

## Justifying Uncivil Disobedience

**Prepublication draft. Forthcoming in *Oxford Studies in Political Philosophy* Vol 5.**

## Abstract

A prominent way of justifying civil disobedience is to postulate a *pro tanto* duty to obey the law and to argue that the considerations that ground this duty sometimes justify forms of civil disobedience. I argue that this view entails that certain kinds of *uncivil* disobedience are also justified. Responding appropriately to the considerations that ground the duty to obey the law sometimes demands activities that fall short of being civil. So it follows either a) that civil disobedience is never justified or b) that uncivil disobedience is sometimes justified. Since a) is implausible, we should accept b). I consider and respond to the objection that this ignores the fact that civil disobedience enjoys a special normative status on account of instantiating certain special features: nonviolence, publicity, the acceptance of legal consequences, and conscientiousness. I then show that my view is superior to two rivals: the view that we should expand the notion of civility and that civil disobedience, expansively construed, is uniquely appropriate; and the view that uncivil disobedience is justifiable in but only in unfavourable conditions.

*Keywords:* duty to obey the law, civil disobedience, uncivil disobedience, violence.

### Justifying Uncivil Disobedience<sup>1</sup>

A prominent way of justifying civil disobedience is to start from the idea that there is a *pro tanto* duty to obey the law and to argue that the considerations that ground this duty sometimes justify forms of civil disobedience.<sup>2</sup> The basic idea is that we have a duty to obey the law that derives from certain important substantive or procedural values that are secured by compliance. However, even societies like ours, which seem reasonably just such that this *pro tanto* duty to obey the law holds, are likely to fall short of the substantive or procedural values that they aim to deliver. And while it will often be feasible to address these shortcomings within the bounds of the legal system, sometimes the only effective way of doing so will involve engaging in certain types of illegal political activities. *Disobeying* the law may be the best way of realizing the substantive or procedural values that underpin the duty to obey the law. Under these circumstances, disobedience may be justified.<sup>3</sup>

Proponents of this view take for granted that, in societies that are reasonably just, only *civil* forms of disobedience are capable of being justified in this way. According to the Bedau (1961) definition that gained significant influence through John Rawls's *a Theory of Justice* (1999), civil disobedience consists of "a public, nonviolent, 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" (p. 320). While certain aspects of this definition can be (and have been)

---

<sup>1</sup> Earlier versions of this paper were presented at *Disobey! Understanding the Politics and Ethics of Disobedience* (2015), *ANU Philsoc Seminar* (2016), *ANU MSPT Work in Progress Workshop* (2017), *Oxford Studies in Political Philosophy 5<sup>th</sup> Annual Conference* (2017), and *Stockholm Centre for the Ethics of War and Peace Graduate Reading Retreat* (2017). I would like to thank Nicholas Southwood, Philip Pettit, Seth Lazar, Justin Bruner, Lachlan Umbers, Kimberley Brownlee, Peter Vallentyne, Sameer Bajaj, Renee Bolinger, Candice Delmas, Ned Dobos, Yun Ying Lau, Holly Lawford-Smith, RJ Leland, Emily McTernan, Matthew Lindauer, Shmulik Nili, William Smith, and the participants of the above-mentioned workshops and conferences. This research is supported by an Australian Government Research Training Program (RTP) Scholarship.

<sup>2</sup> Some argue that there is a moral right to engage in civil disobedience (e.g. Brownlee, 2012; Dworkin, 1978; Lefkowitz, 2007). These accounts are beyond the scope of this paper. However, I am inclined to believe that my argument can be extended to those accounts: the grounds of the right to civilly disobedience would most likely extend to support certain (though perhaps a more limited range of) acts of uncivil disobedience.

<sup>3</sup> I avoid taking a stand on whether different forms of disobedience are justified as merely permissible or obligatory. This is an important issue, but beyond of the scope of this paper.

challenged (e.g. Morreall, 1976; Moraro, 2007; Brownlee, 2012; Celikates, 2014; just to name a few), the key idea is that disobedience is justified only when it meets some requisite standard of *civility*, however construed. Activities that fail to meet this type of thresholds can never be justified.

Let us call this the *Orthodox View*.<sup>4</sup> The Orthodox View comprises two theses:

*Positive Thesis*: It is justified to engage in civil disobedience within a reasonably just society insofar as and because doing so constitutes responding correctly to the considerations that ground the *pro tanto* duty to obey the law.

*Negative Thesis*: It is *never* justified to engage in uncivil disobedience within a reasonably just society.

The aim of this paper is to argue that there is something unstable about the Orthodox View. Engaging in certain kinds of *uncivil* disobedience—disobedience that fails to meet one or more of Rawls’s criteria or civility however broadly construed by critics of Rawls—within a reasonably just society also sometimes constitutes responding correctly to the considerations that ground the *pro tanto* duty to obey the law.<sup>5</sup> So, if it is sometimes justified to engage in civil disobedience within a reasonably just society because doing so constitutes

---

<sup>4</sup> Proponents of the orthodox view include, just to name a few, Hugo A. Bedau, Martin Luther King Jr., John Rawls, Andrew Sabl, Daniel Markovits, and William Smith. In addition, activists often endorse the orthodox view. The Occupy Central movement in Hong Kong, for example, adhered strictly to nonviolence, and as soon as the movement ended, the leaders submitted themselves to arrest. Ordinary citizens also tend to condemn activities that fall short of being civil. For example, some dismiss the possibility that the Ferguson Unrest in the U.S. can be justified because violence was involved.

<sup>5</sup> The term “uncivil disobedience” has been used by Jennet Kirkpatrick (2008) to refer to violent political activities such as the interracial abolitionists mob in 1854 that attempted to rescue the fugitive slave and Baptist preacher Anthony Burns from being returned to slavery under the Fugitive Slave Act of 1850, where one guard was killed during the incident. She holds that these violent activities shouldn’t be dismissed prematurely as “antidemocratic” or “terrorist attacks,” as they were often motivated by democratic ideas and civic empowerment, and has played a significant role in shaping contemporary democracy. However, she also warns against how these commendable motivations can lead to condemnable and indiscriminate violence. My use of the term “uncivil disobedience” is broader: any illegal political act that fails the standards of being civil, however expansively civility may be defined. Accordingly, political activities that involve little or no violence may also be instances of uncivil disobedience.

responding correctly to the considerations that ground the *pro tanto* duty to obey the law, then it is also sometimes justified to engage in uncivil disobedience within a reasonably just society, all else being equal. If the Positive Thesis is true, then the Negative Thesis is false. In short, we should conclude either a) that civil disobedience is never justified within a reasonably just society or b) that uncivil disobedience is sometimes justified within a reasonably just society. Thus, civil disobedience doesn't pick out a category that enjoys a special normative status over uncivil activities.

This paper is in 4 sections. In section 1, I examine a number of different versions of the Positive Thesis, starting from Rawls as a key reference point, but also incorporating a wide range of non-Rawlsian accounts. In section 2, I argue that, if the Positive Thesis is true, then this implies that uncivil disobedience is also sometimes justified and, hence, that the Negative Thesis is false. In section 3, I consider and respond to the objection that my argument ignores the fact that civil disobedience enjoys a special normative status over other illegal dissents on account of instantiating certain special features: non-violence, acceptance of legal consequences, publicity, and conscientiousness, and thus avoid involving actions that are wrong in themselves. In section 4, I argue that my view is distinct from and superior to two rivals: the view that we should expand the notion of civility such that civil disobedience, expansively construed, is uniquely appropriate; and the view that uncivil disobedience is appropriate in but only in unfavourable conditions.

It should be emphasized that throughout the paper, I do not take a stand on whether or why there is a general duty to obey the law. Instead, I simply work with the assumptions of different accounts of civil disobedience, and show that their justification of civil disobedience vis-à-vis the duty to obey naturally extends to justify uncivil disobedience.

### **1. Justifying civil disobedience**

The Orthodox View begins from the presumption that, in reasonably just societies, there is a *pro tanto* duty to obey the law (e.g. Rawls, 1999; Smith, 2011). This duty to obey is supposed to extend to laws and policies that are nontrivially flawed. (Otherwise there would be no point in engaging in civil disobedience to fix anything, or there would be no need to justify civil disobedience against a duty to obey that doesn't exist.) But why think that there is any duty to obey laws that are far from perfect, say, laws that impose systematic disadvantages on certain minorities?

Consider, first, the duty to obey *perfectly just* laws. There are, broadly, two ways of grounding this duty: what I shall call *substantive* and *procedural* accounts.<sup>6</sup> Substantive accounts appeal to certain substantive values that are realized through obedience: e.g. responding better to reasons (Raz, 1986),<sup>7</sup> promoting justice through supporting just institutions (Rawls, 1999), or fulfilling our “duty to rescue” in a fair way (Wellman, 2005).<sup>8</sup> Procedural accounts, in contrast, appeal to the non-instrumental quality of the (usually democratic) procedures in which political decisions are made. For example, the binding force of democratic decisions might be grounded on the fact that laws are constraints that we impose upon ourselves (Post, 1993; Markovits, 2005), or decisions made when all relevant points of views are properly considered (Habermas, 1996; Smith, 2011).<sup>9</sup>

---

<sup>6</sup> This dichotomy is employed in order not to over complicate the discussion. It should, however, be pointed out that those who endorse a procedural account still give a certain weight to substantive considerations, and *vice versa*.

<sup>7</sup> The basic idea of Raz's account of legitimate authority is that if, by following the directives of some agent or agency, we would better conform to the reasons which apply to us in a given domain than through reliance upon our own judgment, that agent or agency has practical authority over us.

<sup>8</sup> Wellman (2005) grounds the duty to obey the law in what he labels as “the Samaritan duty:” we ought to rescue others from great peril provided that such rescue is not too costly for us. He holds that the state of nature threatens everyone, and can only be prevented by establishing a state to maintain order. The burden of supporting the state, if fairly distributed through each obeying a fair law, is comparatively small. Given that the cost for each individual is small, whereas the benefit of rescuing everyone is great, each individual has a duty to obey the law.

<sup>9</sup> It is important to point out that this is clearly not an exhaustive enumeration of the substantive and procedural accounts of the duty to obey. However, I am confident that my analysis can be easily applied to other versions of the substantive or procedural accounts.

How might we extend these accounts to less than perfect laws?<sup>10</sup> Take substantive accounts first. Joseph Raz (1986) holds that one ought to obey, if but only if, submitting one's judgment to imperfect law responds to reason better than relying on one's own judgment. Rawls (1999) holds that the natural duty towards justice demands that we support less than perfectly just institutions "as long as they do not exceed certain limits of injustice" (p. 311). That's because there is no guarantee that we can establish perfectly just institutions, while establishing and supporting institutions represents our best chance of approximating a just system. As for procedural accounts, it is often argued that we ought to respect others through respecting democratically made decisions, even when the outcomes fall short of being perfect.

At the same time, it seems clear that when the quality of the law deviates from the ideal too much, obeying no longer contributes to realizing the substantive or procedural values that ground the duty to obey. Obeying in such cases is pointless if not detrimental. This brings us to civil disobedience. In such circumstances, the duty to obey is undermined. As a last resort to address serious flaws within the system, civil disobedience might very well represent the most appropriate way of responding to the substantive or procedural considerations that ground the duty to obey the law. Wellman (2005) for instance, states that if a law is unjust and if disobeying it in a particular way is effective in a certain circumstance to promote justice, one is "morally at liberty to break the particular laws [...one] disobeyed simply because they were unjust" (p. 86). For example, in a system that embodies racial discrimination, some might disobey the law publicly to draw attention to the oppression certain groups face and thus enable change. Because such illegal activities help to rescue

---

<sup>10</sup> Some simply admit that once the law falls short of being perfect, the duty to obey no longer applies. Wellman (2005), for example, points out that when a law is unjust, it either fails to play any positive role in fulfilling the duty to rescue and might even play a part in perpetuating injustice, or it places unfair burdens on particular individuals. Either way, the duty to rescue is not fairly distributed. Since cashing out that duty fairly is exactly what grounds the duty to obey, there is no duty to obey.

others from immediate and persisting harm that arises from unjust systems, in contrast to obeying unjust laws and perpetuating injustice, they would actually be fulfilling the duty to rescue. Rawls holds that civil disobedience is permissible when dealing with clear and blatant injustice such as racial discrimination, and employed as a device to promote justice. Those who endorse procedural accounts appeal to the quality of the relevant procedures, and hold that democratic decisions are not binding if certain groups or individuals were excluded from the decision making procedures, and that civil disobedience is justified when disobeying actually enables or promotes inclusion (Markovits, 2005; Smith, 2011): say, when the voices of certain groups are continuously ignored by the majority, and can only be brought to the table through illegal and disruptive activities; or when there are bureaucratic obstacles that can only be overcome by imposing costs on the system, e.g. inconvenience and public embarrassment, and forcing negotiation to take place (Fung, 2005).<sup>11</sup>

In each case, then, the idea is that civil disobedience is justified *vis-à-vis* the substantive or procedural considerations that ground the *pro tanto* duty to obey the law. Obeying imperfect laws or policies may be pointless if not detrimental with regard to realizing these considerations; and civil disobedience may better realize these considerations. In such cases, there is no duty to obey the law. Rather, civil disobedience is justified.<sup>12</sup>

## 2. Uncivil disobedience

I shall now argue that if this way of justifying civil disobedience succeeds, then it also extends to *uncivil* disobedience—activities that are somewhat similar to civil disobedience,

---

<sup>11</sup> Note that civil disobedience doesn't necessarily breach the laws it purports to change. Sometimes breaching otherwise perfectly unproblematic laws represents the best way to respond to the underlying values that normally demand obedience. Civil disobedience that breaches the corresponding laws is labeled "direct" civil disobedience, and that breaches other laws "indirect civil disobedience." The justification of direct and indirect civil disobedience is pretty much identical, so I do not emphasize the distinction in this paper.

<sup>12</sup> I have focused on unjust laws or policies. However, the justification of civil disobedience extends naturally to disobeying otherwise just laws or policies: sometimes disobeying them, e.g. for the sake of signalling the injustice, also serves the underlying values better than obeying those laws. The basic idea is the same: if obeying otherwise just laws doesn't realize the underlying political values, but disobeying them does, those values would demand disobedience.

but that fall short of the standards of civility by failing to be public, refusing to accept punishment, or showing no respect or loyalty to the system, etc., and most notably involving violence. Paradigm examples of uncivil disobedience include whistleblowing,<sup>13</sup> hacktivism, ecotage, and the use or threat of violence in protests.<sup>14</sup> *Whistleblowing*, or more precisely governmental whistleblowing, defined by Candice Delmas (2014b), “involves the unauthorized acquisition [...] and disclosure [...] of classified information about the state or government” (p. 78) regarding “suspected illegal or unethical conduct...[such disclosure] amounts to an indictment of the wrongdoing” (p. 80). *Hacktivism* is activism using hacking techniques, “with the intent of disrupting normal operations but not causing serious damage” (Denning, 2001, p. 241). *Ecotage* is “sabotage of inanimate objects (machinery, buildings, fences) that contribute to ecological destruction” (Vanderheiden, 2005, p. 427). *The use or threat of violence in protests* includes politically motivated vandalism, resisting arrest, threats to escalating to more radical measures, and the actual damaging of property or harming of persons.<sup>15</sup>

Note that the discussion of civil disobedience in the previous section was confined to cases where civil disobedience was a *last resort* to address *serious flaws* within the system. A more refined reading of this is that, to be justified, civil disobedience must be *necessary* to

---

<sup>13</sup> I follow Candice Delmas (2014b) in holding that whistleblowing falls short of civility, as it refuses to accept punishment and involves covert planning or even anonymity; but I acknowledge that some might find whistleblowing, at least highly idealized versions of it, compatible with the norms of civil disobedience. However, the main argument of my paper doesn't rest on whether whistleblowing is civil, and I am confident that those who insist that whistleblowing is civil would agree that other activities, especially those that involve violence, are uncivil, and this would suffice for the argument in this paper for work.

<sup>14</sup> This list is clearly non-exhaustive, but should serve the purpose of discussion. I will omit cases such as secret tax evasion to dissociate with unjust governments or draft dodging when facing unjust wars, which are traditionally labelled as “conscientious refusals” or “conscientious objections.” There seems to be well developed and widely accepted accounts regarding such activities.

<sup>15</sup> Here I use “violence” in a broader sense, as Bedau (1961) did when he discussed the nonviolent condition of civil disobedience, which includes “deliberately destroying property, endangering life and limb, inciting to riot (e.g., sabotage, assassination, street fighting)” (p. 656). I am well aware that there is a fair amount of equivocation that occurs when this term is used, and it is an inexcusable (and arguably often a malicious) mistake to equivocate these different senses when engaging in normative arguments. In order to avoid this mistake, I will single out violence in a narrower sense—against persons—and have in-depth discussion thereon immediately after discussing violence against property in section 2.1. My argument, therefore, can also appeal to those who view only violence in a narrower sense as genuine violence.



address the targeted issue effectively, and the costs or harm imposed by civil disobedience must be *proportionate* to the severity of injustice. When it comes to uncivil disobedience, it might be thought that uncivil activities are likely to be much costlier than civil activities. Thus, uncivil disobedience, even if necessary to realize significant value(s) effectively, may never be proportionate, and thereby never permissible.

However, the claim that uncivil disobedience is likely to be much costlier than civil disobedience is simply false. Certain forms of uncivil disobedience impose much less costs on persons or society in general in comparison to civil disobedience. Whistleblowing, for example, often causes at most public embarrassment to the government, but that can hardly be counted as being harmful in any meaningful sense. Politically motivated vandalism indeed destroys public property, but the costs they impose are far outmatched by instances of civil disobedience that aim at causing large scale inconvenience, e.g. occupying and thus paralyzing transportation hubs or even airport runways (where the latter can cause worldwide chaos in the airspace).

In addition, even if certain forms of uncivil disobedience impose more costs on persons or the society, this doesn't prevent uncivil disobedience from being proportionate. First of all, whether an act is proportionate depends, at least in part, on how significant the values realized are. In cases where, say, ecotage helps to prevent massive environmental damages that threaten the ecosystem or people's health, or say, political violence deters severe racialized policing or racial violence, the values realized or protected are substantial, and thus speaks in favor of those acts being proportionate. Second, and perhaps more importantly, it matters to proportionality exactly *who* bears the costs of particular actions. Regarding the ethics of self-defense and war, it is widely accepted that when it comes to the distribution of costs, it is better than those who are more responsible for the wrong being addressed to bear the costs in addressing that wrong; moreover, proportionality allows more costs to be

distributed to the culpable—those who freely and knowingly engage in the wrongful activities that necessitate defensive actions—in comparison to their innocent counterparts (Bazargan, 2014; Draper, 2016; Montague, 2010; Tadros, 2011, 2012, Vallentyne, 2011, 2016). Applying this to uncivil disobedience, even if such activities sometimes cause much more overall harm, insofar as the harm is directed at those who are culpable, acts of uncivil disobedience can still be proportionate. This can be true of a variety of instances of uncivil disobedience, ranging from ecotage targeting industries that poses severe threats to the environment, to political violence that respond to racial violence, or a wide range of possible disruptive actions that can be taken against those who profit from selling firearms and/or from opposing gun control. In contrast, acts of uncivil disobedience that impose *indiscriminate* costs on others are more likely to be ruled out by proportionality. (Taking this into consideration, one might even suspect that acts of uncivil disobedience that target the culpable are much more preferable in comparison to acts of civil disobedience that impose costs on people indiscriminately, as proportionality would more likely rule that the costs be imposed on the culpable.)<sup>16</sup>

Having established the possibility that uncivil activities might be proportionate even if it might be thought to be much costlier, I will now spell out the implications of the substantive and procedural versions of the Orthodox View for the justifiability of uncivil disobedience.

### 2.1. Substantive justifications

---

<sup>16</sup> One can also understand this issue in terms of the distinction between *narrow* and *wide* proportionality introduced by Jeff McMahan (2009). Accordingly, wide proportionality is about defensive harm imposed on those who are not liable, while narrow proportionality concerns those who potentially are. The weight of the harm with regard to narrow proportionality is typically discounted in virtue of the target's liability; for the target has forfeited her rights against being harmed, and thus the harm doesn't *wrong* her (in contrast to being merely permissible but nevertheless *wronging* the target). This permits more harm to be imposed on the liable in comparison to their innocent counterparts, all other things being equal. The worry that uncivil disobedience is costlier and thus never proportionate might in part be a confusion that all the costs must be treated as rights-infringements, weighted equally in proportionality calculations. Rather, in at least some cases the extra costs are imposed on individuals who are liable to bear them, and so do not count against the wide proportionality of the disobedience.

First consider substantive accounts. They hold that under special circumstances engaging in civil disobedience, rather than obeying the law, constitutes the best way of realizing the substantive values that ground the *pro tanto* duty to obey the law. In the following, I shall show that this can and should be extended to uncivil disobedience. That is, under other special circumstances, it is the case that engaging in uncivil disobedience, rather than obeying the law or engaging in civil disobedience, constitutes the best way of realizing the substantive values that ground the *pro tanto* duty to obey the law, namely the value of responding to reasons better, fulfilling our duty to rescue, or acting upon our general duty to promote justice. Where this is so, it seems clear that we should conclude that uncivil disobedience is indeed justified.

As we saw above, paradigm types of uncivil disobedience include whistleblowing, hacktivism, ecotage, and the use of violence in protests. These types of activities involve breaking laws prohibiting the leakage of classified information, laws governing the cyberspace, property laws or laws specifically introduced to target “eco-terrorism,” or laws prohibiting the use of violence against property, persons, or the police. Under many “normal” circumstances, obeying these laws will presumably contribute to the realization of the desirable substantive ends. But there is no reason to think that this will always be so.

Consider governmental whistleblowing. To reiterate, governmental whistleblowing is “the unauthorized acquisition [...] and disclosure [...] of classified information about the state or government” (Delmas, 2014b, p. 78) that involves state injustice. Obeying the law and concealing such secrets might eliminate the possibility of correcting, punishing, or preventing severe wrongdoings. The cases of Chelsea Manning<sup>17</sup> and Edward Snowden<sup>18</sup> fall

---

<sup>17</sup> Manning leaked a large amount of classified information regarding the U.S.’s military conduct, including the slaughter of non-combatants. See, for example, Rizzo, J. (2012). Bradley Manning charged. CNN. <http://security.blogs.cnn.com/2012/02/23/bradley-manning-charged/>

<sup>18</sup> Snowden revealed information regarding NSA’s mass-surveillance programs, including PRISM. See, for example, Andrews, S., Burrough, B., & Ellison, S. (2014). The Snowden saga: A shadowland of secrets and light. Vanity Fair. <http://www.vanityfair.com/news/politics/2014/05/edward-snowden-politics-interview>

into this category. In such cases, obeying the law would seem to be positively detrimental to the substantive values underpinning the law, while whistleblowing would seem to contribute most effectively to the realization of these values. Correcting and punishing seriously unjust activities seems to amount to responding to reason better and to promoting justice, while preventing severe wrongdoings would be demanded by our duty to rescue, especially when the wrongdoings endanger people's lives. Whistleblowing, therefore, under special but realistic circumstances, would seem to be justifiable *vis-à-vis* the duty to obey by being demanded by the substantive sources of our political obligations.

Hactivist techniques include paralyzing websites through virtual sit-ins, denial-of-service (DoS), or distributed-denial-of-service (DDoS) attacks, site defacements, site redirections, and information theft (Hampson, 2012). There are laws prohibiting most if not all of these techniques in many countries. Again, obeying these laws would amount to giving up a wide range of useful strategies in engaging in protests and forfeiting numerous opportunities to promoting justice. Site defacements and site redirections can raise the awareness on certain issues or even provide (counter) information against problematic organizations and their websites.<sup>19</sup> Information theft can also be a form of whistleblowing.<sup>20</sup> Though hacking techniques can be used for selfish purposes and cause severe harm to the society, or sometimes represents nothing more than a simple display of the hacker's expertise, if used properly, they can help promote the substantive values that otherwise demand obedience better than obeying the law. Thus, hacktivism can be justified *vis-à-vis* the duty to obey the law.

---

<sup>19</sup> For example, in 1999 Anonymous redirected the "traffic intended for a KKK Web site to Hatewatch" (Himma, 2007, p. 88).

<sup>20</sup> For example, in 2010 the hacktivist Andrew "weev" Auernheimer exposed AT&T's security breach (Delmas, Forthcoming). He was later sentenced for 41 months. See <https://www.wired.com/2013/03/att-hacker-gets-3-years/>

What about the use or threat of violence against either property or persons? The thought that resorting to violence can be in line with the grounds of our duty to obey the law might seem counterintuitive. The private use of violence seems to be one of the most dangerous threats to social order. It often incites retaliation, which leads to more violence, and thereby undermines the secure and stable society that our way of life depends on. It might also be an indication that one has arrogated to oneself the licence to behave in ways prohibited to others. It is not a surprise that many different accounts of our duty to obey the law insist that we do our part in establishing and maintaining a civil society that prohibits the private use of violence (e.g. Locke, 1690; Rawls, 1999; Wellman, 2005). The use or threat of violence, some might conclude, is the exact opposite of what the grounds of our duty to obey the law demands.

It is simply not true, however, that under *no circumstances* is violence in line with the grounds of political obligation. At least in certain extreme cases, i.e. cases where resorting to violence is necessary and proportionate to bring about certain goods, the substantive considerations might demand resorting to violence instead of obeying laws that prohibit violence. First, consider violence against properties and objects. Consider laws banning “eco-terrorism.” Such laws prohibit direct actions against industries that cause serious harm to the environment. Environmental hazards, however, sometimes pose significant risks to people’s health. In specific circumstances, successful ecotage could help prevent such risks. This might be the outcome of the attention ecotage draws, which translates into public pressure, the economic costs that destroy the profit of the industries in question, or simply through direct prevention or hindrance of environmental hazards. In such cases, it is legitimate to ask what the substantive considerations demand. If one endorses the duty to rescue as the grounds of obedience, then since such laws prohibit rescue one would have to admit that ecotage rather than obedience is demanded. Regarding the duty to promote justice through supporting just

institutions, in such cases it could hardly be said that institutions are just with respect to environmental protection. Since obedience in this particular case does not support just institutions, while ecotage effectively promotes justice, the latter is demanded by such a duty. In addition, it is simply not the case that obeying laws that demand inaction with regard to severe environmental hazards that threaten people's lives would amount to responding better to reason. In terms of responding to reason, then, there is no duty to obey such laws. Ecotage, if it will genuinely save people's lives, constitutes the most appropriate response.

Now consider politically motivate vandalism, another type of violence against properties and objects. The British Suffragettes, for example, engaged in a certain amount of violent activities including smashing windows, blowing up mailboxes, and sabotaging telephone lines. They chose to do so because nothing less disruptive seemed to work. Such disruption, however, is relatively minor in comparison to their disenfranchisement and the disadvantages they suffered from disenfranchisement. Or consider the vandalism of political symbols in Taiwan. Statues and monuments of the former despot Chiang Kai-shek were established long before the democratization of the regime. Countless people were persecuted and thousands tortured and murdered during the 38 years of the White Terror he initiated.<sup>21</sup> This so-called "lighthouse of freedom" personally altered the sentences of a number of innocent people to execution.<sup>22</sup> The display of political symbols in honour of this man, for example, praising this dictator as the "Saviour of the Nation," is simply unjust and extremely offensive to the victims.<sup>23</sup> Based on such beliefs, and futile attempts to remove these symbols through legal channels, surviving victims and those who sympathize with them underwent several attempts

---

<sup>21</sup> See Huang, T. (20 May 2005). White Terror exhibit unveils part of the truth. *Taipei Times*. <http://www.taipetimes.com/News/taiwan/archives/2005/05/20/2003255840>

<sup>22</sup> See Hsiao, A. (25 May 2015). DPP official urges nationwide Chiang Kai-shek purge. *Taipei Times*. <http://www.taipetimes.com/News/front/archives/2015/03/25/2003614346>

<sup>23</sup> For the justificatory conditions of displaying political symbols, see, for example, Tsai (2016), where it is argued that first of all, the symbol must uphold genuine political values, and second, must be decided through a legitimate democratic procedure. Symbols that honour Chiang Kai-shek fail to meet either of these conditions.

to desecrate these state-displayed political symbols.<sup>24</sup> In either case, the use of violence to pursue just political ends is completely in line with whatever substantive values there might be.<sup>25</sup>

Let's now turn to the use or threat of violence against persons in political protests. There are surely cases where resorting to violence is the only way of minimizing unnecessary conflict and casualties. Both legal and illegal protests occasionally face police brutality. In normal circumstances, it is uncontroversial that an innocent person has the right to engage in self-defence against unjust aggressors. However, the belief that activism and civil disobedience in particular must be committed to nonviolence might lead one to hold the view that the activists and civil disobedients ought never to resort to violence.<sup>26</sup> Once an activist or civil disobedient engages in self-defence, she has resorted to violence, and has breached the commitment to nonviolence. Accordingly, her action is unjustifiable. But this is absurd. The right to self-defence surely can't be compromised or nullified just because one is engaging in political activities, or because the unjust aggressor is wearing a police uniform. Therefore, the view that violence must always be prohibited during political protests must be rejected. Note that, strictly speaking, such cases don't fall under the category of uncivil disobedience, as legitimate self-defence is typically legal or legally excused, and thus aren't, technically, acts of "disobedience." But some might view a protest in question (legal or illegal) and the

---

<sup>24</sup> See, for example Su, C. & Chin, J. (1 March 2016). Bust of Chiang Kai-shek vandalized in Taichung. *Taipei Times*. <http://www.taipeitimes.com/News/taiwan/archives/2016/03/01/2003640556> Similar acts of vandalism occurred constantly and regularly throughout the past several years. It wasn't until late 2017 did the government finally yield to the demands of the people, and started the legislation regarding the removal of symbols honoring Chiang and his authoritarian rule as part of the project of transitional justice. See, for example Hetherington, W. (7 Dec 2017) Transitional Justice Act: Schools named after Chiang Kai-shek to be renamed: education minister. *Taipei Times*. <http://www.taipeitimes.com/News/taiwan/archives/2017/12/07/2003683572>

<sup>25</sup> It should be emphasized that, as I've suggested at the beginning of section 2, that there is a significant difference between violence imposing costs on the culpable and nonculpable. Acts of uncivil disobedience that impose costs on the culpable would less likely to be ruled out by proportionality. Instances of political vandalism that targets governmental officials who act unjustly or unjust political symbols more often satisfy this.

<sup>26</sup> Hugo Bedau (1961) defended exactly this position: "[the civil disobedient] does not respond with violence or violent resistance during the course of his disobedience, regardless of the provocation he may have, and thus that he is prepared to suffer without defense the indignities and brutalities that often greet his act" (p. 656).

violence employed by the protesters in self-defence as one single act, and thus dismiss the movement as “uncivil” because it “involves violence.” My discussion here is a response to those that hold such a view: if this counts as “uncivil disobedience,” so be it, but this shows that uncivil disobedience is actually justifiable.

I’ve argued that the case of violent self-defence in political protests should at least not be in conflict with the substantive values otherwise demand us to obey the law. In addition to self-defence, the use or threat of violence can sometimes promote substantive values more directly. The Ferguson Unrest might be one instance: the violence involved, e.g. violently resisting arrest or threatening to resort to retaliatory activities, demonstrates and forces the public to acknowledge the seriousness of racially biased law enforcement and abuses of power that are more often left unprosecuted (Hooker, 2016). The angry reactions from activists, some of which manifested in the form of riots, against systematic racist police violence following the rape of Théo in France is another instance. Without the more radical movements, severe police misconduct would more likely receive less than fitting punishment, for example charges against police officers for rape would have been reclassified as mere aggravated assault.<sup>27</sup> In such cases, obeying laws prohibiting violence doesn’t fulfil the duty to rescue, doesn’t support just institutions, and doesn’t respond to reason better than direct action. There is, therefore, no duty to obey such laws in such circumstances; resorting to violence, instead, would be demanded by the sources of our political obligations.

There is yet another way violence can contribute to the realization of the substantive grounds of our political obligation. Violent groups often “work in concert” with their nonviolent counterparts. This can lead to a *positive radical flank effect*, that is, the bargaining position of the nonviolent groups is strengthened in virtue of the presence of violent

---

<sup>27</sup> See McQueen, F. (2017). A horrific accusation against police reignites anger in Paris suburbs. *The Conversation*. <https://theconversation.com/a-horrific-accusation-against-police-reignites-anger-in-paris-suburbs-73314>



alternatives (Haines, 1984). Accordingly, the presence of violent groups increases the awareness of the issue(s) nonviolent groups attempt to address, as both groups aim at addressing the same issue(s). In addition, the presence of genuine violence helps people recognize that nonviolent groups are genuinely nonviolent. This prevents nonviolent groups from being mislabelled as violent, and helps them avoid the backlash and aversion violent activities typically face. Moreover, since the government and the majority would worry that the failure of nonviolent approaches would drive people to join violent campaigns, negotiating with nonviolent groups would appear to be the better option. This kind of “good cop, bad cop” interaction occurred during the Civil Rights Movement when Martin Luther King Jr.’s nonviolent campaign seemingly conflicted with the violent approach of Malcolm X, as well as nowadays in certain environmental movements where the radical activists “assist” the mainstream nonviolent organizations by being there and being violent (Vanderheiden, 2005). It’s easy to overlook the contribution of violence. The Civil Rights Movement, most notably, has often been presented in a sanitized fashion, where the “success” is attributed primarily or even solely to the nonviolent campaigns (Hooker, 2016). This obsession with nonviolence is a mistake, to say the very least. The strategic use of violence, or at least maintaining the availability of violent alternatives, can contribute significantly to the realization of substantive values.<sup>28</sup>

In sum, regarding substantive accounts of the Orthodox View, we should conclude that the grounds of our political obligation might under special circumstances cease to demand obedience to laws prohibiting certain activities or even civil disobedience, but instead speaks

---

<sup>28</sup> According to Coretta Scott King in an interview, Malcolm X intended but was unable to visit Martin Luther King Jr. when the latter was jailed in Selma in February 1965. Malcolm X instead visited Coretta Scott King, and told her: “I want you to say to him that I didn’t come to Selma to make his job more difficult but I thought that if the White people understood what the alternative was that they would be more inclined to listen to your husband.” Accordingly, this “good cop, bad cop” strategy has been intentionally employed by at least some groups during the Civil Rights Movement.  
<http://digital.wustl.edu/e/eii/eiiweb/kin5427.0224.089corettascottking.html>

in favour of uncivil disobedience. If civil disobedience may be justified in this way, then uncivil disobedience may be justified in the same way.

## 2.2. Procedural justifications

What about procedural accounts? They hold that when legal means fail to do the job, civil disobedience is justified in virtue of enhancing the quality of decision-making procedures: Ignored or marginalized but important points of views are brought to the attention of the public, and this enables more inclusive democratic decisions. Might we also extend this argument to uncivil disobedience?

Certain types of uncivil disobedience, though failing to meet the standards of civility in numerous ways, are mainly communicative, and it is not hard to see how they actually do enhance the quality of democratic deliberation. Whistleblowing exposes illegal or unjust conduct, and such information is necessary for citizens to make fully informed decisions. Similarly, hacktivism, ecotage, and vandalism can also be used in a communicative way, often to raise the awareness of certain issues.<sup>29</sup> It is less clear how other types of uncivil disobedience, especially those involving coercion, threats, or violence against persons can be consistent with a procedural account. Certain instances of hacktivism, such as Anonymous's cyber-attack "Operation Payback" against entities they perceive as being hostile towards WikiLeaks, are more attempts to retaliate than to communicate.<sup>30</sup> Ecotage is often performed as direct action with the primary intention "to make certain present and future acts more expensive, and hence to discourage" environmentally damaging industries (Vanderheiden, 2005, p. 438). The use or threat of violence against persons might seem to be the exact

---

<sup>29</sup> For instance, in 1996 hacktivists hacked the homepage of the United States Department of Justice, and altered title "Department of Justice" to "Department of Injustice," as part of the protest against the Communications Decency Act (Denning, 2015). Vandalism defacing statues, spray-painting messages like "murderer" or "BlackLivesMatter" also serves as obvious examples.

<sup>30</sup> See, for example, BBC (2010) "Anonymous Wikileaks supporters explain web attacks". BBC. <http://www.bbc.co.uk/news/technology-11971259>. Here I leave it an open question whether Operation Payback is justified. I've employed this example just to show that cyber-attacks often aren't aimed to talk but to coerce.

opposite of attempting to arrive at mutually acceptable solutions through deliberation. It might thus be held that most uncivil activities are incompatible with procedural considerations.

However, the conflict between procedural accounts and uncivil disobedience is not as stark as it might first appear. It could, sometimes, be questioned whether the laws targeted by uncivil disobedience are really justified in the first place, according to the standards of procedural accounts. If, for example, laws against ecotage were introduced solely under the influence of corporations whose profits would be protected by such laws, while laws in favor of environmental protection were never seriously reviewed, laws against ecotage simply lack the feature of being the outcome of an inclusive democratic decision. Another example would be governmental regulations of the cyberspace. It can be seriously doubted whether those who are regulated really had a say in the issuing of those regulations (Delmas, Forthcoming). In such cases, while uncivil disobedience doesn't *contribute* to the realization of procedural considerations, it does not *conflict* with such considerations either; for the laws that are targeted might be incompatible with the relevant procedural considerations in the first place.

Two additional points can be made concerning how to bring certain types of uncivil disobedience into line with procedural considerations, even if they don't primarily aim to be communicative. The first is about the enforcement and execution of inclusive democratic decisions. There is, to say the least, no guarantee that the government will carry out and stick to democratically made decisions in virtue of them being made democratically. For example, it is quite possible that laws regarding environmental protection or regulations concerning permissible policing tactics are completely ignored by governmental officials. Moreover, it might be the case that governmental officials are known to constantly get away with misconduct, and that no legal measures taken by individual citizens, such as protests to expose such misconduct, can get the government to stick to the rule of law. Compared to

inaction in the face of the government's continuous neglect of the law, direct action, such as protecting the environment through ecotage or keeping policing in check through the use or threat of violence, might actually amount to enforcing the execution of democratic decisions, and, hence to be more in line with procedural considerations.<sup>31</sup>

The second point concerns the robustness and stability of deliberations. According to Locke (1690, secs. 224–226), and more recently revisited by Philip Pettit (2012), the government has disproportionate power over the people it governs. In order for the people to remain in charge of the government, instead of the government having arbitrary power over the people, the people needs to be ready to rise up and overthrow the government should the government forget its place and step outside of its legitimate boundaries. In a similar vein, in order for all parties to stick to democratic procedures, instead of those in power diverging from deliberation whenever diverging is to their advantage, threats and coercions to check and balance their power might be thought to be needed. Certain types of uncivil disobedience, e.g. sabotages, hacktivism, vandalism, etc. might very well be effective means of imposing costs on those who disregard democratic procedures, and keep everyone at the table. It is worth noted that, unlike the previous point, this is not about privately enforcing democratic decisions, but about ensuring that the honoring of democratic procedures doesn't depend on the good will of the government.

Uncivil disobedience, therefore, even if it primarily involves threats or coercions instead of providing reasons, can still be in line with procedural accounts by making deliberation robust and stable.

All this being said, it is certainly possible that procedural accounts might justify a rather *different* set of uncivil activities compared to their substantive counterparts. It is not my

---

<sup>31</sup> One instance is the Sea Shepherds Campaigns. Illegal commercial whaling has been often done under the disguise of legal "scientific research." Seeing that the international laws regarding whaling are often unenforced, the Sea Shepherds take the matters into their own hands and enforce the law themselves. See, for example, Dryzek (2000, p. 122), Smith (2016, p. 166), and O'Sullivan (2017).

intention to settle which account is better or to decide exactly which types of uncivil disobediences are justifiable. The aim of this paper is simply to show that insofar as civil disobedience is taken to be justified with reference to certain (substantive or procedural) values that ground the duty to obey the law, then this mode of argument also extends to *some* instances of uncivil disobedience. In short, if the Positive Thesis is true, then the Negative Thesis is false. We should conclude either a) that civil disobedience is never justified in a reasonably just society or b) that uncivil disobedience is sometimes justified in a reasonably just society.

### 3. Is civil disobedience special?

The above arguments naturally invite the objection that there is something *special* about civil disobedience that serves to distinguish it from uncivil disobedience and in virtue of which the former is uniquely justifiable. What is this allegedly special feature of civil disobedience?

**Nonviolence.** The most straightforward possibility is that civil disobedience is necessarily nonviolent, while uncivil disobedience might involve violence. Some might believe that there is something inherently wrong with deploying or threatening violence, such that violence should always be avoided, or at least that there is always some sort of “moral stain” left behind even if violence is necessary. If this is the case, then it would follow that there is a fundamental normative difference between civil and uncivil disobedience.

However, it is quite difficult to understand what this inherent wrongness of violence is supposed to be. It is true that violence normally causes significantly more harm than nonviolent activities. This makes conditions such as necessity and proportionality more difficult to satisfy. It is also true that many activities that involve violence, especially those that involve physical harm, are considered *mala in se*, acts that are wrong in themselves independent of the law, for example rape and murder (Ristroph, 2011). That being said, there seems to be no difficulty in conceiving of cases where violence is completely justified and

don't fall under the category of *mala in se*. Justified self-defence seems to be an example, even if it involves violence; so is policing according to just law seems justifiable. So involving violence doesn't *ipso facto* make an act unjustifiable or *malum in se*. In the case of violent uncivil disobedience, the question is exactly whether they can be justified instances of violence. To assume violent uncivil disobedience is inherently wrong despite the fact that it can sometimes be necessary, proportionate, and furthermore promote our shared political values seems arbitrary.

Some might want to say that the state possesses the moral right to monopolize the use of violence. Again, self-defence, at least where the state is unable to provide the defence, serves an obvious counterexample. Moreover, in societies like ours it seems that at least sometimes resorting to violence would be necessary and proportionate. Certain issues might be so severe that it would be proportionate to damage property or (threaten to) harm people to fix it. The system might furthermore be unresponsive to a certain degree to this particular issue and the relevant political movements for such extreme measures to be necessary. Thus, even if the state is functioning relatively well on other issues, it is highly questionable whether the state retains the power to monopolize violence on this particular issue.

It might be thought violence often if not always incites violence and hatred, "while nonviolence civil disobedience leaves open the possibility of a just harmony in a scale of years rather than generations" (Sabl, 2001, p. 314). While I agree that nonviolent civil disobedience can be one way of maintaining "the possibility of a just harmony," it is unclear why the uses of constrained violence can't. When violence is carefully employed to promote just ends, or to deter one side from unilaterally abusing violence so that all parties would to stick to democratic procedures, instances of uncivil disobedience are also making a *just* harmony not only possible but stable. Instances of violent uncivil disobedience that are in line

with the underlying values of the duty to obey are exactly such instances. Thus, they shouldn't be ruled out just because violence is involved.

**Accepting legal consequences.** A second possibility is that civil disobedience expresses “respect for law.” Civil disobedients improve the law through illegal activities, but accept the legal consequences to demonstrate their loyalty to the regime (King Jr, 1963; Rawls, 1999). In contrast, people who engage in uncivil disobedience, though not necessarily, often attempt to avoid or resist punishment.<sup>32</sup> It might be said that this distinctive attitude towards punishment is what makes civil disobedience uniquely appropriate.

Two things can be said. First of all, while accepting punishment is one way of expressing one's loyalty to the regime, it is not the only way. Taking on great personal costs when exposing state injustice in order to make reformation possible, such as in cases of whistleblowing, seems to be just as loyal as any case of civil disobedience.<sup>33</sup> In addition, if being loyal is nothing but bearing and expressing some sort of positive attitudes towards the regime, it is unclear why incurring any costs apart from that which is necessary to make the regime better is necessary for being loyal. By doing something to improve the moral status of the state or enhancing state legitimacy, one has benefited the regime more than most law-abiding citizens. If doing more for the sake of the regime doesn't count as being more loyal, it's difficult to conceive what counts.

---

<sup>32</sup> It is typical for those who engage in whistleblowing, hacktivism, ecotage, and political vandalism to attempt to avoid punishment. This might be because the punishment is so severe that it is unreasonable for anyone to be willing to face such punishment. Chelsea Manning was sentenced to serve 35-year in prison, and served nearly 7 years (due to being commuted by then President Barack Obama). “Eco-terrorists” are treated like genuine terrorists in the U.S. It might also be because some activists just want to remain anonymous, as the Anonymous's name suggest. Though I won't go so far as to maintain that those who engage uncivil disobedience necessarily avoid punishment, it should be fair to say that being non-evasive is not a typical feature of uncivil disobedience.

<sup>33</sup> Sabl (2001) has made a similar point: accepting punishment suggests the willingness to cooperate in the future. However, it was also stated “if the other costs of disobedience are sufficiently strong, and the disobedients show a willingness to incur them in the face of great temptation, this may be sufficient to show a propensity to cooperate in the future” (319). It seems that this naturally extends to cover uncivil disobedience.

The second thing is that why respect for law is important in need of explanation in the first place. The most plausible explanation is that we express *mutual respect* through the respect for law. We interact with other persons under fair terms of cooperation, and refuse to claim any special privileges for ourselves. This, however, is only the case if the system is just. If the system incorporates a number of unjust laws, then expressing positive feelings and maintaining loyalty towards it would amount to expressing *disrespect* towards those who are systematically exploited. If mutual respect is genuinely what grounds the respect for law, when respecting the law expresses disrespect towards others, we ought to refrain from respecting the law in order to respect persons.<sup>34</sup>

Certain types of disobedients refuse to accept legal consequences. This might render them uncivil, but normatively speaking this seems unimportant. One can express the respect for law while refusing to accept punishment. It might also be the case that one ought not to respect the law. Either way, refusing punishment doesn't by itself render an act of disobedience unjustified.

**Publicity.** Civil disobedience was traditionally defined as a public act. Some might hold that if an activity lacks publicity, it's uncivil and therefore unjustifiable. However, before jumping to conclusions, it should be questioned in what sense publicity is conceived to be important, and why.

One way of understanding publicity is to focus on whether the identities of the actors were voluntarily revealed. Call this "identity publicity." Paradigm cases of civil disobedience seem to have this kind of publicity. Those who engage in such activities openly declare their disobedience, and furthermore submit themselves to the authorities. This automatically

---

<sup>34</sup> Delmas (2014a) argues that voluntarily participating in, benefiting from, and maintaining a system that is unfair amounts to freeriding and expresses disrespect towards those who are exploited. She further argues that this gives us reason to disobey the system.



entails their identities being revealed. In contrast, uncivil disobedience might involve people breaching the laws anonymously, and furthermore putting effort in remaining anonymous.

However, it can be questioned why this sort of publicity is morally relevant. One answer might be that disobedients should be legally accountable for their actions in order to express the “respect for law.” This is incorrect, as I have argued in the previous subsection. The more plausible answer is that people should be morally accountable for their own actions, and ought to be in a position to receive moral evaluation in order to engage in moral dialogue with the general public. If this is all there is to the moral importance of publicity, it seems that identity publicity is unnecessary. People can receive moral feedback from the general public insofar as their actions are known by the public. They could easily distinguish whether the public is referring to and passing moral judgment on their actions.

The importance of being morally accountable suggests another way of understanding publicity, something I would like to refer to as “anonymous publicity.” Anonymous publicity concerns actions rather than actors. It’s about an act being done and being known to have been done, so that the public could pass their moral judgment to the actors. The revelation of the identities of the actors is not necessary for such moral dialogue to take place.

Anonymous publicity is of moral relevance while identity publicity isn’t. Therefore, even if uncivil disobedience is uncivil in virtue of lacking identity publicity, it is not thereby unjustifiable as it still maintains anonymous publicity.

**Conscientiousness.** Finally, some might hold that civil disobedience is special in enshrining a morally important kind of *conscientiousness*: firmly upholding one’s deeply held moral convictions to the extent that one is willing to bear nontrivial costs to dissociate from and alter things one perceives as morally unacceptable. Some of the earliest and most prominent accounts of civil disobedience define it as requiring conscientiousness (e.g.

Thoreau, 1849; Bedau, 1961; Rawls, 1999). Perhaps it is this feature that distinguishes civil disobedience from “ordinary offenses” or “mere criminality” (Brownlee, 2012, p. 18).

Suppose that this is true. Does it distinguish civil disobedience from other types of illegal activities that are in line with the grounds of the duty to obey the law? The answer, I believe, is no. Consider what a conscientious person would do in a scenario where civil disobedience is futile if not detrimental, but uncivil alternatives can be effectively employed to address the issue. If the person is serious about fixing the problem, she won't exclude the possibility of engaging in justifiable but uncivil activities. In special circumstances, it seems that a conscientious person would blow the whistle or engage in certain types of violent activities. It might be true that conscientiousness would demand us to engage in civil disobedience under certain circumstances, but it wouldn't limit us to do so.

Indeed, we can even go a step further, and hold that conscientiousness is the mark of disobedience, both civil and uncivil. By being motivated by one's deeply held moral convictions, rather than mere self-interest or recklessness, the breaching of law in attempt to respond to the political values that otherwise ground the duty to obey the law is distinct from “mere criminality.” This distinctiveness is not solely enjoyed by justified disobedience. Disobedience can fall short of being justified in a number of ways; most commonly because disobedients sincerely hold misguided moral convictions or miscalculate the necessity or proportionality of their disobedient actions. Nevertheless, these shortfalls don't prevent unjustified disobedience from being genuine attempts of responding to the grounds of our political obligations. Thus, disobedience, even if unjustified, should be viewed, and perhaps treated, differently from “mere criminality.” Especially in cases where the shortfall relates to the miscalculation of necessity or proportionality, we should seriously consider what sorts of deficits in the society drove people to engage in acts of disobedience, rather than hastily dismissing them as unworthy of our attention.

#### 4. Other approaches

I have argued that we should conclude either a) that civil disobedience is never justified in a reasonably just society or b) that uncivil disobedience is sometimes justified in a reasonably just society. Suppose we assume that civil disobedience is sufficiently important that we must reject (a). In that case we must accept (b): that uncivil disobedience is sometimes justified in a reasonably just society. It will be instructive to contrast this view with two alternatives: first, the view that we should expand the notion of civility such that civil disobedience, *expansively construed*, is uniquely appropriate in a reasonably just society; and second, the view that uncivil disobedience is permissible under (but only under) *unfavourable conditions*.

**Expanding the notion of civility:** A number of philosophers have suggested that the Rawlsian definition of civil disobedience is unduly narrow. For example, John Morreall (1976) and Piero Moraro (2007) argue that illegal activities may potentially involve violence yet still count as civil disobedience. In addition to violence, Kimberley Brownlee (2012) argues that justified civil disobedience may also potentially involve covert planning and the rejection of legal punishment. Robin Celikates (2014) proposed a minimalist account of civil disobedience, according to which some degree of violence, covertness, or defiance can be incorporated. This suggests a way of saving the Orthodox View: It isn't the case that uncivil disobedience is sometimes justified, but that some of the activities that were dismissed by the Rawlsian definition as uncivil instead count as instances of civil disobedience, sufficiently broadly construed, and, hence, are perfectly appropriate. Perhaps the Negative Thesis is correct after all. Uncivil disobedience is indeed never permissible in a reasonably just society.

It may well be right that we should adopt a broader notion of civility and interpret the Orthodox View accordingly. This would allow the Orthodox View to be more inclusive with respect to the kinds of activities that count as appropriate within a reasonably just society. But it is highly questionable that there is any plausible broadening that would encompass *all* the

disruptive activities we mentioned above. There are clearly limits to what can count as civil. And it stretches credulity to suggest that whistleblowing, cyber-attacks, sabotages, uses or threats of violence against persons really count as “civil” in any sense of the term that we would recognize.<sup>35</sup>

In addition, there is something unsavory about this approach. Proponents of this view tend to alter or expand the definition of civility to make it the case that all justified acts of disobedience just happen to be civil. If a type of action that was previously viewed as uncivil (say, because it involves violence or refuses punishment) turns out to be justifiable, it becomes civil by definition in virtue of being justifiable. This undermines the justificatory role of civility. A type of action is potentially justifiable because it’s civil, but civil because it’s potentially justifiable. This is simply circular.

In contrast to this approach, my view doesn’t rely on the definition of civility. Thus, my view avoids the need to define civility to accurately capture all potentially justifiable activities, and, more importantly, averts the risk of prematurely excluding potentially justifiable activities due to overly narrow definitions. Moreover, my view stays clear of the strategy of re-definition, and thereby avoids the risk of running into a circulation.

**Uncivil disobedience in unfavourable conditions:** The other view that is worth mentioning holds that uncivil disobedience is sometimes justified in unfavorable conditions. A. John Simmons (2010) has argued that the *application* of Rawls’s account of civil disobedience is extremely narrow: it only applies to cases that occur in what Rawls calls “near-just societies.” This reaction can be extended to any version of the Orthodox View. The Orthodox View only applies to “reasonably just societies.” It might be said that, whatever is

---

<sup>35</sup> Delmas (Forthcoming), for example, argues that hacktivism just can’t be all shoehorned into the traditional framework of civil disobedience: “To accommodate novel forms of digital resistance, what is called for is neither an unreflective application of an ill-fitting and too narrow concept of civil disobedience, nor an extension of the latter concept beyond recognition. Instead, we need to enrich our conceptual framework and devise additional lenses besides ECD [i.e. electronic civil disobedience] to approach these phenomena” (p. 20).

required to count as “reasonably just,” no existing society is likely to meet it. For example, no basic structure of any constitutional democracy is anything close to being designed according to the Rawlsian or any reasonable principles of justice, and rules governing any cooperative scheme are anything but fair. Perhaps the proponent of the Orthodox View is right that civil disobedience is uniquely justified within a reasonably just society. But the interesting question is not what is appropriate within a reasonably just society but what is appropriate within the less favourable conditions that characterize the actual societies we live in. According to Simmons and others, there is no reason to think that civil disobedience is uniquely appropriate in these less favourable conditions. Rather, we should expect uncivil disobedience at least sometimes to be justified as well.

Let’s concede that uncivil disobedience is sometimes appropriate in unfavourable conditions. The question is whether these are the *only* conditions in which it is justifiable. In particular, is uncivil disobedience also sometimes justified in a reasonably just society? Reasonably just societies inevitably remain flawed in a number of different ways, and fall short of realizing the substantive or procedural values that ground the duty to obey the law in such societies. Indeed, civil disobedience will represent the best way of remedying some of the flaws, but other flaws, e.g. concealed state misconduct and urgent environmental hazards, are better addressed by certain forms of uncivil disobedience. Unless we have a separate argument showing that societies that are flawed in ways that can only be appropriately responded to by some form of uncivil disobedience always fall short of being reasonably just, we have to admit that appealing to “being reasonably just” doesn’t exclude the justifiability of uncivil disobedience.

In contrast to this approach, my view avoids the need to provide an argument supporting why “being reasonably just” excludes the justifiability of uncivil disobedience. I’m simply skeptical of whether a plausible argument can be made. In addition, this way of rescuing the

Orthodox View renders the Orthodox View irrelevant: it has no application now, and I suspect that it might not ever have any application in any future society.

### **Conclusion**

The Orthodox View of civil disobedience justifies such illegal activities by appealing to the considerations that ground the duty to obey the law and suggesting that civil disobedience constitutes the most appropriate response to situations where the quality of the law deviates from the ideal. I have argued that if this approach is correct, it should be extended to uncivil disobedience. Exactly the same considerations that, in some circumstances, will support civil disobedience will, in other circumstances (that are different but not necessarily more unjust), support uncivil disobedience instead. I've considered and rejected several versions of the objection that there is something special about civil disobedience, and distinguished the view from two rivals that seek to accommodate some of the same intuitive data in different ways.

Thus, we should be skeptical of the privileged normative place that civil disobedience is typically taken to occupy in political theory and practice. It is a mistake to overplay the importance of standards of civility, whatever they might be, when evaluating illegal dissent and considering what sorts of actions we should take in response to injustice. What is of fundamental importance isn't whether an act is civil; rather, acts of disobedience, civil or uncivil, are justified insofar as they are necessary, proportionate, and represent the best way of responding to the political values that purportedly ground the duty to obey the law.<sup>36</sup>

---

<sup>36</sup> My view leads to two potential practical implications: The first relates to punishment. The aims of punishment might be to deter undesirable actions, inflict deserved suffering, get back from freeriders, and/or express condemnation. It might very well also be the case that only those who owe something due to past wrongdoing are liable to be punished (Tadros, 2011). The punishment of justified acts of uncivil disobedience, even the more uncivil forms, might be inconsistent with the aims and constraints of punishment. The second is more political. According to Bernard Harcourt (2012), "the ability to brand a particular discourse as uncivil is itself a political accomplishment that reflects a certain position of privilege" (p. 348). The exact same thing might be said about those too ready to call out the incivility of certain acts of disobedience. Sometimes overplaying the importance of civility is more than a simple mistake. We should be wary of whether putting acts of disobedience under the strictest scrutiny are just deliberate attempts to silence and disempower vulnerable and desperate people.

### References

- Bazargan, S. (2014). Killing minimally responsible threats. *Ethics*, 125(1), 114–136.
- Bedau, H. A. (1961). On civil disobedience. *The Journal of Philosophy*, 58(21), 653–665.
- Brownlee, K. (2012). *Conscience and conviction: The case for civil disobedience*. OUP Oxford.
- Celikates, R. (2014). Civil disobedience as a practice of civic freedom. *On Global Citizenship. James Tully in Dialogue*, 207–228.
- Delmas, C. (Forthcoming). Is hacktivism the new civil disobedience? *Raisons Politiques*.
- Delmas, C. (2014a). Political resistance: A matter of fairness. *Law and Philosophy*, 33(4), 465–488.
- Delmas, C. (2014b). The Ethics of Government Whistleblowing. *Social Theory and Practice*, 41(1), 77–105.
- Denning, D. E. (2001). Activism, hacktivism, and cyberterrorism: The Internet as a tool for influencing foreign policy. *Networks and Netwars: The Future of Terror, Crime, and Militancy*, 239, 288.
- Denning, D. E. (2015). The rise of hacktivism. *Georgetown Journal of International Affairs*.
- Draper, K. (2016). Necessity and proportionality in defense. In *The Ethics of self-defense* (pp. 171–184). Oxford University Press.
- Dryzek, J. S. (2000). *Deliberative democracy and beyond: Liberals, critics, contestations*. Oxford University Press on Demand.
- Dworkin, R. (1978). *Taking rights seriously* (Vol. 136). Harvard University Press.
- Fung, A. (2005). Deliberation before the revolution toward an ethics of deliberative democracy in an unjust world. *Political Theory*, 33(3), 397–419.
- Habermas, J. (1996). Between facts and norms, trans. William Rehg. *Polity, Oxford*, 274–328.

- Haines, H. H. (1984). Black radicalization and the funding of civil rights: 1957-1970. *Social Problems*, 32(1), 31–43.
- Hampson, N. C. (2012). Hacktivism: A new breed of protest in a networked world. *BC Int'l & Comp. L. Rev.*, 35, 511.
- Harcourt, B. E. (2012). The Politics of Incivility. *Arizona Law Review*, 54, 345.
- Himma, K. E. (2007). *Internet security: Hacking, counterhacking, and society*. Jones & Bartlett Learning.
- Hooker, J. (2016). Black Lives Matter and the paradoxes of US Black politics: From democratic sacrifice to democratic repair. *Political Theory*, 44(4), 448–469.
- King Jr, M. L. (1963). Letter from Birmingham city jail.
- Kirkpatrick, J. (2008). *Uncivil disobedience: Studies in violence and democratic politics*. Princeton University Press.
- Lefkowitz, D. (2007). On a moral right to civil disobedience. *Ethics*, 117(2), 202–233.
- Locke, J. (1690). *Second treatise of government*.
- Markovits, D. (2005). Democratic disobedience. *Yale Law Journal*, 1897–1952.
- McMahan, J. (2009). *Killing in war*. Oxford University Press.
- Montague, P. (2010). Self-defense, culpability, and distributive justice. *Law and Philosophy*, 29(1), 75–91.
- Moraro, P. (2007). Violent civil disobedience and willingness to accept punishment. *Essays in Philosophy*, 8(2), 6.
- Morreall, J. (1976). The justifiability of violent civil disobedience. *Canadian Journal of Philosophy*, 6(1), 35–47.
- O'Sullivan, S., McCausland, C., & Brenton, S. (2017). Animal activists, civil Disobedience and global responses to transnational Injustice. *Res Publica*, 1–20.



- Pettit, P. (2012). *On the people's terms: a republican theory and model of democracy*. Cambridge University Press.
- Post, R. C. (1993). Between democracy and community: The legal constitution of social form. *Nomos*, 35, 163–190.
- Rawls, J. (1999). *A Theory of Justice*. Oxford University Press.
- Raz, J. (1986). *The morality of freedom*. Clarendon Press.
- Ristroph, A. (2011). Criminal law in the shadow of violence. *Alabama Law Review*, 62.
- Sabl, A. (2001). Looking forward to justice: Rawlsian civil disobedience and its non-Rawlsian lessons. *Journal of Political Philosophy*, 9(3), 307–330.
- Simmons, A. J. (2010). Disobedience and its objects. *BUL Rev.*, 90, 1805.
- Smith, W. (2011). Civil disobedience and the public sphere. *Journal of Political Philosophy*, 19(2), 145–166.
- Smith, W. (2016). The boundaries of a deliberative system: the case of disruptive protest. *Critical Policy Studies*, 1–19.
- Tadros, V. (2011). *The ends of harm: The moral foundations of criminal law*. Oxford University Press on Demand.
- Tadros, V. (2012). Duty and liability. *Utilitas*, 24(2), 259–277.
- Thoreau, H. D. (1849). On the duty of civil disobedience.
- Tsai, G. (2016). The morality of state symbolic power. *Social Theory and Practice*, 42(2), 318–342.
- Vallentyne, P. (2011). Enforcement rights against non-culpable non-just Intrusion. *Ratio*, 24(4), 422–442.
- Vallentyne, P. (2016). Defense of self and others against culpable rights violators. In *The Ethics of Self-defense* (pp. 86–109). Oxford University Press.

Vanderheiden, S. (2005). Eco-terrorism or justified resistance? Radical environmentalism and the “War on Terror.” *Politics & Society*, 33(3), 425–447.

Wellman, C. H. (2005). Samaritanism and the Duty to Obey the Law. *Is There a Duty to Obey the Law*, 3–89.