

Civil Disobedience and Nuclear Protest: A Reply to Dworkin

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Philosophical writing about civil disobedience tends to reach only the vaguest of conclusions: that it is normally wrong to disobey the law in a democratic society, but that in some circumstances civil disobedience may be justified, provided the issue is sufficiently serious and weighty and alternative methods have been tried without success. That of course leaves all the important practical questions untouched. Having myself found it difficult to see where one goes from there, I am much in sympathy with the stated aim of Dworkin's paper "Civil Disobedience and Nuclear Protest" [1]. That aim is to develop "a working theory" which, by distinguishing between different kinds of civil disobedience, might enable us to base decisions about the rightness of civil disobedience on a recognition of the kinds of convictions involved, rather than on our particular views about the substantive issues at stake. I welcome the philosophical enterprise, then, but I find myself at odds with Dworkin's political conclusion: that whatever one thinks about the issue of nuclear deterrence and disarmament, and in particular about the decision to station new American nuclear missiles in Western Europe, it is very difficult to justify civil disobedience as a way of protesting about an issue of this kind. Dworkin offers his argument as a "challenge" to "those who advocate this form of disobedience" and who "now have the burden of showing how a working theory could accept it" (p. 113). I should like to take up that challenge.

Dworkin distinguishes three kinds of civil disobedience: integrity-based, justice-based, and policy-based.

Integrity-based civil disobedience consists in refusing, on grounds of conscience, to do something which the law requires you to do. He gives the example of the many inhabitants of the northern states of the USA before the civil war who, disobeying the Fugitive Slave Act, gave help to escaped slaves from the south. Examples of justice-based civil disobedience are the actions of the civil rights movement, and those civilian protests against the Vietnam war which involved breaking the law. In contrast to both these kinds, recent acts of civil disobedience at Greenham Common and elsewhere in protest against the stationing of new American nuclear missiles in Europe are examples of policy-based disobedience.

Dworkin then introduces a further distinction between persuasive and non-persuasive strategies of civil disobedience. A persuasive strategy "hopes to force the majority to listen to arguments against its program, in the expectation that the majority will then change its mind and disapprove that program" (p. 109). A non-persuasive strategy "aims not to change the majority's mind, but to increase the cost of pursuing the program the majority still favors, in the hope that the majority will find the new cost unacceptably high" (*ibid.*). For reasons which I will consider shortly, Dworkin thinks that civil disobedience directed against the new missiles is likely to

involve a non-persuasive strategy. But a non-persuasive strategy which is also an instance of policy-based disobedience is, says, Dworkin, "the least likely to be justified in any general working theory" (p. 111). This is because it violates the principle of majority rule which is "essential to democracy, ... the principle that once the law is settled, by the verdict of the majority's representatives, it must be obeyed by the minority as well" (p. 110). Persuasive strategies of civil disobedience, though at one level they seem to go against this principle, accept it at a deeper level since they are addressed to the majority as a way of asking it to change its decision. Non-persuasive strategies are more difficult to justify, but if they are justice-based they can at least appeal to the principle that the majority has no right to abuse its power at the expense of a minority's rights. Non-persuasive policy-based civil disobedience fails on both counts. It is, in effect, an attempt to thwart the democratic process. According to Dworkin, civil disobedience against the new missiles falls into this category, and that is why he thinks it difficult to justify.

Is he right? Is this a case where civil disobedience is policy-based? And does it involve a non-persuasive strategy? I will try to answer the two questions, in that order, but in doing so I also hope to show that the questions themselves are problematic in ways which raise doubts about Dworkin's classification.

The question whether anti-nuclear civil disobedience is integrity-based, justice-based or policy-based is one which I find perplexing, since it seems to be me to be none of these. In some few cases it might be integrity-based: members of the armed forces might refuse to engage in preparations for nuclear war, and I suppose that the refusal to pay that proportion of one's income tax which could be thought of as helping to pay for nuclear weapons might also come into this category. Most anti-nuclear civil disobedience, however, is not like that. It is not a refusal to perform acts against one's conscience which the law requires. It is a matter of deliberately setting out to break the law in ways which could perfectly well have been avoided. The issues which underlie that decision do not, indeed, seem to be matters of justice, but they do not seem to be mere matters of policy either. Must they be one or the other?

Consider Dworkin's own examples of justice-based civil disobedience. The civil rights movement is an obvious example to put into this category, but why should protests against the Vietnam war be described as justice-based? It seems to me that they can be so called only if the term "justice" is being used in a very broad sense, defined by reference to an equally broad notion of "rights" such that any profound wrong done to others is seen as a violation of their rights. We can, I suppose, talk in that way, but only at the risk of over-extending the concept of justice. At any rate, protest against the Vietnam war was not justice-

based in the more precise sense of appealing to the community's sense of justice and condemning, from that standpoint, the treatment of a certain section of the community. Nevertheless, even though not concerned with questions of justice in any strong sense, such protest was certainly concerned with issues of principle. It was not just an expression of technical disagreements about the effectiveness of alternative policies. This suggests to me that what we need is a more fundamental distinction than Dworkin's, a distinction between "principle-based" and "policy-based" civil disobedience. Dworkin himself says that integrity-based and justice-based civil disobedience both involve "convictions of principle" in contrast to "judgments of policy" (p. 107). There are, however, other kinds of principle which do not necessarily involve considerations either of integrity or of justice. I do not know exactly how one should describe the principles which underlay protests against the Vietnam war, but I imagine that it would be more appropriate to call them, in a broad sense, humanitarian principles rather than principles of justice.

What now of nuclear protest? Dworkin recognises, in a footnote, that

... some people have made arguments of principle against deploying nuclear weapons. Certain religious groups argue, for example, that because it would be wrong actually to use atomic weapons, even defensively, it is also wrong to threaten to use them, even if that threat would in itself make nuclear war much less likely. That is rather rigid, even counterintuitive argument of principle... (p. 404, n. 2).

That, however, is a statement of the argument in its least plausible form. I agree that a simple argument from the wrongness of using nuclear weapons to the wrongness of threatening to use them is too simple, and as such could perhaps be called "rather rigid, even counterintuitive". If one could be morally certain that the threat of nuclear retaliation would prevent nuclear weapons from being used, my own view is that deterrence could then be acceptable. The fact is, however, that such threats carry with them the real possibility that, by accident or through miscalculation or as a result of the irrational reactions of politicians in a crisis, the weapons will actually be used. It may be claimed that deterrence makes nuclear war less likely, but this can be contested, and the most that can be asserted on either side is a judgment of probability: a judgment about how likely it is that nuclear weapons, if they continue to be deployed in this country, will be used, and about how likely it is that other countries would use them if all nuclear weapons were removed from this country. Those, therefore, who accept a policy of nuclear deterrence on the part of this country must recognise the real possibility that the weapons may be used, and so must regard it as morally permissible to use them. It is then reasonable for us to maintain a strong objection of principle to a policy which makes the defence of this country rest on a willingness to commit an unspeakable evil.

However, even if nuclear protests did not appeal to principle in this particular way, it would still seem quite inappropriate to regard them as merely policy-based. In support of such a categorisation, Dworkin says:

If we tried to reconstruct the beliefs and attitudes of the women of Greenham Common in England, or of the people who occupied military bases in Germany, we would find that most - not all but most - did not believe that their government's decision to accept the missiles was an act of a majority seeking its own interest in violation of the rights of a minority or of another nation. They thought, rather, that the majority had made a tragically wrong choice from the common standpoint, from the standpoint of its own interests as much as those of anyone else (p.107).

That way of putting it presupposes the dichotomy: either

"justice-based" or "policy-based". But as one who does not have to engage in any "reconstruction" here, I have to say that the last sentence does not seem to me to capture the nature of such protests. How then are we to put it? What is the nature of the disagreement between those of us who engage in anti-nuclear protest and the government against whom we protest?

I do not pretend to understand the psychology of our rulers, but my impression is that, like most ruling groups in history, their decisions involve a good deal of hypocrisy and self-deception. This seems to be true, at any rate, in the case of the nuclear issue. Everyone recognises that nuclear deterrence cannot be relied on for ever, that there is a need for measures of nuclear disarmament of some kind or another (multilateral or unilateral or some combination of the two), and that the need is urgent. We may disagree about how urgent it is, but I think it would be generally agreed that we must aim to achieve nuclear disarmament within the foreseeable future, that is, in a matter of decades rather than centuries, and given the size of the nuclear arsenals, this means that the process must start soon. But though the governments of all the nuclear powers profess to accept this, they have signally failed to act on it. They have taken no effective steps of nuclear disarmament. They have lacked the courage to confront the relevant economic interest-groups (the so-called "military-industrial complex", etc.), they have lacked the courage to challenge the enemy-stereotypes and the chauvinistic attitudes which they find so politically



expedient in the short term. While claiming to recognise the need for reductions, they have pressed ahead with the deployment of new weapons. Britain and America, specifically, have refused to move to agreements on such matters as a verifiable freeze on new deployments, a verifiable comprehensive test ban, and a "no first use" treaty, even though such agreements could now be concluded. In the light of all this, although their profession of concern on the nuclear issue may at one level be genuine - after all, no sane person actually wants a nuclear war - we have to judge that, at the level that counts, our rulers are insincere.

I know that all of this can be contested, and I will come back to the significance of that in a moment, but if what I have said is true (or indeed if it is merely thought to be true by those who protest) it means that matters of principle are involved here. They are matters not of justice but of humanitarian principle. Anti-nuclear protest is motivated by the simple principle that it is wrong to pursue policies which risk massive death and destruction for the sake of short-term political advantage, and by the belief that governments which profess to accept this principle have failed to live up to it. If the government in power was genuinely and resolutely committed to such a principle and to the goal of nuclear disarmament by some route or other, then the remaining disagreements, for instance between "unilateralists" and "multilateralists", would be much more straightforwardly policy-based, disagreements about means to an agreed end, and civil disobedience would, for the reasons Dworkin

indicates, be that much more difficult to justify. That, however, is not the situation we are in.

The existing situation is in fact precisely analogous to that which Dworkin describes when he considers the case of the civil rights movement. He says of it:

The rhetoric of American politics had for some decades been freighted with the vocabulary of equality, and the Second World War had heightened the community's sense of the injustice of racial persecution. I do not deny that there was and remains much hypocrisy in that rhetoric and alleged commitment. But the hypocrisy itself provides a lever for persuasive strategies. The majority, even in the South, blushed when it was forced to look at its own laws. There was no possibility of a political majority saying, "Yes, that is what we're doing. We're treating one section of the community as inferior to ourselves." And then turning aside from that with equanimity (p. 109f.).

In the case both of the civil rights movement and of anti-nuclear protest, then, the grounds of the protest are that people in positions of power who profess to accept certain principles have, through their own hypocrisy, failed to live up to them.

I noted just now that such judgments could be contested. That too is significant. It shows that the two sides which disagree about the issues may well also disagree about whether the protest is principle-based or policy-based. I suspect that this was the case with the civil rights movement. I do not know what the opponents of the movement actually said, and I expect that many of them did not formulate their opposition in any clear terms at all, but, to judge from Dworkin's own account which I have just quoted, it would seem that those who did articulate their opposition might have said something like this: "Yes, of course blacks must be treated decently, they must be given their rights, but there are different ways of achieving this, it is bound to be a long and slow process and we must try not to rush it." In other words, they would have claimed that they accepted the principles and disagreed only on the policies. The same claim is made by the opponents of anti-nuclear protest, and it is a claim which the protesters themselves would dispute. Thus one side to the disagreement is likely to see the protest as policy-based and the other side is likely to see it as principle-based. It turns out to be difficult, then, to separate judgments about what kinds of convictions are involved from judgments about the substantive issues - yet that is precisely the separation which Dworkin's "working theory" was intended to achieve.

This does not vitiate Dworkin's philosophical enterprise. I agree that it is important for the advocates of civil disobedience to ask themselves whether the actions they propose are principle-based or policy-based, and to recognise that if they are policy-based they are that much more difficult to justify. But even if they are principle-based, I suspect that those who engage in them cannot with any confidence "expect honor or opportunity" from their opponents [2]. The latter, disagreeing about the issues, are likely also to deny that the actions are principle-based.

I turn now to the distinction between persuasive and non-persuasive strategies, and to the claim that anti-nuclear civil disobedience must involve a non-persuasive strategy. I must admit that this is the point on which the movement is most vulnerable to criticism. There is a good deal of confusion about whether the civil disobedience is meant to be persuasive or non-persuasive. Most people, I think, would say the former, but I have heard loose talk to the effect that "if there were enough of us, they couldn't find room in the prisons for all of us," the implication being that the government would have to make concessions in order to deal with the consequent disruption. Prior to the arrival of cruise missiles at Greenham, there were some (but not many) who thought that this could be physically prevented. Experience has brought with it a

healthier realism, and I think it is now generally agreed that actions such as the blockade of Molesworth are symbolic disruptions intended to draw attention to what is going on, to express our deep-rooted rejection of what is being done in our name, and to invite others similarly to reject it.

Why then does Dworkin think that these activities cannot amount to a persuasive strategy? Again he offers a contrast with the civil rights movement. The latter could appeal to a shared conception of justice, and

... it was only necessary to force enough people to look who would be ashamed to turn away. The questions of policy at the bottom of the nuclear controversy are, by contrast, signally complex. It is plainly not obvious, one way or the other, whether deployment of missiles in Europe is more likely to deter or provoke aggression, for example, or even what kind of an argument would be a good argument for either view. It is hard to see in these circumstances how discussion could be illuminated or debate strengthened by illegal acts. On the contrary, such acts seem likely to make the public at large pay less attention to the complex issues on which any intelligent view must be based, because it will think it has at least one simple and easy-to-understand reason for sticking with the policy its leaders have adopted: that any change in that policy would mean giving way to civil blackmail (p. 112).

It is apparent that Dworkin's reasons for thinking that the strategy of anti-nuclear civil disobedience cannot be a persuasive one are tied to the claim that it is policy-based rather than principle-based. Consequently, in disputing his claim that it is policy-based, we can also dispute his claim that it is bound to involve a non-persuasive strategy. If the point of the protest is to declare that we cannot consent to having these weapons used in our name, then we can reasonably hope to persuade others to share in that declaration. If we are calling on the government to take seriously its own professed recognition of the need for nuclear disarmament, and to act on it in good faith, we can reasonably hope to persuade others that such government action is urgently needed.

Having said that, I must also say that I find it odd to be arguing that anti-nuclear civil disobedience is an attempt to persuade the majority. The fact is that we have persuaded the majority. At least on the issue of cruise missiles - which is the focus of Dworkin's discussion, and also, of course, the focus of civil disobedience at Greenham and Molesworth - majority opinion is clear. Polls have shown a steady 60% opposition to the new missiles.

Why does this fact not feature in Dworkin's discussion? Partly, perhaps, because he was addressing himself to a German audience, but, more fundamentally, because of his technical use of the term "majority". He explains this in a footnote:

I use the word "majority" in a perhaps special sense: to name those who have control for the time being of the political machinery of an adequately democratic political system. They may not be the numerical majority, but they have secured their power through elections under procedures that are, at least roughly speaking, democratic (p. 404, n. 1).

Certainly in this sense we have not persuaded the "majority". What we are about is indeed, in part, an attempt to persuade the "majority" in this technical sense to pay heed to the views of those who are in the normal sense the majority. In this context it also becomes more possible to make a case for a non-persuasive strategy as well. If the government is trying to ride roughshod over the wishes of the majority, there may, on democratic grounds, be a case for trying (non-persuasively) to frustrate their attempt to do so.

It emerges, then, that if we are assessing civil disobedience in the terms Dworkin proposes, a great deal will hinge on the interpretation of his phrase "adequately

democratic". How democratic does a political system have to be in order to count as "adequately democratic". One may take the view that the present political system, though it has its imperfections and does not always function as it should, is democratic enough to merit that label. One may consider that institutions of this kind, though they do not guarantee that government decisions always reflect majority opinion, are the most practical and effective way of grounding the one in the other. If so, one will be that much more inclined to see at least some kinds of civil disobedience as attempts to frustrate the democratic process. Alternatively one may take the view that, since these institutions give most people little or no say on matters which affect their lives in fundamental ways, the decision-making process could and should be quite substantially more democratic. One will then be that much more inclined to support civil disobedience which reflects majority opinion in opposition to government decisions.

This is not the place to discuss the relative desirability and feasibility of the different versions of democracy. We can, however, ask the more limited question: how "adequately democratic" is the decision-making process which has brought the new missiles to Europe? I suggest that one does not have to be an advocate of extreme plebiscite-democracy to take the view that the process has been very undemocratic indeed. The decision was taken at a meeting of NATO ministers in December 1979, without any debate in parliament. Subsequent parliamentary debates have simply been about whether to endorse or reverse a decision which had already been taken. There has been no willingness to encourage a national debate on the issues, despite the extremely widespread strength of feeling, in this country as in all the other countries scheduled to take the missiles. On the contrary, those who have questioned the decision and have sought to open up the debate have been ridiculed and dismissed as either naive or seditious. Such a mode of proceeding is entirely alien to the spirit of democracy.

This, then, is the major gap in Dworkin's "working theory". It fails to give an adequate account of civil disobedience which is undertaken in the name of democracy, which is aimed at exhibiting the deficiencies of a purportedly democratic system and at challenging government decision-making when it is insufficiently democratic. If we look at anti-nuclear civil disobedience in those terms, and if we can recognise also that it can in fact be principle-based, we can make a much stronger case for it than Dworkin allows.

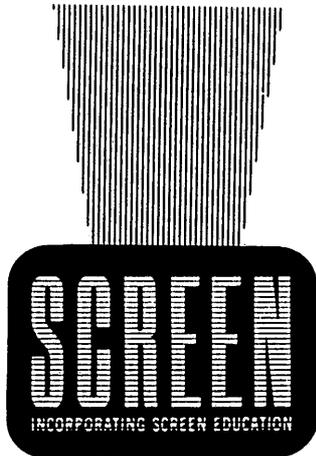
I should add, in conclusion, that those who engage in such actions would not, I think, normally put the point in quite those terms. I have presented it as a cautious and primarily negative conclusion of a rather abstract logical argument. Most advocates of civil disobedience would not arrive at their justification by such a route. They would nevertheless appeal to the kinds of considerations I have mentioned. They would, I think, present the justification in something like the following terms: Civil disobedience is the only way in which we can say what needs to be said. It is the way of expressing our sense of alienation from the political system. That means two things. It means that the voice of dissent has been entirely excluded from the decision-making process, a purportedly democratic system has shown itself to be insufficiently democratic, and the resort to unconstitutional means draws attention to this failure of democracy. At the same time, by breaking the law, we deliberately distance ourselves from a political system which is prepared to defend itself with a willingness to commit genocide.

Notes

[1] In Ronald Dworkin, *A Matter of Principle* (Harvard University Press, Cambridge, Massachusetts and London, England, 1985). The paper was originally presented to a conference of the German Social Democratic Party in Bonn in 1983.

[2] "But once we abandon the project of this essay, once we make the rightness of what we do turn entirely on the soundness of what we think, we cannot expect honor or opportunity from those who think it is we who are naive and stupid." (Dworkin, p. 113).

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