

KEY CONCEPTS

CIVIL DISOBEDIENCE

WILLIAM E. SCHEUERMAN



Civil Disobedience

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William E. Scheuerman

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First published in 2018 by Polity Press

Polity Press
65 Bridge Street
Cambridge CB2 1UR, UK

Polity Press
101 Station Landing
Suite 300,
Medford, MA 02155, USA

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ISBN-13: 978-1-5095-1862-3

ISBN-13: 978-1-5095-1863-0(pb)

A catalogue record for this book is available from the British Library.

Library of Congress Cataloging-in-Publication Data

Names: Scheuerman, William E., 1965- author.

Title: Civil disobedience / William E. Scheuerman.

Description: Malden, MA : Polity Press, 2018. | Includes bibliographical references and index.

Identifiers: LCCN 2017021115 (print) | LCCN 2017023718 (ebook) |

ISBN 9781509518654 (Mobi) | ISBN 9781509518661 (Epub) |

ISBN 9781509518623 (hardback) | ISBN 9781509518630 (pbk.)

Subjects: LCSH: Civil disobedience—Juvenile literature.

Classification: LCC JC328.3 (ebook) | LCC JC328.3 .S254 2018 (print) |

DDC 303.6/1—dc23

LC record available at <https://lcn.loc.gov/2017021115>

Typeset in 10.5 on 12pt Sabon by Toppan Best-set Premedia Limited
Printed and bound in the UK by CPI Group (UK) Ltd, Croydon

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For my parents

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Acknowledgments

The initial inspiration for writing this volume came from Edward Snowden, whose 2013 whistleblowing jolted me out of my scholastic slumbers and forced me to think hard about politically motivated lawbreaking and how to make sense of it. Donald Trump's ascendancy later provided a frightening reminder of why it remains vital that we understand civil disobedience.

Robin Celikates and Maeve Cooke accompanied the journey, generously supporting my efforts and commenting on components of the manuscript, as have two colleagues, Russell Hanson and Jeffrey Isaac. I have learned a great deal from all of them.

I presented earlier versions of the ideas developed here at my home institution, Indiana University, and Amsterdam University, Copenhagen Business School, *Forschungskolleg Humanwissenschaften* (Bad Homburg), Goethe University (Frankfurt), Hamburg University, Humboldt University (Berlin), Notre Dame University (Indiana), Seoul National University, University College Dublin, University of Memphis, University of Pennsylvania, University of Toronto, and the University of York (UK). As always, the annual Prague critical theory conference on philosophy and social sciences, for which I have been fortunate to serve as co-director, provided ample opportunities to garner critical feedback. Lively audiences there and elsewhere forced me to think more clearly

about what I was trying to say. Special thanks to Kimberley Brownlee, Simone Chambers, Gabriella Coleman, Aurelian Craiutu, Verena Erlenbusch, Alessandro Ferrara, Rainer Forst, Jeffrey Green, Joohyung Kim, Poul Kjaer, Mihaela Mihai, Brian Milstein, Darrel Moellendorf, Peter Niesen, Niklas Olsen, Danielle Petherbridge, Maria Pia Lara, Martin Sauter, Sandra Shapshay, Jon Simons, Jiewuh Song, Ernesto Verdeja, Susan Williams, and Theresa Züger.

During the summer and fall of 2016, the idyllic *Forschungskolleg Humanwissenschaften* in Bad Homburg, Germany, hosted my family. I thank Rainer Forst for making the visit possible, and Beate Sutterlüty, Iris Koban, and Andreas Reichardt for their patience and support. Without their efforts, I would never have completed the volume. The Humboldt Stiftung, the German-American Fulbright Commission, and Indiana University helped finance the research stay. Seyla Benhabib and Nancy Fraser generously endorsed my fellowship applications.

Some sections of articles from *Journal of International Political Theory*, *Journal of Political Philosophy*, *New Political Science*, and *Philosophy and Social Criticism* have been reworked into this text. Thanks to a host of anonymous reviewers, and Jocelyn Borycka, Bob Goodin, Patrick Hayden, and David Rasmussen, for providing sound editorial advice at earlier stages. At Polity, Louise Knight and Nekane Tanaka Galdos were a pleasure to work with.

My debts to Julia, Zoe, and Lily transcend my limited literary and stylistic talents.

Finally, I dedicate this book to my parents, Bill and Louise, with the hope that we will enjoy another great half century together. Thank you.

Introduction

Why civil disobedience?

A loose collection of activists targeting police racism and brutality, Black Lives Matter (BLM) got its name from Alicia Garza, who first used the term in a July 2013 Facebook post criticizing the acquittal of George Zimmerman, who had shot and killed Trayvon Martin, a black teen. The 2014 police killings of Michael Brown and Eric Garner, followed by other widely publicized incidents of police violence, rapidly ignited protests organized by younger black activists. Beyond the usual mix of demonstrations, marches, and vigils, BLM soon embraced more controversial tactics, including some deemed illegal by public authorities and, not surprisingly, culminating in arrests. Protestors occupied police stations and police union offices, blockaded major highways and mass transit systems, interrupted political speakers (including Hillary Clinton and Bernie Sanders), and disrupted shoppers in large malls and downtown shopping districts. Though its activities have generally been nonviolent, some have resulted in the destruction of property and scuffles with police (Lowery 2016).

BLM has generated sympathy among political progressives, some of whom view it as a rightful heir to the 1960s US civil rights movements and Martin Luther King's vision of

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nonviolent civil disobedience. On the political right, in sharp contrast, prominent figures – including President Donald Trump – accuse the group of instigating violence against police officers, describing its actions as reckless and incongruent with the “rule of law,” an idea conservatives tend to conflate with “law and order.”¹ Right-wing pundits often draw clear lines between a saintly King and what they deplore as BLM’s propensity for violence and white-bashing.

A third – and more sophisticated – response comes from an older generation of African-American activists, some of whom marched with King yet worry the movement has abandoned his ideas. They accuse its proponents of lacking the requisite spiritual orientation and failing to appreciate why conscientious lawbreaking demands public displays of dignity, decorum, and self-discipline. BLM, on their view, has not done enough to delineate its actions from those of street thugs and looters. It needs to think harder about how to mobilize majority support for its grievances. Recent activists have given lucid expression to legitimate black frustration, but not enough thought as to how best to funnel it in morally sound and politically productive ways (Kennedy 2015; Reynolds 2015).

While also claiming inspiration from King, BLM has responded by distancing itself from his patriarchal and occasionally conservative religious views. The group rejects the “respectability politics ethos” of older civil rights activism, touting its own preference for less hierarchical, centralized organizational forms. In contrast to the electoral reformism of the present-day black political elite (and its close ties to the Democratic Party), the activists doubt that “the American system is salvageable, because it is so deeply rooted in ideas of racial caste.”² Accordingly, the movement has spurned efforts by elected leaders and other political figures to embrace its cause, seeing in them a real danger of cooptation. Its defenders have also pushed back against sanitized readings of King’s tactics, pointing out that he and his followers were also frequently accused of fomenting unrest and violence (Sebastian 2015).

What should we make of these competing interpretations? BLM has in fact broken the law and engaged in behavior that has sometimes rattled even sympathizers. Should we

highlight the movement's apparent disdain for legality? Does it make sense to view its endeavors as essentially lawless and criminal? Though the movement's participants have by no means always categorized their activities as civil disobedience, the term appears frequently in discussions of them. One reason is that the concept "civil disobedience" possesses a moral and political cachet that alternatives – most obviously, "crime" or "illegality" – lack. With this moral and political capital also come some modest legal gains: when politically motivated lawbreakers convince a judge or jury that their actions constitute civil disobedience, in some jurisdictions they can count on less severe treatment than those who fail to do so.³ Protestors may get off with a reduced sentence, or some realistic expectation of clemency in the not-too-distant future. They can also successfully claim the mantle of iconic practitioners of civil disobedience such as King and Mahatma Gandhi, in the process garnering a valuable measure of public recognition for their actions.

Our answers to these questions, in short, are politically consequential, and the stakes for real-life activists high. BLM's case, to be sure, is of special interest to US citizens (and, of course, people everywhere repulsed by racism).⁴ Yet parallel questions emerge in many other contexts. We are witnessing a proliferation of politically motivated illegalities, some familiar and some less so, with activists, their supporters, and critics regularly debating whether the illegalities in question deserve to be described as *civil disobedience*.

A similar controversy, for example, has broken out about whether mass migrations of peoples across state borders, like those that have recently brought millions to Germany, Greece, Turkey, and smaller countries such as Austria and Sweden, might be sensibly characterized as civil disobedience. Those illegally crossing borders in search of a decent job, for example, apparently view legal entry requirements as unjust, and when violating laws prohibiting their free movement do so nonviolently. Even when crossing borders covertly, they may subsequently take on occupations making them visible to a broader public. Their actions also generate public debate about immigration and refugee policies, spurring calls for legal changes. On one interpretation, illegal migrants are implicitly appealing to some nascent idea of global or

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cosmopolitan justice that favors human rights over national prerogatives (Cabrera 2010: 131–53). Since their acts seem to meet some of the usual tests of legitimate civil disobedience, why not describe them as such?

This and related queries seem increasingly inescapable. Given substantial popular dissatisfaction with the normal workings even of longstanding liberal democracies, large numbers of people are now willing to pursue unconventional and legally suspect protest. In well-functioning liberal democracies, political decisions should be made via normal lawmaking channels; those seeking legal and policy changes should not be driven to break the law in personally risky ways. Unfortunately, it is no longer clear that many liberal democracies are in fact sufficiently well-functioning. The present crisis of democracy, as manifest in burgeoning mass apathy, populist rage against political elites, and the decline of mainstream political parties, likely portends a growing prominence for politically motivated lawbreaking. Alarming authoritarian trends also probably mean that incidents of grassroots or oppositional lawbreaking will increase, as citizens push back against top-down attacks on civil liberties and democracy.

We need to understand civil disobedience, its key components, what they entail, and how and why it involves a special type of lawbreaking, one that in principle may be deserving of our respect even when we find the political cause or activists behind it disagreeable. Why does it matter? Since Gandhi and King, the concept of civil disobedience has appealed especially to those hoping to bring about positive social change. Responsible political action today – as in the past – presupposes conceptual and terminological clarity. We want a notion of civil disobedience that potentially allows us to situate it coherently within a broader field of related political terms, even if messy social realities unavoidably get in the way of airtight conceptual distinctions. For both political and theoretical reasons, to be examined below, one tendency in recent years has been a certain blurring of the lines between notions of civil disobedience, on the one hand, and other politically motivated illegalities, on the other. Both normative and empirical literatures now speak broadly of *political resistance*, nonviolent or otherwise.⁵ In contemporary

political discourse as well, *resistance* functions as a diffuse catch-all concept, masking a diversity of competing political tactics and ideological perspectives. Unfortunately, this trend sometimes comes with a hidden price tag: we risk losing a sufficiently precise understanding of civil disobedience and its distinctive traits.⁶

Unlike those that jettison the term “civil disobedience” for generic and potentially less precise conceptual alternatives, this book tries to hold on to it. To do so successfully, we need to explore the concept’s nuances as well as possible ambiguities and frailties.

Which civil disobedience?

One way to proceed would be offer another full-fledged political philosophy of civil disobedience. To their credit, some contemporary authors are pursuing this approach. One of their project’s more striking oversights, however, suggests the virtues of a more modest starting point.

Civil disobedience has long been the subject of wide-ranging controversy. Philosophically inclined writers are again revisiting the topic; later we take a careful look at their efforts (chapter 7). Though multifaceted, the ongoing exchange seems motivated to a great degree by a skeptical reading of the allegedly hegemonic liberal model of civil disobedience, and especially the influential account provided by the philosopher John Rawls in his classic *A Theory of Justice* (1971). The ongoing debate’s premise is that only by transcending the orthodox liberal model of civil disobedience can we accommodate contemporary political realities and realize a sufficiently supple conceptual alternative. Preoccupied with knocking Rawls off his pedestal, critics tend to revert to cramped interpretations of a rich body of prior political and theoretical reflections. They simplify key ideas about civil disobedience, liberal or otherwise. They make things too easy for themselves by obscuring the concept’s complex history.

There is no *single* classical or orthodox idea of civil disobedience: rival political traditions have formulated overlapping

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yet basically different models of civil disobedience. Consequently, this volume examines four separate accounts of civil disobedience – namely, competing religious-spiritual, liberal, democratic, and anarchist concepts.⁷ Ideas about civil disobedience have been articulated in diverging and indeed conflicting ways. Civil disobedience's presuppositions, normative justifications, and political aspirations can only be properly grasped when situated in the context of four rival traditions, each of which has made some notable contributions. My exposition is both analytic and roughly chronological: we can view the longstanding debate about civil disobedience as a learning process of sorts, with succeeding generations of activists and thinkers trying to correct the real (or at least perceived) mistakes of their predecessors, and then improving on them. By proceeding in this fashion, we can gain a better sense of how more recent notions of civil disobedience – in particular its impressive *democratic* variant – represent real conceptual and political progress. We should also eventually be able to see where contemporary philosophical analysis goes astray.

For religious believers Gandhi and King, civil disobedience was principally a device to counter evil, a form of divine witness requiring of practitioners a suitably demanding spiritual comportment. Every element of this original model, accordingly, possessed a directly *religious-spiritual* significance (chapter 1).⁸ In contrast, the *liberal* model of civil disobedience, as fashioned by Rawls and other liberals in the 1960s and early 1970s, struggled to free civil disobedience from its initial religious bearings, recognizing that it could only remain politically relevant when reconfigured in accordance with modern pluralism. In the process, liberals came to interpret civil disobedience primarily as a useful corrective to overbearing political majorities that periodically threaten minority rights (chapter 2). The *democratic* model of civil disobedience, whose most significant defenders have included Hannah Arendt and Jürgen Habermas, challenged liberalism's narrow understanding of democracy and its insufficiently critical diagnosis of the liberal political status quo. Civil disobedience, on their wide-ranging and sometimes politically radical account, could help overcome far-reaching democratic deficits and open the door to extensive political

and social reform (chapter 3). Finally, the *anarchist* model, as practiced by generations of political militants, and recently reformulated by self-described philosophical anarchists, defied core presuppositions about the state and law on which previous approaches rested. Posing a profound challenge to all prior accounts, contemporary anarchism remains deeply conflicted about civil disobedience as conventionally understood (chapter 4).

This typology hardly denies the existence of vital alternative ideas about civil disobedience. The women's movement, for example, has made significant practical and intellectual contributions (Perry 2013: 126–56). Nonetheless, the four frameworks discussed here (religious, liberal, democratic, anarchist) remain hugely influential and theoretically most decisive. Feminists who write fruitfully about civil disobedience, in fact, often rely on them.⁹

Notwithstanding differences between and among rival models, we can identify crucial commonalities, especially among its religious, liberal, and democratic renditions. Despite its plural conceptual formations, civil disobedience rests on some shared components and aspirations.

Most importantly, religious, liberal, and democratic accounts all view civil disobedience as a distinctive mode of lawbreaking predicated, however paradoxically, on a deeper respect for law or legality. As King eloquently commented in “Letter from Birmingham City Jail”

I submit that an individual who breaks a law that conscience tells him is unjust, and willingly accepts the penalty by staying in jail to arouse the conscience of the community over its injustice, is in reality expressing the very highest respect for the law. (King 1991 [1963]: 74)

With the notable exception of most anarchists, activists and intellectuals from Gandhi to Habermas have typically offered some rendition of the idea that civil disobedience means not only morally or politically motivated lawbreaking, but also lawbreaking demonstrating fidelity to – or respect for – law. Absent some version of this notion of lawbreaking for the sake of law, or illegality in the name of legality, King and many others suggested, it would prove difficult to counter

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the commonplace criticism, recently rehashed by Trump and others hostile to BLM, that civil disobedience represents deplorable lawlessness or shameful criminality. As I intend to document, this simple but powerful intuition has been formulated in a diversity of more-or-less plausible ways. It remains, in fact, hard to imagine a sound concept of civil disobedience without it, despite creative efforts by recent writers to do just that.

Competing models of civil disobedience, despite their sizable disagreements, also make use of a joint conceptual language, even as they employ that language for different purposes. Even some anarchists, when push comes to shove, implicitly suggest that lawbreaking's legitimacy depends on *civility*, *conscientiousness*, *nonviolence*, and *publicity*, though they interpret such preconditions in ways dissimilar from those in competing religious, liberal, and democratic approaches. One of the more surprising features of the story I retell below is how many elements of Gandhi's original model of civil disobedience tend to resurface, in novel and sometimes barely recognizable forms, in subsequent accounts. Civil disobedience is not, at any rate, an empty pot into which rival political and theoretical traditions simply pour their own potions. Its exponents depend on a common analytic language. Even when speaking that language in ways that are so heavily accented by their own political and philosophical views that others may find them hard to comprehend, theirs remains a common tongue. As such, it provides some minimal yet meaningful constraints on what can or cannot be meaningfully expressed by it.

Just as an ordinary English speaker hoping to communicate successfully would not arbitrarily reclassify the word "dog" to mean "cat," so too would those interpreting "civility" to cover verbal or physical harassment, or "nonviolence" to enable corporal abuse, seem confused and perhaps incomprehensible to standard users of civil disobedience's conceptual language.¹⁰ Civility, conscientiousness, nonviolence, and publicity, within civil disobedience's pluralistic conceptual discourse, take on different and sometimes antagonistic connotations. Yet they remain shared ideational mainstays.

Whither civil disobedience?

Lest readers have already become vexed that I intend to provide a Panglossian story about civil disobedience, let me put your worries – or rather *lack of* worries – to rest. In fact, standard (religious, liberal, and democratic) versions are under strain today; there are many grounds for anxiety about their prospects. Some strains result from a now widespread anti-statism and anti-legalism, a trend motored by a resurgence of anarchist (and libertarian) currents. For those who view state and law as congenitally illegitimate, King's view of civil disobedience as intrinsically linked to the "very highest respect for law" must seem hopelessly naïve. Other strains derive from the ongoing *postnationalization* and *privatization* of public authority, fundamental shifts in state/society relations that work to undermine the nation-state-centered or Westphalian presuppositions of mainstream thinking about civil disobedience (chapter 5). One reason why many illegal protests today no longer mesh neatly with conventional ideas of civil disobedience is that their implicit social and institutional presuppositions are dissipating. Present-day activists face the unattractive task of applying "old-fashioned" notions of civil disobedience to a "newfangled" political and social context by no means conducive to their efforts, and the results can prove messy.

Parallel quagmires tend to plague digital disobedience, or politically motivated digital or online lawbreaking. Prominent digital lawbreakers such as Edward Snowden have occasionally categorized their acts under the rubric of civil disobedience. In some scenarios, there may be sound reasons for endorsing this claim. Nonetheless, it remains unclear whether concepts designed with physical or "on-the-street" lawbreaking in mind can or should be seamlessly applied to digital lawbreaking. There are real perils in stretching the concept of civil disobedience to capture phenomena probably better analyzed by alternative means. By overextending it, we rob the concept of the requisite analytic and normative contours, denying ourselves tools we need to respond to political challenges in a responsible, well-informed manner. Civil disobedience is an essential piece of the puzzle of

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contemporary politics. Yet that puzzle contains many other pieces as well.

What then about BLM, global migrants, or countless other contemporary examples that potentially come to mind? Does it make sense to employ the term civil disobedience when analyzing them? What do we gain – and potentially lose – by doing so? Answering these questions requires a lengthy detour. That detour begins with the religious-spiritual model of civil disobedience sketched so vividly by Gandhi and King.