Review

Civil Disobedience

William E. Scheuerman

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The philosophical discussion about civil disobedience has reached a curious juncture. On the one hand, there has been a wave of recent writing on the topic, which builds upon and updates the earlier explosion of philosophical interest triggered by the protest movements of the sixties and seventies (see, e.g. Brownlee, 2012; Smith, 2013). On the other hand, it is notable that much of this scholarship challenges civil disobedience, suggesting that philosophers should follow the lead of those activists who reject the label in favour of apparently more radical notions of ‘uncivil disobedience’ or ‘resistance’ (see, e.g. Brennan, 2018; Delmas, 2018). It is, then, difficult to determine if civil disobedience will remain central to philosophical debates and activist practice, or whether we are witnessing the beginnings of its decline.

William E. Scheuerman’s critical analysis of civil disobedience, published as part of Polity’s influential Key Concepts series, therefore arrives at an auspicious moment. It offers an excellent, systematic survey of the philosophical literature on civil disobedience, as well as a nuanced appraisal of the profound impact of Gandhi and Martin Luther King, Jr on its theory and practice. Scheuerman maps the terrain through analysing the contrasting approaches to civil disobedience adopted by religious–spiritual (chapter 1), liberal (chapter 2), democratic (chapter 3) and anarchist (chapter 4) approaches. Although much of his discussion focuses on landmark contributions from previous eras, he also devotes considerable attention to recent developments. There is, for instance, a sharp overview of the state of current scholarship (chapter 7), informed by an impressive analysis of the transformative impacts of digitisation (chapter 6) and post-nationalisation (chapter 5) on the theory and practice of civil disobedience.

The upshot is that the book functions as a superb primer on civil disobedience, which offers a one-stop resource for scholars, students and activists seeking an accessible guide to the literature. It would, though, be wrong to downplay the extent to which it constitutes an original and important contribution in its own right. If there is uncertainty about whether civil disobedience will continue to enjoy the

prominence it has in the past, then Scheuerman comes down firmly on the side of those who believe that it should. This claim is conditional upon rediscovering the lost treasure of civil disobedience, which he contends is something that its present-day champions and critics fail to do.

That treasure is closely associated with the ideal of the rule of law. Although it is a form of political protest that entails unlawful conduct, Scheuerman insists that ‘religious, liberal and democratic accounts all view civil disobedience as a distinctive mode of lawbreaking predicated, however paradoxically, on a deeper respect for law or legality’ (p. 7). Respect for law is reflected in the manner of its violation, particularly insofar as civilly disobedient citizens adopt demanding norms of nonviolence, publicity and a willingness to accept the legal consequences of their actions (p. 49). These are familiar ideas, but Scheuerman goes further than most in contending that fidelity to law is *the* paradigmatic feature of civil disobedience. This insight is often overlooked because commentators conflate respect for the rule of law with acceptance of the prevailing legal order (p. 52). Civil disobedience can, in fact, be seen as an attempt to prefigure a legitimate legal order even in circumstances marked by the absence of such an order. This is emphasised in Scheuerman’s discussion of civil disobedience against the current global order: ‘fidelity to the law in this context anticipates the possibility of a reformed and significantly improved order in which emerging post-national constitutional and legal rules might in fact prove more fully worthy of our respect’ (p. 121).

The close association that Scheuerman posits between civil disobedience and respect for the rule of law informs his sharp and oftentimes critical analysis of current trends in the philosophical literature. He contends that an ‘anti-legalist’ orientation pervades the arguments of advocates and opponents of civil disobedience alike (p. 147). A recurring theme of the book is that critics have been unduly quick to dismiss the Rawlsian account of civil disobedience, which – despite its defects – is said to capture the distinctive status of civil disobedience as an expression of fidelity to law (pp. 105–108). As he puts it ‘in their eagerness to fight off Rawls’s ghost, critics discard core traits of civil disobedience that deserve a fairer hearing’ (p. 146). Kimberley Brownlee, for instance, is commended for her defence of civil disobedience, while at the same time criticised for devaluing and discarding the Rawlsian intuition that it is closely related to respect for the rule of law (pp. 150–152). Robin Celikates also comes in for criticism, on the grounds that his radical democratic perspective transforms the concept of civil disobedience beyond recognition (p. 144). The underlying thought here is that ‘the familiar – but now increasingly neglected – idea of civil disobedience as congruent with the rule of law still provides impressive conceptual and political firepower’ (p. 154).

This is a powerful intuition that is persuasively elaborated throughout the course of the book. It is also a theme that has resonance beyond scholarly debates, as anyone who has been following recent attempts of public authorities to prosecute

nonviolent protesters in Taiwan and Hong Kong will attest. The societal debates surrounding these trials turn on the relationship between civil disobedience and the rule of law. Those favouring nonprosecution or lenient sentences have emphasised the extent to which respect for the rule of law informed both the means and the ends of these civil disobedience campaigns.

The arguments put forward by Scheuerman are thus timely and compelling, but there are two themes that might be explored further. First, an important focus of the recent wave of philosophical scholarship on civil disobedience has been the treatment of protesters by public authorities. This is a particularly salient theme for those of us who wish to retain a close relationship between civil disobedience and the rule of law, because the response of public authorities expresses that relationship as much as – and perhaps more than – the conduct of protesters. It is thus somewhat surprising that Scheuerman does not explore in greater detail the recent revival of interest in the claim that civil disobedience is a moral right, which generates duties on the part of authorities not to interfere – at all or in certain ways – with those who exercise this right. The case for the right is briefly considered by Scheuerman in relation to Brownlee, but he concludes – a little unfairly in my view – that her argument is a further example of a tendency to subordinate law to conscience (p. 152). A different conclusion might be reached if the attempt to frame civil disobedience as a moral right is seen as a means of showing how respect for the rule of law must guide state responses to civil disobedience. The resulting moral framework structures and strengthens criticism of repressive state action, going beyond the well meaning but ultimately rather vague appeals to toleration and respect that characterise Rawls's brief comments on state treatment of civil disobedience.

Second, notwithstanding his spirited defence of civil disobedience, Scheuerman readily concedes that 'alternative modes of illegal activism may prove both necessary and appropriate' (p. 137). This observation is particularly pertinent to emerging forms of digital disobedience, which – as Scheuerman suggests – might nonetheless be defensible irrespective of their apparent incompatibility with traditional notions of civil disobedience (p. 135). Scheuerman is surely right to resist the temptation to stretch the concept of civil disobedience to cover these emergent forms of dissent, but his analysis raises complex questions about the extent to which disobedience can move beyond the limits associated with civility. Scheuerman quite understandably cannot and does not attempt to resolve this issue in the context of an introductory text, though he is willing to aver that 'nonviolence, vis-à-vis persons, remains a *sine qua non*, especially in the context of more-or-less functioning democracies' (p. 137). The appeal of nonviolence requires no further emphasis, but the current challenge to civil disobedience alluded to at the outset of this review is destabilising its grip on our imagination. Candice Delmas, for instance, argues for a nuanced appraisal of the violent tactics employed by anti-fascist activists, guided by the intuition that 'equating all acts of violence without

distinguishing their aims is morally dubious' (Delmas, 2018, p. 244). A related idea, prompted in part by controversies surrounding militarised and racialised policing, is violence as either a tactic of self-defence or a means of rescuing others from the immediate threat of harm.

It is thus quite likely that debates on disobedience and resistance will continue to push at the limits of nonviolence, such that it will be increasingly common to see contrasts drawn between civil disobedience and forms of disruptive activism that are less tethered to the rule of law. At the same time, Scheuerman performs a valuable service in reminding us what we stand to lose if we side-line the rich tradition of civil disobedience.

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