaped slaves they knew of, that they did not help escaped slaves in any way, and that anyone caught aiding an escaped slave was subject to harsh fines and penalties. This would fall into Feinberg's category of conscientious evasion, as those breaking this law by sheltering and aiding escaped slaves could only continue to do so by avoiding detection. We would not expect one of these people to intentionally be caught in the act aiding an escaped slave simply so that they may go to court and fight the law, as by doing this, the disobedient would be essentially turning in the slave anyway and betraying the whole moral reasoning for the act in the first place.

In "Civil Disobedience and Nuclear Protest," Dworkin places this example into a category he calls integrity-based disobedience. What this means is that, for those involved, their integrity and conscience forbid them to follow what the law demands (106). As will be discussed more fully in a later section, morality is a primary consideration in all acts of civil disobedience. Here is a case where, not only do the laws of the state and the morality of a certain group not align, but are completely in contradiction. Dworkin describes these types of cases as matters of urgency, meaning that the disobedients cannot in good conscious follow the law at all, as opposed to cases of disobedience where the illegal act is more strategic in terms of the location and time of its taking place.

How should this type of case be considered within the procedural model? These types of disobedients would certainly view themselves as committing a civic act, completely within the confines of justice. As for the publicity of the act, however, hiding fugitive slaves would

certainly be counter to both senses previously discussed, as too much publicity in either regard would betray the moral reasoning which urges, or even necessitates, such action. While the procedural model emphasizes the importance of publicity in most cases, the type of publicity that is emphasized is not simply for its own sake, but instead is suggested as one of the best ways a disobedient may justify her act to the state and the public. This is especially important in cases of disobedience that are more politically charged, or where the moral considerations of a group which oppose a given law are less obvious or unclear and must be made apparent to be understood. For the Fugitive Slave Acts case, however, there is little to no grey area in understanding how the laws being enforced are in direct opposition to the morality and integrity of a large portion of the population.

This is not to say that the procedural model completely gives up the expectation of publicity in such cases, but instead that there may be a differentiation that occurs in cases of such drastic moral consequences. While most acts of disobedience are in themselves a call to reform law or policy, in this case, the disobedience itself may take place outside of any public calls for reform. We may rightfully expect these disobedients, if they feel strongly enough about the immorality of a law that they feel justified in breaking that law, to also be active supporters and advocates of politicians and interest groups which also support the overturning of this policy. If the immorality of the law is so immediately apparent, each individual disobedient should have little trouble finding others who completely agree with her positions and actions. Thus, while the illegal and disobedient act itself (aiding escaped slaves) may remain hidden for strategic or moral reasons, we should expect those disobedients to also be active in more public efforts which more directly attempt to change the immoral or unjust law or policy.

Non-violent act

One of the most debated aspects of civil disobedience is that it must be a non-violent act. Bedau's reasoning for following the non-violent tradition in civil disobedience is that the disobedient must be "prepared to suffer without defense the indignities and brutalities that often greet his act" (656). There are numerous reasons for advocating a non-violent form of civil disobedience, many of which are fairly obvious. As has already been stated numerous times, the public image of the civilly disobedient act is crucial to its overall success. Any sort of violence committed by the disobedient, even if only retaliation or in a claim of self-defense, will provide ammunition for those in opposition to the disobedient's positions. Violence is seen as a more extreme act and ultimately makes justifying the act incredibly difficult. If a disobedient is already breaking one law, violence on her part will be another crime which she must face afterwards. Perhaps she can justify breaking the law that is the original goal of the act, but by being violent she creates a much more difficult legal situation for herself.

Furthermore, non-violence may be important to acts of civil disobedience if that act is met with violence or brutality, because refraining from retaliation will generate much more sympathy and support for the cause. Who can forget the images from the Civil Rights movements in the United States, where peaceful protesters were beaten by police officers and attacked by police dogs? Or the Jallianwala Bagh massacre in India, where hundreds of peaceful protesters were killed and wounded by soldiers with orders to shoot anyone who had gathered? One would hope that in a liberal-democratic state, civil disobedience does not necessarily invite violence from figures of authority, but when this does occur it may serve to strengthen the disobedients' case by displaying to the public how peaceful protesters or disobedients are met with unnecessary amounts of violence. The majority of the public may not even agree with the

cause of the disobedients, but just as a disobedient will struggle to justify violence towards others, so will a citizen struggle to justify their officials and police officers advocating violence and extreme force in dealing with a peaceful sit-in or public protest.

Feinberg also advocates a non-violent understanding of civil disobedience, for many of the same reasons. He states: “The main reason, in short, why the civil disobedient wants his act to be nonviolent is the same as his reason for wanting it to be public – so that he can convince the majority of his fellow citizens that the act is indeed conscientious and sincere and intended to address the public’s sense of justice” (131). The disobedient must hold, or at least show his or herself to hold, some sort of moral high-ground in the act of disobedience, demonstrating a commitment to justice and the liberal principles of the state. In extension from this, Feinberg mentions that civil disobedients must be wary of their act becoming or being interpreted as intimidation. Such acts, which may include “disruption of traffic, strikes, boycotts, and political pressure,” will often work against the disobedient in the long run. Civil disobedience should be seen as an attempt at creating an open forum for moral deliberation, not as a threat to ‘give us what we want, or else!’

We may thus conclude here by stating that, as far as the procedural model is concerned, there is rarely a justifiable case to be found in which civil disobedience is committed in coincidence with violence. We should have no trouble providing a case in which violence occurred within civil disobedience, but regarding the purposes of our arguments, this is not advisable. Violence is too problematic and adds an unnecessary burden upon the attempts to justify the disobedience. These concerns extend to cases of intimidation, as Feinberg mentions, but we may more easily conceive of justifiable cases of civil disobedience which use intimidation in some way. If this is the way in which a disobedient chooses to act, we still grant

that they may meet the parameters for justification, but we must also suggest that they proceed with extreme caution in maintaining a balance between acting disruptively and attempting to open the aforementioned moral forum with other citizens and the state.

Direct and indirect disobedience

Bedau, Feinberg, Dworkin, and Rawls all discuss the distinction between direct and indirect disobedience. Direct disobedience is when the law being broken is the exact law which the disobedients want to change or remove. Here, an example may be something akin to smoking marijuana in public in protest of its prohibition. The disobedients are directly violating the law they wish to change, which likely results in them to be arrested or cited, but through this they are given media attention and the ability to fight the charges in court or simply bring attention to the cause.

Indirect disobedience, on the other hand, is the breaking of a law not to change that specific law, but to draw attention to a larger issue or policy. Those taking part in the Occupy Movements have been cited with charges such as illegal gathering and unlawful camping, but these are obviously not the issues those partaking wish to address. Instead, the reason for breaking these laws is to create attention to larger concerns with the social status of American citizens and the economic policies which have been enacted by the United States government. Somewhere between direct and indirect disobedience would be cases such as American Indian tribes fighting over treaty rights. In one case, the Ojibwe of Minnesota illegally casted nets and were fishing in a public lake during the offseason. They were cited for this, and while they are attempting to fight the citations regarding their right to fish, they are also fighting the larger scale issue of the ways in which their treaties with the United States and state governments have been

interpreted and enforced.

In his article, “Civil Disobedience in the Modern World,” Joel Feinberg argues against including as civil disobedience what he considers to be ‘test cases,’ where “private citizens can get constitutionally suspect laws overturned by the tactic of getting themselves convicted for disobeying them and then launching an appeal upward through the courts” (130). His reasoning for not including test cases is that he does not view the lawbreaker as “intentionally violating a law,” because this person views their action as completely within his legal rights. Feinberg has duly noted one type of differentiation that exists within disobedient acts, but we shall disagree with his exclusion of these acts.

Our previous example of the Ojibwe intentionally breaking local laws to fight for treaty rights would certainly fall into Feinberg’s classification of a test case and thus be excluded from civil disobedience, as would numerous (or perhaps even all) examples of direct disobedience. Perhaps Feinberg is correct in asserting that there exists a separation between disobedience, specifically direct disobedience, which argues that a law is unjust for moral reasons and a disobedience which argues that a law is unjust for constitutional reasons, but this division is too fine to be of use to us. Instead, we should consider that, in either case, if a disobedient is arrested and/or cited for her actions, she has broken the law and must then defend herself publically and legally. Certainly she aids her case if she holds a strong argument based upon the constitution of the state, but the fact remains that if she must defend herself in court and fight a law, in terms of the procedural model, the responsibility of justification still falls upon her shoulders. Thus, while useful in an analysis of particular cases and types of disobedience, the procedural model of justification includes such test cases within our understanding of civil disobedience.

Not only should a disobedient avoid any sort of violent action which is likely to hurt her

cause, she should avoid any unnecessary actions outside of this cause which are not in some way related to the overall purpose of the original act of disobedience. In either direct or indirect disobedience, the disobedients must be able to show that they are united in their cause and have a clear goal in mind. With large scale disobedience unification is crucial, as every person taking part in the act becomes accountable for the overall image of the cause. For direct disobedience, this means breaking only the law which is the target of their action. Civil disobedience must remain a civic cause; if some disobedients take their illegal act as an opportunity to break any and all other laws they can, it will ultimately be detrimental to the whole.

This, however, becomes trickier for indirect disobedience. The fact that indirect disobedients cannot break the exact law or policy they are attempting to address (at least we may assume this to be the case for choosing indirect over direct) means that they must be extremely strategic and careful in planning what law they are breaking and how they go about their act. In some cases, the choice is easy as there are certain laws that may be broken in order to address larger policy issues, as shown with the American Indian tribes previously mentioned or in a case such as Rosa Parks, where refusing to move from her bus seat was just one act against a the larger policy of segregation.

Bedau rightly argues that civil disobedience is an attempt to frustrate law in order to force attention upon the purpose at hand. The fine line here becomes frustrating law enough in order to make the act acknowledged and create attention towards the goal, while not overacting to the point of hurting one's cause. Furthermore, he states that "the remoteness of the connection between the disobedient act and the objectionable law lays such acts open to the charge of ineffectiveness and absurdity" (658). Here again we must emphasize the importance of a well-planned act of disobedience, one that may frustrate the law and those officials with the

responsibility of enforcing the law, without, however, being on one hand too menial of an illegal act to even be noticed or reported, or on the other hand being too extreme to be considering a civic-minded act. For the Occupy Movements of the past year, the overall message and goal was not as relatable to a tangible law which can be intentionally broken and fought in court. In some ways the purpose was to create a presence on Wall Street, create a nuisance, and cause problems for those attempting to work there; but as mentioned before, most of the laws broken were laws about camping in public parks and such.

For any disobedients we may imagine to be acting in reference to our procedural model, the difficulty in this and similar indirect disobedience cases becomes determining the most effective way to proceed in relation to the goal. If the disobedients are going to break a law, they must choose a law that is simultaneously significant enough to draw attention to themselves, but also harmless enough to not alienate any support they want to gather for their cause. Furthermore, indirect disobedience must maintain the same unification and organization mentioned earlier. Engaging in civil disobedience in no way provides a mulligan to disobedients to disregard all lawful behavior. Indirect disobedients must actually proceed with even more caution than direct disobedients. Because they cannot act in a direct way, their only reason for breaking any law is to draw attention to an issue they believe to be of the utmost importance. If those taking part in this type of disobedience begin breaking a variety of laws and straying from their original purpose, their goal will likely become overshadowed and their act more difficult to justify. In just the same way that violence is ultimately detrimental to most acts of disobedience, free-for-all behavior will expose any weaknesses in the disobedient's organization and provide authorities, police, and those in opposition to the disobedients with all the more reason to take harsher action against them.

This was one of the shortfalls of the Occupy Movements, as in many places, the camps became scenes of drug use and debauchery. Instead of maintaining the unification which is necessary to any type of mass disobedience, many people flocked to the Occupy camps as a place where they could get away with any type of lawless behavior. Even if these problems only occurred a few times or because of certain people, to use an old cliché, the chain is only as strong as its weakest link. Any instance of drug use or other crimes in the camps gave police all the more reason to move in and begin detaining, citing, and arresting at will. For this type of disobedience to succeed, every single person must be unified in their resolve and united in their cause, as only in this way will the message be heard without being tainted by issues of character or excessive unlawful behavior. The public can identify with groups illegally demonstrating if their intent is good and they show themselves to be otherwise virtuous and civic minded people, but once the civic image is gone, so is the public support.

While this criticism of the Occupy movements may be rather harsh, the intention is to demonstrate actions which, if not in line with the strategy of the group as a whole, may prove detrimental to the cause at hand. This is not to say that the Occupy movements do not qualify as civil disobedience or were not successful at all, as many will claim that despite the shortcomings we have mentioned, the Occupy movements were important in demonstrating a new type of energy, enthusiasm, and drive to enact reform within the United States (as well as other countries which have had Occupy camps) that has been missing in recent years. One of the goals of the movements was to raise awareness of social and economic inequalities currently exist in their respective countries. Inasmuch as this was the goal, we may say that these disobedients were successful. This also points to a concern which we shall address in Chapter 4 though, regarding the measure of success of the act and justification for the act.

Conscientious and goal-oriented act

Bedau claims that an act of civil disobedience must be a conscientious act, explaining that “the dissenter proposes to justify his disobedience by an appeal to the incompatibility between his political circumstances and his moral convictions” (660). This claim is perfectly in line with our present argument in favor of procedural justification for civil disobedience. Taken in a literal way, the dissenter is the one proposing to justify the disobedient act, and does this through an explanation of the circumstances which have led to the decision to commit civil disobedience. In many ways, the conscientiousness of a civilly disobedient act directly relates to the dissenter’s civic-mindedness. The dissenter is responsible with showing that she is not simply breaking the law for personal benefit or because she thinks that civil disobedience allows for any sort of law-breaking, but instead that a given law or policy creates a moral dilemma for herself and others within her position, cultural group, financial class, etc.

Feinberg notes that there is a double sense of conscientiousness that may be understood in relation to civil disobedience, which he terms ‘strong’ and ‘weak’ conscientiousness. Strong conscientiousness can be understood as acting as one does because it is morally mandatory, “because of one’s honest and sincere conviction that what one is doing right” (132). This is relatable to Dworkin’s description of integrity-based disobedience discussed in the previous section on the publicity of civil disobedience. This is not to say that one’s convictions are necessarily correct, but rather that, when acted upon and expressed sincerely, such convictions hold a certain moral value and deserve some amount of recognition and respect from fellow citizens.

The weaker sense of conscientiousness that Feinberg notes refers to convictions one

holds and acts upon which are not derived from moral necessity, but instead from political ideals and a liberal understanding of constitutionally granted rights. Disobedients acting conscientiously in this weaker sense are not driven by a moral need to act as much as by a desire to challenge existing law or policy that they feel to be unwise or even just unnecessary. Feinberg explains that, “these are acts done *in* a clear conscience, but not *from* conscientiousness (in the strong sense” (132). His examples here are “drinking beer during Prohibition and attending a marijuana smoke-in.” Thus, strong conscientiousness may be understood as forcing disobedience by moral necessity, while weak conscientiousness, on the other hand, would apply to disobedience which is freely, willingly, and strategically performed.

This distinction is useful in clarifying different aspects of civil disobedience, and some definitions may exclude the weaker sense of conscientiousness. We shall, however, include this weaker sense for the same reasons which we included Feinberg’s test cases earlier on. In this weaker sense, the disobedient is still risking her livelihood and well-being for what she views to be a purpose above her own benefit. She must face any consequences for these actions. If she was not prepared to do so, she should not have participated in the disobedient act in the first place. The fact that she has done so shows that, even if not based upon a strong sense of conscientiousness, she still views this issue as important enough to deserve her and her groups attention and devotion in an attempt to change the law and further or establish their rights.

Part of the conscientiousness of a disobedient act is taking into consideration what the goal or purpose of the act is, who this is applicable to, and making both of these considerations known to the public in order to demonstrate the necessity for changes to law or policy. As mentioned earlier, each case of civil disobedience is intended towards different purposes. Some purposes are in order to address policies that affect all citizens of the state, while others are

intended to modify law for a specific sub-group or population within the citizenry. The purposes of a civilly disobedient act may affect different groups of the population in very different ways, but each way is important in considering partaking in the act itself. Disobedients should be as forthright and honest as possible about what their goals are in order to demonstrate the sincerity of their act.

For the civil rights movement, we could say that the primary goals were such things as the end of segregation and the establishment of true equality and rights for African-Americans in the United States. Stemming from these primary goals, however, were secondary, longer-term goals, such as establishing civil rights and equality for all minority groups instead of just African-Americans, and attempting to modernize the white conception of justice towards other groups.

While the differentiation between primary and secondary goals is not crucial, the distinction is worth noting for a variety of reasons. These terms are not intended to denote that primary goals are necessarily of greater importance than secondary goals, rather that the primary goals are what should be considered the immediate change that is desired through an act of civil disobedience, while secondary goals are perhaps longer-term or more abstract goals. Returning to Rosa Parks and the Montgomery Bus Boycott, we could say that the primary goal in this case was to end segregation on buses, while the secondary goals are to end segregation completely and draw attention to the problems and injustice of such policies. Primary goals are important in this way in that the disobedient must consider the fact that their overall purpose may be best served through a series or succession of smaller, more manageable and achievable goals. Instead of attempting to achieve every major goal all at once, the case may be that “baby-steps” are required in order to raise awareness of the disobedients’ positions and purposes. Through the

achievement of a succession of primary goals, civil disobedients may serve to draw additional attention and support for their overall, long-term causes.

3. Problems of Justification for Civil Disobedience

Circumstances allowing for civil disobedience

Finally we turn our attention to the most important aspect of civil disobedience that many philosophers disagree about. What allows for civil disobedience to be the correct course of action for a situation, and thus allows for it to be justified? First, we must consider the circumstances that are argued as allowing for civil disobedience. Perhaps the most common argument put forward, and the one Bedau seems to agree with, is that civil disobedience is only a proper course of action when all legal means of redress have already been exhausted, realistic legal means for redress do not exist, or the issue is of such importance and sensitive to time that the disobedient may not wait for the proper legal channels of action. In this manner, Bedau suggests that “one is almost bound to insist that whenever such legal devices still obtain and civil disobedience or any other form of resistance is nevertheless committed, either the dissenter is acting irresponsibly, or his politics are anarchical, or both” (661). Furthermore, he remains skeptical that even if all legal means of redress have been exhausted, this is not yet sufficient in justifying an act of disobedience or determining what type of disobedience should be used.

For our purposes in arguing for the procedural justification of civil disobedience, we shall neither subscribe to this reasoning nor disagree with it entirely. Potential disobedients in any particular instance must be capable of surveying the social and political landscape that they are subject to and decide for themselves what manner of proceeding will most favorably receive and respond to their calls for reform. In many cases, if legal means of redress remain open and a plausible way of drawing attention to a cause, this will be the best way to proceed, at least as a primary step. This is not to say, however, that civil disobedience cannot be justified if legal means are not initially pursued. Instead, for the procedural justification, we argue that legal

means should be any reform-seeker's first step in order to demonstrate their civic-mindedness and respect for the legal process.

If the legal means of redress are unsuccessful though, as is often the case with controversial cases that create a sharp divide within the citizenry, civil disobedience obviously becomes a more extreme and controversial way of calling for the reforms which are sought. If a group feels strongly enough about an issue but their attempts at addressing it legally prove insufficient, civil disobedience demonstrates to the state and public that, for this group, the issue at hand is of utmost importance or urgency. By acting disobediently, the group is effectively saying: "We have played by the legal rules to this point, but this issue is too important to leave up to a court decision or political decision that we feel to be mistaken, and thus we have taken up more drastic measures to demonstrate the importance and urgency of this issue."

Legal means of address are not always available to some causes, however. Numerous cases may be given where this is so, such as extremely poor faith in the legal/political process which is offered, underrepresentation of the group calling for reform in the legal or political spheres, expectation of failure given the legal/political precedence of the time, or a lack of funds or resources to pursue a possibly costly and lengthy trial, hearing, etc., just to name a few. In these cases, if a group pursues civil disobedience before legal means, bypassing what should be considered the logical first step of legal redress, our procedural justification would ask that an explanation as to why civil disobedience was chosen as the groups primary act. If a group chooses civil disobedience while legal redress seems to the public and state a realistic and viable option, they will be criticized for being overly irrational in their actions, which ultimately damages their efforts to justify their act in the long run.

On the other hand, if the group can publicly explain why legal redress is unrealistic,

insufficient, or implausible in terms of addressing the given issue, they will garner more sympathy in choosing civil disobedience instead of being criticized for hastily breaking laws. In fact, we may suggest that disobedients even internalize this reasoning into their overall purpose. For example, say that minority X has bypassed a lengthy court battle which they are likely to lose and instead proceeded to act in a civilly disobedient way. Perhaps racism against minority X has demonstrated to most members of this group that they are certain to lose any trial because almost all judges and jurors will be from the majority (numerous examples are conceivable here from the way in which the American legal system has historically treated groups such as American Indians and African Americans). Minority X may very well help their cause if they internalize this as a further reasoning for their disobedience. In addition to any other causes they might have, we may expect them to also claim as one of their goals in acting disobediently that the legal process itself must be reformed so that it becomes a more fair and balanced system which serves the interests of all citizens instead of just the majority.

Thus, while the procedural justification of civil disobedience would typically expect any reform-seekers to first pursue legal means before resorting to civil disobedience, as in this way they certainly aid their image as civic-minded and responsible citizens, this cannot hold as a rule given the example of above. A minority which is certain to lose in court or spend any and all of their funds in the process would be far better off avoiding this step if the outcome is for the most part predetermined and will ultimately cripple their cause. If we allow for this exception to the parameter of pursuing legal means prior to engaging in disobedience, however, we must also expect that this group of disobedients has accurately determined what the possible outcome of a court decision may be. The accuracy of the disobedients' claim can best be measured by the defense they offer to the public, and the public's willingness to accept this reasoning. Through

an appeal to the moral and political sensibilities of the public, this group may present the urgency of their case in a way that simultaneously shows the injustice and unfairness of the current legal system, judges, or political party in power.

Is there a moral obligation to obey law?

In concluding his article, Bedau takes up a variety of issues that he sees as problematizing the justification of civil disobedience. A primary consideration that has plagued political philosophy on the issue of civil disobedience is whether or not citizens of a state have a moral duty or obligation (here synonymous, although their difference will be noted later) to obey a given law simply by the fact that it is a properly enacted law. Bedau argues that legal validity does not necessitate obedience: “I ought to do x ’ cannot be deduced from ‘There is a valid law that applies to me and prescribes the doing of x .’ So anyone’s obligation to obey any law is pretty clearly contingent on what the law happens to be” (662). He believes that there is a heavy moral burden which is placed upon any law “before it yields any authority to the law to guide one’s conduct” (662).

The procedural justification of civil disobedience must necessarily agree with Bedau’s argument. As citizens of a state, we would ideally hope that the laws of our state perfectly aligned with morality, but there are numerous reasons why this cannot be the case:

(1) Even if the laws of the state did perfectly, or at least very closely, align with our morality, to join both law and morality into one single concept as a result is to do a great disservice to the importance and differentiations which exist for each concept in social, political, and ethical philosophy.

(2) Laws are by necessity prone to varied interpretation and implementation in any sort

of liberal-democracy. This may be to the benefit or detriment of any particular group depending upon the social and political situations which are present within the state or a region of the state.

(3) Closely related to our second argument is the fact that laws are a product of their time and environment. The reasoning for any given law is dependent upon the present situation within which that law was enacted, but as time passes and situations and circumstances change, numerous laws become archaic, misunderstood, misconstrued, and misunderstood.

(4) In both law and morality there is a constant and simultaneous play between the need to stay the same in order to be of any use, and the need to change to be relevant to shifts in society or cultural views. This problematizes any efforts to constantly connect the two ideas, as they are almost never moving in the same direction at the same moment. The movements of one affect the movements of the other.

(5) To argue for a moral obligation to obey law seems to suggest that all citizens of a given state subscribe to an identical moral/ethical system, but any member of a diversely populated liberal-democratic state knows that this is in no way true.

The previous points we have provided briefly detail some of the arguments that may be made against such arguments for a moral obligation to obey law and the ways in which this argument may misconstrue the complex relationship between law and morality. A more decisive argument in this regard is offered by Joel Feinberg. In “Civil Disobedience in the Modern World,” Feinberg considers many of the flawed arguments which have been offered in favor of a *prima facie* obligation (PFO for short) to obey the law. He explains the importance of such considerations to a discussion of civil disobedience as follows: “The standard way of characterizing the individual citizen’s moral problem concerning civil disobedience is as a conflict of reasons of basically different types” (133).

There is an important difference between what Feinberg considers to be a prudential reason and a moral reason for obeying the law. Of the prior, Feinberg says: “You might get caught, and the risk is always a consideration to be weighed carefully by any reasonable person” (134). This is an important consideration in our procedural model, as has been demonstrated throughout our analysis of the various types of civil disobedience what must be entailed in the planning for and execution of each. This person must ask herself numerous questions about what will happen and what to expect. “Will I be arrested? Can I afford a lawyer or court costs? Will this impact my career or home life?” etc. Prudential reasoning is important, but is more about the citizen herself instead of being about an obligation to law. In this way, prudential reasoning for a civil disobedient is no different that the reasoning for why any citizens tends to obey the law on a daily basis.

The true question is whether there is a PFO to obey the law – an obligation to law derived through moral reasoning. There are PFOs for obeying certain laws, but merely due to the coincidence between them instead of because they are expressed in law. Examples here are PFOs not to kill or steal. Feinberg insists that if a PFO to obey law exists, it must either be a basic PFO which is self-evidential, or must be derived through one or a combination of other PFOs. The fact that such widespread disagreement is prevalent in philosophy over this issue seems to immediately rule out the self-evidential argument, and thus, Feinberg turns his attention to the PFOs which are often cited as evidence for an obligation to law.

Ultimately, Feinberg does not believe that any decisive arguments have been made to successfully claim an obligation to obey law that is derived from basic PFOs, but nonetheless critiques a few of the more popular and stronger arguments which have been made in relation to PFOs for gratitude, fidelity, fair play, and justice. In order to not stray too far from our own

purposes, we shall only briefly consider a few of the more relevant and interesting points from this analysis. A few of Feinberg's claims here will be of interest to the procedural model, however, and these we will discuss more fully.

The arguments in favor of gratitude and fidelity relate to Plato's *Crito*, where Socrates is given the chance to flee Athens prior to his execution but refuses to do so. While Socrates remains to face his death out of gratitude to the city in which he spent his life, Feinberg argues that the idea of repayment is incredibly problematic, and in no way allows the other party (the state) to dictate all aspects of the citizens' behavior. As for fidelity, the argument goes that our obligation to follow the laws and dictates of the state is derived by a type of promise which is made through continued residence and acceptance of any benefits from the state. The major consideration here is that all citizens have granted consent to the state's authority, but there is no realistic way of determining this to be so.

The third PFO Feinberg discusses is that of fair play or fairness, as termed by Rawls, where citizens have a duty to not exploit good faith for their own advantage. If this PFO applies to any obligation to obey law, however, "then each individual citizen's duty of obedience is owed ultimately, not to the state, but to the other citizens, for it is essentially a duty not to take advantage of them even in 'harmless' ways" (139). This is important for the procedural model of justification. As previously stated, the manner in which a disobedient or group of disobedients goes about their actions should be as strategically planned as possible. The law or law which is broken must be balanced between relevant enough to be a nuisance or consideration to the public and state, without, however, causing any long term damage which would ultimately harm the disobedients' efforts. The PFO of fair play should be considered in the way Feinberg has stated it, and disobedients direct their actions towards the state itself, while avoiding any

actions that would, without good reason, do harm to or place in a compromising situation their fellow citizens. Feinberg notes how one could argue that almost all civil disobedience can be seen as violating the PFO of fair play, but questions the overall application of this PFO in society: “So long as there is economic deprivation, social discrimination, and unequal access to powerful offices, society is not a ‘mutually advantageous’ cooperative venture” (140).

The final PFO referenced as a possible base for an obligation to obey law is what Rawls termed the “natural duty to uphold just institutions” (qtd. 140). Feinberg explains how Rawls has differentiated obligation, something incurred through voluntary action, and duty, particularly natural duty, which are universal to all citizens (although these definitions raise issues with our understanding of *prima facie* obligations, this is minor to our purposes and we shall not dwell on it). Feinberg agrees that such a PFO exists concerning the upholding of just institutions, explaining that: “Individual justice is much less likely to be done in general in the absence of strong and reliable just institutions that are constituted by clear and reasonable rules” (140). He does not feel, however, that this PFO is sufficient to grant an obligation to obey law, because, while some law-breaking certainly does do damage to just institutions, much other law-breaking is relatively harmless to those institutions. Feinberg’s examples are “running a red light at three in the morning, cohabiting, playing poker at home with friends” (141). This is not to say that there are no reasons for obeying these laws; rather, such menial illegal acts do little if anything to damage the just institution.

Even if an obligation to obey law is not derived from this PFO to uphold just institutions, an argument that civil disobedience nonetheless runs counter to this same PFO is perhaps plausible, but quickly dismissed. Yes, disobedience certainly acts against the institution, but it does not necessarily break this obligation to uphold just institutions. Instead, the reasoning for

many acts of civil disobedience can often be reduced to the fact that, in the opinions of beliefs of a certain group of citizens, the institution or the institution's laws and policies are contrary to justice and the values established by the liberal-democratic state, and their act of disobedience is an attempt to call attention to this fact and change it through their actions. Feinberg, in part quoting Rawls, states:

Rawls himself writes that civil disobedience, when it satisfies certain minimal conditions of reasonableness...actually functions as "a final device to maintain the stability of a just institution," because it is an escape valve for pent-up indignations and is "disobedience to law within the framework of fidelity to law, although at the outer edge thereof." (qtd. 141)

Thus, in considering the four PFOs that might grant an obligation to obey the law, Feinberg comes to the conclusion that, despite some valuable arguments, all four are insufficient in attempting to grant that there is a moral reason all citizens must obey the law. The reasoning for obeying many laws is simply a result of those laws properly lining up with what citizens would consider to be immoral or wrong regardless, and there are many practical reasons why numerous laws should be followed on a daily basis; but, in opposition to the positivist arguments, laws hold no obligation for obedience over the citizens of the state, and certainly no moral standing, simply by the fact of their being properly enacted laws.

With this topic sufficiently laid before us, we should add that despite the fact that we do not view any PFO as providing a moral obligation to obey law, these PFOs are valuable concepts in relation to the procedural justification of civil disobedience. Disobedients must demonstrate that, despite their illegal action, they hold a certain respect for morality in general, the beliefs of others, and for the most part the laws of the state. Disobedience calls for the reform of a certain law, set of laws, or policy, but this does not mean that all disobediends are simply criminals and petty law-breakers. Disobediends may greatly aid their cause if they can demonstrate that they

have followed these obligations. This especially holds true with the PFOs of fair play and duty to uphold just institutions. Despite the illegality of the act, disobedients should attempt to demonstrate that they are in fact acting in a way which is intended towards the benefit of the just institution (or liberal-democratic state), and that their act is in no way intended to take advantage of their fellow citizens but instead demonstrate to them the manner in which a law or policy is detrimental to the goal of making the society and state as just and fair as possible.

Moral grounds for justification

These are just a few of the main arguments that can easily be made against the legal positivist position, but why is this important in our consideration of the justification of civil disobedience? Here, we must consider how any sort of justification for civil disobedience may arise. While some more liberal political philosophers may argue otherwise, our view must be that justification cannot be expected to arise by any sort of legal means, due to the necessity of illegality in the disobedient act. The only exception to this rule applies in retrospect: if a disobedient is charged for her act but through the legal system manages to overturn the law she intentionally and consciously disobeyed for certain convictions. This exception is very limited in application, however, as a legal justification for civil disobedience such as the one given here may only apply to direct disobedience, while the types of disobedience which can be noted in the present age are increasingly varieties of indirect. Furthermore, for the disobedient to expect or search for some type of legal justification for her act ultimately undermines the severity of civil disobedience. The disobedient may hope for sympathy from the state, but through the very decision for and implementation of a civilly disobedient act, the disobedient puts herself in direct opposition to the demands of the state and laws.

Instead, justification for civil disobedience must be primarily determined through morality. To add further weight against the legal positivist position, one of the primary considerations in most cases of civil disobedience is that the morality of a subgroup or population within the citizenry is being poorly represented or even damaged by laws or policy currently in effect. We should never expect those in a minority position in a liberal-democratic state to say, “We firmly believe that law or policy *X* is morally wrong and completely unjust, but because it is law, we must instead be in the wrong.” To expect citizens to blindly accept law as binding for this type of reason is completely contrary to the ideals of liberal-democracy. Perhaps the minority group is wrong for other reasons which are specific to their given case, but this is beyond our current argument.

Our views here closely align with Bedau’s position. Bedau acknowledges the primacy that moral beliefs have in considering any type of political act like disobedience. He struggles, however, to grant that this ultimately allows for civil disobedience in any case, given the possibility of a disobedient’s mistaken moral considerations. In holding a middle ground, he claims: “The most we can say is that one has a right to conscientious disobedience; we need not and we cannot always go on to say that conscientious disobedience is the right thing to do. But being able to say the latter, and not just the former, is surely the main aim of trying to justify an act of disobedience” (663).

This statement is perfectly in line with the procedural justification for civil disobedience. First, citizens must always reserve the *right* (in a general moral sense) to commit an act of civil disobedience in a liberal-democratic state, even if the act itself turns out to be unjustified or wrong. Whether or not civil disobedience is the right thing to do, as Bedau says, cannot be stated in advance, as this depends entirely upon the circumstances surrounding each individual

act. This is where the planning and strategy on the part of the disobedients becomes essential for the procedural model.

Philosophically, we can grant the moral right to commit civil disobedience in general, but whether or not each particular act is morally right depends upon multiple levels of consideration. First, the disobedients-to-be must delve into all possible courses of action, weighing their own moral conduct against what they feel to be the moral bearing of the particular law or policy and the moral sentiments of the citizenry. Next, the act itself must be morally weighed in terms of what law shall be broken or not followed and what consequences this might have for the disobedients or for other citizens. If the negative consequences seem to outweigh the possible positives that may be garnered through such an act, perhaps civil disobedience is not the group's best option, but ultimately the disobedients must decide this fact for themselves. Finally, in procedurally justifying their act to the public, possibly the most crucial aspect of the process, the disobedients must demonstrate why their decision was made and the given act committed. Their success may, to an extent, be measured in how well they outline the ways in which their morality called upon them to break the law, or how their moral code deemed necessary such action against an law they deem to be immoral or unjust.

In a way, this is exactly what the final sentence states in the above quote from Bedau, although we may modify it slightly to fit the procedural model of justification. Justifying civil disobedience entails demonstrating that, beyond a right to disobedience existing in general, in a particular case it is also in fact the right thing to do. This sort of justification cannot be provided philosophically, however, as it relies upon the details of any given situation. Indeed, "we need not and we cannot always" justify civil disobedience as philosophers. This is where the responsibility shifts to the disobedients themselves. They must demonstrate through their actions

and in their defense of said actions that, in their specific case, civil disobedience is in fact the right thing to do, whether due to their financial status, social position, religious beliefs, moral codes, etc. With this responsibility shifted to the disobedients, we can certainly agree that demonstrating the rightness of a particular act is indeed “the main aim of trying to justify an act of disobedience.”

As Bedau’s article draws to a conclusion, we will elucidate a number of statements he makes which further coincide with the procedural model for justification. Bedau struggles to see how any principles could be provided which grant, on the one hand, the necessity of obedience to all law, and on the other hand, open justification for free range civil disobedience. This is due to what we have already emphasized numerous times – a citizen’s decision to obey the law or disobey cannot be understood simply from the perspective of law, but instead must also take into consideration all the circumstances regarding the given situation. Any principle one believes to have found will necessarily be malleable depending on the circumstances that person finds himself in: “the only way he could use his principle is by tacitly deciding on each occasion either to interpret the principle so as to cover the situation he is in or to describe the situation so as to fit the principle” (664). That is why we have argued for the procedural justification of civil disobedience, which attempts to make room for the malleability of any principle which argues to either obey or disobey a given law.

While Bedau begins his section on the problems of justifying civil disobedience with a certain hesitation, he ultimately advocates it in comparison to other types of more extreme disobedience, and even goes as far as to claim that civil disobedience may be beneficial to the public and state by more directly involving citizens who would otherwise have very little input in political and legal matters. In considering a variety of actions that those discontent with a given

political/legal/social situation may pursue, Bedau comes to a pro-civil disobedience conclusion:

[When] one has no path to the seats of authority or to the minds of one's country-men other than open resistance and since the method of resistance must be consistent, as far as possible, with preserving respect for law and order, the only thing to do is to commit civil disobedience, and the sooner the better. (664)

In concluding with Bedau, we should like to ask the following question: given Bedau's positions shown throughout this project, would he support the procedural model of justification that is offered here? Bedau's article ends with an advocacy of civil disobedience, but also with a variety of questions that still cloud his exact position on the subject. He explains his reservations by saying that "The major obstacle in the way of granting a privileged status to such acts is that such status would rest on a series of empirical facts whose factuality is still in doubt," but then remains optimistic by answering himself as follows: "The only way to get answers is to conduct actual experiments in civil disobedience" (665).

The procedural model is an attempt to answer the exact, and for the most part sincere, concerns Bedau has regarding the justification of civil disobedience. Despite his support of disobedience, the reservations he holds are grounded in what we feel to be genuine problems for any philosophical treatment on the subject. This is the reason, however, that we may truly believe Bedau would support the procedural model. As has been shown, philosophers may grant a general right to civil disobedience without specifying any exact circumstances, but justifying particular acts themselves is beyond the extent of our capabilities. But, alas, that is why the responsibility must fall upon the disobedients themselves to demonstrate why their particular act of disobedience is justified. The goal of the procedural model that has been sketched throughout this analysis is to demonstrate the variety of considerations which become essential in the planning of and execution of a civilly disobedient act. With this model in hand, we may feel confident that any potential-disobedient may have a greater understanding of what she must

understand and do if she is to justify her act to the state and the public.

4. Addressing Possible Criticisms and Concerns of the Procedural Model

How do we measure the success of the act, or know that it is justified?

One very valid concern which may be presented to the procedural model of justification relates to how success is measured. Directly related to this, although not identical, would be a question about how justification is truly determined. Before answering these concerns exactly, we must foremost concede that this question is likely the most problematic aspect of the model which we have here proposed. Regardless, we will attempt to provide the most satisfactory answer that we can. We may preliminarily say that the success or justification of an act of disobedience is measured in degrees, and rarely can any case provide a black or white answer to such questions. We shall elaborate upon this further, but first, we should clarify what we mean by the success of an act and the justification for the act.

The success of an act is determined by the disobedients themselves, and directly correlates to the primary and secondary goals they have laid out prior to their act (or after, in cases of unplanned and spontaneous disobedience). Success or failure may be measured in an incredibly wide array of ways. Ideally, the disobedients would hope that after their act has been committed and they have defended their act in the hopes of justifying it to the state and public, all of a sudden everyone understands their reasoning, sees the issue from their perspective, and aids them in enactment of the goals set forth both primarily and secondarily. The disobedients enter into their act understanding that this is, however, extremely unlikely.

In a realistic sense, the disobedients must measure their success based upon a before and after analysis of both the way their group is viewed and the way their fellow citizens feel about the particular issue they are addressing. To use a cliché but nonetheless valuable comparison, success regarding the primary goal is winning a single battle, but is merely one success out of

many that are required to win the war and achieve the ultimate, secondary goal. Even if a primary goal is not met, in that the particular law remains unchanged, it may be considered a success towards the secondary goal if it raises additional awareness and support for the cause among the public, media, and public officials. In widespread acts of disobedience, it remains likely that different members of the group of disobedients feel at odds about the level of success a given act has achieved. But, thus is the nature of any public, political act, and in this way is no different than how political parties may feel about any given legislation they have passed.

As for how we may know an act of disobedience to be justified or not, we may again assert that this may be measured in degrees, but more must obviously be said. Recalling our initial statements on the procedural model for justification for civil disobedience, our goal is not to provide a definitive ‘yes’ or ‘no’ to any given case regarding its justification or lack thereof, but instead to provide an understanding the numerous scenarios which may occur and responsibilities which fall upon the disobedients in the execution and presentation of their act. To this statement, many critics are likely to still question us. “How do you offer a model of justification but fail to determine what constitutes justification?”

While success and justification are to be understood separately, we may assert that they do in fact go hand in hand in certain ways. If an act is successful in that its goal was to gain public support for a certain agenda or cause and it has achieved this, we may say that the disobedients have also sufficiently justified their actions to the populace. If the act is successful in overturning a controversial law or policy, we may conceivably argue that the disobedients have sufficiently justified their actions to the state, either in defense of their actions in a court case (likely in direct cases of disobedience), or in convincing public officials that a program is problematic and requires reform or abolition (in either direct or indirect cases).

Furthermore, while we stand by the response provided in the previous section, that there can be no explicit time-frame within which justification must be provided or not, the justification of a civilly disobedient act does depend upon time in a different way. If the disobedients truly feel that they are acting morally and rightly by committing such an act, they hope to demonstrate this by an appeal that will remain true long after the act itself has succeeded or failed. The hope is to make a lasting impression upon the sentiments and conscious of the public. As an example, Martin Luther King Jr. was often labeled a simple troublemaker during his most active years as a leader in the civil rights movement, but we may expect there to be few who hold such an opinion in modern times. By an appeal to morals or truths which he and his fellow disobedients felt to be of greater value than certain laws and policies, King made an incredible impression upon a certain time period in American history.

While strong and devoted leaders such as King are rare, the point is that there is no simple way to measure justification. The easiest way to measure justification would be in relation to the success of the act and the public and state's response to the act, but even this initial reaction fails to fully determine what the lasting impression of the act may be. The most we can truly say is that justification can be best measured by how well it appeals to the social, moral, and political values of the state and populace.

Is there a time frame for justification?

There are a variety of questions which may be raised regarding concerns with the procedural model which we have argued for. The first of these that we will address concerns the possible time frame which exists for the disobedients to justify their acts to the state and public. Is there a certain time limit that exists within which the act must be justified, and is there no

chance of justification after such a time limit has passed? To explain further, after the civilly disobedient act has been committed, the disobedients now possess the burden of justifying their act to the state and public. Would the procedural model claim that the state and public owe or grant a certain 'grace period' to disobedients, within which they must justify their acts?

Our response to this question must take into consideration the variety of goals that any civil disobedient or group of disobedients holds. In general, the best response to this question may be that the time limit for justification depends upon if the contentious issue is time-sensitive as well. If the goals of the disobedients are the reform of long-standing policies which have been in place, and if their goals are achieved in a step-by-step fashion, then we may say that there is no time limit on the justification. Here, we may again reference the civil rights movements in the United States. The policies of segregation and the Jim Crow laws had been in place for such an incredibly long period of time that those participating in civil disobedience against these policies knew that they were in for a lengthy battle. To say that these disobedients had only x amount of time to overturn long-standing policies would be incredibly problematic. Obviously, for the disobedients, the sooner they demonstrated to the public that their actions were civic, conscientious, and with the intent of reforming the law to be more just for all citizens within the nation, the better; but there does not seem to be any reason to demand that if their actions were not immediately successful, that they could not be in the future. If the issue is of enough importance to have civil disobedience used as the method of redress, it would not be conceivable that disobedients would abandon their project even after a few setbacks.

In extension, the considerations of what the group's primary and secondary, longer-term goals are is important as well. If the primary goal of a specific act of disobedience is the overturning of this particular law, while the secondary goal is the reform of a broader state

policy, we would again not say that there is a time frame which must be met. We would, however, urge the group to consider the ways in which the passing of time affects the connection between these goals. On one hand, if a primary goal has been achieved and the act has been for the most part successful (or even, we may suppose, if it is unsuccessful), it may be to their benefit to let a certain amount of time pass before committing further disobedience. In this way, they may hope to avoid alienating any public or state support they have by demanding too much too quickly. On the other hand, they must also be careful to not let too much time pass and lose any kind of momentum they have gained by their previous success. This is a careful, strategic measuring of the type of support the disobedients have. They must decide for themselves if their overall purpose is risked by being overly aggressive, or if their momentum might carry them forward by acting more expediently.

There may be cases, however, in which the goal of the disobedients is time sensitive. In a case like the one Ronald Dworkin discusses, where disobedients were protesting the placement of American nuclear arms in Europe, time may not be on the side of the disobedients. Their initial success or failure may depend upon the initial outcome of a law or policy. We must not concede, however, that the justification for their act is explicitly linked to this initial outcome. As previously stated, if the outcome of a specific issue is of such importance to bring about acts of civil disobedience, then we would not expect those acting disobediently to simply give up because an allotted amount of time passed, even if their actions are initially unsuccessful. If the disobedients still fail to garner any public support for their cause, they may over time decide that perhaps they are mistaken and have wrongly or unjustifiably committed civil disobedience. Thus, we may grant that a time limit exists for justification, but only inasmuch as the disobedients themselves decide if their actions remain realistically pursuable. This is not to say

that the state or public determines this time limit.

Perhaps a certain amount of time passes after an initially unsuccessful act of civil disobedience has been committed, and the disobedients have in fact given up. Here the case may be that the law or policy that was of concern has been enacted and carried out but has not been as detrimental or problematic as was initially thought, in which case the disobedients were simply wrong and need not act further. Or, if the law or policy *is* in fact as bad as was originally thought, but the disobedients have given up all hope of enacting any sort of civic-minded change or gathering public support, then we may very well suspect that the disobedients no longer live in a liberal-democratic state, and thus that justifying an act of civil disobedience has become a lesser concern to those involved (furthermore, this may call for more extreme or revolutionary action if the policy is truly that bad). In either example, the justification may have perhaps failed, but not for reasons of a certain limit on the time in which the disobedients have to justify their acts.

A few additional considerations

Can a person commit an act of civil disobedience which is morally the right thing to do given their specific ethical code, but the act itself be unjustified? At first glance, this seems paradoxical. The reality, however, is that this can be true. We would obviously hope that this is not the case, but there may be instances where this could occur. Conceivably, a person may refuse to follow something which is prescribed by law because it runs counter to their specific ethical code and/or belief system, but if this is not the same morality that the majority of the population subscribes to, they may fail to sympathize with the unwitting disobedient despite her attempts at justification. This may speak volumes about the morality of the populace, or that this

person does not live in a truly liberal-democratic state, but the case may also be that the slight to this person is too minor to be worth pursuing, or that she is insufficiently funded or prepared to launch an extensive campaign in her defense. If the slight against this person is indeed harsh and unjust, we would hope that she did not back down, but civil disobedience is admittedly, in both time and resources, an extremely costly method of attempting to enact change. Perhaps history will prove to be on her side and demonstrate her act as justified; but again, if the act and her treatment is not of sufficient volume, it is likely to go unnoticed to most people and public officials.

One further remark that we should touch upon is that of how the state should treat civil disobedients. This is the focus of numerous articles, such as David Lefkowitz's "On A Moral Right to Civil Disobedience" and Ronald Dworkin's "Civil Disobedience and Nuclear Protest." While disobedients may certainly hope for sympathy from the state because of the moral or political nature of their act, we must disagree with the opinions of the aforementioned authors and claim that the state holds no responsibility to treat civil disobedients any differently than anyone who may have broken the same exact law. This holds so even the act is in fact justified.

An obvious exception to this claim would be in cases where direct disobedience has been committed and proves to be both justified and successful. At this point, there remains no reason to pursue punishment and incarceration of the disobedients, as the law has in fact been overturned. Also, in many cases of direct disobedience, the disobedients do not want to be treated differently if they are attempting to fight a law on some type of legal or constitutional grounds. The purpose of this type of disobedience is to justify the act through the legal process, and the disobedients would want to be tried in order to admit responsibility but claim innocence because of guaranteed rights or some type of legal precedence. If the disobedient is given an

easier treatment *because* she was acting through civil disobedience, she may benefit in the short run by suffering less severe costs to herself, but the overall purpose she wished to have achieved will remain untouched.

Even in cases of indirect disobedience, however, we would still assert that the state holds no responsibility towards civilly disobedient actors. One should only take part in a disobedient act with a clear conscious and understanding that her actions may require her to pay some sort of fine or spend time in jail. This is a necessary cost of committing civil disobedience and must be understood by a person before they commit this act; simultaneously, this is exactly what separates civil disobedience from other types of legal action and protest. If the costs of acting civilly disobediently are lessened and equated with other types of legal action, the act itself risks losing the very thing that separates it and makes it such a risky but effective means of political action.

5. Concluding Remarks

In conclusion, we shall take up one final question: what choose the procedural model of justification over other philosophical alternatives? The hope is that this question has been answered piece by piece throughout the above work, but regardless, we shall elaborate upon a few reasons. First, the *ex-ante* justification which we have discussed in the introduction to this piece is incredibly problematic in that it attempts to specify certain criteria which may be met, and if so, necessarily grants justification for an act of civil disobedience. To grant justification to an act of civil disobedience without considering the specifics of that particular case seems to make the entire act of justification extremely insignificant.

The procedural model, on the other hand, requires that certain parameters be considered and sufficiently met if an act may be sufficiently justifiable, but does not claim that this therefore grants justification. Instead, these parameters are meant to be specific to each given case of disobedience, and should ultimately take into consideration all of the questions regarding who is committing the act, why they have committed the act, how they go about the act and defending it, etc. In this way, the procedural model offers an understanding of justification that is tailored to the conditions of each case. This may make justification harder to achieve in comparison, but we stand by this fact because the harsher requirements for justification push the those committing the act to take responsibility and prove to themselves and to their fellow citizens the necessity of their act, and in doing so, offer a justification that is not only philosophically valid, but is also valid in regards to the actual society and state within which the act takes place.

Additionally, the procedural model attempts to preserve civil disobedience as a meaningful social and political act. While we grant that a right to civil disobedience exists, we

would not insist that it is a viable means of action in all cases. For civil disobedience to remain a powerful act, we must understand it, and the circumstances which allow for it, in very specific ways which elucidate the times and places in which civil disobedience is a proper course of action. Through the analysis of different types and examples of disobedience, we have attempted to show what sorts of disobedience are proper and relative to a variety of different cases. Also, in this analysis, we have provided a greater understanding of the uniqueness of the parameters which are to be considered in these different cases. By considering all of these factors together, we have attempted to find a balance between, on the one hand, allowing for civil disobedience to remain an open option in a variety of cases, while on the other hand, preserving its effectiveness by preventing it from becoming simply an everyday act.

Finally, and most importantly, we feel that the procedural model can sufficiently address some of the issues which have plagued recent political philosophy regarding the justification of civil disobedience. This has been shown most specifically through our dialogue with Hugo Bedau, who argues that a right to civil disobedience exists, but struggles to see how philosophy can grant that civil disobedience is the *right thing to do* in a given situation. As has been stressed time and again, this may be addressed by calling upon the disobedients themselves to demonstrate why, as a result of their situation and circumstances in relation to a problematic law or policy, their committing of a civilly disobedient act is morally and politically right. They must necessarily defend the moral and political rightness of this act to the public and state. This may be done through considerations of the parameters we have outlined, an explanation of the reasoning and planning behind their act, and a general appeal to the citizens and state to adopt a broader or more balanced perspective in reconsidering the problematic law or policy. In doing so, the disobedients stand to provide a sufficient justification for this specific act.

Throughout all that has been said in this work, we hope to have demonstrated that our procedural model for justifying acts of civil disobedience may be viewed as a philosophically plausible and valuable alternative to previous attempts at justification, in that it offers a different perspective on how we should approach this problematic topic. Instead of following in previous traditions by providing certain criteria which if met will necessarily justify the act, we have chosen to demonstrate, through a lengthy analysis of varying types and forms of disobedience, the multifarious parameters which exist and may be uniquely applied to each given case.

To reemphasize a few key points, we may correctly grant that citizens have a *general* right to civil disobedience as method of political action in the attempt to call for change or reform to a policy or law if all other means of legal redress are either exhausted or do not realistically exist for a person or group; but we may not philosophically grant a *particular* right for a given act of civil disobedience without any knowledge of the circumstances surrounded that case. Instead, this particular right to civil disobedience, and by extension, justification for civil disobedience (understood as a sufficiently presented defense of action which calls upon the moral and political values of the state and public) becomes the responsibility of the disobedients themselves. The planning for and defense of their actions must demonstrate their sufficient knowledge the moral and political values of the citizens, what it is they hope to achieve, and why their act of civil disobedience is, despite its illegality, the morally and/or politically correct thing to do given their situation.

While our argument claims that philosophy cannot itself grant justification for the act, what we hope to have shown in our thorough analysis of the various types and examples of civil disobedience is the various ways in which each particular case of civil disobedience must be considered and approached if the disobedients are to be successful and justify their act.

Furthermore, by engaging the works of a variety of political philosophers, such as Bedau, Dworkin, and Feinberg, we have attempted to demonstrate to the reader that such a model for justification is not entirely unheard of. Instead, we feel that the procedural model for justification is extremely valuable in its attempts to, first of all, play a part in the extensive literature which already exists regarding civil disobedience, and second of all, respond to and engage the various issues which seem to plague attempts at a moral general and broad justification.

This is not to say that this model is without its own issues or complete for any matter, some of which we hope to have addressed already. Rather, the hope is that we have introduced the reader to what may be considered a fresh and interesting perspective in the effort to better understand the complexities that abound in any philosophical treatment of a contentious and complex social and political issue such as civil disobedience.

Bibliography

- Bedau, Hugo A. "On Civil Disobedience." *The Journal of Philosophy* 58.21 (1961): 653-65. *JSTOR*. Web. 03 Feb. 2012.
- Brownlee, Kimberley. "The Communicative Aspects of Civil Disobedience and Lawful Punishment." *Criminal Law and Philosophy* 1.2 (2007): 179-92. *ProQuest*. Web. 03 Feb. 2012.
- Brownlee, Kimberly. "Civil Disobedience." *Stanford Encyclopedia of Philosophy*. Metaphysics Research Lab, CSLI, Stanford University, 04 Jan. 2007. Web. 23 Jan. 2012. <<http://plato.stanford.edu/entries/civil-disobedience/>>.
- Dworkin, Ronald. "Civil Disobedience and Nuclear Protest." *A Matter of Principle*. Cambridge, MA: Harvard UP, 1985. 104-16. Print.
- Dworkin, Ronald. "On Not Prosecuting Civil Disobedience." *Readings in the Philosophy of Law*. Ed. John Arthur and William H. Shaw. 4th ed. Upper Saddle River, NJ: Prentice Hall, 2006. 57-63. Print.
- Feinberg, Joel. "Civil Disobedience in the Modern World." *Law and Philosophy; Readings in Legal Philosophy*. Ed. Edward Kent. Englewood Cliffs, NJ: Prentice-Hall, 1970. 129-42. Print.
- Lefkowitz, David. "On a Moral Right to Civil Disobedience." *Ethics* 117.2 (2007): 202-33. *ProQuest*. Web. 03 Feb. 2012.
- Lyons, David. "Moral Judgment, Historical Reality, and Civil Disobedience." *Philosophy and Public Affairs* 27.1 (1998): 31-49. *ProQuest Criminal Justice Periodicals Index*. Web. 03 Feb. 2012.
- Plato. *Crito*. *Readings in the Philosophy of Law*. Ed. John Arthur and William H. Shaw. 4th ed. Upper Saddle River, NJ: Prentice Hall, 2006. 45-50. Print.
- Rawls, John. "The Justification of Civil Disobedience." *Collected Papers*. Ed. Samuel Richard. Freeman. Cambridge, MA: Harvard UP, 1999. 176-89. Print.
- Rawls, John. *A Theory of Justice*. Cambridge, MA: Belknap of Harvard UP, 1971. Print.
- Weber, David R. *Civil Disobedience in America: A Documentary History*. Ithaca, NY: Cornell UP, 1978. Print.

Academic Vita for

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Education

Bachelor of Arts candidate, Philosophy
Pennsylvania State University, University Park, PA

- Expected completion: May 2012
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- Will graduate from Schreyer Honors College with honors in Philosophy
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Research Projects

Procedural Justification of Civil Disobedience

- Current project, expected completion: April 2012
- Address various aspects of the definition of and justification for civil disobedience, and address the ways in which a procedural justification for civil disobedience may best avenue for philosophical analysis.
- Working with Dr. John Christman and Dr. Vincent Colapietro

Political Philosophy and Anarchy

- Spring 2011
- Comparing the problems of pure democracy and the possibility of a working anarchist society, as described in Robert Paul Wolff's *In Defense of Anarchism* and Jeffrey H. Reiman's *In Defense of Political Philosophy*
- Worked with Dr. Paul Taylor

The Beauty of Nature in Hegel's Aesthetics

- Fall 2010
- Outlining the importance of the beauty of nature in Hegel's *Aesthetics*. Despite being consigned as of lesser importance, the beauty of nature proves to be a pivotal part of Hegel's overall project.

- Worked with Dr. Dennis Schmidt

Memberships

Schreyer Honors College

- August 2010 – Present
- On track to graduate with honors
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National Society of Collegiate Scholars

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Awards

Dean's List Scholar

- Awarded for every semester of undergraduate study
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