

# **The Boundaries of Justifiable Disobedience**

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## *Abstract*

This thesis centers on the question of when, how, and how not to engage in political disobedience. It first explores the classical Rawlsian view on civil disobedience and points out its limitations with respect to the range of allowable actions and application in semi-liberal societies. It then discusses and motivates the use of “uncivil disobedience” as an alternative means of resistance, and points out two important gaps in current philosophical discussions about uncivil disobedience. Finally, it proposes and justifies a “Matching Principle”, which suggests that it is prima facie justifiable to violate a civic duty against the state in an act of resistance if one is systematically deprived of corresponding right(s) by the state or its affiliates. Thus construed, the principle provides both a set of rules about when it is appropriate to disobey in a certain way, as well as a set of rules that regulate conducts during acts of disobedience.

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## **1. Introduction**

### 1.1 Background and Motivation

In September 2014, the people of Hong Kong made global news headlines by starting the Occupy Central Movement, or what later became known as the Umbrella Movement. Frustrated by a Chinese National People's Congress (NPC) decision that places extensive restrictions on Hong Kong Chief Executive elections, two student organizations launched a series of protests outside the government headquarters, which gradually evolved into a city-wide sit-in movement that lasted for more than two months and attracted hundreds of thousands of participants. Modeling the Movement on classic examples of Civil Disobedience such as the Civil Rights Movement and the Indian Salt March, initiators of the Movement placed great emphasis on the protests' non-violent, public, and conscientious nature. They also explicitly agree to be subject to legal punishments at the end of the Movement. But despite capturing global attention, the movement changed neither the mind of the Chinese NPC, who did not retract its decision, nor the Hong Kong Government, who condemned the Movement for its illegality, repeatedly used tear gas to disperse the crowds, and allowed triad members to attack peaceful protestors. Ultimately, the crowds were dissolved after a sequence of forceful "clearance operations" by the police, after which many participants in the protests continued to be prosecuted or intimidated.

Less than five years later, another series of large-scale protests broke out in Hong Kong follow the government's proposal of the Fugitive Offenders Amendment Bill (commonly known as the Extradition Bill). Fearing that the Bill would allow the Chinese government to purge dissidents in Hong Kong and undermine the city's legal autonomy, protestors again took to the streets and demanded that the government withdraw the Bill. Frustrated by their experience in the Umbrella Movement, however, Hong Kong protestors lost their faith in civil means of protests like sit-ins and hunger strikes, and began to employ alternative resistance

strategies that involved anonymity, vandalism, and violence (Ibrahim & Lam 2020). Notable scenes during the Anti-Extradition Movement included the Storming of the Legislative Council, the use of ignited roadblocks as impediments, as well as the sieges of the Chinese University of Hong Kong (CUHK) and the Polytechnic University, where students and protestors armed with petrol bombs and shields fought police who used over 2000 rubber bullets and more than 3000 canisters of tear gas. When protestors broke into the Legislative Council, they spray-painted a slogan that said, “It was you who taught me peaceful marches did not work.” (BBC News 2019; Richards 2020)

The transition of Hong Kong’s protests from civil to uncivil disobedience sparked considerable controversy among citizens and commentators. While some criticized acts of uncivil disobedience as politically divisive and strategically counter-productive, others argued that they were necessary and justified given the government’s lack of response and use of police brutality. But regardless of one’s stance, the use of uncivil means in protests is something that deserves serious reflection and scholarly attention. For even though Hong Kong’s case is representative, it is far from the only instance in the contemporary world where uncivil disobedience is used as an alternative or supplement to civil disobedience.

Over the past two decades, the world has witnessed the occurrence of many resistance movements that diverge from the classic paradigm of civil disobedience. These include hacktivist movements, most of which are non-public, unattributable, and involve damage to third parties (Jordan & Taylor 2004; Manion & Goodrum 2000; Delmas 2018); government whistleblowing, the practitioners of which often refuse to be punished by law (Delmas 2015; Harwood 2017); and eco-activism, which is often denounced as “eco-terrorism” for its use of militant means (Welchman 2001, Vanderheiden 2005). Even more notable than these new classes of resistance are violent protests and riots, which have not only broken out in Hong Kong but also in other places (under a wide spectrum of political regimes) such as the United

States (during the Black Lives Matter protests in Ferguson, Baltimore, Minneapolis), France (during the Yellow Vest Movement), Taiwan (During the Sunflower Student Movement), Lebanon (during the October Revolution of 2019), and Catalonia (during their independence movement).

Despite being “uncivil”, participants in these movements often claim that they are justified on the same grounds that justify traditional civil disobedience, and demand that their acts of resistance should be recognized as more than barbaric, society-destroying acts. This has prompted a number of philosophers and theorists to reconsider the role of incivility in movements of resistance, and some have begun to advocate for “uncivil disobedience” as a legitimate alternative to civil disobedience, even in near-just liberal democratic regimes (Delmas 2017, 2018; Lai 2019; Zerilli 2014).

Notwithstanding these recent contributions, uncivil disobedience remains an incomplete area of normative research. Neither proponents nor opponents of uncivil disobedience have discussed differences between classes of uncivil actions and their legitimate scope, so it remains unclear how one should determine when a certain uncivil act is appropriate. The current scholarship also lacks discussions on the types of disobedience justified in less-just societies, such as semi-democratic ones. Because of these lacunae in literature, even if one can provide a sound justification for uncivil disobedience, they would struggle to find theories that could guide practice. This calls for additional research on the rules and norms governing uncivil actions, which is what this thesis intends to focus on.

As a student of philosophy, I find the study of uncivil disobedience valuable, as it is both closely related to key concepts in political philosophy such as justice, democracy, and the rule of law, and also intimately tied to debates in normative ethics about moral rights, duties, and supererogation. As a student of politics, I find the study of uncivil disobedience illuminating, since it allows us to better understand the motivation and significance of novel forms of

disobedience (such as hacktivism and eco-activism), which remain an active area of research in both empirical political science and political theory. Finally, as a citizen of Hong Kong who went through both the 2014 and the 2019 protests, this project has an extra layer of meaning for me. It provides an occasion for me to reflect on what my city has gone through in the previous year, and gain insights on what Hong Kong citizens - as well as global activists in similar situations - should and should not do.

### 1.2 Outline and Overview of Thesis

This thesis aims to defend uncivil disobedience as a justifiable alternative and supplement to civil disobedience, and propose a set of principles and rules that define its boundaries and regulate its applications. To achieve this, I will start off with an examination of traditional accounts of civil disobedience, go on to discuss arguments for and against uncivil disobedience, and finally that aims to guide actions in uncivil disobedience.

In Section 2 of this thesis, I will briefly review the classic literature on disobedience. I begin by providing a brief sketch of the origin and evolution of the idea of civil disobedience, highlighting John Rawls' theory of civil disobedience, which I call the "Classical Theory" since it remains the most widely accepted philosophical theory on civil disobedience to date. I then suggest that while the Classical Theory provides a powerful justification for disobedience movements that classify as "civil", it does not cover an important class of disobedience acts that fall outside of its scope, and provides little guidance to resistance in less-just societies. Even though subsequent theorists have attempted to address these issues by expanding the definition of "civil disobedience", I suggest that their attempts are ultimately insufficient since they remain bounded by the notion of civility.

In Section 3, I will present uncivil disobedience - acts of disobedience that fail to satisfy one or more of the conditions in the Classical Theory - as an alternative to civil disobedience. I will summarize three key arguments that proponents have suggested in support of uncivil

disobedience: a moral argument, a practical argument, and a historical argument. I will then put forward an additional argument that builds upon the idea of fairness. These four arguments combined, I argue, provide convincing reasons for us to accept uncivil disobedience as an alternative to civil disobedience.

In Section 4, I identify and pinpoint the significance of two unanswered questions in the ongoing academic discussion about disobedience. The first question concerns the appropriate means of resistance under half-liberal regimes, which are neither completely autocratic nor completely democratic. Many (if not most) disobedient acts we see in the current world are taking place in such regimes, so it is important to consider whether (and what type of) uncivil disobedience can be justified in those circumstances. The second question concerns rules that govern conducts during acts of uncivil disobedience. Since uncivil disobedience is a recent topic, most of the normative theorizing on it has been about *whether* it is justifiable, rather than *how* one may justifiably engage in it. But if one wants to promote uncivil disobedience not just as a theoretical possibility but also as a viable alternative in practice, then one must go beyond mere justifiability, and show that there can be a systematic set of rules that govern and set boundaries on the class of acts.

In Section 5, I provide my own answer to the two questions I raised by formulating what I call the “Matching Principle”. The Matching Principle states that it is prima facie justifiable to violate a civic duty against the state in an act of resistance if one is systematically deprived of the corresponding right(s) by the state or its affiliates. Building on the idea of fairness, it suggests that we have an obligation to obey a civic duty against the state if and only if it guarantees, protects, and actively respects the corresponding right(s). For this reason, the Matching Principle suggests that uncivil disobedience can be justified, but only when there is a systematic pattern of rights violation originated or acquiesced to by the state, and when the acts of disobedience specifically target the state and/or its affiliates.

In Section 6 I explain what follows from the Matching Principle. I argue that if one agrees with the Principle, then one can derive both a set of rules regarding when uncivil disobedience can be practiced, and a set of rules that regulate conducts during uncivil disobedience. These two sets of rules closely resemble the famous concepts of *jus ad bellum* and *jus in bello* in Just War Theory (Walzer, 1977). They provide useful theoretical resources for activists and others to reflect on the justifiability of particular acts of disobedience.

In Section 7 I respond to three anticipated objections to the Matching Principle. The first objection protests that the Principle is merely a variant of the classical *lex talionis* principle, that is, “an eye for an eye.” I reply to this criticism by delineating three important differences between the Matching Principle and *lex talionis*. The second objection condemns the Matching Principle for providing an overly piecemeal account of rights and duties, which I reply to by showing how the Principle strikes a balance between an overly coarse and an overly granular conception of rights and duties. The third argument suggests that it is difficult to enforce rules when it comes to uncivil activism. While I acknowledge that this can be a problem, I argue that it should not stop us from supporting the Matching Principle, for the problem is not unique to uncivil disobedience but also seen in other areas of moral and political theorizing such as the Ethics of War.

## **2. Civil Disobedience: The “Classical Theory”**

### 2.1 Origins of Civil Disobedience and the Classical Theory

The idea of civil disobedience has deep roots in Western political history and political theory. Many philosophers including Cicero, Aquinas, and Locke have motivated the idea of following one’s conscience and disobeying unjust laws, and (though controversial) some have argued that Socrates (in *Apology* and *Crito*) and Sophocles’ Antigone have also engaged in some forms of proto-civil disobedience (Bedau, 1961; Prosch, 1967; Rucker, 1966; Tiefenbrun, 1999). The term “civil disobedience” was created by philosopher Henry David Thoreau in 1848 in his

essay *On Civil Disobedience* (Thoreau, 1993), where he justifies his refusal to pay taxes in an attempt to protest the United States' War on Mexico and the Fugitive Slave Law. Citizens, according to Thoreau, have a duty to disobey laws from an unjust authority in order to not be complicit in their atrocities. They should also accept legal punishments associated with their acts, for "under a government which imprisons any unjustly, the true place for a just man is also a prison".

This philosophical idea of civil disobedience inspired many acts of resistance, which served as important drivers of social change in places all over the world. In suffragette movements worldwide, activists like Emmeline Pankhurst and Emily Davison frequently used acts of disobedience to display their anger and raise awareness for gender inequality issues (Pankhurst, 1914). The Indian Salt March, led by Mahatma Gandhi, protested the Salt Act of 1882 by non-violently marching and making salt from seawater (Hendrick, 1956). It was a key event in India's political awakening and its eventual independence from the British Empire. Most famously, during the American Civil Rights Movement, civil rights champions such as Rosa Parks and Martin Luther King Jr. Organized disobedient acts like the Montgomery Bus Boycott to protest segregationist measures (Burns, 2012). King's *Letter from Birmingham Jail* explicitly invokes the term "civil disobedience," and argues that people have a moral responsibility to disobey unjust laws since "an unjust law is no law at all" (King, 1963).

The pervasiveness and popularity of civil disobedience movements, especially the Civil Rights Movement and the Anti-Vietnam War Protests, motivated academic philosophers (especially those in the Anglo-American world) in the 1950s and 60s to further theorize on civil disobedience and its legitimacy as a non-institutional political act. An early philosophical account is given by Hugo Bedau, who in his essay lays out several criteria for an act to qualify as "civil disobedience" (Bedau, 1961). Firstly, Bedau proposes that an act of civil disobedience must be illegal and should be "the sort of thing that can send one to jail". Secondly, he argues

that such an act should be “necessarily public” since it intends to raise people’s attention and drive political changes. Thirdly, Bedau suggests that only non-violent acts can qualify as “civil” disobedience. Finally, he points out that civil disobedience must also be conscientious, meaning that dissenters must sincerely believe that the consequences of their acts of disobedience are less severe than the consequences of the law they are objecting to. In addition to these four criteria, Bedau also makes a distinction between “direct” acts of disobedience, which directly violate the law one objects to, and “indirect” acts of disobedience, which violates some unrelated law to express objection (we will come back to this distinction later in Section 5.3).

Bedau’s account is famously picked up by his contemporary John Rawls, who in *A Theory of Justice* defines civil disobedience as “a public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government.” (Rawls, 1999) In his account, citizens engage in civil disobedience when they would like to communicate to the public and the government about their frustration with unjust laws or policies. Participants in civil disobedient acts should be “guided and justified by political principles” and should express “fidelity to law” by showing a willingness to accept the legal consequences of their conduct. If an act of disobedience fulfills all these conditions, Rawls argues, then it should be accepted as an appropriate act of resistance in a “nearly just” society, which is liberal and democratic in the most part but still contains serious violations of justice.

The account of civil disobedience developed by Rawls and Bedau has been widely accepted as the definitive account of civil disobedience in the philosophical world and was cited to justify numerous social movements in the past and present. For this reason, I will henceforth refer to this theory of Civil Disobedience as the “Classical Theory.”

## 2.2 Features of the Classical Theory

It is important to highlight several features of the Classical Theory, for they are either built upon or opposed to by proponents of uncivil disobedience. Examining these features will give us a better understanding of why uncivil disobedience is presented as a complement or an alternative, as well as a set of theoretical vocabulary that we will use in subsequent chapters.

First, as we can see in both Rawls' and Bedau's work, the Classical Theory sets out certain conditions for an act of resistance to qualify as civil disobedience. These include:

(1) The condition of *communicative intent* and *publicity*. The Classical Theory requires civil disobedience to be a communicative act that attempts send a message to both the government and the (non-participating) public. To the government, dissenters will express their frustration with the unjust law, and demand changes in relevant laws and policies. To the public, dissenters use their acts of disobedience to address the "sense of justice of the majority," and declare that "in their considered opinion the principles of social cooperation among free and equal men are not being respected." (Rawls, 1999) What follows from this communicative aim is that an act of civil disobedience must be public rather than covert or secretive. It should be "engaged in openly with fair notice." (ibid), and both the government and the public should be notified ahead of time on the purpose and means of disobedience (Bedau, 1961). Thus construed, the criterion rules out anonymous acts as acts of civil disobedience, for it makes the identity of the protestor non-public. Moreover, it rules out acts of resistance that operate "under the hood" and does not primarily attempt to communicate to the general public, such as attempts to rescue unjustly jailed protestors and provide help to illegal immigrants. Aside from hiding the identity of dissenters, they also keep the means and goals of resistance away from the public.

(2) The condition of *nonviolence* and *non-offensiveness*. Because the Classical Theory sees civil disobedience as a "form of address" akin to political speech (Rawls, 1999), it requires that dissenters must refrain from the use of violence, which includes both the initialization and the threatening of violence (Bedau, 1961). Rawls suggests that the use of violence interferes with

the civil liberties of others, and therefore “obscures the civilly disobedient quality of one’s act.” This concern is echoed by Peter Singer, who likewise argues that violence obstructs constructive communication (Singer, 1973). Other proponents of the Classical Theory have argued that violence can also be counter-productive to the achievement of political changes, citing empirical research that demonstrates the relative effectiveness of non-violent protests in liberal societies (Chenoweth and Stephan, 2011). For these numerous reasons, the Classical Theory excludes violent acts – such as acts that inflict injury on others or acts that destroy properties – as acceptable forms of civil disobedience. Some proponents of the Classical Theory also extend this exclusion to offensive, rude, or “incivil” practices, practices that target specific individuals and make them feel uncomfortable (Delmas 2016; Edyvane 2019; Zerilli 2014). In their view, participants in disobedient acts must obey general norms of civility even when they breach legal rules and demonstrate respect to their audience throughout their action, so they should not, for example, use hate speech or insult in their course of action (Sabl, 2001).

(3) The condition of *fidelity to law* or *non-evasiveness*. The Classical Theory emphasizes that what civil disobedience objects are particular instances of unjust laws, rather than the legal system or idea of the rule of law. For this reason, it suggests that participants of disobedience acts should express “fidelity to law” by accepting the legal consequences of their conduct. According to Rawls, accepting rather than evading legal punishments contributes to civil disobedience in its capacity as a communicative act, for it shows the majority that the act of disobedience is conscientious and sincere, and that it aims at appealing to the public’s sense of justice. It is a necessary price to pay for the dissenters to gain the public’s trust, for it is not easy for others to believe that one’s act is done out of goodwill.

Besides setting these three important conditions on civil disobedience, the second important feature of the Classical Theory is that it has an exclusive focus on “nearly just societies”. Rawls states at the outset of his theorizing that his sole focus is what he calls “nearly just societies,”

which are “well-ordered for the most part but in which some serious violations of justice nevertheless do occur.” By “well-ordered”, Rawls refers to the state in which the basic institutions of a society satisfy certain principles of justice, and in which those principles of justice are known and justified to all reasonable persons of the society through a commonly accepted and legitimate constitution (Rawls, 2001; Simmons, 2010). It is assumed by Rawls that such a society will necessarily have a liberal, democratic political regime under which citizens cooperate fairly as free and equal individuals. Although such a society will be just on the most part, Rawls suggests that it is nonetheless possible for it to enact policies and laws that seriously infringe the equal basic rights of certain minority groups, or ones that significantly obstruct the fair equality of opportunity when it comes to distributive justice. It is against the backdrop of such a society that Rawls puts forward his argument in favor of civil disobedience (and against more violent/ uncivil forms of disobedience). Rawls explicitly warns about applying his theory to other kinds of government, as he claims that in an “unjust and corrupt system”, not only civil disobedience but also more radical actions like militant actions and revolutions would be warranted.

The question of which, if any, real-world societies qualify as “well-ordered” or “nearly just” has always been a controversial topic since Rawls proposed these notions. While some believe that Rawls had the United States in the 1960s in mind as a model for a “nearly just” society, and that the Classical Theory was meant to guide ongoing disobedience movements such as the Civil Rights Movement and the anti-Vietnam War protests (Forrester, 2014), others would differ and claim that Rawls is only working on “ideal theory” that does not map on neatly to real-world cases. In fact, Rawls himself claims in *Kantian Constructivism and Moral Theory* that the American society at his time does not qualify as a well-ordered society, since there was no widespread consensus on basic principles of justice (Rawls, 1980). One should therefore

use caution when applying the Classical Theory to real-world instances of civil disobedience, since it is dubious whether the Theory was intended to be used that way.

Thirdly, the Classical Theory construes civil disobedience as a middle ground between institutional/ legal protests and militant actions. Rawls suggests that a crucial condition for civil disobedience is that “normal appeals to the political majority have been made in good faith and [...] Have failed,” that is, when both judicial procedures and legal protests have failed to hold back an unjust law or policy (p.327). Civil disobedience can only be used as a last resort, when previous experience shows that the majority in society are apathetic to ongoing injustice. On the other hand, under the Classical Theory, civil disobedience is also the furthest that a dissenter can go in a nearly just society. For the reasons detailed above, supporters of the Classical Theory typically consider more radical actions such as militant/ violent resistance, covert and secret operations, as well as evasive acts as inappropriate for appealing to people’s sense of justice in a nearly just state. Civil disobedience is therefore established as a category of disobedient acts that fall between ordinary protests and militant actions and used to set a boundary for legitimate political acts within a nearly just state.

### 2.3 Limitations and Modifications of the Classical Theory

The Classical Theory as formulated by Rawls and Bedau has been heavily discussed among philosophers, and commentators have generally pointed out two major limitations of the theory. The first significant limitation is the narrow scope of the term “civil disobedience” under the theory. Since the Classical Theory requires civil disobedient acts to be public, non-violent, and non-evasive, it rules out a great deal of real-world resistance movements as legitimate (at least in nearly just states). For example, whistleblowing acts by people such as Edward Snowden on government agencies would not be justified, for whistleblowers usually evade punishments and their acts can pose great risks to national security (Delmas 2015; Harwood 2017). Violent responses to police brutality, such as those we see in Hong Kong during the anti-Extradition

Law protests, and in the United States during the Civil Rights Movement and the Black Lives Matter movement, and in numerous other places from France to Lebanon and Catalonia, are also ruled out because of their violent nature. “Eco-sabotage”, a means of resistance employed by eco-activists that involve forceful destruction of properties, would likewise not be justified (Welchman 2001). If one accepts the additional condition that all legitimate protests must be “civil” and respectful, then many campus protests and feminist demonstrations would be declared illegitimate, for they can be offensive to many groups in society (Zerilli, 2014). “Hip hop dissent” – the use of playful and disrespectful street art to condemn authority especially common among African American youths – would also undoubtedly be ruled out (Shelby, 2016).

The advent of modern-day internet technology poses yet more problems for subscribers to the Classical Theory, for it opens up the possibility to new forms of resistance that the founders of the theory do not or cannot foresee (Wray 1999). Take Hacktivism, the use of illegal computer-based tools and techniques in the pursuit of political agendas (Delmas 2018b; Jordan & Taylor 2004). Anonymous, the most well-known hacktivist group worldwide, launches cyber-attacks such as Distributed Denial of Service (ddos) attacks, website defacements, and data leakages to protest issues ranging from copyright protection, wealth inequality, and government surveillance (Goode 2015; Gorham 2020). The group (as its name implies) operates in an anonymous, non-attributable manner, which implies that its members cannot be subject to legal punishments for their digital trespassing acts. Because of the surprise nature of their attacks, they also operate in a non-public way. Hacktivist movements like those therefore fail at least two of the three criteria set out by the Classical Theory.

The existence of these alternative forms of resistance gives one good reason to look beyond the Classical Theory. For one thing, it indicates a significant gap between the theory and practice of disobedience. While many practitioners of disobedience have turned to embrace

alternative means and strategies of resistance that involve violence, covertness, and evasion of punishment, the predominant theory in academic remains either hostile to those practices (if one thinks that “nearly just society” is defined liberally) or silent to them (if one thinks that no real societies qualify as nearly just), depending on one’s interpretation. As we have seen historically, activists are often ahead of scholars when it comes to advancing the notion of disobedience: Thoreau’s theorization of civil disobedience comes after his own refusal to pay taxes, and contemporary philosophical reflection on civil disobedience began as a response to the wave of disobedience movements in the 1950s and 60s. The new forms of resistance that we witness nowadays among activists may therefore be a sign that we need to update our understanding of permissible means of disobedience.

Of course, the mere fact that activists are supporting alternative forms of disobedience does not imply that those new forms are necessarily morally right. But even if one sticks to the Classical Theory and considers all the alternative forms of disobedience as illegitimate, one may still consider the question of how best to categorize those forms of disobedience. As we see in the previous section, the Classical Theory presents civil disobedience as the immediate last option before military revolts, with no middle option that lies between them<sup>1</sup>. But since evasive, violent, or covert acts of disobedience fit into neither of these categories, their prevalence suggests the need to establish an intermediate analytical category, so that future theorists on disobedience can better understand them as a distinctive class of resistance. For this reason and the one above, the Classical Theory is limited with respect to the types of disobedience that it covers.

The second significant limitation of the Classical Theory has to do with the limited types of societies that it covers. As explained above in Section 2.2, the Classical Theory is only intended

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<sup>1</sup> Other categories of resistance like conscientious objection are discussed, but uncivil disobedience fit into none of those categories.

to cover nearly just societies, under which most social and political institutions are well-formed and just. It does not intend to cover the case of less just societies, like those that lack a fully established democratic procedure and those that do not protect all the basic liberties for the majority of people. However, most societies in the current world where (civil and uncivil) disobedience movements are taking place would not qualify as “nearly just societies” under the Rawlsian definition. To give an example, Hong Kong, which lacks a truly democratic procedure for the election of its chief executive and is only half democratic when it comes to the election of legislators, would not make the list. Myanmar, in which a military government seizes control by force rather than by common approval, would also fail to qualify. If one concurs with Rawls that the United States at Rawls’ time did not have what it takes to be a nearly just society, then even fewer (if any) real-world states would make the list. Whether the United States nowadays is “nearly just” is particularly questionable, for the same racial justice problems that plagued that country forty years ago still haunt it today.

This narrow focus on “nearly just societies” leaves another significant theoretical gap in the discussion of disobedience, for one gets very little guidance when it comes to what form(s) of resistance is legitimate in other, less just states. It is assumed by Rawls (and most other theorists on resistance) that full-on military revolutions would be justified in a broken and fully unjust state, but not every less just society is so broken to warrant the necessity of military actions. Thus, if we want our theory of disobedience to be able to evaluate real-world instances of disobedience and give guidance regarding appropriate forms of resistance, we will need to either extend the Classical Theory or supplement it with another theory that covers the case of less just societies.

Many theorists are aware of the above limitations of the Classical Theory, and they have made a number of attempts to ameliorate them (Aitchison, 2018). Most of these attempts try to address the first limitation, and they do so by expanding the meaning of “civil”, so that the

notion of “civil disobedience” incorporates acts that are violent, covert, or evasive. For instance, Berel Lang (1970) and Joseph Raz (1979) argue that violent acts can sometimes also qualify as civil disobedience, since they can be necessary for the restoration of justice and maybe less harmful than non-violent ones. Even though Lang and Raz believe that non-violent means should still be prioritized compared to violent ones, they accept that there are cases in which violent disobedience can be justified in a liberal democratic state<sup>2</sup>.

Kimberley Brownlee (2007, 2012), on the other hand, modifies the standard formulation of the Classical Theory by removing the condition of publicity and violence. According to her account, as long as an act of disobedience remains a communicative act that involves significant personal commitments, it retains its “civil” quality. Thus, whistleblowing actions and violent riots also count as legitimate civil disobedience and can be justified on the same grounds that justify other forms of civil disobedience.

Finally, Robin Celikates (2016) also proposes a new notion of “democratized civil disobedience”, under which none of publicity, non-violence, and non-evasiveness is a necessary condition for civil disobedience. His account of civil disobedience defines it loosely as any extra-legal act that aims at communicating to the public and driving political changes. It therefore allows most, if not all, of the aforementioned forms of resistance to qualify as civil disobedience.

While these accounts challenge and tweak one or more of Rawls’ requirements on civil disobedience, they still fundamentally agree with Rawls in that justifiable disobedience in near-just societies needs to be civil, and they differ only with respect to their interpretation of the term “civil”. Opponents have questioned whether these modifications to the Classical Theory are satisfactory, and this is for two major reasons (Delmas 2018a). First, such modifications seem to stretch the meaning of “civility” too far only for the purpose of accommodating

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<sup>2</sup> This view is also more recently shared by Adams (2018).

alternative forms of resistance. Under some of the modified accounts, for example, riots, destruction of property, and shocking tactics such as guerilla theater count as civil disobedience, while most common conceptions of the word “civil” would likely deem them as uncivil behaviors. One may therefore find it inappropriate to extend the scope of “civil” to such a great extent. Secondly, many practitioners and theorists of alternative disobedience do not see themselves as engaging in “civil disobedience”, and some explicitly claim to be doing otherwise. Many feminist activists, for example, see the notion of civility as a masculine, patriarchal notion used to silence minority expression, and actively accept the label of incivility in their acts of resistance (Delmas 2016, 2018a; Zerilli 2014). Describing all extra-legal disobedient acts as “civil disobedient” therefore risks being phenomenologically inaccurate, that is, it may fail to capture how practitioners in fact conceive of their own actions.

### **3. Towards Uncivil Disobedience**

#### 3.1 Defining Uncivil Disobedience

Realizing that expanding the meaning of “civility” cannot overcome all the limitations in the Classical Theory, theorists have recently begun to consider “uncivil disobedience” as a legitimate supplement or alternative to civil disobedience. By uncivil disobedience, they refer to acts of disobedience that does not satisfy one or more of the three core “civil” features of civil disobedience – that is, publicity, nonviolence, and non-evasiveness – as stated in Section 2.2. Despite not having these civil qualities, uncivil disobedience is still distinct from military revolts and revolutions since they do not constitute a total challenge to the ruling regime. Like civil disobedience and legal protests, uncivil disobedience challenges a specific unjust part of a political system, rather than the entire system. The similarities and differences between uncivil disobedience and other types of dissent are captured in the following table:

Table 1: Similarities and Differences between types of Resistance

	<b>Legality</b>	<b>Civility</b>	<b>Comprehensiveness</b>

<b>Legal Protests</b>	Legal	Civil	Partial challenge to regime
<b>Civil Disobedience</b>	Illegal	Civil	Partial challenge to regime
<b>Uncivil Disobedience</b>	Illegal	Uncivil	Partial challenge to regime
<b>Military Revolt</b>	Illegal	Uncivil	Total challenge to regime

Thus, this new analytical category of uncivil disobedience fills in the conceptual gray area that previously exists between civil disobedience and military revolt. Proponents of uncivil disobedience suggest that while one would not go so far to revolt against and topple a nearly just regime, they may nevertheless be justified in starting uncivil disobedience when they find a part of it corrupt and unjust. They typically advance three arguments to justify the legitimacy of uncivil disobedience in nearly just regimes (and thereby also in less just ones). The following sections will reconstruct these arguments, and respond to potential objections.

### 3.2 Argument from Moral Necessity

The first argument for uncivil disobedience is a moral one; it argues that duties of justice can be fulfilled in uncivil ways, and sometimes can *only* be fulfilled in uncivil ways. Some situations require one to use uncivil means to defend oneself and others, extend emergency help, and frustrate injustice (Delmas 2018a). In those cases, one’s duties to their compatriots and fellow citizens should trump their duties to remain civil towards the violators of rights.

To see the force of this argument, consider two historical examples of uncivil disobedience. In the 1970s and 1980s, “gay bashing” – a type of hate crime that uses physical violence to harm and humiliate homosexual people – was a pervasive problem in San Francisco (Harry 1990). The state police system connived in these acts of violence, and did nothing to protect homosexuals from being severely harmed. If the victims reached out for help, they would often be accused back by the police of having “invited the beating by propositioning someone.” (TIME Magazine 1973) As a result, many homosexual people suffered serious injuries, while most of the attackers went away unpunished. In view of this situation, Raymond Broshears, a

gay activist based in San Francisco, founded the Lavender Panthers association, an armed vigilante that patrolled the streets, attacked gay bashers, and provided protection to defenseless homosexual people (Robinson & Robinson 2018). Not only did the Lavender Panthers attempt to stop anti-gay violence, but they also tried to subvert the stereotype that homosexual people were weak, cowardly, and easy to exploit.

As another example of uncivil disobedience, consider the provision of shelter and assistance to refugees in European countries. In the 2010s, as a result of wars and conflicts in Africa and the Middle East, many refugees surged into Western European countries seeking asylum. Many among them are undocumented, or illegal immigrants. In most recipient states, providing shelter and assistance to these undocumented refugees is an illegal act. For this reason, many undocumented refugees lived under inhumane conditions and were forced to drift between different countries. Cédric Herrou, a French farmer, broke law by helping more than 250 illegal migrants enter France from the Italian border, providing shelter and material support for them in the meantime (Nossiter 2016). He was later arrested for multiple times by the French authority for engaging in such acts<sup>3</sup>.

Both Broshears' and Herrou's acts of resistance fall into the category of uncivil disobedience. The Lavender Panther's use of violence breaks the norm of nonviolence, while Herrou's smuggling of illegal migrants broke the norm of publicity. However, the breaking of civil norms in both cases are made out of necessity: in the former case it is required to ensure the personal safety, self-respect and democratic equality of homosexual people, and in the latter case it is required to lift illegal migrants from their inhumane conditions. In cases like those where the state fails to perform its fundamental duties with respect to the protection of citizens' fundamental interests, uncivil disobedience can often be the only possible remedy. When the

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<sup>3</sup> It is noteworthy that Herrou's action was ultimately ruled by the French court as legal, invoking the Principle of Fraternity in the French Constitution. It is one of the very rare instances in which a disobedient were pardoned by the state.

relevant fundamental interests or moral duties are sufficiently morally weighty (esp. when it involves the protection of lives and guarantee of humane conditions), transgression of civil norms should be a morally legitimate, and arguably necessary, means of response.

The above justification of uncivil disobedience rests on its instrumental value, or the amount of expected moral goods that it can achieve. But besides this instrumental value, commentators have also suggested that uncivil disobedience can have intrinsic moral value as an apt expression of anger. Contemporary political theorists have increasingly endorsed anger as a proper political emotion and response in unjust societies, arguing that when there are prevalent “moral violations” such as systemic injustice and domination, victims of these violations can use anger as a “fitting response” (Srinivasan 2018). In these circumstances, anger can have moral value because it “affectively registers”, or recognizes, the injustice of the world. Moreover, it also can serve as a form of communication that enables victims to publicly condemn injustice and share their experience. These considerations give victims “reasons of aptness” to choose anger as a response, and these reasons may trump the “reasons of prudence” against being angry. This gives moral basis for the politically oppressed to choose anger as a response, even in cases where it will be counterproductive to the pursuit of constructive, forward-looking aims.

Even before philosophers begin to theorize on the aptness of anger, practitioners of uncivil disobedience have been viewing their acts of resistance as morally legitimate expressions of anger. For example, supporters of the Black Lives Matter movement commonly see instances of riots as a manifestation of black rage, which arises (in general) from the systemic injustice against African American men and women, and (in particular) from the brutal police murders of Michael Brown, Eric Garner, John Crawford, and numerous other victims of state violence (Hooker 2015; Thompson 2017). They further argue that because the relevant moral violations are egregious in nature, only a radical and uncivil form of expression (such as riot) would

suffice as a proportionate expression of anger. The act of rioting allows activists to express their disrespect to corrupt authority and unjust laws, and assert their dignity, solidarity, and agency in the meantime.

If one accepts that egregious injustice such as racial inequality and arbitrary violence can warrant anger as a fitting response, and that uncivil disobedience can constitute a radical expression of anger, then we would have an additional, intrinsic (as opposed to instrumental) justification for uncivil disobedience. This justification does not depend on what uncivil disobedience can achieve, or how it will impact the future<sup>4</sup>. It makes uncivil disobedience an act of resistance that can be justified in its own right.

### 3.3 Argument from Strategic Efficacy

Other than the moral argument, proponents of uncivil disobedience also advance a practical/strategic argument in favor of it. It suggests that uncivil disobedience can be more effective than its civil counterpart in achieving dissenter's strategic objectives, especially under two kinds of circumstances: when disobedients want to achieve alternative objectives, and when there is a high level of repression.

When interlocutors cast doubt on uncivil disobedience, they often cite empirical political science research showing that violence leads to suboptimal political outcomes. For example, Erica Chenoweth and Maria Stephan's book *Why Civil Resistance Works* (2011) examined 323 political campaigns between 1900 and 2006, and discovered that while nonviolent ones succeeded 53% of the time, violent ones only succeeded 27% of the time<sup>5</sup>. Emma Thomas and Winnifred Louis' research yields similar results, suggesting that nonviolent campaigns are more likely to highlight the illegitimacy of the relevant issue and promote support for further political actions (Thomas & Louis 2014).

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<sup>4</sup> This is in no way denying that the aptness justification can be *defeated* by other moral considerations.

<sup>5</sup> The result already takes into account the consideration of endogeneity, which is the concern that nonviolence and success of resistance may share some further explanatory factor.

Theorists have suggested various explanations for this gap in efficacy. Some suggest that violent acts can easily antagonize potential allies and deepen social divides (Smith 1968; Raz, 1979), some argue that non-violence is more appealing to neutrals (Lahey 1987; Munoz & Anduiza 2019; Summy 1994), while others suggest that the use of violence gives authority more excuses to repress political movements (Chenoweth & Stephan 2011). Rawls, in a similar fashion, argue that the use of violence is “incompatible with civil disobedience as a mode of address,” since it renders communication with the general public difficult (Rawls 1999). All these concerns have often led skeptics of uncivil disobedience to dismiss it as not only ineffective, but also counterproductive to the pursuit of justice.

Despite these critiques, one should not hasten to denounce uncivil disobedience as strategically valueless. Results from empirical research need to be put into context, and this is for four reasons, which will be presented below in increasing order of importance.

In the first place, the empirical research and theoretical critiques above primarily target the use of violence, but uncivil disobedience does not only include violent protests. Even if one accepts all the conclusions above and dismiss the use of violence completely, one may still find strategic value in the use of evasive or covert forms of resistance.

Secondly, even if it is true that violent or other forms of uncivil disobedience in general is in most cases less efficacious than its civil counterpart, it may still be true that in certain situations, uncivil disobedience has more advantages. This conclusion receives support from empirical research. For example, Enos et al’s study of the 1992 Los Angeles riot – one of the most memorable episodes of violent protests in recent American history – shows that political violence resulted in higher public support for liberal policies (Enos et al 2019). They suggest that the use of violence allowed the concerns of the protestors to be heard and echoed by a wider audience, and enabled them to collect support from more people sharing similar concerns. Based on this result, they argue that political riot can be a “useful tool for building policy

support,” especially when protestors have relatively low status in society and possess limited resources for awareness-raising.

Thirdly, not only is uncivil disobedience more likely to succeed in certain circumstances, but it can also be the only viable option in more extreme circumstances. As Lehoucq (2016) points out, in many cases it is the oppressive authority rather than the resisting mass who gets to choose whether people would protest civilly or rise up uncivilly. For example, in cases where the level of political repression is high, and the unjust authority is already prepared to use violence, organizing large-scale, public, and non-violent protests will likely be both futile and costly. Using violence, going underground, and adopting guerilla tactics become the only remaining weapons in the hands of the oppressed. As another example, if certain operations are bound to be secretive (e.g., a DDoS attack cannot be announced before or it would defeat its purpose), using uncivil means is also mandatory for the achievement of strategic goals. Furthermore, in cases where opposition force is low and insufficient, the evasion of legal punishment is also necessary for dissenters to survive and maintain their forces. All these cases show that even if uncivil disobedience is on average less effective, it can still be the most or the only effective way of resistance in particular cases.

Finally, and most importantly, evaluation of the efficacy of disobedience depends heavily on how one conceives of the objectives of disobedience. Proponents of the Classical Theory see disobedience as mainly a communicative act aimed at creating policy changes. Following this line of thinking, “success” in empirical studies of disobedience is often equated with the removal of unpopular rulers/ governments, or changes in the relevant policies. While these are indeed common objectives of political resistance, they are far from the only possible objectives. Especially when it comes to uncivil disobedience, activists often pursue goals other than simple policy changes. For example, when Tommie Shelby discusses “hip hop dissent” among young African Americans, he notes that many of the dissenters’ acts do not aim at creating political

change or engaging the sympathetic public. Instead, they seek to affirm their own self-respect, distance themselves from the oppressive state, and establish solidarity with fellow oppressed people. Even though these objectives fall outside of the scope of the Classical Theory and the “Civil Rights Movement paradigm,” Shelby argues that they can nonetheless be valid objectives, for they are ways for the oppressed to demonstrate political engagement (Shelby 2016)

Many other disobedient acts are driven by aims other than effecting large scale political changes. Some are driven by the Samaritan duty to extend help to others (e.g., Cédric Herrou and Lavender Panthers), some are trying to raise awareness and make their situation/pledge visible to outsiders (e.g., Hong Kong protestors and hacktivists), some are attempting to prevent or stop injustice from taking place (e.g., eco-activists who engage in sabotage of whalers), while yet others are using their acts of resistance to strengthen solidarity and seek allies (e.g., suffragettes and racial activists). The achievement of these alternative objectives is not taken into account in previously mentioned empirical research, and can also be difficult to measure quantitatively. However, they are still valuable and legitimate objectives that dissenters often seek to achieve, and are often only achievable via uncivil means. The existence of these alternative (non-communicative or non-reform-intending) objectives therefore provides extra strategic reasons for people to engage in uncivil disobedience.

#### *3.4 Argument from Historical Reflection*

The third argument for uncivil disobedience is a historical one. It suggests that even though many successful resistance movements in history are presented as civil ones, in many cases at least part of their successes are attributable to uncivil elements. To make this argument, proponents of uncivil disobedience re-examined a number of famous examples of disobedience campaigns, including most notably the Civil Rights Movement. What they showed is that

although the movement is portrayed as canonical examples of the power of civil disobedience, their achievements are in many ways inextricably linked to the uncivil elements in them.

For many years since its culmination in the 1960s, the Civil Rights Movement has been portrayed as the epitome of non-violent civil disobedience. The Montgomery Bus Boycott, initiated by Rosa Parks and the Montgomery Improvement Association (MIA), protested against and eventually removed the system of segregated bus seating with 381 days of mass boycott (Burns 2012). The Freedom Riders' bus tour, which travelled through the American South to challenge the segregation of interstate transportation, successfully raised public awareness and pressured the incumbent authority to prohibit segregation (Arsenault 2007). The ensuing Birmingham Campaign of 1963, led by Martin Luther King Jr., further directed people's attention to the injustice of economic and social segregation under Jim Crow. King's "Letter from Birmingham Jail," written during his custody after the campaign, became the definitive statement of the Civil Rights Movement. In the letter, King advocated for the right of the oppressed African American mass to protest by nonviolent means, and argued against various black nationalist and Islamic groups' call for violence, calling it "the force [...] of bitterness and hatred." (King 1963) According to King, civil rights activists should strive to be "gadflies" who create "constructive, non-violent tension" within society and prompt the populace to reflect on the state's injustice.

The Civil Rights Movement culminated with the Civil Rights Act of 1964 as well as the Voting Right Act of 1965, which eliminated in law many segregationist laws and policies. Since King's speeches and nonviolent campaigns helped the Civil Rights Movement gain much attention and win sympathies from neutral American citizens (many of whom are white), most commentators attribute the important achievements of the Movement primarily to King and the nonviolent wing of the Movement that he represents.

This dominant narrative, however, has increasingly been challenged by activists and historians. August Nimtz, for example, has argued that the achievements of the Civil Rights Movement cannot be explained without considering the violent and uncivil wing of the activists, most notably represented by Malcom X (Nimtz 2016). By analyzing archival evidence related to the establishment of the Civil Rights Act and the Voting Right Act, Nimtz suggests that Black riots and violent confrontations played an important role in the Movement by sending credible threat to the ruling elites. These uncivil acts, along with Malcom X's famous statement that Black people will either have "the ballot or the bullet," demonstrated to the authority that the African American mass were both capable of and willing to use force against unjust laws. Facing this threat during the height of the Vietnam War prompted the incumbent Johnson government to quickly respond to the call from the protestors.

In a similar vein, activist and historian Charles Cobb argued in his book *This Nonviolent Stuff'll get you Killed* that the practice of armed self-defense was at least as important as nonviolent direct actions in shaping the success of the Civil Rights Movement (Cobb 2015). In response to arbitrary racist violence and state incrimination in the rural south, armed Black self-defense organizations (mostly from the grassroots) guaranteed the safety of their comrades, asserted solidarity with fellow dissenters, and established the foundation for later, higher-scale protests. Many Black activists (including those who practiced nonviolent disobedience) recognized and respected these movements of resistance, and saw them as crucial in the struggle against segregation. The clashes between the violent and non-violent wings are therefore not as significant as the convergence and synergy between them. This conclusion echoed with many academic historians' findings, which suggest that rather than understanding the Civil Rights Movement along the violence/non-violence dichotomy, one would do a better job focusing on how the two kinds of approach interact with each other (Payne, 2005; Tyson, 1998; Umoja, 2013; Williams, 1998).

What we can learn from historical experiences like this is that in conditions of state injustice, dissenters often can benefit from a mix of civil and non-civil tactics, employed according to needs, resources and circumstances. The rosy picture that there is no need for incivility once there is a predominantly democratic government is but an idealized myth (Hooker 2016). And it goes without saying that in less democratic and liberal states, uncivil resistance has often been the norm rather than the exception.

### 3.5 Argument from Fairness

Aside from the three arguments above that are already advanced and defended by proponents of uncivil disobedience, there is a further argument one can make in favor of it. The argument is based on the idea of *fairness*, which is frequently referred to in political philosophy. It is the idea that many of our moral and political obligations are based upon the expectation that if we follow a certain norm, others will do the same. H.L.A. Hart famously invokes this idea of fairness when he argues that “when a number of persons conduct any joint enterprise according to rules and thus restrict their liberty, those who have submitted to these restrictions when required have a right to request a similar submission from those who have benefitted by their submission.” (Hart 1955). This, according to Hart, is an important source of our political and legal obligations. Following Hart’s spirit, early Rawls also emphasizes the idea of fairness, grounding people’s duty to obey laws on the fact that they “have accepted, and intend to continue to accept,” the benefits of a just scheme of social cooperation (Rawls 1964, 1999).

Although the idea of fairness has mostly been invoked to justify our political and legal duties, a parallel argument can be made for our moral duties to be civil towards each other: that we treat other people with decorum and respect, that we accept punishment for our transgressions, and that we do not use physical force against each other. If we reflect on these norms that set expectations for our behaviors, we will discover that many of them are grounded on the fact that others will follow suit. If we are told that our counterparts in society will not be following

similar rules, much of that ground disappears. When, for example, the majority group in society actively and systematically disrespect a minority group and deny them of basic decency, it makes no sense to say that the minority group is still morally bound to treat their oppressors with respect and decorum.

If that is the case, then when there is a systematic pattern of injustice, violations, and incivility against a certain group of citizens in a state, that group would not have a duty to remain civil towards the state. Thus, one cannot deny them of the freedom to initiate uncivil disobedience by suggesting that they should comply to norms of civility. To do so is to be both grossly unfair to the oppressed and overly conniving to the oppressors.

We thereby get another argument for uncivil disobedience from the idea of fairness. This argument is fundamentally a moral one, but it is different from the ones discussed in Section 3.2. Rather than providing positive reasons on why one might justifiably participate in uncivil disobedience, this argument provides a negative reason as to why one does not have a duty to remain civil towards their oppressors under circumstances of pervasive injustice<sup>6</sup>. This, of course, does not imply the stronger conclusion that one must act uncivilly in such situations, for there may be non-moral (strategic) reasons that advise against uncivil acts. Moreover, the argument suggests only that the oppressed have no obligation to act civilly towards their oppressors, but the argument does not extend to non-oppressors. As such, if uncivil actions are expected to result in significant collateral damage, one can still have strong moral reasons against committing them. Nonetheless, the Argument from Fairness is still an important addition to the arguments in favor of uncivil disobedience, insofar as it shows that under many unjust conditions, there is no such thing as an unchangeable “duty to remain civil.”

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<sup>6</sup> We will come back to this idea in Section 5.2, when we discuss the Matching Principle.

#### **4. Unsolved Puzzles about Uncivil Disobedience**

##### 4.1 A More Comprehensive Theory (and the Need for an even Better one)

What we can see from all the arguments in favor of uncivil disobedience is that uncivil disobedience should be viewed as a complement rather than a substitute to civil disobedience. This is so for three reasons. First, the objectives of uncivil disobedience are unlike those of civil disobedience. Civil disobedience, as formulated in the Classical Theory, aims at appealing to the public's sense of justice and eventually creating political changes in response to the relevant unjust policy or law. Although these can also be objectives of uncivil disobedience, most instances of uncivil disobedience do not (or do not exclusively) aim at them. Thus, one can still accept civil disobedience as (in most cases) the most effective way to effect political changes, while simultaneously accepting uncivil disobedience as a legitimate instrument for alternative aims such as frustrating injustice and helping those in need.

Secondly, nothing in the arguments for uncivil disobedience contradicts the philosophical arguments for civil disobedience. Even if one accepts all the arguments for uncivil disobedience, they can still accept the Classical Theory's justification of civil disobedience and its view of civil disobedience as a useful remedy to injustice. Proponents of uncivil disobedience need only challenge one part of the Classical Theory, and that is the claim that civil disobedience is the only morally and strategically justifiable form of illegal disobedience in nearly just states (apart from milder ones like conscientious objection). One can therefore accept uncivil disobedience as an addition to the Classical Theory, while assuming that Rawls and Bedau are correct on their justification of civil disobedience. This is the assumption that this thesis will make.

Thirdly, accepting uncivil disobedience as a (morally and practically) viable alternative to civil disobedience does not imply embracing uncivil disobedience at all times. None of the arguments for uncivil disobedience suggest that uncivil disobedience is necessarily more

effective or morally preferable to civil disobedience. If anything, they suggest that dissenters should thoroughly consider the relevant moral and strategic factors before landing on either approach as a way of resisting.

What we obtain from the burgeoning literature on uncivil disobedience is therefore a more comprehensive version of the Classical Theory, which fills up a previous gap between the theory and practice of resistance and offers more flexibility to dissenters who are trying to achieve alternative objectives. In my view, this revision to the Classical Theory is a timely and valuable one, especially in a time when dissenters are increasingly seeking out alternative strategies.

That said, the revised theory still possesses some crucial limitations. For one thing, current theorists on uncivil disobedience have yet to discuss how civil/ uncivil disobedience ought to play out in less just societies. For another thing, although the arguments for uncivil disobedience provide justifications for uncivil disobedience in general, they do not provide much guidance on what specific kind of uncivil disobedience should be chosen for particular situations, and how one should regulate their behaviors during uncivil disobedience. The following sections will elaborate on these limitations and motivate their significance, and then the ensuing chapters will suggest a way to address them.

#### 4.2 Application in Less Just Societies

In Section 2.3, I suggest that one important limitation of the Classical Theory is that it focuses on nearly just societies and does not intend to cover less just societies. This raises questions about the applicability of the Classical Theory, since most existing states (especially where resistance is taking place) are arguably less-than-nearly-just. Moreover, since the Classical Theory does not make a careful distinction between uncivil disobedience and full-on revolutions, it tends to assume that all kinds of radical actions are justified in less just societies, which is clearly an overly crude conclusion.

While the addition of uncivil disobedience provides us with the resource to address this limitation, theorists have not yet discussed how we may do so, as their focus has been on the justification of uncivil disobedience as a viable alternative in nearly just societies. Thus, the current theory on uncivil disobedience inherits the limitation from the Classical Theory. If our objective in advocating for uncivil disobedience is to bridge the gap between theory and practice and make our theory more action-guiding, then this is a limitation that we must address, given the predominance of less just societies in the current world.

If we are to develop an account for the justifiability of different forms of resistance in less just societies, what would that account look like? An intuitive and straightforward answer is that more severe injustice should warrant more radical or extreme forms of resistance, and vice versa. For example, in an autocratic or totalitarian state where the constitution provides no protection to basic rights and democratic governance is non-existent (think Cambodia under Khmer Rouge), we would expect all extreme forms of resistance to be justifiable. In contrast, in a state where the constitution protects some basic rights (though not to all groups in society) and there is some form of democratic election (though not necessarily fair), we would expect more limited forms of uncivil or civil disobedience to be applicable.

What this suggests is that rather than breaking up all instances of resistance into discrete categories such as civil disobedience, uncivil disobedience, and military revolution, we can do an even better job by viewing different forms of resistance as existing in a continuous spectrum, ranging from the least radical to the most radical<sup>7</sup>. Having this spectrum would allow us to map different forms of resistance onto different types of unjust regimes – which most people will agree also exist in a spectrum (ranging from the least autocratic to the most autocratic) – yielding an account that proportionally relates the extremity of means of resistance to the

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<sup>7</sup> This is not to deny that categories are still useful, especially in highlighting the differences between civil, uncivil, and military means to resistance. What it says is that in developing an account on the boundary of justifiable disobedience, a general account that views forms of resistance as existing in a spectrum would be more useful and parsimonious than a disjunctive one.

severity of injustice experienced. The ensuing Chapter 5 will propose and justify a principle that adopts this approach.

#### 4.3 Rules of Conduct for Uncivil Disobedience

The second limitation of the revised theory concerns rules that govern conducts during acts of uncivil disobedience. In any theory of resistance, there is a trade-off between allowing too little and allowing too much. While one may criticize the Classical Theory for being too restrictive, it is undoubtedly a virtue of it that it draws a clear boundary between legitimate acts of disobedience and illegitimate ones (for example, violence is strictly prohibited in nearly just societies according to the Classical Theory). And while one may praise theorists of uncivil disobedience for expanding the theoretical possibility and providing additional flexibility, one should also acknowledge that they have made the boundary less clear. Focusing on the justifiability of uncivil disobedience as an alternative category of resistance, they have hitherto paid little attention to detailed analyses about what kind of uncivil disobedience is appropriate under what kind of conditions. For this reason, they can often make it sound as if their arguments make all forms of uncivil disobedience morally justified in all cases, even though (I believe) that is very far from their intention.

Many objections against uncivil disobedience stem from the impression that once we allow it, we can place no limits on incivility. Jennet Kirkpatrick (2008), for example, sees uncivil disobedience as a precursor to terrorism and social disintegration, for it opens the door to indiscriminate and random violence. This charge can be interpreted in two ways. On the one hand, we can interpret it as an empirical criticism, which observes that historical incidences of uncivil disobedience have often deteriorated into terrorist violence, and that moral rules have failed to regulate dissenters' behaviors. This, in my opinion, is a misleading claim, and I will come back to it in Chapter 7.

On the other hand, Kirkpatrick's charge can be interpreted as a normative one, which suggests that since theorists of uncivil disobedience allow violence, evasiveness, and covertness in acts of resistance, they have no room to place limits on the exercise of incivility. This line of criticism echoes with many common worries about uncivil disobedience, which fear that once society accepts violence and other uncivil acts as justifiable, it would not be able to condemn out-of-control protestors or malicious parties from initiating indiscriminate violence and terrorist actions.

From the perspective of proponents of uncivil disobedience, this is clearly a problematic "straw man" objection, since it wrongly and misleadingly equates "permission of violence in specific cases" with "permission of unlimited violence". Nevertheless, the objection reveals a limitation of current theories in uncivil disobedience, which is that they do not set out very clear boundaries on dissenters' actions. While they suggest that uncivil disobedience can be justified in states where specific groups experience serious injustice, they leave the following questions unanswered: Who can uncivil dissenters be uncivil against? Is the group of legitimate targets limited to the state, the party that commits injustice, or does it also include innocent people who have nothing to do with oppression? Who has the permission to act uncivilly when there is injustice? Is it limited to people whose rights have been violated, or does it also include other unrelated parties? What *kind* of incivility can be justified in particular situations? Does justification of one uncivil approach (e.g., covertness) imply justification of another (e.g., violence)? How far can uncivil dissenters' actions go, and what damage can they cause? Do they still need to follow ethical rules during uncivil disobedience, and if so, what rules should they follow?

Without clear answers to these questions, it would be difficult for uncivil disobedience to gain approval either from academics or from the general public. For the theoretical literature on uncivil disobedience to be practically action-guiding and publicly acceptable, theorists must

go beyond its mere justifiability, and show that there can be a systematic set of rules that govern and set boundaries on it. This will also be an objective of the remaining chapters of this thesis.

## **5. The Matching Principle: Proposal and Justification**

### 5.1 The Matching Principle Explained

To address the limitations of current theories on uncivil disobedience highlighted in Chapter 4, I propose the following moral principle.

#### **The Matching Principle:**

It is prima facie justifiable to violate a civic duty against the state or its affiliates in an act of resistance, if and only if one is systematically deprived of their corresponding right(s) by the state or its affiliates.

There are several key terms in the Matching Principle, and I will explain them one by one before defending the Principle in the remaining parts of this Chapter. After that, I will lay out the implications of the Matching Principle in Chapter 6 and respond to potential objections in Chapter 7.

First, the Matching Principle is a prima facie principle, meaning that it can be overridden by other concerns. It says that other things being equal, one can violate a civic duty against the state if the state has deprived them of their corresponding rights. What it does not say is that it is always morally justifiable to violate civic duty against the state when there is a rights violation. In cases where conducting uncivil disobedience is expected to cause serious collateral damage (to the innocent public), defeat the aims of dissenters (through discouraging peaceful protestors or prompting government retaliation), or result in a large number of unnecessary casualties (as compared to civil disobedience), strategic concerns or concerns of utility should override the Matching Principle and make uncivil disobedience unjustifiable.

This is a reasonable qualification to the Principle, for no theory of social movements would say that an action is always permissible, no matter what.

Secondly, the Principle talks about “civic duties” and “civic rights”. Philosophers and political scientists have used these terms in widely different ways, but here I will define them in a specific manner. Since we are creating an ethical principle for uncivil disobedience, “civic duties” will refer to people’s moral duties to conduct social and political movements in overt, non-evasive, non-violent, and non-offensive manners. Symmetrically, “civic rights” will refer to people’s moral rights to be treated in overt, non-evasive, non-violent, and non-offensive ways (and specifically by the government)<sup>8</sup>. The Matching Principle requires a type correspondence between citizens’ violation of civic duty and the state’s violation of civic right<sup>9</sup>. It says, for example, that citizens can only act violently towards the state if the state has acted violently against them. Motivations for this kind of correspondence will be explained in Section 5.2.

Thirdly, the Matching Principle limits the targets of dissenters to the “state or its affiliates”. It thus prohibits them from targeting private parties, unless those private parties are complicit with the state (in which case they will be treated as the state’s affiliates). In a situation where a state is just and fully functioning, a violation of civic rights by some private parties (e.g., an ethnic group) towards some other private parties (e.g., another ethnic group) does not give the victims’ the right to respond uncivilly. Some activists may find this an undue limitation, but I will defend it in Section 5.4.

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<sup>8</sup> Some may find it strange that we are calling these “rights” and “duties”. Note, however, that we are not talking about *legal* rights and duties (which are the rights and duties people most commonly refer to), but *moral* rights and duties.

<sup>9</sup> Note that the correspondence required is *type* correspondence, rather than *token* correspondence. Token correspondence would require the dissenters’ violation of civil duty to exactly mimic the state’s violation. If the state attacks protestors with grenades, it would require dissenters to fight back with grenades. This requirement is impractical, and is not part of the Matching Principle. Type correspondence, on the other hand, only requires the type of violations to match. It says, for example, that state violence can be answered with dissenters’ violence, but it does not set requirements on the specific violent means that dissenters adopt.

Fourthly, the Matching Principle requires there to be a “systematic” violation of civic rights before citizens can justifiably violate their civic duties. This means that particular or one-off incidences of rights violations should not be sufficient to trigger uncivil disobedience (unless they can be shown to reflect broader, systematic injustice within society). The motivation for this is straightforward: since uncivil disobedience is a high-stake social act, practitioners should make sure that they are only using it to respond to deep-rooted, structural problems in society. As proponents of the Classical Theory (e.g., Rawls) also limit civil disobedience to systematic injustice, it makes sense that uncivil disobedience, which usually involves higher stakes than civil disobedience, should be bound by a similar requirement.

### 5.2 Argument from Fairness Revisited

The key insight of the Matching Principle is that violations of civic duties are morally permitted if they “match” existing violations of civic rights. The justification for this goes back to the argument from fairness, introduced in Section 3.5. Recall that the argument from fairness suggests that many moral and political obligations are grounded on the expectation that other parties in society will reciprocally meet those obligations. When such expectation of reciprocity disappears, those obligations lose much of their grounds. I argued that civic duties, including our duties to be open, respectful, non-violent, non-evasive in our actions towards the state, fall under this group of fairness-based obligations. For this reason, when the state has acted uncivilly towards its citizens, citizens are free to break their corresponding civic duties in their acts of resistance against the state.

Some may challenge this argument by suggesting that our civic duties are not solely grounded on fairness and reciprocity. They may ask: as human beings, are we not always morally obligated to act civilly towards others? Even if other people fail to treat us in civil ways, are we not still morally bound to remain civil towards them? Our duties to not harm and offend other people, our duties to be responsible for our own actions (i.e. be non-evasive), and our

duties to be public and transparent in other-regarding actions seem to be duties that we have in virtue of us simply being humans or moral agents, independent of other considerations. But if that is the case, then these duties would not simply disappear when other people fail to respect our corresponding rights in their actions against us. It is not the case, for example, that whenever a person hits us in the face, we are morally permitted to hit them back with force. It is also not the case that when people insult us, we then have the full right to insult them however we want. As morally capable human beings, we should continue to respect relevant moral norms towards other people, even if they fail to reciprocate. Thus, opponents may argue, the Argument from Fairness (and therefore the Matching Principle) is fatally flawed for assuming that our duties would disappear whenever we cannot expect reciprocation.

The problem with this counterargument is that it fails to distinguish between our civic duties *towards other individuals* and our civic duties *towards the state*. I believe that the argument gets it right when it says that in treating other individuals, we should try our best to be civil, even if they fail to treat us in the same way. This is a duty that we have *qua* human beings, rather than a duty that we have because we have received some benefits from others. However, the same does not hold for our duties towards the state. The state is not another human being; it is an external entity that claims authority upon us, placing limitations on our natural liberties. In cases where the state is undemocratic and illegitimate, it amounts to a violent external force that threatens to impose itself upon us and take control of our lives. As most social contract theories would suggest, we do not owe anything to a state (let alone an unjust state) simply *qua* humans. Our duties toward the state only obtain when we have received - and can expect to receive in the future - the various rights (protection, cooperation, mutual prosperity) that it delivers to us. When those rights are absent, or when we cannot reasonably trust the state's promise, there should no longer be such a thing as a duty towards the state.

For this reason, our duties toward the state and our duties toward other human beings are fundamentally different. While the Argument from Fairness does not necessarily apply to the latter, it definitely applies to the former. From the Argument of Fairness, we can then deduce that citizens lose their duty to remain civil toward the state whenever the state has acted uncivilly towards them. This gives us a justification for the core insight of the Matching Principle.

### 5.3 Argument Against the Spill Over of Incivility

The Matching Principle both permits and limits uncivil disobedience. It claims that citizens are permitted to break civic duties *if and only if* the state has deprived them of their corresponding civic rights. The *if* side of the principle has been justified in the previous section with the Argument from Fairness. In this section, I will also justify the *only if* side, showing that violation of civic rights in one area does not give citizens the right to violate civic duties in another area.

While advocates for state authority may find the Matching Principle too permissive, some uncivil activists may find it too restrictive. Under the Matching Principle, uncivil disobedience is not allowed if the state does not act uncivilly towards citizens in the first place. Moreover, if the state violates citizens' civic rights in one area (e.g., by acting disrespectfully towards dissenters), citizens are not thereby permitted to violate their civic duties in another, unrelated area (e.g., by resisting with force). Both qualifications place limits on the range of justifiable actions that dissenters can take, and some may protest that these limits go too far. Why do we not allow dissenters to use uncivil tactics more fluidly and flexibly, and why do not allow citizens to respond uncivilly whenever there is injustice in a state? If the goal of theorizing on uncivil disobedience is to give dissenters more flexibility, are these restrictions not counter-productive?

I understand the concerns that some activists may have, but I believe that there are good reasons behind the Matching Principle's restrictions on uncivil disobedience. Even though (1) allowing citizens to respond uncivilly whenever there is injustice (even if the state has not acted uncivilly), and (2) allowing citizens to violate civic duties in one area in response to injustice in another area can afford dissenters more strategic space, it is difficult for one to find moral justifications for these permissions.

When the state has acted unjustly toward a subgroup of its citizens, but has not acted uncivilly towards that subgroup, there are likely to be alternative means of resistance that cause lesser damage than uncivil disobedience. For example, it may be that the state has merely arrested dissenters in accordance with the law but has not employed undue violence in their actions and has not been disrespectful to dissenters. In such cases, civil disobedience would remain an effective strategy for resistance, since dissenters need not worry about their lives and safety being threatened in the course of protests, and do not have a need to conceal their identities. Civil resistance would also be likely to garner more public support, since it imposes fewer negative costs to neutral citizens and causes less social disruption. Uncivil disobedience, on the other hand, would be an expensive alternative, considering the social costs that it can impose and the oppositions that it may engender.

Moreover, while the justification for the use of incivility under an uncivil state is relatively straightforward (with the Matching Principle and the Argument from Fairness), it is much more difficult to justify being the first party to initiate incivility. The Argument from Fairness cannot be invoked, since the state has not deprived citizens of their civic rights in the first place. The Argument from Moral Necessity introduced in Section 3.2 also cannot be used, since dissenters' objectives are likely achievable by other means such as civil disobedience. The Argument from Strategic Efficacy is also not likely to hold, as peaceful, civil protests are much more likely to succeed under such kinds of situations. Thus, none of the arguments we have examined provide

justification for dissenters to initiate incivility in a state. This shows that dissenters should use incivility as a response and defense, rather than an all-purpose weapon.

In the case where the state has violated citizens' civic rights in one area and dissenters want to respond by breaking civic duties in another area, justification is also flimsy. In particular, it is difficult to justify using violence as a response to violations of other civic rights (e.g., when the state violates the public's right to know by engaging in secret operations). As in the case of initiating incivility when the state is merely unjust but not uncivil, none of the Argument from Fairness, the Argument from Moral Necessity, or the Argument from Strategic Efficacy provide compelling reason for such kind of "spilling-over" of incivility. The Argument of Fairness cannot be invoked, since one's civic duty in one area does not get nullified by a violation of civic rights in another area. The Argument from Moral Necessity does not work, as it is difficult to show why dissenters have to use incivility in one area to respond to state incivility in another. Similarly, the Argument from Strategic Efficacy fails in this case, since breaking the civic duty corresponding to the violation is usually a better alternative than breaking an unrelated one.

Other than the lack of justifications, the "spilling over" of incivility also suffers from another critical problem. Dissenters initiating incivility in another area may give opportunities for the oppressive state to follow suit and act uncivilly in that area. As such, what is originally state incivility in one area will evolve into state incivility in multiple areas. We can imagine, for example, that if dissenters use violence as a response to government secrecy, it may give excuses for the state to fight back with violence. At that point, what is originally a struggle about state transparency would have become a massive, violent confrontation between dissenters and the state. In most cases, such escalation of affairs is neither desirable to dissenters nor helpful to their causes.

On the other hand, requiring dissenters to respond to civic rights violations by breaking the corresponding civic duty has an important advantage, that of highlighting the nature of the state's transgression. For instance, when a group of dissenters responds to police brutality by taking up arms, they remind spectators of the violent nature of the state's actions. By contrast, if a group of dissenters responds to state secrecy with violent means, the violence may distract the movement from its core objective, which is to make the state more open and transparent. Other than impacting activists' self-understanding, it may also cause spectators to be confused about the nature and aim of the resistance.

What this section hopes to show is that it is important to keep in mind and respect the limitations placed by the Matching Principle, as well as the boundary that it sets on the legitimate use of incivility. The permissions and restrictions given by the Matching Principle are two sides of the same coin, since they are based upon the same set of arguments. While it may seem tempting to accept the Matching Principle's permissions while ignoring its restrictions, one must either accept both as a package or reject them at the same time; otherwise, one risks holding a double standard and being theoretically incoherent.

## **6. Responding to Objections**

### 6.1 *An eye for an eye?*

The previous chapter introduced the Matching Principle as a moral principle for uncivil disobedience and clarifies its most important permissions and restrictions. In this chapter, I will discuss three possible objections to the Matching Principle, before defending the principle against each of them.

Some people may feel uneasy about the Matching Principle at the first sight, for it may remind them of the ancient principle of *lex talionis*, or "an eye for an eye". *Lex talionis* states that one is justified to inflict harm on another party, given that they have been inflicted equivalent harm by that party. As a retributivist theory of punishment, it was widely adopted by ancient legal

and religious codes, most famously the *Code of Hammurabi*, the *Old Testament*, and the *Quran* (modern Islamic Sharia law retains this feature of the *Quran*). However, as modern systems of criminal justice developed, it has been gradually displaced and regarded as a backward, barbaric principle (Fish 2008; Van Den Haag 1992). The most famous criticism of the principle comes from Martin Luther King Jr., who suggests that “an eye for an eye leaves everyone blind.” (King 1985) The message in that quote is that seeking exact revenge in every case sustains rather than resolves conflicts, and that when there are alternative, more constructive and humane ways to resolve conflicts, they should enjoy precedence over exact retaliation.

Since the Matching Principle suggests that citizens can act uncivilly in response to similar uncivil acts by the state, some may think that it is just a beautifully phrased version of *lex talionis*. Opponents may then suggest that we should reject the Matching Principle on the same grounds that we reject an eye for an eye as barbaric. However, this line of critique is problematic for three reasons.

Firstly, and most importantly, many people’s uneasiness about “an eye for an eye” arises under the assumption that there is a fully or mostly functioning legal system in the background, or that alternative (peaceful) means of conflict resolution are available. In those contexts, it is true that “an eye for an eye” would be both less effective and less reasonable than its alternative. However, in cases where appealing to the legal system or resorting to other methods is simply not an option, “an eye for an eye” may actually emerge as the most civilized and effective approach to securing justice. For example, in a “state of nature” situation where capable and reliable authority is completely absent and peaceful negotiations are impossible, one may find “an eye for an eye” as an appropriate moral principle, especially in comparison to the alternative principle that grants people unlimited freedom to attack each other. A tighter principle of exercising justice can leave victims unprotected, while a looser principle would open the door to unnecessary violence. In fact, many political theorists have noted that in

ancient civilizations where *lex talionis* was introduced as a norm for punishment, systems of criminal justice were often ill developed in a way that rendered more peaceful conflict resolution impossible (Fish 2008; Van Den Haag 1992; Waldron 1992). Against this background, *lex talionis* should be seen as a progressive principle encouraging restraint and proportionality, rather than a backward and barbaric principle encouraging excessive retaliation.

The Matching Principle only allows dissenters to act uncivilly against the state when the state initiates incivility against its subjects. In most cases, its “prima facie” component would also require that dissenters try out more peaceful means of protests before resorting to incivility. When all these conditions are met, alternative means of conflict resolution are often impossible. One cannot appeal to the state judiciary, since it is the opponent that they are fighting against. One also cannot appeal to the majority in society, since previous attempts (e.g., of civil disobedience) have shown that to be a futile route. For the oppressed few, the situation they are in is akin to one in the State of Nature, where they cannot rely on any external party but themselves. In such cases, I believe that using *lex talionis* as a guiding principle for action should not be seen as allowing excessive violence.

Secondly, “an eye for an eye” allows retaliation against private parties, while the Matching Principle prohibits such retaliation. In a world where every violation of civic rights gives the violated party the freedom to retaliate, one can foresee many private feuds taking place. One’s uncivil behaviors may easily trigger another’s retaliation with similar behaviors, and the antagonism between them may later involve more parties and escalate into larger-scale ones. Through this ripple effect, an incidence as minor as a person insulting, attacking, or physically harming another may evolve into a society-wide conflict. For this reason, a principle like “an eye for an eye” is unfit for the regulation of behaviors towards private individuals (especially when there is a criminal justice system in place). This, however, is not the point of the Matching

Principle, which limits the target of incivility to the state or its affiliates. The point of this restriction is to ensure that incivility is only used when it is absolutely needed – when the most reliable alternative, the state judicial system, cannot be trusted, and when all civil ways of conflict resolution have been attempted. With this restriction in place, the Matching Principle would not lead to excessive conflicts in society like *lex talionis*, and should not be objected to on that basis.

Thirdly, while “an eye for an eye” can be triggered by trivial violations of justice, the Matching Principle limits the target of uncivil acts to gross and systematic violations of justice. When many people think about a world with “an eye for an eye” as a penal principle, they would conceive of a world where people would brawl and fight with each other for the pettiest of issues. Such a world is difficult to live in, as it would be full of conflicts and danger. The Matching Principle, however, does not permit uncivil behaviors in response to small or unsystematic violations. Recognizing the gravity of uncivil actions and the impact they can have on society, it limits the use of uncivil disobedience to only situations where the state has repeatedly acted uncivilly towards its citizens. In those situations, incivility would be an appropriate response to injustice, and often also a necessary one. Thus, those who worry about petty conflicts arising in society should not be concerned with the Matching Principle.

### 6.2 Piecemeal Approach to Rights and Duties?

Another possible worry about the Matching Principle is that it provides an overly piecemeal account of our rights and duties. Under the Matching Principle, one’s obligation to remain peaceful towards the state is nullified when the state acts violently towards them. The same applies to the duty to remain respectful, the duty to respect the law and accept punishment, etc. Some may question whether this is the right way to think of our rights and duties with respect to the state, especially if they are believers in the state’s authority against the individual. Our civic obligations towards the state, they may argue, “come as a package” with the state’s

provision of basic security. Individuals are not in a position to bargain with the state on what duties they are to obey, as long as the state is minimally functioning and providing protection to the majority of members of society. In case some individuals do not want to obey, they should leave the state, instead of acting uncivilly and destroying the social order.

I believe that this position is ultimately untenable, as its supporters cannot provide a persuasive justification for the continual existence of citizens' civic duties when the state fails to guarantee citizens' civic rights. When the state fails to be public, accountable (non-evasive), and respectful towards its citizens, it does not make sense why its mere protection of basic safety should obligate the public to be public, accountable, and respectful towards it. If anything, it only obligates the public to remain peaceful, since the freedom from violence is the only thing that they have received from the state. In case the state also acts violently towards some of its citizens, those who are oppressed would further lose their obligation to remain peaceful. The mere fact that the state is guaranteeing the safety of some other members of society - even if they are the majority - should not give rise to any obligation on the oppressed people's part. Oppressed people do not have a responsibility to maintain the social order for a majority who is apathetic to their suffering, and who enjoys peace and prosperity at the expense of their welfare. Thus, the "package view" of people's civic rights and duties is untenable, and the Matching Principle should not be objected to on the ground that it is overly piecemeal.

### 6.3 Difficulty with Enforcement?

Some people may oppose the Matching Principle on the basis that it cannot be enforced in practice. Since uncivil dissenters are by definition breaking laws and resisting legal judgment, their actions cannot be bound by the state judiciary. Since they are also allowed to operate in covert and secretive manners, it can also be difficult for public opinion to regulate and constrain their behaviors. The lack of constraints seems to imply that even if the Matching Principle is widely acknowledged, its realization still depends on uncivil dissenters' self-regulations.

Dissenters will have full freedom to disobey norms set by the Principle, and do whatever they want to advance their causes. The result of that can be catastrophic, due to the violent and aggressive nature of uncivil disobedience. So even if the Matching Principle seeks to place boundaries on dissenters' acts, its attempt would ultimately be futile or even counter-productive, since it gives uncivil dissenters the possibility to claim that their behaviors are justified.

People who hold this line of criticism against the Matching Principle often also cast doubt on the very possibility of a moral theory on uncivil disobedience. On their view, uncivil dissenters (because of their violent, evasive, and covert nature) are simply not the type of people that can be regulated by moral rules. So instead of allowing uncivil disobedience and attempting to regulate it with detailed rules, one would do better by just placing a blanket ban on it since it gives no excuses for any types of uncivil dissenters to destroy social orders.

Is this criticism towards theories of uncivil disobedience (and in particular the Matching Principle) fair? I believe that it is not, and this is for three reasons.

Firstly, although it is true that the Matching Principle cannot be straightly enforced through channels that we are most familiar with, such as judicial processes and (in some cases) public opinion, it is not the only ethical and political principle for which enforcement is challenging. Consider, for example, the various principles within Just War Theory that we have repeatedly made reference to. The fact that the current international system is non-hierarchical and that international organizations (esp. the UN) do not have an independent force of their own implies that it is ultimately up to individual states to recognize the just war principles. If a dominant or hegemonic state decides to wage an unjust war against a weak state, international security and humanitarian laws would struggle to bound its actions. This, however, does not (and should not) stop philosophers and theorists from conceiving and advocating for the Just War Theory. For one thing, self-regulation with rules is better than no regulations. For another thing, political scientists have widely observed that informal mechanisms of enforcement such as

socialization, peer pressure, and naming and shaming can often play important roles in enforcing just war principles. Thus, in the case of Ethics of War, the lack of formal enforcement does not constitute sufficient reason for one to give up proposing and recognizing moral principles. But if we believe that there can be moral codes for something as violent and as uncontrollable as wars, then the same should also hold for uncivil disobedience, which is usually far lesser in severity.

Secondly, the “no enforcement” criticism ignores many ways by which recognition of the Matching Principle can influence uncivil dissenters’ behaviors. The claim that uncivil dissenters would not follow moral principles because they are illegal, violent and covert is simply false. In fact, many uncivil dissenters take extra care in recognizing moral principles and finding justification for their actions, precisely because they realize the gravity of their actions<sup>10</sup>. Thus, if the Matching Principle is widely recognized in society, one can reasonably expect a lot of uncivil dissenters to plan their actions and choose their means of resistance in accordance with the Principle.

Moreover, even though certain cases of uncivil disobedience can fall under the public’s radar because of their covert and evasive nature, uncivil dissenters will ultimately have to rely on the public’s support in their battle against injustice. Even in cases where the democratic majority is apathetic to their cause, winning over the remaining part of the populace is still important. For this reason, if the Matching Principle is widely recognized among the general public, the effect of public opinion and socialization will provide sufficient motivations for uncivil dissenters to constrain their actions by the Principle. As one can see from the example of the Ethics of War, the influence of these “softer” enforcement mechanisms is often quite significant. Therefore, the lack of formal or “hard” enforcement mechanisms on acts of uncivil

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<sup>10</sup> See, for example, Anonymous’ mission statement (<https://hacktivismanonymous.wordpress.com/mission-statement/#:~:text=Anonymous%20keeps%20those%20with%20financial,reputations%20and%20uncovering%20their%20secrets.&text=While%20we%20bring%20the%20stories,the%20word%20of%20the%20people>).

disobedience should not lead us to a complete pessimism against all theories of uncivil disobedience.

Thirdly, the alternative of placing a blanket ban on uncivil disobedience is less appealing than it may seem. If one believes that moral principles will not have any influence on uncivil dissenters, then there is no reason to think that a blanket ban would stop them from doing what they have already planned to do. On the other hand, if one believes (like I do) that most uncivil dissenters have a sense of justice and would agree to be bound by reasonable moral principles, then imposing a blanket ban on their uncivil acts would severely constrain their acts of resistance and put them at a great disadvantage against their oppressor. In either case, a blanket ban appears as the less appropriate principle for regulating uncivil behaviors. Thus, we have good reasons to believe that when it comes to uncivil disobedience, having rules is better than having no rules but a blanket ban.

## **7. Implications of the Matching Principle**

### 7.1 An “Just War Theory” for Social Movements

In the previous two chapters, I proposed, justified, and defended the Matching Principle. In this chapter, I will explain how the Matching Principle can be applied to real-world cases of uncivil disobedience. In particular, I will demonstrate how the Matching Principle allows us to make the first steps towards building a “Just War Theory” for uncivil disobedience.

As we have seen in section 6.3, there are important parallels between the ethics of uncivil disobedience and the ethics of war. Both subfields of applied ethics attempt to define moral rules that govern an area of human action that is considered both dangerous and uncontrollable. Both of them suggest that while conflicts are sometimes inevitable and ethically justifiable, there should be limits and regulations to participants’ behaviors during the conflicts.

In some sense, we can even see the ethics of disobedience as a direct extension of the ethics of war. As suggested in Chapter 4.1, different modes of confrontation between citizens and the

state are better seen as existing in a continuum, rather than existing as distinct, clear-cut categories. In that continuum, uncivil disobedience finds itself situated in between civil disobedience on one side, and full-on military revolution or civil wars on the other side. If one accepts this view of uncivil disobedience and its relationship to large-scale wars, then presumably the same set of moral rules that apply to wars would also apply to uncivil disobedience, though perhaps with some changes.

In the ethics of war, the most recognized and widely cited philosophical tradition is the Just War Tradition. Having its origins in medieval scholasticism, the Just War Tradition has been famously picked up and redeveloped by Michael Walzer, who uses it as a theoretical framework to evaluate the ethicality of modern wars (Orend 2016; Walzer 2015). Just War theorists like Walzer believe that some wars are worth fighting, and that there should be moral rules that govern behaviors in war. They therefore reject both pacifism – the claim that no wars should ever be fought – and realism – the claim that morality is either impossible or irrelevant to wartime behaviors.

Traditionally, Just War theorists divide their principles into two major categories: principles of *jus ad bellum*, which discuss whether the cause of a war is just, and principles of *jus in bello*, which discuss whether a war is fought justly (Orend 2016; Walzer 2015). In the following two sections, I will show how the Matching Principle allows us to derive similar sets of rules for uncivil disobedience.

## 7.2 “Jus ad Bellum” for Acts of Disobedience

In Latin, *jus ad bellum* refers to “right to war”. Just war principles of *jus ad bellum* concern when states should be allowed to resort to war. The most important such principle is the principle of just cause, which defines legitimate objectives of war. According to what is now called “traditionist” Just War Theory (defended most famously by Walzer), wars are only legitimate when they are fought for (1) national defense against external aggression, or (2)

humanitarian intervention when there exist “crimes that shock the moral conscience of mankind” (Walzer 2015). “Revisionist” Just War Theory challenges this proposition for being too restrictive, claiming that the bar on foreign intervention should be lower or that other objectives (e.g., redistribution of wealth) can also be legitimate (Caney 2005, Lippert-Rasmussen 2013, Øverland 2013, Shue 1997).

In the ethics of disobedience, the Matching Principle essentially suggests that there can only be one just cause for the use of incivility: that of responding to the state’s violation of a corresponding civic right. Other causes, such as using incivility to respond to mere injustice (without incivility) or using incivility in one area in response to incivility in another area, are deemed illegitimate. In addition, the Matching Principle prohibits the use of incivility for personal gains and private interests. These restrictions ensure that whenever uncivil disobedience is used, it is used for the right kind of reasons.

Another important principle of *jus ad bellum* is the principle of limited objectives, which suggests that wars are only just if their goals are limited (Walzer 2015). Under this rule, wars that attempt to go beyond their just cause, such as wars that intend not only to recover lost grounds but also to usurp the enemy’s territory, are ruled out as unjust wars. A similar rule can be derived for uncivil disobedience from the Matching Principle. Uncivil disobedience should only aim to deter the state’s uncivil acts or defend the public against them, and it should not attempt to overthrow the entire state (unless situations are such that a full-on military revolt is necessary). Setting this limit is important, as uncivil disobedience can easily escalate into wars and cause massive social damage, unless dissenters have limited objectives in mind.

Having these rules of *jus ad bellum* for uncivil disobedience allows us to address one of the two limitations we identify with current theories of uncivil disobedience, which is the application of uncivil disobedience in less-than-nearly-just societies. The rule of just cause suggests that uncivil disobedience is to be used as a response to incivility from states. As a

state's incivility towards its citizens increases, more uncivil approaches to resistance would be justified. Assuming that the degree of state injustice and incivility are positively correlated in most cases, this implies that as a state becomes more unjust, more uncivilly disobedient acts would be morally justified under that state. In other words, a wider range of uncivil tactics would be allowed when the state becomes more oppressive.

### 7.3 "Jus in Bello" for Acts of Disobedience

Rules of *jus in bello*, or justice in war, concerns appropriate behaviors of soldiers during wars. In traditional just war theory, there are two primary rules of *jus in bello*: the rule of discrimination and the rule of proportionality.

The rule of discrimination in Just War Theory suggests that there is a fundamental distinction between combatants and non-combatants. While it is permissible to attack combatants in wars (using normally accepted weapons), it is never permissible to intentionally attack non-combatants. The reason behind that is that combatants, by engaging in warfighting, have chosen to waive their rights to life and liberty (Walzer 2015). Non-combatants, on the other hand, retain such rights and therefore should not be targeted.

In the ethics of disobedience, the Matching Principle also implies a principle of discrimination. It suggests that the state and its affiliates (those who knowingly associate themselves with state incivility) are the only legitimate targets of incivility, and that other parties, such as innocent citizens and foreigners, should never be targeted in uncivil acts. Whether collateral damage to these innocent third parties should be allowed is up to debate, and we will discuss it briefly in Section 7.5.

Like the other major arm of *jus in bello*, the rule of proportionality in Just War Theory states that the means employed in a war should be proportionate to the aims of the war. For example, if a state invades another state by sending over a small troop, the rule of proportionality would allow the invaded state to respond by sending another troop to counter the attack, since that is

a proportionate response. On the other hand, if the invaded state responds by dropping an atomic bomb, the action would be unjustified because it is not a proportionate response. The assumption underlying the proportionality principle is that actions in war inevitably lead to harm, and harm is intrinsically bad (Orend 2016). Therefore, military actions need to be backed up by positive reasons, such as the achievement of peace or the deterrence of aggression. Furthermore, the good achieved or the bad averted by the war should be at least on a par with the foreseeable negative impacts of war, since otherwise the war is not worth its hefty (social and economic) cost.

In the ethics of disobedience, the Matching Principle implies a similar rule of proportionality. By tying the use of incivility to the violation of civic rights, the Principle suggests that the intensity of uncivil measures used in resistance should be proportional to the degree of incivility that citizens have experienced from the state. If the state's uncivil practice is limited (e.g., when it has acted offensively but not violently towards a minority group), then only "milder" forms of uncivil disobedience (e.g., hip hop dissent, offensive parodies of the state) should be used. On the other hand, if the state's incivility is egregious (e.g., when it initiates indiscriminate violence against citizens), it would be morally justified for citizens to use the most extreme uncivil tactics in response.

With rules of *jus in bello* established for uncivil disobedience, we are now in a position to also address the second limitation of the current literature on the topic: the lack of rules that govern behaviors during uncivil disobedience. The two rules defined above – the rule of discrimination and the rule of proportionality – show that it is very much possible for there to be ethical rules on uncivil dissenters' behaviors. As research in the area of uncivil disobedience develops, we can also expect more similar rules – such as those on the permissibility of collateral damage – to be proposed and defended (see Section 7.5 for a brief discussion). Therefore, even though devising ethical rules for uncivil disobedience is a relatively

unexplored area, it is nonetheless a promising one, especially when we are equipped with a guiding moral principle like the Matching Principle.

#### 7.4 Application to Particular Instances of Disobedience

Now that we have derived a set of principles governing uncivil disobedience, we are in a position to apply them to actual instances of uncivil disobedience. Doing so allows us to evaluate whether a movement of uncivil disobedience is just, and whether particular acts within that movement are morally appropriate.

Recall that in Chapter 2 of this thesis I examined several types of resistance that the Classical Theory fails to recognize as justified. These include covert hacktivist acts, evasive whistleblowing acts, and violent protests in response to police brutality. With the Matching Principle and its definition of just cause, I believe that one can provide robust justifications for these acts of resistance.

Acts of hacktivism are often conducted as a response to a lack of transparency in government operations. Typically, government officials have some secret agenda “under the hood”, which they intentionally hide from the public for selfish reasons. Sensing signs of such secrecy, hacktivists employ computer-based techniques to reveal government plans or launch attacks against their computer systems. Most hacktivists choose to conceal their identities and operate in a covert manner, announcing their operations only after they have achieved results. Even though the Classical Theory would rule these actions out as uncivil and thus illegitimate, the Matching Principle suggests otherwise. It suggests that since the state has violated citizens’ right to know in the first place, hacktivists have no duty to disclose their identity and plans to the government. The hacktivists’ covertness “matches” a similar covertness on the government’s end, and it is therefore justified as a tactic of resistance.

Like hacktivists, government whistle-blowers typically take action when they notice (as persons inside the government) that the state has acted in ways that are contrary to public

interests. Knowing that the state cannot be held accountable unless the general public is informed of its acts, whistle-blowers reveal the details of the state's transgressions to the people. Most whistle-blowers face the charge of treason for their actions, and many choose to evade this legal punishment by hiding themselves or escaping to another country. From the perspective of the Matching Principle, their evasive behavior is well justified. Since the state government has deprived the public of their right to hold it accountable, the whistle-blower does not have a duty to be held accountable for their act of whistleblowing.

In the case of police brutality, the application of the Matching Principle is perhaps even more straightforward. When it has been proven that the state's police force has acted violently towards certain subgroups of citizens in a systematic manner, the Matching Principle suggests that citizens can resist violently as a response. Since the state has deprived its citizens of their right to equal protection against violence, citizens are no longer obligated to remain peaceful against the state. They are then allowed to use force proportionate to the force that the state has used and develop weapons for their resistance as they deem necessary.

As previous chapters have emphasized, the Matching Principle is not only a Principle of permissions, but also one of restrictions. Therefore, in addition to providing justifications for certain acts of uncivil disobedience, it also condemns other acts of uncivil disobedience that fail to meet its standards. These include the use of incivility without proper justification, as well as the intentional harming of innocent third parties.

Unlike the instances of uncivil disobedience discussed above, some acts of uncivil disobedience lack a clear and well-founded justification. Take the Capitol Hill Riot in January 2021 as an example. Claiming that the 2020 Presidential election was rigged and calling for votes to be recounted, rioters violently attacked the capitol police and occupied the Capitol complex, resulting in significant casualties. The violent and uncivil nature of their act is not backed up by a claim of state incivility; instead, the only charge that one can identify from the

rioters is that the state has been unjust in the election (which, to make matters worse, has proven to be a false claim). If one applies the Matching Principle, it is clear that the violent riots would not be justified. The Capitol Hill riot thus provides an example in which the Matching Principle can help us rule out illegitimate instances of uncivil disobedience.

Other than condemning an entire movement of uncivil disobedience as unjust, the Matching Principle may also allow us to accept certain movements of uncivil disobedience as just overall, while critiquing specific unjust elements within them. For example, during several anti-racism/Black Lives Matter protests in the United States over the past decade, one can sometimes observe acts of random looting, which destroy irrelevant stores and harm innocent storeowners<sup>11</sup>. Even though the anti-racism protests as a whole would be seen as an acceptable instance of uncivil disobedience under the Matching Principle (because of the previous history of state/police violence against racial minorities), the acts of looting would be condemned by the Principle, since they violate the principle of discrimination and the principle of proportionality. Those acts intentionally target innocent third parties and employed means that are neither necessary nor helpful for the achievement of the protestors' objectives. For these reasons, the Matching Principle suggests that while we should accept limited violence in the anti-racism protests, dissenters should distance themselves from the looters who used an undue amount of incivility (and arguably for personal/private benefits).

The above examples merely demonstrate some possible ways to apply the Matching Principle. As people's interpretation of different terms in the Principle (e.g., "corresponding rights and duties") and their construal of different disobedient acts may differ, they may be inclined to apply the Principle in different ways and thus reach different conclusions about specific instances of disobedience. Therefore, one does not have to agree with what I have said in this

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<sup>11</sup> There are good reasons to believe that in most cases, the people who participated in the looting are unrelated to the people who participated in the other protests.

section to accept the Matching Principle as a valid guiding principle for uncivil disobedience. On its own, the Matching Principle only sets out a list of criteria for an act of uncivil disobedience to be justified; it says nothing about whether a particular uncivil act meets those criteria, which should be left to individual judgments. Stressing this point is important, since the Matching Principle does not aspire to be a solve-it-all formula that provides an answer to every question on uncivil disobedience, but rather just a guiding principle and a framework of reflection that tells one how to begin to think ethically about uncivil disobedience.

### 7.5 Further Topics in The Ethics of Disobedience

Besides allowing us to systematize moral principles, seeing the ethics of (uncivil) disobedience as analogous to the ethics of war has another advantage. Since the ethics of war (and in particular, the Just War tradition within it) is a well-discussed theme in Political Theory and Philosophy, many questions have been raised and answered in the field of study. The issues that these questions touch on are often issues that are also pertinent to disobedience, but ones that are relatively under-explored because of the topic still being in its infancy. Therefore, studying them can often allow us to find worthy new areas of research in the ethics of disobedience.

In the remaining parts of this chapter, I will highlight some of these commonly discussed questions in Just War Theory and discuss how analogous questions can be further studied under the ethics of disobedience. My goal here is not to provide an answer to all of these questions – that would be impossible to achieve within a single thesis. Nor do I claim that the Matching Principle alone is sufficient to resolve those issues. My hope is that raising these questions can allow theorists to pay more attention to further important areas in the ethics of disobedience, and that further research on these areas can enrich the Matching Principle and provide us with a comprehensive theory of disobedience.

In the area of *jus ad bellum*, the legitimacy of humanitarian intervention is a fiercely debated area in Just War theory. The topic involves one state (or several states) using force on behalf of citizens of another state who suffer from humanitarian abuses. On this issue, some theorists and diplomats have suggested that state sovereignty is supreme, and that other states should never interfere in the internal affairs of a country (Ayoob 2002). Others suggest otherwise, arguing that states have a responsibility to protect (R2P) citizens of all countries, and that they should try their best to extinguish grave instances of humanitarian violations as soon as possible (Bellamy 2009).

In the ethics of disobedience, there is also an analogous question of whether un-oppressed parties can legitimately resist on behalf of, or in addition to, oppressed parties. When the disobedience is civil the issue is less controversial, as its negative impact is relatively limited, and all participants accept legal punishment for their actions. When it comes to uncivil disobedience, however, matters become trickier. Since uncivil disobedience can often result in great disruptions to societies, there are more reasons to exclude “outsiders” from acting uncivilly. Moreover, since uncivil dissenters can be allowed to anonymize their identities and evade legal punishments, allowing non-oppressed parties to join uncivil disobedience may enable opportunists with malicious intents to enter and take advantage of the movement<sup>12</sup>. Another related and similarly sensitive question is whether foreign individuals and states should ever be allowed to assist uncivil dissenters. I do not have well-developed answers to these questions, but I believe that more theorizing would allow us to develop principles in this area.

Another commonly discussed topic under the *jus ad bellum* side of Just War Theory is the legitimacy of pre-emptive and preventive wars. In International Law (the United Nations

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<sup>12</sup> I believe that we have witnessed some instances of this during the anti-racism / Black Lives Matter protests in the United States, where those who are not the primary victims of racial injustice made their way into the protesting crowd and initiated acts of looting.

Charter), self-defense with force is only permitted when an actual armed attack takes place, or when the Security Council identifies a credible threat to international security. However, many theorists of Just War believe that pre-emptive wars, wars that are fought to deter or dissolve an imminent attack, should also be allowed. Walzer, for example, argues that pre-emption should be justified when an enemy shows “a manifest intent to injure” and “a degree of active preparation that makes the intent a positive danger” (Walzer 2015). Some diplomats go further to argue that not only pre-emption but prevention – attacking in response to a distant danger – should be allowed (e.g., in the United States’ 2003 war against Iraq).

In the ethics of disobedience, an analogous topic is whether uncivil dissenters should be allowed to “strike first” when they see a credible threat that the state will treat them uncivilly. The Matching Principle, as it is currently phrased, only allows uncivil disobedience to resist uncivilly after the state has acted uncivilly. This, however, is a conservative formulation that could be challenged and revised. Depending on one’s view on the potential risks of uncivil disobedience and the importance of hindering state injustice, one may arrive at different conclusions on the threshold of injustice that triggers legitimate incivility. Again, further research is needed for there to be a conclusive answer.

On the *jus in bello* side, there is a long-standing debate on whether collateral damage, or foreseeable but unintended damage, is ever allowed, and if so when they would be allowed. Most ethicists of war oppose the intentional attack of innocent third parties (in particular civilians) in war. However, some argue that certain actions in war, such as air-dropping bombs to areas with a significant civilian population to destroy enemy forces, do not intentionally attack but only collaterally harm innocent third parties. Citing the Scholastic Doctrine of Double Effect (or some revised version of it), theorists have argued that such military actions can sometimes be justified (McMahan 1994, Walzer 2015). Others have rejected these

arguments and claimed either that the civilian/combatant distinction is empty or that combatants should avoid all foreseeable harm to civilians (Lichtenberg 1994).

Like Just War Principles, the Matching Principle respects and requires non-combatant immunity, limiting legitimate targets of incivility to the state and its affiliates. Thus, it also faces the question of whether collateral damage should be allowed. This is an important question in the Ethics of Disobedience, since many acts of disobedience, civil or uncivil, will inevitably impose some costs or harm on citizens who choose to stay neutral. Civil tactics such as mass sit-ins and road-blocking may cause nuisances to people (as we have seen from reactions to the Occupy Central and Occupy Wall Street movements) and affect people's livelihoods (through impacting the economy), while uncivil tactics can result in social unrests, damage of private properties, as well as accidental harm to innocent citizens (in cases where violence is used). Therefore, a comprehensive theory on the ethics of disobedience must discuss whether collateral damage can be justified, and if so, under what occasion they would be appropriate.

## **8. Conclusion**

What I have argued in this thesis is that uncivil disobedience: (1) offers a legitimate alternative and complement to other methods of resistance, (2) can and should be guided and regulated by moral principles in its initialization and development, and (3) can and should be bounded by the Matching Principle.

On point (1), I suggested that the Classical Theory on civil disobedience does not offer a sufficiently comprehensive theory of resistance, due to its narrow focus on nearly just state and on creating large-scale political changes. Since many states are too oppressive for civil disobedience and dissenters can have different objectives, limiting oneself to the narrow means allowed by the Classical Theory greatly reduces dissenters' ability to respond to gross injustice. Moreover, since states can often act uncivilly towards dissenters, prohibiting uncivil responses

by dissenters can often give oppressive states an unfair advantage. For this reason, opening up the door to uncivil means is both necessary and justifiable.

On point (2), I argued that allowing incivility as a possible way of response does not mean allowing incivility in any case. As much as one should recognize uncivil disobedience as a viable alternative that can be strategically superior to its civil counterpart, one should also acknowledge that it comes with high risks and costs, and should be exercised with great caution. As critics have rightfully noted, unbounded incivility can wreak as much havoc as unjust rule by an autocratic state. The implication of this, however, is not that we should give up uncivil disobedience as an alternative, but that we should supplement it with a thorough set of moral codes. In the same way that there is an Ethics of War for large-scale battles, one should seek to develop an Ethics of Resistance for uncivil disobedience.

On point (3), I presented the Matching Principle as a strong candidate for an ethics of uncivil disobedience. Through requiring uncivil political responses to “match” or correspond to the state’s incivility towards its citizens, the Matching Principle opens up uncivil disobedience as a legitimate way of resistance, but also sets clear boundaries for its exercise. It provides guidance on how we may theorize about resistance in less just states, by suggesting that the severity of permissible resistance should be proportional to the severity of injustice. As a principle that limits the target of incivility to the state, prohibits harming of innocent parties, and requires proportionality between aims and measures, it also strikes a good balance between giving dissenters too little flexibility and giving them too much.

If one accepts the Matching Principle, one can derive from it a “Just War Theory” for uncivil (and potentially also other kinds of) disobedience, with rules both covering *jus ad bellum* (what justifies disobedience) and *jus in bello* (what one should do during disobedience). One would also be able to evaluate the legitimacy of particular acts of disobedience using the analytical

framework provided by the principle, identifying rightful acts of disobedience while revealing uncivil acts that are based on shaky grounds.

Being able to identify and applaud just instances of civil disobedience would no doubt be an important achievement, for it gives numerous uncivil activists the credits they are due. However, it is no less a significant achievement that we would be able to identify and condemn unjust uncivil disobedience.

When I begin planning and conceiving this thesis in early 2020, examples of uncivil disobedience I considered mainly included the Anti-Extradition protest in Hong Kong, anti-racism protests in the US, as well as hacktivist and eco-activist movements. Never would I have imagined that over the course of writing this thesis, I would witness three more major waves of uncivil disobedience in the US, and many more around the globe<sup>13</sup>. In Minneapolis and many other major cities, the murder of George Floyd by the US police on May 25<sup>th</sup>, 2020 caused numerous acts of riots, vandalism, and looting. Less than five months later, the murder of Walter Wallace Jr. in Philadelphia incited another round of mass riot.

Both waves of protests, like previous waves of anti-racism/ Black Lives Matter protests, have raised national and international attention, and have led the public to reflect once again on the possibility and boundary of incivility in protests. In my view, both events provide good thought materials for those theorizing on uncivil disobedience, as both contain justified instances of incivility (e.g., where protestors defend themselves with force against excessive police violence) and unjustified ones (e.g., where some group of protestors/ opportunists looted random storefronts and harmed innocent citizens). Applying the Matching Principle to events like those shows us how useful it could be in guiding protestors' actions, and how urgently we are in need of an ethical principle for uncivil disobedience.

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<sup>13</sup> Consider Myanmar which is currently (as of March 2021) resisting against a military takeover, and numerous countries where people uncivilly protest against quarantine policies.

In January 2021, a very different act of uncivil disobedience occurred in the wake of the US presidential election. Dissatisfied with the results of the election, supporters of ex-president Donald Trump raided the Capitol Complex, vandalized the buildings, threatened to inflict harm on state officials, and attacked the Capitol police with weapons ranging from pipe bombs to Molotov cocktails. The riot resulted in five persons' death, more than 140 people's injuries, and an incalculable amount of economic and social cost.

In my opinion, the Capitol Hill riot was a paradigmatic case of *unjust* uncivil disobedience that the Matching Principle would call out and condemn. Participants of the riot justified their actions on claims that are thoroughly false, and many struggled to even come up with a cogent argument on why their act was an appropriate response to the injustice that they claim they were facing. They initialized incivility to state forces that did not act uncivilly towards them, and used a hugely disproportionate amount of violence and vandalism throughout their raid. Moreover, they immediately escalated their actions to the level of uncivil riots, disregarding numerous other available (legal or civil) channels through which they could have expressed their discontent. As such, it fails to meet most, if not all requirements of the Matching Principle.

As contemporary societies become increasingly divided and conflictual, as authoritarian and populist governments emerge all over the world, and as the tools available to protestors continue to increase, we should expect to see in the near future increasing cases of both just and unjust uncivil disobedience. Merely dismissing them as barbaric or posing a blanket ban on all uncivil acts would neither be fair to just dissenters' causes, nor helpful in appeasing unjust dissenters' anger. For this reason, we need more ethical theorizing on the use of incivility in politics, as well as more elaborate theories on the boundary of justifiable disobedience. Through writing this thesis and proposing the Matching Principle, I hope that I have contributed my small part to this timely and valuable mission.

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