

# The Ethics of (Un)Civil Resistance

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*A Duty to Resist: When Disobedience Should Be Uncivil*, Candice Delmas (Oxford: Oxford University Press, 2018), 312 pp., \$29.95 cloth, \$19.99 eBook.

*When All Else Fails: The Ethics of Resistance to State Injustice*, Jason Brennan (Princeton, N.J.: Princeton University Press, 2019), 288 pp., \$27.95 cloth, \$27.95 eBook.

Civil disobedience has long dominated philosophical debates about the ethics of unlawful protest. The likes of Hannah Arendt, Michael Walzer, Ronald Dworkin, Peter Singer, Jürgen Habermas, and—perhaps most influentially—John Rawls offer contrasting formulations of the same basic idea: that citizens of more-or-less democratic societies can sometimes, perhaps often, engage in suitably constrained acts of public lawbreaking to express their disapproval of law and policy. The disobedient act is constrained in the sense that it is carried out in line with norms of *civility*, with most accounts ruling out covert action, coercive force, and political violence. The recent revival of philosophical interest in civil disobedience illustrates that there is something close to a scholarly consensus over its permissibility, though it is fair to say that nothing like this consensus exists among public officials or ordinary citizens.<sup>1</sup>

This does not mean that civil disobedience is the subject of uncritical adulation among the ranks of political theorists. The emerging trends in the literature in fact suggest something far more interesting. Civil disobedience is increasingly seen as a defensible form of protest that nonetheless functions as an unduly restrictive framework for considering the ethics of dissent. The scale and severity of injustice in national, transnational, and global contexts is such that far more radical forms of disobedience can and perhaps should be undertaken. This prompts some theorists to reject the constraints of civility, contending that acts of “uncivil

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disobedience” are morally permissible in certain contexts.<sup>2</sup> This deep injustice is also a driving factor behind a notable tendency to favor alternative theoretical concepts, such as the increasing prominence of the resonant if somewhat nebulous term “resistance” in philosophical debates.<sup>3</sup>

These trends are encapsulated in the provocative books under consideration here. Candice Delmas’s *A Duty to Resist: When Disobedience Should Be Uncivil* and Jason Brennan’s *When All Else Fails: The Ethics of Resistance to State Injustice* offer contrasting and often compelling arguments in favor of uncivil resistance. The arguments are nuanced in that neither author offers carte blanche to dissidents contemplating uncivil resistance, emphasizing the moral and prudential considerations that weigh against its use. They nonetheless bridge a gap between the theory and practice of resistance, encouraging philosophers to attend to long-standing debates among activists about the adoption of violent, forceful, or covert tactics in their struggles.<sup>4</sup> The following reflections consider the challenge to civility posed by these books, exploring whether and to what extent the tradition of civil disobedience continues to have any relevance for political resistance in an increasingly interconnected world.

## FROM DISOBEDIENCE TO RESISTANCE

The standard accounts of civil disobedience often, though not always, endorse a presumption against this form of protest in more-or-less democratic societies, which can only be overridden by significant countervailing considerations. The Rawlsian account, for instance, defines civil disobedience as conscientious, nonviolent, and unlawful protest carried out to communicate opposition to law or policy. The resort to this form of constrained disobedience should be limited to circumstances where law or policy is implicated in clear and severe injustice, after good faith attempts to pursue lawful means of redress have failed, and alongside efforts on the part of protesters to safeguard overall levels of societal stability.<sup>5</sup>

Delmas challenges this approach on a number of grounds. First, she contends that Rawls exaggerates the weight of our duty to desist from unlawful forms of activism in democratic societies.<sup>6</sup> She argues that these societies are characterized by profound injustices, including “racism, religious intolerance, sexism, ableism, anti-LGBTQ+ discrimination, and other cases of unequal group treatment” (p. 15). The sheer magnitude of these injustices means that, far from being presumptively wrong, there is in fact often a moral *duty* to engage in unlawful

resistance. Delmas pursues this claim through a novel reading of four major philosophical accounts of political obligation, based respectively on the natural duty to seek justice, the principle of fairness, the Samaritan duty, and political association. Her contention is that, according to the best interpretation of these approaches, “the very grounds supporting a duty to obey also impose duties to disobey under conditions of injustice” (pp. 8–9). This argument, moreover, is said to align with the testimony of protesters, who generally frame their activism within a “duty-centred discourse” (p. 6).

Second, Delmas contends that citizens confronting injustice might be duty bound to engage in a much broader range of actions than the narrow form of civil disobedience envisaged by Rawls. The concept that frames her analysis is “resistance,” which she defines as “a multidimensional continuum of dissenting acts and practices, which includes lawful and unlawful acts (or “principled disobedience”), and expresses, broadly, an opposition and refusal to conform to the established institutions and norms, including cultural values, social practices, and laws” (p. 10). She further clarifies that “acts of principled disobedience that are covert, evasive, anonymous, violent, or deliberately offensive are generally (though not necessarily) uncivil” (p. 17). This definition, it should be noted, rightly departs from a trend in the empirical literature to assert an equivalence between civility and nonviolence, thus neglecting other dimensions that are clearly relevant to ascertaining the civility of our conduct.<sup>7</sup>

Delmas argues that it is crucial to explore conditions under which uncivil disobedience is morally appropriate, which she presents as an important point of departure from liberals such as Rawls. In a particularly powerful analysis, she explores the various ways in which the broadly Rawlsian account of civil disobedience has gone hand in glove with a sanitized reconstruction of the civil rights movement to shape public discourse surrounding resistance in societies such as the United States (pp. 23–24). She suggests that these ideas function to marginalize and delegitimize political struggles that stray beyond tightly demarcated norms of civility by setting up a historically inaccurate and normatively indefensible ideal of virtuous nonviolent resistance against which subsequent movements are judged and found wanting. The upshot is that “in the official narrative of civil rights and the standard theory of civil disobedience, we thus have something like an ideology, which includes a defense of the status quo through a series of conformist moves” (p. 35). Delmas’s critique of this “counter-resistance ideology” paves the way for embracing the tactical repertoire of uncivil disobedience, albeit with the important

proviso that “resistors must act with respect for other people’s interests, including but not limited to their basic interests in life and bodily integrity; their interest in non-domination . . . and their interest in protection by a stable, secure, system of rights” (p. 49).

## DEFENSIVE ACTIONS

The arguments that Jason Brennan puts forward might, at first glance, appear far less relevant to the standard theory of civil disobedience than those of Delmas. This is an impression fortified by his insistence that his book “is not about civil disobedience, at least not in the specialized way that philosophers and legal theorists tend to use that term” (p. 15). His focus, instead, is on a particular form of resistance that he calls “defensive actions,” defined as “acts of lying, cheating, stealing, sabotaging, destroying, attacking, and killing in self-defense or the defense of others” (p. 15). Brennan’s core aim is to defend what he calls the “moral parity thesis”:

The conditions under which a person may, in self-defense or the defense of others, deceive, lie to, sabotage, attack, or kill a fellow civilian, or destroy private property, are also conditions under which a civilian may do the same to a government agent (acting *ex officio*) or government property (p. 11).

The book is devoted, for the most part, to defending the moral parity thesis against attempts to support the contrary view that holds that public officials have some kind of “special immunity” against defensive actions (p. 10). On Brennan’s account, the principles that regulate the use of defensive actions in general—which might include imminent danger, necessity, prospects of success, and proportionality—also regulate the use of defensive actions against government agents.<sup>8</sup> The point is that the police, for instance, are as liable to defensive force as the mafia, at least if both are implicated in analogous forms of unjust conduct.

This focus on defensive action means that Brennan’s philosophical agenda departs from that of Rawls. The major point of difference is that civil disobedience is an attempt to achieve societal change, whereas defensive action is an effort to protect an agent from some unwarranted threat or harm. Brennan illustrates this difference by contrasting an unlawful protest against restrictive drug laws with an unlawful attempt to escape arrest for possessing drugs. The lack of concern for legal reform in the latter case illustrates his claim that defensive action can include modes of conduct that are incompatible with civility. After all, part of the

rationale for embracing civility—at least on most accounts—is to enhance the likelihood that campaigns for reform will be successful (pp. 96–101).

Brennan's arguments nonetheless have important implications for standard accounts of civil disobedience. First, according to Brennan those accounts tend to assume that government authority generates a duty to obey that must be overridden before disobedience is permissible (p. 92). He rejects this assumption for the simple reason that, on his view, no successful philosophical defense of government authority has been developed (pp. 78–79). Brennan therefore contends that “since governments probably lack any authority, let alone the authority to commit severe injustices, we need to revise our theories of civil disobedience” (p. 92). It should be noted that Brennan gives a rather selective, albeit entertaining, overview of the philosophical literature on authority, which neglects several of the important positions that Delmas considers in her analysis—such as Samaritanism and political associationism. This does not diminish his argument as such, but readers are advised to treat with caution his claim that rejection of authority “may now be the dominant position among political philosophers who write about authority and legitimacy” (p. 69).

A second, and related, implication is that it is possible that the triggering conditions for civil disobedience might also serve as triggering conditions for defensive action. Rawls, for instance, claims that clear and serious infringements of our equal rights—including threats to our person, liberty, or property—can be resisted through civil disobedience. These infringements also appear to warrant the far less constrained tactics that Brennan associates with defensive action, which would dramatically expand the moral options available to citizens contemplating whether and how to resist injustice. This expansion of the range of options is a shared feature of the contrasting positions that Brennan and Delmas each stake out.<sup>9</sup>

## RESISTANCE AND LEGITIMACY

Advocates of the standard approach to civil disobedience might respond to this line of argument by drawing attention to the moral significance of political legitimacy. As Brennan notes, it is possible to distinguish between a government's “authority,” or the power it has to impose an obligation to obey, and its “legitimacy,” or the permission it is granted to impose a coercive system of rules on a given territory or population.<sup>10</sup> One can accept Brennan's claim that most governments lack authority but nonetheless allow—as he explicitly does—that at least

some governments possess legitimacy. The legitimacy of government might derive, on this account, from the goods or benefits that arise as a consequence of granting it a moral permission to govern. This is relevant for considering Rawls's argument, insofar as the constraints he imposes on civil disobedience either express respect for or contribute to the stability of legitimate regimes. These considerations might block the transition from civil to uncivil resistance.

However, this appeal to legitimacy is not sufficient to defeat the case for uncivil resistance entirely, although certain responses to it are more compelling than others. The first type of response, favored by Delmas, accepts the premise that legitimacy is relevant to the ethics of resistance but rejects the conclusion that uncivil resistance against a legitimate regime is necessarily impermissible. First, uncivil resistance does not necessarily express a lack of respect for legitimate institutions and might in fact benefit such institutions in the long run. Delmas illustrates this through the case of government whistleblowing, which typically fails to adhere to norms of civility (such as publicity and nonevasiveness) while potentially serving to expose government actions that infringe rights or undermine the rule of law. Second, the gravity of injustice may be such that respect for legitimate regimes should be withheld or the stability of such regimes should be challenged. Uncivil resistance might be preferred to civil resistance, on this account, if it is more effective at contesting entrenched and often hidden forms of injustice. Delmas illustrates this through the offensive rhetoric and confrontational tactics of activist groups such as Pussy Riot and FEMEN, whose "sensationalist 'sextremist' acts reveal the patriarchy that actual civic friendship accommodates and present that evil as an adversary to confront and offend." Their uncivil conduct thus serves to "contest and disrupt the moral and political consensus" (p. 64).

The second type of response, favored by Brennan, is to reject the premise that legitimacy is relevant to the ethics of resistance. As he puts it: "That a government legitimately does X tells us nothing by itself about what citizens may or may not do in response" (p. 70). The thought here is that only government authority, the power to create an obligation to obey, is relevant to considering the response of citizens. This response, though, is not persuasive. Even if legitimacy does not create a binding obligation for citizens to obey, it surely influences our moral deliberations about how to resist. To see why, consider a pair of hypothetical cases that Brennan invokes to illustrate the moral parity thesis.

The first is a scenario where John, a private citizen convinced that caffeine is bad for us, creates a coercive system of rules to "capture coffee drinkers, confiscate

their belongings, and imprison them in [his] filthy basement for years” (p. 6). A follower of John breaks into the house of Ann while she is drinking coffee and attempts to capture her. In response, “she struggles to defend herself, and in the process, kills him” (p. 7). The second scenario involves town leaders ruling that marijuana should be illegal, despite a lack of compelling evidence to support this decision. The government imposes excessive prison sentences for drug possession and is unresponsive to calls for reform. The police raid Ann’s house at night while she is in possession of marijuana. In response, she “resists arrest and escapes” (pp. 8–9). The thought here is that if we are inclined to regard using defensive force as appropriate in the first case, we should treat using defensive force as appropriate in the second case as well.

There are nonetheless suggestive differences between the two cases. The first difference relates to the kind of defensive action utilized in each. Ann resists through lethal force when confronted by John’s follower, but not when confronted by police. This contrast is curious, as the moral parity thesis entails permission to use the same degree of defensive force in both cases. The contrast might be explained if we stipulate a second difference: Ann is threatened by agents of an *illegitimate* regime in the first case, whereas she is threatened by agents of a *legitimate* regime in the second. The fact that neither regime possesses the authority to impose an obligation to obey is not decisive in determining her actions. Ann may be morally permitted to disobey a legitimate regime, but in a way that does not unduly compromise the capacity of that regime or its agents to perform the tasks that warrant its designation as legitimate. This gives her a reason to moderate, or at least consider moderating, the manner in which she resists agents of a legitimate regime, a concern that does not arise in her interactions with agents of an illegitimate regime. My primary aim here is not to challenge the moral parity thesis, but merely to express some doubt about Brennan’s assertion that legitimacy is irrelevant to the ethics of resistance. As a result, Delmas’s nuanced approach seems a more plausible and promising basis for defending the use of uncivil resistance against legitimate institutions in national or global contexts.

## TOWARD AN ETHICS OF GLOBAL RESISTANCE

Both of these books pose a further challenge to standard theories of civil disobedience, albeit one that is implicit rather than explicit. The authors discuss several cases of resistance that have international, transnational, or global dimensions.

Delmas, for instance, returns several times to the case of border controls, highlighting circumstances where citizens of receiving societies are obliged to assist refugees or undocumented migrants through acts of uncivil resistance. And Brennan considers the entitlement of soldiers and officials to defy unjust orders in military conflicts, either in defense of themselves or others. This can be seen as a tacit rebuke to the literature on civil disobedience—particularly in the Rawlsian tradition—which tends to focus on protest in territorially bounded societies against injustices that primarily affect members of that society.

There have been, in fact, several recent attempts to show how theories of civil disobedience—even those with a strongly Rawlsian character—can be revised to speak to cases that do not fit within this national or statist framework.<sup>11</sup> The more fundamental issue is whether global resistance should be pursued through civil or uncivil means. Our response to this question is likely to rest on the same intuitions that Brennan appeals to in his discussion of defensive action, whereby our course of action—killing, injuring, sabotage, theft, or lying—should be governed in part by a doctrine of necessity. This generates some fairly noncontroversial rules of thumb for Brennan, such as “When choosing among defensive actions, one should pick the least harmful and violent action” (p. 47). Delmas, for her part, appeals to similar intuitions in her discussion of undocumented migrants. If our goal is “to protect unauthorized migrants from the harms of arrest, detention and deportation,” then it seems that our actions “must be covert in order to succeed” (p. 94). Her general thrust is that, while civil or less harmful forms of resistance are to be preferred in general, there are almost certainly circumstances where covert, offensive, and violent forms of resistance are necessary to resist global injustice.

The ethics of global resistance must offer further guidance on the defensibility of these tactics, including further clarification of the moral constraints on incivility. This is not a task that can be adequately addressed here, but it is possible to say something about the relevance of civil disobedience to this endeavor. These books, as noted at the outset, reflect a broader dissatisfaction with standard theories of civil disobedience in the philosophical literature, particularly their apparent conservatism in the face of profound injustice. The reasons for this discontent are understandable, but it would be wrong to conclude that extant theories of civil disobedience offer nothing of importance to the study of global resistance.

First, we should note that some of the most innovative work on civil disobedience in recent years addresses the moral duty of public authorities to treat this



form of protest with appropriate toleration and respect. This work contests orthodox interpretations of our rights to assembly and protest by insisting that citizens often have rights-based claims against such measures as preventative protest policing and punitive legal sanctions, despite the illegality of their actions.<sup>12</sup> This is significant because disruptive forms of nonviolent protest are triggering ever more repressive responses from governments in democratic and nondemocratic societies.<sup>13</sup> The allies of protest movements in national, transnational, and global contexts could challenge this wave of repression by mobilizing arguments that have been put forward in favor of treating civil disobedience as a moral right. If these arguments entail that civil disobedience is a *human right*—as I suspect they do—criticism of the repression advanced by states and other transnational or global actors would be strengthened, particularly in light of the well-established norm that human rights are matters of international concern.

Second, let us reconsider Delmas's critique of the counter-resistance ideology that she associates with the official narrative of the civil rights movement and the Rawlsian theory of civil disobedience (p. 29). She is surely right to criticize the way in which these ideas are periodically mobilized to delegitimize uncivil resistance movements. This discourse has, though, also served progressive and emancipatory causes, a fact that becomes particularly clear when we consider its ongoing diffusion across national borders.

The standard doctrine of civil disobedience emerges out of a transnational dialogue between participants of different struggles, illustrated by the interactions between U.S. civil rights activists and followers of Gandhi in the mid-twentieth century.<sup>14</sup> The subsequent philosophical debate about civil disobedience is also informed by this dialogue, particularly the rhetoric and tactics of the civil rights movement (pp. 25–26). The standard doctrine continues to serve as a crucial point of reference for activists across the world, often functioning as a legitimating narrative in societies that do not have established traditions of principled disobedience. Gandhi and Martin Luther King, Jr. are important touchstones, but it is also notable that, perhaps surprisingly, the much maligned Rawlsian doctrine of civil disobedience has been mobilized in certain contexts. The Rawlsian claim that civil disobedience can be an expression of fidelity to law offers important resources for protesters whom apologists for their societies' status quo accuse of showing contempt for law. This is why, for example, representatives of the struggle for democracy in Hong Kong and Taiwan appeal to Rawls's theory of civil disobedience in defending their resort to unlawful protest.<sup>15</sup> This philosophical doctrine

may not be terribly helpful in guiding these activists in their strategic deliberations, but it does provide discursive resources for framing and defending their campaigns in national and transnational public spheres.

The point here is not to deny that theories of civil disobedience must be supplemented by theories of uncivil resistance. That case is decisively made by Delmas and Brennan both. The point, rather, is to insist that civil disobedience has a rich legacy that continues to inspire and empower activists in diverse societal contexts. For this reason alone, civil disobedience is likely to be an important element of a broader doctrine of global resistance.

#### NOTES

- <sup>1</sup> A masterly survey of the philosophical literature on civil disobedience can be found in William E. Scheuerman, *Civil Disobedience* (Cambridge, U.K.: Polity, 2018).
- <sup>2</sup> N. P. Adams, "Uncivil Disobedience: Commitment and Violence," *Res Publica* 24, no. 4 (November 2018), pp. 475–91; and Ten-Herng Lai, "Justifying Uncivil Disobedience," in David Sobel, Peter Vallentyne, and Steven Wall, eds., *Oxford Studies in Political Philosophy*, vol. 5 (Oxford: Oxford University Press, forthcoming).
- <sup>3</sup> See, for instance, Simon Caney, "Responding to Global Injustice: On the Right of Resistance," *Social Philosophy and Policy* 32, no. 1 (Fall 2015), pp. 51–73.
- <sup>4</sup> Marc Stears, *Demanding Democracy: American Radicals in Search of a New Politics* (Princeton, N.J.: Princeton University Press, 2010).
- <sup>5</sup> John Rawls, *A Theory of Justice*, rev. ed. (Oxford: Oxford University Press, 1999).
- <sup>6</sup> Delmas acknowledges that Rawls limits his argument to "nearly just" societies, but suggests he erroneously viewed his own society as being such a place (pp. 28–29).
- <sup>7</sup> See, for instance, Erica Chenoweth and Maria J. Stephan, *Why Civil Resistance Works: The Strategic Logic of Nonviolent Conflict* (New York: Columbia University Press, 2011).
- <sup>8</sup> Brennan does not put forward an independent theory of defensive action, which means that he does not take a stand on some of the current areas of controversy or uncertainty in the philosophical literature. His argument is more formal than substantive, resting on the intuition that the moral parity thesis holds true regardless of the precise details of our theory of defensive action (pp. 28–29). This move may be methodologically sound, but it makes it harder to relate his arguments to real-world contexts. To take an obvious example: I am uncertain whether or under what circumstances Brennan regards compulsory taxation as an unjust threat to our personal property, which would warrant unlawful attempts at tax avoidance as a defensive strategy (pp. 55–56). This uncertainty stems, in part, from the absence of any attempt on Brennan's part to clarify the kind of unjust harms or threats that trigger the case for defensive action.
- <sup>9</sup> Constraints of space preclude a full analysis of the similarities and differences between the authors' accounts. A notable difference that warrants further scrutiny is that Brennan does not follow Delmas in framing resistance as a duty (pp. 206–37).
- <sup>10</sup> This distinction is not universally accepted among political theorists, at least not in the precise form suggested by Brennan. I nonetheless accept it here for the sake of argument. For a helpful overview, see *Stanford Encyclopedia of Philosophy* Archive, Summer 2017 ed., s.v. "Political Legitimacy," by Fabienne Peter, [plato.stanford.edu/archives/sum2017/entries/legitimacy](https://plato.stanford.edu/archives/sum2017/entries/legitimacy).
- <sup>11</sup> William Smith, "Civil Disobedience as Transnational Disruption," *Global Constitutionalism* 6, no. 3 (November 2017), pp. 477–504. See also Temi Ogunye, "Global Justice and Transnational Civil Disobedience," *Ethics & Global Politics* 8, no. 1 (2015), pp. 1–23; and William E. Scheuerman "Civil Disobedience in the Shadows of Postnationalization and Privatization," *Journal of International Political Theory* 12, no. 3 (October 2016), pp. 237–57.
- <sup>12</sup> See, for instance, Kimberley Brownlee, *Conscience and Conviction: The Case for Civil Disobedience* (Oxford: Oxford University Press, 2012); David Lefkowitz, "On a Moral Right to Civil Disobedience," *Ethics* 117, no. 2 (January 2007), pp. 202–33; and William Smith, *Civil Disobedience and Deliberative Democracy* (London: Routledge, 2013), chs. 4–5.

- <sup>13</sup> See, for instance, Lesley J. Wood, *Crisis and Control: The Militarization of Protest Policing* (London: Pluto, 2014).
- <sup>14</sup> Sean Chabot, *Transnational Roots of the Civil Rights Movement: African American Explorations of the Gandhian Repertoire* (Lanham, Md.: Lexington Books, 2012).
- <sup>15</sup> Benny Tai, "Civil Disobedience and the Rule of Law," in Michael H. K. Ng and John D. Wong, eds., *Civil Unrest and Governance in Hong Kong: Law and Order from Historical and Cultural Perspectives* (London: Routledge, 2017), pp. 141–62.
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Abstract: Civil disobedience is a conscientious, unlawful, and broadly nonviolent form of protest, which most political philosophers and many non-philosophers are inclined to treat as potentially defensible in democratic societies. In recent years, philosophers have become more receptive to long-standing complaints from activists that civil disobedience is an unduly restrictive framework for considering the ethics of dissent. Candice Delmas and Jason Brennan have written important books that illustrate and strengthen this trend, both defending forms of "uncivil" resistance that go beyond the narrow confines of civil disobedience. Their books offer contrasting but complementary philosophical defences of incivility as a tactic of resistance, but it is nonetheless a mistake to conclude that the rich tradition associated with civil disobedience no longer has any relevance for resistance in national, transnational, and global contexts.

Keywords: Candice Delmas, Jason Brennan, civil disobedience, defensive action, incivility, legitimacy, resistance, violence