Dear Fellows,

My goal in this new project is to conceptualize and make room for the justification of uncivil disobedience. This project is based on the first two chapters of the book I am currently completing, *Duty to Disobey: Revisiting Political Obligation*. I now plan to write a separate journal article arguing for the need to make conceptual and normative space for uncivil disobedience. What follows is the basic outline I envision for this article.

I very much look forward to our discussion!

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0. Introduction

Consider the following:

- The Boston Tea Party’s raid on a British merchant ship and destruction of its cargo;
- The suffragists’ window-smashing in London’s shopping district;
- The Catonsville Nine’s burning of an entire civil registry with napalm in 1968;
- The protests and hunger strikes undertaken by Irish Republican Army (IRA) fighters imprisoned in Northern Ireland;
- The Sanctuary Movements organized in the 1980s to covertly aid Central American refugees and, recently, for undocumented migrants from the Middle East;
- Chelsea Manning’s leaks of classified documents to WikiLeaks;
- Russian feminist collective Pussy Riot’s guerilla performances;
- The Sea Shepherd’s anti-whaling operations;
- La Via Campesina’s raids on agribusinesses;
- Kentucky clerk Kim Davis’s refusal to issue marriage licenses to same-sex couples; and
- Anonymous’ distributed denial-of-service (DDoS) attacks against PayPal, Visa, and Amazon in “Operation Payback.”

What do these have in common? Not much at first glance, beyond their being unlawful acts of resistance: they were undertaken against various perceived injustices including governmental secrecy, sexism, an unjust war, and inhospitable refugee policy; some were led by small, tight-knit and organized groups, others by lone individuals, yet others by large unstructured groups; some were covert, others public and televised; some were out of sight behind bars; a few involved violence, against property, persons, or self; yet others were deliberately offensive or threatening. They took place all over the world and on the Internet. Yet each of these acts has involved some controversy about whether it qualifies as civil disobedience, with sympathizers affirming, and opponents denying the label for particular acts.

Why does the labeling matter? These days, in Western societies in particular, to describe an act as an instance of civil disobedience is to go some way toward justifying it.
The label makes an otherwise disruptive action intelligible as protest and further confers a veneer of political respectability by situating it within a venerable tradition including the likes of Rosa Parks and Martin Luther King, Jr. It is therefore no surprise that those wishing to establish the bona fides of one or another act of disobedience call it civil. But to do so, they have to either ignore some of the features of the actions that put them at odds with the common understanding of civil disobedience, or articulate capacious concepts of the latter that can accommodate a wide range of protests.

I find both approaches defective. The latter, inclusive approach forces a variety of disobedient actions in a narrow concept, at times stretching it out beyond recognition, so that it fits neither ordinary linguistic practices nor activists’ self-understanding. The former, standard approach is unduly restrictive, morally problematic, and historically untenable. Or so I shall argue in the first section (1.1). In this section I also sketch a broad matrix of resistance including lawful acts of resistance and principled—civil and uncivil—disobedience (1.2).

The second section makes a case for the justifiability of some acts of constrained principled disobedience that neither appear nor try to be civil (I describe these constraints in 2.1), by responding to the main objections to disobedience in general (2.2) and to the arguments in favor of civil disobedience and against uncivil disobedience (2.3).

1. Conceptualizing uncivil disobedience

1.1. The standard account of civil disobedience: Theory, practice, and ideology

John Rawls is widely credited for having offered the seminal and now standard account of civil disobedience. Witnessing civil rights and antiwar protests in the United
States of the 1960s, Rawls defined civil disobedience as a conscientious, public, nonviolent breach of law undertaken in order to persuade the majority to change a law or policy in a nearly just society. Rawls defined civil disobedience as a conscientious, public, nonviolent breach of law undertaken in order to persuade the majority to change a law or policy in a nearly just society. Agents of civil disobedience are to appeal to the community’s shared conception of justice in their pleas and to demonstrate their general “fidelity to law” and endorsement of the legal system’s legitimacy by accepting, or even seeking out, the legal consequences of their actions.

Rawls’s criteria of civil disobedience—the agent’s motivation, goal, intended audience, attitude toward the system, acceptance of punishment, and principles appealed to, as well as the conscientiousness, publicity, and nonviolence of the act—have all been subject to much criticism over the past half-century, which I will not review. Suffice to say that, on the one hand, the Rawlsian conception still has many champions (though they may have relaxed some of the requirements), and on the other hand, some theorists, finding the Rawlsian conception excessively narrow, have instead articulated much more capacious concepts of civil disobedience that extend to all sorts of principled lawbreaking.

Thus Kimberley Brownlee defines civil disobedience as “a deliberate breach of law taken on the basis of steadfast personal commitment in order to communicate our condemnation of a law or policy to a relevantly placed audience,” and stresses that it need

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1 The nearly just society, in Rawls’s view, is well ordered for the most part—that is, governed by the right principles of justice but still subject to some serious violations of justice.
3 See e.g., William Smith, Civil Disobedience and Deliberative Democracy (Routledge 2013).
be neither public nor nonviolent. Robin Celikates, who spearheads the radical democratic approach, understands civil disobedience as a collective disruptive practice designed to articulate political claims. This broad and minimal conception imposes no requirement on the agent’s attitude toward the system, her target, or the goals of her protest. Neither must the civilly disobedient act be necessarily public or nonviolent.

Before explaining the issues with minimalist accounts like these, I want to register what I find to be most problematic about the standard, Rawlsian conception of civil disobedience, and which critics rarely recognize: together with an official, historically inaccurate narrative of the civil rights movement, it functions as a tool of counter-resistance ideology.

The activities of the civil rights movement—especially those led by King—clearly inspired the standard account of civil disobedience, and, to be sure, did satisfy a number of its demanding criteria (superficially at least), such as agents’ modest goals of reform, commitment to nonviolence, and acceptance of punishment. But this outward submission to law did not reflect their endorsement of the system’s overall legitimacy. And their choices of methods were mainly driven by strategic rather than moral reasons. To take just one example, King conceived of submission to arrest and punishment in symbolic

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4 What sets it apart from ordinary crime, radical protests, and private conscientious objection are its constrained, communicative, and non-evasive properties, which have to do with the agent’s dialogic efforts with her intended public. Kimberley Brownlee, *Conscience and Conviction: The Case for Civil Disobedience* (Oxford: Oxford University Press), chap. 1.

terms, as a “powerful and just weapon,” and as a matter of prudence, given that civil rights activists were outnumbered and outgunned.\(^6\)

The standard account turned a particular style of civil disobedience—adopted for context-dependent, tactical purposes by King and some other civil rights leaders—into conditions binding activists engaged in any reform struggle, then and now. It reinforced an official narrative of the civil rights movement that largely misrepresents it. In brief:

i. The official narrative falsely equates the civil rights movement with the campaigns led by King and the Southern Christian Leadership Conference, ignoring the contributions of radical ideologies and groups. The result is an orthodoxy whereby a nonviolent, state-legitimizing disobedience movement “won” the struggle for civil rights “despite the threats” of radical groups, such as black nationalist and Marxist liberation movements.

ii. The official narrative overstates the victory of the civil rights movement, and in doing so portrays American society as having realized the demands of racial justice—an arguable diagnosis indeed.

iii. The official narrative’s emphasis on the civil rights movement’s nonviolence functions as a misplaced and disingenuous appeal to compliance in the face of black victimization. It valorizes docility and deters

the population, especially blacks, from unruly kinds of resistance—and really, from any defiance at all.⁷

The official narrative of the civil rights movement and the standard theory of civil disobedience have shaped the public discourse about protest, seeping into officials’ speeches and children’s textbooks. The idealized version of King-style civil disobedience sets an unreasonable standard for other social movements, hailing nonviolence as the only acceptable script for social movements and branding as uncivil and dangerous any movement that does not fit the script. It constitutes in these ways a counter-resistance ideology. We need instead an account of principled disobedience that won’t obscure the real practice of activists engaged in political struggles. To this end, I sketch a broad matrix of political resistance.

1.2. A matrix of resistance

The matrix I offer does not put forth necessary and sufficient conditions for its central concepts—resistance, principled disobedience, civil, non-civil and uncivil disobedience. It highlights central features of the concepts in question, like constellations on the matrix rather than sharply outlined categories.

*Resistance* can designate a broad range of dissident activities, which all express an opposition and/or refusal to conform to the dominant system’s norms, including values and laws, and in pursuit of various goals, from rectifying to publicly condemning

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⁷ See e.g., Ta-Nehisi Coates, *Between the World and Me* (Spiegel & Grau New York 2015), pp. 30–32. Coates also highlights the irony of urging nonviolence upon children whose daily lives are dominated by violence, in a country founded upon, and continually engaged in, the same. See also Juliet Hooker, “Black Lives Matter and the Paradoxes of U.S. Black Politics: From Democratic Sacrifice to Democratic Repair,” *Political Theory* 44, 4 (2016): 448–469. Hooker shows that the official narrative’s valorization of nonviolence amounts to an unreasonable “demand for extraordinary sacrifices [that is, peaceful acquiescence to racial terror] from the citizens least positioned to make such ‘gifts’.”
perceived wrongs, and even retaliating against perceived wrongdoers. Illegal acts of resistance fall under the category of *principled disobedience*.

One subset of principled disobedience is *civil disobedience*: a principled and deliberate breach of law intended to protest unjust laws, policies, institutions, or practices and undertaken by agents broadly committed to basic norms of civility. This means the action occurs publicly, is intended to communicate a position, is carried out nonviolently, and shows decorum in language and action. Like minimalist accounts of civil disobedience, my definition does not constrain the protest’s audience, its target (public or private actors), the principles of political morality to which civil disobedients appeal, or their attitudes toward the political system. But unlike minimalist accounts, mine stresses adherence to basic norms of civility—publicity, nonviolence, and decorum—in order to track the common understanding of civil disobedience.

Minimalist accounts not only stretch civil disobedience beyond its common meaning, but they also miss the point of many acts of principled disobedience, which is to *refuse* civil disobedience as traditionally conceived. Emmeline Pankhurst defended suffragists’ use of “militant methods” and characterized herself as a “soldier” in a “civil war” waged against the state by women. Ukrainian feminist group Femen similarly seeks to brand its disobedience as provocative, not civil, by calling its tactics, which include topless heckling and disruption, “sextremism.” Agents may also find that following the standard script of civil disobedience will be ineffective. Or, when they are denied a place in the political community, they may simply not be able to follow it. The standard conception of civil disobedience assumes prior equal standing that powerless groups lack.
The categories of *uncivil* and *non-civil disobedience*, which theorists so far have neglected, are useful to think about acts of principled disobedience that neither appear nor try to be civil, as well as controversial cases of civil disobedience, such as the examples I listed at the outset. Acts of principled disobedience that are deliberately offensive, covert, evasive, anonymous, uncommitted to nonviolence, or more than minimally destructive are generally *uncivil*, especially if they display more than one of these traits (e.g., evasiveness plus violence). Further examples include illegal strikes, riots, guerilla street art, doxxing (release of confidential information), underground resistance, and vigilantism. Some of these activities may be criminal simpliciter if they are not motivated by moral or political principles but instead undertaken for fun or for profit.

The point of the categories of uncivil and non-civil disobedience is to grant or embrace the (apparent) lack of civility of certain disobedient acts and ask whether such non-civil or uncivil acts of principled disobedience can nonetheless be justified.

**2. Justifying uncivil disobedience**

**2.1. Uncivil yet constrained**

The kinds of non-civil and uncivil disobedience I seek to defend are constrained: resistors must act with respect for other people’s interests, including, but not limited to, their basic interests in life and bodily integrity, their interests in choosing the values that shape their lives, and their interest in a stable, secure system of rights. These basic human interests constrain both the legitimate goals of resistance and the appropriate means to achieve one’s goals.

I further propose two ceteris paribus constraints that relate to the demand to act with respect for other people’s interests, and provide parameters for the evaluation of acts of
principled disobedience. Resistors should seek courses of action (1) that are the least likely to be harmful to others and (2) that have a reasonable chance of success. These constraints do not constitute necessary conditions for the justification of principled lawbreaking, in part because agents may sometimes justifiably settle for second or third best if, say, the least harmful course of action demands too much sacrifice on their part. They do not constitute sufficient conditions for justification either, since they say nothing about the goal of principled disobedients.

2.2. The problem of (un)civil disobedience

Opponents of disobedience (civil or otherwise) claim that any disobedience is wrongful, at least or especially, in decent, liberal democracies. This prohibition rests on three pillars: first, disobedients violate the moral duty to comply with the law; second, disobedience undermines law and order and destabilizes society; third, disobedients flout democratic processes and in so doing threaten democratic ideals. I take these objections seriously but show that their actual scope is narrower than their purported one. While the objections take the form of categorical prohibitions against principled disobedience, what they succeed in setting is instead a presumption against principled disobedience. This presumption is more or less firm but it can be overcome. (The discussion that follows is very schematic.)

2.1. The duty to obey the law

**Objection:** Disobedience violates political obligation—the moral duty to obey the law.

Endorsement of this duty is often deemed essential under conditions of reasonable pluralism, where people disagree about matters of justice.
Response: Philosophers agree that the duty to obey the law is defeasible and that it does not arise where injustice is severe and persistent. So we can at least ask, what can and should be done in such cases? And we need not presume (at that point) that only civil disobedience could be acceptable.

2.2. Law and order

Objection: Any disobedience sows anarchy and undermines law and order.

Response:

i. This is an empirical question; and there is no evidence to suggest that this is generally the case (e.g., from the social scientific studies on the civil rights movements).

ii. Even if we grant that principled disobedience undermines the legal order, this effect may be justified and salutary in unjust states: not all legal orders are worth preserving.

Objection take 2: Disagreements about justice being inevitable, in a state where subjects disobey laws they find unjust, we might be no better off than in the state of nature, where everyone individually decides what is right and wrong.8 If one violates the law each time one thinks it is unjust, one undermines the rule of law. Doing so is wrong because it prevents the legal system from performing its essential function of rights-protection.

Response:

i. I agree that legal systems could not function if everyone disobeyed every law they think is unjust or otherwise not worth obeying. But my point is that

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8 See Jeremy Waldron, The Dignity of Legislation (The Seeley Lectures: Cambridge University Press, 1999), p. 59. Waldron writes about Kant’s defense of legislation: “The one who proposes to resist or disobey is announcing in effect that it is better to revert to a situation in which each acts on their own judgment about justice.”
some acts of principled disobedience are justified (even morally required, I argue in my book) and it would generally be a good thing if one undertook those.

ii. It is not clear that principled disobedience undermines the rule of law in this way. Indeed, legal systems can withstand surprising amounts of noncompliance, criminal or principled, while still doing their job of protecting people’s fundamental rights, as we can observe in nonideal conditions such as ours.

iii. Civil disobedience does not undermine but instead strengthens the rule of law: King affirms that his civil disobedience expresses “the very highest respect for the law,” Ronald Dworkin viewed civil disobedients as engaged in constitutional disputes over the law and contributing in that way to law’s integrity; and William Scheuerman argues that we should understand civil disobedience as exemplifying and underpinning the rule of law.

iv. It is clear from the debates that critics articulate a firm presumption, but not a categorical prohibition, against principled disobedience, since all recognize that civil disobedience can sometimes be justified.

2.3. Threat to democracy

Objection: Principled disobedience threatens and erodes democratic authority. By flouting democratic processes, disobedients make themselves enemies of democratic ideals.

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Response:

i. Disobedients often protest precisely a lack of democracy, and their exclusion from collective decision-making processes. They demand democratic inclusion—a reasonable demand indeed given the serious democratic deficits of our supposedly decent polities, historically and at present.

ii. Civil disobedience has the potential alert to and correct these pervasive democratic deficits. For instance, Daniel Markovits identifies “democratic disobedience,” designed to “overcome not a particular policy but the inertial institutions that prevent a democratic sovereign from taking up an issue by excluding considerations essential to the issue from the popular or legislative agenda.”

Democratic theorists conceive of civil disobedience as essentially an exercise in popular participation and show that civil disobedience is not only compatible with but can be a true expression of democratic sovereignty.

To recap, none of the three objections sets a viable moral prohibition against principled disobedience. What they offer instead are presumptions against disobedience in decent, liberal democracies, which weighs a fortiori against uncivil disobedience, yet can be overcome under unjust sociopolitical conditions.

2.3. In defense of (in)civility

Not only are the traditional objections against disobedience mere presumptions against it, but the considerations that explain why civil disobedience is sometimes

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justified—especially its justice-preserving and democracy-enhancing potential—can also explain why some acts of uncivil disobedience can be justified, too. One might doubt this, objecting that I ignore proponents’ stress on the civility of civil disobedience in my responses to the objections above. Civil disobedients’ restraint—their commitment to nonviolence, acceptance of punishment, etc. (in the standard account)—is supposed to demonstrate that they are not engaged in a form of moral self-indulgence and understand the demands of reasonable pluralism.

In contrast, agents engaged in non-civil and uncivil disobedience, such as illegal strikes, riots, government whistleblowing, and DDoS attacks, flout these self-imposed constraints and impose serious costs on their targets and potentially on the community at large or even the state (e.g., leaks of classified state information risk harming national security). There are a number of reasons for preferring civil over uncivil disobedience indeed. In reviewing some of them here, I show that they do not categorically rule out non-civil types of principled lawbreaking.

Activists have good prudential reasons to favor civil over non-civil disobedience, including the harsh punishment that will be meted out, especially if the disobedient act involved violence against persons or property. There also pragmatic reasons. Social scientists have recently shown that nonviolent resistance campaigns tend to be more successful than violent campaigns. Drawing on their statistical analysis of 323 twentieth-century violent and nonviolent civil resistance campaigns, Erica Chenoweth and Maria Stephan have found that while many violent decolonization movements were successful in the 1970s and 80s, the success of violent resistance campaigns has since declined.
Nonviolent campaigns have become increasingly successful since the 1950s, and especially since the end of the Cold War.\textsuperscript{13} There are also moral reasons to favor nonviolent, civil disobedience. An important source of such reasons is persons’ dignity. Thus nonviolence is morally preferable to violent disobedience, given the harms the latter inflicts or threatens to inflict. Yet nonviolence may not always be the appropriate response to the circumstances. The use of self- or other-defensive violence against an aggressor may be justified, if nonviolent defense is sure to fail. Thus vigilante groups such as the Deacons for Defense protected African Americans from white supremacist violence under Jim Crow.

A general and compelling moral case for civil over uncivil disobedience is prefigurative, based on the idea that the values guiding resistance should be those animating the ideal world, or at least that there shouldn’t be a radical gap between them. Forward-looking concerns demand that agents presently style their resistance in a way that enacts the concord they envision or at least does not foreclose future cooperation.\textsuperscript{14} Transitioning to a just society requires that citizens be willing to live together. Rawls calls this willingness “civic friendship” in his Theory. It designates the social glue holding people together through common endorsement of mutual reciprocity.\textsuperscript{15} Civil disobedience risks eroding civic bonds, but to a much lesser extent than uncivil disobedience, which can inflict lasting damage.

In response, first, we may doubt the need to guide resistance according to the ideal values that one aims to promote. Norman Geras defends revolutionary violence by rebutting the prefigurative view that the means must always reflect the ends pursued, because, he argues, the means “will also reflect their own beginnings,” that is, the oppression and tyranny that revolutionaries seek to overcome.¹⁶ Recently, Lisa Tessman has argued that resistance to oppressive circumstances may need to be guided by virtues and values that we would normally condemn—such as rage or hatred—in order to successfully lead to a just, hate-free society.¹⁷

Second, it may be that the deployment of non-civil or uncivil types of principled disobedience is compatible with, and may often be shaped by, forward-looking considerations of social concord. In particular, there is place for uncivil disobedience where the civic bonds are already seriously strained. This is most likely to be the case in oppressive contexts, where some citizens are denied full and equal status. The Black Lives Matter protests—some of which involved uncivil acts of principled disobedience such as rioting, notably in Baltimore, Maryland, and Charlotte, North Carolina, in 2015-2016—purported to jolt the community into examining whom exactly the bonds of civic friendship and mutual reciprocity tie together. The answer: visibly not black people. Even the violent elements of BLM can and should be seen as expressing outrage and indignation at the inauthenticity of the public commitment to mutual reciprocity.¹⁸

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¹⁸ See Avia Pasternak, “In Defense of political rioting” (ms.)
Incivility is rarely a first-person attribution. It is usually what the powerful accuse the powerless of, when the latter speak with emotion. It is often a tool of a particular form of epistemic injustice Kristie Dotson dubs “testimonial quieting,” whereby interlocutors focus on how oppressed people speak (e.g., they are “whining” or “angry”) instead of listening to what they have to say, which has the effect of silencing the speakers and ignoring and discrediting their testimony.\(^\text{19}\) Often, however, incivility is the end of a long process that begins with protesters expressing their reasonable grievances “nicely,” but not being heard.

To be clear, in conclusion, I do not wish to “dethrone” civility and put incivility in its place. My goal is modest: it is to contest the common understanding of civility as the necessary form of all acceptable principled disobedience and the one and only key to social harmony. Disobedience that flouts the standard script of civil protest can alleviate serious wrongs, highlight injustice, interrogate civic friendship, and correct democratic deficits. It has a role to play in the political drama of our large modern states.

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