

Civil Disobedience with Candice Delmas

Christiane Wisehart, host and producer: I'm Christiane Wisehart. And this is Examining Ethics, brought to you by The Janet Prindle Institute for Ethics at DePauw University.

[music: Blue Dot Sessions, Partly Sage]

Christiane: Civil disobedience is an inherently tricky moral issue. It involves intentionally breaking laws, and purposefully upsetting norms. My guest today, Candice Delmas, professor of philosophy and political science at Northeastern University, is on the show to help us understand civil disobedience, and its potential value to society.

Candice Delmas: It is very important to see all the potential it has to bring about more justice, to bring about more democratic legitimacy. Often civil disobedience is used in order to bring to the fore an issue that has been neglected, or voices that have not been heard. So it can enhance not just legitimacy in general, but public deliberation in concrete ways.

Christiane: Stay tuned for our conversation about civil disobedience on today's episode of Examining Ethics.

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Christiane: I wish I was different, but I am an uptight rule follower at heart, and always have been. Intellectually, I see the value in civil disobedience, and I champion acts of law-breaking that promote social justice. But there's always a seven-year old, straight A teacher's pet inside my brain that gets *really* uncomfortable about breaking rules, let alone laws.

That's part of why I was so glad to speak with the philosopher Candice Delmas, whose work on civil and uncivil disobedience explores the *value* of disobedience to society, and challenged me to really question my fidelity to rules and legal codes.

[interview begins]

Christiane: So, so yeah, you write a lot about civil disobedience; what is civil disobedience?

Candice Delmas: It depends on who you ask, but I think that there is a common public conception of civil disobedience that sees it as a public, open, non-violent, conscientious breach of law that is designed to persuade the majority of fellow citizens of the need for reform.

Christiane: Could you provide an example for the listeners that we might not have heard of?

Candice Delmas: Given this definition, actually Thoreau, the archetype of civil disobedience doesn't fit especially well. So what he did was refusing to pay the poll tax for six years in a row, I think, to protest the institution of slavery, the war against Mexico, and the treatment of Native Americans, the extermination of Native Americans. And that wasn't really an open protest until he kind of made it so by lecturing about it and inviting fellow townspeople to do the same. It was clearly conscientious, it was motivated by moral and political principles, and it was a kind of resistance of non-cooperation, but in many ways it doesn't fit what we now have as the standard common conception of civil disobedience that I just described. Oh, it's also important on that conception that the agent be willing to accept punishment, that there be no attempt to evade law enforcement, arrest, prosecution, punishment at all. But let me come back to examples.

So another example I imagine your listeners know is the sit ins at whites-only lunch counters during Jim Crows in the era of racial segregation. That is a standard example. But let me give you some which I think will be less known. So, in 1872, which is 50 years before the 19th amendment passed that gave women the franchise, Susan B. Anthony and a group of other women cast ballots in a presidential election illegally. And they did so very publicly, because it was a protest. They were arrested and that fits nicely in some ways the definition of civil disobedience. In some other ways, it doesn't, because they always loudly protested against arrest and trials, right? Saying that it was completely unjust to prosecute them for their actions, that the injustice lied in their treatment as unequal citizens.

In 2015, in the US, again, it was just days after the Charleston massacre in which nine African-American people died at the hand of a white supremacist. An activist from South Carolina named Bree Newsome climbed the flagpole, the 30-foot flagpole of the state capital, and removed the Confederate flag. And as soon as she got down, she was arrested.

In France, in 2019, climate justice activists stole the official portraits of President Emmanuel Macron from more than 130 town halls. So that was also a large campaign of civil disobedience to denounce the government's inaction in the face of the climate crisis.

And of course you also think about the anti-lockdown protests. So all the people who openly violated the public health measures enacted by local authorities. So refusing to wear masks, or holding masses and all kinds of meetings and assemblies where these were illegal and so on.

Christiane: So yeah, we'll get to the whether civil disobedients should accept punishment question in a little bit, but I think first we should talk about whether or not the state or whatever power is in play where you are doing the civil obedience, should the state punish civil disobedience?

Candice Delmas: Whether you think it should or not depends in part on whether you think that civil disobedience is a public wrong worthy of punishment, right? So the state should punish whatever is a wrong, and so you're likely to think that it's important that the state punish civil disobedience if you view it as a kind of public wrong. Why might you view it as a kind of public wrong? Because it destabilizes society, it disrupts the civic life of fellow citizens, it invites, in a way, lawlessness or anarchy. I mean, that's the concern, right? It is also anti-democratic, so it flouts democratic decision-making processes. So it goes against decisions, laws, that have

been enacted, made, by the people. So you have a case of a minority violating what the majority has deemed part of the public good. So some view it as a kind of civic blackmail, a way for a minority to put themselves above the rest of the people. So this would be the grounds for thinking that the state should punish civil disobedience.

But there are some scholars, and even judges, who thought that civil disobedience could be justified and still be worthy of punishment. So even if you don't accept everything I said, as in you might think that some acts of civil disobedience are justified because they are good and valuable and socially valuable in other ways, it's still important to punish agents engaged in civil disobedience, if only because impartiality demands it, right? So treating like cases alike. So if you trespassed on a government building, whether you did so for civil disobedience or for any other reason should be irrelevant to your treatment in a court of law. So some think that it's really the impartiality that demands the uniform application of legal prohibitions. And so that doesn't mean that you're against any form of civil disobedience, but from the standpoint of the legal system, you do really need to punish. And it's in part a deterrent, right? So what you don't want is a proliferation of acts of civil disobedience, some undertaken lightly or for frivolous purposes, that would kind of overwhelm the system. It could also lead to escalations of lawlessness, so civil becoming uncivil disobedience.

Christiane: In your work you've used a phrase called "fidelity to law". Could you tell us what that means and what it has to do with civil disobedience?

Candice Delmas: The phrase is not from me, it's John Rawls. He uses it in a theory of justice to contradicting civil disobedience from criminal and revolutionary activity. People who engage in civil disobedience, he says, operate at the boundary of fidelity to law. And that means that they have a general respect for the regime, for the state, for the legal system; they show it by their willingness to accept the legal consequences of their action, and they are committed to the rule of law, basically. That makes their activity importantly distinct from that of people engaged in crime and from revolutionary actors; neither cares about the rule of law and their endorsing the legal system and the state, and showing that fidelity to law.

That fidelity to law is produced by adherents to the norms of civility. That's the idea. That's really what makes civil disobedience special. So it's a principled law-breaking that is unique in that it is a kind of protest, that although it resorts to extra-institutional illegal avenues, it has a kind of place in society, especially in liberal democratic society, because of this civility and this underlying commitment to law that it expresses. So it explains why civil disobedience is not a contradiction in terms, if you want, when you think back about the arguments in favor of punishing civil disobedience, all the ways in which it makes it a destabilizing force, a counter-majoritarian force. This conformity to civility, to the publicity, non-violence, non-evasion, and even on some accounts respectability and decorum of the action shows the agent's sincere commitment to the rule of law. And so that is what makes it special.

Christiane: Yeah, you're helping me understand the difference between the revolutionary and the civil disobedient too, because I think a lot of times I get them mixed up, maybe because they

both have similar aims, right? Like a revolutionary in the '60s might have similar aims to a civil rights activist, but the level of disobedience makes them different, or the intention makes them different? Or both?

Candice Delmas: Yeah, it's actually a difficult question. So if you look at the question of fidelity to law. Revolutionary actors do regularly use civil disobedience; Mahatma Gandhi did, you just suggested that black nationalist and activists in the civil rights movement shared something like a revolutionary goal if you think that overthrowing racism and achieving racial justice is a revolutionary goal. In post-USSR, a lot of states, a lot of populations used civil disobedience and non-violence in order to overthrow Soviet regimes. Decolonization movements used them. Is fidelity to law, one, present there, and two, important?

And on the one hand, you might think that in those maximal civil resistance campaigns that do make civil disobedience central to their strategy, that there is a kind of commitment to democratic order, that you might call fidelity to law. But it also seems not exactly what Rawls was talking about when it comes to the reformist aims of civil disobedience as commonly understood where, no, the point is that your willingness to accept the legal consequences of your action shows that you are respecting this legal system. That's clearly not what revolutionary agents are up to, right? They do not respect that legal system. They just want a different one. So, sure, they respect the law; they want a different rule of law. Not this one.

So to the extent that revolutionary groups often use civil disobedience, that civil disobedience can be used for revolutionary purposes, it really makes the distinction difficult to draw in a clear cut fashion, and it also in some ways challenges this idea that the point of civility is to demonstrate fidelity to law.

Christiane: Well yeah, given what you just said, should those undertaking civil disobedience accept punishment?

Candice Delmas: One reason to think they should is this. It's that they will thereby express their sincerity, their seriousness, the depth of their commitment, and their respect for the rule of law. To the extent that they can do that, they might think that there are good tactical reasons for them to do that. And so a lot of the non-violent activists in the civil rights movement who were accepting arrest and punishment were doing so for tactical purposes, as in the fill in the jails campaign, to overwhelm the system and also bring publicity, draw media and public attention to their cause. So this non-evasion serves to defuse the fears one might have, the fears that others might have about the destabilizing potential of civil disobedience. And that could be a good thing.

There are other reasons to think, "Why should you accept punishment?" Since you might, in doing so, demonstrate something like an endorsement of the system that you have no reason to show, because that system is not worthy of your endorsement, let's say. And that's the argument of the suffragettes, and that's the argument of some anti-war activists even. And so there's then a panoply of stances the activist, the disobedient agent might take, that involve, on one hand, acting covertly and evading arrest and law enforcement. And we have seen some of that in Black Rights Matter protests, in the pro-democracy protests in Hong Kong. So not a great willingness and not an invitation to police to arrest them. So some forms of self defense and

evasion. So in Hong Kong it was done through the use of masks, before we had face masks, that hide part of the face.

So why evade? It may be that the disobedience you're engaged in, the resistance you're engaged in, will come with very significant legal sanctions. So leakers often evade punishment by leaking anonymously the classified documents that they stole to the press. The press in turn is supposed to protect their identity. And the reason to evade may seem prudential in that the costs are so so high, decades behind bars. In other cases it may be that, well, if you do it openly and invite punishment, you will not be able to do what it is that you're doing, be it help unauthorized migrants, rescue animals illegally, break in some places and do the job. So there's lots of instrumental and non-instrumental reasons on the side of evasion that can be summoned to understand why the willingness to accept punishment should not be taken as the blanket requirement that it is often taken to be, even from a tactical standpoint.

Christiane: How should we think about civil disobedience?

Candice Delmas: We should think about its value as a practice for a society. So it is very important to see all the potential it has to bring about more justice. Often civil disobedience is used in order to bring to the fore an issue that has been neglected, or voices that have not been heard. So it can enhance not just legitimacy in general, but public deliberation in concrete ways, and that is really important. It can also strengthen the rule of law, and do so in ways that are, I guess, unexpected, given the means that are used, disobeying in order to strengthen good law.

It is very important to think about the value of civil disobedience, but what I think is very important is ... so, two things. One is to better understand the history of the practice of civil disobedience. I think that there's a lot of misunderstandings and unfair demands and assumptions and expectations made on activists that comes from a kind of romantic, sanitized, and basically inaccurate rendering of the history of the civil rights movement. So the ubiquitous calls for civility are supposedly grounded in a history, a history of the civil rights movement, that does not represent that history well in fact. And it is used in the present to prejudice the public against progressive social justice movements. And I think that's a problem.

And intertwined with this idea of the importance of better understanding the history and the historical background is, I guess, an invitation to a kind of critical approach to the public discourse around civil disobedience. I just mentioned these calls for civility; I think that they often mask the relations of power, of subordination and domination, that structure society and that often motivate activists. And so being able to be attuned to the complex moral, social, political reality of the situation is important, and to pick apart the kinds of knee jerk reactions that you have in the media, and sometimes in academia too, to civil disobedience, the demands made on activists, and so on. I think that that is important.

And I also think we should think beyond civil disobedience to all kinds of other techniques of resistance. And we should be open to the justification of these potentially non-civil techniques, and not presume that anything that does not meet the criteria of civility is thereby unacceptable in a liberal democratic society, or any other society of course.

Christiane: If I'm an activist, how airtight does my argument need to be? Or how pristine does my idea that I want to get across have to be before thinking about engaging in civil disobedience?

Candice Delmas: Often certainty does not track the reality, the truth value, of the statements we're committed to, but it is important. And often, again, as a matter of fact, activists are extremely committed, and at the end of this commitment you have willingness to resort to violence and to harm other persons in pursuit of what one takes to be just and true and right.

And so I guess I'm not here to tell you exactly what steps you ought to take before turning to disobedience protest. The expected thing would be, "Well, you should be informed, and you should try your best to self-scrutinize, so self-critique and introspect and make sure that you are doing the right thing as you set out to protest something and to break the law."

I also think that obedience itself, obedience to law itself, should elicit questions. So just because something is legal, it doesn't mean that it's the right thing to do. So maybe we should also be thinking long and hard about all the things we do without thinking when we obey the law.

Christiane: I noticed that a lot of your writing on civil disobedience has been published in the last five or six years, and if you've lived through the last five or six years, listeners will know that we've seen a lot of civil disobedience and protest, particularly in the United States. So how have your ideas on the ethics of civil disobedience perhaps changed or shifted or expanded over the course of this time period?

Candice Delmas: Some of the things that I've barely written on but that I find really important is the increasingly transnational and global nature of protests. Black Lives Matter actually is now one of them, and it wasn't in 2014/2015. As part of the climate justice movement is also the real substantial involvement of youth, and I think that that's also a really interesting feature of these more recent forms of protests, so through school walk-outs and mass demonstrations to demand governments take action to combat the climate crisis.

There's much migrant resistance and migrant protests in refugee camps, or through unauthorized border crossing or violating national/international/transnational laws, in part to protest or resist against immigration restrictions. So the figure of youth and of the refugee really invites us to expand what we think as civil disobedience, because the person we usually imagine to be engaged in civil disobedience is an equal citizen, and that isn't quite the case there.

And I will add, you mentioned the last year, and you probably have in mind Black Lives Matter, but the right wing disobedient also beckons our attention. There has been more lately than ever before, right wing. So there has always been right wing opposition, of course, and violations of law in the form of racist violence or local disobedience to federal statutes, as under racial

segregation, but lately we see a kind of mass ... less massive than on the left, but a kind of mass disobedience that looks civil in all kinds of ways. Democratic theorists tend to conceptualize civil disobedience in ways that make it an exercise of political agency, democratic sovereignty, that is just really intertwined with ideas about democratic deliberation and people's sovereignty in ways that just make it almost ipso facto, so automatically, a good thing. And right wing disobedience I think requires a different lens than the deliberative and even radical and Republican democratic theorists have offered to think about what it is that they're doing, because they are, in a way, safeguarding forms of domination, and not challenging them.

And so there's a lot of violation of anti-discrimination statutes and so on, so they're not pushing for equality and more democracy, they're pushing for less democracy and less equality. And that is interesting. And in some ways, the past decades of philosophical and theoretical thinking about civil disobedience has not really given us the tools to tackle that.

Christiane: Yeah, I wish we had another hour to talk about the right wing disobedients. Maybe you can come on for a part two. So yeah, why do you care about this issue?

Candice Delmas: I care because...I care as a human being and as a citizen. I think that resisting injustice is part of our political responsibility, and activists themselves call on us. They evoke a political and moral duty to join in the fight to resist injustice, to emancipate, achieve liberation. And we need to heed their calls. And I say that in part because this is not really how philosophers have been thinking about civil disobedience. The question all along has been, "How can we justify that law-breaking?" And this is not what activists are interested in. And in fact, civil disobedience is really just the tip of the iceberg. It's one of the tools of the activist among many other tools, and there is very little philosophical thinking about activism, about organizing, and that is really central to movements, much more so than the occasional civil disobedience kind of things they might organize. I mean, in some cases activists are arrested for no good reason, and we need to think about that, so all the anti-protest legislation and so on. So I don't want to minimize the importance of the law, but I am trying to dethrone the importance we give to the mere fact of breaking the law in activism.

And so, as a citizen I think it's important we critically evaluate the public discourse about protesters, and in turn try to influence, contribute, and push back against the state's harsh treatment, brutal repression of protests and harsh treatment in courts, and just think harder about this idea that even obedience itself might not always be the right course of action, even in states that are decent liberal democracies.

[music: Blue Dot Sessions, Colrain]

Christiane: If you want to know more about our guest's other work, and to find more information on the ethics of care, check out our show notes page at examiningethics.org.

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