

“It is always easier to justify conscientious objection than civil disobedience.” Is it?

The two issues of civil disobedience and conscientious objection are very difficult; they seem to conflict immediately with the idea held by the average layman that one should obey the law. Therefore, their potential justification is likely to be a complex issue. What must be noted from the start is that the answer to this question is heavily dependent on what is meant by justification. It seems that there are two possible ways in which it can be examined. The first is simply that conscientious objection or civil disobedience is, in the circumstances, seen as the right thing to do i.e. it is correct behaviour. On this premise it would seem that it will be possible to find justifiable examples of both. The second, on the other hand, would be to say that such action is only justified where someone has a right to do it. If this is the case then whether the action is viewed as ‘correct’ or not becomes irrelevant. This difference between the two types of ‘right’ is something which is heavily emphasised by Dworkin. Both of these approaches to ‘justification’ will be looked at.

Conscientious objection has been defined by Raz as the refusal to comply with a legal order, not for political reasons, but because the individual is morally prohibited, by their own moral standards, from obeying. This contrasts with civil disobedience, which is a politically-motivated breach of the law designed to contribute to a change in the law or to show the particular actor’s dissociation from a particular law. Immediately it can be seen that the primary difference between the two is that whilst the former can be seen as quite a *private* matter aimed at defending oneself from what is seen as immoral, the latter is always going to be a *public* disregard of the law because it is only in this way that the aims of civil disobedience can be achieved. It would seem that if we take justification to mean simply that some action is the right thing to do, whether or not there is an actual right to do it, then both civil disobedience and conscientious objection will be justified in some cases.

However, the interesting point to note is that actually here the opinion expressed in the question would seem to be wrong.

For something to be seen as 'right' it must be viewed as so not by the particular objector or protestor, who obviously sees what they are doing as 'right', but by the majority. The problem for the conscientious objector, however, is likely to be that most people in society will view his moral convictions as 'wrong' because they are not in accordance with the majority. In some situations this may be forgiven by the majority, such as where pacifists object to conscription because of their religious beliefs, and then the majority may feel it is right for the individual to follow their morals rather than the law. However, in some cases the 'moral' divergence may be too great for this. Here the majority may feel quite differently and believe that the moral view of the individual is so displaced that it is not 'right' for them to follow it at all. Here there would therefore be no justification. This should be contrasted with civil disobedience. Raz states there are two ways in which this is pursued and it is in strategic and non-strategic strategies. The first is where the disobeyer appeals to the morality of the majority to try and bring about change. The second is where they attempt to make the cost of following the law too high for the majority to bear so they must change it. It is submitted that in most cases it is the former which is pursued and if there is an appeal to the majority morality it would seem more likely that the majority will see the disobedience as 'right'. So although under this concept of justification both civil disobedience and conscientious objection will be justified sometimes, it is possible to make an argument which says that it is civil disobedience which can be more easily justified. Thus the opinion in the question would be misplaced.

This is not necessarily true when it comes to the second outlined concept of justification, however. Civil disobedience will be looked at first. In order for there to be a right to civil disobedience, a right not to follow the law, it must be possible to say that the legitimacy of one's actions does not depend at all on the correctness of the cause that is being pursued. As Raz states, a right allows someone to choose between right and wrong but for this to be a

choice it must be possible for the individual to choose the 'wrong'. It would seem, however, that in a society where there is a right to political participation there can be no right to civil disobedience. Where a society allows political participation this will be protected by law, giving a right to it. If political activity is protected by law then political activity can never be justification for breaking the law. Moreover, if one has a right to perform an act then its performance can seemingly only be classified as a lawful political act; it can't be civil disobedience. Thus civil disobedience cannot exist as a concept if there is a right to it. What this serves to demonstrate is that if justification is made to rest on there being a right to a particular action, then civil disobedience cannot be justified.

When it comes to conscientious objection the issues which must be looked at are, of course, different. The problem is that for an individual to have a right to conscientious objection, society must accept that a person may not do what they would otherwise morally have a duty to do because of their own mistaken belief that it is the wrong thing for them to do. There seems to be two possible ways that such a right could be said to exist. The first is the utilitarian approach. If someone breaking the law does not detract from the greater good then there is no reason why they should not have a right to do it. However, this would only be a *prima facie* right because if the utilitarian approach is to be adopted then every suggested breach of the law by a conscientious objector must be assessed and balanced against all other interests and values. If it would detract from the greater good then there would be no right to do it. This may seem to justify conscientious objection but there seems to be a fatal flaw in adopting this approach, which is that the utilitarian approach fails to take account of the peculiarly moral nature of the objection. It is allowed simply because it is an objection, not specifically because it is a moral objection. It would seem that any accurate account of a right to conscientious objection must take account of the moral nature of the objection because this is all there is to distinguish it. So utilitarianism cannot show a right to conscientious objection.

The conclusion is not so damning when one looks at the idea of respect for the person, an element of humanism. Here there is an emphasis on the autonomy of every individual, meaning that a person is seen as having a right to moral beliefs which we may find misguided, and equally has a right to live their life according to those beliefs. However, again this would not result in an absolute right because this theory recognises that the autonomy of the person may sometimes have to be overridden in order to protect other values and ideas. That said, it does at least provide a superficial right to object on conscientious grounds and if justification requires a right to carry out the act then this would seem to show that conscientious objection can be justified more than civil disobedience on this definition.

Therefore the conclusion comes down to which meaning of justification is to be adopted. It is submitted here that it is the first concept which is the most appropriate: that of someone being right to an act rather than having a right to do it. Often people will look at an illegal act and think people are justified in acting in the way that they have; the black civil rights movement in America is an obvious example. To say someone needs a right to do something in order to be justified in doing it simply doesn't fit with accepted meaning of the word. Therefore, it must be said that both conscientious and objection and civil disobedience can be justified in some circumstances but that the opinion expressed in the question is misplaced. As stated, on this view it may well be civil disobedience which will seem to be more easily justified.