PUBLICITY AND CIVIL DISOBEDIENCE

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January 25, 1979
This paper is a critical discussion of Robert T. Hall's recent attempt to construct a "minimal" definition of 'civil disobedience.' It is shown that the analysis, if applied consistently, results in a definition which is too minimal in including far too much under the rubric of 'civil disobedience.' Furthermore, it is argued that Hall himself is not consistent in his treatment, the result being a definition which is too restrictive insofar as it excludes certain clear cases of civilly disobedient action. It is shown that the inadequacies in Hall's minimal definition stem from an underlying confusion in his understanding of civil disobedience, the nature of which is indicated by examining his treatment of one of the features commonly held to be essential to acts of civil disobedience, namely, the publicity attending their performance. Finally, my argument is intended to demonstrate that any proposed definition of 'civil disobedience' which does not include reference to a publicity condition is bound to fail to do the job required of it.
Publicity and Civil Disobedience

It has commonly been held that in order for an action on the part of some individual to qualify as an act of civil disobedience, it must be characterized by certain features which distinguish it from simple criminal activity, on the one hand, and from various forms of legal protest, on the other. It is obvious, for example, that the action in question must at least be in violation of some legal statute in order to distinguish it from various species of lawful protest such as strikes, boycotts, peaceful demonstrations, and so on; otherwise the act would not be one of disobedience at all, civil or otherwise. Similarly, it is contended that the action in question must be undertaken for "moral" reasons to distinguish it from criminal acts which, presumably, are always or at least for the most part motivated by purely selfish considerations. However necessary these two conditions are for identifying acts of civil disobedience, they have not traditionally been considered to be jointly sufficient; it has been felt by most that some further feature or set of features must be taken into account in attempting to mark off the class of civilly disobedient actions. Among the characteristics frequently cited in this context are the non-violent nature of such actions, the publicity attending their performance, the willingness on the part of the agent to submit himself to arrest and punishment, and so on.

Recently, however, the notion that any one or all of these additional features is necessary for characterizing acts of civil disobedience has come under attack. Robert T. Hall has argued that only two elements are essential for defining an act of civil disobedience, namely, "the illegality of the act, and the alleged moral nature of its justification."\(^1\) He claims that each of the other features commonly held to be essential to such acts (e.g., their non-violent nature, the publicity attending their execution, etc.) is at best a frequent—but by no means a necessary—characteristic of civilly disobedient action. Hall argues that, except for the two conditions specified by his minimal definition, to include reference to any of the other characteristics commonly held to be necessary results in definitions which are too restrictive, insofar as they must rule out certain clear-cut instances of civil disobedience.

What I should like to do is show that Hall's definition, if employed consistently, is too minimal in that it admits far too much under the rubric of "civil disobedience." Furthermore, I want to claim that Hall himself is not always consistent in his treatment, and that the result of the inconsistency is a definition which is too restrictive insofar as it excludes certain clear instances of civilly disobedient action. I will argue that the inadequacies of the minimal definition stem from an underlying confusion in Hall's understanding of the concept of civil disobedience; and I will attempt to indicate the nature of this confusion by briefly examining his treatment of one of the features traditionally held to be essential to acts of civil disobedience, namely, the publicity attending their performance.

Let us focus for a moment on this element of publicity. It seems plausible to argue that, since at least one of the functions of acts of civil disobedience is to persuade others of the morality of one's (illegal) challenging of a law or practice in the hopes that they too will come to support the effort—either directly or indirectly—it follows that the actions thus performed must be undertaken publicly. As Rudolph Weingartner has observed, "simple evasion of the law, even when undertaken for the highest reasons of conscience, is not yet civil disobedience." An illegal act on the part of Jones could hardly be construed as a vehicle of moral persuasion if Jones manages to conceal its commission from the same public he is attempting to persuade. For this reason, then, it is claimed that in order for a given action to qualify as an act of civil disobedience, it is necessary that the act be essentially public in nature. Of course, this requirement does not imply that the act must be performed before a public audience. It is only necessary that the agent make reasonable efforts to apprise the relevant segments of the community of what he is doing or intends to


do, and his reasons for doing so.4

Hall claims that all this simply distorts the concept of civil disobedience. On the contrary, he claims, there may very well be cases of civilly disobedient action which are undertaken secretly by the agent in question.

If Francis Weyland had publicized his aid to fugitive slaves in the 1850's, he would have endangered the liberty of those he intended to help. If either partner in a marriage between people of different races in a state in which such marriages are forbidden publicizes his former misrepresentation of his race in obtaining a marriage license, he may not only destroy his marriage but might illegitimize his children as well. And nothing more than social disapproval may be thought to excuse the homosexual from publicizing his illegal activities which, to him, are not only morally justified, but also a private matter.5

From this, Hall concludes that "One cannot simply say that in order to be morally justifiable an act of civil disobedience must be performed in public, or in some other way be made known to the community."6 Herein I think we can locate the source of the confusion under which Hall is laboring. Recall that our problem is that of determining whether the element of publicity is essential to civil disobedience. This must be kept distinct from a separate, though related, question; namely, that of determining whether, in a given set of circumstances, a certain illegal action is or is not morally justifiable.

4 One must be careful here to avoid making the publicity requirement too strong. To insist that the public in fact be made cognizant of the activity and/or the agent's reasons for acting would be overly restrictive. On certain understandings of "the public," one would have to perform very drastic actions indeed to gain their attention—or perhaps be wealthy enough to advertise. Civil disobedience ought not be limited only to those acts drastic enough to engage the attention of a very large or blase public. And getting such a community to really understand one's reasons also turns out to be pretty forbidding.

5 Hall, p. 94.

6 Hall, p. 94; italics mine.
The inadequacies of Hall's minimal definition stem from his apparent confusion of these two questions. In particular, the last passage cited indicates that Hall is concerned with the issue of moral justification of various sorts of illegal action rather than the logically prior question of identifying precisely which sorts of illegal activity constitute civilly disobedient action. This same confusion is evidenced elsewhere. In general, Hall claims, "If 'civil disobedience' is defined in such a way to eliminate cases which any significant number of people would consider morally justifiable, linguistic and conceptual difficulties will result in that new categories will have to be created for the discussion of these cases." From remarks like these, one begins to detect a subtle shift in Hall's line of argument. Recall that one of the two conditions specified by the minimal definition of "civil disobedience" is the alleged moral nature of the justification of such acts. The sorts of cases we are invited to consider, however, are all instances of activities which most of us, in fact, regard as morally justified. Having made this shift, it begins to look as if Hall takes the moral justifiability of certain illegal actions as a sufficient condition for qualifying those actions as cases of civil disobedience.

But surely this is mistaken. Consider, for instance, the hypothetical case of a would-be assassin who attempts to dispose of Hitler and thereby bring an end to the atrocities perpetrated by the Reich. Suppose, further, that the attempt is successful and that peace and harmony are secured among the warring parties. Assuming that his motives were not merely self-seeking, very few (with the possible exception of Kant?) would be unwilling to allow that the assassin's act was justifiable on moral grounds. Nevertheless, we are not forced, on the basis of these considerations alone, to conclude that the act was one of civil disobedience. Similarly, with respect to Hall's illustration, we can readily agree that what Francis Weyland was doing in aiding the fugitive slaves was certainly justifiable on moral grounds without thereby committing ourselves to the view that he was engaging in civilly disobedient action. To suppose that one would be committed to this view serves only to obviate the distinction between illegal action which is (or may be) morally justifiable, on the one hand, and genuine cases of civil disobedience, on the other. There are all sorts of illegal activity, most of which are unjustifiable, but some of which clearly may be morally justified. But from this alone

7 Hall, p. 17
we need not--indeed ought not--conclude that all species of justifiable illegal activity undertaken for "moral" reasons thereby qualify as acts of civil disobedience. Nor need we, as Hall claims, invent new categories to handle such cases. We already have such categories at our disposal; the concepts of resistance, sedition, insurrection, and treason serve us well in this regard.

I think this will become clear once we attend to the nature and function of acts of civil disobedience. An act of civil disobedience, whatever else it entails, is essentially an act of protest. As Hall points out, the protest itself may be purely symbolic, in the sense that the agent only intends his act to draw public attention to a law, practice, or institution which he considers morally objectionable; or it may be exemplary, designed to serve as an example to others and to encourage them to follow suit. But in any case it is difficult to conceive how any act could be construed as an act of protest--symbolic or exemplary--unless its commission were somehow intended to be made known to the public. The verb "protest" is derived from the Latin protestire meaning to declare formally, in public. Apart from the question of violence associated with the hypothetical assassination, the covert nature of the assassin's act and Weyland's aid to the fugitive slaves would alone be sufficient to disqualify these as civilly disobedient actions; but this disqualification, of course, does not rule these actions out as morally unjustifiable. The formal, public declaration may even, in some cases, render the protest virtually ineffective as a means for effecting the desired changes. Had Francis Weyland in any way publicized his aid to the fugitives, he certainly would have sabotaged his entire operation. But it is not necessary that an act of protest be effective in order to qualify as civilly disobedient, only that it be to the point (provided, of course, that it is illegal, undertaken for "moral" reasons, intended to be made known to the public, . . .). In other words, the proof is not in the pudding, but in the doing. I think that Hall has placed too much emphasis on the effectiveness as well as the moral justifiability of certain illegal actions in arriving at his minimal definition of civilly disobedient action. Acts of civil disobedience cut across both lines. Some are morally justifiable, others are not. Some acts of civil disobedience may very well be instrumental, to a greater or lesser extent, in bringing about the desired changes, while others may be totally ineffective.

Hall's emphasis on the moral justifiability of certain illegal actions is, however, a two-edged sword. Recall our
earlier discussion (p. 4) of Hall's claim that "If 'civil disobedience' is defined in such a way as to eliminate cases which any significant number of people would consider morally justifiable, linguistic and conceptual difficulties will result . . . ." In that context, we detected a shift in Hall's line of argument from the alleged moral justification of such acts to an insistence on their actual moral justifiability (at least in the eyes of a significant number of people), the result being a definition which is far too broad. I would wish to contend further that not only is this insistence responsible for letting too much count as civil disobedience (viz., those illegal actions undertaken for "moral" reasons which are not essentially public in nature), but that it also rules out certain other types of activity which we would surely regard as civilly disobedient. It seems clear to me, for example, that the obstruction of traffic in Washington, D. C. by neo-Nazis or Ku Klux Klansmen is no less an instance of civil disobedience than the same action undertaken by the suffragettes in the early part of the century or the Vietnam war resisters of the 60's, in spite of the fact that most of us find the causes espoused by the former groups morally repugnant. Hall's misplaced emphasis throughout his discussion of moral justification is, I believe, symptomatic of an underlying tendency on his part to regard the notion of civil disobedience as an honorific concept. That is, implicit in his discussion is the belief that civil disobedience is a noble activity in which to engage, an activity which is usually, if not always, commendable. But if we are to avoid conflating the job of classification and the job of moral assessment, if we are to keep the task of the logician distinct from that of the moral philosopher, then we must resist the temptation to invest the concept of civil disobedience with these honorific overtones. Of course, no one would wish to deny that much good has been accomplished by those willing to take the risks involved in engaging in civil disobedience--the names of Mahatma Gandhi and Martin Luther King spring immediately to mind. But from this it does not follow that all acts of civil disobedience are, for that reason alone, fitting objects

If the notion of "moral" reasons extends to those perhaps seen as moral but issuing from a wrong-headed morality, then cases like this present no problem for Hall's analysis. But if, as I have tried to show, Hall's understanding is restricted just to those which are morally correct, then his analysis must exclude the activities of the neo-Nazis and Klansmen from the domain of civilly disobedient actions. But surely this is wrong.
of moral approbation.

In summary, then, Hall's minimal definition is not adequate for characterizing acts of civil disobedience. It is not enough that the act in question be illegal and undertaken for "moral" reasons. Something else is needed, and this something else, as I have argued, includes at least the element of publicity (it might include much else besides). To neglect this is to countenance too much as civil disobedience. On the other hand, it is not necessary that the action in question be either morally justifiable or effective in bringing about the desired changes. The question of whether or not a given action does, in fact, constitute an act of civil disobedience is logically prior to the question of whether that act is morally justifiable and/or an effective means to its stated end. To tacitly introduce these features into one's characterization of civil disobedience is to beg some important questions, and the result is a definition which is at once too minimal as well as too restrictive.9

9 I wish to thank Professor James Hanink as well as the editorial consultants of the Philosophy Research Archives for their helpful comments on earlier drafts of this paper.

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