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# Civil disobedience, and what else? Making space for uncivil forms of resistance

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[journals.sagepub.com/home/ept](https://journals.sagepub.com/home/ept)**Erin R Pineda** 

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Candice Delmas, *A Duty to Resist: When Disobedience Should be Uncivil*, Oxford University Press: New York, 2018; 312 pp. \$29.95, ISBN 9780190872199 (hardcover).

## Abstract

Theorists of political obligation have long devoted special attention to civil disobedience, establishing its pride of place as an object of philosophical analysis, and as one of a short list of exceptions to an otherwise binding obligation to obey the law. Yet all of this attention to civil disobedience has left the broader terrain of resistance to injustice relatively under-theorized. What other forms of action are justifiable – even required – in the face of systemic injustice? Candice Delmas' *A Duty to Resist: When Disobedience Should Be Uncivil* offers an original and powerful defense of the idea that we have a duty to resist, and that carrying out this duty may sometimes require going beyond civil disobedience – engaging in forms of action that are evasive, shocking, violent, or otherwise deemed “uncivil.” Building on a wealth of recent scholarship and a rich set of examples, Delmas grounds the duty to resist in the same principles that political philosophers routinely use to defend an obligation to obey the law: the natural duty of justice, the principle of fair play, Samaritan duties to rescue others from peril, and the associative duties of membership. In making room for uncivil forms of dissent, however, I contend that Delmas ironically hollows out the category of civil disobedience, wedding it too tightly to a principle of decorum, and isolating it from protest that exceeds the boundaries of the communicative. Nevertheless, *A Duty to Resist* is an excellent – and much needed – contribution to the literature on dissent and disobedience.

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civil disobedience, resistance, protest, dissent, incivility, civility, political obligation

In the tradition of liberal and democratic theory, civil disobedience and forms of principled lawbreaking are often confronted as limited exceptions to an otherwise binding obligation to obey the law. Particularly in liberal democracies, where the law is presumed to be the product of legitimate institutions that citizens have an interest in maintaining, breaking the law in protest—even for good reasons—becomes normatively troubling. For Peter Singer (1973: 59), for example, there are “special reasons for obeying the law in a democracy,” given that laws, however imperfect, represent a “fair compromise between competing claims to power.” By continuing to participate in the institutions and practices of a democracy, moreover, citizens take on a “*prima facie* obligation to accept the results” of the decision-procedures that order institutions. Though operating with a different account of political obligation, John Rawls (1999: 335) similarly theorizes political obligation and the moral justification for lawbreaking within the horizons of a settled, legitimate constitutional order—a society that he thinks of as the “nearly just” state. Civil disobedience, then, operates as a limited exception to the constitutional rule.

Such is the common philosophical starting point for thinking about when we are justified in breaking the law in protest. Yet, as David Lyons (1998) has argued, activists—including paradigmatic practitioners of disobedience from Henry David Thoreau to Martin Luther King, Jr—tend to defend their actions in terms of a different set of moral demands: the responsibility to respond to and rectify injustice. Thoreau (1996: 10) famously suggested that in an unjust society “the true place for a just man is . . . a prison,” while King (2001: 87) explained his own disobedient actions by insisting that “injustice anywhere is a threat to justice everywhere.” Candice Delmas’ excellent book, *A Duty to Resist: When Disobedience Should be Uncivil*, takes this language of moral and political duty seriously, asking if and when it might be our responsibility to resist injustice, and arguing carefully and persuasively that political obligation should not be equated with the duty to obey the law. As she contends, “[g]iven our less-than-ideal polities, obeying the law is neither the sole, nor necessarily the most important, of our political obligations” (p. 106).

*A Duty to Resist* pursues two large theoretical claims: First, we have a positive duty to resist injustice that sometimes requires us to engage in unlawful action; and second, we are potentially justified in using a range of actions, beyond civil disobedience, to carry out this duty—including forms of action that we deem uncivil and even violent. The bulk of *A Duty to Resist* works in service of the first claim, which Delmas pursues through a novel and effective argumentative strategy: her conception of the duty to resist is grounded in the same principles that political philosophers routinely use to defend an obligation to obey the law. Building on a wealth of recent scholarship on political obligation and a rich set of historical and contemporary examples, Delmas examines in turn the natural duty of justice (Chapter 3), the

principle of fair play (Chapter 4), Samaritan duties to rescue others from peril (Chapter 5) and the associative duties generated by “dignitary political membership” (Chapter 6). In each case, she demonstrates that accepting the bounds of a political obligation to obey—whether based on our participation in a mutually-beneficial cooperative social scheme, or a natural duty to support, maintain, and establish just institutions—also means accepting an obligation to resist injustice, up to and including illegal acts of “principled disobedience.” Thus, on Delmas’ account, “basic liberal commitments can and do have far-reaching and radical implications for how we ought to respond to injustice around us,” despite the fact that “radical activists” tend to view these very commitments as “barriers to resistance” (p. 225).

Throughout these chapters, Delmas’ text is attentive to the different sites, scales, and types of injustice, and provides an account of the duty to resist that is responsive to contextual considerations as well as the distinct duties of differently-situated actors. Our duties to justice and democracy, for example, generate obligations to redress not just the kinds of blatant rights violations that animated Rawls’ (1999) influential defense of civil disobedience, nor the forms of deliberative malfunction that concern deliberative democrats like William Smith (2013). In addition to these, Delmas argues, we may have duties to resist due to “official misconduct” and political corruption; pervasive public ignorance sustained by governmental secrecy; and the mistreatment and abuse of nonmembers of the polity. The types of action demanded to redress these injustices—as well as the other forms of peril, disrespect, exploitation, and indignity explored in this book—range from seeking out good information, to communicating and drawing attention to injustice, to pursuing direct means of rectifying injustice—whether that means shielding vulnerable groups from institutionalized harms, acting in solidarity with the oppressed through protest and disobedience, or asserting one’s own dignity in the face of its denial.

Confronted with the enormity and complexity of real-world injustice, we might object that living up to such a duty to resist would impose costs too heavy for the average person to bear. But here Delmas is unflinching: if we are to take the idea of political obligation seriously, and if we accept that all polities (including liberal democracies) regularly inflict forms of systemic harm on members as well as nonmembers, then we have to reckon with the fact that we may have duties—natural as well as associative—to resist the injustice we see. Even so, as Delmas advises, these duties may be no more onerous than those implied by other accounts of political obligation—understood in narrow terms as a duty to obey the law. Writing about the political obligations generated by fair play, Delmas cautions:

when fairness is used to ground the moral duty to obey the law, it is understood to require substantial sacrifices, such as paying taxes or fighting in a conscript army. If discharging the duty of fair play can involve substantial sacrifices, the same may be presumed about the fairness-based duty to resist. (pp. 133–134)

While the riskiest, costliest, and least accepted means of resisting—sabotage, evasion, vigilantism, and so on—may not be the only means of fulfilling a duty to

resist, sometimes they might prove to be the most effective means (or simply the means of last resort). This brings us to the second prong of Delmas' argument: to theorize a broader range of actions available for contesting injustice, beyond the typically acceptable means of legal protest and civil disobedience. In distinction to recent "inclusive" accounts of civil disobedience, which grapple with systemic injustice and severe democratic deficits by expanding the category of civil disobedience to include a diversity of seemingly "uncivil" tactics,<sup>1</sup> Delmas takes the opposite tack: she (more or less) accepts the narrow parameters that typically define civil disobedience but argues that we can justify numerous actions that exceed them. This approach has the benefit of acknowledging the unlikelihood of convincing the public that something like ecosabotage counts as properly "civil"—thus meeting Delmas' standard of political utility—while also taking activists seriously when they explicitly frame their actions as purposefully uncivil—thus meeting the standard of "phenomenological accuracy" (pp. 37–38).

Yet if contemporary "inclusive" theorists of civil disobedience stretch the category of civil disobedience beyond recognition (at least on Delmas' account), I wonder if she does not make the opposite mistake—constricting it so far that its usefulness is in doubt. If liberal conceptions of duties to justice and Samaritan rescue can be repurposed for radical arguments, despite activist suspicion of them, is there not an opportunity here to read the civil disobedience against the grain—even if there are good reasons for doing so in narrower terms than Celikates or Brownlee? In making space for uncivil disobedience, Delmas accepts much of the liberal consensus about what defines civil disobedience: it is action that is illegal but public, non-evasive, nonviolent, and decorous—the latter of which requires that "citizens who want to enter the public sphere ought to behave in a dignified and polite manner and avoid causing offense" (p. 42). In line with Rawlsian principles of public reason and the "duty of civility," Delmas interprets the demand for decorum somewhat capaciously, and thus characterizes as "uncivil" a surprising range of actions that we might think of as ordinary, civil disobedience—disrupting trade on the floor of the New York Stock Exchange (p. 57); protesting at churches by chanting, disrupting mass, blocking the aisles, and desecrating communion wafers (p. 57); using road blocks to disrupt traffic (p. 43); shouting down an invited speaker (p. 43); or engaging in hunger strikes and work stoppages (p. 184)—all of which in one way or another entail actions too disruptive, rude, offensive, or psychologically and economically coercive to meet the standards of decorum.

Ironically, then, there may be times that the lines Delmas draws violate her own standards of "phenomenological accuracy," in the sense that tactics that activists may adopt self-consciously as forms of *civil* disobedience are now defined as outside its bounds. As Delmas rightly argues, activists who position themselves as deliberately "uncivil" are making notable political claims about themselves, their goals, their positionality, and their relationship to a script for disobedience that often operates as a "counter-resistance ideology," in Delmas' terms (p. 29). Yet political actors who adopt for themselves the mantle of "civil" disobedience—particularly amidst accusations of incivility, violence, or

illegitimacy—are making no less significant claims about themselves and the way they wish to be received. When Martin Luther King, Jr insisted that the 1963 Birmingham campaign fitted into a long tradition of civil disobedience—even as newspaper editorials nationwide castigated the protests as ill-timed, disruptive, irresponsible, and uncivil—he was claiming *civic space* and *citizen status* for Black Americans within a cultural tradition and sociopolitical order that disavowed them. And he was offering a radical rebuttal to a notion of civility defined in terms of a dominant majority's preferences for the tranquility of non-disruption over the chaotic and disruptive struggle for justice (see King, 2001; see also Shulman, 2008: 97–129). Notably, King insisted on this while simultaneously emphasizing that coercion, disruption, and institutional crisis would be required in the fight for racial justice. Despite Delmas' intentions to use the distinction between civil and uncivil disobedience to call out bad faith charges of incivility, I cannot see how a line drawn at the boundaries of decorum can plausibly help us do this work.

My concern, then, is not really about the somewhat nitpicky question of which specific actions fall into which category. Rather, I would contend that the requirement that civil disobedients “avoid causing offense,” outrage, or even “inconvenience” (p. 44) raises real questions about who is able to position themselves as acting with decorum, and relatedly, about the efficacy of civil disobedience (so-defined) against the sprawling, enormous injustices that Delmas cares most about. Who else but those who can already take their equal standing for granted—those individuals who are already assured of their accepted status as legitimate political actors, as speakers and citizens—can meet a standard so inherently tied to the existing order's own sense of itself? What power can civil disobedience have (and for whom) if its standards are reliant on dominant groups' racialized, gendered, and class-based perceptions of unruliness—let alone their desire to live free from inconvenience? As Linda Zerilli (2014: 116) writes in her critique of civility:

The idea of civility has always relied on a highly homogenous conception of the public, a conception in which mostly white, mostly male citizens found themselves in an unsurprising agreement about the fundamental moral and political values of American liberal democracy. . . . The accusation of incivility, in other words, has been a familiar means for denying the political (and thus common) quality of [the claims of outsiders] and making them sound instead as if they were “merely subjective” outbursts of one sort or another.

Delmas herself points to the facility with which powerful groups raise the charge of incivility against oppressed groups; yet the standard of decorum seems to grant them all the reason they need for doing so.

If offense and rudeness mark one explicit set of boundaries distinguishing the civil from the uncivil, the differences between symbolic and direct action form another more implicit one. Throughout Delmas' exploration of the text's manifold examples, I was struck by the way in which she routinely placed activists that engage in

strategies of direct intervention on the uncivil side of the divide. More precisely, while Delmas notes that there may be acts of uncivil disobedience that seek to dramatize, communicate, or reveal an injustice to the broader public, “many do not aim to persuade an audience – seeking instead to prevent or redress wrongs” (p. 45). On the other side of the divide, fidelity to the principle of decorum would seem to demand that civil disobedience operate (perhaps primarily) as a communicative act, because it requires respectful, persuasive engagement with the public, within the limits of public reason. Moreover, strategies of disruption—such as blocking traffic on the Triborough Bridge with garbage collected from neglected East Harlem schools (as the Congress of Racial Equality did in 1964), or engaging in work stoppages and hunger strikes in violation of prison policy (as inmates at Pelican Bay State Prison did in 2013)—create precisely the conditions that violate decorum: offense, coercion, institutional breakdown, and certainly inconvenience. Civil disobedience, then, trespasses its definitional limits when it crosses from the symbolic into the direct. Perhaps for this reason, Delmas notes that civil disobedience cannot possibly “vex the status quo” in the ways that uncivil disobedience can (p. 65).

Reading civil disobedience as inherently communicative is certainly in line with the liberal-democratic consensus about it: civil disobedience is a “mode of address,” as Rawls (1999: 321) puts it; it is “exclusively symbolic,” in Jurgen Habermas’ (1985: 99) terms.<sup>2</sup> Yet, as Jennifer Welchman (2001) argues, the move to categorize civil disobedience primarily as a form of communicative action is of relatively recent philosophical vintage—and it marks a rather dramatic shift from a long activist tradition of thinking about civil disobedience as but one of many tools of direct action. The fact that we now take this idea to be somewhat obvious is one of the many ways that political theories of civil disobedience remain hostage to Rawlsian frameworks, assumptions, and categories of analysis—despite a vibrant intellectual tradition, connecting American abolitionism to global anticolonial struggles to the long years of the civil rights movement and beyond, in which civil disobedience gained credibility precisely as a means of direct intervention, a means of generating social crises and “vexing the status quo.” To borrow Robin Celikates’ (2016b: 42–43) words, “without moments of real confrontation (that will in many instances be seen and categorized as violent),” civil disobedience would be little more than “a mere appeal to the conscience of the powers that be and their respective majorities.” That is, might cease to be effective at all—capable of serving as a tactical vehicle for claims and causes that really challenge the way things are.

Thus, all of this raises a real problem for the efficacy of civil disobedience, if we understand it the way that Delmas does: What would the effect of actions meeting her standards be, in the context of significant, systemic injustice? Much to Delmas’ credit, her text displays an acute sensitivity to the depth and dimensions of contemporary injustice, and the multiple forms of vulnerability, violence, exploitation, and peril that routinely plague people’s lives and livelihoods. She is also attentive to the ways in which living amidst systemic injustice, and particularly living as products of its differential privileges and deprivations, distorts and affects our moral psychology: “Privilege thus breeds blindness and blindness reinforces

privilege, since being privileged is being able, even encouraged, to fail to see the oppressive system and the privileges it grants” (p. 204). This dynamic is what Charles Mills (1997: 18), in the context of white supremacy, refers to as an “epistemology of ignorance”—an “agreement to *misinterpret* the world, but with the assurance that this set of mistaken perceptions will be validated by white epistemic authority, whether religious or secular.” In light of the grave (and often life-threatening) assaults on dignity, bodily integrity, equity, freedom, and democracy that structure our political worlds, and given an epistemic context in which the beneficiaries of white supremacy, patriarchy, or capitalist exploitation are more likely to disavow than acknowledge claims of injustice, I am not sure the purely symbolic, decorous, or polite is going to cut it.<sup>3</sup>

One might suspect that, for Delmas, our world is simply too unjust for civil disobedience; it’s time for us to be uncivil. I would be inclined to agree, if I had to take her categories as a given. Yet she is not quite willing to jettison civil disobedience: her project seeks to expand the terrain for resisting injustice beyond it, not displace it entirely. Based on the way she carves out space for the uncivil, however, I am left wondering what the purchase of retaining its civil counterpart is, at all—beyond, perhaps, our historical attachment to it as an idea. What I think is missing here is the recognition of the ways that the line between civil and uncivil is politically constructed: it is the product of a contested, contentious process of political claim-making between activists and spectators, subjects and citizens, institutions and individuals—not a matter of any particular action’s correspondence with a set of *a priori* normative categories.

These questions aside, I take Delmas’ broader point to be that we can and should create normative space for forms of resistance that are evasive, coercive, or shocking, even when we cannot agree on their civility. While I have taken issue with Delmas’ conceptualization of civil disobedience, it bears emphasis that her way of delimiting it—placing civil disobedience within the confines of decorum, nonviolence, publicity, and non-evasion—is part of a strategy to put civil disobedience in its place, in order to think critically about the forms of action that lie beyond it. This, I think, is both eminently worthwhile and, in Delmas’ book, very well done. For mid-20th century liberal theorists of civil disobedience such as Rawls, civil disobedience and conscientious objection became privileged objects of analysis because they represented the narrow terms of a citizen’s right to violate the law within states that were presumptively legitimate, liberal democracies. What Delmas systematically and compellingly demonstrates is that our political obligations as well as our latitude to disobey are far more expansive, given the scale and scope of injustice, violence, and exploitation around us. On this front, Delmas’ book stands as an original and significant contribution, and a challenge to accounts which fail to seriously consider what we owe to each other when we live within—and particularly when we benefit from—the conditions of systemic injustice.

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## Notes

1. Delmas focuses on the work of Robin Celikates (2014, 2016a) and Kimberlee Brownlee (2012) as emblematic of this approach.
2. It also comports with more recent accounts, such as Brownlee's (2012) and Smith's (2013).
3. This is the precise epistemic context, I would argue, that forges our ideas about what counts as decorous, respectful, civil, or nonviolent.

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