

In defence of a liberal theory of autonomy, obligation and civil disobedience

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Abstract

This article is a defence in the field of liberal political philosophy, on the ideas of *autonomy*, *obligation* and *civil disobedience*. The article is divided into three parts, each devoted to one of the concepts mentioned above. The basis of this defence is primarily a support for the contribution made by Joseph Raz (1939-). The primary goal of this article is to present a defence of the right to civil disobedience, in this sense meaning the right to break the law. This does not involve an idea of radical rebellion as we see it today with far right and left political groups who do not garnish the support of a majority. Instead I want to highlight an idea of the right to civil disobedience involving the right of all the agents of a community against the state.

Introduction

This article involves two major concepts, that of autonomy and that of obligation, to present a defence of the right to civil disobedience based on the liberal theory that personal autonomy is primary to any obligation to the law, state and government. I have divided this article into three parts, respectively devoted to (1) autonomy, (2) obligation and (3) the right to civil disobedience.

The first part: 1. *The case of autonomy* starts out with an introduction to the concept of autonomy. I state in this section that the concept of autonomy is an abstract concept, so this introduction is not to be taken as a

definitive description of what the concept of autonomy is about. Instead I present a small introduction to understand the further course of this article.

From there I have devoted section 1.2. *Autonomy in the liberal theory: Joseph Raz*, to give an account of a significant contribution to the liberal theory of the concept of autonomy, which is presented by Joseph Raz (1939-) in his book *Ethics in the public domain*¹⁶.

The second Part: 2. *Autonomy and obligation to the law*, follows on the understanding of a liberal concept of autonomy, given in part 1, asking whether autonomy is compatible with an obligation to the law, state and government or not. I will in this part include in section 2.1 *The anarchist view of obligation* the view given by Robert Paul Wolff (1933 -) in his article “The conflict between authority and autonomy”¹⁷. Here, Wolff defends autonomy against any kind of obligation to abide by the law and concludes that anarchism is the only political doctrine consistent with personal autonomy.

In section 2.2 *Is there an obligation to the law?* I will present the account of obligation from Joseph Raz in his article “The obligation to obey the law”¹⁸ to defend a view of autonomy that works with an idea of the state as being instrumental, without there being any obligation to obey the law. This is to defend a view of autonomy that does not recognize any obligation to the law, but that is different from the anarchist view as presented by Wolff. This view doesn’t conclude that anarchism is the only political doctrine consistent with personal autonomy.

The last part: 3. *The right to civil disobedience* refers to Joseph Raz's article *A right to dissent? 1. Civil disobedience*, where Raz clarifies which features a state must encompass in order to be consistent with the autonomy

¹⁶ Raz, Joseph. 1995 [1994] *Ethics in the Public Domain*, rev. edn.

¹⁷ Wolff, Robert Paul. 1998 [1970]. In *Defense of Anarchism*, rev. ed. New York, Harper & Row.

¹⁸ Raz, Joseph. 2009 [1979] *The authority of law: essays on law and morality*. Oxford University Press.

of its citizens, and what the state must lack for the citizens to have the right to dissent from the law and engage in acts of civil disobedience.

1. The case of autonomy

1.1 An introduction to the disagreement about the concept of autonomy

I wish my life and decisions to depend on myself, not on external forces of whatever kind. I wish to be the instrument of my own, not of other men's acts of will. I wish to be a subject, not an object; to be moved by reasons, by conscious purposes, which are my own, not by causes which affect me, as it were, from outside. I wish to be somebody, not nobody; a doer – deciding, not being decided for, self-directed and not acted upon by external nature or by other men as if I were a thing, or an animal, or a slave incapable of playing a human role, that is, of conceiving goals and policies of my own and realizing them. (Berlin 2009: 178)

This quote, from Isaiah Berlin's book *Two Concepts of Liberty*¹⁹, is one of the most famous formulations of the concept of autonomy, and it is linked to his notion of *negative and positive liberty*. *Negative liberty*, according to Berlin, refers to the independent agent who is not being controlled or constrained by other people or political institutions. *Positive liberty*, as the quote suggest, refers to the agent being granted the possibility of self-rule over his life i.e. having personal autonomy.

It is important to note that Berlin was not the pioneer of the concept of autonomy. Immanuel Kant in his work *Foundation for the Metaphysic of Morals*²⁰ defines autonomy as being the "*autonomy of the will as the supreme principle of morality*" (Kant 2002: 58), meaning that a man is autonomous if he in deciding morally, in the form of the categorical

¹⁹ Berlin, Isaiah. 2002 [1969] *Liberty*, ed. Henry Hardy. Oxford: Oxford University Press.

²⁰ Kant, Immanuel. 2002 [1797] *Groundwork for the Metaphysics of Morals*. Yale University Press.

imperative, gives laws to himself. Man's *pure reason* shows the correct action, and for Kant the highest value of being, is that which is dictated by reason.

The one who best realizes the ideal of Kantian moral autonomy, as I understand it, is the self-legislating man who combines freedom, pure reason and responsibility and is therefore metaphysically free, in a Kantian sense, from a non-empirical point of view.

As the differences in defining *autonomy* suggests, it is hard to agree on a simple definition of the notion. That the concept of autonomy refers to self-legislation is embedded in its etymology, From Greek *autos*: self, and *nomos*: law.

To use a distinction first introduced by H.L.A. Hart (1907 – 1992) and later developed by John Rawls (1921-2002), there can be no clear description of the *concept* of autonomy, as it is an abstract concept, but we have several *conceptions* of autonomy. These different conceptions of autonomy do not give a clear view of what the concept is about. It's the same argument Rawls uses when he talks about the concept of justice and the many conceptions of justice in his work *A theory of justice* (1971). My focus, in section 2, is to describe the concept of autonomy in the liberal theory, through the contribution provided, especially, by Joseph Raz.

1.2 Autonomy in the liberal theory: Joseph Raz

In part 1, Chapter 5 In *Ethics in the Public Domain*, Joseph Raz reserves section 4 to the subject of *Liberalism and Autonomy*. In this section, Raz outlines his concept of autonomy, while also referring to his idea of the state as being instrumental but never above the autonomy of its population (see section 2.2). To him, the governments primary task is to promote autonomy to the extent that it increases the well-being of its population, and to understand autonomy, you must understand the well-being of a plurality of people in a state (*Raz. 1995: 118-119*).

Raz refers to the notion of liberal fear, a fear of a conflict between the state and the agent's autonomy, i.e. whether to accept a competent uniform state, thus risking it reshaping its agents into a collective mass based on ideals, or to reject the state completely and insist on the value of the individual autonomy of its agents. Raz tries to combine both the instrumental role of the state and the individual's autonomy through a conception of well-being based on autonomy and *value pluralism*. For Raz, value pluralism is intimately associated with autonomy.

Raz outlines value pluralism as the understanding that there are many different and incompatible valuable ways of life that makes up the differences in people's personalities. These different ways of life are incompatible, because it is impossible for one person to combine them all in the course of one life. They are valuable because each and every one of them is good in that they contribute to the well-being of the individual that pursues them. Raz divides autonomy into two major aspects (*Raz. 1995: 119-120*).

The first aspect is that of self-definition, which corresponds to Berlins idea of positive liberty. Self-definition is the result of a succession of choices a person makes during his life. Self-definition is important for the understanding and meaning of a lived life. What you are, what your self-definition is, is made through the choices and decisions you make during your life, that you have made among diverse and valuable options. The second aspect states that people's lives are what they are because of the specific choices they make, and not because they alone are able to make a certain amount of choices that they make as a part of their own self-definition. The autonomy in this aspect values only a specific route, a certain plan for your life, of choices made among diverse and valuable options, and that a life is what it is because of a specific choice made in situations where the choices were many. And not as in the first aspect, where the choices are freely made as part of a person's own route to self-definition. This second

aspect of autonomy is what Raz considers the ideal aspect of personal autonomy, because the choices in this aspect are part of a plan for a person's life, in the present and in the future.²¹

From here Raz connects autonomy with his idea of value pluralism. His idea of the life of the autonomous person as being of value only when it provides a life of well-being, requires a range of available and valuable options for the autonomous agent, and a society with a pluralistic set of values that provides these options.

This set of pluralistic, available and valuable options can also lead to the autonomous agent choosing what Raz calls *immoral*, *ignoble* or *worthless* choices, because they are free autonomous agents. This shows that the autonomous life does not always lead to actual well-being of the person, since this person does not engage in valuable activities and pursuits. It is therefore also easier to judge a person's choices and actions (that the person thinks best for his well-being) more harshly in the value pluralistic society, since otherwise we could say that he did not have the chance to pursue differently a life of well-being. This leads Raz to the partial conclusion that for his idea of the autonomous life of *well-being*, we need:

A conception of individual well-being which combines autonomy and value-pluralism [That] meets the liberal questions of how a political pursuit of ideals of the good can be combined with an attitude of toleration and respect for individual freedom. (Raz. 1995: 120)

²¹ It is important to add that Joseph Raz's idea of personal autonomy is closely linked to what John Stuart Mill called Individuality. And what Raz refers to as the well-being of the autonomous agent, Mill referred likewise to individuality as a main ingredient needed for human happiness: "It is desirable, in short, that in things which do not primarily concern others, individuality should assert itself. Where, not the person's own character, but the traditions or customs of other people are the rule of conduct, there is wanting one of the principal ingredients of human happiness, and quite the chief ingredient of individual and social progress." (Mill. 2001: 53).

From here Raz points out that his combination of autonomy with value pluralism is a strong force against the liberal fear earlier defined, where the concern was the uniformity of the state versus the value of the individual autonomy of its people. The pluralism of values in a society cannot be accomplished in a state where the government forces a uniform ideal vision of life on its population. Therefore, his idea of value pluralism, combined with individual autonomy, requires the freely active life of the agent to choose what he or she regards as being important for their own well-being, and it is therefore incompatible with a uniform ideal vision of life dictated by a state.

Therefore, in this society of value pluralism and individual autonomy, the state is only instrumental and cannot enforce ideas of what it means to be a good person. The government and the people working in the state can only be instrumental for the flourishing of the well-being of people by creating the conditions for individuals to lead autonomous lives. This is done by securing that society is diverse and pluralistic in its values that are available to everyone. Other than that, individuals should be left free to pursue their own idea of a good life consisting of well-being.

The instrumental function of government, besides that of providing a minimal protection that guarantees the basic needs of the citizens, is to provide the security of a value-pluralistic society so it is available to all.

2. Autonomy and obligation to the law

2.1 The anarchist view of obligation

I will not dwell further on the Kantian concept of moral autonomy than the already given understanding of this concept (section 1.1), but this understanding is needed to highlight the defence of *political anarchism* presented by Robert Paul Wolff in his book: *In Defence of Anarchism*.

In this chapter Wolff argues that an autonomous person cannot both retain his autonomy and be under an obligation to obey the laws of the state. Wolff asks: ‘under what condition and for what reason does someone have authority over another, and in which ways does someone have an obligation to obey this authority?’

The defining mark of the state is authority, the right to rule. The primary obligation of man is autonomy, the refusal to be ruled. It would seem, then, that there can be no resolution of the conflict between autonomy of the individual and the putative authority of the state. (Wolff 1998: 18).

Wolff argues that a person only has an obligation to himself, as being an autonomous self-legislating agent and ruler of his own decisions, and that he must therefore resist the authority of the state and law. Because of this view of autonomy, Wolff declares that authority of any kind is never legitimate because the kind of obedience associated with authority is inconsistent with the autonomy of the subject. Every person has a duty to act according to his autonomy which is inconsistent with obligation to the state and law, and this makes Wolff conclude that anarchism is the only political doctrine consistent with the virtue of autonomy. A state can never have any legitimate authority over its subjects. This is a classic example of the anarchist view of obligation (Wolff 1998: 18).

2.2 Is there an obligation to the law?

In this section I will defend the liberal theory of obligation to the law, which contains a view of autonomy that works with an idea of the state as being instrumental, but without there being any obligation to obey the laws of the state. It is different from the anarchist view as presented by Wolff, because it does not conclude that anarchism is the only political doctrine consistent with personal autonomy.

In his article “The obligation to obey the law” from his book *The Authority of Law* Raz starts with stating that:

There is no absolute or conclusive obligation to obey the law. I shall suggest that there is not even a prima facie²² obligation to obey it [...] I Shall argue that there is no obligation to obey the law even in a good society whose legal system is just. In other words, whatever one’s view of the nature of the good society or the desirable shape of the law it does not follow from those or indeed from any other reasonable moral principle that there is an obligation to the law. (Raz. 2009: 233)

Raz then breaks down three major arguments for obligation to the law, *moral reasons*, *prudential reasons*, and *reasons to follow the law if it is a good law brought about by a good legal system*.

The first argument, based on moral reasons, states that breaking the law can have grave consequences such as encouraging, by example, other people to disrespect the laws. An individual who breaks the law is liable for setting a bad example of behaviour in relation to the law, to disregard promises, oaths, and risk inducing harm to others. Raz points out that a moral argument against setting a bad example isn’t enough to establish a general obligation to obey the law, since there is a large number of violations of the law, such as tax offenses, that are never detected and therefore never highlighted as setting a bad example, and so would not contribute to a general disposition among people to disrespect the law. But since the obligation to obey the law is supposed to be general (meaning without exceptions), the obligation cannot be based alone on the moral reason of setting a bad example for others to follow. (Raz. 2009: 237-238)

Raz also highlights the fact that most people do not believe that others obey the law because they are expected to do so. He does state that people

²² Prima facie means a duty you shall fulfill unless it goes against another corresponding duty.

will often conform to the law to prevent harming others, but conforming is not the same as acknowledging a general obligation to the law. (Raz. 2009: 239-240)

The second argument claims that we have prudential reasons, i.e. reasons of self-interest, to obey the law. This claim relies on the fact that individuals in a community risk legal or social sanction from the state or community if he breaks the law, which is against his self-interest. Therefore, we have prudential reasons to obey the law. As with the argument of moral reasons to obey the law, Raz makes clear that there can never be a general obligation to obey the law based on prudential reasons. According to Raz (a point that I especially agree with) people are often not clear about the reasons for why they abide by the law. Many people have what he calls secondary prudential reasons not to break the law, simply because they do not break the law in normal situations, but not because the law requires it. Since there is a vagueness to the argument why some individuals abide by the law on grounds of self-interest and others do not, the arguments of prudential reason also do not support a general obligation to the law. (Raz. 2009: 242-245)

The third argument claims we have reasons to follow the law if it is a good law brought about by a good legal system. Raz states, that individuals are more likely to have independent moral reasons for conforming to the laws brought about by a good state and legal system than a bad one. It is more likely that a good legal system and state have morally good laws (such as laws against murder), which conforms well to several independent moral reasons that individuals have. Raz answers to this argument by adding a second function of the state (the first being that of providing a minimal protection that guarantees the basic needs for people to survive). This second function is the instrumental function of the state that Raz calls *schemes of co-operation*. These schemes can provide the conformity needed for an individual to follow, such as an agreement that every individual has a

moral duty to contribute to the welfare of a community, something many have an independent moral reason to conform to, while it also helps manifesting a sense of belonging to a community of independent individuals²³. The good state and law can therefore serve an instrumental function for creating and maintaining such schemes of co-operation and if the state and law does this well enough, it can encourage the participation of several of these schemes of co-operation. But it is again important to make clear that because the state and law are good and well-functioning in providing schemes of co-operation for individuals to conform to, it can never give rise to an obligation for the individuals to follow, for even a good state with good laws have individuals who do not abide by them, and those who do not abide by them, fails to become bad examples for others to follow (Raz. 2009: 245-249)

All these reasons I have mentioned that count in favour of doing what the law requires, do not have anything to do with obligation. The good state with good laws can be instrumental, and it can even be admirable for the agents to conform to its laws, while they at the same time do not have any obligation to abide by them. Just because a state and its laws are good, it does not follow that there is a reason to obey them. Everyone has independent moral reasons to conform to the law, the law is only an extra motivation for those who may be inclined to act against a sense of moral reason. The laws exist to help us act in such ways, that we already have independent moral reason to conform to anyway. Most people do not even need the law, but for some there is a need for it to be instrumental in

²³ This point, which I need to comment on, also shows that Raz's liberalism is far from the radical laissez-faire libertarianism that we meet in the political philosophy of Robert Nozick (such as in the infamous *Anarchy, State, and Utopia* from 1974). This second function of contributing to the welfare of a community can lead to a broad spectrum of social policies to uplift the overall collective welfare of the citizens, without the need for an obligation to the state itself. This is far from the libertarian view which I with a pessimist sense of humor would call live and let die policy.

showing what is for the collective moral good, without there ever being any obligation to it.

Raz concludes that autonomous individuals have reasons to conform to the law since they already have moral independent reasons to conform to it anyway. But Raz also concludes that an obligation to the law does not exist. The state as instrumental can never interfere with autonomy, since its secondary function is to present schemes of co-operating that its subjects do not necessarily need to conform to, but which they most likely do, if the state and its laws are good. Raz concludes, like Wolff, that there is no obligation to the state and law, but this does not mean that the state cannot serve an instrumental function for its autonomous subjects to conform to (Raz. 2009: 248-249).

3. The right to civil disobedience

We now plunge into the third part of this article, which discusses *the right to civil disobedience*.

One of the key examples of civil disobedience was that of Mahatma Gandhi²⁴, who in an action of civil disobedience against the British tax on Indian produced salt, started his salt march to the coastal village of Dandi where he picked up grains of salt from the ground and thereby violated the British tax law. In the light of this historical event, that led to the fall of British colonial rule, the modern interpretation favours the acts of civil disobedience by Gandhi against British exploitation of its colonies. But at the time of Gandhi's actions it was seen as a violation of obligation to the authority of the British Empire over India (known at that time as the British Raj).

I will in the following section discuss the right to civil disobedience, as it is presented by Joseph Raz in his article “a right to dissent? I. Civil

²⁴ Real name: Mohandas Karamchand Gandhi. Was given the title Mahatma (Sanskrit for *venerable*) by his followers.

disobedience” from his book *The Authority of Law* and use this definition of the right to civil disobedience to answer the question of whether Gandhi’s action was legitimate.

Raz himself makes clear that the question to be considered in his article is whether, and under what circumstances, there is a moral right to break the law by performing an act of civil disobedience

Raz defines the act of civil disobedience as follows:

Civil Disobedience is a politically motivated breach of law designed either to contribute directly to a change of a law or of a public policy or to express one’s protest against, and dissociation from a law or a public policy. (Raz. 2009: 263)

Civil disobedience is different from a conscientious objection, which is a morally private action by an individual²⁵. A case of civil disobedience is one of political public action which leads to a political effect. As a political action, civil disobedience is aimed at law or public policy and uses violations of laws as means. It must be the autonomous agents own choice whether he wants to engage in an act of civil disobedience and whether he thinks that it is right or wrong to do so, but whether he has the right to do so is another thing entirely.

For this purpose, Raz introduces the *liberal principle* which states that every person in a society and state has a right to a certain degree of political participation, and it is the government or law-making institutions responsibility to ensure a *right* to political participation. Raz therefore divides the state into two categories the *liberal state* and the *illiberal state*. Illiberal states are characterized by violating the liberal principle of right to

²⁵ morally private action by a person such as refusing to pay taxes, solely based on the persons independent personal interest. Individual personal interest alone does not belong in the field of civil disobedience. If a person wishes to avoid paying taxes that most people gladly pay, he has to show that he is a part of a greater number of individuals who’s well-being is being generally weakened by the tax system imposed on them by the state.

political participation. Members of an illiberal state have, according to Raz, a moral right to civil disobedience, since their right to political participation is not recognized by the state and they can therefore choose not to conform to the laws of the state (and they never have an obligation to do so) which they are prohibited from participating in. (Raz. 2009: 271-272)

The state must provide (as stated in part 1 section 1.2) a set of pluralistic values for the autonomous agent and the liberal principle of political participation is one of many. This also provides the autonomous agent with a plurality of options to make his disagreements with the state clear without it leading to dissent from the law.

Raz makes it clear that in the liberal state there can be no general right of its agents to engage in acts of civil disobedience, since the state provides a pluralistic set of values, and respects the agent's political participation. The agents can find expression for their disagreements with the state by other means than engaging in acts of civil disobedience (Raz. 2009: 272-275). An act of civil disobedience reflects that the state and its law is not setting the right limit to lawful political activity, and in the liberal state (this being idealistic or not) this is not the case. The agents retain their autonomy and have the freedom to act in accord with their autonomy if they are citizens in a liberal state that respects the agents right to political participation and secures a set of pluralistic values for the agents.

So, to return to the question of whether Gandhi's act of civil disobedience was legitimate, my answer would be a clear yes (without any question). The criteria for resolving to, and having the right to, engage in an act of civil disobedience are met. The Indians were subjugated by another state whose politics was controlled by another nationality, the British, and which the Indians did not have the right to participate in. This is a clear violation of what Raz calls the liberal principle and therefore the act of civil disobedience by Gandhi was legitimate without any doubt.

Conclusion

The point of this article, as indicated in the introduction, was to highlight on what grounds we have the right to civil disobedience, based on a defence of the concepts of autonomy and obligation from a liberal philosophical point of view.

In part 1. The case of autonomy, I discussed whether the concept of autonomy is an abstract concept.

In section 1.2 I showed how Raz connects autonomy with his idea of value pluralism. His idea of the life of the autonomous person as being of value only when it provides a life of well-being that requires a range of available and valuable options for him, and a society with a pluralistic set of values that provides these options. Therefore, Raz's idea of value pluralism combined with individual autonomy requires the freely active life of the agent and is therefore incompatible with a uniform ideal vision of life dictated by a state.

In part 2 I defended Raz's idea that there is no obligation to the state and the law. The state as instrumental can never interfere with autonomy, since its only function is to present schemes of co-operation that its subjects don't necessarily need to conform to, but which they likely would, if the state and its laws are good. Raz concludes then that there is no obligation to the state and law, but this does not mean that the state cannot serve an instrumental function for its autonomous subjects to conform to.

In part 3 I have shown, through a liberal theory defended by Raz, under what circumstances a moral right to break the law by performing an act of civil disobedience is present. Members of an illiberal state have, according to Raz, a moral right to civil disobedience since their right to political participation is not recognized by the state and they can therefore choose not to conform to the laws of the state (and they never have an obligation to do so) which they are prohibited from participating in.

The agents retain their autonomy and have the freedom to act in accord with their autonomy and can never resolve to civil disobedience if they are citizens in a liberal state, that respects the agents right to political participation and secures a set of pluralistic values for the agents

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