

## Uncivil Disobedience with Candice Delmas

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**[music: Blue Dot Sessions, Coulis Coulis]**

**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.

On today's episode of Examining Ethics, philosopher Candice Delmas returns to discuss *uncivil* disobedience. She explains that if we're living in an unjust society, we have a duty to be disobedient.

**Candice Delmas:** Compliance with the law itself, so obedience itself should raise questions. So it shouldn't be that that's a thing that obviously goes without thought. Uncritical, thoughtless compliance with the law is really problematic. It entrenches injustice.

**Christiane:** Stay tuned for our discussion on today's episode of Examining Ethics.

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**Christiane:** The last time I spoke with the philosopher Candice Delmas, we explored civil disobedience. On today's show, we're discussing the uncivil side of disobedience. She explains that the very reasons that we might be obligated to follow the law in just societies can also impose a duty to *break* the law in societies that are unjust. And she says that this doesn't always have to be an act of culturally-approved civil disobedience. Sometimes injustice requires behaving without civility.

**[interview begins]**

**Christiane:** So welcome back to the show. The last time that you were with us, you provided a really great explanation of civil disobedience, and today we're back with you to talk about uncivil disobedience, which is the topic of your book. So how is uncivil disobedience different from civil disobedience?

**Candice Delmas:** I think I started last time with the militant suffragists' illegal voting as a kind of civil disobedience. They had very militant tactics, such as smashing the windows of London's shopping district. They used arson also as a form of violent militant protests. Think also about the hacktivist group Anonymous who launched distributed denial of service attacks. Members of the Sanctuary Movement provide shelter and aid to unauthorized migrants in Europe and North America. And finally, the Russian feminist group Pussy Riot staged a punk prayer in Moscow's Cathedral of Christ the Savior.

So what do all these activities have in common? They are illegal acts of resistance. But what

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interests me is that all have been described by those who approve of them in news media and also in philosophy articles as instances of civil disobedience.

So it's first important to see what's at stake here with the label we use, and quite importantly and straightforwardly, to call a disobedient act civil is to go some way towards legitimizing it, right? But, and this is where I think we need to go beyond that, it's just easy for opponents of all these acts to deny that the act in question qualifies as civil simply by confronting the act in question to the common definition of civil disobedience. An act of civil disobedience is a conscientious public non-violent breach of law undertaken by an agent willing to accept punishment with the goal of persuading the majority to change a law or policy.

So the marks of civility are nonviolence, also generally associated with non-coercion. So civil disobedience is a non-violent tool of persuasion. It does not harm others, it does not use force or the threat of force, and it simply aims to appeal and to persuade, to appeal to the public's conscience and to persuade.

It is public, so civil disobedients act in the open. Sometimes theorists think that they need to notify authorities. A third requirement is non-evasion, meaning that agents willingly accept, even invite, legal sanctions, including arrest and punishment. And finally, there is a sense in which civil disobedients behave civilly, that is courteously, respectfully. So they avoid causing offense or disrespecting in some ways their opponents or witnesses.

So going back to the examples at the outset, so smashing windows or burning public property, does not satisfy non-violence or non-coercion requirement. The DDoS, the distributed denial of service attacks, or sanctuary assistance, or eco-sabotage, these are covert actions and agents typically seek to evade law enforcement because if they were arrested they couldn't keep doing what they do, which is to obstruct injustice as they see it and so on.

So what counts as civil disobedience is often if not always contested, right? What sympathizers do in response to opponents trying to say, no, no, of course it doesn't qualify as civil disobedience because it doesn't meet the criteria of civil disobedience, so what sympathizers do is try to minimize or downplay the inconvenient feature of the action in question, right? So they'll downplay suffragists' violence or Anonymous' covertness. Or they will use a broader inclusive account of civil disobedience that kind of denies the marks of civility that are typically taken for granted, such as publicity and non-violence. So they might say that an act of civil disobedience can be civil while being covert or violent.

So that's what the philosophical literature looks like, it's a lot of attempts to expand, to rethink the concept of civil disobedience. I think this is an important route that theorists have taken because the conception of civil disobedience, it is politically constructed. Not only is it political constructed, but it is used to police and to discipline protestors. So it is important in many ways to push back against critiques that keep using a conception of the civility of civil disobedience to systematically tell protestors you're doing it wrong, this is not what civil disobedience looks like.

However, common conception of civil disobedience is just remarkably stable, for one, in a way that does not lend it to the possibility of significant revisions in the eyes of the public. That's important, because in effect when people say civil disobedience can be covert and violent, others just say, no, it isn't, it has to be open and non-violent and so on, so the debate stays at the definitional level in ways that I think are not helpful to really think about what might make the action justifiable or not.

In addition, not all activists see or style their actions as civil disobedience, and again, the suffragists or Anonymous or Pussy Riot are cases in point. They see their actions as profoundly disruptive and radical and militant and they deny the legitimacy of the system in which they are acting. They do not seek merely reform. They do not mean to reflect their commitment to or endorsement of the system's legitimacy. The whole point of disobeying civilly is to reflect, to manifest, to display fidelity to law, according to John Rawls, and other, liberal and liberally democratic, political philosophers.

So in many cases, activists just don't mean to do that, to demonstrate that, and that is not how they feel. So I think that it's important to think beyond civil disobedience about uncivil disobedience for that reason, and to be open to the possibility that incivility and disobedience might be good, might achieve certain goods that are worthy pursuing, or it might just be an adequate, an apt, a fitting response to injustice at stake.

So in my view, uncivil disobedience designates acts of principle disobedience that may or may not be communicative where civil disobedience as a non-violent tool of persuasion is primarily communicative, and the act violates one or more of the norms of civility by being covert, violent, coercive, evasive, or offensive, and it can be either or all of these things.

**Christiane:** When you're talking about looking beyond civil disobedience to uncivil disobedience, does uncivil mean anarchistic? Does it mean there are no rules?

**Candice Delmas:** Uncivil means not civil in the common conception of civil disobedience. So if an act of uncivil disobedience is uncivil in so far as it is covert, an agent seeks to evade punishment, I don't think that that makes it necessarily anarchist, right? So you might think of doctors performing abortion covertly and illegally where it is illegal to do so, and it is hard to see it as obviously anarchic but it is restrained and conscientious and altruistic, so I don't think that it follows from granting the incivility of certain actions that they are necessarily destabilizing of order.

I think that leaks of classified information may be a good case here. So leaks of classified information I don't think should be simply understood as civil disobedience, although a lot of sympathizers see it that way. Early on when Edward Snowden blew the whistle on the NSA surveillance program, he compared his action to Martin Luther King, Jr. and Daniel Ellsberg, who leaked the Pentagon Papers. But Snowden didn't repeat that analogy in his memoir and he

hasn't said it so much since 2013.

I mean, it seems to me that it just requires a different lens of analysis than civil disobedience. It's just not a mass public protest or anything that is obviously purely communicative.

Whistleblowing, leaks of classified information, fall under the category of uncivil disobedience in my view because of the covertness and evasiveness of agents, and yet their purpose is not necessarily to destabilize. So Snowden explicitly said that he really wanted the NSA, so the government's actions, to conform with the rule of law and to conform with the constitutional rights to respect the constitutional rights of the people. That is a stabilizing, justice-enhancing, legitimacy-enhancing kind of force.

Sure, there's going to be many acts of uncivil disobedience that are impermissible, that are violent, right? So let's say the assault on the Capitol of January 6th is a case of mass uncivil disobedience, so to the category doesn't have the positive valence that the category of civil disobedience does have in the imaginary. But I think, again, it's important to be open to the possibility of their justification, the justification of acts that fall in that category.

And in many cases, it may be that some types or acts of uncivil disobedience are justified for the same kinds of reason on the same kinds of grounds that acts of civil disobedience are, right? So when I say that whistleblowing can enhance justice and preserve legitimacy I'm using arguments that adherents of civil disobedience I've used in defense of civil disobedience.

**Christiane:** So the last time we spoke, we talked about how there are certain things that happen, say the Jim Crow laws in the United States in the first half of the 20th century, that might require us to disobey, right? The part of the book that I found quite challenging in a good way was your idea that we might be required to break the law uncivilly as well as civilly.

**Candice Delmas:** Yes. I should start by explaining, of course, why it's presumptively impermissible to break the law uncivilly, right? So there was that hurdle to overcome first. There might be four kinds of objections to uncivil disobedience. One is that it violates the moral duty to obey the law insofar as it's an act of disobedience. The fact that it is principled, be it civil or uncivil does not lessen the charge because it might be that it's an invitation for everyone who disagrees to then refuse to comply with the laws.

And that in turn leads to a second objection, which is that it's destabilizing and it destabilizes order, it can lead to lawlessness and violence, proliferation of disobedience--civil or uncivil--the escalation of disobedience from civil to uncivil to very violent, and so on.

Third, it is anti-democratic, right? So if you're breaking the law that's been democratically enacted, you are a minority going against the will of the democratic majority, and that's a problem and expresses contempt for the law and contempt for democracy. It reflects a kind of moral self-indulgence or a kind of epistemic arrogance in so far as you think you're more right or you're right when others are wrong.

It can also undermine civic friendship in part because of the democratic question. That would be the fourth kind of objection that applies specifically to uncivil disobedience. So it undermines civic friendship, which is the glue that binds us all together because of that element of refusal to at least abide by the kind of self-restraint that civility demands.

In the end, so be it, part of that fourth objection, or fifth one, it's counterproductive, right? So if you use uncivil rather than civil disobedience, you're using a tactic that is sure to alienate potential allies, indeed, to excuse violent repression, also. So you will lose allies, you will not win allies, and you're unlikely to garner a broad mass movement.

There are lots of problems with uncivil disobedience that explain why, if anything, only civil disobedience is going to be accepted in a liberal democracy. In the book, I use the arguments that theorists have articulated to save civil disobedience from these charges and show that these arguments apply to some types and acts of uncivil disobedience, too. You can use these defenses of civil disobedience and show that they are not necessarily restricted to civil disobedience only.

So female suffragists or some environmental groups, like Extinction Rebellion, are really actually focused on what democratic politics involves and requires and they are clearly interventions in democratic affairs. So again, the ways in which I use arguments developed by theorists of civil disobedience to defend uncivil disobedience won't apply in a blanket fashion to all uncivil disobedience. It's going to depend, but I think that in a lot of cases, these arguments do extend in the ways I'm suggesting.

The question of counter-productivity similarly is not an erosion of civic friendship. I don't think it's settled for uncivil disobedience. So again, you have all kinds of acts of principled disobedience that are uncivil in virtue of being covert or evasive and they do that not primarily within a communicative framework. So if you think of sanctuary assistance or the illegal provision of abortion services, the main goal is to just help people. The main goal is not to communicate to the broader public the necessity of changing the laws, although, of course, those tactics are to be found within a movement that also does these things.

It seems pretty clear that those kinds of covert and evasive tactics do not necessarily alienate the public. So you don't have less support for less restrictive immigration policies in countries where the sanctuary movement goes strong, the same with reproductive justice, so it doesn't follow that it's counterproductive.

As far as those tactics that are uncivil but that are communicative, that also is not a foregone conclusion that they are counterproductive. So ACT UP's zaps, so their guerilla protests, were seen as extremely disrespectful, disruptive, too radical, too impatient, and so on, all things that are always said about activists for social justice, in particular, and yet a generation later the work of ACT UP is seen as having completely changed the cultural landscape, the political

landscape, and really influenced for the better the public and having been very, very effective in the broader gay rights movement.

So, okay, I just gave you reasons why it shouldn't be thought as generally presumptively impermissible. There's an extra step to get to an argument that it is morally required. Our political obligations, so they should be plural. It's not the political obligation, the moral duty to obey the law, we have a variety of political obligations. The primary one in non-ideal conditions is to resist injustice.

**Christiane:** So yeah, you say that we all share an obligation to resist injustice, and yeah, I love in your book the different ways that you lay out arguments for our duty to resist and our duty to engage in sometimes uncivil acts of disobedience. I want to talk about one of those, which is that you argue that we might be morally required to disobey when we are benefiting from exploitation or unfairness.

**Candice Delmas:** Again, it's grounded in the initial argument from fair play, for the duty to obey the law. The duty of fair play requires reciprocating for benefits received and it requires doing one's share in producing mutual benefits. So political philosophers, including Rawls and Hart, H.L.A. Hart, have used the duty of fair play to ground a moral duty to obey the law given an understanding of citizens as participants in a mutually beneficial cooperative scheme.

So citizens enjoy the mutual benefits of peace, stability, the protection of their rights, safe roads, clean water, and other public goods, and as part of providing these goods and as part of reciprocating for these benefits, what everyone has to do is to comply with the law, is to do their part in sustaining the state. But it's crucial for this argument that the cost be reasonable and that they be fairly distributed.

So I'm inviting you to think of a scheme of cooperation that in fact does not distribute the burdens and benefits fairly, the burdens of producing the benefits and the benefits understood as public goods, and that requires a lot more cost be borne by a certain population. In cases like this, where the scheme of cooperation is in fact exploitative in so far as it can only produce those benefits, or in producing these benefits, it unfairly burdens a certain category of people, who in part benefit a lot less, in these cases, the duty of fair play would not generate a general political obligation, so a general moral duty to obey the law. It wouldn't bind those who are unfairly exploited, who are taken advantage of, from complying with the law, and on a number of accounts, it wouldn't even bind those who benefit because they are benefiting from an exploitative scheme.

So at best, the duty of fair play would then trigger some kind of very weak obligations of cooperation to that scheme, given they are benefiting from it and their duty to reciprocate for benefits received, but those obligations would be outweighed by other kinds of duties that would come in. So that's usually the way that theorists of fair play think about the arguments for political obligation.

But I want to go further and argue that under circumstances of exploitative or harmful schemes, so schemes that harm the non-members, so schemes that produce certain benefits by harming those who are not part of the scheme, it is fairness itself and not other kinds of duties that come in and it is fairness itself that prohibits beneficiaries of exploitative schemes to cooperate.

The argument here rests on an analysis of fair play's prohibition of free-riding, right? So the opposite of fair play is free-riding. So the duty of fairness, the principle of fairness, prohibits free-riding, which is to benefit without doing one's share, to take the benefits of cooperation without doing one's share. I think that benefiting from an exploitative scheme, under certain conditions, involves the same kind of deontic wrongs, the same kind of wrongs as free-riding. Namely an objectionable aggregation of privileges and wrongful exploitation.

So it isn't a backward-looking argument that grounds guilt or responsibility in the past or in the setting up of the scheme or anything like that. It's just saying that if you continue to, if you are benefiting from exploitation without doing anything, you are engaged in wrongful conduct in the same way as if you were free-riding. So you need to cease benefiting from that scheme.

So the argument leads to an argument for radical reform. So what you need to do is not just to withdraw in the mountain. What you need to do is to change the scheme. So to act, to join a movement, to act together with other people, including with the victims, actually, of the exploitative scheme, in order to reform it and to change it so that no one benefits from the exploitative scheme.

So it's an argument that looks at the beneficiaries, right? It's obvious why an exploitative system needs to be reformed and is bad for the victims, but I'm giving an argument why beneficiaries themselves ought to do whatever they can, organize politically, protest, civilly disobey, and so on, in order to bring about the change that is needed to discontinue, to cease that scheme of coordination. Again, it is the reciprocity at the heart of fairness that supports this obligation.

**Christiane:** If you're convinced by your argument that we all bear a responsibility to disobey in the face of injustice, it can be really hard to imagine how to do that if you've been following the rules all your life and if the folks that you are looking up to are actual heroes, right? So what responsibilities do, I guess, lay people or people who don't think of themselves as heroes, or don't think of themselves as maybe being able to have a big impact, what can we do, what should we do, in the face of injustice?

**Candice Delmas:** Among the obstacles to really seeing one's political obligations as involving duties to resist injustice is a kind of historical romanticized narrative of disobedient change that emphasizes certain key figures at the expense of movements. A lot of textbooks and culture around, for instance, the Civil Rights Movement is really built around just a few heroes, and that hides the everyday work of everyday people. There's a lot of non-heroic, time-consuming, tedious work that goes into organizing and protesting and resisting injustice that naturally, because it is tedious, time-consuming, and seems small, is just not emphasized.

So that's one issue I think, which is that it's movements and movements are made of people. Movements are not made of heroes, they're just made of a lot of people.

So what I want to say is that, yes, the obligation to resist injustice is as general and imperfect and it takes the individual to think about how they can contribute to that struggle, how to fulfill their obligation. And we're all talking about action within context of epistemic and moral uncertainty, so you don't exactly know what the effects of your actions are going to be. You are affirming that you're right when others are wrong and so on and that comes with risks and with cost. It requires careful attention, scrutiny, introspection, and so on. So it requires participating in and cultivating a certain social environment in which you can collaborate, speak with others, and together act and together decide on the shape and form of resistance. It requires cultivating certain virtues and dispositions within you, around you, in your children, and so on.

What I would like to end with is the idea that compliance with the law itself, so obedience itself should raise questions. So it shouldn't be that that's a thing that obviously goes without thought and scrutiny. In many cases historically, and in some cases at present as well, uncritical thoughtless compliance with the law is really problematic. It entrenches injustice. It supports a bad status quo. And so, there shouldn't be this idea that, of course, obeying the law is fine, following the rules is fine, and then it's everything else that requires careful scrutiny.

So I'd invite people to think about that and their responsibilities even as rule followers and what comes out of these rules, be they law or conventional rules, social norms and so on, the ways in which complying with those rules and practices can create harmful climates or put certain people in danger and so on.

**[Interview ends]**

**[music: Blue Dot Sessions, Gullwing Sailor]**

**Christiane:** If you want to know more about Candice Delmas' other work, check out our shownotes page at [examiningethics.org](http://examiningethics.org).

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