

Transnational Civil Disobedience: Understanding illegal political dissent beyond borders

By

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DECLARATION

I, undersigned Elettra Repetto hereby declare that this dissertation contains no materials accepted for any other degrees, in any other institutions. The dissertation contains no materials previously written and/or published by any other person, except where appropriate acknowledgment is made in the form of bibliographical reference.

Vienna, the 28th of February, 2022

Elettra Repetto

A handwritten signature in black ink that reads "Elettra Repetto". The script is cursive and fluid, with the first letter 'E' being particularly large and stylized.

To the women in my life,

And to those who risk being imprisoned for protesting the war

ACKNOWLEDGMENTS

I have closed my thesis in a moment of war when food and shelter and being able to communicate with loved ones are the important things to worry about, surely not philosophy. My last days of revision, the days I had left for being able to concentrate on the minutia, the formatting, the acknowledgments, those days I had figured as being relaxing, have been completely absorbed by the news about Ukraine and waiting for messages that confirmed me my friends were safe. Friends I would not have met if I had not entered CEU and whose names belong here, in the acknowledgments. Revising my work seemed such a trivial activity, but then I have realized that even in war people need more than food and shelter and that any work of abstraction remains important even when others are the main necessities for survival. For this thought alone already, some people know I owe them my gratitude.

As for this particular piece of work, there are many people I want to thank.

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ABSTRACT

This thesis reviews the concept of civil disobedience as defined by Rawls, expanding it beyond borders, and focuses on its consequences, especially the unintended harmful ones. The main features associated with disobedience, its political and civil nature, its nonviolence, and its communicativeness are analyzed and tested transnationally while I also focus on the agents of illegal political dissent and their motivations. Departing from an understanding of disobedience where citizens were the agents par excellence, I introduce migrants but also digital actors such as hackers and whistleblowers as the new agents of change, alongside social movements and NGOs. Their disobedience is transnational in its crossing borders in diverse ways I will explore, as it addresses transnational targets and denounces problems that affect the world or different states in the same way, like climate change. To justify such acts, on the one side, I focus on the wrongs disobedience normally contests, i.e. violations of rights, the lack of political participation, the unconstitutionality of the law, but I also introduce the possibility that civil disobedience is justified when it legitimately responds to a serious threat in a preventive manner. On the other, I deal with the natural duties that each of us has and that apply globally, and that in some cases can justify disobedience or even make it an obligation when we cannot discharge our duties otherwise. The last part of my thesis is dedicated to the consequences of *transnational* civil disobedience (TCD), and explores whether TCD could still be justified the moment it causes damage to people, who are not bystanders, and who are already disadvantaged or are exactly those protesters wanted to help. My answer involves considering human beings as autonomous and forces protesters to take into account the interests of the people they are protesting for or who might be in some way affected by their disobedience. This requires protesters to take into account the possible affected parties in planning their protests, both making sure protesters do not act on others' behalf without

them knowing, and, later, discharging the duty to redress those they may affect. This holds true even when their protest is morally motivated and all things considered just and good. Here, the specific agents on whom the duty of reparation falls, as well as the methods to redress people are only hinted at, and open to a new direction of research.

FOREWORD

These days, Ukraine is under attack. Russia has decided to invade the independent Republic of Ukraine and has started bombing indiscriminately the entire country, hitting airports, public buildings, schools, and hospitals. People are hiding in schools basements transformed into bomb shelters and sleeping in the metro. Before such a horror, Russian people went to the streets and protested. Hundreds have been already arrested and many more will be. Anonymous, a collective of hackers, has taken down Russian governmental sites to oppose the decision to wage war. Legal protests and demonstrations of support are being organized everywhere in Europe. My thesis ends these days, not only with an unjust war but also with the images of people who oppose it, by being ready to be put in prison to defend others, to support others, to not be associated with a war of aggression that, like any war, will only bring poverty and sufferings, wounding people long after the explosion of the last bomb.

INTRODUCTION

Let your life be a counter-fiction to stop the Machine.

H. David Thoreau

I entered CEU when it was still in Budapest, before the government decided that it was an institution non grata. A few months later, protests to save CEU started and accompanied my own research for months. At the same time, Trump got elected as President of the United States, which prompted other protests, and the Black Lives Matter movement grew after yet another killing of an African-American. While the demonstrations and occupations I witnessed and took part in were legal, they helped me shape the argument I am presenting to you here, and obliged me to question the legitimacy of the agents that could occupy a square and of the means they could legitimately use, not to mention the question of power and privilege I was confronted with, especially while in the US, i.e. should I have participated in the Black Lives Matter movement, am I acting superficially when voicing someone else's claim? It is confronting what was happening in the world with old definitions and justifications of civil disobedience that pushed me to rethink the concept of disobedience to render it more adequate to an already changed world.

Thus, while concentrating on the expansion of civil disobedience beyond borders and its consequences, this work will address the following questions: Is it legitimate to use violence to advance a just cause in a decent political system? How can corporations be disobeyed if they do not pass laws themselves? What does it mean to act politically in a transnational arena with no global lawmakers nor global representatives to address? Should you intervene in someone else's life in solidarity, and should

you care if some people end up being worse-off because of your intervention, provided your actions are promoting justice overall?

In particular, this work revises the Rawlsian paradigm and applies it beyond borders, recognizing certain transnational illegal political acts as forms of transnational civil disobedience (TCD), and focuses on the problem of unintended harms transnational civil disobedience might generate, especially when protesting on behalf of unaware third parties. Departing from the evidence that we already live in a world where politics transcends borders and corporations heavily influence the lives of people worldwide, my research provides reasons to revise civil disobedience, as a political and collective expression of dissent and to consider it in transnational terms. In our globalized world, individuals protest for reasons that concern them as persons and not merely as citizens, and have a growing influence on each other also as consumers, regardless of borders. This renders them more capable to harm, but also to help which in turn makes their reciprocal moral duties more stringent, and might oblige them to resort to disobedience as a way to discharge them. At the same time, people in the richer part of the world run the risk to play the role of unrequested saviors, intervening in situations they do not know in-depth and causing more harm than good to those who are already suffering from those same wrongs protesters combat. Thus, while I propose a broader understanding of disobedience and justify acts even beyond borders, my work also intends to cast a light on the harmful consequences transnational civil disobedience may have. Despite the just causes that motivate disobedients, there is the risk that protests become the acts of privileged agents who play the revolution at the expense of others, namely exploited workers whose life prospects could worsen if disobedience is successful in its demands. Therefore, to minimize the harm produced by an act of all-things-considered justified disobedience and show respect for the agents involved, I claim demonstrators need to face the consequences of the success of their disobedience, and not simply of

their illegality, even when their disruption brings more good than harm, and be ready to support those they contribute making less economically independent.

The matrix of civil disobedience

In Chapter 1, after establishing we do have a duty to obey the law grounded in our necessity for coordination, the respect we owe to our fellows, and our reciprocal duties, I present a definition of domestic civil disobedience, highlighting the differences between disobedience and revolution on the one side, and conscientious objection on the other. I then depart from the definition of disobedience given by Rawls to dissect it and revise it. Rawls defined 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, 320). Citizens, in this framework, are the only ones justified in resorting to disobedience when the majority in power disregards certain minority’s rights, or in general, before cases of rights violations they themselves suffer, when acting nonviolently, in concord with other minorities and as a last resort after other legal mechanisms have failed. Disobedients are justified only insofar as they are responsible for their acts, which for Rawls means that they have to accept the punishment that follows their illegality, as a way to demonstrate the sincerity of their commitment. In the Rawlsian framework, disobedience is a tool against the state that disobedients themselves, in their capacity as citizens, have contributed to empowering or whose decisions they have to bear.

This understanding of civil disobedience is surely not apt to account for the world as it is now, nor to capture the nuances of contemporary disobedience in the present globalized arena. If we followed the Rawlsian state and citizen-centered paradigm, many actors that now occupy the streets, migrants among them, would not qualify as civil disobedience actors, and the secrecy and anonymity utilized by some would disqualify acts that I conversely include in the definition and also justify. In my

framework, civil disobedience includes acts that while remaining political and morally motivated, are not primarily communicative, nor do they imply an ex-ante disclosure of the plans of the disobedients, nor are necessarily nonviolent, but rather mostly so. Indeed, I claim that a limited amount of violence does not necessarily disqualify an act from being civil, nor does the avoidance of legal punishment do it either. There are various ways in which people can be responsible for their acts and show the sincerity of their intentions, by enduring to live in exile for instance, such that legal punishment is not a necessary, not even a sufficient requirement in this regard. As for the sense of justice of the majority, I intend it as a moral capacity, rather than referring to a specific understanding of what justice requires. The idea that a civilly disobedient act, to be as such, has to be political, remains nonetheless central. At the same time, what changes is the way I intend the polity of reference, not conflated with the nation-state, but understood it also in transnational terms. Even for those who criticize Rawls (Brownlee 2012; Celikates 2016a), the attention has been mostly on the boundaries of disobedience, rather than on its borders, with few exceptions (Cooke 2019; Allen 2017; Ogunye 2015) but even in these cases, their analysis differs from mine in their approach and in the questions they pose. Still, not all political protests fall in the category of civil disobedience, and yet I acknowledge they can be justified in their own terms, such as the case of anti-fa, which I briefly touch upon.

Taking disobedience beyond borders

The conceptual analysis that occupies the first part of my work is propaedeutic to Chapter 2, since it leaves us with a revised and more inclusive understanding of civil disobedience we can test beyond borders. The transnationalization of disobedience is necessary to include as expressions of civil disobedience, those illegal political and morally motivated acts that are brought about by non-members, contest transnational wrongs, such as climate change, or target transnational entities. More

precisely, with transnational disobedience, I intend illegal, political, and morally motivated acts brought about by citizens, but also migrants, by individuals acting alone, or jointly in non-governmental organizations, but also by digital disobedients, protesting as people, and not always as citizens, attacking practices and policies beyond borders. Following the conclusions I have reached in Chapter 1, I contend these agents exhibit the fundamental characteristics to be civilly disobedient even when they act anonymously or do not always undergo trial. Understanding civil disobedience in transnational terms matters as it highlights the global scope of the expressed grievances, the relevance they do have for individuals regardless of their membership status, and the fact that disobedients urge the responsibilities to be borne globally. Even more, this inclusiveness is important given the particular moral position of civil disobedience, whereby its agents are recognized as morally motivated and are therefore distinct from common criminals, which also suggests that leniency should be used in the courts. Still, it is not obvious that disobedience should be justified, especially beyond borders, and we still need justifications for the disruption protesters cause, which I will develop in Chapter 3.

Legitimizing Disobedience

Drawing from the definitions of civil and transnational disobedience I have given in the previous chapters, in Chapter 3 I approach the justifications of civil and transnational disobedience. This chapter is divided into two different sections, the first one dedicated to the wrongs that might justify disobedience, the other to the duties that might not simply justify it, but also require it. When the wrongs I detail in the first section are committed, the duties I present in the second part activate. For instance, the first section details the infringements that correspond to the harms that might activate the duty not to harm, the duty of solidarity or Samaritanism, and the natural duty of justice that occupy the second section.

Justifying civil and transnational civil disobedience (TCD) requires us to confront both with the liberal tradition that sees disobedience as a remedial right to fight for political and civil rights, and the democratic one that justifies disobedience as an occasion to participate more democratically (Markovits 2005), or sees it as a right when the classical, legal, participatory avenues we have a right to, are not available (Lefkowitz 2007). Thus, provided and assuming disobedience is chosen as the last resort, always trying to minimize the harm caused to others, I specifically focus on the wrongs that constitute a morally valid reason, or a just cause, to resort to disobedience. So, I claim that basic rights violations, the unconstitutionality of the law, the lack of participatory avenues both domestically and transnationally are among the wrongs that legitimately justify the resort to disobedience. I also claim that we might have a right to participate even across borders, which can then also ground a right to transnational disobedience. The wrongs that might justify disobedience activate also our natural moral duties, such as the duty not to harm, the duty of solidarity, and the natural duty of justice. These, might not simply justify, but demand TCD (Delmas 2018a; Ogunye 2015). At the same time, these very same infringements might also justify disobedience as a preventive mechanism of defense. Still, although I have established certain wrongs justly motivate disobedience, this is not sufficient to justify it, especially when it occurs transnationally. It is on the limits of the justifications we can adopt for TCD that I work on in Chapter 4.

Out of proportion or the risk of being a white savior

In this last chapter, I want to question whether regardless of the just causes we have discussed in Chapter 3, there are cases in which protests are unjustifiable, or could give rise to additional duties given the harm they cause. I will show that a very successful disobedience campaign, while being all things considered justifiable, can have harmful results for some of the people involved. While some

have written about the consequences that disobeying has for the activists, in terms of their growth as political agents (Scheuerman 2021), there has been a lack of thinking about the practical results of disobedience for those disobedients disobey for, beyond borders. Aside from bystanders, the attention has never been on those harmed by disobedience, partly because the harm caused is, by assumption, very limited, and so proportional to the good produced, partly because in a domestic framework there are already redressing mechanisms that support those made worse-off. However, these are absent in the transnational framework, which is why in the fourth and last chapter, I argue for a duty to redress those people disobedients make worse-off, regardless of the overall good protesters may bring about. So, by drawing a parallelism with just war theory I will contend that TCD can be justified if it has a just cause, if it is proportional and is likely successful, but also if it properly considers the plans of life of those involved. More in detail, I will highlight the importance of treating people with dignity as autonomous agents and of not speaking on their behalf, especially when their life could be worsened by the results of our actions. As for the proportionality requirement, I consider it is fulfilled only when those affected are granted the means to live a life as good as the one they had before disobedience occurred, and not simply when all things considered, the harm averted is superior to the one caused. Indeed, while this work aims at justifying more acts of disobedience than past theories did, it also wants individuals to be cautious when disobeying especially transnationally and on someone else's behalf. While we cannot simply accept an unfair status-quo fearing harming a few people, not all forms of disobedience are equally respectful of all the people involved, nor do they solve the root causes of injustice. To properly respect people implies protecting their plans of life, which might impose duties to redress them the moment they are harmed, even by a just disobedience. Transnational disobedients should not be saviors, acting as a *deus ex machina*, without considering the consequences their well-intended and overall just acts may have on these. Instead, while fighting for what they believe to be a

fairer world, they have to be ready to bear the burden of their success and help those that might suffer even from important and valuable changes.

Worth noting is that the approach of this entire work is informed by the cosmopolitan literature. I am not interested in dwelling on subtle distinctions (Moellendorf and Widdows 2015; Brock 2009; Ypi 2013; Brock 2015; Pogge 2002a; Brock and Brighouse 2005), which are quite superfluous here, but rather in specifying that humans have obligations and moral duties beyond borders towards other people and not simply toward fellow citizens and that institutions should look after every person and redistribute rights and goods globally.