

Civil Disobedience beyond the liberal paradigm

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Abstract

This paper aims at discussing the liberal definition of civil disobedience and the paradigm it was born in. This work is based on the critiques elaborated by Robin Celikates, William E. Scheuerman and Erin R. Pineda and tries to make them interact in order to challenge the liberal elaboration of the notion of civil disobedience from various perspectives. In the course of the paper, further reflections will be provided, suggesting new aspects not considered or not dealt with by the three authors. The aim is to save civil disobedience from the depotentiating conception liberals gave to it and to bring it back to its political and democratic power.

Introduction

In every constituted political asset, whatever its type, be it a liberal democracy or an absolute monarchy, the issue of dissent must sooner or later be faced. Of course, depending on the kind of constitution, disobedience can be considered a simple case of lawbreaking, and thus quickly suppressed with various means, or it can be problematized and viewed as an expression of political constituent power or as a corrective mean toward an institution, a law or a policy. It is in this second case, when some kinds of disobedience express in the same time both dissent and the urge to change something (or even a great part) of the political life without destroying the principle of the rule of law, that this disobedience may be called *civil*.

That of civil disobedience is a relatively new notion, even if the issue of resistance to unjust laws is as old as political philosophy. The problem was addressed, for example, by Plato's *Crito*, when Socrates refuses the chance to escape from prison after being sentenced to death in the name of lawfulness, even if the decision, though legitimated by the political system, is clearly unfair¹. Some centuries later, medieval thinker such as Augustine and Aquinas advanced the possibility to disobey to unjust laws, especially when their content challenges the christian morality, for an unjust law may well be considered not a law at all²: in their case the requirement for disobedience to be sound is, of course, the adherence to the Christian religion. The first thinker to focus a great part of his work on the issue of civil disobedience, but without calling it this way, was Étienne de La Boétie in his book *Discourse on Voluntary Servitude*, where the author claims that tyrants rejoice in their power only because people agree to be subject, so it is entirely up to the people a refusal in

¹ Plato, *Crito*: "whether in battle or in a court of law, or in any other place, he must do what his city and his country order him; or he must change their view of what is just".

² Augustine of Hippo, *De libero arbitrio*: "Lex esse non videtur quae justa non fuerit"

the support of an oppressive government. Also, in modern age, depending on the kind of constitution the philosophers wanted to endorse, we find for example Hobbes, that saw any act of dissent as inadmissible for the sake of the solidity of the State, and Locke, who claimed instead that people have the right to resist to laws that are too intrusive and deprive them of their individual inalienable rights. In fact, we could say that in Locke's work it is contained one of the fundamental principle of the liberal doctrine on civil disobedience, the one that this paper aims at discussing and, if possibly, challenging, basing on the critiques advanced by Robin Celikates, William E. Scheuerman and Erin R. Pineda.

Before analyzing their work, a last historical premise needs to be recalled. The very expression *civil disobedience* has been explicitly used for the first time by the American thinker Henry David Thoreau in his book "On civil disobedience" published in 1849, where he endorses a form of individual non-collaboration with the purposes of the government. It is a position that overlaps with the contemporary notion of conscientious objection, rather than civil disobedience as we tend to conceptualize it, but this claim will be better deepened and explained later in this paper.

In the next section, the works of the three authors mentioned above will be analyzed and discussed in what they have in common, namely the critique of the liberal definition of civil disobedience and its implications, leading to a complete refusal of the paradigm in which this definition has been conceptualized, and in the aspects on which they differ from one another. In particular, the issues of violence and lawbreaking will be addressed, trying to further the reflection by highlighting some aspects that, on a deeper analysis, the three authors seem to have left out.

The liberal definition of civil disobedience and its limits

Celikates, Scheuerman and Pineda all start considering the classical liberal definition of civil disobedience, which is to say the one provided by John Rawls in *A Theory of Justice*:

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.

Other characteristics, according to the liberal formula, are the appeal to the "sense of justice of the majority" and the acceptance of the possibility of a penalty, being the act "within the limits of fidelity to law".

Robin Celikates starts her analysis with the identification of these five pillars on which the liberal paradigm is based, all present in the definition: to qualify as civil disobedience, an act requires publicity, non-violence, consciousness, the appeal to the majority sense of justice and the fidelity to law. The liberal formula immediately appears to her too normative, thus in part excluding some significant acts from the domain of civil disobedience and, most notably, depotentiating the very idea of civil disobedience by relegating it in an institutionalized framework that eliminates its subversive power of political contestation. The definition provided by Jürgen Habermas stresses this last point even more: for him an act of civil disobedience is to be

“announced in advance” and the police must have the possibility “to control as it occurs”³. For this tradition, that closely follows the liberal one and that William Scheuerman labels as *democratic*, actions of civil disobedience have a purely symbolic meaning, given that the potential conflict arising from it is defused from the beginning. It seems, actually, that what Habermas has in mind, apart from unlawfulness, is something more like a manifestation or a pacific march.

Publicity

Celikates’ critique involves all the five pillars of the Rawlsian definition mentioned above, let alone its public nature. With Rawls, she believes, and it seems reasonable, that in order for qualifying as civil disobedience an act must be public indeed because of its aim: pointing out an injustice to the public opinion and trying to change the social asset that makes that situation possible. Contrary to what Celikates says, an act of civil disobedience may also be individual, provided, though, that it gives rise to a collective entailment in the topic at stake. The author claims that individual actions pertain to the domain of conscientious objection. This condition of collectiveness, however, seems to be a requirement like the Rawlsian ones she wants to criticize: it is true, an act like Thoreau’s refusal of paying taxes in order not to support the government does not probably fall into the category of civil disobedience, but it is undeniable that a lot of movements for the civil rights started with the actions of an individual, for example Gandhi, Rosa Parks, Martin Luther King Jr. The difference is that their claims, though starting from individuals, *became* collective, so it is possible to argue that one of the factors that is required for civil disobedience to be effective is the capacity to involve a sort of collective feeling and organized actions. It is something very similar to what Martin Luther King Jr argued when he said that the aim of direct action is “to dramatize the issue that it can no longer be ignored”.

Non violence

Liberals want civil disobedience to be non-violent in order to be pursued legitimately and it is actually easy to find examples of great leaders of civil rights movements that based their actions on claims of non-violence, think for instance about Gandhi. However, some problems arise, even internally to the liberal formula: for Rawls, civil disobedience represents the last resort, when all other type of actions have been tried but they have failed. It seems at least strange to conceive the exasperation connected to the very last resort one needs to appeal to and the totally pacific conduction of the action, especially in particularly dramatic situations. Also, it is not always clear, as Celikates points out, if by excluding violence liberals mean only the one against other people or even against objects. Not only this, it is not usually specified if the restriction regards physical violence alone or also psychological one: for example, we can recall here, as Celikates did, the famous case of Laepple of 1969, where the German Federal Court of Justice stated that sit-

³ Habermas, Jürgen, *Civil Disobedience. Litmus test for the Democratic Constitutional State*

ins were to be considered “violent” because of the psychological pressure put on the drivers who could not access the road. If violence is intended in this broad sense, however, not only civil disobedience but also every other form of protest becomes illegitimate, considering that if there is a certain grade of dissent frictions arise in any case.

As Erin Pineda clearly points out, we come to face the issue of the political use of the notion of non-violence inside the liberal paradigm, that the author tries to challenge. According to this analysis, liberals claim to be against conservatives, by criticizing the causal link the latter wanted to draw between disobedience and violent disorder in order to disentangle the civil rights achievements from the violent behaviour of the activists. However, even in doing so, “liberal theorists tended to accept the premises of the conservative argument – that disruption and disorder mark the boundaries of democratic society, that American political institutions are basically just and require external provocation only rarely and on narrow terms; and that peaceful mechanism of law, reason, and persuasion remain sufficient for ushering in necessary social and political change”. This claim is based on the assumption Rawls makes, without apparently no reason to get to such a conclusion, that as we live in a society we are under political obligation to follow the established law. Under this point of view, it is clear how an act of dissent leaves puzzled and needs to be justified.

Finally, what is left to be said about claims of non-violence is that, abstractly speaking, it is understandable why theorists of civil disobedience usually voiced for it. Violence is usually connected with other forms of protests, like rebellions and revolutions, which are quite different from civil disobedience in that their aim is to destroy a specific social order namely by the use of force. Civil disobedience is a form of dissent that, paradoxically, expresses the highest respect for the rule of law and only wishes it to be more inclusive. The discrepancy is between theory and the real examples of civil disobedience we face in society. This is in fact one more critique that can be pushed against Rawls and the other liberals theorists: the lack of a practical lens through which many acts of dissent may be categorized as civil disobedience.

Consciousness

The third pillar of liberal theories is less problematic than others but still worth an examination. It can actually represent a criterion through which it is possible to discover that some actions presented as civil disobedience are instead no more than strategic protests. Celikates conceptualizes this claim with the expression “NIMBY”, Not In My Backyard. So, for example, a protest against nuclear energy may not be driven by a sincere concern about the very issue at stake, but for the fear of the consequences that a nuclear central could have if built close to one’s place of residence. In the same way, anti-omophobic fights may be pursued only for the prestige that derives from this progressive position rather than for a true conviction of the claim.

Appeal to the majority’s sense of justice

This point is very interesting because it shows both a distinctive and positive trait of the liberal thinking and a problematic assumption. Let's start with the first. As William Scheuerman underlines in his work, putting the birth of the liberal claims on civil disobedience in a historical perspective, the appeal to the majority's sense of justice relies on rational and persuasive methods, such that everyone can potentially share. This comes in opposition to the civil disobedience conceptualized on religious or spiritual grounds, so that its source could be shared by fewer people, namely only by those who adhered to that particular religious or spiritual tradition. In this last case, civil disobedience was seen as a "device to counter evil, a form of divine witness requiring of practitioners a suitably demanding spiritual comportment", as Scheuerman explains, and this was the basis for a political or social reform. An example of such a view is of course Gandhi but also Martin Luther King. The liberal tradition disentangled civil disobedience from its religious component by recognizing the pluralism of modern societies: considering the multitude of diverse way to conceptualize the good life, society needs a wider ground on which to base the particular form of dissent that is civil disobedience. This ground, at least in a Western democracy, can derive from nothing but the rational faculty shared by all people that, following also the Constitution, should lead to the comprehension of the "sense of justice" that guides the disobedient act.

A controversial aspect is the one noticed by Celikates, who points out that the act of civil disobedience is often necessary indeed because of the lack of this sense of justice in the majority of the population.

A further critique to Rawlsian definition involves the nature of this "majority" he appeals to. In principle it could be understood as almost an arithmetical term – the greatest number of people. But in fact, in the social reality, it is not only a matter of numbers but of social power⁴. Rawls says that a certain degree of injustice is inevitable, even in the best designed Constitution, and that citizens should accept it, provided that the burden of such an injustice is more or less equally shared on the different groups of the population. This, as we know, is often not close to reality and the discriminated groups are always the same ones. Acknowledging this, he says that in this case, and in cases of denial of basic liberties, acts of disobedience may be justified. But then, how to consider valid both claims, that concerning the appeal to the majority's sense of justice and the consciousness of the real situations we find in the world? Rawls seems not to mind the contradiction.

Fidelity to law

We have addressed this point before in the course of this paper, for what concerns the final aim of civil disobedience, which is to say the change of some policy or law. In this sense, civil disobedience resembles more reformist a practice than a revolutionary one. In this section it is worth focusing more on the danger that is intrinsic to principle of general fidelity to the rule of law: the whitewashing, as underlined by Pineda. The problem, she claims, is that the very structure of the rule of law, in modern Western democracies, is based on the actual exclusion of some groups of people, whose dissident action comes necessarily to be seen

⁴ The arithmetical interpretation of "majority" is a trap also Henry David Thoreau failed to recognize. In his book *On Civil Disobedience* (1849), he claims that no matter if a person is alone in practicing dissent because he or she "already constitutes a majority of one". It is more rhetorical than practical, however.

as unlawful, or at least disobedient. Such a system of systemic domination can be contrasted by keeping in mind that the status of civil disobedience should be that of a “decolonizing praxis”, serving as a mean of emancipation and namely a democratic one, so to secure “not just survival but also the eventual transformation of white oppressors into fellow citizens”.

A further reflection on this point is needed, though. When an unlawful act is recognized as civil disobedience and not as simply a behaviour that violates a law? It is worth recalling the case of civil rights activists Claudette Covin and Rosa Parks. They both refused to let a white passenger take their seat on a bus, going against the law. Covin did it nine month before Parks, but her case did not have the resonance, the magnitude and the game-changing effect that Park’s act indeed started. Recalling the Marxist tradition, it is fair enough to say that probably it is when the oppressed are self-conscious of the discrimination they undergo that an unlawful behaviour may be seen as civil disobedience, as a way to affirm a basic right that is denied by law. In the other case, when the oppressed group has not reached yet a “class consciousness” (of course here it is intended in a broader sense than the Marxian economic one), the unlawful act has no consequences and does not trigger a fight for improving the conditions of that group and reaffirm justice.

Conclusion

The aim of this paper was to analyze the aporias of the liberal definition of civil disobedience through the critical lens of the works by Celikates, Scheuerman and Pineda and also to try to further the reflection on some points that seemed not directly dealt with or solved by the three authors.

The conclusion we can draw after the present analysis is that, in the historical developement of the concept and the practice of civil disobedience, liberals played a crucial role in liberating this practice from its religious and spiritual presuppositions, making it an instrument in the hands of ideally every citizen. At the same time, though, they provided very restrictive requirements for the behaviours that according to their definition can be labelled as civil disobedience. It seems that the problem arises mainly from the fact that liberals tend to consider the liberal asset of society as one which does not need amendments, apart from really exceptional cases, probably underestimating the degree of possibility that this cases should occur in real society. This is why the most famous cases of civil disobedience actually do not fit into the Rawlsian definition, and not even to a little extent.

If we consider false the liberal assumption and instead conceptualize as possible a costant improvement of the principle on which our democracies are based, civil disobedience becomes a powerful mean for progressively amending the fallacy of the institutions. Also, it must be recognized that in a fast-changing society like the one we live in even the best institutions and policies become quickly obsolete and need a frequent rethinking. Civil disobedience may serve as a method – among others of course – to contrast the stiffening of the social asset and help it to move and evolve in a more modern one.

This is why civil disobedience is a dynamic and political force that shall not necessarily be conceptualized in the strict liberal way. It obviously needs some requirements (like for example publicity, civic-mindedness, aim at social change) but these must not be too narrow as to exclude or depotentiate the strength of a disobedient significant act. So, apart from its definition, civil disobedience, considering what has been said so far, may be recognized as a tool through which it is possible to keep alive what Benjamin Constant used to call the “constituent power” of people, a sort of bastion for the groups that are victims of injustices and that gain a space to affirm their violated rights.

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