

Introduction: Why, Once Again, Civil Disobedience?

William E. Scheuerman

Why another volume devoted to civil disobedience? Libraries are filled with thick tomes devoted to the topic. Henry David Thoreau, Mahatma Gandhi, and Dr. Martin Luther King, Jr., canonical figures in the history of civil disobedience, not only inspired countless familiar and not-so-familiar movements but also ignited extensive political and scholarly debate.¹ From the late 1960s to the early 1980s, civil disobedience became a fashionable subject for discussion among lawyers, philosophers, political scientists, and many others. Prominent intellectuals, including Hannah Arendt, Ronald Dworkin, Jürgen Habermas, John Rawls, and Bertrand Russell, produced significant theoretical statements about it. What possibly remains to be said about something that fascinated so many of the most innovative and influential political thinkers in the last century?

Ongoing political trends underscore the necessity of revisiting the theory and practice of civil disobedience. This volume aims to do so in a suitably systematic fashion.

Most significantly, we are witnessing a proliferation of (sometimes novel) politically motivated illegalities, with grassroots activists frequently viewing their actions as examples of *civil disobedience*. Given widespread dissatisfaction with normal political mechanisms even in well-established liberal democracies, in conjunction with the startling worldwide rise of authoritarian populism, the trend seems likely to continue, as a growing number of individuals and groups pursue controversial, unconventional, and oftentimes illegal political action. Black Lives Matter protestors targeting racialized policing, so-called “digital disobedients” (e.g., Chelsea Manning, Edward Snowden), Extinction Rebellion climate change activists, sexual harassment victims who fought unsuccessfully to derail Brett

2 WILLIAM E. SCHEUERMAN

Kavanaugh's US Supreme Court appointment, Hong Kong activists resisting the People's Republic of China's authoritarian clampdown: all have claimed that some of their activities constitute civil disobedience, even when their endeavors might have surprised Gandhi or King. Snowden, for example, has characterized his now famous US surveillance whistleblowing as civil disobedience. Yet he is widely interpreted as refusing to accept any legal repercussions, a decision that on the surface conflicts with standard views of it.²

Even more recently, critics of both Black Lives Matter and Hong Kong democracy activists fault them for allegedly jettisoning the requisite commitments to civility and nonviolence, widely viewed as essential to civil disobedience.³ In Hong Kong, militants threw rocks and Molotov cocktails, and sometimes used heat-resistant gloves to throw tear gas canisters back at security personnel.⁴ The massive and perhaps – for the US – unprecedented summer 2020 protests that followed the police killings of Ahmaud Arbery, George Floyd, and Breonna Taylor remained, for the most part, nonviolent. Yet property destruction and physical attacks on police officers and others, though usually undertaken in the name of self-defense, also occurred.⁵

In part because the term *civil disobedience* is sometimes employed loosely by activists and others, it seems imperative to clarify what it in fact entails. In part also because some activists and political writers are now unabashedly defending *uncivil disobedience*, its rowdy but arguably closely related cousin, clarifying civil disobedience's multifaceted, unavoidably controversial features seems timely as well. Even those movements now universally regarded as canonical practitioners of civil disobedience were once criticized for their (allegedly) uncivil elements.⁶ Can we draw meaningful distinctions between the two phenomena?⁷ How, more generally, might civil disobedience be usefully demarcated from other types of politically motivated lawbreaking? And why does it matter?

Since Gandhi and King, civil disobedience has appealed to those hoping to bring about constructive – and prospectively far-reaching –

political and social change. Civil disobedience has long represented a singularly influential approach to morally conscientious, civil, non-violent, politically motivated lawbreaking. In many political contexts, it possesses a moral and political stature that alternative terms (e.g., “leaking,” “resistance,” “rioting”) lack, with one result being that prosecutors, judges, and juries will sometimes treat those grouped under its rubric with a measure of leniency. Writing in 1983, Dworkin noted that “we can say something now we could not have said three decades ago: that Americans accept that civil disobedience has a legitimate if informal place in the political culture of their community.”⁸ Dworkin’s observation that civil disobedience had gained a measure of political legitimacy in the USA now surely could be interpreted as applying to many other countries and political settings as well. In this way, as in many others, civil disobedience has become a genuinely global practice. Even when condemned and its practitioners excoriated, it possesses a relatively privileged political and discursive status.

As Dworkin and others in his impressive generational cohort of commentators on civil disobedience correctly grasped, responsible political action benefits from conceptual clarity and theoretical coherence. We require analyses of civil disobedience that can help us distinguish it from related phenomena (e.g., whistleblowing, revolution), even if messy political and social realities unavoidably undermine the quest to formulate clear distinctions. We would do well, at any rate, to reconsider the main competing theoretical accounts of civil disobedience, reexamine their core components, and carefully reappraise how and why they demand special types of lawbreaking. The appearance of novel types of activism and protest politics enjoins us to determine not only what remains valuable in competing accounts, but also what is now perhaps obsolete or untenable about them.

Not surprisingly given recent political trends, we are also seeing a revival of sustained research dedicated to civil disobedience. Many scholars are again exploring the topic, with a number

of creative and wide-ranging debates now underway.⁹ As in previous theoretical exchanges, political thinkers are reassessing civil disobedience as a way not only of connecting philosophical and theoretical reflections to real-life politics, but also in order to investigate fundamental questions about law and politics: what obligations are owed by citizens to their governments, especially in more-or-less liberal democratic contexts? What limits to the citizen's obligation to the state can be identified, and where do they lie? How should law be properly conceived, and when – if at all – is punishment for lawbreaking appropriate? To what extent should civil disobedience be viewed, at its core, as a moral, political, or legal type of activity?

As a result of such debates, we can quickly identify a variety of roughly overlapping, yet ultimately rival, visions of civil disobedience. Alongside influential religious and spiritual (e.g., Gandhi, King) and also liberal (e.g., Rawls, Dworkin) theoretical accounts, deliberative democrats, political realists, radical democrats, and also anarchists (both on the left and right) have been energetically weighing in with their own contributions. Some theorists even go so far as to question whether civil disobedience, in its most influential contemporary versions, has much if anything to do with Thoreau, the historical figure usually, albeit somewhat misleadingly, credited with introducing the term into political discourse.¹⁰ As this volume's readers will quickly observe, many of its contributions militate against the still commonplace assertion that there is some single "orthodox" view of civil disobedience. Not coincidentally, much recent debate seems inspired by deep skepticism about an (allegedly) erstwhile hegemonic liberal model of civil disobedience, and especially the influential account provided by Rawls in his classic *Theory of Justice* (1971). The underlying premise of a great deal of contemporary exchange is that only by transcending that liberal model of civil disobedience can we properly accommodate contemporary realities while preserving a sufficiently supple understanding of civil disobedience. Not surprisingly, liberals have responded to critics

and creatively reformulated their ideas, claiming that their opponents rely on simplified interpretations of liberalism's contributions.

CIVIL DISOBEDIENCE AS AN ESSENTIALLY CONTESTED CONCEPT

Such disagreements should not surprise us: *civil disobedience* has always represented an “essentially contested concept” along the lines sketched by the Scottish philosopher W.B. Gallie in a now-classic essay.¹¹ A main premise of this volume is that only by taking its necessarily contestable character seriously will fruitful intellectual and political exchange about it be possible.

According to Gallie, contested concepts possess seven core features. First, a contested concept is one that is necessarily “appraisive” or evaluative. Second, it is internally complex, in the sense that it consists of a variety of different elements, each of which is usually interpreted as making up some part of the concept “as a whole.”¹² Third, “there is nothing absurd or contradictory in any one of a number of [possible] rival descriptions” of contested concepts or their component parts.¹³ Contestable concepts are relatively open-ended, and claims about them (especially when first introduced, or “prior to experimentation”) will likely diverge in far-reaching ways.¹⁴ Fourth, both the concept and its component pieces may undergo “considerable modification in the light of changing circumstances.”¹⁵

We can readily apply these four initial conditions to civil disobedience and longstanding debates about it. First, civil disobedience is an unavoidably appraisive or evaluative concept. In this vein, Candice Delmas has correctly noted that “to call a disobedient civil” is already “to begin the work of . . . justification.”¹⁶ The idea of a normatively neutral or morally indifferent rendition of civil disobedience seems odd and probably nonsensical. Indeed, the fact that the term is not just evaluative but also always operates within a *political* force field further complicates matters. As Judith Butler has accurately pointed out in a recent discussion of *nonviolence*, it and closely related terms are “subject to instrumental definitions that

6 WILLIAM E. SCHEUERMAN

serve political interests.”¹⁷ One immediate consequence is that “we cannot race to the phenomenon itself without passing through the conceptual schemes that dispose the use of the term in various directions,” always keeping in mind that such competing ideational schemes necessarily have far-reaching political and strategic implications.¹⁸

Second, the concept is typically defined with reference to a number of complex component parts, e.g., *civility*, *conscientiousness*, *nonviolence*, and a *willingness to accept legal sanctions*. Competing theoretical accounts of civil disobedience usually reference such elements, even as they provide competing and sometimes sharply opposed interpretations. Third, a great deal of theoretical debate can be interpreted as stemming from understandable differences about how best to make sense of and also weigh its various elements. Most writers have viewed nonviolence as a *sine qua non* of civil disobedience, for example, while disagreeing about what precisely it entails. Nonviolence meant something quite different for spiritually minded activists such as Gandhi or King than, for example, a modern liberal such as Rawls or the radical democratic Habermas.¹⁹ Writers on civil disobedience have almost universally interpreted nonviolence as precluding physical and extreme psychological harm to other persons. However, there has been decidedly more controversy about “violent” acts that damage property, for example, or when motivated by physical self-defense.²⁰ Similarly, those deploying the term civil disobedience often highlight its *public* contours, though disagreeing about precisely when and where they seem most apposite. Should civil disobedients be expected, for example, to reveal their identities, or does it suffice for them to provide some public statement about their actions?

Fourth, “changing circumstances” have regularly shaped debates about civil disobedience. Think, for example, of the substantial attention paid to questions of the following type: can eco-sabotage, for example, or digital whistleblowing be plausibly characterized as civil disobedience?²¹ What about politically motivated

lawbreaking by transnational movements targeting supranational institutions (e.g., the World Trade Organization (WTO) or International Monetary Fund (IMF)), rather than specific nation-states or specific national laws? As altered political and social conditions generate novel forms of protest and lawbreaking, civil disobedience's changing political and social contexts take on a pivotal role in conversations about it.

Gallie's final conditions are more complex but potentially illuminating as well. The fifth implies that those deploying a contested concept recognize that their usage is not only likely to be challenged, but that it often remains sensible for them to continue defending their reading against those of rivals. Why? Opposing views may fail to highlight one or more key features. Each party to such a dispute, Gallie commented, nonetheless "must have at least some appreciation of the different criteria in the light of which the other parties claim to be applying the concept."²² Sixth, those using a contested concept are not in fact trying to address basically different issues or simply "talking past one another." Instead, they at least implicitly aspire to capture an exemplary or perhaps idealized version of the *same* concept, even as they disagree about what weight its various components possess, or how they best fit together. In Gallie's own example of athletic competitors seeking to figure out who deserves to be called a "champion" absent any quantitative rankings system, rival teams plausibly view quite different individual and team traits as essential to gaining "championship" status. Despite their disagreements, the idea of championship relies on some account of exemplary or ideal play.²³ Athletes remain engaged in a common quest, and those evaluating them recognize it as such, even as they interpret its demands in variegated and sometimes opposing ways.

These conditions provide additional directives that help identify how ongoing discussions of civil disobedience might progress. While fiercely defending their own positions, those engaged in debates about it typically recognize, of course, the existence of competing interpretations. Even so, it is by no means clear that they

sufficiently appreciate how their disagreements can potentially illuminate different faces of an irrepressibly contestable concept. Despite sometimes significant divides, most theorists (and activists) deploy a shared language when discussing civil disobedience, even as they sometimes remain inadequately self-aware about doing so. A great deal of controversy, as noted, has always been preoccupied with alternative ways of interpreting and then weighing its common elements (e.g., *civility*, *conscientiousness*, *nonviolence*, and *legal non-evasiveness*).²⁴ Even as different writers speak that language in ways that sometimes render it difficult to decipher even for other users, theirs nonetheless typically remains a *shared* conceptual and theoretical endeavor. Its plural and contested conceptual versions notwithstanding, discussions of civil disobedience rest on some familiar underlying aspirations, and even perhaps a latent quest to identify its exemplary or “best possible” types. Liberals and radical democrats who otherwise disagree heatedly about many features of civil disobedience, for example, are not simply “talking past one another” about unrelated practices. Instead, they implicitly hope to place what they picture as related activities in some overlapping – and perhaps: best possible – conceptual light.

Gallie also claimed that, seventh, competition between and among rival usages is potentially productive insofar as it allows for the concept “to be sustained and/or developed in optimum fashion.”²⁵ Competing usages not only bring to light previously neglected elements, but also prepare the way for updated conceptual versions that can plausibly be described as “fuller” or more developed than their predecessors.²⁶ Gallie denied the existence of any clear-cut general principles or standards that would allow us to negotiate between and among rival versions; many concepts are contested in the first place partly because the requisite general standards are missing or unclear. Nonetheless, something along the lines of conceptual learning remains possible: over time, hitherto neglected elements of a concept can be brought to light, or perhaps understood more richly, opening the door to “more or less intellectually respectable

conversions."²⁷ Those who previously endorsed one view may quite sensibly opt to embrace a new and arguably superior rendition, something Gallie rightly envisioned as resting on identifiably cognitive grounds and not reducible to human psychology or sociology.

Unfortunately, far too many participants in debates about civil disobedience continue to interpret its conceptual contestability as a weakness rather than potential strength. They view discord as a sign of theoretical immaturity, an unfortunate scenario to be overcome when we (finally) get the concept (and single correct theory) of civil disobedience "right." But this aspiration, Gallie presciently warned, rests on an inflated view of philosophy "as a kind of 'engine' of thought, that can be laid on to eliminate conceptual confusions wherever they may arise."²⁸ As he also provocatively inferred, taking conceptual contestability seriously does not in fact entail normative or cognitive relativism: battles about how best to make sense of a contestable concept can in fact generate some modest conceptual (and normative) gains and perhaps even something such as theoretical progress.²⁹ Discussing nonviolence and its politically contestable contours, Butler makes a similar observation: "The point is not to accept a general relativism."³⁰

PLURAL VOICES, RIVAL FRAMEWORKS

The present volume represents a sustained effort to tap Gallie's fertile insights. Accordingly, Part I interrogates civil disobedience from the perspective of a broad range of competing political and theoretical orientations. The idea of civil disobedience has been articulated in diverse and indeed conflicting ways: its definitional contours, normative presuppositions, and political aspirations are best grasped when placed in the context of rival approaches. Accordingly, political thinking about civil disobedience can be helpfully viewed as consisting of a series of contrasting, yet frequently overlapping, models, each resting on relatively distinct assumptions.

Digging into neglected archival sources, Russell L. Hanson (Chapter 1) offers a revisionist rejoinder to the still commonplace

reading of Thoreau as having introduced *civil disobedience* into political discourse. Thoreau, in fact, never used the term. The misleading attribution to him of a general injunction to disobey unjust laws nonviolently only emerged as a result of a series of tendentious political appropriations, undertaken in part by Arthur Fifield, a now forgotten London publisher. As Hanson documents, it was Fifield's substantially reworked version of Thoreau, heavily edited in accordance with Fifield's Tolstoy-inflected version of Christian pacifism, that Gandhi first encountered. Fifield's Thoreau, and not the original, played a role in shaping not only Gandhi's but also then, indirectly, King's influential ideas about civil disobedience, ideas that ultimately had little in common with Thoreau's original intent and meaning. The rest, as they say, is history: Thoreau's defense of (potentially violent) *resistance*, by means of *voluntary individual withdrawal* of support for unjust laws that directly conflict with *moral conscience*, became *civil disobedience*, interpreted as a *universal duty* to participate in *civil, conscientious, nonviolent, politically motivated* lawbreaking.

Erin R. Pineda (Chapter 2) provides a strikingly parallel narrative about King's complex political legacy and its selective, oftentimes misleading appropriation by liberal and radical democratic philosophers and political theorists. By reading King not as a radical intellectual and political militant focused chiefly on destroying the deeply rooted US system of racial domination, but instead as a fellow-traveling normative theorist principally concerned with legitimate lawbreaking and its moral presuppositions, thinkers have occluded his most striking political insights. According to Pineda, King's perspective should be interpreted less as a theory of civil disobedience than as a radical political practice of *disobedient civility*. Disobedient civility, she tells us, conceives of "*disobedience* not to law so much as to the norms of comportment inculcated by relations of domination, and through which we forge the new *civil* bonds necessary for a radically restructured multi-racial democracy."