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CIVIL DISOBEDIENCE IN A DISTORTED PUBLIC SPHERE

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1. Introduction

Civil disobedience has always existed, but as a philosophical notion it only arrived relatively late in the history of political theory. This is no coincidence. It was only when a public sphere accessible to all had developed in modern times that new opportunities for effective civil disobedience came into being. The reason for this is not self-evident. The public sphere is in some ways distorted, making it problematic for the civilly disobedient to make a public appeal for social justice. To them the public sphere is therefore both a curse and a blessing. Civil disobedience may nevertheless be effective. As a moral issue it is usually discussed in terms of reasons and acts. In this article I will focus on its effectiveness and argue, from a moral perspective, how civil disobedience can be effective despite the distortions the public sphere suffers from.

Civil disobedience has its place within a broad spectrum of actions that make up political (and civil) resistance. They range from self-initiated civil participation, such as the Belgian G1000 (www.g1000.org), via legal demonstration and illegal protests, as we have seen during the Arab Spring, to violent actions. We may differentiate between these different forms of political resistance by taking heed of what makes them effective. Political

resistance may be effective primarily on the basis of either employing dialogical resources or real confrontation. The importance of this distinction is that the first type still functions within the existing power of structure of society, drawing on resources of symbolic power to persuade the people in power who owe their dominance to greater resources, including a monopoly on violence, while the effectiveness of the second type depends, on the basis of real confrontations, on achieving a direct change in society's balance of power. What makes the category of civil disobedience a special one, is that it may be the only form of resistance that can be effective in both respects (although not necessarily simultaneously). If people obeying the law is a necessary condition for the ruling social groups to stay in power, then breaking this law (for example when soldiers refuse to obey an order to shoot at demonstrators) will have an immediate effect as a real confrontation (see Corlett 1997 who discusses the possibility of non-violent, coercive civil disobedience). But breaking the law may also have an effect when it affects not primarily power resources, but people's minds. Here I will focus on the effectiveness of civil disobedience from the perspective of civil disobedience as a moral, more specifically as a dialogical practice (cf. Smith 2011: civil disobedience as 'deliberative practice').

Political theorists usually agree on a standard notion of civil disobedience that comprises at least three characteristics that can be found in the Rawlsian notion of civil disobedience: it involves breaking the law, is non-violent and is public. As Rawls's notion of civil disobedience still dominates literature on this subject, I will take this as a starting-point for criticising the standard notion of Rawls (Rawls 1991a; 1999b). Rawls too starts from the idea that civil disobedience is a form of political resistance. What sets civil disobedience apart from these other forms is that it entails actions that are both illegal and non-violent. Other features Rawls attributes to civil disobedience are not specific to it, but are inherent to all forms of resistance, i.e. that they are 'guided and justified by political principles'. Civil disobedience has one other feature it shares with other forms of political resistance: it is public.

I will argue that Rawls cannot explain how civil disobedience may be effective as a public appeal for social justice, because he does not fully understand what it means for civil disobedience to be public in relation to

the public sphere. His analysis would require an additional notion of publicity which, as I will argue, is the notion of hermeneutical publicity. From a Bourdieusian perspective I then make a case for the claim that public spheres always suffer from hermeneutic invisibility. This may explain why non-violent appeals for social justice fail as dialogical practices. Finally I will suggest how we nevertheless could understand that civil disobedience can be effective as a dialogical practice.

2. Hermeneutical invisibility

According to Rawls civil disobedience is a public act in two different ways: by addressing public principles and by entering the public forum. When breaking the law, which is not necessarily the same law that is being protested against, the civilly disobedient justify their act with an address to public principles. With their appeal they intend to denounce what they consider to be unjust laws. Their criticism is 'guided and justified by political principles'. Next, the civilly disobedient make their appeal in public, i.e. address a public with their act of breaking the law. An act of civil disobedience is by itself not enough, it should be backed up by efforts to offer an explanation for breaking the law. Civil disobedience – as both the act of breaking the law itself and the accompanying acts that disclose its appeals – is then 'engaged in openly with fair notice; it is not covert or secretive. One may compare it to public speech, and being a form of address, an expression of profound and conscientious political conviction, it takes place in the public forum' (Rawls 1999b: 321). The notion of publicity, in both its senses, demonstrates two different dimensions of the public sphere, a subject that Rawls explores more extensively in his *Political Liberalism*. Rawls has been criticised by deliberative and discourse theorists for offering a notion of the public sphere that is restricted to public opinion in the governmental and legal domain and excludes public opinion in the domain of civil society (cf. Benhabib 1996; Charney 1998). But this debate does not affect the criticism of his notion of publicity being discussed in this article.

If the only requirements for civil disobedience to be a public act were 'addressing public principles' and 'entering the public forum', then taking recourse to illegal acts of protest would not be necessary: legal acts of protest already meet these requirements. Rawls acknowledges that people who make normal appeals against injustice, by performing legal acts of protest, may experience difficulties that make it hard for their protest to be heard. As examples he mentions the indifference and the unwillingness of the dominant majority. He then concludes that, when 'normal appeals to the political majority [...] have failed', civil disobedience is 'a last resort' (Rawls 1999b: 327): '[b]y engaging in civil disobedience a minority forces the majority to consider whether it wishes to have its actions construed in this way, or whether, in view of the common sense of injustice, it wishes to acknowledge the legitimate claims of the minority' (ibid.: 321). Rawls does not choose to theorise such difficulties as indifference or unwillingness as a problem of publicity. This weakens, in the first place, his notion of the public forum. Rawls concedes that making one's appeal in public is obviously not enough when the public it addresses is indifferent or unwilling to listen. But it then remains unclear why a public sphere that does not function properly for normal appeals would do so for civil disobedience. As breaking the law is the one difference that he discusses in comparing normal appeals with those of civil disobedience, Rawls seems to assume that the symbolic force of an illegal (non-violent) act is already enough to arouse the attention of the dominant majority. But even this explanation would be unsatisfactory. Underlying his analysis of moral appeals for justice is the assumption that they, whether they are sustained by legal or illegal acts, essentially aim to persuade the dominant public. But it is not obvious that breaking the law has this effect. It may even strengthen the opinion of the dominant public that this minority deserves no just treatment. Rawls' notion of the 'public forum' is too weak to overcome the issues I raise here. This is due to the restrictive definition of his other notion of publicity: the appeal to public principles. To show this I will first discuss the Rosa Parks case.

The case of Rosa Parks is commonly regarded as a typical case of civil disobedience. In Montgomery a city ordinance prescribed that seats in buses should be segregated: the first four rows of seats were reserved for white passengers while black passengers could be seated in the remaining rows.

One day in December 1955, Rosa Parks, a black woman, refused to give up her seat for a white passenger. She was arrested for this. It ignited one of the great events of the Civil Rights Movement: the 1955-6 the Montgomery Bus Boycott (McAdam 2011). If we first look at this case from the perspective of the public sphere, the essence of the dominant public opinion was the 'separate and equal' doctrine, which stated that the separation of black and white people was compatible with the idea of their equality. The basic, legal source for this doctrine was a decision of the Supreme Court of the United States of America in the case *Plessy v. Ferguson* (163 U.S. 537 (1896)). This decision was repudiated only in 1954 by a new decision in the case *Brown v. Board of Education* (347 U.S. 483 (1954)). If, however, we look beyond the dominant public opinion and what laws were saying, African-Americans suffered in many ways from a severely discriminatory attitude towards them. It led to brutal practices of lynching men and raping women, but it also translated into many more subtle practices of discrimination (McGuire 2010). Gradually some African-Americans organised themselves for political action. When the Rosa Parks incident took place in 1955, they had already been looking for an interesting case that could lend itself not just to an appeal to the dominant public, as it appears, but also to a mobilisation of their community to mass protest actions. The case of Rosa Parks was carefully and strategically chosen. An important consideration was the estimation of how the press and the public opinion would judge her integrity and respectability. For this reason the earlier, similar, case of Claudette Colvin was rejected (McGuire 2010).

The notion of the 'public forum' is defective due to the restrictive definition of Rawls' other notion of publicity: the appeal to public principles. As Rawls sees it, the civilly disobedient appeal to public principles with the aim of bringing about a change in the law or policies of the government. But this prevents him from seeing other, deeper-lying forms of injustice. For example, seeing the Civil Rights Movement, of which Parks became part, as a struggle primarily against unjust laws fails to recognise that this movement was a response, as the Rosa Parks case illustrates, to a pattern of discriminating practices against African-Americans that were sometimes backed-up by laws, sometimes enacted despite laws to the contrary, and in the end denied them real citizenship (cf. Arendt 1969). The appeal

of the civilly disobedient, although it may be part of a struggle for adjusting laws, addresses the attitudes of people from dominant social groups against the dominated, and the social practices that result from it. These practices include violence, but also ordinary injustices that evade regulation by law. As the dominated see themselves forced to take recourse to civil disobedience, this may show that their problem lies even deeper. The difficulties in making a public appeal for social justice are themselves part of the social injustices which the dominated suffer. Their appeals remain, somehow, invisible to the dominant public. The notion of the public forum, however, does not allow Rawls to theorise this problem.

Another notion of publicity is needed to make sense of this problem. A clue for an alternative understanding is provided by Fricker who draws attention to what she calls 'hermeneutical injustice': 'the injustice of having some significant area of one's social experience obscured from collective understanding' (Fricker 2007: 155). She illustrates this by telling the story of Wendy Sanford who, in the late sixties, was battling depression after having given birth to a son. One day she visited a university workshop on women's and sexual issues and participated in one of the discussion groups: 'In my group people started talking about postpartum depression. In that forty-five-minute period I realized that what I'd been blaming myself for, and what my husband had blamed me for, wasn't my personal deficiency. It was a combination of psychological things and a real societal thing, isolation' (Susan Brownmiller as quoted by Fricker 2007: 149). While Fricker is interested in tracing the moral causes of this injustice to 'a structural identity prejudice in the collective hermeneutical resource' (ibid.: 155), as she phrases it in her technical vocabulary, for the present argument Fricker may be understood to claim that people should be able to articulate, disclose, explicate their social experiences. From this we may derive a normative ideal of publicity that is not one of the public forum, but one of hermeneutical publicity.

Fricker is not explicit on the theoretical sources of her notion of 'hermeneutical injustice' or how she understands hermeneutics in this context. Here I will turn to Gadamer's ideas on hermeneutics, including those on conversation, which interest me not because of the moral ideal they imply, but because they allow me to distinguish two forms of hermeneutical

publicity by tracing what is hermeneutically invisible. Hermeneutics should be understood here as a special form of interpretation, one that pre-understands other people as intentional subjects, not as objects. Hermeneutical publicity (or: visibility), however, is not the standard situation. Hermeneutic invisibility is part of our human condition in two different ways. First, interpretation takes place against a background ('Hintergrund') of pre-understandings or what Gadamer calls 'sensus communis' (common sense) (Gadamer 1990). We may call this 'background invisibility'. Hermeneutic reflection presupposes that something from the background understanding becomes visible in reflected, articulated self-understanding (Gadamer 1993).

Yet another form of hermeneutic invisibility can be distilled from Gadamer's ideas on conversation. In a true conversation people come to an understanding. It requires a certain identification, which does not imply a transposing of one's self into another person, but which is a process in which 'each person opens himself to the other, truly accepts his point of view as valid and transposes himself into the other to such an extent that he understands not the particular individual but what he says. What is to be grasped is the substantive rightness of his opinion, so that we can be at one with each other on the subject' (Gadamer 1975: 387). If during a dialogue people succeed in mutual identification, the exchange of opinions will have a transformative effect on them, changing their previous understandings. If a person's identification fails, however, then the opinion of the other will remain hermeneutically invisible to us. This we may call 'dialogical invisibility'.

The two criteria of publicity that Rawls distinguishes, 'addressing public principles' and 'entering the public forum', are not enough to make civil disobedience into a public act. Only if these notions are supplemented by the notion of hermeneutical publicity (or: visibility) can we see that in the public sphere normal appeals and civil disobedience may both suffer from hermeneutical invisibility. As interesting as this insight may be to moral and political theorists, it is crucial, as the Rosa Parks case illustrates, to the dominated themselves who wish to be heard. They may use this insight for searching those instruments of protest that will overcome hermeneutical invisibility and make their appeal effective. But this requires

understanding hermeneutical invisibility as the consequence of a distorted public sphere. This issue I will address in the next section.

3. The distorted public sphere: social habits of interpretation

In the previous section we have seen two forms of hermeneutic invisibility. The idea of a distortion of communicative exchanges within society has been explored in different ways by deliberative theorists (see Hayward 2004). One of the first was Habermas (1970). His ideas have been re-examined by Warnke (1993), O'Neill (1997) and, also using Bourdieu, Crossley (2004). According to one line of argument the dominant devalue what the dominated say on account of their cultural styles of communication (their way of speaking with an accent, dressing, moving, et cetera). To support this claim Bourdieu's notion of habitus, and specifically of linguistic habitus or habitus in taste, has sometimes been invoked. The general idea behind this is that a certain form or style of how people present themselves elicits a certain response from others, one which discloses a certain evaluation of that style. In the way people present themselves they are recognised as part of some particular social group. Depending on how this social group is valued, people may be perceived as authoritative speakers or devalued as speakers. Fricker, for example, theorises this as 'testimonial injustice' (2007). I choose a different line of argument. I believe Bourdieu's notions allow for yet another interpretation of distorted communication, more specific of a distorted public sphere that has not yet received much attention from political theorists. If we home in on linguistic expressions, Bourdieu's theoretical frame allows a distinction between their form (their style, their non-propositional aspects) and their (cognitive) content. Whereas the former line of argument focuses on the form of communication and self-presentations and its implications for the status of those who speak, regardless of the content, I propose a reading of Bourdieu that focuses on the propositional contents of communicative exchanges and the extent to which the contents of linguistic expressions are caught by habitus.

Bourdieu would agree with Rawls in imagining the public sphere as a forum where citizens exchange opinions, or a 'field of opinion', as Bourdieu

Bourdieu phrases it himself (1977: 168). The contents of these opinions, as I interpret Bourdieu, are structured in two different ways: according to the logic of argument (discourse), and according to social habits of interpretation. The habitus is a system of 'internalized structures, schemes of perception, conception, and action common to all members of the same group or class' (ibid.: 86) which determines people's attitudes, not only in how they act and react towards people from other (dominant or dominated) social groups, but also in how they perceive and understand their social world. Bourdieu understands habitus as a response by people to the objective conditions of existence (economic, social, et cetera) that build up the social world in which people grow up. As past experiences condition people to respond in particular ways to these conditions, they tend to perform the same reactions whenever similar conditions occur. When conditions change over time but without compelling them to adapt their habituated responses, people may persist in the same reactions. Although people's habitus, as a structural, internalised response to objective conditions, lends objective social meaning to their practices, this does not mean that people perform these practices with the intention of realising this objective social meaning. As such the habitus is 'the source of [a] series of moves which are objectively organized as strategies without being the product of a genuine strategic intention' (ibid.: 73). With his notions of 'linguistic habitus' and 'distinction' Bourdieu has explored his notion of habitus in more specific domains, those of language and taste. Whereas these notions stress the non-propositional features of social practices and our non-propositional responses to objective conditions, habitus may also be applied to the propositional contents of our social practices, i.e. of our speech acts. Whenever opinions, as interpretations of objective conditions, are expressed according to certain patterns which themselves are not the product of a strategic intention, they are what I call social habits of interpretation.

Interpretive habits raise problems for making normal moral appeals as Rawls understands them: they prevent the dominant from seeing alternative interpretations of social events and, even more so, they prevent the dominated from adequately reflecting on social injustice. Although Bourdieu has not engaged in discussions on specifically civil disobedience, he has always been concerned with social injustice. One way of incorpo-

rating this in his theoretical frame was by introducing the notion of symbolic violence. Whenever habitus, including interpretive habits, function to conceal power relations, this is what Bourdieu calls symbolic power. One way of understanding this concealment is censorship in its classic sense: the dominant who choose to suppress certain expressions. But Bourdieu has in mind a more pervasive kind of concealment. Outside the field of opinion, the universe of the discussed, is the universe of the undiscussed. This is what Bourdieu calls 'doxa', which is related to Gadamer's common sense: 'It seems, however, to be almost a relationship of mirrored opposition: while Gadamer emphasizes the enabling aspects of the *sensus communis*, Bourdieu emphasizes its limits' (Holton 1997: 47). Both notions have in common the idea that a great deal of what people do carries implicit, non-deliberative meanings that they take for granted and that are beyond their conscious and reflexive grasp. Doxa is therefore pre-reflective. Whenever there is a 'quasi-perfect correspondence between the objective order and the subjective principles of organization [...] the natural and social world appears as self-evident' (Bourdieu 1977: 164). Bourdieu is aware, more than is Gadamer, of the implications of doxa for issues of power and social justice. Domination will be most effective if censorship is internalised and everyone, the dominant and the dominated, accept the social order as a natural order. Social injustices lie hidden in the daily social practices that people perform with their habitus. As the habitus, which governs the interpretive habits, belongs itself to the doxa, people take these interpretations as representing the social reality, even if counter-evidence is available. Unjust practices therefore appear to them as normal and natural. Normal appeals will fail to convince the dominant social groups to adopt new interpretations. Bourdieu is even more pessimistic. He questions people's capacity for self-reflective understanding of their social practices and therefore of the mechanisms of power. Although the public sphere, the field of opinion, is also a sphere of reflection, the social imagination is only quasi-reflective. The limits to self-reflection therefore put a limit on the effectiveness of public dialogue.

Bourdieu allows no room for a disruption of the interpretive habits, of the 'undiscussed', except when a crisis occurs: 'The critique which brings the undiscussed into discussion, the unformulated into formulation, has as the condition of its possibility objective crisis, which, in breaking the im-

mediate fit between the subjective structures and objective structures, destroys self-evidence practically' (ibid.: 168-169). The objective crisis enables people to challenge the boundary between doxa and the field of opinion. They make explicit the views on certain social conditions, views that until then remained undiscussed and for that reason were invisible, and start to question the self-evidence of these views which by now are unveiled as arbitrary interpretations. As a result they will bring forward opinions which are heterodox, because they bring undiscussed topics from the doxa into the field of opinion. But the crisis is not yet a sufficient condition for the emergence of a critical discourse. People from dominant social groups have an interest in preserving the boundary of doxa even though, as this interest too belongs to the universe of doxa, they may not be aware of this interest. One possible strategy would be to prevent, by ignoring or disqualifying, the need to face, and respond to, the heterodox opinions as regards their contents. Another strategy, which is of interest for my argument, to which their social habits of interpretation will prompt them, will be to respond to the contents of the heterodox opinions in an effort to force them into the logic of their standard, orthodox interpretations. The effect will be that heterodox opinions, in a hermeneutic sense, are silenced. A critical discourse which will enable a rationalisation of competing opinions will be possible only, according to Bourdieu, when 'the dominated have the material and symbolic means of rejecting the definition of the real that is imposed on them through logical structures reproducing the social structures [...] and to lift the (institutionalized or internalized) censorships which it implies' (ibid.: 169).

When we do not see social habits of interpretation preventing hermeneutical visibility, we risk not recognising certain acts as civil disobedience. This means examples of those who did not succeed, or have not yet succeeded in making their appeal public, are hard to find, especially so when we focus on our own contemporary societies. This is illustrated by the situation of minority groups such as the Roma. They live throughout the European Union and share the same experiences of institutional discrimination and social exclusion. Although their situation has been recognised by both national authorities and the European Union, their (illegal) acts of resistance against political authorities are rarely reported in terms of civil disobedience. One reason for this may be that we tend to assume that

civil disobedience, as the term already suggests, is performed by citizens, whereas citizenship is precisely what is often denied to Roma. What the problematic status of their citizenship implies for the effectiveness of their appeals in the public sphere is illustrated by the campaign of a group of Roma NGOs. In the summer of 2010 French authorities started to repatriate thousands of Roma to Romania and Bulgaria in order to get rid of illegal camps. Roma NGOs tried to change public perception with a campaign that had as its motto 'ROMA=CITIZENS'. However, this failed to stop or slow down the expulsion of Roma, in part because the motto itself was a strategy that could not disrupt the social habits of interpretation surrounding the concept of citizenship (cf. Parker 2012).

4. Disrupting the social habits of interpretation

In the previous two sections I have sketched the problem the dominated face in making an appeal. The concept of hermeneutical invisibility makes it clear that the social injustice dominated people experience includes the problem of making public their claim of social injustice. Next, the notion of social habits of interpretation introduces the possibility of a distorted public sphere that prevents normal appeals from becoming hermeneutically public. We have no reason yet to believe that civil disobedience does not suffer from this problem. In this section, however, I will show why civil disobedience may nevertheless succeed where normal appeals fail. First I will argue that the pre-condition for disrupting the social imaginations depends on a pre-reflective capacity to sense injustice that both the dominated and the dominant have, despite their interpretive habits.

The claim, implicit in Bourdieu's notion of 'doxa', of how oppressed people experience unjust conditions in times without crisis, is problematic (cf. Lewandowski 2000; Crossley 2003; Myles 2004). In any society there is an imperfect fit between the objective and subjective structures, between doxa and the field of opinion, between the actual social practices and what they mean according to society's interpretive habits. In times without crisis, as we have seen, marginalised people experience the imperfect fit, including their unjust conditions, as normal and natural because its real

nature is concealed by the social habits of interpretation and other habitus. Bourdieu claims that only an objective crisis enables them to reflect on their conditions and realise a more appropriate self-understanding. But the reflection of dominated people, however imperfect it may be to bring out clear articulated opinions, presupposes also, apart from objective conditions, subjective experiences that already contain a spark of discontent with these conditions. For this claim we find a clue, again, in Fricke's idea of hermeneutical injustice. Wendy Sanford, in the example we mentioned earlier, had a sense that she was unhappy with her condition even though she lacked the appropriate words and the context for understanding it. Furthermore, when she met other women in a similar situation, she was able, not only to recognise what other people said as relevant to her own situation, but to incorporate what was said into feelings she already had. The notion of doxa cannot, however, allow an understanding of people's doxa as including discontent. By stressing the normality that oppressed people experience in relation to their oppressive conditions, Bourdieu assumes that doxa, in times without crises, is harmonious in a way that suggests that people experience some kind of contentment with their social situation. But a harmonious experience would provide no interesting material for self-reflection.

Another construction is needed of people's subjective experiences to the extent that they belong, beyond reflected self-understandings, beyond habitual interpretations, to the universe of doxa. This requires a different view on 'doxa'. At the same time the challenge is to preserve those elements of 'doxa' that support the analysis of a distorted public sphere. Doxa can be understood as the universe of the undiscussed, but also as the attitude itself that people in society have incorporated towards the universe of the undiscussed: the habitus, the 'feel for the game' or, as Bourdieu also phrases it, the practical sense. It means that people act in silent recognition of what remains as undiscussed. I argue for a broader notion of sense than Bourdieu uses ('sens pratique'), one that includes the sense of injustice (cf. Ostrow 1990; Shklar 1990). Whereas the practical sense generates a sensitivity for the unspoken rules of the game that are implied in social practices, the sense of injustice, on the other hand, creates a sensitivity for the dissonance between what the rules of the game require, and their habitual interpretations. Experiencing the social order

as natural and normal is not necessarily the same as having a harmonious experience and does not preclude the simultaneous experience of discontent. Even when the injustices people suffer are hermeneutically invisible to themselves and go unrecognised as an experience of social injustice, this does not imply that people are blind to the disadvantageous, hard social conditions they personally suffer from. People do sense, at least within the limits of their personal experiences, the differences between their unfavourable situation and those of dominant social groups. And they do sense the burden of their own situation in comparison with the situation of the dominant. To the extent that they are sensitive, therefore, to the dissonance between the habitus that prompts them and others to respond in certain ways, and the needs, wishes, or dreams they have in whatever rudimentary form, they may come to experience discontent about their conditions. At this stage it does not matter that they are yet incapable of articulating their discontent as an indignation about social injustice.

The sense of injustice forms the pre-condition for emancipation and political resistance. It allows for acts of civil disobedience even when people have not yet completed the transition from background invisibility to self-reflection. If injustices are invisible to people from both dominant and dominated social groups, it would seem that political resistance, including civil disobedience, is not possible as it presupposes awareness of those injustices. This is not the case. Even if people are not in a situation of articulating this discontent as one of social injustice, they may nevertheless act on their discontent (see Scott 1990). As people have a sense of injustice, they also have a pre-understanding of the limits of the social power they are subjected to. In such cases it is crucial that the act of breaking the law remains non-public. Only in a later phase, when people of a dominated social group have organised themselves, may the process of self-reflection evolve to the point where they choose to make their appeal public.

All moral appeals in the public sphere have in common the attempt to question habitual interpretations of certain social practices. Moral appeals therefore start from the hope for dialogue and intend to persuade the dominant public opinion by articulating what is claimed to be a social injustice. Just as dominated people have a practical sense and a sense of soci-

social injustice, so have the dominant. While the first sense determines whether the dominant register social injustice, the second sense determines how they are affected by them. The problem is precisely that their sense of social injustice tends to be weak to the extent that habitus, and social habits of interpretation in particular, confirms their dominant position. Whatever reasonable and well-articulated appeal is made, its responses remain caught in the patterns of interpretive habits. This obtains for both normal appeals and civil disobedience. What is needed is something that somehow arouses dominant people's sense of social injustice.

Civil disobedience is more than a purely moral appeal. It can be effective where normal appeals cannot, because the civilly disobedient have realised that their earlier normal appeal failed due to its hermeneutical invisibility. They use this insight to find means of protest that pass the test of morality, but may also disrupt the social habits of interpretation. The secret to their success is that they persist, as they did when they made a normal appeal, in addressing the dominant public as a moral public, but they employ resources of dialogue that differ from those used in making their normal appeal. The use of the 'dialogue' metaphor in relation to the public sphere should not blind us to differences in dialogue between people in a face-to-face setting and interactions between social groups in the public sphere. But there are certain analogies that work for both. Gadamer teaches that the exchange of opinions has a deliberative impact on people: a true conversation changes our own understandings. If, however, we limit our understanding of dialogue to an exchange of opinions as propositional contents, we are in danger of blinding ourselves to the dialogical force of the non-verbal, the non-propositional, implicit meanings of our practices. From Bourdieu we may learn, especially from the way he shows, more so than Gadamer, that doxa is always present in what we do, including the dialogues we 'do'. When one person talks to another it has a deliberative impact on the other by what she says, but a non-deliberative impact by how she says it, how she behaves while saying it. (Although this idea is implicit in Bourdieu, he has not, as far as I know, explicitly dealt with analysing this. cf. Goffman 1981; Garfinkel 1964; Heritage and Clayman 2010.) But an impact which is non-deliberative may nevertheless have a dialogical effect, encouraging or inviting the other to an attitude of identification. This type of effect is related to what Warren called 'the illo-

cutionary force of good manners' (2006). If, in a conversation, someone feels she is not being heard, she still has strategies available that may help her to win the attention of the other, sometimes even by disrupting the habitual 'logic' for having a conversation, for example by being silent (cf. Brown 1998) or by performing rituals of mourning (Pool 2012). Therefore dialogue is an exchange of acts that have both a deliberative and a non-deliberative impact. A dialogue in a face-to-face-setting may have its equivalence in the public sphere. When, in the case of normal appeals, discontented citizens focus solely on what they have to say, they are in danger of not being heard, as we have seen in the previous sections. They should, therefore, also speak by performing acts that have a non-deliberative yet dialogical impact. This impact appeals at first to the practical sense of people from dominant social groups. It should enable them to identify and sympathise with discontented citizens (although they need not be aware of the non-deliberative impact). Next, discontented citizens may succeed to arouse the sense of social injustice the dominant have. And this, finally, may disrupt their habits of interpretation.

It seems that breaking the law is a powerful act of creating a non-deliberative impact and thereby forces a crisis in the habitual interpretations, precisely because in a (near) just society the rule of law is considered to be fundamental to realising justice. If people choose to break a law for their cause, risking punishment, it must be something very important to them. It is therefore tempting to consider, as Rawls does and with him many others, acts of political resistance, based on breaking the law, as constituting a different class of political resistance: civil disobedience. Here I disagree with Rawls. A definition of civil disobedience as breaking the law is a definition from the perspective of the dominant. Many breaches of law of which African-Americans were victim, were not recognised as such. On the other hand, both Claudette Colvin and Rosa Parks, for example, were probably not breaking the law in a technical sense, but only subverting custom (McGuire 2010). What matters for the civilly disobedient is not breaking the law, but what the dominant public perceives as breaking the law. Even then, breaking a law, or at least what the dominant public perceives as such, is in the first place a means of generating publicity, of getting access to the public sphere of the dominant. What really matters for the civilly disobedient is to find what will set in motion the sympathetic

identification of the dominant public: what law to break, how to do this, what other actions are required. What creates the non-deliberative impact the civilly disobedient need, is not that they break the law, but how they break the law. Consider, for example, the demonstration that the Southern Christian Leadership Conference (SCLC) and its leader Martin Luther King organised in 1963 in Birmingham, Alabama. The aim was that the demonstrators would protest non-violently for several days. But the choice for Birmingham was strategic. Its Commissioner of Public Safety was 'a notorious racist and redhead who could be depended on not to respond non-violently' (Howard Hubbard as quoted by McAdam, Doug 2011). The violent response against the demonstrators created the non-deliberative impact the demonstrators had wanted. Public opinion was on their side. Finally, I believe that appeals for social justice may be effective by employing non-deliberative resources, even without the need for breaking the law. My suggestion, therefore, is that in our analysis of non-violent acts of political resistance, including civil disobedience, we focus less on breaking the law as a criterion of distinction, and more on the dialogical effectiveness of non-violent political resistance.

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