

***A DUTY TO RESIST: WHEN DISOBEDIENCE SHOULD BE UNCIVIL* BY
CANDICE DELMAS (OXFORD UNIVERSITY PRESS, 2020) PAGES 1-312. PRICE
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LAUREN JESSUP-LITTLE*

I. INTRODUCTION

Candice Delmas in her book *A Duty to Resist: When Disobedience Should be Uncivil* provides interesting and novel perspectives on the concept of disobedience.¹ Utilising relevant real-life examples, although at times oversimplified,² Delmas undertakes an extensive exploration of the duties and obligations of citizens to undertake principled disobedience,³ the circumstances in which these duties and obligations arise, the constraints placed on those undertaking principled disobedience, and the types of principled disobedience citizens may undertake to fulfil their duties. She observes that many theorists believe that disobedience violates a citizen's moral duty to obey the law, but she argues that the duty to obey is defeasible, particularly in circumstances where injustice is so severe and persistent. In fact, in the face of systemic injustice, one has a duty to *disobey*.⁴ Whilst Delmas's proposal of the duty to disobey promises a meaningful alternative to existing moral theories, a point of contention arises: can the duty to disobey realistically be applied to all circumstances?

II. THE MORAL DUTY TO DISOBEY

In illustrating the circumstances in which principled disobedience becomes a moral duty, Delmas first considers the work of William Smith in *Civil Disobedience and Deliberative Democracy*.⁵ Smith outlined that in legitimate democratic states, there are three kinds of injustice that can be appropriately subject to civil disobedience. However, within these injustices, there were only certain circumstances where there was an absolute duty to disobey.

* BA, candidate for LLB, University of Newcastle (Australia).

¹ Candice Delmas, *A Duty to Resist: When Disobedience Should be Uncivil* (Oxford University Press, 2020).

² Ibid 81. For instance, Delmas suggests that the low rate of convictions following incidents of police brutality in the USA is because the legal standard invites white 'people to put themselves in the officer's shoes and imagine their "reasonable" fear when faced with criminal- and dangerous – looking (Black or Brown) people'. Whilst systematic racial injustices may be a factor leading to the low levels of convictions following police brutality, there are a number of factors that experts have identified as contributing to the issue. see generally Emma Tucker et al, 'Why it's Rare for Police Officers to be convicted of Murder', *Cable News Network* (online, 21 April 2021) <<https://edition.cnn.com/2021/04/20/us/police-convicted-murder-rare-chauvin/index.html>>; Kimberly Kindy and Kimbriell Kelly, 'Thousands Dead, Few Prosecuted', *The Washington Post* (online, 11 April 2015) <<https://www.washingtonpost.com/sf/investigative/2015/04/11/thousands-dead-few-prosecuted/>>.

³ Principled disobedience is here defined as disobedience that is morally or politically motivated. Methods through which citizens may participate in principled disobedience include education, protest, covert disobedience, vigilantism and government whistleblowing.

⁴ Delmas (n 1) 51.

⁵ William Smith, *Civil Disobedience and Deliberative Democracy* (Routledge, 2013), referred to by Delmas (n 1) 75.

The first kind of injustice – deliberative disrespect – occurs when a democratic majority tolerates or enacts blatant injustice by publicly denying some citizens free and equal status. Such injustice – which may include slavery, racial segregation, and disenfranchisement of women – are unjustifiable and give rise to an absolute duty of all citizens to disobey.

The second type of injustice – deliberative disagreement – refers to such unjust outcomes that are neither blatant nor obvious to the democratic majority.⁶ These include gender inequalities, institutionalised homophobia and inadequate protections for workers and immigrants. Smith argues that whilst such injustices are an appropriate basis for civil disobedience (the purpose of which is to garner public attention and support for such wrongs to be rectified), the nature of these injustices is not severe enough to give rise to an absolute obligation for disobedience.

The third injustice – deliberative inertia – arises when certain issues or discourses are absent from the public sphere because of political will and agendas which seek not to bring attention to such injustices. For instance, resource mining has a grave impact on certain communities (ie they are unjust to these societies) but discussions on the vices of resource mining are often lacking in mainstream discourse because of its perceived benefits to the economic prosperity of a nation. Smith argues that such injustices, similar to deliberative disagreement, is an appropriate basis for civil disobedience, but there is no absolute duty to disobey, owing to that the injustice is not obvious to the majority.⁷

Delmas challenges Smith's distinction between deliberative disrespect and disagreement, in that whilst Smith acknowledges both are appropriate grounds for civil disobedience, a duty to disobey (for Smith) only arises in the face of severe injustice (ie in situations of deliberative disrespect). This gives rise to an inevitable debate as to the severity of injustice which would give rise to a duty to disobey.⁸ Delmas further submits that Smith's distinction may not be attainable because of changing perspectives. For instance, at one point in history, slavery and the disenfranchisement of women would have been classified in Smith's category of deliberative disagreement, but it ought to be clear now that these injustices are so severe that they would be classified in the category of deliberative disrespect.⁹

Delmas argues that in any circumstance where citizens are subject to injustice, whether obvious to the democratic majority or not, there is an absolute duty to disobey. This duty to disobey extends to situations where the state commits an injustice against non-citizens abroad. Further, injustices not necessarily inflicted upon a specified group – such as the misconduct of elected officials – also give rise to the duty to disobey. Public ignorance is not an excuse to evade the obligation to disobey in the face of injustice.

The weakness of Delmas' proposal is contained in the practical realisation of the absolute duty to

⁶ As summarised by Delmas (n 1) 75.

⁷ Ibid.

⁸ Ibid.

⁹ Ibid 77.

disobey. Whilst Smith acknowledges that injustices that the democratic majority may be unaware of, or ignorant to, do not give rise to an absolute duty to disobey,¹⁰ Delmas contends that there is an absolute duty to disobey in those circumstances. Nevertheless, Delmas undertakes no consideration of how a citizen's duty to disobey could be fulfilled where there is an absence of knowledge of injustice. Nor did she consider how one may disobey where the injustice only becomes obvious upon historical reflection.

III. DISOBEDIENCE AND ASSOCIATIVIST THEORY

Delmas further supports her argument for the duty to disobey through a consideration of associativist theory - that is the theory that members of groups (such as nationality, ethnic, cultural, or religious groups) have certain duties and obligations to other members of that group to preserve the social functionality of those groups. Utilising the theory of Ronald Dworkin regarding the connection between associative obligations and dignity,¹¹ Delmas argues that associative obligations include a duty to resist violations of dignity. In this sense, members of the same polity (whether they are themselves mistreated) have a moral obligation to those whom dignity is violated to resist such mistreatment. In particular, Delmas proposes that a duty to disobey in circumstances where one's own dignity is violated assists the democratic majority to identify non-obvious injustices and recognise their own duty to disobey.

Delmas acknowledges that attributing an obligation to resist violations of one's own dignity places an unnecessary burden and blame on victims. In response, Delmas notes that 'victimhood and subjugation, even if entirely involuntary, may generate some responsibility.'¹² The reason, citing Du Bois, is because self-respect is incompatible with silent submission to gross injustice and requires resistance.¹³

However, one may discern a valid and strong objection to her notion that victimhood has an associated obligation to resist, ie it seems reasonably clear that some victims in situations of severe injustice may not be able to fulfil this obligation due to the very real risks to their safety. It is not sufficient to say that an obligation exists but not elucidate as to how this obligation should, or could, be fulfilled.

IV. CONCLUSIONS

Delmas attempts to articulate an alternative theory to those proposed by previous scholars on disobedience. Her work points particularly to the absolute duty to disobey by both the majority and victims of injustice. Whilst the work provides an interesting theoretical perspective on disobedience, her failure to address points of contention concerning the applicability of a duty to disobey in all circumstances significantly weakens her overall theoretical framework.

¹⁰ Ibid 76.