Rethinking Resistance

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Contents

Abstract

This thesis is a collection of four discrete essays on the topic of political resistance. While the contents of the individual essays are disparate, they are nonetheless connected by substantive and methodological themes. I discuss these issues, and the broader framing of the thesis, in the *Introduction*.

The first essay, *Clarifying Our Duties to Resist*, examines a prominent argument according to which the moral principles that ground individuals' duties to comply in just conditions also ground their duties to resist injustice in unjust conditions. I argue that this argument does not apply to conditions where injustice is entrenched and normalised.

The second essay, *Differentiating Disobedients*, considers the question of the ways in which morally motivated individuals should differentiate themselves from criminals when they engage in political resistance or disobedience. I argue that the category of morally motivated disobedients is potentially more inclusive than has been commonly assumed.

The third essay, *The Legitimate Targets of Political Disobedience*, address the question of what individuals can legitimately target during their acts of political disobedience. I defend a novel principle that allows us to make fine-grained differentiation between legitimate and illegitimate targets.

The fourth essay, *Vandalising Tainted Commemorations*, adjudicates a contemporary disagreement about what we should do about commemorations of people or events implicated in injustice. I offer a qualified defence of vandalising tainted commemorations, as a strategy that adjudicates the demands of the two dominant yet opposing views on the issue.

In a final note, *In Lieu of A Conclusion*, I review the work that has been done, and identify several areas for future work.

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Introduction

> *No philosophical inquiry can restrict itself to the central questions; in pursuing these, we are led to others as well. Common themes unite our consideration of the diverse questions but, rather than begin with these as first principles, I prefer to let linkages emerge. … I suggest that our model be the Parthenon. First we emplace our separate philosophical insights, column by column; afterwards, we unite and unify them under an overarching roof of general principles or themes. When the philosophical structure crumbles somewhat, as we should expect on inductive grounds, something of interest and beauty remains standing.*
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> *~ Robert Nozick, Philosophical Explanations, p. 3.*[1]

We are, at any given point, subject to a large set of laws with which we are – and moreover regard ourselves as – obligated to comply. On most occasions, we are either indifferent to these laws and their requirements or we may agree with them. On some rare occasions, however, we do not, for various reasons, agree. Among other things, we may think the law wicked or stupid. We must, thus, decide what to do. We may choose to quietly comply despite our disapproval. Or we may comply but only after voicing our disapproval. Or we may, after some thought, resist or disobey the law in question.[2] What, on such occasions, should feature in our deliberations? This question has not, in general, been adequately answered within the philosophical literature.

[1] Robert Nozick, *Philosophical Explanations* (Cambridge: Harvard University Press, 1981).
[2] Hugo Adam Bedau, ed., *Civil Disobedience in Focus* (London: Routledge, 1991), 1–12.

This thesis is a collection of four stand-alone essays that, in different ways and to different extents, answer this general question. In each of these essays, I consider a different aspect of political resistance that I think has been neglected within the philosophical literature. On their own, the essays suggest that we need to rethink particular aspects of political resistance. It is my hope that, when taken together, they provide partial motivation for rethinking – and changing – the kinds of questions that are asked and answered about political resistance within the philosophical literature.

While the essays are stand-alone, they are nonetheless connected by several broader themes. I outline these, and other related issues, in this "integrative" Introduction. I proceed as follows. In Section 1, I provide summaries of each of the essays, situating them within a broader context. In Section 2, I briefly detail the connections between the essays. I conclude in Section 3.

Before proceeding, a brief note on terminology is important. I construe political resistance broadly, as involving the refusal to fully comply with certain laws (especially, but not necessarily, those which one disapproves of) and the mechanisms that produce or sustain them. Resistance need not involve law-breaking behaviour – for instance, one may resist by dragging one's feet while complying with a law. Political disobedience is a member of the category of political resistance. Disobedience is construed as necessarily involving law-breaking behaviour. As should be obvious, the burdens of justification for resistance and disobedience differ – the latter are more onerous than the former. This is connected to the general and defeasible presumption against engaging in law-breaking behaviour, which must be overcome if disobedience is to be justified. The essays in this thesis focus, variously, on resistance and disobedience. My choice of focus in each essay depends, in

large part, on what level of granularity is sufficient to address my concern. In concrete terms, this means that I focus on disobedience only when doing so is required to address a concern that arises specifically about law-breaking behaviour. I focus on resistance otherwise. Where my discussions are about resistance, I take it that they may be applied, with further discussions, to disobedience. Where my discussions concern disobedience, I take it that they apply *a fortiori* to resistance.

1 Summaries

1.1 Essay 1: Clarifying Our Duties to Resist

In the first essay, I consider one prominent defence of political resistance that challenges the claim that citizens have a general duty to obey the law – that while shared conceptions of moral principles ground citizens' duty to obey the law in just conditions, they ground their duty to resist or disobey in unjust ones. I call this *Duty*. *Duty* has been applied to a variety of conditions and is moreover intended to be applicable to *all* conditions. *Duty* applies to both resistance and disobedience; I focus on the broader category.

My main argument is as follows: it is untrue that in all conditions, the shared conceptions of moral principles can ground the duty to resist. When we look at some conditions in which injustice is institutionally entrenched and socially normalised, we realise that the shared moral principles themselves are part of the problem – they are configured in ways such that certain states of affairs are not treated as unjust. Where this is so, the natural duty of justice – even if it applies – requires obedience rather than resistance. If there is a

duty to resist in such conditions, it cannot be grounded in those shared principles. *Duty*, then, is not applicable to *all* conditions. While my argument centres on the conditions during the earliest stages of activism for women's suffrage, it is extendable to other unjust conditions.

The discussions in this essay have broader implications for contemporary problems. I conclude the essay with a discussion about engaging in resistance to aid potential migrants who have been turned away by states in accordance with widely accepted rules. Even though people may regard these cases as unfortunate, they do not judge them as impugning the justice of their common institutions. I suggest that the duty to resist, if it exists in these conditions, cannot be grounded in our shared conceptions of moral principles. Other grounds must be found.

1.2 Essay 2: Differentiating Disobedients

Suppose that an individual decides to disobey on this basis, referring to her sincere and serious conviction that a certain law or policy is wrong. In this case, a question arises as to how *we* – who neither inhabit nor have unmediated access to the individual's mind – are to differentiate the morally motivated disobedient from common criminals whose actions also violate the law. In this essay, I discuss Kimberley Brownlee's answer to the question. Specifically, I consider her defence of what she terms the communicative principle of conscientiousness. According to this principle, genuine moral convictions have a communicative element. A morally motivated disobedient who remains silent casts doubt on the sincerity and seriousness of her conviction that a certain law or policy is wrong. These are doubts that the disobedient has reason to avoid inviting – for they may

result in her being erroneously treated as a common criminal and would moreover draw attention away from what she regards as the wrong of the law or policy.

I am in general agreement with Brownlee's account. However, I think that the specific conditions that she articulates are too stringent. My aim in this essay is constrained. I argue for three revisions of Brownlee's principle. First, I explain why the conditions should not be understood as amounting to necessary and sufficient conditions for an individual to have a sincere and serious moral conviction. Second, I argue that the principle is most plausibly construed as one that assesses individuals and their behaviour holistically, rather than one that assesses discrete actions. Finally, I show how disobedients have reason to constrain their disobedience on the basis of their recognition that they may be mistaken about the tactics they employ.

When taken together, these revisions challenge a common thought that morally motivated disobedients should behave in constrained and non-radical ways, in order to not call into question the sincerity or seriousness of their convictions. My revisions allow that an individual may, in some circumstances, engage in unconstrained and radical modes of disobedience without at the same time inviting such doubts. Additionally, the revisions allow the category of morally motivated disobedients to be potentially more inclusive than has been commonly assumed. It may, among other things, include character types such as hackers, rioters or vigilantes.

1.3 Essay 3: The legitimate targets of political disobedience

Suppose that a morally motivated individual is committed to breaking the law, and that her disobedience is grounded by various principles or considerations. A question nonetheless remains as to what *precisely* she should do. Consider, for instance, a law that imposes unjust burdens on certain members of her community, and which effectively prevents them from receiving welfare provisions. What precisely should the morally motivated individual do? She may be faced with a wide range of options – among other things, to steal the provisions, to illegally coerce the officials to distribute them fairly, to attack the uncooperative or corrupt officials, to destroy the provisions, and so on. This, I suggest, is a question of what the *legitimate targets* are of dissidents' political disobedience. While it is common to hear – in both public and philosophical discourse – that what is right for her to do will depend on the circumstances, we nonetheless intuitively think that some of the actions are in some sense better or more meaningful than others. The challenges, then, are to articulate what this sense of meaningfulness consists in, and to consider whether there may be a fine-grained and principled way of differentiating between appropriate and inappropriate targets.

Relatively little philosophical attention has been paid to this issue. In this essay, I go some way in addressing this silence. I have two main aims. The first is to qualify the commonly held position that persons are never legitimate targets of political disobedience. The second is to defend a principle of differentiation that picks out the things that are the legitimate targets of dissidents' political disobedience. According to the principle I defend, legitimate targets are required to bring about the occurrence of an injustice, in contrast with a baseline situation in which that injustice does not occur. principle, I argue, allows us to make fairly fine-grained assessments of what we may legitimately target during acts of political disobedience. For instance, it allows us to say that a corrupt politician's office

can permissibly be targeted, but not her home. The principle also picks out as legitimate targets those things which are required for the occurrence of injustice in the sense described, but which are also used for *good* – such as a police station staffed by racist police officers who nonetheless (and at least sometimes) do protect ordinary citizens from harm. Throughout the essay, I show how the principle is not *ad hoc*, but in fact coheres in several ways to our intuitive judgements about what is appropriate or inappropriate for dissidents to target. On the basis of this principle, we can specify and subsequently vindicate – albeit partially – our intuitive judgement that directing our political action at some targets is more *meaningful* (in some sense) than directing it at others.

1.4 Essay 4: Vandalising Tainted Commemorations

In this essay, I address the question of what we should do about tainted commemorations – commemorations of people who were responsible for injustice, or commemorations of unjust events. Two views currently dominate public discourse. According to one, tainted commemorations should be removed because they are connected to injustice. This view is frequently supported by claims about the threats to the self-respect of historically oppressed groups, that are posed by the tainted commemorations – and which we have an interest in eliminating or ameliorating. According to the other view, tainted commemorations should not be removed even though they are connected to injustice. This view is often supported by the promise that remembering the bad parts of our history can help us to avoid making the same mistakes again.

I have two main aims in this essay. First, I clarify the positions for and against removing such commemorations and argue that they are less naïve than has been assumed. In doing

so, I resist the attempts by adherents of both positions to dismiss the views of their opponents, and the impulse among philosophers to reduce one of the views to the other. The second aim is to offer a qualified defence of vandalising tainted commemorations in some circumstances. This is an option that has not been adequately considered within public or philosophical discourse. I argue that such acts of political disobedience can constitute a plausible way of treating tainted commemorations, and which effectively negotiates the demands of the two opposing views. This defence comprises two parts. I begin by assessing the suggestions to establish counter-commemorations near tainted commemorations and to add contextualising plaques to them. I evaluate them on the basis of how well they satisfy the demands of the two opposing views and argue that they are often beset with difficulties. Then, I argue that a suitably constrained vandalism of tainted commemoration can succeed in overcoming these difficulties and in satisfying the demands of the two opposing views.

2 Connections

In this section, I identify and discuss some connections between the essays.

2.1 Justifying resistance

The essays in this thesis are concerned in various ways with the issue of how resistance or disobedience may be justified. Consider the first essay (‘*Clarifying Our Duties to Resist*’). The essay is concerned with a prominent defence of political resistance that challenges the claim that citizens have a duty to obey the law. According to this argument,

the shared conceptions of moral principles that ground a duty to obey in just conditions turn out to ground a duty to resist or disobey in unjust conditions. In unjust conditions, citizens' resistance or disobedience are grounded in such conceptions of moral principles – specifically, to bring about conditions that satisfy the requirements of those principles. Here, I argue that whether this argument succeeds depends on what the actual conditions are. In some conditions, a political disobedient may find herself able to rely on the shared conceptions of moral principles that undergird and regulate common institutions and social practices. The law or policy is judged to be in violation of those principles. Her political action, in such conditions, may then grounded in the duty to rectify the situation. In other conditions, however, the shared principles may not constitute such grounds. They may be deeply flawed; the law or policy which the individual judges to be wrong do not violate those principles.

The second essay ('*Differentiating Disobedients*') is concerned with a different approach to disobedience – it does not centre on *shared* conceptions of moral principles. Instead, it focuses on the beliefs or convictions of individuals that a certain law or policy is wrong, and that *they* can no longer obey it. For instance, a pacifist who judges that all wars are wrong may judge it impossible for herself to obey a law mandating conscription. Regardless of whether there are shared conceptions of moral principles that allow us to say of mandatory conscription that it is wrong or unjust, we have an interest in at least tolerating individuals' decisions to live in ways that they regard as expressive of their personalities, which includes living in accordance with their moral convictions. Of course, such toleration is not absolute. Among other things, it is defeated by considerations of the harms and risks that would be posed by individuals living in this way.

The third essay (‘*The Legitimate Targets of Political Disobedience*’) is concerned with justification at a more fine-grained level. Here, the concern is with the criticism – common within public political discourse – that dissidents’ law-breaking actions are unjustified because they are directed at *this* or *that* specific target. For instance, activists who fight to eliminate or mitigate racial injustices appear to be behaving in an unjustified manner when they illegally stop flights from departing an airport by chaining themselves to the runway. Settling the issue of individuals’ duties or rights to resist leaves open what we should think about this case, and others like it. Within the philosophical literature, this question, concerning legitimate targets, is often regarded as a practical or strategic – rather than moral – issue, best left to dissidents who are better acquainted with the details of the circumstances they find themselves in. this position is undergirded by an implicit and respectable restraint concerning the appropriate reach of philosophical theorising, especially in the absence of details about living experiences on the ground. However, and as I argue in the essay, this view is mistaken. There are issues of whether dissidents behave permissibly (or justifiably) when they direct their political action at *this* or *that* target.

The focus in the final essay (‘*Vandalising Tainted Commemorations*’) is even more fine-grained. Suppose that an individual has correctly identified a legitimate target for her political disobedience. Now, she recognises that there are weighty reasons against directing her political action at that target. For instance, it may be required to bring about some good or desirable state of affairs, or perhaps others in her society may have legitimate interests in the preservation of those targets. What should she do? Several options are available to her. She may concede that the reasons against her action outweigh those in favour of taking the action and leave the target as it is. Or she may argue that her

reasons outweigh those in favour of it. Or she may attempt to find a way of acting that respects the claim on both sides. This is a generalised form of the question which I address in the final essay – which concerns how we should treat tainted commemorations.

2.2 Concrete issues

The essays share a basic orientation – there is more that philosophers can say about "concrete" or "applied" issues that arise when we think about political resistance, beyond the more general or abstract issues concerning, for example, citizens' right to disobey (where that right is set against the backdrop of the broader questions of the legitimacy of the state she lives in),[3] or the interests citizens have,[4] and so on. I do not deny that these general or abstract issues are important. My contention is that our answers to these issues, if and when we find them, do not provide clear or determinate answers for the finer-grained questions of what citizens can permissibly (or should) do in concrete cases. For instance, the conclusion that citizens have the right to disobey in a given condition leaves open the questions of *what exactly* they should do, *why* they should perform this rather than that action, and *how* they are to respond to countervailing considerations, and so on. Furthermore, settling the issue of rights does not *help* us with answering these questions. Independently of the problems specific to a narrow focus on general or abstract issues,[5]

[3] Joseph Raz, *The Authority of Law: Essays on Law and Morality* (Oxford: Clarendon Press, 1979), 272–73; David Lefkowitz, "On a Moral Right to Civil Disobedience," *Ethics* 117, no. 2 (2007): 202–33.
[4] Peter Singer, *Democracy and Disobedience* (Oxford: Clarendon Press, 1973); Ronald Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1977); John Morreall, "The Justifiability of Violent Civil Disobedience," *Canadian Journal of Philosophy* 6, no. 1 (1976): 35–47; Raz, *The Authority of Law*, 272–73.
[5] For a discussion of several problems that arise when philosophers focus narrowly on general or abstract issues, and also when they try to "apply" their conclusions for those issues to "real" cases, see Jonathan Wolff, "Method in Philosophy and Public Policy: Applied Philosophy versus Engaged Philosophy," in *The Routledge Handbook of Ethics and Public Policy*, ed. Annabelle Lever and Andrei Poama (Abingdon: Routledge, 2019), 13–24.

the fact that such questions have generally been left unaddressed gives us, to my mind, good reason to explore them. And these are the issues which I address in the thesis.

In light of the issues that this thesis addresses, there may be a worry that I have departed – in some sense and to some extent – from *philosophy*. This worry is perhaps most prominently articulated by Gerald Gaus. According to Gaus, philosophers who "apply" their theories to concrete cases fail to achieve true justified beliefs, and thus 'corrupt philosophy'. Gaus' specific formulation is a little less strident than first appears. He claims only that '*much* … of applied ethics fails to achieve the requisite standard of argument or justification'.[6] The connection between applied philosophy (applied ethics in particular) and corruption thus is, on this view, contingent – not because there is anything essentially corrupting about such work, but simply because much of it happens not to be very good. In this respect, the possibility is left open that the work done here could meet the requisite standards.

My concern with this worry lies instead with the specific conception of philosophy that underlies it. On Gaus' presentation, philosophy appears to be concerned only with the discovery of generalised truths or claims that are justified regardless of the 'wants, values and ends' of the audience to whom those truths or claims are to be justified.[7] This view,

[6] Gerald Gaus, "Should Philosophers 'Apply Ethics'?," *Think* 3, no. 9 (2005): 64, emphasis mine.

[7] Gaus, "Should Philosophers 'Apply Ethics'?" It must be noted that Gaus' concern is not with non-ideal theorising in general, where such theorising is taken as answering in the positive the question of whether feasibility considerations should constrain normative political theorising. Instead, his claim here appears to be that insofar as applied philosophy accommodates the wants, values and ends of its audience, it is a corrupt form of philosophy. In this sense, the discussion between ideal and non-ideal theorising is orthogonal to the issue here – the purported error that Gaus is concerned with may arise at either level. For recent surveys of the different ways of drawing the line between ideal and non-ideal theorising, see Laura Valentini, "Ideal vs. Non-Ideal Theory: A Conceptual Map: Ideal vs Non-Ideal Theory," *Philosophy Compass* 7, no. 9 (September 2012): 654–64; Zofia Stemplowska and Adam Swift, "Rawls on Ideal and Nonideal Theory," in *A Companion to Rawls*, ed. Jon Mandle and David A. Reidy (Chichester: Blackwell, 2014), 112–27.

however, is peculiarly narrow. Since I do not want to embark on a defence of philosophical methods here, my response will be brief. If we take this conception of philosophy seriously, we see that it may even rule out work in political philosophy that we standardly accept as philosophical. Consider, for instance, the following features of John Rawls' work in political philosophy. It begins by taking seriously the considered judgements and beliefs (at all levels of generality) of a set of individuals who have been idealised in a certain way – as living in a constitutional liberal democratic society, and as being interested in offering certain kinds of reasons for the exercise of political power in certain domains that may be accepted by their interlocutors in a specific way, and so on.[8] This appears to, in some sense, make reference to the wants, values and ends of the audience to whom the truths or claims (in Rawls' case, principles) are to be justified. If so, even Rawls would be excluded on Gaus' conception – as not being engaged in philosophy. Moreover, from this perspective, not much may even be left which could count as philosophy. I do not endorse this specific conception of philosophy and am moreover suspicious of narrowing the concerns of philosophy in this way (and, along with it, the grounds for imposing such restrictions). Consequently, I do not take it as setting constraints on my project here.

In saying this, however, I am not committed – at least here – to the further claim that this conception of philosophy is *wrong*. Answering the questions of whether there is a proper or right conception of philosophy, and whether it can accommodate such "concrete" or "applied" questions will require much more work than I can provide here, in a thesis that is not primarily concerned with political-philosophical methodology. In light of this, we

[8] John Rawls, *Political Liberalism: Expanded Edition* (New York: Columbia University Press, 2005), xiii–lx; Burton Dreben, "On Rawls and Political Liberalism," in *The Cambridge Companion to Rawls*, ed. Samuel Freeman (Cambridge: Cambridge University Press, 2003), 316–46.

may qualify the nature of my project in the following way: proponents of a conception of philosophy that approximates Gaus' may see my discussions and their results as conditional on our answer to the purportedly more fundamental question of what the correct conception of philosophy is.[9] I do not believe that this qualification throws doubt on any of the substantive claims I make in this thesis.

2.3 Context sensitivity

The essays rely, in some sense and to some extent, on the distinction between *pro tanto* and all-things-considered claims. The central focus of Essay 1 ('*Clarifying Our Duties to Resist*') is the *pro tanto* duty to bring about just institutions, including through resistance. Even if individuals do in fact have such a duty in all circumstances (a claim which I deny), the issue is still left open as to whether they should, all things considered, behave in ways that discharge that duty. The conditions identified in Essay 2 ('*Differentiating Disobedients*') as those which an individual needs to satisfy in order to indicate the sincerity and seriousness of her moral convictions are *pro tanto* in character. In some circumstances, the individual may have weighty reasons for not satisfying those conditions. Essay 3 ('*The Legitimate Targets of Political Disobedience*') defends a principle that identifies *pro tanto* legitimate targets, as those things that are required to bring about injustice. Whether individuals should direct their action at such targets, when all things are considered, is left open. Essay 4 ('*Vandalising Tainted Commemorations*') articulates a *pro tanto* defence of vandalism, which rests on showing that it can satisfy the desiderata from two opposing views as well as defeat several presumptions against

[9] For further discussions of how utopian or realistic a philosophical theory can be, see Valentini, "Ideal vs. Non-Ideal Theory"; Stemplowska and Swift, "Rawls on Ideal and Nonideal Theory."

vandalism. Again, it leaves open whether individuals should vandalise tainted commemorations, when other considerations beyond those which I have discussed are brought to bear on the issue.

At this point, one may worry that the essays' reliance on this distinction is self-defeating. Recall that the essays have been earlier described as sharing a basic orientation – aiming at providing answers to the questions of *what exactly* individuals should do, *why* they should perform this rather than that action, and *how* they are to respond to countervailing considerations, and so on. By rendering the claims made in the essays provisional in this sense, rather than all-things-considered, it appears that they do not actually answer those questions which I set out to answer. This worry about self-defeat is, however, exaggerated. The fact that the essays' claims are provisional means only that they provide partial answers to the questions, and not that they do not answer them. Of course, more could and ought to be done in attempting to provide fuller responses to these questions. And it is my intention of carrying on work in this direction, beyond the limits of this project. I identify several topics for future investigations in a final note at the end of this thesis ('*In Lieu of A Conclusion*'). For now, we may note, simply, that the possibility of going further does not diminish the importance of going some distance.

The reliance on the distinction between *pro tanto* and all-things-considered claims is intended to ensure that the claims made in the essays leave room for contextually sensitive verdicts about what individuals in any given circumstances should do, all things considered. This is important if we wish to avoid dogmatism – insisting that differently situated individuals nonetheless should, all things considered, do the same thing. Notice, however, that accommodating context sensitivity does not preclude our making general

or generalisable claims. Indeed, the *pro tanto* claims that are made in the essays are intended to be generalisable (at least to an extent). For instance, we can say that differently placed individuals *in fact* have reasons to direct their actions at things that are required to bring about injustice (given, of course, the stipulation that the individuals have interests in eliminating or ameliorating injustice), even as we acknowledge that those reasons may, in some circumstances, be outweighed by other considerations. Structurally similar claims may be made for the various conclusions of the other essays.

3 Directions

Despite these connections, the essays are nonetheless, and in an important sense, substantively disparate. Here, I wish to draw inspiration from the epigraph, by Robert Nozick, at the start of this introductory essay. We may see the work in this thesis as constituting an attempt to move beyond the so-called "central" questions in political resistance, to the more fine-grained questions of what citizens can permissibly (or should) do in concrete cases. Addressing concrete cases, however, requires that we first attend to the myriad considerations that are present, and which are salient in those circumstances. While I have restricted my attention to four substantively disparate issues, I leave open the possibility that they may be united or unified, in some sense and to some extent, by overarching general principles or themes. What I have not done, is to prematurely – and on the basis of merely four substantively disparate essays at different levels of generality – attempt to speculate what those principles would look like. I believe that taking Nozick's insight seriously means that we might not know, as we emplace the various columns, whether what we build is in fact (or could indeed become) the Parthenon.

A brief note before we proceed: in each of the essays, I make extensive use of footnotes. The footnotes serve two primary functions. First, they provide context for some arguments. They highlight how the argument that is being considered is situated within the academic literature – what it responds to, and who has responded to it. These footnotes provide the reader with a sense of the complications that accompany any philosophical argument, but which would, if included, detract from the flow of the essay. The use of footnotes for this purpose is especially marked in essays where I bring historical and sociological insights to bear on the philosophical arguments being made. Second, they clarify the exegetical moves that undergird my reconstruction of some arguments. This is important, as the arguments that I discuss are often not clearly presented by the authors themselves and may be variously interpreted. In some cases, there may also be ongoing exegetical disputes within the literature on those arguments. In these contexts, and wherever possible, my discussions in the main text proceed on the basis of what I take to be the most plausible reconstruction of the arguments. I leave to the footnotes my discussions of the exegetical issues related to be reconstruction, and how I have resolved them. While it is true that exegetical issues are not directly relevant to the questions I wish to address, I do not wish to ride roughshod over them. The use of footnotes, then, appears to be a good compromise. Very rarely, I use footnotes for a third function – to indicate things that I have left unsaid or issues which I am unable to address in the main text, but which could form the basis of future investigations. The most apparent implication of all of this, however, is that the footnotes are numerous. However, and to the best of my knowledge, I have not included in the footnotes any claims or qualifications that affect how my arguments work, or assumptions upon which my arguments stand or fall.

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Essay One: Clarifying Our Duties to Resist

Abstract

What should individuals in unjust societies do? According to a prominent line of thought, they have a *duty* to resist injustice. The moral principles that ground the duty to obey the law in just or nearly just conditions are usually deemed to ground the duty to resist in unjust conditions. Call this *Duty*. *Duty* is often applied to a variety of cases and assumed to be applicable to all conditions. In this essay, I critically examine the application of *Duty*, focusing on conditions involving institutionally entrenched and socially normalised injustice. In such conditions, where the relevant moral principles are marshalled in support of injustice, *Duty* is not clearly applicable. I offer a diagnosis of how *Duty* is supported by a certain view about how individuals living in unjust conditions may come to recognise it. I conclude by considering how my discussions may clarify a contemporary problem about engaging in resistance to aid potential migrants who have been turned away by states in accordance with widely accepted rules.

Introduction

It is a common thought in both public and philosophical discourse – one that appears to approximate consensus – that in a reasonably just society citizens have a general duty to obey the law. It is, moreover, generally acknowledged that this duty, where it exists, is defeasible or *pro tanto* in character. Among other things, it may be overridden by considerations of costs. For instance, the duty to obey any particular law might be overridden if obedience would foreseeably lead to severe harms or wrongs on individuals who neither deserve them, nor have behaved in ways that render themselves liable to suffer them. Such a duty might also be overridden by the consideration that disobedience would lead us to behave in ways that violate our other commitments. Obedience is the *default* position. Citizens, if they wish to resist or even disobey, must provide justifications for their actions. Among other things, they must show that something weighty is at stake and that it defeats the duty to obey. Where such justifications cannot be found, they must obey.

In this essay, I consider one prominent defence of political resistance that challenges the claim that citizens have a general duty to obey the law: individuals living in unjust conditions have a *duty* to resist injustice. Shared conceptions of moral principles that ground a duty to comply with the law in just conditions are argued to ground a duty to resist or disobey in unjust conditions. Call this *Duty*. This approach to resistance and disobedience is appealing. If successful, it would secure a much stronger claim than the claim that individuals are justified in resisting or disobeying. It has correspondingly received significant attention over recent years.

I argue that the duty to resist, assuming it exists, cannot always be grounded in the way sketched out by *Duty*. In some contexts involving institutionally entrenched and socially normalised injustice – where certain moral principles are marshalled in support of injustice – the claims that individuals are under a duty to resist on the basis of shared conceptions of moral principles, and that their resistance is justified by the demand to satisfy that duty, are mistaken. If their actions are justified – as we may believe they are – it would have to be on the basis of something other than an appeal to shared conceptions of moral principles. The discussions thus constitute an important qualification on the scope of duties to resist as sketched out by *Duty*. This qualification is not merely of theoretical interest. Instead, and as I will suggest, it has implications for what we may and ought to do about some contemporary states of affairs.

The essay proceeds as follows. In Section 1, I outline the general structure of *Duty* by tracing its roots to John Rawls' statements concerning the natural duty of justice, which requires individuals in unjust conditions to act in ways (including resistance or disobedience) that bring about just institutions. Philosophers who argue for the duty to resist often endorse this aspect of Rawls' account. *Duty* is often applied to a variety of cases and is assumed to be applicable to all conditions. In Section 2, and looking back at the earliest stages of activism for women's suffrage, I argue that in some conditions, the injustice lies in the problematic conceptions of moral principles that undergird common institutions and practices. In such conditions, injustice is institutionally entrenched and socially normalised. Individuals do not regard there to be any injustice, and thus the relevant moral principles are not regarded as grounding a duty to resist. *Duty* cannot be appropriately applied to these conditions. In Section 3, my aims are diagnostic. I show that *Duty* is supported by a certain view about how individuals living in unjust conditions

may come to recognise injustice. I show that two arguments supporting this view are used to dismiss the significance of the possibility that shared conceptions of moral principles are themselves problematic. The arguments centre on the possibility of escaping the influences of ideology, and on the obvious perniciousness of protecting self-interests. Such dismissal, if successful, would undermine the conclusions in Section 2. I argue that they do not always succeed. In Section 4, I conclude with a brief consideration of how my discussions can be applied to clarify a contemporary problem about engaging in resistance or disobedience to aid potential migrants who have been turned away by states in accordance with widely accepted rules.

1 Duties

According to John Rawls, the natural duty of justice imposes two related requirements. It requires citizens to support and comply with just (or nearly just) institutions that exist and apply to them. It also requires citizens to bring about just institutions which do not yet exist, at least when this can be done without much cost to themselves.[1] Among other things, just institutions are those situated within, and guided by, a constitution satisfying the principle of equality or equal liberty – according to which each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties. When just

[1] John Rawls, *A Theory of Justice: Revised Edition* (Cambridge: Belknap Press, 1999), 99, 293–301. For developments of Rawls' account of the natural duty of justice, see Jeremy Waldron, "Special Ties and Natural Duties," *Philosophy & Public Affairs* 22, no. 1 (1993): 3–30; Christopher Wellman and John Simmons, *Is There a Duty to Obey the Law?* (Cambridge: Cambridge University Press, 2005); Anna Stilz, *Liberal Loyalty: Freedom, Obligation, and the State* (Princeton: Princeton University Press, 2009); Thomas Christiano, *The Constitution of Equality: Democratic Authority and Its Limits* (Oxford: Oxford University Press, 2010). For a critical take on the relationship between natural duty and the obligation to comply with the law, see George Klosko, "Political Obligation and the Natural Duties of Justice," *Philosophy & Public Affairs* 23, no. 3 (1994): 251–70.

conditions obtain, citizens have a requirement – deriving from the duty of justice – to comply with the law. In unjust conditions, however, the requirement to comply with the law ceases to bind citizens. They are instead *required* (and *a fortiori* permitted) – again, deriving from the duty of justice – to transform or overturn the unjust conditions in order to bring about just institutions, subject to the consideration of the costs to themselves.[2] In effect, what individuals are required to do is conditional on the circumstances they find themselves in.[3]

Rawls restricts his attention to how individuals ought to act in discharging the natural duty of justice in *nearly just* societies. These societies are described as well-ordered for the most part. There exists a conception of justice that is publicly recognised as constituting or undergirding the fundamental terms of citizens' cooperation, and by reference to which they regulate their political affairs.[4] However, there are some serious violations of justice which nonetheless occur. In this context, Rawls argues that citizens are required by the duty of justice to bring about just institutions. They are justified in engaging in resistance and civil disobedience with the aim of bringing about a change in the unjust laws or policies, if doing so would in fact satisfy the demands of the duty of justice. In justifying their political actions (including resistance and disobedience), citizens refer and appeal to the 'commonly shared conception of justice that underlies the

[2] Rawls, *A Theory of Justice: Revised Edition*, 99, 310–12, 319. That is to say, the duty to engage in social change is *pro tanto* and imperfect in character.
[3] Two related clarifications are relevant for securing the accuracy of this reconstruction of Rawls' account. First, the conditionality of this requirement is fine-grained (about what *exactly* individuals are required to do), rather than coarse-grained (about what *in general* they are required to do). On the coarse-grained characterisation, conditionality is absent. Individuals are simply required to do whatever it takes in order to further justice. Second, fine-grained conditionality is distinct from, and compatible with, Rawls' claim that the natural duty is *unconditional*. Rawls means only to note that the duty of justice is not conditional upon individuals' consent or their voluntary acts. Thus, the characterisation of the requirement as conditional does not depart from Rawls' account. See Rawls, 99.
[4] Rawls, 321, 325, 329, among others.

political order'.[5] In making this appeal, they show how the states of affairs are in fact unjust according to the shared conception of justice. This appeal constitutes both the justification and explanation for their actions, which they offer to their fellow citizens.

Rawls' narrow focus has received sustained criticism. Perhaps most importantly, it is problematic for the reason that we do not inhabit nearly just societies. Indeed, most of our societies are marred by corruption and injustice, and may have been so from the very start.[6] Rawls himself appears to concede as much, when he qualifies his account of civil disobedience as being restricted to those nearly just societies.[7] If so, Rawls' discussions of civil disobedience appear to provide us with no guidance as to how individuals like us, living in the societies we find ourselves in, should think about our duties of justice or how to discharge them – especially if doing so involves our having to engage in resistance or disobedience. Contemporary political philosophers have set about to extend or revise Rawls' account, or to reject its relevance or usefulness, for our current times.[8]

[5] Rawls, 320–21. Rawls subsequently weakens this formulation, allowing that citizens in a nearly just society can have different conceptions of justice, *provided that* those conceptions nonetheless lead to similar political judgements (in our context, about the justice of the laws and policies against which activists react). The point I make holds regardless of which formulation is adopted. See Rawls, 340.

[6] I set aside one potentially radical implication of the observation that our societies are deeply unjust – that it is difficult or impossible to sustain a *general* moral or political duty or obligation to comply with the law in such conditions. For further discussions, see Joel Feinberg, "Civil Disobedience in the Modern World," *Humanities in Society* 2, no. 1 (1979): 37–59; A. John Simmons, *Moral Principles and Political Obligations* (Princeton: Princeton University Press, 1979); Kent Greenawalt, *Conflicts of Law and Morality* (Oxford: Oxford University Press, 1989); Chaim Gans, *Philosophical Anarchism and Political Disobedience* (Cambridge: Cambridge University Press, 1992); Kimberley Brownlee, "The Moral Status of Civil Disobedience" (DPhil dissertation, Oxford, University of Oxford, 2007), 39–75; David Lyons, *Confronting Injustice: Moral History and Political Theory* (Oxford: Oxford University Press, 2013), 154–55; Robert Jubb, "Disaggregating Political Authority: What's Wrong with Rawlsian Civil Disobedience?," *Political Studies*, 2019, 955–971.

[7] Given that Rawls already acknowledges this restriction, there is a question – which has not been adequately addressed within the literature – about why he nonetheless chooses to focus on political action within nearly just societies. Elsewhere, I suggest that this has to do with Rawls' understanding of the reconciliatory task of political philosophy. Regardless of this, however, the worry about the lack of guidance remains.

[8] For representative monographs on this issue, see Kimberley Brownlee, *Conscience and Conviction: The Case for Civil Disobedience* (Oxford: Oxford University Press, 2012); Lyons, *Confronting Injustice*; Tommie Shelby, *Dark Ghettos: Injustice, Dissent, and Reform.* (Cambridge: Belknap Press, 2016);

Regardless of their endorsement or rejection of Rawls' narrow focus, however, many political philosophers appear to endorse the following claim, central to his account:[9]

> *Duty*: Shared conceptions of certain moral principles ground citizens' duty to comply with the law in just conditions, and their duty to resist or disobey in unjust ones.[10]

According to *Duty*, the duty to resist is grounded in shared conceptions of certain moral principles to which people are committed. *Duty* is often explicitly endorsed. Consider, for instance, Tommie Shelby's general claim, echoing Rawls, that the duty of justice requires compliance in just conditions, and resistance or disobedience in unjust ones.[11] Or his specific claim that a conception of reciprocity requires compliance with a scheme of cooperation in just conditions, but resistance or disobedience in unjust ones.[12] Or consider David Lyons' claim that that when social arrangements are exploitative and unjust, the principles of justice and fairness requires resistance rather than compliance.[13] Or consider

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Candice Delmas, *A Duty to Resist: When Disobedience Should Be Uncivil* (Oxford: Oxford University Press, 2018).

[9] These philosophers also appear to endorse two other aspects of his account. The first concerns individuals' *appeal* to those shared conceptions to *justify their actions to others*. The second is the claim that the shared conceptions of moral principles *guide* – by imposing constraints on – what kinds of actions may be taken by activists. For instance, Rawls suggests that resistance or disobedience must be nonviolent not because of an abhorrence of the use of force in principle, but because certain features of violent action are incompatible with addressing other citizens in a manner consonant with the conception of justice undergirding their cooperation. I address the character of violent and radical actions in another essay in this thesis. See 'Differentiating Disobedients'.

[10] Rawls restricts his discussion of civil disobedience to citizens; he does not consider the possibility of non-citizen resistance or disobedience. Not all who accept *Duty* accept this restriction. My formulation is not intended to rule out non-citizen resistance or disobedience. For further discussion, see Patti Tamara Lenard, "What's Unique About Immigrant Protest?," *Ethical Theory and Moral Practice* 13, no. 3 (2010): 315–32.

[11] Shelby, *Dark Ghettos*, 57–59.

[12] Shelby, 193–95.

[13] Lyons, *Confronting Injustice*, 158–60.

Candice Delmas' recent and elaborate discussion of a range of moral ideas which are purportedly well established in morality – in addition to justice, the ideas of fairness, Samaritanism, and political association also require obedience in just conditions and impose a duty to resist or disobey in unjust ones.[14] These moral principles are often presented as those to which we share, and to which we are already committed.[15]

Duty is often applied to a variety of specific cases. It is moreover often assumed that it is applicable to *all* cases. For instance, Delmas explicitly describes her account of individuals' obligation to resist as applying 'to all societies'.[16] By showing that those cases involve injustice on the basis of certain moral principles, these philosophers argue that individuals within them have the duty to resist. Their arguments are often bolstered by references to activists' characterisations of their own actions. Specifically, that the activists regard themselves as having the duty to resist or disobey. For instance, the "exemplars" of political resistance – Henry David Thoreau, Mohandas Karamchand Gandhi and Martin Luther King, Jr. – have all been on record affirming the duty to resist injustice or disobey unjust laws. For some philosophers, the need to take these self-characterisations seriously constitutes the very starting point of their account of individuals' duty to resist or disobey.[17]

Those who endorse *Duty* do not appear, however, to take seriously the possibility that the relevant moral principles under consideration may themselves be problematic. Lyons provides a clear articulation of this position – the problem of injustice 'is to be found, *not*

[14] Delmas, *A Duty to Resist*, especially 8-9.
[15] Delmas, 9, 20.
[16] Delmas, 10.
[17] Lyons, *Confronting Injustice*, 1–5; Delmas, *A Duty to Resist*, 5–8. I do not directly engage with their interpretations of these activists' claims. As we go along, however, it will be clearer that *Duty* may not adequately capture what activists are saying or doing in those unjust conditions.

in the principles, but in the real social circumstances, which rarely if ever satisfy the conditions required for the principles' application'.[18] Within the philosophical literature on resistance, there are few discussions of how these moral principles may themselves be problematic, and of the implications if it were so.[19] It is this neglect that I respond to in this essay.

Before proceeding, three clarifications are important. First, I construe resistance broadly, as involving the refusal to fully comply not just with laws and policies that allow or lead to injustice but also with mechanisms that produce or sustain them. The latter may include social norms governing expected behaviour that, when violated, do not constitute law-breaking activity. In this essay, I focus on resistance. Securing the claim that citizens have a duty to resist does not yet secure the further claim that they have a duty to disobey. For citizens to have a duty to disobey, it will have to be shown that they have weighty considerations to do so that defeat the presumption in favour of obedience or compliance with the law, or that there are no other options to resist except disobedience.[20] Second, recall that the duty to resist (or disobey) is part of the natural duty to bring about just institutions, subject to considerations of costs. In my discussions, I assume both that the resistance does bring about just institutions in some sense and to some degree, and that the costs of resistance are not so great as to override the duty to resist.[21] While there are interesting questions about the relationships between (the stringency of) the duty to resist

[18] Lyons, *Confronting Injustice*, 160, emphasis mine.
[19] This is distinct from the thought that the moral principles may in some conditions be subject to reasonable disagreements – such that we are unable to say, at a general level, that there are indeed shared conceptions of the moral principles. The problems posed by disagreements, while several and serious, are distinct from those that are posed by people sharing problematic conceptions of moral principles.
[20] This is in keeping with my setting aside of the issue of whether there is ordinarily a presumption to comply with the law. See *supra* note 6.
[21] That is, I assume that resistance satisfies the broader requirements on harm- or risk-imposing actions, such as those concerning proportionality, necessity and efficiency. I discuss these conditions in another essay of this thesis. See 'The Legitimate Targets of Political Disobedience'.

and the extent to which any given action satisfies the broader aim of societal transformation, and how we are to assess the costs in relation to the payoffs, I cannot address them here. Finally, the formulation of *Duty* is not committed to the strong claim that there is a duty to resist *only when* there are shared conceptions of moral principles. It leaves open the possibility that we may have a duty to resist that is not grounded in such shared conceptions.[22] Accordingly, my discussions here should be seen as concerning a candidate argument for the duty to resist (in the presence of shared conceptions of moral principles), rather than the duty to resist more generally.

2 Resistance

In 1872, Susan B. Anthony was arrested for voting in the presidential elects in Rochester, New York. This was an illegal act of resistance – state laws then permitted only men to vote. Prior to the election, Anthony had walked into a voter registration office with her sisters and demanded to be registered to vote. In her conversation with the registration officials, she cited the Fourteenth Amendment to the United States Constitution, which had recently been adopted in 1868. Specifically, she cited the part of the Amendment which read that 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States'. Since women were citizens, and since states were prohibited from abridging their privileges or immunities, women, Anthony argued, had the right to vote. The registration officials proceeded to register the women. After the incident, almost fifty other women proceeded to register to vote. On election

[22] I discuss Kimberley Brownlee's belief-relative grounds for resistance and disobedience in another essay of this thesis. See 'Differentiating Disobedients'.

day, Anthony and fourteen other women were allowed to vote, while the rest of the women were turned away by election officials. The women and the election officials were subsequently arrested.[23]

At a first glance, this brief recount appears to be a straightforward case to which *Duty* is and can be applied. It appears that the prohibition against abridging the privileges or immunities of citizens is undergirded by a principle of equality. And it appears that this principle of equality was violated by the state laws which denied women the right to vote. This violation constitutes an injustice. The principle of justice, then, grounds and requires actions that bring about just institutions, including resistance. This reading is bolstered by the fact that the activists also appealed to the idea of equality to justify their disobedience to their fellow citizens.

Candice Delmas provides just such a rendering of the conditions of women's disenfranchisement. According to Delmas, this constitutes a condition in which some citizens are publicly disrespected. They are denied free and equal status – which includes, among other things, the denial of participation in public life, the right to vote or stand for office. Such disrespect is unjust and cancels the duty to comply with the prevailing laws.[24] Moreover, the demand to respect citizens' equal status – and to bring about conditions (including the establishment of common institutions) in which such respect is secured –

[23] Kathleen Barry, *Susan B. Anthony: A Biography of a Singular Feminist* (New York: New York University Press, 1988); Ann Gordon, *The Trial of Susan B. Anthony* (Federal Judicial Center, Federal Judicial History Office, 2005); Sally McMillen, *Seneca Falls and the Origins of the Women's Rights Movement* (Oxford: Oxford University Press, 2008).

[24] Delmas, *A Duty to Resist*, 75–76. Here, Delmas echoes William Smith's discussion that in contexts of disrespect, the duty to comply does not arise. See William Smith, *Civil Disobedience and Deliberative Democracy* (Abingdon: Routledge, 2013), 36–59. However, Delmas dismisses the distinction Smith makes, between disrespect and disagreement – choosing to fold the latter into the former. I return to this in Section 3.1.

grounds a requirement to engage in a range of behaviour aimed at change, including resistance.[25] In this case, then, the women may be described as being under a duty to resist the exclusionary state laws.

The history of the activism leading up to the enfranchisement of women is complex and resists simple summary. However, even a brief discussion of two sets of details of this case is sufficient to destabilise the thought that the application of *Duty* to this case is appropriate.

First, from the perspective of the law and common institutions more generally at the time, voting was not regarded as a *right* arising from citizenship of the United States, but a *privilege* accorded by state laws.[26] At Anthony's trial, Justice Ward Hunt argued that suffrage was not one of the privileges or immunities of citizenship, and therefore that the amendment prohibiting their abridgement did not prohibit excluding women from the vote.[27] His claim was not an anomaly – it was consonant with, and directly referred to, earlier Supreme Court rulings that narrowly defined the privileges and immunities of citizenship.[28] This argument was later reaffirmed by the Supreme Court, which *unanimously* concluded in *Minor v. Happersett* (1875) that the Fourteenth Amendment

[25] Delmas, *A Duty to Resist*, 88–100. This bears similarities to David Lyons' treatment of the issue. See Lyons, *Confronting Injustice*, 127–28.
[26] Gordon, *The Trial of Susan B. Anthony*, 15.
[27] Susan Anthony, *An Account of the Proceedings on the Trial of Susan B. Anthony, on the Charge of Illegal Voting* (Rochester, NY: Daily Democrat and Chronicle Book Print, 1874), 59–66; Gordon, *The Trial of Susan B. Anthony*, 6.
[28] Gordon, *The Trial of Susan B. Anthony*, 6.

did not guarantee women the right to vote.[29] In fact, the position advanced by Anthony was regarded as constitutionally and political extreme at the time.[30]

Despite this, the courts were careful to address what they took to be the main worry underlying the suffragists' complaint – that women would not, in virtue of their disenfranchisement, be regarded as (or count as) equal citizens. This might have been due to their recognition of the importance of the concept of equality that the suffragists relied on. Indeed, much of the ruling in *Minor v. Happersett* was spent arguing that women *were* in fact citizens and 'have always been considered citizens *the same as men*',[31] in addition to the argument that suffrage was not coextensive with citizenship. Women's disenfranchisement was judged, from the perspective of the law, not to call into question their equality as citizens. This is because the shared conception of equality – which undergirded the law and operation of the common institutions – was regarded as pertaining narrowly to issues such as being entitled to protection, the standing to sue or be sued, to inherit or transmit inheritance, or to purchase and settle on land, and so on.[32] Equality was not generally understood as applying to *all* aspects of social and political life. Importantly, it was not regarded as applying to the issue of suffrage, and as such did not require the enfranchisement of women. This conception of the principle of equality was not regarded as violated by women's disenfranchisement. From the perspective of

[29] Minor v. Happersett, 88 U.S. 162 (United States Supreme Court 1874). We may not even need to go beyond this judgement to make the claim in concern. As the ruling itself indicates (at 175), the fact that a subsequent Fifteenth Amendment was needed to secure the voting rights of black men may provide adequate indication that the Fourteenth Amendment was regarded as leaving unaddressed the issue of citizens' right to vote. For a discussion of the broader context and reception of the two Amendments, see Dan T. Carter, *When the War Was over: The Failure of Self-Reconstruction in the South, 1865-1867* (Baton Rouge: Louisiana State University Press, 1985), 242–44.
[30] Jules Lobel, *Success Without Victory: Lost Legal Battles and the Long Road to Justice in America* (New York: New York University Press, 2003), 91.
[31] *Minor v. Happersett* at 169, emphasis mine.
[32] *Minor v. Happersett* at 166, 169, 170.

the law and common institutions undergirded by such a conception of equality, there was no injustice and therefore no duty to resist.

A quick clarification is important. Implicit in the discussions so far is a distinction between concept and conception. We may understand a concept as detailing an idea in the abstract – for instance, the concept of justice could be understood as encapsulating the abstract idea, 'treat like cases alike'. A conception, on the other hand, supplements an abstract idea with criteria that allow it to be applied to evaluate laws or social arrangements. That is, a conception specifies or concretises a concept. In the case of justice, a conception tells us which features are to be taken as salient and relevant when thinking about cases, and which others are irrelevant. Insofar as a concept may be variously specified, it may have various conceptions, which moreover may come into conflict. My focus throughout this essay centres on conceptions rather than concepts. My mentions of 'principles' or 'ideas' should be taken as referring to conceptions, unless otherwise stated.[33]

My reference to the shared conception of equality has to be carefully qualified. Ordinarily, a society's law and common institutions are accompanied by a complex structure of extra- or non-legal sources of support. Indeed, it is thanks to the receipt of such support that these common institutions tend to persist over time. The reason for such support has been attributed, by H. L. A. Hart, to the general tendency among those subject to a set of rules to develop and adopt certain attitudes towards them. For instance, they regard a set or pattern of behaviour as a general standard to be followed not only by themselves but by

[33] For further discussions of the distinction, see W. B. Gallie, "Essentially Contested Concepts," *Proceedings of the Aristotelian Society* 56 (1955): 167–98; H. L. A. Hart, *The Concept of Law*, 2nd ed (Oxford: Clarendon Press, 1994), 157–67, especially 159-160; Rawls, *A Theory of Justice: Revised Edition*, 5.

the group as a whole. They take the existence of the relevant rules or norms as giving a reason and justification for their behaving in certain ways. Moreover, they take the mere fact of an individual's deviation from those rules or norms as constituting (or giving) a good reason for criticism. These constitute a complex internal point of view from which the relevant rules or norms are accepted.[34] However, we must be cautious not to construe this point too strongly. While the existence and organisation of common institutions constitutes an important part of the way of life of a group – including the beliefs people have, and their expectations concerning their interactions with each other – they do not exhaustively delineate the plausibility of judgements or views that may be held at any point. Crucially, they neither necessarily determine nor constrain what is regarded as *right*. People may comply or act in accordance with laws they do not regard as morally binding – they may regard themselves as being coerced. People may also comply for self-interested reasons, for strategic reasons, or the mere wish to behave as others do.[35] There is always room for deviation or dissent, and for a variety of considerations. That is to say, the conceptions of moral principles undergirding the law and common institutions may not coincide with those which individuals generally actually endorse.

This is where the second set of details of the case – concerning the broader social context in which Anthony and her peers attempted to vote – is critical. Attending to the broader context reveals that the legal and political decisions made against Anthony and her peers were not regarded as aberrations. They coincided with, and were supported by, widely held views about the natural characteristics of women. Among other things, people generally endorsed (and usually purportedly religious) views that women were inferior to

[34] Hart, *The Concept of Law*, 55–61.
[35] Hart, 203.

men, that women were destined for submission to men, or that women's delicacy and purity meant that they were naturally suited to the domestic sphere. The views about the inferiority of women were bolstered by what were regarded as the facts of women's dependence on men (especially financially), and by the observation of a general indifference or hostility even among women to the issue of suffrage or women's rights more generally.[36] These views did not constrain women specifically in terms of their right to vote, but extended to their public engagements (or even appearance) more generally. For instance, even women's act of speaking in public was regarded as offensive – as women overstepping their rightful domestic sphere.[37]

The views about the purportedly natural characteristics of women and of their inferiority to men was regarded as *naturally* supporting a narrow and constrained conception of equality – as concerning only a very few domains where women were equal to men. It is important to note that this connection is not *analytic*. A quick reference to some (purportedly "conservative") sections of contemporary society reveals that views about the natural inferiority of women is not (and need not be) accompanied by the thought that women are not equal to men in the political domain – at least in terms of their right to vote. In any case, and during Anthony's time, the thought that equality required treating women and men as equals in the exercise of political authority (through voting) or in the domain of politics more generally, was regarded as ignoring the purportedly important differences between the nature and capacities of women and men. It was regarded as a kind of abstract thinking that had gone astray because it had lost traction with reality – specifically, with how different women were from men.[38] All this is to say that there was

[36] McMillen, *Seneca Falls*, 136–39.
[37] McMillen, 63.
[38] Cora Diamond suggests this as one way of understanding the disagreements between pro-slavery and anti-slavery thinkers, with the former thinking that the latter's conception of equality as applying to all

general support for the view – undergirding the law and common institutions, and espoused by the judges – that the principle of equality was not actually violated by women's disenfranchisement. Indeed, their disenfranchisement was supported by a plurality of sources beyond the law. These observations secure the claims, made earlier, that women's disenfranchisement was *not regarded as unjust*, and that individuals would not have regarded there to be a duty to resist.

As with the earlier discussion, this point must not be construed too strongly. Inasmuch as individuals may possess views different from those undergirding the law and common institutions, so they may also hold ideas deviating or dissenting from those undergirding common practices or even social or ordinary morality more generally. We should resist the naïve claim that the enculturation of individuals – their being educated and having to live within a particular social and cultural context – simply renders them *incapable* of forming different ideas or holding views different from those which are prevalent within their society.[39] There is always a heterogeneity of views within any society or social group.[40] This qualification is essential; for otherwise we would not be able to properly account for the fact that suffragists were themselves able to come up with a conception of equality that deviated from what was generally accepted *despite* being enculturated in

had gone astray in ignoring the different natures and capacities of black and white people. If so, the employment of the general strategy in the case of the duty to resist pro-slavery laws – at least at the very earliest stages of abolitionism – may also not be fully appropriate. See Cora Diamond, *Reading Wittgenstein with Anscombe, Going On to Ethics* (Cambridge: Harvard University Press, 2019), 285–303. For a discussion of the changes in the interpretation of the statement that 'all men are created equal', see Pauline Maier, "The Strange History of 'All Men Are Created Equal,'" *Washington and Lee Law Review* 56, no. 3 (1999): 873–88.

[39] For various reasons, however, this claim has been made of individuals inhabiting various historical societies. For instance, Michael Slote suggests that individuals in ancient Greece 'were *unable* to see what virtue required in regard to slavery'. Such claims, I take it, are sociologically naïve. See Michael Slote, "Is Virtue Possible?," *Analysis* 42, no. 2 (1982): 70–76, emphasis mine.

[40] Michele M. Moody-Adams, "Culture, Responsibility, and Affected Ignorance," *Ethics* 104, no. 2 (1994): 296 n. 14; Michele M. Moody-Adams, *Fieldwork in Familiar Places: Morality, Culture, and Philosophy* (Cambridge: Harvard University Press, 1997), 68–71; Margaret Urban Walker, *Moral Understandings: A Feminist Study in Ethics*, 2nd ed. (Oxford University Press, 2007), 163.

those unjust conditions, or the fact that they found allies amongst some men (some of whom served as their attorneys).

With these observations, we may reject the implicit assumption that undergirds the application of *Duty* to this case – that the problem of injustice is not to be found in the shared conceptions of moral principles but in the real social circumstances that women found themselves in. What we see, instead, is that the problem is also very much in the principles themselves. More specifically, the problem also resides in the conception of the principle of equality which undergirded the law and common institutions, and which was supported by a variety of views about the natural characteristics of women. The statement otherwise would be historically inaccurate.

The recognition that the problem can also lie with the shared conceptions of moral principles themselves is, however, not always fully appreciated by those who write about resistance or disobedience in (other) unjust conditions. Consider, for instance, Cass Sunstein's claim that civil rights activists were mostly conservative – they appeal to the inconsistency between racial inequality and the basic thrust of American ideals and practices.[41] Or consider David Lyons' claim that Martin Luther King, Jr.'s actions rested on an appeal to the central values and ideals as enshrined in the Declaration of Independence and the Constitution, and a condemnation of the prevailing practices.[42] Running through these Sunstein's and Lyons' claims is the implicit assumption that unjust

[41] Cass Sunstein, "What the Civil Rights Movement Was and Wasn't," *University of Illinois Law Review*, 1995, 193. While Sunstein recognises that one of the most visible disagreements between Martin Luther King, Jr., and Malcolm X turns on whether American practices and institutions were ever committed to those ideals (or if they were fundamentally racist and exclusionary, and from the start), he does not follow through on the implications this disagreement has for how we should understand civil rights activists' appeals to certain conceptions of moral principles.

[42] David Lyons, "Moral Judgment, Historical Reality, and Civil Disobedience," *Philosophy & Public Affairs* 27, no. 1 (1998): 45; Lyons, *Confronting Injustice*, 143, 181, 209.

conditions are the result of a society's failure to live up to the demands of the unproblematic moral principles to which it is already committed.[43] These philosophers' view of the social conditions in which the civil rights activists found themselves is mistaken. Among other things, it neglects the fact that the activists were proposing a dissenting conception of citizenship according to which certain kinds of segregated interactions – including those in the areas of business, education or transportation – were *also* the appropriate subject of public political concern. This conception deviated from – specifically, it was broader than – the prevalent and operative idea that citizenship concerned only the rights or practices of formal political participation. On the narrower conception, segregation does not impugn the quality of black Americans relative to white Americans, *qua* citizen.[44] This means, also, that the conception of equality was itself conceived narrowly – as not ranging over certain domains. The novel conceptions of citizenship and equality faced serious opposition, especially from those who sought to preserve the status quo of segregation. The view expressed by Sunstein and Lyons, then, is committed to the implausible position that by the time of the civil rights movement (and unlike the conditions in which slavery of women's disenfranchisement were institutionalised and entrenched), American society had somehow settled on the right

[43] Delmas explicitly makes this claim. See Delmas, *A Duty to Resist*, 20. As Brandon Terry observes, one of the most famous articulation of this assumption is found in Gunnar Myrdal's study of the so-called "Negro problem" in America, published in 1944. According to this view – which Terry criticises – America's racism boils down to a conflict between the creed of high ideals to which it was committed, and local and prejudiced interests. See Brandon M. Terry, "Which Way to Memphis?: Political Theory, Narrative, and the Politics of Historical Imagination in the Civil Rights Movement" (PhD Dissertation, New Haven, Yale University, 2013), 61–65.

[44] Terry, "Which Way to Memphis?," 95–98. This narrower conception is perhaps best expressed by the 'separate but equal' doctrine, infamously confirmed in *Plessy v. Ferguson* in 1896. It was not until the *Brown v. Board of Education* ruling in 1954, in the midst of civil rights activism, that the doctrine – and along with it the narrow conception of equality – began to be legally dismantled. See Plessy v. Ferguson, 163 U.S. 537 (United States Supreme Court 1896); Brown v. Board of Education of Topeka, 347 U.S. 483 (United States Supreme Court 1954). For further discussions of the idea of citizenship and how it features in politics and political theory, see Judith N. Shklar, *American Citizenship: The Quest for Inclusion* (Cambridge: Harvard University Press, 1995).

conception of the relevant moral principles, and thus that its failure was primarily one about living up to their demands.[45]

While I do not consider further examples, these discussions suffice to secure a more general point – it is untenable to claim that the problem with unjust conditions is always to be found in the social world rather than the shared conceptions of moral principles. At least sometimes, and perhaps especially in conditions where the injustice is institutionally entrenched and normalised, the problem is also because of the shared conceptions of moral principles themselves.

Given this, we should rethink the application of *Duty* to specific cases. Consider, first, Duty's claim that those who live under such unjust conditions are under a duty to resist which is grounded in shared conceptions of certain moral principles that already exist and to which people are committed. In the conditions that the suffragists were in, the principle of equality was conceived of in such a way that women's disenfranchisement did not violate it, nor was generally regarded as violating it. Correspondingly, the institutions which authorised their disenfranchisement were not regarded as unjust. It is not true that certain conditions' occurrence is automatically 'sufficient' for individuals to count them as constituting serious injustice against which they must resist.[46] In some conditions, the injustice is not only *not* recognised for what it is but is actively endorsed and supported. If so, the duty of justice to bring about just institutions could not have been regarded as

[45] Tommie Shelby and Brandon Terry argue that this view also problematically reduces the depth of the deliberations and thought of civil rights activists – to *mere strategy* concerning how best to leverage on the commitments of white Americans in order to advance the interests of black Americans. See Tommie Shelby and Brandon M. Terry, *To Shape a New World: Essays on the Political Philosophy of Martin Luther King, Jr.* (Cambridge: Harvard University Press, 2018), 3–4. I discuss the issue of activists' "merely strategic" thinking in another essay in this thesis. See 'The Legitimate Targets of Political Disobedience'.

[46] That is, contra Delmas. Delmas, *A Duty to Resist*, 15.

grounding either the permission or requirement to resist. Indeed, in these conditions, individuals would have been required to comply with what were regarded as just institutions.

Moreover, the application of *Duty* to this case mischaracterises the situation. Specifically, it obscures the fact that the suffragists' appealed to, and were acting on the basis of, a different – broader and more inclusive – conception of equality. Yet this conception was not only rejected as an erroneous understanding of the conception which undergirded the law and common institutions but was also more generally regarded as inappropriate given the kinds of people women were. The application of *Duty* mischaracterises the suffragists' arguments, and diminishes the *innovation* they accomplished given the conditions they found themselves in. These activists are not merely cheerleaders – getting people to live up to their commitments. They are more aptly described as 'moral pioneers' – they come up with and possess moral ideas that 'outstrip' those of others in their social world.[47] It is only in light of *this* conception of equality – novel and radical for its time – that the *injustice* of women's disenfranchisement even comes into view at all. And it is only when one *accepts* this conception of equality as correct, that one even perceives the duty to resist.

What this means is that the activists' political actions (including resistance) would not be readily intelligible or understandable by their fellow citizens as acts of resistance, and

[47] Cheshire Calhoun, *Moral Aims: Essays on the Importance of Getting It Right and Practicing Morality with Others* (New York: Oxford University Press, 2016), 50–51. Calhoun appears to think that moral pioneers are those who have gotten it *right*. Indeed, she characterises the frontiers of moral knowledge as a context in which some individuals 'made advances in moral knowledge faster than they can be disseminated to and assimilated by the general public'. However, it appears that such contexts may also occur when some individuals in society produces regressions. Pioneer status need not always involve advances in moral knowledge. See Calhoun, 196.

much less obviously as acts which seek to fulfil a duty of justice to bring about just institutions. Instead, they would 'simply look like doing the wrong thing'.[48] As we have seen, suffragists were regarded as behaving badly by speaking in public or agitating for suffrage. Similar criticisms were laid against civil rights activists, especially when they engaged in what was regarded as transgressive behaviour – such as when black activists occupied segregated spaces reserved for white people. This problem is connected to the conception of moral principles upon which the activists rely for their actions, which are different from those which are shared by the rest of the society. It is not ameliorated by the activists' mere reiteration of their grounds for acting. Instead, activists would also have to *persuade* their audience that their conceptions of the relevant principles are correct.[49] This task of persuasion is critical to their activism, and an important prerequisite for their appeal to succeed.[50]

In sum, we see that *Duty* may not be straightforwardly or appropriately applied to *all* unjust conditions. Recall that their application to specific cases is aimed at showing individuals – and contrary to their views that they should comply with unjust laws – that they actually have *obligations* to resist on the basis of shared conceptions of moral principles. However, it is not true that all the injustices we face can be addressed if only we 'make good on the commitments we already claim to accept'.[51] The problem is

[48] Calhoun, *Moral Aims*, 36–38.
[49] As part of the task of persuasion, activists would have to show that they in fact sincerely and seriously believe in the conception undergirding their actions. This is so that they are not mistaken, among other things, for fools or criminals. I discuss this issue in another essay of this thesis. See 'Differentiating Disobedients'.
[50] Focusing on the case of sexual harassment, Alice Crary suggests – drawing from Jean Grimshaw and Catherine MacKinnon – that the introduction of the term 'sexual harassment' constituted a 'proposal' for others to see certain behaviour in a different way. Rather than see them as mere *annoyances* at worst, they instead should be seen as 'unpleasant, intrusive and coercive imposition' which moreover rises up to the level of significant *abuses*. See Alice Crary, "The Methodological Is Political: What's the Matter with 'Analytic Feminism'?," *Radical Philosophy* 2.02 (2018): 57–58.
[51] Delmas, *A Duty to Resist*, 20.

sometimes with the shared conceptions of moral principles themselves. Reliance on these problematic principles does not secure the desired aims.

While my discussions in this section have centred on historical cases, they are not merely of historical interest. The more general point is that getting the analysis of historical cases right is important for it reveals *limitations* about the application of Duty that are not immediately apparent. These limitations are especially unobvious given that in contemporary discussion we often assume that we have gotten it right about our moral principles, and that all that we need to do is to live up to them (or to cajole or coerce others into doing so). Moreover, keeping these limitations in mind may constitute a reminder for us to keep a lookout for how we may fail to recognise certain conditions as unjust because of our shared conceptions of certain moral principles. An examination of the past is important, even if our concerns are firmly about the present.[52] I return to this in the final section.

2.1 Clarifications

Before proceeding, several brief clarifications about the character of my claims are in order. First, my claim is not that the problem is always with the shared conceptions of moral principles, but only that it is sometimes so. This claim is a response to what I take to be a neglect, within discussions of political resistance, of such a possibility. This claim is compatible with the claim that the application of *Duty* is appropriate in other unjust conditions – when a given society *is in fact* committed to certain principles, but whose

[52] This means that Delmas may not appeal to her statement that her goals 'have more to do with the moral obligations citizens face today', in order to evade the problems with her historical analyses. See Delmas, 19.

practices deviate from the demands of those principles. For instance, we might want of say of a blanket prohibition on the entry of members of certain groups into our country (thus including refugees and asylum seekers) that it clearly violates core commitments that we have – perhaps of a principle that requires us to avoid harm (including foreseeable harm) subject to the considerations of costs.[53] Of course, and as I hope the earlier discussions indicate, whether this (or any given injustice) may in fact be thus characterised, will have to rely on careful historical and sociological analyses rather than sweeping statements. My complaint is not about the application of *Duty per se*, but about its application to *all* unjust conditions.

This clarification has two exegetical payoffs. First, it brings into focus Rawls' reasons for narrowly situating his discussions of resistance and disobedience within a nearly just society. As we recall, such a society is characterised by there being a shared conception of justice that is publicly recognised as constituting or undergirding the fundamental terms of cooperation, and by reference to which citizens regulate or justify their political activities. As we now see, it is only in such a society, where the relevant moral principles are unproblematic, and where citizens are indeed committed to them, that the application of *Duty* is appropriate. Only in such a society does the natural duty of justice unproblematically ground a duty to resist, if doing so would bring about just institutions. Second, it explains Rawls' narrow focus on one *type* of nearly just societies. Rawls suggests that there are two ways in which institutions can be unjust. One is when laws

[53] This may be understood as the principle undergirding the non-refoulement principle in international law, which requires that we do not return migrants (especially refugees and asylum seekers) to countries where they face a likely risk of being persecuted on the basis of certain morally irrelevant features (such as race or religious beliefs) or face other human rights violations. See High Commissioner for Refugees, "1951 Convention and 1967 Protocol Relating to the Status of Refugees," accessed February 22, 2020, https://www.unhcr.org/protection/basic/3b66c2aa10/convention-protocol-relating-status-refugees.html, article 33.

and policies deviate from publicly recognised standards or principles. Another is when institutional arrangements conform to a society's shared conception of justice, but where that conception itself is unreasonable or flawed. Rawls' discussions of resistance and disobedience are situated within the first type of injustice. He does not say much about the latter, except to note in passing that how our duties and obligations are affected by the two types of unjust conditions are 'very different'.[54] The discussions here constitute a partial explanation for this claim. In conditions where a particular state of affairs is not even regarded as unjust to begin with, individuals generally will not regard themselves as having a duty to resist. If there is indeed such a duty, it would have to be grounded in something other than the shared conceptions of moral principles.[55]

The second clarification is that I am not committed to any form of relativism about the *truth* of moral principles – that what *is* right in a particular context may not be so in a different one. Instead, my arguments rely on the uncontroversial point that what is *regarded as right* is context dependent. The relevant distinction here is between what is true from a fact-relative as opposed to a belief-relative perspective.[56] My claim is that individuals in some unjust conditions may not, on the basis of shared conceptions of moral principles, regard there to be any injustice and may thus reject the claim that they have a duty to resist. They may also regard those who appeal to different conceptions of moral

[54] Rawls, *A Theory of Justice: Revised Edition*, 309–10.
[55] I set aside the difficulties arising from conditions in which there are deep and pervasive *disagreements* about justice, but where the operative conceptions of justice are not clearly unreasonable or flawed. I take it that the extensive discussions within political and public reason liberalism are intended to address issues in these conditions. I do not address them here. For representative contemporary texts (beyond Rawls), see Gerald F. Gaus, *The Order of Public Reason: A Theory of Freedom and Morality in a Diverse and Bounded World* (New York: Cambridge University Press, 2011); Jonathan Quong, *Liberalism without Perfection* (Oxford: Oxford University Press, 2011).
[56] Derek Parfit, *On What Matters: Volume One* (Oxford: Oxford University Press, 2011), 150–51. In making this distinction, however, we should take heed of the caution against drawing too stark a line between morality and social practices. See Calhoun, *Moral Aims*, 1–26.

principles as mistaken. This claim is compatible with the claim that these individuals have actually gotten it wrong from a fact-relative perspective. My arguments are, in this sense, compatible with a range of meta-ethical views about the truth of moral ideas.

Third, and relatedly, my criticisms of those who apply *Duty* do not implicitly turn on a meta-ethical disagreement (which, one might worry, delivers my conclusions on the cheap). This is because *Duty* is not necessarily wed to any specific meta-ethical views about the truth of moral ideas. Here, it may be fruitful to consider Rawls' characterisation of his own work – in his claim that his project is to work out a conception of justice from a fund of implicitly shared ideas and principles within a liberal democratic society, which can gain the support of (suitably idealised) individuals holding on to a plurality of reasonable world views.[57] This is connected to Rawls' construal of the method of wide reflective equilibrium. It leaves room for the possibility that other societies at other times may begin with a different set of considered judgements that, when duly elaborated and put into an equilibrium, result in a different conception of justice that is regarded as true by the individuals within them. As should be clear, this is separate from, and compatible with, the issue of whether any or which of those conceptions are actually true.[58]

[57] John Rawls, *Political Liberalism: Expanded Edition* (New York: Columbia University Press, 2005), xxxix, 14, 28, among others. For a discussion of this point and how it involves a significant re-characterisation of Rawls' earlier work, see Burton Dreben, "On Rawls and Political Liberalism," in *The Cambridge Companion to Rawls*, ed. Samuel Freeman (Cambridge: Cambridge University Press, 2003), 316–46.

[58] The observation that Rawls is a constructivist does not destabilise this claim. As Rawls repeatedly clarifies, his constructivism is political, not metaphysical. Political constructivism seeks to articulate and defend conceptions of certain moral ideas (including principles) in a restricted domain – concerning the political – where people with different worldviews each claim to be defending the truth. It is explicitly noncommittal about what is actually true. John Rawls, "Kantian Constructivism in Moral Theory," *The Journal of Philosophy* 77, no. 9 (1980): 515–72; John Rawls, "Justice as Fairness: Political Not Metaphysical," *Philosophy & Public Affairs* 14, no. 3 (1985): 223–51.

Finally, my comments about the seeming naturalness of certain flawed conceptions of moral principles for individuals in unjust conditions (and the corresponding difficulty of seeing otherwise) leaves open the issue of individuals' *culpability* for behaving in ways that sustain those conditions, or even for not recognising that they were engaged in wrongdoing. For instance, we may argue, as Cheshire Calhoun does, that many men were not culpable for their participation in the oppression of women (at least in the earliest stages of feminist theorising and movements), in virtue of the fact that they were not culpably ignorant of the novel conceptions of moral ideas that the feminists had.[59] Or we could agree with Michele Moody-Adams in granting such men far fewer excuses from culpability. These men could be inculpated on the basis of their affected ignorance – among other things, in their insistence on knowing nothing about potential wrongdoing, their readiness to ask no questions about some state of affairs, or their failure to acknowledge the fallibility of their convictions.[60] I do not address this issue here.

3 Dismissals

Why have those who apply (or attempt to apply) *Duty* to all cases not taken seriously the possibility that the shared conceptions of moral principles in those conditions may themselves be problematic, and thus that individuals may not (and often do not) regard themselves as having a duty to disobey on the basis of their shared conceptions of moral principles? My aims in this section are diagnostic – to identify the arguments that have been used to justify dismissing the significance of this possibility. Focusing on the recent

[59] Calhoun, *Moral Aims*, 199.
[60] Moody-Adams, "Culture, Responsibility, and Affected Ignorance"; Moody-Adams, *Fieldwork in Familiar Places*, 61–106.

and prominent work of Candice Delmas, I identify two arguments on the basis of which the significance of this possibility is dismissed or downplayed. The first centres on the possibility of escaping the influences of ideology – including escaping from the influence of flawed conceptions of moral principles. The second is that flawed conceptions of moral principles are supported merely disingenuously – in order to secure selfish interests. I examine the limits of these arguments and argue that they do not always succeed. The point of the diagnosis is to show that the failure to take the possibility seriously is not due to mere (or innocuous) neglect. Instead, it is supported by a certain view about how individuals living in unjust conditions come to recognise injustice. Because of this, the neglect cannot be rectified simply be constraining the scope of *Duty's* application. Rectification will have to be achieved first by recognising that the supporting arguments are not always plausible, and subsequently revising them. The discussions here show the steps that must be taken in constraining the scope of *Duty's* application in a way that is not *ad hoc*.

3.1 Ideology

Part of Delmas' position on the applicability of *Duty* to all cases is supported by her views about ideology. Following Tommie Shelby, Delmas understands ideology as a set of widely shared beliefs and judgements that misrepresents or distorts social reality. This set of beliefs is often reflected in (or undergird) common practices and institutions – all of which may constitute or perpetuate unjust social relations. Ideology does not simply refer to false beliefs. It also refers to how certain facts are organised in a misleading way, or how certain relevant information is obscured. Under the influence of ideology, individuals come to hold erroneous beliefs about certain states of affairs or groups of

individuals – often to pernicious effects on the latter – without necessarily being credulous or ill-willed. Ideology results in individuals holding beliefs with false consciousness – they hold the belief while being ignorant of or self-deceived about the real motives for their holding it. While they think that they hold a belief or judgement because of its being true, as a matter of fact they hold it primarily because of the influence of reasons that are not necessarily to do with truth.[61] It is in these ways that ideology tends to protect certain social conditions from criticism, especially from those who are disadvantaged by them.

An example from Shelby clarifies the discussion. Consider the 'widely held view' that welfare reform – specifically, policies aimed at reducing welfare – is necessary because the welfare system is abused by black women. This view receives support from the beliefs that these individuals are responsible for their own poverty, that black women are unfit to be parents, as well as race-skewed media portrayals. When taken together, these obscure the real causes of racial inequality in the society – by falsely or inappropriately attributing them to individuals' behaviour and character, rather than the existence or operation of oppressive social structures.[62] As a result, and perniciously, the state of racial inequality is then not regarded as an injustice; it is regarded as reasonable.[63] Yet this view is mistaken. An analogous analysis may be applied to our earlier discussions. The fact of

[61] Delmas, *A Duty to Resist*, 205–6; Tommie Shelby, "Ideology, Racism, and Critical Social Theory," *The Philosophical Forum* 34, no. 2 (2003): 153–88; Shelby, *Dark Ghettos*, 22–24. See also Jason Stanley, *How Propaganda Works* (Princeton: Princeton University Press, 2015), 178–268; Sally Haslanger, "Racism, Ideology, and Social Movements," *Res Philosophica* 94, no. 1 (2017): 1–22. This brief characterisation glosses over several complications. For one, and as Shelby observes, there are evaluative and non-evaluative senses of the term 'ideology'. On the latter sense, ideology simply refers to the worldview or belief system of a particular society in time – it leaves open whether the constituents of that system are distorted or erroneous. More often, however, those who discuss ideology in the context of disobedience and political action refer to its evaluative (and pejorative) sense. There are also strong and weak senses of ideology. On the strong sense, the fact that a system is ideological or ideologically influenced is a sufficient reason to reject it. On the weak sense, that fact is not a sufficient reason for rejection. The characterisation here refers to the evaluative and strong sense ideology, in accordance with Delmas' usage.

[62] Shelby, "Ideology, Racism, and Critical Social Theory," 165–66.

[63] Shelby, *Dark Ghettos*, 139, 169–74.

women's disenfranchisement is not regarded as an injustice – and indeed regarded as natural and reasonable – because of a set of beliefs or judgements that misrepresent how women are, or obscure or distort the real causes of their conditions, so on. These beliefs and judgements are held with false consciousness.[64]

Recall that in some conditions, people do not generally regard certain states of affairs as unjust, on the basis of their shared conceptions of moral principles. This raises an issue about what grounds activists' political actions (including resistance) and also how they may justify those actions to others. The analysis and critique of ideology enters here. One of the aims of analyses and critiques of how a society is in the grips of an ideology, is to show how an injustice indeed exists and is connected to – indeed supported by – certain false beliefs or the way they are organised. Put crudely, someone who engages in ideology critique is in effect saying the following to other members of her society: "This state of affairs is unjust; you believe that it is just (or reasonable) because of false beliefs or how certain information is organised." Consider, on this presentation, what is required to get people to recognise that a certain state of affairs is unjust. It involves correcting their knowledge and perceptions of certain relevant *facts* which are out there and, in some sense, verifiable. When that is successful, the implicit claim is that those who now see reality for what it is, will recognise the injustice involved. How do they recognise the injustice? It appears that they do so on the basis of shared conceptions of moral principles, which are themselves unproblematic.[65]

[64] For a discussion of how this is so in the case of the disadvantages faced by women, see Walker, *Moral Understandings*, 161–207.

[65] This is one way of conducting ideology critique. For an extensive discussion of other ways of doing so, and which are not committed to the view that shared conceptions of moral principles are themselves unproblematic, see Rahel Jaeggi, *Critique of Forms of Life* (Cambridge: Harvard University Press, 2018), Chapter 5.

This claim is supported by a view that individuals can somehow come to know that some state of affairs is unjust, *even when* they are under the influence of ideology. Delmas' engagement with William Smith is indicative of this view; and it is here that we have an entry point to critiquing it. Smith distinguishes different kinds of injustice that are appropriate objects of disobedience – deliberative disrespect, deliberative disagreement and deliberative inertia.[66] The two of concern are injustices arising from deliberative disrespect and from deliberative disagreement. According to Smith, deliberative disrespect occurs when a democratic majority tolerates or enacts blatant injustices by publicly denying some citizens free and equal status. For instance, the denial of the right to vote or stand for office count as deliberative disrespect. Deliberative disagreement refers to states of affairs which fall short of deliberative disrespect and which are neither obviously nor blatantly unjust. In contexts involving deliberative disagreements, there exist potentially reasonable disagreements about what is right or just. Reasonable views about the justice or rightness (or otherwise) of the states of affairs in question may be constructed on either side. Smith regards gender inequalities, institutionalised homophobia or inadequate protections for workers as the result of such disagreements in certain periods of time.[67]

Delmas argues that the 'deliberative' prefix should be dropped from these categories. The prefix wrongly suggests that the injustices only or fundamentally result from, or are connected to, individuals' statuses as deliberators. Delmas' observation is incisive that

[66] Two exegetical comments are relevant. First, Smith's discussion centres on disobedience rather than resistance. However, since disobedience is a subset of resistance, the conclusions about disobedience apply *a fortiori* to resistance. Second, Smith takes his claims to be restricted to democratic societies. However, and as we have already seen in Section 2, democratic societies may also be animated by shared conceptions of moral principles that are deeply flawed. I take it that Smith, in accounting for disagreements in this sense, recognises this point.

[67] Smith, *Civil Disobedience and Deliberative Democracy*, 36–59.

our concern with the moral and political status of individuals extends beyond our concern with deliberation. However, her argument that 'we should fold the category of deliberative disagreement into that of disrespect' is problematic'.[68] Delmas recognises that at the same time as institutions of slavery, women's disenfranchisement and racial segregation 'were being scrapped', there were nonetheless many supporters who were regarded as reasonable.[69] However, she dismisses the views of individuals who sought to defend those institutions on the basis that they were not unjust. Even if these issues may have been regarded as exemplifying deliberative disagreements during their time, we *now* know that those institutions were egregiously unjust. The views that supported them are simply wrong. The obviousness of an injustice is distinct from its seriousness. Because of this, Delmas claims that 'the test of time is not a useful standard, since we want to assess the gravity of current injustices'.[70] This is a dismissal of the views of those who did not regard the status quo as unjust and of the (conceptions of) relevant moral principles undergirding their views. For the purposes of determining what is unjust, and thus what activists (*including* those who lived in those conditions) are required to do or how they may justify their actions to others, these views are treated as irrelevant. Delmas' argument is problematic in two ways, which I detail below.

3.1.1 Disingenuous disagreements

First, the context to which Delmas appeals is inappropriate. Presumably, at the time that those institutions 'were being scrapped', there would already be an adequate and general

[68] Delmas, *A Duty to Resist*, 76–77.
[69] Here, reasonableness is not intended as a technical term (à la Rawls); it is meant to refer to our ordinary sense of the term, as denoting people who are regarded as having sensible or good judgements about issues.
[70] Delmas, *A Duty to Resist*, 76–77.

understanding of the overall injustice of the relevant states of affairs. Otherwise, the kinds of social and political reforms that were being proposed and undertaken to *scrap* the existing institutions – which, importantly, would require significant social and political will – would be under-supported and unexplained. If this is so, however, disagreements between those who sought reform and those who held opposing views may not be regarded as genuinely reasonable. It may be generally recognised that the shared conceptions of moral principles in fact required reform, and that the reluctance to reform counted as a violation of those requirements. Referring to such contexts, then, would not help to address the question of what we ought to do about the views of those who genuinely disagree about the injustice of a certain state of affairs.

Of course, this, again, is not an analytic point. It is possible for certain institutions to be scrapped without such accompanying support.[71] Here, and again, we must look to the details of the cases being discussed. An example from the history of abolitionism illustrates the point. Relying on the parliamentary debate leading up to the Slavery Abolition Act 1833 in the United Kingdom, David Wiggins makes the general claim that there simply are no sustainable positions on the morality of slavery.[72] If so, we cannot have genuine disagreements about its morality. Those who disputed the issue would be disingenuous – we may set their claims aside and claim that the relevant moral principles indeed required reform or even resistance. In response, Cora Diamond suggests that the parliamentary debate is the wrong place to look for genuine disagreements about the

[71] This, Gerald Gaus suggests, is what happened in the United States of America in the 1970s – a small group of elites engaged in institutional reform without first having succeeded in persuading the majority of others of the importance of doing so. Gaus suggests that this is responsible for, and moreover helps to explain, the ongoing backlash against "liberal" ideas. See Gaus, Gerald F., "The Open Society and Its Friends: With Friends Like These, Who Needs Enemies?," *The Critique*, January 10, 2017.
[72] David Wiggins, "Moral Cognitivism, Moral Relativism and Motivating Moral Beliefs," *Proceedings of the Aristotelian Society* 91 (1991): 71 n. 10.

morality of slavery. The participants to the debate generally recognised the immorality of the institution of slavery; the defences they marshalled – especially to secure exceptions about which slaves could be freed immediately – concerned the *process* of abolition. This observation has to be set in the context of there being decades of activism prior to the 1833 Act. Prominent examples include the Society for Effecting the Abolition of the Slave Trade (founded 1787) which worked to educate the public of the evils of the slave *trade* and which succeeded in helping to bring about the abolition of the international slave trade in 1807 (via the Slave Trade Act 1807), and the Society for the Mitigation and Gradual Abolition of Slavery which was founded in 1823 and whose work contributed to the 1833 Act. By the time the parliamentary debates occurred, there were already regarded as 'no real questions' about the shared conceptions of moral principles in concern – it was widely understood that they required the abolition of slavery, even in the face of the expected economic costs of abolition. This appears to have been recognised even by those who opposed the formulation of the Slavery Abolition Act 1833 – whose opposition vanished as soon as their economic concerns were addressed.[73] Given this, it is plausible to say of those who argued against abolition (purportedly on the basis of moral principles) that they were behaving in bad faith – raising questions about issues that were already regarded as settled by shared conceptions of moral principles. In order to find genuine disagreements, we would have to look further back in time, to when people genuinely found the institutions of slavery reasonable. Referring to an extensive range of historical

[73] Izhak Gross, "The Abolition of Negro Slavery and British Parliamentary Politics 1832-3," *The Historical Journal* 23, no. 1 (1980): 63–85; Seymour Drescher, *The Mighty Experiment: Free Labor Versus Slavery in British Emancipation* (New York: Oxford University Press, 2002), 121–43; David Brion Davis, *Inhuman Bondage: The Rise and Fall of Slavery in the New World* (Oxford: Oxford University Press, 2006), 231–49; Seymour Drescher, *Econocide: British Slavery in the Era of Abolition, 2nd Edition* (Chapel Hill: Univ of North Carolina Press, 2010); David Brion Davis, *The Problem of Slavery in the Age of Emancipation* (New York: Knopf Doubleday Publishing Group, 2014), 256–90.

sources, Diamond argues that there was such a time where even the ideas of equality or justice were not regarded as leading to a condemnation of slavery.[74]

To secure her point that disagreements should be included within the category of disrespect, then, Delmas' focus should not have been on contexts in which unjust institutions were *being scrapped*. Instead, they should be on contexts in which the very injustice of those institutions is neither generally recognised nor disputed, or those in which the injustice of institutions is regarded as a genuinely open question open to reasonable disagreements despite being called into question. These contexts constitute an important counterexample to Delmas' claims about categorisation. Yet in these contexts, the views of those individuals who seek to defend the status quo may not be appropriately dismissed on the basis that they have clearly gotten it wrong. For the question of whether the status quo is unjust is *precisely* the question under dispute.

A point of clarification is important. The claim here is not that issues involving disagreements may *never* be included within the category of disrespect. Instead, the claim is constrained – that whether conditions involving disagreements may be folded into the category of disrespect will depend on the details of the conditions. Among other things, we would have to ascertain whether certain widely shared conceptions of moral principles commit individuals to the view that a certain state of affairs is wrong, and that they are thus required to behave in certain ways to address those injustices. That is to say, whether issues involving disagreement are to be folded into the category of disrespect is not an analytic point, but one that relies, among other things, on historical and sociological examination. The discussions here leave open the possibility that in some conditions,

[74] Diamond, *Reading Wittgenstein with Anscombe, Going On to Ethics*, 284–91.

issues involving disagreements may indeed be folded into the category of disrespect. Disagreements during the parliamentary debates, in 1833, about the abolition of slavery may count as such an instance.

This constrained point is enough to secure the point I wish to make – that in some conditions what we now regard as unjust was genuinely regarded as exemplifying disagreements (if the question of their justice was even raised in the first place). This is due to the fact that the shared conceptions of moral principles themselves were problematic. If there is any duty to resist, it cannot be grounded on the basis of these principles. The application of *Duty* to such cases would be inappropriate.

3.1.2 Escaping ideology

The second, and more important, problem with Delmas' dismissal of the views of certain individuals concerns her discussion of the effects of ideology and false consciousness. Specifically, her dismissal rests on a problematic view about how individuals escape the influence of ideology and recognise the injustice of a certain state of affairs. While Delmas acknowledges the potential obstacles to recognising injustice that is posed by ideology, she argues that we should not exaggerate its effects. She claims that it is not true that 'people don't know and have no way of knowing that an immoral practice is wrong when it is widely established and buttressed by ideology'.[75] If it is true that people generally can and do recognise the wrongness or injustice of certain states of affairs *despite* the effects of ideology, then we may reiterate the point that those who claim otherwise – that they regard the states of affairs as just or reasonable – may be dismissed.

[75] Delmas, *A Duty to Resist*, 208.

The application of *Duty* would also be appropriate – for it could latch on to those moral principles that undergird people's recognition of injustice. Delmas provides two brief arguments in support of this claim.

Her first argument centres on a reading of a scene from Mark Twain's *Adventures of Huckleberry Finn*, where Huckleberry frees the enslaved Jim. Delmas makes the claim that 'morality prevails thanks to Huckleberry's natural feelings of shared humanity'.[76] Delmas' reading of this scene is confused. The influence of ideology is on what is *regarded as* right, not what is objectively right. The fact that Huckleberry's action happens to be objectively right does not secure the claim that he has, on the basis of his feelings of shared humanity, escaped the corrosive effects of ideology. As Delmas recognises, Huckleberry regards himself as doing something *wrong* – acting contrary to the demands of morality – by freeing Jim. What would (and is required to) support Delmas' claim is if, instead, Huckleberry regards himself as *doing the right thing* despite the prevailing understandings that doing so would be wrong. Yet that is not an appropriate reading of the scene. Indeed, Huckleberry undergoes a crisis of conscience after lying to slave-hunters about whether there was a slave on the raft that Jim was on – a crisis that has been described as giving up on trying to fulfil the demands of morality, and to live nihilistically – to behave in ways depending only on what would be convenient at any given point.[77]

Moreover, Delmas' claim that Huckleberry's feelings of shared humanity are 'natural' appears to contradict her earlier claim that ideology is corrosive of our moral capacities

[76] Delmas, 206–7.
[77] I have learned from Jonathan Bennett's analyses of this scene and of the relationship between moral principles and our sympathies. See Jonathan Bennett, "The Conscience of Huckleberry Finn," *Philosophy* 49, no. 188 (April 1974): 123–34.

– including of perceiving injustice and having the right emotional responses to it.[78] Indeed, those feelings would be regarded – including by Huckleberry himself – as in some sense unnatural.[79] Delmas does not provide an account of how it is that those natural feelings escape the influence of ideology, and, more importantly, how ideology may even persist if the natural feelings were always there unscathed and could be easily appealed to in order to ground or justify actions that would be regarded as wrong.

Even if we grant that those feelings were indeed regarded as natural, Delmas does not provide any explanation as to how they would ground the duty to resist in the face of the judgement that the states of affairs to be resist were not unjust to begin with. That is, Delmas does not explain how the reliance on these purportedly natural feeling secures resistance *rather than* mere pity that is not accompanied by the thought that there is injustice that needs to be addressed. Here, an example from Jonathan Bennett illuminates the problem. Consider a small child who screams in terror when his mother passes him to the doctor to be examined. The natural feelings of the mother would, if relied on, lead her to hold the child close and not let the doctor come near. Yet that would be for her to do something *wrong*. Moreover, the mother would not, on the basis of those natural feelings, judge that the doctor's examination constitutes a problem that she needs to resist. The lesson to be taken from the example generalises. For any case in which the requirements of moral principles conflict with one's natural feelings, it is in fact possible for us to judge

[78] Delmas, *A Duty to Resist*, 206–7. Kristie Dotson provides an incisive diagnosis of a similar problem in Jason Stanley's discussion of ideology. See Stanley, *How Propaganda Works*; Kristie Dotson, "Distinguishing Knowledge Possession and Knowledge Attribution: The Difference Metaphilosophy Makes," *Philosophy and Phenomenological Research* 96, no. 2 (2018): 475–82.

[79] Margaret Walker's discussions of how people do not perceive certain others as equals, but as 'inferior castes of souls', may help to explain why having certain feelings towards them may be regarded as natural, and others inappropriate or unnatural. See Walker, *Moral Understandings*, 185–207.

that acting on the basis of natural feelings are in the wrong.[80] Reliance on natural feelings alone cannot secure the escape from ideology.

Delmas' second argument is a brief and favourable invocation of Kwame Appiah's argument that when it comes to certain unjust practices (such as female foot-binding in China, duelling in Europe and chattel slavery in Britain) people had recognised the wrongness of the practices from their inception. What changed in the process leading up to reform was not the moral argument – because they had already existed – but the 'willingness to live by them'.[81]

However, Delmas misunderstands Appiah's argument. He states only that the moral arguments against certain practices were 'already there' and moreover 'well-known'.[82] This is not to say that people generally regarded those moral arguments (and the moral principles which undergirded them) as in fact correct, plausible, or, most importantly, as having great weight. Appiah is careful to note that at the start of various reform movements, there were plenty of arguments in support of the status quo and against change. The arguments in support of reform were generally regarded as radical or wrong.

Moreover, and as Appiah reiterates throughout his discussions, the moral arguments about the wrongness of certain practices – *even when* generally believed to be correct – did not secure the reforms that activists were pushing for. It was appeals to the idea of honour – or more generally, to social recognition – that won the day. The activists succeeded only when the wrongness of certain practices was generally regarded as

[80] Bennett, "The Conscience of Huckleberry Finn."
[81] Delmas, *A Duty to Resist*, 208; Kwame Anthony Appiah, *The Honor Code: How Moral Revolutions Happen* (New York: W. W. Norton & Company, 2010), 161.
[82] Appiah, *The Honor Code*, xii.

essential to the explanation of why they were dishonourable or shameful.[83] Engaging in duelling, foot-binding or slavery was not regarded as dishonourable – they did not impugn individuals' moral and social standing amongst their peers. In this context, the activists' arguments that the wrongness of these behaviour was intimately connected to their being dishonourable, constitute a *reconceptualisation* of the existing moral ideas. Indeed, part of Appiah's point is precisely that new conceptions of moral ideas are required.[84] With this, we see how Delmas neglects the significance of activists' success in persuading others of this reconceptualised idea. She also neglects the extent to which individuals' willingness to live differently depends on their being persuaded of a different conceptualisation of certain moral ideas.

Implicit in these discussions is the claim that the relevant moral ideas (including principles) undergirding the moral arguments were, on their own, simply not regarded as having the appropriate weight relative to other considerations. Specifically, they were not regarded as outweighing the considerations that arose from individuals having to live and interact with others in their societies, in manners that were socially recognised, and which garnered them social recognition. We may say that even though these people may have thought that there was something wrong with the practice, they did not regard it as *all-things-considered* wrong or unjust, and thus requiring reform.[85]That this means, however,

[83] Appiah, 172.
[84] Appiah, 168.
[85] A similar point is made by Bernard Williams, in his discussion of how the ancient Greeks regarded the institution of slavery. Williams argues that while the ancient Greeks recognised that it was wrong to enslave others, and moreover that it was a grave misfortune to be enslaved, they nonetheless thought the institution to be necessary for other purposes – most importantly, for sustaining their way of life which they judged to be immensely valuable. The latter considerations were regarded as outweighing the claims of the arguments against slavery. That is, the ancient Greeks' recognition of the wrongness of slavery did not lead them to think of the state of affairs as all-things-considered wrong. Appiah neither cites nor engages with Williams on this point. See Bernard Williams, *Shame and Necessity* (Berkeley: University of California Press, 1993).

is that there was *also* something problematic about their understanding of the relevant moral ideas – in this case, as lacking conclusive weight in relation to other considerations. Once clarified, we see that appealing to Appiah's argument does not support Delmas' claim that people generally can and do clearly recognise the wrongness or injustice of certain states of affairs despite the influences of ideology. People may regard certain states of affairs as all-things-considered just or reasonable, even when they believed that certain moral arguments were correct. In those conditions, the justice or morality of certain institutions or practices may have been genuinely regarded as up for dispute. In these conditions, where the moral ideas were themselves problematic, the application of *Duty* is not appropriate.

In effect, and summing up the discussion of the second problem facing Delmas' argument, while she acknowledges that ideology and false consciousness constitute obstacles to individuals' perception of injustice, and thus to their recognition of their political obligations, she downplays the severity of these obstacles and exaggerates the ease of overcoming them. It is only when we recognise them as constituting genuine and serious obstacles, that we may clarify and understand why even activists who hold progressive agendas might nonetheless have "blind spots" in their concerns. For instance, an overwhelming majority (ninety percent) of the participants (who were male) at the 1840 World Anti-Slavery Convention voted against seating women activists as delegates at the convention. They had judged that it would be unseemly and unfeminine for women to share the public event with men, and that it would be a violation of the ordinances of God himself.[86] Or consider the decision by abolitionists to put the issue of women's suffrage

[86] McMillen, *Seneca Falls*, 72–77. This incident is generally acknowledged to have prompted the first women's rights convention – in Seneca Falls, New York – in the United States eight years later in 1848

on the backburner – as less important – to avoid complicating or derailing the fight for suffrage for black men.[87] They did not think that such exclusion or de-prioritisation was incompatible with the principle of equality upon which they relied to make their abolitionist arguments. Or consider the racist arguments made by suffragists against the two constitutional amendments which granted black men the right to vote prior to women – that the ignorance and degradation of black men would negatively affect the political system upon their enfranchisement, or that it is better to be the slave of an educated white man than a degraded and ignorant black man.[88] In each of these cases, the activists fought for and acted on the basis of a conception of a moral principle of equality that was broader than what was more generally accepted. Yet in each of them, the activists failed to adopt a conception that was broad enough to allow them to recognise the wrongness of excluding members of a certain group. This suggests that the obstacles constituted by ideology and false consciousness are not easily overcome – and especially not by simple appeals to natural feelings of sympathy or the mere existence of some moral arguments. In certain unjust conditions, people may achieve only limited success in contesting the prevalent beliefs and broadening the prevailing principles, and they may fail to broaden it in ways that show how the continued exclusion of some others counts as unjust.

I do not, of course, want to exaggerate the severity of the obstacles posed by ideology. As we have seen, suffragists were themselves able to come up with a novel conception of the

[87] Lobel, *Success Without Victory*, 78.

[88] Elisabeth Griffith, *In Her Own Right: The Life of Elizabeth Cady Stanton* (Oxford: Oxford University Press, 1985), 124; McMillen, *Seneca Falls*, 161. Judgement on these racist arguments may be complicated by several observations – that the suffragists who made them were nonetheless in favour of suffrage for black women; that their rejection of the two amendments were plausibly construed as being primarily in response to the amendments' exclusion of women; and that they often concurrently presented the issue of suffrage for black men or white women as one of priority (rather than about whether black men *should* get the vote). While these may mitigate the sting of the racist arguments, they do not remove it.

idea of equality *despite* being enculturated in those unjust conditions, and moreover managed to find allies amongst some men. Freedom from ideology is certainly possible. Despite this, we have seen that it is not always easy to escape the influence of ideology – and certainly not on simple appeals to natural feelings or the mere existence of moral arguments. Many people under the influence of ideology are likely to regard certain states of affairs as not unjust. They are also likely to reject that activists have a duty to resist that is grounded in shared conceptions of moral principles. In these conditions, the application of *Duty* would be inappropriate.

3.2 Interest

The second argument used to justify the dismissals of the views of certain people and the shared conceptions of moral principles undergirding them, centres on the claim that those who purportedly have certain beliefs or hold certain views are actually motivated by the considerations of their self-interest. Consider Delmas' discussion of white southerners who supported racial segregation despite federal law requiring otherwise and despite civil rights activists' widespread opposition and dissent. Delmas acknowledges that there were obstacles – including those posed by ideology – to white southerners' understanding of the injustice facing black Americans, and of their duties in those conditions. She claims, however, that they 'were well aware of what was at stake for them in abolishing the system'.[89] Their support was not because they genuinely believed that the system was just or fair. Instead, their support was grounded in their desire to preserve their own selfish interests.

[89] Delmas, *A Duty to Resist*, 120.

Delmas suggests, additionally, that this characterisation could plausibly be extended to 'the period before the federal government began ordering desegregation',[90] and presumably before opposition to the system was widespread. These individuals had a duty to withdraw their support from the system, or to disobey its requirements. Yet they chose, culpably, to ignore their duty because of considerations of their own interest. Their claims – that the system was not unjust – are not genuine, and thus may be justifiably set aside. The diagnosis of interest reveals that there were moral ideas which were endorsed by people, but which they were ignoring. As with the earlier appeal to the possibility of evading ideology, this diagnosis is intended to justify setting aside the views claiming that there was no injustice. If successful, it addresses the difficulties of applying *Duty* to all cases.

I am in general agreement with Delmas' analysis as it pertains to contexts where opposition to segregation is widespread and when the injustice is clearly and widely known. However, it is unclear – at least prior to the historical work being done[91] – that the same could be said of *any* period before the federal government began ordering segregation. As I have noted earlier, segregation was not generally (at least initially) regarded as unjust because interactions outside the domain of formal political participation (including voting, etc) were not regarded as calling into question the equality of black Americans relative to white Americans, *qua* citizens. Those who argued that segregation was unjust relied on conceptions of citizenship and equality that were broader than those which undergirded the common institutions and practices.[92] The significance of the broader context becomes clearer when we recognise that the federal government

[90] Delmas, 120.
[91] On this point, see my discussions in Section 3.1.1.
[92] *Supra* notes 44 and 45.

did not order desegregation in a vacuum. It did so – thus repudiating its earlier endorsement of segregation – in response to the work done by activists.

Prior to such activism, the situation may not have been simply one where the individuals could clearly see through the ideology to perceive the injustice, yet chose not to do anything about it in order to preserve their own interests. Instead, the situation was one where they did not regard the preservation of their own interests – *even* at the expense of others – as unjust.[93] If so, they would not regard themselves as having a duty to withdraw support from the system, or to engage in behaviour that violates its demands on the basis of shared conceptions of moral principles. This is related to the earlier discussion, and I will not belabour the point.

The basic point is that in some conditions the diagnosis that individuals' support of a system is fundamentally undergirded by self-interest, does not justify our dismissals of their views. Instead, dismissing these views would require arguments – such as those which civil rights activists provide – that those interests may not be rightly protected at others' expense. And to do so, we would need to move beyond the shared conceptions of moral principles which are flawed, towards different conceptions of moral principles that bring the injustice of the situation into view.

3.3 Inventory

[93] This view is not unique to those who defended segregation. It is also arguably present in discussions of slavery, animal welfare or global poverty. See Nigel Pleasants, "Moral Argument Is Not Enough: The Persistence of Slavery and the Emergence of Abolition," *Philosophical Topics* 38, no. 1 (2010): 159–80.

Let us quickly take stock of the discussions in this section. We began with the question of why philosophers who discuss resistance have not taken seriously the possibility that the shared conceptions of moral principles in those conditions may themselves be problematic, and thus that individuals may not (and often do not) regard themselves as having a duty to disobey on the basis of their shared conceptions of moral principles. We have seen how the failure to take this possibility seriously is not due to mere neglect but is instead supported by a certain view about how individuals living in unjust conditions come to recognise it. Our discussions in this section have also rendered more precise the scope of *Duty*'s application to cases. It may apply in unjust conditions where there are shared conceptions of moral principles that are not (yet) institutionalised, but which allow individuals to recognise the injustice of a particular state of affairs. It does not apply in cases where there are no such shared conceptions of moral principles capable of facilitating such recognition.

4 Conclusion

In this essay, I have articulated a constrained challenge to the application of *Duty* – it does not apply to all cases. In some conditions where the conceptions of moral principles undergirding common institutions are flawed or problematic and endorsed by individuals within them, *Duty* does not apply. The existence of these conditions constitutes a limit of the application of *Duty*. The grounds for the duty to resist will have to be found elsewhere – in the novel conceptions of moral principles that activists propose. I have also provided a diagnosis, centring on Candice Delmas' recent and elaborate application of *Duty*, of two

ways in which theorists have attempted to justify dismissing the views of some individuals and the problematic moral principles supporting their views.

I conclude by very briefly considering how the discussions may clarify a contemporary problem concerning migration. The conventional view which dominates public discussions is that states have the right to exclude non-citizens[94] and to select potential candidates for citizenship. According to this view, additionally, states may freely select potential citizens, as long as their selection is not marred by wrongful discrimination.[95] Usually, a range of reasons are given for these border control measures. Among other things, they concern preserving culture or cultural continuity,[96] exercising states' freedom of association,[97] or ensuring the employment of citizens.[98] These reasons are situated within, and supported by, a complex web of other beliefs about, among other things, the nature and purpose of political association, the role of the state in relation to its citizens, the value of membership in a bounded group and the importance of enforcing those boundaries, and so on.

[94] Subject, of course, to the non-refoulement principle in international law (supra note 53). However, states' commitment to this principle has also come under strain as states increasingly opt for giving refugees the bare minimum levels of protection consistent with the requirements of principle. See Matthew E. Price, *Rethinking Asylum: History, Purpose, and Limits* (Cambridge: Cambridge University Press, 2009), especially pp. 1-18. In this context, and unsurprisingly, even decisions to accept refugees *at all* are presented as supererogatory – something that is good for them to do, but which they have no duty to do. Consider, for instance, the presentation of the UK government's decision in 2015 to take in refugees (at a smaller number than was recommended by activists and human rights groups) as an act of 'extraordinary compassion'. See Patrick Wintour, "UK to Take up to 20,000 Syrian Refugees over Five Years, David Cameron Confirms," *The Guardian*, September 7, 2015, https://www.theguardian.com/world/2015/sep/07/uk-will-accept-up-to-20000-syrian-refugees-david-cameron-confirms.

[95] David Miller, "Immigration: The Case for Limits," in *Contemporary Debates in Applied Ethics, Second Edition*, ed. Andrew I. Cohen and Christopher Heath Wellman (Malden: Blackwell Publishing, 2014), 363–375.

[96] Miller, 363–75.

[97] Christopher Heath Wellman, "Immigration and Freedom of Association," *Ethics* 119, no. 1 (2008): 109–41.

[98] Stephen Macedo, "The Moral Dilemma of U.S. Immigration Policy: Open Borders vs. Social Justice?," in *Debating Immigration*, ed. Carol M. Swain (New York: Cambridge University Press, 2007), 63–81.

Consider, now, the following case based on a common feature of many immigration systems around the world. Anne is a member of country A, and has recently gotten married to Bill, who was originally born in country B. They decide to settle permanently in country A. However, Bill's attempts to apply for permanent residence are repeatedly rejected. This is due to country A's adoption of a "points-based" system that assesses applicants by assigning them "points" based on characteristics such as level of income, occupation, level of education and so on. Bill is a low-skilled and low-wage worker who, upon such assessment, fails to accrue the require number of points for permanent residence. Anne's and Bill's relationship and their lives more generally are thrown into disarray. The transnational couple is faced with the option of living apart or in country B; they regard, for various reasons, these options as inferior to their settling in country A.

When presented with cases like this, it is common to hear people express *sympathy* for the couple. However, few people think that this case shows that the immigration system which selects migrants in this way is *unjust*, or even more minimally, that it calls into question the justice of the system. This judgement is typically stable in the face of the claim that the immigration system is set up in such a way in order to protect the interests of the majority of members of country A *even when* it comes at the expense of others. This may be due, I suggest, to a general acceptance of the view that the reasons for border control measures clearly and securely outweigh the reasons for accepting people like Bill. The claim that the immigration system should be reformed in such a way as to allow people like Bill permanently into the country are likely to be rejected – regarded, among other things, as sentimental or unreasonable.

Given these conditions, what are we to make of the claim that we have a *duty*, grounded in shared conceptions of moral principles, to resist the existing institutions – perhaps by helping Bill *illegally* settle in society A, or, if he is already here, to help him resist deportation?[99] This claim is likely to be rejected. People are simply going to deny that the shared conceptions of moral principles *require* that we permit people like Bill to settle permanently in the country, and moreover reject the claim that his not being allowed to do so is a failure on our part to live up to the requirements of our principles. This, as is obvious, is intimately connected to the view that the institutions as they are set up are *not* unjust. If individuals have a duty to resist, it cannot be of the form sketched out by *Duty*. Grounds other than the existing shared conceptions of moral principles undergirding the immigration rules will have to be found.

While the application of *Duty* to this case is inappropriate, our discussions suggest a way of rendering it so. What we would need to do is, among other things, first persuade others that the institutions are unjust. This may be done by broadening the principle of anti-discrimination such that it excludes talent-based selections,[100] or by expanding our shared conceptions of citizenship or membership so as to include people like Bill as "one of us" or at least "people like us",[101] or by showing how our honour or social reputation are

[99] For further discussion of the reasons we have to resist or even disobey immigration laws, see Javier Hidalgo, "The Duty to Disobey Immigration Law," *Moral Philosophy and Politics* 3, no. 2 (2016): 165–186; Javier Hidalgo, "The Ethics of Resisting Immigration Law," *Philosophy Compass* 14, no. 12 (2019): e12639. Hidalgo's discussions are constrained – referring only to our reasons for resisting *unjust* immigration laws. He does not discuss what individuals have reason to do – and what principles those reasons are grounded in – when the laws or institutions more generally are not regarded as unjust.
[100] Desiree Lim, "Selecting Immigrants by Skill: A Case of Wrongful Discrimination?," *Social Theory and Practice* 43, no. 2 (2017): 369–96; Lior Erez, "In for a Penny, or: If You Disapprove of Investment Migration, Why Do You Approve of High-Skilled Migration?," *Moral Philosophy and Politics*, forthcoming.
[101] Agnes Tam, "Why Moral Reasoning Is Insufficient for Moral Progress," *Journal of Political Philosophy* 28, no. 1 (2020): 73–96.

impugned by the failure to include people like Bill,[102] or even by arguing that our interests (including Anne's) in family life are weighty enough that our shared conceptions of moral principles need to be reworked to properly accommodate them. Whether any of these may be successfully done, and be regarded as persuasive, will partly depend on how well the broadened principles reconfigure rather than outrightly dismiss – the complex web of beliefs supporting people's views on membership and migration. That is, our discussions show that what we need is a reimagining or reinterpretation of the moral world.[103]

[102] Appiah, *The Honor Code*.
[103] Moody-Adams, *Fieldwork in Familiar Places*, 106.

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Essay Two: Differentiating Disobedients

Abstract

How should individuals whose disobedience of the law is motivated by sincere and serious moral conviction, differentiate themselves from criminals whose law-breaking behaviour is not morally motivated? A common response is that morally motivated disobedients should behave in certain, constrained ways in order to communicate their convictions. In this essay, I revise Kimberley Brownlee's account of the communicative principle of conscientiousness in three respects. These revisions force a significant reframing of which are the salient questions that we need to consider when we are confronted with acts of disobedience. The category of morally motivated disobedients is potentially more inclusive than has been commonly assumed. It may, that is, include character types such as hackers, rioters or vigilantes.

Introduction

Consider the following, general description of a morally serious citizen, Anne. Upon sustained reflection, Anne comes to possess a sincere and serious moral conviction that a certain law or policy in her society is wrong. Because of this, she judges that she can no longer conform with its demands and behave accordingly. Anne proceeds to engage in disobedience.

A question arises as to how Anne (a "disobedient") is to be differentiated – in the eyes of other people, including and perhaps especially her compatriots – from criminals whose actions also violate existing laws, but not on the basis of their moral convictions (call the latter, for ease of reference, "criminals"). We may call this the question of differentiation. The question centres on differentiating disobedients from criminals in the minds or from the perspectives of other people: it is about how disobedients are perceived, and not whether their *unseen but actual* mental states and motivations distinguish them (in an "objective" sense) from others who breach the law. While references to disobedients' *actual* mental states may secure an 'objective' differentiation between them and the criminal, these states are not those which we can readily access (if at all).[1] Because of this, observers have to look for indications of the existence and quality of disobedients' moral convictions. This additional step is important. Our interest in differentiating disobedients

[1] That is, the differentiation must be secured from an evidence-relative (or belief-relative) perspective rather than a fact-relative perspective. One implication of the focus on the question of differentiation as I have framed it, is that if a criminal actually lacks the relevant mental states and moral convictions, but behaves outwardly in identical ways to a disobedient, we will have no choice but to treat them alike. See Derek Parfit, *On What Matters: Volume One* (Oxford: Oxford University Press, 2011), 150–51; Kimberley Brownlee, "Reply to Critics," *Criminal Law and Philosophy* 10, no. 4 (December 1, 2016): 727.

from criminals is not merely theoretical. It is a crucial component in various practical issues that we need to reach verdicts on – among other things, whether they are to be treated equally or differently in criminal law, and whether they are to be excused or tolerated. What we need is to secure differentiation for particular cases, rather than in the abstract.

A general answer to the question of differentiation is that Anne must communicate her reasons for her disobedience. This may be done by offering explanations – unlike the criminal, her disobedience is undergirded by moral convictions rather than morally irrelevant or pernicious considerations. This is one important indication of the existence and quality of Anne's moral convictions. However, it is insufficient. To the extent that Anne can verbally offer such explanations, so can the criminal. The latter may make use of moral arguments or moralised claims in order to receive more favourable judgements of their law-breaking action, and possibly even to avoid punishment (or to avoid severe punishment). To secure the differentiation, Anne would have to do more than simply assert her moral convictions. She has to show that her moral claims are not *just talk*. A more specific answer, then, is that Anne's *actions* (or behaviour more generally) would have to indicate that she does sincerely hold the relevant moral conviction, and that she does so seriously – in the sense of judging it to be more important than her other commitments (which can include conforming with the law).[2] Anne's behaviour must, in many cases, be visibly distinct from those of the criminal. When she trespasses, for instance, she must try to do so in a way that sets her apart from a criminal whose trespassing is not morally motivated.

[2] The dimensions of sincerity and seriousness are taken from Kimberley Brownlee's discussions of civil disobedience. See Kimberley Brownlee, *Conscience and Conviction: The Case for Civil Disobedience* (Oxford: Oxford University Press, 2012), 1.

In some circumstances, these actions may be onerous. These burdens have to be contextualised. Even if citizens are prepared to excuse or tolerate disobedience that is undergirded by sincere and serious moral convictions, they nonetheless have interests in avoiding being strung along by criminals who assert their possession of moral convictions as a way of justifying their disobedience, and possibly avoiding punishment. Here, the thought is that in bearing these burdens, a disobedient shows herself to indeed have a sincere and serious moral conviction. Behaving and living in accordance with that conviction are so important to her that bearing these burdens is regarded by her as worthwhile. And in bearing these burdens, she makes the sincerity and seriousness of her moral conviction plain for others to see.

These general thoughts receive an elaborate articulation in Kimberley Brownlee's prominent account, specifically, in her defence of what she terms the communicative principle of conscientiousness. According to this principle, genuine moral conviction has a communicative element.[3] A morally motivated disobedient who does not engage in such communication, and who remains silent, 'necessarily casts doubt on the sincerity of [her] conviction' that a certain law or policy (and the conduct required or enabled by it) are wrong.[4] A disobedient has reason to avoid inviting these doubts, for they may result in her being erroneously treated as a criminal and would moreover draw attention away from the wrong of the law or policy. I focus on Brownlee's account as it is the most systematic attempt that has been made at articulating a communicative principle of conscientiousness

[3] Brownlee, 2.
[4] Brownlee, 29.

as it pertains to morally motivated disobedience. In this essay, I clarify and introduce three revisions to this principle.

The essay proceeds as follows. In Section 1, I briefly present the core features of Brownlee's communicative principle of conscientiousness. In Section 2, I argue for three revisions of the principle. In Section 3, I consider the implications of the revised principle for the ways in which disobedients can indicate the sincerity and seriousness of their moral conviction. My revisions force a significant reframing of what the salient questions are when we are confronted with acts of disobedience. On this basis, it becomes clear that the category of morally motivated disobedients is potentially more inclusive than has been commonly assumed. It may, that is, include character types such as hackers, rioters or vigilantes.

Before proceeding, a brief clarification is important. In this essay, I focus on the sincerity and seriousness with which an individual holds her moral conviction, setting aside the question of the content of that conviction.[5] The issues are distinct; an individual may conscientiously – that is, sincerely and seriously – hold an abhorrent conviction.[6] At the limit, we may judge (as we often do) that an individual who sincerely and seriously holds an abhorrent conviction and who acts on that basis, is no better (or perhaps even worse) than ordinary criminals. Even so, there are questions arising from how an individual can indicate – and how others can come to know – the sincerity and seriousness of her moral

[5] I also set aside the issue of the civility of the participants. Brownlee sees an intimate connection between conscientious communicativeness and civility. For reasons that will become apparent later, I do not think the connection is plausibly construed in this way. See note 63.

[6] Note that on Brownlee's account, conscientiousness is a descriptive idea, referring simply to the sincerity and seriousness of an individual's conviction or belief. Brownlee distinguishes conscientiousness from conscience. The latter is understood as a deeply moral property requiring, among other things, genuine and self-conscious moral responsiveness. The former is understood as a necessary but insufficient condition for the latter. Brownlee, *Conscience and Conviction*, 7, 16–17.

conviction. We may also ask whether their conscientiousness makes (or should make) a difference to how we treat them.[7]

Two sets of considerations support the separation of our concerns with the quality and content of individuals' moral convictions. First, we typically think that individuals have a defeasible moral right – grounded, among other things, in our commitment to respecting their freedom of thought and expression[8] – to engage in what they regard as morally motivated disobedience. In practical terms, this means that we have an interest in bringing about the conditions in which individuals can live in ways that they regard as expressive of their personalities, which includes living in accordance with their moral convictions. Even when their exercise of this right is defeated by considerations pertaining to the content of their convictions, something of value would nonetheless be lost.[9] Given this, we have an interest in understanding this right and the conditions under which it is most plausibly defended. This, again, is served by attending to how individuals can indicate that their disobedience is morally motivated.[10]

[7] Brownlee, 18.

[8] Brownlee characterises the freedom of thought and expression as grounding *two* rights. My discussions in this essay do not hinge on their separation. The simplified view – which runs them together, and which Brownlee diagnoses as characteristic of 'standard liberal views in the spirit of John Stuart Mill' – is sufficient. See Brownlee, 119–52, esp. 119-20.

[9] That is to say, the right is *pro tanto* rather than *prima facie*. While a *pro tanto* right remains a right even when overridden or defeated; a *prima facie* right does not remain so. For further discussions of this distinction, see Bernard Williams, *Problems of the Self: Philosophical Papers 1956-1972* (Cambridge: Cambridge University Press, 1973), 166–86; Shelly Kagan, *The Limits of Morality* (Oxford: Oxford University Press, 1989), 17; Lisa Tessman, *Moral Failure: On the Impossible Demands of Morality* (Oxford: Oxford University Press, 2014), 11–56, esp. 22 n. 23.

[10] There are other potentially grounds for excusing, tolerating or permitting individuals' conscientious action (including disobedience). I do not discuss them here. For further discussions, see John Stuart Mill, *On Liberty and Other Writings*, Cambridge Texts in the History of Political Thought (New York: Cambridge University Press, 2009); Corey Brettschneider, *When the State Speaks, What Should It Say?: How Democracies Can Protect Expression and Promote Equality* (Princeton: Princeton University Press, 2012); Eric Heinze, *Hate Speech and Democratic Citizenship* (Oxford University Press, 2016); Seana Valentine Shiffrin, *Speech Matters: On Lying, Morality, and the Law* (Princeton University Press, 2014).

Second, for any given law or policy there is likely to be a plurality of views about whether that law or policy is wrong, due to an expected plurality in individuals' convictions. This means that even if we exclude abhorrent views from consideration – as those about which it does not matter whether their adherents possess those views sincerely and seriously – we are still left with a large set of views about which there is likely to be substantive disagreements. Given this, a theory of disobedience would be useless for addressing concrete cases if it commits only to the obvious claim that disobedience is right if and only if all agree that the law is unjust.[11] What we want is a theory that allows us to answer the question of what individuals can permissibly do when there are substantive disagreements about whether a given law or policy is wrong. The articulation of such a theory, I suggest, is partially achieved by attending to the sincerity and seriousness with which individuals hold their moral convictions, regardless of the content of their convictions.

1 Communicativeness

On Brownlee's account, the communicative principle of conscientiousness comprises four conditions – consistency, universality, non-evasion and dialogue. These conditions are individually necessary and jointly sufficient for someone to have a conscientious – that is, sincere and serious – moral conviction.[12] My presentation of Brownlee's account will be brief, centring on the core features. I consider and address potential problems in the next section.

[11] Ronald Dworkin, *A Matter of Principle* (Cambridge: Harvard University Press, 1985), 106.
[12] Brownlee, *Conscience and Conviction*, 40.

The consistency condition requires there to be consistency between a disobedient's 'judgements, motivations, and conduct to the best extent that [she is] able'.[13] This means that she takes care to avoid conduct that she judges wrong, and to engage in conduct that she deems correct. The qualifier on consistency – that the consistency is to be maintained to the best extent that in an individual is able to – is important. The condition would be implausibly stringent if it were to require individuals to be consistent *regardless* of the costs of doing so. This qualifier allows the consistency condition to be broadly context-sensitive.

The universality condition requires individuals to universalise their judgements. Some action is wrong not just for them, but for others in similar circumstances. For instance, an individual should not simply judge that it is wrong that *she* is conscripted – thus legally required – to participate in an unjust war, but that everyone who participates in that war commits a wrong. Brownlee is careful to note that individuals' universalised judgements are (to be) *pro tanto* rather than all-things-considered in character. This is a modest interpretation of the universality condition and accommodates context-sensitivity and moral pluralism. Individuals who judge something to be *pro tanto* wrong can nonetheless acknowledge that others who are differently placed – among other things, they may be subject to a different range of considerations or hold different moral convictions – may reach different all-things-considered judgements about whether to act on the basis of the *pro tanto* judgement.[14]

[13] Brownlee, 30.
[14] Brownlee, 34–37.

The non-evasion condition requires that disobedients be willing to bear the risks of living in accordance with their convictions. They should not seek to evade the implications of their possessing those convictions, especially the consequences of their disobedience. In some cases, they should take positive steps to support their convictions. Brownlee departs from John Rawls' now-famous specification of the condition – that individuals should willingly accept being arrested and facing legal punishment.[15] All that is required is for the disobedients to be willing to accept the *risk* of being arrested and punished. The condition is, again, broadly context-sensitive. The existence of other weighty considerations – such as those concerning respect or sympathy for others – may outweigh the requirements of this condition.[16]

Finally, the dialogic condition requires that disobedients 'be willing to communicate [their] conviction to others in an effort to engage them in reasoned deliberation about its merits'. When disobedients satisfy this condition, they treat others as reasoning agents rather than those who may be (or are to be) coerced. Two caveats are important. First, Brownlee notes that the condition is not excessively demanding – it does not require that disobedients *succeed* in communicating their conviction and persuading others of its merits. It simply requires them to be willing to do so.[17] Second, a genuine dialogue is distinct from mere assertion. Among other things, participants in a dialogue must be responsive to the possibility that their views may be mistaken,[18] and ensure that the means and modes of their communication – whether through words or actions, and whether aggressive or supportive – are likely to foster rather than detract from dialogue.[19] These

[15] John Rawls, *A Theory of Justice: Revised Edition* (Cambridge: Belknap Press, 1999), 322.
[16] Brownlee, *Conscience and Conviction*, 37–42.
[17] Brownlee, 42–46.
[18] Brownlee, 20.
[19] Brownlee, 43–44, 223.

requirements are, again, context-sensitive and may be outweighed by considerations of the costs associated with communication.

According to Brownlee, three of the four conditions – the consistency, non-evasion and dialogic conditions – have conative elements. They are linked, in some sense, to individuals' actions. Because of this, these conditions are practically testable. Others can look to the conduct of disobedients to check if they satisfy the conditions. This is a more credible way of assessing whether disobedients hold sincere and serious moral convictions, than simply taking their word for it.[20] An individual who disobeys on the basis of her moral conviction is likely to be judged as indeed having that conviction if her judgements, motivations and actions have been consistently aligned – and even better if they have been aligned for a long time – than if they were not.[21] A disobedient who is non-evasive signals that she is not insincere or hypocritical about her convictions – her assertion of conviction is not just empty talk. The signal is more strongly sent if her non-evasiveness is consistent, or if she chooses more burdensome options rather than the easier ways out.[22] Finally, a disobedient who is willing to engage others in dialogue about the merits of her conviction, or even to simply stand up for her convictions in a public way, shows herself to be sincere and serious about the conviction.[23] A quick clarificatory note: The universality condition does not have a conative element because, recall, it requires only universalised *pro tanto* judgements. Insofar as such judgements may be outweighed, the all-things-considered judgements on the basis of which individuals act

[20] Brownlee, 30.
[21] Brownlee, 33–34.
[22] Brownlee, 37–38.
[23] Brownlee, 42–43.

may not reflect (and may indeed deviate from the demands of) their *pro tanto* judgements.[24]

Where individuals do not satisfy (or do not fully satisfy) the requirements of these conditions, doubts may be raised about the sincerity and seriousness of their convictions. And insofar as disobedients have an interest in avoiding being treated as criminals, they have reason to not behave in ways that raise such doubts. With this general sketch of Brownlee's account in hand, we may proceed to consider several revisions that may be made to it.

2 Revisions

In this section, I argue for three revisions of Brownlee's communicative principle of conscientiousness. The revisions are progressively more specific. First, I identify and separate two characterisations of the principle, corresponding to its dual functions. The principle may be understood in either constitutive terms, as sketching out the necessary and sufficient conditions for what it is to have a conscientious conviction. It may also be understood in epistemic terms, as identifying the conditions that when satisfied by disobedients indicates their conscientious convictions to others. Various commentators have criticised the constitutive reading for being implausibly strongly characterised. In light of these criticisms, I suggest a revised, "paradigmatic reading" of the principle.

[24] In response to critics, Brownlee re-characterises the conditions. Specifically, the non-evasion and dialogic conditions might be understood as corollaries of the consistency and universality conditions, respectively. The revised characterisation does not affect my argument. See Brownlee, "Reply to Critics," 724.

Second, I resolve an apparent tension between her characterisation of the constituent conditions of the principle as being context-sensitive, but also serving as practical tests of the sincerity and seriousness of disobedients' moral convictions. I suggest that understanding the principle as making its assessments holistically resolves this tension. Third, I clarify Brownlee's claim that disobedients should indicate their recognition that they may be mistaken in their views by behaving in constrained ways. The claim does not refer to their views about injustice; instead, it is most plausibly taken as referring to their views about the tactics they choose. Upon making each of these revisions, I briefly detail what I regard as the most obvious implications for the question of differentiation.

A note on methodology is important. In undertaking the revisions, my concerns are not exegetical. My aim is not to provide the most accurate reconstruction of Brownlee's account. Where there are ambiguities and tensions in Brownlee's account, I settle them with an eye to articulating what I regard as a more plausible account of how disobedients may indicate (and how others come to know) the sincerity and seriousness of their convictions.

2.1 The principle's functions

Brownlee presents the communicative principle of conscientiousness in two different ways. First, the four conditions are characterised as constituting 'necessary and sufficient conditions' for an individual to *have* a genuinely conscientious moral conviction.[25] Call this the "constitutive reading" of the principle. On this reading, when an individual fails to satisfy one or more of these conditions, she does not *have* a genuine conscientious

[25] Brownlee, *Conscience and Conviction*, 40.

moral conviction. This characterisation of the principle occurs at various points during Brownlee's discussions. For instance, consider Brownlee's claim that the question of how long our judgements, motivations and actions must be consistent or aligned with each other is one that concerns what it is 'for us to *have* a genuine conviction'.[26] Or her claim that we must universalise our moral judgements in order '*to be* conscientious'.[27] Or that *to be* conscientious we need not take more burdensome and non-evasive options.[28] Or that the satisfaction of the dialogic condition is necessary for conscientiousness.[29] And so on.

The principle is also characterised in a second way, which we can call the "epistemic reading". On this reading, the principle is not so much concerned with whether individuals *have* genuinely conscientious moral convictions, but whether they *indicate* to others that they have such convictions. Here, the primary function of the principle is to assuage or eradicate other peoples' doubts about the sincerity and seriousness of the disobedients' convictions. When an individual fails to satisfy one or more of these conditions, she fails to *show* others that she does have a genuine conscientious moral conviction. This is distinct from the issue of whether she in fact has such a conviction. This characterisation also occurs at various points. For instance, we should aim to '*show* that there is consistency *ceteris paribus* between [our] judgements, motivations, and conduct'.[30] We are rightly sceptical about someone who behaves in ways that indicate that she does not universalise her moral judgements.[31] Our choice of burdensome and non-evasive options is to '*signal* that we are neither inconsistent nor hypocritical', and to ensure that no doubt

[26] Brownlee, 33, emphasis mine.
[27] Brownlee, 35, emphasis mine.
[28] Brownlee, 38.
[29] Brownlee, 43.
[30] Brownlee, 31, emphasis mine.
[31] Brownlee, 36–37.

is cast about the sincerity and seriousness of our convictions.[32] Our willingness to engage in dialogue 'shows both that we believe our conviction is sufficiently credible … and that we are sufficiently committed to it'.[33] And so on.

The two readings of the principle and the functions that they correspond to, are intimately connected. Specifically, the principle succeeds in its function as an *indication* of individuals' conscientiousness because its constituent conditions sketch out a generally plausible view of what it is to *have* sincere and serious moral convictions. However, the two readings are not often differentiated by those who engage with Brownlee's account, nor is the connection between them often noticed.[34] Consider, for instance, Candice Delmas' worry that 'if … the [conditions] can be satisfied notwithstanding the lack of de facto communication, then surely we are justified in wondering why Brownlee claims they are necessary and sufficient conditions for conscientiousness'. Delmas' worry rests on an equivocation of the two readings of the principle. Whether there is *de facto* communication is an issue for the epistemic reading of the principle – about disobedients' indication of their conscientious convictions to others. This is separate from the issue of whether they in fact, according to the conditions on the constitutive reading, have conscientious conviction.[35] More generally, commentators have directed their attacks at the constitutive reading, seemingly thinking that it forms the core (or even the only component) of the account. Their criticisms are structurally similar, centring on its

[32] Brownlee, 37–38, emphasis mine.
[33] Brownlee, 42, emphasis mine.
[34] Thomas E. Hill appears to be in the minority in picking out the two readings and their relationship. However, he takes the epistemic reading as comprising criteria for the sort of moral convictions that the law should respect and protect. This is a step too quick. The epistemic reading comprises merely the criteria for indicating to others that one has conscientious conviction. Whether the law respects or protects those convictions is a separate issue requiring further arguments. See Thomas E. Hill, "Conscientious Conviction and Conscience," *Criminal Law and Philosophy* 10, no. 4 (2016): 677–92.
[35] Candice Delmas, "False Convictions and True Conscience," *Oxford Journal of Legal Studies*, brown, 35, no. 2 (June 1, 2015): 411.

susceptibility to a range of obvious counterexamples – of individuals who genuinely have sincere and serious moral convictions, but nonetheless fail to satisfy the conditions comprising the principle.

For instance, Christopher Cowley rejects Brownlee's specification of the dialogic condition – specifically her claim that disobedients have to recognise the possibility that they may be mistaken in their views to count as sincerely intending to engage in a dialogue. Cowley begins with the counterexample of a *committed* vegetarian who is not perplexed about whether eating meat is wrong. She is secure in her conviction being correct. Cowley suggests that this case bears structural similarities to the activist Rosa Parks, who disobeyed laws mandating racial segregation in public spaces. Parks is described as being similarly secure in her conviction that segregation is wrong. In either case, the individuals are 'not open to the possibility of error in her conscientious conviction'.[36] This is a challenge to Brownlee's characterisation that such a recognition is a 'necessary condition for intending sincerely to engage in a dialogue'.[37] This challenge subsequently poses a problem for her claim that the conditions constitute necessary and sufficient conditions for conscientiousness.

Similarly, Candice Delmas provides several counterexamples of individuals who hold on to sincere and serious moral convictions yet behave in ways that run afoul of the 'narrow

[36] Christopher Cowley, "Conscientious Objection and the Limits of Dialogue," *Philosophy & Social Criticism* 42, no. 10 (2016): 1009. Similar arguments are also made elsewhere. See William Smith, "The Burdens of Conviction: Brownlee on Civil Disobedience," *Criminal Law and Philosophy* 10, no. 4 (2016): 694–97; C. A. J. Coady, "Kimberley Brownlee: Conscience and Conviction: The Case for Civil Disobedience," *The Journal of Value Inquiry* 50, no. 2 (2016): 502–3.

[37] Brownlee, *Conscience and Conviction*, 20 n. 9. In her response to critics, Brownlee appears to weaken the requirement of the dialogic condition – someone like Rosa Parks would count as conscientious if she 'would have tried to understand' her opponents' motivations and commitments, and if she 'would also have sought to see things' from their perspectives. This revision is also susceptible to plausible counterexamples; I set it aside. See Brownlee, "Reply to Critics," 728.

conception' that Brownlee sketches. According to Delmas, a Catholic who engages, before marriage, in various sorts of intimate physical contact short of coitus may nonetheless be sincerely and seriously devout. An individual who strongly believes that abortion is wrong may fail to satisfy the universality condition when she declines to pass judgement on women who underwent or plan to undergo abortions.[38]

More generally, there appears to be other counterexamples to the conditions. For instance, a poor worker who, due to her poverty, is unwilling to face the risk of being arrested or punished for her disobedience seems to fail the requirement of the non-evasion condition to bear the risks of living in accordance with her convictions. A socially inept individual whose demeanour or behaviour are widely interpreted as indicating her reluctance to engage in conversation may be taken (and perhaps reasonably so) as failing the requirement of the dialogic condition. And so on. Yet each of these individuals may *actually* have genuinely conscientious moral convictions. If so, the existence of these individuals poses a challenge to the constitutive reading of the principle, according to which the conditions amount to necessary and sufficient conditions for someone to have a genuinely conscientious moral conviction.

[38] Delmas also lists, among her examples, the case of an individual raised in a very conservative environment who 'might be evasive and non-dialogic as she comes to shed her parents' and peers' views and develops liberal conscientious convictions.' She credits Alon Harel as the inspiration for this example. This example is, however, misplaced. It secures, at best, the claim that moral beliefs falling short of the standard of conscientiousness (defended by Brownlee) are nonetheless morally significant, especially since they are precursors (or even preconditions) of conscientious convictions. This lends support to the claim that the *protections* accorded to conscientious convictions should be *extended* to include them. This example does not secure the claim that the standard of conscientiousness *itself* – which determines what counts as conscientious – is overly narrow and should be relaxed. The claims are distinct. We may think, for instance, that the standard of conscientiousness is correctly formulated, while nonetheless thinking that the protections that are accorded to them should be extended to their precursors. Or we may not. See Delmas, "False Convictions and True Conscience," 409–10; Alon Harel, review of *Conscience and Conviction: The Case for Civil Disobedience*, by Kimberley Brownlee, *Notre Dame Philosophical Reviews*, February 29, 2013, https://ndpr.nd.edu/news/conscience-and-conviction-the-case-for-civil-disobedience/.

These challenges to the constitutive reading of the principle neglect the connection between the constitutive and epistemic aspects of the principle. Recall that the point of the principle is not simply to determine who has conscientious convictions, but *also* to serve as a standard for individuals with such convictions to indicate to others that they have them. This is tied to the general question we began with, concerning how a morally motivated disobedient is to be differentiated – in the eyes of other people, including and perhaps especially her compatriots – from criminals whose actions also violate existing laws. In recognising this, the possibility is foregrounded that the latter function of the principle could still succeed, in some sense, even if the constitutive reading is susceptible to some counterexamples. Indeed, it appears that the counterexamples raised may be rare enough that the principle could still indicate to us who count as having conscientious convictions in most cases.

For the principle to fail at the latter function, it would have to be shown that the conditions sketched out are *implausible* conditions for determining who has conscientious convictions. That is, the challenges to the principle – if they were to rest on counterexamples – cannot simply disrupt the conditions' claim to be necessary and sufficient conditions. Instead, the challenges would have to be more serious – to also show that the conditions are far off the mark in determining what it is for individuals to have conscientious convictions. One way of doing this involves showing how the conditions miss out central or paradigmatic cases of conscientious convictions. Yet this is not what the critics have done. There is no indication that the counterexamples that have been identified are indeed regarded as such important cases that their failure to be included by the conditions (as they are currently formulated) counts as a conclusive

reason for us to reject those conditions. The critics' challenge, then, is less serious than they have presented it to be.

Qualifying the challenge posed by counterexamples, however, does not remove it. It is, thus, at this point that I introduce my revision of the principle. My revision turns on the observation that for the epistemic reading of the principle to do its job, we do not require the constitutive reading of the principle as it is articulated by Brownlee. That is, we need not think of the conditions as amounting to necessary and sufficient conditions for an individual to have a genuinely conscientious moral conviction. It is adequate for the purposes of indicating conscientiousness to adopt a weaker formulation – to regard the conditions as delineating what is paradigmatically or typically true of those who have sincere and serious moral conviction. We may call this this the "paradigmatic reading" of the principle.

The paradigmatic reading is respectful of the fact that social reality is messy, and that clear lines are difficult to draw between different kinds of actions.[39] More specifically, it allows for individuals who fail to satisfy all the conditions (or fail to satisfy all of them fully) to nonetheless *count as having* conscientious conviction. This renders the principle more humane and accommodating of imperfect beings like us – we may still be counted

[39] This recognition, it turns out, is one that is acknowledged by Brownlee, elsewhere, in an essay written almost a decade earlier than her articulation of the communicative principle of conscientiousness. One may think, given this, that this recognition raises the suspicion that Brownlee thinks that there are other reasons for adopting the constitutive reading, and which override her own caution about line-drawing. Brownlee does not appear to consider what these reasons might be. One such reason may concern the need to deliver concrete and fine-grained verdicts for whether someone has a conscientious conviction – a need that may not be adequately addressed by a paradigmatic reading of the principle (since it allows someone to *count as* having a conscientious conviction while failing to satisfy all convictions). This need may, moreover, become more pressing in the context of our deliberations about whether certain actions are protected by law. Whether such a reason is plausible and how weighty it is relative to our concern with descriptive accuracy, are complications that I do not address here. See Kimberley Brownlee, "Features of a Paradigm Case of Civil Disobedience," *Res Publica* 10, no. 4 (2004): 338–40.

as conscientious despite our occasional failures. This may result in some vagueness in our determination of who counts as having conscientious convictions. In some circumstances, there may even be no determinate answer as to whether an individual has conscientious convictions. This vagueness may be regarded as a problem, especially when we juxtapose it against the seemingly clear lines that need to be drawn in order to reach legal verdicts about how to treat any particular disobedient. The worry, then, is about making such verdicts more difficult to reach. Here, my response is resolute. We should not try to make the issue of who counts as having conscientious conviction seem clearer than it actually is – especially when doing so is accompanied by the potential costs, borne by some morally motivated disobedients, of erroneously being treated as criminals. I regard the vagueness as a worthwhile price to pay to acknowledge and accommodate the fact that social reality is messy, and that not all disobedients need to (or in fact) behave in the same way.

Recognising that not all disobedients are the same also allows us to sidestep the trade of counterexamples that is invited by the constitutive reading. Going through the previously mentioned counterexamples, albeit quickly, reveals the strength of the paradigmatic reading. Consider, for instance, the individuals who fail the dialogic condition – the committed vegetarian, the socially inept or Rosa Parks. On the paradigmatic reading, their failure to meet the demands of a single condition does not deliver the verdict that they do not have genuinely conscientious moral convictions. Instead, we would have to examine whether they satisfy the demands of the other conditions, and how much. After such examination, we would have to engage in some deliberation about whether their satisfaction of the other conditions allows us to say of them that they count as having conscientious convictions. The same analyses apply to the other counterexamples,

concerning the purportedly inconsistent Catholic, the non-judgemental pro-choice supporter, or the poor worker unwilling to face the risks of her disobedience.

Here, we see that the paradigmatic reading facilitates more nuanced discussions when we encounter boundary or vague cases. Rather than dismissing them as those in which the individuals in concern do not have conscientious convictions, we may ask questions about how much the individuals' behaviour deviate from the conditions, and whether their deviation is serious enough to defeat their claim to conscientiousness. In this way, we may avoid the trap of thinking that the determination of conscientious conviction can be done mechanistically, or without argumentation.[40]

2.2 Tests for conscientiousness

The second site of revision concerns Brownlee's characterisation of the conditions as context-sensitive. In some circumstances, the demand on disobedients to behave in ways that satisfy the conditions may be overridden by other, weightier considerations. These considerations may pertain, among other things, to the 'burdens of vulnerability, disadvantage, unpopularity, relative power, and the relative costs of communication'.[41] In incorporating context-sensitivity into the conditions, Brownlee accommodates the fact that disobedients may be committed to respecting and furthering values other than those protected by the conditions.

[40] In this way, the term 'conscientious conviction' may join other terms with seemingly indeterminate boundaries – such as 'cruel', 'inhuman', 'degrading' or 'dignity'. Jeremy Waldron has argued that these terms should be seen as operating as sites of thoughtfulness. See Jeremy Waldron, "What Do the Philosophers Have against Dignity?," *New York University School of Law, Public Law & Legal Theory Research Paper Series*, no. 14–59 (September 17, 2014): 1–22.
[41] Brownlee, *Conscience and Conviction*, 44.

The incorporation of context-sensitivity, however, may raise a worry. Recall that the primary function of the communicative principle of conscientiousness is to differentiate disobedients from criminals, *given that* we do not have access to their mental states, and given that we need more than their mere assertions as reassurance that they indeed possess sincere and serious moral convictions. The reliance on their behaviour is, in a sense, all that we have. It is in this context that the incorporation of context-sensitivity may be problematic. If disobedients are permitted to behave in ways that do not satisfy the conditions, we are returned to the initial problem – of having to rely on their assertions. Yet this is exactly what was unsatisfactory at the start. The spectre is thus raised that the incorporation of context-sensitivity 'defeats the point of the communicative principle of conscientious conviction, which is to guarantee that the sincerity of our commitments be visible to all, and that no doubt be cast on it'.[42]

This worry, however, is exaggerated. Recall, again, the project of differentiation. Our concern with the actions of individuals is (at least partly, though nonetheless importantly) instrumental – as indications of (or proxies for) individuals' possession of the relevant moral convictions. If we have sufficient evidence that a disobedient typically behaves in ways that satisfy the conditions, it is of little import that she *occasionally* fails to do so. The following case illustrates the point. Consider a committed vegetarian who dedicates a significant portion of her life to campaigning and activism, and who generally satisfies the conditions of the principle. Suppose that on one occasion she breaks the law in an evasive manner, where the evasiveness is not required for the success of her disobedience but primarily to avoid bearing the personal costs of being detected. Various reasons may

[42] Delmas, "False Convictions and True Conscience," 411.

undergird her decision here – perhaps she has been arrested so many times that she is no longer able to afford bail, or perhaps she requires a clean record for her work as a policy adviser to the government, and so on. Suppose that despite her best efforts at evasion, she is arrested after the act of disobedience. It then becomes common knowledge that she had intended to evade the consequences of her action. Does her violation of the non-evasion condition, *in this case*, call into question the sincerity and seriousness of her moral conviction? I do not believe so. When we look to her past and ongoing behaviour as a whole, we see plenty of indications that she is indeed conscientious. This singular evasive act does not impugn her conscientiousness.

While Brownlee does not make her position on this issue explicit, the communicative principle of conscientiousness is most plausibly construed as one that assesses individuals *holistically*. We want to look to individuals' past and ongoing behaviour in all or most areas of her life, rather than at a single act at a single time. This claim has to be clarified – it is not only that we *may* look to individuals' past and ongoing behaviour; instead, we *must* do so. It is only when we get a fuller view of the disobedient in concern, that we can differentiate between those who are morally motivated from criminals who deploy the language of conviction in their attempts to avoid or mitigate the negative judgements of others, and possibly to avoid punishment. Upon this clarification, we see more clearly why the worry is exaggerated. Rather than being a serious problem for the principle *tout court* and which undermines the principle, it is serious problem only in cases where the disobedient in question has *never* behaved in ways that satisfy the conditions, and never given any indication of her convictions. Yet in such cases, it is not problematic for us to adhere, *even dogmatically*, to the verdict delivered by the application of the principle – that the disobedient does not count as morally motivated. Of course, this verdict may be

mistaken – the disobedient may indeed be conscientious. But given that she has never behaved in ways that indicate it and that we have interests in not being strung along, our dogmatism would be well justified.

This revision has implications for Brownlee's discussion of the distinction between civil and personal disobedience. According to Brownlee, civil disobedience is necessarily communicative – satisfying the conditions of the communicative principle of conscientiousness. Personal disobedience, on the other hand, typically fails to satisfy all the conditions of the principle (or to satisfy them fully).[43] While personal disobedience may also be communicative, it is only incidentally so. Brownlee suggests that examples of personal disobedience include, among other things, 'the pharmacist who refuses to prescribe an emergency contraceptive pill, the religious patient who refuses an inoculation, and the soldier who refuses to redeploy'.[44] Since these acts of disobedience are not communicative, they raise doubts about the sincerity and seriousness of the disobedients' convictions.

Notice, however, that these are singular instances of personal disobedience. Given our revision of the principle – as making holistic assessments of individuals – we see the importance of considering how the acts fit in with the past and ongoing behaviour of the individual. In recognising this, we see that Brownlee's discussions of the examples she provides are incomplete. For it may well be that the civil registrar who swaps assignments

[43] A clarification: when the conditions are characterised as necessary and sufficient for someone to have a conscientious conviction, the failure of an individual to meet *any* condition fully means that she does not have such a conviction.

[44] Brownlee, *Conscience and Conviction*, 27–28. Note that these are instances of law-breaking behaviour only in societies that have laws that prohibit the denial of medical services on the basis of religious convictions, mandate inoculation, and require active soldiers to comply with decisions about their deployment, and so on. That is to say, the examples Brownlee identifies may not always be instances of law-breaking behaviour.

with colleagues has consistently communicated her views on same-sex marriage to others in other contexts, is a member of several religious groups that campaign against same-sex marriage, and so on. That is, when we look at her as an individual, there may be no doubt about the sincerity and seriousness with which she holds her conviction. The security of our knowledge (or inference) about her conviction is not significantly disrupted (if at all) by her evasive act of swapping assignments with her colleagues. The same analysis extends to the case of the grocery store employee, as well as the other instances of personal disobedience which Brownlee discusses. When understood this way, the principle that allows us to securely differentiate conscientious disobedients from criminals, turns out to prevent us from making very clear differentiations between what Brownlee terms civil and personal disobedients on the basis of their conscientiousness.

In light of our discussions, we should shift our attention away from the distinction between acts of civil and personal disobedience, and away from the question of whether such acts satisfy the conditions comprising the communicative principle of conscientiousness. Our central concern should instead be directed at whether disobedients have generally behaved in ways that satisfy the conditions, to the extent that we are not in doubt about the sincerity and seriousness of their conviction. All other things being equal, the distinction between civil and personal disobedience takes centre stage only in boundary cases – where our judgements about an individual's conscientiousness would shift with the addition of a single act of civil or personal disobedience. That is, in cases where the individual's past and ongoing behaviour are such that her committing an act of civil disobedience would lead us to judge that she is indeed conscientious, but where an act of personal disobedience would lead our judgement in the other direction. When we look beyond such boundary cases, we see that a disobedient's choice of civil or personal

disobedience in any given case may very well not impugn her conscientiousness.[45] This helps us, in a way, to reframe some of the discussions in the literature focusing on identifying the exact differences among forms of political disobedience – especially between civil and uncivil disobedience, and between civil disobedience and conscientious objection.[46] That is, the discussions here can help us to be less fixated by the distinctions between them. For the most part, these distinctions are immaterial to the determination of the conscientiousness of the morally motivated disobedient, as differentiated from the criminal.

2.3 Possibility of error

The third revision concerns Brownlee's claim that participants in a communicative endeavour must be responsive to the possibility that their views may be mistaken, and ensure that the means and modes of their communication – whether through words or actions, and whether aggressive or supportive – are likely to foster rather than detract from dialogue. More specifically, disobedients realise that they may be mistaken in their views, and '*therefore* [they] select constrained acts that show that [they] bear this in mind'.[47] Brownlee does not define what constrained or unconstrained acts consist in. I think the refusal to engage in such definition is for good reason – among other things, it accommodates the plurality of reasons that we have for thinking an act constrained or

[45] This shift in attention, moreover, delivers more plausible verdicts about who is deserving of protection (from punishment) for their disobedience, when such protection is to be accorded *on the basis of* their conscientiousness. The discussion of protection and punishment is beyond the scope of my essay, and I set it aside.
[46] The most notable of which is, of course, John Rawls' account. See Rawls, *A Theory of Justice: Revised Edition*, 319–25.
[47] Brownlee, *Conscience and Conviction*, 20, emphasis mine.

unconstrained. For my purposes, a general characterisation is adequate – an act is constrained if it is restricted in some sense and to some extent.

Brownlee's claim seems peculiar. Consider potential disobedients' realisation that their views about injustice might be mistaken. Upon this realisation, they may attempt to reduce such possibility of error. They may do so by engaging in discussions with, or testing their claims against, other people. Or they may qualify – specifically, scale back – the claims that they make. For instance, rather than making claims about the specific features of the injustice (such as those concerning its causes, scope or severity), they may restrict themselves to saying that the injustice *exists*. If they engage in the latter, we may describe them as constraining (the nature of) their claim upon realising the possibility of error. This, however, does not yet lead us to the claim that the disobedients should be constrained in their *actions*.

It may be thought that a general connection between our beliefs, reasons and actions may provide the explanation we need. Given that our actions depend on our beliefs about the reasons there are and the reasons we have, our recognition that we may be mistaken – grounded in the recognition that, among other things, that 'there are other considerations that can bear on a case'[48] – often leads us to reassess our actions. More specifically, for any given action, our recognition that we may be mistaken leads us to either refrain from acting, or to select a different act that we are more confident is supported by reasons. This, however, may not always result in our selecting *constrained* variants of the action that we initially thought was supported by reasons. Consider this in the context of potential disobedients who recognise that they may be mistaken about injustice. If they realise that

[48] Brownlee, 20 n. 9.

there is a *significant* possibility that they are mistaken, then they should conclude that they should not engage in disobedience at all. While this is a form of constraint, it is not a constrained *disobedience*. The connection is still mysterious as to why (and how) disobedients should constrain their disobedience on the basis of their recognition that they may be mistaken.[49]

Suppose, for the moment, that we have a plausible explanation for this connection – that disobedients who recognise the possibility of their being mistaken therefore select constrained acts of disobedience. An additional problem arises. Recall the observation, made earlier by Cowley, that some disobedients – such as Rosa Parks – may rightly not be open to the possibility of being mistaken.[50] In these circumstances, the claim here appears to permit potential disobedients to engage in *unconstrained* disobedience in order to communicate their convictions.[51] This appears to be an implausible verdict. We do not ordinarily think that it is permissible for a disobedient to engage in just about any kind of

[49] A similar worry about constrained action is made by William Smith. According to Smith, the constrained or unconstrained character of disobedience is a distinct issue from – and thus does not licence any inferences about – whether disobedients seek to have a dialogue with their audience. Smith's target is Brownlee's dialogic condition; he expresses scepticism about taking the willingness of disobedients to enter into dialogue as amounting to a necessary requirement of demonstrating sincerity and seriousness. Insofar as I do not take any of the conditions as necessary for the demonstration of conscientiousness, Smith and I agree. However, I think that the problem is more appropriately located at the level of the specific requirement that disobedients must recognise the possibility of being mistaken, rather than with the dialogic condition in general. Fully articulating the similarities and differences between Smith's and my views, however, will take us too far afield. See Smith, "The Burdens of Conviction," 694–97.

[50] A stronger claim may be made – such disobedients ought to be uncompromising (and thus not be open to the possibility that they may be mistaken), for to do otherwise may constitute a failure of being self-respecting (either of their conviction specifically, or of their person more generally). I do not make the stronger claim here, as it is not required for my argument. For further discussions, see Bernard R. Boxill, "Self-Respect and Protest," *Philosophy & Public Affairs* 6, no. 1 (1976): 58–69; Thomas E. Hill, "Symbolic Protest and Calculated Silence," *Philosophy & Public Affairs* 9, no. 1 (1979): 83–102; J. Harvey, "Oppression Moral Abandonment, and The Role of Protest," *Journal of Social Philosophy* 27, no. 1 (1996): 156–71.

[51] It is important to note that this permission is provisional. What forms of actions the disobedients are in fact and eventually permitted to engage in, will depend on whether and to what extent those principles satisfy the demands of other principles – such as those regulating the imposition of risk or harm more generally (including, among other things, the principle of proportionality or necessity). Such constraints, however, are not *grounded* in individuals' recognition that they may be mistaken. It remains that the claim in concern, when taken on its own, permits unconstrained actions.

law-breaking action, on the basis that she is secure in her knowledge that she is right. Taken together with the earlier point, it appears that we should reject the claim that disobedients should select constrained acts of disobedience because they recognise that they may be mistaken.[52]

Rejecting the claim entirely would, however, be a mistake. I suggest that we preserve the claim but understand it differently – as referring to the disobedients' recognition that they may be mistaken in their views about the *tactics* they employ as part of their communicative endeavours, rather than their views about injustice.

The deliberations concerning the choice of action (including but not limited to disobedience) are complicated. In many ways, they depend on how we weigh a range of complex and interconnected considerations salient in the context in which the act is to be executed. Among other things, these may pertain to the relationship between the disobedients and their audience, the expected reactions of other citizens and government officials, the expected responses from and implications on other activist groups, the organisation of the media, the possibility of publicising their act without distortion, and so on. There are, then, a range of questions that disobedients have to ask – about whether disobedience is really necessary, whether a particular action is the "best" way of getting their point across, or at least a good one, whether the costs that are incurred by their disobedience is too high relative to the expected goods, and so on. While these are deliberations about tactics, they are not merely strategic. Disobedients' decisions about

[52] In her response to critics, Brownlee clarifies her position as a broadly Millian one – even when we are fully secure in our knowledge that our conviction is right, we must recognise that we are fallible. To do so is to have sufficient modesty about one's epistemic position and moral understanding – the latter which is an important part of what it means to engage others in a dialogue. Despite this clarification, the connection between the recognition and *constrained* action is still unclear. See Brownlee, "Reply to Critics," 728–29.

which action to take indicate their position, among other things, on the price that they think they (and other citizens) ought to be prepared to pay in order to secure the goods that are aimed at.[53]

In recognising this, we see more clearly why it is peculiar for Brownlee to claim that disobedients choose constrained acts of disobedience because of their recognition that they may be mistaken in their views about justice. Potential disobedients could decide, on the basis of the considerations just elucidated, that a less constrained act of disobedience best secures their communicative aims – *even if* they recognised that they may be mistaken in their views about justice. Or they could decide otherwise – choosing more constrained acts even though they are absolutely certain in their views about justice. The more general point is this – once we recognise the difficulties of political action, we see that it is difficult to make inferences from disobedients' choice of actions, to whether and to what extent those disobedients recognise the possibility of error about their views of justice.[54] A constrained act of disobedience does not necessary indicate to its audience

[53] Michael Walzer, *Political Action: A Practical Guide to Movement Politics* (Chicago: Quadrangle Books, 1971); H. J. McCloskey, "Conscientious Disobedience of the Law: Its Necessity, Justification, and Problems to Which It Gives Rise," *Philosophy and Phenomenological Research* 40, no. 4 (1980): 554. In another essay in this thesis, I consider one way in which deliberations about disobedience are in some respect not merely strategic, but deeply moral. This is clearest when disobedience is characterised as a form of *defensive* action which aims at the elimination or amelioration of threats of harm. Incidentally, it is on such a characterisation that Brownlee's claim about the connection between recognising the possibility of being mistaken (about justice or injustice) and constraining action makes the most sense. For instance, a disobedient's recognition that she may be mistaken about whether some specific individuals are implicated in injustice (and thus liable to bear the costs of disobedience), will directly lead her to constrain her act of disobedience so as to exclude them from its effect, or to mitigate the costs that they bear – assuming, *ceteris paribus*, that her decision otherwise would impugn the capacity of the act to satisfy the requirements of a stringent necessity condition. Brownlee, however, does not refer to the characterisation of disobedience as defensive in making the claim in concern. Her concern is instead with the communicativeness of disobedience. My claim, here, is that the connection is peculiar when disobedience is thus characterised. See 'The Legitimate Targets of Political Disobedience'.

[54] One might think that this recognition is already implicit in Brownlee's discussions, and specifically at two places. The first concerns Brownlee's discussion of the universality condition of the communicative principle of conscientiousness. There, she observes that individuals can reach an all-things-considered judgement that overrides their *pro tanto* universal judgement that something is wrong. Second, she claims that not much should be read into disobedients' willingness to accept punishment. In both cases, the

that the disobedients in fact recognise the possibility of their being mistaken in their views about justice; nor does an unconstrained act show otherwise.[55]

We see that even if disobedients are secure in their conviction about injustice, they may nonetheless be mistaken about whether their chosen act of disobedience is the best (or at least reasonable) as a way of communicating their views and engaging with their audience.[56] In this context, the claim that they thus have reason to constrain their disobedience is more plausible. For a start, the recognition and the deliberations about what act to engage in belong to the *same* domain, concerning action. The peculiarity of the previous claim does not arise here. Of course, this would be paltry consolation if an explanation cannot be found for how such recognition leads to *constrained* action.

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underlying claim is that we cannot easily make inferences about disobedients' intentions on the basis of their actions. Brownlee does not, however, extend this recognition to her discussion of disobedients' choice of constrained or unconstrained action, and whether they recognise the possibility of being mistaken. It may well be that the action mandated (or supported) by such a recognition is outweighed by other considerations. The only way to avoid this is to posit that the recognition has to be a contextually invariant and conclusive reason – an implausible stipulation. See Brownlee, *Conscience and Conviction*, 34–37, 205, respectively.

[55] A caveat is relevant. I am not saying that we can *never* make inferences from a disobedients' actions to her views about justice or her intentions. In some circumstances, such inferences may be easy to make. One obvious case is when the individuals' personal (including material) interests are frustrated by a law or policy; in this case we may easily infer her intentions or views about justice from her act of disobedience. The point remains, however, that it is difficult to make inferences from her choice of actions to whether and to what extent she recognises the possibility that she may be mistaken. For a discussion of the actions and intentions of resistors more generally, see James C. Scott, *Weapons of the Weak: Everyday Forms of Peasant Resistance* (New Haven: Yale University Press, 1985), 290–91.

[56] There are two points at which Brownlee appears to make this exact point. First, she notes that disobedients may make errors in their practical reasoning about whether they would be heeded in a way such that their efforts would promote their values. However, Brownlee describes this as a case in which the disobedients *do in fact* behave in ways concordant with the communicative principle of conscientiousness. That is, she does not appear to see these errors as impugning on the communicativeness of the disobedient act. Second, Brownlee suggests that disobedients may believe mistakenly that their choice of disobedience is reasonable and parsimonious as responses to a state of affairs. However, the discussion is set in the context of establishing whether any given act of disobedience is a proportionate response – an issue which has implications for whether that disobedience is *justified*. This issue is distinct from that of communicativeness. Moreover, Brownlee does not link her discussions here to the issue of constraint. Should the reader disagree with these textual claims, and thus think that the claim is one which Brownlee herself makes, my discussions in this section may nonetheless be reframed as a clarification of an *ambiguity* in Brownlee's discussions. See Brownlee, *Conscience and Conviction*, 67–68, 202–3, respectively.

The following example helps us to begin sketching a plausible candidate explanation. Suppose that Betty has just discovered that her friend has stolen money from her to pay for recreational drugs. Betty is as sure as can humanly be about this fact, and thus is not open to the possibility of error. On the basis of this, she decides to confront her friend. Her aims are to communicate her disapproval (or even condemnation) of his actions, and to persuade him to see the merits of her view that both stealing and drug abuse are wrong. Suppose that she barges into his room and begins to shout at him. Suppose, further, that her friend understands her view perfectly well, and even comes to be persuaded by its value. Even so, he has a legitimate complaint against her choice of action – surely, he thinks, such a drastic action was unnecessary to achieve her aims. This may be especially so if it is his first offence, and if Betty had not tried any other way of communicating with him prior to her outburst. She might well have succeeded in her communicative aims through a more constrained action – perhaps by simply talking to, rather than shouting at, him.

What is the character of such a complaint? Two features are salient. The first is that the drastic action imposes certain burdens (in this case, psychic stress) on the audience, but which are unnecessary to achieve the aims of communication and even persuasion. The second, related, aspect is that the choice of such unnecessary action conveys a particular view of the audience – perhaps as generally unreceptive, or as requiring coercive or drastic measures before they would listen, and so on – which may very well be mistaken, and which even if not would be the target of some resentment.

The analysis here extends to the choice of acts of disobedience, when such acts are aimed at communicating a certain view and at persuading others of its merits. This, as we have seen, is Brownlee's view of the aims of conscientious (civil) disobedience.[57] When disobedients choose an act that is regarded as too drastic for the purposes of achieving these aims, they impose burdens which are more than what is necessary for the communication. Moreover, they may also convey a view about the audience that may be mistaken.[58] As in the case of Betty and her friend, the audience may in fact be receptive to the message being communicated on the basis of a slight nudge and may not require drastic methods. When disobedients recognise that they may be mistaken *about their choice of tactics* they have good reason to *therefore* constrain their acts of disobedience – by choosing those that impose fewer burdens and which does not convey the negative view of their audience, or which does not convey it that strongly.

Upon this revision, we see that whether something counts as being constrained is not fully in the hands of the disobedient. Instead, the answer also rests partly on the how the audience regards it. Among other things, it would depend on whether the burdens imposed are indeed too great, and whether the audience indeed does not require drastic action to hear and be persuaded of the views of the disobedients. In some cases – and as Brownlee

[57] Brownlee, 20.

[58] These are separate issues from the five broad conditions for genuine dialogue that Brownlee identifies. The conditions concern (i) the reciprocity of the parties in terms of the roles they play and their recognition of the roles; (ii) the sustained and extensive nature of a dialogue; (iii) the purposive nature of dialogue; (iv) the fairness and equality of the participants and their participation; and (v) the non-subjugation of one party to another. The worries about imposing more burdens than are necessary, and about the speaker's mis-estimation about what is required for her audience to take her seriously, are do not impugn on any of these conditions. While it is possible to reformulate these worries as constituting additional necessary conditions for genuine dialogue, it is not work that I undertake here. See Brownlee, 217–22.

recognises – even violent[59] or coercive and manipulative[60] disobedience could be constrained in this sense.

A quick caveat is important. In some cases, the audience may be exaggerated or unreasonable in their claim that any given act of disobedience is unconstrained. In many of these cases, however, their unreasonableness may be apparent. Moreover, and even if it were not, we 'need not take as our audience the people who are most hostile and unreceptive to us'.[61] We may extend the point to those who are not necessarily hostile or unreceptive to us but are unreasonably averse to norm- or law-breaking actions more generally. And where their reaction to a given act disobedience is (or would not be) not clearly unreasonable, that may itself count as a reason for disobedients to choose a different, more constrained act.

If this is the case, however, we will need to reassess Brownlee's claims about radical or unconstrained disobedience. Brownlee suggests that radical protests – such as those involving 'serious coercive violence, organized forcible resistance, militant action, intimidation, and terrorization' – lack the constrained conscientious communicativeness of disobedience.[62] But if the earlier discussion is right, the line between constrained and unconstrained disobedience is highly dependent on the context. Brownlee's claim here, if it is right, has to be seen as being indexed to a *specific* context.[63] Consider a society

[59] Brownlee, 21–23, 44–45.
[60] Brownlee, 219.
[61] See Brownlee, 20.
[62] Brownlee, 24.
[63] Some brief exegetical remarks: the discussions so far also imply that we will have to reformulate some of Brownlee's claims about how, for instance, certain behaviours are not 'by nature' at odds with some of our concerns. For instance, she describes violence as not being 'by nature' at odds with behaving civilly. If the point of context-sensitivity holds, such a claim would be incomplete. While it is important to establish that the behaviour is not by nature – or analytically – incompatible with our concern (in this case with constraint as it pertains to communication and persuasion), showing this is only part of the task. We

that sees very frequent incidences of disobedience, and whose members take it as mere nuisance to be set aside – and who thus do not reflect on the motivations and messages of the disobedients. Here, the disobedients' choice of purportedly constrained disobedience may simply fail at communication and persuasion. A similar point may be made in a society whose members have repeatedly shown themselves unwilling to take disobedients' message – as delivered through constrained disobedience – seriously. In these contexts, disobedients may have no other choice than to engage in actions involving coercive violence, intimidation or terrorisation to achieve their aims. Moreover, the line between constrained and unconstrained action would accordingly be shifted – the former category may encompass what would, in a different context, be considered unconstrained action. In other societies – especially those whose members are generally averse to norm- or law-breaking actions – what is considered unconstrained may include those that would, in a different context, be considered constrained.[64]

must also show that such behaviour is considered constrained for any given context. See Brownlee, 198. An additional implication of my revisions concerns the connection, drawn by Brownlee, between conscientious communicativeness and civility. Brownlee suggests that 'the civility of civil disobedience lies … in the conscientious, communicative motivations of civil disobedients'. See Brownlee, 23–24. My discussions suggest that the connection has to be reconsidered. Either we preserve the connection between conscientious communicativeness and civility, in which case even suitably placed rioters could be *civil* – an implausible result. Or we loosen the connection, in which case establishing the conscientious communicativeness of disobedients does not (yet) say anything about their civility. I am inclined to the latter view, according to which civility is merely a matter of presentation and conduct, but nothing deeper. This does not necessarily mean that it is a trivial virtue; in some conditions, it may make all the difference between the ability of participants in a disagreement to continue with their conversation, or a breakdown of communication. Since I have not discussed the issue of civility in this essay, I do not take up this issue here. For further discussions, see Cheshire Calhoun, *Moral Aims: Essays on the Importance of Getting It Right and Practicing Morality with Others* (New York: Oxford University Press, 2016), 75–102.

[64] The discussions here may constitute the starting point of a broader critique of views about communicativeness that do not clearly distinguish between the social meanings of actions and the intentions of the actor. I hope to undertake this project in future work.

3 Differentiation

Let us quickly take stock of the revisions that I have made to the communicative principle of conscientiousness, and their implications. First, I have dropped the constitutive reading of the principle, according to which the conditions amount to necessary and sufficient conditions for someone to have a genuinely conscientious moral conviction. It is adequate for the purposes of indicating conscientiousness to adopt a weaker formulation, which I term the paradigmatic reading: the conditions delineate what is paradigmatically or typically true of those who have conscientious convictions. Second, the principle is most plausibly construed as one that assesses individuals and their behaviour holistically, rather than on singular actions at any given point in time. Finally, insofar as conscientious disobedients have an interest in communicating their views and persuading others of their merits, they have an interest in constraining their disobedience. The grounds of this constraint are not to be found in the disobedients' recognition that they may be mistaken about their views of injustice, but in their recognition that they may be mistaken about the tactics they employ.

These revisions are accompanied by several implications. First, the paradigmatic reading renders the principle more humane and accommodating of imperfect beings like us. It allows for individuals who fail to satisfy all the conditions of the principle to nonetheless count as having conscientious convictions. Second, the focus on holistic assessment allows us to engage in a more thorough assessment of disobedients' conscientiousness, and secures their differentiation from criminals looking to hijack the language of

conscientiousness to support their law-breaking.[65] The revision, however, blurs the line between civil and personal disobedients, and diminishes the importance of the distinction between acts of civil and personal disobedience. Third, given that the evaluation of tactics is importantly context dependent, the members of the category of constrained and unconstrained disobedience will vary across contexts.

In this final section, I conclude by briefly considering how these implications can be put together in a way that disrupts our common understanding of morally motivated disobedience. Recall that the revision turns on the characterisation of the aims of disobedients as communicating a certain view and at persuading others of its merits. This, however, requires qualification in light of the earlier revisions. First, given that I have dropped the constitutive reading of the principle, these aims should not be considered as constituting necessary or sufficient conditions for disobedients to count as having a sincere and serious moral conviction. While it may often or typically be the case that those who possess such convictions also have these aims, it is not always the case (nor need it be so). This opens up room for those who lack these aims to nonetheless count as having conscientious conviction. This allowance is, it turns out, supported by the second revision. Given our concern with differentiating disobedients from criminals on the basis of conscientiousness, we should look, holistically, at their previous and ongoing behaviour in other areas of their lives rather than fixate on their specific acts of

[65] One complication, which I do not address here, concerns how the adoption of a holistic assessment of disobedients may result in those who have recently changed their convictions to act on the basis of those convictions. A warmonger-turned-pacifist may, on the basis of a holistic assessment, face insurmountable difficulties in indicating the conscientiousness of her new convictions. For now, two remarks will have to suffice. First, changes in deep convictions do not usually happen overnight; they take time to develop, and in conversations and interactions with others. If so, there may be plenty of opportunities for the convert to behave in ways that indicate her changed (or changing) convictions. Second, if such opportunities are few, we may rightly be *resolute* in our scepticism about the convert's conscientiousness.

disobedience. When we take the broader view, however, we recognise that disobedients' choice of unconstrained acts *need not* impugn their conscientiousness.

If this is correct, it turns out that the revisions to the communicative principle of conscientiousness end up being quite permissive of *unconstrained* disobedience – assuming, of course, that such disobedience does not impugn the conscientiousness of the disobedients. Of course, this may not always be the case. In many real-world cases, we may judge that the disobedients whose actions we are tasked with evaluating fail to indicate (or fail to indicate securely) their possession of sincere and serious moral conviction. In such cases, our suspicions are rightly raised about their differentiation from criminals. We want them to do more in order to show (or show more clearly) that they indeed have such convictions. But our wanting more in such cases is compatible with our judgements that a broad range of unconstrained acts of disobedience are indeed clearly morally motivated (and perhaps even in ways that we are happy to excuse or tolerate).

The revisions lead to a surprising analysis of what is typically regarded as unconstrained disobedience. Consider the example of morally or politically motivated rioting. It is common for commentators to describe rioting (even those which are morally motivated and respond to political injustices) as merely criminal activity. For instance, the 2011 England race riots (which was an escalated response to the perceived unlawful killing of a nonwhite man) have been described as undifferentiated from criminal activity – as 'common or garden thieving, robbing and looting'. The 2015 Baltimore riots (also a response against police brutality) was likewise described as 'just criminal activity'.[66]

[66] "House of Commons Hansard Debates for 11 Aug 2011," accessed February 18, 2020, https://publications.parliament.uk/pa/cm201011/cmhansrd/cm110811/debtext/110811-0001.htm; Jon Swaine, Ben Jacobs, and Paul Lewis, "Baltimore Protests Turn into Riots as Mayor Declares State of Emergency," *The Guardian*, April 28, 2015, https://www.theguardian.com/us-

These statements are concordant with the view – common in much philosophical and public discourse – that the quality or character of these *actions* throw doubt on whether the disobedients in concern possess genuinely conscientious moral conviction. According to my revisions, such statements would be critically incomplete. What is important is not simply to look at the acts themselves, but to also look at the *actors* and the *audience*. Among other things, have the actors shown themselves – through their past and ongoing behaviour – to hold sincere and serious moral convictions that could support their disobedience? Have the audience shown themselves to be non-receptive to less drastic (that is, constrained) attempts at communication? If the answers to both of these questions are in the affirmative, the actors would nonetheless be vindicated as conscientious disobedients. Their differentiation from criminals is not thrown into doubt by their engagement – in this instance – in such drastic disobedience. The same analyses can be extended to other kinds of actions that are typically regarded as being closer to criminality than morally motivated disobedience – such as harassing politicians responsible for injustice at their private residences,[67] denying certain people service at businesses on the basis of their political views,[68] or even engaging in covert and anonymous cyber-attacks.[69] In this way, the revisions force a significant reframing of which are the salient questions that we need to consider when we are confronted with acts of disobedience.

news/2015/apr/27/baltimore-police-protesters-violence-freddie-gray. Both cited in Avia Pasternak, "Political Rioting: A Moral Assessment," *Philosophy & Public Affairs* 46, no. 4 (2018): 385.

[67] Peter Beinart, "Left Wing Protests Are Crossing the Line," The Atlantic, November 16, 2018, https://www.theatlantic.com/ideas/archive/2018/11/protests-tucker-carlsons-home-crossed-line/576001/.

[68] Emily Cochrane, "Sarah Huckabee Sanders Was Asked to Leave Restaurant Over White House Work," *The New York Times*, June 23, 2018, https://www.nytimes.com/2018/06/23/us/politics/sarah-huckabee-sanders-restaurant.html.

[69] Christie Thompson, "Hacktivism: Civil Disobedience or Cyber Crime?," *ProPublica*, January 18, 2013, https://www.propublica.org/article/hacktivism-civil-disobedience-or-cyber-crime.

These revisions, however, do not throw open the floodgates to any and all unconstrained behaviour. While they have relaxed the constraints on acts, they impose new constraints on *actors*. That is, potential disobedients need to have behaved in certain ways *leading up to* their acts of disobedience. They would also need to show that less constrained acts would not reasonably have succeeded given their audience's past and ongoing responses. Otherwise, even their strictest adherence to the conditions laid out by the communicative principle of conscientiousness may be insufficient to indicate to their audience that their disobedience is indeed undergirded by their sincere and serious moral convictions.

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Essay Three: The Legitimate Targets of Political Disobedience

Abstract

Within the philosophical literature, political disobedience is typically construed as communicative. When construed this way, there appear to be few constraints on what dissidents may legitimately target, if doing so would secure communicative success. In recent years, and drawing from the literature on defensive harm, political disobedience has been characterised as defensive. In some circumstances, dissidents can permissibly impose harm in order to eliminate or mitigate an injustice. In this essay, I show how this new characterisation allows us to articulate a fine-grained principle of differentiation that picks out the legitimate targets of dissidents' political disobedience. This essay has two main aims. The first is to qualify the commonly held position that persons are never legitimate targets of political disobedience. The second is to defend a principle of differentiation which picks out the things that are the legitimate targets of dissidents' political disobedience, when such action is characterised as defensive. My aim is to specify and subsequently vindicate – albeit partially – our intuitive judgement that directing our political action at some targets is more meaningful (in some sense) than others.

Introduction

In 1961, Nelson Mandela and several other South African anti-apartheid activists co-founded the militant group, Umkhonto we Sizwe, and began a sabotage campaign against the apartheid government. As part of their campaign, dissidents disrupted, damaged or destroyed various economic and governmental targets, including railways lines, power stations, police stations and government offices.[1] During the Rivonia Trial, which saw these dissidents being sentenced to life imprisonment, Mandela offered several justifications for their actions. Their decision to engage in political disobedience was the result of both the injustices faced by black South Africans and the repeated failures of legal modes of action to address them.[2] Their choice of economic targets was aimed at creating a heavy drain on the economic life of the country, forcing voting citizens (which did not include black South Africans) into reconsidering their support for the apartheid government. Their choice of government targets was symbolic – a protest against the perpetuators of injustice, and aimed at inspiring people and galvanising support for the

[1] Govan Mbeki, *The Struggle for Liberation in South Africa: A Short History* (Bellville: Mayibuye Centre for History and Culture in South Africa, 1992); Nelson Mandela, *Long Walk to Freedom* (London: Abacus, Little, Brown Book Group, 2013); Janet Cherry, *Spear of the Nation: Umkhonto We Sizwe* (Athens: Ohio University Press, 2012); Stephen R. Davis, *The ANC's War Against Apartheid: Umkhonto We Sizwe and the Liberation of South Africa* (Bloomington: Indiana University Press, 2018).

[2] By political disobedience, I refer to law-breaking actions committed for political aims. This category is broad; it includes, among other things, civil, uncivil, direct or indirect disobedience. For a discussion of the distinctions between these categories, see Kimberley Brownlee, *Conscience and Conviction: The Case for Civil Disobedience* (Oxford: Oxford University Press, 2012), 18–27. Importantly, the category of political disobedience is distinct from, though overlapping with, that of 'principled disobedience' – law-breaking actions undergirded by moral or political principles. A disobedient act can be political without being principled, or vice versa. For discussion of the category of principled disobedience, see Candice Delmas, *A Duty to Resist: When Disobedience Should Be Uncivil* (Oxford: Oxford University Press, 2018), 21–46.

dissidents' cause. Finally, and despite the severity of the injustices to which they were responding, Umkhonto activists chose to avoid targeting persons during this period.[3]

Prominent strands within contemporary political philosophy have largely vindicated Mandela's justification for engaging in political disobedience, including those acts that impose significant costs – whether via disruption, damages or destruction – on ordinary citizens.[4] Many philosophers argue that in circumstances involving severe injustice, such acts are permissible. While the grounds for this conclusion are varied, they typically centre on arguments that such action does not necessarily violate general moral principles, or that the usual presumptions against engaging in them are absent in circumstances involving grave injustices. Discussions typically concern how we should specify the relevant moral principles in order to accommodate (or even require) such action, or how to specify the threshold of injustice (its kinds and magnitude) above which political disobedience is permissible [5].

However, little philosophical attention has been paid to the issue of what the *legitimate targets* are of dissidents' political disobedience. The choice of targets appears to be regarded as a practical or strategic issue, best left to dissidents who are better acquainted

[3] Nelson Mandela, "I Am Prepared to Die: Nelson Mandela's Statement from the Dock at the Opening of the Defence Case in the Rivonia Trial," Nelson Mandela Foundation, April 20, 1964, http://db.nelsonmandela.org/speeches/pub_view.asp?pg=item&ItemID=NMS010.

[4] I neither specify nor stipulate the forms that political disobedience may take. As we will see, however, regardless of its forms, such action is permissible only if it satisfies the requirements of several principles –especially, among other things, those concerning differentiation, proportionality, and necessity.

[5] Peter Singer, *Democracy and Disobedience* (Oxford: Clarendon Press, 1973), 86; John Morreall, "The Justifiability of Violent Civil Disobedience," *Canadian Journal of Philosophy* 6, no. 1 (1976): 35–47; Joseph Raz, *The Authority of Law: Essays on Law and Morality* (Oxford: Clarendon Press, 1979), 267; John Rawls, *A Theory of Justice: Revised Edition* (Cambridge: Belknap Press, 1999), 319; Brownlee, *Conscience and Conviction*, 22; Robin Celikates, "Democratizing Civil Disobedience," *Philosophy & Social Criticism* 42, no. 10 (December 2016): 982–94; Tommie Shelby, *Dark Ghettos: Injustice, Dissent, and Reform.* (Cambridge: Belknap Press, 2016), 223; Delmas, *A Duty to Resist*, 39.

with the details of the circumstances they find themselves in. Consider, for instance, John Rawls' statement that once it is established that dissidents have the right to disobedience, their choice of actions would depend on whether it is wise or prudent to exercise the right – depending, among other things, on whether any given action would provoke harsh retaliation from the majority.[6] This neglect is undergirded by an implicit though respectable restraint concerning the appropriate reach of philosophical theorising, especially in the absence of details about lived experiences on the ground. However, it is still problematic. Within public political discourse, dissidents are often criticised for having directed their actions against *this* or *that* specific target. For instance, the actions of dissidents part of the environmental activism group, Extinction Rebellion – which include blocking roads and public transportation in the United Kingdom – have been described as aiming at the wrong target.[7] That is, there appears to be a strongly-held intuitive judgement that some targets are appropriate or meaningful, whereas others are not. The questions then arise of how we are to understand this judgement, and whether there is a fine-grained and principled way of differentiating between appropriate and inappropriate targets. Moreover, given the frequency of such actions in recent years, we have reasons to take this question seriously: addressing them can help us with evaluating political disobedience at a greater level of granularity. In some cases, it can even help to shore up the vindication of political disobedience – the actions of dissidents may not only be justified on the basis of relevant moral principles, but also in terms of the appropriateness of their targets.

[6] Rawls, *A Theory of Justice: Revised Edition*, 329–30.
[7] BBC News, "Climate Protesters Block London Bridges," *BBC News*, November 17, 2018, sec. London, https://www.bbc.com/news/uk-england-london-46247339; Stefan Boscia, "The Extinction Rebellion Protests Are Targeting the Wrong Country," *The Spectator*, April 19, 2019, https://blogs.spectator.co.uk/2019/04/the-extinction-rebellion-protests-are-targeting-the-wrong-country/.

This essay has two main aims. The first is to qualify the commonly held position that *persons* are never legitimate targets of political disobedience. The second is to defend a fine-grained principle of differentiation which picks out the *things* that are the legitimate targets of dissidents' political disobedience. My aim is to specify and subsequently vindicate – albeit partially – our intuitive judgement that directing our political action at some targets is more *meaningful* (in some sense) than others.

The essay proceeds as follows. In Section 1, I consider the context of the discussion – especially the novel characterisation of political disobedience as a form of defensive action, upon which the principle I defend is built. In Section 2, I discuss some preliminaries which are required to clarify the nature of my project. Section 3 discusses and qualifies the intuitively plausible claim that persons are never legitimate targets of dissidents' political disobedience. I then present and defend the principle of differentiation in Section 4. On my account, legitimate targets are those persons and things that are required to bring about the occurrence of an injustice, in contrast with a baseline in which that injustice does not occur, and which when targeted would eliminate or mitigate that injustice. In Section 5, I clarify the principle in response to three worries. I conclude in Section 6 with a brief reflection on the limitations of my discussions, and a suggestion for further extending the principle of differentiation.

1 Reconceptualisation

Political disobedience is often characterised as falling within the category of communicative political action. Through disobedience, dissidents communicate their

disapproval or rejection of something, typically some aspect of the society in which they live (including public policies), which they regard as constituting an injustice. The aim is to send a message to, among others, policymakers or members of the public generally. The communicative aim is typically (but need not be) accompanied by a practical or political aim – to bring about a change in public policy, or the aspect of their society which they disapprove of or reject.[8]

In many circumstances, dissidents may achieve their communicative aims through legal protest. In reasonably democratic societies, even victims of injustice may succeed in communicating their messages in such ways. However, dissidents may sometimes judge that they have no way of succeeding in their aim except via law-breaking or *disobedient* political action. These may be circumstances where the dissidents (or those whom they represent) are so severely and unjustly marginalised that their peaceful and legal protests are unlikely to be taken seriously by their audience, if they even receive attention from the media and policymakers at all. In even more extreme circumstances, dissidents may have to resort to even more drastic options to achieve these aims – such as those involving damage and destruction, or, more generally those disruptive actions which impose significant costs on other members of the society. Such circumstances may be less uncommon than is often assumed. For instance, one (partial) explanation for riots turns on the observation that they are responses to the systematic neglect of the grievances of

[8] The goals of dissidents are varied. Among other things, they may aim simply venting their anger or frustration, at retribution against those who have violated their rights, to settle the score against a society that has failed to keep its promise of inclusion and equal opportunity, or to establish their self-respect – as indomitable even in the face of an injustice which they cannot alter. See Robert M. Fogelson, "Violence and Grievances: Reflections on the 1960s Riots," *Journal of Social Issues* 26, no. 1 (1970): 141–63; Matthew Moran and David P. Waddington, *Riots: An International Comparison* (London: Palgrave Macmillan, 2016); Bernard R. Boxill, "Self-Respect and Protest," *Philosophy & Public Affairs* 6, no. 1 (1976): 58–69; Thomas E. Hill, "Symbolic Protest and Calculated Silence," *Philosophy & Public Affairs* 9, no. 1 (1979): 83–102; J. Harvey, "Oppression Moral Abandonment, and The Role of Protest," *Journal of Social Philosophy* 27, no. 1 (1996): 156–71.

certain members of society, and to their repeatedly unsuccessful attempts at communicating them through legal channels or constrained disobedience.[9]

This characterisation, however, says little in response to the question of legitimate targets. Indeed, it appears that dissidents may target *anything*, if doing so would secure communicative success. There appears to be no principled way of determining what would or would not communicate dissidents' message. While this has the benefit of accommodating and delivering verdicts sensitive to the specific socio-historical contexts in which dissidents' actions are embedded, it allows too much variance. For instance, it permits dissidents to target a corrupt politician's office and her *home*. This result appears implausibly permissive.[10]

Recently, some philosophers have begun to consider a different characterisation of political disobedience. In addition to being primarily communicative, it may also be characterised as a form of defensive action, in the sense that dissidents impose harm in order to eliminate or mitigate the injustice they or others face.[11] This characterisation

[9] Fogelson, "Violence and Grievances"; David Waddington, "The Madness of the Mob? Explaining the 'Irrationality' and Destructiveness of Crowd Violence," *Sociology Compass* 2, no. 2 (March 1, 2008): 675–87; Moran and Waddington, *Riots*. A clarification is important. These sociologists are primarily concerned with showing that even destructive riots may be (partly) *explained* by dissidents' lack of other opportunities to secure their aims. This does not immediately constitute a *justification* for dissidents' disobedience (especially if they impose significant costs). The fact that an explanation is available for political disobedience in some circumstances, does not mean that it is permissible *when* those circumstances obtain. Nor does it mean that an individual can rely on the potential explicability of her actions, when seen from such an *ex post* perspective, as part of her justification for engaging in them.

[10] This claim is compatible with the possibility that the communicative account could be developed to deliver fine-grained and principled differentiation of targets. For instance, it may be noted that dissidents often also have the aim of communicating their sincerity or civility, and that their targeting of some things (rather than others) may fail to communicate that. These ideas, when developed, may allow principled differentiation of targets. One important obstacle in formulating such a principled differentiation, however, is in accommodating the contingent and context dependent connections between what would communicate sincerity or civility. On the communicative account, a principled differentiation may have to be committed to the result that in some contexts there are *no* legitimate targets.

[11] For a small selection of representative writings, see Jason Brennan, *When All Else Fails: The Ethics of Resistance to State Injustice* (Princeton: Princeton University Press, 2018); Delmas, *A Duty to Resist*;

draws from the literature on defensive harm, which is concerned with examining and specifying the conditions under which the imposition of harm is permissible. While there are disagreements about how to specify these conditions, many agree that the imposition of defensive harm must have a reasonable prospect of success at eliminating or mitigating the injustice to which the defensive harm responds.[12] In the context of political disobedience, the concern is with action which eliminates or mitigates the injustice which some citizens face. This characterisation, then, puts the practical or political aims of political disobedience in the front and centre.

Consider some circumstances in which political disobedience is clearly defensive – the imposition of harm (via damage or destruction) is necessary for directly eliminating or mitigating an injustice which some citizens face. For instance, destroying a coal power plant will directly and immediately stop the polluting effects which lead to harm to some. Destroying border fences or stations in which abuses of immigrants occur will eliminate (at least) one injustice they face. Destroying a police station staffed by brutal and racist police officers will eliminate (at least temporarily) the injustice they pose or contribute

Avia Pasternak, "Political Rioting: A Moral Assessment," *Philosophy & Public Affairs* 46, no. 4 (2018): 384–418; Zsolt Kapelner, "Revolution Against Non-Violent Oppression," *Res Publica*, n.d., Early Online View. While the characterisation of such action as defensive is not entirely novel – it was already present in Mandela's defence statement, and the justifications offered by civil rights activists in the US – the connection to the philosophical literature on defensive harm appears to be novel. Mandela, "I Am Prepared to Die"; Danielle L. McGuire, *At the Dark End of the Street: Black Women, Rape, and Resistance- a New History of the Civil Rights Movement from Rosa Parks to the Rise of Black Power* (New York: Vintage Books, 2011); Charles E. Cobb, *This Nonviolent Stuff'll Get You Killed: How Guns Made the Civil Rights Movement Possible* (New York: Basic Books, Inc., 2014).

[12] There is a question of whether actions that deviate from this characterisation may nonetheless be plausibly characterised as defensive. For further discussions, see F. M. Kamm, "Self-Defense, Resistance, and Suicide: The Taliban Women," in *The Moral Target: Aiming at Right Conduct in War and Other Conflicts*, by F. M. Kamm (Oxford: Oxford University Press, 2012); Suzanne Uniacke, "Self-Defence, Just War, and a Reasonable Prospect of Success," in *How We Fight: Ethics in War*, ed. Helen Frowe and Gerald Lang (Oxford: Oxford University Press, 2014). Avia Pasternak suggests that characterising such actions as defensive is controversial. See Pasternak, "Political Rioting," 399.

to. Destroying military equipment will eliminate the injustices that they will be used to pose during an unjust war. And so on.

A similar gloss could be given of at least some instances of communicative disobedience. For instance, the public nature of dissidents' engagement in political disobedience could be described as disrupting the facade that a certain discourse or representation is accepted by everyone, and which may unfairly constrain some citizens' lives. Their engagement in such action may also eliminate the injustice of their marginalisation.[13] They gain a voice that they would otherwise not have had by relying on legal channels which are prejudiced against them. More generally, action which brings about changes in public policy are also characterisable as defensive. According to Avia Pasternak, who provides a qualified defence of political rioting, this is partly because such actions put pressure on policymakers, and may be used to wrestle concessions and accommodations from them. Insofar as such measures – which may include public recognition of the injustice motivating the action, and the subsequent redistribution of resources and implementation of policies to address them – eliminate or mitigate the injustices to which dissidents respond, the actions which they take are characterisable as defensive.[14]

In establishing the connection between political disobedience and defensive harming, the possibility is opened up for a principled way of determining the legitimate targets of dissidents' action. This is because the literature on defensive harm offers well-developed

[13] Pasternak, "Political Rioting," 393.

[14] Pasternak, 393. It may be thought that the imposition of damages or destruction is *incidental* to the pursuit of these goals; it appears that dissidents could disrupt hegemony or gain a voice via means other than through such action. This neglects the crucial issue that damage and destruction are similarly incidental in many of the cases discussed within the defensive harm literature. Even in stylised two-party cases of self-defence, the imposition of such harm is necessary (and permissible) only in the absence of non-harmful options. For instance, harming an unjust aggressor is unnecessary to avert the threat she poses, if one can simply run away. I discuss this in Sections 4 and 5.

principles for regulating the imposition of harm on others – including how much harm is permissible, and which targets are legitimate. However, this possibility has not been adequately explored by those who offer such a characterisation of political disobedience. I explore and develop this possibility in this essay.

2 Preliminaries

A brief discussion of the assumptions and caveats upon which this essay proceeds will clarify the nature of my project.

First, I assume that the characterisation of dissidents' political disobedience as defensive has been adequately and plausibly elaborated. My concern is not with defending this characterisation as it is with extending and elaborating it in order to get a principle of differentiation that addresses the initial question about legitimate targets. Importantly, this does not commit me to the view that such action is *only* or *most plausibly* characterisable as defensive. While the focus is restricted, it is open for us to extend the principle – first to political disobedience that is not defensive, and subsequently to political action more generally. The exploration of *these* further possibilities is a task which I do not undertake here.

Second, I assume that dissidents' disobedience – violation of the law – satisfies what has been termed the "last resort" requirement. This is typically understood as requiring the absence of other viable means of achieving their goals, except those which break the law. This must not be construed narrowly. As John Rawls observes, dissidents can always try

to engage legally *yet again*, even if those options have no reasonable chance of success. The existence of such options should not constrain their choice of disobedience [15]. Thus, I assume that legal means are reasonably regarded as being exhausted. In such a context, disobedient political action may be the only way for dissidents to achieve their goals.[16] I side-step complications arising from how to determine when this requirement is met. A caveat: the last resort requirement should ideally be satisfied by groups rather than individuals. Individuals, on their own, may lack options that they have access to as members of a group.[17]

Third, I assume that dissidents' disobedience does not, at the point of their decision to engage in it, foreseeably result in greater harms than what is threatened by the injustice to which they respond. Disobedience is typically costly. In addition to the costs that are incurred by ordinary citizens due to the disruption, damages or destruction brought about by dissidents, disobedience may also, among other things, hinder the aspects of ordinary life regulated by laws, and disrupt (or even threaten) the bonds of civic friendship. The decision to engage in disobedience as a mode of political engagement, then, must be reasonably thought to bring about benefits which outweigh these costs, or at least not result in greater harms. The complications surrounding such *ex ante* judgements are several and severe, and I do not address them here.[18] Crucially, this means that my

[15] Rawls, *A Theory of Justice: Revised Edition*, 327–28.
[16] The plausibility of this requirement may not extend to all forms of defensive political action. As Rawls acknowledges, some conditions may be so extreme that there may be no duty to first use legal means. Additionally, and as Ronald Dworkin argues, the last resort requirement also appears implausible in the context where individuals are compelled to do what their conscience forbids. See Rawls, 328; Ronald Dworkin, *A Matter of Principle* (Cambridge: Harvard University Press, 1985), 108.
[17] I adopt Iris Marion Young's conception of a "group" – a collective that *need not* have any deeper connections to each other beyond the fact that they are subject to the same forces, in this case, of injustice. Adopting this allows us to recognise that individuals who are not part of a *community* may nonetheless have reason to act collectively to address their common condition. See Iris Marion Young, "Gender as Seriality: Thinking about Women as a Social Collective," *Signs* 19, no. 3 (1994): 713–38.
[18] See Patrick Tomlin, "Subjective Proportionality," *Ethics* 129, no. 2 (December 20, 2018): 254–83.

conclusions will be provisional, rather than all-things-considered. To soften the sting, I note that the assumption will not buy any conclusions on the cheap. The supposition that dissidents may disobey, does not settle the issue of how they may disobey – which includes the question of what they may legitimately target.

Fourth, I will generally bracket considerations of two principles that regulate dissidents' actions *during* disobedience. They require that the magnitude of harm imposed by dissidents (if they impose any) is proportional to the harms of an injustice (the "proportionality" principle), and that the magnitude of harm is among the lowest necessary for eliminating or mitigating the injustice (the "necessity" principles). I take it that disobedient action which violates these principles may not be all-thing-considered permissible.

Fifth, I do not adopt any specific theory of justice (or injustice); my discussions are intended to be ecumenical. This does not mean, however that considerations of justice are irrelevant to the issue. Depending on the theory of justice adopted, dissidents may face more or fewer constraints on their actions, which will have implications for what they can permissibly target.

Finally, I do not impose restrictions on *who* can permissibly engage in political disobedience.[19] Thus, I adopt a general description of the participants – as dissidents. This claim requires elaboration. It may be thought that only victims of injustice can

[19] There is another sense in which I do not (at least here) introduce restrictions on who may dissent. This concerns the *content* of dissidents' views. Individuals who support or reject access to abortions equally have the moral right to dissent. Kimberley Brownlee argues that such a right follows from a principle of humanism Brownlee, *Conscience and Conviction*, 7. This is in keeping with my bracketing the issue of what theory of justice to adopt.

permissibly engage in political disobedience. This is sometimes explained in terms of their lacking other options of making their voice heard, beyond political disobedience – their actions satisfy the last resort requirement. Conversely, privileged individuals (especially when seen as members of a group) do not typically satisfy the last resort requirement, since they have resources and connections and, thus, other legal options available to them.[20] However, this explanation allows for the possibility that even privileged individuals may sometimes have no other options except to engage in political disobedience. The privilege of individuals varies in kind and degree. Even individuals whom we would ordinarily consider privileged may find themselves in circumstances where they have no other options of making their voices heard (about some issue). Moreover, even privileged individuals may find that their privilege does not render available to them viable options to ameliorate the situation of others, especially victims of injustice; their privilege may be restricted to options pertaining to their own lives. If so, privileged individuals may join the victims of injustice in their political disobedience, in solidarity. These are other-defensive (rather than self-defensive) grounds for privileged individuals to participate. Given this, we see that there is room for privileged individuals to participate, even if we regard the justificatory standard for their engagement in political disobedience to be higher than that for victims of injustice.[21]

We may still find ourselves uncomfortable with privileged individuals' participation. This means that our resistance to their participation does not consist simply in the greater range of viable options available to them, relative to victims of injustice. Explanations of our unease may turn on the following observations: that acts of political disobedience are

[20] Pasternak, "Political Rioting," 403 note 78.
[21] Note that this claim does not rule out these privileged individuals' acting in defence of others. For discussions of complications arising from the differences in justificatory structures of self-defence and other-defence, see Cécile Fabre, *Cosmopolitan War* (Oxford: Oxford University Press, 2012), 54–65.

typically accompanied by increased repression by the state (even if they may eventually succeed in achieving their goals); that the targets of such repression are typically those who are *already* subject to injustice, rather than privileged individuals; and that privileged individuals are more likely to be able to marshal resources to mitigate the consequences of their actions. Our resistance to privileged individuals' engaging in such action, then, may be due to any (or all) of the following worries: that they may put victims of injustice at risk without the latter's consent or authorisation; or that they would be engaging in a kind of action the costs of which they either do not bear, or do so only partially. Another further worry is that the participation of privileged individuals may constitute *yet another* instance of the victims of injustice not having a voice.[22] This is especially pertinent if privileged individuals engage in such action on their own, or even if they are the ones interviewed by the media rather than the victims. However, these worries may be assuaged by requiring that privileged individuals do not engage in such action without consultation with representative members of victims of injustice, that they do not originate such actions, and that they defer to victims of injustice when asked to speak, and so on. That is, these worries do not rule out the participation of privileged individuals.

[22] Michael Walzer discusses the complex relationship between political actors and those they represent. See Michael Walzer, *Obligations: Essays on Disobedience, War, and Citizenship* (Cambridge: Harvard University Press, 1970), 46–70; Michael Walzer, *Political Action: A Practical Guide to Movement Politics* (Chicago: Quadrangle Books, 1971), 32–59. For discussions of the potential problems arising from the fact that the environmental activist group, Extinction Rebellion, is too white and too "middle-class", see Natalie Fiennes, "How White Extinction Rebellion Members Are Confronting Their Privilege," *The Independent*, October 7, 2019, https://www.independent.co.uk/voices/extinction-rebellion-climate-crisis-justice-diversity-white-privilege-police-a9145776.html; Tatiana Garavito and Nathan Thanki, "Stop Asking People of Color to Get Arrested to Protest Climate Change," *Vice*, September 18, 2019, https://www.vice.com/en_us/article/mbm3q4/extinction-rebellion-xr-is-shaped-by-middle-class-white-people-it-does-not-serve-people-of-color; Damien Gayle, "Does Extinction Rebellion Have a Race Problem?," *The Guardian*, October 4, 2019, https://www.theguardian.com/environment/2019/oct/04/extinction-rebellion-race-climate-crisis-inequality; Hettie O'Brien, "Does Extinction Rebellion Have a Class Problem?," *New Statesman*, October 11, 2019, https://www.newstatesman.com/politics/environment/2019/10/does-extinction-rebellion-have-class-problem; Ben Smoke, "Extinction Rebellion Protesters Who Want to Be Arrested: Be Careful What You Wish For," *The Guardian*, April 15, 2019, https://www.theguardian.com/commentisfree/2019/apr/15/extinction-rebellion-protesters-arrested-stansted-15.

3 Exemption

In this and the following section, I consider what counts as the legitimate targets of dissidents' political disobedience, when such action is characterised as defensive. This section considers and qualifies the claim that persons are never legitimate targets of such action.

Consider a central thought in the literature on defensive harm – some *persons* are legitimate targets of defensive harm. When extended to the context of political action, this means that persons can also be legitimate targets of dissidents' political disobedience. That is, persons can be permissibly targeted or attacked. This conclusion appears implausible. At least within the sphere of domestic politics, there is a strongly held view – one that moreover approximates consensus – that persons should never be targeted during political disobedience. This constitutes a serious challenge to the characterisation of political disobedience as a form of defensive action. There are (at least) three strategies that attempt to vindicate our intuition that persons are never within the set of legitimate targets.[23] I argue that none of them fully secure the claim that persons should never be targeted.

[23] In this section, I set aside the worry that targeting people in order to force policymakers to change unjust laws appears to be using them as mere means to an end. Such action appears to violate the presumption against our treatment of people. While this is a problem for the characterisation, it may not be intractable. For characterisations of the "means" principle that, when extended, would permit some such action, see T. M. Scanlon, *Moral Dimensions: Permissibility, Meaning, Blame* (Cambridge: Harvard University Press, 2009), 89–121; Derek Parfit, *On What Matters: Volume One* (Oxford: Oxford University Press, 2011), 212–32; Victor Tadros, *The Ends of Harm: The Moral Foundations of Criminal Law* (Oxford: Oxford University Press, 2011), 113–38.

3.1 Natural duties

The first strategy appeals to natural duties, understood as duties which have no necessary connection with institutions or social practices, and thus are those we owe to each other regardless of the conditions we find ourselves in. Among these duties are those not to harm, injure or kill others, not to cause unnecessary suffering, not to be cruel, to show due respect for the personhood of others, and so on.[24] The characterisation of these duties as holding *regardless of our social and material circumstances*, appears to rule out targeting people during political disobedience. Indeed, it seems to explain the reluctance of Mandela and other Umkhonto dissidents to target people during their sabotage campaign, despite the severity of the injustice to which they were responding.[25]

However, this strategy neglects a central feature of the literature on defensive harm, which is to identify and specify the conditions under which these natural duties are obviated or overridden, and harming *persons* is permissible. Such a project does not turn on a blunt rejection of the demands of natural duty. Instead, it coheres with the claims of even those who appeal to natural duties in order to prohibit certain actions against persons. This is because natural duties admit of exceptions. For instance, while John Rawls argues that we are not released from our natural duties just because others act unjustly, he allows that these natural duties may be set aside when there are 'considerable risks to our legitimate

[24] Rawls, *A Theory of Justice: Revised Edition*, 98–100.
[25] Mandela, "I Am Prepared to Die." That their sabotage campaign was accompanied by preparations for guerrilla warfare does not diminish the relevance of their reluctance to target persons, nor how seriously we should regard it.

interests'.[26] While Tommie Shelby argues that our natural duties are not 'negated by the existence of even a grossly unjust social order', he acknowledges that circumstances of self-defence or defence of others are those in which targeting persons is permissible.[27] The existence of severe injustices which threaten these interests, then, counts as a situation in which these risks are present, and where actions that are ordinarily in violation of natural duties become permissible.[28] The existence of these exceptions counts against construing natural duties as absolute or final. This means that the exclusion of persons from the legitimate targets of political disobedience cannot be fully secured by appealing to such duties.

The fact that the appeal to natural duties does not exempt persons from being targeted, leaves open the question of *which* persons may be targeted. Extending the literature on defensive harm to this context allows us to say more. Specifically, persons are legitimate targets when they are morally and causally responsible for an unjust threat.[29] This general statement glosses over several complications about how to determine the thresholds of

[26] Rawls, *A Theory of Justice: Revised Edition*, 192. Rawls' discussion centres on the natural duty to uphold a just constitution. For now, and like Shelby, I take it that this conclusion is extendable to other natural duties.

[27] Shelby, *Dark Ghettos*, 219–20.

[28] This claim, endorsed by Rawls and Shelby, is ambiguous on two fronts. First, it is ambiguous whether political disobedience is permissible in virtue of its being necessary for certain aims (perhaps to eliminate or mitigate the injustice), or in virtue of the forfeiture of certain rights by those who have contributed to those injustices. Second, it is ambiguous what role the obtaining of the relevant circumstances plays – whether as constraint (dissidents may not act in such ways *unless* those circumstances obtain) or as justification (dissidents may act in such ways *when* those circumstances obtain). While clarifying these ambiguities will be important for a full account of *when* and *how* the appeal to natural duty fails to exclude persons as legitimate targets, they do not matter for my current argument which aims simply to answer the question of *whether* targeting persons is (at least sometimes) permissible.

[29] There are disagreements about this characterisation in the literature. There are some who deny that moral responsibility for an unjust threat is necessary for an individual to count as a legitimate target. They claim that only causal responsibility is required. For a summary of the different views, see Seth Lazar, "War," in *The Stanford Encyclopedia of Philosophy*, ed. Edward N. Zalta, Spring, 2017, https://plato.stanford.edu/archives/spr2017/entries/war/. Despite these disagreements, the central point – that some persons are legitimate targets – is not disputed. I set these disagreements aside. I note, however, that those who deny that *moral* responsibility is required will end up with a *larger* set of legitimate targets than those who do not.

moral and causal responsibility beyond which an individual counts as a legitimate target. Depending on where we set the thresholds, civilians who contribute to an unjust war effort by producing or delivering weapons or food, or ordinary citizens who contribute to an injustice through their everyday behaviour may all be picked out as legitimate targets. Within the literature on defensive harm, the disagreements about where to set this threshold are extensive, and implicates further disagreements about the nature of causation, moral responsibility, and the extent to which we forfeit or are protected by the rights we may hold despite our responsibility for injustice, and so on.[30] I do not address these complications here. For my purposes, it is enough that the central claim – that some *persons* are legitimate targets – is not disputed. This claim disrupts the widely held view that persons are never legitimate targets of political disobedience.

3.2 Relative importance

The initial view about the impermissibility of targeting persons, period, requires restatement, in order to accommodate the limitations of the appeal to natural duty. One way this may be done consists in acknowledging the possibility that dissidents can sometimes permissibly target persons, but insisting that doing so is not *preferable* relative to other options. This restated intuition appears plausible – the justificatory burden for targeting people indeed appears to be much higher than that of targeting mere things. This rests on the observation that the constraints on our treatment of persons are grounded in their possessing rights which are then grounded in their status (for instance, as moral

[30] For further discussions, see Seth Lazar, *Sparing Civilians* (Oxford: Oxford University Press, 2015); Lazar, "War," sec. 4.

persons), which things lack.[31] Thus, even if we can permissibly target persons, we may never be able to do so, *all things considered*, due to the existence of better targets. This is the second strategy; if successful, it would also secure the exemption of persons from being targeted by dissidents' political disobedience.

However, this restated intuition is nonetheless susceptible to important exceptions, centring on situations when things are not regarded as mere things. The most obvious are cultural artefacts (or material heritage), such as, among other things, monuments of architecture, archaeological sites, religious objects, works of art, or historical manuscripts.[32] Cultural artefacts are constituents of the culture of a community of people, and are regarded as more than mere things. They are things which are regarded as expressing the way of life a community, including its history, shared beliefs, values or ideals. They tell part of the story about who they are, where they come from, what they value, and what they aspire to. They are also often taken as evidence of its achievements – be they intellectual, cultural or spiritual.[33] Their importance is even enshrined in various international conventions, notably the 1954 Hague Convention and its descendants, which focus on the protection of cultural artefacts in the event of armed conflict.

Cultural artefacts are important to people. They constitute part of the background conditions – as constituents of people's culture – in which people form and sustain their identities and conceptions of the good. Conceptions of the good are understandings of what is valuable in human life. They include and promote values and ideals about various

[31] This also appears to explain why we have fewer qualms about using *things* as means to an end, relative to using persons in those ways. See Tadros, *The Ends of Harm*, 126, 152.
[32] For an argument for understanding the environment as part of our heritage, see Janna Thompson, "Environment as Heritage:," *Environmental Ethics* 22, no. 3 (2000): 241–58.
[33] Lyndel V. Prott and Patrick J. O'Keefe, "'Cultural Heritage' or 'Cultural Property'?," *International Journal of Cultural Property* 1, no. 2 (July 1992): 307–20.

aspects of human life, including people's relationships with their families, associates, environment, and the world writ large. Such conceptions may be fully comprehensive – covering all values and aspects of human life – or they may be partially so.[34] Regardless of their comprehensiveness, however, conceptions of the good constitute people's understandings of themselves, and form part of their identities. Insofar as cultural artefacts are constituents of culture, they are also constituents of people's conceptions of the good and identities.[35] The continued existence of such artefacts is important for people to sustain their conceptions of the good and identities, and for new participants (new-born or immigrants) to be inducted into them. Targeting cultural artefacts – resulting in damage or destruction – disrupts these background conditions, and thus people's conceptions of the good and identities.[36] This is so even if people do not interact with the artefacts directly in their everyday lives, or even if the artefacts are displaced – as is the case of many artefacts stolen by conquerors and colonisers – or if the people live apart from their communities. Their being valued in these ways gives us reasons to care about them, and at least not to target them.[37] Cultural artefacts constitute an important exception to the claim that targeting things is always preferable to harming persons.

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[34] John Rawls, *Political Liberalism: Expanded Edition* (New York: Columbia University Press, 2005), 13–20.

[35] John Henry Merryman, *Thinking about the Elgin Marbles: Critical Essays on Cultural Property, Art and Law* (New York: Kluwer Law International, 2000), 35.

[36] This is distinct from the point that targeting such artefacts disrupts the strong emotional connections that people may have with them. See Erich Hatala Matthes, "'Saving Lives or Saving Stones?': The Ethics of Cultural Heritage Protection in War," *Public Affairs Quarterly* 32, no. 1 (2018): 69. I discuss this below.

[37] Joseph Raz, *Value, Respect, and Attachment*, John Robert Seeley Lectures (Cambridge: Cambridge University Press, 2001), 163–64; Erich Hatala Matthes, "Impersonal Value, Universal Value, and the Scope of Cultural Heritage," *Ethics* 125, no. 4 (July 1, 2015): 999–1027; Janna Thompson, "War and the Protection of Property," in *Civilian Immunity in War*, ed. Igor Primoratz (Oxford: Oxford University Press, 2007), 239–56. A caveat: I take it that such reasons are not content-neutral, at least in the political context. That is, we have no justice-based reason to protect the enabling and sustaining conditions for morally repugnant identities. This is not to say that we cannot preserve (or care about) artefacts from repugnant cultures for other reasons. See my essay "Vandalising Tainted Commemorations" in this thesis.

Relatedly, common and collective property may also constitute a class of things which disrupts the intuition that dissidents should always prefer targeting things than harming persons. Common property is available for use by everyone – such as parks, open spaces, or water bodies. Collective property is owned by a collective or a community – such as schools, hospitals, or government buildings. While the relationships between individuals and such property are typically weaker than that between them and cultural artefacts, it remains that the interests of *many* people – many of whom may not be implicated in injustice – would be adversely affected by their being targeted.[38] This is especially clear in cases where these properties are essential for fundamental aspects of everyday living – such as water pipes, electrical grids or internet systems. This, again, should give us pause in asserting that targeting things is always preferable to harming persons.

Yet another class of things comprises meaningful private property. This includes things such as heirlooms and other inheritance, or wedding rings and other personal commemorative artefacts, among others. People have very strong emotional bonds with these things. In some cases, their owners may prefer that they be harmed rather than allow these things to be targeted. Here, we need not adopt individuals' unique evaluative perspectives to determine the significance of such relationships and which target is legitimate or preferable. Instead, we may plausibly describe the intentional damage to or destruction of such things as cruel. If so, there may be a presumption (grounded in a natural duty) against doing so, and which requires additional justification relative to targeting mere things.[39] While there will be exceptions to such a duty, it nonetheless

[38] For an analysis of public property as owned by the people, see Shmuel Nili, "The Idea of Public Property," *Ethics* 129, no. 2 (January 2019): 344–69.
[39] See Margaret Jane Radin, "Property and Personhood," *Stanford Law Review* 34, no. 5 (1982): 957–1015. and Jeremy Waldron, *The Right to Private Property* (Oxford: Clarendon Press, 1988). for discussions of the significance of the relationship between persons and private property.

disrupts the claim that targeting such things is always preferable to even harming persons.[40]

We need to take the importance of these things seriously. Even though things lack a status comparable to those possessed by persons, some of them may be so centrally implicated in persons' fundamental interests such that targeting them is not preferable to targeting persons. So, even if it turns out that our concern with things is fundamentally a concern with persons,[41] there are still circumstances where targeting things is not preferable relative to targeting persons, all things considered. In recognising this, however, we have to give up on the restated intuition that targeting people is always preferable to targeting things. There are circumstances when targeting persons is not only permissible, but also preferable *all things considered*. The appeal to the apparent relative unimportance of things cannot entirely *exempt* persons from being the targets of political disobedience.[42]

3.3 Counterproductivity

[40] The discussions here have two potential implications for the proportionality and necessity calculi. First, a distinction is often drawn between narrow and wide proportionality, as a general way of distinguishing the scope of the proportionality calculus – the former includes the impact of defensive harming on unjust aggressors, whereas the latter includes the impact on innocent others. See Jeff McMahan, *Killing in War* (Oxford: Clarendon Press, 2009), 20–32. In the case of such things which innocent others also have interests in, the distinction may not be stably held. Deliberations about targeting such things may always be about wide, rather than narrow, proportionality. This qualifies Avia Pasternak's claim that the burdens imposed by dissidents' actions should be assessed on a narrow proportionality calculus, due to ordinary citizens' participation in the injustices of their state. See Pasternak, "Political Rioting," 409 note 91. If there is *at least one* citizen who is not implicated in injustice but who has an interest in these things, the narrow proportionality calculus is inappropriate. Second, given the number of people who have interests in such property, the results of the proportionality and necessity calculi may shift such that harming persons is easier to justify than targeting things – a seemingly implausible result. Avoiding this result will require a substantive moral theory of the *good*, which adjudicates conflicts between fundamental but seemingly incommensurate interests.

[41] Matthes, "Saving Lives or Saving Stones," 69.

[42] I set aside the issue of how dissidents should *rank* these targets. Differentiation between these targets will be based on assessments of proportionality and necessity, which I have bracketed.

The third strategy for exempting persons centres on the observation that targeting persons is typically counterproductive for dissidents' own aims of eliminating or mitigating injustice. One explanation for this, common in the literature, turns on the observation that such actions are typically viewed negatively – as violent, radical, uncivil, wanton, and so on – such that dissidents' engagement in them would detract from their broader aims, especially those of communicating a message to the general public and persuading them of it. For instance, Peter Singer argues that violence is likely to hinder the task of persuasion.[43] This is echoed by Kimberley Brownlee, who worries that forceful tactics may diminish the appeal of dissidents' message.[44] Avia Pasternak claims, in a similar vein, that the public may respond angrily and resentfully to actions targeting persons – a response which would direct public attention away from the injustices which dissidents try to draw attention to.[45] The core thought is that if the attention of the general public is distracted – from dissidents' message to the character or quality of their actions – then dissidents would be engaging in counterproductive action. This is a question of whether dissidents' actions would serve or frustrate their aims of eliminating or mitigating injustice. If the latter, their actions would be impermissible (again, on their being characterised as defensive).

A clarification: we must not think that dissidents' success in communicating and persuading others of their message is irrelevant to their defensive goals. Dissidents do not typically aim only at eliminating or mitigating existing instances of injustice; they also have a broader interest in ensuring that they are not simply replaced by future iterations.

[43] Singer, *Democracy and Disobedience*, 82.
[44] Brownlee, *Conscience and Conviction*, 20.
[45] Pasternak, "Political Rioting," 405. Rawls claims that violent action tends to obscure the civility of dissidents' actions, and as such is incompatible with civil disobedience as a mode of addressing the public Rawls, *A Theory of Justice: Revised Edition*, 321. Since our concern is not with *civil* disobedience, we may set this aside.

For instance, they do not simply want to remove only existing police brutality or racism, but to ensure that they are eliminated, period. And one way of securing the broader interest (or increasing the likelihood that it would be secured) consists in conducting their political action in ways that persuade and convince members of the general public of the injustice which they face, and of the urgency of eliminating it permanently.[46]

While the third strategy responds to a genuine concern, we must nonetheless be cautious about taking it *too seriously* – as always and decisively ruling out certain kinds of action by dissidents. This caution is grounded on the observation that the criticism of counterproductivity has also been levelled, more generally, at political disobedience directed at things rather than persons. Even seemingly peaceful actions such as blocking traffic or occupying public buildings receive such criticisms. To use a recent example, consider Extinction Rebellion, an activist group seeking to raise awareness about and bring about policy changes concerning climate change. Dissidents blocked major roads and public transportation in many places in the United Kingdom, especially in London. These actions were described as damaging the cause of those who seek to address climate change.[47] Extinction Rebellion's plan to disrupt air traffic at a London airport was also described as counterproductive in virtue of its breaking the law.[48]

[46] The claim here is simply that when dissidents act to eliminate or mitigate (instances of) injustice, they have reason to do so in a way that is also communicative and persuasive. Two caveats are important. First, this reason is defeasible. Second, the claim does not commit me to the claim that dissidents can permissibly engage in political disobedience in order to *solely* communicate or persuade, where such actions do not eliminate or mitigate the injustice to which they respond.

[47] Sadiq Khan, "Mayor of London Statement on Tomorrow's Planned Protests in London," London City Hall, April 16, 2019, https://www.london.gov.uk//press-releases/mayoral/mayor-of-london-statement-on-planned-protests.

[48] George Bowden, "Exclusive: How Extinction Rebellion Plans to Shut Heathrow Airport Down," HuffPost UK, July 4, 2019, https://www.huffingtonpost.co.uk/entry/extinction-rebellion-heathrow-drone-plans_uk_5d1da527e4b04c48140ef43c; BBC News, "Planned Heathrow Drone Protest 'Criminal,'" *BBC News*, August 29, 2019, https://www.bbc.com/news/uk-england-london-49509852.

This phenomenon is not isolated, but generalised to the political actions of dissidents, especially those representing minority groups or views. Their political actions – even if legal, but especially if disobedient – are more likely to be regarded negatively in such a way as to raise the spectre of counterproductivity.[49] In effect, there appears to always be even better or even less-disruptive actions that dissidents *should have* engaged in, rather than the actions they *actually* took.[50] One explanation for the frequency with which such criticisms are made, is that people may have mistaken the presumption against law-breaking activity for an absolute rule (or something approaching it) against doing so, even in circumstances where there are genuine overriding reasons to disobey. Another could be that law-breaking political action is regarded as anti-democratic in character, insofar as it is regarded as seeking to bypass normal democratic procedures for introducing changes that affect the society.[51] More generally, it could be that the barriers that are faced by victims of injustice and their allies in terms of political representation and participation are likely to be instantiated in a different form to suppress or dismiss their political action – whether disobedient, radical, or otherwise.[52] Whatever the explanation, however, the general picture is clear. The counterproductivity criticism is often levelled at even those actions which fall far short of harming persons. Even if it is a genuine worry, it is not one that is unique to harming persons.

[49] Ruth Braunstein, "Boundary-Work and the Demarcation of Civil from Uncivil Protest in the United States: Control, Legitimacy, and Political Inequality," *Theory and Society* 47, no. 5 (October 2018): 603–33.

[50] Matthew Chrisman and Graham Hubbs argue that political dissent may be self-undermining *qua* speech acts if they are presented in ways that raise suspicions about dissidents' sincerity and good-faithedness. I suspect that who counts as acting sincerely and in good faith will likely be influenced by the unjust political situation to which dissidents respond. See Matthew Chrisman and Graham Hubbs, eds., "Speaking and Listening to Acts of Political Dissent," in *Voicing Dissent: The Ethics and Epistemology of Making Disagreements Public*, Routledge Studies in Contemporary Philosophy 105 (New York: Routledge, 2018), 164–81.

[51] Singer, *Democracy and Disobedience*, 58.

[52] In canvassing potential explanations, I have set aside those involving disingenuous or dishonest critics – those who raise the counterproductivity worry under the guise of supporting dissidents' aims (but not their methods), but whose overall positions are actually opposed to those aims.

This caution, however, does not licence our setting aside the third strategy and the concern to which it responds. For even if the concern with counterproductivity is not unique to targeting persons, it may well be that it is *more* counterproductive to target persons than things. This thought need not be naïve; it may be due to the importance of the integrity or safety of persons' relative to that of things, grounded in differences in their status. But as we have seen earlier, targeting some kinds of things may be regarded more adversely than even harming persons. In such circumstances, it may be less counterproductive to target persons. The general point, then, is that the concern with counterproductivity does not secure the exemption of persons from the set of legitimate targets.

In sum, these strategies do not secure the *exemption* of persons as legitimate targets of dissidents' political disobedience. Each strategy leaves room for some exceptional circumstances where doing so is permissible. What they secure, instead, is the moderate position that targeting persons, even though permissible, is *generally* worse (in some sense) than targeting things. An account of the legitimate targets of dissidents' political disobedience when it is characterised as defensive, then, will include persons in some exceptional circumstances. This is a relatively uncontroversial conclusion in the literature on defensive ethics – especially when we are thinking about circumstances of war. However, this claim is controversial in the context of political disobedience within a society, which is guided by the strongly and commonly held view that persons should never be targeted. The discussion in this section, then, goes some way in qualifying the intuitive view which rules out targeting persons.

4 Differentiation

The discussions in the previous section do not settle for us the question of what things are legitimate targets, and when they are so. There appears to be important differences in dissidents' targeting a state building, a community facility, or a private property. The challenge is to make such fine-grained differentiation on principled grounds. This section sketches the central features of such a principle of differentiation; the following section clarifies and specifies it in response to several worries.

Recall the claim that persons who are morally and causally responsible for an injustice are legitimate targets of defensive harm. The magnitude of the harm that we can permissibly impose will depend, among other things, on whether it is proportionate to the harm threatened, and whether it is among the least harmful viable option available.[53] Here, it is generally assumed that damages to possessions – things – are, or involve, lesser harms than targeting persons. As we have seen earlier, however, this is typically, but not always, true. Nonetheless, the literature on defensive harm appears to regard things as legitimate targets, if their being targeted would eliminate or mitigate the injustice posed by their owners.

This result is connected to the earlier observation that persons are regarded as possessing certain rights against being treated in certain ways, which things lack. Moreover, as we have seen earlier, even very valuable things are important because of their importance *for*

[53] I set aside disputes about whether the requirements of proportionality and necessity are "internal" or "external" to the principle regulating who may be permissibly targeted. For instance, Jeff McMahan regards both requirements as internal, whereas Helen Frowe argues that only the requirement of proportionality is. See McMahan, *Killing in War*, 10; Helen Frowe, *Defensive Killing* (Oxford: Oxford University Press, 2014), 11–12, 119.

people. If there is a presumption against targeting things, it is grounded in terms of avoiding setbacks to the interests of their owners. But when the owners are responsible in the relevant ways, their rights against incurring such setbacks appear to be obviated or overridden. The presumption against targeting their possessions appears to be correspondingly lifted. So, according to the general framework of defensive harm, it appears that *any* of the possessions of unjust aggressors are included as legitimate targets. For instance, if someone is about to unjustly attack me, it appears that I can permissibly target any of her possessions if doing so would eliminate or mitigate the threat she poses. This claim is extendable to the context where the perpetuator of injustice is the state or other group agents. For instance, Avia Pasternak suggests that in some circumstances, rioters can permissibly target the property of the state (or a subunit of it) which is responsible for perpetuating injustice. While Pasternak allows some differentiation between state property to be made, depending on how much harm is caused, her position appears to be that such property in principle count as legitimate targets.[54]

As it stands, this account already gives us a plausible restriction on the class of things that are legitimate targets – things which belong to individuals who are not responsible for an injustice are illegitimate targets.[55] Since the state and its agents are often responsible for injustice, state property typically can permissibly be targeted. And if ordinary citizens are not responsible for an injustice, dissidents should not target private residences.[56]

[54] Pasternak, "Political Rioting," 405–6, 410, 414.
[55] This is not to say that there are never circumstances where targeting them are permissible. This bears similarities to the discussion of whether innocent parties may be harmed over the course of our defensive actions.
[56] It may be thought that ordinary citizens are complicit in injustice, and thus their possessions are legitimate targets. As we shall see later, the principle I defend allows us to side-step this complication.

Notice, however, that the restriction makes no differentiation *among the possessions* of the those responsible for injustice. It deems as equally legitimate the weapons, vehicles, residence, furniture or even nutritional sources of a brutal and racist police officer. This appears intuitively wrong – it seems that only her weapon is a legitimate target, whereas the others are not. This turns on the observation that those other things are not in some sense relevant to the injustice that the individual poses or contributes to. One difficulty of differentiating them, however, lies in the fact that all of these things are *equally members of the full causal structure* of the injustice that an individual poses or contributes to. They feature in the full set of factors that causally contribute to the occurrence of the injustice. For instance, if she does not have food or a stable residence, she will not be able to pose the injustices that she does as a police officer. Here, we may be tempted to draw a distinction between those things that *cause* an injustice, and those which are *mere conditions* for it. However, this distinction is typically drawn on the basis of moral responsibility or intentional action.[57] This does not readily apply to things, as they are not apt bearers of attributions of responsibility or intentionality. Another way is required to pick some things out from the full causal structure as legitimate targets.

A quick clarification is important. It may be claimed, in a deflationary mood, that there is no *real* metaphysical difference between the contribution of weapons and food, insofar as they are equally members of the causal structure of the injustice.[58] Even if this is true, however, their participation in the causal structure may still be differentiated in *principled* ways, such as on the basis of the magnitude of their causal contribution.[59] For now, one

[57] Adil Ahmad Haque, *Law and Morality at War* (Oxford: Oxford University Press, 2017), 73–77.
[58] Victor Tadros, "Causal Contributions and Liability," *Ethics* 128, no. 2 (December 18, 2017): 413–15.
[59] Cécile Fabre, "Guns, Food, and Liability to Attack in War," *Ethics* 120, no. 1 (2009): 36–63; Helen Beebee and Alex Kaiserman, "Causal Contribution in War," *Journal of Applied Philosophy*, 2019, Early Online View.

way of resisting this deflationary position turns on the observation that it would include as legitimate targets everyone and everything who or which has ever made a difference to the injustice, regardless of magnitude or immediacy. For instance, the parents, teachers and friends of unjust aggressors would be included – a seemingly implausible result. If so, some differentiation *must* be made.

As a first-pass response to this question of differentiation, consider the claim that things which are *required for* the injustice are legitimate targets of dissidents' political disobedience.[60] In line with the focus, in many discussions of defensive harm, on act-tokens rather than act-types, we are here concerned with *tokens* of things rather than *types* of things. This is because even things which do not belong to the types of things that are typically required for injustice may nonetheless be required for it in some circumstances. A simplified example illustrates. Hair-dryers are not typically a type of thing that is required for injustice. However, a hair-dryer may be used, in an exceptional case, to dry a matchstick that is used to set someone on fire.[61] The fact that a thing does not belong to a type that is typically required for injustice is irrelevant for our purposes. What is crucial is whether it is *actually* required, in the cases we consider, for the injustice.[62]

[60] In this essay, I leave open how to specify the meaning of the "required for" relationship. Here, we can appeal to different ideas available in the literature on causation and causal contribution. We could adopt J. L. Mackie's account, and describe required things as those which are minimally jointly sufficient for an injustice. Or we could adopt David Lewis' counterfactual account, and describe required things as those elements of the causal structure which the injustice is more sensitive to, relative to other elements. As we will see below, my account integrates a contrastive aspect which assuages some worries about leaving the "required for" relationship unanalysed. See J.L Mackie, "Causes and Conditions," *American Philosophical Quarterly* 2, no. 4 (October 1965): 245–64; David Lewis, "Causation as Influence," *The Journal of Philosophy* 97, no. 4 (2000): 182–97.

[61] Tadros, "Causal Contributions and Liability," 414.

[62] To pre-empt a worry: this does not commit me to the claim that types of things are never relevant *for other purposes*. The fact that a thing belongs to a generally innocuous class of things may become relevant when we consider complications arising from the fact that dissidents do not typically have full knowledge of what is required for injustice, and that they may have to rely on generalisations – about what is typically required for injustice. Considerations about types of things may also be relevant when we make judgements about culpability. For instance, our having the liberty or entitlement to use certain types of things may mitigate the extent to which we may be held culpable when our use of tokens of them

Even at this general level of analysis, the first-pass response is an improvement over the account above (centring on possessions) in two ways. First, it leaves out things which an unjust aggressor owns, but which are not required for the injustice. These may be things such as her vehicle or furniture. Second, it picks out as legitimate targets those things which are required for an injustice, but which do not belong to the aggressor – as when she uses a weapon which does not belong to her to pose the injustice. These refinements better capture our intuition that some, but not all, things are legitimate targets, and that whether they are so depends on their relationship to the injustice that an individual poses or contributes to.

The second refinement introduces a complication. Depending on *how* the aggressor obtains the thing which does not belong to her, but which is required for an injustice, we may not think that the thing counts as a legitimate target. This is clearest when we suppose that the aggressor has *stolen* a weapon from someone and uses it to threaten an innocent person. Targeting the weapon will set back some of the interests of its owner. Yet since the owner is innocent, she is not liable to have her interests set back. This appears to be a case in which the weapon required for the injustice is an illegitimate target, and where the defensive harm should be instead directed at the aggressor's other possessions, or in their absence, at her person. Two judgements are relevant here, but which pull us in opposite directions. On the one hand, we think that characterising the stolen weapon as an illegitimate target aptly captures our reluctance to permit unjust aggressors to engage in behaviour which sets back the interests of innocent others, and to impose costs on them

results in harm to others. An individual appears to be less culpable for injuring someone when she uses a soft toy to hit her, as opposed to using a baseball bat. Regardless of the issue of culpability, however, the soft toy would count as a legitimate target.

when they do not know of, and have not consented to, their things being used to pose an injustice. We want unjust aggressors to bear the costs of their actions, rather than for innocent others to do so. On the other hand, we think it is at least sometimes permissible to impose some minor costs on innocent others, if doing so would avoid our having to impose significantly greater, or potentially disproportionate or unnecessary, costs on someone else. This is because even unjust aggressors do not lose their right, held against others, against being subject to disproportionate or unnecessary harm in order to eliminate or mitigate the harms they threaten.[63]

The first-pass response has to be qualified in response to this complication. Specifically, while the stolen weapon does count as a legitimate target, this judgement does not *conclusively* settle for us whether a dissident should target it, all-things-considered. The claim that a thing is a legitimate target means, on my account, simply that we have a justification for targeting it which derives from our interest in eliminating or mitigating the injustice which requires it. This claim is silent on, and compatible with, the different claims that its being targeted would be accompanied by some morally weighted bad or would unfairly set back the interests of some innocent others. More generally, whether dissidents should, all-things-considered, direct their political disobedience at a legitimate target is subject to deliberations about whether doing so would satisfy, among other things, the proportionality and necessity principles.[64] Such deliberations may very well deliver

[63] That is, we take a fine-grained approach to the rights that they lose as a result of their posing or contributing to an injustice. See Joanna Mary Firth and Jonathan Quong, "Necessity, Moral Liability, and Defensive Harm," *Law and Philosophy* 31, no. 6 (November 2012): 673–701.

[64] That is to say, this qualification is in keeping with my bracketing of the issues of proportionality and necessity. This qualification also resolves for us a related worry, concerning circumstances when things are picked out as legitimate targets, but which are also required for *good*. A weapon which is ordinarily required to protect innocent others *is* a legitimate target if it is also required for injustice. A similar worry, concerning "dual-use" facilities, occurs in just war theorising. See Henry Shue and David Wippman, "Limiting Attacks on Dual-Use Facilities Performing Indispensable Civilian Functions," *Cornell International Law Journal* 35, no. 3 (2002): 559–79.

the conclusion that dissidents are not permitted to target certain things which are legitimate. For instance, the things required for injustice may be hugely significant to many people – such as cultural artefacts or common property – such that targeting them may not be proportionate. But regardless of the conclusion of such deliberations, the thing which is required for injustice remains a legitimate target.

This qualification that the judgement of what counts as a legitimate target is provisional is not *ad hoc*. Instead, it coheres with – and can explain – two key responses that we have when it comes to actual political action. The first concerns our sense of frustration when we realise that we are not permitted, all-things-considered, to target a particular thing that is required for injustice. An example of such frustration is when we find that we are unable to target a brutal policeman, because of the existence of countervailing considerations. Here, and on the basis of the qualification, we see that the frustration stems from the fact that there *remains* a reason for targeting that thing, despite the fact that it is outweighed by other considerations. The thing in concern *still is* a legitimate target, only that we may not target it now.[65] Second, and relatedly, this qualification is able to account for our judgement that dissidents who nonetheless target such things in such conditions (that is, when doing so is not all-things-considered permitted) are behaving in a way that is still guided by reason in some sense. They are, despite their poor all-things-considered judgements, still correct in directing their political action at *legitimate targets* rather than at other things. Our judgement here turns, again, on the fact that there are reasons for doing so – based on the things being required for injustice.

[65] That is to say, the reason is *pro tanto* rather than *prima facie*. While a *pro tanto* reason remains a reason even when it is outweighed, a *prima facie* reason does not remain so. For further discussions of the distinction, see Bernard Williams, *Problems of the Self: Philosophical Papers 1956-1972* (Cambridge: Cambridge University Press, 1973), 166–86; Shelly Kagan, *The Limits of Morality* (Oxford: Oxford University Press, 1989), 17; Lisa Tessman, *Moral Failure: On the Impossible Demands of Morality* (Oxford: Oxford University Press, 2014), 11–56, especially p. 22 n. 23.

The account is still over-inclusive, and thus incomplete. Specifically, the aggressor's nutritional sources and accommodation are also required for the injustice she poses – for without them, she would not be alive to pose the injustice she does. Yet we intuitively judge that they are not legitimate targets, again because they do not appear to be relevant to the injustice in some sense. Consider the following revision of my account, which specifies this idea of relevance: *legitimate targets are things which are required to bring about the occurrence of an injustice, in contrast with a baseline situation in which that injustice does not occur*.

The specification of the baseline is justified on the basis of individuals – including unjust aggressors – having the freedom to conduct their lives in certain ways and to require certain things in conducting their lives thus, as long as doing so *does not involve or contribute to unjust harms* to others. This is distinct from the claim that the baseline situation refers to the "ordinary" circumstances that we find ourselves in. While this latter specification may better accommodate our judgements about what we can reasonably expect – where reasonable expectations is understood in laypersons' terms – it deviates from the operational characterisation of political disobedience as aiming at the elimination or mitigation of injustice.[66] This is most clearly illustrated when we recognise that "ordinary" circumstances may be characterised by prevalent and severe injustice, an obvious case being pre-abolition societies. In such circumstances, what can be reasonably expected may nonetheless involve injustice. Given this, only the former specification accommodates the interest we have in securing that aim.

[66] For a qualified defence of the exculpatory potential of appealing to reasonable expectations in this sense, see Douglas Husak, "The 'But-Everyone-Does-That!' Defense," *Public Affairs Quarterly* 10, no. 4 (1996): 307–34. I discuss a related issue, arising from institutionally entrenched and socially normalised injustice, in another essay of this thesis. See 'Clarifying Our Duties to Resist'.

The clause that legitimate targets are things which are required to *bring about* the occurrence of an injustice reflects this concern with eliminating or mitigating the injustice. Specifically, our concern is to identify (and target) the things that are required to *change that situation* from one in which the injustice does not occur to one in which it does, or, more minimally, which are required to contribute to such a change.[67] The revision delivers the judgement that an unjust aggressor's nutritional sources and accommodation are illegitimate targets. This is *not* because she would also require food and accommodation even if she does not pose the injustice. As we have seen earlier, even things which are required to bring about good states of affairs are legitimate targets when they are required for injustice. Instead, it is because her access and use of food and accommodation are not – except in extremely rare or hypothetical circumstances – required to *change the situation*. A response would not only be conversationally infelicitous, but erroneous, if it referred to things such as food and accommodation which do not explain what the aggressor needs to bring about the injustice. For it would wrongly imply that what makes the difference between the aggressor's posing the injustice and her not doing so consists in her reliance on food and accommodation.

Of course, there may be counterexamples in which these things are precisely what make the difference in the relevant sense. One such circumstance is where a group of unjust aggressors who are otherwise able to pose unjust threats are incapacitated due to hunger and exposure to the elements, and where the provision of goods to mitigate the sources of their incapacitation would bring about the change in the situation. In this case, these

[67] I address complications arising from collective and overdetermined contributions in the next section.

things *would* count as legitimate targets. These circumstances, then, does not constitute a problem for my account.

In this way, this revised account accommodates and takes seriously our intuition that while some things are required for the occurrence of an injustice, they are nonetheless in some sense irrelevant. It specifies the idea of relevance as tracking what is required to bring about the occurrence of the injustice, in contrast with a baseline in which that injustice does not occur. Irrelevant things are those which are not required to bring about such a change in the situation. In the context of political disobedience, it allows us to say that government offices or police stations typically are legitimate targets, whereas community facilities or private residences typically are not. This is because the former are required to bring about the occurrence of an injustice compared to a baseline where it does not occur, whereas the latter are not required in this sense. Of course, whether any *particular* thing is required in this sense, will have to depend not just on philosophical but also sociological and historical analyses.

5 Clarification

Briefly addressing several worries further clarifies the principle of differentiation sketched in the previous section. The first two centre on the claim that dissidents should not target ordinary citizens' things. The third concerns the uncertainty that dissidents often find themselves in.

5.1 Citizens' things

The first worry centres on the plausible observation that the actions of many ordinary citizens collectively support the injustices that some others face. This is especially so when we consider structural injustices. Certain injustices occur partly due to citizens behaving in certain ways collectively, others persist because citizens' actions support the continued functioning of unjust practices or institutions. In this sense, citizens are often complicit in, and sometimes actively contribute to, the injustices that some face.[68] If so, at least some of their things are also required to bring about the injustice in the sense described by the principle, and thus count as legitimate targets. Yet this result appears to return us to the start of our problem – that there appears to be a significant difference between targeting state property and private possessions, and that the challenge is to articulate a principled way of differentiating them.

My response is resolute. The initial judgement about the difference between targeting state property and private possessions does not account for the possibility that in some circumstances the private possessions of ordinary citizens are indeed required to bring about injustice in the sense described by the principle. Once this possibility is accommodated, we see that such things in fact count as legitimate targets. This, then, constitutes a point at which our intuitive judgement requires revision. Such a revision is not implausible, especially when we recall that the things in concern are not simply any of the private possessions of ordinary citizens, but *only* those among them which are required to bring about the injustice. For instance, we may judge that motor vehicles count

[68] Christopher Kutz, *Complicity: Ethics and Law for a Collective Age* (Cambridge: Cambridge University Press, 2000); Iris Marion Young, *Responsibility for Justice* (Oxford: Oxford University Press, 2011).

as legitimate targets for dissidents seeking to eliminate or mitigate the injustice of environmental degradation, even though they are private possessions. This judgement is compatible with severe constraints on what other private possessions those dissidents can target – among other things, they may not target the homes of ordinary citizens, or even public transportation.[69] In this way, my response is resolute but not radical.

5.2 Making a difference

The second worry – which is a restatement of the concern underlying the first worry, and an objection to my first response – centres on the relationship between dissidents' actions and the injustice they seek to address. It may be thought that even though some of the possessions of ordinary citizens are required to bring about injustice and are thus legitimate targets, directing action against one or a few of them would rarely *make a difference* concerning whether an injustice occurs. In contrast, targeting state property would have a major impact on the injustice. Targeting ordinary citizens' things would then be pointless – it would neither eliminate nor mitigate the injustice.[70] In such circumstances, our imposition of defensive harm would eliminate or mitigate the injustice only if it targets and disables the use of most or even all these citizens' things, in a way that can be counted as eliminating or mitigating the injustice. This appears to be disproportionate, or at least runs the risk of being so. For instance, in order to eliminate or mitigate the injustice of environmental degradation, it is not enough to target simply one or a few motor vehicles. A significant number of them will need to be targeted. Yet

[69] This qualifies the comment made by the Mayor of London (*supra* note 47), that activists seeking to disrupt public transportation were behaving counterproductively. Setting the issue of counterproductivity aside, we may say, more definitely, that the activists were directing their action at an illegitimate target.
[70] See *supra* note 12.

that may impose disproportionate costs on those individuals who require them to carry out their everyday activities. This thought builds on the earlier caveat that the judgement that something is a legitimate target does not conclusively settle for dissidents whether they should target them. It seeks to shield ordinary citizens' things from being targeted by dissidents, by pointing out that targeting them would violate the requirements of the proportionality or necessity principles, which constrain what dissidents can do, all-things-considered. If successful, this objection neutralises the conclusion of the resolute response.

Before proceeding, I note that the worry – as stated – rests on a dubious empirical claim, that targeting state property would always eliminate or mitigate an injustice, whereas targeting private possessions would not. A more plausible restatement is that state property is *typically* a better target because of the centrality of their role in bringing about an injustice – measured, perhaps, in terms of the magnitude of their causal contribution – *relative to* private possessions. The former are better targets because targeting them makes a greater difference to the eliminating or mitigation of the threat; targeting them also avoids the disproportionality that arises from targeting private possessions given the magnitude of their contribution. Notice, however, that this construal in effect concedes the possibility that in some circumstances, dissidents can target private possessions, all-things-considered – when they are more centrally involved than state property. Thus, it does not secure the desired exemption of ordinary citizens' things from being targeted by dissidents. Whether and how often dissidents may target private possessions is then an empirical question (which I do not address here). The existence of circumstances in which the injustice is prevalent and citizen-directed but ignored by the state – consider prevalent racist attacks carried out by citizens in everyday life, accompanied by police inaction – suggests that ordinary citizens' things may often not be exempted. Setting aside these

worries, there still remains a genuine worry which requires addressing, concerning the point of targeting private possessions when doing so would not make a difference.

My first response to this worry centres on the varied natures of the injustices that we (including dissidents) are interested in eliminating or mitigating. An example illustrates the point. Suppose that a group of people, Reds, are engaged in a genocide against another group of people, Greens, in their society. Here, we may suppose, plausibly, that targeting the one or a few of the weapons used by the Reds would not make a difference to whether the *genocide* occurs. Indeed, it seems that we would have to target most or even all of the weapons in order to succeed at eliminating or mitigating the injustice of genocide. In this example, however, it is implausible for us to say that because targeting any singular weapon does not make a difference to the genocide, we should therefore not target any of them. Indeed, we judge that we should target one or a few of the weapons, even if doing so would be pointless in terms of making a difference to the injustice of genocide. The structure of this example generalises; it includes the injustices of slavery, exploitation of the working class, racist rental practices, and so on. In these cases, I suggest, the judgement rests on the fact that the broader injustice is *constituted by individual events* – for instance, of wrongful killing, exploitation, or racism – *that we also have legitimate interests in eliminating or mitigating*. That is to say, dissidents need not always be interested only in addressing an injustice at the broadest or most general level of its instantiation.

This structure is, however, absent from the case of environmental degradation being discussed. While we have an interest in eliminating or mitigating environmental degradation, we appear to have no legitimate interest in eliminating or mitigating

individual instances of vehicle usage. It is *this* feature that drives the worry about pointless actions, and which succeeds in exempting ordinary citizens' things from being targeted. Our comparison reveals that the extent to which ordinary citizens' things may be shielded from political disobedience will depend on the *kind* of injustice that we are interested in eliminating or mitigating. In some circumstances, and depending on the injustice, the appeal to the insufficiency of eliminating or mitigating the broader injustice does not secure such protection. Nonetheless, my response concedes that in some circumstances ordinary citizens' things ought *not* be targeted, all-things-considered, because of the nature of the injustice involved.

A quick clarification is due: what our legitimate interests are will depend, among other things, on our theories of the right and the good, which specify for us the boundaries of our legitimate entitlements and expectations. In specifying such interests, we must also take seriously what dissidents claim their (or our) interests are – from the armchair, some interests may escape our notice, and the importance of some others may be exaggerated. This is not to say, however, that dissidents are inviolable detectors of what our legitimate interests are, especially concerning the elimination or mitigation of injustice. For my purposes, I leave open the issue of how we should specify these interests. I note, simply, that our specifications of and disagreements about them will have implications for what dissidents can do all-things-considered.

Recognising that the variability in our judgements about targeting ordinary citizens' things depends on the nature of the injustices and our interest in them, helps us to explain part of the critical reaction towards dissidents in some circumstances. Recall, for instance, the dissidents who planned to disrupt air traffic in their aim to eliminate or mitigate

environmental degradation. A partial explanation of many people's critical reaction towards this plan may centre on the judgement that individuals have the freedom – whether a right or at least an entitlement – to engage in air travel, and thus that we (including dissidents) have no legitimate interest in stopping individual instances of air travel from occurring. That is, even though airplanes and air travel are required to bring about the broader injustice, targeting them is nonetheless viewed as a problematic infringement of individual freedom. Of course, this considered view is not immutable. The possibility is left open that our views about individuals' freedom to engage in air travel may shift in such a way that supports – rather than frustrates – dissidents' targeting them as part of a broader aim to eliminate or mitigate environmental degradation. This point is extendable to other injustices which I do not discuss here.

My second response turns on the observation that while targeting one or a few things required to bring about injustice (i.e. legitimate targets) would not *directly* eliminate or mitigate a broader injustice, it may nonetheless do so *indirectly*.[71] This distinction can be clarified by examining how the action relates to the causal chain leading up to an injustice. An action which succeeds directly is one whose effects are, on their own, sufficient to disrupt or frustrate the causal chain so as to eliminate or mitigate the injustice. This can include, among other things, disrupting the causal chain such that it no longer leads to the injustice, frustrating its progression up to the injustice, or substituting elements in the chain with others so as to weaken the severity or scope of the injustice, and so on. An action which succeeds indirectly is one whose effects are, on their own, insufficient to disrupt or frustrate the causal chain to secure the aim of eliminating or mitigating the

[71] A clarification: this claim does not commit me to the further view that indirect action *in general* is permissible, if doing so would eliminate or mitigate an injustice. For if it were the case, there would be no need to engage in the project of identifying legitimate targets in the first place – we may simply target *anything* that is required to eliminate or mitigate an injustice.

injustice, but which creates *other effects* that are, when taken together, sufficient in the relevant way. That is, indirect action succeeds by creating a *new* causal chain of events that is sufficient to eliminate or mitigate an injustice. For instance, while targeting one or a few of the weapons of individuals involved in unjust killing would not directly eliminate or mitigate the genocide to which they contribute, it may nonetheless succeed indirectly due to the other effects of the action – such as the attack frightening or coercing others into ceasing their contribution to the genocide. If such indirect actions are permissible, they would undermine the severity of the second worry – actions directed at one or a few things may indeed succeed in eliminating or mitigating an injustice, albeit indirectly. Thus, they may not be pointless. Moreover, they would meet the demands of the proportionality principle.

There is a common complaint against actions which only succeed in eliminating or mitigating an injustice indirectly – that it involves a problematic (or even impermissible) use of people as mere means to achieve some other ends. This complaint is typically grounded in the demand to treat persons in ways that respect, or are required by, various aspects of their status as equal persons. Indeed, it appears that targeting the vehicles of some ordinary citizens in order to coerce or frighten the majority of the citizens to stop driving, constitutes a problematic treatment of them. They appear to be *used*, in some sense, to achieve some other goals.

As I have noted earlier, this worry is not intractable. Philosophers have proposed qualified defences of the circumstances in which we may treat people as means – even as mere means – to achieve some other ends, without violating the deeper concerns that ground the complaint against using them in the first place. In keeping with my bracketing of the

issue of when and which persons may be targeted, I set aside this issue. My defence of the permissibility of at least some indirect action takes a different approach. Recall that we have established the permissibility of targeting just one or a few things in some circumstances, even though doing so would not eliminate or mitigate the broader injustice for which they are required. These are circumstances in which we have an independent interest in eliminating or mitigating the constituent events for which those things are *also* required. In these circumstances, dissidents secure some good by targeting these things which is *distinct from* that which concerns the action's effects on the broader injustice. In such a case, there would be a need to weigh the secured good against the harms of the wrong that is committed by treating persons in certain ways. Depending on the weight of the good of eliminating or mitigating the constituent event, relative to the wrong of indirect action, targeting just one or a few things may not be ruled out. Once we recognise this, however, we may push further. Depending on the weight of the good of eliminating or mitigating the broader injustice, indirect action may yet again be permissible. This is clearest when we consider an act which eliminates or mitigates a single instance of wrongful killing, but which is intended and indeed has the effect of frightening others into ceasing their similar activities – thus resulting in the elimination or mitigation of a genocide. The exclusion of *all* indirect action cannot be justified. In some circumstances, at least, doing so is permissible.[72]

[72] The discussions here can be reiterated in response to the worry arising from the fact that some injustices may be overdetermined. First, if an injustice is overdetermined by constituent contributions that we have a legitimate interest in eliminating or mitigating, the question of whether those things required to bring them about can be permissibly targeted is resolved in the positive. Helen Frowe makes a similar argument in the context of those civilians' actions in war which overdetermine the injustice to which they contribute. According to Frowe, the fact that an injustice is overdetermined typically has no bearing on whether someone (and presumably something) is a legitimate target, at least when individual constituent contributions are unjustified. See Helen Frowe, "Civilian Liability," *Ethics* 129, no. 4 (2019): 650. Second, if we do not have a legitimate interest in eliminating or mitigating those constituent events, dissidents can permissibly target them *only if doing so would eliminate or mitigate the broader injustice*. And since indirect action may sometimes succeed in the broader aim, the things required to bring it about can also be permissibly targeted.

5.3 Uncertainty

The third worry is that dissidents do not always have complete knowledge about all the things that are required to bring about an injustice. This may be due, among other things, to the fact that dissidents may themselves be victims of injustice such that they have restricted access to the operations of injustice or social institutions writ large, at least relative to members of more privileged groups. Or it may be more commonplace, to do with the amount of time and resources needed to get a complete picture of all and only those things which are required to bring about an injustice, and which may be unreasonable to demand any individual dissident to spend prior to her political action. Dissidents may regard some things as required to bring about injustice when they are in fact not, or *vice versa*. Since the justification for political disobedience centres on what is actually required to bring about injustice, this means that their actions would be impermissible. Here, the worry is that the requirement that only things which are required to bring about injustice are legitimate targets, may be one that dissidents may not often meet. If so, it would frustrate their political actions, and even compound the injustices which some of them face.

In response to this worry, I clarify the nature of my account – it is a fact-relative rather than an evidence-relative or belief-relative account of what counts as a legitimate target.[73] Specifically, it is concerned with what counts as a legitimate target on the basis of all the

[73] Parfit, *On What Matters: Volume One*, 150–51. Parfit specifies the fact-relative perspective as being based on our knowledge of all the morally relevant facts. As Seth Lazar observes, however, what matters is not our knowledge of the facts, but what the facts *are*. See Lazar, *Sparing Civilians*, 6 n. 13. This distinction has also been presented as being between 'objective' and 'subjective' accounts. See McMahan, *Killing in War*, 43–44.

morally relevant facts, rather than what counts as a legitimate target on the basis of the evidence that is available to us or our beliefs about them. This raises the justificatory bar for dissidents' political disobedience – they *must* make sure that their actions are not directed at illegitimate targets. However, it best explains our judgement that dissidents are doing something *wrong* if they take (or turn out, upon future discovery, to have taken) action against an illegitimate target – a judgement that persists even when such action is regarded as understandable given the evidence available to them or the beliefs they have.

Additionally, the fact-relative account is silent on how we should deal with the uncertainties that arise from conditions of uncertainties. To address these uncertainties, extensions and revisions will be required, which accommodates the kinds of evidence that are generally available, and what is reasonable or justified to believe about what things are required to bring about injustice. It may turn out that upon this extension, legitimate targets are those which are *reasonably regarded as typically required* to bring about the occurrence of an injustice, in contrast with a baseline situation in which that injustice does not occur. The defence of this extended principle, however, is one which I do not undertake here.

6 Conclusions

I have argued that the legitimate targets of dissidents' political disobedience, when such action is characterised as defensive, are things which are required to bring about the occurrence of an injustice, in contrast with a baseline in which that injustice does not occur. This is a significant improvement from the idea that any of the possessions of

someone responsible for injustice are legitimate targets. With some work, it could even be extended to clarify the conditions under which we can target things in war and other conflicts. As I have indicated at various points, this result is provisional. Things which are picked out as legitimate targets on my account, may nonetheless not be permissibly targeted by dissidents, once we take into account considerations of proportionality, necessity and productivity, and upon adopting our preferred theory of justice. Furthermore, there are also issues arising from our selection from the set of legitimate targets. For instance, on what grounds should we prioritise them – how should we weigh up the considerations pertaining to their magnitude of contribution to the injustice, the effectiveness of our action on eliminating or mitigating the injustice, the probability of success, and so on? A fuller defence of what things to target, all things considered, will have to integrate these considerations.

I conclude with a brief discussion of one limitation of our discussion, and the difficulties of overcoming it. The focus on things which are required to bring about an injustice *rather than its non-occurrence* means that we have not been able to include as legitimate targets those things which provide *auxiliary* support for the injustice. These are things that support injustice, but do not make a difference to its occurrence. The following case illustrates the point. In 1914, a women's suffrage activist, Mary Richardson, attacked the *Rokeby Venus*, a painting by Diego Velazquez (housed in the National Gallery in London) with a chopping knife. This attack was a protest against the U.K. Government's arrest and treatment of Emmeline Pankhurst – the founder of the Suffrage movement – and against the injustice faced by women more generally. The painting was not, on our terms, required to bring about the injustice *rather than its non-occurrence* in contrast with a certain baseline. Instead, the painting is more plausibly described as a representation of the

injustice – specifically, representing a certain image of femininity and its position in the national culture then.[74] Even on a stronger (but still plausible) construal, the contribution of the painting would consist in its *reinforcing* or *stabilising* the injustice. However, things that are required to reinforce or stabilise an injustice are distinct from the things that are required to bring about its *occurrence* in contrast with a baseline in which the injustice does not occur. If so, it appears that the painting is not a legitimate target on my account. Moreover, while the removal of reinforcers and stabilisers may make the injustice more susceptible to attempts to eliminate or mitigate it, doing so does not necessarily eliminate or mitigate the injustice *itself*.[75] For instance, removing the reinforcements and stabilisers of police brutality does not necessarily eliminate or mitigate police brutality itself.

Such a conclusion appears to neglect the *symbolism* or otherwise *meaningfulness* of targeting the painting. This worry generalises. In many cases, political disobedience may be more symbolic than defensive. Here, we need only recall the widespread iconoclasm of dissidents, especially *after* the injustices they were subject to were removed, or after the regime enacting them has collapsed.[76] In order to account for such actions, we will have to expand the scope of our concern. We may hope to achieve this by relaxing the principle of differentiation, so as to include targeting things as permissible when they are directed at things which are required to reinforce or stabilise an injustice, but which need not do anything to eliminate or mitigate the injustice itself. The problem with this,

[74] Lynda Nead, *The Female Nude: Art, Obscenity, and Sexuality* (London: Routledge, 1992), 34–42; Dario Gamboni, *The Destruction of Art: Iconoclasm and Vandalism Since the French Revolution* (London: Reaktion Books, 1997), 93–98.
[75] Of course, if a thing that is required for an injustice's occurrence is incidentally also required for its reinforcement and stabilisation, it would be a legitimate target. However, it would be so in virtue of its being required for the former, and not the latter.
[76] Gamboni, *The Destruction of Art*.

however, is that it would return us to the problem of over-inclusiveness. A simplified example illustrates the point. Suppose a sexist politician owns several other artistic masterpieces and derives comfort from his daily viewings of it. This comfort reinforces and stabilises his commitment to enforce sexist policies in the country. Suppose that the removal of such comfort would not make a difference to the occurrence of the injustice brought about by his sexist policies. The relaxed principle of differentiation would pick out the artistic masterpieces as legitimate targets of political disobedience – a seemingly implausible result. The worry generalises – many things may provide auxiliary support for an injustice; yet relaxing the principle of differentiation to include them delivers implausible results. Addressing this worry will be the task for future work.

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Essay Four: Vandalising Tainted Commemorations

Abstract

What should we do about "tainted" public commemorations? Recent events have highlighted the urgency of reaching a consensus on this question. However, existing discussions appear to be dominated by two naive opposing views – to remove or preserve them. My aims in this essay are two-fold. First, I argue that the two views are not naive, but undergirded by concerns with securing self-respect and with the character of our engagement with the past. Second, I offer a qualified defence of vandalising tainted commemorations. The defence comprises two parts. I consider two prominent suggestions – to install counter-commemorations and to add contextualising plaques – and argue that they are typically beset with difficulties. I then argue that in some circumstances, constrained vandalism is a response to tainted commemorations which effectively adjudicates the demands of the two opposing views.

Introduction

What should we do about "tainted" public commemorations – commemorations of people who were responsible for injustice, or commemorations of injustice?[1] Recent campaigns to remove commemorations of historical oppressors – notably, for instance, those of Cecil Rhodes in South Africa and the United Kingdom, or Confederate soldiers in the United States – have brought this question to the fore. Two opposing views currently dominate public discussions. According to one, tainted commemorations should not be removed, even though they are connected to injustice. This view is often supported by claims about the importance of preserving our history rather than eliminating aspects of it that we now find repugnant or offensive. Sometimes, the view is supported by the promise that remembering the bad parts of our history can help us to avoid making the same mistakes again, thus furthering the aims of justice. According to the other, tainted commemorations should be removed if they are connected to injustice. This view is frequently supported by claims about the relatively greater importance of eliminating the negative impact of tainted commemorations on members of formerly oppressed groups, in terms of their self-respect or social standing. There are many other responses to the initial question, among other things, adding contextualising information, relocating the commemorations, housing them in museums, or installing "counter" commemorations. These suggestions

[1] Commemorations take many forms. They may be material (as in the case of statues, flags, or artwork) or immaterial (as with commemorative rituals or activities). In this essay, I focus narrowly on material commemorations. Material commemorations, in virtue of often being literally set in stone, are relatively less amenable to change. They persist even when offensive activities have ceased; their creators are also often no longer alive to update or repudiate the messages they convey. Moreover, they often feature (rightly or wrongly) as the subject of historical and preservationist interests, which push against alteration or elimination. As such, there are difficulties about our treatment of material commemorations, which are separate from and additional to those concerning commemorative activities. In this essay, all mentions of commemorations are to be taken as referring to material commemorations, unless otherwise indicated. I also set aside the thorny issue of tainted private commemorations.

are often taken, overly-quickly, as sensible or plausible in virtue of their occupying the ground between the two dominant views.

There appears to be a paucity of philosophical discussions on how we should treat tainted commemorations. Existing discussions of commemorations centre on commemorative activities rather than commemorative artefacts, which include memorials or statues, along with flags and other symbols, among other things. Moreover, the discussion of such activities has tended to focus on the nature of the ethical or moral demand to remember the past, and its weight relative to our other commitments.[2] Answering these questions, however, leaves open the question of what we should do about commemorations of people or events that are now regarded as connected to injustice.

Even the claim that we may not commemorate injustice does not help us to address our initial question. While it may rule out establishing commemorations of immoral conduct, or those which express abhorrent values,[3] it does not tell us what to do about commemorations that already *exist*, the appropriate treatment of which are subject to the demands of historical memory. Moreover, it neglects the possibility that existing tainted commemorations may be subject to processes (of contextualisation, and so on) such that the views they express are repudiated, and which may then further the aims of eliminating or mitigating injustice. Indeed, these are the possibilities that are repeatedly referred to by those who criticise the attempts by activists to remove tainted commemorations.

[2] Avishai Margalit, *The Ethics of Memory* (Cambridge: Harvard University Press, 2002); Jeffrey M. Blustein, *The Moral Demands of Memory* (Cambridge: Cambridge University Press, 2008); Jeffrey M. Blustein, *Forgiveness and Remembrance: Remembering Wrongdoing in Personal and Public Life* (Oxford: Oxford University Press, 2014).
[3] Blustein, *Forgiveness and Remembrance*, 275.

My aims in this essay are twofold. The first aim is to clarify the nature of commemorations and the disagreements about their treatment. In Section 1, I argue that commemorations can be tainted in more ways than is commonly assumed. In Section 2, I clarify the positions for and against removing commemorations, and argue that they are less naive than has been assumed. The second aim is to offer a qualified defence of vandalising tainted commemorations in some circumstances. This is an option that has not been adequately considered within philosophical or public discourse. I argue that such acts of political disobedience can constitute a plausible way of treating such commemorations, and which effectively negotiates the demands of the two opposing views. This defence comprises two parts. In Section 3, I assess the suggestions to establish counter-commemorations and to add contextualising information, in terms of how well they satisfy the demands of the two opposing views. I argue that while these responses are not ruled out in principle, they are often beset with difficulties. In Section 4, I argue that a suitably constrained vandalism of tainted commemoration can succeed in satisfying the demands of the two opposing views and in addressing these difficulties. I conclude in Section 5.

1 Commemoration

Before proceeding, it is important to enter a clarification about the nature of the discussion. In this section, I present several *typical* features of commemoration. This is to be contrasted with discussions which attempts to detail the *essential* features of commemoration – as part of a project of *defining* commemoration. Here, I take it that commemoration takes so many forms that any account which purports to enumerate

essential features which are held by *all instances of* commemoration is likely to run into problems with extensional accuracy. That is, such an account is likely to be over- or under-inclusive about what counts as commemorations. My discussions are an instance of what has been called paradigm-case accounts – which detail the paradigmatic features of a phenomenon. A paradigm-case account improves on essentialist or definitional accounts by allowing cases which lack "essential" features of a phenomenon to nonetheless count as instances of it. Whether any given case counts will depend on further considerations, such as the number of essential features they lack, or the interests that may be served or frustrated by counting them as such, among others. Paradigm-case accounts allow us to avoid the trade of fantastical counter-examples that characterise discussions of definitions. It does so by inviting us to consider how cases which ostensibly deviate from what is paradigmatically present may nevertheless be connected to it in salient or interesting ways, and to reflect on the conditions that enable these connections – rather than dismiss them outright by definitional fiat.

In the context of commemoration, for instance, such an account allows us, with some argumentation, to say of a temporary and make-shift statue erected by members of a marginalised community to count as a (kind of) commemoration. The arguments for the nature of commemoration as a social phenomenon and its amenability to reductive or unifying analysis, however, will take us too far afield. Two remarks, however, may assuage worries about leaving this issue unresolved. The first is that social phenomena are almost always messy, characterised by vagueness and indeterminacy. In this context, it would be implausible for commemoration to have clear and determinate boundaries which are appropriately picked out by analysis. The second is a concession that my choice of method here does not rule out, in principle, the possibility of such analysis. Readers

committed to providing an essentialist account of commemoration may take my account as provisionally detailing some essential features of commemoration, and which may be refuted by plausible counterexamples.[4]

Commemorations have been typically characterised as a way in which a community takes its past seriously. More specifically, commemorations acknowledge the importance of a certain person or event (and often the values that undergird them) for the community. They feature in the stories that the community (or at least part of it) tells about its past and how that past relates to the present identity of the community. They express its values, beliefs, ideals and relations with other communities.[5] Commemorations, then, are composite – they are remembrances of certain people or events, accompanied by the expression of some evaluative view (or views). While commemorations typically valorise or celebrate important persons or events (along with the values they defended or promoted, and the ideals they aspired to), they need not be so. Commemorations may also present certain persons or events as the subject of communal lamentation or regret – as, for instance, is the case of the Vietnam Veterans Memorial Wall in Washington, D.C., which sombrely commemorates those U.S. soldiers who died in a war that was more tragic than triumphant. Commemorations are typically established in well-trafficked public spaces,

[4] For a brief account of the paradigm case method, see Robert Audi, *The Cambridge Dictionary of Philosophy* (Cambridge: Cambridge University Press, 1999), 642, "Paradigm case argument.".
[5] This process is complicated. Among other things, commemorations play a role in obscuring – and potentially reducing – heterogeneity in views within the community. There is, then, a question of how some come to speak for the community. For further discussions, see John E. Bodnar, *Remaking America: Public Memory, Commemoration, and Patriotism in the Twentieth Century* (Princeton: Princeton University Press, 1994); Sanford Levinson, "They Whisper: Reflections on Flags, Monuments, and State Holidays, and the Construction of Social Meaning in a Multicultural Society," *Chicago-Kent Law Review* 70, no. 3 (1995): 1079–1119; Blustein, *Forgiveness and Remembrance*, 267; Dell Upton, *What Can and Can't Be Said: Race, Uplift, and Monument Building in the Contemporary South* (New Haven: Yale University Press, 2015); Kirk Savage, *Standing Soldiers, Kneeling Slaves: Race, War, and Monument in Nineteenth-Century America, New Edition* (Princeton: Princeton University Press, 2018).

and especially in those with significance (such as state buildings), where they can be seen by many people, and the views they express widely promulgated.[6]

The generality of this characterisation obscures two important features of commemoration. First, commemorations are typically the product of contestation. This is connected to the context in which they occur. Members of communities are typically not homogenous in their views. Even the most homogenous of communities – in which all member participate in the same culture and religion – do not have a view that is shared by all of its members.[7] This is often due to the differentiation among its members along many dimensions, such a sex, age, race, ability or material well-being. In less homogenous communities, there is further differentiation arising from differences in evaluative perspectives – sometimes due to differences in cultural or religious membership. The plurality of evaluative perspectives in communities disrupts the characterisation of commemorations as expressing the views of a community, on the basis of the simple observation that there is typically no one specific view that members of a community have a consensus on. Specifically, members of a community will diverge in their judgements about who or what is important enough to commemorate, and why it is important to do so. Note that what is crucial is not simply the evaluation of the importance of a person or event, but its being important *enough* to the self-understanding of the community for it to be a fitting subject of commemoration. Whether something is judged important enough may also turn on the absence or existence of other people or events judged to be more important. Such judgements will, of course, differ depending on the

[6] In this essay, I assume that what a commemoration expresses is clear and perceptible. This is a simplification. What commemorations are taken as expressing vary across time and context. How and why exactly they change is the proper subject of localised historical and social scientific scholarship, among others. I do not take a stand on the issue of interpretation here.
[7] Michele M. Moody-Adams, *Fieldwork in Familiar Places: Morality, Culture, and Philosophy* (Cambridge: Harvard University Press, 1997), 68.

evaluative criteria one adopts. For instance, members of a community may disagree – and perhaps intractably so – about whether it is more important to commemorate a person who started a movement, or who led it to achieve its ends. Members of a community may agree on the importance of a person or event, while disagreeing about whether they are important enough in this sense. More generally, such divergences may be part of broader disagreements over the proper use of public space.[8] Moreover, in many cases – especially after periods of intra-community, inter-group conflict – members of minority (or marginalised) groups within the community do not (and often cannot be expected to) share the views expressed by commemorations.[9]

The establishment of commemorations, then, is a fraught affair. This phenomenon generalises – an observation borne out by historical and sociological research. In the absence of evaluative consensus among members of a community about the targets of commemoration, the establishment, nonetheless, of commemoration typically indicates the success of a particular (sub-)group within that community in pushing for their views despite contestation – often endorsed by state authorities. Typically, and up until recently, such successes were easily achieved by the dominant or most powerful groups within a community.[10] For instance, there are many more commemorations of the Confederacy in the American south compared to the north – roughly corresponding to the dominance of groups sympathetic to the Confederate cause in those areas. Many of these commemorations were erected in the century after the Civil War, in which white

[8] Levinson, "They Whisper"; Kirk Savage, *Monument Wars: Washington, D.C., the National Mall, and the Transformation of the Memorial Landscape* (Berkeley: University of California Press, 2009); Savage, *Standing Soldiers, Kneeling Slaves*; Sara McDowell and Máire Braniff, *Commemoration as Conflict: Space, Memory and Identity in Peace Processes* (London: Palgrave Macmillan, 2014).
[9] Cécile Fabre, *Cosmopolitan Peace* (Oxford, New York: Oxford University Press, 2016), 293.
[10] John R. Gillis, ed., *Commemorations: The Politics of National Identity* (Princeton: Princeton University Press, 1994), 3–24, https://doi.org/10.2307/j.ctv39x64g; Upton, *What Can and Can't Be Said*, 15.

southerners attempted to vindicate and celebrate the Confederate dead and their causes, including those of white supremacy. Black Americans were comparatively less able to establish commemorations of individuals or events they judged to be worthy of commemoration. [11] It comes as no surprise, then, that the peak of Confederate commemoration coincided with 'the highest stage of white supremacy'.[12] This had the effect of obscuring (or even silencing) conflicting views – such as those which celebrates the victorious northerners, those which were remorseful about the war fought for unjust causes, or those which at least lamented the magnitude of the loss of human lives. Moreover, these commemorations were erected despite the fact that many black Americans, who held different views about the moral status of the Confederate cause, continued to live in the south after the war.[13]

The first feature reveals that commemorations do not simply acknowledge or express views shared by the community, if that is understood as including all its members. Instead, they at best express the views of a group within the community that is successful in pushing for its view. This picture, however, is still too crude. As we have already seen, groups are typically heterogeneous in terms of the evaluative perspectives held by their members. For instance, even among southern white Americans, we should expect there to be pluralism in evaluative attitudes towards the moral status of the participants in the

[11] W. Fitzhugh Brundage, "Exclusion, Inclusion, and the Politics of Confederate Commemoration in the American South," *Politics, Groups, and Identities* 6, no. 2 (April 3, 2018): 324–30, https://doi.org/10.1080/21565503.2018.1454332; Savage, *Standing Soldiers, Kneeling Slaves*.
[12] John Whitson Cell, *The Highest Stage of White Supremacy* (Cambridge: Cambridge University Press, 1982).
[13] In some cases, members of minority groups within a community can succeed in establishing commemorations with some effort – as evidenced by the observation that most civil rights commemorations were established in places where there were mass demonstrations and political engagements by black Americans. This does not disrupt the claim that commemorations are typically the result of contestation, nor that majority groups typically succeed in such contestation. See Upton, *What Can and Can't Be Said*, 10.

Civil War. However, commemorations are not typically regarded as partisan. Instead, they are often regarded as *in fact expressing* the views of the community.[14]

This brings us to the second important feature of commemoration – they play a role in reducing evaluative heterogeneity about an object of commemoration (or diminishing its impact), and thus in establishing a certain view about the target of commemoration as authoritative. This is often achieved by the fact that commemorations, when established in public spaces, minimally require state permission. In contexts where there are contestations about whom or what to commemorate, and how to do so, the state's permitting a certain commemoration to proceed, and at the expense of others, is often regarded as legitimating that particular view about the object of commemoration.[15] This perception is strengthened when the commemoration is established in well-trafficked public spaces, more so when those spaces are also part of or near state buildings, and even more so when the state allocates resources to support the establishment of the commemorations.[16] The views of those who do not agree are correspondingly set aside as relatively less important to the community. A concrete example illustrates this. When the Vietnam Veterans Memorial Wall in Washington, D.C. was first proposed in 1981, it faced great initial opposition. At that time, it was regarded as customary and appropriate

[14] Savage, Kirk, "The Politics of Memory: Black Emancipation and the Civil War Monument," in *Commemorations: The Politics of National Identity*, ed. John R. Gillis (Princeton: Princeton University Press, 1994), 135–36; Sanford Levinson, "The Tutelary State: 'Censorship,' 'Silencing,' and the "practices of Cultural Regulation"," in *Censorship and Silencing: Practices of Cultural Regulation* (Los Angeles: The Getty Research Institute, 1998), 199.

[15] Levinson, "The Tutelary State: 'Censorship,' 'Silencing,' and the "practices of Cultural Regulation"," 196; Upton, *What Can and Can't Be Said*, 20. For a discussion of how such legitimation could work, see Langton's discussion of how even hate speech may acquire authority. Rae Langton, "Blocking as Counter-Speech," in *New Work on Speech Acts*, ed. Daniel Fogal, Daniel W. Harris, and Matt Moss (Oxford: Oxford University Press, 2018), 144–64.

[16] This observation reveals why "private" commemorations – such as statues established in private properties – are not regarded as having the same status as those established in public spaces, and why they are (rightly) treated differently.

that the attitude towards the war dead was one of celebration of their status as heroes. In virtue of its not celebrating the war dead – but instead mourning the loss of their lives – the memorial was regarded as an insult, and as a 'black gash of shame'. People even tried to block the construction of the commemoration.[17] Indeed, the public outcry was so severe that a "compromise" was reached to erect an accompanying statue near the memorial, which depicts three soldiers in line with the heroic tradition.[18] However, just a few years later, the commemoration was regarded as *aptly expressing* the views of Americans towards the war dead. The establishment of the commemoration had played a role in bringing about the fact that Americans did publicly regard the loss of these soldiers' lives as appropriately meriting mourning. This feature of commemoration – as contributors to their own success – generalises.[19]

[17] The New York Times, "The Black Gash of Shame," *The New York Times*, April 14, 1985, https://www.nytimes.com/1985/04/14/opinion/the-black-gash-of-shame.html. For an interpretation of the commemoration, see Charles Griswold, *Forgiveness: A Philosophical Exploration* (Cambridge University Press, 2007), 201–10.

[18] I set aside complications arising from the possibility that the negative reaction to the commemoration may have been because its designer was of Asian ethnicity, and thus not regarded as having the appropriate standing to speak on behalf of the community.

[19] In several of my discussions with colleagues on this issue, a thought recurs with some frequency – that commemorations are arguably a species of what J. L. Austin terms 'performative utterances'. Performative utterances are actions performed by persons with the appropriate authority uttering certain statements in appropriate conditions. For instance, a senior naval officer's saying "I name this ship the Queen Elizabeth" when smashing a bottle (of champagne) against the stem of a ship counts as the act of christening the ship. An important distinguishing feature of such speech acts – and one which is purportedly possessed by commemorations – is that they do not simply describe the world, but *bring about* a certain state of affairs. For instance, prior to the performative utterance of christening a ship, the ship does not (yet) have a name. This feature is generalisable to other performative utterances, such as, among other things, bequeathing, betting, promising, pronouncing or resigning. However, commemorations are unlike performative utterances in one crucial aspect, to do with how the relevant state-of-affairs is brought about. In the case of performative utterances, the intended state-of-affairs is brought about immediately upon the speech act. This is due to the existence of accepted social conventions such that the utterances of certain words by certain people in certain circumstances *constitutes* a certain act. In contrast, no such conventions exist in the case of commemorations. Indeed, it is implausible to think that the mere fact of establishing a commemoration makes it immediately true that the members of a community indeed held the views expressed by it. The claim here is, instead, that commemorations *contribute* to making it such that members of a community come to hold the views expressed by it. This is due to broader process – both social and personal – that resist simple elucidation, and which are beyond the scope of this essay to discuss. See J. L. Austin, *How to Do Things with Words* (Oxford: Clarendon Press, 1962).

The discussions so far reveal that commemorations can be "tainted" in several different ways. As should already be clear, this point is generally recognised by historians and sociologists, especially those whose work centres on commemorations. Within philosophical and public debates, however, there is a common assumption that the problem with tainted commemorations lies in the *inappropriateness* of their *targets*. That is, persons or events have been commemorated which are not truly important to the community, or which are morally repugnant. To this, we may add that commemorations can also be tainted when appropriate targets of commemoration have been neglected. An example is illustrative. Consider, again, the Vietnam Veterans Memorial Wall. Even if we suppose that the target of this commemoration is appropriate, it nonetheless does not commemorate those who played other crucial roles during the war – such as American nurses or soldiers from allied nations, including the South Vietnamese, who fought in the war. In doing so, it may fail to express the appropriate attitude towards the contribution and sacrifice of these individuals, and may present them as though they were not important enough for commemoration.[20] Insofar as we think that these individuals are also appropriate targets of commemoration, neglecting them taints the existing commemoration.

Commemorations can also be tainted when the *process* of their establishment is improper.[21] One way this can be so, is if the commemorations are established without fair

[20] Griswold, *Forgiveness*, 207; Fabre, *Cosmopolitan Peace*, 290–91.

[21] I have set aside two sets of complications. First, it is often difficult to determine whether the target of commemoration is appropriate. For instance, should we commemorate a political leader who substantially increases national welfare, but starts unjust wars? Is a political leader rendered inappropriate as a target of commemoration if she commits immoral acts in a non-official capacity? Should inventors be commemorated, if their inventions led to serious wrongs? Second, the question of who to include in the deliberative process often may not have a clear answer. Should we include former Nazis (or those sympathetic to them) in the process of determining whether to commemorate the victims of the Holocaust? How do we reconcile their repugnant views with their status as members of the community, if

consultation or deliberation. Without providing a full account of fairness, we can say, abstractly, that one necessary condition of fair consultation or deliberation is that the participants enter it as equals. Situations in which the views of some members of a community are neglected, dismissed or suppressed during the process of determining who or what to commemorate, are, typically clear cases of unfairness. In such situations, these individuals are not regarded as equal members of the community, at least with respect to their standing as equal participants in collective commemorative endeavours to narrate their society's past.[22] Another way is if the state adopts a prejudiced endorsement of different commemorators and commemorations. Even if there is fair consultation or deliberation for the establishment of existing commemorations, it is still problematic if the state allocates prominent and prestigious sites to the commemorations of only one group in the community, but not to others. For instance, even if there were to be proportional numbers of commemorations of black and white Americans in a community, commemorations of white American heroes may still be considered tainted if they were the recipients of such prejudiced state endorsement.[23]

2 Positions

Recall that the two dominant views about the treatment of commemorations are that they should be preserved and that they should be removed. At this level of presentation, the

we should in the first place? These are interesting questions for further enquiry, which have not received sustained attention in the literature. I hope to address these difficulties in future work.

[22] Johannes Schulz, "Must Rhodes Fall? The Significance of Commemoration in the Struggle for Relations of Respect," *Journal of Political Philosophy* 27, no. 2 (2019): 174.

[23] See Brundage, "Exclusion, Inclusion, and the Politics of Confederate Commemoration in the American South."

views appear crude, and are indeed often regarded as such. Little philosophical attention has been brought to bear on examining them. The aim of this section is to elaborate and clarify these views, and to show that they are less naive than has been assumed. My discussions in this section will engage with a specific and ongoing dispute about commemorations of Cecil Rhodes in the United Kingdom. Despite the narrow focus, I take it that the arguments are generalisable, with some work, to disagreements about other commemorations.

2.1 Activists

One of the activists' demands is for commemorations of Cecil Rhodes be removed. Rhodes was a British imperialist and white supremacist who served as the Prime Minister of the Cape Colony from 1890 to 1896. His government introduced laws that drove black South Africans off from their lands and disenfranchised them. These were important precursors of the apartheid in South Africa. Despite his actions, Rhodes was commemorated at various times and places, one of which takes the form of a life-sized statue at Oriel College, University of Oxford, where he was a student, and to which he donated generously.

Activists argue that Rhodes' repugnant actions render him an inappropriate target of commemoration. Additionally, the commemoration leaves out appropriate targets. Honouring *Rhodes* for his contribution and generosity obscures the fact that they were made possible through his oppression of others. It constitutes 'an effacement of the histories of the millions of black Africans whose livelihoods were destroyed by

Rhodes'.[24] In some cases, it appears that activists regard the mere taint of the commemoration as giving us a good (or even conclusive) reason for removing it. This appears hasty. We can, however, bolster their demand for removal by referring to an argument they make about the payoff of removing the commemoration:

> 'Taking down the statue would be a momentous gesture, demonstrating some commitment to rectifying and atoning the colonial past; it will be a recognition that the welfare of BME [Black and Minority Ethnic] students – for whom colonialism is a deeply painful history – truly matters.'.[25]

At first sight, it appears that the university can demonstrate its commitment in other ways besides removing the statue. For instance, the relevant information about Rhodes' actions (and the repudiation of them) could be integrated into the university curriculum – perhaps in the form of a mandatory introductory class that all students must take. Removing the statue appears to be simply one way of demonstrating such commitment, and not the only way. Because of this, some have claimed that the activists were choosing the 'easy option' by focusing on statues rather than the "real" or more important issues which we need commitment to – such as the continued underrepresentation of minorities in universities and leadership roles, the entrenchment of privilege, or widening inequalities.[26] However, this characterisation fails to explain the urgency of the activists' demand to remove the

[24] RMF Oxford, "Frequently Asked Questions," *#RHODESMUSTFALL Website* (blog), December 4, 2015, https://rmfoxford.wordpress.com/faqs/.
[25] RMF Oxford.
[26] Will Hutton, "Cecil Rhodes Was a Racist, but You Can't Readily Expunge Him from History," *The Guardian*, December 20, 2015, https://www.theguardian.com/commentisfree/2015/dec/20/atonement-for-the-past-not-censorship-of-history; Peter Scott, "Oxford Students' Fight to Topple Cecil Rhodes Statue Was the Easy Option," *The Guardian*, February 2, 2016, https://www.theguardian.com/education/2016/feb/02/students-cecil-rhodes-statue-campaign-oxford-oriel-college.

commemoration. It simply dismisses them as being mistaken about the commemoration's importance; it is uncharitable.

We should take seriously the activists' argument that removing the statue would be a recognition that the *welfare* of minority ethnic students truly matters. Unfortunately, this claim is often characterised as a demand for "safe spaces" where they can be shielded from any offense and discomfort. For instance, the chancellor of the university urged activists to embrace debate, or to 'think about being educated elsewhere'. The vice-chancellor of the university said that the 'cosseted' students would benefit from hearing different opinions, and that 'an Oxford education is not meant to be a comfortable experience'.[27] According to this characterisation, the activists' demands are due simply to their weaknesses – they are overly-sensitive or fragile, and unable to cope with the challenges that constitute a rigorous education. This characterisation is often used to support the dismissals of the activists' claims as unimportant.

We should resist trivialising the activists' claims in this manner. A more charitable reading is possible. Recall that the commemoration is tainted partly due to its failure to commemorate appropriate targets. Some people (from minority ethnic groups) were, at the point of establishment of the commemoration, viewed as not important enough – both as targets of commemoration, and as members of the community whose views were important to consider. Activists claim that this view about historically oppressed groups of people still undergirds how the university is run, in terms of the gross under-

[27] Damien Gayle and Nadia Khomami, "Cecil Rhodes Statue Row: Chris Patten Tells Students to Embrace Freedom of Thought," *The Guardian*, January 13, 2016, https://www.theguardian.com/education/2016/jan/13/cecil-rhodes-statue-row-chris-patten-tells-students-to-embrace-freedom-of-thought; Camilla Tominey, "University Chief Despairs of Her 'Cosseted' Students," *Daily Express*, May 29, 2016, https://www.express.co.uk/news/uk/674779/Oxford-University-chief-despairs-cosseted-students.

representation of members of these groups in the student and faculty bodies, and in the Eurocentric content of the university curriculum. According to activists, 'the past is not in the past but is still determining existing patterns of behaviour'.[28] Seen in this context, the commemoration of Rhodes (along with the decisions of the relevant authorities that allow the commemoration to persist) is not innocuous. It is not simply that it expresses a disrespectful view about members of certain groups, but also that the view has social power, in terms of how the institution operates. If so, the view and its expression are no longer simply disrespectful, but also *threatening* – specifically, to their status as equal members of the community, and to their self-respect.[29] In contrast, a disrespectful view expressed in the absence of an existing unjust social hierarchy between white and nonwhite people, would not be similarly threatening. Insofar as self-respect is an important good and constituent of well-being, we have a reason to remove threats to them – and thus for removing the tainted commemoration.

Of course, the self-respect of members of these groups may be secured in other ways – for instance, and as earlier suggested, through modifications to the curriculum. However, the good of self-respect is secured in a diffuse way – relying for its formation and sustenance on the existence of supporting conditions in many different aspects of social life.[30] Even self-respect which is generally secured in many areas is threatened by the expressions and endorsement of disrespectful views in highly localised contexts. Importantly, self-respect is not fully secured for some members of a community when

[28] RMF Oxford, "Frequently Asked Questions."
[29] Schulz, "Must Rhodes Fall?," 167. Schulz characterises the expression of a disrespectful view in the context of a wrongful social hierarchy as *degrading*. However, such expressions need not always involve degradation. They can also be threatening, wrath-inducing, or frustrating, among other things. Pluralism here is to be expected, insofar as we take there to be many aims and effects of disrespectful speech more generally.
[30] Jeremy Waldron, *The Harm in Hate Speech* (Cambridge: Harvard University Press, 2012), 92–96.

there are commemorations that honour or celebrate the architects of the injustice to which they are subject. Such commemorations introduce uncertainties about whether the community genuinely and fully respects and regards members of a certain group as equals. This uncertainty constitutes an insecurity in the sources of their self-respect. It is in recognising this, that we better understand the fixity of the activists' demand to remove the tainted commemoration. It is best understood as a demand to secure self-respect.

2.2 Preservationists

On the other hand, the demand to preserve commemorations of Rhodes centres on the importance of historical memory.[31] It is generally recognised that we have some ethical or moral reasons or even duties to remember the past. These reasons or duties are variously grounded. For instance, we may have a reason for remembrance in virtue of our being responsible for, or having benefitted from, wrongdoings, and where the remembrance is plausibly understood as a way through which those wrongdoings are rectified. Remembrance may also be grounded in our concern with not repeating historical wrongdoing.[32] It may also be grounded by our interests in sustaining our relations with others,[33] or in its value for individuals' lives going well, or for the civic health of a

[31] I set aside the point that the monuments may have great artistic or aesthetic value, which warrant their preservation. This is not a defence that is typically made. Indeed, as art historian Dario Gamboni observes in surveying iconoclasm since the French Revolution, the issue of the aesthetic merit of public commemorations typically does not seem to play a major role in determining whether they were targeted for removal or preservation. See Dario Gamboni, *The Destruction of Art: Iconoclasm and Vandalism Since the French Revolution* (London: Reaktion Books, 1997). I return to this issue in the concluding section.

[32] Blustein, *The Moral Demands of Memory*, 35; Blustein, *Forgiveness and Remembrance*, 268; Fabre, *Cosmopolitan Peace*, 299–300. Fabre's discussion concerns war remembrance but may be extended to remembrance more generally.

[33] Margalit, *The Ethics of Memory*, 7–8.

community.[34] Regardless of its grounds, the importance of remembrance is not generally denied.

What is at stake, however, is not simply the reasons we have to remember the past. Instead, it concerns how the reasons we have for remembrance are connected to the reasons we have for *preserving* tainted commemorations. In our context, it appears that we may remember Rhodes for all that he did, and stood for, by integrating such information and evaluations into our history textbooks. Remembrance may even succeed despite *mass removal* of material commemorations. For instance, Germany is often regarded as mostly having succeeded in remembering and learning from the Nazi atrocities even though most physical relics of the Nazi regime were removed after the Second World War. An explanation, then, is needed to bridge the gap between remembrance and preservation.

It is in this context that we should consider the claims of some preservationists. Consider, for instance, prominent classicist Mary Beard's evaluation of the Rhodes Must Fall campaign:

> 'the campaign to eradicate Rhodes from our consciousness was in many ways a foolish enterprise, which probably did more harm to our understanding of history (and capacity to argue with it and take a different stance) than the campaigners will admit.'[35]

[34] Blustein, *The Moral Demands of Memory*, 2.
[35] Mary Beard, "Cecil Rhodes and Oriel College, Oxford," The Times Literary Supplement, December 20, 2015, https://www.the-tls.co.uk/cecil-rhodes-and-oriel-college-oxford/.

This characterisation of the activists appears to be implausibly exaggerated. Surely, one may think, the campaign to remove commemorations of Rhodes falls far short of *eradicating* him from our consciousness. Success in the former neither constitutes, nor necessarily leads to, the latter. We may be tempted, on this basis, to dismiss Beard's characterisation. Yet this characterisation appears with some frequency. Historian David Cannadine presents such campaigns as attempting to *obliterate* painful and offensive figures from the historical record.[36] Will Hutton, the principal of Hertford College, Oxford, cautions against *expunging* Rhodes from history.[37] Historian R W Johnson describes the campaign as *erasing* history in a way similar to the iconoclasm of Al Qaeda and Islamic State.[38] Historian Roy Strong describes the campaign as attempting to *rewrite* history.[39] And so on.

I do not want to explain these statements as *simply* due to reasoning errors, to failures to understand activists' claims or take them seriously, or even to ulterior motivations masquerading as a neutral concern with history.[40] Instead, I suggest that we understand these statements as being undergirded by two requirements concerning our dealings with the past – it must be *public* and *incorporated*. Elaborating these requirements clarifies the

[36] David Cannadine, "Introduction," in *Dethroning historical reputations: universities, museums and the commemoration of benefactors*, ed. Jill Pellew and Lawrence Goldman (London: Institute of Historical Research, 2018), 1–14.
[37] Hutton, "Cecil Rhodes Was a Racist, but You Can't Readily Expunge Him from History."
[38] Javier Espinoza, "'Rhodesgate': Campaign to Remove Rhodes Statue 'Is like Isil's Destruction of Antiques', Says Oxford Don," December 22, 2015, https://www.telegraph.co.uk/education/educationnews/12064936/Rhodesgate-Campaign-to-remove-Rhodes-statue-is-like-Isils-destruction-of-antiques-says-Oxford-don.html.
[39] Laura Freeman, "Everywhere Sir Roy Strong Looks, the Thumbscrews Are Tightening," *The Sunday Times*, September 3, 2017, https://www.thetimes.co.uk/article/everywhere-former-va-chief-roy-strong-looks-the-thumbscrews-are-tightening-6qhsp3pv7.
[40] For discussions of how white supremacists cloaked their defences of the Confederacy in seemingly neutral appeals to historical importance, see Savage, *Standing Soldiers, Kneeling Slaves*, ix; Upton, *What Can and Can't Be Said*, 49.

character of preservationists' opposition to activists' demand to remove tainted commemorations and shows why they are plausible responses to such commemorations.

According to the publicity requirement, we must reckon with our past in a public manner, rather than concealing it. An example of such concealment would be if the commemoration is removed and no longer seen or thought about by members of the public. When there is no longer any interaction with the tainted commemoration, it becomes sensible to say that the memory of the commemoration has been erased from *public* consciousness. The publicity requirement sets a moderate constraint on our treatment of tainted commemorations. While it prevents us from destroying commemorations or keeping them in permanent storage, it allows us to *move* them to other public locations. In some circumstances, moving tainted commemorations – to a different location, or even to a museum – may address the problems arising from their occupying (under the auspices of the authorities) a prestigious or prominent public location relative to other commemorations. The preservationists cited, however, do not entertain the possibility of relocating commemorations to museums. Their reluctance derives, I suggest, from a second requirement.

According to the incorporation requirement, events, persons and actions of historical significance should be incorporated into our everyday consciousness and understanding of our history and identities. An example illustrates the point. Ordinary British citizens are likely able to recount – though perhaps in general terms – the contribution of soldiers (who fought in the World Wars) to their society. There is a general consciousness and understanding of how the world they have inherited has been shaped by the actions (especially sacrifice) of these individuals. This is supported by various sources. While

education in schools is important, the annual Remembrance Day and the existence of many war commemorations (including the naming of streets) dotting the landscape are also critical – they provide occasions for, and moreover facilitate, citizens' remembrance. These commemorations 'allow a certain vision of the past to be incorporated into the everyday settings and activities of the city.[41] There is also a general appreciation of (and perhaps even endorsement of) the values – especially of courage or loyalty – that undergirded or guided the soldiers' actions. These are understood as values that the community – including individuals themselves – deems important and worthy of celebration. In this case, we may say of these events, persons and actions that they are incorporated into individuals' everyday consciousness and understanding of their history and identities.[42]

With this, we may identify two related considerations against relocating commemorations to museums. First, moving them to museums – which are spaces that individuals have to make a conscious effort to enter – eliminates an everyday occasion for remembrance. Individuals no longer confront or interact with the events, persons or actions being commemorated in their everyday activities. Second, moving commemorations to museums may obscure the fact that at some point the values that undergirded the targets of commemoration were regarded by members of *their* community as important and worthy of celebration. The underlying worry, then, is that moving commemorations to museums may be accompanied by a diminution of the significance of the targets of commemoration in people's everyday consciousness and understanding, eventually resulting in individuals forgetting them. These considerations bridge the gap, identified

[41] Owen J. Dwyer and Derek H. Alderman, *Civil Rights Memorials and the Geography of Memory* (Chicago: The Center for American Places at Columbia College Chicago, 2008), 8–10. While Dwyer and Alderman's claim concerns civil rights memorials, it is applicable to the case I am discussing.
[42] Blustein, *The Moral Demands of Memory*, 184–87; Blustein, *Forgiveness and Remembrance*, 178–285.

earlier, between reasons for remembrance and preservation. They show how our interests in remembrance are supported by preserving tainted commemorations, and potentially frustrated by their relocation or removal.

A reconstruction of what could be the preservationists' ideal scenario illustrates how the worry plays out in the context of the commemoration of Rhodes. Rhodes' actions, and the values that undergirded them, should ideally be part of the everyday consciousness and understanding of members of the community, of their own history and identities. They should be able to recount – even if in general terms – how Rhodes' actions have influenced their society, and how the actions of ordinary people during his time contributed to his projects. There should also be a general understanding of the fact that ordinary people of Rhodes' time shared the values that undergirded his actions. Not only did they not regard those actions (or their own contributions to them) as abhorrent, they positively regarded them as worthy of celebration. Finally, there should be various occasions for people to remember them.

When citizens' everyday consciousness and understanding are constituted this way, they cannot (and do not) turn away from the fact that they have inherited a world that has been shaped by the injustices caused by their forebears. This increase in the accuracy of historical understanding may facilitate citizens' owning up to the negative aspects of what they have inherited.[43] Additionally, citizens recognise that responsibility for or complicity in injustice is not something that only those with deformed characters or states-of-mind – "moral monsters" – engage in. Instead, people can cause injustice by engaging in ordinary

[43] Erich Hatala Matthes, "Who Owns Up to the Past? Heritage and Historical Injustice," *Journal of the American Philosophical Association* 4, no. 1 (2018): 87–104.

or even socially valorised activities. Those who caused injustice may also have, as with Rhodes' donations, made other morally valuable contributions to society. This may prompt further reflections about whether these citizens themselves are, here and now, behaving in ways that sustain injustice. In this ideal scenario, the commemorations serve as constant and everyday reminders for people to engage in such reflections, to remain vigilant, and to do better.[44]

When presented thus, we see what the preservationists regard as being at stake with relocating the commemoration to a museum. It risks the loss of historical accuracy, the denial of responsibility, and the opportunity to do better. The preservationists appear to have taken the incorporation requirement as ruling out the reduction of everyday occasions for remembrance, or against introducing obstacles to it more generally.

In sum, it is in light of these two requirements that we better understand the seemingly exaggerated claims of the preservationists. They are best understood as being undergirded by a deeper concern with and demand concerning how we engage with the past, and how such engagements are affected by our treatment of commemorations.

2.3 Strategy

It is a common assumption (especially in public debates) that the opposing views – in virtue of the seeming fixity of their demands – are naive. This assumption is often accompanied by unarticulated refusals to take the views seriously, or refusals to articulate

[44] Beard, "Cecil Rhodes and Oriel College, Oxford"; Hutton, "Cecil Rhodes Was a Racist, but You Can't Readily Expunge Him from History"; Cannadine, "Introduction," 7.

their possible grounds. As we have seen, however, these views are not naive. Instead, their demands are grounded by deeper concerns. Activists seek to secure self-respect by removing the threats to them posed by tainted commemorations. Preservationists seek to secure public engagement with the past which is incorporated into people's everyday consciousness and understanding. Clearly setting out the grounds of their demands may help both sides better understand their opponents, and resist the temptation to dismiss them. It also allows us to take a step forward in resolving their disagreement.

Indeed, even with the brief discussion, we see more clearly that there are many possible ways of tackling the disagreement. For instance, we may attempt to directly address the arguments made by proponents of either view, to qualify or constrain their demands. In response to activists, we may challenge their accounts of when self-respect is genuinely threatened, of the significance of removing tainted commemoration, or of the duties of states or corporate entities to address such threats. In response to preservationists, we may challenge the relationship between preservation and remembrance, or the stringency with which the publicity and incorporation requirements have been construed. These may reveal the existence of options other (or better) than those which are proposed by the parties, and which would be acceptable to them based on principles they accept.

I do not rule out these options (or others which I have not considered) in principle, nor do I take a stand on their plausibility. Instead, I begin from the observation that proponents of the two opposing views have each grounded their arguments in *something of value* – self-respect and remembrance. These values are distinct not always reducible to each other. My aim, then, is to identify and defend a response to tainted commemorations that would be acceptable, in principle, to adherents of both views. Such a response would have

to satisfy two desiderata – it must remove the threat to the self-respect of some members of the community, while not diminishing the occasions for remembrance. If successful, this response would protect *both* things of value.

This strategy may also be supported by a weaker and pragmatic consideration. Disagreements about what to do with the relics of an unpalatable past have arisen in different times and contexts. These disagreements are often similarly configured – between those who seek to remove those relics and those who seek to preserve them.[45] This gives us some reason to think that the two positions are tracking a stable divide in people's attitudes and priorities, such that the disagreements are unlikely to go away anytime soon. If so, and given that both sides are on to something of value, we might as well try a different approach to the disagreement – by attempting to locate a "middle" position that adherents of both views can find acceptable.

This strategy also constitutes a corrective response to the way that the disagreements typically unfold. Adherents of both views typically do not take their opponents seriously. Often, they take their own concerns as decisive in guiding our treatment of tainted commemorations. They either neglect the relevance of their opponents' concerns or assume without much argument (if any is provided at all) that those concerns are trivial relative to their own concerns. Insofar as the adjudicative strategy begins by taking both their concerns seriously, and without specifying their weight relative to each other, it corrects for the mutual dismissals by the parties to the disagreement of their opponents.

[45] Gamboni, *The Destruction of Art*; Upton, *What Can and Can't Be Said*; Savage, *Standing Soldiers, Kneeling Slaves*.

Briefly considering a recent attempt to tackle the disagreement between the adherents of both views clarifies my strategy. In support of the claims of activists, Johannes Schulz argues that insofar as tainted commemorations may constitute the wrongs of degrading or alienating members of formerly oppressed groups, removing them can be a legitimate response to tainted commemorations, to secure their self-respect.[46] He recognises, however, that depending on the specific socio-historical context in which the tainted commemoration is embedded, the demand to preserve it may also be a legitimate response.[47] How should we decide between these legitimate but opposing responses? According to Schulz, 'the most appropriate way of dealing with a tainted commemoration is the one most likely to further the establishment of relations of respect' between members of formerly oppressive and oppressed groups, and thus also self-respect.[48] That is, he adopts a narrower view of the concern with historical engagement that has been presented – it has to be in the service of the aim of securing respect. On this characterisation, those concerns about historical engagement which do not serve this aim appear to be set aside as illegitimate, at least concerning the treatment of tainted commemorations. On Schulz's account, there would be no fundamental disagreement between the two opposing views, only a disagreement about which response best secures a common aim to which they are *both* committed. The seemingly intractable disagreement we began with is dissolved. All that remains is for us to identify which response to tainted commemorations would best further relations of respect.

Schulz acknowledges that there is not always a clear answer to the question of which response to tainted commemorations best furthers relations of respect.[49] In practice, then,

[46] Schulz, "Must Rhodes Fall?," 180–83.
[47] Schulz, 179.
[48] Schulz, 177.
[49] Schulz, 178.

it comes down to whether those responses are *likely* to further those relations. Consider his discussions of IG-Farben-Haus (a company which was involved in the Holocaust) at the University of Frankfurt and of Rhodes at the University of Cape Town. Schulz suggests that the preservation of IG-Farben-Haus '*may* have a significant impact on the establishment of relations of respect',[50] and that the removal of Rhodes '*may* constitute a legitimate attempt at initiating a process'[51] of working through the past in a way that could potentially further relations of self-respect.[52]

In contrast, my view does not rely on the characterisation that the concern with history is (or should be) fundamentally the concern with securing self-respect, such that there is no fundamental disagreement between the two opposing views. Instead, I take the disagreement as it is. As earlier indicated, there are valuable goals furthered by both views which are distinct and not always reducible to each other. Though I will not argue for it here, I suspect that Schulz's characterisation is likely to be regarded by preservationists as loading the die in favour of activists who seek to secure self-respect, and at the expense of remembrance.

3 Suggestions

[50] Schulz, 180, my emphasis.
[51] Schulz, 183, my emphasis.
[52] My reconstruction of Schulz's account sets aside an important complication arising from his discussion of the more ambiguous case of George Washington and Thomas Jefferson. There, Schulz strengthens his formulation – claiming that we 'must address tainted commemorations in ways that *will* further rather than frustrate relations of respect.' (p. 185, my emphasis). It is not clear – and Schulz does not explain – why the requirement on our treatment of these ambiguous commemorations is more stringent than in the 'relatively clear cases' of IG-Farben-Haus and Rhodes.

In this section, I evaluate two suggestions for how we should respond to tainted commemorations – installing counter-commemorations near tainted commemorations and adding contextualising information to them. My discussions will again centre on specific cases – the commemoration of Confederate soldiers and of white supremacists. The aim of this section is to consider how well these suggestions fare in addressing the demands of the two opposing views. Showing that the suggestions often do not fare well, constitutes the first part of the defence of vandalising tainted commemorations.

3.1 Counter-commemorations

One suggestion that is often mentioned, and sometimes enacted, is to establish- counter-commemorations near the tainted commemoration. Consider, for instance, the Silent Sam Confederate Statue on the University of North Carolina at Chapel Hill's campus. The statue commemorates the students of the University who fought for the Confederacy as soldiers during the American Civil War. At its unveiling in 1913, a speech was given which praised the soldiers for 'their courage and steadfastness [which] saved the very life of the Anglo Saxon race in the South', and for contributing to the consequence that 'the purest strain of the Anglo Saxon is to be found in the 13 Southern States'.[53] The commemoration was subject to sustained protest by those who rejected the views it expressed, and subject to calls for removal. Analogous to the controversies surrounding commemorations of Rhodes, the preservation of the Silent Sam statue was also vigorously defended by those concerned with the accuracy of historical representation. Amidst these

[53] Julian Carr, "Unveiling of Confederate Monument at University," in *Julian Shakespeare Carr Papers #141, Southern Historical Collection, The Wilson Library, University of North Carolina at Chapel Hill* (Southern Historical Collection, The Wilson Library, University of North Carolina at Chapel Hill, 1913), Scans 93-112, https://finding-aids.lib.unc.edu/00141/#folder_26#1.

disagreements, a counter-commemoration – the Unsung Founders memorial – was established, in 2005, at some distance from the Silent Sam statue, in the same park. The counter-commemoration was dedicated to the contributions of people of colour (many of whom were slaves) to the community.

We can quickly take stock of what such a counter-commemoration achieves. First, it brings to the surface the existence of views other than those expressed by the initial commemoration. In doing so, it acknowledges the heterogeneity of evaluative perspectives among members of that community about who or what is important enough to commemorate. The views undergirding the Silent Sam statue are not the only ones on offer in the community. More concretely, it addresses the neglect of appropriate targets of commemoration. Second, it appears to mitigate the inequality in the standing of historically oppressed members of that community to speak publicly about their views, as equals within that community. The people who initiated the establishment of the commemoration, and the authorities who endorsed it, did not regard black Americans as equal members of the community, at least concerning decisions about who and how to publicly commemorate. In contrast, the establishment of the counter-commemoration expresses the view that nonwhite Americans now possess equal standing as members of that community. Third, its endorsement by the university authorities, as evidenced by the latter providing some financial support for it and allowing its establishment, signifies that the expression of this updated view is similarly endorsed. This appears to address uncertainties and insecurities about whether the community genuinely and fully respects and regards nonwhite Americans as equals. Fourth, the establishment of the counter-commemoration opens up the possibility that it may contribute to shaping the views of

members of the community, away from the racist views expressed by the Silent Sam statue.

In this case, the establishment of the counter-commemoration leaves the tainted commemoration untouched; instead, the former works around the latter. This satisfies the preservationist desideratum. However, it does not appear to satisfy the self-respect desideratum. Here, two sociological observations are salient. First, the establishment of the counter-commemoration in 2005 did little to stem the protests against the tainted commemoration. Indeed, the protests continued and culminated in the purportedly illegal toppling and removal of the Silent Sam statue in 2018. For the protestors who toppled the statue, establishing the counter-commemoration did not appear to address their complaints about the tainted commemoration. Second, this situation is not peculiar to the dispute about the Silent Sam statue, but generalised to other commemorations. Historian Dell Upton observes that the establishment of counter-commemorations does not typically cancel out or repudiate the messages of tainted white-supremacist commemorations. Instead, their existence merely facilitates the development of a convoluted ideology of "dual heritage", according to which black and white Americans simply took different, but equally honourable paths to their current status as equal members of the community.[54]

The sociological observations, however, take us only so far. Some explanation is needed for why counter-commemorations may not typically succeed in addressing the problems with tainted commemorations. Here, a stylised example is illustrative. Suppose that Abe creates a poster reading "We think Reds are great" and puts it up in a prominent location

[54] Upton, *What Can and Can't Be Said*, 15.

beside the city hall. He receives permission from the local authorities to do so. Suppose, further, that the Reds used to oppress other members of the community, the Greens. Some residents, one of whom is Betty, disagree with the view expressed by Abe's poster, and its claim to speak for the entire community. Betty decides to make her views heard through a "counter-poster". In doing so, her aims are to indicate the existence of a heterogeneity of views within the community about who is appropriate for honour, and to repudiate the view expressed by Abe's poster. It is obvious that the relationship between Abe's and Betty's posters will play an important role in determining the effectiveness of her poster in achieving her aims. One aspect of this relationship is the distance between the posters. Suppose that while Betty is granted permission to display her poster, she is only allowed to put the poster in a different location further down the street from the city hall, and at a distance from Abe's poster. A resident who passes by both locations is able to view both posters, and to reflect on their content and connection to each other. This resident may come to recognise the heterogeneity of views among members of the community, and moreover that Betty's poster (which was created later) is intended to repudiate the message of Abe's poster, or at least qualify its presumption to speak for the entire community. However, many residents may fail to pass by both locations, and thus fail to see Betty's poster. In such cases, her poster would fail to achieve her aims as a response to Abe's poster. The general point here is that the physical distance between the two posters allows for them to be viewed in isolation from each other (if the counter-poster is even viewed at all). This point extends to the relationship between tainted commemorations and counter-commemorations. When the two commemorations are situated far apart, it is possible to engage with one but not the other. In such a case, the work that the counter-commemoration seeks to do would be obviated.

A related aspect of this relationship is the prominence of the display of Betty's poster, relative to Abe's. The prominence of Betty's poster may be diminished in many other ways. For instance, the location in which her poster is displayed may be much less trafficked than that in which Abe's is displayed, reducing the number of people who manage to view it. The location that Abe's poster is on may be regarded as more important in virtue of its being situated beside the city hall. Betty's poster may also be physically smaller or less imposing than Abe's. And so on. Each of these diminishes the effectiveness of Betty's poster in achieving her aims. These are not idle possibilities. In the context of Chapel Hill, the Silent Sam statue stood at the intersection of several paths, at what has been described as the front door of the university and a position of honour. In contrast, the Unsung Founders memorial was established in the green space marked off by two paths some distance away. The counter-commemoration is also significantly shorter in height and less imposing than the former, which was raised on a pedestal. That is, the counter-commemoration does not fully tackle the process-related taint of commemoration, to do with the original commemoration occupying a more prominent or prestigious site relative to the counter-commemoration. Of course, there are reasons – among other things, to do with space management, traffic control or aesthetic presentation – not to establish a counter-commemoration of the same size directly beside the tainted commemoration, even though doing so would ensure that the two commemorations are never seen in isolation from each other and are regarded as occupying the same position of prominence. However, not doing so preserves the differences between the two commemorations and diminishes the work of the counter-commemoration.[55]

[55] Even establishing a counter-commemoration of the same size at the same place may not mitigate all the problems. Consider, for instance, Kirk Savage's suggestion that we establish a commemoration of Martin Luther King, Jr., at the Lincoln Memorial. However, where *exactly* should the commemoration of King be established – before, beside or behind Lincoln? The tricky issues to do with relative prominence and prestige would re-surface, albeit in a less obvious fashion.

We have yet to consider the content of Betty's poster. Suppose that instead of directly repudiating the view expressed by Abe's poster, it reads "We think Greens are great". What effect would that have? Betty's poster would achieve her first aim – it indicates the existence of a heterogeneity of views about who is an appropriate recipient of honour within the community, and that Greens (and those who admire Greens) also have the standing to speak for the community. However, the content of Betty's poster does not actually *repudiate* that of Abe's – it simply adds that "we", whoever they are, also admire Greens. Importantly, this is compatible with the view expressed by Abe's poster, concerning the honouring of Reds as members of a formerly oppressive group.

This situation is again reflected in the case which we are discussing. Consider the Unsung Founders Memorial, which honours the people of colour who contributed to the community. It succeeds in indicating the heterogeneity of views within the community about who is deserving of commemoration, and who may commemorate them. However, the counter-commemoration does not actually *repudiate* the commemoration of Confederate soldiers. That is, it leaves unaddressed the fact that they and their actions were inappropriate targets of commemoration. The expressions and social power of the tainted commemoration are regarded as being left untouched and possibly even endorsed by the authorities. If so, the counter-commemoration does not remove the threat posed by the tainted commemoration to the self-respect of some members of the community. And since *that* was the root of protesters' complaint, it is clear why establishing the counter-commemoration was not regarded as addressing their complaints. The absence of repudiation also explains how something like the "dual heritage" view could have developed in the first place. For the counter-commemoration to address their complaints,

and to contribute to blocking the development of the "dual heritage" view, it would have to engage in direct repudiation. While we may have reasons not to establish such directly repudiative counter-commemorations, we must note the cost of not doing so, in terms of their effectiveness at satisfying the self-respect desideratum.

We have identified the three worries about the Unsung Founders counter-commemoration. They concern the distance between the counter-commemoration and the tainted commemoration, the differences in the relative prominence or prestige of the locations they occupy, and that it does not repudiate the view that Confederate soldiers are inappropriate targets of commemoration. These worries generalise. In practice, it is often not possible to establish counter-commemorations in ways that mitigate these worries. This is because tainted commemorations are usually established in locations of prominence or prestige, and counter-commemorations, when established, are usually located some distance away. Moreover, counter-commemorations are typically established with the intention of honouring different people (who have been historically marginalised or oppressed), rather than with the intention of repudiating existing targets of commemorations. It is also unclear how counter-commemorations could express the repudiation that an individual or event is an *inappropriate* target of commemoration. An example illustrates. For instance, the statue of Rhodes in Oxford is worked into the façade of a building, and flanked by two windows, such that there is no room for establishing a counter-commemoration of the same size at the same location. Moreover, it is unclear what a counter-commemoration would look like if it seeks to express that Rhodes is an inappropriate target of commemoration. Of course, this is not to say that establishing counter-commemorations cannot, *in principle*, satisfy the self-respect desideratum, and thus constitute a response to tainted commemorations that successfully adjudicates the

demands of the two opposing views. I leave open the possibility that in some circumstances, establishing counter-commemorations may succeed in just this way.

3.2 Contextualisation

The addition of contextualising information to tainted commemorations appears to be more promising, in virtue of its potential to directly address and repudiate the views expressed by a tainted commemoration. It clearly meets the preservationist desideratum, and promises to do better than counter-commemorations in satisfying the self-respect desideratum. Consider, for instance, the Battle of Liberty Place Monument, a roughly 10-metre tall white obelisk located in New Orleans, Louisiana.[56] It was established in 1891 to commemorate the violent overthrow, in 1874, of the democratically-elected government of Louisiana composed of an alliance of white and black Americans (the latter who were newly enfranchised), by members of the White League, a white-supremacist terrorist organisation. Leading up to the coup was a dispute about who had *really* won the local elections – one which was resolved by the federal government, to the resentment of the white supremacists. While the elected government was eventually reinstated by federal troops, the event was nonetheless regarded as a significant achievement by white supremacists to exclude black Americans from political participation, among other things. The commemoration lists the names of those members of the White League who died in the conflict, and the names of their leaders. In 1932, inscriptions were added to the base of the commemoration, which describes the elected

[56] For a more extensive reconstruction of the history of this commemoration, see Lawrence Powell, "Reinventing Tradition: Liberty Place, Historical Memory, and Silk-stocking Vigilantism in New Orleans Politics," *Slavery & Abolition* 20, no. 1 (April 1, 1999): 127–49; Jacob A. Wagner, *The Myth of Liberty Place: Race and Public Memory in New Orleans, 1874-1993* (New Orleans: University of New Orleans, 2004).

government as a 'carpetbag government' and 'usurpers', and which celebrated their being overthrown by the defenders of white supremacy. In 1974, the local government added a contextualising plaque describing the battle as an insurrection and stating, bluntly, 'Although the "battle of Liberty Place" and this monument are important parts of the New Orleans history, the sentiments in favor of white supremacy expressed thereon are contrary to the philosophy and beliefs of present-day New Orleans'. The contextualising plaque also listed the names of the defending forces who died during the conflict.

In this case, the addition of the contextualising plaque, unlike the establishment of counter-commemoration, appears to directly respond to the target-based taint of the initial commemoration. It describes the actions of the White League as illegitimate and rejects the white supremacist views which undergirded their actions. Moreover, it indicates as worthy of commemoration those who died defending against the insurrection.[57] The addition of the contextualising plaque, however, did not stop the calls for the commemoration's removal. Eventually, the commemoration was removed by the local government and moved out of public view into storage. Of course, this action was subject to criticisms by adherents of the preservationist view.

The following observations may partly explain why the addition of the contextualising plaque was regarded as inadequate in satisfying the self-respect desideratum. First, it falls short of stating that the event and the members of the White League should *not* have been

[57] In this way, the addition of contextualising plaques appears to count as a kind of counter-speech in response to hateful or offensive speech. Rather than silencing the expression of hateful or offensive speech, counter-speech repudiates them in an attempt to mitigate their potential effects. Corey Brettschneider, *When the State Speaks, What Should It Say?: How Democracies Can Protect Expression and Promote Equality* (Princeton: Princeton University Press, 2012); Eric Heinze, *Hate Speech and Democratic Citizenship* (Oxford University Press, 2016); Nadine Strossen, *Hate: Why We Should Resist It with Free Speech, Not Censorship* (Oxford University Press, 2018).

commemorated. While the plaque repudiates the commitment to white supremacy, it does not explicitly state that the members of the White League are *inappropriate* targets of commemoration. Despite the local authorities' public statement – expressed through the contextualising plaque – distancing themselves from the views of white supremacists, it remains that white supremacists and their deeds are still publicly honoured. This undermines the certainty, among some members of the community, that the community genuinely and fully respects them as equals. In this way, the plaque does not fully address the threat posed by the commemoration.[58] Second, the plaque leaves out the local authorities' complicity in allowing the commemoration to be established in the first place, and in such a prominent location. The omission raises worries about the hypocrisy of the authorities; specifically, their calling out a situation as problematic, but without admitting their contribution to it. In contrast, the addition of such information – which has the character of an apology – would convey their sincerity. This would further secure the self-respect of members of formerly oppressed groups. They are people who – like others within the community – are owed (and can demand) sincere public apologies when they are wronged.[59]

[58] The same analysis applies to a contextualising plaque that was later added. In 1993, some of the original inscriptions (including those endorsing white supremacy) were removed, and replaced with a statement that the commemoration was 'In honor of those Americans on *both sides* who died in the Battle of Liberty Place ... A conflict of the past that should teach us lessons for the future' (my emphasis). This statement still *does not repudiate* the view that the white supremacists were appropriate targets of commemoration. In fact, it fares much worse than the 1974 plaque, in virtue of its claim that members of *both sides* were appropriate targets of commemoration. Moreover, as Sanford Levinson notes, it is not clear what the lessons should be. See Levinson, "They Whisper."

[59] David Wasserman gestures to, but does not elaborate on, the worry about hypocrisy. See David Wasserman, "Commemoration and Disavowal," *Philosophy and Public Policy Quarterly* 16, no. 3/4 (December 1, 1996): 12–13. For further discussions on public apologies, see Nick Smith, *I Was Wrong: The Meanings of Apologies* (Cambridge: Cambridge University Press, 2008); Edwin L. Battistella, *Sorry about That: The Language of Public Apology* (Oxford: Oxford University Press, 2014).

Of course, the failures of the contextualising plaque in this case need not generalise. It is possible to have more fully-repudiative contextualisation. The more explicitly repudiative they are, the more securely they would satisfy the self-respect desideratum. However, two difficulties now emerge. The first concerns the accessibility of contextualising plaques relative to tainted commemorations. The stylised example involving Abe and Betty illustrates the point. Suppose that Betty receives permission to add a contextualising poster adjacent to Abe's poster. To be fully contextualising and repudiative, it would need to include salient facts such as that Reds have been oppressors, that Abe's poster does not represent the views of all (or even many) members of the community, and that putting up the poster in the first place was a mistake. The more fully-contextualising Betty's note is, the more likely it is to be lengthier. This may lead to its being less immediately accessible than Abe's poster, which simply expresses one statement. As is often recognised, it takes much more work to repudiate hateful or disrespectful speech, than to make it. This worry is more pronounced when it comes to commemorations. Commemorations present their information in a primarily visual format, whereas contextualising plaques do so in a primarily textual format. These differences in accessibility will affect the effectiveness of the contextualisation in addressing the tainted commemoration.

The second observation concerns the inclusion of appropriate targets of commemoration. In the case of the Battle of Liberty Place Monument, the addition of the contextualising plaque transforms the tainted commemoration into one which *also includes* those who died defending the elected government. This is due to the non-depictional character of the commemoration. An obelisk is more amenable to such transformation than commemorations which are depictional in character. For instance, the addition of a fully contextualising and repudiative plaque to a statue of Rhodes would not, in virtue of such

an addition, transform it into a commemoration that also includes his victims. If so, the worry that arises from the neglect of appropriate targets of commemoration persists. This is an issue of the fit between the visual presentation of the commemoration and its target. It is in this respect that the addition of contextualising plaques fares less well – compared to counter-commemorations – at remediating the neglect of appropriate targets of commemoration.

The addition of contextualising plaques also does not address two worries that beset counter-commemorations – concerning their presentation relative to tainted commemorations. First, contextualising plaques are comparatively much smaller than the tainted commemorations whose views they seek to repudiate. The smaller these plaques, the more easily they will be missed by people who interact with, or merely pass by, the tainted commemorations. They will also not be seen when the tainted commemorations are viewed from a distance. Second, while contextualising plaques occupy the same location as the tainted commemorations, they are, due to their relative size, comparatively less prominent. Again, while there are reasons not to add contextualising plaques that are comparable in size and prominence directly beside the tainted commemorations, not doing so risks diminishing the work that they seek to do.

Again, the discussions here do not conclude that the addition of contextualising plaques cannot, in principle, satisfy the self-respect desideratum. However, and as with the previous section, we have reason to suspect that the difficulties besetting it are not easily or typically resolved.

3.3 Summary

We have seen that while the establishment of counter-commemorations and the addition of contextualising plaques are not *in principle* excluded as responses to tainted commemorations which can satisfy both the self-respect and preservationist desiderata, they are beset with difficulties that frustrate their ability to do so. I leave open the possibility that extending or even combining the suggestions that I have discussed in this section could work well in adjudicating the opposing demands of the two dominant views. What I wish to do, however, is to consider a different response to tainted commemorations which can satisfy both desiderata, but which has not been adequately discussed.

4 Vandalism

It is noteworthy that a very common response by activists to what they regard as tainted commemorations is to engage in vandalism. Most of the commemorations discussed in this essay have been subject to vandalism. Statues of Cecil Rhodes have been smeared with human faeces or tagged with various graffiti describing him as a racist, thief and murderer (among others). The Silent Sam statue and Battle of Liberty Place Monument were also repeatedly vandalised with anti-racist and anti-white-supremacist graffiti. The Vietnam Veterans Memorial Wall has also been subject to some cases of vandalism, though the point of those actions (if there is any) is much less clear. In this section, I argue that vandalising tainted commemorations (which includes inflicting damages on them short of destruction) can constitute a plausible response to tainted commemorations. It may satisfy both desiderata, and avoid the difficulties besetting the earlier responses. This

discussion constitutes the second part of my qualified defence of vandalising tainted commemorations. If successful, it would constitute a partial vindication of activists' vandalism of tainted commemorations.

Let us return to the stylised example involving Abe and Betty. Suppose that instead of creating a counter-poster or adding a contextualising one, Betty chooses to vandalise Abe's poster. With a red marker, she cancels the word "great", substituting it for "oppressors". In doing so, she achieves several things. First, she indicates a heterogeneity of views about who is an appropriate recipient of honour. Specifically, that not everyone thinks that Reds are great, and appropriate targets of commemoration. This achievement is minimal, and relatively easy to secure. It would be secured even if Betty scrawls a crude "X" over Abe's poster. Second, in contrast with her earlier choice of putting up a counter-poster, this act directly addresses the view expressed by Abe's poster. The vandalised poster now publicly repudiates the idea that Reds are worthy of commemoration. This prevents her act from being misunderstood as merely indicating that the community honours Greens *in addition to* Reds. Third, Betty's vandalism is located at the very same place as Abe's poster. There are no differences between her message and Abe's poster in terms of how well-trafficked they are. Additionally, it is also impossible to view Abe's poster in isolation from Betty's message. Fourth, Betty's vandalism is as prominent as Abe's poster. Unlike the addition of a contextualising poster, Betty's message here is not easily missed, even when seen from afar. Fifth, and in virtue of the simplicity of its presentation, the vandalism is as accessible as Abe's poster. Sixth, Betty's unauthorised act constitutes an act of defiance against and rejection of the authorities who allowed Abe's poster to be put up in the first place.

These achievements find their analogue in the vandalism of commemorations. First, the vandalism of a tainted commemoration immediately indicates a heterogeneity of views, at least in the minimal sense that not everyone agrees with the appropriateness of the target of commemoration. This may be secured even with non-textual and seemingly inarticulate vandalism. For instance, activists often splash red paint (signifying blood) on tainted commemorations to convey – often effectively – that the target of commemoration was responsible for or involved in injustice or the loss of lives. In a recent case, the splashing of red paint at the base of the Equestrian Statue of Theodore Roosevelt in New York effectively conveyed such a message, even though the more specific protest against his responsibility for and involvement in white supremacy and settler colonialism may not have been immediately clear to everyone.[60] Second, and depending on the content of the vandalism, it can directly repudiate the views of the tainted commemoration. For instance, painting the word "racist" on the Silent Sam statue conveys that the target of commemoration is inappropriate. That is, vandalism avoids a common problem facing counter-commemorations, pertaining to its allowing room for the development of distorted ideologies such as the "dual heritage" view. Third, since the vandalism is on the tainted commemoration itself, the possibility is ruled out of viewing the commemoration in isolation from the vandalism. Fourth, vandalism is often prominent and attention-grabbing, and enacted in such a way that they can be viewed even from afar. Fifth, vandalism is also more accessible compared to the establishment of contextualising plaques, insofar as the message is presented immediately. Vandalism avoids the worries facing the earlier responses, concerning their presentation and accessibility relative to the

[60] Colin Moynihan, "Protesters Deface Roosevelt Statue Outside Natural History Museum," *The New York Times*, October 26, 2017, https://www.nytimes.com/2017/10/26/arts/protesters-deface-roosevelt-statue-outside-natural-history-museum.html. See also Lesley Oelsner, "Six Indians Accused of Defacing Theodore Roosevelt Statue Here," *The New York Times*, June 15, 1971, https://www.nytimes.com/1971/06/15/archives/six-indians-accused-of-defacing-theodore-roosevelt-statue-here.html.

tainted commemoration. Finally, in expressing their views in a way that violates laws or norms, activists can also convey their rejection of the authorities and processes leading up to the establishment of the tainted commemoration. While this may also be achieved by the addition of contextualising plaques, vandalism does so in a manner that is relatively more accessible.

Importantly, vandalism can transform a tainted commemoration from a public honouring of an inappropriate target, into a public *repudiation* of its being such a target (or even public humiliation, as in the case of smearing faeces on Rhodes). In such a transformation, the threat to the self-respect of some members within the community, which is posed by a public honouring of an inappropriate target, is mitigated. That is, it satisfies the self-respect desideratum. It also satisfies the preservationist desideratum. Insofar as the commemoration are preserved *in situ*, the requirements of publicity and incorporation are met. Indeed, in order for vandalism to be successful, it *has to* preserve enough of the tainted commemoration. A quick reference to the stylised case illustrates the point. Suppose that Betty splashes red paint over the entirety of Abe's poster, obscuring Abe's original message. At and around the time of the vandalism, Betty's message would be clear and apparent – the vandalism is a response to Abe's poster. Over time, however, those who encounter the vandalised poster would see only a red poster – there is a risk that Betty's message would be lost over time. In contrast, her cancelling the word "great" and substituting it for "oppressors" preserves enough of Abe's poster, such that the message she seeks to convey through her vandalism does not face the risk of being lost over time. Similarly, if activists destroy an entire commemoration, or obscure it entirely, the message that they seek to convey faces the risk of being lost over time. In this way,

the preservation of the statue (or at least enough of it) is a requirement *internal* to the act of vandalism.

Vandalism, however, has a bad reputation.[61] First, it is commonly understood as an action falling within the exclusive purview of the brutish or barbaric. That is, they are actions by individuals who are ignorant about the value of that which they vandalise or ignorant about the meaning of their vandalism,[62] or by antisocial individuals who simply do not care about the values that a community holds. Typically, it is regarded as sufficient to dismiss an action – and any political message it may be attempting to convey – by describing it as vandalism. Second, insofar as vandals typically carry out their vandalism when few people (if any) are around, and moreover typically do not reveal their identities, they are often regarded as being cowardly – hiding in the shadows rather than facing the public. Third, vandals often act alone, and may not be representative of the community. A common criticism of vandalism is that they are not done by representative members of the community – instead, vandals are deviants, on the margins of the community. Finally, vandalism is illegal in most jurisdictions. We may take these considerations as giving rise to four presumptions against vandalism.[63]

The first two presumptions against vandalism may be counteracted if vandalism is carried out in line with a principle of communicativeness.[64] In our context, the principle of

[61] Part of this may have to do with its initial coinage and use, to decry the pillage and destruction of artwork during the French Revolution.
[62] Gamboni, *The Destruction of Art*, 19.
[63] There is an additional presumption against vandalism, which is grounded in the fact that vandalism often involves damages to the commemorations. I address this issue in another essay in this thesis. See 'The Legitimate Targets of Political Disobedience'. For now, we can say that this presumption against vandalism may be overridden if the damages are necessary in order to bring about some valuable good, and if the good achieved outweighs the bad of the damages.
[64] Kimberley Brownlee provides a thorough defence of the requirement of communicativeness. See Kimberley Brownlee, *Conscience and Conviction: The Case for Civil Disobedience* (Oxford: Oxford

communicativeness imposes two requirements.[65] It requires, first, that the act of disobedience conveys a message directed at the tainted commemoration. This is especially pertinent in the case of vandalism. Some acts of vandalism are not communicative (or if they are so, it is not clear what they communicate). For instance, "tagging", a form of graffiti consisting simply of a personalised word referencing a person or a group, may not be communicative in the sense of conveying any political message directed at the tainted commemoration. Ideally, the vandalism clearly conveys the message directed at the disrespectful view expressed by the tainted commemoration. For instance, the vandalism of the Silent Sam statue through a graffiti stating, simply, "racist", is communicative in this sense. This is connected to one of the aims of addressing tainted commemorations, which is to repudiate its views. When vandalism is communicative in this sense, it overcomes the presumption against doing so arising from the worry that vandals are brutish or barbaric. While this is an ostensibly low bar, it nonetheless imposes some minimal constraints on activists' actions.

The second requirement is that the act needs to be non-evasive. The vandal should be willing to articulate her commitments and reasons for her actions to others within her community. In practical terms, it means that activists must take public responsibility for their acts of vandalism, in the sense of admitting to their vandalism.[66] When acts of vandalism are communicative in this sense, they also mitigate the intuitive judgement

University Press, 2012). In this essay, I assume that this requirement is generally plausible. I clarify its grounds and qualify its scope in a different essay in this thesis. See 'Differentiating Disobedients'.

[65] I note, also, that these requirements are defeasible.

[66] I set aside the issue of whether vandals must submit themselves to punishment. Whether they do so, is a separate issue from the efficacy of their act in meeting the demands of the two opposing views. However, their willingness to submit to punishment may be regarded as an indication of the *sincerity* of their actions – which has implications for the evaluation of the morality of their act more generally. Kimberley Brownlee provides a discussion of why relationship between submission to punishment and sincerity should not be too tightly construed. See Brownlee, *Conscience and Conviction*, 204–5. I discuss this in another essay in this thesis. See 'Differentiating Disobedients'.

among members of the community that the vandals are of poor character. They are not cowardly. Their vandalism is neither motivated by ignorance nor anti-sociality. It is not ignorant because it requires as part of its motivating conditions an understanding of what the tainted commemoration is about, or even how it came to be established as a commemoration. It is not antisocial because it is motivated by a concern for the values that the community shares or aspires to. Satisfying this requirement contributes to mitigating the negative evaluation of vandalism. Additionally, it allows the activists a chance to clarify the motivations behind their political act, and to dispel misunderstandings about what the act means. This overcomes the presumption against vandalism arising from its typical evasiveness.

The third presumption against vandalism concerns its purportedly non-representative character. While the claim is overused that the vandals (and their views) are not representative of the community, it nonetheless tracks a genuine worry. Suppose that a lone activist vandalises a commemoration which she regards as tainted. She may genuinely be a marginal character with views that are not representative of the community as a whole, or even of a subset of it which includes the members of formerly oppressed groups. If so, there is a question of how the act of vandalism mitigates the threat to the self-respect of members of those groups. That is, a singular act by a non-representative individual does not mitigate the uncertainties about and insecurities in the sources of these members' self-respect, concerning whether the community genuinely respects them as equals.

One way in which the worry may be mitigated, is if the vandal receives support from other activists and organisations that are representative of at least those members of

oppressed groups whose self-respect are at stake. This may be in the form of public statements, released after the fact of vandalism, in support of the message that the act conveys, and perhaps to lament the regrettable state of affairs (in which other strategies and attempts to address the tainted commemoration have failed) which has made such a drastic action necessary. When these statements are made public, the question about the representativeness of the vandals' views would be answered in the positive. Ideally, the vandal should consult with these individuals and groups before her action, both to confirm that her views are indeed shared by them, and so as to avoid springing an unpleasant and perhaps unwanted responsibility upon them to respond. The act of vandalism, when accompanied by these public statements, responds to the threat to self-respect. Of course, this may often not be enough – other individuals, groups and even the relevant authorities will also have to respond if the uncertainties and insecurities are to be securely mitigated. This can be done by their also stating publicly their support for the repudiative message of the vandalism.

The uncertainties and insecurities may be further mitigated if the local authorities permit the tainted commemoration to stay vandalised, rather than attempt to restore it to its original state. While granting such permission appears to be the prerogative of the authorities, it could also be the conclusion of a consultative process with members of the community. Permitting vandalised commemorations to stay vandalised also addresses the following worry. If the vandalised commemoration is restored to its original state, the accompanying public statements are likely to be forgotten over time. Moreover, public statements are, on their own, susceptible to the difficulties besetting the earlier responses to tainted commemorations. Once the vandalised commemoration is restored, people can interact with it in isolation from the statement; the tainted commemoration is also more

prominent and accessible than the statement. Since we have reason to think that these worries render the earlier responses unable to securely satisfy the self-respect desideratum, we have reason to think that restoring vandalised commemorations would have the same impact. Allowing the tainted commemoration to stay vandalised would mitigate these worries – it would allow the statements to be continually sent, and in an accessible manner, to anyone who interacts with the commemoration. It would be even better if the authorities protected the vandalised commemoration from private efforts (especially by groups comprising individuals belonging to groups of former oppressors) to restore its appearance.

It may be thought that it is to ask too much of the relevant authorities, that they permit vandalised commemorations to stay vandalised. However, what they are asked to do is not categorically different from what they are asked to do when it comes to the establishment of counter-commemorations or the addition of contextualising plaques. That is, the request is for them *to be participants* in the endeavour to secure the self-respect of members of formerly oppressed groups. Indeed, none of the previous responses could work without the participation of the relevant authorities, in the minimal sense of allowing them to be carried out. This becomes clearer once we see that the earlier responses also have "guerrilla" counterparts – activists may also establish counter-commemorations and add contextualising plaques without approval – to which the authorities may respond differently. A brief comparison of two cases illustrates the point.[67] In 2015, anonymous artists installed a bust of the whistle-blower Edward Snowden in a Brooklyn park, in order to commemorate his work and those of other

[67] In making this comparison, I am only interested in the variances in the participation of the authorities. I leave open the question of *why* there were such variances.

whistle-blowers. The bust was quickly removed by the local authorities.[68] In contrast, in 2016 activists established two commemorations of conscientious objectors in Wellington, New Zealand, to protest both their treatment at the hands of the government during the Second World War, and the glorification of war. While the commemorations were installed without the approval of the authorities, the latter nonetheless responded favourably, stating that they would not rush to remove the sculptures. One of the sculptures was left in place for a week, after which it was moved to a museum.[69] We see, then, that the requirement that authorities need to participate in order for vandalism to be an effective response to tainted commemoration, is not one which is unique to vandalism.

The final presumption against vandalism concerns its illegality. It is important to note that vandalism *need not* be illegal. The possibility is open that the authorities could invite representative members of formerly oppressed groups to vandalise the tainted commemorations. While this raises worries about the co-option of a form of resistance, the vandalised commemoration and the participation of the authorities would still be effective as a response which secures self-respect. Of course, such offers are generally rare, and we need to take seriously the conditions in which the presumption against vandalism which centres on its illegality may be lifted.

This presumption follows from a more general presumption against breaking the law. However, it is not always overriding. There are many situations in which individuals can

[68] Alan Yuhas, "Edward Snowden Statue Prompts Cover-up at Brooklyn Park," *The Guardian*, April 6, 2015, https://www.theguardian.com/us-news/2015/apr/06/edward-snowden-statue-bust-brooklyn-park-covered.
[69] Tom Hunt, "Conscientious Objector Archie Baxter Remembered in Guerrilla Sculpture," *Stuff.Co.Nz*, April 26, 2016, https://www.stuff.co.nz/national/last-post-first-light/79299545/conscientious-objector-archie-baxter-remembered-in-guerilla-wellington-sculpture; Rob Garrett, "Temporary Inspires Permanent," Forecast Public Art, January 18, 2018, https://forecastpublicart.org/temporary-inspires-permanent/.

permissibly break the law or even have a duty to do so.[70] A common defence for disobedience is that it is the *last resort* available to activists for securing their aims. This is not to be construed narrowly. As Rawls observes, activists can always try to engage legally again, even if they have no reasonable chance of success. The existence of such options that are reasonably thought to be fruitless should not, however, constrain their choice of political action.[71] In our context, this presumption against vandalism is lifted *when there are no other effective responses to tainted commemorations* that satisfy both the self-respect and preservationist desiderata. We have seen that two of the most common responses to tainted commemorations are beset with difficulties. In contrast, vandalism – when guided by the constraints set above – can address these difficulties.[72] My claim is that the presumption against vandalism which centres on its illegality may be lifted in such circumstances. That is, in such circumstances, activists may appeal to the last resort condition as grounds for engaging in vandalism. The *conditionality* of this argument for vandalism reflects our considered judgement that law-breaking actions should not be taken unless activists have run out of fruitful legal options. Indeed, it is notable that vandalisms frequently occur when activists judge that the authorities are unwilling to listen or engage with their concerns through official means, or that efforts to address their concerns through those means have proved to be repeatedly fruitless.

[70] Brownlee, *Conscience and Conviction*; Tommie Shelby, *Dark Ghettos: Injustice, Dissent, and Reform.* (Cambridge: Belknap Press, 2016); Candice Delmas, *A Duty to Resist: When Disobedience Should Be Uncivil* (Oxford: Oxford University Press, 2018). I discuss the idea of a duty to disobey in another essay in this thesis. See 'Clarifying Our Duties to Resist'.

[71] John Rawls, *A Theory of Justice: Revised Edition* (Cambridge: Belknap Press, 1999), 327–28.

[72] Of course, the judgement of whether the responses are effective is dependent on the specific context in which the tainted commemorations are embedded. While Schulz also argues that our treatment of tainted commemorations has to be context dependent, his concern is with what is most likely to further relations of respect given the context, rather than what satisfies *both* the self-respect and preservationist desiderata.

We may be tempted to reject the conditionality of the defence of vandalism, by referring to the additional work that vandalising tainted commemorations can do, relative to counter-commemorations and contextualising plaques.[73] Among other things, vandalism can be a way for activists and members of formerly groups to express their emotions. For instance, smearing faeces on the statue of Rhodes is an expression of anger that is not easily achieved (if at all) by establishing counter-commemorations or contextualising plaques. Such expressions can constitute apt responses to injustice and even be politically productive.[74] Should we include expressiveness as among the desiderata which a response to tainted commemorations must satisfy? Or should we take it as a "bonus" achievement of vandalism which may function as a tiebreaker in cases where vandalism equally satisfies the demands of the two opposing views, compared to other responses? I do not take a stance on this issue here. I note simply that expressiveness in this sense is not typically part of the demand of even those seeking to remove tainted commemorations. Moreover, it is likely to be regarded by those seeking to preserve commemorations as loading the die against their favour.

In sum, the four presumptions against vandalism may be defeated, and we should take vandalism seriously as a response to tainted commemorations. Before concluding, two brief qualifications of this argument are important. First, the defence of vandalising tainted commemorations does not commit me to the further claim that there is a requirement or duty to vandalise them. The argument here shows only that vandalism can

[73] I am sceptical that these are aims which are in principle unavailable to counter-commemorations or contextualising plaques. At best, we may say only that vandalism is typically more expressive than these responses.

[74] Amia Srinivasan, "The Aptness of Anger," *Journal of Political Philosophy* 26, no. 2 (June 2018): 123–44; Maxime Lepoutre, "Rage inside the Machine: Defending the Place of Anger in Democratic Speech," *Politics, Philosophy & Economics* 17, no. 4 (2018): 398–426. Or we may not think so. For a rejection of anger in politics, see Martha C. Nussbaum, *Anger and Forgiveness: Resentment, Generosity, Justice* (Oxford University Press, 2016).

be a response to tainted commemorations which adjudicates the demands of two opposing views and avoids the worries besetting the earlier responses. Second, the defence of vandalism is provisional. There are further worries about vandalism – including, crucially, whether it is civil – that I have not addressed, and which may rule out vandalism all-things-considered.

4.1 Objection

In a recent essay, Helen Frowe argues that the preservation of tainted commemorations is incompatible with the state's duties to repudiate and condemn serious wrongdoing. On Frowe's account, a person's being a serious rights violator is a sufficient condition for a state having a defeasible duty to remove commemorations of that person. This claim extends not only to those whom we now regard as thoroughly bad – such as, perhaps, the architects of the institution of slavery – but also to those morally ambiguous individuals who perpetuates serious wrongdoings but nonetheless brings about significant goods. Thus, for instance, states would have a duty to remove commemorations of Winston Churchill on the basis of his authorisation of the unjust firebombing of Dresden, and perhaps on the basis of his alleged responsibility for the Bengal famine of 1943.[75] Frowe's account is subtle and complex, and I cannot satisfactorily address it fully here. I focus, instead, narrowly on her brief suggestion that vandalising tainted commemorations count as an inferior option compared to removing them.

[75] Helen Frowe, "The Duty to Remove Statues of Wrongdoers," *Journal of Practical Ethics* 7, no. 3 (2019): 1–31.

Frowe concedes that vandalism can repudiate the views expressed by the commemoration. Her concern with vandalism centres on the relationship between acts of vandalism and the participation of the state. Frowe observes that acts of vandalism 'do not, ordinarily, constitute a rejection of that wrongdoing by the state'. Instead, acts of vandalism are typically committed when the state has failed to fulfil its duty to remove tainted commemorations. Frowe acknowledges that the state could sanction or endorse vandalism as a way of fulfilling its duty to repudiate and condemn wrongdoing. She enters two brief responses to this possibility. First, Frowe claims that 'it is not clear' why such endorsement is better than simply removing the statue (or removing the statue and replacing it with a counter-commemoration). Second, she suggests that 'state-sanctioned acts of vandalism typically lack the expressive power of illicit, rebellious defacement'.[76]

To begin with, and as an observation of a point of consensus between Frowe and myself, my qualified defence of vandalising tainted commemoration is also intended to secure the repudiative and condemnatory aims. On my account, this aim is connected to the self-respect desideratum – itself a reconstruction of the claims of activists. Frowe's account is broader – for her, the duties to repudiate and condemn are grounded in what is owed to the victims of wrongdoing more generally.[77] We may understand the self-respect desideratum as one member of that category of considerations and reasons.

Here is the point at which our strategies substantially diverge: unlike Frowe, I do not argue that the considerations pertaining to what is owed to victims of wrongdoing conclusively outweigh the considerations in support of preservation. As we have seen,

[76] Frowe, 26.
[77] Frowe, 13–19.

my strategy is fielded with the explicit aim of adjudicating the opposing claims – to locate a response that best preserves that which is of value, and which has been identified by adherents of the opposing views. Frowe does not appear to hold this aim; she devotes a fair amount of attention to how the claims of the preservationists are outweighed.[78] Her overall aim, it appears, is to secure a response to tainted commemorations that best satisfies the duty of repudiation and condemnation. Of course, and as I have acknowledged earlier (in Section 2.3), I do not rule out such a strategy in principle. I thus wish to leave open the possibility that if my strategy fails to break the impasse between the adherents of the two opposing views (that is, if it fails on the terms I have sketched out), that we have reason to endorse Frowe's strategy. However, the facts that our respective projects begin with different overall aims, and are guided by different desiderata, give us reason to set aside Frowe's evaluation of vandalism as a response to tainted commemorations.

This, however, does not mean that my qualified defence of vandalism is therefore inferior to removal, *even when* the evaluation is done on Frowe's terms. First, consider Frowe's claim that it is unclear why vandalising the statue is better than removing it. One important reason, which I have discussed earlier, is that vandalism can transform a tainted commemoration from a public honouring of its target to a public repudiation of its being an appropriate target. A *standing* public repudiation of the tainted commemoration better secures the requirement, which Frowe endorses, of disavowing certain views and behaviour. My earlier discussions can illuminate why this is so. While the *act* of removal constitutes an effective repudiation, the message it sends may be lost over time. This, as I have suggested, is not a problem faced by preserving the tainted commemoration in its

[78] Frowe, 7–10.

vandalised form. Moreover, and as we have seen, vandalism is a way through which activists – including members of marginalised or oppressed groups – can convey their rejection of the authorities and processes leading up to the establishment of the tainted commemoration. The broadened participation of such individuals can count as a way of addressing their historic exclusion – it is also a way of giving victims of wrongdoing what they are owed. If so, it is also valuable on terms that Frowe accepts. Frowe's neglect of this payoff appears to be partly due to her focus on the actions of the state. While it is true that states are 'sometimes uniquely or best situated to discharge certain duties, or express certain sentiments',[79] at other times they may not be so.

Frowe's second claim is that state-sanctioned vandalism typically lacks the expressive power of rebellious vandalism. This statement is all that Frowe says on the issue, and so we have to engage in some speculation of what she might be gesturing to. The idea here is perhaps that illicit acts of vandalism – in virtue of their being illegal or deviant – express a certain attitude of rejection towards the state that would be neutralised if the state endorses it as part of its response. This claim, when stated generally, appears to be plausible. However, whether it is actually plausible for any given act of vandalism would have to depend on the details. Among other things, we need to look at the message that the activist intends to send, to assess whether it is neutralised by state endorsement. The relevant contrast is as follows. Consider, first, an activist who wishes to narrowly repudiate the state's participation in a certain set of behaviour leading up to the establishment of the tainted commemoration, but who does not reject state authority in general. Then, consider an activist who wishes to communicate her rejection of the state on *both* fronts. It is only in the latter case that we may say, plausibly, that the message

[79] Frowe, 14.

conveyed by the activist's act of vandalism is neutralised by state endorsement. In the former, it appears that state endorsement has a beneficial effect. This, as we have seen earlier, is for the state to be (rather than refuse to be) a participant in the endeavour to secure the self-respect of members of formerly oppressed groups. On this issue, then, my response to Frowe is qualified – I grant that my defence of vandalism may not succeed when the vandals are of the latter, rather than the former, type. I note, however, that when our concern pertains to vandals of the latter type, even the removal of *all* tainted commemorations may not suffice. The concerns of such individuals, in virtue of their rejection of state authority in general, go far beyond the concern with tainted commemoration – and thus is not adequately addressed by total removal.

In sum, my proposal survives Frowe's objection, even when we depart from my unique framing of the issue and assess it on her terms.

5 Conclusion

I have undertaken several tasks in this essay. In clarifying the nature of commemoration, I have shown that they may be tainted in more ways than is commonly assumed. I have also clarified the demands of the two dominant yet opposing views about our treatment of tainted commemorations and shown that they are not naive. Finally, I have provided a qualified defence of vandalism; first by showing the deficiencies of existing suggestions about what to do about tainted commemorations, and next by showing how vandalism can overcome them. We should take vandalism seriously as a response to tainted commemorations.

By way of concluding this essay, I wish to briefly consider two issues for further exploration. The first begins with the observation that the most effective ways of responding to tainted commemorations involve significant changes to the use of public spaces or the presentation of commemorations in public spaces. Counter-commemorations, contextualising plaques, and vandalism must be prominently displayed to be properly effective. This, however, may make public spaces *ugly*. Intuitively, this appears to be a significant consideration when we decide how to respond to tainted commemorations. Yet there is little within contemporary political philosophy that allows us to make sense of its weight relative to the more "elevated" considerations, to do with justice, self-respect, history, and so on. Indeed, aesthetic considerations are often not even regarded as relevant to our choice of political response. This neglect may well be a mistake.

Second, and relatedly, the conclusions in this essay do not immediately apply to other tainted objects. This is not a failing, but a result of acknowledging the presence of additional considerations which I have not discussed, and which have the potential to affect our evaluation of how well candidate strategies respond to opposing demands. For instance, there is a question of what we should do about artwork, when they threaten, in some way, the self-respect of certain members. It is argued that the portrayal of women as nude and passive in many artworks is something which helps to sustain a culture that does not regard them as equals,[80] or even that it is a constitutive aspect of such a culture. What should we do about such artworks, including those which are regarded as artistic masterpieces? Our concern with them is not simply historical, but *also aesthetic*. As with

[80] Lynda Nead, *The Female Nude: Art, Obscenity, and Sexuality* (London: Routledge, 1992).

the case of tainted commemorations, the dominant positions about the appropriate treatment of artwork are opposed to each other. Consider the prominent action of Mary Richardson, a suffragette who attacked the *Rokeby Venus* (a painting by Diego Velázquez, housed in the National Gallery in London) with a chopping knife in 1914.[81] This attack was part of a suffragette protest, and other similar attacks followed. Even then, the debates were dominated by those who thought that aesthetic concerns were trivial or irrelevant to what the activists were permitted to do, and those who thought that they were so weighty as to rule out such treatment of artwork. Yet unlike the case of tainted commemorations, the concern with aesthetics is *integrated* into the demands by those who seek to preserve them. Indeed, there is a strong presumption in favour of leaving the artwork as it is, without any modification. Our evaluation of the effectiveness of responses in meeting the demands of the two opposing views will correspondingly change. Different considerations are again involved when we consider tainted commemorative *practices* or *private* commemorations, among other things. Given the heterogeneity and complexity of these phenomena, we should not expect the conclusions about our treatment of tainted commemorations to immediately apply to other tainted objects. Instead, we should take the complexities seriously, and face them head-on.

[81] I discuss another interesting yet tricky aspect of this case, concerning what we may do to such objects on the basis of their relationship to injustice, in another essay in this thesis. See 'The Legitimate Targets of Political Disobedience'.

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In Lieu of A Conclusion

Let me quickly take stock of the discussions in this thesis. The first essay ('*Clarifying Our Duties to Resist*') argues that individuals' duties to resist injustice cannot always be grounded in the same ways in all conditions. Importantly, whether those duties can be grounded on the basis of shared conceptions of moral principles, will have to depend on how those conceptions are articulated. In some conditions, the shared conceptions of moral principles that undergird common institutions and social practices may themselves be flawed. To ascertain whether this is so, philosophers must take seriously the findings of sociologists, among others. Where the conditions in question are in the past, philosophers must take seriously the findings of historians, among others. These findings have important implications for specifying the scope of the philosophical arguments that are made; philosophers should take them seriously.

The second essay ('*Differentiating Disobedients*') argues that the differentiation of morally motivated disobedients from criminals should be reframed. A significant portion of the philosophical discussions on differentiating the disobedient from the criminal have tended to focus on discrete *acts*. Specifically, their aim is to outline the boundaries of morally motivated actions from those which are not. Rather than focus on discrete *acts* of disobedience, I argue that we should instead look holistically at the behaviour of the *individual* in general. Several important implications follow from this reframing. It is more humane and accommodating of imperfect beings like ourselves; it better secures the differentiation of disobedients from criminals; it alters the constituency of morally

motivated disobedients, to include those who are not ordinarily thought to be morally motivated.

The third essay ('*The Legitimate Targets of Political Disobedience*') defends a fine-grained principle that allows us to pick out the legitimate targets of dissidents' political action, when such action is characterised as defensive. According to this principle, legitimate targets are persons or things that are required to bring about the occurrence of an injustice, in contrast with a baseline situation in which that injustice does not occur. On the basis of this principle, we may evaluate a range of concrete cases of political disobedience. In addition to this payoff, another important contribution of this principle lies in addressing the criticism – common in public political discourse – that dissidents should not have directed their political action at *this* or *that* target. This criticism has not been adequately addressed within the philosophical literature. As I have argued, however, there is much more that philosophers can say in response to such criticisms.

The final essay ('*Vandalising Tainted Commemorations*') adjudicates an ongoing public disagreement about how we should treat tainted commemorations – commemorations of people who were responsible for injustice, or commemorations of injustice. Public discourse about tainted commemorations is dominated by two opposing demands, which are often regarded as naive. I argue that the opposing demands are not naive; instead, they are on to something of value. Moreover, we have seen iterations of these opposing demands at various points across history. Given this, I adjudicate the two opposing demands, by identifying and defending a particular treatment of tainted commemorations – constrained vandalism – that satisfies both of them.

We are, however, still a long way from completing the Parthenon (if that is, in fact, what the work that has been done here leads to). There is more work to be done, before the conclusions of the four essays in this thesis can be woven into a systematic philosophical theory. In the concluding section of each of the four preceding essays, I have briefly indicated how the results of the discussions are provisional and have moreover gestured to ways of extending them. In this sense, we see that the columns we have emplaced are few. More will have to be installed in order to bear the weight of overarching beams (which we have yet to find). In this brief concluding note, I wish to briefly identify and consider some pertinent issues for further investigations. As we address these issues (and possibly more beyond), we may move closer to articulating the systematic philosophical theory we seek.

Consider what may come after the conclusion, in the first essay ('*Clarifying Our Duties to Resist*'), that the duty to resist cannot be grounded by shared conceptions of moral principles in conditions where injustice is institutionally entrenched and socially normalised. This conclusion leaves open the possibility that the duty to resist may nonetheless be grounded in something other than those shared principles. Perhaps there may be resources, within their shared form of life, that could do such work. If so, some exploration will have to be undertaken as to their structure and normative force.

We will also need to examine whether activists can *rationally* persuade their audience of their novel conceptions of moral principles. If the answer to this question is in the affirmative, we will have to consider, among other things, whether and how behaviour of activists may augment or abridge the rationality of their persuasion. Our responses to this will have to address the thought – common in philosophical and public discourse – that

certain violent or radical actions are akin to (or are actually) coercion, and thus presumably incompatible with rational persuasion. If the answer to the question of rationality, however, is in the negative, we will have to consider whether and to what extent the non-rational character of the persuasion detracts from the normativity of the claims that may be made on the basis of the novel principles, and from the good that may be done. In answering these questions, we may arrive at (at least part of) a general account of moral or social change (or progress). This account may even allow us to answer, without hand-waving, the age-old question of whether might makes right.

There are also questions following from the claim, in the second essay ('*Differentiating Disobedients*'), that the differentiation of morally motivated disobedients from common criminals has to be reframed. One obvious question concerns whether this conclusion should lead us to revise (and, if so, to what extent) our attitudes – in social critique and in legal punishment – towards political disobedients when we judge that their disobedience is undergirded by sincere and serious moral convictions. Some of the work that is already being done, concerning the justifications for punishing political disobedients, may be fruitfully brought to bear on this question.

There are also important and hitherto under-examined questions about the nature of the constraints on political disobedients' behaviour, when the evaluation of their conscientiousness is to be done holistically. What kinds of behaviours are relevant? Which of those should we consider? For instance, in what domains should we consider their actions – must we examine only public behaviour, or may we scrutinise private ones? How should we balance our concern with the privacy of political disobedients with our interest in securing their differentiation from common criminals? What principled – rather

than intuitionistic – ways might there be of determining when (and whether) any given act pushes a political disobedient below the threshold (on the basis of which we may wish to excuse her disobedience, or at least tolerate it)? These questions have to be addressed in order to secure the essay's attempt to reframe our discussions about political disobedience.

Consider, now, the third essay ('*The Legitimate Targets of Political Disobedience*'), which identifies and defends a principle that allows us to make fine-grained differentiation of what political disobedients can legitimately target. Securing the rationality (or reason-guided character) of political disobedience leaves open many issues. For one, what is the normative weight of the claim that a particular thing is a legitimate target, relative to other considerations? The reason-guided character of political disobedience may not amount to much, if it turns out that the considerations of proportionality, necessity and effectiveness are almost always overriding – and thus conclude against engaging in any disobedience. On this issue, the ongoing philosophical discussions about the justifications and limits of actions in war, defensive harming, or risk imposition may be helpful.

There are also questions arising from what political disobedients can legitimately target, when the shared conceptions of justice that undergird common institutions and social practices do not allow them to conclude that certain states of affairs as unjust – and thus do not allow them to pick out the things that contribute to them as legitimate targets. The conclusions of our discussions in and following from the first essay will have implications for how we address this issue. There are further questions about what we can do when we are faced with reasonable disagreements about whether a certain state of affairs is unjust,

or with epistemic difficulties with determining whether any given thing contributes to a given state of affairs. The principle will have to be extended or revised if it is to provide guidance in light of these difficulties.

The claim, in the final essay ('*Vandalising Tainted Commemorations*'), that constrained vandalism of tainted commemorations can constitute a plausible and effective way of adjudicating the opposing claims of the two dominant views on the issue, also invites further questions. Pursuant to our discussions so far, some of these questions are obvious. One concerns how seriously we should take the conclusion that constrained vandalism is effective at adjudication. For we may find that we have a greater interest in defending the values that have been identified by the proponents of one view, rather than those which have been identified by those of the other. This unsettles the motivation for the adjudicative strategy. However, the fact that we have greater interests on one side does not conclusively settle the issue – there may nonetheless be good political reasons for adopting the adjudicative strategy anyway. That is, there may be reasons for compromise. Another question concerns how we should weigh adjudicative effectiveness against the considerations that are salient in harm imposition – concerning proportionality and necessity, and so on. Furthermore, there are questions about whether vandalism that fails to meet the constraints of communicativeness may nonetheless – in light of the discussions in the second essay – satisfy the desiderata identified by the adjudicative strategy.

There is also a further question of the stability of the conclusion of the adjudicative strategy. Importantly, we have to consider what we should think and do when people's views change. It may well turn out that once the adjudicative strategy is fielded, the

adherents of the two opposing views strengthen their claims *in response*. In such a case, we have to decide whether we should restart the adjudicative strategy anew, or if we should argue against their reformulation of their views – thus taking a stance on what is reasonable for them to claim. If the latter, a question also arises as to whether taking such a stance is compatible with the initial motivation for adopting the adjudicative strategy.

These further issues are numerous, and some of them are a long way from being addressed. As I hope should be clear, it is still too early to tell whether the structure that we are building is complete when these questions are addressed, and whether it possesses the order and symmetry of the Parthenon.