On Civil Disobedience and Liberal Democracy

Madsen, Tine Hindkjær

Publication date: 2019

Document version
Publisher's PDF, also known as Version of record

Document license: CC BY-NC-ND

Citation for published version (APA):
PhD Thesis
Tine Hindkjær Madsen

On Civil Disobedience and Liberal Democracy
TABLE OF CONTENTS

Acknowledgements 4

Article overview 6

Introduction and state of the art 9

Methodology 61

Article 1: On a Belief-Relative Moral Right to Civil Disobedience 71

Article 2: Disobedience, Epistocracy and the Question of Whether Superior Political Judgment Defeats Majority Authority 97

Article 3: Are Dissenters Epistemically Arrogant? 128

English Summary 160

Dansk Resumé 161

Bibliography 162
ACKNOWLEDGMENTS

I am first of all thankful to my supervisor Klemens Kappel for his sharp comments on my articles, for always having an open door and for never doubting that I could write the dissertation (or at least for not making any doubt explicit to me). I am also very grateful to David Estlund for giving me the great opportunity of a visiting-scholar stay at Brown and for many enlightening, enjoyable discussions. This dissertation has benefitted immensely from discussion with and inspiration from both Dave and Klemens.

I also want to thank my colleagues in the practical philosophy research group and the former disagreement and legitimacy research group at University of Copenhagen. For their support and valuable comments on my papers, I want to thank in particular Bjørn Hallson, Morten Ebbe Juul Nielsen, Sune Holm, Josephine Pallavicini and Nana Kongsholm. I owe a very special thanks to Andreas Christiansen for spending many, many hours reading and discussing my papers with me, to Kasper Lippert-Rasmussen who was generous enough to comment on my first paper even though he was in no way obliged to do so and to Nikolaj Nottelmann who has been enormously helpful and encouraging during my years of studying philosophy.

I would also like to express my gratitude to the people who have contributed to the production of the present dissertation in a more indirect way – with pleasant distractions from thesis writing. I am thankful to the best work wife in the world, Josephine Pallavicini. To the ph.d.-students who gave me a warm welcome when I first started working at KU, Nana Kongsholm, Bjørn Hallsson, Rikke Moresco and Andreas Christiansen. To my favorite platonist and main hang at Brown, Anna Pavani. To the greatest friends Carla Charlotte Prip, Mads Hvas, Yasmine Khattar Larsen, Helene Lund. To my family Jan Madsen, Annette Hindkjær, Mette Nina Hindkjær Madsen, Bo Rune Madsen and the rest of the Hindkjær & Madsen families. Finally, I am grateful to my love Andreas for really being
an incredible support and an even greater distraction. Andreas made my thesis and thesis writing years so much better than they would have been without his care and his massive amounts of patience with me when I was finishing the dissertation.
ARTICLE OVERVIEW

Article 1: On a Belief-Relative Moral Right to Civil Disobedience

Acts of civil disobedience are undertaken in defense of a variety of causes ranging from banning GMO crops and prohibiting abortion to fighting inequality and saving the environment. Recently, Brownlee has argued that the merit of a cause is not relevant to the establishment of a moral right to civil disobedience. Instead, it is the fact that a dissenter believes his cause for protest to be morally right that is salient. We may term her and similar such theories belief-relative theories of civil disobedience. In this paper, I first argue that Brownlee’s important argument from conscientious conviction does not succeed in its aim to establish a belief-relative moral right to civil disobedience. I then provide a more general argument that no purely belief-relative theory of civil disobedience grounded in a basic moral value will be tenable. Any moral warrant of civil disobedience that is derived from a value must be limited by the value from which it is derived, as well as by other similarly weighty values. If the moral warrant of civil disobedience is derived from the value of autonomy, then the warrant does not extend to acts of civil disobedience that violate the autonomy of others, or other similarly weighty values. Furthermore, granting a right to disobey in promotion of a grossly unjust view is problematic because civil disobedience ought to serve the role of promoting justice.

The article is published in Res Publica (Online first 2018). DOI: 10.1007/s11158-018-9404-7
Article 2: Disobedience, Epistocracy and the Question of whether Superior Political Judgment Defeats Majority Authority

In this paper, I sketch a new approach to the question of when civil disobedience is warranted in liberal democracy. I begin by arguing that civil disobedience and epistocracy are similar in the sense that they both involve the idea that superior political judgment defeats majority authority, because this can lead to correct, i.e. actually just, prudent or morally right, political decisions. By reflecting on the question of when superior political judgment defeats majority authority in the epistocracy case, I identify considerations that also apply to the disobedience context. I argue that civil disobedience performed by agents who are knowers is legitimate when there are no reasonable objections to a principle that the superior political knowledge of those who know warrants their rejection of the majority’s authority (the authority principle*). There are no reasonable objections to the authority principle* when the following propositions are true: 1) it is not reasonably disputable that the civil dissenter is a knower 2) the adoption of the law or policy being protested is a high-stakes political decision and 3) no destabilizing effects ensue. This account of legitimate civil disobedience deviates from the influential liberal and democratic theories of civil disobedience in that it avoids restricting the class of political causes that can warrant civil disobedience to liberty rights violations or democratic failures. The present account instead holds that civil disobedience is legitimate when used to fight grave wrongs whether they be deficits in the democratic decision-making procedure, rights violations or other moral wrongs.
Article 3: Are Dissenters Epistemically Arrogant?

In court rulings and public political debate, citizens engaging in civil disobedience are sometimes accused of being arrogant because they apparently think their own political judgment is superior to that of the democratic majority and that their superior political judgment justifies illegal protest. This paper examines and evaluates the claim that civilly disobedient citizens are epistemically arrogant. I will argue that, contrary to the dominant view in theories of epistemic arrogance, epistemic arrogance can consist in falsely exaggerating the epistemic worth of one’s view and this is one way in which civil dissenters can be accused of being epistemically arrogant. The most plausible charge against civil dissenters that they are epistemically arrogant consists of not just the one claim that they falsely exaggerate the epistemic worth of their political view, but of two claims. Specifically: (1) civil dissenters have a higher degree of rational certainty in P than is warranted and uphold the same degree of certainty despite being presented with relevant evidence contrary to P. (2) civil dissenters use a method of expression that requires a higher level of rational certainty than is warranted in the propositions that their political view is right and the injustice they fight is substantial, and they use the same method of expression even when presented with evidence to the contrary. Against this backdrop, I conclude that civil disobedience is not such that it necessarily involves epistemic arrogance, but whether an act of civil disobedience manifests epistemic arrogance will in the end depend on whether in each case the dissenter lives up to (1) and (2). Finally, I argue that even though epistemic arrogance is epistemically bad at an individual level because it is irrational, epistemically arrogant civil dissenters can still contribute to the epistemic end of his democratic community by promoting true, but unjustified views about justice in turn enabling the community to adopt more just laws and policies.
INTRODUCTION AND STATE OF THE ART

The history of liberal democracy has witnessed the Suffragettes fight for the enfranchisement of women, student protesters occupying the offices of local draft boards in protest of the Vietnam war, and civil rights protestors engaged in illegal sit-ins, pray-ins and marches to repeal the Jim Crow laws that enforced racial segregation and to stop the de facto disenfranchisement of African-American citizens. In recent years, we have also witnessed the citizens of Ferguson, Missouri storm the Saint Louis City Hall to protest racial injustice in the wake of the killing of an unarmed black 18-year old, Edward Snowden leak classified information from the NSA to reveal their mass-surveillance, and anti-abortion activists vandalize clinics. These are all examples of citizens who break the law in protest of what they believe is unjust or wrong. In other words, these are all examples of civil disobedience.

Some acts of civil disobedience are motivated by merited causes and show that civil disobedience can serve the role of relieving great injustice. It is difficult to find someone who will challenge the moral credentials of the civil rights movement protests, for instance. Yet, it is part of the democratic idea that citizens of liberal democracies must follow the laws that their fellow citizens adopt, even when they have adopted wrong or unjust laws. This invites the question: how are we to reconcile the intuition that civil disobedience is sometimes morally warranted with the intuition that citizens of liberal democracies ought to respect the opinion of their fellow citizens and follow democratically enacted laws, even when these laws are unjust or wrong? Put differently, when are citizens of liberal democracies warranted in engaging in civil disobedience? The aim of the present dissertation is to contribute to the solving of this philosophical puzzle.
The dissertation consists of three articles: “On a Belief-Relative Moral Right to Civil Disobedience”, “Disobedience, Epistocracy and the Question of whether Superior Political Judgment Defeats Majority Authority” and “Are Dissenters Epistemically Arrogant?”. Before turning to the articles, I devote this first part of the dissertation to an introduction of the philosophical discussions about civil disobedience in liberal democracy. In this connection, I also place the contribution of the articles that make up this dissertation within these discussions. My presentation of the literature proceeds as follows. I begin by briefly introducing the concept of civil disobedience. I then turn to the main issue of the dissertation which is the moral defense of civil disobedience in liberal democracy. I lay out the democratic challenge to civil disobedience and then present the different approaches scholars have taken to defend civil disobedience in liberal democracy.

1. Defining Civil Disobedience

The dissertation is mainly concerned with the question of when it is warranted to engage in civil disobedience in liberal democracy. In order to answer that question, however, we will need to know, at least roughly, what concept we are referring to when we speak of civil disobedience. I thus briefly introduce the concept in this section before turning to the moral defenses of civil disobedience.

The most prominent and discussed conception of civil disobedience is provided by Rawls in his *A Theory of Justice*. According to Rawls, civil disobedience is “…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 1971, 320). Rawls’ theory of civil disobedience is meant for application in what he calls “a nearly just society” (Rawls 1971, 319). A nearly just society is a democratic society in which there are still some major injustices. There is another defining feature of
a near just society: there exists a shared conception of justice. Having a publicly shared conception of justice enables civilly disobedient citizens to appeal to considerations that the majority will understand. Rawls assumes that in a near just society, the two principles of justice he proposes in *A Theory of Justice* are publicly recognized as the terms of fair cooperation between free and equal citizens. The civilly disobedient citizen addresses the majority or the government to let them know that in his considered opinion, the principles of justice are being violated (Rawls 1971, 321-22).

It should be noted also that Rawls distinguishes between two sub-categories of civil disobedience. There are *direct* forms of civil disobedience where agents break the same law they protest and *indirect* forms of civil disobedience where agents break a different law than the one they protest. According to Rawls, agents engaging in civil disobedience need not break the same law they wish to protest. For one thing, there are sometimes weighty reasons not to engage in direct disobedience. If one wants to protest treason laws, for instance, it is more appropriate to break traffic laws during a demonstration than to commit treason. Furthermore, it is sometimes not possible to engage in direct civil disobedience. For example, it is often not possible disobey a government’s foreign policy (Rawls 1971, 320). Most scholars agree with Rawls that there is this distinction between direct and indirect civil disobedience and with his contention that is sometimes more appropriate to engage in indirect civil disobedience.

However, other aspects of Rawls’ conception of civil disobedience has raised debate and criticism. Take the condition that an act of disobedience must be public. One thing that Rawls takes the publicity condition to mean is that the act of civil disobedience is done not in secret, but openly and with forewarning to authorities. Critics have pointed out that forewarning the authorities may sometimes undermine an act of civil disobedience, because giving notice beforehand will enable authorities and
opponents to hinder the execution of civil disobedience. For example, in the case of dissenters who aided runaway slaves in the Antebellum era of the Southern United States, or dissenters who release animals from laboratories or factories (See e.g. Dworkin 1985; Milligan 2017; Smart 1991). Even though dissenters do not forewarn authorities, their dissension may nonetheless be done ‘openly’ if dissenters publicly assume responsibility for their action after it has been carried out (Greenawalt 1987).

Rawls’ idea that an act of civil disobedience is by definition non-violent is also criticized. Brownlee 2012, for example, argues that there is no reason one should think that any act of violence would make disobedience uncivil. According to the commonsense conception of violence, violence is “…the likelihood or actuality of a person or group causing injury to someone or damage to something…” (Brownlee 2012, 21). Since violent acts include many acts that are not injurious or merely cause minor damage, it is implausible that an act of disobedience is by definition uncivil if it falls within the class of acts encompassed by the common conception of violence, according to Brownlee. Furthermore, what is important is not so much violence as harm, and non-violent acts of dissent can be more harmful than violent ones (Brownlee 2012, 22). As Raz also comments, a strike by ambulance workers causes more harm than minor property damages (Raz 1979, 267).

Such consideration have led scholars to deem Rawls’ conception of civil disobedience too narrow, and the philosophical literature now offers several conceptions of civil disobedience, which differ with respect to details such as whether violent protests and protests against non-state actors, like business corporations, should be included under the umbrella of civil disobedience. Notwithstanding these disagreements, most conceptions of civil disobedience converge on certain core features: civil disobedience is an illegal, conscientious act motivated by the aim of political change, i.e. changing
laws or policies or changing the practice of political engagement. Liberal scholars and democratic scholars disagree about whether civil disobedience is meant to spark democratic engagement and deliberation or initiate changes in law and policies. However, they converge on the idea that the aim of civil disobedience is political change and a political change that is not as far-reaching as changing the system of government entirely, i.e. not revolutionary (see e.g. Rawls 1971; Raz 1979; Markovits 2005; Brownlee 2012). Knowing that civil disobedience includes at least these three features will do for the purposes of the present thesis, which is to elucidate when it is warranted at all to break democratically enacted laws with the aim of instigating a political change one sincerely believes is just or right.

**Distinguishing civil disobedience from other types of dissent**

The rough definition of civil disobedience according to which civil disobedience includes at least the three core features of illegality, conscientiousness and the aim of changing laws or policies or practices of political engagement also enables us to distinguish civil disobedience from other related types of dissent and protest. First, civil disobedience is typically distinguished from revolution for the reason that revolutionary disobedience is motivated by a desire to change the form of governance entirely (Raz 1979, 263), whereas civil disobedience aims only at either changing specific laws and policies or sparking democratic engagement.

Although civil disobedience and revolutionary acts are conceptually different, they may also overlap in real life cases. The Boston Tea Party is a case in point. During the Boston tea party, Samuel Adams, John Hancock and 50 other young men climbed aboard a ship and threw 45 tons of tea
overboard in protest of the Tea Act of 1773. The protest was part of the American colonists’ “no taxation without representation” movement. The colonists had boycotted tea from the British East India Company to protest the taxation on tea imposed by Prime Minister Lord North and the British Parliament, a parliament in which the American colonies were not represented. The Tea Act was adopted by the Parliament in Westminster to increase tea sales by lowering prices on tea while still levying taxes, a move that outraged the colonists. The Boston Tea Party seems to be an act of civil disobedience, because it was an illegal protest against a specific law (granted, of course, that an act of dissent involving property violence can count as civil disobedience). At the same time, the Boston Tea Party could be deemed revolutionary because the protest also aimed at changing the structure of government, and it escalated the conflict between the American colonists and the British King George III, a conflict that eventually turned into a war over American independence.

Second, civil disobedience is different from conscientious objection. Conscientious objection is a breach of law or non-compliance with an administrative order motivated by an agent’s conscientious moral conviction that it is wrong to do what the law or order prescribes. Conscientious objection may be evasive, i.e. done in secret, or non-evasive, i.e. done openly and such that authorities may be aware, but neither type involves a deliberate communication of opposition to the law (Brownlee 2012, 149). Acts of conscientious objection differ from acts of civil disobedience, first, for the reason that conscientious objectors do not try to address the public to instigate political change, and second, for the reason that conscientious objection is not necessarily an illegal act whereas civil disobedience is. Examples of conscientious objection include a citizen who refuses to enlist in the army, a doctor refusing to perform abortions, clergymen unwilling to perform same-sex marriages, or Sikhs refusing to wear motorcycles helmets so they can wear turbans, all of which may in principle be legal.
2. Civil Disobedience and Liberal Democracy

The thorny relationship between civil disobedience and liberal democracy is the focus of the present dissertation, and therefore also the main focus in this literature introduction. As Dworkin writes, "Civil disobedience, in all its various forms and strategies, has a stormy and complex relationship with majority rule. It does not reject the principle entirely, as a radical revolutionary might; civil disobedients remain democrats at heart. But it claims a qualification or exception of some kind…” (Dworkin 1985, 110). The tension between the liberal democratic form of rule and civil disobedience as a political practice finds several expressions. Christiano, for example, defends a duty to obey democratically enacted laws and argues that if a citizen judges that the majority has made an unjust decision, then that citizen is not morally justified in disregarding what the majority thinks by setting the decision aside or reverse the majority’s decision by using coercive force, "If I were to change things regardless of what others think, I am in effect saying that my judgment on these matters is better than theirs in a way that is contradicted by all that I know about the limitations of people's capacities for judgments. I am in effect treating myself like a god or the others like children. Since that is not the relationship between us and since they have the same interests in having their judgments respected as I do, I must respect their judgments” (Christiano 2008, 98).

---

1 Since my focus is on the tension between civil disobedience and liberal democracy, I must set aside a related discussion on civil disobedience and political obligation broadly speaking. In the discussion I set aside, civil disobedience is sought defended against the objection that civil dissenters violate a general moral duty to obey the law. Delmas, for example, argues that the Samaritan duty that grounds the duty to obey the law also grounds a duty to disobey. The Samaritan duty states that when others are in a peril, you are under an obligation to assist them, when assisting them does not result in an unreasonable cost to yourself. According to Wellman, the Samaritan duty grounds a duty to obey state laws. This is because the state rescues us from the perils of the state of nature. But the state can only serve this role if we obey its laws and therefore we have a duty to obey (Wellman 2005). According to Delmas, however, the Samaritan duty also grounds a duty to disobey laws when law-breaking is necessary to save honor the duty to save others in peril. For example, there was a Samaritan duty to aid runaway slaves in the Antebellum era in the southern United States even though this was illegal due to the Fugitive Slave act of 1850.
When the civil dissenter expresses the view that his judgment is superior and should be given more weight, he is in effect saying that other citizens are inferior, according to Christiano. For disobedience not only express the view that your political judgments are better, but also that your interests count as more than your fellow citizens’ interests (Christiano 2008, 99).

Estlund 2008 similarly defends a duty to obey and permissibility to enforce democratically enacted laws based on his theory of epistemic proceduralism. Democratic decisions are legitimate and authoritative according to epistemic proceduralism, because they are the result of a procedure that is better than random at coming to correct political decisions where this is acceptable to all qualified or reasonable points of view. Still, Estlund contends that there is a limit to democratic authority and a place for civil disobedience, since there are cases of “unjust laws that, while not so heinous as to silence any suggestion of authority or legitimacy, warrant disobedience of a conscientious or demonstrative kind” (Estlund 2008, 111).

The question is now when there is a place for civil disobedience in a liberal democracy: when do the reasons in favor of civil disobedience defeat the reasons in favor of following democratically enacted laws without vanquishing the latter entirely. The literature on civil disobedience provides different approaches to this question which I lay out in the following. The first type of approach is rooted in a liberal tradition. It claims that there are limits to democratic authority and civil disobedience is justified when it is used against a democratic majority that oversteps its authority. The second approach is grounded in a democratic tradition. It states that civil disobedience is an inherently democratic practice that is justified when it is used to remedy democratic failures. I add a third

---

2 This is so because people are biased toward promoting their own interest when they make political judgments. Even though citizens strive to come to the true conclusion about what justice requires and are not deliberately trying to advance their own interests, they have a bad understanding of the interests of others, and they are likely to give less weight to the interests of others. Therefore, they end up not taking the interests of others properly into account (Christiano 2008, 89).
approach, one that I develop in the second paper of this dissertation. It basically says that superior political judgment trumps majority authority when dissenters know the majority has adopted a wrong decision and the wrong is grave enough. According to the fourth approach there is a moral right to engage in civil disobedience in a democracy. I end this literature introduction by presenting a related difficulty that arises when civil disobedience and liberal democracy intermix, which is also the topic of the third article of the dissertation, namely the problem that by engaging in civil disobedience, dissenters evince an arrogance towards their fellow citizens.

2.1. The Liberal Tradition

The first way to answer the democratic challenge to civil disobedience is provided by the so-called liberal school of civil disobedience. To liberal theorists, there are limits to democratic authority: there are fundamental rights that a democratic majority cannot legitimately violate. Civil disobedience is justified when it is used to protest democratic majorities overstepping their authority by violating fundamental rights. In this section, I provide two examples of the liberal approach, namely Rawls’ and Dworkin’s accounts of justified civil disobedience.

Rawls on the justification of civil disobedience in a nearly just society

One of the most prominent liberal scholars is Rawls. According to Rawls, a conflict of duties arises in a nearly just society, i.e. a democratic society where some major injustices still exist, because there is both a duty to comply with democratically enacted laws, but there is also a duty to resist injustices (Rawls 1971, 319). To Rawls, “civil disobedience used with due restraint and sound judgment helps
to maintain and strengthen just institutions. By resisting injustice within the limits of fidelity to the law, it serves to inhibit departures from justice and to correct them when they occur” (Rawls 1971, 336).

Rawls’ theory applies to a nearly just society, which is not only characterized by being a democratic society, but also by being a society with a shared conception of justice. The shared conception of justice consists of (1) the equal liberties principle of justice, according to which “Each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all” and (2) the principle stating that “Social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and (b) attached to offices and positions open to all under conditions of fair equality of opportunity.” (Rawls 1971, 266). A citizen who engages in civil disobedience does so in order to let majority or government know that in his considered opinion, their shared principles of justice are being violated (Rawls, 1971, 321).

However, citizens are only morally justified in protesting the first principle of equal liberty as well as clear violations of the second part of the second principle, according to Rawls. This is because it is rather straightforward to tell whether the first principle of justice is violated, e.g. when minorities are denied the right to vote, religious freedom, or the right to own property. It is much more difficult to settle whether the first part of the second principle of justice, “the difference principle”, is violated. Any conclusion as to whether a given rate of inequality is to the greatest benefit of the worst-off will depend “…upon theoretical and speculative beliefs as well as upon a wealth of statistical and other information, all of this seasoned with shrewd judgment and plain hunch”, in the words of Rawls 1971, (p. 327). Because it is so difficult to determine in practice whether the second principle has been
violated, it is also difficult to determine whether protests are motivated by self-interest or bigotry, or by a concern for justice (Rawls 1971, 327). Consequently, contestations over the second principle of justice should be settled through democratic procedures, not through the use of illegal protests.

A second condition that has to be satisfied in order for civil disobedience to be morally justified in a nearly just society is that the use of civil disobedience has to be a last resort. The civilly disobedient citizen has to have tried moving the majority through legal means of political participation before resorting to civil disobedience. If the dissenter has already tried addressing the majority through legal channels, but the majority has proved indifferent time and time again, then resorting to civil disobedience is justified (Rawls 1971, 327-328).

The final condition for a moral justification of civil disobedience is that dissenters coordinate their efforts with other groups of dissenters. Occasionally, there will be a number of different minorities suffering injustices that justify civil disobedience. If they were all to engage in illegal political protest, however, this would bring about unrest, and a lack of respect for the law and for the, ex hypothesi, just constitution, according to Rawls. Therefore, minorities must coordinate their dissent in order to keep the occurrence of civil disobedience at a decent level (Rawls 1971, 328).

Rawls thus handles the democratic challenge by limiting justified civil disobedience to cases where a democratic majority has implemented a law that violates a basic liberty right and thus oversteps its authority. Even then, citizens must first try to address the majority using the democratic and legal mechanisms for engagement and only use civil disobedience as a last resort.
Dworkin on Civil Disobedience

Another prominent scholar in the liberal tradition is Dworkin. In his *Taking Rights Seriously*, Dworkin also argues that there are limits to democratic authority, and that when a democratic government oversteps its authority there is a right to civil disobedience. Dworkin approaches the discussion from the perspective of constitutional law. In a constitutional democracy, there are limits to democratic authority, and supreme courts can strike down democratically enacted laws as unconstitutional. There is not, however, always a clear answer to whether a law is unconstitutional and, according to Dworkin, a citizen acts within his rights when he follows his own judgment about what the constitution requires, even when the highest competent court says otherwise.

Dworkin rejects the thesis that a citizen must obey a law he believes to be unconstitutional and only use legal channels of political participation to voice his opinion. Dworkin also rejects the thesis that a citizen should follow his own judgment about the constitutionality of the law until a decision by the highest competent court says he is wrong. Instead, Dworkin defends the view that a citizen who believes a law is unconstitutional may follow his own judgment about whether the law is valid, even after the highest competent court has said otherwise. Courts, after all, make mistakes and may overrule their own decisions later. The citizen should still take the court’s decision and reasoning into account when he considers whether the law is unconstitutional or not (Dworkin 1997, 254-255).

To Dworkin, it is valuable that citizens follow their own judgment about what the constitution requires, because this practice provides a means for testing hypotheses about how to understand the constitution. When dissenters defend themselves in the legal system, their arguments go on record and can be used by the legal profession and the legal system to better interpret the constitution. As
Dworkin puts it, “If our practice were that whenever a law is doubtful on these grounds, one must act as if it were valid, then the chief vehicle we have for challenging the law on moral grounds would be lost, and over time the law we obeyed would certainly become less fair and just, and the liberty of our citizens would certainly be diminished.” (Dworkin 1997, 256).

Since a citizen acts within his rights when he follows his own judgment about what the constitution requires, a government should be tolerant of his dissent, Dworkin contends. Government should refrain from prosecuting the dissenter unless there are strong reasons for prosecuting, if dissent makes it difficult for government to carry out its policies for instance (Dworkin 1997, 260). Dworkin provides the example of the draft resistance during the Vietnam War. Many protesters at the time believed that it was wrong and unconstitutional to exempt from the draft those who were against war on religious grounds, but not those who were against the war on moral grounds. Vietnam War protestors also objected to the decision-making process that resulted in the resolution to go to war, arguing that the initial decision was not made or deliberated openly by Congress (Dworkin 1997, 252). The decision-making process was arguably unconstitutional, because the Constitution vests the power to declare war in Congress and only gives the President the right to repel against sudden attacks (Fisher 2009, 388). Nevertheless, it was President Johnson who first ordered an attack on the North Vietnamese3. Because draft resistors could thus make a plausible case that the draft and, indeed, the

---

3 The Constitution splits war powers between the executive branch and the legislative branch. The Constitution’s Article I gives Congress the power to declare war, raise and support armies, provide and maintain a navy, regulate land and naval forces and the power to call forth and discipline the militia. According to Article II of the Constitution, the President has the right to repel against sudden attacks, because the founders feared that Congress would be too slow to act during times of crises (Fisher 2009, 388). In the case of the Vietnam war, a U.S. destroyer was reportedly attacked by North Vietnamese torpedo boats on August 2, 1964, and on August 4, 1964, Americans intercepted another attack. That same evening President Johnson ordered an attack on the North Vietnamese. The next day, on August 5, 1964, Johnson told Congress and the public that there had been unprovoked attacks against U.S. destroyers and he requested that Congress support his measure and pass the Tonkin Gulf Resolution. It is dubious whether this initiation of war was constitutional for several reasons. First, it has been questioned whether the attack was entirely unprovoked and some evidence even suggests that the second attack never even took place. If this is the case, the President was not repelling against sudden attacks as the Constitution allows. Second, it is unclear whether the Tonkin Gulf Resolution was a declaration of war although the Johnson administration claimed that it was the "functional equivalent of a declaration of war" (Rudalevige 2008, 76-79).
initiation of war was unconstitutional, and it is unfair to punish citizen for disobeying laws that are arguably unconstitutional, the court ought to acquit those citizens who disobey the draft laws (Dworkin 1997, 267).

Dworkin and Rawls, then, both provide an account of civil disobedience that can release the tension between civil disobedience and democracy by arguing that there are limits to democratic authority. If a democratic government oversteps its authority by passing a law that arguably violates fundamental rights, it is less problematic when dissenters flout democratic processes to redress such rights violations. The idea that there are political issues that are off limits to democratic authority, however, has been unfavorably received by some democratic scholars. The next section explores the so-called democratic school of civil disobedience that rejects the liberal approach and instead conceives of civil disobedience as a democratic practice and an integral part of the democratic process itself.

2.2. The Democratic Tradition

The democratic approach to civil disobedience arises from a criticism of the liberal tradition. Exponents of the democratic approach criticize liberal theories for not being able to account for cases of civil disobedience that are aimed at other political issues than liberal rights, such as foreign policy, globalization or, of course, failures in democratic decision-making processes. In this section, I

On the other hand, and to confuse things further, there are constitutional scholars who argue that the executive branch does not overstep its authority when initiating wars without a declaration from Congress, because Congress’ power to declare war is only meant to serve as “clarifying the legal status of the nation’s relationship with another country – rather than authorizing the creation of that state of affairs” (Yoo 2005, 145).
elaborate on the alternative accounts of justified civil disobedience provided by the democratic approaches as exemplified in the following by Markovits’ republican theory and Smith’s deliberative theory of civil disobedience.

**Justifying civil disobedience within a republican theory of democracy**

Begin with Markovits who develops an account of democratic disobedience grounded in a republican theory of democracy. According to Markovits’ republican account of democracy, citizens are free when they are authors of their own lives and the laws under which they have to live. Citizens are free when they live under a democratic form of rule, because the democratic process of citizen engagement ensures collective authorship of political decisions. According to republican theories of democracy, the democratic decision-making system enables citizens to gain a sense of authorship of decisions even if they voted with the minority. The republican theory of democracy differs from a liberal theory in that it does not say that there are certain political issues that are beyond the scope of democratic authority. Liberty rights are important, but so are democratic values, and the latter may also outweigh the concern for protecting liberty rights (Markovits 2005, 1911-1915).

Democratic decision-making procedures, however, are not perfect and sometimes democratic deficits occur. It is in these situations civil disobedience becomes appropriate, according to Markovits. Democratic deficits can arise, first, because the democratic institutions that encourage deliberation and compromise, might also be used to force through policies that promote special interests. For example, instead of seeking to compromise on a formulation of a bill, a legislator, or faction of the
legislature, with a deciding vote can block the bill or refuse to vote for it unless it is changed in favor of their special interests (Markovits 2005, 1921-1922).

A second way in which democratic deficits arise is when there is a gap between the collective will and the law. To show this, Markovits invites us to consider an analogy between collective will and individual will. When an individual agent forms an intention to Φ, she silences the reasons that favor not Φ-ing and brings to the fore reasons in favor of Φ-ing. Otherwise, her internal deliberation about what to do could go on ad infinitum and she would be incapable of forming an intention to Φ or not to Φ. Still, circumstances might change such that the reasons against Φ-ing that she silenced before may become weightier or circumstances might change such that new reasons now apply to her internal deliberation about whether or not to Φ. In light of these changes, she ought to reconsider whether Φ-ing would still be the best course of action for her. It would be irrational for her just to stick with the intention she initially formed instead of re-opening her internal deliberation. Analogously, when we make collective decisions, we exclude considerations from the political agenda, because it is necessary to end political deliberation in order to make and implement a decision (Markovits 2005, 1924-1925). Here, the reasons that favor one policy over another may also gain or lose strength in changed circumstances or when the citizenry changes, and this may cause a gap between the collective will and the law. The sense of authorship of a collective decision may then vanish and a democratic deficit occurs (Markovits 2005, 1927).

Markovits argues that civil disobedience can be justified when it is used to remedy the aforementioned democratic deficits. To get his argument off the ground, Markovits relies on an analogy between a democratic account of judicial review and the democratic account of civil disobedience that he proposes. Judicial review and civil disobedience, he writes, are both seemingly
undemocratic political practices in which judges or dissenters thwart democratically enacted laws. According to the liberal conception of judicial review, judges can strike down democratically enacted laws as unconstitutional when the democratic government has overstepped its authority (Markovits 2005, 1929). According to the democratic conception of judicial review, however, judges ought to not strike down laws as unconstitutional, but judicial review ought rather to serve the role of remedying democratic deficits by inducing democratic reengagement with a law over which there is no longer a collective sense of authorship. Judges may invalidate laws that have fallen into desuetude or find vague laws void. In so doing, the judges encourage the legislature to reconsider the law in question: to consider whether to reenact the law or perhaps pass a new version of it. In this way, judicial review works as part of the democratic process instead of limiting the democratic process (Markovits 2005, 1932).

The democratic rather than liberal theory of judicial review sketched above should serve as a model for a theory of civil disobedience, argues Markovits. When democratic deficits occur, civil disobedience can serve the same purpose as judicial review: the purpose of rectifying democratic deficits by “triggering a democratic reengagement with issues that the status quo has kept off the political agenda” (Markovits 2005, 1933). Of course, citizens may try the legal channels for democratic engagement available in liberal democracy, but these legal channels might not always succeed in bringing the neglected political issue back on the political agenda, and if the democratic deficit is substantial, citizens are then justified in turning to disobedience to reopen the democratic debate (Markovits 2005, 1933-1934). This kind of democratic disobedience is not democracy-limiting, but a necessary part of a well-functioning democracy, according to Markovits (p. 1936; 1949). Note, however, that once the democratic community once again considers the issue that has
been kept off of the political agenda, civil disobedience is no longer justified, even when the legislature winds up re-affirming their support of the status quo (Markovits 2005, 1941).

Markovits’ democratic justification of civil disobedience has received criticism for claiming that it is ‘unnatural’ to use civil disobedience to promote a policy outcome. Since Markovits justifies civil disobedience as a means of reviving democratic deliberation, a revival as such must be the sole aim of civil disobedience. According to Smith, however, Markovits thereby fails to capture the practice of civil disobedience, which is usually motivated by a criticism of the policy outcome as well as political process. The Vietnam War protestors that Markovits invoke as an example were not only protesting the flaws in the process that led to the initiation of the war, but also what they found was an immoral war, Smith argues. What is more, protesting a policy outcome is good for democracy, because it leads to more democratic deliberation over the issue protestors bring up (Smith 2011, 148). Furthermore, it is problematic to allow citizens who do not support a political decision to engage in civil disobedience on the basis of the claim that they know what the real collective will is. Engaging in civil disobedience on this basis may arouse resentment in the citizens who do support the political decision (Smith 2011, 148). Finally, civil disobedience should not only be justified when it is used to promote a policy option that has been neglected in public political decision-making despite the fact that it enjoys wide support in the population, according to Smith. Some issues are not widely supported among a population because of orthodoxy’s hold on popular opinion. Under such circumstances, civil disobedience should also contribute to the reviving of democratic deliberation (Smith 2011, 149). These considerations lead Smith to reject the idea that a justification of civil disobedience within a democratic framework should proceed from a republican theory of democracy. Instead, he proposes to ground the justification of civil disobedience in a deliberative theory of democracy that is presented in the next section.
Justifying civil disobedience within a deliberative theory of democracy

Like Markovits, Smith also finds fault with the liberal approach to civil disobedience for restricting justified civil disobedience to acts aimed at remedying liberty rights infringements. Smith then develops a theory of justified civil disobedience within a framework of deliberative democracy, specifically within Habermas’ theory of deliberative democracy. Activism, including civil disobedience, is usually thought to have a complex relationship with the ideal of deliberative democracy. The two are often thought incompatible because deliberation is characterized by the calm exchange of reasons, whereas activism involves critical opposition and interruption of deliberation (for further discussion see Young 2001; Talisse 2005; Fung 2005; Estlund 2008). According to Smith, however, civil disobedience is justified as method of overcoming the deliberative inertia that can occur when the public sphere is not working as it ought to.

According to Habermas, the public sphere consists of networks for communication and deliberation, and it is here public opinion is formed and decisions are made about what public policy to adopt. The public sphere comprises both the formal, legislative part of the decision-making process (‘will-formation’), which makes concrete decision about how to resolve the political problems and the public political discourse of civil society (‘opinion-formation’) where political and social problems are identified and brought to the fore (Habermas 1996).

Against this Habermasian backdrop, Smith develops his theory of justified civil disobedience. According to Smith, opinion-formation and will-formation processes may suffer from what he calls ‘deliberative inertia’. Deliberative inertia can occur during the opinion-formation process when certain discourses, i.e. tacit assumptions that frame discussion, hinder alternative political viewpoints
and proposals from being considered. Deliberative inertia becomes problematic when the alternative viewpoints in question provide better answers to our political problems or shine light on important political matters that are otherwise neglected. Civil disobedience is justified when it is used against problematic deliberative inertia at the opinion-formation stage: when it is used to bring attention to a superior, alternative viewpoint that is not being considered at all or not being considered seriously at the center of the public sphere. An example of civil disobedience used against deliberative inertia at the opinion-formation stage is the protests against the neo-liberal and anti-welfare discourse of international institutions such as IMF and the World Bank.

Problematic deliberative inertia can also occur at the will-formation stage when a public opinion that enjoys wide public support is not taken up in the will-formation process (Smith 2011, 154). Civil disobedience is also justified when it is used against problematic deliberative inertia at the will-formation stage: when it is used ensure that there is a transition from opinion-formation to will-formation. For example, when civil disobedience is used to call on governments to act on the urgent environmental issues the globe is facing (Smith 2011, 157-159).4

Additional to the condition that civil disobedience must be used against deliberative inertia, Smith proposes two further conditions on justified civil disobedience. First, the political issues that dissenters attempt to bring attention to must be of great significance and require immediate attention in the public sphere (Smith 2011, 156). This is the case, for instance, when fundamental interest such

---

4 Civil disobedience is an effective way of overcoming deliberative inertia, according to Smith for three reasons. First, the illegality of the act and the possible punishment attracts media attention and better publicizes the alternative viewpoint that dissenters are trying to get out (Smith 2011, 160). Second, the fact that the dissenter is willing to break the law and risk punishment also conveys the intensity with which he supports the issue, which in turn is effective in making his fellow citizens consider his point. Finally, in deciding whether to punish the dissenter, authorities are also forced to consider the merits of the law subject to protest (Smith 2011, 162).
as human rights are at stake or when a political decision has significant, harmful consequences that are difficult to alter (Smith 2011, 157). The final condition for justified civil disobedience is that it not be used to promote policies that conflict with the inclusive ideal of the public sphere. For example, it is not justified to engage in civil disobedience to promote policies of racial discrimination, even if they are alternative and kept off of the deliberative agenda, because such policies are not compatible with the inclusive ideal of the public sphere (Smith 2011, 159).

Concluding this section, the democratic approaches to civil disobedience developed as a response to the liberal theories that democratic scholars found too restrictive, because they imply that environmental activism, campaigns against war or campaigns for nuclear disarmament are never warranted (Singer 1973; Markovits 2005; Smith 2013). Furthermore, democratic theorists found fault with the fact that liberal theories exclude disobedience addressing democratic deficits and thus fail to account for many of today’s global protests against global governance institutions such as the IMF, the WTO or the EU (Markovits 2005; Dupuis-Déri 2007). What proponents of the democratic school have observed, then, is that liberal theories have problematic formalist criteria for justified civil disobedience. The term ‘formalist’ is introduced by Schlossberger 1989 to describe theories that use criteria for justified civil disobedience that restrict the justification of civil disobedience to a specific class of political causes, such as rights violations.

Nevertheless, democratic theories also turn out to use problematic formalist criteria for justified civil disobedience. According to the democratic approach, civil disobedience is justified when it is used to countervail deviations from the ideal democratic decision-making procedure. Yet, intuitive examples

---

5 In later work, Smith further develops this deliberative account of civil disobedience into an account that synthesizes the liberal and democratic approach to civil disobedience (Smith 2013).
tell us that disobedience against the outcome of democratic decision-making procedures is also sometimes justified. Indeed, in the 1950s, American civil rights activists protested the Plessy v. Ferguson decision that legalized racial segregation in public schools. These civil rights activists were not (only) protesting against the procedure that led to the decision, they were protesting the outcome of the procedure. It is an implausible implication of the democratic account of civil disobedience that these protests would not have been justified if there were no flaws in the procedure that led to the adoption of racial segregation laws.

In the second article of this dissertation “Disobedience, Epistocracy and the Question of Whether Superior Political Judgment Defeats Majority Authority”, I explore a new approach to the question of when civil disobedience is warranted in liberal democracy. The account that I sketch in the article deviates from democratic and liberal approaches to civil disobedience in that it avoids having formalist criteria of either kind: it is not restrictive regarding the class of causes it is legitimately justified to protest. I present this account in the next section.

2.3. A New Approach

In article two of the present dissertation, I sketch out a third approach to the problem that dissenters flout democratic processes. I take my cue from another political practice that conflicts with the democratic ideal, namely epistocracy, or the rule of the wise elite. I argue that civil disobedience and epistocracy are similar in the sense that they both involve the idea that superior political judgment about what we ought to do politically defeats majority authority. If we care about promoting good political decisions, for example if we care about whether our political decisions are actually just, the
question suggests itself: why not privilege the judgment of those who know better, be they civil disobedients or epistocrats, over the judgment of the democratic majority? By reflecting on the question of when superior political judgment defeats majority authority in the epistocracy case, I identify considerations that also apply to the disobedience context. I argue that civil disobedience is legitimate when there are no reasonable objections to a principle that the superior political knowledge of those who know warrants their rejection of the majority’s authority (the authority principle*). There are no reasonable objections to the authority principle* when the following propositions are true: 1) it is not reasonably disputable that the civil dissenter is a knower 2) the adoption of the protested law or policy is a high-stakes political decision and 3) no destabilizing effects ensue.

The similarity between civil disobedience and epistocracy

Consider first the perhaps surprising idea that civil disobedience and epistocracy are akin at all. I argue that civil disobedience and epistocracy both involve the idea that superior political knowledge defeats majority authority for the sake of promoting correct decisions, a claim I divide into three sub-claims in order to spell it out. First, civil disobedience as well as epistocracy conflict with the majority principle. Citizens engaging in civil disobedience violate the majority principle by breaking laws enacted by the majority thus rejecting the authority of the majority, if only in this one instance. Still, dissenters may signal more or less respect for the opinion of the majority depending on whether they employ tactics that are aimed at persuading the majority to change their mind by argument or more coercive tactics. Epistocracy, or the rule of a wise elite, also conflicts with the majority principle. The term epistocracy covers a plurality of political decision-making practices that are more or less at odds with the majority principle. The permanent delegation of political power to a wise elite only is more
at odds with majority rule than a moderate type of epistocracy like Mill’s where suffrage is (almost) universal, but the wise are granted a plurality of votes (Mill 1991 [1859], 330-40).

The second feature civil disobedience and epistocracy share is that when they are justified, i.e. when the considerations in favor of disobedience or epistocracy outweigh the considerations in favor of majority decision-making, they are justified because they promote correct decisions, or so I will hold at least. The more plausible way of motivating an argument for epistocracy is not the claim that the wise have a right to rule, but rather with reference to the fact, if it is a fact, that the wise make better political decision, i.e. more just, morally right, or prudent political decisions. Similarly, scholars of civil disobedience have often emphasized the role of civil disobedience in promoting justice (see e.g. Rawls 1971; Dworkin 1997; Brownlee 2012). In the paper, I contend that the role of civil disobedience is to promote correct decisions broadly speaking, including promoting decisions that are actually just, prudent or morally right.

Third, epistocracy as well as civil disobedience involves an assertion of privileged political knowledge. When dissenters protest a policy P that the majority has adopted because they believe P is unjust, their action expresses the judgment that the majority was wrong in thinking that P was the right policy to enact and hence that the dissenter knows better than the majority whether or not P is the right policy to adopt. When citizens engage in civil disobedience for the sake of revitalizing democratic processes, their dissent also involves an assertion of privileged political knowledge about the claim that the relevant political issue has not been debated as thoroughly as its importance warrants. When experts exercise power for the reason that they are more knowledgeable and in turn able to make better political decisions, the experts’ exercise of power also expresses that they have privileged political knowledge. Whether civil dissenters and expert rulers actually make superior
political judgments is a different question. Expert rulers are defined such that they necessarily make superior political judgments, while it is contingent whether a civil dissenter has privileged political knowledge. The case for civil disobedience that I provide in the paper is inspired by the case for epistocracy and accordingly limited to cases where dissenters do have privileged political knowledge.

To sum up, civil disobedience and epistocracy are similar in the sense that they both conflict with the majority principle. They also both make assertions of privileged political knowledge and when they are justified, they are justified for the reason that the concern for promoting correct decisions defeat the concern for having the majority rule. Both practices thus invite the question of whether or when superior political judgment defeats majority authority.

**The legitimacy of civil disobedience**

In the article, I transpose the case for epistocracy to the disobedience context. The main principle in the case for epistocracy, as described by Estlund 2008, is a principle stating that: *the superior political knowledge of those who know warrants their having political authority over the rest of the population.* For convenience, I will refer to it as ‘the authority principle’. I revise the authority principle to accommodate the fact that acts of civil disobedience are not exercises of political authority as much as they are rejections of another agent’s political authority. The revised authority principle* reads as follows: *The superior political knowledge of those who know warrants their rejection of the majority’s authority.*

There is a challenge to the authority principle as well as the authority principle* originating with democrats who argue that the principles are incompatible with the idea that legitimate political
systems must be respectful or tolerant of the conflicting political views citizens hold. The democratic challenge comes in different forms and one prominent version of the objection says that political arrangements are legitimate only if they are acceptable to all reasonable citizens. To show that civil dissenters are warranted in rejecting majority authority, then, we must show that the authority principle* is reasonably acceptable. There seems to be three clearly reasonable objections the authority principle* that can be found by looking to the epistocracy debate once again, but there are circumstances under which these reasonable objections do not hold and civil disobedience is legitimate under such circumstances.

First, there could be reasonable dispute over whether civil dissenters are knowers. Notice that the objection being reasonable is compatible with the civil dissenters actually being knowers. The objection may be false, but reasonable. The objection that it is controversial who political knowers are stems from the debate on the legitimacy of epistocracy (see Estlund 2008; Lippert-Rasmussen 2012). Drawing on the epistocracy discussion, I argue that in cases where the non-knowers are unreasonable, it is not reasonably disputable who the knowers are. In this case, the non-knowers who object to the disobedience of the knowers do not have a reasonable objection that can defeat the authority principle*.

A second reasonable objection would be that the political decision civil dissenters protest is not high-stakes. A high-stakes political decision is a decision where a gross wrong is on the line. It could be a political decision that grossly violates a liberty right, it could be a policy that enhances the greenhouse effect, or it could be a policy that robs citizen of an economic minimum. When civil dissenters protest political decisions that are not high-stakes, the majority that adopted the decision can reasonably object to the minority’s disobedience, even when the dissenting minority knows that the majority has
adopted a wrong decision. The majority has a reasonable objection in low-stakes situations, because in low-stakes situations, the concern for adopting the right laws or policies is outweighed by the concern for respecting majority authority. On the other hand, when we do have a high-stakes political decision on our hands and the civil dissenter knows that the majority’s decision is wrong, I will argue that the civil dissenter is not bound by the majority’s authority in this case. Again this line of reasoning is inspired by a defense of the legitimacy of epistocracy (see Brennan 2016).

The third reasonable objection says that CD is not warranted even though civil dissenters know that the majority has enacted a wrong law, when disobeying inspires general disrespect for the law and thus has a destabilizing effect.

To sum up, civil disobedience is legitimate when there are no reasonable objections to the authority principle* and there are no reasonable objections to the authority principle* when the following propositions are true: 1) it is not reasonably disputable that the civil dissenter is a knower 2) the adoption of the law or policy being protested is a high-stakes political decision and 3) no destabilizing effects ensue.

The justification of legitimate civil disobedience provided in the article deviates from the influential liberal and democratic schools of civil disobedience in that it is not restrictive regarding the class of causes it is legitimately justified to protest. This account is only restrictive regarding the gravity of the injustice or wrong subject to protest. Furthermore, the present account of legitimate civil disobedience deviates from the belief-relative moral rights accounts of civil disobedience presented in the next section. According to belief-relative theories of civil disobedience, civil disobedience is
warranted whenever a citizen sincerely believes the majority has adopted an unjust or wrong law, not only when a citizen knows the majority is wrong.

2.4. A Moral Right to Civil Disobedience

The fourth way in which scholars have defended civil disobedience in liberal democracy is to argue that there is a moral right to civil disobedience in liberal democracy. There is a moral challenge to the use of civil disobedience in liberal democracy which says that even though civil disobedience may sometimes morally justified, there is no moral right to civil disobedience in liberal democracy. This is the stance taken by Raz, who argues that if there were a moral right to civil disobedience, it would have to be derived from the right of political participation and since the right to political participation is, ex hypothesi, intact in liberal states, there is no moral right to civil disobedience in those states (Raz 1979, 273). There is only a right to engage in civil disobedience in illiberal states, where political participatory rights are violated. Citizens of illiberal states have a right, ceteris paribus, to break the laws that violate their participatory right and to act as though their right to participate were intact (pp. 272-273).

Still, while liberal states do protect their members’ rights to political participation, this by no means implies that there are no injustices in these states. So even though there is no right to engage in CD, citizens of liberal democracies can still be justified in engaging in civil disobedience to protest unjust laws (pp. 273-274), but the justification “… must be based on the rightness of the political goal of the disobedient ”(p. 274). Raz explains his distinction between being justified in engaging in civil disobedience and having a moral right to civil disobedience by way of analogy with freedom of
expression. A right to freedom of speech, entails a right to speak in cases when one should not. For example, you have the right to spread untrue rumors, but still you should not. In the case of civil disobedience, a moral right to civil disobedience would then also entail a right to disobey even when you should not: when your political cause is unjust (pp. 266-267). Against Raz’ view, Lefkowitz 2007 and Brownlee 2012 argue there is indeed a moral right to civil disobedience in defense of unjust political causes in liberal democracy. In the rest of this section, I lay out Lefkowitz and Brownlee’s arguments in turn and finally I present my own criticism of their arguments as they appear in my first article “On a Belief-Relative Moral Right to Civil Disobedience”.

The right to political participation grounds a right to civil disobedience

Like Raz, Lefkowitz argues that a moral right to civil disobedience is derived from the right to political participation and that it is a moral right to advocate political views even when these are mistaken. In contrast with Raz, however, Lefkowitz argues that there is indeed a moral right to engage in civil disobedience in liberal democracy.

Lefkowitz concedes that the exercise of political authority is justified in a liberal democratic state and there is a duty to obey democratically enacted laws. He argues that a democratic decision-making procedure is a legitimate form of political decision-making, because it cannot be reasonably rejected, and because it treats citizens with the respect that are due to them qua autonomous agents. The democratic decision-making procedure, however, is not flawless, and that is why the right to political participation can ground a moral right to civil disobedience in liberal democracy.

6 Although a few restrictions are usually in place, e.g. libel and slander laws.
A moral right to political participation gives rise to two specific moral rights namely (1) a right to participate in the official decision-making procedure and (2) a right to continue to call into question the outcome of the decision-making procedure after the decision has been made. Exercising one’s right to continue to dispute the result of the democratic procedure can take different forms, one of which is civil disobedience (p. 213). According to Lefkowitz, civil disobedience helps diminish the importance of luck in attracting attention to a political view by attracting attention to a view that may not otherwise be exposed in the mass-media (pp. 214-215). Furthermore, civil disobedience helps compensate for the fact that a voting procedure cannot take into account the depth with which a conviction is held (p. 217).

The reason why there is a right to continue to challenge democratic decisions through civil disobedience is that political deliberation must sometimes arbitrarily be cut short in order to make a decision, and reasonable disagreement will persist after a decision has been made. A minority could therefore validly complain that, had deliberation not been arbitrarily brought to a close and they had more time to disseminate their arguments, their view might instead have been the majority view when the vote was cast.

Lefkowitz defends the right to engage in civil disobedience as a claim right to civilly disobey. When an agent has a claim right to Φ, this means that the agent has a right that other agents not interfere with her Φ-ing, and this right corresponds to a duty on behalf of others not to interfere with her Φ-ing. If an agent has a claim right to engage in civil disobedience, then that agent has a claim against the state that the state not interfere. To Lefkowitz, the state would be interfering with civil
disobedience, if it were to punish the dissenter, although the state should still penalize the dissenter.⁷

Lefkowitz provides two justifications for a claim right to civil disobedience. Both justifications are grounded in the non-instrumental value of autonomous choice, which Lefkowitz extends to political, not just individual, life. The non-instrumental value of autonomous choice grounds the moral right to political participation, including the rights to participate in the official decision-making procedure and to continue to debate political decisions through civil disobedience (Lefkowitz 2007, 226). The first justification for a claim right to civilly disobey is a non-instrumental, unconditional justification: an autonomous choice has non-instrumental value regardless of whether the agent makes a good choice. This will imply that a civilly disobedient agent has a claim right that the state not interfere, even if she makes a poor choice and advocates unjust laws or policies (Lefkowitz 2007, 226-227).

The second justification for a claim right to civilly disobey is a non-instrumental, but conditional justification: it is also based on the non-instrumental value of autonomous choice, but the value of autonomous choice is here dependent on whether the choice the agent makes is good or not. If the choice the agent makes is not good, the then choice itself is not good. The reason why a non-instrumental, conditional value of autonomy can justify a claim right to civilly disobey, when this includes civilly disobeying for wrong causes, is that in order to be able to make autonomous, good choices, we need to allow agents to choose autonomously, including making bad choices autonomously (Lefkowitz 2007, 227). So, when an agent contributes to making a morally wrong political choice, then that choice has no non-instrumental value even though it is an autonomous choice. If the agent contributes to making a just political choice, on the other hand, then the choice

⁷ Lefkowitz follows Feinberg in distinguishing between punishment and penalty. Punishments and penalties are similar in the sense that they both involve the state issuing fines or incarceration to a citizen, but they are different in the sense that punishment also includes an expression of disapproval which penalty does not (Lefkowitz 2007; Feinberg 1985).
does have non-instrumental value. But the only way to promote the latter type of choice, is to allow for the former type by having a right that protects both types of autonomous choice (Lefkowitz 2007, 228).

According to Lefkowitz then, having a moral right to engage in civil disobedience is a right to do wrong, in the sense that it is a right to advocate a political view through the use of civil disobedience even when the political view is mistaken. If a citizen reasonably and sincerely believes that she is promoting justice, even though she is actually mistaken in the view she advocates when she engages in civil disobedience, she acts within her rights, but she is doing wrong on the assumption that agents have a moral duty to strive not to contribute to greater injustice (Lefkowitz 2007, 224).

Lefkowitz’ argument, however, has received criticism for the reason that it does not necessarily entail that there is a moral right to civil disobedience. According to Brownlee, Lefkowitz is correct to observe that minorities have a valid complaint theirs is the minority view due to bad luck. Nevertheless, as long as there are other, legal, ways of remedying the democratic deficit, it does not follow that there is a right to civil disobedience. It would only follow that there were a right to civil disobedience if protecting a such a right were the only way to rectify the problem of luck’s influence on political decision-making. Even if the argument did entail a moral right to civil disobedience, then that moral right would be reserved for monitors only, a thought that is troublesome to Brownlee, who maintains that there is a general moral right to civil disobedience for all citizens in liberal democracy based on a principle of respect for their human dignity and autonomy (Brownlee 2012, 144). I elaborate on Brownlee’s argument in the next section.
A humanistic principle grounds a right to civil disobedience

In *Conscience and Conviction: the Case for Civil Disobedience* 2012, Brownlee argues that there is a moral right to engage in civil disobedience in liberal democracy. Instead of grounding the moral right to civil disobedience in a right to political participation as Lefkowitz does, Brownlee grounds the right to civil disobedience in a principle of respect for human dignity and autonomy.

The concern for human dignity and autonomy has usually led liberal thinkers to endorse a right to conscientious objection, not civil disobedience (see e.g. Raz 1979; Horder 2004). As mentioned in section 1, conscientious objection is conceptually different from civil disobedience. Conscientious objection is commonly conceived of as violation of a law or rule motivated by a sincere belief that it would be morally wrong to follow the law or rule. Civil disobedience involves law-breaking motivated by a sincerely held belief that a law is morally wrong, but, as opposed to the conscientious objector, the civil disobedient also acts with the aim of changing laws or policies or sparking democratic debate and engagement. Civil disobedience is meant to attract public attention in order to create a political change. To Raz, a principle of respect for human dignity and autonomy grounds a right to conscientious objection, not civil disobedience. If there were a right to civil disobedience in a liberal democracy it would be grounded in the right to political participation. Yet, respecting conscientious moral conviction does ground a right to conscientious objection. We should not have to go to war, for example, if our conscience tells us it would be wrong. In this case the right to conscientious objection outweighs a legal obligation to go to war (Raz 1979, 286).
Brownlee, on the other hand, argues that a principle of respect for human dignity and autonomy more readily protects a right to civil disobedience than a right to conscientious objection. Brownlee, too, finds that respecting human dignity and autonomy means respecting people’s conscientious moral convictions (Brownlee 2012, 7). To Brownlee, however, having a conscientious moral conviction means being willing to communicate that moral conviction. Since civil disobedience necessarily involves an attempt to communicate moral convictions whereas conscientious objection does not, we should protect a right to civil disobedience if we want to respect conscientious moral convictions.

To elaborate, Brownlee argues that a conscientious moral conviction is a sincerely held moral belief that may be wrong or right (Brownlee 2012, 16). She puts forward a communicative principle of conscientiousness in her analysis of what a conscientious moral conviction is. The principle has the following four conditions: 1) a consistency condition: if we judge that some action is wrong, we should, to the best of our ability, avoid taking that action ourselves, 2) a universality condition: if we are convinced that it is wrong for ourselves to act in certain ways, we should also think it wrong for others to act in those ways, ceteris paribus, 3) a non-evasion condition: we are willing to bear the risk that there may be costs to honoring our conviction, and 4) the dialogic condition: we are willing to communicate our conviction to others (Brownlee 2012, 29-46). An agent who has a moral conviction that causes him to meet these four conditions has a conscientious moral conviction, according to Brownlee. Notice that describing a moral conviction as conscientious says nothing about the evaluative content of that conviction; it merely says something about the way in which the view is held.

Brownlee then argues that since willingness to openly communicate a moral conviction to others is a
mark of conscientiousness, the communicative aspects of civil disobedience signal a quality in the dissenters conscientiousness. A quality that conscientious objectors lack. If we are to respect conscientious moral convictions, we must to respect the communicative efforts that accompany conscientious moral convictions by protecting a sphere of autonomy to acts in ways that are expressive of conscientious moral convictions. The class of actions that require a sphere of autonomy includes illegal acts expressive of our conscientious moral convictions, because for it may be too psychologically burdensome to put the law above conscientious moral convictions, according to Brownlee (Brownlee 2012, 168). These considerations lead Brownlee to defend a moral right to civil disobedience in expression of conscientious moral convictions. This moral right is a moral right of conduct, meant to protect a sphere of autonomy for an agent to act in ways expressive of conscientious moral conviction without interference from others. The moral right therefore places a duty on others not to interfere (Brownlee 2012, 120-122).

Brownlee not only defends the moral right to civil disobedience by way of a humanistic principle of respect for conscientiously held believes. The weight and the justification of the right is also grounded in the interest of society. She therefore adds the argument stating that there is a “double harmony” between the interest of the activist in having the right protected and the interest of society in protecting the right. It is in the interest of society as a whole to protect a moral right to civil disobedience, because civil disobedience used in defense of merited causes has a “stabilizing effect”. ‘Stabilizing effect’ is the term used by Rawls to describe the ability of civil disobedience to help ”maintain and strengthen just institutions” by serving to “inhibit departures from justices and correct them when they occur” (Rawls 1971, 336). Furthermore, Brownlee argue that it is in a society’s interest to grant its citizens a right to civil disobedience because civil disobedience helps enhance democratic
deliberation (Brownlee 2012, 146). Brownlee provides the example of a soldier who refuses to go to war. It is not only in his own interest to stay at home, his society also benefits from taking his concerns into consideration in the general democratic conversation about the legitimacy of the war. Brownlee justifies the claim that the soldier’s action enhances democratic deliberation with reference to 1) the possibility that he presents a view that is not represented in mainstream media, and 2) the possibility that his dissent forces those holding the dominant views to defend the merits of views. According to Brownlee, the democratic conversation benefits even if the soldier is mistaken in his view (Brownlee 2012, 146).

**On a belief-relative moral right to civil disobedience**

In the first article of this dissertation “On a Belief-relative Moral Right to Civil Disobedience”, I argue, contrary to Brownlee and Lefkowitz, that there is not a general moral right to civil disobedience in defense of a cause that the agent sincerely believes to be right, but that is actually wrong. Essentially, I argue that any moral warrant of civil disobedience grounded in an appeal to a basic moral value must be limited by the value from which it is derived, as well as by other similarly weighty values, for which reason no purely belief-relative theory of civil disobedience will be valid. Furthermore, I argue that granting a right to disobey in promotion of grossly unjust views is problematic because civil disobedience ought to serve the role of promoting justice.

I begin by proposing that we categorize theories of civil disobedience according to whether they are “fact-relative” or “belief-relative”. A belief-relative theory of civil disobedience is a theory with certain constraints on the doxastic attitude of the dissenter: he must in some way believe his political
goal to be right, but the moral defense of the act of disobedience is not relative to whether the
disserter’s cause for protest is actually just or morally right. Belief-relative theories of civil
disobedience contrast with fact-relative theories of civil disobedience, according to which the moral
warrant of civil disobedience is dependent on whether the dissenter actually has a just or morally right
cause for protest. Theories of civil disobedience may also combine elements of both categories.

The first reason why belief-relative theories such as Brownlee’s and Lefkowitz’ are not tenable is that
the arguments underpinning these theories are invalid. Whether we derive a belief-relative moral right
to civil disobedience from a humanistic principle of respect for human dignity and autonomy, from
the right to political participation, or from something different, the right to civil disobedience must
be limited by the value from which the right is derived as well as by other equally weighty or weightier
values. If a right to civil disobedience is justified by some value V, because V is truly valuable and
sufficiently weighty, then we have no reason to protect acts of civil disobedience that undermine V.
It would be incoherent to say that a right to civil disobedience includes a right to acts of civil
disobedience that undermine V. Furthermore, it would be arbitrary to hold that only V can limit the
right to civil disobedience. The right to civil disobedience must also be limited by other equally
weighty or weightier values. If the right to civil disobedience is limited in these ways, then there is
no purely belief-relative right to civil disobedience, and the arguments thus fail to establish their
conclusion.

Take Brownlee’s argument. Since Brownlee grounds a belief-relative moral right to civil
disobedience in the principle for respect for human dignity and autonomy, the moral right to civil
disobedience must also be limited by the values that the principle comprises as well as other equally
or more weighty values. Once we begin to weigh off values, rights, and norms against each other and
re-define Brownlee’s theory to include all the statements entailed by the original formulation of the theory, it is clear that it does not entail a purely belief-relative right to civil disobedience. Since the humanistic principle entails that there is no moral right to civil disobedience in defense of causes that conflict with respect for human dignity and autonomy, a moral right to civil disobedience grounded in the humanistic principle could not, for example, protect a right to civil disobedience for the restaurant owner in the late 1960s in the United States who believed the civil rights act of 1964 was wrong and expressed his view by upholding racial segregation in his restaurant. Such act of disobedience violates the dignity of those subject to segregation in his restaurant.

It is not that all acts of civil disobedience in defense of a cause that conflicts with the humanistic principle must be excluded from protection. Values can generate conflicting demands that must be weighed off against each other. The values of autonomy and dignity may generate a right for racists to engage in civil disobedience and a right for a minority not to have their dignity violated by racist dissenters. In this case, the minority’s right to dignity outweighs the racists’ right to dissent, but in other cases where a violation of dignity is much less serious, the right to civil disobedience may outweigh the concern for dignity.

A right to civil disobedience derived from a humanistic principle should not only be limited by the values of autonomy and dignity that the principle encompasses. It would be arbitrary to claim that the moral right to civil disobedience is limited solely by the humanistic principle. A right to civil disobedience derived from the humanistic principle must also limited by other values and rights such as, say, property rights or the right to bodily integrity, when these values, or the norms and rights they may entail, are equally weighty or weightier.
The upshot is that a belief-relative right to civil disobedience grounded in a basic moral value is morally circumscribed in such a way that it is no longer meaningfully belief-relative. Once we engage with the weighing off of values, norms, and rights against each other, it becomes clear that there are constraints on the content of the political cause that motivates the dissenter. If there are many other sufficiently weighty moral concerns, then the difference between a belief-relative view and a fact-relative view wanes.

The second problem with granting citizens of liberal democracies a belief-relative moral right to civil disobedience is that it is far from clear that it promotes justice or enhance or enhances public political deliberation. The critique comes in an internal and an external formulation. According to the external version of the critique, granting citizens with morally reprehensible causes a moral right to civil disobedience is troublesome because we ought to value civil disobedience for its role in promoting justice. According to Rawls, for example, the reason why civil disobedience poses an interesting moral problem in the first place is because a conflict of duty arises between the duty to obey democratically enacted laws and the duty oppose injustice (Rawls 1991, 103). Belief-relative theories of civil disobedience that do not invoke consequentialist considerations in their justification are subject to this external version of the objection.

Belief-relative theories of civil disobedience that do justify the right with reference to the fact that it promotes justice or enhances deliberation are subject to the internal version of the objection. Recall that Brownlee justifies the belief-relative right to civil disobedience with reference to the claim that there is a double harmony between the interest of the citizen in having a right to civil disobedience in defense of a conscientious moral conviction and the interest of society. Society benefits because civil disobedience enhances public political deliberation by exposing “...society to a view not presented
by the mainstream media’ and because a dissenter can force ’...champions of dominant opinion to defend their views.” (Brownlee 2012, 146). Civil disobedience, furthermore, has a stabilizing effect, i.e. promotes justice or inhibits injustice, when the act of civil disobedience is undertaken in defense of a merited cause.

However, a belief-relative moral right to civil disobedience cannot be justified for the reason that it promotes truth or prevents dogmatism in deliberation by allowing for a greater diversity of views to receive attention in public political deliberation. First, while having more views represented in a deliberative arena does increase the likelihood that the correct standpoint is part of the debate, but it also increases the likelihood that the correct standpoint gets lost in the crowd (Kappel et al. 2017) in which case the addition of new perspectives into the deliberative arena does not epistemically enhance deliberation.

Second, even if it is true that a greater diversity of views does promote truth or prevent dogmatism in political deliberation, we already get this benefit from the right to freedom of expression in a liberal democracy. Indeed, the claim that a greater diversity of views promotes truth or prevents dogmatism is familiar from Mill’s defense of free speech. While the right to freedom of expression is not always fully honored in practice in liberal democracies, the defender of a belief-relative right to civil disobedience would still have to tell us how the epistemic gains we get from a belief-relative right to civil disobedience exceeds the epistemic gains we already get from free speech, where this epistemic value is enough to outweigh the value of following democratically enacted laws.

Brownlee’s other claim that protecting a belief-relative moral right to civil disobedience promotes justice or inhibits injustice is also problematic. It is true that if a dissenter is motivated by a merited
cause, his act of disobedience might promote justice. Be that as it may, it is doubtful whether granting a moral right to civil disobedience to anyone who sincerely believes he is fighting injustice also promotes justice. One would have to claim that dissenters’ cause are merited more often than not, in a way that also weighs the severity the injustices or moral wrongs that dissenters with unmerited causes promote against the severity of the injustices dissenters with merited causes inhibit.

The upshot is that a purely belief-relative moral right to civil disobedience in a liberal democracy grounded in a basic moral value is not tenable. First, the right must be limited by the value from which it is derived as well as by other equally weighty or weightier values, norms and rights. Second, it is doubtful whether granting a belief-relative moral right to civil disobedience in liberal democracy promotes justice, inhibits injustice, or enhances deliberation. This concludes my presentation of the discussion on the moral right to civil disobedience in liberal democracy and the moral warrant of civil disobedience in liberal democracy generally speaking. In the next and final section of this literature overview, I introduce a different issue that arises when we try to disentangle the messy relationship between civil disobedience and the ideal of liberal democracy, namely the problem that civilly disobedient citizens may signal disrespect or arrogance towards their fellow citizens.

2.5 Epistemic Arrogance and Civil Disobedience

As mentioned in section 2.3, I argue in this dissertation that civil disobedience involves an assertion of privileged political knowledge. When dissenters protest a policy P that the majority has adopted because they believe P is an unjust policy, their action expresses the judgment that the majority was wrong in thinking that P was the right policy to enact, and hence that the dissenter knows better than
the majority whether or not P is the right policy to adopt. Similarly, when citizens engage in civil disobedience to re-open deliberation about an issue that is kept off of the political agenda, their dissent also involves an assertion of privileged political knowledge about the claim that the relevant political issue has not been debated as thoroughly as its importance warrants. This assertion of privileged political knowledge puts further strain on the relationship between civil disobedience and liberal democracy. For one thing, when a citizen engages in civil disobedience, she may signal disrespect toward her fellow citizens, because she assumes she knows better than they what their community ought to do politically. This issue is taken up in Brownlee 2012 and Weinstock 2015. In article three of this dissertation “Are Dissenters Epistemically Arrogant?”, I take up a related issue which, to my knowledge, has not been debated in the philosophical literature on civil disobedience before: I ask whether citizens of liberal democracies engaging in civil disobedience are epistemically arrogant.

Although it has not been brought up in the philosophical literature on civil disobedience, the charge of arrogance is sometimes raised in public political discourse and even in court rulings. Indeed, ruling on an act of civil disobedience Justice Hartz wrote, “One who elects to serve mankind by taking the law into his own hands thereby demonstrates his conviction that his own ability to determine policy is superior to democratic decision-making. Defendants’ professed unselfish motivation, rather than a justification, actually identifies a form of arrogance which organized society cannot tolerate” (United States v Ardeth Platte (2005) 401 F.3d. 1176 (10th Cir.)).

The question is whether it is true that acts of civil disobedience somehow manifest epistemic arrogance. On the one hand, it does seem epistemically arrogant to be so confident in your opinion that a policy is wrong that you see it fit to disobey the law in expression of the opinion. To be sure, political decision-making depends on a morass of esoteric statistical, economic, and sociological
evidence, theoretical reasoning about justice, as well as the social evidence that the democratic majority disagrees with you. On the other hand, it also seems intuitively wrong to say of civil rights protester Rosa Parks that she was evincing arrogance when she refused to give up her bus seat in protest of segregation laws.

What is epistemic arrogance?

In order to answer the question of whether civilly disobedient citizens are epistemically arrogant, we must first know what epistemic arrogance consists in. In the article, I argue that the dominant views on epistemic arrogance presented by Lynch 2018, Tanesini 2018 and Roberts and Woods 2017 are incorrect to assume that epistemic arrogant does not consist in falsely exaggerating the epistemic worth of one’s view; or at least, that there is a distinct kind of epistemic arrogance that does consist in falsely exaggerating the epistemic worth of one’s view. Specifically, I argue that it is sufficient for epistemic arrogance to have a higher degree of rational certainty in P than is warranted while upholding that same degree of certainty despite being presented with relevant evidence contrary to P.

A conception of epistemic arrogance according to which epistemic arrogance consists in having a falsely exaggerated assessment of the epistemic worth of one’s view seems at first blush to capture well the charge that civil dissenter are epistemically arrogant. The epistemically arrogant civil dissenter is one who engages in civil disobedience in protest of a policy because he believes the policy is unjust or morally wrong, yet he has a higher degree of rational certainty that the policy is unjust than is warranted, and he moreover upholds that same degree of certainty despite having been
presented with relevant evidence that the policy is not unjust, for example, he has been presented with the evidence that counterarguments from his peers constitute.

Still, there seems to be more driving the intuition that the civilly disobedient are epistemically arrogant. Justice Hartz states that dissenters are arrogant because they think their political acumen is superior to the democratic majority’s. But what makes a dissenter more vulnerable to the charge of epistemic arrogance than a citizen who writes to a law-maker or a news editor asserting his disagreement with a democratically enacted policy? After all, a citizen who voices his dissent by written word may also have a higher degree of rational certainty than is warranted that the policy he opposes is unjust, and he may maintain that degree of certainty despite being presented with relevant evidence to the contrary.

The difference between the citizen engaging in civil disobedience and the citizen who expresses his dissent by written means seems to be the attitude involved in thinking that their means of expression are justified: the dissenter is arrogant, if he is arrogant, because he chooses illegal means to express his conviction that a political decision is wrong or unjust instead of engaging in political debate through the legal channels available in liberal democracy. Thus, I argue that when we consider whether civil dissenters are epistemically arrogant, we should not look only to whether they (A) falsely exaggerate the epistemic worth of their view, we should also consider whether they (B) choose a means of expressing their view that is incommensurate with how certain they ought to be that their view is merited.

To illustrate, consider Rosa Parks’ refusal to give up her bus seat in protest of racial segregation. Parks’ grounds for protest is well-founded, and Parks is rationally entitled to be certain that racial
segregation is wrong. Given the merits of her cause, Parks’ choice of method is perhaps even modest. Because Parks chooses a means of expressing her political view that is not out of proportion relative to the level of certainty that she is entitled to have that her view is correct, she is not being epistemically arrogant. The case of Rosa Parks also reveals that the method of expression should be proportionate to the substantiality of the injustice. It is not just the fact that civil rights were clearly violated that made Parks’ method of protest modest; it is also the fact that a civil rights violation is a substantial injustice.

I thus argue that in so far as dissenters are epistemically arrogant, they are arrogant because they (A) have a higher degree of rational certainty in P than is warranted and uphold that same degree of certainty despite being presented with relevant evidence contrary to P, and (B) use a method of expression that requires a higher level of rational certainty that the political view is right and the injustice is substantial than is warranted, and additionally, were to use that same method of expression were they to be presented with evidence undermining the notion that their view is merited and the injustice substantial. These two types of arrogant behavior are distinct, but they come together in what seems to be the most plausible way of understanding the charge that dissenters are epistemically arrogant.

**Does civil disobedience involve epistemic arrogance?**

The question is whether the fact that an agent engages in civil disobedience in itself tells us anything about (A) his level of justified certainty, and (B) to what extent that agent proportions his method of expression to the rational degree of certainty that his political view is merited and substantial that is
warranted. Prima facie, it is unlikely that there is anything general to be said about whether civil dissenters are epistemically arrogant, as dissenters defend causes with varying merit employing different means of expression. Yet, all civil dissenters who protest democratically enacted laws share one relevant piece of higher-order evidence: the fact that a democratic majority or its representatives disagrees with them. If democratic decision-making procedures reliably track the truth about justice, then an agent who disagrees with the policy outcomes of such procedures has a very weighty piece of evidence that the outcome is correct. According to epistemic theories of democracy, e.g. theories based on Condorcet’s jury theorem or theories based on the epistemic benefits of deliberation, the fact that a decision is the result of a democratic procedure is evidence that the decision is likely to be correct. If these epistemic theories of democracy are themselves correct, they imply that dissenters who disagree with the outcome are not rationally entitled to be very certain that the majority has adopted a wrong decision. Using illegal means of protest is then invariably incommensurate with the level of certainty a dissenter is rationally entitled to.

Be that as it may, it is still very controversial whether democratic decision-making procedures do in fact reliably track truth. Take Condorcet’s Jury Theorem. It shows that when a group votes on binary questions, the probability that the group will identify the correct answer to the question increases with the number of people voting. The theorem works on the assumptions that people have more than a 0.5 probability of being right and that they have come to their conclusion independently of one another (Condorcet 1995 [1785]). If one or more of Condorcet’s jury theorem’s conditions are violated, however, there is not Condorcet-based higher-order evidence that the dissenter is wrong and the dissenter can rationally retain her conviction that it is the majority that is wrong. Whether civil disobedience necessarily involves arrogance must therefore also be left open here because we cannot
establish that all cases of civil disobedience are such that civil dissenters who disagree with the majority are not rationally entitled to a high level of certainty that their political view is merited.

Still, even though civil disobedience does not necessarily involve arrogance, specific instances of civil disobedience may still involve epistemic arrogance. Whether a dissenter manifests this vice will have to be established on a case by case basis, and must ultimately depend on whether the dissenter has a higher degree of rational certainty in P than is warranted and whether she proportions her means of expression to how certain she ought to be that her cause for protest is merited and substantial.

**Is epistemic arrogance harmful?**

Finally, it is worth bearing in mind that even though the epistemically arrogant civil dissenter is irrational at an individual level, she may still contribute to the epistemic ends of her democratic community, i.e. promoting true beliefs about justice in democratic deliberation. A civil dissenter may be irrational at an individual level if she has and expresses a higher degree of certainty than is rational given the available evidence, but still be right. That is, the dissenter may have a true, unjustified belief about what her community ought to do politically, and be overly confident given the level of confidence that is actually justified. In such a case, the civil dissenter can be epistemically arrogant while simultaneously epistemically benefitting her community by promoting the truth about what should be done politically.

It is an open question whether this sort of epistemic benefit is also valuable from a political perspective. If the purpose of political engagement is to arrive at and implement the correct
conception of justice, then epistemic arrogance may be politically valuable if it is an epistemic benefit to the community, as the above analogy suggests. Presumably, promoting true views about justice will have a spill-over effect to public policy-making, and the community will also benefit from the adoption of truly just laws and policies. If we do not evaluate political engagement and the political process in terms of how reliably they produce just decisions, or at least not solely in terms how reliably they produce just decisions, then the epistemic arrogance of a dissenter seems to be harmful, at least in the sense that she is being arrogant towards her fellow citizens. On the other hand, an act of civil disobedience that evinces epistemic arrogance may not be harmful all things considered, because it is possible that an act of dissent manifests epistemic arrogance and is simultaneously morally justified, for example if questions of legitimacy do not bear on epistemic considerations.

References


Smart, B. 1991. ”Defining Civil Disobedience” in Hugo Adam Bedau’s (ed.’s) Civil Disobedience in Focus. London, UK: Routledge


United States v Ardeth Platte 401 F.3d. 1176 (10th Cir. 2005)

United States v. Seeger, 380 U.S. 163 (1965)


Young, I.M. 2001. ”Activist Challenges to Deliberative Democracy” in *Political Theory* 29/5: 670–90

We should not expect too much of a theory of civil disobedience, even one framed for special circumstances. Precise principles that straightaway decide actual cases are clearly out of the question. Instead, a useful theory defines a perspective within which the problem of civil disobedience can be approached; it identifies the relevant considerations and helps us to assign them their correct weights in the more important instances. If a theory about these matters appear to us, on reflection, to have cleared our vision and to have made our considered judgments more coherent, then it has been worthwhile.


I begin with Rawls’ words of caution here, because they capture well what is the aim of theorizing about civil disobedience. The aim of a philosophical theory of civil disobedience is not to provide a final moral judgment over particular cases of civil disobedience, but it is rather to identify the considerations that ought to guide thinking about particular cases of civil disobedience. Real life cases work as helpful intuition pumps, but the framework developed in this dissertation is meant to serve as a tool that helps clear our thinking about whether in specific instances civil disobedience is protected by a moral right (article 1), legitimate (article 2) or whether an act of disobedience manifests the vice of epistemic arrogance (article 3).

With Rawls’ words of caution in mind, we can begin to think about how to achieve the aim of developing a political philosophy about civil disobedience. In this dissertation, I have employed the standard methods of normative theorizing as described in List and Valentini 2016: conceptual analysis, reflective equilibrium and elements such as consistency and deductive closure that secure
the internal validity of a theory. In the following, I give a short introduction to these methods and give examples of how I employ them in this dissertation.

1. Justifying a Normative, Political Theory

In general, a theory should be externally valid which means that the theory is true or lives up to the standard for correctness that is fit for the domain of political philosophy. In political philosophy, unlike in the physical sciences, for instance, it is quite controversial what our theories are meant to represent, if anything, but as List and Valentini 2016 note, “the very idea of a theory breaks down unless we assume there is something potentially representable by it, however observer-dependent or socially constructed it might be” (p. 541). I cannot settle here whether there are normative facts that our moral and political theories can represent, as this is a deeply complex question that has not come close to being settled in the philosophical literature, and making even a small contribution to this discussion would require an article or even an entire thesis of its own. I will assume that political theories can be true or correct, and, as will be evident once you read the thesis, most of my arguments will rely on the assumption that there are, if not moral facts, then at least some other standard of correctness that normative principles must live up to. For example, I will argue that the role of civil disobedience is to promote correct political decisions, i.e. political decisions that are actually just, morally right, or prudent. Of course, whether the claim is meaningful will depend on whether political decisions can be correct or wrong according to some standard for correctness, but we do not have to settle that meta-ethical question before we can ask political questions. Even though it is controversial whether there are moral facts, it is common in political philosophy to proceed as if there were: to assume that we can make right and wrong claims about justice, legitimacy and morality. If it did turn out that moral nihilism is true, much of what I will be arguing in this thesis will not make sense,
indeed much of what we do in political philosophy will cease to make sense. As long as moral nihilism has not been proven true, however, we should continue to try to answer normative, political questions as if their answers represent facts or some other standard for correctness.

**Wide reflective equilibrium**

An influential test as to whether a theory in political philosophy is true is the method of wide reflective equilibrium. Following Rawls 1975 and Daniels 1979, the method of wide reflective equilibrium aims at an equilibrium between (a) relevant background evidence, e.g. psychological, sociological or economic evidence relevant to the theory in question, (b) a set of moral principles or theory and (c) considered moral judgments or moral intuitions. The idea is to work back and forth between background theory, moral principles and intuitions to see whether they fit. If our moral principles are not supported by our intuitions or considered judgments, for example, then we reflect on whether to revise the theory or the intuitions.

One way to check a theory or principle against one’s moral intuition is by using thought experiments. Thought experiments can reveal exactly whether the implication of a principle or theory is intuitive or counter-intuitive. Thought experiments work in the way that we envisage and consider a specific scenario in order to answer a more general question, e.g. about the validity of a theory or principle that is more abstract or general than the scenario invoked in the thought experiment. We answer the question of what is morally required, for instance, not just in the specific scenario under consideration, but in general: in all scenarios involving the same morally salient factors. The intuitive response to the envisaged scenario in the thought experiment then works as evidence for or against the principle or theory we are considering (Brownlee and Stemplowska 2017, 25-28). When using the method of
wide reflective equilibrium, the intuitive response to the thought experiment does not settle the question: if a principle turns out to have a counter-intuitive implication, this does not settle the case against the validity of the principle. Rather, we must now reflect upon whether to revise our principles or abandon our intuitions.

I use the method of wide reflective equilibrium in the first article of this dissertation “On a Belief-relative Moral Right to Civil Disobedience”. In the paper, I argue that there is not a purely belief-relative moral right to civil disobedience, where a belief-relative theory of civil disobedience is a theory that puts no constraints (or few, undemanding constraints) on the causes you are morally warranted in engaging in civil disobedience to advocate. One of the reasons why I doubt that there is a belief-relative moral right to civil disobedience is exactly that it is counter-intuitive. The belief-relative right to civil disobedience is a moral right of conduct. This means that when an agent A has a moral right to φ other agents have a duty not to interfere with A’s φ-ing. It is counter-intuitive that I would have a duty not to interfere when, say, neo-Nazis who believe their political cause is just attempt to promote grave injustices through civil disobedience. It seems more intuitively plausible that I would be required, or at least morally permitted, to interfere and stop their endeavor to advance injustice. The intuition is evidence against the claim that there is a belief-relative right to civil disobedience. However, working within the method of wide reflective equilibrium, the intuition does not settle whether there is a belief-relative moral right to civil disobedience. Since I also put forward other arguments against the claim that there is a belief-relative right to civil disobedience, the evidence against the claim adds up, and I end up arguing, on reflection, that the principle that there is a belief-relative moral right to civil disobedience should be revised instead of discarding the intuition.
The method of wide reflective equilibrium, while highly influential and widely used, has also been subjected to criticism. First, there are the familiar problems with coherence theories of justification in general that you can have coherence in a massive system of false beliefs, and you can also imagine two sets of beliefs where each individual set is internally coherent, but the two sets are contradictory. Valentini and List also note that the method of reflective equilibrium has a "non-uniqueness problem" (List and Valentini 2016, 542) as there may be more than one equilibrium to arrive at and a "path-dependence problem" (List and Valentini 2016, 542) as we may end up with a different equilibrium depending on what aspect of our theory we consider first and second.

Furthermore, the use of moral intuitions in normative theorizing has also been subject to much debate. Singer has criticized the method of reflective equilibrium for employing moral intuitions in its theoretical framework. Since most moral intuitions are based on emotional gut-feelings that are the result of our evolutionary and cultural past, we should not use most moral intuitions in our ethical theorizing, according to Singer (Singer 2005). Contra Singer, however, Tersman 2008 and Lippert-Rasmussen 2011 argue that the use of moral intuitions in normative theorizing is not undermined by evolutionary arguments, because the fact that the best explanation as to why we hold a certain belief does not entail it being true does not necessarily undermine the evidential value of this belief. Unfortunately, it is beyond the scope of the present dissertation to delve further into the discussion on using moral intuitions in normative theorizing. I just note here that there is a controversy over the evidential status of moral intuitions, but also that it is common to use moral intuitions in normative theorizing, even Singer in the end relies on certain moral intuitions.
**Internal validity**

So far I have been focusing on criteria for assessing the external validity of a normative theory, but a normative theory must also be internally valid. Principles and theories can be evaluated internally according to whether they are consistent, deductively closed and not unnecessarily complex. These elements are not an exhaustive set as there are countless other fallacies that can make a theory internally invalid (List and Valentini 2016, 539-540), but I focus on these elements in the following.

One of the points that I also make in the first article “On a Belief-relative Moral Right to Civil Disobedience” is that Brownlee’s argument from humanism to a belief-relative right to civil disobedience should be revised so that it is deductively closed. A theory is deductively closed when it includes any statement that is entailed by the theory. Once deductively closed, however, Brownlee’s theory is inconsistent and can no longer imply that there is a belief-relative moral right to civil disobedience.

In brief, Brownlee derives a belief-relative moral right to civil disobedience from a humanistic principle of respect for human dignity and autonomy. Brownlee argues that respecting human dignity and autonomy means respecting people’s conscientious moral convictions (Brownlee 2012, p. 7), where a conscientious moral conviction is a sincere and serious, though possibly wrong, moral commitment (Brownlee 2012, p. 16). In order to respect conscientious moral convictions, we must respect the communicative efforts that accompany such deeply held convictions and protect a sphere of autonomy to act in ways expressive of our conscientious moral convictions, where this includes acts of civil disobedience.

I argue that Brownlee’s theory is not deductively closed, because the humanistic principle of respect for human dignity and autonomy must also imply that there is no moral right to acts of civil
disobedience that violate the autonomy and dignity of others when this violation outweighs the concern for the autonomy and dignity of the dissenter. For example, a humanistic principle of respect for human dignity and autonomy could not protect civil disobedience undertaken by a U.S. restaurant owner in the late 1960s who wished to protest the civil rights act of 1964 by upholding racial segregation in his restaurant, because his act of disobedience would violate the dignity of those subject to segregation in his restaurant. The point is that the right to civil disobedience is limited in terms of the kind of cause you may be warranted in engaging in civil disobedience to fight for. The statement that a moral right to civil disobedience is limited in the sense that the right does not extend to acts of CD violating the autonomy and dignity of others when this violation outweighs the concern for the autonomy and dignity of the dissenter must also belong to a theory of civil disobedience derived by a principle of respect for human dignity and autonomy.

Once we have revised the original, not deductively closed formulation of the theory so that it includes the statement that there is no right to civil disobedience in defense of cause that violate people’s dignity and autonomy when this violation outweighs the concern for the autonomy and dignity of the dissenter, the theory is now inconsistent. Indeed, the deductively closed theory now both states (a) that there is a belief-relative moral right to civil disobedience and (b) that there is no moral right to civil disobedience in defense of a cause that violates the dignity or autonomy of agents when this violation outweighs the concern for the autonomy and dignity of the dissenter. (a) and (b) cannot simultaneously be true, and an inconsistency as such is problematic because inconsistent statements imply everything and an inconsistent theory is thus too indiscriminate (List and Valentini 2016). If we accept the humanistic principle of respect for human dignity and autonomy and (b) rather than (a) follows from the humanistic principle, we ought to reject the claim (a) that there is a belief-relative right to civil disobedience and instead accept (b) there is no moral right to civil disobedience in
defense of a cause that violates the dignity or autonomy of agents when this violation outweighs the concern for the autonomy and dignity of the dissenter.

2. Conceptual Analysis

In the present dissertation, my focus has mainly been on the normative aspects of civil disobedience and less on the conceptual analysis of civil disobedience. In answering normative questions about civil disobedience, however, I have also made some use of conceptual analysis. In my third article, “Are Dissenters Epistemically Arrogant?”, I have sought to answer the question of whether citizens who engage in civil disobedience are epistemically arrogant, a vice that dissenters are sometimes charged with in public political debates and even in court rulings. To answer the question of whether dissenters are epistemically arrogant, I first had to answer the question: what is epistemic arrogance?

The aim of conducting conceptual analysis is to ascertain the defining conditions of concepts, i.e. the necessary and sufficient conditions that an object must satisfy to be classified as the concept in question (List and Valentini 2016, 531). Once we have made explicit the defining conditions of a concept, we can determine the extension of a concept, i.e. what objects can be classified as falling under that concept.

A norm governing conceptual analysis is that when we determine the defining conditions of a concept, we should also respect intuitions (List and Valentini 2016, 533). It would speak against a conceptual analysis of epistemic arrogance, for instance, if it implied that the infamously humble John Rawls was an epistemically arrogant agent. In analyzing the concept of epistemic arrogance, I too rely on intuitions. For example, I make use of intuition when I argue that part of what makes an agent
engaging in civil disobedience epistemically arrogant, if he is epistemically arrogant, is that the agent has chosen a means of expressing his political view that is out of proportion relative to how certain he ought to be that his political view is merited. This interpretation of epistemic arrogance respects the intuition that a citizen writing a letter to the editor does not seem to be arrogant in the same way that a civil disobedient may be, even though the writer may have the exact same rational degree of certainty that his view is correct as a dissenter. This is because the writer’s method of voicing dissent is much more modest. The writer may still be mistaken in the level of certainty he ought to have, but he has not selected means that are disproportionate relative to the level of certainty he ought to have. It also makes sense of the intuition that Rosa Parks was not being epistemically arrogant when she used civil disobedience to protest racial segregation, because Parks’ method of expressing her view was modest relative to her rational level of certainty that racial segregation is wrong.

References


Article 1

ON A BELIEF-RELATIVE MORAL RIGHT TO CIVIL DISOBEEDIENCE

The article is published in Res Publica (Online first 2018). DOI: 10.1007/s11158-018-9404-7

According to a 1960s civil rights movement slogan, political dissenters of the era were speaking truth to power. The slogan itself implies that their dissension was motivated by a just or merited cause and protesters fighting for the legal protection of citizenship rights were, indeed, motivated by a merited cause. However, it is not true of all dissenters that their causes are well-founded. Consider anti-abortion activists, on the one hand, and abortion-rights activists on the other. They cannot both be right. Recently, Brownlee has argued that both such parties should nevertheless enjoy a moral right to engage in civil disobedience (henceforth CD). In her formidable 2012 Conscience and Conviction: The Case for Civil Disobedience, Brownlee maintains that the rightness of a dissenter’s political goal is irrelevant to the establishment of a moral right to CD. In contrast to Brownlee, I will argue that whether a citizen has a right to engage in CD is sometimes, and more often than we may think, dependent on whether the dissenter actually has a just or morally right cause.

My discussion has three main parts and proceeds as follows. I first distinguish between normative theories of CD on the basis of whether they require that protesters be motivated by merited causes in order for their dissent to be morally warranted. I term one category fact-relative theories of civil disobedience and I term the other category belief-relative theories of civil disobedience. In the second part of the paper, I argue that Brownlee’s argument from humanism is ultimately unsuccessful in establishing a belief-relative moral right to CD. Moreover, the examination of Brownlee’s argument reveals some general difficulties with maintaining a belief-relative theory of CD. In the third section,
I argue that any moral warrant of CD grounded in an appeal to a basic moral value must be limited by the value from which it is derived, as well as by other similarly weighty values, which is why no purely belief-relative theory of CD will be valid. Finally, I argue that granting a right to disobey in promotion of grossly unjust views is problematic because CD ought to serve the role of promoting justice.

1. Belief- and Fact-relative Theories of Civil Disobedience

Theories of CD can be sub-divided into numerous categories, depending on a) whether we are talking about a defense of a moral right to disobey or a moral justification of disobedience, b) what kind of regime the defense of dissent applies to, e.g. liberal or illiberal states (or both), and c) who is alleged to enjoy normative protection for his dissent: all citizens or only some relevant minority. In what follows, I distinguish between theories of CD on the basis of whether a theory requires dissenters to be motivated by merited causes. I will term theories of CD that require dissenters’ causes to be merited fact-relative theories of CD and I will term theories that have no constraints (or few, undemanding constraints) on causes belief-relative theories of CD. I define belief-relativity and fact-relativity with respect to moral facts and beliefs about moral facts. While this seems to presuppose

---

8 These categories are familiar from other areas of philosophy. For example, in his On What Matters, Parfit distinguishes between different senses in which an act can be wrong or right: an act can be wrong or right in the belief-relative, evidence-relative and fact-relative sense. It is the distinction between belief- and fact-relativity that is relevant to my argument here. First, an act is wrong in a belief-relative sense when, say, a doctor gives you medicine he believes will kill you, but it is in fact likely to save you and you survive. Conversely, a doctor acts rightly in a belief-relative sense when she gives you medicine she believes will save you, but as it turns out, she is not a very practiced doctor: the medicine is in fact likely to kill you and so it does. Second, an act is wrong in a fact-relative sense when a doctor gives you medicine he believes will save you, while it actually turns out to be lethal. Conversely, an act is right in the fact-relative sense, when a doctor gives you medicine she believes will kill you, although taking the medicine ultimately saves your life (Parfit 2011, pp. 151-152). Parfit’s examples concern morally relevant non-normative facts, and beliefs and evidence concerning such facts. Yet, I will define belief-relativity and fact-relativity with respect to moral facts and beliefs about moral facts.
controversial metaphysical assumptions, I will simply leave the metaphysical status of moral facts open here.

A fact-relative theory of CD is a theory of CD according to which the moral warrant\(^9\) of disobedience is partly dependent on whether the dissenter actually has a just or morally right cause. It is not enough that dissenters merely believe that their political causes are right. Whether an act of CD is morally warranted will usually also depend on other factors regarding the use of method. For example, it may depend on whether the protest is non-violent, a last resort and comes with public forewarning, as Rawls would require (Rawls 1991, 108-111). Here, I wish to bracket the question of constraints on method and focus on constraints imposed on causes. A fact-relative theory of CD can be found in Raz’ 1979 *The Authority of Law*. Raz argues that acts of CD can be morally justified if the political goal of a dissenter is actually just, but citizens of liberal democracies do not have a belief-relative moral right to CD. For Raz, a moral right to CD must be derived from the moral right to political participation and the right to CD is then reserved for citizens of states that do not protect citizens’ right to political participation. Since the right to political participation is, ex hypothesi, intact in liberal states, there is no moral right to civil disobedience (Raz 1979, 273). Still, while liberal states do protect their citizens’ rights to political participation, this by no means implies that there is not injustice in such states; laws enacted in liberal states may be, say, wrongfully discriminatory. Citizens can then be morally justified in engaging in CD to protest such unjust laws. However, in this case, the justification ”... must be based on the rightness of the political goal of the disobedient” (Raz 1979, 274). As Raz’ position only provides moral warrant for citizens of liberal democracies whose political cause is actually just or right, this defense is fact-relative.

---

\(^9\) I use the term moral warrant to cover both moral justification as well as moral right.
Fact-relative theories of CD contrast with belief-relative theories of CD. A belief-relative theory of CD is a theory according to which a moral defense of CD can be made with no constraints on either the content of the dissenter’s cause or the evidence he has in support of his moral belief. There are certain constraints regarding the doxastic attitude of the dissenter: he must (in some way) believe his political goal to be right, but the moral defense of the act of disobedience is not relative to whether the dissenter’s cause for protest is actually just or morally right. According to this definition, Brownlee’s view that there is a general moral right to civil disobedience is an example of a belief-relative theory of CD. This is illustrated in the following quote:

Conscientious moral conviction gives rise to two moral rights. One of these is a limited moral right of conscientious action as our expression of our conscientious convictions. It follows from the principle of humanism that this right includes a moral right to civil disobedience. This means the animal rights activist, the anti-abortion activist, the neo-Nazi, the environmentalist, and the anti-war protestor each has a moral right to engage in certain constrained, communicative breaches of law in defense of her cause (Brownlee 2012, 7).

Since Brownlee extends the moral right to engage in CD to the neo-Nazi and the neo-Nazi does not have a merited cause for protest, it is clear from the above passage that Brownlee does not require dissenters to have merited causes in order to for them to enjoy the normative protection that a moral right generates10. What she does require is that dissenters sincerely believe they are fighting for a just cause. I will elaborate on Brownlee’s theory later, but for now it is just worth noting that this approach to defending a moral right to CD makes the theory belief-relative.

Bear in mind that the categories of belief- and fact-relative theories are meant to serve as two main categories. Theories of CD may lie somewhere in between these two poles. Theories of CD may also combine elements of these categories, as belief-relative and fact-relative theories are not mutually

10 Brownlee also provides a moral justification of acts of CD motivated by conscience, where conscience refers to a set of moral skills that make us sensitive to an objective and plural morality (Brownlee 2012, p. 50). Her conscience-based normative defense of dissent then more resembles a fact-relative theory of CD.
exclusive. One possible hybrid theory could be a theory according to which there is a belief-relative right to CD, but the right is constrained by moral facts in the following way: there is a moral right to engage in CD in protest of policy X only if the absence of X is not very morally wrong\(^\text{11}\). A citizen then has a right to engage in CD in protest of a policy that he mistakenly thinks is unjust, so long as repealing the policy is not very unjust as a matter of fact. Rawls’ theory could also be interpreted as a version of a hybrid theory. It could be interpreted as being fact-relative regarding basic normative principles, but belief-relative regarding whether the principles have been violated or not. According to Rawls, dissenters only have a right to disobey in protest of violations of the equal liberties principle of justice\(^\text{12}\); this part of his theory of CD is fact-relative, since Rawls puts the equal liberties principle forward as objective in A Theory of Justice. Still, it seems that Rawls accepts that dissenters can be mistaken in their judgment of whether the equal liberties principle of justice is in fact violated in practice and still have a right to CD, since Rawls only demands that their opinion that the first principle of justice is infringed upon be ‘sincere and considered’\(^\text{13}\) (Rawls 1991, 114). In this regard, the moral warrant of disobedience solely depends on the dissenter’s doxastic attitude toward the proposition that a basic liberty is being violated, not on the fact that a basic liberty is being violated. This further part of Rawls theory is belief-relative.

While belief- and fact-relative theories can be combined in these and other ways, I am here concerned with theories that are predominantly belief-relative. My goal in this paper is not to settle any tension between belief- and fact-relative theories, but rather to take a closer look at some of the elements of belief-relative theories that are problematic. To this end, it will be helpful if we rehearse the main

---

\(^{11}\) I am thankful to Kasper Lippert-Rasmussen for bringing this formulation of a possible hybrid theory to my attention.

\(^{12}\) It should be noted that it is not clear from Rawls’ writings whether he intends to speak of a right to CD or a justification of CD, as he uses these terms interchangeably (Rawls 1991, pp. 108-113).

\(^{13}\) I am thankful to David Estlund for pointing out to me that much will depend on whether Rawls meant for the condition that the dissenter’s opinion be ‘considered and reasonable’ to be only a necessary condition. If it is only a necessary condition, Rawls’ position may not be belief-relative.
features of a belief-relative theory of CD and the next section is therefore devoted to Brownlee’s
demonstrated defense of a general moral right to CD.

2. Brownlee’s Argument from Humanism: a Critique

One of the points that Brownlee makes in the impressive work *Conscience and Conviction: The Case for Civil Disobedience* is that citizens of liberal democracies have a general moral right to engage in CD. The moral right is general in the sense that it extends to all agents who are motivated by a conscientious moral conviction regardless of whether their conviction is merited. Indeed, the neo-
Nazi can have as much a moral right to engage in civil disobedience as, say, the global warming activist, ceteris paribus, according to Brownlee. The merit of the cause is not important. Instead, the deep way in which the dissenter believes his cause for protest to be morally right establishes his moral right to CD. This is not to say that acts of CD are morally justified regardless of the content of the political cause. Brownlee only argues that citizens of liberal democracies have a moral right to engage in CD in defense of an unjust cause, not that their CD is morally justified when it is motivated by an unjust cause. The lenient constraints on the content of the cause and the emphasis on the doxastic attitude of the dissenter constitute the reasons for which Brownlee’s moral rights theory of CD is belief-relative.

Brownlee’s main argument for the claim that there is a moral right to CD is her argument from humanism. The argument has as its point of departure the humanistic principle of respect for human dignity and autonomy (henceforth HPR). According to Brownlee, respect for human dignity and autonomy implies respecting people’s conscientious moral convictions (Brownlee 2012, 7), where a conscientious moral conviction is a sincere and serious, though possibly wrong, moral commitment
(Brownlee 2012, 16). Commonly, the principle of respect for agents’ conscientious moral convictions has led liberal thinkers to endorse a right to conscientious objection, not a right to CD (Raz 1979; Horder 2004). According to Brownlee’s definition of conscientiousness, however, willingness to openly communicate a conviction to others is a signal, and indeed a necessary condition of conscientiousness. The communicative component of CD is thus a mark of conscientiousness that many acts of conscientious objection lack and therefore a principle that tells us to respect conscientious moral convictions must protect acts of CD rather than acts of conscientious objection. This also means that in order to respect conscientious moral convictions, we must respect the communicative efforts that accompany such deeply held convictions and protect a sphere of autonomy to act in ways expressive of our conscientious moral convictions.

Moreover, Brownlee contends, we must also recognize that it may be too psychologically burdensome to be required to put the law above deeply held convictions (Brownlee 2012, 7; 168), so that the class of conscientious actions that we require a sphere of autonomy to protect will include illegal conscientious actions (Brownlee 2012, 140-141). Since an act of CD is necessarily communicative (Brownlee 2012, 23), and communicative efforts signalize conscientiousness, CD falls under the category of conscientious action that needs protection. Brownlee then concludes that citizens of liberal democracies have a moral right to engage in civil disobedience in expression of sincere and serious, though possibly mistaken moral commitments, as granting a moral right of conduct is precisely intended to protect a sphere of autonomy for an agent to Φ by placing a correlative duty on other agents to not interfere with the agent’s Φ-ing (Brownlee 2012, 120-122). In the following, I argue to the contrary that the humanistic principle of respect for human dignity and autonomy does not entail a purely belief-relative moral right to CD.
An objection from validity

One reason why HPR cannot ground a belief-relative moral right to CD is that any right derived from the values of autonomy and dignity that constitute HPR must be limited by those same values, as well as by other weighty values and norms. I do not mean to suggest that Brownlee holds the view that the right to CD and the values in which the right is grounded should never be sacrificed for other rights or values. However, it is worth exploring the implications of a weighing off of values and rights. My contention is that once we start engaging with the issue of how to weigh off values, rights and norms against each other and we re-define Brownlee’s theory to include all the statements entailed by the original formulation of the theory, it will be clear that it does not include a purely belief-relative right to CD.

According to Smith 2014, it is not clear why a humanistic principle of respect for dignity and autonomy does not exclude all actions that negatively impact the agency and dignity of others, in which case HPR excludes all acts of CD carried out in defense of a cause that conflicts with the autonomy and dignity of others. Although I believe Smith is right that the values of autonomy and dignity that ground the moral right to CD do limit the range of causes you can protest, I do not think the conclusion that HPR excludes all acts of CD where the dissenter is motivated by a cause that negatively impacts the dignity and autonomy of others is warranted. The conclusion is not warranted for the following reasons that will also reveal how the right to CD is instead limited. First, values can generate conflicting demands that must be weighed off against each other. The values of autonomy and dignity may generate a right for racists to engage in CD and a right for a minority not to have their dignity violated by racist dissenters. In the aforementioned case, the minority’s right to dignity may outweigh the racists’ right to dissent, but in other cases where the violation of dignity is much less serious, the right to CD may be prioritized.
Second, it is not clear that engaging in CD in defense of a cause that conflicts with the dignity or autonomy of others actually violates or negatively impacts the autonomy and dignity of others. Consider the following case. A group of anti-abortion activists march through the streets of their home country where abortion is legal. Their political cause conflicts with women’s exercise of autonomous choice with regards to reproduction. Yet, we cannot plausibly say that a woman’s exercise of autonomous choice has been violated. Whether it is a relevant consideration that the protest has had negative impact on a woman’s exercise of autonomous choice will depend on what we mean by ‘negative impact’. One way to understand the claim that the protests negatively impact the autonomy of women is to say that the protests increase the likelihood of an abortion prohibition. If this is the claim, we would need to know more about the empirical claim that protests render the prohibition probable, including the part played by protests as distinct from, say, religious authorities or legal ways of convincing others citizens and decision-makers of the immorality of abortion. We would also need to know why a moral right to exercise one’s autonomy through CD can be circumscribed for the reason that such exercise of autonomy increases the probability that others may in the future experience a limitation to their exercise of autonomous choice. Consider an analogy to free speech. Even if the moral right to free speech is grounded in the value of autonomy, we still take the moral right to free speech to include a right to express one’s discontent with, say, legal abortion even if this entails some increase in probability that abortion may someday be illegal and thus in this sense negatively impacts the autonomy of women. Similarly, a moral right to CD derived from HPR does not exclude all acts of CD motivated by causes that conflict with the autonomy and dignity of others.

To see how a moral right to CD derived from HPR is limited by HPR consider the following case. Imagine that the anti-abortion protestors are not citizens marching on the street, but doctors openly refusing to perform abortions in order to communicate their objection to pro-choice policies. Now
the protest can be said to violate the autonomy of the women being denied their right to abortion. The
relevant difference between the marching protest case and the abortion doctor case is that the former
is an instance of indirect disobedience, while the latter is a case of direct disobedience. Indirect
disobedience is a form of dissent where dissenters break a law different from that which they wish to
protest. For example, dissenters could break traffic laws during a demonstration against the waging
of a war. Indirect forms of disobedience contrast with direct forms of disobedience where dissenters
break the same law they wish to protest. It is cases of direct CD motivated by a cause that conflicts
with the autonomy and dignity of others that HPR cannot protect. Indeed, HPR could not protect CD
undertaken by, say, a U.S. restaurant owner in the late 1960s who wished to protest the civil rights
act of 1964 by upholding racial segregation in his restaurant, because his act of disobedience would
violate the dignity of those subject to segregation in his restaurant.

What is more, it would be arbitrary to claim that the moral right to CD is limited solely by HPR. Why,
we might ask, are the causes you can protest only limited by the values of autonomy and dignity that
constitute HPR and not by other values and norms? Why is a moral right to CD not also limited by
other values and rights such as property rights or the right to bodily integrity? If the right to CD were
thus limited, protests against abortion or protests by anarchist movements inspired by Proudhon’s
idea that property is theft would not enjoy normative protection either. If the argument from
humanism is not to set arbitrary restrictions on what causes you can legitimately protest, the right to
CD must also be limited by values that are at least as weighty as autonomy and dignity. Even if we
do not treat the values of autonomy and dignity as two among many competing values, but instead
regard HPR as a supreme principle from which we can derive different norms, the same issue arises:
the belief-relative right to CD will sometimes conflict with other norms and rights derived from the
HPR and must be limited by those norms and rights when they outweigh the right to CD.
If the above reasoning holds true, the argument from humanism is not valid, because HPR does not entail that there is a purely belief-relative moral right to CD. A right to CD derived by HPR is limited by the values that constitute HPR in the sense that the right does not extend to acts of CD violating the autonomy and dignity of others where this violation outweighs the concern for the autonomy and dignity of the dissenter. A moral right to CD must furthermore be limited by other equally weighty values, norms and rights. The implication may then not just be that the argument from humanism does not convincingly support a belief-relative theory of CD, but rather that the moral right to CD entailed by HPR sails a lot closer to a fact-relative right to CD.

**An objection from bigotry**

Brownlee herself anticipates the second objection that she has brought ”...the rats in the house with the cats, and have given bigots, racists, and xenophobes of all stripes a moral right to break the law in defense of their cause” (Brownlee 2012, 147). For convenience, let us call this complaint the objection from bigotry. In response to this concern, Brownlee points to her conceptual analysis of CD, which excludes acts of protest in which the method of communication is too radical. Indeed, in order for an act of illegal protest to count as an act of CD, the protester must be sincere and serious in his aspirations to change society. Furthermore, his act must aim at communicating with at least some of his fellow citizens. Because sincere and serious protesters who want to communicate with others will not use overly intimidating methods that may overshadow their message, overly intimidating acts of illegal protest are not acts of CD, according to Brownlee’s definition\(^{14}\) (Brownlee 2012, 148).

\(^{14}\) Note that these constraints on the method of protest do not exclude the use of violence (Brownlee 2012, pp. 21-23).
Now, the objection from bigotry can be understood in several ways. In what follows, I lay out three ways in which the objection may be conceived. Brownlee’s above reply only defeats one version of the objection. The second and third versions of the objection from bigotry, however, constitute relevant criticism, which is why I will argue that the objection still stands. Brownlee’s response to the objection from bigotry is satisfactory only if we understand the objection as saying a) that xenophobes, neo-Nazis or dissenters with similarly despicable causes should not have a moral right to CD for the reason that they are likely to use coercive and radical means of protest. If the problem with neo-Nazis and xenophobes is their method of protest and Brownlee’s definition of CD excludes protesters who use radical means of protest, then the objection from bigotry can indeed be dismissed. However, the objection from bigotry can be understood in two other ways, so that Brownlee’s response is insufficient. The objection from bigotry can also be understood in the sense that b) it is counter-intuitive that citizens of liberal democracies should have a moral right to break the law in order to promote a morally reprehensible cause. A moral right is a justified moral claim that correlates to a duty. In this case, what we are dealing with is a moral right of conduct so that a moral right to Φ on behalf of an agent A will correlate to a duty on behalf of others not to interfere with A’s Φ-ing. It is counter-intuitive that I would have a duty not to interfere when, say, neo-Nazis attempt to promote serious injustice through CD. It seems more plausible that I would be required, or at least morally permitted, to interfere. Especially given the assumptions 1) that CD is a particularly efficient mode of political communication and 2) that we are in a liberal state where citizens who believe in morally wrong causes do enjoy freedom of expression, so that I am not preventing them from expressing their views. If granting a belief-relative moral right to CD implies that we are not morally permitted or required to interfere with the illegal, but effective promotion of, say, neo-Nazism, we should reject the claim that there is a belief-relative moral right to CD. Of course, Brownlee may just disagree with
me that it is counter-intuitive or perhaps she is simply willing to accept that her theory has counter-intuitive implications.

This leaves us with the final interpretation of the objection from bigotry saying c) that granting citizens of liberal democracies a moral right to CD in defense of morally reprehensible causes is problematic because it does not promote justice. The problem with granting the neo-Nazi a moral right to CD is not reducible to his potential use of intimidating tactics. The problem also lies in the content of his cause, and the consequences of affording him a moral right to the potent tool of communication that CD may be. It is problematic to grant xenophobes and Nazis a moral right to CD, when the moral right to CD is also in part justified with reference to the ‘double harmony’ between the interest of dissenters and the interests of society as a whole. Following Raz, Brownlee maintains that a moral right for an agent A to Φ is justified when it is not merely in the interest of A to have his right to Φ protected, but when it is simultaneously in the interest of society at large to protect A’s right to Φ. To illustrate: a journalist's right to protect her sources of information is not only justified by the fact that it serves her own interest not to disclose those sources, but also by the fact that it serves the interest of the public to gain access to the information that anonymous sources unveil (Brownlee 2012, 122; Raz 1986, 247-8). Similarly, Brownlee argues, there is a double harmony between the interest of civilly disobedient citizens in having a moral right to CD, and the interest of society as a whole. According to Brownlee, dissent is in the interest of society at large, even when dissenters do not have merited causes, because of both the deliberation-enhancing and stabilizing effects that CD has. Citizens therefore enjoy a moral right to engage in CD whether their cause for protest is merited or not.

Let me first elaborate on Brownlee’s assertion that there is a double harmony between the interest of the civilly disobedient citizen in having a moral right to disobey and the interests of his society.
Brownlee first argues that CD enhances democratic deliberation by exposing “...society to a view not presented by the mainstream media’ and because a dissenter can force “...champions of dominant opinion to defend their views. And, his disobedience can perform at least some of these services even when he is mistaken about either the facts or his principles” (Brownlee 2012, 146). Second, an act of CD works as a stabilizing force when the dissenter’s cause is merited: “And when his cause is well-founded, he may serve society not only by questioning, but by inhibiting a moral wrong or rectifying a moral wrong, thereby acting as a stabilizing force within society” (Brownlee 2012, 146).

Given that Brownlee is defending a belief-relative theory of CD, she must show that there is a double harmony between the interests of the disobedient activists and the interests of society at large, regardless of the merits of the causes that dissenters advocate. Yet, I will argue that the evidence underpinning that conclusion is not convincing. Consider Brownlee’s first claim that dissent enhances democratic deliberation by exposing the rest of society to a viewpoint not presented in mainstream media. I take this to be an epistemic claim similar to the claims Mill 1991 [1859] made about the epistemic value of freedom of speech, namely that freedom of speech promotes truth or prevents dogmatism, because its protection allows for a greater diversity of views in political deliberation. Protecting a right to CD could be said to have the same epistemic benefits, because it enables a greater variety of views to receive public attention. However, whether CD does enhance democratic deliberation by exposing our democratic conversation to new points of view must depend in some way on the content of the view. It is not clear that it is sufficient for disobedience to bring a new perspective into the deliberative arena, regardless of the content of this new perspective. Having more views represented in a deliberative arena does increase the likelihood that the correct standpoint is part of the debate, but it also increases the likelihood that the correct standpoint gets lost in the crowd (Kappel et al. 2017). Similarly, while having more views represented in the mainstream media on, say, what justice requires does increase the likelihood that the right view on justice is represented, it
also increases the likelihood that the right view on justice gets lost in the crowd, in which case the addition of new perspectives into the deliberative arena does not epistemically enhance deliberation.

Furthermore, even if Mill is correct that free speech has the epistemic benefits of promoting truth or preventing dogmatism, it is not clear that we can transpose Mill’s line of reasoning to a justification of a moral right to CD in a liberal democracy. First, free speech is, ex hypothesi, protected in liberal democracies, although granted it is not always fully honored in practice. The defender of a moral right to CD would have to tell us a story about how the epistemic gains we get from CD exceeds those we already get from free speech, where this epistemic value is enough to outweigh the value of following democratically enacted laws. Keep in mind that the right to free expression is not a right to communicate. A right to communication would be a right to have others listen to your view, whereas a right to expression is not, according to Brownlee (Brownlee 2012, 140). Since the right to expression and the derived right to CD do not entail a right to be heard, the story would have to be told without reference to the fact that some citizens are not heard in public political deliberation.

Consider Brownlee’s second reason why granting a belief-relative right to CD is in the interest of society, namely that dissent acts as a stabilizing force by preventing injustice or other moral wrongs when the dissenter’s cause is merited. Whether granting a belief-relative moral right to CD can be defended on the grounds that there is such a stabilizing effect will depend on further interrelated questions such as these: Do activists’ causes tend to be right? One would have to claim that activists causes tend to be merited or more often merited than not, in a way that also weighs how severe the injustice or moral wrong is. Do dissenters with merited causes inspire others with unmerited causes to dissent? If so, granting a belief-relative moral right may have a destabilizing effect, overall. Are dissenters generally successful in instigating the change they advocate? Some examples of successful CD stand vivid in our historical memory: the suffragette movement, the US civil rights movement.
and the fight against apartheid in South Africa, to name a few. However extraordinary these examples, they constitute insufficient anecdotal evidence. It is less clear what the impact will be of, say, the occupy Wall Street movement, anti-abortion activism or the use of the Hitler salute in Germany. Whether CD is generally an effective mode of political participation is an interesting empirical question that unfortunately cannot be answered here.

The upshot is that “letting the rats in the house with cats” is problematic, because it is not evident that dissent has a deliberation-enhancing effect regardless of the content of the cause for protest, and it is similarly doubtful that a belief-relative theory of CD can be justified on the grounds that merited dissent has an ultimately stabilizing effect and is thus in the interest of society as a whole. Brownlee's response to the objection from bigotry, asserting that her definition of CD excludes dissenters who employ radical methods, does not engage with the morally problematic content of the neo-Nazi’s cause. What is a defining feature of, and moral problem with, say, neo-Nazis or xenophobes, is precisely their political cause and not necessarily the extreme methods of protest they may employ. The content of the cause for protest is relevant due to the fact that should protesters with morally wrong causes be ultimately persuasive in their protest, grave injustices will ensue. Brownlee’s appeal to her conceptual analysis of CD is a satisfactory reply to version (c) of the objection from bigotry only given a further, partly empirical, premise stipulating that dissenters with morally deplorable causes are likely to use uncivil methods. If this is the case, they do not live up to the process constraints on CD and thus are not protected under a moral right to CD.
3. Implications for Belief-Relative Theories of Civil Disobedience

As the previous sections show, it appears difficult to justify a predominantly belief-relative theory of CD. The conclusion that citizens of liberal democracies enjoy a moral right to engage in CD regardless of the merits of their cause does not follow from a humanistic principle of respect for human dignity and autonomy. Moreover, granting citizens of liberal democracies a moral right to CD in defense of morally reprehensible causes is problematic because it does not promote justice. In what follows, I argue that the same conclusion applies to any belief-relative theory of CD grounded in an appeal to basic moral values.

The objection from validity revisited

Recall that the argument from humanism does not entail that there is a purely belief-relative moral right to CD, because a right to CD derived by HPR is limited by the values of autonomy and dignity that constitute HPR. The right cannot protect acts of CD that violate the autonomy and dignity of others and where this violation outweighs the concern for the autonomy and dignity of the dissenter. What is more, if a right to disobedience that is derived from HPR is not to be arbitrarily limited, it must also be limited by other weighty values, rights and norms. For example, a moral right to disobedience might be limited by, say, property rights or the right to bodily integrity. These considerations evinced that a moral right to CD derived from HPR cannot be purely belief-relative.

The above arguments not only pose a problem for a belief-relative right to CD grounded in a humanistic principle. If we transpose the line of reasoning to any other value from which one may wish to derive a belief-relative moral right to CD, be it the value of political participation or the value of deliberation or some other value, the same problem arises. To see this, assume that a right to CD
is fully justified by some moral value V. Someone proposing this must assume that V is somehow truly valuable and sufficiently weighty. If CD is defended because it promotes V, then we do not have a reason to protect acts of CD that undermine V. Rather, it would be incoherent to say that a right to CD also includes a right to CD-acts that undermine V, except in cases where V is undermined more by prohibiting dissent. A V-motivated right to CD is thus circumscribed by V. This implies that many CD-acts targeted at laws, institutions and policies that are fully justified by V could not enjoy normative protection under a moral right to CD derived by V.

What is more, it is arbitrary to maintain that the right to CD can be circumscribed by V, but not by other equally or more weighty values. Consider the following analogy to freedom of speech. Even though freedom of speech is considered extremely valuable among liberal philosophers, it is still thought to be legitimately subject to circumscription by other values. Indeed, Mill argued that free speech was limited by the value of preventing harm (Mill 1991 [1859]), while Feinberg 1985 circumscribed freedom of speech by the value of preventing offense, and others still have argued that freedom of expression can, in at least some cases, be limited by the values that underpin liberal democracy (Langton 1990; Fish 1994). Indeed, a right derived from some value V is sometimes properly subject to circumscription by another weighty value V’. Even freedom of expression is curtailed by other values and the right to freedom of speech is presumably so much weightier than a right to CD that the latter will be subject to far greater circumscription than the former.

To see how the above reasoning applies to other belief-relative theories of CD, consider the example of Lefkowitz’ 2007 On A Moral Right To Civil Disobedience. Lefkowitz argues that citizens of liberal and democratic states have a moral claim right to engage in CD for a wrong or unjust political
cause. Lefkowitz derives the moral right to CD from a right to political participation\textsuperscript{15} which is in turn grounded in the value of autonomous choice. Lefkowitz’ conception of a moral right to CD is what I would term a belief-relative moral right, because it constrains the doxastic attitude of the dissenter, but puts no explicit constraints on the content of the cause. Indeed, Lefkowitz writes,

> when an agent engages in public disobedience in order to advocate for a change in law or policy that, though she believes it would be an improvement, would in fact be worse from the standpoint of justice or morality than existing law or policy, still she acts within her moral rights (Lefkowitz 2007, 224).

The belief-relative right to CD derived from the right to political participation is ultimately founded on the value of autonomous choice. To Lefkowitz, it is valuable that agents make decisions autonomously, although the value is conditional upon the quality of the choice. In order to promote the good autonomous choices that give autonomy its value, we need to create a space for agents to act unencumbered, hence we need a claim right to make bad choices as well. The value of an agent’s autonomous choice in the political domain is also conditional upon the merits of the political choice. The only way to promote autonomous and good political decisions, however, is to give agents the right to autonomous choice, where this inevitably will include autonomously making bad political decisions (Lefkowitz 2007, 227-228).

The justification of a moral right to CD that Lefkowitz proposes does not convincingly support a purely belief-relative moral right for the same reasons that applied to Brownlee’s argument: the moral right must be limited by the value or norms from which it is derived, political participation or autonomy, as well as by other weighty values, norms and rights. The right cannot protect acts of CD that violate the autonomy of others or their right to political participation where this violation outweighs the concern for the autonomy and right to political participation of the dissenter. Without

\textsuperscript{15} In contrast to Raz, Lefkowitz contends that a right to political participation does entail a right to CD in a liberal, democratic state.
going into details, Lefkowitz recognizes that the right to CD should be weighed off against other values and rights (Lefkowitz 2007, 226-28), but a weighing off as such will imply that the so-called right to do wrong is not a belief-relative moral right. To illustrate: Lefkowitz’ moral right to CD must be limited by the right of political participation, which means that it cannot protect the right to violate the participation rights of others. The limitation implies that you have no right to protest, say, the voting rights of citizens on transfer income by stealing their ballot papers. Lefkowitz’ moral right to CD will also be limited by the value of autonomy. It cannot protect, for example, doctors who refuse to perform abortions as a way of communicating condemnation of legal abortion, because this violates the autonomy of the women being denied their reproductive rights. Finally Lefkowitz’ moral right to CD should be circumscribed by other weighty values. Dissenters do not then have a right to engage in CD in defense of a cause that compromises the dignity of others, say, a minority under attack.

What the above argument suggests is not that a right to CD is fact-relative, but that a belief-relative right to CD grounded in a basic moral value is morally circumscribed in such a way that it is no longer meaningfully belief-relative: it is no longer true that there are no constraints on the content of the political cause that motivates the dissenter. We need to decide how much value we ascribe to CD in relation to other moral concerns. If there are many other sufficiently weighty moral concerns, then the difference between a belief-relative view and a fact-relative view wanes. The two views may still be motivated differently, but the implications of the two views begin to look similar.

**The objection from bigotry revisited**

The objection from bigotry also applies to belief-relative theories in general. Recall that the objection from bigotry says that granting citizens of liberal democracies a belief-relative moral right to CD is
problematic because it will not promote justice. The objection is problematic for any belief-relative theory of CD for it can be formulated as an external as well as internal criticism. According to the external version of the critique, granting citizens with morally reprehensible causes a moral right to CD is troublesome because we ought to value CD for its role in promoting justice. The reason why CD raises a moral question at all is because a conflict of duties arises between the duty to obey democratically enacted laws, on the one hand, and the duty to promote justice, on the other. Belief-relative theories of CD that do not invoke consequentialist considerations in their justification are subject to this external version of the objection.

By contrast, belief-relative theories that do justify a right to CD on the grounds that the practice of CD helps promote justice will have to respond to an internal version of the objection from bigotry. Take Dworkin’s argument that a citizen acts within his rights when he follows his own judgment about what the constitution demands and engages in CD in order to protest a law he considers unconstitutional (Dworkin 1997 [1977], 254-255). A draftee, for instance, acts within his rights, when he disobeys draft laws on moral grounds, because he thinks it arbitrary and thus unconstitutional that the draft exempts those who object to wars for religious reasons, but not those who object to war on moral grounds (Dworkin 1997 [1977], 252-253). Dworkin only demands that dissenters make reasonable efforts to reach the better conclusion about what the constitution requires, where this includes taking contrary decisions by courts into account when forming an opinion (Dworkin 1997 [1977], 254-55). The theory thus meets the requirements of a belief-relative theory that there are constraints on the doxastic attitude of the dissenter, but no or undemanding constraints on the content of the cause. In support of the claim that there is a right to disobey, Dworkin at one point writes that if citizens did not challenge laws they believe are unconstitutional through dissent “...then the chief

---

16 Or oppose injustice as Rawls would say (Rawls 1991, p. 103).
vehicle we have for challenging the law on moral grounds would be lost, and over time the law we obeyed would certainly become less fair and just, and the liberty of our citizens would certainly be diminished” (Dworkin 1997 [1977], 256). According to Dworkin, dissent helps improve judicial decisions on constitutional matters, because the record of dissent and the arguments put forward by dissenters can be used by the legal profession to criticize court decisions (Dworkin 1997 [1977], 57).

In justifying a right to CD with reference to the ability of the practice to promote justice, Dworkin’s argument becomes vulnerable to the internal version of the objection from bigotry. As previously mentioned, it is doubtful whether granting a belief-relative moral right to CD can be defended on the grounds that it promotes justice. Whether the practice of CD does promote justice will depend on issues such as whether activists’ causes tend to be merited or more often merited than not, in a way that also weighs how severe the injustice or moral wrong is. It will further depend on whether dissenters with merited causes inspire others with unmerited causes to dissent and whether dissent is, indeed, a vehicle for change.

Like Brownlee, Dworkin could instead invoke a Mill inspired line of reasoning according to which dissent enhances political deliberation, because allowing for a greater diversity of views in public deliberation, or in legal deliberation about what the constitution requires, has the epistemic benefits of promoting truth. Now, Dworkin rejects the view that there is a discoverable right answer to legal issues, however, he does argue that arguments about what the constitution requires can be better or worse (Dworkin 1997 [1977], 260-61). So if Dworkin were to pursue a Millean line of reasoning, his argument would not be vulnerable to a criticism that belief-relative dissent does not enable decision-making to more reliably track the truth about what justice requires. However, the argument would still be criticizable for claiming that a belief-relative right to dissent has the epistemic benefit of tracking the better argument about what the constitution requires.
Again, it is not clear that we can transpose Mill’s line of reasoning to a justification of a moral right to CD in a liberal democracy. We would still need to know whether the epistemic gains we get from CD exceeds those we already get from free speech and from challenging the constitutionality of law through legal channels, where this epistemic value is enough to outweigh the value of following democratic laws. Just like free speech already allows us to reap some epistemic rewards from diversity, we must also already benefit from having citizens challenge the constitutionality of law, because it is possible for citizens to do so through legal channels. If you are denied your constitutional rights in the U.S., for example, you can ask courts to review your case and you have the opportunity to put forward your arguments for why a law is unconstitutional, where these arguments go on record and can be used by the legal profession to improve judicial decisions. Accordingly, Dworkin’s theory and any other belief-relative theory of CD will be vulnerable to the objection from bigotry in either its internal or external formulation.

4. **Concluding Remarks**

Acts of CD are undertaken in defense of a variety of causes: from banning GMO crops and prohibiting abortion to fighting inequality and saving the environment. However, not all causes for protest are equally merited and this fact should influence whether acts of CD are morally warranted. What I have argued here is that there can be no such thing as a completely belief-relative moral right to CD. This is not to say that any plausible normative defense of CD must be fact-relative: I have not argued that dissenters must be right in their political cause in order for their act of protest to be warranted. Indeed, a fact-relative theory of CD will have problematic features as well. For one thing, moral and political questions are oftentimes extremely complex and since there are no moral authorities that tell us whether a political cause is right or not, one could argue that we are left with the problem that a fact-
dependent justification lacks action-guidance. Second, a fact-relative moral right to CD may also defeat the purpose of a moral right if one thinks that purpose is to secure a sphere of autonomous conduct.

Acknowledgments

For their valuable comments and for interesting discussions on this paper, I am very grateful to Klemens Kappel, Andreas Christiansen, Kasper Lippert-Rasmussen, David Estlund, Bjørn Hallson, Sune Holm, Morten Ebbe Juul Nielsen, two anonymous reviewers for this journal, the practical philosophy research group at University of Copenhagen, the OZSW spring school in Ethical Theory and Applied Ethics and the audiences of the 7th Meeting on Ethics and Political Philosophy at University of Minho and the University of Copenhagen Analytic Philosophy platform colloquium.

References


Civil disobedience has a stormy and complex relationship with majority rule, Dworkin once wrote (Dworkin 1985). The majority principle dictates that the majority must decide on behalf of its community what ought to be done politically, and that majority decisions are binding even for those who think the majority’s decisions are wrong. Yet, citizens engaging in civil disobedience sometimes break democratically enacted laws, exactly because they think the majority or its representatives have adopted a wrong law or policy. If we maintain, as I think we should, that the role of civil disobedience is to promote correct, i.e. actually just, prudent or morally right, political decisions, and if we concede that we ought to care about making correct political decisions, the question suggests itself: why not let citizens who know that the majority has adopted, say, an unjust decision engage in civil disobedience with the aim of remedying the majority’s wrong? A similar line of reasoning motivates the justification of epistocracy or expert rule: if we think it important that our political decisions be correct, then why not let the epistemically more qualified parts of our population make our political decisions? In this paper, I show that epistocracy and civil disobedience are similar in the sense that they both involve the idea that superior political judgment defeats majority authority, because this can lead to correct political decisions. By reflecting on the question of when superior political judgment defeats majority authority in the epistocracy case, I identify considerations that also apply to the disobedience context and attempt to sketch a new approach to the question of when civil disobedience is warranted in liberal democracy.
The paper proceeds as follows. In the first section of the paper, I elaborate on my contention that disobedience and epistocracy both involve the idea that superior political knowledge defeats majority authority for the sake of promoting correct political decisions. In the second section of the paper, I investigate when civil disobedience is legitimate by drawing on justifications for epistocracy. The second part of the paper begins by introducing the objections that democrats have raised against epistocracy which are surprisingly similar to the objections they raise against civil disobedience. One such objection says that even if dissenters or epistocrats do know that the majority has adopted a wrong decision, dissent or epistocracy is not legitimate, because disobedience and epistocracy is not reasonably acceptable. By drawing on the epistocratic answers to the democratic objection, I then go on to argue that civil disobedience performed by agents who are knowers is legitimate when there are no reasonable objections to a principle that the superior political knowledge of those who know warrants their rejection of the majority’s authority (the authority principle*). There are no reasonable objections to the authority principle* when the following propositions are true: 1) it is not reasonably disputable that the civil dissenter is a knower 2) the adoption of the law or policy being protested is a high-stakes political decision and 3) no destabilizing effects ensue.

Finally, I reflect on how this account of legitimate civil disobedience differs from the traditional liberal and democratic justifications of civil disobedience. It deviates from the liberal approach in that it avoids being restrictive regarding the class of causes you may protest. According to Dworkin 1977 and Rawls 1971, disobedience is only justified when it is used to protest infringements of liberty rights. The account I provide in this paper is not as restrictive as Rawls’s and Dworkin’s regarding the content of the cause: civil disobedience may be warranted when it is used to protect liberty rights, but it is not just when liberty rights are at stake that civil disobedience may be warranted. The present account instead holds that the role of civil disobedience is to promote correct decisions, including
promoting decisions that are actually just, prudent or morally right. Still, the account provided here does not say that disobedience is warranted whenever dissent promotes correct decisions. Instead, this account of legitimate disobedience is restrictive regarding the substantiality of the wrongs citizens may legitimately protest using civil disobedience. That is, dissenters may protest everything from infringements on liberty rights over distributive policies or democratic deficits and so on. However, minor wrongs cannot warrant civil disobedience. The main difference between a case of legitimate civil disobedience and illegitimate civil disobedience is whether the stakes are high: whether the wrong being protested against is grave.

1. Disobedience, Epistocracy and the Idea that Superior Political Judgment Defeats Majority Authority

It may be surprising that civil disobedience and epistocracy should end up in the same moral tangle. Epistocracy is usually thought of as an elitist practice in which we let the wise rule. Civil disobedience (henceforth CD), by contrast, is associated with grassroots movements whose members break the law in protest. In this paper, I argue that CD and epistocracy are similar in the sense that both practices involve the idea that superior political knowledge defeats majority authority for the sake of promoting correct decisions, i.e. just, prudent or morally right decisions. Because CD and epistocracy are similar in this way, the moral evaluation of epistocracy can teach us something about the moral evaluation of CD. Before turning to the justification of epistocracy and CD, however, I will use this first section to elaborate on my contention that CD and epistocracy are akin.

The claim that CD and epistocracy are similar because they both involve the idea that superior political knowledge defeats majority authority for the sake of promoting correct decisions can be
divided into three sub-claims. First, dissent as well as epistocracy conflict with the majority principle. Second, CD as well as epistocracy is sought justified because they promote correct decisions. Third, epistocracy as well as CD involves an assertion of privileged political knowledge. In the next paragraphs, I elaborate on these three sub-claims beginning with the claim that CD and epistocracy both conflict with the majority principle.

Disobedience, epistocracy and their conflict with the majority principle

To see how epistocracy and CD conflict with the majority principle, it will be helpful to lay out each concept and then show how it conflicts with the majority principle. I will begin with the concept of CD and its uneasy relationship with majority rule and then turn to epistocracy.

CD is commonly conceived of as an illegal, yet conscientious act motivated by the aim of changing law or policies (see e.g. Rawls 1971, Raz 1979, Dworkin 1977) or motivated by the aim of triggering political engagement (Markovits 2005; Smith 2013). Dissenters break and protest democratically enacted laws, i.e. laws that enjoy support among the majority, but dissent may nonetheless be more or less in conflict with the majority principle depending on the method of protest employed. Dworkin 1985 distinguishes between two strategies dissenters might use in pursuit of their political aims: a persuasive strategy and a non-persuasive strategy. Dissenters using the persuasive strategy aim to change the majority’s mind. The non-persuasive strategy, on the other hand, is coercive: dissenters employing the non-persuasive strategy have no intention of convincing the majority to change their minds by argument, but their intention is instead to force the majority to change a policy by raising the cost of holding on to their political course. Such non-persuasive strategies may include blocking traffic, imports, or official department buildings, or, more radically, the strategy of creating fear. Non-persuasive strategies are more at odds with the majority principle than persuasive strategies, because
dissenters do not care whether they actually convince the majority that changing the law is the right thing to do (Dworkin 1985, 109). Still, even though dissent can be done with more or less respect for the opinion of the majority, dissenters always do violate the majority principle by rejecting the authority of a law enacted by the majority by breaking that law.

Turn to epistocracy. Epistocracy is a term coined by Estlund to denote a form of oligarchic rule: the rule of a wise elite (Estlund 2008, 277). The idea of epistocracy dates back at least to Plato’s Republic, in which Plato argued that kings must be philosophers (Republic 471 c-474 b), although epistocracy is a broad term covering a multitude of political decision-making practices. An epistocracy can be formal or informal. A formal epistocracy may consist in granting political rights to the wise elite only, but formal epistocracy also comes in moderate forms, such as Mill’s plural voting scheme, where suffrage is (almost) universal, but the wise are granted a plurality of votes (Mill 1991 [1859], 330-40). In an informal epistocracy, on the other hand, the wise do not have any special political rights, but they still enjoy greater influence on agenda-setting, public political deliberation, or decision evaluation than the average voter, say, by being overrepresented in the media. In a cultural epistocracy, for example, the culture is such that experts enjoy a high degree of respect and, consequently, they gain a superior informal influence on the political decision-making process (Holst 2012, 44-46).

Different forms of epistocracy will also be more or less at odds with the majority principle. The formal and permanent delegation of political power to experts is more at odds with majority rule than a moderate type of epistocracy, say, where you have epistocratic institutions that are under democratic supervision, e.g. judicial review, or where the majority has the authority to make decisions, but some groups of citizens are excluded from the decision-making process due to their insufficient cognitive abilities, e.g. the disenfranchisement of children or the mentally disabled.
For the democratically spirited, it may seem odd that CD and epistocracy might be justified even though they conflict with the majority principle. The reason why we can still consider CD or epistocracy valuable, or so I will hold, is that dissent and epistocracy can promote correct decisions, say, decisions that are actually just. Being valuable for promoting correct decisions is the second feature that CD and epistocracy have in common and the next paragraphs are devoted to elaborating their value.

**Disobedience, epistocracy and the promotion of correct decisions**

CD and epistocracy both invite the question of why we should privilege ‘one person, one vote’ when serious injustice is on the line. The reason why both practices invite this question is because of the second feature they share, namely that they are both valuable because they enable us to live under more just and morally right laws and policies. In the case of epistocracy, one could motivate letting the wise rule by arguing, as Socrates does in Crito 47c9-d2, that the wise simply have a right to rule, but the more plausible way of motivating an argument for epistocracy is with reference to the fact, if it is a fact, that the wise make better political decisions for the community than the people are able to and thus will be better able to promote correct decisions.

CD has also often been thought valuable for the reason that it can bring about more just laws or policies. As Rawls writes: “civil disobedience used with due restraint and sound judgment helps to maintain and strengthen just institutions. By resisting injustice within the limits of fidelity to the law, it serves to inhibit departures from justice and to correct them when they occur” (p. 336). Rawls envisages the role of CD as one of securing basic liberties and thus protecting his first principles of justice, the equal liberties principle. Dworkin 1977 similarly justifies CD with reference to the fact
that it promotes justice. Dworkin defends the stance that whenever the constitutionality of a law is
doubtful, a citizen may follow his own judgment about whether the law is constitutional (Dworkin
1977, p. 254). Disobedience as such is valuable because the record that is made when a citizen follows
his own judgment about the constitutionality of a law contributes to making better judicial decisions.
To Dworkin, there is not one uniquely right answer to the question of what the constitution requires,
but there are better or worse arguments about whether a law is constitutional and CD helps courts and
legal scholars to make better arguments about what the constitution requires. So without CD, “…the
chief vehicle we have for challenging the law on moral grounds would be lost, and over time the law
we obeyed would certainly become less fair and just, and the liberty of our citizens would certainly
be diminished” (Dworkin 1977, 256).

So called ‘democratic disobedience’ is usually not thought of as valuable for the reason that it
promotes just outcomes. Recall that democratic disobedience is aimed not at changing a specific law
or policy, but aimed instead at triggering engagement with an issue that has not been debate as
thoroughly as its importance warrants. Nevertheless, I will maintain that democratic disobedience is
also ultimately valuable for the reason that it promotes more just or correct decisions. The reason why
democratic deliberation is valuable in the first place is, at least in part, because democratic
deliberation promotes better decisions. As Estlund notes, it is unclear why we should we prefer a
reason-recognizing decision-making procedure if it were not because we thought a procedure as such
would led to better political decisions (Estlund 2008, 101). Indeed, why would we think it valuable
to exchange evidence and arguments if not because this would lead to better decisions? Because
democratic deliberation is in this way valuable, disobedience aimed at rectifying democratic deficits
is also ultimately valuable for the reason that it promotes better decisions.
Disobedience, epistocracy and superior political judgment

So far we have established that CD and epistocracy both conflict with the majority principle and the reason why this conflict might not have to worry us is that CD and epistocracy are also both thought to promote correct decisions. In order to hold that CD and epistocracy are valuable for promoting correct decisions, one must also hold that civil dissenters and expert rulers make judgments about what we ought to do politically superior to those of the majority. In the paragraphs to come, I elaborate on the third sub-claim that civil dissenters or expert rulers have superior political knowledge. I show that acts of CD and the experts’ exercise of power both involve assertions of privileged political knowledge. Whether civil dissenters and expert rulers actually make superior political judgments is a different question. Expert rulers are defined such that they necessarily make superior political judgments\(^\text{17}\), while civil disobedience is defined such that civil dissenters do not necessarily make superior political judgments. It is contingent whether a civil dissenter has privileged political knowledge. The justification of CD inspired by the justification of epistocracy that I provide in the second section of this paper will therefore be limited to specific cases of CD where dissenters do have privileged political knowledge.

Begin with the thought that an expert’s exercise of political power and an act of civil disobedience involve assertions of privileged political knowledge. The epistocratic ideal involves the assertion that one class of citizens, the experts, make political judgments that are superior to those of the rest of the population, the non-experts. The assertion that expert rulers have privileged political knowledge is made by the theorists who defend epistocracy; those theorists depend on this assertion as part of their

\(^{17}\) It might still be controversial in the public who the experts are. I do not wish to say that it is easy to identify and agree on who the individual political experts are in practice, but just that the definition of an expert is such that an expert necessarily makes superior judgments,
argument that experts ought to rule, because such rule leads to better or more just decisions. The expert rulers themselves also assert their superior political knowledge. Indeed, when experts exercise power for the reason that they are more knowledgeable and in turn able to make better political decisions, the experts’ exercise of power expresses that they have privileged political knowledge.

CD similarly involves assertions of privileged political knowledge. The theorist justifying CD may claim that there are cases where the act of CD provides valuable input to the political decision-making process and this claim relies on the assertion that civil dissenters have privileged political knowledge. An act of CD itself also involves an assertion of privileged political knowledge. When dissenters protest a policy P that the majority has adopted because they believe P is an unjust policy to adopt, their action expresses the judgment that the majority was wrong in thinking that P was the right policy to enact and hence that the dissenter knows better than the majority whether or not P is the right policy to adopt.

Of course, acts of civil disobedience do not necessarily express the idea that the majority has adopted a wrong policy, because dissent may not always be done with the aim of protesting the adoption of a specific law or policy, depending on your conception of CD. Recall from the previous paragraphs that Rawls conceives of CD as an act that is “…usually done with the aim of bringing about a change in the law or policies of the government” (p.104). However, dissenters could also have other aims. For example, the type of dissent described as ‘democratic disobedience’ aims not at making the majority realize they are mistaken about the justice of a law, but rather to initiate democratic deliberation about an issue (Markovits 2005). Thus dissent does not involve a claim in those cases

---

18 One could also defend the claim that the act of CD provides valuable input to the political decision-making with reference to a Millean line of reasoning according to which disobedience promotes truth or prevents dogmatism in our democratic conversation, because disobedience promotes a greater diversity of views in political deliberation. However, as I have argued elsewhere, whether CD does enhance democratic deliberation must depend on the merits of the view dissenters advocate. Having more unmerited views represented in our democratic conversation just increases the likelihood that the right view gets lost in the crowd (Kappel et al. 2017; Hindkjaer Madsen 2018).
that the majority is mistaken about the justice of a law or policy and so, on the face of it, it seems less clear that citizens engaging in this sort of democratic disobedience assert privileged political knowledge, at least with regard to the judgment that a law or policy is unjust or in other ways wrong. Still, democratic disobedience does involve an assertion of privileged political knowledge about the claim that the relevant political issue has not been debated as thoroughly as its importance warrants.

Turn now to the question of whether expert rulers and civil dissenters also actually possess privileged political knowledge. Expert rulers are defined such that they make political judgments superior to those of the rest of the population. The expert rulers might gain their status as experts because of their academic merits or because they are skilled practitioners, and their merits may fall within the factual or moral domain (Holst 2012, 48), depending on how you spell out the epistocratic ideal. What all experts will have in common is that they are knowledgeable relative to the rest of the population and if they ought to rule, they ought to rule because their decisions are likely better than the decisions the population at large would make.

CD, on the other hand, is not defined such that civil dissenters necessarily have privileged political knowledge. Nothing in common definitions of CD implies that dissenters necessarily or always know that the decision they protest is in fact wrong or that the relevant political issue has not been debated as thoroughly as its importance warrants. Dissenters are commonly held to have a conscientious belief that the policy they protest really is wrong, but conscientiously believing you are right is compatible with actually being wrong (Brownlee 2004; 2012).

Interestingly, civil dissenters are still sometimes described in the CD literature as a type of expert. Brownlee 2012, for example, defends the epistemic value of CD with reference to the claim that
environmentalists or soldiers are sometimes epistemically better placed than the legislature to assess all reasons relevant to environmental or foreign policy; she describes these groups as “on the ground experts” (p. 175-76). Anderson also argues that dissent is epistemically valuable because it makes use of citizens' situated knowledge: "Citizens from different walks of life have different experiences of problems and policies of public interest, experiences that have evidential import for devising and evaluating solutions” (Anderson 2006, 13). Still, civil dissenters need not always be knowers; they might make wrong political judgments. Some might argue that it is also true of expert rulers that they may sometimes make wrong political judgments. Experts in the traditional sense of the term will not always be right; if we accept that experts can disagree about whether P is true and it cannot be the case that P and not-P, then we have to accept that expertise does not require being right about some proposition (Goldman 2011, 115). In contrast with civil dissenters, however, traditional experts do have some institutional merit. Claiming that civil dissenters are knowers is therefore more dubious than claiming that experts are. Be that as it may, since my aim is to investigate when it is legitimate for citizens who do know, say, that the majority has adopted a wrong decision to engage in CD, I simply assume that the assertion of privileged political knowledge involved in CD is true. My conclusions as to when CD is legitimate is then limited to cases where dissenters are in fact knowers.

Summing up, CD and epistocracy both conflict with the majority principle, both involve assertion of superior political judgment, and both are valuable in so far as they promote correct decisions, i.e. actually just, prudent or morally right decisions. If we concede that we care about whether our political decisions are correct, the question arises: why not just let experts make our political decision instead of having the people vote? A related question arises in the disobedience context: why not let citizens engage in disobedience with the aim of remedying wrongs? There are of course democratically spirited objections to the idea that superior political knowledge defeats majority
authority and interestingly, CD and epistocracy have been subjected to two similar objections from democrats that will need to be answered before we can know whether CD and epistocracy are legitimate. In the sections to come, I elaborate on the democratic challenge and develop an answer to the challenge that brings to light the conditions under which CD is legitimate.

2. Justifying the Legitimacy of CD

In the first part of this paper I motivated why I believe we can learn something about the justification of CD from the justification of epistocracy. I have argued that epistocracy and CD are similar in the sense that they involve the idea that superior political judgment defeats majority authority and thus they both have an uneasy relationship with democratic rule. The question is whether having this complex relationship with democracy is problematic: why not concede that sometimes the concern for enacting laws and policies that are actually just or morally right can outweigh the concern for respecting majority authority? In this second part of the paper, I take a closer look at the reasoning that can justify epistocracy in order to investigate whether CD is justified as well. The second part of the paper will proceed as follows. I first lay out the objections that democrats have raised against CD and epistocracy. The objection that I address in effect says that legitimate political justification has to be acceptable to reasonable citizens, and it is not reasonably acceptable that the superior political knowledge of civil dissenters or epistocrats defeats majority authority. Drawing on discussions regarding the legitimacy of epistocracy, I then argue that CD is reasonably acceptable and thus legitimate when there are no reasonable objections to a principle that the superior political knowledge of those who know warrants their rejection of the majority’s authority (the authority principle*). There are not reasonable objections to the authority principle* when the following propositions are
true: 1) it is not reasonably disputable that the civil dissenter is a knower 2) the adoption of the protested law is a high-stakes political decision and 3) no destabilizing effects ensue.

**Objections against epistocracy and CD**

Democrats have raised two objections to the claim that the superior political knowledge of epistocrats defeats majority authority. The first objection says that epistocrats are not in a privileged epistemic position relative to the democratic majority. The second objection states that even if epistocracy is epistemically superior to democracy, it is still illegitimate, because epistocracy is not acceptable to reasonable citizens. Interestingly, those two objections are similar to the objections democrats have used to show that CD is not warranted just because dissenters know their society ought to alter its political course. In the following, I lay out the two objections in both the versions addressed at epistocrats and the versions addressed at dissenters.

In the literature on CD, the first objection says that civil dissenters challenge the legislature's right to make collective decisions, even though the legislature is able to make better political decisions than the dissenter (for discussion see Brownlee 2012, 174-177; Weinstock 2015). The reasoning behind this epistemic objection to disobedience is that members of the legislature have more time to think political decisions through than the average citizens, and that legislators can draw on the expertise of their civil servants in turn enabling the legislature to make better decisions, because the factual input that inform political decisions is more likely to be correct.

The suggestion that democratic institutions are epistemically superior also appears in literature disputing the epistemic benefits of epistocracy. According to Landemore 2012, democratic decision-
making bodies can make better decisions than a small, wise elite, because there is greater cognitive
diversity to be found in a democratic body and this cognitive diversity has epistemic benefits that
outweigh the benefits of having the wise make our decisions. Even representative democracies have
this epistemic advantage, according to Landemore, because representatives reproduce the cognitive
diversity of the whole democratic community, just on a smaller scale (for varying versions of the
claim that democratic decision-making procedures produce better political decisions than a small
wise elite would see e.g. Anderson 2006; Condorcet 1995). Landemore’s argument is intended to
refute epistocracy, but note that since Landemore claims that a majority decision is better than a
decision made by the few, even when the few are the wisest, a majority decision must also be better
than a decision made by a civil dissenter, even if the dissenter is the wisest. Landemore’s argument
thus implies that civil dissenters who disagree with the democratic majority do not know better than
a democratic majority or its representatives what we should do politically. The upshot is that both
civil dissenters and expert rulers are charged with the criticism that their judgment is not as
epistemically superior as they may think: democratic decision-making procedures actually yield
better or more just decisions than civil dissenters or expert rulers.

Whether or not democracy epistemically outperforms a wise elite or a wise civil dissenter is a
complex and controversial issue that I cannot hope to settle here. However, even if democratic
procedures are generally epistemically best, there may be specific circumstances that may make one
justified in thinking that an outcome of the democratic decision-making procedure is mistaken or
unjust. I will assume that there are citizens who do sometimes know better than the majority what
ought to be done politically and, as mentioned earlier, I will also assume that civil dissenters as well
as expert rulers may fall under the category of knowers. Accordingly, my conclusions as to when CD
is legitimate will also be limited to cases where dissenters do know better than the majority. My focus
in the following will be on the second objection that democrats have raised against civil disobedience and epistocracy. This second objection takes the following form: even when civil dissenters or experts do know better than their fellow citizens, the majority’s claim to authority may still not legitimately be defeated, because legitimate decisions are decisions made with respect for the reasonable, but divergent viewpoints of citizens, even when these viewpoints are wrong.

The second objection comes in different forms, but they all share the basic premise that legitimate political systems must be respectful or tolerant of the conflicting political views citizens hold. Daniel Weinstock 2015 argues that even if dissenters do know better what we ought to do politically, this does not translate into a moral justification for disregarding democratic decision-making procedures. Drawing on Jeremy Waldron’s 1999 Law and Disagreement, Weinstock writes that democratic decision-making procedures are not meant to find the epistemically best decisions, but they serve the role of making decisions “…that are respectful of all citizens in the face of disagreement”. Therefore, dissent cannot be justified solely with reference to its ability to promote just outcomes (for discussion see Brownlee 2012, 174-177; Weinstock 2015). Waldron’s argument in Law and Disagreement is based on the basic premise that legitimate political authority should be justified to the citizens that are bound by that authority, although authority does not need to be justified to citizens who hold crazy or unreasonable views. The idea that we should tolerate and be respectful of reasonable, but perhaps wrong political views is also found in the literature rejecting the legitimacy of epistocracy. According to David Estlund 2008, the question of legitimacy is not reducible to whether a decision-making procedure results in good decisions. One reason why this is so is that political arrangements are legitimate only if they are acceptable to all reasonable citizens. Since there will be reasonable disagreement over who the experts are, an epistocracy will objectionable to reasonable citizens and thus illegitimate, argues Estlund (p. 33-36).
Epistocrats and dissenters must answer said moral objection before they exchange their epistemic currency into a moral one, that is, before their superior epistemic positions legitimately defeats majority authority. So let us have a closer look at this type of moral objection to epistocracy and dissent. The basic premise invoked by Estlund and Waldron belong to a family of views that have come to be known as liberal conceptions of legitimacy. According to liberal conceptions of political legitimacy, a political regime, law or policy is legitimate iff it is acceptable or endorsable by a subset of the population who are what liberal theorists call reasonable or qualified\(^\text{19}\) (Rawls 1993; Estlund 2008). The liberal conception of legitimacy is motivated by the idea that we ought to be tolerant of the political doctrines that our fellow citizens subscribe to, even when these doctrines are mistaken.

In order to be in this way tolerant of each other’s political doctrines, we must reject as illegitimate any political justification that conflicts with reasonable political doctrines. There are many conflicting reasonable views, and they cannot all be true. Hence, a perfectly sound justificatory argument may be defeated by virtue of being unacceptable according to a false, but reasonable political doctrine.

However, we do not need to be tolerant of all political doctrines no matter how vicious they are. There is a standard for the kind of doctrines we need to tolerate and that is the standard of reasonableness. Note that there is not consensus on how to spell out the standard of reasonableness and I will not provide a very specific version of the standard in this paper. This is just to note the structure the normative theory has: if political justification is unacceptable according to an unreasonable political doctrine, this has no implications for the legitimacy of that political justification. On the other hand,

\(^{19}\) Note that the talk of reasonable citizens is not meant to indicate that there are individuals who are reasonable themselves and hence have a right to reject political justification no matter what the grounds of their rejection is. It is the principles or doctrine that they endorse that can be reasonable or unreasonable (Estlund 1998, 259).
if a political justification is unacceptable according to a reasonable political doctrine, that political justification is illegitimate.

The upshot for now is that when we ask in the coming section whether epistocracy is a legitimate form of rule, for example, we do not ask whether it is true that the wise should rule, but instead we ask whether it is acceptable to all reasonable citizens to let the wise rule.

**Turning the case for epistocracy into a case for CD**

The question whether epistocracy is legitimate becomes relevant once we concede that there is an epistemic dimension to political legitimacy: that we should not only care about whether our political decision-making procedure is fair, but we should also care whether our political decision-making procedure yields, or tends to yield, correct, i.e. actually just, prudent or morally right, decisions. One implication of caring about whether our political decisions are correct is that it opens up the possibility that we should then let the epistemically more qualified parts of our population make our political decisions. Thus, perhaps epistocracy is a legitimate form of rule. A similar line of reasoning can motivate the legitimacy of disobedience: if we think it important that our political decisions be correct and some citizens know that a majority has adopted an unjust law, then why not let those citizens engage in CD with the aim of remedying the injustice? To find out when disobeying is legitimate, it could therefore be helpful to review the discussion on the legitimacy of epistocracy. I will argue that there are a few key features of the case for epistocracy that apply in the disobedience context as well.
The main principle in the case for epistocracy, as described by Estlund 2008, is a principle stating that: *the superior political knowledge of those who know warrants their having political authority over the rest of the population*. For convenience, I will refer to it as ‘the authority principle’ in the following. The aim now is to apply this principle to the CD context. Before applying the authority principle to the disobedience context, I will need to rewrite the principle. When presenting the epistocratic version of the authority principle, the mention of ‘those who know’ usually, but not necessarily, refers to a small wise elite; in the CD version of the authority principle, ‘those who know’ refers to dissenters who know that the majority has adopted a wrong decision, or that the issue has not been debated as thoroughly as its importance warrants.

Furthermore, the authority principle should be revised to accommodate the fact that acts of CD are not exercises of political authority as much as they are rejections of someone else’s political authority. I will here assume that political authority means a right to rule correlating with a duty to obey. On this conception of political authority, civil dissenter do not have political authority: they do not rule, enact laws that are enforceable and that there is a duty to obey. Citizens engaging in CD are rather rejecting majority authority, since authority is the right to rule correlating with a duty to obey and dissenters refuse to obey a law enacted by the majority. We should thus revise the authority principle so that it now pertains to the rejection of authority rather than the exercise of authority. The revised authority principle: the authority principle* reads as follows: *The superior political knowledge of those who know warrants their rejection of the majority’s authority regarding law or policy X.*

---

20 Perhaps acts of CD could be conceived of as exercises of political authority if we were to define political authority as justified coercion. Acts of CD can, indeed, be coercive when dissenters simply force the majority to change its policies by raising the cost of holding on to those policies (Dworkin 1985). However, even if we did conceive of authority as justified coercion, the proposition as it stands can have no implications for non-coercive or persuasive acts of CD when dissenters are not acting coercively, but instead wish to engage in dialogue with the majority to make them change their mind. Such dissenters are not exercising authority, but they are still rejecting majority authority, since authority is the right to rule correlating with a duty to obey and dissenters refuse to obey the majority.
Note that CD is by definition not used to protest a regime granting the majority authority; CD is not revolutionary. Thus, when I write that dissenters reject majority authority, I do not mean to say that they reject the democratic form of rule entirely, but only that in specific instances they reject majority authority by breaking a law enacted by the majority to protest a decision made by the majority.

If we want to justify disobedience, we would normally have to show that the authority principle is true. However, when it comes to questions of legitimacy, the picture gets more muddy, because there is more to legitimacy than truth. As we saw, a liberal principle of legitimacy requires not that a justification of a political practice be sound, but rather that the justification be reasonably acceptable. To show that civil dissenters are warranted in rejecting majority authority, we must show that authority principle is reasonably acceptable.

There seems to be three clearly reasonable objections to the authority principle that can be found by looking to the epistocracy debate once again, but there are circumstances under which these reasonable objections do not hold and CD will be legitimate under such circumstances. In the following, I will spell out the three reasonable objections to CD and the circumstances under which they do not hold and CD as a consequence is legitimate.

**Reasonable objection 1: dissenters are not knowers**

First, there could be reasonable dispute over whether civil dissenters are knowers: whether they do in fact know that the law they protest is wrong or that the relevant issue has not been deliberated as thoroughly as its importance warrants. Note that the objection being reasonable is compatible with
the civil dissenters actually being knowers. The objection may be false, but reasonable. The objection that it is controversial who political knowers are stems from the debate on the legitimacy of epistocracy. Estlund 2008 argues that reasonable citizens will not accept the claim that the superior political knowledge of those who know defeats majority authority, because reasonable citizens will disagree about who the knowers are.

In response to Estlund, Lippert-Rasmussen 2012 shows that in cases where the non-knowers or less knowledgeable part of the population are unreasonable, it is not reasonably disputable who the knowers are. To see this, take Nazism as an example of an unreasonable doctrine and imagine we were living in a state where almost everyone are Nazis, except for a wise or wiser few. In such case it would not be controversial to reasonable citizens who the knowers were, even though it would be controversial to the Nazi part of the population (Lippert-Rasmussen 2012). Lippert-Rasmussen’s argument shows that epistocracy is legitimate in the Nazi case and the argument more generally shows that if we accept a liberal conception of political legitimacy, epistocracy will be a legitimate form of rule in cases where the majority of citizens hold unreasonable views. In these cases, there is no reasonable controversy as to who the knowers are, and thus there is no reasonable objection to the authority principle.

The Nazi case applies to the disobedience context in the following way. Imagine again that we are living in a state where the majority of citizens are Nazis. The Nazi majority adopts a law prohibiting Jewish citizens access to higher education and this law is justified with reference to Nazi ideology. A minority of citizens know the law is unjust and reject the majority’s authority by dissenting in protest of the discriminatory law. The Nazi majority do not accept that the minority knows that the law is unjust, because the law is not unjust according to their political doctrine. Since Nazi ideology is
unreasonable, however, it is not reasonably disputable that the minority knows better than the majority and so the reasonable dispute objection cannot in this case defeat authority principle*.

Nazism is of course not the only unreasonable doctrine and so not the only doctrine that has no hypothetical veto power against CD. I will not attempt to derive what counts as reasonable and what counts as unreasonable from a general theory about reasonableness, but a few data points will suffice to start the conversation. Laws justified by bigoted or racist doctrines would clearly be unreasonable in such a way that dissent in protest of those laws would be, and has been, legitimate. Protests against Jim Crow laws are a case in point. The rest of the data points will have to be filled in to settle which laws are based on unreasonable doctrines, but this is just to show the structure the normative theory has.

Note that the dialectic between Estlund and Lippert-Rasmussen leaves open whether it is reasonably acceptable that those who know should rule, even if it is uncontroversial who the knowers are. We merely know that is not always reasonably controversial that the minority are knowers. It could simultaneously be true, however, that (a) it is reasonably acceptable that the minority are knowers and (b) that the superior political knowledge of the minority does not defeat majoritarian authority. Accordingly, we still need to explore whether there are further reasonable objections to the authority principle and the authority principle*.
Reasonable objection 2: the political decision is not high-stakes

A second reasonable objection would be that the political decision civil dissenters protest is not high-stakes. A high-stakes political decision is a decision where a gross wrong is on the line. It could be a political decision that grossly violates a liberty right, it could be a policy that enhances the greenhouse effect or it could be a policy that robs citizen of an economic minimum. What makes the decision high-stakes is that the possible wrong is grave. Political decisions that cause minor liberty rights violation or a distribution of wealth that is not completely just are not high-stakes. When civil dissenters protest political decisions that are not high-stakes, the majority that adopted the decision can reasonably object to the minority’s disobedience, even when the dissenting minority knows that the majority has adopted a wrong decision. The majority has a reasonable objection in low-stakes situations, because in low-stakes situations, the concern for adopting the right laws or policies is outweighed by the concern for respecting majority authority. On the other hand, when we do have a high-stakes political decision on our hands and the civil dissenter knows that the majority’s decision is wrong, I will argue that the civil dissenter is not bound by the majority’s authority in this case.

Again, we can draw inspiration from the epistocracy discussion to elaborate on this line of thought. In his 2016 Against Democracy, Brennan proposes an epistocratic principle called the competence principle. According to the competence principle, political decisions are legitimate and authoritative only if they are produced in a competent way and the political decisions are what Brennan calls competent\(^a\) (p.142). When there is a more competent decision-making scheme available than the

\(^a\) Brennan speaks of the legitimacy and authority of a decision-making procedure as well as the legitimacy and authority of decisions that result from decision-making procedures and it is unclear whether Brennan takes his competence principle to apply to procedures as well as individual decisions that result from procedures. The scope of Brennan’s competence principle is therefore a bit unclear, but I will assume that the competence principle applies to political decision-making procedures as well as the individual decisions that are the result of political decision-making procedures.
incompetent one currently in use, it is unjust not to use the more competent one instead (p. 141). Brennan uses the competence principle to argue that epistocracy rather than democracy is legitimate and authoritative, because democracy does not live up to the competence requirement while epistocracy does. Brennan is not taking his competence principle to legitimize CD, nevertheless I bring up his argument here, because the argument also suggests that CD is legitimate when dissenters know the majority has adopted a wrong decision.

To justify the competence principle, Brennan provides several intuitively plausible analogies. One analogy Brennan proposes is the analogy between a political decision-making system and a jury system. According to Brennan, juries are only legitimate and authoritative in so far as they are competent, because they are making high-stakes decisions that influence people’s life prospects and can rob defendants of their life, liberty and property. A defendant who has been found guilty by an irrational jury therefore does not need to submit to the jury’s authority (p. 153). Similarly, political decisions are high-stakes and have implications for our life prospects and rights to life, liberty and property and so political decisions or decision-making systems are not legitimate and authoritative if they are incompetent either (p. 156). Brennan also proposes an analogy between doctors and political decision-makers. An M.D., he writes, undeniably has superior medical knowledge. In high stakes situations, e.g. if a person starts choking, the doctor should step in and save that person. In political decision-making, superior political judgment is similarly necessary to save us from bad governance (p.122).

Notice that the intuitive pull of Brennan’s analogies is dependent on the claim that we are in a high-stakes situation and the decisions being made are a matter of life and death or may have serious consequences for people’s life prospects. Yet, political decisions are not generally high-stakes and an emergency situation akin to the situation in which someone is choking. Most legislation does not
have the same negative and serious consequences as choking or being found guilty in a court trial. Some political decisions are about changing tax brackets a bit or where to build a bridge, these are not high-stakes decisions. Since many political decisions will not be high-stakes, Brennan’s reasoning does not seem to imply, as he argues, that democracy should be substituted with epistocracy. Brennan’s reasoning only implies that in high-stakes, emergency situations, political decisions are legitimate and authoritative only if they are competent, that is, when there is a competent decision-making scheme at our disposal.

Taking these considerations into account, we may instead revise Brennan’s competence principle so that it reads: when political decisions are high stakes and the result of the decision-making procedure is incompetent, then those decisions are not legitimate and authoritative when there is a more competent alternative. The reasoning might thus justify a mixed system of government, where we still have a democratic legislature, but we also have some epistocratic institutions that deal with high-stakes political issues. An example could be judicial review, which is arguably an epistocratic institution where legal experts can strike down laws as unconstitutional—and we are arguably in a high-stakes political situation when a law is unconstitutional, say, because it infringes on constitutionally protected liberty rights. Brennan himself also mentions the possibility of having a system with a so-called ‘epistocratic veto’. In this system, laws are passed by a democratically elected decision-making body, but an epistocratic body may veto the laws that the democratic body has enacted (Brennan 2016, 15).

The revised version of Brennan’s competence principle also suggests that it is legitimate for agents who are knowers to engage in CD in a high-stakes situation. When we are in a high-stakes situation and the dissenter knows that the majority has adopted a wrong law or know that the relevant issue
has not been deliberated as thoroughly as its importance warrants, then the better alternative to claiming that the majority has authority is to let the civil dissenter push for political reform through protest. This way, democratic decisions are not rejected as illegitimate and unauthoritative across the board, but room is left open for the idea that sometimes democratic decisions are not authoritative when there is a more competent alternative. Of course, more will have to be said about where to draw the line between high-stakes and low-stakes political decisions. I have mentioned a few data points, e.g. deciding where to build a bridge would obviously be a low-stakes political decision whereas depriving citizens of an economic minimum would be a high-stakes political decision. For now, these data points will do as an illustration the structure of the theory’s structure.

**Reasonable objection 3: destabilizing effects ensue**

Finally, there is a third reasonable objection to the authority principle*. The third reasonable objection says that CD is not warranted even though civil dissenters know that the majority has enacted a wrong law, when disobedying inspires general disrespect for the law and thus has a destabilizing effect. Whether CD does have that sort of destabilizing effect is, of course, an empirical matter that presumably depends on the specifics of the situation and thus will not be settled here (for an overview of the discussion see Delmas 2016, 686). The objection is reasonable when it is plausible in a given situation that CD will have a destabilizing effect. If acts of CD do have this effect that would be a powerful veto against using CD. Perhaps this sort of pragmatic consideration should also be given weight when we consider whether epistocracy rather than democracy is legitimate (for discussion see Brennan 2016, 228-230; Knight and Johnson 2014). Again, it is an empirical question whether epistocracy would spawn unrest and have a destabilizing effect as well. However, if it turns out that having the people make political decisions, even when they are wrong, secures a stability that
epistocracy does not, then this is a pro tanto reason to prefer democracy to epistocracy. Of course, it does not settle whether democracy would be preferable to epistocracy all things considered.

3. Concluding Remarks

The basic idea is that in liberal democracy, where majority decisions are usually binding even for those who know the decisions are wrong, CD is nevertheless legitimate when the democratic decision is substantially wrong. Specifically, CD performed by agents who are knowers is legitimate when there are no reasonable objections to the authority principle*. There are no reasonable objections to the authority principle* when the following propositions are true: 1) it is not reasonably disputable that the civil dissenter is a knower 2) the adoption of the law or policy being protested is a high-stakes political decision and 3) no destabilizing effects ensue. Note that it is only a sufficient condition for legitimate CD that there are no reasonable objections. Construed as a sufficient condition, it says that CD is legitimate if dissenters know that the majority has adopted a wrong law or that the relevant issue has not been deliberated as thoroughly as its importance warrants and there are no reasonable objections to the authority principle*. The criterion thus does not imply that nothing else can justify legitimate CD. It is compatible with the view that there are other sufficient conditions for legitimate CD. If the criterion were interpreted as a necessary and a sufficient condition, it would say that CD is legitimate if and only if civil dissenters are knowers and there are no reasonable objections to the authority principle*. I am not taking this view, since I do not wish to deny that CD may sometimes be warranted even though dissenters are not knowers, for example.
Notice in conclusion that the justification of legitimate CD provided here deviates from influential theories of CD in one important aspect: it avoids being what Schlossberger 1989 would call formalist. Formalist criteria are criteria for justified CD that restrict the justification of CD to a specific class of political causes such as rights violations. The influential liberal and democratic approaches to the justification of CD both have problematic formalist criteria. According to the democratic approach, CD is justified when it is used to countervail deviations from the ideal democratic decision-making procedure (Markovits 2005). Yet, we can easily imagine a scenario in which we follow the correct decision-making procedure to the letter, but the procedure still results in a grossly unjust law. Intuitive examples tell us that dissenters protesting the content of the laws are sometimes justified in doing so; in the 1950s, American civil rights activists protested the Plessy v. Ferguson decision that legalized racial segregation in public schools. These civil rights activists were not (only) protesting against the procedure that led to the decision. They were protesting against the outcome of the procedure; they were protesting the content of the law. It is an implausible implication of the democratic account of CD that these protests were only justified in so far as they were targeting procedural flaws.

The liberal model, too, is based on problematic formalist criteria. According to the liberal approach, CD is justified when it is used to protest infringements of liberty rights (Dworkin 1977; Rawls 1971). Liberal theories of CD thus implausibly imply that environmental activism, campaigns against war or campaigns for nuclear disarmament are never warranted (Singer 1973, Cohen and Arato 1992, Markovits 2005, Smith 2013). Furthermore, the liberal approach excludes dissent that addresses any deficits there might be in the democratic decision-making procedure itself, e.g. many of today’s global protests against the democratic shortfalls in global governance institutions such as the IMF, the WTO or the EU (Markovits 2005; Dupuis-Déri 2007; Carter 2005).
The criteria for legitimate CD defended in this paper are not formalist: they are not restrictive regarding the class of causes it is legitimately justified to protest. Causes can count rights violations, democratic deficits, lack of privacy, transparency and so on. Because we have not settled beforehand what kind of causes it is legitimate to defend through CD, CD can serve as a progressive force that helps develop a community’s sense of justice and help promote just laws, policies and institutions. The present account instead says that CD is legitimate when used to fight grave wrongs, since CD is legitimately justified when it is used in high-stakes situations to counter laws that dissenters know are wrong or in situation where the relevant issue has not been debated as thoroughly as its importance warrants. The implication is that deficits in the democratic decision-making procedure, rights violations and other injustices are political causes that can legitimately justify engaging in CD. However, minor wrongs cannot warrant CD.

22 Markovits 2005 has argued that the liberal and democratic accounts of CD are analogous to liberal and democratic accounts of judicial review, which is interesting because judicial review is arguably a form of epistocracy. However, using the analogy to judicial review instead of epistocracy more broadly conceived puts too many restrictions of the kind of causes you can engage in CD to protest. The role of judicial review, according to liberal theories, is to limit democratic authority by preventing majorities from imposing policies that violate “fundamental rights to equal treatment and to individual liberties” (Markovits 2005, 1929). Liberal theories of disobedience, such as those of Rawls 1971 and Dworkin 1977 assign the same role to civil disobedience: to limit the democratic majority’s power to enact laws that infringe on the basic liberty right of citizens. According to the democratic theory of judicial review, some laws suffer from democratic deficits, perhaps because they were passed a long time ago and would not be passed by today’s voting population or their representatives and in these cases courts should intervene to “trigger reengagement” with the policy issue. They should do so not by striking down laws as unconstitutional, but rather by e.g. invalidating laws for desuetude or rendering the laws void for vagueness, so as to make the legislative branch reconsider the laws in question and reenact the laws they are for (p. 1932). Analogously, civil disobedience can help trigger reengagement with political issues that are currently not on the political agenda and thus serve as part of the democratic process, according to Markovits 2005 (p. 1933). Instead of looking to theorizing about the justification of judicial review, which can be seen as a specific instance of epistocracy, I have argued that we should look to theorizing about the justification of epistocracy more broadly conceived to investigate when CD is justified. This way we avoid the formalist criteria that restrict the democratic and liberal accounts of CD.
References


Weinstock, D. 2015. “How Democratic is Civil Disobedience?” in Criminal Law and Philosophy
Article 3

ARE DISSENTERS EPISTEMICALLY ARROGANT?

One who elects to serve mankind by taking the law into his own hands thereby demonstrates his conviction that his own ability to determine policy is superior to democratic decision-making. Defendants’ professed unselfish motivation, rather than a justification, actually identifies a form of arrogance which organized society cannot tolerate.

- Justice Hartz, at the sentencing hearing of three nuns convicted of trespassing and vandalizing government property to demonstrate against U.S foreign policy, in United States v Ardeth Platte (2005) 401 F.3d. 1176 (10th Cir.)

It was the arrogance of an individual who looked upon the activity of a national security agency and believed that his legal and ethical judgment trumped the judgment of his co-workers, his leadership, the American president, the American congress and the American Court system…Snowden would have to have believe his judgment trumped all of those in order to create the kind of moral righteousness he claims

- Michael Hayden, former NSA director, in “Snowden’s Great Escape” 2015

Dissenters are sometimes accused of arrogance because they seem not only to think that their political judgment is superior to that of the democratic majority, but that it moreover justifies illegal protest. On the one hand, it indeed seems epistemically arrogant to be so confident in the injustice of a policy that you disobey the law to express that opinion. It seems arrogant given that political decision-making depends on a morass of esoteric statistical, economic and sociological evidence combined with complex theoretical reasoning about justice as well as the social evidence that a democratic majority of the dissenter’s fellow citizens disagree with her. On the other, the notion that civil rights
protester Rosa Parks was evincing arrogance when she refused to give up her bus seat in protest of segregation laws seems intuitively wrong.

According to the Oxford English Dictionary, arrogance is described as “having or revealing an exaggerated sense of one's own importance or abilities”. Arrogance becomes epistemic when the exaggerated sense of one’s abilities concerns one’s intellect or the epistemic worth of one’s beliefs. Epistemic arrogance can take many forms and may be manifest in many different actions. This paper aims to flesh out and evaluate the claim that civilly disobedient citizens are epistemically arrogant. The paper proceeds as follows. First, I introduce a familiar conception of civil disobedience. Second, I provide an overview of existing definitions of epistemic arrogance and argue that they are incorrect in assuming that epistemic arrogance does not consist in falsely exaggerating the epistemic worth of one’s view; or, at least, that there is another, distinct kind of epistemic arrogance which does consist in falsely exaggerating the epistemic worth of one’s view. Specifically, I argue that epistemic arrogance can consist in having a higher degree of rational certainty in P than is warranted, while one maintains that degree of certainty despite being presented with relevant evidence contrary to P.

Dissenters vulnerable to the charge of epistemic arrogance are so because they falsely exaggerate the epistemic worth of their political view. However, we should also capture why there might be something epistemically arrogant about engaging in civil disobedience (henceforth CD) as distinct from, for instance, writing a letter stating your disagreement with a policy that the majority has voted to implement. I therefore argue that if dissenters are epistemically arrogant, they seem to be so in the sense that they both (A) falsely exaggerate the epistemic worth of their view and (B) choose a means of expressing their view that is out of proportion relative to how certain they ought to be that their view is merited and that the wrong they protest is substantial. With these considerations in mind, we
can evaluate the charge that civil dissenters are epistemically arrogant. In the third section, I argue that CD does not necessarily involve epistemic arrogance. In some cases, civil dissenters may be epistemically arrogant, and this is ultimately determined by whether the individual dissenter satisfies conditions (A) and (B). Finally, I argue that while epistemic arrogance is epistemically bad at an individual level because it is irrational, epistemically arrogant civil dissenters can still contribute to the epistemic end of a democratic community by promoting true views about justice, enabling the community to adopt laws and policies that are more just.

1. Defining Civil Disobedience

In order to examine whether civil dissenters are epistemically arrogant we will need to know a bit more about what civil disobedience involves. The philosophical literature provides several conceptions of CD, which differ with respect to details such as whether violent protests and protests against non-state actors, like business corporations, should be included under the umbrella of CD. Still, while conceptions vary, there are certain core features on which almost all conceptions of CD converge. It is generally held that CD is an illegal, conscientious act motivated by the aim of political change (see e.g. Rawls 1971, Raz 1979, Brownlee 2012). For CD scholars approaching the concept from a liberal perspective, political change refers to a goal of altering laws or policies, while for those scholars who view CD as a means of remedying democratic deficits, political change rather involves the triggering of political debate, for example by bringing a new or neglected political issue into the deliberative arena (Markovits 2005).
The three core features of CD - illegality, conscientiousness and the aim of political change - capture a kind of dissent familiar from recent history. Indeed, Rawls is said to have developed his conception of CD with the 1960s American civil rights movement in mind. Civil rights movement protesters of the era held illegal sit-ins, pray-ins and marches. Their aim was to repeal the Jim Crow laws enforcing racial segregation, to end racial discrimination and to stop the de facto disenfranchisement of African-American citizens, upheld in many states through changing voting dates, competency testing, and ‘every device of which human ingenuity is capable’ as noted President Lyndon B. Johnson in his speech to Congress, March 1965. Those protesters sincerely believed they were defying gross injustices. As Martin Luther King Jr. wrote in his 1963 *Letter from Birmingham Jail*, “One day the South will know that when these disinherited children of God sat down at lunch counters they were in reality standing up for the best in the American dream and the most sacred values in our Judeo-Christian heritage, and thusly, carrying our whole nation back to those great wells of democracy which were dug deep by the founding fathers in the formulation of the Constitution and the Declaration of Independence.”. Of course, the civil rights movement is more diverse, and the thoughts of MLK Jr. far richer than illustrated here\(^\text{23}\), but according to a widely shared, perhaps romantic conception of the movement, it epitomizes CD conceived of as an illegal, conscientious act done with the aim of provoking political change.

It should be noted, however, that nothing in the common conception of CD entails that civil dissenters are motivated by just causes. Protests may be illegal, serving the purpose of change, and protesters may conscientiously believe they are promoting a just cause, though they may be mistaken in their judgment. This is important to underline because if civil dissenters were always motivated by a

\(^{23}\) For a more detailed analysis of the thoughts of MLK Jr. on the civil rights movement, see Terry 2017; Shelby and Terry 2018.
merited cause, the charge of arrogance may seem less pressing. If an act of dissent may fall under the category of CD despite dissenters being wildly wrong about the justice of their cause, the charge of epistemic arrogance becomes more interesting.

It is also worth briefly distinguishing civil disobedience from other types of dissent expressed in liberal democracies. Dissent may simply involve voicing disagreement in a political debate. Dissent may also consist in illegal acts of protest that are not categorized as civil, because dissenters are not, say, motivated by a conscientious conviction. We can imagine cases where a dissenter aims to bring about political change not because he has a conscientious moral conviction that the law he protests is unjust, but instead because he is motivated by pure self-interest. Tax-evaders motivated not by a conscientious conviction that taxation is unjust, but by a desire to accumulate wealth is a case in point. For the purpose of this paper, I focus on the type of dissent that theorists generally agree constitutes as civil disobedience, for it is citizens engaging in civil disobedience who have been charged with arrogance. Snowden’s release of confidential NSA material as well as the three trespassing nuns mentioned in the introduction fall within the class of acts known as CD (see e.g. Scheuerman 2014; Brownlee 2012). These acts of disobedience have raised the question as to whether dissenters are epistemically arrogant because dissenters act upon a sincere belief that the majority of their fellow citizens or their representatives are mistaken. In order to answer this question, we will first need to know more about the concept of epistemic arrogance itself. In the section that follows, I develop a conception of epistemic arrogance that can be used to evaluate the charge that civil dissenters are epistemically arrogant.
2. Defining Epistemic Arrogance

Recall the words of Justice Hartz above: ‘One who elects to serve mankind by taking the law into his own hands thereby demonstrates his conviction that his own ability to determine policy is superior to democratic decision-making. Defendants’ professed unselfish motivation, rather than a justification, actually identifies a form of arrogance which organized society cannot tolerate’. Justice Hartz here identifies the kind of arrogance we are interested in; the arrogance allegedly manifest in acts of disobedience when civil dissenteres believe a law or policy adopted by the majority is unjust, and for that reason use illegal means to express their conviction or to coerce the government into changing its policy. My question is the following: do such acts of protest evince epistemic arrogance? Before turning to this question, we must first know what epistemic arrogance consists in. In this section, I argue that the available conceptions of epistemic arrogance are incorrect to assume that the concept does not consist in falsely exaggerating the epistemic worth of one’s view; or at least, that there is a distinct kind of epistemic arrogance that does consist in falsely exaggerating the epistemic worth of one’s view. Specifically, I argue that epistemic arrogance can consist in having a higher degree of rational certainty in P than is warranted while upholding that same degree of certainty despite being presented with relevant evidence contrary to P.

Conceptions of epistemic arrogance

Michael Lynch has argued that “True arrogance is not based on a mistaken assessment of the correctness of one’s view, but on a self-delusion about why it is correct” (Lynch 2018, 286). To Lynch, an agent is epistemically arrogant when he thinks his worldview is correct because it is his
worldview; he has nothing to learn from evidence or the testimony of others. The epistemically arrogant agent adopts the attitude that he has nothing to learn from his fellow citizens and this results in behaviors such as failing to properly listen to others and an unwillingness to admit to mistakes (Lynch 2018, 284).

Roberts and Wood similarly deny that epistemic arrogance consists in falsely believing you are in an epistemically superior position. Roberts and Wood rather conceive of arrogance as “a disposition to ‘infer’ some illicit entitlement from a supposition of one’s superiority”. Roberts and Wood flesh out their conception of arrogance by way of an example: Albert Schweitzer was an excellent M.D. and his autobiography reveals that he was aware of his medical superiority relative to other physicians. According to Roberts and Wood the fact that Schweitzer believed he was superior to others in his field did not itself make him arrogant. On their account, if Schweitzer had been arrogant, he would have had to make an illicit inference from his belief in his medical superiority to some entitlement, e.g. to exception from ordinary responsibilities, or to treat others with disrespect (Roberts and Wood 2017, 243). According to Roberts and Woods, arrogance becomes epistemic when the superiority claim concerns the intellect and when the illicit entitlement claim concerns intellectual activity (p.248). Note that as I will argue that epistemic arrogance can simply consist in falsely exaggerating the epistemic worth of one’s view, I maintain that arrogance becomes epistemic when the superiority claim concerns the intellect. On my account, had Schweitzer falsely exaggerated his superiority in the field of medicine, this would have been sufficient grounds to ascribe to him epistemic arrogance.

Tanesini 2018 also rejects the notion that epistemic arrogance consists in falsely believing you are in an epistemically superior position to others. Tanesini develops a conception of epistemic arrogance called ‘Superbia’ an attitude made manifest by “an overwhelming desire to diminish other people in
order to excel and by a tendency to arrogate special entitlements” (p. 1). According to Tanesini, Superbia stems from a low sense of self-worth that the arrogant try to enhance by diminishing others.

For Tanesini, the belief that one is superior or that one knows better than others is not sufficient for epistemic arrogance as an agent can believe that he is superior without either acting superior, being dismissive of others or being flippant, perhaps because the agent is self-confident or because the agent has made an honest mistake in estimating her abilities. Nor is the belief that one is superior or that one knows better necessary for epistemic arrogance, because an agent can act superior in the way that characterizes the epistemically arrogant “as a way of building up her self-confidence against nagging doubts about her own superiority” (p. 8). Tanesini thus denies that an agent A’s belief that he knows better than other agents is necessary or sufficient to make A epistemically arrogant.

Tanesini is not explicitly denying that epistemic arrogance can consist in falsely exaggerating the epistemic worth of one’s view, as I will argue it can, because exaggerating the epistemic worth of your view is distinct from believing that you know better than others. However, Tanesini’s arguments imply that falsely exaggerating the epistemic worth of your view, even when this exaggeration is non-comparative, is neither necessary nor sufficient for epistemic arrogance. Indeed, falsely exaggerating the epistemic worth of your view is not sufficient for epistemic arrogance on Tanesini’s account because an agent can falsely exaggerate the epistemic worth of his view without acting superior. By Tanesini’s lights, falsely exaggerating the epistemic worth of one’s view is not necessary for epistemic arrogance either because an agent can act superior in the way that characterizes the epistemically arrogant as a way of building up her self-confidence.
Each of the above conceptions of epistemic arrogance thus either explicitly or tacitly claim that the concept does not consist in falsely exaggerating the epistemic worth of one’s view. In the next section, I argue that epistemic arrogance, or at least a type of epistemic arrogance, does consist in having a falsely inflated assessment of the epistemic worth of one view’s. Epistemic arrogance consists in having a higher degree of rational certainty in P than is warranted, and in the upholding of that same degree of certainty despite being presented with relevant evidence contrary to P.

**Epistemic arrogance as falsely exaggerating the epistemic worth of your view**

The following three considerations appear to cast doubt on whether the above conceptions of epistemic arrogance are correct that epistemic arrogance cannot consist in holding a falsely exaggerated assessment of the epistemic worth of one’s view. First, reflection upon Roberts & Wood’s Schweitzer case reveals that epistemic arrogance can consist in making a falsely exaggerated assessment of his view’s epistemic worth. Second, writings on epistemic humility imply that epistemic arrogance consists in failing to question whether you know in the right time and in the right way. Someone who makes a falsely exaggerated assessment of his view’s epistemic worth does not question whether he knows in the right time and way and is thus epistemically arrogant. In the following, I elaborate on each of these considerations and propose a conception of epistemic arrogance on which the concept consists in falsely exaggerating the epistemic worth of one’s view.

Consider first the Schweitzer case that Roberts and Wood (2007) use to show that epistemic arrogance does not require a falsely exaggerated assessment of the epistemic worth of one’s view. The case may show that falsely exaggerating the epistemic worth of your view is not required for epistemic
arrogance. Indeed, epistemic arrogance can consist in other attitudes or dispositions to, say, make illicit entitlement claims or attempts to excel by belittling others. Yet, thinking about the case also reveals that making a falsely exaggerated assessment of the epistemic worth of one’s view is sufficient for epistemic arrogance. Recall that Roberts and Wood argue that Schweitzer is not arrogant even though he thinks that he is in an epistemic position superior to that of his colleagues in the medical profession. Schweitzer would have to infer some unjustified entitlement from his epistemic superiority before we could charge him with arrogance. While I agree with Roberts and Woods that Schweitzer is not, in this case, arrogant, I do not believe that the case shows that arrogance cannot consist in the claim to superiority itself. The intuition that Schweitzer is not being arrogant because he believes he is in an epistemically superior position in the field of medicine is not motivated by the fact that Schweitzer does not make an illicit inference, but rather by the assumption that Schweitzer was in fact epistemically superior to his colleagues. If Schweitzer had believed he was the more competent M.D. despite killing patients left and right out of neglect, it seems intuitive to think that Schweitzer was exhibiting epistemic arrogance even though he did not make any unjustified entitlement claims. The Schweitzer case thus seems to suggest that an agent can be arrogant as a result of having a falsely exaggerated assessment of his view’s epistemic worth.

Consider another example of a person who intuitively seems to evince epistemic arrogance where this intuition is based solely on the fact that that person is making a falsely exaggerated assessment of her epistemic position. I once had a conversation with a person who claimed to know that all men who engage in excessive sports activity are repressed homosexuals. She was very confident in her view, so confident that she rejected any attempt I or others made to challenge her view. It seems intuitively plausible to say that she was being epistemically arrogant by virtue of her certainty that this unwarranted, even bizarre view was true; indeed the epistemic arrogance here consisted in her
having a falsely inflated assessment of the epistemic worth of her view. She was not trying to excel, she was not illicitly inferring some entitlement and she did not espouse this view just because it was hers – she had formed the view based on her experience working in psychiatry in the 70s. The intuition that this case is indeed one of epistemic arrogance seems to stem from her falsely exaggerated assessment of the epistemic worth of her view.

The concept of intellectual humility provides a second clue that epistemic arrogance, or at least one type of epistemic arrogance, does involve having a falsely exaggerated assessment of one’s view’s epistemic worth. The idea of epistemic humility can help us grapple with the concept of epistemic arrogance because it stands in contrast with epistemic arrogance. Epistemic arrogance is usually thought of as a negative character trait or psychological attitude, along with other epistemic vices such as, say, wishful thinking, close-mindedness, or insensitivity to detail. These negative traits contrast with positive character traits, or virtues, such as epistemic humility, open-mindedness, and attention to detail. According to Battaly 2014, an epistemic vice can be understood either as a contradictory or a contrary to an epistemic virtue. If a vice is a contrary to a virtue, agents can act in ways that are neither virtuous nor vicious, whereas if the vice is a contradictory, an agent is vicious whenever he is not virtuous (p.13). I leave open here whether epistemic arrogance is a contradictory or a contrary to epistemic humility, but notice that epistemic arrogance contrasts with epistemic humility in such a way that the concept of epistemic humility may help shed some light on the concept of epistemic arrogance.

24 According to Lynch 2018, epistemic arrogance can be conceived of as a trait or a psychological attitude. If an agent is epistemically arrogant where this is understood as a trait, that agent has a personal quality that is stable over time. A psychological attitude is not stable over time in that an agent may have an attitude of epistemic arrogance one or more times, but does not have a stable disposition to be so (p. 288).
Hazlett 2015 suggests that intellectual humility should be understood as a civic virtue. He argues that skepticism is a civic virtue, where intellectual humility is a component part of skepticism. Before turning to the particular virtue of intellectual humility, Hazlett defines a virtue as the disposition to “Φ at the right time and in the right way” (p. 74); he calls this disposition “excellence in Φ-ing”. Civic virtues are a sub-category of virtues pertaining to those activities we perform as citizens. Intellectual humility is a civic virtue because it pertains to our actions as citizens: political reasoning and public debate. Intellectual humility “is excellence in attributing ignorance to yourself, withholding attributing knowledge to yourself, and questioning whether you know” (p. 75). When engaging in political reasoning, the virtuous person questions whether she knows at the right time and in the right way. Acting in this way is virtuous because, all things considered, it is good, and it is good for citizens to be skeptical about whether they know because this prevents the stifling of political inquiry. If citizens ascribe knowledge to themselves, they have no reason to engage with the arguments of their fellow citizens about what politically ought to be done. Of course, having a disposition to doubt whether you know is only virtuous when it used at the right time in the right way. This means that the virtuous agent will also refrain from such questioning when it would, all things considered, be bad to do so. For instance, it is virtuous to not question that P if a reliable epistemic authority says that P (p. 80). Hazlett’s conception of epistemic humility as a civic virtue seems precisely to imply that epistemic arrogance can consist in having a falsely exaggerated assessment of the epistemic worth of one’s view, because if one has a falsely inflated assessment of one’s view, one has failed to question whether one knows at the right time and in the right way.

Both Schweitzer case as well as the concept of epistemic humility as civic virtue support the notion that epistemic arrogance can consist in holding a falsely exaggerated assessment of one’s view’s epistemic worth. The conceptions of epistemic arrogance mentioned at the outset of this section thus
seem to be incorrect in asserting that epistemic arrogance cannot consist in having a falsely exaggerated assessment of the epistemic worth of one’s view. Or, perhaps they are each correct that the type of epistemic arrogance they respectively espouse does not involve having a falsely exaggerated assessment of the epistemic worth of one’s view. Perhaps there is simply another type of epistemic arrogance, one that does involve having a falsely exaggerated assessment of one’s view’s epistemic worth. The type of epistemic arrogance I have in mind involves having a higher degree of rational certainty in P than is warranted, and upholding that same degree of certainty despite being presented with relevant evidence contrary to P. The condition that the epistemically arrogant agent upholds an unwarranted degree of certainty in P despite being presented with relevant evidence contrary to P is crucial if we are to avoid ascribing epistemic arrogance to an agent that has a higher degree of rational certainty than is warranted where this is due to an honest mistake. Suppose that I falsely believe that my epistemic position regarding some proposition is much better than is actually warranted. As soon as my beliefs are challenged by sound arguments and relevant evidence, however, I change my views. Even though my initial assessment of the epistemic worth of my view was incorrect, this was an honest mistake and intuitively, it seems incorrect to think that I was epistemically arrogant. An epistemically arrogant agent, then, believes that her epistemic position is better than it actually is and upholds that belief despite being presented with relevant evidence that it is not.

The upshot is that a sufficient condition on epistemic arrogance is for one to have a higher degree of rational certainty in P than is warranted, and to uphold that degree of certainty despite having been presented with relevant evidence contrary to P. Note that one can be epistemically arrogant with respect to a proposition and with respect to a specific domain. The claim that an agent is epistemically arrogant may moreover be comparative or non-comparative. Non-comparative epistemic arrogance
involves having a higher degree of rational certainty in P than is warranted and upholding that degree of certainty despite having been presented with relevant evidence contrary to P. Comparative epistemic arrogance involves having a higher degree of rational certainty that one is in an epistemically superior position relative to others than is warranted, while upholding that degree of certainty despite of being presented with relevant undermining evidence. When epistemic arrogance is comparative, an agent may be epistemically arrogant not because he is wrong about the epistemic worth of his view, but because he is wrong about the epistemic worth of his view relative to others whose epistemic position he underestimates.

3. Are Dissenters Epistemically Arrogant?

A conception of epistemic arrogance according to which the concept consists in having a falsely exaggerated assessment of the epistemic worth of one’s view seems at first blush to capture well Justice Hartz’ and Michael Hayden’s charge that civil dissenters are epistemically arrogant. The epistemically arrogant civil dissenter is one who engages in CD in protest of a policy because he believes the policy is unjust or morally wrong, yet he has a higher degree of rational certainty that the policy is unjust than is warranted, and he moreover upholds that same degree of certainty despite having been presented with relevant evidence that the policy is not unjust. For example, an agent could vandalize abortion clinics in protest of a free abortion policy because he is more certain that abortion is morally wrong and that it should be prohibited than is actually warranted. Furthermore, if the dissenter is well aware of his opponents’ arguments against the prohibition of abortion, he has upheld his high level of certainty in the proposition that abortion is morally wrong and should be prohibited despite having been presented with relevant evidence to the contrary.
Still, in the case of civil disobedience, there seems to be more driving the intuition that dissenters are epistemically arrogant. Justice Hartz states that dissenters are arrogant because they think their political acumen is superior to the democratic majority’s. But what makes a dissenter more vulnerable to the charge of epistemic arrogance than a citizen who writes to a law-maker or a news editor asserting his disagreement with a democratically enacted policy? After all, a citizen who voices his dissent by written word may also have a higher degree of rational certainty that the policy he opposes is unjust than is warranted, and he may maintain that degree of certainty despite having been presented with relevant evidence that the policy is just. Still, it seems that we are less likely to charge a dissenter who chooses this mode of expression with epistemic arrogance.

The difference between the citizen engaging in CD and the citizen who expresses his dissent by written means seems to be the attitude involved in thinking that their means of expression is justified: the dissenter is arrogant because he chooses illegal means to express his conviction that a political decision is wrong or unjust instead of engaging in political debate through the legal channels available in a liberal democracy. Thus I argue that when we consider whether civil dissenters are epistemically arrogant, we should not look only to whether they (A) falsely exaggerate the epistemic worth of their view, we should also consider whether they (B) choose a means of expressing their view that is commensurate with how certain they ought to be that their view is merited and important.
Disproportionate means of expression

Let me elaborate on the idea that epistemic arrogance can also consist in (B) choosing a means of expression that is disproportionate relative to the level of certainty that one’s view is merited and important that is actually justified. It seems natural to think that we should attune our means of expressing a proposition to our degree of rational certainty that the proposition is true. That is to say that while asserting proposition P, we ought to convey an appropriate level of certainty in the truth of P. Consider the following case. A group of constitutional law scholars are debating whether it is unconstitutional for the U.S. President to initiate a foreign war. John’s expertise lies not in the powers of the president but in issues surrounding the first amendment, so insofar as he lacks the relevant expertise, he is not at all rationally entitled to be certain as to whether the constitution vests the power to start wars in the president. Nonetheless, when it is John’s turn to speak, he loudly asserts “the constitution does not establish a fixed process for decision-making about foreign relations!” while pounding his fist on the table. John’s method of expression is odd and his behavior seems arrogant given his lack of justified certainty. If we transpose this line of thought to the context of civil disobedience, we might say that just how radical the action in question is determines the level of justified certainty you ought to have, and thereby also what counts as epistemically arrogant. If an act of CD requires level of rational certainty c1, and you only have rational certainty c2, where c2 < c1, then you are epistemically arrogant. It is not the method of expression itself that evinces arrogance, but rather the attitude at play in thinking that it should be chosen, or that it is justified.

A condition should be added to this conception of epistemic arrogance. If an agent uses a method of expression that requires a higher level of rational certainty that the proposition he expresses is correct than is warranted, but would choose a more modest method of expression if he were presented with
evidence that he was wrong, the use of disproportionate means of expression is an honest mistake. An act of CD is thus arrogant if the method of protest requires a higher level of rational certainty than the dissenter is rationally entitled to, on the condition that the dissenter would use the same method of protest even if presented with relevant evidence that he has a higher degree of rational certainty than is justified.

To illustrate, consider Rosa Parks’ refusal to give up her bus seat in protest of racial segregation. Parks’ grounds for protest is well-founded, and Parks is rationally entitled to her certainty that racial segregation is wrong. Given the merits of her cause, Parks’ choice of method is perhaps even modest: while it constitutes a breach of the law, it is, for example, not violent or coercive, nor does it impose burdens or inconveniences on numerous others. Her method of protest was not disproportionately radical given the very high degree of certainty that is warranted in the belief that racial segregation is unjust. If anything, her method was too modest. Now compare Parks’ action with the three trespassing nuns. The nuns broke into a nuclear missile silo in Colorado to protest US military policy; the nuns were specifically protesting the American military intervention in Afghanistan and Iraq, as well as the manufacturing and maintenance of nuclear weapons. The nuns were convicted of obstructing U.S. national defense and damaging government property (Brownlee 2012, 157). Determining whether a war is just is often an extremely complicated matter, and yet the nuns expressed their views in a rather radical way: they could have chosen a more moderate means of expressing their view, for instance by writing to lawmakers or organizing a legal demonstration. The nuns seem to be much more vulnerable to the charge of arrogance than Rosa Parks is, and this can be explained by the account of arrogance in CD set forth in this paper: the nuns are epistemically arrogant because they use a somewhat radical method to express their view, even though they are not rationally entitled to a very high degree of certainty that their view is correct given the complexity of the evidence pertaining to
the perceived injustice. As mentioned, the evidence pertaining to such issues is complex, so even if one is correct that a war is unjust, one is not rationally entitled to a high level of certainty in this proposition, and it is not clear that the nuns would be justified in holding the level of certainty required to justify illegal means of protest.

The case of Rosa Parks also reveals that the method of expression should be proportionate to the substantiality of the injustice. It is not just the fact that civil rights were clearly violated that made Parks’ method of protest modest; it is also the fact that a civil rights violation is a substantial injustice. Contrast Parks’ action with a case in which the state is cutting media subsidies (as opposed to doing away with them altogether). Say that a group of citizens are certain that cutting media subsidies is wrong. They protest the policy by vandalizing their city. While the policy is, ex hypothesi, certainly wrong, the injustice is not substantial and vandalizing the streets in protest is a mode of expression that is incommensurate with the injustice in question. By contrast, if an agent is certain that civil rights are being violated, vandalizing the streets in protest may in fact be commensurate with the breach of fundamental rights at issue.

The upshot is that when evaluating whether those engaging in civil disobedience are epistemically arrogant, we should not only look to whether they (A) have a higher degree of rational certainty in P than is warranted and uphold that same degree of certainty despite being presented with relevant evidence contrary to P. We should also look to whether they (B) use a method of expression that requires a higher level of rational certainty that the political view is right and the injustice is substantial than is warranted, and additionally, whether they would use that same method of expression were they to be presented with evidence undermining the notion that their view is merited and substantial. These two types of arrogant behavior are distinct, but they come together in what
seems to be the most plausible way of understanding the charge that dissenters are epistemically arrogant.

**Does CD necessarily involve epistemic arrogance?**

So far I have argued that if dissenters are epistemically arrogant, they seem to be so both in the sense that they falsely exaggerate the epistemic worth of their view and in that they choose a means of expressing their view that is out of proportion relative to how certain they ought to be that their view is merited and that the injustice they protest is substantial. With these considerations in mind, we can now evaluate the claim that civil dissenters are epistemically arrogant. The question is whether the fact that an agent engages in CD tells us anything about his level of justified certainty, and to what extent that agent proportions his method of expression to the rational degree of certainty that his political view is merited and substantial that is warranted.

Prima facie, it is unlikely that there is anything general to be said about whether civil dissenters are epistemically arrogant, as dissenters defend causes with varying merit employing different means of expression. Yet, there is surely one thing all dissenters have in common that may allow us to say something about whether civil dissenters are epistemically arrogant: all civil dissenters who protest democratically enacted laws share one relevant piece of higher-order evidence that they need to take into account when they consider whether they ought to engage in CD. This higher-order evidence is the fact that a democratic majority or its representatives disagrees with them. If democratic decision-making procedures reliably track the truth about justice, then an agent who disagrees with the policy outcomes of such procedures has a very weighty piece of evidence that the outcome is correct. If
correct, this could imply that using illegal means of protest is invariably incommensurate with the level of certainty a dissenter is rationally entitled to. So the question becomes whether democratic authority is an epistemically reliable authority in the sense that those decisions resulting from the democratic decision-making procedure are likely to be correct. If so, it seems that engaging in civil disobedience as a means of expressing a conviction that the majority is wrong would invariably involve a degree of epistemic arrogance.

There is a burgeoning philosophical literature on the epistemic merits of democracy. Important models of epistemic democracy include theories based on Condorcet’s jury theorem and theories based on the epistemic benefits of deliberation. They all make the case that a democratic decision-making body makes epistemically better decisions than an enlightened few. Incidentally, some of the arguments put forward in the literature on epistemic democracy seem to imply that democratic decision-making bodies are epistemically superior to a minority of dissenters. According to these epistemic theories of democracy, the fact that a decision is the result of a democratic procedure is evidence that the decision is likely to be correct. On such theories, if the outcome of a democratic decision-making procedure is the adoption of policy P and you support policy Q, where Q is incompatible with P, you now have higher-order evidence that you are probably wrong. So if one thinks that democracy epistemically outperforms the rule of the wise, then one should probably consider civil dissenters epistemically arrogant inasmuch as dissenters are not rationally entitled to a high level of certainty that they are correct. Dissenters who use illegal means of expressing their view will thus be epistemically arrogant because they use means of expression that require a higher level of rational certainty than is warranted, and if their means of expression are also an indication of how certain they are, then they also have a higher degree of rational certainty than is warranted. The
question as to whether agents engaging in CD are *necessarily* epistemically arrogant is therefore a function of whether the rule of the wise is epistemically superior to democracy.

Let us begin with epistemic theories of democracy that rely on Condorcet’s Jury Theorem, which shows that a majority vote is likely to identify the correct decisions given certain conditions. The original theorem put forward by Condorcet in 1785 shows that when a group votes on binary questions, the probability that the group will identify the correct answer to the question increases with the number of people voting. The theorem works on the assumptions that people have more than a 0.5 probability of being right and that they have come to their conclusion independently of one another (Condorcet 1995 [1785]). In order to better apply this reasoning to democratic decision-making, the theorem has been developed to include votes on questions with multiple options (List 2001), to apply to cases where some individual voters have less than a 0.5 probability of identifying the right answer on the condition that the average competence of voters is above 0.5 and the individual competences are normally distributed around the average (Estlund 1997, 188); and to accommodate the fact that many citizens do not form their political opinions independently of one another. This is because the theorem will still work if we count the voters who are co-dependent as one voter.\(^{25}\)

Now imagine that you are a part of a minority that voted against a policy P. You did so because you believed that given the evidence you sought out and evaluated, P was the incorrect policy to adopt. If the above Condorcetian reasoning is sound, the fact that a majority of your fellow citizens thought otherwise is higher-order evidence that you are probably wrong. On the other hand, if the theorem’s conditions do not hold, this Condorcetian piece of higher-order evidence that one’s judgment about

\(^{25}\) This observation is from a handout by David Estlund written for the seminar *New themes in Democratic theory*, Brown 2018.
policy P is wrong no longer holds. It may, for example, be the case that the individual competence level is abnormally distributed around the average such that the theorem does not provide evidence that the majority is right. If one or more of its conditions are violated, the dissenter can rationally retain his conviction that the majority is wrong. Whether Condorcet’s theorem can show that democracy epistemically outperforms a wise elite is still controversial within the literature. Whether CD necessarily involves arrogance must therefore also be left open here because we cannot establish that all cases of CD are such that civil dissenters who disagree with the majority are not rationally entitled to a high level of certainty that their political view is merited\(^\text{26}\).

Even if the Condorcetian conditions hold true, this does not imply that civil dissenters are epistemically arrogant if they aim solely to bring a new political issue to the table. At the outset of this paper, I distinguished between two schools of thought in the literature on CD: a democratic and a liberal approach to understanding the concept. Liberal scholars generally define CD as an act aimed at changing laws and policies, whereas democratic scholars conceive of CD as an instrument to remedy deficits in democratic decision-making procedures. The type of CD described as democratic is not vulnerable to Condorcet-type accusations of epistemic arrogance. Engaging in so-called democratic disobedience, dissenters aim not to make the majority realize that a given law or policy

\[^{26}\text{The same is true of other epistemic theories of democracy. While the Condorcetian reasoning captures the potential epistemic benefits of having large groups of people vote, it fails to make sense of interactions among the citizenry. Landemore 2013 proposes an account of epistemic democracy that accounts for the benefits of interaction among citizens by applying Page’s “Diversity Trumps Ability Theorem” to democratic decision-making. According to Page’s original theorem, a group of cognitively diverse people will be better at solving problems than a group of the individually best problem solvers, provided certain conditions are met (Page 2007, 11). Drawing on Page’s theorem, Landemore argues that democratic decision-making bodies are epistemically superior to a small, wise elite, because a large citizenry is more diverse and will thus produce better decisions than a small group of experts (Landemore 2013, 104). If Landemore is right, the fact that a political decision is made by a large and diverse democratic body is evidence that the decision is likely to be right. As in the Condorcet case, one or more of the conditions involved in the diversity justification of epistemic democracy may not be met. Again, whether the theorem succeeds in showing that the fact that a decision is democratically made constitutes evidence that a decision is correct is still subject to debate. Whether CD is such that it necessarily involves epistemic arrogance because civil dissenters who disagree with the majority are not rationally entitled to be very certain that their view is merited is thus also still up for debate.}\]
is just, but rather to engage the public in deliberation about an issue that dissenters think is important, but that has been kept off the deliberative agenda. Examples include environmentalist protesters who sought to inspire public and political concern about climate change when no one was discussing the issue (Smith 2011, 155). Chelsea Manning’s disclosure of confidential military documents and Edward Snowden’s release of confidential NSA material may also be cases in point. In his statement at the Moscow airport in 2013, Snowden said, ‘I took what I knew to the public, so what affects all of us can be discussed by all of us in the light of day…’, though his case is more ambiguous than the statement conveys. In such cases, civil disobedience does not involve a claim that the majority is mistaken about the justice of a law or policy. Accordingly, the dissenter seems to make no claim (tacit or explicit) that he is in an epistemically superior position than his fellow citizens, at least with regard to the judgment that the law or policy in question is just. Still, democratic disobedience does involve an assertion of privileged political knowledge about the claim that the relevant political issue has not been debated as thoroughly as its importance warrants. So while Condorcetian-type accusations of epistemic arrogance do not show that democratic disobedience necessarily involves epistemic arrogance, acts of democratic disobedience may still manifest this attitude in cases where the dissenter has a higher level of rational certainty than is warranted in the proposition that the issue has not been debated as thoroughly as its importance warrants and if the means of expression is disproportionate relative to the level of rational certainty the dissenter is entitled to have that the issue has not been debated as thoroughly as is warranted.

The upshot is that while dissenters share the piece of higher-order evidence that the majority of their fellow citizens disagree with them, CD is not necessarily such that it involves arrogance. Whether it does will depend in part on whether epistemic theories of democracy are correct and on whether the conditions that support epistemic theories of democracies hold in specific instances. Still, dissenters
should take the fact that their fellow citizens apparently disagree with them under consideration, as this evidence may influence how certain they ought to be that they are right. What’s more, the fact that their fellow citizens disagree that P is unjust and have put arguments forward in defense of the justice of P also implies that should dissenters have a higher level of certainty than is warranted and should they fail to proportion their means of expression to the warranted level of certainty, this cannot be conceived of as an honest mistake. Dissenters have been presented with relevant evidence undermining the proposition that policy P is unjust and have nevertheless maintained their level of certainty.

We should additionally distinguish between two ways in which it might be claimed that citizens engaging in CD are epistemically arrogant: (1) CD is such that it necessarily involves arrogance and (2) even if CD does not necessarily involve epistemic arrogance, specific instances of CD may still involve epistemic arrogance. Even if (1) is not true, (2) is. Whether a dissenter manifests this vice will have to be established on a case by case basis, and must ultimately depend on whether the dissenter has a higher degree of rational certainty in P than is warranted and whether she proportions her means of expression to how certain she ought to be that her cause for protest is merited and substantial.

4. Is the Epistemic Arrogance of Dissenters Harmful?

Epistemic arrogance is clearly an epistemic bad for the individual who is epistemically arrogant. If an agent is epistemically arrogant in the sense that she has a higher degree of rational certainty in P than is warranted or in the sense that she does not proportion her means of expression to the rational
degree of certainty in a supposition that is justified, and if employing a method of expression that is disproportionate implies that she does not have the degree of rational certainty that she ought to, she is irrational according to this conception of epistemic arrogance. However, even though the epistemically arrogant civil dissenter is irrational at an individual level, she may still contribute to the epistemic ends of her democratic community. In ‘The Division of Cognitive Labor’, Kitcher argues that within scientific communities, the epistemic ends of the community are sometimes best achieved when there is cognitive diversity, even when this compromises rationality at an individual level. Kitcher provides the example of theory choice among Geologists. In the beginning of this century, an overwhelming amount of evidence suggested that Alfred Wegener’s theory of continental drift was wrong, yet a small number of geologists continued to develop theories based on his ideas. According to Kitcher, even though it may have been irrational for those few geologists to continue advocating Wegener’s theory of continental drift, it was ultimately epistemically advantageous to the community who later came to recognize the accuracy of the theory (Kitcher 1990, 7). There seems to be an analogy between Kitcher’s analysis of the division of cognitive labor in the scientific community and that of a democratic community. There may also be a discrepancy between what is rational at the individual level of each citizen and what is rationally beneficial for the democratic community as a whole. Engaging in CD may be epistemically arrogant at an individual level, but still contribute to the epistemic end of democratic deliberation which is ultimately to promote true beliefs about justice in democratic deliberation. A civil dissenter may be irrational at an individual level by having and expressing a higher degree of certainty than is rational given the available evidence, but still be right. That is, the dissenter may have a true, unjustified belief about what his community ought to do politically, and be overly confident given the level of confidence that is actually justified. In such a case, the civil dissenter can be epistemically arrogant while simultaneously epistemically benefitting his community by promoting the truth about what should be done politically.
Notice that this sort of epistemic defense of CD differs from the Millean line of reasoning that is often used to justify civil disobedience (Brownlee 2012). On the Millean line of reasoning, disobedience promotes truth or prevents dogmatism in democratic discourse, because disobedience promotes a greater diversity of views in political deliberation. However, whether CD does enhance democratic deliberation depends on the merits of the view that dissenters advocate. Having more unmerited views represented in democratic conversation just increases the likelihood that the right view gets lost in the crowd (Kappel et al. 2017). The above epistemic justification of CD depends instead on the civil dissenter having a true but unjustified belief about what justice requires.

It is an open question whether this sort of epistemic benefit is also valuable from a political perspective. If the purpose of political engagement is to arrive at and implement the correct conception of justice, then epistemic arrogance may be politically valuable if it is an epistemic benefit to the community, as the above analogy suggests. If a civil dissenter can be irrational at an individual level by having and expressing a higher degree of certainty than is rational given the evidence, but still be right, the epistemically arrogant civil dissenter can nevertheless contribute to the promotion of true beliefs about justice in democratic deliberation. Presumably, promoting true views about justice will have a spill-over effect to public policy-making, and the community will benefit from the adoption of truly just laws and policies. Still, whether acts of CD do have the effect of promoting true views about justice will still depend on whether dissenters defend true views about justice. Whether promoting true views about justice in turn promotes the implementation of a correct conception of justice will further depend on how the content of democratic deliberation affects the content of adopted laws and policies.
However, whether democratic decision-making procedures have epistemic merits and whether they are morally justified as legitimate are two different questions, at least at the outset. Some theorists argue that democratic decision-making procedures are legitimate only if they produce correct decisions (Rousseau 1968; Nino 1991), in which case the two questions overlap. It is, however, important to keep the two questions apart for now, because in attempting to determine whether dissenters are epistemically arrogant, I have only made an epistemic point. I have not said anything about whether democratic procedures are legitimate or whether dissent is morally justified. On the one hand, if we do not evaluate political engagement and the political process in terms of how reliably they produce just decisions, or at least not only in terms how reliably they produce just decisions, then the epistemic arrogance of a dissenter may still be harmful even though the dissenter has a merited cause. On the other, it may turn out that an act of dissent simultaneously evinces epistemic arrogance and is morally justified, for example if questions of legitimacy do not bear on epistemic considerations.

5. Concluding Remarks

As noted in the introduction, civil dissenters have at times been portrayed in public political discourse and in court rulings as arrogant because they apparently think that their political acumen is superior to that of their fellow citizens’. In this paper, I have tried to make sense of the arrogance charge by reconstructing it in the most plausible way. Contrary to the dominant view in theories of epistemic arrogance, I have argued that epistemic arrogance can consist in falsely exaggerating the epistemic worth of one’s view; or at least that there is a distinct kind of epistemic arrogance which does consist in falsely exaggerating the epistemic worth of one’s view. Specifically, I have argued that epistemic
arrogance can consist in having a higher degree of rational certainty in P than is warranted while upholding that same degree of certainty despite being presented with relevant evidence contrary to P. This conception of epistemic arrogance captures well the charge that dissenters are arrogant because they think they are better able to determine what is just and unjust than their fellow citizens.

That being said, the more plausible interpretation of the charge that dissenters are epistemically arrogant should also explain why engaging in CD as opposed to a means of expressing disagreement with a democratically enacted policy that does not involve CD may be epistemically arrogant. I have therefore argued that the charge made against civil dissenters that they are epistemically arrogant is most plausibly understood as consisting of the two claims that civil dissenters (A) have a higher degree of rational certainty in P than is warranted and uphold that degree of certainty despite being presented with relevant evidence contrary to P, and (B) civil dissenters use a method of expression that requires a higher level of rational certainty that their view is correct and that the injustice they fight is substantial than is warranted, and they select this method of expression even when presented with evidence to the contrary. These two types of behavior are distinct, but they come together in the most plausible charge of epistemic arrogance. This approach can make sense of the intuition that Rosa Parks was not arrogant when she protested racial segregation. It also makes sense of the intuition that when Kenneth Bridges picketed and threatened users and employees at an abortion clinic, he was epistemically arrogant inasmuch as employing physical threats is disproportionately radical relative to how certain he ought to have been that abortion is a grave wrong and should be banned. It can additionally make sense of the intuition that a dissenter who chooses to express his disagreement by, for instance, written means does not seem to be epistemically arrogant in the same way that a civil disobedient citizen may be, even though the writer may have the same rational degree of certainty that his view is correct as a dissenter who engages in CD. This is because the writer’s method of
voicing dissent is much more modest. The writer may still be mistaken in the level of certainty he ought to have, but he has selected means of expression that are commensurate with the level of certainty he ought to have.

Against this backdrop, I have argued that CD is not such that it necessarily involves epistemic arrogance; whether an act of CD manifests epistemic arrogance will have to be determined on a case-by-case basis. Whether engaging in CD is epistemically arrogant will ultimately depend on whether the dissenter falsely exaggerates the epistemic worth of his view and chooses a means of expressing that view that is disproportionate relative to how certain he ought to be that the view is merited and substantial. Finally, I have argued that while epistemic arrogance is epistemically bad at an individual level because it is irrational, an epistemically arrogant civil dissenter may still contribute to the epistemic end of his democratic community by promoting true, albeit unjustified views about justice which in turn enable the community to adopt laws and policies that are more just.

References


Page, S. E. 2007. ”Making the Difference: Applying a Logic of Diversity” in Academy of Management Perspectives 21/4


Snowden, E. 2013. “Statement by Edward Snowden to Human Rights Groups at Moscow’s Sheremetyevo Airport” [Friday 12 July 2013, 15:00 UTC]:


Terry, B. 2017. "MLK Now". In Terry, B. (Ed.’s) Boston Review: Fifty Years Since MLK

United States v Ardeth Platte 401 F.3d. 1176 (10th Cir. 2005)
ENGLISH SUMMARY

The dissertation explores the complex relationship between civil disobedience and liberal democracy. Civil disobedience is an illegal mode of political protest that raises a moral problem in liberal democracy, because there is arguably a moral duty to obey democratically enacted laws and respect the decision of your fellow citizens, even when they are wrong. At the same, acts of civil disobedience can serve as a valuable tool for relieving the great injustice that can occur in liberal democracies.

In the first article of the dissertation, I argue that there is no purely belief-relative moral right to civil disobedience in liberal democracy. Brownlee has argued that the merit of a cause is not relevant to the establishment of a moral right to civil disobedience. Instead, it is the fact that a dissenter believes his cause for protest to be morally right that is salient. I argue that no purely belief-relative theory of civil disobedience grounded in a basic moral value will be tenable, because any moral warrant of civil disobedience that is derived from a value must be limited by the value from which it is derived, as well as by other similarly weighty values.

In the second article, I sketch a new approach to the question of when civil disobedience is legitimate. I begin by arguing that civil disobedience and epistocracy are similar in the sense that they both involve the idea that superior political judgment defeats majority authority, because this can lead to correct, i.e. actually just, prudent or morally right, political decisions. By reflecting on the question of when superior political judgment defeats majority authority in the epistocracy case, I identify considerations that also apply in the disobedience context. I conclude that civil disobedience is legitimately justified when it is used in high-stakes situations to counter laws that dissenters know are wrong or when dissenters know that the political issue has not been deliberated as thoroughly as its importance warrants.

In the third article, I examine whether democratic citizens engaging in civil disobedience are epistemically arrogant. Dissenters are sometimes perceived as arrogant, because they apparently think that their own judgment about what ought to be done politically is superior to that of their fellow citizens and elected government. I argue that civil disobedience is not such that it necessarily involves epistemic arrogance, but dissenters are epistemically arrogant in cases where they have a higher degree of rational certainty in P than is warranted and use a method of expression that requires a higher level of rational certainty than is warranted in the propositions that their political view is right and the injustice they fight is substantial.
DANSK RESUMÉ

Nærværende afhandling undersøger forholdet mellem civil ulydighed og det liberale demokrati. Civil ulydighed er en ulovlig form for politisk protest, hvilket rejser en moralsk problemstilling i et liberalt demokrati: På den ene side er der en antagelse om at der er en moralsk pligt til at følge demokratisk vedtagne love og at respektere flertallets beslutninger, også når de er uretfærdige og fejlagtige. Men på den anden side kan civil ulydighed også bidrage positivt til det liberale demokrati, idet civil ulydighed kan anvendes til at gøre op med store uretfærdigheder.

I afhandlingens første artikel kritiserer jeg Brownlees, Lefkowitz’s og Dworkins argumenter for, at borgere i et liberal demokrati har en moralsk rettighed til at begå civil ulydighed, selvom de ikke har en velbegrundet politisk sag, så længe de oprigtigt formoder at deres politiske sag er velfunderet.

I den anden artikel argumenterer jeg for, at der er mange relevante ligheder mellem civil ulydighed og epistokrati. Begge politiske praksisser involverer idéen om at det nogen gange er vigtigere at træffe gode og retfærdige politiske beslutninger end at lade flertallet diktère alt. Derfor kan vi også lære noget om, hvornår det er legitimet at begå civil ulydighed ved at kigge nærmere på diskussionen om epistokratiets legitimitet. Jeg konkluderer i artiklen, at civil ulydighed er legitimt, når en agent ved, at majoriteten har vedtaget en uretfærdig lov og loven tilmed er særligt uretfærdig, således at der er meget på spil.

I den tredje artikel undersøger jeg, hvorvidt demokratiske borgere, der begår civil ulydighed, er epistemisk arrogante. De opfattes nemlig sommetider som arrogante, fordi de mener at vide bedre end resten af befolkningen, hvad vi bør gøre politisk. Jeg argumenterer for, at civil ulydighed ikke nødvendigvis involverer epistemisk arrogance, men at borgere der begår civil ulydighed er epistemisk arrogant i de tilfælde, hvor de er mere sikre på, at deres politiske standpunkt er rigtig end hvad de rationelt har grund til, samt når de udtrykker deres politisk holdning på en måde der er ude af proportioner med hvor sikre de rationelt bør være på at de har ret.
BIBLIOGRAPHY


Fish, S. 1994. There’s No Such Thing as Free Speech...and it’s a good thing too. Oxford: Oxford University Press


Plato. The republic. Various editions

Plato. Crito. Various editions


Snowden, E. 2013. ‘Statement by Edward Snowden to Human Rights Groups at Moscow’s Sheremetyevo Airport’ [Friday 12 July 2013, 15:00 UTC]:


United States v Ardeth Platte 401 F.3d. 1176 (10 Cir. 2005)

United States v. Seeger, 380 U.S. 163 (1965)


Young, I.M. 2001. ”Activist Challenges to Deliberative Democracy” in Political Theory 29/5: 670–90