ABSTRACT. This paper develops a theory of civil disobedience informed by a deliberative conception of democracy. In particular, it explores the justification of illegal, public and political acts of protest in constitutional deliberative democracies. Civil disobedience becomes justifiable when processes of public deliberation fail to respect the principles of a deliberative democracy in the following three ways: when deliberation is insufficiently inclusive; when it is manipulated by powerful participants; and when it is insufficiently informed. As a contribution to ongoing processes of public deliberation, civil disobedience should be carried out in a way that respects the principles of deliberative democracy, which entails a commitment to persuasive, non-violent forms of protest.

KEY WORDS: civil disobedience, contestation, deliberative democracy, justification, non-violence

Work in contemporary political philosophy offers several perspectives on how principled acts of civil disobedience might be justified within a constitutional democracy. One of the most common approaches can be found in the work of leading liberal theorists of justice, such as John Rawls and Ronald Dworkin. Their intuitive idea is that civil disobedience is justifiable when laws or policies seriously violate principles of justice, such as equal basic liberties. Political philosophers commenting on these theories often accept the value of a justice-based defence of civil disobedience, but suggest that these accounts are too restrictive in the conditions they place on justified civil disobedience. In particular, one idea that has continually resurfaced is that, in some circumstances at least, civil disobedience is understood in this paper as public, illegal and political protest carried out against state laws or policies. Justification here is understood as a moral or political justification – where civilly disobedient citizens claim that they are morally or politically entitled to disobey law. It does not imply legal justification.

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disobedience might also be justified by appealing to democratic principles.3

In this paper I contribute to a democratic defence of civil disobedience by sketching an account informed by a deliberative theory of democracy. Despite the fact that there has been a surplus of material written on the theory and practice of deliberative democracy in recent times, few attempts have been made to apply deliberative ideas to the issue of civil disobedience.4 Yet as a theory about the production of legitimate law through democratic procedures, deliberative democracy clearly has something to offer to debates about the extent of our moral duty to comply with democratic decisions. Using principles gleaned from a family of deliberative conceptions of democracy, this paper suggests certain circumstances where illegal disobedience might become a justifiable course of action in a constitutional deliberative democracy. Such a theory is offered here as a complement to existing theories of civil disobedience that defend illegal protest in the context of rights-violations.5

The paper is divided into three sections. The first offers a general outline of deliberative democracy. The outline brings together themes in the existing literature on deliberative democracy and places special emphasis on the ideas of democratic inclusion, reason-giving through public deliberation and informed public debate. In the second section a theory of civil disobedience as ‘deliberative contestation’ is developed by applying the idea of deliberative democracy to the justifi-

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4 Exceptions are the articles by Sparks and Young, op. cit.

5 This is an important point: I believe that the moral case for disobedience of laws that seriously violate basic liberties has already been defended strongly in Rawls and Dworkin, op. cit. What follows is a discussion of civil disobedience as a contribution to democratic practices. Though I do not argue for it in this paper, I presume that a democratic account and a rights-based account of civil disobedience can be mutually compatible (an argument for this position is developed in Cohen and Arato, op. cit., 564–604).