Retheorising Civil Disobedience in the Context of the Marginalised

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Abstract: This article proposes a retheorisation of Rawlsian civil disobedience through examining the burdens we expect people to bear when they practice civil disobedience, focussing specifically on marginalised groups. First, I consider public concerns over civil disobedience, to elicit the idea of an ‘authentic civil disobedience’. I then assess the claim that civil disobedience occurs within a ‘nearly just’ society in order to recognise the more complex position of marginalised civil disobedients. This allows me to frame any criteria we theorise for civil disobedience as a wicked problem. Next, I examine one particular criterion dominant within the literature: that to be interpreted as civil disobedience, disobedients must show a willingness to suffer the legal consequences – and so, must not act anonymously. I claim that this asks too much of civil disobedients in a marginalised context and conclude civil disobedience theory needs retheorising to consider when and why anonymity is acceptable.

Keywords: anarchy, civil disobedience, Hacktivism, intersectionality, political theory/philosophy, public order, Rawls

This article makes a normative claim: that the criterion found in Rawlsian disobedience theory – willingness to suffer the legal consequences (and so a demand for non-anonymity) – often asks too much of civil disobedients who are marginalised or politically vulnerable. Though this is theorised within the Rawlsian tradition, it is a widely shared demand. Therefore, we should reconsider non-anonymity as a disqualifying criterion.
The first section briefly outlines the concerns authorities and onlookers may have with civil disobedience. The concerns can either be local – an anxiety over disorder – or even national – an anxiety over anarchy and the rule of law. I draw upon the ‘Broken Windows’ theory to elucidate the former and frame the latter within hegemonic ideas on sovereign law and political order. This is not to say all forms of civil disobedience cause these anxieties, but when they do, they contribute to generating demands upon civil disobedients, to prove they are ‘authentic’. This means civil disobedience theory often includes discussions on what counts as authentic civil disobedience.

The second section examines how the idea of a ‘nearly just’ society informs this discussion (Rawls 1999: 319). I acknowledge debates over Rawls’ description of ‘nearly just’ but use it to further contextualise the vulnerability of marginalised groups when they engage in civil disobedience. I conclude this section by reframing the demands on civil disobedience as a ‘wicked problem’: do we theorise (and legislate) civil disobedience to placate the concerns of authorities, onlookers and the general public, or do we theorise (and legislate) it to protect the identities of disobedients?

The third section shows that it is the former that is dominant within civil disobedience theory. I explore the criterion ‘willingness to suffer the legal consequences’ of civil disobedience, in order to qualify as civil disobedience. Although a Rawlsian criterion, I show that this, or variations of, is a widely shared criterion, and essentially equates to demanding non-anonymity.

The fourth section makes a normative argument: that this demand as a universal criterion can sometimes be too strong. I claim this because it does not take into account vulnerability marginalised groups may experience within the legal system or consider the psychological anxiety attached to this – especially when there is a history of state and institutional violence against them. Such histories, even if a society no longer does this, can cast a long shadow. Further, this demand overlooks the social impact of civil disobedience – in an age of smart phones and social media, images of disobedients engaging in political dissent could have harmful effects on those people. Essentially, non-anonymity adds an extra barrier to engaging in civil disobedience, and under a Rawlsian account – that civil disobedience furthers justice and political stability – this is an
I also add that online hacktivism further problematises the criterion of non-anonymity. I conclude that civil disobedience theory should engage more with the question of non-anonymity. We could say that sometimes it is desirable for lawbreaking as a form of dissent to be anonymous, and when this is the case, it is not to be categorised as civil disobedience. This could just as easily be the conclusion as it is to *re-theorise* civil disobedience, and the core thrust of this article would still be upheld – simply, for us to consider anonymity as a justification when performing conscientious lawbreaking acts. This conclusion has the advantage of keeping a narrow notion of civil disobedience, which then enables us to distinguish between political dissent that is unlikely to cause harm (because it is non-anonymous and implies willingness to suffer the legal consequences) and political dissent that has a greater likelihood of causing harm (because it allows for anonymity and avoiding legal consequences). But making this assumption is not without problem.

If we distinguish anonymous political dissent from civil disobedience, and the advantage of that is we can distinguish between lawbreaking actions which pose a small threat of harm from those which pose a greater threat of harm, there is a danger that political dissent which could cause more harm is conflated with marginalised groups. If this were the case, we would not have overcome the additional barrier of anxiety which disobedients from marginalised groups feel when enacting political dissent. As Koshka Duff argues, the concept of the criminal is often used to depoliticise acts that transgress the narrow boundaries of civil disobedience (2017). Placing anonymous political dissent outside of the categorisation of civil disobedience may run similar risks.

**Concerns over Civil Disobedience**

Civil disobedience is very much a contemporary political and social concern, as both an academic debate (Brownlee 2012; Jubb 2019; Sabl 2001) and focus of public interest. In the wake of the Police, Crime and Sentencing Bill in the UK (Home Office 2021), and the media focus on Black Lives Matter and Extinction Rebellion
internationally, revisiting a theory of civil disobedience seems pertinent, for liberal democracies at least.

If civil disobedience is to have a place in our polis, it needs to be theorised. For John Rawls, any liberal democracy requires a theory of civil disobedience. The reasons are fairly obvious: today’s idea of justice may be tomorrow’s injustice. ‘Dissent being unobjectionable in liberal states’ (Delmas 2017: 198), breaking the law is often a necessary part of this change. Political philosophers therefore tend to talk about civil disobedience in relation to a ‘nearly just’ society (Delmas 2013: 466), because it would be an overall just society that acknowledges the need for political dissent, to force new progressions on what is considered just. I will draw this out later. For now, we can understand that, in such contexts, the assumption is that sometimes we will find ourselves in a situation where we feel compelled to disobey, in order to highlight an existing injustice, within an overall just structure. This can bring civil disobedience into conflict with perceptions of public and political order. There is the obvious issue that civil disobedience, when occurring in public spaces (or at public-facing private events), may have direct impacts upon people’s lives, like getting to work or enjoying a tennis match, but it goes deeper than simple disruption of a task or pursuit. Civil disobedience can cause concern and anxiety if it is a long-term act (like a squat) or a repetitive action. This tension may be heightened in countries with a history of terrorism, or town centres where crime and anti-social behaviour are known problems. Disruption and disorder lead to fears of further disruption and disorder.

This can be understood through the ‘Broken Windows’ theory. In this, Coles and Kelling (1997) state that ‘disorderly behaviour unregulated and unchecked signals to citizens that the area is unsafe’. Consequently, being prudent and fearful, ‘citizens will stay off the streets’ and ‘avoid certain areas’. Thus, they ‘withdraw from roles of mutual support with fellow citizens on the streets’ that help to maintain a community, and with this undermining of the ‘fabric of urban life’ and its ‘social intercourse’, the result is an ‘increasing vulnerability to an influx of more disorderly behaviour and serious crime’ (Coles and Kelling 1997: 20). This means civil disobedience may produce an anxiety in local onlookers and local authorities in certain contexts.

These concerns may extend beyond the short term though and can be a concern to national authorities as well. Civil disobedience
breaks laws. What if we all went round breaking laws to make a point? This would make the rule of law contingent on and subservient to our own individual (or group) sense of justice. This elicits a wider fear – the degradation of the rule of law. Anarchy as a violent, conflict-ridden all against all has been a common political theme since Hobbes (1985 [1651]), in both political theory and popular culture. From Leviathan to the Walking Dead, the spectre of anarchy shapes our perceptions of political order. The idea that sovereign rule of law upholds order holds sway. This is something anarchists have pointed out is deliberately curated. Ruth Kinna makes a convincing point:

The problem with it is that it situates anarchism in a framework of government that uses the rejection of anarchy for its justification. So, anarchy immediately becomes a condition of disorder. . . . Anarchy is the order they run away from. It implies chaos, sometimes vigilantism, sometimes mob rule, and it cannot guarantee peace or security. (2020: 11)

In other words, public disorder can be a concern, a hassle, or even elicit fear around vandalism. But it also occurs in the backdrop of hegemonic ideas on what political order actually is and how it is held together (Stevens 2023a).

So, my main aim in this section is to foreshadow two key points. Civil disobedience has not only a burden of justification placed upon it but also a burden of qualification. Disobedients need to distinguish themselves from vandalism, anti-social behaviour or public disorder to local authorities and local populace. But they may also need to placate deeper, national anxieties produced by hegemonic binaries over what political order is. This subsequently contributes to generating several demands on civil disobedients.

Essentially, they must prove that they engage in some kind of ‘authentic’ civil disobedience, and not vandalism, rioting or revolt. What is ‘authentic’ civil disobedience then, and what criteria does it include?

**Nearly Just and the Duty to Obey**

Before I can answer this question fully, the type of society in which civil disobedience takes place is a necessary context that needs to
be further explored. The Rawlsian account of civil disobedience recognises injustice and the frustration of legal resolutions to that injustice but does not seek revolution. In other words, in such contexts, the assumption is that sometimes we will find ourselves in a situation where we feel compelled to disobey, in order to highlight an existing injustice, within an overall just structure. Rawls refers to this as a ‘special case’ that needs its own theorisation from other forms of political dissent (1999: 319).

The duty to obey a political order that has some unjust laws, according to Rawlsian civil disobedience theory, depends upon how close to justice the society as a whole is, or how just its constitution may be, generally (1999: 311). To quote, ‘only a few think that any deviation from justice, however small, nullifies the duty to comply with existing rules’ (1999: 310). We should obey because we do not want the whole structure to come tumbling down. We want to change an aspect of our society because it is ‘not all bad’.

However, Rawls also claims that civil disobedience covers ‘serious violations’ within that ‘nearly just’ society. In more detail: ‘there is a presumption in favour of restricting civil disobedience to serious infringements of the first principle of justice, the principle of equal liberty, and to blatant violations of the second part of the principle, the principle of Fair equality of opportunity’ (1999: 326). This has invited censure from theorists of radical civil disobedience (Celikates 2016: 42) and liberal moralists (Brownlee 2012) because, on the one hand, it implies that we ought to obey existing rules because a society is ‘nearly just’ yet, on the other hand, claims that ‘nearly just’ societies can be guilty of ‘serious violations’. As Andrew Sabl points out, ‘If an existing regime tolerates, perhaps requires, practices that deprive huge populations of basic rights, why should those populations retain any duty of obligation at all?’ (2001: 308). So, on this account, Rawlsian civil disobedience can be too restrictive – we cannot expect a duty to obey when a ‘serious violation’ is the concern.

However, Robert Jubb has argued the opposite: that Rawlsian civil disobedience is too accommodating in regards to a duty to obey existing rules because of the high bar at which he sets a ‘nearly just’ society. Jubb points out that Rawls’ idea of ‘nearly just’ does not actually reflect any real, contemporary liberal states. A society that is ‘regulated by principles favoring narrow class interests’ (Rawls
1999: 353) is ‘a clear case’ of an ‘unjust society’ (Jubb 2019: 958) according to Rawls’ principles of justice. If we take failure to abide by such principles as a disqualifier for a society being ‘nearly just’, then the theory cannot be applied to most contemporary nation states. As Jubb claims, the ‘persistent growth of income and wealth inequality over the past four decades’ (2019: 958) shows that most political orders are indeed regulated by ‘narrow class interests’.

What Jubb concludes from this is that we should not be applying Rawls’ civil disobedience theory to real societies because the nearly just descriptor is too binary and does not recognise that political authority is a sliding scale, not an absolute, and how far a society is down that scale informs what options and duties civil disobedients have. As Jubb says, more options of resistance were open to the ANC under Apartheid than were to the anti-Poll Tax campaign because it is obvious that the regime the former were opposing was far more oppressive (2019: 966). This is an interesting direction and opens up much discussion around what injustices constitute a loss of political authority, which do not, and how we can disaggregate political authority. Further issues regarding punishment and when a state loses that right due to injustice have also been discussed (Duff 2001; Shelby 2016).

I think it is true that our contemporary liberal societies do not ‘pass muster’ (Chambers 2006: 83) when it comes to them qualifying under Rawls’ idea of ‘nearly just’. Yet, at the same time I think there is something in the ‘serious’ violation’ that allows some flexibility within the tradition. Rawls argued that the proper focus of civil disobedience was fundamental rights: ‘The violation of the principle of equal liberty is, then, the more appropriate object of civil disobedience’ (1999: 327). Ergo, on this account, a ‘serious violation’ (which justifies civil disobedience) is one concerning ‘equal liberty’. If the so-called proper purpose of civil disobedience is to focus on something as serious as injustice around rights, then Rawls allows the structural injustice of contemporary societies to slip back into the theoretical definition of ‘nearly just’. In other words, how can a society be ‘nearly just’ yet at the same time be guilty of ‘serious violations’, unless his idea of ‘nearly just’ is relatable to the contradictions within real, contemporary societies? For sure, relatable is not the same as reflective, it is a weaker claim, but one that means we can still theorise Rawls’ civil disobedience
theory in relation to contemporary societies that are, perhaps ‘*somewhat* just’. This weaker claim of ‘relatable’ means we can reconsider the demands within Rawlsian civil disobedience theory.

But this debate is not the focus of this article, nor does my interpretation of it have to be agreed with in order for me to proceed. Regardless of whether Rawls’ theory of civil disobedience was *meant* to be applicable to contemporary liberal societies, my central claim is simply that a liberal theory of civil disobedience which *is* applicable to contemporary liberal societies should not require non-evasiveness (and so non-anonymity) as a prerequisite.

What this idea of a ‘nearly just’ society that can also be guilty of ‘serious violations’ does do, however, is require us to further contextualise. Any society in which civil disobedience is justified ‘may involve fair treatment, mutual cooperation, and a sense of justice by a ruling group with respect to its own members’ at the same time as seriously infringing upon liberty for others (Sabl 2001: 311). The point of this is to show that ‘nearly just’ actually has three possible contexts: (1) A society is mostly just towards all of its members, (2) A society is mostly just to most of its members. (3) A society is always just to most of its members. What this means is that when theorising civil disobedience, we have to take into account which one of these three situations we are thinking about. Situation (1) is one where citizens, although suffering injustice on the odd occasion, suffer it equally so, just as they equally enjoy justice ‘most’ of the time. This is, I think, a situation that would only exist in the abstract. Situations (2) and (3) are more like how real societies work, and when thinking about ‘nearly just’ in this way, we realise that those who do not receive justice ‘most of the time’ suffer an additional vulnerability, or unequal treatment, on top of any other injustice, within the basic political structure. Put simply, they are a marginalised group, who often do not engage in political acts because of that (Easat-Daas, A. 2020).

This contextualisation has implications for what we demand of civil disobedients because those demands can be from, on behalf of or in relation to, those who are within the more privileged groups of (2) and (3) – those who do not suffer the injustice. How authorities respond to civil disobedience is in part, about protecting the sensibilities and interests of the ‘general public’ – hence, my point in the previous section about concerns over public disorder. This
means we ought to see the criteria of authentic civil disobedience in this context as a ‘wicked problem’. Do we placate the anxiety of the onlooker or police officer, especially in an historical context of terrorist attacks, and so demand the disobedient prove their authenticity, or do we allow anonymity and evasion to placate the anxiety the (marginalised) disobedient feels in committing disobedience?

**Willingness to Suffer Legal Consequences**

Wicked problems are political and moral issues that do not seem to have a clear, correct response, either because the morality of a situation is context or perspective dependant or because any normative solution leads to subsequent complications and problems (Rittel and Webber 1973). The wickedness of the problem is this: civil disobedience can often cause concern and anxiety to the general public, in a similar way to anti-social behaviour (be they onlookers, local inhabitants or employees within the vicinity). That concern includes violence, disorder, lawbreaking, disruption and vandalism. The burden of placating such concerns lays upon the civil disobedients by imposing a willingness to be seen and arrested. Yet, this puts disobedients into a vulnerable position. Who then, should we centre when it comes to civil disobedience? Do we assuage the anxiety of the public or onlooker, limit the disruption caused to law enforcement, or ease anxiety of the disobedient?

Currently, most civil disobedience theory implies we do the former. I wish to examine a criterion of civil disobedience that is shared by many philosophers and show how it is problematic when applied to contemporary societies, in the cases where civil disobedience relates to the marginalised expressing their political frustration. This will lead to a call for anonymity and evasion from consequences to be included within future theorisations on civil disobedience.

The criterion is the willingness to suffer the legal consequences of civil disobedience, and so the need for the identity of a civil disobedient to not be concealed or hidden. The assumption in this criterion must be that civil disobedience can be a public act – one that happens in public, so spaces which can be openly observed – because one would think that a ‘nearly just’ society would not overly punish
disobedients exposing an injustice. But if it is already guilty of a serious violation against that group, this may not be a safe assumption, or as I will argue later, one free of psychological anxiety.

The openness and publicness expected of civil disobedience comes from the need to prove one is enacting ‘a form of address, and expression of profound and conscientious political conviction’, which ‘takes place in the public forum’ (Rawls 1999: 321). This means both the government and fellow inhabitants can understand civil disobedience as a political speech act and not a form of violence, mindless disruption, riot or revolt. Rawlsian civil disobedience is therefore about addressing a sense of justice. The conviction forces authorities to take note. In other words, civil disobedients are making a case to authorities but also addressing citizens, ‘with the aim of bringing about a change in the law or policies of the government’ (Rawls 1999: 320).

The ‘public’ is a fluid notion in civil disobedience and a distinction between in public and the public is required. Local onlookers who are present are the ‘public’, but when civil disobedience reaches national media, any resident of a nation state is being addressed as a member of the public. We can take Gandhi’s triad and assume that they are a group who do not have the direct power to make legal changes but are a group who have the capacity (in numbers) for their opinion to influence such decisions (1997 [1909]). But this can be reductive. Police officers can be members of the public, but when they are on duty they act as authorities. So, it is hard to rigidly define who exactly the ‘public’ are when it comes to civil disobedience. Thus, it is better to think of civil disobedience as addressing residents, citizens, local and sometimes national authorities because it happens in public, which therefore means there is a demand for non-anonymity.

Hence, civil disobedience, under this theory, operates to strengthen and stabilise a society because it attempts to move towards a better and more just society, which one can assume would be more stable. Its ultimate goal, therefore, is not to cause political disorder, even though acts of civil disobedience may do this temporarily. One must be seen to make a claim as part of this disruption, and therefore be a political speech act. We can trust civil disobedients who subsequently show their face because they understand that they are still operating within the basic confines of law and punishment; they are obeying the ‘existing rules’ as outlined earlier.
For Rawls, this is coined as fidelity to the law: one is appealing for change within the political order, and not threatening it as a whole. This ‘helps to establish to the majority that the act is indeed politically conscientious and sincere, and that it is attended to address the public’s sense of justice’ (1999: 322). As a consequence, as part of this openness, in order for civil disobedience to be an authentic speech act it must be engaged in ‘with fair notice; it is not covert or secretive’ (1999: 321). The burden of establishing trust lies with the civil disobedient.

This, and therefore the willingness to suffer the legal consequences, is a criterion shared by other theorists. Habermas claims that civil disobedience ‘demands the readiness to accept the legal consequences of the transgression of those norms’ (1985: 100). The use of the word ‘transgression’ is interesting. This is an understanding of transgression as something which pushes at boundaries in order to enact change. This is a similar understanding to bell hooks (1994), and counter to a view purported by Michel Foucault (1978) and George Bataille (2012), as transgression shoring up existing rules through subsequent feelings of guilt and shame, which can happen when a group is trying to change entrenched norms. Yet, as I will argue later, shame can be bound up with transgressing norms when it comes to civil disobedience.

Kimberley Brownlee defines civil disobedience as ‘non-evasive and communicative rather than private or evasive’ (2012: 2). Even Andrew Sabl, who is critical of Rawlsian restrictions on civil disobedience, admits that civil disobedients ‘must be willing to suffer punishment’, not to show good faith or fidelity towards the rule of law, but ‘for the sake of just cooperation in the future’ and as a ‘first move to establish trust in a set of renegotiations of a new order’ (2001: 317–318). Within civil disobedience theory, it is therefore important one considers non-anonymity a criterion for authentic political speech acts and legitimate civil disobedience.

Rawls outlines that any political action ought to be judged by a liberal idea of public reason – that a speech act can be ‘considered proper’ when we believe others may accept our arguments (1993: 78). In other words, when engaging in political action, actors should see themselves as ‘people who live alongside others with whom they will always reasonably disagree but with whom they must come to agree on fair and shared terms of social cooperation’ (Stears and...
Humphrey 2012: 287). This means coercive or aggressive means are off the table, and ideas must be widely accepted before they are implemented. We can see elements of Political Liberalism (1993) in this, where, as Chambers notes, Rawls shifted focus from ‘What are legitimate principles of justice?’ to ‘Why should we think citizens would accept these principles as legitimate?’ (2006: 82).

One issue with this theoretical requirement is that it would have stifled the historic ‘political achievements of liberalism itself’ – from abolitionist movements to suffrage for women – and so, ‘if this is true of the past, it may be true today as well’ (Stears and Humphrey 2012: 288–289). This is a demand that could subsequently lead to illiberal outcomes. Imagine in one hundred years, a situation where climate change has been averted because the dissenting actions of an activist group forced it onto the political agenda. As such, people are not subject to prohibitive laws on their lifestyle choices. In such a circumstance, these future people would hardly look back on the actions of that activist group with condemnation for potentially transgressing the liberal idea of public reason.

The willingness to suffer the legal consequences of civil disobedience is consolidated by the idea of public reason, for under this view, if a civil disobedient has a reasonable demand, then they can rely upon the eventual reason of public opinion, and so government, to ‘come to terms’ with their argument and agree to some kind of ‘social cooperation’. Punishment is less of an eventual concern to a civil disobedient, in this case. Anonymity in civil disobedience is thus a concern because it does not seem to show a willingness from disobedients to engage in public reason, or even that they believe in the power of their own claims.

Anonymity, and so a presumed unwillingness to suffer the legal consequences of civil disobedience, implies a wilful rejection of sovereign law and order. This is perceived as a threat that overwhelms the message within the disobedience. The spectre of anarchy hangs over anonymity because of what anonymity tries to avoid – that is, a willingness to suffer the legal consequences of civil disobedience. Civil disobedience can sometimes be seen, or curated, as a precursor to anarchy, though that is ‘rarely the alternative on offer’ (Sabl 2001: 308). So, concerns over public order in public space start to mix with concerns over political order in general. Public openness, and a willingness to suffer the legal
consequences of one’s disobedience, helps offset this suspicion, as well as placating a more localised concern with public order.

**What Is Wrong with What Is Demanded**

Within Rawlsian civil disobedience theory then, established ideas on sovereignty generate a sharp, binary distinction between rebellious or revolutionary acts that challenge the rule of law, and acts which challenge specific laws. Yet such distinctions are reductive. One can engage in non-violent civil disobedience which verbally denies the rule of law yet does not try to prevent arrest because of the fear of punishment that comes from more violently challenging it, rather than an acknowledgement of a society being ‘nearly just’. The idea that this is contradictory, because civil disobedience implores the state and so recognises its right to deliver changes, ignores civil disobedience where the intended audience are individuals, other groups or non-state institutions, and the goal is a *message* about the rule of law. Civil disobedience can also show how state rule can be temporarily disrupted, which means civil disobedience can be about an aspirational message, rather than imploring of state power.

There have been dissenting voices to the criterion of ‘suffering the legal consequences’. In *Disobedience, Civil and Otherwise*, Candice Delmas talks briefly of ‘covert disobedience’, where to do something openly would actually prevent the civil disobedience from occurring: ‘secretly participating in the Underground Railroad and covertly aiding unauthorised refugees appear as the only effective ways to frustrate injustice’ (2017: 205). Robin Celikates echoes this sentiment, when pointing out ‘well-established’ forms of civil disobedience: ‘blocking an intersection, occupying a port or obstructing the deportation of so-called illegal immigrants, to give just a few examples – depends on not giving the authorities fair notice in advance. It would be strange to exclude these forms of protest by definition whatever else one may think of them’ (2014: 213). Yet, these comments are in-passing, and only consider non-anonymity in the *planning* of civil disobedience. The points they raise however, encourage a serious re-consideration of anonymity and evasion as automatically disqualifying civil disobedience in any theory of it.
I will now argue that the necessity to show an open face and be identified has two additional problems. First, it fails to see how this presumes too much of civil disobedients, particularly when considering matters of racial injustice or marginalised groups, and if the proper focus of civil disobedience is fundamental rights, this will most likely include such people. Further, this imposes a neutral view of the state as some kind of arbiter that is often not the experience of minorities. Second, a supplementary point, that this view of civil disobedience needs to be historicised: it is not necessarily fit for purpose in an age of widespread, permanent data storage and online political activism.

Charles Mills criticised Rawlsian political philosophy; in particular, the issue with abstraction in some thought experiments. Taking aim at Rawls’ veil of ignorance, Mills argued that to abstract away the experiences of racism in order to establish what justice is, is to overlook how those experiences affect the cognition of the oppressed (1997, 2005, 2017). This, in turn, is to overlook how such experiences would affect decision-making. But more than this, it is to present a very specific way of thinking – one in which racism (or sexism, transphobia, etc.) has not been a daily experience and part of one’s cognitive development – and present it as a universal default of rational thinking. Even if we only take into account gender discrimination, in most cases, this makes up almost half of most populations. When we factor in other types of discrimination on top of this, it is not unreasonable to suggest that discrimination, and so a cognitive development affected by that, is potentially the default human experience. Such abstractions, in their idealisations, imply the opposite, and so we need to be careful when considering apparent irrational decisions in the day-to-day reality of politics.

This critique is relevant to the claim that a ‘nearly just’ society can involve ‘serious infringements’ on minorities. Rawls seems to be suggesting that a ‘nearly just’ society is one that gets it right most of the time. But this can be a very perspectival position and risks universalisation of a specific way of thinking in our practice. The measurement of ‘nearly just’ must equally take into account how often someone is affected and the degree of intensity, alongside how many are affected. We would assume that institutional racism, or unequal sentencing, comes under ‘serious violation’ of equal liberty. Yet, the demand to suffer the legal consequences of
civil disobedience expect people on the receiving end of such injustices to see the wider justness of society outside of their experience. In this way, such a description of ‘nearly just’ with a few serious infringements could end up imposing a position of privilege upon the cognition of the oppressed.

Mills’ target is the abstraction of political philosophy, but in it we can see how our cognitive processes are produced from experience, and, if one is not subjected to those experiences, one may initially fail to understand or empathise with those who are. An obvious example: someone who lives in a country with both historic and contemporary injustices around race is driving home from work and sees a police car in their rear-view mirror. Immediately, their experiences with the police or the experiences with communities they identify with will affect their reactions. A white upper-class, heterosexual cis-gendered man may simply shrug it off or not even consider that the police car is following them but simply driving in the same direction. A Black, working-class, heterosexual, cis-gendered man, however, will possibly have an array of emotions and thought processes to this event, which will produce a reaction that is in all probability entirely different to the white man. In this case, we have to ask, which is the ‘correct’ objective default cognition here, and which is the one ‘corrupted’ by an outlier experience? Both are produced by experience, the experience of living with privilege or the experience of living with structural racism: the lack of reaction from the white man comes from the context of the former, the anxiety the Black man may feel comes from the context of the latter. So, when civil disobedience theorists say a society is ‘nearly just’ but acknowledge when equal liberty is obstructed for a minority, thus permitting civil disobedience, there is an issue when visibility is demanded as a qualifier, even if it is in order to secure a feeling of trustworthiness towards the disobedients and open a public forum. This is because it will often impose demands dependent upon the experience of privilege or status, upon the experience of discrimination. This in itself, produces a civil disobedience theory that may at times be unjust and unequal. I refer back to my point about what a ‘nearly just’ society may be: (1) A society that is mostly just towards all of its members. (2) A society that is mostly just to most of its members. (3) A society that is always just to most of its members. Thus, when a marginalised minority engage
in civil disobedience over a fundamental right – Rawls’ proper focus of civil disobedience means situation (2) or (3). Therefore, the consequences of a willingness to suffer the legal consequences, especially within societies that have a history of unequal sentencing or violence within penal institutions, is to overlook the additional vulnerability, anxieties and concerns of disobedients which may have driven them to disobedience in the first place.

One cannot underestimate the shadow of history that hangs over the marginalised. The emotional labour and psychological cost of being civilly disobedient within such environments, historical or contemporary, is often far higher. Yet, the willingness to suffer the legal consequences of civil disobedience is almost universal amongst political theorists.

There are, of course, ways to frustrate the legal consequences of civil disobedience, whilst being ‘willing’ to suffer it. One can be ‘willing’, in terms of arrest, but then subsequently try to evade legal consequences, through legal means – such as a robust legal defence or technicality. ‘Willingness’ is not the same as ‘eagerness’. Disobedients could also opt for anonymity during the act of disobedience, and then subsequently ‘own up’ to it afterwards, as Brownlee has argued (2012). But both of these amendments to ‘willingness’ can still be a problem if the disobedient does not feel safe within the legal system (or even in police custody) or cannot access a legal defence that is robust enough.

Consider the vigil women held over Sarah Everard. Effectively, the ‘willingness to suffer legal consequences’ criterion asks women to expose themselves to police officers, show their faces and accept arrest, when the murderer was a police officer.

Rawls says, and as Jubb also notes, that if the injustice caused by a ruling majority means any instances of injustice are not equally shared, but become endemic to the political order, those minority citizens cannot be expected to ‘acquiesce in the denial of basic liberties’ (1999: 355). However, the irony is the criterion for civil disobedience abstracts away that injustice when it imposes a universal demand of willingness to suffer the legal consequences.

There is also something to be said for anonymity when it comes to the social and economic consequences of civil disobedience. Civil disobedience theorists have oddly failed to pay much attention to these consequences – for example, how societal and individual
prejudices may affect those identified, from renting a flat to gainful employment, and so on. This is strange, especially considering how prominent social condemnation is within John Stuart Mill’s reflections on freedom of speech (2008). There are many instances of how such prejudices manifest within all sorts of interactions we have on a daily basis; recently, these have been described as ‘microaggressions’ (Ridge 2021).

These social consequences are not just limited to everyday practical or emotional needs but can impact long-term careers and even psychological states – when one considers how shame can play a part in being ‘outed’ on social media. This reveals another flaw with contemporary civil disobedience theory which insists on a willingness to suffer legal consequences and thus not engage in anonymous disruption: it fails to consider the contemporary reality of the digital world, namely, data storage and online activism. The first point can be brief, because it relates to the argument already outlined about asking too much of civil disobedients. Surveillance, facial recognition technology and the selling and occasional breach of data are considerable contemporary concerns. This adds an extra anxiety upon those who engage in civil disobedience.

Smart phones have done much good in exposing police brutality, but they can also be used by members of the public with prejudices against disobedients, and images can quickly be uploaded and circulated on social media, for a significant length of time. Disobedients can be subjected to massive cyber-bullying. Such images can be seen by equally prejudiced managers, customers or clients. Again, in this context, this may ask too much of civil disobedients. When we talk about a ‘nearly just’ society we need to take into account the prejudices of the population, and not just its laws. A country may have anti-discrimination laws, and still have a serious problem with informal discrimination. Similarly, many nation states have geographical differences in regards to these prejudices. London may be diverse and generally inclusive. This does not mean other parts of England are equally so, and the location of the civil disobedience may make the criteria for non-anonymity more demanding.

Similarly, weeks in court can be costly for low-income people, or those in temporary or part time employment. The longer a case goes on, the more anxiety increases over lost money, days off work and an angered employer. Precarious employment and a precarious
living circumstance intersect here. To summarise this point, socio-
logical and economic consequences need to be considered, and 
not just legal consequences, especially when surveillance and data 
sharing can come from the hands of a prejudiced individual and be 
widely shared.

The second point regarding online activism has received brief 
commentary which requires some discussion: ‘I further question 
how the emphasis on publicity would accommodate more recent 
forms of digital disobedience, as practised, for example, by Anony-
mous, and more generally what “public” is supposed to mean here’ 
(Celikates 2016: 38). One key issue with online disobedience is 
we cannot know where it may be occurring. If it occurs outside 
of a geographical territory, does it not count? Does this mean we 
exclude ex-pats or exiles from civil disobedience?

The internet makes us reconsider the role of publicness in iden-
tifying authentic civil disobedience, in relation to online activism. 
Here it is important to distinguish between protest, political state-
ment and civil disobedience. Social media commentary and online 
petitions could be seen as a form of protest, though this is disputed, 
with the term ‘slacktivism’ being coined. Online protest has also 
recently been associated with an emerging ‘fourth wave feminism’, 
defined by being predominantly online (Munro 2013). The #MeToo 
campaign, and various other hashtag ‘movements’ are good exam-
pies of this type of political statement (Zimmerman 2017). This 
is not necessarily to divorce online campaigning from embodied 
action – Black Lives Matter organised its marches through social 
media platforms, and there is a concrete relation between its pres-
ence online and its embodied presence (Mundt 2018). Though 
sometimes a clear overlap, for protest movements often spontane-
ously morph into civil disobedience too, this article is concerned 
with intended civil disobedience. In this context, this can be under-
stood as ‘hacktivism’ (Deseriis 2016). And as Celikates points out, 
the group Anonymous is well known for such actions.

Although individuals remain anonymous, the group itself does 
not, often being open about when it has performed some online civil 
disobedience. This is an interesting point: is the group, then, abid-
ing by the Rawlsian demand for non-anonymity? The answer has 
to be no, because they are not engaging in a willingness to suffer 
the legal consequences of their actions. However, what this points
to is a need to further theorise civil disobedience; a willingness to suffer legal consequences is too simplistic. Clearly, Anonymous is not just aiming to cause disruption for disruption’s sake but trying to address a sense of injustice in its hacktivism: a wider, structural injustice maybe, and perhaps not a specific law, but the desire for public reflection and engagement is there in its announcements of admission. So, there is obviously something in Rawls’ criterion, shared by so many other theorists, that civil disobedience has to be public or public facing. But an unwillingness to suffer legal consequences does not mean an act of civil disobedience is inauthentic or untrustworthy. It may mean the disobedients have good reason to not be identified as individuals. Graffiti can be public facing; it does not mean the artist has to stand by their art until they get arrested.

Civil disobedience is contextual. Abstracted notions of what counts as authentic civil disobedience do not take positionality and power dynamics into account. The point of this article was to highlight how a willingness to suffer the legal consequences of civil disobedience, and so anonymity, can be considered an unjust requirement in certain contexts. However, this does not necessarily mean we universally discard it, simply that it has been presumed in civil disobedience theory. This may therefore mean anonymity is a ‘wicked problem’, one that has no clear correct normative answer.

This means we must retheorise civil disobedience as competing interests between groups. This weighing up of justice, comparing one group’s situation to another’s rather than seeking a conclusive singular answer, has the benefit of allowing us to consider policy in this way, and how we may accept minor injustices, to avoid major ones. Policymaking sometimes does the opposite (Stevens 2017, 2021), and we may consider how demanding non-anonymity may be an example of this. Is the major injustice against civil disobedients by demanding non-anonymity, or would it be a major injustice upon onlookers and authorities to allow anonymity?

**Conclusion: A Minor Injustice to Prevent a Major One**

I started this article with a brief description on what the concerns of civil disobedience are in regards to public order and political
order. This enabled me to draw out the idea that civil disobedience requires a criterion of qualification and disqualification to be theorised. I examined this in relation to the idea of a ‘nearly just’ society and went on to show how ‘nearly just’ could mean that civil disobedients face not only injustice in and of itself but also unequal treatment compared to others. This is important when we consider that demands made upon civil disobedients might be as a result of the sensibilities and concerns of the majority, who may be receiving privileged treatment in comparison.

I explored this through focusing on the willingness to suffer legal consequences, and so the need for one’s identity to not be veiled or anonymous. I further claimed the idea that this in part emerges from a political and sociological fear of anarchy and claimed it asked too much of civil disobedients, especially as most will be marginalised people within society.

First, I argued it abstracted issues around specific injustices, such as racial injustice, and the anxiety civil disobedients may feel in a context of racial prejudice. I also claimed that we need to consider not just the legal consequences of non-anonymity, but the social and economic ones too. This is especially true in an age where those with prejudice have the means to widely share someone else’s identity.

Second, I suggested that civil disobedience theory needed to move with the times in relation to online activism, which is a fertile ground for anonymous civil disobedience, or ‘hacktivism’. I used the example of Anonymous to show that a group can be non-anonymous, and so be engaging in a political speech act about the injustice of society, whilst keeping its members identities unknown. I argued that to disqualify such civil disobedience on the grounds of anonymity is not fit for purpose today.

One answer is to simply say that civil disobedience demands non-anonymity, but sometimes anonymity is desirable, in which case it is another form of political dissent that is not civil disobedience. This would allow us to distinguish between forms of dissent which are less likely to cause harm from those that are more likely. This is one answer, but it runs the risk of conflating political dissent that is more likely to cause harm with marginalised groups; therefore, I think there is a strong argument in favour of expanding civil disobedience theory discussions to include non-anonymity. I think
one of the reasons civil disobedience has received theoretical attention post-Rawls, is that Rawls embedded it with normative weight, where marginalised groups were considered to be at the centre of the theory, rather than outlier cases.

This does open up difficult discussions around civil disobedience and when anonymity invites more extreme versions of disruption, and even terrorism. Anonymity may enable outlier groups to utilise more violent tactics, but if they were that way inclined, they would do so regardless. Yet for non-violent groups, it enables them a chance to practice civil disobedience without fear of backlash. This may encourage more civilly disobedient acts, but as Rawls says, this is all to the good; for civil disobedience, when the focus is *proper*, pushes us towards greater political stability.

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**Notes**

1. In another article – ‘Homelessness and Civil Disobedience’ (2023b) – I make an argument that we should view anti-social behaviour from people experiencing homelessness, as civil disobedience, for any disruptive act must have, through the status of being homeless, political frustration wrapped up within it.

**References**


