Civil Disobedience: A Reasonable Polemic

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Abstract

I offer herein a productive critique of fifty years of liberal orthodoxy on the question of civil disobedience, at a time when the spirit of dissent and resistance is — after the relative quiet of the 1990s — once again in the air.

This fiftieth anniversary critique has two principal targets:

First, the endemic idea of the praxis of civil disobedience itself, forged in the civil rights ferment of the US 1960s, and then carried over by successive generations of normative political theorist to the archetypal dissident concerns of subsequent decades. This vision of disobedient activism — viz. as a distinctively and exclusively *rhetorical and symbolic* form of political engagement (rather than anything more red-blooded) — is, I claim, largely fictitious. A sustained examination of the historical record — one paying particular heed to civil rights activism, the peace movement, the anti-poll-tax resistance, and disobedient environmentalism of all stripes — reveals that this ubiquitous academic idea of civil disobedience possesses little historical life, and, in particular, that the most impressive disobedient episodes of the twentieth and twenty-first centuries exist well outside its ambit.

With that backwards-looking judgement in hand, I go on to assess the prospects for liberal civil disobedience construed (counterfactually) not as an account of civil disobedience at it has been conducted hitherto, but as a moral model for its conduct henceforth. My conclusions on this front are no more encouraging: our world departs so drastically from the reason-governed circumstances presumed in the liberal body of work that this vision of civil disobedience must be judged a truly vain hope.

These verdicts together establish the first of my twin critical judgements in this thesis: that five decades of liberal theory on the question of civil disobedience have revolved around an abstraction, one bearing no useful relation to our real political predicament and to the activism that we do or might find in it.

My second charge has a still wider scope: it concerns not the endemic idea of civil disobedience itself, but the underlying project of thinking normatively about protest, disobedience, and resistance. I argue in this connection that the same sordid political reality that pushes really-existing activism beyond the conciliatory and strictly rhetorical bounds of the liberal vision, and which guarantees that disobedience after the liberal fashion will not find a foothold in our society, also demands the abandonment of the traditional normative theoretical agenda. The questions that have orientated and motivated the liberal engagement since the beginning — 'is political lawbreaking justified?'; and, 'if so, how ought the state to treat it?' — are, in our world, theoretically mundane at best, and quietist and diversionary at worst. They are a distraction from the repressive and congenitally unjust situation in which we find ourselves, and from what are the only urgent questions that this situation brooks: what is to be done? And what value is there in what we do?

If we theorists of dissent cannot speak to these themes, I remark by way of final conclusion, then we ought not to speak at all.

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Introduction

It is fifty years now since Martin Luther King, Jr. was shot dead on a motel balcony in Memphis. It is just over fifty years since the civil rights legislation that he and his movement struggled for was signed into law, and since that groundswell of disobedient opposition merged with and was transformed by the wider antiwar unrest. And now, after the relative quiet of the 1990s, the spirit of dissent and disobedience is once again in the air. The twenty-first century has brought the largest street demonstrations ever seen in the modern West, new and kaleidoscopic resistance to the discontents of the globalised economy, novel forms of public occupation taking root in the interstices of the world's financial capitals, urban riots breaking out across the UK, armed reactionaries seizing federal lands in Oregon, thousands of people obstructing oil pipelines in the US-Canadian borderlands; Black Lives Matter, civil disorder in Ferguson, 'woke' activism going mainstream, and a broader re-awakening of radical racial consciousness in the US and UK; school walkouts over gun control, congressional members sitting in on the House floor, disabled occupations of GOP Senate offices, anti-deportation actions worldwide, massive wildcat teacher strikes in West Virginia and Oklahoma; a sharp rise in far right activism, intensified anti-fascist action in reply; *gilets jaunes* paralysing France, climate change roadblocks bringing central London to a halt.

These, then, are dissident times. And so the conditions are ripe for a thorough re-evaluation of the academic consensus on that dissident category *par excellence* — civil disobedience. That is my project here: a fiftieth anniversary critique of political theory orthodoxy on the question of civil disobedience, one laying bare that — far from having the matter well in hand — we have for five decades been parsing and probing an abstraction.[1] This academic consensus — this dominant theoretical tendency in Anglo-American political philosophy — sheds no normative light on the problem and political phenomenon of extra-legal activism, nor the social world that gives rise to it and against which it reacts.

[1] Fiftieth anniversary not only because five decades since the high peak and then ebb of disobedient activism in its prototypical modern form, but

The 'Liberal View'

At the price of leaving the nature and shape of my arguments opaque for now, I should like to begin with an extended introduction to the academic consensus that is their object — what I call the 'liberal view'. This orthodox impression of civil disobedience — and indeed, the pre-eminent place of civil disobedience in the pantheon of 'non-ideal' fields of inquiry — grew up in the boiling ferment of the US 1960s, when, precipitated by actions of the civil rights and antiwar movements, the problem of political lawbreaking became a national philosophical obsession.[2] The various views of that time — most of them largely unknown to posterity and seldom cited now — suffused and were synthesised in John Rawls's work at the turn of the decade, which set down for all time the canonical substance and bounds of the academic inquiry into civil disobedience.[3] A substance and bounds that

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[2] The dense thicket of liberal engagements spanning this tumultuous period includes (by no means exhaustively): Hugo Adam Bedau, 'On Civil Disobedience', *Journal of Philosophy* 58:21 (1961): 653-665; Stuart M. Brown, Jr., 'Civil Disobedience', *Journal of Philosophy* 58:22 (1961): 669-681; Harry Prosch, 'Limits to the Moral Claim in Civil Disobedience, *Ethics* 75:2 (1965): 103-11; and his 'Towards an Ethics of Civil Disobedience', *Ethics* 77:3 (1967): 176-192; Darnell Rucker, 'The Moral Grounds of Civil Disobedience', *Ethics* 76:2 (1966): 142-145; Leslie J. Macfarlane, 'Justifying Political Disobedience', *Ethics* 79:1 (1968): 24-55. Ronald Dworkin, 'On Not Prosecuting Civil Disobedience', *New York Review of Books* (6 June 1968), reprinted in his *Taking Rights Seriously* (Cambridge, MA: Harvard University Press, 1977); W. T. Blackstone, 'Civil Disobedience: Is it Ever Justified?', *Georgia Law Review* 3:4 (1969): 679-703, and his 'The Definition of Civil Disobedience', *Southern Journal of Philosophy* 8:2 (1970): 233-249; Rex Martin, 'Civil Disobedience', *Ethics* 80:2 (1970): 123-139; Michael Bayles, 'The Justifiability of Civil Disobedience', *Review of Metaphysics* 24:1 (1970): 3–20; Carl Cohen, 'Defending Civil Disobedience', *Monist* 54:4 (1970): 269-487, and his *Civil Disobedience* (New York: Columbia University Press, 1971).

It is a measure of the depth of this national philosophical obsession that, as Sarah Conly observes in an editorial retrospective on the first hundred years of *Ethics*, civil disobedience was the journal's defining theme in the 1960s. [Sarah Conly, '*Ethics* 1965-1990', *Ethics* 125:4 (2015): 1114-1118]. And it is a measure of its generative significance that, as Katrina Forrester argues, it spurred the advent of normative political theory as we know it today — moving the discipline on from the dry meta-ethical discussion that had typified it in previous decades, towards a confrontation with the interrelated practical and quasi-practical issues that remain core preoccupations of contemporary political philosophers: state legitimacy, political obligation, and the demands of justice. [Katrina Forrester, 'Citizenship, War, and the Origins of International Ethics in American Political Philosophy, 1960–1975', *The Historical Journal* 57:3 (2014): 773-801]. For more on these origins see e.g. Mark Bevir and Andrius Galisanka, 'John Rawls in Historical Context', *History of Political Thought*, 33:4 (2012): 701-725.

[3] I refer here to Rawls's 'The Justification of Civil Disobedience', in Hugo A. Bedau ed., *Civil Disobedience: Theory and Practice* (New York: Pegasus, 1969): 240-255; and especially to his *Theory of Justice* (Cambridge, MA: Harvard Belknap, 1971), §§55-59. Note that while I give the period-accurate citations here, all subsequent references to 'Justification of Civil Disobedience' and

successive generations of political theorist would then carry forward, albeit with some modification, to the new disobedient frontiers and defining dissident campaigns of subsequent decades — to the peace movement, to environmental disobedience, to anti-abortion activism, to animal rights direct action, and to the anti-globalisation front.[4]

Now, the agenda formalised by Rawls in the crowning moment of this period of fevered philosophical commentary reduces the issue of civil disobedience to three basic and sequential problems: the preparatory conceptual question of what civil disobedience is, and how it may be distinguished from ordinary crime, lawful protest, and radical or revolutionary activity.[5] And thereafter the real meat: the normative

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Theory of Justice are to John Rawls, 'The Justification of Civil Disobedience', in Samuel Freeman ed., *John Rawls: Collected Papers* (Cambridge, MA: Harvard University Press, 1999): 176-189; and John Rawls, *A Theory of Justice: Revised Edition* (Cambridge, MA: Harvard Belknap, 1999).

[4] On the peace movement, see e.g. Ronald Dworkin, *A Matter of Principle* (Cambridge, MA: Harvard University Press, 1985), 108-116; Robert Goodin, 'Civil Disobedience and Nuclear Protest', *Political Studies* 35:3 (1987): 461-466; and Rodney Barker, 'Civil Disobedience as Persuasion: Dworkin and Greenham Common', *Political Studies* 40:2 (1992): 290-298. On environmental disobedience, see e.g. William Smith, 'The Boundaries of a Deliberative System: The Case of Disruptive Protest', *Critical Policy Studies* 10:2 (2016) 152-170, 164-185; and his 'Civil Disobedience and the Public Sphere', *Journal of Political Philosophy* 19:2 (2011):145-166, 159-161. On anti-abortion and animal rights activism, see Kimberley Brownlee, *Conscience and Conviction* (Oxford: Oxford University Press, 2012), esp. Chapter One. And on anti-globalisation activism, see e.g. Daniel Markovits, 'Democratic Disobedience', *Yale Law Journal* 114:8 (2005): 1897-1952, 1940-1952; William Smith, 'Democracy, Deliberation and Disobedience', *Res Publica* 10:4 (2004): 353-377, 370-373; 'Policing Civil Disobedience', *Political Studies* 60:4 (2012): 826-842, 834-836; 'Boundaries of a Deliberative System', 167; and his 'Public Sphere', 158.

[5] Stuart M. Brown, Jr., for instance, announces the conceptual priorities of a theory of civil disobedience thusly: 'Acts of civil disobedience must be distinguished both from typical cases of crime and from acts of civil rebellion.' ['Civil Disobedience', 670]. Similarly (and perhaps somewhat obviously), Ronald Dworkin remarks that 'Civil disobedience ... is very different from ordinary criminal activity motivated by selfishness or anger or cruelty or madness. It is also different — and this is more easily overlooked — from the civil war that breaks out within a territory when one group challenges the legitimacy of the government or of the dimensions of the political community.' [*Matter of Principle*, 105]. And Rawls observes, in much the same vein, that civil disobedience properly falls between 'legal protest and the raising of test cases on the one side ... and the various forms of resistance on the other' ... [it is] 'far removed from organised forcible resistance', and 'clearly distinct from militant action and obstruction'. *Theory of Justice*, 322. Kimberley Brownlee, meanwhile, avers that 'conscientiousness is an important notion that identifies a motivational difference between ordinary offending, on the one hand, and practices such as civil disobedience and personal disobedience, on the other. Whereas ordinary offenders are not conscientiously motivated in any deep sense, people who engage in civil disobedience or personal disobedience typically are or think they are'. And at the other end of the spectrum, she distinguishes civil disobedience from 'radical' actions, which latter 'protests are those acts of illegal dissent, including serious coercive violence, organized forcible re-

question of when, if ever, this variety of political engagement is permissible or protected by right (given the presumptive obligation to obey the law, and hence at least the pro tanto wrong of lawbreaking);[6] and — civil disobedience's moral propriety having been secured — the secondary normative question of how it ought to be treated by the state authorities and the social mainstream.[7]

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sistance, militant action, intimidation, and terrorization, that also aim to communicate condemnation of policy, but lack the constrained conscientious communicativeness of civil disobedience'. *Conscience and Conviction*, 18; 24.

[6] Writes David Lefkowitz, representatively: 'In a state without justifiable claim to political authority, civil disobedience in itself presents no moral difficulty … no moral significance attaches to the mere fact that it involves disobedience to the law.' But in states *with* 'justifiable claim to political authority … civil disobedience at least appears to conflict with this duty [i.e. to obey the law] and so is morally problematic in itself and independent of other moral considerations that may bear contingently on any particular act of civil disobedience' — for instance whether 'the act in question directly harms innocent third parties'. ['On a Moral Right to Civil Disobedience', *Ethics* 117:2 (2007): 203-233, 205]. In the same vein, Rawls puts it that: 'the problem of civil disobedience … arises only within a more or less just democratic state for those citizens who recognise and accept the legitimacy of the constitution' … 'the difficulty is one of a conflict of duties'. [*Theory of Justice*, 319; and cf. 'Justification of Civil Disobedience', 176-177]. Kimberley Brownlee, meanwhile, starts from the assumption that — regardless of any instrumental considerations — civil disobedience is *prima facie* objectionable in itself because activists 'improperly arrogate to themselves licence to disregard laws by which others hold themselves to be bound', and thereby demonstrate 'disrespect for other citizens who have exercised their judgement in making the laws in a fair, deliberative, and democratic way'. [*Conscience and Conviction*, 157]. In this connection see also Markovits's pithier framing of the issue — viz. that 'political disobedience in a democracy carries a taint of autocracy' ['Democratic Disobedience', 1898]; Dworkin's rendering of the problem as one involving a distasteful 'elitism or paternalism' — i.e. an 'attack' on the principle of majority rule [*Matter of Principle*, 111]; Smith's claim that civil disobedience 'stands in need of justification in a democratic society because it goes against the moral requirement that citizens comply with democratic institutions' ['Public Sphere', 145]; and Rex Martin's succinct gloss on the foregoing qualms: viz. that 'a good citizen in a continuing democracy will not disobey a democratically derived law; if he does, he is not acting like a good democrat'. 'Civil Disobedience', 129.

[7] As Goodin has it: 'the practical point of a theory of civil disobedience is to convince those whom we concede may legitimately make the laws that they have made that it is nonetheless legitimate for us to disobey those laws.' ['Nuclear Protest', 461]. Similarly, Ronald Dworkin identifies a 'working theory' of civil disobedience as one serving the practical purpose of legitimising civil disobedience in the eyes of the squeamish majority. [*Matter of Principle*, 106]. I call this — this will to carve out for civil disobedience a legitimate niche in the public culture — the 'project of reconciliation', and it is my sole critical target in Chapter One. At this introductory stage, however, we need only note that — practically speaking — theorists have tended to pursue this project (and thereby give an answer to the normative question of how civil disobedience ought to be treated by the state authorities) by means of defending an enforceable moral right to civil disobedience (that is, one correlating with a state duty to permit, or even abet, civilly disobedient demonstrations). Such rights figure centrally in, for instance: Rawls, *Theory of Justice*; Dworkin, *Taking Rights Seriously*; Brownlee, *Con-*

I will not at this introductory stage delve much into the canonical answers to the latter — moral — questions (after all, and as will become transparent shortly, I object to them as questions). But we must linger a while on the first — conceptual — question. Theorists have — since and before Rawls — perceived civil disobedience as that form of political engagement lying at the middle point between lawful protest and militant uprising. And they have then parlayed this commonsense observation — i.e. that civil disobedience is markedly more radical than lawful protest, but considerably less radical than, say, the wildcat strikes of the IWW or the bombings of the Weather Underground — into a very definite specification: properly understood, civil disobedience is a species of reform-advocating political speech, one constituted (or at least underlined) by the symbolic breach of law.[8] This is, in other words, a vision of civil disobedience as, variously, a 'form of communication' and means of 'express[ing] opposition to law and policy';[9] a 'mode of address' and species of 'advocacy';[10] a 'microphone' for activists to 'voice their views' and to 'communicate [their] condemnation of a law or policy'.[11] And, crucially, this is a vision of civil disobedience as strictly discursive or rhetorical in nature[12] — a shared idea of

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science and Conviction; Daniel M. Farrell, 'Paying the Penalty: Justifiable Civil Disobedience and the Problem of Punishment', *Philosophy & Public Affairs* 6:2 (1977): 165-184; Vinit Haksar, 'The Right to Civil Disobedience', *Osgoode Hall Law Journal* 41:2 (2003): 407-426; David Lefkowitz, 'On a Moral Right'; Smith, 'Policing Civil Disobedience'; and A. D. Woozley, 'Civil Disobedience and Punishment', *Ethics* 86:2 (1976): 323–31.

[8] As Raz has it: civil disobedience is distinguished from the other rhetorical or discursive forms of political engagement — letter-writing and lawful demonstrations, for instance — by its using the violation of law '*as a means*'. The idea here being that civil disobedience is not merely *illegal*, but that its discursive, expressive, rhetorical work is done *by* the breach of law — that it is the breach of law itself that generates civil disobedience's verbal-symbolic charge. [Raz, *The Authority of Law* (Oxford: Clarendon, 1979), 265]. I refer to this idea hereafter as the breach of law '*per se*', and this panliberal commitment — viz. that lawbreaking itself is the source of civil disobedience's power — is something I will often have occasion to push back against.

[9] William Smith, 'Democracy, Deliberation and Disobedience', 375; and 'Policing Civil Disobedience', 826.

[10] Rawls, *Theory of Justice*, 366; Lefkowitz, 'On a Moral Right', 204. See also here Raz's more allusive, though still thoroughly discursive, definition of civil disobedience — i.e. as 'a social statement that seeks to induce change'. Raz, 'Bound by their Conscience', *Haaretz*, 31 December 2003.

[11] Brownlee, 'Reply to Critics', *Criminal Law and Philosophy* 10:4 (2016): 721-739, 735; *Conscience and Conviction*, 18.

[12] The Rawlsian synthesis I mentioned above was, in this vital respect, more of a genesis. Rawls himself claims to be carrying over and developing Hugo Bedau's earlier definition of civil disobedience [*Theory of Justice*, 320 n.19]. But while he does indeed carry over the broad outline of Bedau's concept — including its typological insistence on civil disobedience's illegal, public, and nonviolent nature — he also, and seemingly unwittingly, narrows it substantially: Rawls does not carry over Bedau's more militant no-

civil disobedience as never offering inducements more forceful than argument or moral appeal, and certainly never stooping so low as to coerce the state authorities one way or the other.[13]

In this light, then, and to circle back to the typological problem described above, civil disobedience's middle-point character is revealed: it is more radical than lawful protest, because illegal; but significantly less radical than militant or revolutionary action, because never going further than protest — because never stepping into the territory of coercion, and in this way signalling a rejection of the political process as such.[14] The alloy thereby reached: civil disobedience is —

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tion of civil disobedience's possible *ends* — in particular, that it may aim not only for 'propaganda' (i.e. discursive) effect, but also to 'frustrate' the application or enforcement of a detested law. [See Bedau, 'On Civil Disobedience', 656-657]. In any event, it is too early in the thesis to get into the weeds in this way, and I broach the subject here simply to clarify an odd exegetical fact: that the endemic concept of civil disobedience as an essentially discursive endeavour *originates* in Rawls, even though he himself claims merely to be carrying over and developing an earlier notion of civil disobedience. For more on the historical origins of liberal civil disobedience as a form of political speech, see Jennifer Welchman, 'Is Ecosabotage Civil Disobedience?', *Philosophy & Geography* 4:1 (2001): 97-107; esp. 99-102.

[13] See, for instance, Rawls's distancing of civil disobedience from the various forms of 'obstruction', and his verdict that 'while it may warn and admonish, it is not itself a threat'. [*Theory of Justice*, 322]. And see also Brownlee's stipulation that 'civil disobedients *aim rationally to persuade* their hearers of the merits of their causes. To aim to *coerce* authorities and society rather than to persuade them would be to treat them as *less than fully autonomous beings* to whom disobedients could make a reasoned defence of their view. If disobedients are to claim legitimately that they endeavour to engage in moral dialogue, their modes of communication must aim to respect the autonomy of their hearers as rational beings capable of responding to the reasons they believe they have to challenge current policy.' [*Conscience and Conviction*, 221, my emphasis]. Also see Smith's position that civil disobedience '*eschews the aim of coercing* a majority into reversing a decision and *instead aims to instigate or contribute to deliberation* through the presentation of an *argument* to the public' ['Public Sphere', 163, my emphasis]; and cf. the view due to Lefkowitz, viz. that: 'disobedience must also be non-coercive. Those who engage in such acts must display their commitment to the equal authority of all citizens to determine what the law ought to be and so must refrain from usurping this authority by coercing the state into abandoning or adopting certain policies'. ['On a Moral Right', 216].

Now, for the sake of transparency in the identification of my targets here, I must acknowledge that Dworkin (and Bedau, as I mentioned in the note above) allow at least *some* room for a non-discursive — even coercive — civil disobedience. I discuss these views in isolation at my §5.1, but at this stage note that neither theorist dissents from the underlying liberal normative project — i.e. that of determining civil disobedience's moral permissibility and proper treatment by the state authorities, given the presumption of political obligation and the democratic legitimacy of existing law. See Dworkin, *Matter of Principle*, 109-112; and Bedau, 'On Civil Disobedience', 656-657.

[14] For most liberal theorists this is not the only difference between civil disobedients and radical activists. Indeed, an attitudinal corollary is usually proposed — viz. that civil disobedients, unlike radical activists, sincerely

in virtue of its strictly discursive, argumentative form — consistent with the lawful apparatus of liberal democracy, but — because illegal — a more potent means of intervening in it.

That is the distinctive core of the liberal concept. And yet with this abbreviated exegetical review I have touched only on the consensus idea of civil disobedience's form — i.e. as an essentially discursive or rhetorical enterprise. But what this activism does — functionally — is also a matter of universal agreement among liberal theorists of civil disobedience, and with my allusion above to its comparative potency as a medium of political speech, I have hinted at it: the disobedient activist's dramatic communiqués serve to revivify the public moral conversation on hitherto neglected issues, helping to bring about a democratic re-litigation of dubious policy, and thereby to secure a change in the law.[15] Civil disobe-

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accept and endorse the legitimacy of the prevailing social-political order. This is what Rex Martin alludes to when he writes, pithily, that the civil disobedient is 'in opposition to society but not above it' ['Civil Disobedience', 136]. And it is the view that Robert Goodin takes when he judges that 'unlike political dissidents of a revolutionary cast, the civil disobedient's principled disagreement with the law is not so thoroughgoing as to delegitimate for him the entire system of law and policy-making. [Goodin, 'Nuclear Protest', 462]. Rawls, for his part, expresses much the same idea in his lengthier characterisation of militant activism — viz. that '[t]he militant … is much more deeply opposed to the existing political system [than is the civil disobedient]. He does not accept it as one which is nearly just or reasonably so; he believes either that it departs widely from its professed principles or that it pursues a mistaken conception of justice altogether. While his action is conscientious in its own terms, he does not appeal to the sense of justice of the majority (or those having effective political power), since he thinks that their sense of justice is erroneous, or else without effect. Instead, he seeks by well-framed militant acts of disruption and resistance, and the like, to attack the prevalent view of justice or to force a movement in the desired direction.' *Theory of Justice*, 322-323. To be clear, I mention all of this for reasons of exegetical comprehensiveness: my preoccupation in this thesis is not so much what disobedient activists *believe* (though, as we shall see in Chapter Three, they take more or less the Rawlsian 'militant' view of the situation), but rather what they *do*. In other words: my concern here is activist strategy, rather than activist ideology.

[15] As Dworkin has it: civil disobedience's role is to 'force the majority to listen to arguments against its program, in the expectation that the majority will change its mind and disapprove that program'. [*Matter of Principle*, 109]. In the same vein, David Lefkowitz models civil disobedience as a *continuation* of the ordinary democratic deliberations after the votes are in — as a second bite of the argumentative cherry for those 'who may justifiably claim that, had there been further time for debate and deliberation, or had they enjoyed greater resources for the dissemination of their arguments, their own (reasonable) views might have won majority support.' ['On a Moral Right', 213]. William Smith, meanwhile, conceives civil disobedience specifically as a method of 'deliberative contestation' — a way of gaining representation for views and arguments unfairly ignored in the ordinary political apparatus, and of 'securing publicity for oppositional arguments and [thereby] activating counter-inertial deliberation'. In other words: civil disobedience on his view 'aims to instigate or contribute to deliberation through the presentation of an argument to the public'. ['Public Sphere', 160-161, my emphasis]. And Daniel Markovits, for his part, describes civil

dience is, in other words, and so the story goes, a kind of edifying stimulus for dysfunctional liberal democratic regimes, one that might inspire a sufficient mass of the ordinary voting population (or legislators directly) to take action in the service of reform.

This, then, is the common core of the liberal view and the basic idea of civil disobedience upon which I offer judgement in this thesis: civil disobedience as a strictly and essentially discursive endeavour — a vital form of political speech, one leveraging the symbolic breach of law in order to shine a spotlight on the views of marginalised constituencies, confront society with arguments of principle hitherto neglected in the public conversation, and through this to force a democratic reexamination of the legislative settlement in ways that might remedy any intentional or accidental failures in the representative apparatus of state.

Yes, that is the common core of the liberal view. And yet I must be careful not to imply that there has been perfect unanimity among liberal theorists. Indeed, and if I might extend these exegetical introductory remarks, there has been for five decades a thriving debate on two broad fronts: intramural skirmishes concerning the precise form of the civilly disobedient discursive intervention; and then a deeper pluralism about civil disobedience's preeminent value. Thus, on the former side, we find universal acceptance of the idea of civil disobedience as a non-coercive, discursive, didactic breach of law, but substantial division on the propriety of particular descriptions or prescriptions — for instance, those having to do with whether civil disobedience should be carried out in full view of the public, or whether it may sometimes be a clandestine activity; with whether civil disobedience may target only state laws or policies, or whether it may also target the policies and directives of private agencies (universities, for instance, or corporations); with whether civil disobedience is a strictly nonviolent phenomenon, or whether it may also involve non-coercive violence against property; with whether civil disobedients should accept willingly the penalty for their breach of law, or whether they may legitimately seek to avoid it (for instance by fleeing the scene and refusing to turn themselves in); with whether activists must adopt merely reason-giving, didactic tactics, or whether they should also

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disobedience's political function in similarly pro-deliberative terms: '[the aim is to] initiate a process of sovereign reengagement with an issue concerning which the political system, at the moment, stands in democratic deficit … to overcome not a particular policy but the inertial institutions that prevent a democratic sovereign from taking up an issue by excluding considerations essential to the issue from the popular or legislative agenda.' This is, in other words, a vision of civil disobedience as 'expand[ing] the space of political options and, therefore, destabiliz[ing] political debate'. 'Democratic Disobedience', 1940.

strive for an affective attitude of democratic respect and reciprocity towards those whom they oppose (and so on).[16]

And on the deeper moral pluralism, meanwhile, we find not so much a healthy back and forth (for this is no war of comprehensive doctrines), but rather a mutually respectful diversity of views about what is civil disobedience's bedrock moral salience — the precise reason for which we ought to prize its debate-firing power. Such views range from Rawls's unusually drastic notion that civil disobedience's discursive intervention may make good on the natural duty of justice by heading off open rebellion and thereby stabilising the state,[17] to more prosaic defences of civil disobedience rooted in its broad-spectrum stimulant effect on the public moral discussion — for instance, those valuing that stimulation for its rendering the eventual political settlement more authentically the product of the demos's will, hence more legitimate in the distinctively republican sense;[18] or for its helping to create and

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[16] On civil disobedience as a necessarily public endeavour, see e.g. Rawls, *Theory of Justice*, 320; and Brown, Jr., 'Civil Disobedience', 670-671. For counter-arguments that it may on occasion be conducted under a veil of secrecy (so as to avoid pre-emptive arrest), see e.g. Brownlee, *Conscience and Conviction*, 23; and Brian Smart, 'Defining Civil Disobedience', *Inquiry* 21:1 (1978): 249–269. On civil disobedience as (by definition) targeted only against *state* laws or policies, see e.g. Raz, *Authority of Law*, 264. For a case that it may also target the policies and directives of private agencies, see Brownlee, *Conscience and Conviction*, 19. On civil disobedience and the legitimacy of non-coercive violence (i.e. that against property), see e.g. Raz, *Authority of Law*, 267; Brownlee, *Conscience and Conviction*, 148-158; and Lefkowitz, 'On a Moral Right', 216. On whether civilly disobedient activists must accept the penalty for their offences, see (in the affirmative) e.g. Rawls, *Theory of Justice*, 322; and Martin, 'Civil Disobedience', 132-135. For arguments to the contrary, see e.g. Dworkin, *Matter of Principle*, 114-115; and Brownlee, Conscience and Conviction, 2-8. Finally, on the alleged affective and attitudinal concomitants of civilly disobedient activism, see the lively debate in Brownlee, 'Reply to Critics', §3.

[17] For Rawls, civil disobedience is specifically a last-resort mode of address, one through which a trodden-on minority might sound a kind of emergency klaxon intended to pull society back from the brink. Indeed, Rawls's view is that protracted violations of the 'conditions of social cooperation' must inevitably invite 'either submission or forceful resistance'. Civil disobedience, in his estimation, 'forces the majority to consider whether it wishes to have its actions construed in this way [i.e. as inviting submission or resistance], or whether, in view of the common sense of justice, it wishes to acknowledge the legitimate claims of the minority'. [*Theory of Justice*, 321]. I note here that Vinit Haksar endorses Rawls's view more or less in its entirety, adding only a more definite idea of the defence's practical implications — viz. that 'a just constitution ought to recognise the right to civil disobedience either explicitly in writing or at least in the way it is interpreted by judges and other state officials', such that 'civil disobedients should not be prevented from breaking the law … [and] 'when they break the law, they have a claim to no punishment or reduced punishment'. Haksar, 'The Right to Civil Disobedience', 408.

[18] Daniel Markovits's republican defence of civil disobedience is founded on the idea that every democratic system has a pathological tendency to generate deficits in representation — i.e. that such democratic gaps are the

sustain robust public deliberations of the kind upon which the legitimacy of a deliberative democratic polity depends.[19] Still other theorists, meanwhile, defend civil disobedience for simple consequentialist reasons — i.e. in virtue of its power to end or ameliorate deleterious states of affairs.[20] And still other theorists defend this form of unlawful political engagement not for its system-level benefits at all (whether of stabilising or democratising or ameliorating the society), but rather as an extension or corollary of the citizen's ordinary right to political participation.[21]

Now, before I bring this exegetical commentary to a close, there is one last — and much broader — aspect of this pluralism to draw out here. A minority tendency, what I call the 'cathartic view', though it accepts the pro-democratic picture just described (and indeed, greatly values civil disobedience's deliberation-boosting powers on substantially Rawlsian lines), justifies civil disobedience for a quite different set of reasons — those having to do with its person-centric value as a self-expressive and integrity-preserving outlet for conscientious moral conviction.[22] In other words, where the great

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'inevitable and intrinsic concomitants of the very mechanisms that make democratic sovereignty possible *tout court*'. Building thereon, he argues that 'as the inertial mass of democratic politics grows … the need for disobedient shocks to improve democracy tends also to grow.' Markovits, 'Democratic Disobedience', 1903; 1937.

[19] I refer here to William Smith's defence of civil disobedience (from a deliberative democratic perspective) as a form of 'deliberative contestation' — one exercising a remedial influence on political systems wherein 'processes of public deliberation fail to respect the principles of a deliberative democracy', as when 'deliberation is insufficiently inclusive … manipulated by powerful participants … [or] insufficiently informed'. Smith, 'Democracy, Deliberation and Disobedience', 354-355.

[20] See for instance W.T. Blackstone's defence of civil disobedience in terms of the socially beneficial effects of its 'calling public attention to the unjust or iniquitous character of certain laws through the disturbance and arrests required to enforce those laws'. [Blackstone, 'The Definition of Civil Disobedience', 233]. And see also Daniel M. Farrell's comparably consequentialist case — viz. that civil disobedience is justified under some version of the right of necessity (i.e. as instrumental to the avoidance of a greater harm). Farrell, 'Paying the Penalty', esp. §§II-III.

[21] That is Lefkowitz's view: the right to civil disobedience grows out of the familiar right of political participation (in this case given a contractualist reading). That familiar right of participation is alleged, on closer inspection, to decompose into two distinct rights — a right to participate in the democratic decision procedure, and a right to contest such decisions after the fact. It is under this latter right that civil disobedience is justified, in combination with the general principle that 'potential barriers to [people's] exercise of this right be diminished as much as possible'. 'On a Moral Right', 215; and see more generally §§III-IV.

[22] Brownlee's 'conviction-driven' civil disobedience is the main exemplar of this genre, though it features centrally in the work of Darnell Rucker, and also (if peripherally) in the accounts of Dworkin and Raz. I devote the entirety of Chapter Two to a critical dissection of this variant liberal tendency, and so I leave the exegesis seriously abbreviated here. See Brownlee,

bulk of the liberal tendency values civil disobedience for its political effects (whether at the level of the system, or as a mechanism of individual political engagement), this minority tendency values it chiefly for its personal effects — for its role in confirming and developing the activist's sense of moral self-harmony.[23]

In any event, we are at risk of getting bogged down here, and I hope that this will suffice for an exegetical introduction to the academic consensus on civil disobedience. The fine details of its constituent accounts will become transparent as we go on, and what matters at this early stage is only to gain a robust (if rough) picture of the perspective that I take issue with here — the core, universal commitments of the liberal body of work.[24] And, as I have just suggested, while there has been protracted debate on precisely what form the disobedient discursive intervention may take (whether clandestine, whether violent, whether accepting of punishment, and so on); and while there has been a pluralistic difference of opinion on the proper moral justification for breaching the law to so intervene (whether the natural duty of justice, or the principle of deliberative democracy, or the demands of republican or contractualist concepts of state legitimacy, or the signal personal benefit of breaking the law for the sake of one's own conscience), there has been no dissensus on the ABCs of civil

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Conscience and Conviction; Rucker, 'Moral Grounds'; Dworkin, *Taking Rights Seriously*, 199-201; and Raz, *Authority of Law*, 264.

[23] For clarity, I refer to this great bulk of the liberal tendency — viz., that prizing civil disobedience solely and specifically as a mechanism of political engagement — as the 'republican view'. And I use that term simply to convey that the theorists in question locate civil disobedience's moral significance in its power to play a certain role in the affairs of the republic. I would have preferred to use 'political', since it communicates much the same idea in plainer fashion, but that would have been to risk prejudicing my argument in Chapter Two. Regardless, in using that term I expressly do not mean to suggest that this majority strain in the liberal view has anything to do with republicanism in its full and distinctive political-philosophical sense.

[24] If the reader is now wondering why, having just mentioned its diversity of substantive political and moral doctrines, I call this body of work the 'liberal view', let me clarify now that I do so with no involved intent. Rather, I use that term in a humdrum descriptive sense, to denote that the origins of this pervasive concept of civil disobedience lie in the work of prominent US postwar liberal philosophers. I do not mean thereby to indicate that this concept embodies the substantive normative commitments of liberalism *qua* philosophical tradition. Indeed, my criticism of liberal civil disobedience is far distant from a critique of liberalism as such: I shall not be suggesting anything so general as that liberalism — that storied philosophical tradition and political tendency — is ill-suited to comprehending the worldly activity of civil disobedience. And to illustrate this distinction between liberal view and liberal philosophy, we might note that Brian Barry, a thoroughgoing liberal, perceptively criticises Rawls's 'high minded' idea of civil disobedience. See Brian Barry, *The Liberal Theory of Justice* (Oxford: Clarendon, 1973), 153.

disobedience itself. That is, on the basic idea of civil disobedience as an intentionally unlawful, reason-giving, strictly non-coercive, verbal-symbolic intervention in the public moral conversation, one leveraging the breach of law in order to reanimate — by means of good arguments dramatically put — the ordinary political process, and thereafter to turn it to the cause of reform.

I say again: there is no dissensus on this basic picture. And nor is there any dissensus on the right and proper agenda of a theoretical engagement with this phenomenon: viz. to determine its moral permissibility, given the normative weight of law; and to determine how far the state ought to go in accommodating or facilitating it, given its moral permissibility.[25] And it is this combination — form and agenda; the liberal concept of civil disobedience and the underlying liberal normative project — that I subject to a sustained fiftieth anniversary re-evaluation here.[26]

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[25] The consensus on this normative agenda may be glimpsed plainly enough in the *titles* of the work making up the liberal corpus. I am thinking here, for instance, of Rawls's 'The Justification of Civil Disobedience'; Darnell Rucker's 'The Moral Grounds of Civil Disobedience'; Leslie J. Macfarlane's 'Justifying Political Disobedience'; W. T. Blackstone's 'Civil Disobedience: Is it Ever Justified?'; Michael Bayles's 'The Justifiability of Civil Disobedience'; Carl Cohen's 'Defending Civil Disobedience'; Daniel M. Farrell's 'Paying the Penalty: Justifiable Civil Disobedience and the Problem of Punishment'; A. D. Woozley's 'Civil Disobedience and Punishment'; Vinit Haksar's 'The Right to Civil Disobedience'; and David Lefkowitz's 'On a Moral Right to Civil Disobedience'.

Now, I must acknowledge an important exception to this rule: the only anglophone theorist I know to substantially dissent from this project — i.e. to treat civil disobedience as a rich social and political phenomenon to be understood, rather than as an instantiation of the abstract normative problem of disobedience to morally authoritative law — is Michael Walzer, over the course of several essays collected in his brilliant and humane *Obligations* (of which more in Chapter Five). See Michael Walzer, *Obligations: Essays on Disobedience, War and Citizenship* (Cambridge, MA: Harvard University Press, 1970).

[26] In the interests of methodological clarity, I should say that while every theorist to whom I have referred hitherto is a critical target in this thesis, henceforward I shall tend to focus on a much narrower set of representative texts (largely because it would be unwieldy to proceed otherwise). That core set is made up by Rawls's 'The Justification of Civil Disobedience' and *Theory of Justice*; Dworkin's *Matter of Principle*; Brownlee's *Conscience and Conviction* and 'Reply to Critics'; Lefkowitz's 'On a Moral Right'; Markovits's 'Democratic Disobedience'; and sundry articles due to William Smith. Crucially, I choose this weighting — skewed, as it is, towards more recent engagements with the phenomenon of civil disobedience — because these latter four theorists are the major voices on the contemporary scene, and it would seem productive to address my criticisms most directly to the current state of play. All that aside, and though I am reluctant to belabour the point, I must stress again that this combination — i.e. of discursive civil disobedience and permissibility-focussed theoretical agenda — is what everyone thinks, and perhaps more to the point, that *everyone* thinks it (Walzer notwithstanding). This common core is, in other words, essentially exhaustive of 'civil disobedience' in anglophone political theory: it is not

My Argument

Now, all of this just surveyed may seem perfectly reasonable. It may seem commonsense, and nothing more, that civil disobedience is a non-coercive, discursive endeavour — a means of issuing symbolic social statements, and therethrough winning hearts and minds to the cause of reform. And it may seem straightforward that, because illegal — because depending on the breach of law for its added potency — civil disobedience stands in pressing need of justification, and further that because principled, and because a political activity of impressive social benefit — it is an urgent practical-moral question what sort of role it may legitimately be allotted in the constitutional system.

Yes, all of this appears eminently reasonable. And yet the substance of my case in this thesis is that none of these assumptions, nor these normative preoccupations, are reasonable. That despite the natural ring of this endemic idea of civil disobedience, and despite the seemingly self-evident validity of this pervasive normative agenda, that idea is an abstraction bearing little resemblance to civil disobedience as it has been or might be conducted, and that agenda is a theoretical and political dead end.

This, then, is my overarching charge here: the combined edifice of liberal concept and liberal normative project, despite its firm grip on the academic consensus, and despite its seeming naturalness, has been a fifty year red herring, or something close to it.

A sweeping and somewhat mysterious diagnosis, no doubt. And I therefore owe the reader a reasonably detailed overview of its internal workings. Herewith that now, arranged — for clarity — under three headings.

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just the dominant and well-accepted paradigm, it is to all intents and purposes the *only* one — simply the 'natural' way of thinking about the matter. Now, this is not to say that theorists wouldn't see Rawls's view, for instance, as merely one view among others. But they would not see his view as one view within a unitary general account that *itself* is merely one view among many possible others. Of course, sketching what these alternative views might look like is also part of my project here, and a task I take on towards the end of Chapter Five.

Charge One: Against the Liberal View

I take on first the liberal concept of civil disobedience itself — civil disobedience as a discursive breach of law aimed at refiring the ordinary apparatus of representative democracy. And I begin by demonstrating — through a detailed analysis of civil disobedience's real historical life — that this endemic picture fatally misrepresents the very actions and personalities that it presumes to describe. It does not capture the epochal disobedience of the civil rights era, for instance; and nor does it capture any other of the historically significant disobedient campaigns marking the last several decades: not the peace movement, not the '68 campus rebellions, not the UK anti-poll-tax resistance, not US anti-abortionism, and not the various strands of environmental or ecological direct action — all of which campaigns were and are conducted with a coercive militancy quite foreign to the liberal concept.

The upshot of this intermediate and backwards-looking judgement may be stated thusly: this endemic liberal concept has no handle on the disobedient actions that have shaped our political world, and which exert a continuing hold on our political imagination. Nor those that are the object of reactionary doubt and fear, nor any that are emblematic of important real-world dissident currents. Liberal civil disobedience, in other words, has very little to do with civil disobedience in this actual world: it leaves the great mass of twentieth and twenty-first century extra-legal activism normatively unprobed.

Or, it leaves this great mass of extra-legal activism directly unprobed, at any rate. And to foreclose the alternative — i.e. that we might read the liberal concept, counterfactually, not as an attempt to offer normative commentary on the real historical cases, but rather as an attempt to consecrate a regulative ideal to which future disobedients ought to aspire (whatever their conduct hitherto) — I move on to assess the forwards-looking prospects for a disobedient politics of reason after the liberal archetype. My conclusions on this front are no more encouraging: we do not possess the right institutional structure and public political culture for such a politics to flourish. And more to the point, there is almost no likelihood of our coming to possess them even in the medium to long term. In other words, this liberal concept of civil disobedience — quite apart from its near-total absence in the historical record — could not find a toehold in our society, nor any society in prospect. For that reason — viz. that our world is a hostile environment for reason-giving, didactic, dialogue-seeking activist strategies — it cannot serve as a regulative ideal of dissident conduct: it cannot serve as a viable model or moral exemplar for future activism.

Now, in combination, these judgements indicate the following — what is my first fiftieth anniversary verdict on the liberal body of work: liberal civil disobedience is neither a true rendering of historic and historical dissent outside the law, nor a plausible regulative ideal for disobedience in future. This natural, received, ubiquitous idea of civil disobedience — wherein one breaks the law symbolically as a means of issuing, to the wider society, a reformist proclamation apt to re-fire the engine of democracy — is, historically speaking, a fiction, and politically speaking, a vain hope. Thus is revealed the bankruptcy of the liberal body of work: this corpus fails to do what a normative theory of civil disobedience ought to do (and what it is the avowed purpose of liberal theorists to do) — viz. to illuminate normatively, whether directly or regulatively, this political world of ours and that thing of importance and historical ubiquity in it: activism outside the law.

Charge Two: Against the Liberal Normative Project

With that first critical verdict in hand — viz. that the liberal view fails to illuminate the worldly phenomenon of unlawful dissent — I go on to gauge the prudence of seeking such illumination in the first place. And my case on this front has it that the same empirical reality forcing historical disobedients to eschew the reason-giving activism envisaged in the liberal view; and the same empirical reality guaranteeing that a liberal-inspired disobedient politics of reason will not flourish — viz. that the political settlement is dysfunctional, repressive, and congenitally unjust, also must cause us to doubt the theoretical viability (and more than this, the wisdom and humanity) of continuing on with the liberal normative project. Of continuing to ask the two canonical questions: 'could civil disobedience ever be justified?'; and, 'it being justified, how ought the state to treat it?'.

In our unjust and substantively undemocratic world, the former question is little more than a formality. And worse, asking it — and invoking the supporting assumptions required to give it weight: viz. political obligation and the democratic sanctity of state policy — is to cede too much propriety to the status quo. It is, if I may put it crudely at this introductory stage, to take the wrong side — to display insufficient attentiveness to the following historical fact: that civil disobedience — and most of all the epochal civil disobedience motivating the initial liberal engagement — is nearly always righteous, while the regimes that it targets invariably are not.

And this historical fact also does for the latter of the two canonical questions. Asking how the state ought to treat civil

disobedience — and concretely, whether it really ought to repress or marginalise such dissent to the extent that it has done in actuality — is not only to take the wrong side, but to ask something scarcely intelligible: it is to lose sight of some essential dynamic, one having to do with what makes civil disobedience vital and necessary in the first place.

This, then, is the crux of my second fiftieth anniversary verdict: the traditional normative project — the inquiry into civil disobedience's moral permissibility and proper reception by the state — is rendered largely moot, even unseemly, by the political circumstances with which we are confronted. There is little of normative interest to say about disobedient activism in this actual world — and much danger in the attempt to pretend otherwise.[27]

Subordinate Charges

That is my main case in this thesis — these twin meta-theoretical charges against five decades of liberal theory on the matter of civil disobedience. But in the interests of transparency, I should point out that it is not my only one, and indeed that I devote Part One to a wholly different style of criticism. In those first two chapters I bracket entirely the empirical and meta-theoretical analysis just described, and mount instead a narrower and more conceptual case against two liberal totems in particular — to wit, that there exists (or could exist) an enforceable moral right to civil disobedience; and that civil disobedience could or ought to be conceived as a distinctively conscientious activity — one having something important to do with personal integrity and moral self-harmony.

I shall not pause here to outline these arguments in any detail, for they will be upon us soon enough. But I ought to say a word on motivation, at least — I ought to say why I develop this sizeable and standalone strand of argument, given that it is ancillary to my main critical endeavour in this thesis, and given that it plays no inferential role in the unfolding of that critique.

I do so partly for dialectical reasons: if the reader finds unpersuasive the broad-brush and somewhat polemical case

[27] These twin charges — my core case in this thesis — it may clarify things to point out, are 'meta-theoretical' in nature. I am here embarked on a meta-theoretical assessment of the existing theoretical edifice *given* this actual world: I determine whether the liberal body of work is what it claims to be — viz. a viable normative theory of the worldly phenomenon of civil disobedience; and, more elementally, I determine whether there is any profit in the pursuit of this kind of theory (and speculate on what sort of alternative engagement is demanded by such a world as ours).

described above, then these more concessive criticisms will stand unaffected. In other words, by means of these standalone critical essays I hope to offer a different — and more palatable — route to the same conclusion: viz. that fifty years of liberal theory is seriously defective.

But I do so mainly because in addition to dismantling the fifty year edifice of the liberal engagement, I have an important parallel aim here — viz. to throw out, if in unsystematic fashion, true and useful judgements on the theory and practice of civil disobedience, and in so doing to dissolve some endemic (and not only academic) canards. In other words, I develop this logically independent strand of criticism not to rub salt in liberal wounds, but to draw out some truths of independent potency.

And in doing so I shall also be addressing, even if often implicitly, the conventional wisdom on civil disobedience in the wider society. I shall be using Part One to get at a broader, though less precise, social way of thinking about the point and value of civil disobedience — one redounding to the progressive commonplace that civil disobedience is, in some crucial respect, a matter of individual conscience and moral integrity, and that for this reason — and for its power to stir up public debate of the kind on which liberal democracies are thought to thrive — it ought to be respected, even welcomed, by the powers that be.

A Last Word

Let me round off these introductory remarks with a word on method and strategy. My project here — in both parts of the thesis — is a critique of fifty years of liberal orthodoxy on the question of civil disobedience. But crucially, and as I have suggested at various points hitherto, I undertake this critique without classically negative intent. I do not intend simply to demonstrate the falsity of a preponderant academic view, rather, I undertake this critique because I think it matters — matters enormously — *why* the view is defective. It matters that the liberal concept and the liberal normative project are unsound — in essence — because they are each, though in different ways, insensitive to something that theorists ought to be deeply sensitive to — the grim reality of our political world.

And this kind of 'productive' critical ambition — that of trying to say something, by means of critique, about our world and the predicament of the activists we find in it — makes it

doubly important that I criticise in a language with which the targets of my criticism are familiar. For that reason, my arguments throughout are — as it were — intra-disciplinary: I do not rely on any presuppositions or meta-theoretical totems that the liberal body of work is not explicitly committed to (and indeed, that it does not share with the general tendency in contemporary anglophone political philosophy).

In other words, and if I may venture it, the virtue of my approach is that I rely only on argument of a perfectly conventional kind, invoking premises, techniques, and orientating assumptions that liberal theorists not only ought to accept, but do avowedly accept. I shall try to demonstrate throughout that it is the liberal theorists' own logic and precommitments, their own theoretical priorities, and their own paragon practitioners of civil disobedience which indicate the comprehensive failure of their view and the unwisdom of the normative project that it figures in. Like a good Rawlsian dissident, then, I argue only in the intersubjective working language of the community. I refer only to the public principles of normative political theory.

Part One: High Concept

Chapter 1: Kicking Against The Pricks

For fifty years now, commentators inside and outside of the academy have been trying to reconcile us — the silent majority — to civil disobedience's constitutional propriety.[1] It is a commonplace in liberal and left-leaning quarters of the pop culture, for instance, that far from mistrusting or excoriating the presumedly anarchistic proclivity of civil disobedience, the state and the social mainstream instead ought to embrace it as a fundamentally legitimate — indeed, vital — concomitant of thriving liberal democracy.[2] After all, civilly disobedient discursive interventions are the kind of prod — the kind of provocation — that no liberal society worth the name can afford to marginalise or denigrate.[3]

Inside the academy, meanwhile, this reconciliatory impulse

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[1] Indeed, and as I noted in the introduction, Robert Goodin goes as far as to say that 'the practical *point* of a theory of civil disobedience is to convince those whom we concede may legitimately make the laws that they have made that it is nonetheless legitimate for us to disobey those laws.' [Goodin, 'Nuclear Protest', 461, my emphasis]. In much the same vein, Ronald Dworkin defines a 'working theory' of civil disobedience as one serving the practical purpose of legitimising civil disobedience in the eyes of the truculent majority. *Matter of Principle*, 106.

[2] Thus does Dworkin contextualise his defence of civil disobedience in terms of the 'liberal' current in US public life — viz. that which 'tends to disapprove of prosecutions [for civil disobedience] and celebrate acquittals', and which stands in opposition to the socially 'obvious' view that 'governments must prosecute the dissenters, and if they are convicted it must punish them'. [*Taking Rights Seriously*, 186; 206]. More recent examples of this extra-academic reconciliatory tendency may be found in e.g. Michael Segalov, 'The Fracking Protesters Did Us a Public Service. Jailing Them Was Wrong', *Guardian*, 17 October 2018; Thomas E. Mann, 'Democrats' Sit-In is a Justified Act of Civil Disobedience', *Washington Post*, 23 July 2016; Jeffrey O. G. Ogbar, 'Activism is Politically Essential to Society', *New York Times*, 8 February 2016; Kareem Abdul-Jabbar, 'How Boycotts Could Help Sway Trump', *Washington Post*, 1 December 2016; Joanna Biggs, 'On the March', *London Review of Books Blog*, 28 March 2011.

[3] The general tenor of the liberal project of reconciliation is expressed representatively in John Rawls's vision of civil disobedience as a constitutional device in its own right. He insists, for instance, that 'although this mode of action is strictly speaking contrary to law, it is nevertheless a morally correct way of maintaining a constitutional regime'. So much so, in fact, that theoretical treatments of civil disobedience ought to be seen as 'supplementing' the 'purely legal conception of constitutional democracy.' *Theory of Justice*, 337-338.

finds its concrete and characteristic expression in the defence of a *moral right* to civil disobedience, one having serious practical implications for how the state and the wider society ought to respond to unlawful dissent.[4] These practical implications, which will become more familiar as we go on, range from gestural calls for civil disobedience to be afforded a respectable niche in the public culture, to more definite blueprints for the quasi-institutional accommodation of disobedient protest — for police to help protesters with the staging of their action, for police to exercise a friendly discretion with respect to matters of arrest and prosecution, for the judiciary to endorse activists' pro-democratic contributions (in part by issuing apologies for any penalty that statute might compel them to hand down), for the state to reclassify civil disobedience as a civil offence (and perhaps try it in separate courts), and for legislatures to adopt sentencing conventions that treat civil disobedience with a pronounced leniency compared to ordinary offending.[5]

But here's the trouble, and the crux of my argument in this chapter: this will to reconcile — this wish for society to recognise and accommodate civil disobedience as a perfectly legitimate feature of healthy liberal-democratic states — this impulse is self-defeating. That is so, as I demonstrate at length in what follows, because civil disobedience's value (as universally conceived, at least) is contingent on its standing in a certain antagonistic or seditious relation to the state and the mainstream society.

Let me put the force of this incoherence more directly. The value of civil disobedience is not, in the end, a function of the objective breach of law *per se*. Rather, it is a function of the 'social fact' of political lawbreaking — a function of how that lawbreaking is *perceived* by relevant others and what

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[4] Defences of such a right figure centrally (albeit with important differences, which I dissect as we go on) in e.g. Kimberley Brownlee, *Conscience and Conviction*; Brownlee, 'Reply to Critics'; Dworkin, *Taking Rights Seriously*; Daniel M. Farrell, 'Paying the Penalty'; Vinit Haksar, 'The Right to Civil Disobedience'; David Lefkowitz, 'On a Moral Right'; Rawls, *Theory of Justice*; William Smith, 'Reclaiming the Revolutionary Spirit: Arendt on Civil Disobedience', *European Journal of Political Philosophy* 9:2 (2010): 149-166; 'Public Sphere'; 'Boundaries of a Deliberative System'; 'Policing Civil Disobedience'; and his *Civil Disobedience and Deliberative Democracy* (London: Routledge, 2013). For the sake of transparency in the identification of my targets in this chapter, I should note that the only liberal writers I know to *refuse* this call for reconciliation are Joseph Raz and Michael Bayles (though they reject it for substantive moral reasons, and not — as I shall do — because it is self-defeating). See Raz, *Authority of Law*, esp. 273-275; and Bayles, 'The Justifiability of Civil Disobedience', esp. §1.

[5] The first two of these proposals are due to William Smith ['Policing Civil Disobedience', 830-838], the latter three are due to Kimberley Brownlee [*Conscience and Conviction*, 249-253]. I scrutinise these and several other collusive policies in due course.

ripples it produces in the social world. But in defending a practically consequential moral right to civil disobedience, the reconciliatory tendency attempts to re-litigate this social fact: it implicitly treats the social reception of civil disobedience as exogenous to civil disobedience's function and value, hence open to debate, hence modifiable in warm and positive directions. This, however, is a circle that cannot be squared. If civil disobedience is valuable *because* it tends to be regarded in a certain light — as seditious, subversive, antagonistic (and so on), we cannot then say that in order to protect and extend this value, the state and the wider society ought to regard it differently: that they ought to recognise and accommodate it as a legitimate (if unlawful) complement to the ordinary political system.

Liberal theorists don't see this incoherence, I point out by way of fortifying my case, because their misguided juridicalism — their mysterious faith in the scintillations of lawbreaking *per se* — blinds them to the basic observation just reported — viz. that the source of civil disobedience's value is not the contravention of the positive law, but the contravention of society's *unwritten* rules. It is no surprise, then, that though theorists are well aware that the spectre of paradox guarantees that there can be no *legal* accommodation of the moral right to civil disobedience (which is unlawful by definition), they do not scent that a similar paradox awaits in the sphere of norms — in the sphere of public opinion, codes of practice, rules of thumb, sentencing guidelines, private memos and policing philosophies.[6] Not the paradox of legal rights to break the law, but the paradox of conventional rights to behave unconventionally.

I make my case here sequentially, dealing with a pair of composite accounts that are my distillation of the two living tendencies in the liberal view (what I call, respectively, the 'republican' and 'cathartic' analyses of civil disobedience). In both cases I argue that the liberal theorists — by insisting on a moral right to civil disobedience — end up conceptually undermining their core vision of the practice itself — viz. as a crucially important form of political speech (one apt to shore up the state's democratic viability and normative legitimacy), and as a vehicle for the development and expression of the activist's moral integrity. We may believe that civil

[6] Brownlee, for instance, observes that 'no comparable legal exemption [i.e. to that often extended to conscientious objection in real-world jurisdictions] can be given for civil disobedience, despite its conscientiousness, since it is a deliberate breach of law' [*Conscience and Conviction*, 252]. Theorists have long noticed this paradox, and for earlier treatments of it, see e.g. A. C. Ewing, *The Individual, The State and World Government* (New York: Macmillan, 1947), 73; and David Spitz, 'Democracy and the Problem of Civil Disobedience', *American Political Science Review* 48:2 (1954): 386-403, 342.

disobedience is a practice of rare public and personal value, or we may believe that the state and the prevailing public culture should recognise and accommodate it. We cannot, however, believe both at the same time.

In making that case I also have ambitions beyond the letter of the academic tendency, of course. My target here is not only a set of literal views, but also a wider 'way of thinking' about disobedience — a sense that the state and the disobedient are or could be partners, that disobedience ought to 'brought in' to the mainstream political culture.[7] Regardless of any specific claims about right, I shall try to demonstrate here that that impulse itself is dubious — to hope and urge that we, as a society, become reconciled to civil disobedience.

1.1. Against The Republican Case For Reconciliation

I shall begin with the republican view, which variant of the liberal tendency sees civil disobedience as a vital form of political speech — a discursive intervention leveraging the breach of law in order to shine a spotlight on the views of marginalised constituencies, confront society with arguments of principle hitherto neglected in the public conversation, and thereby to force a democratic re-examination of the legislative settlement in ways that remedy any intentional or accidental failures in the representative apparatus of state.[8]

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[7] As I noted in my introduction, it is partly because they permit me the opportunity to take on these wider 'ways of thinking' that I include the more concessive and conceptual arguments that are my theme in Part One (i.e. despite their being rendered moot, in large part, by the meta-theoretical endgame that I develop in Part Two).

[8] This composite gloss hides substantial differences in the various particulars of the republican accounts, of course (though I am sure that all such accounts are quite harmonious). If I might disaggregate it: Markovits's defence of civil disobedience is founded on the idea that every democratic system has a pathological tendency to generate deficits in representation — i.e. that such democratic gaps are the 'inevitable and intrinsic concomitants of the very mechanisms that make democratic sovereignty possible *tout court*'. Building thereon, he argues that 'as the inertial mass of democratic politics grows … the need for disobedient shocks to improve democracy tends also to grow.' ['Democratic Disobedience', 1903; 1937]. In a similar vein, Smith defends civil disobedience as a form of 'deliberative contestation' — one exercising a remedial influence on political systems where 'processes of public deliberation fail to respect the principles of a deliberative democracy' (as when 'deliberation is insufficiently inclusive … manipulated by powerful participants … [or] insufficiently informed'). ['Democracy, Deliberation and Disobedience', 354-355]. He also refers to it, more pointedly, as a kind of 'deliberative *disruption*' ['Boundaries of a Deliberative System', 163, my emphasis]. For Lefkowitz, meanwhile, the right to

This is, in other words, a view of civil disobedience as a kind of reason-giving stimulus for dysfunctional liberal democratic regimes, and crucially, one so important as to warrant protection by right (and quasi-institutional accommodation by the state and public political culture).[9] And while I believe that this basic picture is historically inaccurate in several crucial respects, I shall not brook any quarrel with it on that empirical terrain in this first part of the thesis. Instead I shall take this picture at face value, accepting both its ontological impression of civil disobedience's discursive form and its functional perception of civil disobedience's pro-deliberative, pro-democratic role. *If* civil disobedience performs this vital pro-democratic service, I shall argue in more conditional fashion, it does so only insofar as it stands in a certain antagonistic aspect *vis a vis* the state and the main-

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civil disobedience grows out of the familiar right of political participation (in this case given a contractualist reading, though I do not think that is essential to the account). That right of participation is, on closer inspection, really two distinct rights — a right to participate in the democratic decision procedure, and a right to contest such decisions after the fact. It is under this latter right that civil disobedience is justified, in virtue of the general principle that 'potential barriers to [people's] exercise of this right be diminished as much as possible' ['On a Moral Right', 215; and see also §§ III-IV]. Rawls, finally, is more of an outlier. Civil disobedience for him is specifically a last-resort mode of address, through which a trodden-on minority sounds a kind of emergency klaxon intended to pull society back from the brink. Indeed, Rawls's view is that protracted violations of the 'conditions of social cooperation' inevitably invite 'either submission or forceful resistance'. Civil disobedience, in his estimation, 'forces the majority to consider whether it wishes to have its actions construed in this way [i.e. as inviting submission or resistance], or whether, in view of the common sense of justice, it wishes to acknowledge the legitimate claims of the minority' [*Theory of Justice*, 321]. I note here that Vinit Haksar endorses Rawls's view more or less in its entirety, adding only a more definite idea of the right's practical implications — viz. that 'a just constitution ought to recognise the right to civil disobedience either explicitly in writing or at least in the way it is interpreted by judges and other state officials', such that 'civil disobedients should not be prevented from breaking the law … [and] 'when they break the law, they have a claim to no punishment or reduced punishment' ['The Right to Civil Disobedience', 408].

[9] As I elaborated in my introduction, I use 'republican' simply to convey that these theorists see civil disobedience as playing a crucial role in the affairs of the republic (rather than, as in the cathartic view, in the private moral affairs of the activist herself). I would have preferred to use 'political', since it communicates much the same idea in plainer fashion, but in doing so I would have risked prejudicing my argument in Chapter Two. In any case, I expressly do not mean to indicate that this strain of the liberal view has anything to do with republicanism in its full and distinctive sense (*à la* Machiavelli, Quentin Skinner, Philip Pettit, and so on). As we saw in the previous note, Rawls and Haksar are political liberals, Lefkowitz is a contractualist, Smith is a deliberative democrat, and Markovits — well, Markovits *is* a republican. But these differences in comprehensive doctrine are of no consequence. What matters in this chapter is only the theorists' functional impression of what civil disobedience does — viz. jump-start the political deliberations, rather than their doctrine-specific impressions of why it matters, morally, that it does it.

stream society. Quite simply: while theorists introduce and defend a moral right to civil disobedience in order to protect this estimable pro-democratic good, the collusive implications of that right are guaranteed to undermine it.

My argument proper starts from the following observation: that whatever the precise moral hinterland underpinning this or that account of the republican right to civil disobedience, all such accounts depend on the same foundational premise and conceptual commitment — viz. that where people ignore *lawful* protest, they do or might take notice of civil disobedience. Every variation on the republican right presumes that civil disobedience's vital pro-deliberative power — this power to get through to the pertinent democratic constituencies — is one that civil disobedience possesses *over and above* all of the lawful political activities common to liberal democratic regimes.[10] I say that because the right to civil disobedience is, truistically, a right to commit the *pro tanto* wrong of breaking the law, and any defence of such a right must therefore assert — as a reliably general truth — that civil disobedience offers a boon that cannot be got within the law.[11] If there were a comparably stimulating lawful means of political engagement, in other words, the case for a right to civil disobedience could not get off the ground.[12] The very notion of a right to break the law in the service of some political purpose presumes that that purpose cannot be served just as well by lawful means — that the same good (i.e. of better representation for hitherto neglected constituencies and a firing-up of the public moral conversation) cannot be bought at a lesser moral price.

This basic faith in the *comparative* potency of civil disobedience over lawful protest is not only a bedrock presupposition of the moral right, it's important to note. It is also an implicit premise in the traditional portrait of civil disobedience as a weapon of last resort. So the story goes, breaking the glass and committing the *pro tanto* wrong of lawbreaking is morally justifiable (and strategically wise) only when all of the lawful means of political engagement have proven them-

[10] This implicit faith in civil disobedience's comparative potency over and above the lawful means of political engagement is perhaps most obvious in Daniel M. Farrell's delineation of a legal defence of 'necessity' for civil disobedience. After all, any claim that civilly disobedient lawbreaking is *necessary* for the avoidance of some greater harm presumes, definitionally, that such lawbreaking offers *something* that could not be got within the law. See Farrell, 'Paying the Penalty', 172-176.

[11] For more on the assumption of a *pro tanto* wrong of lawbreaking (and different perspectives on what that wrong might consist in), see my §5.2.

[12] As William Smith recognises, any defence of a right to civil disobedience 'demands an account of the rationale for engaging in civil disobedience … rather than lawful methods of political participation or protest.' 'Public Sphere', 161.

selves incapable of gaining public traction for one's view (or seem likely to prove themselves so). One may entertain the thought of civil disobedience, that is to say, only when the ballot box hasn't done the trick, and nor has writing to one's MP, canvassing door-to-door, starting a petition, demonstrating lawfully, organising a boycott, standing for election, nor undertaking any other lawful political activity that the reader may call to mind.[13]

Now, in what follows I shall use '*political charge*' as placeholder shorthand for whatever quality of civil disobedience it is that ultimately grounds this vital democratic potency.[14] And the thrust of my argument in this section is that this political charge — whatever it is that grounds the comparative potency upon which the republican right to civil disobedience depends — cannot survive that right's collusive implications. In other words, the republican right undercuts precisely the pro-democratic good that theorists have thought it crucial to protect by right: if civil disobedience is valuable in virtue of this political charge and this comparative democratic potency, then we cannot hope for the state and the mainstream society to be reconciled to it — for it to be recognised and informally sanctioned as a legitimate method of political action.

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[13] Rawls, for instance, says that civil disobedience is to be undertaken only when 'standard democratic processes have failed' ['Justification of Civil Disobedience', 183]; and, more extensively, that 'we may suppose that the normal appeals to the political majority have already been made in good faith and that they have failed. The legal means of redress have proved of no avail. Thus, for example, the existing political parties have shown themselves indifferent to the claims of the minority or have proved unwilling to accommodate them. Attempts to have the laws repealed have been ignored and legal protests and demonstrations have had no success'. [*Theory of Justice*, 327]. Dworkin also endorses this last resort condition [*Matter of Principle*, 109], and so does Brownlee [*Conscience and Conviction*, 200]. For Markovits, meanwhile, the last resort condition is more or less the very foundation of his view, since he positions civil disobedience specifically as a corrective to the inevitable and quotidian representative failures of the ordinary democratic machine. What brooks the need for civil disobedience in the first place is that — someplace, somewhere — the lawful political apparatus is *always* failing to represent marginal views. See my note above, and Markovits, 'Democratic Disobedience', esp. 1898-1905.

[14] I should clarify that with this shorthand invocation of 'political charge' I do not mean to make an *empirical* claim about civil disobedience. In other words, I do not mean to imply that — as a matter of historical and empirical fact — civil disobedience possesses any such property. I reserve this sort of 'piercing the veil' of the republican concept until Part Two, accepting *in arguendo* here what is, for republican theorists, less an empirical proposition than a conceptual article of faith — viz. that civil disobedience possesses a certain impressive power of democratic reach. 'Political charge' is only my shorthand for that stipulative and definitional property of republican civil disobedience — whatever property it is that lends it this assumed democratic potency.

Before I make that case in earnest, let me first try to provide some indication of what civil disobedience's presumed political charge might consist in, as well as some of the vectors by which it might make the democratic difference where lawful political strategies have shown themselves inadequate. If my illustrations in this section prove wanting, however, I remind the reader that my argument in this 'conceptual' part of the thesis does not turn on its practical plausibility: I go down this road to give a sense of what might be going on in the minds of the republican theorists, rather than what might be going on in history (which task I reserve until Part Two of this thesis).

In any event, it is plain enough that in the democratic circumstances at issue here, civil disobedience's comparative potency consists — by definition — in its greater powers of persuasion and publicity. That is a straightforward implication of the majoritarian maths: one's policy criticism — one's claim of governmental injustice or unwisdom — can win the day only if one brings new supporters to one's side, or else if one persuades a sufficient number of one's erstwhile opponents to cross the aisle.

And on the persuasive side of things, to say that civil disobedience makes the difference where no lawful mechanism of political action did or could is to say that it presents the *same* complaint — the same cry of injustice or unwisdom that pertinent democratic constituencies have already heard and dismissed — now in a more impressive manner. One way of making sense of this, I think, is to suppose that the newly heightened force of that old complaint derives from activists this time having *risked* something to lodge it. The idea here being that the element of self-sacrifice inherent in civil disobedience underlines the gravity of the message expressed in it (and perhaps stands as an evidentiary datum attesting to its worthiness). In other words, civil disobedience provides epistemic reason to reconsider (and perhaps straightaway to heed) the principled claims that it articulates.[15]

Another way of making sense of civil disobedience's compar-

[15] David Lefkowitz makes a nearby point — viz. that 'civil disobedients' willingness to risk the state's imposition of various costs on them … can often communicate the strength of their convictions or preferences in ways that legal means for political participation cannot'. ['On a Moral Right', 214]. For the same reason, William Smith sees in civil disobedience a means for activists to 'express the *intensity* of their opposition to law and policy'. ['Policing Civil Disobedience', 829, my emphasis]. For an earlier statement of the link between civil disobedience's often risky nature and its politically expressive potential, see e.g. Peter Singer, *Democracy and Disobedience* (Oxford: Clarendon, 1974), 84.

ative potency is to suggest simply that the aesthetic quality of the action itself induces a moment of revelation in the relevant constituency, one that could not have been supplied by an ordinary lawful march or a demonstration in Parliament Square.[16] This more speculative idea has it that some element of the civilly disobedient *mise en scène* makes real for the observer something that was not properly grasped before, and we can readily imagine the kind of collage that might bring on such a revelatory experience — the pall of CS gas in the air, the activists' moral seriousness, their vulnerability in the face of police repression (and so on).[17] *Taking a Stand in Baton Rouge* — the famous photograph of Ieshia Evans demonstrating at a Black Lives Matter action in 2016 — may serve as an example here. The image of a lone black woman facing down massed ranks of heavily armed white male stormtroopers might be just the kind of composition that really could convince one, instantaneously, of the justness and continuing urgency of the anti-racist cause (to say nothing of the cause of police reform). A cause that we may imagine this hypothetical convert was already cognisant of, but had never endorsed. That is the kind of idea I am reaching for here — that civil disobedience offers an aesthetic moment apt to cause scales to fall from eyes, to provoke a sort of Levinasian 'face-of-the-other' incident.

In any case, I entertain this discussion simply to draw out that, insofar as civil disobedience has a comparative *persuasive* potency, that potency — that political charge — is best glossed in the idea that people sit up and notice, and are more inclined to heed, a plea expressed not cheaply or mundanely through the conventional political channels, but dearly and dramatically through the disobedient discursive breach of law.[18]

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[16] Jack Turner argues that Thoreau experienced this sort of awe — a profound 'moral' and 'aesthetic' awe — on hearing of John Brown's doomed raid on the federal armoury at Harper's Ferry. See Jack Turner, 'Performing Conscience: Thoreau, Political Action, and the Plea for John Brown', *Political Theory* 33:4 (2005): 448-471, 465.

[17] Smith echoes this sentiment in his judgement that 'civil disobedience must always embody an irreducibly "theatrical" quality if it is to succeed in capturing the attention of the public and changing minds.' ['Revolutionary Spirit', 163]. I don't disagree, but as I elaborate at length in §1.3 of this chapter, I believe that Smith misperceives where that theatricality lies.

[18] Henceforth I shall focus only on the former of the options discussed here — viz. that civil disobedience's traditionally risky nature provides epistemic reason to heed it. I do so simply because the alternative — the idea of aesthetic revelation — is by no means reliably or categorically open to civil disobedience (if it is at all). People being odd, virtually any moment whatsoever could occasion a vivid realisation of the moral force of virtually anything. Is it not said that Nietzsche's madness was occasioned by his witnessing the flogging of a horse in Turin's Piazza Carlo Alberto?

In a moment I shall go on to argue that state toleration and civil society normalisation of civil disobedience — the end-game both of the pursuit of right and of the wider project of reconciliation — is guaranteed to undermine the 'epistemically' self-sacrificial quality at the core of this reading of civil disobedience's political charge. But before I do that, we had better cash out the likely mechanism on the other side of the democratic equation — to wit, *propaganda*.

The idea here is simply that civil disobedience's constitutive charge and comparative democratic potency consist in its being better able to publicise a given cry of injustice or unwisdom than did any of the previously tried lawful means of political contestation (and thereby to rally fresh and expanded support for the cause). What this means, obviously, is the *media*, and while I do not want to linger over an extended discussion of how the news agenda is formed, let me point out that for my claims in the remainder of this section to have the ring of plausibility we need only accept that the mass media in liberal democratic societies is not generally responsive to the 'objective' news merit of a given cause or event or action. If it were, I suggest, it's not clear that there would be much call for republican civil disobedience in the first place — it's not clear that there would exist the persistent minorities or systematically neglected viewpoints that it is civil disobedience's express task to bring into the public conversation. In the same vein, but from the other direction, we might also note that *were* the mass media sensitive to the 'objective' news merit of a given action, then illegality would have no positive impact on coverage: reporters would sniff out the quality of the argument and the urgency of the cause, not the subversiveness of its presentation.

What *does* generate TV coverage, column inches, radio airtime, and social media 'virality', it seems to me, is either the titillation quotient of a particular story, or else its ideological usefulness for the party with the power to publish and propagate it.[19] The latter of these editorial rationales — ideologi-

[19] My position here might look more reasonable in light of Brownlee's own reference to the 'sensational news value of illegal methods' in achieving the 'wide dissemination of a [moral] position'. [Kimberley Brownlee, 'The Communicative Aspects of Civil Disobedience and Lawful Punishment', *Criminal Law and Philosophy* 1:2 (2007): 179-192, 181]. And cf. again here (also apropos civil disobedience's 'titillation quotient') Smith's remarks on the vitally 'theatrical' character of civil disobedience ['Policing Civil Disobedience', 163], as well as his more extended reflection that: 'the possibilities of arrest, incarceration and punishment that attend an act of civil disobedience may increase the publicity generated for a particular cause. This is because print, broadcast and online media organisations are arguably more likely to give coverage to protests that involve law-breaking than lawful demonstrations or campaigns. This consideration in favour of civil disobedience is particularly strong in liberal societies where news media, for whatever reasons, often tend not to give thorough coverage to

cal utility for the media-owning class — is not a particularly fertile ground on which to premise an account of civil disobedience's political charge and comparative potency, of course, since if a civilly disobedient action pursues an agenda ideologically ill at ease with that in favour in a given section of the news media, we may say with some confidence that it will not be reported on at all, or that if it is reported on, it will not be reported on accurately — certainly not with the depth and even-handedness necessary for that action to stir up a groundswell of public support sufficient to change the legislative course already in train.[20]

If the act is consonant with the prevailing ideology, on the other hand, it may well be splashed liberally (or splashed conservatively, I fear) in the newspapers, and thereby reach a large number of potential supporters. But the trouble here is twofold: this truth cannot countenance a *general* claim to civil disobedience's democratic potency, since it is obvious that only ideologically felicitous claims would gain widespread coverage, and moreover, there would hardly be call for civil disobedience at all in these cases. If one's agenda is shared with the bulk of the news media and harmonious with the general tenor of the public conversation, it's difficult to see that it could have been unjustly ignored hitherto — rather, it will likely have been unjustly centralised.

This line of argument anticipates a substantial chunk of my reasoning in Chapter Four, where I suggest that the liberal impression of civil disobedience's political vitality is empirically dubious (largely because our media and wider public political culture are ranged against the left quarters that have been dissent's traditional heartland). The point of preempting the question of the media and the public conversation here is simply to draw out that *if* civil disobedience is to play the comparatively potent pro-deliberative role that the republican right is premised on, then it must more effectively propagandise left-behind viewpoints than does any lawful tactic of political engagement. And since there are, generally speaking, only two rationales driving news coverage today,

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lawful political campaigns.' 'Public Sphere', 161.

[20] Bertrand Russell, someone by no means given to hyperbole, thought this rationale more or less determinative of the news agenda (at least in the UK), referring to the British media as a 'vast mechanism intended to prevent the truth being known', and a system dedicated to keeping the public in a state of 'massive artificial ignorance'. [Bertrand Russell, *The Autobiography of Bertrand Russell* (London: Routledge, 1998), 637]. Brownlee, acknowledging Russell's view, positions the presumedly titillating proclivity of civil disobedience as an ignorance-puncturing counterweight to this situation — i.e. that wherein 'the controllers of mainstream media tend to grant defenders of unpopular views limited space to make their case'. 'Communicative Aspects of Civil Disobedience', 181. I return to this theme in more resolutely empirical fashion in §4.2.

and since one of them — ideological utility for the media-owning class — is a bad fit for the republican story, then what is left is to say that civil disobedience's constitutive political charge consists in its power to titillate or fascinate. We may surmise, in other words, that republican civil disobedience must — as a rule — involve some thrilling combination of the dramatic, the heroic, the subversive, the sensational, the risky, the novel (and so on). Certainly, it must steer clear of the mundane, the commonplace, the routine, the run-of-the-mill. That much we know.

1.1.2. The Perils of Normalisation

I have dallied long enough on this indicative sketch of the various qualities that civil disobedience's political charge might consist in — the ultimate grounds of the comparative potency upon which the republican right depends. Our candidates are these, and plainly stated, they seem plausible enough: civil disobedience's political charge consists in some combination of its risky, self-sacrificial, martyrising character, or else its air of drama and sensationalism and subversiveness. Once again, however, I clarify that if my conjectures on this front appear dubious, the thrust of my argument in this section is not much affected.[21] What matters is not that we identify the particular qualities and mechanisms that might be at work in the republican account (and to that extent, I attempt such an identification more for the purpose of elucidating my view than buttressing it), what matters is only that we keep our eye on the bare conceptual claim underpinning the case for the right — viz. the essential premise that civil disobedience possesses a comparative democratic potency over and above the varieties of lawful protest. In other words, what matters is not *why* the republican theorists think that civil disobedience possesses this enhanced power of publicity and persuasion, but simply that they *do* invest it with such a power, and further that in virtue of this power they deem it a rights-protected, perennially valid, last-resort alternative to the ordinary law-bound mechanisms

[21] For instance, the reader may think that these look like empirical claims, and that I ought therefore to provide some supporting evidence for them — evidence that these qualities really are the ones on which civil disobedience's appeal rests. As I suggester earlier, I have no such evidence. And I have no such evidence because — and this is my insistent theme in Part Two — the republican view is empirically untenable. What I describe here is not what civil disobedience really is, and it's not how it really works: it is only my reconstruction of what republican theorists think civil disobedience is, and how they must think that it works. In light of the general trajectory of my arguments in this thesis, then, I prefer to bracket the empirical question as far as possible at this early stage. It will only muddy the waters to entertain it in piecemeal fashion here.

of democracy.

With that out in the open, and with the pieces of my argument in this first section of the chapter now in place, let me demonstrate that this republican constellation of ideas is fatally incoherent — i.e. that civil disobedience cannot possess this comparative potency and *also* be afforded a legitimate niche in the political culture, hence that the proposed moral right to civil disobedience (and the wider project of reconciliation), which is founded on and motivated by the requirement to protect the uncommon pro-democratic good of civil disobedience, in fact enjoins measures that are guaranteed to destroy it.[22]

My case here is straightforward. I simply put it that it is difficult to believe that what the state acknowledges as a legitimate method of political action (and moreover what has an accepted niche in the public political culture) could possess the kind of political charge discussed above — the power to cut through the quotidian political noise and propagandise a minority viewpoint where traditional strategies have failed.[23]

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[22] Smith offers a fine statement of the intended depth of this legitimising drive: 'Civil disobedience plays a legitimate role in the public life of democratic societies. It is thus appropriate for the state — and the police in particular — to respond to civil disobedience in a way that takes into account this status.' ['Policing Civil Disobedience', 829]. Crucially, Smith focusses on the police response in large part because it 'contributes to prevailing ideas about civil disobedience as a mode of political participation' [826] — in other words, not just because a permissive police strategy will make it easier to disobey, but because police acceptance of civil disobedience will help to speed public acceptance of civil disobedience. So important is this link between the police attitude to civil disobedience and the wider public attitude to civil disobedience that Smith takes the thoroughly repressive tenor of real-world protest policing strategies simply to 'emphasise the importance of cultivating social and political acceptance of civil disobedience as a method of political participation' [837]. At the other end of the spectrum, Rawls is the liberal theorist most opaque about what his right entails, though he does say that 'courts should take into account the civilly disobedient nature of the protester's act, and the fact that it is justifiable (or may seem so) by the political principles underlying the constitution, and on these grounds reduce and in some cases suspend the legal sanction.' [*Theory of Justice*, 339]. In any case, on the assumption (defended in my §1.3) that the very idea of a claim-right supposes some kind of enforcement of its bearer's claim, I think that we may count Rawls's right as also vulnerable to my argument in this section. In other words, whatever precisely Rawls means to imply in the remark of his quoted above, I am not sure that one can talk sensibly of a claim-right to civil disobedience (nor, perhaps, of civil disobedience as a 'morally correct way of maintaining a constitutional regime' [337]) without being committed to the idea that the state authorities ought not to intervene to thwart the performance of the act which the claim-right protects (or move to close off any reasonable opportunity to undertake it). Even this minimal refraining from forcible intervention — this *permitting* of civil disobedience — is sufficient to establish my conclusion in this chapter.

[23] That is why I cannot welcome Dworkin's declaration that Americans had, by the 1980s, come to 'accept that civil disobedience has a legitimate, if informal, place in the political culture of their community … civil diso-

It is difficult to think that anyone could be electrified by civil disobedience once it had been — as liberal theorists recommend — recognised and accommodated as a legitimate extension of the ordinary constitutional apparatus.[24]

There is little hope of extensive media coverage here, for what is normal and legitimate soon ceases to be titillating. And nor is the 'epistemic martyrdom' mechanism of persuasion I identified above still in play. In a world where the state refrained from preventing, penalising, punishing, or otherwise interfering in civil disobedience (but did hand down endorsements from the bench), civil disobedience would be so cost-free, perhaps even so socially prestigious,

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bedience is no longer a frightening idea in the United States' [*Matter of Principle*, 105]. Nor can I endorse without qualms the force of Habermas's judgement that 'every constitutional democracy that is sure of itself considers civil disobedience as a normalised — because necessary — component of its political culture.' Jurgen Habermas, 'Civil Disobedience: Litmus Test for the Democratic Constitutional State', *Berkeley Journal of Sociology* 30:1 (1985): 95-116, 101.

[24] The apotheosis of the reconciliatory tendency — this wish for civil disobedience to be regarded as a perfectly normal and legitimate political activity — perhaps comes disguised in William Smith's proposal to levy 'moderate financial penalties' on disobedient demonstrators. Through these penalties (which are non-punitive, and better considered as analogues of the 'fees that are levied as part of the application for lawful protests'), the state 'establishes certain expectations about the contribution of civilly disobedient citizens to collective action schemes.' This goal is perfectly unobjectionable, since 'it is not unreasonable to expect citizens to make modest contributions to covering the cost of their lawful or unlawful protests.' And lest this offend our egalitarian sensibilities, 'the state should not expect civilly disobedient citizens to cover the full costs of their unlawful activism, as this may result in financial burdens that are too heavy for some citizens to bear'. [William Smith, 'The Burdens of Conviction: Brownlee on Civil Disobedience', *Criminal Law and Philosophy* 10:4 (2016): 693–706, 703]. I call this the apotheosis of the reconciliatory tendency not only because it reflects a shift in the conception of civil disobedience from a subversive performance to an 'event' with running costs, but also because it presents civil disobedience as an opportunity to *reinforce* (rather than to sever) the civic bond. The protesters pay a portion of the costs (i.e. in symbolic recognition of their membership of the polity and part payment of what they owe as beneficiaries of the great collective action scheme of state), and society picks up the tab for the rest (i.e. per the 'reasonable expectation' that the policing of demonstrations should be 'heavily subsidised through collective taxation'). The proposal also implies that — from the perspective of the civic compact — it would miss the point to cling to any hard distinction between lawful protest and unlawful protest: civil disobedients, like lawful protesters, ought to pay for their demonstrations, and the state ought in kind to subsidise civil disobedience in exactly the same way that it subsidises lawful protest. All that aside, entertaining the fairness consideration — i.e. that high fines might price poorer activists ought of the market for unlawful dissent — really is to bring civil disobedience wholly inside the state (to such an extent that we regulate access to it by the core principles of a third way liberal democracy). And cf. also here David Lefkowitz's near-identical proposal for the state to levy financial penalties (modelled as 'ex post facto licensing fees') against disobedient demonstrators. 'On a Moral Right', at 220.

that the mere act of undertaking it could not attest a whit to the objective urgency of its message.[25] Would-be civil disobedients living in this liberal society of right would run no more appreciable a risk in conducting their actions than would those activists who preferred to remain within the bounds of the law.[26] What else could be the result of asking that state officials respond to civil disobedience little differently than they do to lawful protest, except perhaps by treating civil disobedients better?[27]

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[25] I must clarify that both Smith and Lefkowitz permit the state to arrest civil disobedients: in other words, neither of them argues for a right against state interference in civil disobedience *as such*. This permission does not rescue the republican view, however, for reasons I elaborate at length below and again in §1.3 of this chapter. See Smith, 'Burdens of Conviction', 701-705; and Lefkowitz, 'On a Moral Right', 217-221.

[26] Quoth the New York Post, criticising demonstrations in support of a $15 minimum wage undertaken by local politicians in New York City (and giving a vivid sense of my view in the process): 'Assemblyman Francisco Moya of Queens tweeted the morning of the protest, "#Fightfor15, no matter the risk." Except, of course, there was no risk — at least to him: Moya received kid-glove treatment from the NYPD and was sent on his way, along with a souvenir photo of him surrounded by a dozen cops gently cuffing him … the problem is that elected professional radicals like Melissa Mark-Viverito and Brad Lander are so accustomed to not being punished for their civil disobedience that they no longer understand what it means.' Seth Barron, 'New York Pols Don't Know What Civil Disobedience Really Is', *New York Post,* 1 December 2016.

[27] As I alluded to above, Lefkowitz argues that the right to civil disobedience protects only against punishment, and not against various kinds of non-punitive interference. He insists, for instance, that the state is perfectly at its liberty to detain and temporarily incarcerate protesters, to fine them (and so on). Though this way of cashing out the right to civil disobedience may appear to preserve the kind of hostile environment I suggest is necessary for political charge, in fact it does not. That is so because the entire artifice of the distinction between penalty and punishment is to define a style of state response that permits the state to interfere materially in civil disobedience without thereby signalling that it disapproves or condemns it. We might say, analogously, that though the referee penalises you for straying offside, she doesn't *judge* or *condemn* you for it (nor wish that you hadn't). Penalties are policy options for the state, to the use of which no intimation of disapproval or censure attaches. Indeed, Lefkowitz likens his temporary incarceration proposal to quarantine on precisely that basis — i.e. that a quarantine restricts people's movement for the sake of the public good, but implies no negative judgement against those who are detained. Now, that's all fine and well, but it is, of course, negative judgement — *disapproval* that furnishes civil disobedience with its necessary political charge (and not the bare material fact of the state having intervened in it). ['On a Moral Right', 217-221]. In other words, the instinct here is still thoroughly reconciliatory: the state ought not to *punish* civil disobedience, rather it ought to recognise it as legitimate, and hence only *penalise* it. As Lefkowitz has it, 'the publicly disobedient agent acts within her moral rights, in penalising rather than punishing, the state recognises that fact' [223]. Indeed, to punish someone for being civilly disobedient is 'equivalent' to punishing her for voting or for exercising her right to free speech [219], and so great is Lefkowitz's concern that society not be misled on the question of civil disobedience's ample legitimacy that he recommends it be handled through separate (and avowedly non-condemnatory)

My point might be made more vivid if we inquire what charge and potency the canonical examples of civil disobedience would have had were they to have happened not in defiance of the state, but with its cooperation. Would King's message have cut through the noise of ordinary politics in the way that it did, or his actions have possessed the vitally folkloric power that they did, had Wallace accommodated King's march to Montgomery out of respect for his democratic contribution?[28] Would the Spies For Peace have electrified the Peace Movement in the UK, and caused such a public stir, had the security forces permitted their trespass into RSG 6 and their distribution of classified nuclear contingency plans?

The essence of my claim here is that conventional toleration of civil disobedience renders it practically lawful — *as good as* lawful, we might say (though still formally illegal). And it's very strange to think that such formally unlawful but conventionally legitimate action could give rise to a momentum for reform that had eluded all of the ordinary political mechanisms.[29] It is strange to think, in other words, that a *de facto* lawful action could satisfy the presumption that the republican right is premised on — viz. that civil disobedience possesses some democratic potency that lawful politics does not. To be clear, in making this point I am not attempting to offer a rich sociological parsing of the free play of human perception. I simply rely on the basic heuristic that people tend to see like things like, and put it that a civil disobedience permitted by the state and accepted as legitimate in the public culture is too much like lawful protest to lay any claim to the comparative potency that is the hallmark of republican civil disobedience and the foundational premise in the case for the right.

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courts and detention centres [222].

[28] One might think that precisely the point, of course, is that the state *could not have done this* — that Alabama in 1965 was not the kind of state capable of this behaviour, and that if it had been, it wouldn't have been systematically persecuting people on the grounds of their race. I return to this theme in §5.3, where I also develop the idea that — historically and politically speaking — the *raison d'être* of civil disobedience has often been to unmask the real nature of the state: to demonstrate that it is *not* a principled entity responsive to the demands of reason and democracy.

[29] Although I argued against the 'aesthetic revelation' analysis of civil disobedience's persuasive potential above, it's worth noting here that state-facilitated civil disobedience would seem to be symbolically empty. The power of *Taking A Stand In Baton Rouge,* for instance, consists partly in the fact that we know that the police were not there to facilitate the protest, but rather to crush it. The only kind of thunderclap revelation that state-facilitated actions might yield would perhaps involve cognition of the pantomime and paternalistic nature of the whole performance. I myself have undergone this revelation, and I remark on it at some length later in the thesis.

What's lurking in the background here is this much-neglected truth: it's not the 'objective' fact of law infringement that produces whatever frisson civil disobedience might have, but the 'social' or intersubjective fact of law infringement. We are, after all, discussing how people perceive and react to a given political action — whether it gets them talking, whether it gets them fired up. And such perceptions bear no necessary relation to the action's 'objective' legal status.[30] Political charge is a social and perceptual property, not a juridical property (although we may admit that it is contingently associated with the objective fact of lawbreaking).[31] In view of which we may then say that insofar as the republican view is premised on the basic article of faith that even though you ignore me when I write you a letter, put leaflets through your door, call you on the phone, share something with you on social media, speak to you on the street, march past your house, promise to raise money for your campaign, promise to raise money for your rival's campaign (and so on), but you take notice of me when I say the same thing while chained to the doors of a bank, what is doing the work here is not the objective legal fact that this behaviour is proscribed, but the social-perceptual fact that this behaviour is *subversive*.[32]

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[30] We are intuitively familiar with this idea, even outside the specific sphere of civil disobedience. All sorts of quotidian lawbreaking raises no stir whatsoever, because it is so mundane and commonplace — indeed, expected — as to be scarcely worth remarking upon. That is why, for example, petty crime, small-scale tax evasion, traffic violations (and so on) garner little more than yawns. Even murder, absent any particularly gruesome detail, is reported on only locally and cursorily. Conversely, all sorts of lawful behaviour can and does raise a very serious stir indeed: people are perfectly entitled — indeed, *invited* — to speak out at weddings on the theme of just causes and impediments, and yet if anyone ever did so, the hall would be scandalised (and the perpetrator in this case really would have excommunicated herself).

[31] There is therefore a very subtle slippage in the liberal view's framing of the moral problem of civil disobedience. Classically, and as I elaborated in the introduction to this thesis, what creates that problem is that citizens have a general obligation to obey the objective law, and what solves it is that breaking the objective law, though it would discharge your democratic obligation, is conducive to a greater (and in this case republican) good. But that is in fact false, what conduces to a greater good is *not* the breach of the objective law, but people's reaction to what they *perceive* as lawbreaking (and the social ripples emanating outwards therefrom). In other words, the two sides of the moral equation involve different kinds — the bad concerns the objective legal infraction, the good concerns the 'social' infraction.

[32] Let me make a slightly different and more serious point in this connection. The Freedom Rides — a canonical (and electrifying) campaign of civil disobedience, without doubt — perfectly indicate the political salience of social convention and how it may come apart from objective law. I say that because precisely their point was to force the federal government to enforce the *law* against segregation on interstate buses in the face of *de facto* strict segregation in the South. In other words, their point was to

The trouble with the republican right — and with the wider project of reconciliation — will by now be obvious. If the moral right behooves the authorities and the wider society to recognise civil disobedience as a legitimate political activity, how then could we think that it might make a mite of difference where *all* of the other legitimate political activities had failed? There is simply no sense in the underlying supposition here — viz. that two actions comparable in their social perception could or would produce very different ripples out there in the social world. Indeed, to the extent that social perception is inclusive of a disposition for perceivers to react in particular ways, this point is almost a truism.

But truism or no, this is precisely the circle that the republican view attempts to square. The view urges, in essence, that the organs of state and the wider society react to civil disobedience in much the same way that they do to the gamut of lawful political activities. And yet the same view is fundamentally premised on the basic faith that these constituencies react to civil disobedience in a manner utterly and enormously different from the way that they do to lawful protest. That is the incoherence at the heart of the republican analysis, and that is why theorists must give up either their view that civil disobedience possesses an immensely valuable pro-democratic potency, or their insistence that the state and society ought to recognise that value and embrace civil disobedience. In theory, as in life more generally, one cannot have it both ways.[33]

1.1.3. Coda: Contagion

Republican theorists introduce and defend the right to civil disobedience as a guarantor of unlawful activism's potent pro-democratic value, but the avowed implications of that

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violate the *conventional* prohibition on integrated seating arrangements in order to force the effective recognition of the Riders' *legal* right to sit where they liked. Thus were the Riders attacked and beaten not for breaking the law, but for exercising their *de jure* right to do what was *de facto* forbidden. That aside, I note that this point may count against the wisdom of conceiving civil disobedience as definitionally unlawful, but while I myself do not think that there is much sense in so defining it, it would serve no purpose to commit myself one way or the other here, and so I let the issue lie for now.

[33] What remains is to discuss the more general implications of this incoherence for the reconciliatory and rights-pursuing projects. And in particular, what remains is to address what appears a neat and natural way out of the problems I raise here — viz. simply to abandon the 'enforcement' commitments of the moral right to civil disobedience. Though I reserve the elaboration of these claims until §1.3, I do not think that this reply will work, nor that there is any other way for the view to depart this chapter unscathed.

right are guaranteed to undermine it. That has been my charge in this section, and with it the folly of the reconciliatory project — at least on the republican side of things — is laid bare.

Before I move on to develop a structurally analogous case against the 'cathartic' variant of the liberal tendency, let me round off my argument here with an independent remark on the general wisdom of thinking that whatever sickness ails the traditional parts of a system would not also infect any new and intendedly meliorative additions to it. In particular, let me point out the strangeness of supposing that the democratic infirmity amply demonstrated in the 'formal' political system (for that is the circumstance of civil disobedience) would not spill over into the 'informal' civilly disobedient extension to it.[34] If the governing class can and does ignore all of the ordinary countervailing pressures of the liberal democratic system — demonstrations, boycotts, public consultations, letters from constituents (and so on), why expect that it would not also ignore civil disobedience, that allegedly potent remedial influence, once it too had become a legitimate, hence ordinary, part of the system? In other words, if all of the lawful mechanisms of political engagement conspire to exclude or marginalise certain constituencies, why think that things would be any different for civil disobedience once it had been — as the right demands that it must be — accepted by the governing class responsible for that exclusion as a legitimate (though illegal) complement to those lawful mechanisms? This is not a conceptual truth, but it seems to me a reliable heuristic: if one accepts that the ordinary political apparatus displays a certain pathology, one couldn't reasonably think that civil disobedience — once it had been thoroughly integrated with it — would not bear exactly that same hallmark.[35]

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[34] Though we have seen that this integration of civil disobedience into the ordinary political apparatus is an essential commitment of the republican right as such, there can be no doubt that William Smith is the arch-theorist of institutionalisation. After all, he proposes that civil disobedients be 'given the opportunity of delegating representatives to petition government at a specially convened public commission or inquiry', and that 'a permanent body could be set up solely for the purpose of hearing complaints from civilly disobedient minorities' ['Revolutionary Spirit', 157]. It is a mystery to me why Smith thinks that these institutional arrangements could cure (rather than begin to resemble) the state of affairs motivating them — viz. a society where 'the normal channels of change no longer function and grievances will not be heard or acted upon', and where the state has 'lost, in the course of time, all institutions that permitted the citizens' actual participation' [153, quoting Hannah Arendt, *Crises of the Republic* (New York: Harcourt Brace Jovanovich, 1972), 74; 89].

[35] It may be that Daniel Markovits senses what it is the business of my argument to put formally — viz. that civil disobedience must remain permanently on the outside of the system, that civil disobedience is of a nec-

1.2. Against The Cathartic Case For Reconciliation

Until now we have been discussing civil disobedience's *political* credentials — i.e. as a democratic stimulus conducing to a more legitimate state. But there is a competitor rights ground in the liberal corpus, one painting civil disobedience as a uniquely valuable form of self-expression.[36]

This view — the 'cathartic' view, as I call it — has it that serious and sincere moral conviction (the kind of moral conviction that civil disobedients characteristically possess, and which consists in their rejecting with every atom of their soul particular aspects of government policy) is in some sense *irrepressible*. If one *really* believes that a given law or policy is unjust or fatally unwise, one cannot and will not go quietly — one will stand up and make it known to the wider society that one condemns the prevailing state of things.[37] *Not* to make known one's stance — to bite one's tongue, or else to attempt speech and be silenced — is to suffer a certain psycho-moral injury: the unsatisfied burden of conviction weighs acutely on the would-be activist, and ushers in a kind of self-alienation or fracturing of the moral psyche.[38]

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essarily provisional and subversive character. I say that because Markovits (conspicuously) never mentions rights or enforcements, and I know of no way to reconcile his judgements that i) our institutions 'create democratic deficits whose cures *no democratic system can incorporate*' ['Democratic Disobedience', 1935, my emphasis]; and ii) civil disobedience is an 'unavoidable, even integral, part of a well-functioning democratic process' [1936], except to say that the irony and paradox of the situation is that society at large cannot recognise this latter fact, nor attempt to institutionalise civil disobedience in light of it. That civil disobedience is an integral part of democracy is, we might say, the kind of truth that society simply cannot handle. In any case, given Markovits's conspicuous silence on the question of rights — and on the question of state response more generally — I style my arguments here, insofar as they pertain to Markovits's thoroughly republican theory, as demonstrative not of an incoherence in his account, but of the impossibility of institutionalising civil disobedience as he perceives it.

[36] As I noted in my introductory exegetical remarks, Kimberley Brownlee's 'conviction-driven' civil disobedience is the principal constituent of this less popular liberal tendency. But, as I explain presently, my case here may also have implications for the views of Ronald Dworkin and Joseph Raz.

[37] This account of conscientious conviction is supposed to be psychologically descriptive, rather than morally prescriptive, it's important to note. The thought is not that sincerely convinced people *ought* to speak out, it's that — as a matter of psycho-motivational fact — sincerely convinced people *just will* speak out. It is supposed to be an empirical truth, in other words, that people with sincere moral convictions find it difficult to stay silent. See Brownlee, *Conscience and Conviction*, §1.1.

[38] Brownlee refers, for example, to 'the psychological risks of self-alienation, incongruity, and akrasia that dog absolute expectations that we adhere to formal norms' [*Conscience and Conviction*, 168], and likens her ground for the right to that 'invoked in less extreme contexts to excuse

I do not propose to analyse here exactly what this psycho-moral injury consists in, and nor will I quibble with the more basic idea that sincere moral conviction is irrepressible, and that repressing it (or its being locked up inside us by some external agency) is harmful. Rather, I intend to accept these various particulars at face value — i.e. that the moral right to civil disobedience is a right to act in ways expressive of one's sincere moral conviction, a right to 'let out' what would be psychically burdensome to keep pent up — and then to demonstrate that state recognition of this right is bound to undercut exactly that which the right aims to protect — viz. civil disobedience as a viable medium for this kind of morally vital self-expression.[39]

1.2.1. 'I Reject It Thus'

We need begin by asking one question in particular. Granted that sincere moral conviction really does impel us to express our moral stance, why would we need to express ourselves through *civil disobedience* at all? Are we not free — as liberal democratic citizens — to say whatever we like? And more to the point, have we not *already said* whatever we like (per

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professionals, such as doctors, nurses, pharmacists, and judges, from carrying out some of the functions of their office that would be *psychologically burdensome* for them' [145, my emphasis]. Incidentally, it is not especially clear whether there are two wrongs here or one — i.e. whether, independently of the question of psycho-moral harm, it is simply wrong for the state to limit people's self-expression, or whether the wrong consists exclusively in the harm one suffers for having one's speech limited. Nothing turns for my argument on this point, but if the correct interpretation is the former one — i.e. that the right infringement *simpliciter* wrongs the citizen — then Smith's criticism of Brownlee (viz. that some convictions, for instance about the fairness of particular tax efficiency schemes, don't look like psycho-moral investments of a momentous enough kind to produce harm if stifled) misses its target. Smith, 'Burdens of Conviction', 699-670.

[39] I should clarify here that though Brownlee does not endorse the republican view of civil disobedience as a ground of right, she does endorse it as an independent (and reconciliation-worthy) account of civil disobedience's *value*. For instance, she refers to civil disobedience as a 'microphone' giving real voice to those constituencies routinely ignored in or excluded from the ordinary political process ['Reply to Critics', 735], and avers that 'when breakdown in the mechanisms of engagement occur, civil disobedience is one comparatively modest way to rectify these democratic deficits by focusing attention on neglected issues'. [*Conscience and Conviction*, 176]. More generally, she argues for the 'deliberation-enhancing effects' of civil disobedience [146]; and in Millian fashion praises the 'gadfly' power of civil disobedience to stimulate the public conversation ['Reply to Critics', 734]. The upshot of this being that even if my arguments against Brownlee's cathartic right are unpersuasive, then the enforcement of the cathartic right, though it might preserve civil disobedience as a vehicle of dissociative self-expression, would still undermine the public, political half of her civilly disobedient equation (assuming that my case in the last section is sound, of course).

the 'last resort' condition discussed above)? In other words, if the vast range of lawful speech possibilities — conversations with our MP, letters to the editor of our favoured paper, public meetings of our Constituency Labour Party, holdings-forth at Speakers' Corner, demonstrations at Whitehall (and so on) — cannot suffice to meet the expressive demands of conscience, then what kind of expression is it that conscience demands? Not a kind of *saying* at all, it would seem, but rather a kind of *doing* — a speech-act, and in particular, a *dissociative* speech-act.[40]

That is Brownlee's view, and the thought underpinning it is undeniably plausible: one cannot properly express one's disavowal of that which one condemns simply by *saying* — lawfully — 'I disavow it'. Rather, one has to *show* or *prove* that one disavows it. Even that is not quite accurate — it's that *in transgressing law* one disavows it. In transgressing law — which is the very foundation of the state and organised society (and to that extent symbolic of both of them) — one places oneself outside the ordinary state of things, one severs ties with one's erstwhile nation, one excommunicates oneself. That is what no amount of mere talk or lawful protestation can achieve, and that is what civil disobedience alone offers: for one's disavowal to be meaningful, one really does have to place oneself 'outside' the state and society in a certain performative and figurative sense.

1.2.2. At Her Majesty's Displeasure

The cathartic right to civil disobedience is best understood, then, as a right to dissociate oneself from the state — a right to place oneself outside it, figuratively and performatively, by means of the disobedient breach of law.[41] And thus codi-

[40] See for instance Brownlee's claim that '[e]xpression encompasses both speech and action since much, if not most, action is expressive. The moral right to free expression is as much a right to expressive action as it is a right to verbal expression' [*Conscience and Conviction*, 140]. And see also her more specific claims that 'although legal protest, like civil disobedience, offers a vehicle through which to communicate conviction, legal protest *lacks the conscientious and performative dissociation* that civil disobedience has as a constrained breach of law' [239 n.1, my emphasis]; that civil disobedience (as a definitional matter) 'serves the purpose of dissociating us from the law or policy we oppose' [104]; and that the purpose of the legal excuse for civil disobedience is to avoid activists having to 'remain surreptitious and self-censoring in [their] efforts to dissociate from laws [they] oppose [8].

[41] Once again, and in keeping with my more concessive and conceptual bent in this first part of the thesis, I shall accept *in arguendo* this basic picture of civil disobedience. I shall accept at face value, in other words, that civil disobedience does effect this kind of morally valuable performative dissociation, and I shall try to show simply that one cannot believe this *and* believe that the state ought to recognise it as legitimate.

fied, the reader will perhaps begin to sense why state recognition of this right — this right of dissociative expression through the unlawful speech-act of civil disobedience — in fact makes it impossible to exercise.

We may depart now from the quasi-sociology of the last section, and hence prosecute this part of the argument with more pace. It seems to me a conceptual truth that genuine dissociation *from* the state and the public moral culture cannot be effected through a mechanism tacitly extended *by* the state and accepted as legitimate *within* that public moral culture.[42] It's just part of the idea of dissociation, I wager, that one's dissociative performance cannot be permitted, facilitated, abetted, praised — in short, indulged — by the agency from which one aims to dissociate oneself.[43] There is

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[42] The tension between state accommodation of civil disobedience and the alleged dissociative charge of civil disobedience finds comical expression in Smith's proposal to levy non-punitive fines for civil disobedience (which proposal, we saw above, is supposed to make good on society's reasonable expectation that 'civilly disobedient citizens [contribute] to collective action schemes', in this case by making 'modest contributions to covering the cost of their lawful or unlawful protests'). ['Burdens of Conviction', 703]. Now, what we have here is a *tax* on civil disobedience, plain and simple, and before I discuss its wider implications, let me point out the truly enormous irony here, which is that Thoreau's *refusal to pay his poll tax* was the original act of civil disobedience — from civilly disobedient tax refusal to a tax on civil disobedience! That aside, the anti-subversive ramifications of this shift are obvious, and its anti-dissociative (indeed, associative) implications are also easy to spot: how can one pay something couched in terms of community membership when one's whole intention is to performatively renounce membership of that community? Indeed, in light of this I speculate that the true civil disobedient will, as a matter of principle, refuse to pay the fine (especially if paying it is positioned, as Smith positions it, as a way of affirming one's obligation to the political community). I develop this idea later in §1.3.

[43] On the scope of this indulgence, see again Brownlee's claim that 'the moral right to civil disobedience protects against *all forms of interference* including prevention, penalisation, and punitive hard treatment' [*Conscience and Conviction*, 249, my emphasis], and that '*any* punishment (and not only that of a 'concretely burdensome' kind) wrongs the civil disobedient by breaching her moral right to act without interference' [8, my emphasis]. On the form of this indulgence (which is more pertinent to my arguments here) see her judgement that 'for our rights to be meaningful, we require an effective system of provision and protection within society's accepted morality and (in certain senses) its legal system. Effective recognition of the moral right to civil disobedience requires, for example, that the state, where possible, allow the disobedience to occur, and neither sabotage the disobedience nor respond with excessive force. Additionally, it requires that the state take civil disobedients seriously as a distinct category of offender, and thus, exercise discretion when deciding whether to arrest, charge, go to trial, convict, or sentence' [249 n.24]. This last requirement gives rise to Brownlee's recommendation that courts ought to try civil disobedience as a civil matter, praise the decency of disobedient defendants, favour 'non-punitive restorative approaches', and impose (at most) sentences that are lenient and non-custodial [250-253]. On top of this, judges ought — in the rare cases where the defeasible right against punishment is overwhelmed by more pressing countervailing considerations -- to signal that 'we appreciate the value of what you do, and regret that we

a strong whiff of paradox, then, in the cathartic view's call for state accommodation of civil disobedience — in the very idea that the state authorities ought knowingly to make it easier for activists to dissociate themselves from the state authorities.

Let me put some flesh on this bare conceptual claim. We may suppose that ordinary lawful demonstrations lack any dissociative potential because they remain wholly *within* the state — because, in demonstrating lawfully, one plays by the state's rules, one avails oneself of a facility created and maintained by the state (i.e. that produced by the state's enforcement of the rights of political speech and free assembly), one acts within the state-sanctioned range of expressive activities. The dissociative potential of civil disobedience, by way of contrast, may therefore be supposed to lie precisely in the fact that, unlike ordinary lawful demonstrations, disobedient activism goes *further* than the limits that the state has laid down — and crucially, this goes regardless of whether those limits are drawn by statute or by informal convention.[44]

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have to censure you for your breach of law, but this is the necessary price of *allowing* any illegal protest to occur' [251, my emphasis]. In the interests of transparency I should note here that Brownlee does think that punishment for civil disobedience can, on certain occasions, be deserved (for instance if activists engage in vandalism or property damage), and hence that the cathartic right does not furnish activists with carte blanche to do whatever they like. That said, even *this* disobedient misconduct should be contextualised against the 'onerousness for civil disobedients of abiding by the law' [135]. In any case, my claim here, of course, is that this detailed complex of collusive policies is guaranteed to undercut precisely what it aims to safeguard — viz. civil disobedience as a viable medium of morally vital dissociative self-expression.

[44] This is the point at which my arguments against Brownlee's right might generalise to undermine elements of Dworkin's view. He includes, among the varieties of disobedience, a vision of civil disobedience as a kind of rights-protected free expression, arguing that: '[a] man cannot express himself freely when he cannot match his rhetoric to his outrage, or when he must trim his sails to protect values he counts as nothing next to those he is trying to vindicate. It is true that some political dissenters speak in ways that shock the majority, but it is arrogant for the majority to suppose that the orthodox methods of expression are the proper ways to speak, for this is a denial of equal concern and respect … if the point of the right is to protect the dignity of dissenters, then we must make judgements about appropriate speech with the personalities of the dissenters in mind, not the personality of the "silent" majority for whom the anti-riot law is no restraint at all.' [*Taking Rights Seriously*, 201]. Now, this is all reasonable enough, as far as it goes. But the pertinent question is this: *why* express yourself in this unlawful manner? Assuming that people are reasonable, there must be some reason why they might feel that their expressive needs cannot be met within the law. And that being the case, it's a good bet that what's doing the work — what's scratching the itch for these heterodox communicants — is not the formal fact of their expressive action being unlawful, but the social fact of that action having transcended a salient limit. Dworkin's comments are terse here, I readily concede, but if I read

The crux of my argument here, and this is the analogue of my earlier remarks on the perceptual (rather than juridical) character of political charge, is that while the cathartic theorists are correct to think that dissociation is a question of boundaries, the relevant boundaries are a function not of law, but rather of *will*. The relevant boundaries are those describing what the state authorities and the prevailing culture will *accept*, not what is enshrined in that state's law.[45] The upshot here being that state facilitation and public acceptance of civil disobedience would not make it *easier* to cross that sacred dissociative border — to break with the state and the mainstream society, and in so doing to make good on the demands of one's conscience. Rather, it would move the border out of reach. In a world where the state recognised and accommodated civil disobedience as a legitimate mechanism of dissociative expression, civil disobedients could not go further than the limits laid down by the state — no matter how many laws they broke in the attempt.

And in moving the border out of reach, the state would thereby *intensify* the burden of sincere moral conviction, rather than lift it. If this kind of conviction really does engender in the activist a drive to dissociate herself publicly from the wrong that she condemns and the state that permits it, and if the thwarting of that drive really is psycho-morally injurious in the manner supposed on the cathartic view, then conventional enforcement of the moral right to civil disobedience would practically *guarantee,* in grimly ironic fashion*,* that activists will suffer this injury.

1.2.3. Take Two: Autonomy

Having established the incoherence lurking at the heart of the core case for the cathartic right to civil disobedience, I move on now to take issue with another element of the account — viz. Brownlee's independent case for giving the right due recognition in the jurisprudence of the land.[46]

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him correctly, then he may betray the same incoherent drive — i.e. that of urging that the state ought to recognise and permit a style of speech that depends for its appeal on, for lack of a better term, 'going too far'.

[45] I believe that this point of mine is consistent with regarding the law as of special moral or symbolic significance (i.e. as the formal and settled will of the community). We should not, however, overstate law's significance: what constitutes a people and what are its rules is a function of practice and convention, not of statute.

[46] This jurisprudential recognition would take the concrete form of a 'demands of conviction' legal defence for civil disobedience, the widespread acceptance of which 'would honour the links between autonomy, psychological integrity and conscientiousness' [*Conscience and Conviction,* 167]. Brownlee borrows this 'legal excuse for disobedience of the law', which she

This second case moves the argument away from the narrower theme of dissociative self-expression (i.e. as a means of avoiding the profound ill of self-alienation), and towards a broader concern for citizen autonomy. The state ought to permit civil disobedience, so the case goes, because denying people room to act outside the law — coercing them to obey it on every occasion, rather than allowing them space for deviance from time to time — threatens the citizen's development of an autonomous moral personality.[47]

Now, my argument against this entailment — that because civilly disobedient lawbreaking is an important means by which the citizen may develop a sense of herself as an independent moral being, the state ought to permit civilly disobedient lawbreaking — is structurally analogous to my earlier remarks on dissociation, and so I dive in with little preamble. One cannot, it seems to me, develop (through lawbreaking) an autonomous sensibility with respect to the state for as long as one's lawbreaking is permitted by the state, for the familiar reason that insofar as one's disobedience is permitted by the state, one is still working within the state's ambit, playing within the range of possibilities determined by the state — operating on license, in effect.

The intuitive force of Brownlee's claim, I take it, is that in breaking the rules — in going 'too far', in pushing beyond the boundary of what the Other expects or is prepared to tolerate — one asserts oneself as an autonomous agent (which explains why, by hypothesis, lawful protest is insufficient to garner this autonomous sensibility). The problem is, of course, that when the state authorities *permit* civil disobedience, to undertake it is no longer to break the rules — it is no longer to assert one's own will and sense of right over

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refers to as 'the political expression of the humanistic principle' (i.e. the principle grounding her *moral* right to civil disobedience) from Jeremy Horder. *Conscience and Conviction*, 167-168, drawing on Jeremy Horder, *Excusing Crime* (Oxford: Oxford University Press, 2004), Ch. 5.

[47] I must clarify that this case is my own reconstruction of Brownlee's highly abbreviated remarks — viz. that 'to insist that we should always sacrifice our commitments in order to comply with legal demands, however trivial those demands may be, is to place disproportionate emphasis on the importance of law-abidingness. And, this unduly affects our prospects for realizing full personal autonomy, the value of which is key in a liberal democracy.' I also extrapolate from her judgement that in recognising the 'demands of conviction' defence discussed in the note above, the state would thereby acknowledge that our civil disobedience was an 'autonomous act taken on the strength of commitments that we may point to when asked to account for our action', as well as her more general claim that being permitted space to disobey provides us with the opportunity to 'cultivate the skills of practical reasoning, good judgement, and will'. [*Conscience and Conviction*, 167-168]. My charge here, of course, is that state-abetted civil disobedience would provide no meaningful opportunity to develop will, or to assert one's own commitments over society's expectations, or, more generally, to realise one's full personal autonomy.

and against what one is expected to do (no matter how many laws one breaks in the course of acting). To harp on my old theme once again: the salient rules — the pertinent strictures — are not a function of law *per se*, but of what the authorities and the mainstream society *accept* (regardless of its legal status).[48] Neither the political charge of an episode of civilly disobedient lawbreaking, nor its dissociative potential, nor its conduciveness to activist autonomy, has anything much to do with the 'objective' legal infraction. These qualities have their roots in what law is usually a proxy for — viz. the will of the state, the *real* rules.

Let me round off my case against this secondary rationale for state collusion with a more allusive restatement. What we are discussing here is really the development of a moral subjectivity, and what I am suggesting is that the moral 'I' — the 'I' which knows itself to be separate from the state and the social mainstream, which decides what it will and will not go along with, which is sensitive to the moral obligations that it owes to different parties and how they rub against each other — must be forged through conflict and boundary-testing: there must be some conflict or discord between the self and the Other.[49] But there is no such conflict or discord in cathartic civil disobedience — there is no need to kick against the pricks. There is only the frictionless accommodation of one's will through state-facilitated civil disobedience, and even worse, a frictionless accommodation enacted *so that* the activist might blossom into an autonomous adult.[50]

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[48] That is why state-abetted civil disobedience is not analogous to throwing a stone in Hegel's river. In throwing the stone one causes the water to move in ways alien to its natural tendency, which altered motion confirms one's separateness from the world. Cathartic civil disobedience causes no such self-confirmatory ripples because it does not require the state to move in ways alien to its natural tendency (i.e. because it has already agreed to accommodate your action).

[49] It would seem to be an implication of Brownlee's account that those who have never been civilly disobedient are not fully autonomous moral persons (or perhaps that they are not possessed of sufficiently weighty moral convictions). Alternatively, it might be that the autonomy concern applies only to people already inclined to disobey — it may be the thwarted intention to disobey, rather than the *tout court* non-performance of civil disobedience, in other words, that risks one's development of moral autonomy. While the former construal initially appears like a reductio of the view, on reflection I find it quite persuasive. Full disclosure: I myself have never been civilly disobedient (at least not in Brownlee's proudly public and performative sense).

[50] I allude here to Brownlee's claim that the 'demands of conviction' defence aids the activist in discharging her 'basic responsibility', a responsibility that we all share, and which 'involves our asserting that, despite everything, we are responsible adults' (i.e. rather than 'our seeking to avoid the bad consequences of any wrong we do by denying responsibility'). *Conscience and Conviction*, 161. I must admit here that I find this a disturbingly moralising and strangely paternalistic take on activism (which theme I shall return to in Chapter Two and §5.1). And let me also hazard in

The incoherence in this call for the state to recognise and affirm civil disobedience is plain: in accepting and abetting civil disobedience as a legitimate recourse for the morally sensitive citizen, the state makes impossible exactly the kind of autonomy-conducive activism of principle that Brownlee endeavours to protect.[51]

1.2.4. Coda: The Price Is Right

My argument in this chapter is largely completed, and I will go on in a moment to formalise it and discuss its implications for the project of reconciliation. Before I do that, however, let me digress a fraction in order to draw out something odd about the framing of Brownlee's cathartic argument — viz. that it rests on a stark warning of the self-alienating and autonomy-stunting ramifications of strictly enforced compliance with law, and yet that its key practical innovation is the delineation of a 'demands of conviction' legal defence that would absolve activists of punishment or penalty for their actions. The oddity here being that any activist in a position to plead this defence before the bench would, truistically, *already* have broken the law, hence al-

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this connection that most civil disobedients would be horrified to learn that the state had 'allowed' them to disobey — that the state had facilitated their action and knowingly refrained from intervening in it *because* it wanted activists to have space for self-expressive and autonomy-conducive action. My case here, of course, is that this permission for civil disobedience is self-defeating, but that aside, I cannot but think that activists would be shaken to learn that the state had permitted their actions: I cannot but think that this knowledge would ruin whatever satisfaction they had derived from their action — that it would make the protest feel hollow in the important respects.

[51] There is an analogy here with the paradox of hedonism: the state cannot intentionally provide an autonomous space for citizen action. Any hint that the state is taking into account the interests of the disobedient, or giving any thought at all to civil disobedience as a good, or making any move (no matter how slight) towards accommodating it — all of this in fact makes cathartic civil disobedience impossible. And what this means, amongst other things, is that arrest or censure or repression is *not* essential for dissociative or autonomous civil disobedience. If the cops don't arrest because they're overworked or under-resourced, or because they themselves (*qua* individual citizens, rather than state representatives) endorse the protest, or because they would prefer not to attract any bad PR, then that is all fine and consonant with civil disobedience's constitutively subversive nature (because civil disobedients are in this case *exploiting* the incentive-matrix facing the police in order to get their own way). If the cops do not arrest because they think that the disobedients ought to have their say, or because they respect the disobedients as autonomous agents, by way of contrast, then the constitutively dissociative and autonomous nature of the action is instantly thwarted. In essence, it must be that — were it not for some countervailing factor irrelevant to the positive interests of the civil disobedients — the police *would* arrest them. I develop this idea later in §1.3.

ready have grown more fully into her unalienated autonomous personality.[52]

This quirk in presentation is not in itself a defect, of course. But it is symptomatic of what is a general — and distinct — problem for Brownlee's pursuit of right: namely that the 'live' moral problem of civil disobedience is not whether the state ought to permit or eradicate civil disobedience (i.e. whether there should *be* civil disobedience), but simply what price the state ought to charge for it. I say that because — in the liberal-democratic circumstances at issue here — *effective* bans on civil disobedience (indeed, on any activity whatsoever) are impossible in practice, and likely impossible also in theory.[53] Any state that could, and did, make civil disobedience impossible would *ipso facto* not *be* a liberal-democratic state (for one thing, such a programme would involve truly enormous collateral infringements of liberty and privacy).[54]

There is, then, no dichotomous choice to be made between civil disobedience or no civil disobedience, civil disobedience or psychically ruinous self-censorship, civil disobedience or stunted autonomy. There is only the choice of what price — what penance — to be exacted from the legions of civilly disobedient lawbreakers guaranteed to pop up wherever the state looks.

The problem is not incidental or cosmetic, in the sense that insofar as the live moral problem of civil disobedience is really one of *punishment* (rather than *tout court* prevention or permission), the cathartic argument appeals to the wrong set of intuitions, and so borrows an unwarranted urgency. What appears to be doing the work in this argument is the activist's vital interest in avoiding the psycho-moral harm of self-censorship by means of the dissociative breach of law, but what is actually germane here is a different sort of wrong entirely — viz. that of being punished or penalised for acting to avoid that psycho-moral harm. And it is not obvious that

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[52] See again here Brownlee's remark that recognition of this defence 'would honour the links between autonomy, psychological integrity, and conscientiousness.' And more, to the point, that 'it would do this by not requiring us either always *to give priority to the law over our deep commitments* or always to remain surreptitious and self-censoring in our efforts to dissociate from laws we oppose.' *Conscience and Conviction*, 8, my emphasis.

[53] Indeed, as I will suggest in a moment, even extremely authoritarian regimes cannot prevent dissent (nor murder, nor much other quotidian criminal activity).

[54] I bring up this conceptual point partly to head off the following objection — viz. that it's important to know that the state ought not to effectively prevent civil disobedience, even though it lacks that capability in practice. Let me also clarify here that I don't say conclusively that the cathartic account is in trouble for the reasons I detail here, but I do say that its intuitive plausibility is much damaged by this shift in framing.

that wrong has anything like the same weight: I certainly agree that dissociative self-expression (and through it the avoidance of self-alienation and a fractured moral psyche) is a good of exceptional importance, but I am not sure that I agree so readily that it's unreasonable to ask activists to buy that good in the coin of fixed penalty notices, court appearances, fines, community service, suspended jail sentences (and so on).[55] And even if it *is* unreasonable, it doesn't seem a wrong of great urgency — all sorts of penalties for all sorts of things are unreasonable, why single out civil disobedience for special attention?

Now, it may be that I move too quickly here. Perhaps the problem is not the punishment imposed on confirmed civil disobedients (i.e. those activists who have already disobeyed), but the disincentives faced by would-be disobedients?[56] Perhaps so, but so-construed the issue is not much more urgent: civil disobedience is a thoroughly pervasive element in our own liberal-democratic politics, and the historical record is dripping with civil disobedients (or comparable dissenters) at work in much more repressive climates.[57] Plainly the mental fortitude of those inclined to disobey is formidable enough that today's comparatively trivial

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[55] There is an open question here whether being punished for expressing oneself is — in itself — a species of injustice. If it is, this may give the issue more bite — i.e. because such an injustice may be less tolerable than the relatively mundane privations in which it consists (in other words: a day in jail might be unpleasant, but it's much better than a day in jail unjustly handed down). That sounds plausible enough, but I don't mean to take up a definite position here. I mean to suggest only that no liberal theorist appears to realise, much less to admit, that this is *in fact* the practical terrain that they are fighting over, and moreover that the fight is — for that reason — much less urgent than they appear to think. Perhaps I read the situation wrongly (and I remind the reader that this speculative addendum plays no role in my main argument in this chapter), but I think it's undeniable at the very least that the view creates a *rhetorically* misleading impression of what is at stake in this debate.

[56] Let me observe in this connection that all of the liberal theorists here surveyed address only the spectre of the *state* response to civil disobedience (save for general invocations of the public moral culture). There are obvious (and perhaps defensible) political-theoretical reasons for doing so, but we ought not to lose sight of the fact that — speaking historically — the salient disincentives have not been the juridical ones (fines, jail terms, criminal records, and so on), but those imposed by the wider society (amongst other things: hate mail, death threats, social ostracism, employment blacklisting, police brutality, mob violence, arson, murder, even bombings). I will not take this point any further here, since it is one of my main themes in Part Two, but it's important to keep some perspective in these debates on rights to civil disobedience and their enforcement by the state.

[57] Not for nothing does James C. Scott argue, in his comprehensive audit of historical patterns and practices of resistance, that the real and perennial question is not Gramsci's 'why don't they rise up?', but 'why do they *always* rise up?'. James C. Scott, *Domination and the Arts of Resistance: Hidden Transcripts* (New Haven, CT: Yale University Press, 1990), esp. 70-80.

sanctions present no serious disincentive to political non-conformity.[58]

1.3. Ruminations and Implications

This chapter is nearing its end, and before I go on to ruminate a little more on the force and implications of my case, let me remind the reader of its central thrust — viz. that both of the existing defences of a moral right to civil disobedience are incoherent. We saw that first with the republican analysis, which founds the moral right on civil disobedience's pro-democratic power to focus the public moral gaze on matters hitherto neglected, jolt the society to its senses, and revivify sclerotic democratic institutions. This picture of civil disobedience is, I argued, implicitly premised on a constitutively subversive idea of civil disobedience — an idea of civil disobedience as possessing a certain political charge, one granting it a comparative potency over all the lawful means of political engagement. From there one need only see that what the right enjoins — viz. state acknowledgement and acceptance of civil disobedience as a legitimate political activity — is guaranteed to undercut that required subversiveness, and with it any claim to civil disobedience's comparative potency. On the cathartic side of things, meanwhile, I made the more conceptual case that state endorsement of civil disobedience — even bare toleration of it — renders it inviable as a mechanism of dissociation from the state, hence as an avenue of the kind of expression to which activists have historically been drawn (on pain of the complex moral and welfare loss of self-alienation and a fractured moral psyche).

Those were the specifics, but the wider lesson is this: the state and mainstream society reception of civil disobedience

[58] What remains is the proposition that — although the levels of dissent have historically been high — they would have been higher had the penalty not been so exacting. What remains, in other words, is the idea that a number of would-be disobedients are presently deterred by the legal consequences of going through with their action — priced out of the market, as it were. I will not entertain this consideration at any length: I am not sure what is to be gained by creating a society where people presently unwilling to risk a three month suspended sentence for the sake of their beliefs will feel that the cost-benefit trade-off of moral consistency has tilted in their favour. To be sure, I am not certain that I would risk that sentence for the sake of my own psycho-moral consistency, but I am certain that if the potential penalty was — at the very worst — a kid-gloved consensual arrest, a warm commendation from the judge, and a course of community service, I would not consider disobeying the law much pertinent to that concern at all.

— what reaction it provokes in the powers that be, and how it is perceived in the public culture — is not *exogenous* to civil disobedience's value. No, how the authorities respond to civil disobedience, how they and the public culture regard it, *that* is the foundation of whatever value it may be said to have. Civil disobedience is, from the point of view of value, not a matter of *lawbreaking*, but a matter of *normative* infraction — a matter of going further than is conventionally accepted.

1.3.1. One Step Forward, Two Steps Back

One liberal commentator appears to grasp something of that truth, even going so far as to suggest that there is a flavour of paradox in the idea that civil disobedience could be protected by a right against state interference given that the high theatre of arrest is — somehow — absolutely integral to it.[59] That said, William Smith does not sense quite where that paradox lies, and correspondingly draws wholly the wrong implication from it *vis a vis* the traditional liberal pursuit of right. It is my hope that the elaboration of this claim will prove a useful conclusion to my arguments in this chapter, which is why I bring up his proposal — undoubtedly the most sophisticated take on the practical implications of a moral right to civil disobedience — only at this late stage.

Smith's innovation, in response to this hint of paradox, is to dispense with the standard liberal claim-right against state interference in civil disobedience as such, and replace it with a new and more nuanced right exclusively against *'unreasonable'* forms of state interference — viz. those which thwart the expressive efforts of civilly disobedient protesters.[60] The practical form of this novel right comes in his proposal for a policing philosophy of 'negotiated accommodation', a law enforcement ethos requiring that police 'attempt to cooperate with civilly disobedient activists in order to assist in their commission of a protest that is effective as an expression of their grievance against law or policy', but which nonetheless (and to that assistive end) has a bespoke niche for reasonable interference built into it — explicit provision for pre-agreed (or otherwise non-preventive) arrests.[61]

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[59] Smith, 'Burdens of Conviction', 702-705.

[60] Smith, 'Burdens of Conviction', 705.

[61] Smith, 'Policing Civil Disobedience', 827-828. On an exegetical note, I should clarify that Smith leaves the relationship between these two papers opaque, but I take it that this proposal for 'negotiated accommodation' is roughly coextensive with the limits of Smith's novel right against 'unreasonable' interference (i.e. the one mooted in 'Burdens of Conviction', 705). I take it, that is, that police action consistent with the strategy of negotiated

Despite our knee-jerk impression, these arrests remain 'within the spirit of the goal of accommodation' because they (and the background density of riot cop chic attending them, one imagines) help to sensationalise the action and to substantiate its dissociative frisson. In other words, these arrests satisfy the strategic requirement that disobedient protests be 'seen to elicit police reaction in order to preserve their symbolic status as transgressive'. Moreover, they give activists the best of both worlds: speedy booking and ejection back onto the street, without jeopardising the 'appearance of transgression implied by arrest'.[62] Thus does Smith resolve the paradox: the key to squaring the thought that the state ought not to interfere in civil disobedience with the equally compelling idea that arrests are essential to any successful act of civil disobedience is to realise, in essence, that arrests (pre-agreed, symbolic arrests, at any rate) are not — in the morally relevant sense — a kind of interference at all, but rather a kind of facilitation.[63]

This solution is no resolution at all, however. And that's because Smith doesn't grasp where the paradox really lies. He thinks that the paradox of the traditional claim-right to civil disobedience resides in the state being forbidden to do what protesters *want* it to do — viz. arrest them. But that's only half-right: what protesters want to do — and what is the real core of civil disobedience — is to defy and provoke the state (or, at the very least, simply to do something of which it disapproves). That is why a show arrest — an arrest executed as part of the state's programme of negotiated accommodation, in deference to its mission to 'assist in [the activist's] commission of a protest that is effective as an expression of their grievance against law or policy' — is guaranteed to thwart (rather than secure) what is the protester's real de-

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accommodation is reasonable, and that the other (and ubiquitous) strategies of prevention and containment are decidedly unreasonable.

[62] Smith, 'Policing Civil Disobedience', 831-832, my emphasis. And cf. also here his remarks that when it comes to civil disobedience, the police have a 'dramaturgical part [to play] as an adversary', and that police-protester negotiations can help to 'transform' a potentially volatile encounter into a 'choreographed spectacle' [832-833].

[63] I wager that part of the reason why Smith gets this wrong is that (as I suggested in a note above) real-world civil disobedients try to provoke arrest because they aim to cause the state's mask to slip — i.e. they act in order to lay bare the underlying and essentially repressive reality of the political settlement. But since Smith, like all of the other liberal theorists, does not think that the state is fundamentally (or even frequently) repressive, this traditional rationale for disobedient protest must appear eternally opaque to him. Indeed, the idea at issue here — that the police are of some kind of dramaturgical value to the action — strikes me as a kind of garbled translation of that really-existing dynamic. I reprise and develop this thought at some length in §5.4.

sire.[64] No amount of facilitatory show arrests will render the demonstration an 'effective' episode of civil disobedience, and that goes for whatever precise sense of it you prefer — whether its republican sense of 'attention-grabbing', or its cathartic sense of 'performatively dissociative'.

Indeed, and if I might supplement this concluding recapitulation of my case with a more speculative remark, it seems to me that Smith's expanded proposals do not make civil disobedience possible where the traditional liberal account of right makes it impossible, they merely postpone the point at which the civil disobedience really starts. In Smith's world of negotiated accommodation, I put it that a technically unlawful action truly *becomes* civil disobedience only at the moment when activists push beyond what was negotiated — when they refuse to obey the 'reasonable' police order to disperse, point made, and thereby force these allied officers into a different and more hostile posture.[65] When a consensual pantomime of repression is turned into an actual instance of repression, in other words. When the cops who before intended only to abet the activist in moving to arrest her now do so because — independently of her wishes — *they* want to. If nothing else, and this is to bring us back round to our theme here, it is only at that moment — the moment at which the protesters escape the bounds of 'negotiated accommodation', or force the police into an 'unreasonable' form of interference — that dissociation is effected, and that political charge begins to accrete.[66]

The state cannot *give* protesters what they want.[67] That is

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[64] Smith, 'Policing Civil Disobedience', 828.

[65] Or, to call back to something I discussed in §1.2, when civil disobedients refuse to pay the fines levied against them as part of their obligation to contribute to the great collective action scheme of state. On which see again Smith, 'Burdens of Conviction', 703; and Lefkowitz, 'On a Moral Right', 220.

[66] Governments have often bungled this lesson, as when the then-Attorney General John Mitchell reassured Nixon at the height of the 1971 Mayday Tribe action in Washington, DC: 'I know they *want* to be arrested but, Mr President, I don't think that's any reason for not arresting them.' Mike Feinsilber, 'Newly Released Nixon Tapes Show Anxiety Over Anti-War Protesters', *Detroit News*, 18 October 1997.

[67] I clarify here that Smith's proposal is not bidirectional, in the sense that it exempts civil disobedients from any moral requirement to negotiate with the police. With this caveat, Smith presumes to escape the charge that his plan results in the 'normalisation' of disobedient protest, i.e. because it allows disobedients to surprise law enforcement with unexpected forms of protest. ['Policing Civil Disobedience', 838-839]. This loophole will not save civil disobedience's subversive edge, however, since that edge depends not (only) on the protester's attitude towards negotiations, but on the bare fact that the *police* are willing to negotiate (or, at any rate, that the general public is aware of this law enforcement disposition). Subversiveness, political charge — these are public perceptual phenomena, and this is specifically a case where 'the commitment of police to negotiated accommodation is

the real shape of the incoherence and the real lesson of this chapter. What Smith senses of this incoherence he senses at the wrong level, stopping at the surface abode of jackboots and sirens — the set-dressing of repression — rather than seeing through it to the underlying question of will.[68] And when one perceives the problem at the *right* level — viz. that for civil disobedience to work there must be genuine friction and disharmony between the state's agenda and the protester's agenda, that the electric potential of arrest resides not in the fact of removal and detention *per se*, but in the clash of wills that it usually indicates — one realises that the solution is not to define a new right, not to keep seeking a way for the state to accommodate civil disobedience without ruining it, not to carry on trying to square the circle, but simply to *abandon* the pursuit of right, and with it the larger project of reconciliation.

1.3.2. Skinning The Cat

My general theme here has been that the liberal view suffers from a mysterious faith in the scintillations of lawbreaking *per se* — from the assumption that breaking the formal rules (perhaps, as in Smith's proposal, with an accompanying performance of knowing police censure) is, just in itself, irresistibly subversive and undeniably dissociative. This is a naive view, for as I have stressed in different ways, the real delineation of social action into the categories of 'verboten' and 'legitimate' is a function not of statute, but of convention, social perception, and the will of the powers that be. The liberal society of right would preserve civil disobedience as a legal infraction but whitewash it as a normative infraction, and in so doing it would destroy it *as* civil disobedience — or, at the very least, it would render it useless as a vehicle for precisely the pro-democratic and self-expressive goods that the right is introduced to protect.

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public knowledge' [838]. The natural reply here — viz. that the state ought to keep secret or disguise its standing resolution to work with protesters in order to make their actions a success — is too esoteric to sustain, and in any case seems too richly paternalistic for these theorists' liberal blood.

[68] Incidentally, the oddness of Smith's view comes to the surface when we wonder why people would not — over time — come to see through the 'appearance of transgression', or start to tire of the 'choreographed spectacle'. ['Policing Civil Disobedience', 831-832]. It may be that he really does think that civil disobedience is, in essence, a sort of ritual performance (rather than a genuinely subversive political counter-strategy) — a piece of constitutional theatre like the chicanery of Black Rod. He might think that I am the lunatic in the gallery, shouting 'But don't you see! They're only *pretending* not to let him in!'. Now, I'm not sure that Smith does think this, but if he does, I find it a quite alarming diminution of civil disobedience — this reduction of it to pure civic pageantry.

That is all I really intended to establish in this chapter — viz. that insofar as the republican and cathartic grounds I discuss here are distillations of what is common to the whole liberal canon, all of the existing accounts propose a moral right to civil disobedience guaranteed to smother what that right is supposed to protect, and are for that reason fatally incoherent. But in the name of thoroughness, and also for the sake of injecting some useful perspective on the broader terrain of moral rights to dissident action, I should like to sign off with a brief survey of what roads out of this quandary there are.

In the first instance, one might simply propose that these republican and cathartic grounds generate *unenforceable* rights — i.e. rights carrying no implication that anyone (whether in the state or in the wider society) ought to modify their view or to change their conduct *vis a vis* what the right protects.[69] I do not know if that proposal is intelligible, since it seems to me that what makes rights distinctive, and what is the very foundation of our interest in them, is that — where they exist — the world ought to reshape itself around them.[70] If nothing else, every other 'moral rights investigation' open in the broad field of moral and political philosophy attempts to establish a practical 'ought' of that kind.[71]

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[69] I should clarify that there *are* two live 'oughts' consistent with my account, though neither of them could be called a viable enforcement of the right. They are: i) that society ought to change from one negative view of civil disobedience to another negative view of civil disobedience; and ii) that society should moderate its treatment of civil disobedience for reasons unrelated to the alleged good of civil disobedience — for instance, on the grounds of proportionality or general clemency (such that society is asked to move from a negative attitude towards civil disobedience and X penalty for it to a negative attitude towards civil disobedience and X-n penalty. Any other candidate 'ought' is, I think, going to fall foul of my general line in this chapter — viz. that civil disobedience, if it is to retain the value that liberal theorists have hitherto thought crucial to it, must be perceived in net negative terms, and that the state authorities must not take into account the alleged value of civil disobedience at any appreciable level, lest that recognition tend to undermine it.

[70] This seems a ubiquitous view in the literature. Mill, for instance, writes that 'when we call anything a person's right, we mean that he has a valid claim on society to protect him in the possession of it, either by the force of law, or by that of education and opinion … To have a right, then, is, I conceive, to have something which society ought to defend me in the possession of'. [J. S. Mill, *Utilitarianism* (Indianapolis: Hackett, 2002), 54]. In the same vein, Raz avers that 'a person who says to another "I have a right to do it" is not saying that … it is not wrong to do it. He is claiming that the other has a duty not to interfere' [Joseph Raz, *Ethics in the Public Domain* (Oxford: Oxford University Press, 1994), 275]. And still in the same vein, Plamenatz declares that 'a right is a power which a creature ought to possess' [John Plamenatz, *Consent, Freedom, and Political Obligation* (Oxford: Oxford University Press, 1938), 82]. Which view is echoed, finally, in Dworkin's observation that 'in most cases when we say that someone has 'right' to do something, we imply that it would be wrong to interfere with his doing it' [*Taking Rights Seriously*, 188].

[71] I am thinking here of rights to die, rights to sell your own organs, rights

In any event, I prefer to remain agnostic whether this diminished sense of right is intelligible, and to say instead that quite apart from its intelligibility, this reshuffling of the pack misses the point. The issue is not the scholastic one of whether or not the existing accounts can be squinted at in ways that preserve their claim to be accounts of right. What matters is that there is no hope for what the liberal theorists set out to *do* with their account of right — viz. to answer the question of state response and to reconcile us, the reactionary mass, to the legitimacy and necessity of civil disobedience. That project — which animates both the academy and the pop culture — is now foreclosed.[72]

But *is* it foreclosed? Everything I have said here concerns only the existing liberal accounts, and I readily concede that I have no deductive argument against the pursuit of right and the wider project of reconciliation as such. I offer in lieu one persuasive reason to *presume* that these endeavours are inviable — one having to do with how costly and far-off and awkwardly located the target is here. What I mean is this: if we are to carry on the project of reconciliation we shall first have to find in civil disobedience some value substantially unrelated to any that theorists have (hitherto) seen in it — i.e. a ground of reconciliation of serious weight, though not one having anything to do with civil disobedience's democratic potency or its self-expressive potential. We shall then have to hope that this value is not dependent on civil disobedience's 'outsider' status — i.e. that it could withstand civil disobedience being afforded a legitimate niche in the public political culture. And finally we shall have to come to terms with the fact that in proceeding like this we are nonetheless

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to procreate, rights to experiment with drugs, rights to bodily integrity, rights not to be killed, rights to abortion, rights to marry, rights to mutual respect, animal rights against cruel treatment or exploitation (and so on). Now, it is Jerry Cohen's view that there is value in knowing what to think *even if* it makes no practical difference. [G. A. Cohen, *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press, 2008), 268ff]. And while I am inclined to think that Cohen is correct in general, I do not think that this style of response can rescue the pursuit of a reconciliatory right, since it relies on a different claim to the one I am prosecuting. In a word: it is not clear to me that there is any great value in knowing what to think (i.e. that the state ought to accommodate civil disobedience) when what to think necessarily cannot, as opposed to contingently will not, make a difference.

[72] I remind the reader again that we are here in the more concessive and conceptual half of the thesis, and that I shall return to the question of state response again in §5.3, this time to argue that it is misguided for a host of other — and to my mind more pressing — reasons. In particular, I shall argue that this question misses the proper point of a theory of civil disobedience, which is not to ponder how a state better than any existing one ought to treat activists, but to take seriously the repressive and congenitally unjust reality of even the best existing states, and then to ponder how activists ought to approach *them*.

still seeking to undermine civil disobedience's pro-democratic and self-expressive value — i.e. because even if we legitimise civil disobedience for some new reason, it will still lack pro-democratic power and self-expressive viability for *being* legitimised. Though it be an option formally available, I do not think there is much prospect of successfully threading the eye of this needle, nor that doing so would be worth the cost.

In any event, we're in danger of losing all perspective here. These conceptual possibilities are too esoteric to be worth much ink, and it was never my intention to try to board them up definitively. I care about what we have in front of us — the living accounts, the existing work, the past fifty years and counting of writing on civil disobedience. It's that body of thought that is engaged in a project that makes no sense, a project that misunderstands where its own concept of civil disobedience's significance lies and what is the source of the power it may be supposed to have. Not in breaking the law, nor in transgressing society's formal rules, but in stepping across a much more fundamental threshold.

Chapter 2: On the Pains of Being Pure at Heart

In this second instalment of my critique's more concessive strand, I double back to take a closer look at the cathartic view. In doing so I shall challenge what I accepted *in arguendo* in Chapter One — viz. that this liberal permutation offers a defensible idea of civil disobedience's nature and value, even if it errs in urging that the state and wider society make provisions to safeguard it. In other words, I shall now demonstrate that — quite apart from the fatal fault in the view's 'action-guiding' programme — the cathartic impression of civil disobedience's basic moral ontology is defective.[1]

Before I set out my critical agenda here in any detail, we ought to reacquaint ourselves with that basic moral ontology. Recall that — from the cathartic perspective — civil disobedience ought not to be judged by its *political* credentials, but in light of its value as an outlet for the moral self. That is, it ought to be understood, from the moral point of view, as a vehicle for the kind of dissociative self-expression that our consciences may demand occasionally (on pain of a fractured moral psyche) that we undertake.[2] So the story goes, if

[1] As I noted in Chapter One, Kimberley Brownlee, perhaps the pre-eminent contemporary theorist of civil disobedience, is the principal voice in this less-travelled liberal tradition. She is not the only one, however, and though her account is my overwhelming focus in this chapter, I shall often branch out to target nearby views — among them, for example, Darnell Rucker's analysis of civil disobedience as a matter of people's 'responsibility [to] themselves as moral, intelligent, and aesthetic beings' [Rucker, 'Moral Grounds', 145]; Robert Goodin's idea that in defending civil disobedience 'we must maintain not that our convictions are correct, but instead that they somehow occupy a special place in our moral universe … that our act of civil disobedience is motivated by a deeply rooted claim of conscience or a strong sense of higher duty' [Goodin, 'Nuclear Protest', 461-462]; and Dworkin's vision of civil disobedience as a vehicle of emotive free expression protected under the principle of 'equal concern and respect'. Dworkin, *Taking Rights Seriously*, 201.

[2] As Brownlee has it: 'the moral right to civil disobedience is a general right, not just a right of vulnerable minorities. And, its foundation lies *not in participatory rights but in the principle of humanism* and hence in society's duty to honour human dignity however popular or unpopular our moral convictions may be' [*Conscience and Conviction*, 145, my emphasis]. See also her more programmatic statement that 'the right is rooted in a humanistic respect for people as reasoning, feeling, and expressive beings who are capable of deep commitments. In short, when a person has a deep

one really and truly believes that a given law or policy is wrong, one can do no other than to *stand up and say that*. One can do no other than to make known to the wider society what one's moral stance is: that one condemns the prevailing state of affairs and severs symbolic ties with it forthwith. Sincere moral conviction — a sincere and reflective belief that the world is morally deficient in some respect — is, in other words, *irrepressible*.[3] It must out. To keep schtum (or to be silenced) is to suffer a serious loss — a mortal blow to one's integrity, a dissolution of one's sense of self.[4]

This, then, is an idea of civil disobedience as a distinctively *conscientious and self-expressive* proclivity — a matter of holding true to oneself in the face of overbearing legal demands (by signalling, through the disobedient breach of law,

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moral conviction, she has strong interests in having some freedom to act expressively and conscientiously to manifest that conviction in her life and to deliberate with others about its merits' ['Reply to Critics', 730]. Stressing the expressive function of the cathartic right, Brownlee explains that it 'acknowledges the communicative dimension of conscientious conviction ... [and] although legal protest, like civil disobedience, offers a vehicle through which to communicate conviction, legal protest lacks the conscientious and *performative dissociation* that civil disobedience has as a constrained breach of law' [*Conscience and Conviction*, 239 n.1, my emphasis]. See also here Brownlee's defence against the charge that civil disobedience is warranted only in cases where citizens lack adequate means of political participation, viz. 'my claim does not imply that because my case for the existence of a content-insensitive right to civil disobedience does not rest on its democratic credentials. Instead, my case for the right to civil disobedience rests on humanistic respect for persons as reasoning, feeling, expressive beings.' 'Reply to Critics', 734.

[3] As I elaborated in §1.2, this impression depends on what Brownlee calls the 'communicative principle of conscientiousness', an allegedly descriptive principle stating not that sincerely convinced people *ought* to speak out, but that sincerely convinced people *just will* speak out. In other words, part of what it is — as a matter of fact — to have a sincere moral conviction, is that one finds it difficult to remain silent. [*Conscience and Conviction*, 16; and see more generally 16-30ff]. What this also suggests is that, for Brownlee, conscientiousness and expressiveness stand in a certain linear relationship — the more overtly you express yourself, the better you satisfy the demand of conscience. I elaborate that idea below, but for now note that this drive to speak out is not a 'compulsion' in the brute sense. To accept that image would be to give a 'false portrait of conscientiousness as a brute, passionate, unthinking, if not slightly deranged obsession by whose force we are spellbound and rendered less autonomous' [171].

[4] Indeed, Brownlee recommends state toleration of civil disobedience on precisely this ground — viz. that of the '*psychological importance*, distinct from autonomy, of our not always having to give priority to literal adherence with the law over our own beliefs and commitments'. [*Conscience and Conviction*, 168, my emphasis]. Similarly, Brownlee writes that a legal excuse for civil disobedience would recognise the 'psychological risks of self-alienation, incongruity, and akrasia that dog absolute expectations that we adhere to formal norms' [167]. What this also suggests, it's important to note, is that the integrity at issue here is more mental than moral — more subjective than objective, we might say. In other words, it is expressly a matter of psychic 'congruity', rather than one of making good on some objective duty of moral consistency.

that one rejects those demands and renounces symbolic ties with the authority enforcing them).[5] And nor is this centralisation of conscience and self-expression any accident or surprise: rather it is the signature innovation of Brownlee's account. In a marked departure from liberal orthodoxy, Brownlee interprets the traditionally opposed practices of civil disobedience and conscientious objection as tokens of the same more general type — viz. 'conscientious disobedience' to law.[6] Indeed, her distinctive contribution and avowed goal is to position *civil disobedience*, and not conscientious objection, as the rightful heir to whatever protections exist in law and morals for lawbreaking committed in deference to conscience.

Civil disobedience better deserves these protections, Brownlee claims, because — in virtue of its public, unabashed, extrovert nature — it better satisfies the drive to externalise one's moral stance than does the classically clandestine business of conscientious objection.[7] While conscientious

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[5] To that extent, the cathartic view mirrors what Dworkin calls the 'orthodox' position in the public culture — viz. that 'men have a duty to obey the law but have right to follow their consciences when it conflicts with that duty'. *Taking Rights Seriously*, 187.

[6] On the traditional habit of seeing these practices in opposition, Brownlee notes that 'standard liberal views' see conscientious objection as a 'modest, unassuming act of deep personal conviction', but civil disobedience as a '*strategic*, *political* act that eschews ordinary participation channels in favour of riskier, but potentially more effective, undemocratic channels.' *Conscience and Conviction*, 5, my emphasis. I remark more on this later in §2.2, but for now note that Brownlee's tactic is in effect to show that this standard view of civil disobedience is false — i.e. that it is not a 'strategic, political act'. On the question of their being tokens of the same more general type, Brownlee writes that 'we should consider civil disobedience together with personal disobedience [i.e. conscientious objection] in our analysis of moral rights. Both make assertions of conscientiousness, and therefore both are most fruitfully considered in relation to a single proposed right to conscientious disobedience to determine which has the best case for protection as a right' [145]. She also says, more generally, that it is wrong, and a 'forced separation', to think, as liberal theorists traditionally have done, that civil disobedience and conscientious objection are 'sufficiently disparate that, if they are protected by moral rights, they must be protected by different moral rights' [143]. Thus where Rawls, for instance, sharply rejects a continuity between conscientious objection and civil disobedience, as expressed in his dictum that civil disobedience is a 'a political and not a religious act', for Brownlee they are waypoints on the same scale — viz. that charting the degree to which one honours one's own convictions. *Theory of Justice*, 337.

[7] See here Brownlee's mission statement: 'standard liberal views say that, if there were a general moral right to engage in disobedience on grounds of conscientious conviction, only private, non-communicative acts of what I'll call "personal disobedience" [i.e. conscientious objection] could be protected under such a right.... I *reverse the standard liberal picture* and show that civil disobedience is *more conscientious* than personal disobedience in virtue of its constrained, *communicative, and non-evasive properties.* As such, first, it has a better claim to any rights-based protection that is appropriate for conscientious action. Second, it has a better claim to any putative legal

objection is degenerate, imperfect conscientious action, civil disobedience is its apotheosis: a pacifist who kept their head down and secretly withheld their war tax would win a comparatively meagre score on the index of conscientiousness, but a pacifist who burned their notice from HMRC in the town square, decrying war and the war tax as they did so, would get full marks.[8] Once again, this distinction is not — as liberal theorists have traditionally supposed — one of kind. Rather it is one of *degree*. What civil disobedience and conscientious objection share is their expression of the self's moral sovereignty, and their answering a demand of the self — a demand of integrity. What divides them is simply that conscientious objection isn't expressive *enough*. It lacks an audience, and so it gives a half-hearted answer to that demand.

Now, with that exegetical *aide mémoire* in hand, I shall state the nub of my argument in this chapter plainly: civil disobedience is not a matter of integrity, and it has nothing to do with the self. That is my theme here, and in elaborating it I offer a strident, general-purpose caution against any reduction of disobedient activism to the private sphere of conscience, personal integrity and self-expression. My grounds for caution are several, but they may be glossed under two broad headings: first, that this cathartic idea of civil disobedience denies activists their proper dignity (a dignity which it is the express purpose of the view itself to give them); second — and to my mind more importantly — that this cathartic lens jeopardises civil disobedience's political viability.

Dignity and political viability, that is my mantra here. And to preserve these goods we must resist the temptation outlined above — i.e. to turn inwards to the realm of conscience — and adopt instead what I call the 'instrumental' conception of civil disobedience. We must see civil disobedience as directed — in the most fundamental sense — at something larger than the self. We must see civil disobedients as engaged — in the most fundamental sense — in the service of some public cause or other. We must read disobedient activ-

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excuse that can be given for conscientious breach of law.' *Conscience and Conviction*, 6-7, my emphasis.

[8] As Brownlee writes: 'not all objectors are made equal. In the case of war, a draft dodger is most plausibly protected by a right of conscientious disobedience not when he seeks to evade detection or keep his own hands clean, but when he is willing to be seen to dissociate himself from the order to go to war, and to bear the risks of communicating that decision. Unlike the soldier who evades detection and the soldier who is indifferent to the war, the civilly disobedient soldier is willing to risk being held to account. His act does not raise the spectre of doubt about his sincerity that is raised by the secretive, self-preserving acts of the private objector. The private objector's evasion raises the worry that his conviction is too shaky to bear the risks of communication. *Conscience and Conviction*, 145-146.

ism as — in its very essence — an attempt to turn or stay the wheels of state.

That is my core case in this chapter. But for reasons of organisational transparency, allow me to detail two subordinate currents in it. First, though we may leave the schism here stated in the neutral language of instrumentalism versus catharsis, we might as well call a spade a spade and say that this debate — this debate about what is morally and conceptually fundamental to disobedient activism — is a debate about whether or not we ought to consider civil disobedience an essentially *political* activity.[9] In this light we may then put it that the cathartic view fails — offers an undignified and politically dangerous account of civil disobedience — because, in perceiving civil disobedience as a practice of the self, it paints it in fundamentally *apolitical* colours.

Second, and regardless of whether we make the rhetorical move just outlined, we shall have to confront the hard textual fact that the cathartic account *also* invests civil disobedience with lively political-instrumental credentials.[10] Canonically and paradigmatically, liberal civil disobedience is a practice of considerable instrumental vim — that's the universal assumption and assertion, and though Brownlee breaks with liberal orthodoxy in positioning civil disobedience and conscientious objection as members of the same action family, she does not break with liberal orthodoxy in ascribing to civil disobedience a politically momentous character. But since, as we shall see at length, cathartic civil disobedience has no political-instrumental credentials to speak

[9] I develop my notion of 'political' as we go on, but it never much strays from an unadorned, pre-theoretical sense — viz. of pertaining to public, constitutional reality.

[10] Brownlee points out, for instance, that 'the civilly disobedient soldier may serve his society's interests in addition to his own. There is a double harmony between his interests in the right to civil disobedience grounded in the principle of humanism, on the one hand, and society's interests in hearing his concerns about the war, on the other. His efforts to communicate may expose his society to a view not presented by the mainstream media. And, this may empower society to hold government more accountable and thereby reinvigorate general discussion about the merits of the war. It may force the champions of dominant opinion to defend their views. And, his disobedience can perform at least some of these services even when he is mistaken about either the facts or his principles. And, when his cause is well-founded, he may serve society not only by questioning, but by inhibiting a moral wrong or rectifying a moral wrong, thereby acting as a stabilising force within society.' *Conscience and Conviction*, 146. My line in this chapter, of course, is that, irrespective of the empirical plausibility of this distinctly Rawlsian view of civil disobedience's public service, it cannot coexist with a cathartic understanding of the act of civil disobedience. If the cathartic perspective becomes the received narrative of civil disobedience in the public culture, so will civil disobedience become politically irrelevant. I devote §2.2 to the elaboration and defence of this claim.

of, the liberal theorists are guilty of a misconception: in moving (or abiding) the conscientious reading of civil disobedience *and* claiming for it a certain impressive political-instrumental potency, they are trying to have their cake and eat it. The fabled double harmony between the political value of dissent and its conscience-salving value to the person of the activist is just that — a fable.[11]

But these matters are not, I remind the reader, what counts here. My endgame is not to lay bare this merely technical infraction — viz. that of assuming, falsely, that civil disobedience can at one and the same time be a vehicle of conscience-salving self-expression and a vehicle of public criticism. I have in mind a more substantive error: that of moving the cathartic conception at all. Given the forking path, what I mean to do is warn against the cathartic route — to expose the dangers involved in endorsing this view of what, fundamentally, civil disobedience is, and why, fundamentally, it happens. As we head into my argument proper, I say it again for clarity: if we are to think properly about civil disobedience, we need to recognise civil disobedients as political actors working in the service of some substantive ideal, rather than as subjectivities in hot pursuit of their own moral self-harmony.[12]

[11] The notion of a double harmony between the cathartic and republican perspectives on civil disobedience is not unique to Brownlee. William Smith, for instance, reckons that Brownlee 'succeeds' in her goal of favourably comparing civil disobedience with conscientious objection ['Burdens of Conviction', 693], and draws at some length on her analysis in order to flesh out his own (republican) idea of civil disobedience as 'deliberative disruption' ['Boundaries of a Deliberative System', 163-167]. If I am right, these liberal traditions are far from complementary — rather, a conscientious reading of civil disobedience renders it inviable as a mode of political engagement.

[12] At the risk of throwing a wet blanket over my case here, I must clarify at this early stage that the cathartic view is emphatically false as an account of historical civil disobedience. I elaborate that claim at some length in §3.2, however, so I will not anticipate my reasoning here. But in light of the cathartic view's empirical dubiety, let me position my arguments here as combatting, philosophically and rhetorically, a pervasive misconception about that activism — viz. that it was about conscience, rather than politics. At the same time, my arguments here will also foreclose a cathartic reading of any disobedience the precise nature of which is left ambiguous in the historical record — i.e. cases where a cathartic reading is *not* empirically ruled out (however few and far between they are). All that aside, I take it that there is independent interest in demonstrating that a major philosophical view is philosophically wanting, even if its empirical falsity gives us sufficient reason to reject it.

2.1. Dignity

I shall begin with the first broad species of cathartic ill — viz. the threat to activist dignity posed by this turn inwards to the realm of conscience and self-expression.

I zero in on this phenomenon, I clarify by way of introduction, largely because such a concern — i.e. for securing activists their proper dignity — is the avowed motivating commitment of the cathartic account.[13] Thus in a certain narrow sense my first critical line in this chapter is that the view undercuts its own *raison d'être*. However, I shall tend to shy away from giving my case that 'theoretical' gloss. I shall not say that we ought to reject the cathartic view because it is (once again, though in a different way) self-defeating; I shall instead stress the important and independent value of activist dignity. The view should be rejected simply because — even absent any explicit motivating commitment to that value — we ought not countenance a theoretical perspective that jeopardises it.[14]

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[13] In this connection see Brownlee's declaration that the moral permission for civil disobedience 'lies not in participatory rights but in the principle of humanism and hence in *society's duty to honour human dignity* however popular or unpopular our moral convictions may be' [*Conscience and Conviction*, 145, my emphasis]. And see also her statement that 'both the moral right and the legal excuse [for civil disobedience] are rooted in a humanistic principle of respect for our agency and dignity as persons' [7].

[14] Let me clarify at this early stage that Brownlee herself never defines or characterises her sense of 'dignity', which perhaps ought not to surprise us, for dignity is — generally speaking — an oft-referenced but rarely defined notion. Indeed, some theorists have thought it an essentially indefinable concept (or at least, an unstably definable concept) — see for instance Philippe-André Rodriguez, 'Human Dignity as an Essentially Contested Concept', *Cambridge Review of International Affairs* 28:2 (2015): 743-756. All that said, I shall lay down some bounds. By 'dignity' I shall here mean something quite different from the metaphysical dignity that humans as such — humanity in general — may be said to possess. Dignity in this Kantian sense — i.e. of pertaining to the essential human capacity for rationality and agency, is, as Ian Carter notes, *inalienable*. It is 'something that persons possess as such … regardless of how they are treated by others', it 'can be destroyed only by destroying personhood itself', for regardless of one's circumstances and treatment, one 'continues to be a moral agent'. Ian Carter, 'Respect and the Basis of Equality', *Ethics* 121:3 (2011): 538-571, 554; cf. Kant's famous formulation: 'morality, and humanity as capable of it, is that which alone has dignity'. Immanuel Kant, *Groundwork for the Metaphysics of Morals*, ed. and trans. Mary Gregor (Cambridge: Cambridge University Press, 1996), 43. For more on the Kantian metaphysical idea of dignity — as that basic and unique quality of the human animal, see e.g. Stephen Darwall, 'Two Kinds of Respect', *Ethics* 88:1 (1977): 36–49. No, I shall not mean 'dignity' in this inalienable, metaphysically human sense. My idea of dignity is more humdrum, a variation on our common ordinary language notion — i.e. of a somewhat ineffable quality that individual persons may have or be denied according to their treatment by others. And I shall sketch it mainly in the negative — where an activist lacks dignity, I declare, this lack consists in their suffering some combination of mortifi-

My arguments on this front do not benefit from any particularly ingenious structure. I simply draw out in sequence various implications and aspersions of the cathartic view — various impressions of civil disobedience's whys and wherefores — and then suggest without much ornamentation that each of them casts a dignity-threatening pall on civil disobedience and the people who do it.

2.1.1. Hello World

The first such dignity-threatening implication of the cathartic view resides in its recasting civil disobedience not as an instrumental move in the service of some public cause or other, but rather as a variety of self-expression — an outing of the activist's distinctive moral subjectivity.

Now, this 'ontological' indignity has nothing to do with the view's mistaking civil disobedience for an essentially *discursive* activity, it's important to note.[15] The discursive image of civil disobedience's basic form is common to both of the liberal tendencies, and while I think that this image is historically dubious, I leave that discussion until Part Two.[16] No, what I am drawing out here is not a mistaken view of civil disobedience as — most saliently — a kind of *speech*, rather than something altogether more red-blooded. Quite the contrary: I accept without complaint that civil disobedience *is* a kind of speech, and direct my critical ire against the cathartic idea of *what is said* in disobedient protest — not provocative, exhortatory claims about the moral fitness of certain public realities (laws, policies, and the like), but 'indexical' propositions expressing how the individual civil disobedient — the 'I' — *feels* about those realities.

I perhaps owe the reader a reasonably sustained defence of my interpretation of the cathartic view on this point, because I cannot deny that the cathartic texts are soaked through

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cation, shame, ignominy, dishonour, discredit (and so on). In other words, I take it for granted that we have an intuitive sense of the term, and I clarify now that my argument does not turn on any precise parsing of it. In adopting this posture I merely abide by the norm in jurisprudential contexts: I hold simply that 'a violation of human dignity can be recognised even if the abstract term cannot be defined. "I know it when I see it even if I cannot tell you what it is."' Oscar Schachter, 'Human Dignity as a Normative Concept', *The American Journal of International Law* 77:4 (1983): 848-854, 849.

[15] 'Ontological' because having to do with what civil disobedience *is* — what *kind* of discourse it is. To be contrasted with the 'motivational' threat to activist dignity that is my theme in the next subsection.

[16] I shall show in §3.1 that an obstructive, coercive reading of civil disobedience is much more accurate than the verbal one foundational to the liberal view — especially when it comes to the most momentous disobedient episodes of the twentieth century.

with reference to civil disobedience as a vehicle of pubic criticism — i.e. as paradigmatically involving the broadcast of pointed moral claims about political states of affairs.[17] What is vital to realise, however, is that though cathartic civil disobedience may usually involve this sort of broadcasting, it does not — from the moral point of view — *essentially* involve it.

The most expedient way of seeing this is simply to recall that Brownlee's justification of civil disobedience explicitly pays no heed to its oft-lauded 'gadfly' character, nor to any wider endorsement of its political credentials.[18] In that sense, the self-expressive essence of cathartic civil disobedience is right there on the tin: from the moral point of view, civil disobedience recommends itself as an outlet for a certain kind of self-expressive speech, not as an outlet for the kind of conventional political commentary that might just as well have been broadcast within the law. In other words, and if I might reheat a by-now well-worn thought: for civil disobedience to be justified at all, it must express *something* that cannot be conveyed within the bounds of the law. And yet you can fine and well say (virtually) anything you like in the liberal democratic circumstances that are our agreed hinterland here. You can say 'Fracking Is Deadly', for instance, however and wherever you like — down the pub, out on a demo, in a letter to the editor, in a phone-call with your MP, in a meeting of your CLP, through a megaphone at Speakers' Corner, on a sandwich-board outside the Tube station (and so on). The upshot of which being that whatever missive you beam out in your justified act of civil disobedience, it can't be *that* proposition — i.e. that Fracking is Deadly. It can only be the performative, dissociative, indexical alternative: 'I myself —

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[17] See again, for example, Brownlee's idea of the 'double harmony' between civil disobedience's public, political value and its cathartic value to the activist herself. Thus the civilly disobedient solider 'may expose his society to a view not presented by the mainstream media … And, this may empower society to hold government more accountable and thereby reinvigorate general discussion about the merits of the war. It may force the champions of dominant opinion to defend their views. And, his disobedience can perform at least some of these services even when he is mistaken about either the facts or his principles. And, when his cause is well-founded, he may serve society not only by questioning, but by inhibiting a moral wrong or rectifying a moral wrong, thereby acting as a stabilising force within society.' *Conscience and Conviction*, 146. And see also in this connection Brownlee's consistent praise for the 'gadfly' power of civil disobedience to stimulate the public conversation. 'Reply to Critics', 734.

[18] As we saw in the introduction to this chapter, Brownlee's defence of civil disobedience 'lies not in participatory rights but in the principle of humanism'. *Conscience and Conviction*, 145. And see also her statement that the 'my case for the existence of a content-insensitive right to civil disobedience does not rest on its democratic credentials. Instead, my case for the right to civil disobedience rests on humanistic respect for persons as reasoning, feeling, expressive beings.' 'Reply to Critics', 734.

me in particular — believe, *really* believe, that Fracking Is Deadly. And I dissociate myself from UK energy policy thusly'.[19]

But — and to arrive at my first critical claim here — *that* is not a provocative, exhortatory proposition about the world, the sort of proposition apt to stir the pot, to make opponents think, to call people to action, to hold power to account. That's not a proposition at all, but rather a reflexive expression of the self — an expression of what the speaker feels about the world and what relation they bear to it (viz. henceforth, *none*).[20]

Now, the important takeaway here is that whatever the apparent *verbal* prominence of the provocative moral claims usually articulated in cathartic civil disobedience, they do not figure in the morally-pertinent semantic content of this disobedient speech. That is what I meant above when I said that though civil disobedience may *usually* involve the broadcast of these claims — these claims that are the raw material of political debate as we know it — it does not *essentially* involve their broadcast. From the moral point of view, one's world-facing, instrumental, exhortatory, propagandistic transmissions are not a proper part of one's diso-

[19] This point is confirmed in Brownlee's identification of the salient difference between lawful and unlawful protest — viz. that 'although legal protest, like civil disobedience, offers a vehicle through which to communicate conviction, legal protest *lacks the conscientious and performative dissociation* that civil disobedience has as a constrained breach of law.' *Conscience and Conviction*, 239 n.1, my emphasis. For that reason, state permission for civil disobedience would permit us not 'always to remain surreptitious and self-censoring in our efforts to *dissociate* from laws we oppose. *Conscience and Conviction*, 8, my emphasis. I developed this point at some length in §1.2 of course, so I leave the exegesis relatively abbreviated here.

[20] As I discussed in §1.2, Ronald Dworkin also appears to endorse an emotive or expressive reading of civil disobedience (though it is not the main current in his view). He writes: 'a man cannot express himself freely when he cannot match his rhetoric to his outrage, or when he must trim his sails to protect values he counts as nothing next to those he is trying to vindicate. It is true that some political dissenters speak in ways that shock the majority, but it is arrogant for the majority to suppose that the orthodox methods of expression are the proper ways to speak, for this is a denial of equal concern and respect … if the point of the right is to protect the dignity of dissenters, then we must make judgements about appropriate speech with the personalities of the dissenters in mind, not the personality of the "silent" majority for whom the anti-riot law is no restraint at all.' *Taking Rights Seriously*, 201. Now, since Dworkin leaves ambiguous both what is expressed in civil disobedience and what is the motive reason for expressing it (though as I alluded to above, there are worrisome hints that what is expressed is the catharsis-flavoured *depth* of the activist's feeling, *à la* 'match his rhetoric to his outrage'), I cannot target him directly in this chapter. What I will say, however, is that my arguments here sharply constrain the kind of civilly disobedient content and motivation he can have in mind: free expression may be a precondition of a viable politics, but it is not itself a necessarily political activity.

bedient action (though they might garnish it). Once again, *qua* civil disobedience, what you broadcast to the world when you disobey is not that thing that you could have beamed out just as well within the law (i.e. the moral case for some reform), but that thing that only law-breaking could properly communicate — viz. a window into your soul.[21] To the extent that you say anything when you disobey, what you say is not something about the world, but something about yourself.[22]

So stated, the loss to activist dignity is palpable, though I do not know how to put that case with much artifice. My point is only the intuitive one that it's more dignified to be perceived in 'ends outside the self' terms than it is to be brought under the cathartic view's self-expressive rubric. When we've done the archaeological work of bringing out exactly what is the *content* of the civilly disobedient communiqué, what is the canonical meaning of cathartic civil disobedience, it's hard not to discern something narcissistic or parochial in it. There is a diminution, I think, in the aspersion that disobedient activism is not *fundamentally* instrumental, not *at root* a move (even if faltering) in the service of a larger cause, but rather a species of soul-baring, a way of letting a little light in on one's moral state of mind.[23]

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[21] We find an evocative statement of a nearby cathartic idea in Justice John Marshall Harlan II's opinion in *Cohen v. California*: 'Much linguistic expression serves a dual communicative function: it conveys not only ideas capable of relatively precise, detached explication, but otherwise inexpressible emotions as well. In fact, words are often chosen as much for their emotive as their cognitive force. We cannot sanction the view that the Constitution, while solicitous of the *cognitive* content of individual speech, has little or no regard for that *emotive* function which, practically speaking, may often be the more important element of the overall message sought to be communicated.' *Cohen v. California*, 403 U.S. 15 (1971). The issue before the bench? A man arrested for wearing a 'Fuck The Draft' jacket at a Los Angeles courthouse. In any case, let me clarify now that I wholly endorse the importance of this sort of non-cognitive expression. I merely deny that it is the proper foundation of a theory of disobedient activism.

[22] I take it that most ordinary propositions about the world may, when articulated in civil disobedience, implicitly suggest the self-reflexive speech act too, though I deny that this implication is of much relevance to the proper conceptualisation of the action. In other words: you may infer from my handcuffed cries of 'the war is unjust' that I believe the war to be unjust and that I dissociate myself from it thusly, but — properly conceived — these additional facts have little to do with my action.

[23] There is a diminution, for instance, in the implication that (*qua* civil disobedient) King's actions during the Birmingham Campaign were not an attempt to build the movement, urge the white majority to intervene, and call the federal authorities to account, but an avenue by which he could express his condemnation of — and dissociation from — the Kennedy Administration's inaction in the South.

2.1.2. To Be Great, Be Whole[24]

The threat to activist dignity in the 'what' of cathartic civil disobedience now plain, let me point out something similarly untoward in the view's impression of *why* activists break the law — viz. not in answer to a demand of the world, but in deference to a demand of the self.[25]

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[24] I maintain this separation of the 'what' and the 'why' of cathartic civil disobedience because a dissociative and self-expressive reading of the 'what' leaves open — if more in principle than in practice — that it might be undertaken for instrumental (hence, in my view, more dignified) reasons. One might, for instance, dissociate oneself from a policy in order to convey solidarity with those affected by it. Or, if one has reason to believe that one's dissociation will be taken at face value as an action of political import, one might dissociate in order to press for reform. In other words, a dissociative reading of the content of the civilly disobedient communiqué does not itself guarantee an unduly narcissistic reading of the action itself. What does that is the cathartic view's impression of *why* activists put themselves outside the law. All that said, I am assuming for now that this 'what/why' distinction is ontically robust. It may not be — it may not be the case that actions or events have meaning independently of their reason for being. Indeed, and what is especially germane to my purpose here, it may be that the motivation for an action 'overwrites' its barer ontological character, such that we might then say that a dissociative action undertaken in order to convey solidarity, or to press for reform, is not — properly speaking — a dissociative action at all, but rather, in the final analysis, an instrumental one. If this is right — that the 'why' of an action determines the action's 'what' — then the possibilities I invoked above are illusory: the idea of an instrumentally motivated dissociative act is almost a contradiction in terms, in the sense that if an action were instrumentally motivated, then it would strictly speaking be false to read it as a dissociative action. It would rather be, variously, an attempt to get one's way, stir up support for the cause, hold power to account, 'change the conversation' (and so on). In any case, the proximate upshot of this digression being that if my exegetical commentary on cathartic civil disobedience's motivation is sound, then my dignity case goes straight through regardless of whether my remarks above on the 'what' of cathartic civil disobedience are convincing.

[25] Permit me a lengthy exegesis of this motivational claim — i.e. that self-expression, and through it the preservation of the activist's integrity, is the goal of cathartic civil disobedience. First, we may note that Brownlee states this, very explicitly, at several junctures. For instance, she identifies self-expression as the 'intended objective' of the disobedient's action, clarifying at the same time that in civil disobedience 'we breach the law *for the purpose* of communicating our condemnation of a law or policy … we do not breach the law merely *because* it will communicate our condemnation'. *Conscience and Conviction*, 25-26. In the same vein, she avers elsewhere that 'dissociating from the law opposed' is the 'operative reason' for undertaking civil disobedience [172]. Now, these remarks indicate that the integrity-salving speech act is the *sine qua non* of the action — its *raison d'être*, and hence that whatever else one might do alongside one's speech act — offer a reason-giving case against a particular law, for instance, this additional activity is not, strictly speaking, *part* of the action. One disobeys *in order* to express oneself in integrity-preserving fashion, one explicitly does not disobey *in order to* broadcast pointed critical claims. And nor is this motivational implication accidental to view. Rather, Brownlee relies on this sort of claim to defuse the 'strategic action objection' — the sceptical idea that civil disobedience, because presumably and allegedly conducted with the hope of political reform in mind, cannot be protected under the hu-

There is indignity enough just in that bare statement of civil disobedience's operative motivation, I think — in the basic sense that what provokes disobedience, most fundamentally, is not a state of affairs in the world (or an ideal to be realised), but elements of the activist's own psyche. In other words, that it's *me*, and not the world, which compels my activism. But there is a further indignity in the peculiarly self-concerned, even egoistic flavour of that motivational picture. The point appears in sharper relief if we adopt the traditional liberal perspective and paint the dilemma of civil disobedience as one involving a conflict of duties: the duty I feel here — the duty I privilege in breaking the law — is one I owe myself, not one reflecting my ties to anything greater (or, for that matter, to others).[26] I act, on the cathartic view, for the egoistic purpose of discharging a self-owed obligation — an obligation of integrity, an obligation of remaining

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manistic right of conscientious self-expression. This objection, Brownlee says, 'misrepresents the motivational differences between communicative disobedience and personal disobedience [i.e. civil disobedience and conscientious objection]', specifically because civil disobedience, despite its offensively strategic appearance, 'paradigmatically … involves principled disobedience undertaken by persons who *appreciate the importance for integrity of communicating their views*' [147, my emphasis]. The implication here, of course, is that civil disobedients *don't* really act in order to push for political reform (and in so doing distinguish themselves markedly from conscientious objectors): they act, like conscientious objectors do, to secure their own integrity. Thus is the sceptic's fear assuaged: 'civil disobedience is neither necessarily strategic nor necessarily anti-democratic' [178]. And all that aside, there are several other reasons to accept this motivational picture of cathartic civil disobedience. For one thing, given that we know that cathartic civil disobedience is a form of dissociative self-expression, how *could* there be a political-instrumental motivation for it? If the *raison d'être* of civil disobedience were political and instrumental, it couldn't admit of so politically and instrumentally inert an output: any disobedient who undertook self-expressive civil disobedience *in order* to advance some public cause — to answer some demand of the *world* — would have to hold a seriously quixotic view of how politics works. I shall not offer much more in the way of exegetical support here, but I return to this theme in §§2.2-2.3, where I demonstrate that an apolitical reading of civil disobedience's nature and motivation is a fundamental requirement of the cathartic account. First, a political image of civil disobedience strains the view's distinctive and foundational identification of civil disobedience and conscientious objection as instances of the same more general *kind* of practice — viz. conscientious action. Second, a political image of civil disobedience jeopardises the cathartic view's sought-after *general* defence of civil disobedience — its wish to justify civil disobedience whatever the cause, whoever the activist (after all, it is more difficult to stomach neo-nazi political actions than it is to accept neo-nazi integrity-salving actions). I leave the elaboration of these points until later in this chapter.

[26] I refer here to Rawls's framing of civil disobedience as a 'difficulty' involving 'a conflict of duties'. On his thoroughly instrumental and political view, however, the conflict pits our 'duty to comply with laws enacted by a legislative majority' against 'the duty to oppose injustice'. *Theory of Justice*, 319. Needless to say, I view this opposition — i.e. that between law and justice — as considerably more dignified than that central to the cathartic analysis.

whole. I do not act — as we might naturally suppose, and as I recommend in what follows — for the quintessentially instrumental, other-regarding purpose of agitating for change, pressuring the state authorities, pleading the case for reform (and so on).[27]

The threat to civilly disobedient dignity is clear here, and I will not spell it out at any length. I simply propose it as an intuitive axiom that we understand disobedient activism as having — right to its core — a wider horizon than the moral self. It is intuitively preferable, I think, that we see civil disobedience as being undertaken not for the purpose of honouring one's morals, but for the purpose of changing (or defending) something in the world — striking a blow for a cause. I mean that to identify the very heart of the action: instrumentality to a larger end is civil disobedience's motivational *raison d'être*, not the prospective icing on top.[28]

Now, I might fortify my case here by pointing out that the same goes naturally even in the more humdrum cases of political action. When I canvass for the Labour Party, for instance, I don't pound the pavements because not to do so would be to let myself down and live in discordance with my morals. I do it because I'm trying (in however small a meas-

[27] We find further support for a non-instrumental reading of cathartic activism's motivation in Brownlee's elaboration that the moral considerations she introduces in support of civil disobedience are akin to those 'invoked in less extreme contexts to excuse professionals, such as doctors, nurses, pharmacists, and judges, from carrying out some of the functions of their office that would be psychologically burdensome for them.' *Conscience and Conviction*, 145. I say that because these cases are — canonically — ones wherein the agent (in)acts so as not to lend herself to the wrong that she condemns, rather than to ensure — at the level of society — that this wrong is eliminated. If this is the terrain — if cathartic civil disobedience is supposed to be relevantly similar to this sort of recusal — then my arguments here are on firm ground.

[28] That political consequence is, at most, the icing on top of cathartic civil disobedience is confirmed in Brownlee's reply to the 'strategic action objection' that I discussed above. Brownlee defuses that objection — viz. that civil disobedience, because politically instrumental in character, has no claim to humanistic protection — in effect by denying that it has any such political-instrumental edge. But in tandem she suggests that conscientious objection, cathartic civil disobedience's avowed motivational bedfellow, is *also* in a sense 'strategic': for instance, one might modify one's act of conscientious objection so as to minimise one's risk of being caught. The lesson here being that one's integrity-preserving act need not be wholly spontaneous: its form and timing might be conditioned by subordinate aims — for instance, one's aim to remain at liberty. By the same token, I take it that one's act of integrity-preserving civil disobedience might *also* be conducted in such a way that it will serve one's subordinate aims (for instance, to garner publicity), though — crucially — the operative motivation remains unchanged. Though one's decision on *how*, *when*, and *where* to honour one's own morals might be conditioned by subordinate political aims, the act itself *exists* because of one's desire for integrity. Integrity is the prize, political consequence a bonus. See *Conscience and Conviction*, 147ff and 178.

ure) to bring about a Labour government.[29] The aspersion that I act for the former purpose rather than the latter — that what moves me to act is more the prospective state of my soul than the prospective state of the world — is simply to read me the wrong way, and to deny me my proper agency and dignity. I repeat: there is a loss involved in reading activism as a question of self-respect and moral integrity, in asserting that activists hit the streets in order not to let themselves down.[30] There is, once again, something unduly narcissistic and parochial about it — about the implied assertion that King urged the bus boycott because his integrity demanded it, and not because he was trying instrumentally to advance the cause of justice. There is no place in a proper conceptualisation of disobedient activism for the thought that he would have let himself down had he remained silent.[31] What matters is only that his silence would have let *others* down — that had he remained silent, he would have let down a larger purpose.[32]

2.1.3. The 'I' That's Everyone

The self, then, is the cathartic view's perennial concern. But the self in question — the self who is expressed in civil disobedience and whose integrity is the proximate prize of acting outside the law — is a peculiarly empty sort of person. Though it is not crucial to my case, let me suggest now in more speculative fashion that there is a threat to activist dignity here too — one residing in the cathartic view's offering a person-centric account of civil disobedience that rather lacks the personal touch.

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[29] I do not deny that I might *also* feel this, of course. I deny only that this is the operative reason for my engagement.

[30] To suspend my intentional insensitivity to empirical reality for a moment, I remind the reader once again that this motivational claim is historically untenable. I make that case at length in §§3.1-3.2.

[31] Notice the egoistic flavour of Rucker's view that civil disobedience is — at root — a matter of honouring the demands that weigh on activists as 'persons whose highest responsibility is to themselves as moral, intelligent, and aesthetic beings.' 'The Moral Grounds of Civil Disobedience', 145.

[32] The self-preoccupied, almost narcissistic quality of cathartic civil disobedience is neatly summarised in Brownlee's approving and evocative reference to Bolt's Thomas More: 'More replies hotly: "The Apostolic Succession of the Pope is ... [he stops: interested] ... Why, it's a theory, yes; you can't see it, can't touch it, it's a theory. But what matters to me is not whether it's true or not, but that I believe it to be true, or rather not that I believe it, but that *I* believe it"'. *Conscience and Conviction*, 15, quoting Robert Bolt, *A Man For All Seasons* (New York: Vintage, 1962), 89. This remark of More's is supposed to crystallise the dynamic that Brownlee sees in civil disobedience. I say in reply: what matters is not our beliefs, much less the fact that we — we in particular — believe them. Activism is not a matter of personal integrity, it's a matter of getting things done.

As a way in to that discussion, recall that the moral justification for cathartic civil disobedience pays no heed to the particular content of the activist's moral psychology, but only to the brute kinds of state that make it up. That is a straightforward implication of the view's avowedly 'content-insensitive' character, and at least this much may be said in its favour: prescinding from the substance of particular convictions (and from the character of particular self-conceptions), makes it that a friend of the political right, when confronted by an instance of left disobedience, can agree that were the law to impinge upon her own vision of the good, she too might disobey. And in virtue of that, she ought then to accept that people of the left have a right to their disobedient moment in the sun.[33] After all, there but for the grace of God and Rupert Murdoch go I.[34]

But there is a cost here, and the cost is this: it's one thing to understand civil disobedience in terms of the activist's subjective convictions and psychic pressures, but it's quite another to understand these psychological phenomena in turn simply as tokens of a more abstract type — as placeholders in the bare formula that strong moral beliefs sometimes drive us to step outside the law. This move, the move outwards from the specific self to the more abstract reasoning and feeling human being, converts an already unduly person-centric account of civil disobedience into a signally im-

[33] Goodin, for instance, writes that the very point of a theory of civil disobedience is to 'legitimate acts of civil disobedience to a law without first convincing its advocates that the law is itself in error', and that we therefore ought to 'point to the *form* rather than the *content* of our beliefs about the wrongness of that law … 'we must maintain not that our convictions are correct, but instead that they somehow occupy a special place in our moral universe'. 'Nuclear Protest', 461-462. And cf. Ronald Dworkin, glossing the same idea: 'a theory of civil disobedience is useless if it declares only that people are right to disobey laws or decisions that are wicked or stupid … Almost everyone will agree that *if* a particular decision is very wicked, people should disobey it. But this agreement will be worthless in particular, concrete cases, because people will then disagree whether the law *is* that wicked, or wicked at all … [therefore] we must try to develop a theory of civil disobedience that can command agreement about what people should actually do, even in the face of substantive disagreement about the wisdom or justice of the law being disobeyed. But that means that we must be careful not to make the rightness of any decision about civil disobedience depend on which side is right in the underlying controversy. We must aim, that is, to make our judgments turn on the *kinds* of convictions each side has, rather than the soundness of these convictions.' *Matter of Principle*, 106.

[34] Indeed, and as I discuss later in the thesis, one fiction of the liberal view is that civil disobedience is something we *all* might do (regardless of our comprehensive doctrine). But this is to ignore the fact that the 'risk' of becoming a civil disobedient is not distributed equally throughout the population — in reality civil disobedience is tied overwhelmingly to the politics of the left (despite its centrist, constitutionalist garb in the US pop-cultural context). I return to this theme in §5.4

personal one. My actions are not explained by the reality of the cause to which I am devoted, this much we know. But nor are they explained by my devotion to that cause — by the strength of my belief in it. Rather, they are explained by the strength of my belief *alone* — by feelings and attitudes that would have excused me whatever the case and whatever their object, just in virtue of their potency and connection to my self.[35] I am, we might say, explained and excused in virtue of my being a mere instantiation of a more general type — the reasoning and feeling person, the liberal human. I am thus made generic, and so are my ends made generic. They are salient in this story at one level only, salient just in virtue of that thing that everyone's politics share — viz. their being believed in by the person in question.[36]

If we are to dignify and respect someone *qua* person, we must dignify and respect them for *who they are* — that is, who they are *concretely*. That is the thought that I am gesturing towards here. And yet on the cathartic perspective, which is paradigmatically concerned with what civil disobedience can do for *me*, *I* am explained away — the specificity of my actions and character is explained away. I say in reply: if you're going to reduce civil disobedience to the self, at least let it be to *my* self! Let it be to my 'I', rather than to the abstract universal 'I'!

2.1.4. On The Pains of Being Pure at Heart

We are back on surer and less speculative ground now, and heading towards the close of my first case in this chapter (viz. that concerning the cathartic view's threat to activist dignity). Let me take us in that direction with a few words on what I have not yet had cause to highlight: the view's endemic focus on the psycho-moral *onerousness* of conscientious conviction.[37]

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[35] This is slightly crude, though nothing turns on it. Brownlee's descriptive account of sincere conviction stipulates that only those beliefs meeting 'the minimal conditions of logical coherence and evidential satisfactoriness' generate a morally relevant drive to speak out. See *Conscience and Conviction*, 170.

[36] There is a spiritual consonance between my criticisms here and the 'alienation' arguments of Peter Railton and Bernard Williams against conventional forms of consequentialism. See e.g. Williams' view that 'utilitarianism … cannot coherently describe the relation between a man's projects and his actions'. J.J.C. Smart and Bernard Williams, *Utilitarianism: For and Against* (Cambridge: Cambridge University Press, 1973), 100. And see more generally Peter Railton, 'Alienation, Consequentialism, and the Demands of Morality', *Philosophy & Public Affairs* 13:2 (1984): 134-171.

[37] If I might stress the *burden* in evidence already reproduced above, see e.g. Brownlee's claim that 'society and the law place *undue pressure* on us when

That burden — created by the activist's habit of moral rectitude and deep investment in her convictions, and consisting in the psychic perilousness of a frustrated will-to-disobey — is, from the cathartic perspective, no peripheral phenomenon. Rather, it is what makes civil disobedience an urgent object of thought and policy. Viewed through the cathartic lens, would-be civil disobedients appear most pertinently as innocents caught in a dolorous double bind: if they disobey, they will win their psycho-moral integrity at the cost of judicial sanction; if they do not disobey, they will escape sanction but throw that self-harmony to the winds.[38] A tricky situation, but one from which the liberal state can and ought to deliver them (bound as it is by the humanistic duty to reduce burdens where it finds them) — viz. by permitting civil disobedience and reducing or suspending the judicial sanction.[39] In other words, the endgame of the cathartic account is to urge the state to recognise that compliance with law is psychically onerous for would-be civil disobedients — that co-

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they require us always to privilege the law before our deeply held moral convictions' [*Conscience and Conviction*, 7, my emphasis]; and see also her view that a legal permission for civil disobedience would justly recognise the '*psychological importance*, distinct from autonomy, of our not always having to give priority to literal adherence with the law over our own beliefs and commitments', and thus avoid 'the *psychological risks* of self-alienation, incongruity, and akrasia that dog absolute expectations that we adhere to formal norms' [167-168, my emphasis]. See also in this connection her reference to 'the *psychological burdensomeness*' of 'absolutely binding law' [169, my emphasis], and more generally her likening of the cathartic right to that 'invoked in less extreme contexts to excuse professionals, such as doctors, nurses, pharmacists, and judges, from carrying out some of the functions of their office that would be *psychologically burdensome for them*' [145, my emphasis].

[38] It strikes me that civil disobedience is, on this view, oddly reminiscent of an expensive taste: unlike 'ordinary' people, the activist can satisfy her craving for integrity only at some considerable cost. And as I suggested in §1.2, the cathartic view's true impulse is not to make civil disobedience possible where it would otherwise be impossible, but simply to cheapen the 'price' of unlawful dissent to the extent that the personal good of disobedience becomes more affordable. On expensive tastes in their egalitarian home context, see e.g. Ronald Dworkin, 'What Is Equality? Part One: Equality of Welfare', *Philosophy & Public Affairs*, 10:3 (1981): 185–246; and G.A.Cohen, 'On the Currency of Egalitarian Justice', in Michael Otsuka (ed.) *On the Currency of Egalitarian Justice and Other Essays in Political Philosophy* (Oxford: Princeton University Press, 2011), 3-43.

[39] That, of course, is the substance of the project of reconciliation. As Brownlee has it: 'concern for disobedients' well-being as conscientiously motivated persons gives the state reason to be merciful towards them irrespective of whether their cause is well-founded and their acts fully parsimonious and reasonable'. And see also her remarks that 'judges have reasons to appreciate the onerousness for civil disobedients of abiding by the law', and that 'civil disobedients' conscientious moral commitments make it very difficult for them not to dissociate themselves communicatively from laws that violate those commitments. These facts about their circumstances give the law reason to show mercy towards them and lessen the severity of any deserved response from the law.' *Conscience and Conviction*, 235-237.

erced conformity with law will induce in them the pain of self-censorship and a fractured moral psyche — and then to reform its policies accordingly.

My theme in Chapter One, of course, was that this proposal is self-defeating. But lay that aside for now, my point here is only that it is difficult to escape the whiff of pity and pathos attending the very idea that the state ought to help activists throw off their regrettable burden. Indeed, if we insist that the moral work in a theory of civil disobedience be done by a kind of humanistic compassion — an empathetic recognition of the psychic plight of activists (re-rendered in the abstract as feelers and reasoners vulnerable to a certain complex welfare loss) — I do not see how civil disobedients can escape with their dignity and agency intact. There is a taint of disrespect, I think, in this image of civil disobedients as suffering souls, especially given what seems uncontroversial — viz. that if anyone possesses an unusual degree of courage and agency, civil disobedients do. And there is a diminution involved in this recasting of activists — for the purposes of policy-drafting, newspaper commentary, moral analysis and the like — as proper objects of compassion, as humans with the misfortune to be possessed of moral convictions outside the mainstream in an age where performative lawbreaking is persecuted.[40] Quite simply: something important goes missing (and it's not just her dignity, I think), when we consider Rosa Parks — from the moral point of view, from the point of view of theory — not as someone possessed of a startling, humbling degree of self-possession, courage, autonomy (and so on), but rather as someone vulnerable to a welfare loss — someone caught in the above-mentioned dolorous double bind.[41]

Of course there is nothing inconsistent in supposing that the brave also suffer, and suffer they may well do. But I put it

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[40] The cathartic view's relentless focus on the will-to-disobey as a burden to be alleviated carries more than a faint smack of paternalism, I think — a paternalism that should make liberals of all stripes uncomfortable. If I might channel Jerry Cohen: 'Hi, I'm from the Metropolitan Police on secondment to the Department of Health, let's do something about that moral guilt you seem to be feeling'. The meat of my argument in Chapter One, of course, was that this paternalistic impulse is self-defeating, but it's no less paternalistic for that.

[41] This mood of pity and pathos is well-evidenced in a quite astounding comment on Parks — viz. that 'a civil disobedient's conscientious moral commitments make it onerous for her not to dissociate herself communicatively from laws that offend those commitments. It's onerous to ask of Rosa Parks that she wait for a better season to challenge segregation laws … [we] can consider the impact of this onerous burden upon a disobedient's well-being when determining what legal response is morally justifiable.' Brownlee, *Conscience and Conviction*, 10. I discuss this idea again at length — and with some polemical edge — later in §5.2, during a broader reflection on the infelicities of the moral lens.

here that there *is* something untoward about zeroing in on that latter phenomenon. Even the gravely ill, who are perhaps the constituency most naturally viewed through the lens of humanistic compassion, properly resist subsumption under that aegis. That is why, given the alternative, we tend to view cancer patients as 'fighters' rather than 'sufferers'.[42] And that is why, the choice being what it is, we ought to see activists as strugglers — scrappers — rather than people caught between the proverbial rock and hard place. I say again: even if civil disobedients *are* vulnerable in the way that the cathartic view supposes, pointing to that fact — making it fundamental to their actions, helping them in virtue of it — is not to secure them dignity and agency, but to deny them it.

And that is not the only perversity of the cathartic view's focus on the psychic onerousness of the will-to-disobey. There is also the strange implication that, insofar as we build our account around the question of burden, the most salient weight borne by the would-be disobedient is not the morally egregious social reality that they live under and challenge, but the above-mentioned double bind. Or, to flip it round, that the welfare situation of the would-be disobedient could be importantly — *markedly* — ameliorated simply by their undertaking civil disobedience, rather than by their winning what civil disobedience is classically undertaken to pursue — viz. a change in the law. In other words, there is a dignity-threatening piece of misdirection in the aspersion that, insofar as burdens are the proper object of a theory of civil disobedience, King's burden as he stood on the threshold of disobedience was not the system of brutal oppression under which he and his community lived (and which he sought to end through civil disobedience), but rather his own moral rectitude in an age where the state took a dim view of unlawful conscientious expression.[43]

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[42] This analogy is perhaps not as crude as we might think, for it strikes me that the cathartic view offers almost a medicalisation of the will to disobey. That aside, forgive me the lapse into this hackneyed rhetoric of fighters vs sufferers. I am acutely aware that patients often loathe the dichotomy and its caricatural poles.

[43] I say more on this kind of misdirection in §2.2, where I discuss the political perils of the cathartic perspective. For now let me say simply that there is something untoward in a theory of disobedient activism which sees King as — most pertinently — a burdened man. And let me say, more pointedly, that though there may be a sense in which a black southerner who had not achieved explicit consciousness of segregation's evil might have been less burdened than King was, whatever sense of burden this is, it has no place in a political theory of civil disobedience. These judgements of mine are an exercise of the 'interpretive responsibility' that I think is one of the theorist's prime duties. We are thinking about politics, and we must think carefully about the implications of our theory — and to whom exactly they would give comfort and cover. I say more on interpretive

Let me close with this last remark: quite apart from the spectre of activist indignity, the unerring focus on the psychic predicament of the would-be civil disobedient (and the steps that the state can and ought to take to alleviate that burden) has the peculiar effect of representing the will-to-disobey as a *curse*. A thing to be removed, spent, exhausted. Now, it may be true that those possessed with so robust a sense of right that they feel compelled to risk the long arm of the law for the sake of their morals are indeed unfortunate — they are perhaps the unlucky ones, those who can't just sit back and watch TV like the rest of us. That said, I cannot see that this misfortune — if it is a misfortune — should have any place at all in a political philosophy of civil disobedience.[44]

2.1.5. Restatement: The Cathartic Threat To Dignity

The cathartic view — this vision of civil disobedience as an integrity-preserving act of self-expression — robs activists of their proper dignity. That has been my theme in this section, and before I move on to offer some more general reflections on the relationship between dignity and activism, it may prove useful to take a moment to review the particulars of my case so far.

This threat to activist dignity, I have argued, consists in three cathartic aspersions in particular. First, the 'ontological' recasting of civil disobedience not as a medium of polemical public criticism, but as a dissociative expression of the moral 'I's stance and attitude — a report of the self's condemnation of (and symbolic distance from) a perceived ill in the world. Second, the motivational imputation that this self-expressive action is undertaken not for the purpose of bringing about change in the world, but in order to honourably discharge one's essentially domestic (and dare I say egoistic?) felt obligation to remain true to oneself.[45] Finally, the 'action-

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responsibility in §2.3 and §§5.2-5.4.

[44] Perhaps I betray some idiosyncratic views here, but I am inclined to say that political guilt, in the present context, is something more important to stoke than to quench.

[45] One might feel that my case here depends on a false (and hyperbolic) dichotomy — viz. that civil disobedience is *either* a political-instrumental activity *or* it is a conscience-salving one. I should like to fend off that anticipated response at some length now, in the first instance by reiterating that my dichotomous framing of the issue simply reflects what is front and centre in the cathartic account: as I demonstrated above, Brownlee herself identifies integrity-preservation as *the* operative motivation for civil disobedience (rather than merely one consideration among other, more political, ones). That aside, there are good independent reasons to accept this dichotomous perspective on civil disobedience. In particular, it seems to me that to give a moral justification of some practice, especially against a background presumption that the practice is morally dubious, is

guiding' designation of civil disobedience — from the point of view of practical ethics and state policy — as the fruit of an unfortunate psychic malady, and therefore the proper object of our humanistic compassion.

These three shifts — concerning what we might call the 'what', the 'why', and the 'why it matters' of civil disobedience — each trample over the dignity and agency of the disobedient activist. Cumulatively, they represent a seriously demeaning way of thinking about civil disobedience and the people who undertake it.

There is a sense in which this result is doubly pointed, of course. For as I elaborated at the outset, the cathartic view's own avowed motivating impulse is to secure activists their rightful dignity. I shall not, however, tie my colours too closely to that narrow and somewhat legalistic claim — i.e. that the view undercuts its own motivating impulse (and is to that extent self-defeating). Rather, my line here has been that — whatever our theoretical pre-commitments — we ought to put a high price on activist dignity, and therefore resist any theoretical lens that would ruin it. We ought to resist this cathartic temptation to turn inwards to the person of the activist — to see activism as a matter of self-expression and personal integrity.

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ipso facto to give an account of what it is *really* or *most saliently* about — i.e. to say something about its essential nature. And that goes doubly, I think, when our moral evaluation of the practice will vary enormously — and irreconcilably — according to which reading of this essential nature we push to the fore. Notice, for instance, that our moral evaluation of civil disobedience swings wildly from 'more or less unobjectionable' to 'extremely dubious' according to whether we describe it as 'breaking the law in order to preserve one's moral integrity' or (say) 'breaking the law in order to agitate for socialism'. In other words: whether we accept or reject civil disobedience turns on which reading — cathartic or instrumental — we stress, and so the moral dilemma is stark enough to preclude any retreat to the suggestion that the descriptive truth lies somewhere in the middle. We may also note in this connection that — as I demonstrated above, and will have occasion to mention again in §2.2 — Brownlee herself lends credence to the dichotomy, and resolves it in favour of the cathartic alternative, *precisely* when she confronts conservative doubts about civil disobedience's moral propriety. At these junctures, any implication that civil disobedience is about agitating for some public cause or other is met with a strong denial: it's not about agitating for a cause, it's about expressing one's subjective investment in a cause. And if the reader finds even the foregoing unconvincing, I must point out the real smoking gun here: a dichotomous framing of the cathartic and political-instrumental alternatives (and a total eclipse of the latter reading) is a basic *requirement* of the cathartic view. Both the view's foundational identification of civil disobedience and conscientious objection as the same *kind* of activity, and its pursuit of a *general* defence of civil disobedience (i.e. one protecting all activists, whoever they are, whatever their cause), require an absolute minimisation of civil disobedience's political-instrumental character. I shall not elaborate these claims here, however, since I take up this theme at some length in §§2.2-2.3.

Now, before I go on to dissect the *political* ramifications of this turn inwards to the person of the activist (which are to my mind the more vexing ones), let me strengthen and formalise my general point in this section with an analogy.

If I were to claim that *voting* ought to be understood, from the moral point of view, as an essentially self-expressive practice designed to secure the citizen's integrity, my claim would rightly be thought scandalous. It would rightly be thought to demean not only the dignity and agency of the citizen, but also the very ideal of democratic participation.

The more dignified interpretation, by way of contrast, has it that when citizens vote, they do so instrumentally to some political goal out there in the world — viz. that of getting a particular party in or keeping another party out. No-one, I think, votes for the purpose of cathartic self-expression (except in the safest of seats, I might add — i.e. except in precisely the context where voting is useless as a politically instrumental action, and where, correctly, we tend to think that our electoral system has proven its inadequacy). And nor does anyone join a party or a pressure group, canvass for a candidate, run for office (and so on) as an exercise in integrity-preserving self-expression.[46] People ordinarily participate in politics for the purpose of influencing states of affairs in the world, rather than for the purpose of feeling at peace with themselves.

And if we accept the foregoing in the case of ordinary political action, I do not see why we should accept the contrary aspersion in the case of civil disobedience. If voting is a political activity, then civil disobedience is a political activity, and I know of no reason to read them differently — to impute to one of them an essential concern for political realities in the world, and to the other an essential concern for the state of the self.[47]

Let me say it again now, and more clearly than I have done hitherto in this section: we do not confer dignity on disobe-

[46] The cynic says: 'ah, but they do! That's all it is — self-expression, the assertion of a social identity, virtue-signalling'. Perhaps so. But if that's the reality, so much the worse for democracy! If that's the reality, my point here is only fortified: these aspersions are usually intended to condemn political engagement, not to affirm it. In any case, let me offer another and perhaps safer example. I imagine that one could defend the right to free assembly (say) on cathartic grounds — one could hold, perhaps, that people with strong convictions feel compelled to come together to shout their view, and that if they are denied this coming-together, they will suffer a welfare loss. Now, I think that this defence of free assembly would rightly be taken to miss the point. And so it goes for civil disobedience.

[47] It may even be that the stakes involved in civil disobedience encourage a still more thoroughly political analysis: I might go to the polling station for (just) the sake of my own conscience, but I don't know if I'd go to jail for it.

dients by conceiving them as having acted to resolve a discord in their soul, we do it by conceiving them as having acted *politically*. We do it by recognising the *fundamentally* political nature of disobedient activism.[48] And let me say it again in the negative for good measure: the cathartic view, in failing to read activism politically, therefore fails to grant activists their proper dignity.

Hitherto I have tried to shy away from that explicit identification, preferring to couch my critical claims in the more neutral language of instrumentalism — the language of 'ends outside the self', 'larger purposes', and so on. But there it is now, out in the open. Cathartic civil disobedience is — and the threat to activist dignity consists in this fact — more an indulgence (in both the vernacular and the specifically Catholic sense) than a live and robust form of alternative politics. And were I a civil disobedient, I would find it most injurious to be told that while I *thought* I was struggling for environmental justice (say), while I thought I was acting *politically* — in the service of some end outside myself, what I was *really* doing was expressing myself, externalising myself in the world, safeguarding my integrity.[49] In the cold light of the moral gaze my activities would appear trivial, parochial, narcissistic; not so much self-possessed as self-indulgent. And who can deny that there is an indignity in that?

2.1.6. Coda: Causes and Explanations

A last word on dignity: I assure the reader that I cling to my judgements here even in the face of the charge that this cathartic conception of civil disobedience's whys and wherefores — this explanation of civil disobedience in terms of the

[48] I should clarify here that I consider the preservation of moral integrity both a serious obligation and a serious good. I simply insist that it take a back seat in the political sphere. In this sphere — the sphere of instrumental action — to push the discussion onto this personal concern is not to valorise civil disobedience, but to give an indictment of it. And while I am on this theme, let me speculate that whatever — shall we say — *non-political* goods might inhere in civil disobedience, they do so only if the action is undertaken for political-instrumental reasons. I have integrity-preservation foremost in my mind here, of course, but I think the point goes for all the other candidates: the rush of the action, the camaraderie of shared activism, the sense of collective power — these goods depend on our being out there for reasons larger than ourselves, I think.

[49] If anecdotal evidence is of any use, and with the statute of limitations working to my advantage, I declare here that I took part in a Greenpeace direct action in the car park of Glasgow's St Enoch's Centre when I was younger, and I maintain that in doing so I did not intend to answer a demand of my own conscience (or to express my symbolic distance from the state). I thought — perhaps vainly — that I was throwing a spanner (though a tiny one) in the workings of the motor industry, and I doubt I would have recognised myself in the cathartic reading of my actions.

activist's subjective convictions and psychic pressures — is *causally* fundamental. Indeed, I think that we ought to prefer the instrumental, political conception of civil disobedience regardless of whether or not it identifies what is causally fundamental to disobedient activism.[50]

I take this view in the first instance because, even though I assume *in arguendo* that the cathartic view, couched as it is in terms of the mental states and subjective commitments of individual civil disobedients, really does offer the causally fundamental description of disobedient activism, we may quibble with that assumption in ways that tend to favour my case. For instance, were I to describe a given act of civil disobedience not as the agent's expression of her considered view, but as her regurgitation of an ideological commonplace which, if she had been born into a different class background, race, gender, sexuality, family, city, or country, she would likely not endorse, I take it that the cathartic theorists would be appalled. Similarly, were I to propose that it is not the moral subject at all — not the self, not the person — which is the fundamental explanatory unit, but rather the wider social structures under which we live (or perhaps truer to my view, and with my tongue only just inside my cheek, the level of development of the productive forces), I imagine that the cathartic theorists would think that I'd gone badly wrong. And in particular, they might accuse me of offering an untenable explanatory account specifically on the grounds that my perspective denies people their due respect as autonomous, dignity-requiring agents.

Now, I am not of course proposing such a structural explanation of civil disobedience here. I am simply suggesting that we all — cathartic theorists included — already accept that descriptions of civil disobedience ought to be sensitive to certain objective considerations — among them, the requirement to dignify and respect people. In light of that my rejection of the cathartic conception in favour of the political conception, and moreover, my declared indifference to the question of causal primacy, should not seem so controversial. Indeed, we are all — and perhaps sorely — familiar with what losses to dignity and respect go with having one's action misdescribed, with one's action being reduced to the wrong set of determinants (even where those determinants have a persuasive claim to causal primacy). It is uncontro-

[50] I am gesturing at a kind of 'single-person' variant of Weber's methodological individualism here — a sense that we ought to explain particular instances of civil disobedience in terms of the individual activist's beliefs, attitudes, subjective commitments (and so on). For the inaugural statement of this principle of social scientific investigation, see Max Weber, *Economy and Society*, trans. Guenther Roth and Claus Wittich (Berkeley: University of California Press, 1968), esp. Chapter One.

versial, for instance, that we do an injury to the teenager when — confronted by their trials and tribulations, their anxieties and melodramas (and so on) — we move to explain their actions in terms of their hormonally vexatious time of life. It is also plausible, I think, that we do an injury to the bereaved when we try to explain their actions in terms of their grief-stricken state of mind.[51]

Dignity, it seems to me, often requires that we do not explain people's actions in terms of their causal foundations.[52] And so — even in the face of this methodological charge against my arguments here — we must resist any backsliding to the realm of subjectivity and personal conscience. Properly speaking it is objective properties of the world (or ideals to be realised), and not the psycho-hydraulic pressure of my own conscience, that demand that I disobey.[53] I mean this in all walks of life, I think, and not only in civil disobedience. We cannot lose sight of what the real compulsive force is: when Brecht's Galileo recants his heliocentrism in the face of the Inquisition, he is correct to intimate that it is not his conscience that he demeans, but his calling.[54]

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[51] More politically, there is a distinct media tendency to try to explain — or explain away — student activism in terms of the protesters' idealistic unworldliness and insulation from the real economy, the implication being that when they grow up they will realise their error and change their view. That may be so, but there is no escaping that such an explanation robs them of dignity in the here and now. This is the commonsense idea underlying my argument here.

[52] Once again, I accept this proposition — that the cathartic view does identify what is causally fundamental to disobedient activism — only for the sake of argument. I return to this theme at length in Chapter Three.

[53] I use more general formulations like 'objective property of the world' in order to avoid anticipating the moral evaluation of particular instances of civil disobedience. In §2.3 I will maintain that I am comfortable holding that it was the wrongness of segregation that compelled civil rights activism (and not, for instance, civil rights activists' *belief or perception* that segregation was wrong). Indeed, my view is that what motivates civil disobedience in general is the reality of something in the world, and what motivates righteous civil disobedience in particular is the repugnant reality of something in the world.

[54] Viz. *Science*. It is no surprise that Brecht — a Marxist — understands the real compulsive force in cases like this. Permit me that dramatic rejoinder to Brownlee's own invocation of Bolt's Thomas More: 'what matters to me is not whether it's true or not, but that I believe it to be true, or rather not that I believe it, but that *I* believe it'. *Conscience and Conviction*, 15, quoting Robert Bolt, *A Man For All Seasons*. And see Bertolt Brecht, *Life of Galileo*, trans. Charles Laughton (New York: Grove Press, 1966), Scene 14.

2.2. The Political Perils Of The Inwards Turn

With the cathartic view's threat to activist dignity now transparent, I move on to take up the other half of my case in this chapter — viz. that concerning the cathartic view's threat to civil disobedience's political viability. As a way in to my discussion here, we ought first to note what is a precondition of this political peril — viz. that it is not only for us, library-bound theorists of civil disobedience, to know why it is that people disobey and what licences them to do so, but rather that the moral metaphysics of civil disobedience should become public knowledge: the cathartic analysis of civil disobedience ought to become the received narrative of civil disobedience in the public culture.[55]

I shall focus here on two kinds of political danger attending this public generalisation of the cathartic lens. First, I shall argue that the cathartic perspective's unerring focus on the self — both as the subject of the disobedient communiqué, and as the proper object of our moral concern — can only work to *divert* the spotlight of considered public attention away from the programme protested and back towards the person of the activist herself (thus keeping putatively and possibly egregious states of affairs well-insulated from disobedient criticism). That case made, I shall go on to argue that even granted a general public capacity to resist this diversion — i.e. to focus the moral gaze on what the disobedient finger points out, rather than the one pointing it, the cathartic perspective gives us no good reason to do so. Painted in the colours of conscience, civil disobedience appears an act of trivial political significance, hence one easily (and in a sense *properly*) brushed off — more the public playing out of a personal psychodrama than a serious (if peaceable and verbal) challenge to the present state of things.

Now, before I begin my case in earnest, let me point out that there is a sense in which my remarks here fortify a strand of argument bubbling away in the background of this chapter — viz. that in moving a concept of civil disobedience as conscience-salving self-expression, and yet *also* claiming for it lively political-instrumental credentials, cathartic theorists try to have their cake and eat it. My target is only incidentally this technical infraction, however — viz. that of assuming, falsely, that civil disobedience can be at one and the same time a vehicle of conscience-salving self-expression and a

[55] This, after all, is what the project of reconciliation demands. As Brownlee notes: 'for our rights to be meaningful, we require an effective system of provision and protection within society's accepted morality and (in certain senses) its legal system.' *Conscience and Conviction*, 249 n.24. See also my more extensive discussion of this point in §1.2.

politically consequential vehicle of pointed public criticism. I shall not stress this theoretical inconsistency. Rather I wish simply to convey the political danger in promoting the cathartic perspective, a danger that I shall survey now under the two broad rubrics telegraphed above — viz. those of diversion and trivialisation.

2.2.1. Divert and Conquer

The cathartic lens is, I think, a quietist mirror — one reflecting our interest and concern back on the person of the activist, rather than the thing she protests. It suggests to us that if disobedient activism raises any object of moral concern, that object is not the worldly state of affairs to which it responds, but the character and plight of the one responding.

This diversion of the moral gaze away from the world and whatever misdeeds might be going on in it is produced in two ways. Perhaps most tangibly, it is created by the cathartic perspective's endemic focus on the psychic burden of the will-to-disobey — on the idea that civil disobedients, in virtue of their robust moral backbone, find it onerous to restrict themselves only to the lawful means of speech and expression. While I suggested above that something is lost in translation when we see activism as a question of psychic burden (and activists as subjectivities whom we ought to regard with humanistic compassion), I suggest now — and more pointedly — that there is also something politically perilous in this perceptual shift.

My reasoning on this point is not complex. I say only that where states of affairs in the world really are morally catastrophic (as they have been in all of the emblematic cases of civil disobedience), it is counterproductive to move an image of disobedient activism that — to the extent that it identifies salient objects of moral concern — locates them not in the political world around us, but in the activist's own psyche. Indeed, if we cast our eye at the activism of the civil rights era, say, I suggest that the burden we ought to take notice of — the moral ill that ought to occupy the entirety of our attention — is not that of possessing so upstanding a character that one feels compelled on pain of psychic incongruity to disobey, but the burden of living under a brutally racist regime. Quite simply, the burdens foundational to civil disobedience — to a narrative of civil disobedience — are not burdens of the self, but burdens in the world. To suggest otherwise is a dangerous piece of misdirection.

Now, burden of the will-to-disobey aside, there is a similar deflection from public reality at work even in the cathartic view's basic impression of what civil disobedience *is* — viz. a

medium of dissociative *self*-expression. After all, what we see when we perceive civil disobedience in this light is not a pointed argument made more vivid, but a window into the civil disobedient's soul. Or to put the point with more force, what we *learn* from an act of cathartic civil disobedience is not a (potentially important) fact about some public state of affairs, but a fact about the individual civil disobedient. That is a straightforward implication of what I demonstrated in §2.1 above — viz. that the morally relevant 'propositions' articulated in cathartic civil disobedience are indexical, self-referential propositions: when I disobey, the morally pertinent proposition that I utter is a proposition about *me* — viz. that *I — me in particular —* deplore a given policy and dissociate myself from it forthwith.[56] It is the chance to say things of that ilk, rather than to make provocative claims about public states of affairs, that grounds the moral justification for disobedient breaches of law.

What I am driving at here is that — in a quite literal sense — the force of the activist's words is altered and diminished on this reading of civil disobedience; and therein lies the diversion. Despite their surface appearance, these claims are revealed not as propositions about the world, but reports of the self's stance and attitudes. What *sounds* like a claim about the world is in reality an expression of the self.[57] *That* is what we learn from cathartic civil disobedience — from

[56] To put the point another way: the *identity* of the claim-maker is of foundational (and unusual) significance to cathartic civil disobedience. Ordinarily it is of no intrinsic significance that a given moral claim is uttered by me, rather than you. For political purposes, certainly, what matters is only that the proposition gets out there: someone had to say it, I did say it, but that it was me and not you who said it is neither here nor there — at any rate, it does not bear upon the *content* of the message. If you are more famous than I am, it may make good tactical sense for you to state the case, but the case itself does not change for its having been stated by you. That — in the cathartic estimation — the content of the message *does* change according to the identity of the activist is perhaps an indication that cathartic disobedience is about something other than stating cases.

[57] I demonstrated in §2.1 that civil disobedients *can* offer reasons for their view while they disobey, but that this additional activity is not — strictly speaking — *part* of the action. What the action *is* is dissociative self-expression, and I simply contend here that our awareness of this moral reality will tend to distract us from what is said on the side. It's worth noting that Brownlee herself often elides this point. She writes, for example, that civil disobedience is partly a matter of 'seeking to persuade others that there are good reasons for the disobedience' [*Conscience and Conviction*, 152], and that one of the activist's key aims is 'to draw attention to the reasons for the protest so as to persuade the relevant audience to accept [their] position and, thereby, to instigate a lasting change in law or policy' [18]. However, and as we have seen at length, the reasons for the action are — on the cathartic view — *psychological* in character, hence not up for public debate. That Brownlee herself often rows back from a purely cathartic gloss on civil disobedience suggests, perhaps, how odd and politically inert a view of activism this is.

civil disobedience construed as a transmission of the self. Not any urgent fact about the world (that segregation is an affront to humanity, or that fracking is a catastrophic folly, for example), but that the individual — I, me — disapproves of segregation or fracking. And that is precisely *not* to learn something of consequence about these phenomena — that is not the kind of information that we can work with if we're trying to get things done in the political world. There is a politically dangerous semantic diversion going on here: if the verbal exclamations of civil disobedience are to stir up debate and inspire change in the world, then the primary content of these exclamations must concern the reality and possibility of public states of affairs. The grammar of the civilly disobedient communiqué must not route us back — reflexively, distractingly — to the person of the activist.

Indeed, if I might paraphrase Walter Sobchak, and tie my threads together as I do: the person is not the issue here! The issue here is the alleged injustice of a given programme, not this apolitical sideshow — this focus on the self's stance and the self's burdens.[58] That is why the cathartic lens is politically dangerous: it is a powerful mechanism for diverting the moral gaze away from the very states of affairs in the

[58] It strikes me that insofar as cathartic civil disobedience *might* raise up a question of principle, that question of principle will concern not the first order object of the disobedient's dissociative efforts, but the legitimacy of their having broken the law to dissociate themselves from it. That is, the focus of such a debate will not be (say) the moral defensibility of airstrikes in Libya, but the second-order constitutional question of how far people may legitimately go in expressing their view of same. In other words, there is a pronounced danger that the cathartic idea of civil disobedience will tend to encourage the wider society to ask the same principled question that liberal theorists do — viz. '*without paying any mind to what they actually protest*, what right have they to protest?'. And while I am on this theme, I really must point out the irony in the liberal propensity to welcome this evasion of the first order question. Dworkin, for instance, says: 'a theory of civil disobedience is useless if it declares only that people are right to disobey laws or decisions that are wicked or stupid … [such a theory] will be worthless in particular, concrete cases, because people will then disagree whether the law *is* that wicked, or wicked at all.' The benefit of a person-centric, content-independent defence of civil disobedience being, therefore, that we can 'find rough agreement' about the permissibility of civil disobedience, even though we 'disagree about the merits of the underlying political controversy', and 'lack consensus about the substantive moral and strategic convictions in play'. *Matter of Principle*, 106. But this position — i.e. that we ought not to make the justification of civil disobedience contingent on the rightness of its cause, since we will then get too bogged down in debating the rightness of its cause — is an utterly strange one for a liberal theorist to endorse. It is, after all, a touchstone of the liberal perspective that civil disobedience's chief value consists in the public debate that it foments, and so what sense is there in trumpeting that one's account of civil disobedience obviates a public discussion of the morality of the law? Were I a civil disobedient, certainly, I could not welcome that people should set aside the morality of the law I protest when they attempt to understand what I'm doing and whether I'm justified in doing it. That would rather seem to undercut the very *point* of my having taking action.

world which provoke civil disobedience, and which are the salient burden under which activists labour, and which are the proper subject of their disobedient exhortations. We may note the flavour of Marx on alienation in my reasoning here — viz. that just as the felt need for religion, drink, drugs, shopping, football (and so on) is of subordinate relevance to the objective material circumstances generating such a need, so the felt need to express and dissociate oneself is of subordinate — indeed, merely diagnostic — relevance. What matters is the worldly state of affairs provoking that need, not the need itself.[59] That is the core defect of the cathartic lens: the person, everywhere we look. The world and the struggle to change it, nowhere.

2.2.2. The Trivialisation of Dissent

I shall say no more on the question of the cathartic view's tendency to deflect the moral gaze away from policy and back towards the person. I shall now make a different case — viz. that in angling the mirror in this way, the cathartic perspective also *trivialises* civil disobedience.

I say that in the first instance because — once civil disobedience is revealed to us as a kind of conscience-salving self expression, rather than (say) an instrumental intervention into the public deliberations — it is difficult not to read into it the implied 'merely'. It is difficult not to think it devoid of public interest, because 'merely' a matter of personal integrity, 'just' a question of self-expression (and so on). The omnipresence of the self in cathartic civil disobedience — the essentially self-regarding nature of its content and motivation — provides ample rhetorical space for blunting its political edge: any suggestion that activists are raising serious points about the moral propriety of the regime — points worth thinking about and responding to — can always be met with this trivialising 'merely'. That suggestion can be countered with the deflationary reply that ('quite the contrary!') these activists are *merely* expressing their personal moral view, *merely* communicating their dissociation from a given policy, *merely* trying to keep their moral integrity intact. In this way — as in the diversionary case documented above — civil disobedience's politically confrontational aspect is yet again prescinded from, in this case because a mollifying discourse is always at hand.[60]

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[59] I return to this theme in §5.4.

[60] The contrast with the instrumental conception of civil disobedience that I have been urging throughout is plain: it is impossible to trivialise an action by saying, for instance, that an activist is 'merely' propagandising for socialism. Unless, of course, the speaker is a particularly militant stripe of

And here's where the plot thickens: nor is it the case that cathartic civil disobedience merely *can* be met by this dismissive, trivialising response; properly speaking, it *ought* to be. The cathartic perspective not only opens up an unfortunate rhetorical space for PR subterfuge in the state and wider society reception of civil disobedience, it gives all right-thinking people no option but to dismiss it — to regard it as politically trivial (whatever its therapeutic benefit for the individual activist).

I say that partly because Brownlee *herself* urges this style of response in her treatment of the familiar conservative fear of civil disobedience — viz. that it arrogates to itself an improper legislative role.[61] But I say it mainly because cathartic

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socialist.

[61] Permit me a lengthy elucidation of this point — viz. that the cathartic view more or less deliberately minimises civil disobediences's political edge. First, this minimisation is a central plank in Brownlee's defence of cathartic civil disobedience from conservative objections. We saw that earlier in her reply to the 'strategic action objection', and it reappears in a later reply to Daniel Weinstock. She writes: 'Weinstock notes that civil disobedience is not the only way to keep democratic deliberation alive between elections. Lawful demonstrations, lawful strikes, letter-writing, and blogs are all ways to engage in political argument and contestation … Weinstock takes [this] to imply that when the mechanisms for engagement have not broken down, most civil disobedience is illegitimate and, therefore, only remedial, injustice-fighting civil disobedience is legitimate. But, my claim does not imply that because my case for the existence of a content-insensitive right to civil disobedience does not rest on its democratic credentials. Instead, my case for the right to civil disobedience rests on humanistic respect for persons as reasoning, feeling, expressive beings. The democracy-compatibility of civil disobedience simply shows that we need not worry about the moral right to civil disobedience on democratic grounds.' 'Reply to Critics', 734. Now, the thrust of Weinstock's objection here is that because there are tens of legitimate mechanisms by which to engage in politics, civil disobedience is unjustified except where those mechanisms have proven themselves dysfunctional. And Brownlee's response is effectively to *deny* that civil disobedience ought to be thought of as a form of political engagement — rather, it ought to be thought of as a form of conscientious expression, and one compatible with democratic rule of law. I can see no other way to make sense of this reply. All that aside, there is a much more fundamental sense in which the cathartic view rests on a minimisation of civil disobedience's political edge, and in elaborating this point I shall be making good on something I promised in §2.1 — viz. to demonstrate that an apolitical reading of civil disobedience is a *requirement*, and not merely an accident, of the cathartic view. Recall that Brownlee's distinctive contribution to the field is to marry civil disobedience and conscientious objection together under the general rubric of conscientious action — i.e. to propose that they are in fact tokens of the same more general type. But here's the thing: the classical difference between civil disobedience and conscientious objection is that while the former *is* political, the latter is not. As Brownlee has it: 'standard liberal views' see conscientious objection as a 'modest, unassuming act of deep personal conviction', but civil disobedience as 'a strategic, political act that eschews ordinary participation channels in favour of riskier, but potentially more effective, undemocratic channels.' *Conscience and Conviction*, 5. The only way to maintain their equivalence of kind, it seems to me, is to argue either that conscientious objection is *also* political (i.e. not *really* a modest,

theorists are *right* to mollify their conservative critics in this fashion — they are right to point out that cathartic activism doesn't present any kind of political challenge. After all, if the bedrock moral truth of the matter is that — despite popular perceptions to the contrary — civil disobedients aren't *really* intervening instrumentally in the extant political debate, but simply attempting to secure their self-harmony through acts of dissociative self-expression, then I see no reason why bystanders, reporters, the audience at home, lawmakers (and so on) should *care* about it. And in particular, I see no reason why we should care *what* civil disobedients are saying when, seen from the moral point of view, they are saying it just to scratch an itch of the self. I see no reason why we should listen to them when we know that they hit the streets not to broadcast an argument, but to salve their own souls.[62] I say it again for good measure: the cathartic turn inwards to the realm of integrity and self-expression doesn't just open up the rhetorical possibility of under-fire regimes dismissing civil disobedience as 'merely' a private concern, it actually *warrants* such a dismissal.

This is what I call the 'schizoid' problem for cathartic civil disobedience. If we know that the activist's claims are — from the moral point of view — reports of her own sentiment uttered for the functional purpose of protecting her sense of moral self-harmony, how then can we take them seriously as truth-capable and *prima facie* worthwhile propo-

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unassuming act), which Brownlee does not do (and is, in any case, untenable under any recognisable sense of 'conscientious objection'); or to argue in effect that civil disobedience is *not* really political (i.e. more a modest, unassuming act than a strategic, political one), since a political civil disobedience makes a mockery of the claim that it is ontologically of a piece with conscientious objection (and the proper inheritor of the latter's moral and legal protections).

My contention in this chapter has been that, despite appearances, this latter is the route that Brownlee takes. But I do not mean to recapitulate exactly that point here. Rather, I mean to point out the dichotomy at work: either one gives up the idea of civil disobedience as political, or one gives up the idea that civil disobedience and conscientious objection are the same sort of thing. And *that* is the sense in which a minimisation of civil disobedience's political edge is foundational to the cathartic view. To *emphasise* civil disobedience's strategic and political nature is to ruin the cathartic account's signature move and avowed ambition — viz. to demonstrate that civil disobedience better deserves protection under the rubric of conscience than does conscientious objection, its imperfect relation.

[62] There is a certain tragedy in this point. Brownlee defuses the epistemic objection to civil disobedience — viz. that civil disobedients are less qualified than parliamentarians to legislate — by pointing out that activists are often better-informed about key issues than are their representatives in parliament. That is undoubtedly true, I think. But this lived experience goes to waste here: why would anyone listen to activists' correct and vital insights when the avowed purpose of their action is not to disseminate them, but to express their dissociative moral stance? See *Conscience and Conviction*, 175-176ff.

sitions about the world. In other words, how then can we take them seriously as what they are *not*, strictly speaking? Even if worldly propositions can be *inferred* from the irreducibly self-concerned, indexical utterances that are cathartic civil disobedience's stock in trade, they cannot be *detached* from them.[63] Even if we can infer (say) 'UK fracking policy is environmentally calamitous' from the strictly self-reflexive utterance that 'I believe UK fracking policy is environmentally calamitous and dissociate myself from it forthwith', I suggest that we have no reason to go on to debate the merits of that inferred claim — to take it seriously as a potentially productive intervention into the public conversation. After all, we know — we cannot forget — that such potential productivity played no role in the statement's origin: that it was uttered for the purpose of shedding a private burden of conscience. We know, in other words, that what is of fundamental pertinence in the disobedient communication is not its *content* (and *a fortiori* its moral urgency, rational merit, or empirical plausibility), but its psycho-moral hinterland — its emanation from, and its expression of, the activist's sincere subjective conviction.[64]

My claim here, then, is that while we might be able to *pretend* that the self-reflexive expressions of cathartic civil disobedience are also arguments, we have no reason to make that imaginative leap. Such leaps are costly in our information-saturated age, and nothing in the provenance of the imaginary argument gives us any indication that it will be worth listening to (even though, it goes without saying, it is possible that this imaginary worldly proposition is, accidentally and incidentally to your purposes in uttering it, *true)*.[65] You didn't say it because it was plausible, and your being justified in saying it had nothing to do with its plausi-

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[63] My claim here is not as controversial as it may appear. I simply maintain that it is very difficult to accept these two ideas at the same time: i) that civil disobedience is the (content-independent) expression of the self for self-concerned reasons; ii) regardless, we ought to listen to the content because it might prove true and useful.

[64] As Goodin has it: 'what we must do, if we are to persuade people that it is permissible for us to disobey … is to point to the *form* rather than the *content* of our beliefs about the wrongness of [the] law … we must maintain not that our convictions are correct, but instead that they somehow occupy a special place in our moral universe'. 'Nuclear Protest', 461-462. And quoth Dworkin, expressing the same idea: 'we must aim … to make our judgments turn on the *kinds* of convictions [the activist] has, rather than the *soundness* of these convictions.' *Matter of Principle*, 106, my emphasis.

[65] Note that the view could be rescued only by the blanket implication that one can feel sincerely and strongly only about a certain class of moral claim — viz. *plausible* ones. I see no reason why this should be true: sincere conviction is a mental state, and mental states pay no heed to theoretical notions of reasonableness or plausibility. That some fears are irrational does not thereby demolish them as fears.

bility (in the sense that you'd have been just as justified, and would have derived the same satisfaction of your conscience, had you voiced a complete falsity as an unimpeachable and urgent truth).[66] Correspondingly, while we *can* go on to assess the plausibility of this accidental, incidental, imaginary proposition, I simply don't see why we should. I don't see why we would. We will have to take seriously those imaginary propositions — which are not the propositions *actually* uttered in civil disobedience — at the same time as we realise we have no epistemic reason to take them seriously.[67] Thus does the content-insensitive, integrity-salving focus of the cathartic lens inevitably tarnish civil disobedience's public interest.

And justifiably so, I think. If someone writes compulsively because they think themselves a writer, and therefore feel themselves under a kind of self-imposed burden to write (such that they feel cathartic release when they do write, and moral alienation when they do not), and further that this fact is known to the reading public — indeed, that this is all we know about them — while it is possible that their work is of enormous literary significance, I do not think that we can be blamed for refusing to read it. The avowed origins of the work *warrant* our refusal to take it seriously: if *that* is why they write, I do not care to read their work (especially when my bookshelves are near caved-in with other prospects).[68]

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[66] The critic replies: 'all ordinary expression is protected by a content-insensitive right to free speech, and yet we still take many people's views seriously as vital public criticism'. Indeed we do. But only because we don't ordinarily carry with us the thought that, in expressing their views, these people are making use of their right to free speech. Indeed, it seems to me that we pay explicit mind to the idea of speech as *free* speech only when we want to signal our indifference to — or our rejection of — what people are saying. Civil Disobedience, on the other hand, is unusual and provocative enough that, unlike in ordinary speech, the question of its underlying moral justification will always be near the surface of our mind: that is why the overt content-insensitivity of the cathartic right will tend to trivialise what people say when they make use of it. All that aside, we ought not to lose sight of the other trivialising considerations here — viz. that cathartic civilly disobedient speech is not, strictly speaking, propositional, and that its avowed moral significance lies (merely) in its meliorative effect on the disobedient's strained moral psyche.

[67] What I am pointing out here is in some sense the political analogue of the 'schizoid' problem for non-cognitive theories of moral statements. I am not quite translating the Frege-Geach problem, but there is a spiritual consonance here — viz. that it is precious difficult to reason from a non-cognitive expression. See Peter Geach, 'Assertion', *Philosophical Review*, 74:4 (1964): 449-465.

[68] I do not say that the view is *false* in virtue of its origins, I say that given the paucity of public attention-time in our information-saturated age, we've no reason to *listen* to the view — its origins render it a low priority transmission. In other words, I assure the reader that I do not commit the genetic fallacy here. For an excellent discussion of 'genetic' or genealogical

In the end, then, the cathartic view practically encourages us to close our ears to disobedient protest, in light of which any hope for civil disobedience as a vehicle of pointed public criticism seems forlorn. Both the act and the proper end of cathartic civil disobedience leave it politically trivial: if we are satisfied that the action itself is an innocuous species of self-expression, and we are satisfied that the motivation for it is impeccably private, why bother going on to treat it *as if* it were something other than it really is — viz. not an integrity-preserving piece of self-expressive theatre, but a provocative challenge to the regime, one inviting further thought and action, one inviting a riposte from the state?

2.2.3. Coda: Recuperation

Let me adjourn the 'political' half of my case here with a more speculative reflection — one having to do with the prospect of cathartic civil disobedience being repurposed in the rhetorical service of the status quo. It seems to me that when the act of civil disobedience has been properly trivialised, and when we have our policy-to-person attention-diverters locked in place, the state authorities and defenders of majority opinion can then safely embrace disobedient activism in self-congratulatory fashion as proof of the regime's openness and democratic maturity.[69] After all, *everyone* — regardless of their doctrinal inclination or vested interest — can permit themselves some warm feeling for demonstrations of moral consistency. But they can do so only if they've been assured that such quintessentially conscience-driven action is of no political consequence — that it poses no threat (even an argumentative one) to them and theirs.

Indeed, I speculate that conscientious action — and in par-

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forms of critique, see Raymond Geuss, *The Idea of a Critical Theory: Habermas and the Frankfurt School* (Cambridge: Cambridge University Press, 1981), 19-22. For a discussion of the genetic fallacy in philosophical reasoning more narrowly construed, see e.g. Margaret Crouch, 'A Limited Defense of the Genetic Fallacy', *Metaphilosophy* 24:3 (1993): 227-240.

[69] Raffaele Laudani is quite correct, I think, to point to the real-world tendency for disobedient protest to be retconned not as criticism of the regime, but as an endorsement of its vitality. Laudani, *Disobedience in Western Political Thought: A Genealogy* (Cambridge: Cambridge University Press, 2013), §5.3. I am also reminded in this connection of Žižek's commentary on the anti-Iraq War marches in London and Washington D.C., which he thought 'an exemplary case of this strange symbiotic relationship between power and resistance. Their paradoxical outcome was that both sides were satisfied. The protesters saved their beautiful souls: they made it clear that they don't agree with the government's policy on Iraq. Those in power calmly accepted it, even profited from it: not only did the protests in no way prevent the already-made decision to attack Iraq; they also served to legitimise it.' Slavoj Žižek, 'Resistance is Surrender', *London Review of Books* 29:22 (November 2007), 7.

ticular its old exemplar, conscientious objection — is so widely accepted precisely because it has no horizon beyond the self.[70] And in repositioning civil disobedience as the same *kind* of activity, the cathartic view effects the theoretical version of this sort of recuperation: its endemic focus on conscience as the source and end of civil disobedience opens up a way to valorise it — and reap the rewards of doing so — while at the same time largely abstracting from its political edge and the states of affairs in the world to which it reacts. That is the gravest peril of the cathartic view, and the one I warn against most stringently in this chapter: the cathartic lens not only permits, but *mandates*, the separation of civil disobedience from politics. Thus while Rex Martin argues that the cathartic inclination to 'absolutise the individual and his moral conscience' spells the ruin of organised society, my case here has stressed almost the opposite point: far from jeopardising the regime, cathartic civil disobedience lets it off the hook.[71]

2.3. … And Dignity for All: Ruminations and Implications

We are nearing the end of my arguments in this chapter, and before I go on to offer some further contextual remarks and a final polemical criticism of the cathartic view, let me remind the reader of my central claims hitherto. I began by arguing that the cathartic view's person-centric reconceptualisation of the 'what', the 'why', and the 'why it matters' of civil disobedience robs activists of their proper dignity — a dignity that the cathartic view itself vows to secure. I then moved on to argue that this turn inwards to the realm of individual conscience also — and more importantly — guarantees civil disobedience's political inviability: it renders it safe and sane and apt to be ignored (or worse, recu-

[70] I alluded to this point earlier, and I develop it at greater length in the next section of this chapter, where I argue that the *generality* of the cathartic defence of civil disobedience — its attempt to protect all civil disobedience, whomever the activist, whatever the cause — forces this abstraction from civil disobedience's political spikiness.

[71] Rex Martin, 'Civil Disobedience', *Ethics* 80:2 (1970): 123-139, 135. Indeed, Martin expressly distinguishes cathartic-style visions of civil disobedience (i.e. those 'stemming from Thoreau', and which see it as a distinctively 'moral' practice), from 'political' concepts of civil disobedience [135-136]. Though I disagree with him that 'moral' civil disobedience presents any appreciable threat to civil order (though it may yet present a danger to the idea of the rule of law), I certainly agree with him that this is the terrain — that conscience-driven analyses of civil disobedience position activism as more a moral than a political proclivity.

perated in the service of the regime).

Dignity and political viability, these have been my watchwords. And in their service I have cautioned against any reduction of civil disobedience to the public performance of a private morality play. Insofar as we are committed to activist dignity, and insofar as we value the prospect of a viable civilly disobedient politics, we must adopt instead a fundamentally instrumental and political concept of civil disobedience. We must see it as working to further some definite end out there in the world; we must see it — to its core — as a move in political space. Civil disobedience is political or it is nothing, there's no two ways about it. That has been my theme and abiding message here.

2.3.1. Won't Anyone Think Of The Nazis?

I cannot leave it there, however, and I offer now a further rebuke to the cathartic view, one having to do with the *priorities* of this theory of disobedient activism. As a way into that case, it will prove useful to ask *why* the cathartic view makes this move away from politics in the first place. In other words, it will be useful to enquire why — given the commonsensical and universally-endorsed assumption that civil disobedience is political if anything is — the account radically rows back from that, even if it doesn't admit that that's what it's doing.

The reason why has to do with the scope of the cathartic right. The cathartic theorist's basic goal is to make civil disobedience *generally* justifiable — to elicit our sympathy for, and secure the dignity of, *all* civil disobedients, not just the sainted few.[72] But here's the thing: under *political* descrip-

[72] This theoretical ambition — viz. that of pursuing a 'general, content-insensitive moral right to civil disobedience', is Brownlee says, part and parcel of negotiating 'an inescapable tension in liberalism, which lies in being tolerant of the intolerant'. 'Reply to Critics', 130. We find a programmatic statement of this generalist bent in Brownlee's claim that 'the bad luck argument [i.e. that it is a democratic accident whether one is in the political majority or the minority] does not give us a *general* moral right to civil disobedience. This will seem unproblematic to thinkers who root the right to civil disobedience in *political participation rights*, but it is problematic in the eyes of those like myself who believe that the most compelling grounds for a right to civil disobedience lie, first, in a principle of humanistic respect for deep moral conviction, and second, in an acknowledgment of the overly burdensome pressure that society and the law place on us when they coerce us always to privilege the law before our deeply held moral convictions.' *Conscience and Conviction,* 144, my emphasis. More pointedly, Brownlee confirms that: 'since I do not constrain the kinds of causes that a moral right to civil disobedience might protect, I have brought the rats in the house with the cats, and have given bigots, racists, and xenophobes of all stripes a moral right to break the law in defence of their causes' [147-148]. '[That right] does not focus upon the value or disval-

tions of civil disobedience, no-one would go for neo-nazi activism.[73] To see that, note only that the instrumental locutions I have been stressing in this chapter invite a profound queasiness when they are brought to bear on the actions of neo-nazi disobedients. No-one — or no-one sensible, at any rate — could stomach a general right to civil disobedience construed *politically* (even though such a right is formally available), since that would mean granting neo-nazis a right to break the law to struggle for white supremacy, granting them a right to intervene materially to propagandise for white supremacy, granting them a right to try to subvert the formal democratic process in the hope of securing white supremacist reform.[74]

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ue of disobedients' commitments, and hence it applies to bigots and xenophobes as well as to noble campaigners' [10].

Incidentally, Eugene Schlossberger attacks this sort of 'internalist' defence of civil disobedience — this paying heed only to the subjective morals of the disobedient, rather than to the objective merit of their cause — because he thinks that it results in a disgraceful absurdity: it can never be right to disobey in the service of intolerable values, and we shall have no way of declaring that unless we row back from 'internalist', cathartic-style views. This criticism rests on a basic confusion, and I bring it up here in order to clarify the terrain: the cathartic position is not that it would be *right* for a neo-nazi to disobey, but simply that he *has* a right to disobey. In other words, one may perfectly well criticise the values that activists profess in their disobedience, even if one can't deny them their right to so profess them. There are many problems with 'internalist', cathartic-style views, but this — that we may not criticise people for disobeying on the basis of their sincere convictions — is not one of them. Eugene Schlossberger, 'Civil Disobedience', *Analysis* 49:3 (1989): 148-153, see 152-153.

[73] I will usually conjure the spectre of neo-nazism when my case requires me to reach for a stereotypically beyond-the-pale bogeyman. But my argument works just as well — indeed, is improved — if the reader swaps in her own most deplored ideology at every such juncture. I will be making several points about political partisanship here, and Reader, I encourage you to bring your prejudices with you.

[74] That is so even though those same sensible people might be very happy to say — as I am — that people have a right to break the law in order to struggle for justice. Now, I should clarify in this connection that the republican views surveyed in Chapter One *also* propose a general (and, crucially, a *political*) right to civil disobedience — they say that everyone, regardless of their cause, has a right to break the law in order to put the case for that cause. How then can I claim that the cathartic rowing back from politics is the *only* way to secure a general right to civil disobedience? Simply because I think that this republican pretension to generality is implausible, and perhaps depends on an implicit turn inwards to a content-insensitive, cathartic-style image of civil disobedience. In other words, I reassert that it is bedrock implausible to suppose that neo-nazis have a right to break the law in order to put the case for white supremacy, and I suggest that any suspicion that they might relies on perceiving this sort of disobedience more as an exercise of content-insensitive *free speech*, than as a politically consequential form of propaganda. Quite simply, it seems to me that the idea of the *general* republican right *also* depends on an implicit minimisation of civil disobedience's politically confrontational and politically consequential character.

I hardly need point out that there is no comparable queasiness involved in granting neo-nazis the right to pursue their own integrity through performative acts of self-expression.[75] 'Even neo-nazis deserve a little compassion' — that's something we could all get behind, perhaps; 'even neo-nazis deserve extra-constitutional political influence' — that, it seems to me, is not. And so the contextual, exegetical lesson here is that civil disobedience's political charge is attenuated in proportion to the generality of the right — the more knuckle-dragging the would-be bearers of the right, the more practically inoffensive we have to make it.[76]

2.3.2. Not Me

But here's the flip-side of that coin, and the special trouble with generality: what you think about neo-nazis you *also* have to think about civil rights protesters. If you move the goalposts to accommodate neo-nazis, you end up having to bring everyone else down to their level. As such the real cost of rights for neo-nazis is not that we have to listen to neo-nazi protest, it's that we have to truss up progressive civil disobedience in the same insulating, quietist way — i.e. as a politically innocuous species of integrity-salving self-expression. Thus is the character and political edge of genu-

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[75] Brownlee gives a vivid statement of this kind of deflationary dynamic during a discussion of the wrong of punishing civil disobedience: '[if] a neo-Nazi engaged in suitably constrained civil disobedience to champion his cause, would a judge really properly owe him an apology if she were to breach his moral rights and punish him? In reply, admittedly, such an apology could seem strange and confusing. But, the judge would simply have to be clear about what she was saying, namely, that the apology was not intended in any way to excuse or condone the neo-Nazi's cause. Rather, the apology was given strictly for not being able in this case, for whatever reason, *to make some space for the person's suitably constrained, civilly disobedient expression of his conviction.*' 'Reply to Critics', 730, my emphasis.

[76] In making this point I address something that I suggested briefly in §2.2 — viz. that the political innocuousness of cathartic civil disobedience is not an unfortunate accident of the view, but rather its essential prerequisite. I say that because both the dialectical constraint of positioning civil disobedience and conscientious objection as tokens of the same type of activity, plus the scope constraint of pursuing a general right to civil disobedience, behoove the cathartic theorist to row back from politics. A political civil disobedience is neither plausibly protected by the sort of moral justification hitherto accepted for conscientious objection (which claim is Brownlee's key innovation), nor by a general right (which variety of right Brownlee considers the *sine qua non* of any worthwhile defence of civil disobedience). Thus if the cathartic theorist attempts to fend off my criticisms in this chapter by stressing civil disobedience's political-instrumental character, in doing so they will ruin what is distinctive to their account, and what gives it the edge over its republican competitors: its inarguable defence of civil disobedience (*qua* conscientious activity) in general.

inely just and valuable civil disobedience held hostage to liberal sensibility: in order that neo-nazis too may disobey without materially fortifying the neo-nazi cause — in order that they too get their proper dignity — progressive civil disobedience is demeaned, defanged, and practically excluded from the material support of progressive causes.

Let me nail my colours to the mast, and begin a more esoteric criticism of the view as I do: I reject any aspersion that the preservation of neo-nazi dignity is more important than correctly honouring civil rights disobedience — indeed, I think that the cathartic view errs *morally* in choosing generality over partisanship to righteousness. It *matters* — it matters *essentially* — that civil rights convictions were correct, and that through their activism they were fighting for the cause of righteousness. I do not mean to provide an argument for that point, I read it as more or less a brute fact. It is, I think, *foundational* to civil rights activism — conceptually basic to it — that it was a struggle for justice, a righteous fight.[77] Thus while it demeans all civil disobedience to consider it catharsis (rather than as instrumental struggle, as fighting) it *especially* demeans civil rights disobedience (and all other squarely progressive activism of more recent decades) to consider it catharsis rather than fighting, and not only fighting, but fighting for the good and the right. It demeans because it misdescribes — because it doesn't capture, in a certain essential sense, what these actions were all about, what they *were*. And while misdescription is traditionally an intellectual error, in this case it seems to me also a moral error: something important is lost here, and it's something that theorists ought not to lose.

I will have no truck with a theory of disobedience that — looking to the lunch counter sitters-in, or the Freedom Riders, or the bus boycotters — paints them as bare humans stuck under the weight of a psychic burden, much less a psychic burden that would have weighed just as heavily had their convictions run in a different direction. And I will have no truck with a theory of disobedience that views their action as a variety of self-expression, much less a variety of self-expression that would have been just as legitimate had their convictions run in a different direction. It misdescribes King to recast his actions as a matter of self-respect, to see him as a soul burdened by his own acute sense of integrity. And it misdescribes him to say that he was doing — at root

[77] The cathartic view has it, of course, that righteousness was not an essential property of civil rights activism, but rather an accidental property of it (and one irrelevant to its conceptualisation and moral defence). From the cathartic perspective it is not the righteousness of King's actions that grounds his right to undertake them, but their content-independent conscientiousness.

— the same sort of thing that George Wallace was doing when he refused to give way to the National Guard.[78] The difference between segregationist disobedience and anti-segregation disobedience is not *accidental*, it is not immaterial to a theory, rather it ought to be the *foundation* of a theory. I am urging here that we take a methodological leap of faith. I am saying that we have found the fabled fixed point of political morality to which all the rest of our theory must bend itself: that civil rights disobedience was a righteous struggle.[79]

In accepting that axiom we will have satisfied what I think is a basic duty of the political theorist — viz. a certain methodological and meta-theoretical partisanship to the cause of right. It is our responsibility, insofar as there are people who fight for what is right, to recognise them on exactly those terms — to honour SNCC, let's say, as fighters on the side of justice.[80] And the present error of the cathartic view — an

[78] Let me clarify that the error I target here does not consist in positing an equivalence of kind between civil rights activism and neo-nazi activism, but simply in remaining insensate to what is conceptually basic to the former activism — viz. that it was a fight for the right. This implies, of course, that any theory positing such an equivalence will be in error, but that error resides not in the equivalence *per se*, but rather in the mischaracterisation of civil rights activism that it must presuppose. That said, it is true that — laying aside the equivalence of kind — the cathartic view mischaracterises civil rights activism *so that* neo-nazis get their dignity. Little turns on whether there is a separate and additional moral error here, however — i.e. not only a violation of the imperative to correctly characterise and honour righteous disobedience, but a violation undertaken *in order to* secure the dignity of the most deplorable amongst us. I think there might be, but I do not commit myself to that claim.

[79] Ronald Dworkin appears to grasp this point when, characterising 'the moral position of the blacks who broke the law in the civil rights movement, who sat at forbidden lunch counters seeking the privilege of eating greasy hamburgers next to people who hated them', he avers that 'it would miss the point to say they were there in deference to *conscience*, that they broke the law because they could not, with integrity, do what the law required … they acted for a different reason: *to oppose and reverse a program they believed unjust, a program of oppression by the majority of a minority.*' *Matter of Principle*, 107, my emphasis. Now, at first glance this seems a ringing statement of the kind of idea I am gesturing at here, but the subtle insertion of the subjectivising language of 'belief' cleaves too closely to the cathartic view's studied and person-centric neutralism: the real struggle of the civil rights movement, I declaim here, was to oppose and reverse a programme that *was* unjust. I shall return to Dworkin's account of civil rights activism in §5.1.

[80] Part of my point here is that the humanistic universalism of the inward turn is not, properly speaking, a neutral position, but itself a kind of partisanship. Our decision is not neutrality or partisanship, it is partisanship one way or the other. The price of refusing to call the bad 'bad' is that we may not then call the good 'good' (at least not essentially, crucially, categorically, good): and refusing to call the good 'good' is, in the final analysis, a refusal of significance. I develop this idea — viz. that we are under a moral constraint when we're thinking about dissent and disobedience, one having to do with interpreting the struggles of the powerless in a sensitive

error quite apart from those rooted in the threat it poses to activist dignity and civil disobedience's political viability — consists in ignoring that responsibility, in erasing that fixed point in the pursuit of a concept that captures equally — and protects equally — civil rights activists, anti-abortion protesters, fox-hunting activists, Oregon neo-nazis, the batmen of F4J, anti-Dylan folkies, and any and every other person stepping outside the law for the sake of their politics.[81]

2.3.3. Rapprochement

Let us return to drier land now. I began my ruminations here with the contextual observation that theorists make the inwards turn in order to secure a *general* right to civil disobedience — in order to procure dignity for *all* activists, even the white supremacists. My line above was that in choosing white supremacist dignity over a correct appraisal of civil rights activism, theorists err morally — they violate my speculative principle of interpretive responsibility. But even if the reader will not follow me that far, notice this: the background presumption here — viz. that if we want to secure the dignity of all activists, we shall have to row back from politics — is in fact false.

That, of course, was the substance of my argument in the first half of this chapter. I put it there that the way to grant activists their proper dignity is to consider them fighters for a cause, rather than as bare humans trying to make good on the demands of their own consciences.[82] Thus, though I myself care little for the dignity of neo-nazis, I believe that it is more dignified to read them as fighting for white supremacy than it is to see them as trying, on pain of a fractured moral psyche, to express their subjective belief in white supremacist ideals and their corresponding dissociation from race-

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and responsible manner — at some length in §5.4.

[81] The difference here is partly one of kind: the theorist ought to recognise that not all activism, though it all be activism, is cut from the same cloth, and hence that a one-size-fits-all approach will not do. A two-speed theory of civil disobedience is required (at the very least): one account for common or garden disobedience, a different one for where the cause is strikingly right and urgent. And this point applies also to the republican views I discussed in Chapter One, of course: while it is more dignified to conceive of civil rights activism as a political, participatory activity than it is to conceive of it as a cathartic activity, it still doesn't quite capture the basic reality I have in mind here. There is still a gap between that relatively buttoned-down (and still neutral) characterisation of civil disobedience and the full-throated partisanship to righteousness I urge in this section.

[82] If 'fighters' strikes the reader as too militant a gloss, I reiterate that I am, for now at least, speaking only of verbal, argumentative, 'fighting'.

blind policy.[83]

But so-conceived, there can no longer be any rights-friendly quarantining of their human status from what they try to work in the world. This instrumental conception makes it impossible to hold them at the appropriate distance, to study them with the neutral gaze. They are struggling to raise the probability of fascist reform, trying to inspire a racist movement, and I say that we ought to admit that, and then admit that we can't let them do it.[84] In other words, while it is not true that dignity and a political concept of civil disobedience are inimical (indeed, quite the contrary), it *is* true that a political concept of civil disobedience will not issue in the sought-after general right. But that itself is of no consequence — a general right is, despite the cathartic implication, not the same thing as dignity for all. If the cathartic view seeks a general right as a means to dignity for all civil disobedients, then it does so unnecessarily — it makes the fatal error of assuming that we best respect the dignity of would-be civil disobedients by contriving a pretext for their being allowed to do what they ache to do.

There is then, and to tie some threads together right at the end, no trade-off to be made here. There is no choice of neo-nazi dignity or civil rights viability, there is no choice of cathartic 'dignity' for all or a different dignity only for the anointed few. My political alternative also grants dignity to civil disobedients in general — to all civil disobedients, even the white supremacists, though it does so by denying that they all have a right to it. We honour civil rights protesters by recognising that they were (and are) fighting for a vital and noble cause, we dignify neo-nazi protesters by recognising that they too are fighters (though of a different kind, and

[83] I am comfortable saying it: they are our enemies. And nor is there any indignity in being held as an enemy (provided that one really is an enemy). I am reminded in this connection of the old adage that the opposite of love is not hatred but indifference — there is truth in that, and truth in its application here: better to be hated for seeking to advance the cause of white supremacy than to be regarded, with studied neutrality, as a bare human out to salve one's accidentally white supremacist conscience.

[84] If I might un-bracket the empirical reality for a second, note that there are no instances of neo-nazi civil disobedience in the historical record (the closest thing that comes to mind is the armed occupation of Oregon's Malheur National Wildlife Refuge in 2016, the declared goal of which was to oppose the US Government's alleged constitutional infidelity on the question of federal lands, but whose participants were in large part drawn from what we would now call the 'alt-right'). For whatever reason — and I wouldn't want to speculate — civil disobedience is not in the right winger's DNA, and this social fact only compounds the theoretical-moral error here: the liberal tendency has preferred to found an account of civil disobedience not on the striking rightness of historic activism, but on the largely chimerical prospect of civil disobedience being undertaken by the most wrongheaded amongst us.

for evil). Where the cathartic view levels down, I level up: all civil disobedients are fighters and propagandists with an essential interest in changing the world. Let us take good and bad ones alike seriously on that terrain.[85] If even neo-nazis merit their dignity, I claim that the way to grant them it is to concede straightaway that they are fighting for the advancement of the 'white cause', and then — forgive me — lock the bastards up.[86]

[85] In saying this I do not mean to suggest that civil disobedience is an especially — or even appreciably — *effective* means of political struggle. I say only that it *is* a means of political struggle.

[86] It is a further question, of course, whether neo-nazis (though their dignity be intact) suffer an unfairness when we jail them as threats to democratic socialism. It is a further question, yes, though one I don't care to answer. Let me nail my colours to the mast once again: I reject any aspersion that treating neo-nazis fairly is more important than correctly honouring civil rights disobedience.

Part Two: Smoke and Mirrors

Part Two: Smoke and Mirrors

Hitherto I have bracketed the question of liberal civil disobedience's empirical veracity. I have tried, largely for dialectical reasons, to sidestep the issue of what exactly that concept picks out in the world — what its historical extension is — and to confine myself to a more abstract project: that of demonstrating, immanently, that the view is defective by its own lights. In other words, I have not yet taken up a position on what civil disobedience, in its historical and political life, is really like. I have only claimed that the liberal idea of civil disobedience *itself* forecloses the project of reconciliation, and that the dignity-preserving impetus for the cathartic view *itself* recommends that we see civil disobedience in fundamentally anti-cathartic terms — not as an exercise in self-confirmation, but as a thoroughly and essentially political enterprise.[1]

I suspend that bracketing now. It is time to turn up the critical heat and — finally — to pierce the veil of liberal civil disobedience and measure it against the political world that it presumes to describe. In so doing we shall be set fair on the road to my critical endgame in this thesis — the last and most instructive of my 50th anniversary commentaries on this body of work.

That endgame takes the form of two widescreen judgements. The first of them a holistic appraisal of the liberal account in 'meta-theoretical' perspective, the second of them a still broader — and much more polemical — appraisal of the very project of thinking normatively about civil disobedience.

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[1] I do not mean to suggest that these judgements have no life outside the liberal concept of civil disobedience, of course. As I argued in Part One, I believe that they identify much wider truths. It is difficult to think, for instance, that there is any plausible idea of civil disobedience's value that would not locate that value in some kind of subversive, state-irking quality or other. And my arguments against the cathartic perspective ring true regardless of one's particular view of civil disobedience, and regardless of whether or not one maintains a prior commitment to activist dignity. There are weighty and dignity-independent reasons to model activism *in general* as an essentially political-instrumental activity, hence there are weighty reasons to model civil disobedience in particular — whatever one's precise view of it — as an essentially political-instrumental activity.

The first judgement is the more involved one, and it starts from a sustained examination of the reality of the world, one issuing in the following intermediate conclusions. First, that liberal civil disobedience — civil disobedience as a discursive, rhetorical, reason-giving intervention into the ordinary political deliberations — has little historical life (with the canonical episodes of disobedient activism in particular existing well outside its ambit). Second, that quite apart from its near-total absence in the historical record, this liberal concept of civil disobedience could not succeed in our world — it could not find a toehold in our society, nor any society in prospect.

With these intermediate conclusions in hand — viz. that decades of liberal debate have centred around a form of activism that *does not exist and will not work*, I develop that first widescreen, meta-theoretical judgement. To wit: the liberal view fails to do what a normative theory of civil disobedience ought to do (and what it is the avowed purpose of the liberal theorists to do) — viz. to illuminate normatively, whether directly or regulatively, this political world of ours and that thing of vital importance and historical ubiquity in it: *activism outside the law*.

That case made, I go on to develop my second and final meta-theoretical judgement — one that is less involved, if perhaps more profound. It holds that the same empirical reality forcing historical activists to eschew the strictly reason-giving disobedience envisaged in the liberal view, and the same empirical reality guaranteeing that a liberal-inspired disobedient politics of reason will not work — viz. that the political settlement is repressive, dysfunctional, and congenitally unjust, also must cause us to doubt the theoretical viability (and more than this, the wisdom and humanity) of continuing on with the liberal normative project. Of continuing, that is, to ask the two canonical liberal questions — viz. 'could civil disobedience ever be justified?', and, 'it being justified, how ought the state to treat it?'. Given the repressive and dysfunctional reality of the world, I suggest at the end, there is only one question really worth asking here: *what is to be done?* If we cannot — as political theorists — speak to that, then we ought not to speak at all.

That case is long and complicated, and for reasons of organisational clarity I have tried to quarantine its different elements into three distinct chapters. I give a sense of them now to orientate the discussion before we begin.

• In Chapter Three I establish the backwards-looking claim that disobedient activism in the real world — and especially disobedient activism in its most historic incarnations — bears little resemblance to the fifty-year object of liberal inquiry.

• In Chapter Four I establish, if in compressed and stylised fashion, the forwards-looking claim that disobedience after the liberal archetype will not make a dent on our society, nor on any likely society.

• In Chapter Five I undertake the meta-theoretical endgame just described: I offer a holistic reflection on what these twin realities mean both for the liberal view and for the very endeavour of thinking normatively about civil disobedience.

Chapter 3: 'Civil Disobedience' vs. History

I devote this chapter to the long-form elaboration and defence of that first key premise in my endgame — viz. that the object of liberal inquiry is largely illusory, certainly that it has little to do with the reality of historic, canonical civil disobedience. Before I begin my case, however, it will prove necessary to flesh out the basic liberal picture with which I take issue in these next several pages, and so I hold fire for a moment to give a better sense of it.

Indeed, the reader may find it odd that I refer here to *a* basic picture, or to *the* object of liberal inquiry. For have I not insisted till now on a division of the liberal view into two distinct strands, republican and cathartic, the former of them seeing civil disobedience as a means of intervention in the political process, the latter of them seeing it as a means of safeguarding one's sense of self?[1] That I have done, but I intend now to bring them together again; or rather, to lay bare their underlying point of commonality — to wit, their shared conception of the essential *form* of disobedient activism, and in particular, their shared idea of civil disobedience as an essentially *discursive or rhetorical* enterprise.

This is a vision of civil disobedience as, variously, a 'form of communication' and means of 'express[ing] opposition to law and policy',[2] a 'mode of address' and species of 'advoca-

[1] This latter may also have ripples in the affairs of the republic, of course. Brownlee's view, against which I argued in §2.2, is that the disobedient's integrity-preserving expression of discontent with the status quo will also stoke the fires of the public moral conversation, thereby nudging the state further in the direction of justice and democracy.

[2] William Smith, 'Democracy, Deliberation and Disobedience', *Res Publica* 10:4 (2004): 353-377, 375; and Smith, 'Policing Civil Disobedience', 826. Note that this verbal, rhetorical, discursive idea is perhaps most obvious in Brownlee, who, as we saw in Chapters One and Two, positions civil disobedience as a dissociative *speech-act*: a means of expressing something that one cannot, by definition, express within the law — viz. that one dissociates oneself from a loathed policy. It can hardly be missed in the other liberal accounts, however. David Lefkowitz, for instance, models civil disobedience as a *continuation* of the ordinary democratic deliberations after the votes are in — as a second bite of the argumentative cherry for those 'who may justifiably claim that, had there been further time for *debate and*

cy',[3] a 'microphone' for activists to 'voice their views' and to 'communicate [their] condemnation of a law or policy.'[4] And, more to the point, this is a vision of civil disobedience as *strictly* discursive or rhetorical in nature — a shared idea of civil disobedience as never offering inducements more forceful than argument or moral appeal, and certainly never stooping so low as to *coerce* the state authorities one way or the other.[5]

That is the common core of the view and the basic idea of

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deliberation, or had they enjoyed greater resources for the *dissemination of their arguments*, their own (reasonable) *views* might have won majority support.' 'On a Moral Right', 213, my emphasis. Smith, meanwhile, justifies civil disobedience specifically as a method of 'deliberative contestation' — a way of gaining representation for views and arguments unfairly ignored in the ordinary political apparatus, of 'securing publicity for oppositional *arguments* and [thereby] activating counter-inertial *deliberation*'. In other words: civil disobedience on his view 'aims to *instigate or contribute to deliberation* through the *presentation of an argument* to the public'. 'Public Sphere', 160-161, my emphasis. Lastly, Markovits nowhere specifies the *form* of civil disobedience, but only describes its political function — i.e. to 'initiate a process of sovereign reengagement with an issue concerning which the political system, at the moment, stands in democratic deficit … to overcome not a particular policy but the inertial institutions that prevent a democratic sovereign from taking up an issue by excluding considerations essential to the issue from the popular or legislative agenda.' I take it, however, that this vision of disobedience — of it 'expand[ing] the space of political options and, therefore, destabiliz[ing] political debate' — also recommends a discursive reading. 'Democratic Disobedience', 1940. For more on the historical origins of liberal civil disobedience as a form of political speech, see Jennifer Welchman, 'Is Ecosabotage Civil Disobedience?', *Philosophy & Geography* 4:1 (2001): 97-107; in particular 99-102.

[3] Rawls, *Theory of Justice*, 366; Lefkowitz, 'On a Moral Right', 204.

[4] Brownlee, 'Reply to Critics', 735; *Conscience and Conviction*, 18.

[5] See for instance Rawls's distancing of civil disobedience from forms of 'obstruction', and his judgement that 'while it may warn and admonish, it is not itself a threat'. *Theory of Justice*, 322. And see also Brownlee's stipulation that 'civil disobedients aim rationally to persuade their hearers of the merits of their causes. To aim to coerce authorities and society rather than to persuade them would be to treat them as less than fully autonomous beings to whom disobedients could make a reasoned defence of their view. If disobedients are to claim legitimately that they endeavour to engage in moral dialogue, their modes of communication must aim to respect the autonomy of their hearers as rational beings capable of responding to the reasons they believe they have to challenge current policy.' *Conscience and Conviction*, 221. Also see Smith's position that civil disobedience 'eschews the aim of coercing a majority into reversing a decision and instead aims to instigate or contribute to deliberation through the presentation of an argument to the public' ['Public Sphere', 163]; and cf. Lefkowitz: 'disobedience must also be non-coercive. Those who engage in such acts must display their commitment to the equal authority of all citizens to determine what the law ought to be and so must refrain from usurping this authority by coercing the state into abandoning or adopting certain policies.' 'On a Moral Right', 216. I note here, for the sake of transparency in the identification of my targets, that Ronald Dworkin, alone among the canonical liberal theorists, allows some room for a coercive civil disobedience. I discuss his view in isolation in §5.1. *Matter of Principle*, 109-112.

civil disobedience upon which I offer an empirical, historical judgement in this chapter: civil disobedience as a strictly non-coercive species of discursive intervention. But what is also important here is the *source* of this kind of discourse. The idea that, as Raz has it, civil disobedience is distinguished from the other rhetorical or discursive forms of political engagement — letter-writing or lawful demonstrations, for instance — by its using the violation of law '*as a means*'. The idea that civil disobedience is not merely *illegal*, in other words, but that its discursive, expressive, rhetorical work is done *by* the breach of the law — that it is the breach of law *itself* which generates civil disobedience's verbal-symbolic charge.[6]

Now, I remind the reader that I am trying to distill the essence of liberal civil disobedience here. I am trying to lay bare what liberal civil disobedience *is*, most fundamentally — viz. a certain kind of political speech, one trading on the symbolic and sensationalising potential of the breach of law, and one which *being* speech, works not by coercion, but by re-engaging and re-animating the ordinary deliberative mechanisms of liberal democracy. In short, by winning hearts and minds — by persuading a relevant constituency of the truth of what it articulates.[7] Thus while theorists disagree about what exactly is said in civil disobedience, and still more about why it's important or valuable that it be said, what matters here is not the content of the disobedient rhetorical intervention, nor its moral salience (whether means of turning the society back from civil war, or of redressing participatory imbalances in the official democratic process,

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[6] Raz, *Authority of Law*, 265. I refer to this idea hereafter as the breach of law '*per se*'. This pan-liberal commitment — that lawbreaking itself is the source of civil disobedience's power — was my principal target in Chapter One, though there I did not treat the matter empirically (as I do now), but conceptually.

[7] We saw this at some length in Chapter One, but see again here e.g. Dworkin's idea that civil disobedience's role is to 'force the majority to listen to arguments against its program, in the expectation that the majority will change its mind and disapprove that program' [*Matter of Principle*, 109]; or William Smith's view that the reformist potential of this brand of activism lies 'in the moral dialogue with authorities and the public that citizens trigger by engaging in civil disobedience'. 'Public Sphere', 162. And to set the view in 'activist', rather than theoretical context, note that this liberal impression approximates what Gene Sharp, the venerable authority on the strategy and method of nonviolent activism, terms 'nonviolent protest and persuasion', a style of 'mainly symbolic' action that aims 'to show that the resisters are against or for something, the degree of opposition or support, and the numbers involved' and thereby to 'convince the opponents to correct, to stop doing, or to do what the grievance group wants.' Sharp contrasts this verbal-symbolic form of action with four other (and more militant) styles — viz. 'social noncooperation', 'economic noncooperation', 'political noncooperation', and 'nonviolent intervention'. Gene Sharp, *How Nonviolent Struggle Works* (Boston: The Albert Einstein Institution, 2013), 25.

or of outing one's distinctive moral personality and thereby securing one's sense of self). What matters here is only that there is no dissensus on this basic, descriptive, ontological impression of the act of civil disobedience itself — civil disobedience as the discursive breach of law *per se*.

With the essence of liberal civil disobedience now clarified, I shall put my case in this chapter more definitely than I did above. Civil disobedience, historically, has not been an act of discursive lawbreaking — a form of political speech which works (if it works) by securing a second reading for some position passed over in the ordinary institutional apparatus of democracy. Quite the contrary, civil disobedience in its historical guise has been a species of *coercive resistance*, an attempt to bypass the ordinary democratic process and frustrate the workings of the machine — an attempt to succeed by *raising the costs* of persisting with the status quo.

I make this case — that the consensus idea of civil disobedience is very far removed from the cost-raising truth of historic and historical activism — principally with reference to the civil rights movement (though I discuss in much-abbreviated fashion other significant civilly disobedient episodes — among them the '68 campus rebellions, the anti-poll-tax campaign in the UK, anti-abortion activism in the US, and along with sundry other environmental activism, the recent anti-pipeline encampments at Standing Rock). And my rationale for circumscribing my focus in this way is not only pragmatic (in the sense that I am no historian, and therefore doubt that I will do interpretive justice to one campaign of civil disobedience, never mind several of them). No, I concentrate on the activism of the civil rights period — rather than, say, the proud and storied tradition of environmental disobedience — because there are particularly pressing dialectical reasons to give that period a sustained treatment. It is, after all, modern activism's spiritual and strategic wellspring.[8] And it is, after all, the motivating subject of the ini-

[8] The movement's importance to all subsequent activism is difficult to overstate. Sydney Tarrow, perhaps the greatest living social movement theorist, reckons its methods to be 'perhaps the major contribution of our century to the repertoire of collective action'. Sydney Tarrow, *Power in Movement: Social Movements, Collective Action and Politics* (Cambridge: Cambridge University Press, 1994), 108. More expansively, Aldon Morris notes that: 'movements as diverse as the student movement, the women's movement, the farm workers' movement, the Native American movement, the gay and lesbian movement, the environmental movement, and the disability rights movement all drew important lessons and inspiration from the civil rights movement. It was the civil rights movement that provided the model and impetus for social movements that exploded on the American scene … the movement sparked the widespread use of the economic boycott, sit-ins, mass marches and numerous tactics that other movements appropriated … awareness of the civil rights movement is so widespread globally that oppressed people in distant lands seek out

tial liberal scholarship on civil disobedience (hence the inherited subject of later treatments).[9] It is also, quite apart from the question of motivation, a perennial reference point in the liberal account;[10] and quite apart from political theory, it is more or less synonymous with 'civil disobedience' in the popular imagination. It is, I am suggesting, *the* case of civil disobedience; and moreover, the case which — pretheoretically, in our non-specialist imaginary — best corresponds to the idea at issue here, viz. of civil disobedience as a species of rhetorical moral appeal: a non-coercive, peacea-

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knowledge of its lessons so they can employ it in their struggles … the national anthem of the civil rights movement, *We Shall Overcome,* continues to energize and strengthen the resolve of social movements worldwide.' Aldon Morris, 'A Retrospective on the Civil Rights Movement: Political and Intellectual Landmarks', *Annual Review of Sociology* 25 (1999): 517-539, 527-30. William Gamson, meanwhile, goes even further: 'If there hadn't been a civil rights movement there might not have been an anti-war movement, if there hadn't been these movements there might not have been an environmental movement. Without these movements there wouldn't have been people coming into the field who were receptive to a new orientation.' Quoted in Aldon Morris and Cedric Herring, 'Theory and Research in Social Movements: A Critical Review', *Annual Review of Political Science* 2 (1987): 137-98, 184.

[9] As David Lyons remarks: 'our philosophical literature on civil disobedience is largely a product of the late 1960s and early 1970s.' Lyons, 'Moral Judgment, Historical Reality, and Civil Disobedience', *Philosophy & Public Affairs* 27:1 (1998): 31-49, 31. Thus Rawls, for instance, notes that in taking up the theme of civil disobedience he is trying to set the 'sort of conception' suggested by King in his 'Letter from Birmingham City Jail' into 'a wider framework'. *Theory of Justice*, 320 n.19. Ronald Dworkin, meanwhile, introduces his theory of civil disobedience with direct reference to the influence of King and the civil rights movement on the subsequent development of the philosophical literature: '[King] led a campaign of disobedience against the Jim Crow laws that perpetuated, against his race, the badges of slavery a century after the Civil War had been won. This civil rights movement flowed into and merged with a great river of protest against the American involvement in Vietnam. The war provoked some of the most violent chapters of civil disobedience in American history and much of the most interesting philosophical literature on that subject.' *Matter of Principle*, 104. Markovits, commentating at greater temporal distance, writes that 'the civil rights movement and the rights revolution more generally represented the heyday of liberal disobedience'. 'Democratic Disobedience', 1901. For a detailed case that the civil rights movement, and the debates on citizenship and the morality of law that it provoked, was the jumping-off point for the whole of postwar liberal cosmopolitanism, see Katrina Forrester, 'Citizenship, War, and the Origins of International Ethics in American Political Philosophy, 1960–1975', *The Historical Journal* 57:3 (2014): 773-801, §4.

[10] Brownlee, for instance, enumerates the following as 'classic examples' of civil disobedience: 'Rosa Parks' 1955 bus-ride defiance and the ensuing Montgomery bus boycott, the Woolworth's lunch counter sit-ins in Greensboro, North Carolina in the early 1960s, and the marches led by Martin Luther King Jr. in Birmingham, Alabama, in 1963.' *Conscience and Conviction*, 18-19. On this point see also my note above, and my §5.1, where I undertake a more in-depth discussion of liberal references to the civil rights movement.

ble, persuasive, redemptive enterprise.[11]

There is a great deal to profit, then, from showing that liberal civil disobedience has virtually nothing to do with this most emblematic case; and even if my remarks here did not generalise to the greater bulk of disobedient activism, this oddity would still be worth exploring. But generalise they do, however — though that fact may be less than transparent in certain instances. On which point, and by way of a last introductory comment, I anticipate now that the reader will often bring to mind cases that she thinks escape my conclusions here; and, more generally, that she may doubt whether the range of historic actions I survey in the following pages constitute a sample large and representative enough to lend support to so drastic a proposition as the one I am suggesting here — viz. that liberal civil disobedience has little historical life. Reader, I address these qualms in the conclusion to this chapter, and I beg your patience until then.

3.1. Activist Reality

My aim in this first section of the chapter is to show that really-existing civil disobedience bears little resemblance to the liberal archetype; and in particular that — far from being a purely rhetorical matter of advocacy and moral appeal — the canonical activism of the civil rights period was in intent and effect a militant species of nonviolent coercion.

In order to see that, we shall first need to get a clear idea of the political and social context of the civil rights era, as well a sense of what was at stake in civil rights activism — a sense of what the movement's proximate ends were. And in so doing, we shall also have to correct an occasional misconception about those ends — viz. that the movement's proximate goal was to persuade Congress to make segregation illegal, to pass new legislation outlawing the 'official' regime of segregation in civil life.[12] Not so, in fact the proximate goal of the movement was to induce the federal authorities to enforce what was *already* the law. The movement's proximate goal was law *enforcement*, not new legislation.

I mean that in two senses. First, the movement aimed to

[11] And nor is it merely *the* case of civil disobedience, but also — seemingly — its proof of concept and most impressive success.

[12] This was certainly a crucial aim of the movement, of course. But it was not its sole or proximate goal.

force the federal government to secure southern compliance with decisions of the federal courts, for segregation had been outlawed in many of its particulars even before the classic phase of the civil rights movement had begun.[13] Second, and more importantly, the movement aimed to force the federal government to uphold the wider rule of law in the South, for the official regime of segregation by law was only one plank in the grim scaffold of the white supremacist terror state — the juridical counterpart to the informal regime of police brutality, unlawful detention, trial-rigging, and the denial of the protection of law in the face of endemic harassment, intimidation, assault, mob violence, murder, lynchings, arson, bombings (and much other gruesome activity besides).[14]

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[13] I allude here to *Morgan v. Virginia*, 1946 (striking down segregation on interstate buses); *Brown v. Board of Education*, 1954 (striking down segregation in public schools); *Brown v. Board II*, 1955 (ruling that public school integration must proceed with 'all deliberate speed'); *Sarah Keys v. Carolina Coach Company*, 1955 (also striking down segregation on interstate buses); *Gayle v. Browder*, 1956 (affirming a lower court ruling striking down bus segregation in Montgomery); *Cooper v. Aaron*, 1958 (ruling that official resistance and mob rule do not provide justification in law for delaying or suspending desegregation efforts); *Gomillion v. Lightfoot*, 1960 (ruling that electoral district boundaries drawn to disenfranchise African-Americans violate the 15th Amendment); *Boynton v. Virginia*, 1960 (striking down segregation in all forms of public transport); and *Bailey v. Patterson*, 1962 (striking down segregation in all transport facilities). This is not to say, however, that the higher courts were wholly enthusiastic in their support for civil rights. Loren Miller wrote of the unprecedented leniency embodied in the 'all deliberate speed' ruling that: 'no American lawyer anywhere had ever supposed that the Supreme Court or any other organ of government could suspend the exercise of a peacetime constitutional right for a single day.' It was a measure of the times, in other words, that the Court could determine that citizens possessed a certain constitutional right (i.e. to be educated in integrated schools), and that an ongoing programme violated that right, and yet permit that right to be violated for an essentially indefinite period of time. Loren Miller, *The Petitioners: The Story of the Supreme Court of the United States and the Negro* (New York: Pantheon, 1966), 352.

[14] So suffocating was the threat of extrajudicial violence in the South that organisers would often ask, in advance, for federal protection. Ahead of the Mississippi Summer campaign in 1964, for instance, SNCC requested that the Justice Department send marshals to protect organisers working on this lawful campaign of voter registration and civil rights education. A hearing was held in Washington, during which dozens of black Mississippians testified about mob rule and endemic police brutality, and during which several movement lawyers set forth a basis in law for federal intervention. Transcripts of the hearing were sent to Lyndon Johnson and (then attorney general) Robert Kennedy, but the Justice Department issued no response. Thirteen days later three civil rights workers were released from jail in Philadelphia, Mississippi, stalked by a group of white men (including the deputy sheriff who had arrested them, now off duty), dragged into the woods, flogged with chains so ferociously that the county coroner likened their injuries to those suffered by air crash victims, and then shot to death. Still there was no response from the Justice Department, and nor would any come: Johnson, Kennedy and Hoover continued to claim that they had no legal authority to intervene [this episode recounted in Howard Zinn, *Postwar America: 1945-1971* (New York: Bobbs-Merrill, 1973), 137]. This

This, then, is the background context of the period: southern states well beyond the rule of law, enforcing neither the ordinary state criminal code, nor the bill of rights, nor federal court rulings in civil rights cases (indeed, waging an overt campaign of 'massive resistance' against federal injunctions to desegregate).[15] And in response, a movement not so much for legislative reform at the level of the republic (much less in the southern states themselves), but for the notoriously *laissez faire* federal government to break its long and ignoble custom of indifference and intervene to end the flagrantly unlawful conduct of the southern 'authorities'. In other words, a movement for the federal authorities to do their sacred constitutional duty and enforce the law of the land.[16]

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case, of course, was hardly unusual. We know about the lynching of 14 year-old Emmet Till (with no convictions), we know about the murder of Medgar Evers on a day when his state police surveillance detail was mysteriously absent (with no convictions), we know about the arrest of nineteen pacifist marchers in Griffin, Georgia, and local police's torture and molestation of them with electric cattle prods (with no convictions), we know about the church bombings in Montgomery and Birmingham (with no convictions), we know about the police shooting of thirty unarmed black students — three of them killed — in Orangeburg, South Carolina in 1968, *four years* after the passage of the Civil Rights Act (with all of the officers acquitted by jury). But what surprised even me was that on at least one occasion the state authorities induced an artificial famine in order to cow the black population into quiescence. During a SNCC voter registration drive in Greenwood, Mississippi, the Board of Supervisors of Leflore County reacted to the uptick in black registration applications by suspending surplus food distribution over the lean and bitter winter of 1962, 'cutting off 22,000 people — mostly negro — who depended on it'. This sordid affair detailed in Zinn, *SNCC: The New Abolitionists* (Boston: Beacon, 1964), 86.

[15] This strategy of 'massive resistance' was institutionalised after *Brown*, when more than a hundred congressmen signed the 'Southern Manifesto' calling on their states to 'resist forced integration by any lawful means'. One measure of the formidable nature of this resistance is that by 1961, seven years after *Brown*, not a single school in South Carolina, Georgia, Alabama, Mississippi or Louisiana had been integrated — not one of the 1.4 million black children in these states was schooled alongside their white counterparts. Even by 1965 — after the passage of two landmark civil rights bills (and *eleven years* after the decision in *Brown*) — more than three quarters of the school districts in the South remained segregated. Zinn, *Postwar America*, 125-126. For the text of the Southern Manifesto, see 'Remarks of Sen. Walter F. George', *Congressional Record* 102:4 (Washington, DC: Governmental Printing Office, 1956), 4515-4516. For more on the Manifesto see Brent J. Aucoin, 'The Southern Manifesto and Southern Opposition to Desegregation', *Arkansas Historical Quarterly* 55:2 (1996): 173-193. On massive resistance and southern intransigence more generally, see e.g. Francis M. Wilhoit, *The Politics of Massive Resistance*, (New York: Braziller, 1973).

[16] In other words, to bring an end to what Zinn called 'the strange passivity of the national government' — to force the federal government to give a practical answer to the question that John Lewis was prevented from asking at the March on Washington: 'I want to know: what side is the federal government on?'. Zinn, *You Can't Be Neutral On A Moving Train* (Boston: Beacon, 1994), 50; Zinn, *Postwar America*, 130. Examples of this 'strange

The context and the movement's aims now clarified, it will be easier to make sense of civil rights activism's two broad and occasionally overlapping forms. On the one hand, the conscious contrivance of 'crisis' situations that would impel the federal government to intervene in order to protect activists from southern brutality and affirm practically their court-declared rights. On the other hand, and where federal law had not already struck down Jim Crow (as in the case of segregation in public accommodations before the Civil Rights Act of 1964), attempts to impel the desegregation of commercial enterprises by means of cost-raising campaigns against the white economy.[17]

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passivity' abound: Lewis himself, in the same speech, asked: 'do you know that in Albany, Georgia nine of our leaders have been indicted, not by the Dixiecrats but by the federal government for peaceful protest? But what did the federal government do when the Albany deputy sheriff beat Attorney C.B. King and left him half-dead? What did the federal government do when local police officials kicked and assaulted the pregnant wife of Slater King and she lost her baby?'. John Lewis, 'Text of Speech to be Delivered at Lincoln Memorial, 28 August 1963' (August 1963), Student Nonviolent Coordinating Committee Papers, Martin Luther King Jr. Library and Archives, Atlanta, GA. Zinn also records the events in Albany: there were hundreds of cases of police brutality against black citizens during the Albany campaign, but only one federal prosecution there under Robert Kennedy's attorney generalship — the aforementioned indictment of nine civil rights workers picketing a segregated grocer. Zinn, *Postwar America*, 136. During the Freedom Rides, meanwhile, when Riders were routinely met with police brutality and mob violence (their bus on one occasion being firebombed), Kennedy intervened only to call for a 'cooling off' period, citing the risk that 'innocent persons may be injured', because 'a mob asks no questions', and asking Riders to suspend their activities until 'the present state of confusion and danger has passed' [see his written statement to the press of 24 May 1961, reprinted in Andrew Cohen, 'A Mob Asks No Questions', *Atlantic*, 22 January 2011]. In other words, faced by this evidence of racist lawlessness in the South, Kennedy did not intervene to stamp out police misconduct and mob rule, rather he asked the Riders to cease the exercise of their legal right. James Farmer, head of CORE and an organiser of the Rides, replied: 'we've been cooling off for 350 years. If we cool off any more, we'll be in a deep freeze. The Freedom Ride will go on.' Kennedy's inaction in these cases was not unusual: 'despite extensive documentation of voter rights violations and extensive documentation of violence inflicted upon civil rights activists [including 'innumerable arrests and beatings, and even some killings'], the Kennedy Administration failed time and again to intervene.' Frances Fox Piven and Richard A. Cloward, *Poor People's Movements* (New York: Vintage, 1979), 234-235. Farmer quoted in Raymond Arsenault, *Freedom Riders: 1961 and the Struggle for Racial Justice* (Oxford: Oxford University Press, 2006), 167.

[17] Dworkin offers a fine general characterisation of 'cost-raising' activism — viz. that it 'aims not to change the majority's mind, but to increase the cost of pursuing the program the majority still favors, in the hope that the majority will find the new cost unacceptably high. There are many different forms of nonpersuasive strategy — many different ways of putting up the price — and some of them are more attractive, when available, than others. A minority may put up the price, for example, by making the majority choose between abandoning the program and sending them to jail. If the majority has the normal sympathies of decent people, this nonpersuasive strategy may be effective. At the other extreme lie nonpersuasive

Now, I use the language of 'impulsion' here so as to provide a more neutral introductory gloss on the point I am about to make — viz. that neither of these forms of action correspond even in outline to the liberal idea of civil disobedience as a quintessentially rhetorical endeavour. They were both, though in different ways, forms of nonviolent *coercion*. In the case of the 'crisis' model, a kind of moral blackmail — 'send in the marshals or we'll be beaten, maybe killed'; in the case of the boycotts and the mass and persistent sit-ins, a new chapter in the venerable labour tradition of coercive economic sanction — a kind of blackmail of the bottom line.

Let me bring my case into sharper relief, beginning with the latter form of action. I note, first of all, that there is simply no way to read the boycott — deployed most famously at Montgomery in 1956, used with some success at Clarksdale, Birmingham, McComb, Selma and Natchez in later years, and the tactical mainstay in King's wider programme of 'economic withdrawal' — as purely a rhetorical exercise in reason-giving advocacy and symbolic opposition.[18] No, a 381-day boycott of Montgomery public transit is not designed purely or primarily to make a symbolic point (though it certainly does make one, and may also be intended to do so); rather, its *raison d'être* is to starve the authority of funds, and so to force concessions.[19] And nor is there any way to

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strategies of intimidation, fear, and anxiety, and in between strategies of inconvenience and financial expense: tying up traffic or blocking imports or preventing official agencies or departments from functioning effectively or functioning at all.' Crucially, however, he thinks that this is *not* what civil rights activists did, rather that they used 'persuasive strategies' designed to leverage the 'hypocrisy' of 'the rhetoric of American politics', a rhetoric that 'had for some decades been freighted with the vocabulary of equality'. *Matter of Principle,* 109. It's worth noting in this connection that Dworkin refers pejoratively to cost-raising activism as a form of 'civil blackmail', rather than a form of civil disobedience [112].

[18] Martin Luther King Jr., 'Letter From Birmingham City Jail', published as 'The Negro is Your Brother', *Atlantic Monthly* (August 1963): 78-88; 80. This idea of economic withdrawal was a constant in King's thought and writing, and it features centrally in his last public oration — the speech given in support of striking sanitation workers in April 1968 at the Mason Temple in Memphis, Tennessee, which speech we have come to know as 'I've Been to the Mountaintop'. See King, '"I've Been to the Mountaintop", Address Delivered at Bishop Charles Mason Temple' (3 April 1968), Martin Luther King Jr. Papers, The Martin Luther King, Jr. Research and Education Institute, Stanford University.

[19] Black commuters made up over three quarters of the Montgomery bus ridership, and King estimated that the boycott was costing the coach company more than three thousand dollars a day (that is, upwards of $1m over the duration of the boycott, not including knock-on losses to downtown businesses). 'Ala. Bus Boycott Costs $3,000 Daily', *Baltimore Afro-American*, 13 December 1955. And if I might make good on my introductory promise and broaden my focus from the civil rights movement for a moment, I note that this strategy of economic coercion also underpinned another historic case of civil disobedience, perhaps the largest in history, though one mysteriously absent in the British political vernacular — the UK anti-

read a persistent sit-in campaign (waged by fifty-thousand activists over a three-month period, and involving nearly four thousand arrests) as solely an attempt to dramatise segregation, and by means of the symbolic breach of law to create a resonant message of principled opposition to it.[20] After all, a breach of law does not become more symbolic for being repeated a thousand times across the South[21] (nor more newsworthy — indeed, quite the opposite).[22] What it does

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poll-tax campaign of 1989-1991. What else is a tax boycott, a community-wide withdrawal from the community charge, but a species of coercive economic sanction? As W. Hamish Fraser noted, it was 'the greatest popular rejection of unjust law since Chartist times', and it saw *four million* people — almost a quarter of those billed in England and Wales, and fully one-third of those billed in Scotland — refusing to pay, with local authorities eventually writing off £5 billion in arrears. This disobedient campaign was abetted by several other ones: Community Resistance groups and the Anti-Poll-Tax Unions organised a supporting programme of pickets and occupations of bailiff offices; in Scotland hundreds of people blockaded houses to prevent bailiffs from seizing personal property in lieu of payment; and even the Labour Party's more moderate 'Stop It' campaign, which did not endorse non-payment, called for an obstructive, cost-raising, 'go-slow'-style strategy — asking citizens to return their tax forms with endless pernickety questions designed to slow down the policy's administration. Richard Bellamy, 'The Anti–Poll Tax Non–Payment Campaign and Liberal Concepts of Political Obligation', *Government and Opposition* 29:1 (1994): 22-41, 22-27; Fraser quoted at 22. Figures corroborated in Chris Wheal, 'Poll Tax is History', *Guardian*, 14 April 1999 (on the occasion of the expiration of the statute of limitations for nonpayment). For the definitive oral history of the campaign and a detailed study of APTU activity, see Danny Burns, *Poll Tax Rebellion* (Edinburgh: AK Press, 1992). For an activists'-eye view of the campaign see 'Beating the Poll Tax', pamphlet of the Anarchist Communist Federation (Sheffield: Anarchist Communist Editions, 1990). On tax resistance more generally, see David M. Gross, *99 Tactics of Successful Tax Resistance Campaigns* (San Luis Obispo, CA: Picket Line Press, 2014).

[20] By April 1960 the post-Greensboro sit-ins had attracted 50,000 participants across the South, around 3,600 of whom saw the inside of a cell. Clayborne Carson, *In Struggle: SNCC and the Black Awakening of the 1960s* (Cambridge, MA: Harvard University Press, 1995), 11; see also Zinn, *Postwar America*, 204. In a separate campaign the following year, Albany, GA saw over 1000 of its 22,000 black residents jailed [*Postwar America*, 207]. The coercive essence of the sit-ins may also be inferred from the fact that in situations where they were initially unsuccessful — where the white society remained recalcitrant and the media had gone home — activists did not give up, symbolic point made, demos engaged but unconvinced at the second time of asking, rather they called for an '*intensification*' of the campaign, as in Rock Hill, SC, over the early months of 1961. See e.g. Thomas Gaither, 'Jailed-In' (1961), CORE pamphlet, Veterans of the Civil Rights Movement Digital Archive, 7.

[21] Could it be that a shimmering rhetorical statement arises 'emergently' from this volume of actions? Not from any one of them, but from hundreds of them in conjunction? Maybe so. But then what's being leveraged into a discursive contribution is not the juridical phenomenon of lawbreaking, but the social phenomenon of mass, co-ordinated lawbreaking.

[22] The mass sit-in model — i.e. of persistent obstruction of premises — was adapted by the US anti-abortion movement from the mid-1980s, though not quite with the same emphasis on dignified moral forbearance. For that reason the disobedient activity of this movement also exists well outside

become, of course, is a much greater drain on the white economy, and a much greater irritation to the white society.[23] The society and the economy can go on unperturbed in

— indeed, even further outside — the perimeter of the liberal concept of civil disobedience. That is a significant result, for these actions — most of them conducted under the banner of Operation Rescue — may have been the largest campaign of civil disobedience in US history: almost 400 clinic blockades were organised over eighteen months from 1989-1990, and 35,000 activists were arrested in 1990 alone. Richard Hughes, 'The Civil Rights Movement of the 1990s? The Anti-Abortion Movement and the Struggle for Racial Justice', *The Oral History Review*, 33:2 (2006): 1-24, 18; Alesha E. Doan, *Opposition and Intimidation: The Abortion Wars and Strategies of Political Harassment* (Ann Arbor, MI: U. Michigan Press, 2007), 86. The strategy here was to shut down the clinic and the surrounding streets for a period of roughly 24 hours, making it impossible for pregnant women or medical staff to enter the building during that time (thereby 'saving lives' in the immediate term), and in so doing mount such a show of hysterical force that women might be cowed into carrying the pregnancy to term, and that clinic staff — subject to this 'political harassment' on a chronic basis — might be intimidated into resigning their profession. Doan, *Opposition and Intimidation*, 125-134ff. Operation Rescue's blockades were also intended to impose economic costs on neighbouring businesses, in the hope that their owners would pressure the clinic to shut its doors permanently. Bernard Nathanson, 'Operation Rescue: Domestic Terrorism or Legitimate Civil Rights Protest?', *Hastings Center Report* 19:6 (1989): 28–32, 30. And nor was Operation Rescue unusual in this respect: these tactics were only a ramping up of a coercive rationale that had long been in the movement. The Pro-Life Nonviolent Action Project (PNAP), for instance, 'stressed that the central function of any sit-in was preventing abortions by "placing your body between the abortionist and his weapon, so that no child will die." Such efforts included occupying waiting rooms or even chaining oneself to operating tables.' Hughes, 'The Anti-Abortion Movement', 16. Doan reports that these coercive strategies had alarming success: blockaded clinics saw a sharp drop-off in the abortion rate, and were also much more likely to close their doors permanently. *Opposition and Intimidation*, 146-148. For more on the coercive bent of the anti-abortion disobedience of this period, see e.g. Nicholas Dixon, 'The Morality of Anti-Abortion Civil Disobedience', *Public Affairs Quarterly* 11:1 (1997): 21–38. For counter-activism dedicated to piercing the blockades and keeping the clinics open, see L.A. Kaufman, *Direct Action* (London: Verso, 2017), 119.

[23] In an effective rebuke to the liberal idea of civil disobedience as a tactic of moral suasion, Merrill Proudfoot, a white minister involved in the Knoxville sit-ins, recalled: 'much as we may prefer the contrary, the issue was not settled on the basis of morality, but on the basis of economics … the store managers respected economic power more than moral power'. Merrill Proudfoot, *Diary of a Sit-In* (Urbana, IL: U. Illinois Press, 1990), 196. And there can be no doubt that the sit-ins took an economic toll: Clarence Harris, a manager at a Woolworth's branch targeted during the Greensboro campaign, reported that the sit-ins cost his store a third of its usual profits, and averred that he would have to close it if the disruption continued. In the end, Harris took the other way out: he was one of the first managers to order his store integrated. Clarence Harris, 'Letter to Tom Osborne, Greensboro City Manager, 10 August 1983', Clarence Lee Harris Papers, Martha Blakeney Hodges Special Collections and University Archives, University of North Carolina at Greensboro. Indeed, Joseph Luders relates that 'Woolworth's managers estimated that protest activities had cost the store some $200,000, and 1960 profits dropped by 50%. After only a few months of sit-ins, downtown merchants buckled. In June, the local Woolworth's manager exclaimed to the mayor: "For God's sake do something, my business is going to pot." By late July, an integration agreement had

the face of a handful of actions, but a hundred actions, a thousand actions, undertaken simultaneously or in close succession (or with grinding, wearing frequency) — *that* starts to bite.[24] Thus we may say that while the point of a *single* sit-in is rhetorical and symbolic — to parlay the breach of Jim Crow or state trespass law into a communication of moral outrage; the point of an indefinite campaign of sit-ins is to say only this: 'you won't sell another cup of coffee until this establishment is integrated'.[25] Or, in a city-wide sense: 'there won't be many cups of coffee sold in this town until these establishments are compelled to integrate'.[26]

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been reached in which the four main department stores would quietly and simultaneously desegregate their lunch counters. In retrospective interviews, the key actors on both sides agreed that the cause of this success "was the tremendous economic pressure" put on the stores by the Negroes' boycott, along with the reticence of whites to trade there because of fear of trouble'. Joseph Luders, 'The Economics of Movement Success: Business Responses to Civil Rights Mobilization', *American Journal of Sociology* 111:4 (2006): 963-998. 976-77. For more on the economic impact of the sit-ins, see e.g. Miles Wolff, *Lunch at the Five and Ten* (New York: Stein & Day, 1970), 172-173; and William Chafe, *Civilities and Civil Rights: Greensboro, North Carolina, and the Black Struggle for Freedom* (New York: Oxford University Press, 1980).

[24] As Luders notes: 'Whereas in New Orleans, targeted and general disruptions brought victory, the movement's *irregular and diffuse protests against downtown businesses in Albany were insufficient to produce serious economic distress* and ultimately led to defeat … Taking stock of the setback in Albany, movement activists tried something different in Birmingham. Instead of concentrating on public officials, the movement targeted specific downtown businesses and enlisted the unwitting assistance of the intemperate chief of local law enforcement to *produce massive disorders and correspondingly broad disruption costs.*' Luders, 'Economics of Movement Success', 975, my emphasis.

[25] Reactionary critics of civil rights action were not blind to this coercive edge: 'In the current racial contentions, the sit-in demonstration has proved to be an effective and disturbing weapon against segregation by privately-owned business establishments. It is effective because the imposition of economic loss, through monopolizing the seats in a restaurant to the exclusion of potential customers, can break down a proprietor's pattern of segregation more relentlessly than persuasion. It is disturbing because the sit-in poses a direct challenge to accustomed understanding of private property rights.' Charles E. Rice, 'Sit-Ins: Proceed with Caution', *Missouri Law Review* 29:1 (1964): 39-70, 39.

[26] Notice how distant this reality is from even the most concessive treatment of coercion in the liberal corpus. Disobedient activism, Kimberley Brownlee writes, may have 'a coercing effect *irrespective of* [activists'] *intentions* since many kinds of civil disobedience, such as illegal boycotts, illegal strikes, refusals to pay taxes, draft dodging, road-blocks, and sit-ins, make it *difficult for a system to function and hence can have a potent effect on leaders' decisions*. However, such *modest, incidental* pressure does not muffle disobedients' moral plea in the way that radical protest can do, and so its limited use can be consistent with both the persuasive aims of civilly disobedient communication and a respect for the hearers.' Brownlee acknowledges, in other words, that the classic methods of civil disobedience — tax refusals, sit-ins, road-blocks, and the like — impose costs on the society. But because these costs are (she presumes) 'incidental' to the purpose of

And we need not rely only on an inferential parsing of the *form* of civil rights actions to perceive their coercive essence.[27] The idea of making segregation too costly to maintain, rather than relying on symbolic appeals to the moral conscience of the white majority, was a perennial theme in civil rights oratory. As Bayard Rustin put it, expressing the strategic essence of civil rights direct action: 'the only weapon we have is our bodies and we need to tuck them into places so wheels don't turn'.[28] And thus Mario Savio, extending the metaphor in one of the classic speeches of the era:

> There's a time when the operation of the machine becomes so odious, makes you so sick at heart, that you can't take part! You can't even passively take part! And you've got to put your bodies upon the gears and upon the wheels … upon the levers, upon all the apparatus, and you've got to make it stop! And you've got to indicate to the people who run it, to the people who own it, that unless you're free, the machine will be prevented from working at all![29]

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the action — viz. that of breaking the law in order to issue a discursive moral plea, she judges them unobjectionable (and consistent with the basic idea of civil disobedience). My line here, of course, has been that — when it comes to civil rights disobedience, anti-abortion disobedience, environmental disobedience, and the anti-poll-tax campaign — precisely the *point* of acting was to 'make it difficult for a system to function'. The 'coercing effect' of the classic methods of civil disobedience has not, historically speaking, been 'incidental' to them, rather it has been their chief strategic virtue. *Conscience and Conviction,* 222.

[27] Nor were sit-ins and boycotts its only intended form: CORE, in conjunction with Baltimore's Civic Interest Group, organised a campaign of sit-ins and pickets along US-40 and US-1 in preparation for a massive 'Freedom Motorcade'. The motorcade was only threatened, and most of the restaurants along the highways pre-emptively desegregated. See 'End Racial Discrimination Along US-40' (1960), CORE pamphlet, Veterans of the Civil Rights Movement Digital Archive. CORE also workshopped eviction resistance for rent strikers at its activist training schools, and although I can find no evidence that the rent strike was ever used in the movement (it was used in New York in the early 1960s, but with no specific connection to the civil rights cause), this suggests at least that it was on the tactical menu. The rent strike is, I hardly need point out, a paradigm of economic coercion. See Martin Oppenheimer, 'Workshops in Nonviolence — Why?' (1964), CORE internal training document, Veterans of the Civil Rights Movement Digital Archive.

[28] Quoted in Gary Younge, 'Bayard Rustin: The Gay Black Pacifist at the Heart of the March on Washington', *Guardian*, 23 August 2013.

[29] Mario Savio, 'Speech at the University of California at Berkeley (December 1964)', in Ralph F. Young ed., *Dissent in America: Volume II* (New York: Pearson, 2004), 380-381. Savio was not agitating for civil rights directly, but was leading the 'Free Speech Movement' against a police-enforced university ban on political fundraising — and in particular, a student's 1964 detention for soliciting donations in support of CORE.

Perhaps the most tactically developed expression of this obstructive, cost-raising commitment came in Diane Nash Bevel's 'Montgomery Action Plan', drawn up for the SCLC after Birmingham, and calling for 20,000 to 40,000 trained activists to occupy the city, prevent traffic in or out, shut down the streets, paralyse the railyards, and sit tight until George Wallace resigned the governorship and every black citizen over the age of 21 was registered to vote.[30] The plan was never enacted, but it inspired the Alabama Project and the

[30] See Diane Nash Bevel, 'Report to SCLC, 17-20 September 1963', and 'Proposal For Action in Montgomery' (September 1963), Veterans of the Civil Rights Movement Digital Archive. And if I might once again push my point here beyond the civil rights context, note that this idea of sustained, obstructive, cost-raising occupation is the *sine qua non* of modern environmental direct action. This physical obstructionism was embodied, for instance, in the most impressive disobedient success of recent years — viz. the (short-lived) suspension of the Dakota Access pipeline project at Standing Rock, North Dakota, where a network of obstructive encampments populated by thousands of activists resisted eviction for ten months, during which time (and partly as a result of additional activist blockades of site access roads and drilling machinery), work on the pipeline ground to a halt. See e.g. Charlie Northcott, 'Standing Rock: Are Pipeline Protest Camp Days Numbered?', *BBC News Online*, 2 December 16; Sam Levin, 'Army Veterans Return to Standing Rock to Form a Human Shield Against Police', *Guardian*, 11 Feb 2017; Carolyn Kormann, 'For the Protesters at Standing Rock, it's Back to Pipeline Purgatory', *New Yorker*, 3 February 2017. Standing Rock aside, tactics of cost-raising occupation, 'cost escalation', and 'monkeywrenching', have been endemic in environmental activism since at least the early 1970s, when Environmental Action (by no means a radical or fringe group) coined the term 'ecotage' [Kaufman, *Direct Action*, 104]. The methods of 'cost-escalation' include 'spiking' trees with ceramic or iron rods so that they will destroy chainsaw and sawmill blades [Welchman, 'Is Ecotage Civil Disobedience?', 97-98], decommissioning logging equipment, persistently blockading sites or access roads, and activists chaining themselves to trees or to necessary machinery with 'lockdown' devices. This latter tactic became so costly during the heyday of its use that police would use 'pain-compliance' measures to induce activists to 'voluntarily' unlock themselves — in other words, officers would apply cotton swabs soaked in pepper spray directly to activists' eyeballs. Kaufman, *Direct Action*, 139-142. Now, 'the basis of the cost escalation strategy', Seel and Plows observe in an effective refutation of the liberal discursive paradigm, 'is that while corporations often do not want to understand the *arguments* or values of radical environmentalists, the one thing they do understand very well is a *balance sheet*.' Benjamin Seel and Alex Plows, 'Coming Live and Direct: Strategies of Earth First!', in Seel, Paterson and Doherty eds, *Direct Action in British Environmentalism* (New York: Routledge, 2006), 126, my emphasis. For more on the cost-raising impetus of environmental disobedience, see e.g. Dave Foreman, *Confessions Of An Eco-Warrior* (New York: Harmony, 1991); Christopher Manes, *Green Rage: Radical Environmentalism and the Unmaking of Civilisation* (Boston: Little, Brown and Co., 1990); and Peter List, 'Some Philosophical Assessments of Environmental Disobedience', in Robin Attfield and Andrew Belsey eds, *Philosophy and the Natural Environment* (Cambridge: Cambridge University Press, 1994). For an activists'-eye view of cost-raising environmentalism, see the classic 'monkeywrenching' manuals: Sam Love and David Obst eds, *Ecotage!* (New York: Pocket Books, 1972); and Dave Foreman ed., *Ecodefense: A Field Guide to Monkeywrenching* (Tucson, AZ: Ned Ludd Books, 1985). Lastly, for an excellent discussion of the gap between environmental disobedience and the liberal archetype, see Welchman, 'Is Ecotage Civil Disobedience?'.

Selma to Montgomery marches, and would later echo in King's paean to the potential of nonviolent direct action during his preparations for the Poor People's Campaign, when he preached that 'to dislocate the functioning of a city without destroying it can be more effective [than disorganised unrest] because it can be longer-lasting, costly to society but not wantonly destructive … mass civil disobedience can use rage as a constructive and creative force … [it] can utilize the militancy wasted in riots to seize clothes or groceries that many did not even want.'[31] He went on:

[31] The reality of historic civil disobedience provides an ironic counterpoint to Rawls's famous concern that 'a group might be so large that some extra precaution is necessary in the extent to which its members organise and engage in civil disobedience', since 'disorder would follow if they all did so'. 'Justification of Civil Disobedience', 185. As a bulwark against this prospect, Rawls mandates activists to coordinate among themselves so as to regulate the overall level of disobedience in the society, and in so doing, he places a normative barrier against what it has been the central mission of historic civil disobedience to do — viz. to cause disorder by means of mass nonviolent direct action. Incidentally, the disobedient episode that perhaps came closest to realising this ideal — viz. that of 'dislocating the functioning of a city without destroying it', was the 1971 Mayday Tribe action in Washington DC, when 25,000 activists attempted to shut down the District in an effort to 'stop the government'. The protesters were met by a military crackdown 'more appropriate to Saigon in wartime than Washington in the spring', one involving blanket teargassing of protest camps by US Army helicopter squadrons, a tank regiment deploying to Dupont Circle, and US Marines assisting a citywide indiscriminate arrest 'dragnet' that put 7,000 people in handcuffs. The arrestees — most of them bystanders with no connection to the action — were interned without food, water, or toilet facilities in an outdoor prison at RFK Stadium. For details of this extraordinary episode, see Kaufman, *Direct Action*, 25-30.

> Civil disobedience has never been used on a mass scale in the North. It has rarely been seriously organized and resolutely pursued. Too often in the past was it employed incorrectly. It was resorted to only when there was an absence of mass support and its purpose was *headline-hunting*. The exceptions were the massive school boycotts by Northern Negroes. They shook educational systems to their roots but they lasted only single days and were never repeated. If they are developed as weekly events at the same time that mass sit-ins are developed inside and at the gates of factories for jobs, and if simultaneously thousands of unemployed youth camp in Washington, as the Bonus Marchers did in the thirties, with these and other practices, without burning a match or firing a gun, the impact of the movement will have earthquake proportions.[32]

Now, what these remarks reveal is not only that the object of liberal inquiry bears no resemblance to civil disobedience in its pre-eminent historical guise. But also a nearby point, or rather, the same point put differently, and one I now break from my argument to formalise — viz. that civil rights activists, in undertaking civil disobedience, did not break the law *per se*.

Recall that, in the Razian formulation, liberal civil disobedients break the law 'as a means'. In other words, their intentional breach of law *is* the civil disobedience — it's the action's tactical fulcrum, what does its symbolic, discursive, rhetorical work.[33] On this view, the liberal civil disobedient

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[32] King, 'The Crisis in America's Cities: An Analysis of Social Disorder and a Plan of Action Against Poverty, Discrimination, and Racism in Urban America' (15 August 1967), Southern Christian Leadership Conference Papers, Martin Luther King Jr. Library and Archives, Atlanta, GA. Indeed, Colaiaco argues that King's organising efforts in the North ran aground simply because it was 'easier to provoke a crisis in a small Southern city, where nonviolent demonstrations could *virtually paralyze a community*, than in a vast metropolis like Chicago, where similar demonstrations were readily absorbed and neutralised.' James A. Colaiaco, 'Martin Luther King Jr. and the Paradox of Nonviolent Direct Action', *Phylon* 47:1 (1986): 16-28, 27-28, my emphasis.

[33] It's worth noting that liberal theorists need not be committed to this view. Theorists could, for instance, hold that in civil disobedience the law is broken incidentally as a means of doing something unorthodox, subversive, unusual, scintillating (and so on), and that it is *these* properties of the action, and not the fact of its being illegal, that give civil disobedience its discursive charge. This modified and perhaps more natural view would still run into the following difficulties, however. First, there are countless lawful activities which are subversive in some respect, as I explored at length in Chapter One (burning the flag or refusing to bow to the Queen,

performs some definite action — sitting uninvited at a lunch counter, straying onto private land, lying down in the street (and so on) — as an unavoidable prerequisite of achieving what is their real end: breaking the law, contravening society's formal rules. What matters, in other words, is not so much the particular action undertaken, but simply that it involves the breach of law.[34]

This idea — that civil disobedients break the law as means, break the law *per se* — is, however, to get the real situation exactly backwards. As my discussion above amply suggests, historical activists have tended to break the law *epiphenomenally*, we might say. They have tended to break the law, that is, as an unavoidable corollary of achieving what is their real end — viz. obstructing a lunch counter, physically occupying a strategically significant location, blocking access to some premises or other (and so on).[35] Thus while real activists, like liberal civil disobedients, *intend* to break the law, they do so simply as a byproduct of pursuing their strategy of cost-raising obstruction and disruption. The real activist breaks the law against the obstruction of the highways, for instance, essentially as a byproduct of stopping traffic on the highway. The liberal civil disobedient, by way of contrast, stops traffic on the highway essentially as a means to their real purpose — viz. contravening the formal law, in this case the Obstruction of the Highways Act, and thereby issuing the discursive, symbolic proclamation that is liberal civil disobedience's stock in trade.

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for instance). And this may count against the justification for civil disobedience, if one thinks, as liberal theorists do, that citizens require particularly good reason to break the law. Second, and more to the point, this modified view still misses the cost-raising edge of civil disobedience in its historic guises — it neglects that, historically speaking, activists have not broken the law *per se*, nor even incidentally *en route* to the performance of a subversive, sensationalistic act, but incidentally *en route* to the imposition of a *cost* on society. Now, the imposition of such a cost, at least by the means usually available to civil disobedients (rather than, say, the business community), will certainly be seen as subversive, and it will almost certainly involve lawbreaking. Nonetheless, it is important to keep these properties separate in our minds, and to discern carefully which of them has been the strategic crux of really-existing activism.

[34] And it is this unlawfulness (and not the non-juridical character of whatever definite action one is undertaking) that, in the liberal estimation, creates the moral problem of civil disobedience. The point is of no relevance here, but I remark on this perspective at length in Chapter Five — the liberal account's habit of analysing civil disobedience solely from the point of view of the *pro tanto* wrong of lawbreaking.

[35] In this respect historic activism has more in common with conscientious objection than it does with liberal civil disobedience. In conscientious objection the breach of law is incidental to one's real purpose — viz. avoiding the performance of a loathed action, though one contingently required by law or policy (as in the case of the Witnesses refusing to salute the US flag, for instance). In liberal civil disobedience the breach of law (just *qua* law) *is* one's purpose.

I mean all of this by way of general clarification, but that clarification is important, and my whole argument in this chapter may be brought neatly under it: liberal civil disobedience has little to do with real activism because real activists, when they disobey, break the law not as a means to some kind of symbolic performance, but as an accident of undertaking the kind of cost-raising, obstructive, disruptive action which, because obnoxious and corrosive of the social order, is usually illegal.[36] And to bring that wider clarification back round to the matter at hand, we may then say that it misses the point to think that civil rights activists occupied lunch counters as a means of violating the segregation law (and thereby symbolising their dissociation from it and opposition to it). No, the segregation laws were violated as a corollary of disrupting commerce at segregated businesses. The law was not broken *per se*.[37]

And nor did the other of the characteristic forms of civil rights disobedience — what I termed above the 'crisis' model of action — break the law in this way. Though that truth is perhaps more difficult to see in its exemplar cases — the Freedom Rides and the made-for-TV marches at Birmingham, Selma, and Montgomery — than it is in the strategy of economic coercion embodied in the boycotts and the persis-

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[36] One way to bring out the wider issue here is to ask the following: if — by quirk of legislative oversight — the OHA were repealed without replacement, would blocking traffic intersections become a less attractive tactic of civil disobedience? I do not think so. Indeed, I rather think that blocking traffic intersections would become the disobedient tactic *du jour*. The liberal model, however, presumes that — given this oversight — traffic-blocking would become wholly inviable as a tactic of civilly disobedient political engagement. One would no longer be able to issue one's distinctive discursive contribution, because in blocking traffic one would not be in breach of any law. This is another aspect of the liberal view's tendency to unduly fetishise lawbreaking (which I explored, in a different connection, at some length in Chapter One), the fetishism this time consisting in the presumption that because civil disobedience is (allegedly) objectionable in virtue of its illegality, so must the breach of law be constitutive of it, or at least tactically central to it. But that, I am suggesting here, is simply not true. And while I am on this general theme, I think it worth pointing out what is overlooked entirely in the liberal analysis of civil disobedience — viz. that King, the paradigm practitioner of the art of civil disobedience, never broke a federal injunction. Indeed, it was 'for some time … a point of pride' for him that he broke *only* laws with no constitutional standing, or injunctions issued by segregationist state courts. Martin, 'Civil Disobedience', 124 n.2.

[37] Another way of construing this point, and neatly glossing the descriptive failure of the liberal view as we do, is to say that civil rights disobedience was not a form of *protest*, but a form of *resistance*. In making this point I rely on no specialised dissident vernacular: there is an obvious and intuitive difference, for instance, between someone protesting their arrest, and someone resisting their arrest. And that difference may be summed up in Ulrike Meinhof's famous dictum: 'Protest is when I say: "I don't agree with this". Resistance is when I see to it that what I don't agree with no longer occurs.'

tent sit-ins. After all, these spectacular shows of moral courage certainly admit at first glance of a discursive reading: local bus segregation laws are violated, injunctions against marching are disregarded, orders to disperse are ignored, and thereby do activists dissociative themselves from southern authority and issue a moral plea for reform.

This picture is misleading, however, for as I suggested above, these actions were not primarily attempts at discursive intervention in the public moral conversation, but attempts at a kind of moral blackmail — attempts to contrive a mortal crisis, a situation where activists' bodies and very lives would be at risk, and then to dare the federal agencies to remain aloof.[38] As Colaiaco writes:

> During the 1950s and early 1960s, the Federal Bureau of Investigation and the Justice Department stood by while federal laws were defied, and civil rights workers were brutally beaten, jailed, and sometimes murdered. Although civil rights laws were enacted in 1957 and 1960, promising greater equality to blacks, these laws were either poorly enforced or ignored. Hence, a method had to be developed that would coerce the Southern states to comply with the law of the land, and induce the President and Congress to be more active in supporting civil rights.[39] The method, forged in the crucible of the Montgomery bus boycott and developed into a fine art during King's Birmingham campaign in 1963, was mass nonviolent direct action.[40]

[38] And not only moral blackmail, but also geo-strategic. Jim Crow was a public relations disaster for US anti-communist efforts abroad, so much so that the Truman Administration filed a lengthy amicus brief in support of the plaintiffs in *Brown v. Board*, one devoted almost entirely to a discussion of the 'effects of racial discrimination in the United States upon the conduct of foreign relations', and in particular to an elaboration of the various ways in which 'racial discrimination furnishes grist for the Communist propaganda mills'. Of course, one imagines that US concern about its perception in Africa and Latin America had only grown more acute by the time of the Bay of Pigs. Brief quoted in Aryeh Neier, 'Brown v. Board of Ed: Key Cold War Weapon', *Reuters*, 14 May 2014. For more on the foreign reception of *Brown*, see Anthony Lester, 'Brown v. Board of Education Overseas', *Proceedings of the American Philosophical Society* 148:4 (2004): 455-463.

[39] Nothing much rides on whether this kind of moral blackmail is truly coercive (in the way that the economic losses imposed by persistent sit-ins and unlawful boycotts exert a coercive influence, for instance). What matters is only that it is not *discursive* — it is not a rhetorical attempt to persuade the authorities, by force of reason, to accept the demonstrators' point of view. That discursive style of protest is a far cry from putting one's own person into a situation where one knows that one will be (at the very

This strategy was not much concealed by the activists involved. James Farmer, National Director of CORE and an organiser of the Freedom Rides, put it pithily: 'our philosophy was simple. We put pressure and create a crisis and then they react'.[41] More expansively, he recalled:

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least) tear-gassed, fire-hosed, attacked by dogs, beaten with nightsticks, pelted with bricks and bottles (and so on), in order to box the authorities into a definite decision whether to permit this to happen, or to intervene to stop it (and in so doing to involuntarily set a precedent for future intervention).

[40] Colaiaco, 'Paradox of Nonviolent Direct Action', 20. And see also Clayborne Carson's view that 'the prevailing postwar civil rights strategy … relied on efforts to publicise the worst aspects of the Jim Crow system and on the use of civil disobedience and mass demonstrations to *coerce the federal government into action*'. He also refers to SNCC as a 'cadre of organisers seeking to mobilise blacks to *coerce the federal government into using its power to achieve civil rights goals*'. Carson, *In Struggle*, 142; 95, my emphasis. Jacquelyn D. Hall gives a more expansive impression of the movement's workings: 'in one dramatic protest after another, civil rights activists couched their demands in the language of democratic rights and Christian universalism; demonstrated their own respectability and courage; and pitted *coercive nonviolence* against guns, nightsticks, and fists. Played out in the courts, in legislative chambers, in workplaces, and in the streets, those social dramas toppled the South's system of disfranchisement and *de jure* or legalized segregation by forcing the hand of federal officials and bringing local governments to their knees.' Jacquelyn D. Hall, 'The Long Civil Rights Movement and the Political Uses of the Past', *Journal of American History* 91:4 (2005): 1233-1263, 1235-1236.

[41] Quoted in Victor S. Navasky, *Kennedy Justice* (New York: Athenaeum, 1971), 233. Let me observe in this connection that the strategy of probing the federal government's response to mortal crisis perhaps has more in common with the raising of test cases — which activity Rawls explicitly distinguishes from civil disobedience — than it does with the liberal idea of civil disobedience itself: in both cases one intentionally contrives a particular situation in order to test the reaction it elicits from the state. Rawls, *Theory of Justice*, 322. Incidentally, Rawls may have included this clarification in light of the work of Stuart M. Brown Jr., another speaker at the liberal-view-defining symposium in 1961, who saw civil disobedience essentially as a means of testing the constitutionality of a given law by performing prosecutable offences under it. See Stuart M. Brown Jr., 'Civil Disobedience', *Journal of Philosophy* 58:22 (1961): 669-681.

> Federal law said that there should be no segregation in interstate travel. The Supreme Court had decided that. But still state laws in the southern states and local ordinances ordered segregation of the races on those buses. Why didn't the federal government enforce its law? We decided it was because of politics. If we were right in assuming that the federal government did not enforce federal law because of its fear of reprisals from the South, then what we had to do was to make it more dangerous politically for the federal government not to enforce federal law. And how would we do that? … We felt that we could then count upon the racists of the South to create a crisis, so that the federal government would be compelled to enforce federal law.[42]

Wyatt Tee Walker, the executive director of SCLC and King's close friend and confidante, explained the tactical rationale for the Birmingham march in more or less identical terms, writing that: 'we've got to have a crisis to bargain with. To take a moderate approach, hoping to get white help doesn't work. They nail you to the cross … You've got to have a crisis.'[43]

Now, with that second mention of King — the patron saint of civil disobedience — it is perhaps time to address the elephant in the room, and to head off any charge of revisionism or one-sidedness as I do. Notwithstanding the rhetoric quoted above hinting at his quiet militancy, isn't my portrait of the coercive reality of civil rights activism difficult to square with his ceaseless invocation of the idea of moral suasion, his constant reference to the possibility and necessity of speaking to the moral conscience of the white majority?[44] He

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[42] Quoted in Steve Fayer, Henry Hampton and Sarah Flynn eds, *Voices of Freedom: An Oral History of the Civil Rights Movement From the 1950s Through the 1980s* (New York: Random House, 1991), 111.

[43] Quoted in Harvard Sitkoff, *The Struggle for Black Equality, 1954-1980* (New York: Hill and Wang, 1981), 128-129.

[44] I try to make sense of King's rhetorical posture here largely for polemical and dialectical reasons (he being, in the popular and theoretical imagination, the most conciliatory of civil rights leaders). We should not forget that he was not the movement, and that the SCLC was not the principal organ of direct action in the movement (that distinction falling to SNCC). In any case, other figures in the struggle were not so keen, even rhetorically, on the idea of moral suasion. CORE's Lincoln Lynch, for instance, said: 'History has shown that if you're really depending on the vast majority of whites to help, you're leaning on a very broken reed.' Quoted in Lance Hill, *The Deacons for Defense: Armed Resistance and the Civil Rights Movement* (Chapel Hill, NC: U. North Carolina Press, 2004), 9. Similarly, Stokely Carmichael offered a withering assessment of King's (presumed) faith in mor-

said of the Birmingham campaign, for instance, that 'we had no alternative except to prepare for direct action, whereby we would present our very bodies as a means of laying our case before the conscience of the local and the national community'; and he wrote, in a manner outwardly hospitable to the liberal reading of civil disobedience, that nonviolent direct action 'is the method which seeks to implement the just law by appealing to the conscience of the great decent majority who through blindness, fear, pride or irrationality have allowed their consciences to sleep',[45] and more generally that 'injustice must be exposed, with all the tension its exposure creates, to the light of human conscience and the air of national opinion before it can be cured.'[46]

In view of this frequent theme in his oratory, am I not then painting too radical a picture of the activist reality in this most historic episode of civil disobedience? Perhaps not, for we cannot forget the delicacy of King's position — the weight of the strategic imperative to strike a conciliatory tone, to play down the confrontational, coercive character of civil rights action, and to play up the ideas of moral forbearance, of agape, of national redemption (and so on). Indeed, as one commentator writes: 'the history of the Negro in America … has been a quest for a revolt that was not a revolt — a revolt, in other words, that did not seem to the white power structure as a revolt.' King's genius lay in satisfying this existential demand by 'clothing a resistance movement in the comforting garb of love and forgiveness'.[47] As he himself put it: 'Only through a nonviolent approach can the fears of the white community be mitigated … A guilt-ridden white minority lives in fear that if the Negro should ever attain power, he would act without restraint or pity to revenge the injustices and brutality … Many white

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al suasion: '[King's] major assumption was that if you are nonviolent, if you suffer, your opponent will see your suffering and will be moved to change his heart. That's very good. He only made one fallacious assumption: in order for nonviolence to work, your opponent must have a conscience. The United States has none.' Quoted in Goran Olsson dir., *The Black Power Mixtape: 1967-1975* (Sweden, USA: Story AB Films, 2011).

[45] King, '"The Rising Tide of Racial Consciousness", Address at the Golden Anniversary Conference of the National Urban League, New York, 6 September 1960', Martin Luther King Jr. Papers, The Martin Luther King, Jr. Research and Education Institute, Stanford University.

[46] King, 'Letter', 84. See also his programmatic statement that 'nonviolent direct action seeks to create such a crisis and foster such a tension that a community which has constantly refused to negotiate is forced to confront the issue. It seeks so to dramatize the issue that it can no longer be ignored' [80]. It's worth noting here that Brownlee herself reproduces this reference to the 'light of human conscience' in order to flesh out her characterisation of civil disobedience's workings. *Conscience and Conviction*, 194.

[47] Lerone Bennet, *The Negro Mood* (Chicago: Johnson, 1964), 30-31.

men fear retaliation. The job of the Negro is to show them that they have nothing to fear, that the Negro understands and forgives and is ready to forget the past.'[48]

The question of optics notwithstanding, we must also acknowledge that, even rhetorically, King never unambiguously placed his faith in moral suasion alone — in *discourse* alone.[49] His remarks above on the appeal to conscience and on the redemptive power of suffering are, for instance, undergirded by transparent allusions to coercion, and even a certain current of threat. He said of the direct action in question, for instance, that 'we decided to schedule our direct action program for the Easter season, realizing that except for Christmas, this is the main shopping period of the year. Knowing that a strong economic-withdrawal program would be the by-product of direct action, we felt that this would be the best time to bring pressure to bear on the merchants for the needed change.'[50] More dramatically, he followed his rhetoric of 'the light of human conscience' with a stark warning that 'if our white brothers dismiss as 'rabble rousers' and 'outside agitators' those of us working through the channels of nonviolent direct action … millions of Negroes, out of frustration and despair, will seek solace and security in black ideologies, a development that will lead inevitably to a frightening racial nightmare.'[51]

What I am suggesting here, by way of rounding off this discussion of the coercive reality of civil rights disobedience, is that even this most conciliatory of civil rights leaders, even

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[48] King, *Stride Toward Freedom: The Montgomery Story* (New York: Harper & Row, 1958), 215–217.

[49] See Adam Fairclough's judgement that King 'never made an unqualified assertion that nonviolent protest succeeded through moral suasion.' Adam Fairclough, *To Redeem the Soul of America: The Southern Christian Leadership Conference and Martin Luther King Jr.* (Athens, GA: U. Georgia Press, 1987), 52.

[50] King, 'Letter', 80.

[51] King, 'Letter', 85. This complex rhetorical blend represents a third form of coercion over and above the two canonical varieties I delineated earlier, and one I remark more on in §3.2. But see for now Hill's parsing of the situation: 'King's message was multilayered and seemingly contradictory, conveying different meanings to different audiences. His preachments against violence were intended for blacks, while his allusions to retributive violence were intended for whites.' Hill, *Deacons for Defense*, 263. In other words, King knew that northern attentiveness to the civil rights cause was largely a product of the white society's fear of violent black uprising, and he also knew that if there ever was such an uprising, it would be crushed easily and brutally. His oratorical high-wire act was to stoke the white fear (while representing his peaceable movement as the only alternative outlet for a black militancy that would otherwise find expression in violence, thereby underlining the imperative of acceding to his movement's demands), at the same time as he tried to ensure that the white fear would never be realised.

at his most conciliatory moments (as in the 'Letter'), did not offer an unequivocally discursive or non-coercive statement of the purpose of civil rights direct action.[52] That fact is doubly telling given the further truth that a Christian minister speaking on behalf of an extraordinarily vulnerable constituency living under a terror regime — a constituency much dependent on the goodwill of a squeamish and broadly racist (though not segregationist) white northern majority, would be liable, with very good reason, to understate the coercive and confrontational foundation of his programme.

With that judgement I adjourn my case on the reality of civil rights disobedience. We now have in hand the main result I aimed to establish in this first chapter of Part Two, and the key premise in Chapter Five's wider critique of the liberal view: viz., that this most historic episode of civil disobedience bears precious little resemblance to the fifty-year object of liberal inquiry — to the liberal idea of civil disobedience as a form of discourse, a 'mode of address' and 'microphone' for the airing of minority grievances, a means of 'express[ing] opposition to law and policy'. In reality this historic activism relied not mainly on discursive breaches of the law *per se*, but on overlapping strategies of moral and economic coercion.[53]

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[52] Once again, I am trying to make sense of King's *rhetorical* posture here. There is no doubt that — as noted King biographer David Garrow argues — he had *in practice* abandoned the strategy of 'persuasive nonviolence' by 1961 at the latest. Thereafter he pursued a programme of 'coercive nonviolence' after the fashion detailed above — viz. that of deliberately inducing southern repression in order to compel northern intervention. David Garrow, *Bearing The Cross* (New York: William Morrow, 1986), 224-225. Similarly, Colaiaco argues that by the early 1960s King had already perceived 'the coercive essence of nonviolent direct action … [that] most racists were compelled rather than converted'. Colaiaco, 'Paradox of Nonviolent Direct Action', 18. In any case, and as we saw above, by 1967 King was preaching openly of the necessity of 'dislocat[ing] the functioning' of northern cities by means of factory sit-ins and mass nonviolent occupations. In the same year, he urged (in a series of lectures broadcast in Canada and now rarely mentioned in the US) that civil disobedience should not issue mere statements to the wider society, but become 'a force that interrupts its functioning at some key point.' King, *The Trumpet of Conscience* (New York: Harper & Row, 1968), 59.

[53] It would be a great folly, of course, to deny that activists also intended their actions to generate a media frenzy, and through it to dramatise and make widely known the reality of life in the white supremacist states. I do not deny that the pursuit of publicity was an important strategic consideration and rationale for acting, I simply deny that civil rights disobedience was, as laid down in the liberal archetype, *only or in essence* discursive — that the basic point of it was discursive. In other words, I am happy to admit what is true: that these were coercive actions with an additional discursive, public relations component. And while I am on this point, also notice that to the extent that these actions did possess a vitally 'charged' character — one that the press could not keep away from, that charge consisted not in the infraction of *law*, but in the activists' physical, bodily confrontation with southern power. As James Farmer had it, in 'putting

3.2. Alt History

I wish to turn now to a slightly different point, though one that will perhaps fortify my case above, and prove telling towards the end of the thesis. In doing so I shift my attention away from the ontological question of what civil disobedience is, and towards the functional question of how it *works* — viz., on the liberal impression, by changing hearts and minds. By rationally convincing a politically salient population of the truth of the activists' moral claims, and thereafter that it ought to take action using the familiar means allotted it in the ordinary political process.[54]

I do not believe that anything like this mechanism of disobedient change was at work during the civil rights period. And more to the point, nor do I believe that there was any *possibility* of its having been at work — I do not believe that there was any leverage for the sort of rational-moral advocacy that the liberal view positions as civil disobedience's signal political contribution. Quite the contrary, this presumed proof of concept of the discursive method in fact serves as a cautionary tale for those who would put much stock in the political power of the disobedient rhetorical intervention: civil rights disobedience was not designed or intended to win by force of moral argument, nor did it win by force of moral argument, and nor *could it have* won by force of moral argument.

That is my theme in this section, and to work our way into the discussion, we need first recall that the liberal model offers two routes to reform, or rather, two politically salient constituencies ripe for convincing of the evil of segregation — viz. those constituencies delegated power under a democratic constitution: either the authorities themselves, or a sufficient mass of the ordinary voting population.

We may strike off the latter constituency immediately. There was no procedural or principled necessity of a sea-change in voter attitudes on segregation, since, as I elaborated above, the proximate goal of the movement was to induce the fed-

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one's body in direct confrontation with the evil'. In other words, the breach of law itself was symbolically irrelevant to the high theatre of civil rights disobedience. Farmer interviewed in Robert Penn Warren, *Who Speaks For The Negro?* (New York: Random House, 1965), 191.

[54] See for instance Dworkin's statement that civil disobedience's purpose is to 'force the majority to listen to arguments against its program, in the expectation that the majority will change its mind and disapprove that program'. *Matter of Principle*, 109. And cf. e.g. William Smith's locating the reformist potential of disobedient activism 'in the moral dialogue with authorities and the public that citizens trigger by engaging in civil disobedience'. 'Public Sphere', 162. For a fuller elaboration of this reformist mechanism, see my §1.1.

eral government to enforce what was *already* the law.[55] And executives of the federal government — in particular the president and the attorney general — possess a pre-existing right and duty to do so *no matter* the views of the general public.[56] There was, in other words, no principled question

[55] Of course, one might reject my abstraction from the Civil Rights Act of 1964 and the Voting Rights Act of 1965 here, and in so doing assert a proper constitutional role for the demos (via its representatives on Capitol Hill). I have no objection: it still remains to be explained why the federal authorities made no effort to intervene in the South during the previous decade. In other words, that the civil rights agenda could not be advanced in full without the support of the white majority ought not to distract us from the fact that a large portion of it could have been, and *ought* to have been, but was not.

[56] In any case, it is by no means obvious that there *was* (over the period) a politically relevant sea-change in the electorate's views on segregation. Southern whites — i.e. the very neighbours and co-citizens to whom civil disobedience is traditionally supposed to be addressed — thought segregation just and lawful in the mid-1950s, of course. But they *also* thought that in 1964, and in 1968, when George Wallace — the arch-segregationist, and himself a civil disobedient in that cause — carried the South in a landslide even despite the traditional disadvantage of running a third-party campaign. In other words: twelve years after Montgomery put civil rights firmly onto the national agenda, the white majority in the South continued to favour segregation. That, of course, is precisely why Johnson is rumoured to have said that pushing for a civil rights bill was the right thing to do, even though it would mean losing the South for a generation (apocrypha or not, he was almost right: in fact it's been more like three). Indeed, so deep was southern opposition to civil rights — and to civil rights disobedience in particular — that two-thirds of southern white *integrationists* disapproved of the sit-ins. See Clive Webb, 'Breaching the Wall of Resistance: White Southern Reactions to the Sit-Ins', in Iwan Morgan and Philip Davies eds, *From Sit-Ins to SNCC: The Student Civil Rights Movement in the 1960s* (Gainesville, FL: U. Florida Press, 2012): 58-80, 58. Now, it is difficult to overstate the significance of this fact, for it categorically undermines both the conventional narrative of America's moral redemption, and, more to the point, the liberal view's core faith in civil disobedience's didactic power. The southern whites electorally responsible for Jim Crow were never brought round to the cause of civil rights — that unjust majority was not reached even by twelve years of righteous civil disobedience. In the end, southern whites were simply overruled — coercively restrained — by a third party, by (in effect) a foreign government.

All that aside, what is more shocking is that *northern* whites retained a consistently pronounced distaste both for the civil rights movement in general, and for King in particular. A meta-analysis of contemporary Gallup polling finds, for instance, that of notable public figures in 1963, the white public viewed only *Khrushchev* less favourably than they did King. In 1964, *before* the carnage at Selma, 80% of white respondents agreed that 'negroes should stop their demonstrations now that they have made their point even though some of their demands have not been met'. In 1965, polls found that King was viewed less favourably than Barry Goldwater (only months after he had lost the 1964 election in one of the largest landslides in US history). In 1966, Gallup found that 72% of white Americans had an unfavourable view of King, and in 1967, less than 0.5% of whites chose King in a hypothetical four-way presidential race between him, Lyndon Johnson, George Romney, and George Wallace (Wallace, the segregationist poster-boy, secured 11% of the nationwide vote). All told, the meta-analysis finds that King was viewed less favourably than *any* other US public figure in the Gallup database, with only Nixon in the aftermath of

of *mandate* for action on the civil rights question. The idea that the attorney general ought to enforce the constitution and the decisions of the federal courts without heed to popular opinion cannot have been — at any stage — reasonably doubted by anyone in the country,[57] though it is an idea which, if respected, would have ended both the official regime of segregation in many of its particulars, and the entirety of the South's extra-legal programme of white supremacy.[58]

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his resignation over Watergate running him close. Figures from Sheldon Appleton, 'Martin Luther King in Life ... and Memory', *Public Perspective* 6:2 (1995): 11-13 & 47-48, 12-48. For more polling data on white attitudes towards the civil rights movement, see e.g. Lawrence D. Bobo and Ryan A. Smith, 'From Jim Crow Racism to Laissez-Faire Racism: The Transformation of Racial Attitudes', in Katkin, Landsman, and Tyree eds, *Beyond Pluralism: The Conception of Groups and Group Identities in America* (Urbana, IL: U. Illinois Press, 1998): 182-220.

[57] Indeed, this idea enjoyed, and enjoys, near-universal support, since it is just another way of describing the separation of powers.

[58] I need hardly clarify that legal bases for federal intervention were legion. Zinn argues, for instance, that the statutory framework laid down during Reconstruction — specifically, the 14th and 15th Amendments, plus the civil rights acts of 1866, 1870, and 1871 — gave the executive ample jurisdiction over 'discrimination in all areas of civil life'. *Postwar America*, 122. And the wider regime of lawless brutality in the South, on the other hand, could have been ended under any number of statutes. 10 U.S.C. §333, for instance, empowers the president to deploy the army, the national guard, or any other agency of government in order to re-establish and safeguard the rule of law. 18 U.S.C. §242, meanwhile, permits federal prosecution of any official who 'wilfully subjects any inhabitant of any State ... to the deprivation of any rights, privileges or immunities secured by the Constitution or laws of the Untied States.' Crucially, these were not niche jurisprudential positions at the time: 'Advocates of civil rights subjected the [Kennedy] Administration's position to a thorough refutation. Some twenty-nine professors from six of the nation's leading law schools sought to establish a firm legal basis for greater federal intervention in defense of civil rights. Citing the Debs case of 1895 as precedent, in which the Supreme Court ruled that the federal government may enforce the law when necessary by injunction in any part of the nation, they argued that the Justice Department could seek injunctions to protect the civil rights of individuals in the Deep South without specific statutory authority. Moreover, they cited Title 10, Section 333 of the United States Code, which reads in part: "The President, by using the militia or the armed forces, or both, or by any other means, shall take such measures as he considers necessary to suppress, in a State, any domestic violence, unlawful combination, or conspiracy, if it (1) so hinders the execution of the laws of that State, and of the United States within the State, that any part or class of its people is deprived of a right, privilege, immunity, or protection named in the Constitution and secured by law, and the constituted authorities of that State are unable, fail, or refuse to protect that right, privilege, or immunity, or to give that protection; or (2) opposes or obstructs the execution of the laws of the United States or impedes the course of justice under those laws."' Colaiaco also observes that the Supremacy Clause (Article VI, Clause 2) of the US Constitution empowers the executive to intervene 'whenever a state fail[s] to protect constitutionally guaranteed rights, such as the rights to vote and to demonstrate', and moreover that Kennedy had relied on precisely this provision to justify his sending federal troops to quell the Bir-

What we are left with, then, if this liberal impression of civil disobedience exerting influence through the ordinary democratic process is to have any purchase on the civil rights case, is the notion that the federal authorities *themselves* had their minds changed, as a matter of moral principle, on the civil rights question. But this alternative is no more plausible. First, it stretches credulity to believe that one of the things the movement did was convince a band of Ivy League officials in the Justice Department and in the White House that segregation, police brutality, mob rule, vigilantism, white terrorism (and so on) were morally repugnant. It defies credulity, I am suggesting, to believe that these officials *needed* civil disobedience's discursive contribution in order to perceive that moral truth. To believe this would be to portray those officials as figures from a wholly different moral era (in ways that are neither wise nor plausible).[59] Second, and more importantly, the *morality* of the southern settlement was neither here nor there. It mattered only that it was *unconstitutional*, and it is absurd to think that the movement convinced the Justice Department, by force of jurisprudential argument, that a whole system of police brutality and tacit law enforcement permission for the intimidation, assault, torture and murder of black citizens was *illegal*, for it had been so since at least Magna Carta.

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mingham riots in 1963. Colaiaco, 'Paradox of Nonviolent Direct Action', 26. Burke Marshall, Bobby Kennedy's assistant attorney general and the chief legal theorist of federal inaction in the South, would eventually admit that the administration's policy had little do with legitimate fear of constitutional overreach. He said, of the compromise brokered during the Freedom Rides (where Mississippi state troopers would protect Riders from mob violence on the understanding that they would be arrested upon their arrival in Jackson), that although the Justice Department had the legal authority to prevent these unlawful arrests, 'the result [of that intervention] would have been chaotic and more destructive of the federal system than what happened in Mississippi'. In other words, Marshall's view, astoundingly, appears to have been that allowing the southern states to flout federal law was *less* destructive of the federal system than holding them to it would have been. Burke Marshall, *Federalism and Civil Rights* (New York: Columbia University Press, 1964), 71-72. For a contemporary demolition of Marshall's jurisprudence, and one written by a federal prosecutor and former Justice Department colleague of his, see Richard Wasserstrom, 'Review of "Federalism and Civil Rights" by Burke Marshall', *University of Chicago Law Review* 33:2 (1966): 406-413.

[59] I have no doubt that they were racist, of course. I only doubt that they could have thought segregation by law — never mind the white terror — morally indifferent. And when I refer to the lack of wisdom in this implied reading of the situation, I mean to suggest that it is a quietist mistake to encourage any sense that the system of black oppression depended on a moral worldview distant from our own, and one now largely conquered. More instructive is to say what is true: that the federal government was complicit, by inaction, in this horror not because its officials held repugnant moral views, but because they were in hock to personal ambition. I return to this idea in a moment, and I elaborate on this habit of state officials in §4.3.

Now, if I am right that it stretches credulity to believe that the movement convinced the executive of the injustice or flagrant illegality of the southern regime, then the didactic, discursive impression of civil disobedience's way of working cannot be accurate in this most emblematic case. There simply was no relevant matter of principle on which the executive's mind could have been changed by force of disobedient argument.

What is more likely, of course, is that the executive already knew of the injustice and illegality of the southern regime — even *before* contact with the movement — but felt it politically inexpedient to intervene. And put that way — that the authorities were chary of intervention not because they doubted the injustice or the illegality of the white terror regime, but because they felt intervention a politically inexpedient course of action — the point appears glaringly obvious, and perhaps so obvious as to render it uninteresting. Yet it is a point of profound and troubling consequence for the liberal view, for what it suggests is this: that the only thing the relevant powers *could* have been convinced of here was that they ought to do what they knew to be right, rather than what they felt to be politically expedient or personally advantageous.[60]

But there is no way to convince someone to do *that* by force of moral argument, by means of the disobedient discursive intervention! What's at issue here — the story of the civil rights era — is federal *akrasia* (at best), not a mistaken view of what justice and the law required. And it is, I think, impossible to *reason* someone out of their akrasia. The principle that people ought to do what they accept as right, even though they would rather not — that principle is not *up* for political-moral debate of the kind which liberal theorists have thought it the purpose of civil disobedience to feed and further.[61] That proposition is rather the unstated precondition *of* political-moral debate — its *sine qua non*.

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[60] Of course the inexpediency here must have had a moral gloss (though perhaps a self-serving one) — viz. that enthusiastic federal efforts for integration would, by provoking white unrest in the South, do more harm than good in the long run: bad consequences trump prolonged injustice, in effect. (On which cf. again Burke Marshall's remark, quoted above, on the 'chaotic' implications of federal oversight of southern police). Now, as I relate in a moment, civil rights activism did not challenge the moral propriety of this calculation: it simply rebalanced it *materially* in favour of federal action. It implied that the authorities had more to fear from a rising black militancy than they did from whatever reprisals the white supremacist rump could muster. If the authorities feared 'chaos', in other words, then they had better intervene.

[61] For classic defences of this Humean claim — i.e. that reason alone cannot lead agents to act morally, see e.g. Peter Railton, 'Moral Realism', *Philosophical Review* 95:2 (1986): 163–207; and Michael Smith, 'The Humean Theory of Motivation', *Mind* 96:1 (1987): 36-61.

The lesson here, then, is that in this most revered civilly disobedient incarnation — the liberal discursive model's supposed proof of concept and most vital triumph — not only did disobedient reason-giving have no sway, in truth there was no *prospect* of its having had sway: the authorities would not be moved by moral argument. What the situation required was not more of the same sort of pressure — more argument, better argument — but a different kind of pressure, an *end* to argument. And while this point fortifies my immediate case — viz. that civil rights disobedience bears no resemblance to the discursive, reason-giving liberal archetype, it also has a much wider force, and it is this force I want to stress.[62] The motivational invulnerability of the authorities to moral argument is not simply an unfortunate empirical truth to be adduced against the liberal view, it is a vital political fact to be known and grappled with — it is the proper *foundation* of a theory of dissent and disobedience.

I will say no more in this vein here. I devote the next chapter to a development and defence of the idea that the state is not moved by moral argument, and I discuss the ramifications of this fact at length in the thesis's final act. For now we need only take on board its less consequential implication: historic civil disobedience did not take the discursive form characteristic of the object of liberal inquiry, and nor was there any leverage for this kind of discursive politics.

I should like to round off this discussion of the strategic and functional reality of civil rights disobedience by addressing, largely for the sake of completeness, the remaining question: granted that the authorities were not moved by moral argument, what *did* move them? The answer, I think, is nothing less than the augur of black civil unrest — the prospect of a race war.[63] Indeed, as Lance Hill puts it in retrospect:

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[62] I offer, in contradistinction to my discussion here, Dworkin's impression of the period: 'The majority, even in the South, blushed when it was forced to look at its own laws. There was no possibility of a political majority saying, "Yes, that is what we're doing. We're treating one section of the community as inferior to ourselves." And then turning aside from that with equanimity. Civil Disobedience forced everyone to look at what the majority could no longer, for a variety of reasons, ignore. So minds were changed, and the sharpest evidence of the change is the fact that halfway through the battle the law became an ally of the movement rather than its enemy' … 'It was obvious early in the civil rights movement that the sit-ins and other techniques of disobedience had persuasive force, because it was obvious that the issue was an issue of justice and that the movement had rhetorical tradition as well as justice on its side. It was only necessary to force enough people to look who would be ashamed to turn away.' *Matter of Principle*, 109-110; 112.

[63] I remark more on this in §5.4, but it too is a vital political fact to be known and grappled with — that *this* is what it took to force action even on so morally cut-and-dried an issue. Far from being proof of concept of the liberal vision of a disobedient politics of reason, the civil rights case in

> The reassuring myth of American moral redemption — a myth that assuaged white guilt by suggesting that racism was not intractable and deeply embedded in American life, that racial segregation and discrimination were handily overcome by orderly, polite protest and a generous American conscience … was a comforting but vacant fiction. In the end, segregation yielded as much to force as it did to moral suasion.[64] Violence in the form of street riots and armed self-defense played a fundamental role in uprooting segregation and economic and political discrimination from 1963 to 1965.[65] Only after the threat

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fact provides an object lesson in the hopelessness of moral argument as a force for political change, and in how enormous and entrenched is the resistance to such change.

[64] Another, and perhaps complementary, answer (and a recently popular one), is that legislative action on civil rights was the product of one man's courage, moral sensitivity, single-minded vision, and extraordinary political competence. A product of Lyndon Johnson's akrasia-busting and politically costly decision to push for civil rights even in the face of an indifferent electorate and a recalcitrant congress, and of his since-unmatched capacity to guide legislation through the byzantine back-channels of Capitol Hill. Now, I will take not take a position on the accuracy of this narrative. I bring it up only because — if true — it is a devastating result for the liberal paradigm. To be clear: it is no vindication of the liberal idea of civil disobedience bending, by force of moral argument, the ordinary political process to the cause of reform that civil rights legislation should have depended on the world-historical personage and unique political skill of a man who *accidentally* became president. See e.g. Michael O'Donnell, 'How LBJ Saved the Civil Rights Act', *Atlantic* (April 2014): 88-94; Todd S. Purdum, *An Idea Whose Time Has Come* (New York: Henry Holt, 2014), Ch. 9; and Robert Caro, *The Passage of Power* (New York: Alfred A. Knopf, 2012), §23.

[65] Robert Conot, covering the Watts Riot, wrote that it 'symbolized the end of the era of Negro passivity — passivity that took the form of the doctrine of nonviolence, and the acceptance of white leadership in the civil rights struggle. In Los Angeles the Negro was going on record that he would no longer turn the other cheek. That, frustrated and goaded, he would strike back, whether the response of violence was an appropriate one or no.' Robert Conot, *Rivers of Blood, Years of Darkness* (New York: Bantam, 1967), ix. The Watts Riot was the bloodiest episode in an epidemic of civil unrest in 1965-66, with police brutality provoking other riots in Jacksonville, Cleveland, New York, Rochester, Jersey City, Chicago, and Philadelphia. And this period was itself only a prelude to the chaos of 1967, when the National Advisory Commission on Civil Disorders recorded riots in 128 cities, leading to 'major or serious' disorder in 39 of them. Zinn, *Postwar America*, 131-133. Indeed, it is Zinn's view that the Civil Rights Act of 1968, which outlawed racial discrimination in the housing market, and enshrined new grounds for the prosecution of police brutality (two issues leading to the explosion of civil unrest in 1967), was in fact cover for draconian new public order legislation. The act included extremely stringent anti-riot measures sponsored by Strom Thurmond, and the first person indicted under it was not (say) Fred Trump, the infamously discriminatory public housing contractor, nor any racist police officer, but SNCC chairman H. Rapp Brown, for incitement at a speech in Maryland. Zinn asks

> of black violence emerged did civil rights legislation move to the forefront of the national agenda. Only after the Deacons [a black self-defence militia operating across Mississippi and Louisiana] appeared were the civil rights laws effectively enforced and the obstructions of terrorists and complicit local law enforcement agencies neutralized.[66]

If civil disobedience convinced the national government of anything, we might say, it was not that the southern settlement was unjust, or that it was illegal, but that if the authorities continued to sit on their hands, there'd be hell to pay.[67]

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rhetorically: 'was [the Act] in response to the protests of those in the civil rights movement against federal inaction in instances of violence against blacks? Or was it in response to the ghetto uprisings of blacks in the summer of 1967?' [138].

[66] Hill, *Deacons for Defense*, 258-259. In particular, Hill's view is that the Civil Rights Act of 1964 was passed only because of the riots at Birmingham, where several thousand black men, most of them unaffiliated with the contemporaneous King-led demonstrations, attacked police and Ku Klux Klan vigilante squads in retaliation for two Klan bombings the night before [259]. Hill also argues that the salutary effect of movement defensive violence was even more pronounced in local (rather than national) politics: 'Urban rebellions in the South placed enormous pressure on national policymakers, but they also dramatically affected local power relations. Significantly, the southern riots contributed to civil rights victories in many cities—in some cases, months before the Civil Rights Act went into effect. Desegregation settlements were quickly negotiated in Charleston, Savannah, Cambridge, Lexington, and St. Augustine. McComb, Mississippi, lived under a siege by white terrorists from 1962 to 1964, despite two separate SNCC campaigns. After a series of bombings in September 1964, McComb blacks abandoned nonviolence and staged a riot. Within days, President Johnson brought pressure to bear on state officials, and the Klan was soon out of business. "Whatever the speculation," writes John Dittmer, "the fact remains that until the end of September the Klan had its way in McComb, and the bombers were arrested only after blacks engaged in retaliatory violence and after both the president and the governor had threatened to send troops to occupy McComb."' [260, quoting John Dittmer, *Local People: The Struggle for Civil Rights in Mississippi* (Urbana, IL: U. Illinois Press, 1991), 310]. For more on the role of violence in the movement, and armed self-defence and the spread of black militias in particular, see e.g. Akinyele O. Umoja, '"We Will Shoot Back": The Natchez Model and Paramilitary Organization in the Mississippi Freedom Movement', *Journal of Black Studies* 32:3 (2002): 271-294; Umoja, 'The Ballot And The Bullet: A Comparative Analysis of Armed Resistance in the Civil Rights Movement', *Journal of Black Studies* 29:4 (1999): 558-578; and Annelieke Dirks, 'Between Threat and Reality: The National Association for the Advancement of Colored People and the Emergence of Armed Self-Defense in Clarksdale and Natchez, Mississippi, 1960-1965', *Journal for The Study of Radicalism* 1:1 (2007): 71-98.

[67] And crucially, and per my note above, that there'd be more hell to pay than whatever unrest the reactionary white rump could stir up. Adlai Stevenson typified this establishment fear of white reaction in the South when he said, a few weeks after the Tuscaloosa Riots in 1956 (where days of violent white rioting and death threats against the dean prompted the University of Alabama to suspend the first black student it had ever enrolled): 'I think that [federal intervention] would be a great mistake. That is

That, as King had it, 'unless some immediate steps are taken by the US government to restore a sense of confidence and the protection of life, limb, and property, my pleas [for nonviolence] will fall on deaf ears and we shall see in Birmingham and Alabama the worst racial holocaust the nation has ever seen.'[68] That James Forman might have been telling the truth when he warned at Montgomery in 1965, 'if we can't sit at the table of democracy, we'll knock the fucking legs off'.[69] That if the situation remained unchanged, as John Lewis intended to put it at the March on Washington, 'we will march through the South, through the heart of Dixie, the way Sherman did. We shall pursue our own scorched earth policy and burn Jim Crow to the ground — nonviolently. We shall fragment the South into a thousand pieces and put them back together in the image of democracy. We will make the action of the past few months look petty.'[70] That

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exactly what brought on the Civil War. It can't be done by troops, or bayonets. We must proceed gradually, not upsetting habits or traditions that are older than the Republic.' Quoted in Zinn, *Postwar America*, 144.

[68] King, 'Telegram to John F. Kennedy, 15 September 1963', Papers of John. F. Kennedy: Presidential Papers, John F. Kennedy Presidential Library and Museum, Boston, MA. King also wrote that if the method of nonviolent direct action 'had not emerged I am quite convinced that by now the streets of the South would be flowing with floods of blood.' 'Letter', 85. As I elaborated above, these gestures towards the racial violence just over the horizon were a key plank in King's rhetorical strategy: 'his preachments against violence were intended for blacks, while his allusions to retributive violence were intended for whites.' Hill, *Deacons for Defense*, 263. In other words, he tried to stoke white fear that there would be a black uprising if the authorities did not engage with King and others in the moderate leadership, while all the while attempting desperately to ensure that such an uprising never came about (knowing that it would be crushed, murderously, in a heartbeat).

[69] Quoted in Carson, *In Struggle*, 160. Julius Lester, an SNCC organiser and writer, eloquently expressed this frustration and growing militancy: 'Now it is over. The days of singing freedom songs and the days of combating bullets and billy clubs with Love … Love? That's always been better done in bed than on the picket line and marches. Love is fragile and gentle and seeks a like response. They used to sing "I Love Everybody" as they ducked bricks and bottles. Now they sing 'Too much love, Too much love, Nothing kills a nigger like Too much love'. They know, because they still get headaches from the beatings they took while love, love, loving. They know, because they died on those highways and in those jail cells, died from trying to change the hearts of men who had none. They know, the ones who have bleeding ulcers when they're twenty-three and the ones who have to have the eye operations. They know that nothing kills a nigger like too much love.' Julius Lester, 'The Angry Children of Malcolm X', *Sing Out!* (November 1966): 120-125, 24.

[70] James Forman persuaded Lewis to remove this closing line from his speech. Douglas Martin, 'James Forman Dies at 76: Was Pioneer in Civil Rights', *New York Times*, 12 December 2005. Sherman, of course, pioneered the strategy of 'total warfare' during his 'March to the Sea', when he made it his policy not only to defeat the Confederate troops, but to destroy the region's crops, industry, and infrastructure. And it was Sherman who issued the famous 'forty acres and a mule' special field order (later countermanded by Andrew Johnson) expropriating land from slaveowners and

Walter Reuther might have perceived the stakes correctly when, on the day of the March on Washington, he told Kennedy: 'Look, you can't escape the problem. And there are two ways of resolving it; either by reason or riots … the civil war that this is gonna trigger is not gonna be fought at Gettysburg, It's gonna be fought in your backyard, in your plant, where your kids are growing up.'[71]

3.3. Sidebar: Civil Disobedience, The Self and The Movement

Our main business in this chapter is done. But I should like to round off my empirical accounting of the object of liberal inquiry with a final rumination — this time on the cathartic tendency in isolation. In doing so I do not mean to fortify my argument against that view: Chapter Two made a strong enough case for its abandonment. Rather, I shall use the occasion to try to get across something important about the moral reality of historic civil disobedience — to wit, that its campaigning, movement-based nature reveals as fetishistic any attempt to invest the political breach of law with special psycho-moral significance. The cathartic view, with its focus on the self-confirmatory, soul-nourishing quality of civilly disobedient lawbreaking, reads into the political

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transferring it to freed slaves. In other words, the meaning of this allusion would have been quite transparent — and bone-chilling — to white southern listeners. And it would have been similarly transparent — and enlivening — to black southern listeners. The original text of Lewis's speech is reprinted in Philip S. Foner ed., *The Voice of Black America: Major Speeches by Negroes in the United States, 1797-1973. Vol. II* (New York: Simon & Schuster, 1975), 359-61.

[71] Quoted in Hill, *Deacons for Defense*, 262. Kennedy was deathly afraid of the spectre of a black uprising. The March on Washington is remembered now as a triumph of democracy and a model for today's mass demonstrations, but Kennedy prepared for it as if for an invasion — he banned liquor sales, imposed a curfew requiring marchers to be out of town by sundown, moved 4,000 troops into the city, and put 15,000 paratroopers on alert at airbases in North Carolina [262]. As one King biographer put it, Kennedy worried that 'negroes might sack the Capitol like Moors and Visigoths reincarnate' [262, quoting Taylor Branch, *Parting the Waters* (New York: Simon & Schuster, 1988), 872]. Crucially, Rawls is the only liberal theorist to grasp anything of the dynamic I discuss in this paragraph — viz. that, in his parlance, sustained and intractable injustice 'invites either submission or resistance', and that civil disobedience is a practical means of asking which alternative the majority wants to choose. What Rawls does not see, however, is that this klaxon quality of civil rights disobedience was more 'threat' than 'warning', and, as I noted above, that it was in any case only a small part of the wider disobedient agenda — a third coercive gambit on top of the strategies of moral and economic blackmail discussed earlier in this section. *Theory of Justice*, 321-322.

breach of law a morally significant connection to the self — a metaphysical dimension — that it simply does not possess.

I say that in the first instance just because it's in the nature of prosecuting a mass and persistent *campaign* of civil disobedience that activists will have to get themselves arrested time and time again. Thus even regardless of their specific intentions and explicit purposes (which, as we saw above, were to destabilise a racial tyranny, not to express themselves in integrity-preserving fashion), their activism could not have furnished them with the psycho-moral boon — the feeling of self-unity — that the cathartic view sees as the fruit of the politically motivated breach of law. After all, and as we saw at length in Chapter Two, this fruit is supposed to reside in civil disobedience's offering an avenue for performative, *dissociative* self-expression: a variety of expression that one cannot make use of within the law, because it consists just in the fact of breaking it — just in the fact of placing oneself outside the society by means of contravening its formal rules.

But here's the thing: if the psychic good of civil disobedience consists in symbolically 'outlawing' oneself through political lawbreaking, then no more of that good can be got from *further* breaches of law. One cannot outlaw oneself any more by infringing the law a second time, a third time, a twenty-fourth time. In other words, if there be psychic profit in the bare fact of breaking the law — as the cathartic view supposes there is — then it must suffice to cross that threshold only once.[72]

And yet, as I have just suggested, and as is a strategic necessity of mounting a *campaign* of civil disobedience, civil rights activists were, in the main, veteran lawbreakers — they were *repeat offenders*. Patricia Stephens suggested as much when, in a letter smuggled out of jail during the first wave of sit-ins in 1960, she wrote: 'this is something that has to be done over and over again, and we are willing to do it as often as necessary. We strongly believe that Martin Luther King was right when he said, "We've got to fill the jails in order to win our equal rights." When I get out, I plan to carry on this struggle. I feel I shall be ready to go to jail again if necessary.'[73] And James Farmer also suggested as much when he declared during the Freedom Rides that 'jails are not a new experience for the Riders, but the Riders are definitely a new

[72] More accurately: once per issue, or per substantial period of time. Not weekly or monthly, on the same issue, for years.

[73] Quoted in Iwan Morgan, 'The New Movement', in Iwan Morgan and Philip Davies eds, *From Sit-Ins to SNCC: The Student Civil Rights Movement in the 1960s* (Gainesville, FL: U. Florida Press, 2012): 1-22, 7.

experience for Mississippi jails.'[74] It was John Lewis, however, a veteran of both of those campaigns, who best proves the point and perhaps took the cake: he had been arrested on twenty-four occasions by the time he became SNCC chairman in 1963, and he was arrested on at least twenty-one occasions thereafter.[75]

Now, I leave open, of course, that the *first* act of civilly disobedient lawbreaking — that first crossing of the threshold — could admit of the kind of self-confirmatory and self-expressive significance that the cathartic view imputes to unlawful activism. My point is only that the cathartic story cannot be the *general* truth of really-existing civil disobedience. It is statistically improbable, I mean to say, that any particular act of civil disobedience over the course of the civil rights period could admit, even in principle, of this kind of reading, since that act would likely not be the occasion of the activist's self-confirmatory break with the mainstream society, but simply the third or fourth time they'd been arrested that year.[76]

The point I am drawing out here, to clarify, is not so much that the organised, persistent, movement-based reality of civil rights disobedience falsifies the cathartic view (though

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[74] Quoted in Zinn, *The New Abolitionists*, 57. Indeed, 'many of the participants in the various freedom rides were already familiar with the jails of the South; they were veterans of the sit-ins and "jail-no-bail" protests. The southern jails had become the crucible in which the cadres of civil disobedience were being formed.' Piven and Cloward, *Poor People's Movements*, 229-230.

[75] 'Lewis Elected as SNCC Chairman', *Student Voice* 4:2 (August 1963), 69; his 21 arrests thereafter detailed in Erin Blakemore, 'John Lewis' Arrest Records Are Finally Uncovered', *Smithsonian Magazine*, 1 December 2016. The record, however, may go to Joan Andrews Bell: an ex-Operation Rescue activist, she has been arrested on more than *two hundred* occasions since 1985. Brian Caulfield, 'Joan Andrews Bell Freed on Unsupervised Parole', *National Catholic Register*, 5 April 1998. Note that Peter Singer gives a lower, though still astounding, estimate of merely 130 arrests. Singer, *Practical Ethics* (3rd edn, Cambridge: Cambridge University Press, 2011), 256.

[76] I concede that this point may not generalise to every movement. I suspect that one cannot refuse the draft twice, for instance, and it is plain enough that the anti-poll-tax campaign relied on one-off breaches of law (unless one wants to take each quarterly bill or each notice of arrears as a fresh opportunity for disobedience). These cases may for that reason admit in principle of the kind of psychic investiture at issue in this section. Operation Rescue, by way of contrast, lies at the other end of the spectrum: Richard Hughes notes that it was even more reliant on repeat offending than was the civil rights movement, which fact may not surprise us, since it is difficult to see how a campaign could generate 35,000 arrests in one year without its activists going to jail more than once. Hughes, 'The Anti-Abortion Movement', 18. For more on Operation Rescue's reliance on a veteran cadre of activists, see Faye Ginsburg, 'Saving America's Souls: Operation Rescue's Crusade Against Abortion', in Martin E. Marty and R. Scott Appleby eds, *Fundamentalisms and the State: Remaking Politics, Economies, and Militance* (Chicago: U. Chicago Press, 1993): 570-580.

it does); but that this reality establishes the more general unwisdom of imputing any great significance to the act of political lawbreaking itself — least of all a metaphysical, self-confirmatory significance. And pointing to the veteran credentials of most civil rights activists is not the only way to see this, for what also works to discredit this fetishistic impulse is to observe that many activists were *paid* to undertake their actions — that they were, in other words, full-time radicals, professional revolutionaries, salaried arrestees. SNCC field organisers, for instance, were paid a weekly stipend (and often given board) so that they could devote themselves to full-time activism: so that they could get themselves arrested time and time again.[77] Indeed, it was in essence 'SNCC's *function* to provide them with a framework to pursue the struggle full-time'.[78]

Given this, it would seem a folly to try to discern in any particular act of SNCC civil disobedience a morally-redolent connection to the activist's self — to try to see their act of lawbreaking as one of profound psycho-moral significance.[79] Or even, and more to the point, to see it as a qualitative break with their ordinary life. These acts of lawbreaking would not be self-confirmatory assertions of the activist's moral stance, but, in an important sense, *work*: more of the same, part and parcel of the everyday business of being involved in the movement, one of the routine tasks of the struggle.[80] And this is indeed how activists of the period regarded their lawbreaking — i.e., with striking nonchalance, betraying no sense that civil disobedience was any more important an activity than the other (lawful) ones to which they devoted themselves: voter registration, adult education, pamphleteering, activist training, planning lawful demonstrations, working to support cooperatives and independent political parties (and so on).[81]

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[77] This 'subsistence salary' was set at ten dollars a week. Zinn, *Postwar America*, 205.

[78] Carson, *In Struggle*, 33, my emphasis. He also refers to SNCC as a 'cadre of full-time organizers and protesters' [31].

[79] This is to say nothing of what is obvious here — viz. that the form and character of most civil rights actions were not the product of the individual activist's will, but of the wider organisation's strategic objectives.

[80] In this connection it is worth noting that civil rights disobedients *trained* for their actions: SNCC operated a programme of 'passive resistance training', and CORE ran nonviolent direct action workshops in Washington DC for more than a decade. I mention this to try to get across in a different way that these actions were not outpourings of the self, but planned-for, trained-for, operations with a substantial infrastructure behind them — that these were, in effect, *deployments.*

[81] This nonchalance is expressed representatively in John Lewis's fond reminiscence of James Forman — viz. that even though he was usually busy at HQ, 'every now and then he got out there and got arrested and

These facts — the frequency with which civil rights activists broke the law, and the correspondingly blasé manner in which they regarded those frequent breaches of law — erode any sense of the momentousness and personal metaphysical gravity of the act of civil disobedience. But they hide another issue of significance here, namely that civil rights disobedience was an often fraught business, and that part of the rationale for bringing student activists on payroll was to deliver those with more to lose — those with jobs, dependents, or less robust physical frames — from taking a turn at the front (and thereby risking the employment blacklistings, beatings, and mortal threats that were a routine concomitant of civil rights action in the Deep South).[82] SNCC field organisers regarded lawbreaking as just part of the job, in other words, but a job that fell to them partly as a result of an intra-community redistribution of a burden — the burden of unpleasant but necessary activism — from which the more vulnerable should be shielded.[83]

Now, what all of this makes clear — the campaigning, movement-based reality of historic civil disobedience, wherein acts of lawbreaking were advised and supported by a larger organisation, purposefully distributed as a kind of social hazard, undertaken by veteran lawbreakers (often salaried), and regarded by them with a certain insouciance — is the essentially fetishistic nature of the cathartic habit of perceiving the activist's very self at stake in the political breach of law. Its melodramatic misperception of what is — in the end — simply a necessary, quotidian part of the collective endeavour of running a dissident social movement.

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went to jail like the rest of us.' Quoted in Douglas Martin, 'James Forman Dies at 76: Was Pioneer in Civil Rights', *New York Times*, 12 January 2005. See also in this connection Judy Richardson's fairly matter-of-fact recollection of her activism: 'we staged regular sit-ins … they followed a similar pattern: the staff got angry and refused to serve you; the police arrived and asked you to leave; we refused, and went limp as we were taken to the county jail. I would be detained for five or six days, but I had it easy: I was never beaten. We made $9.64 a week, and were fed and housed by local families or in dorms paid for by the office. We'd often have parties to let off steam.' Judy Richardson, '"I Had It Easy: I Was Never Beaten" — Fighting Segregation In The US South', *Guardian*, 11 November 2016].

[82] Indeed, 'SNCC organizers understood that their larger responsibility was not to the organization, but to the local people with whom they were organizing, who were nurturing and guiding them … and who were at much greater risk than they were. For the most part, young SNCC activists, though still in harm's way, did not have families to support.' 'SNCC Culture', SNCC Digital Gateway, SNCC Legacy Project and Duke University: https://snccdigital.org/inside-sncc/sncc-culture.

[83] A CORE workshop guidance note on the danger of 'battle fatigue' perhaps attests to the simultaneously routine and burdensome reality of civil rights activism. Oppenheimer, 'Workshops in Nonviolence — Why?' (1964), CORE internal training document, Veterans of the Civil Rights Movement Digital Archive.

And if still we persist in trying to assign to disobedient activism a powerfully self-confirmatory quality — to say that it accomplishes something crucial to the activist's sense of self, then I urge that we locate the relevant moment of self-confirmation not in any particular act of lawbreaking, but in the conscious, morally charged, integrity-confirming, *liminal* decision to join the movement in the first place.[84] It is participation in the movement and its attendant complex of duties and responsibilities — the carrying on of a certain politically active lifestyle — that, if anything does, builds up and confirms the activist's sense of self. We may even say that the decision to join up, to dedicate oneself to something larger, that *this* is the morally resonant act of disobedience. Certainly that seems closer to the truth, and it is consonant with the view I proposed in Chapter One — viz. that disobedience is not a juridical but a social category. In any event, I need not hold that line — that the choice to become an activist is a metaphysically significant act of disobedience. My claim in this obiter dictum on the cathartic tendency is only that *lawbreaking*, in the form of particular acts of civil disobedience, has none of the metaphysical significance that theorists have been tempted to see in it; and that to be so tempted is to make a fetish of civil disobedience: to misunderstand its real nature — not an extraordinary, self-enriching form of expression, but a routine task of the movement.

3.4. Civil Disobedience vs. History: Summary Conclusion

My purpose in this chapter was to pierce the veil of liberal civil disobedience, to dig behind the concept and offer an empirical, historical, accounting of it. And in so doing I aimed to establish an important premise in my overarching argument in this thesis — viz. that the fifty-year ob-

[84] And what is also important here: if we *are* in the business of trying to discern the 'self' in the act of civil disobedience, what kind of self could appear there? The *social* self, it seems to me — the individual bound in relations of solidarity and comradeship. This, certainly, is what's implied in SNCC's aphoristic self-description: 'band of brothers and sisters, circle of trust'. Note that Michael Walzer, alone among theorists of a liberal bent, recognises this: 'men rarely break the law by themselves, or if they do they rarely talk about it. Disobedience, when it is not criminally but morally, religiously or politically motivated, is almost always a collective act, and it is justified by the values of the collectivity and the mutual engagement of its members.' Michael Walzer, *Obligations: Essays on Disobedience, War and Citizenship* (Cambridge, MA: Harvard University Press, 1970), 4. See also Cheryl Lynn Greenberg ed., *A Circle of Trust: Remembering SNCC* (New Brunswick, NJ: Rutgers University Press, 1997).

ject of liberal inquiry bears no resemblance to the reality of canonical civil disobedience.

I made that case by counterposing the liberal idea of civil disobedience — civil disobedience as a certain kind of reason-giving political speech, one trading on the symbolic potential of the breach of law *per se* — with the truth of disobedient activism in its most famous incarnation. And though I remind the reader that I am no historian, and though I admit that I have done little justice to the movement and its personalities, I believe that I have given a reliable enough sense of them to establish that, *pace* the liberal concept, there was nothing purely rhetorical about civil rights activism. Indeed, the hall-of-fame disobedients of the civil rights period intended by their actions to make official segregation too expensive to maintain, and to precipitate crisis situations that would, by means of a bodily kind of moral blackmail, coerce federal agencies into intervening against the state governments and upholding the rule of law.

I undertook two subordinate discussions in tandem with this primary line of argument. First, I suggested that — even regardless of activists' coercive intentions — reason-giving moral suasion could not have done the work in the civil rights case. The federal authorities were operating outside the rules of political-moral deliberation, so to speak: they never doubted what was right, they doubted only whether to *do* what was right, or else to remain beholden to their own political ambition. And that practical choice — in effect, of justice or political advancement — is not one that discursive interventions of principle can illuminate. Indeed, the choice was in fact made, I argued in a further comment, not by moral introspection, but by the prospect of black rebellion. Second, I ruminated once again on the cathartic variant of the liberal view, arguing, if more as a matter of general interest than to further undermine that tendency, that it makes a fetish of civil disobedience — of the political breach of law — to read it in excessively metaphysical, self-confirmatory terms. To ignore the extent to which civilly disobedient lawbreaking has little intrinsic (much less personal) significance, being simply a routine part of the collective enterprise of running a dissident social movement — part and parcel of the collective attempt to force change.

Now, my remarks here were mainly confined to the civil rights case, of course.[85] And I believe that I had reason to so

[85] And even then, concentrated mainly on the classic campaign in the South. I clarify now that in circumscribing my focus in this way, and in largely passing over the efforts against northern *de facto* segregation, police brutality, housing and employment discrimination (and so on), I did not mean to lend credence to the old canard that racism — even institutionalised racism — was a distinctively southern problem. For sustained

confine them (and not only reasons of space). This activism was, after all, the blueprint for the academic and pop-cultural idea of civil disobedience — civil disobedience's home context, alleged exemplar, and proof of concept. In view of which it is itself an indictment of the liberal account, then, that it should go so badly wrong in this case — that it should reinforce, if often implicitly, the quietist myth that the southern racial hierarchy was overturned by means of a series of discursive, symbolic, didactic, redemptive appeals to the white majority's better nature. And quite apart from the descriptive error, it is an important fact to know and grapple with that it took much more militant action than this even partially to erode so astoundingly, baldly, and criminally unjust a regime.[86]

That said, I also touched upon the reality of civil disobedience in several other of its historically and politically significant incarnations (albeit with all the necessary brevity) — the '68 campus revolts, the poll tax resistance, the militant anti-abortion activism of the US 1980s and 1990s, and the anti-pipeline encampments at Standing Rock (along with sundry other environmental activism). These actions and campaigns were also coercive in character; or, what is more germane to my theme, not at all forms of discursive, rhetorical intervention.

We may have confidence, then, in my critical claim here — viz. that liberal civil disobedience, the discursive breach of law *per se*, is largely illusory. And yet, why have I said — here and in the introduction to this chapter — that liberal civil disobedience is *largely* illusory? I must make good now on what I promised at the outset of this chapter, and address any lingering doubt that the set of actions I surveyed here constitutes a comprehensive or representative enough sample to establish so drastic a claim as the one I seem to be defending — that liberal civil disobedience is a mirage, or something close to it.

I say 'largely' because I cannot deny, and do not mean to, that there are some actions — indeed, many of them — that resemble the liberal idea of civil disobedience, at least in their general outline. I am thinking here, for instance, of those conducted by ACT UP, by the Lesbian Avengers, by Plane Stupid, by UK Uncut, by Fathers 4 Justice, by Trenton

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commentary on this myth and its political misuses, as well as for hair-raising detail on the surprisingly militant resistance to integration in the North (albeit a resistance conducted by much wealthier and better-connected people, hence much less crudely than in the South) see e.g. Hall, 'The Long Civil Rights Movement'; and esp. Jeanne Theoharis, *A More Beautiful and Terrible History: The Uses and Misuses of Civil Rights History* (Boston: Beacon, 2018).

[86] I return to this theme in my §5.4.

Oldfield (and so on). And I am thinking here, for example, of the Peace Movement camps at Greenham Common and Faslane, of a broad swathe of Greenpeace actions, and of the recent spate of disobedience at the US Capitol Complex (concerning, variously, the repeal of DACA, family separations at the US-Mexico border, and the Supreme Court nomination of Brett Kavanaugh).

I have no doubt that the reader will be able to add to this list, and once again I take the general point that, at the very least, there is a large quantity of unlawful activism that doesn't fit the description I have been developing in this chapter — viz. of civil disobedience as an obstructive, cost-raising, coercive technique.[87] And more to the point, that there is a large quantity of unlawful activism that *does* perhaps appear to fit the liberal description — viz. of civil disobedience as a rhetorical intervention relying on the symbolic, sensationalising potential of the breach of law.[88]

I accept all of this, but I do not think that it is any vindication of the liberal account. First, even granting that these actions correspond broadly to the liberal object of inquiry — even granting that liberal civil disobedience does describe a broad current of really-existing activism, it does not seem to

[87] Incidentally, Rodney Barker takes Ronald Dworkin to task for misperceiving a coercive *raison d'être* in the peace camp at Greenham Common. He writes: 'At one stage an attempt was made to encircle the base completely with a chain of hand-linked women, but this was for one day only and was not comparable, for instance, to the Saltley coke depot picket in 1972 or the pickets during the coal dispute of 1984-85. No more, in the US, was the weaving shut of the doors of the Pentagon in 1980 by the "Vermont Spinsters" a coercive or blackmailing threat in Dworkin's sense of the term. Major parts of the protests were not coercive even briefly or incidentally. Holding a picnic on a missile hangar or cutting barbed wire and decorating it with teddy bears do not constitute the same kind of physical opposition or impediment to the policy of the government as do refusing to set a rate, pay a tax, or clear the streets when ordered to do so by the police'. Rodney Barker, 'Civil Disobedience as Persuasion: Dworkin and Greenham Common', *Political Studies* 40:2 (1992): 290-298, 295; responding to Dworkin, *Matter of Principle*, 112.

[88] Though accurate in part, this identification would still betray a somewhat impoverished idea of the point and significance of many of these actions. Protest camps in particular (including Faslane, Greenham Common, and the various Occupations) have an important prefigurative dimension beyond whatever their 'conversation-changing' potential. I will not pause to discuss that dimension, but on Occupy's 'rhizomic' organising model and experiments in grassroots deliberative democracy see e.g. Bernard Harcourt, 'Political Disobedience', in Mitchell, Harcourt, and Taussig eds, *Occupy: Three Inquiries in Disobedience*(Chicago: U. Chicago Press, 2011): 45-92; and for more on the anti-hierarchical, feminist prefiguration of Greenham Common, see e.g. Sarah Hopkins and Barbara Harford eds, *Greenham Common: Women at the Wire* (London: Women's Press, 1984); and Jill Liddington, *The Road to Greenham Common: Feminism and Anti-Militarism in Britain Since 1820* (Syracuse, NY: Syracuse University Press, 1989).

me a victory that the account should capture *at most* these comparatively innocuous and often ineffectual cases, and at the same time provide no grip at all on the momentous, historic, and — it seems plain — *more successful* actions. Indeed, and without too much hyperbole, it strikes me that if civil disobedience means anything, it means the civil rights movement, it means campuses in revolt, it means four million people refusing to pay the community charge, it means ten thousand people at Standing Rock. It does not mean six or seven activists arrested while swinging from a cooling tower, three of them arrested while chained to a fence at Faslane, two of them arrested in mock-Guantanamo dress at a Brighton Starbucks, or one of them arrested, alone and Batman-costumed, atop Buckingham Palace. I take up that theme at some length during the thesis's last act, so for now let the point stand unadorned. I mean just to suggest that, even granting that this sort of 'stunt' activism[89] does correspond to the liberal idea of civil disobedience as a discursive intervention, we should not lose sight of the fact that it captures nothing of the historic episodes, the proofs of concept, the cases which are the account's own motivation, and which make us venerate the very idea and potential of civil disobedience.[90]

I stand by that claim, and yet even there I might have conceded too much. I say that in the first instance because under a slightly more nuanced idea of what it is for a theoretical object to have historical life — viz. for it to describe not only certain formal properties of an action in the world, but also crucial functional properties of that action, liberal civil disobedience's grip on political reality is further weakened. In other words, if we take it that the object of liberal inquiry is not merely a discursive form of lawbreaking, but one that, as a general matter, may be said to play a definite role in political society — viz. of democratising it, hence legitimising it, or perhaps of moving it in the direction of justice, then the undeniably modest character of these actions may un-

[89] I must clarify that I do not use this term pejoratively. I do not mean to suggest that these actions are futile, or insubstantial, or fatuous, much less that they are easily done. Few amongst us are brave enough to try it, and with this terminology I mean only to indicate (and contradistinguish) its strategic fulcrum — viz. the performance of publicity stunts that might refocus public attention on some vital matter.

[90] I also remind the reader that vindication of the liberal descriptive picture would not *ipso facto* vindicate the liberal account. I showed in Part One that this account is conceptually and normatively defective in several crucial respects (even bracketing the question of its descriptive accuracy). In other words: if, in the end, the cases at issue here *were* truly described by the liberal concept of civil disobedience, we would then have a conceptually and normatively deficient account of an existing political practice, rather than a normatively and conceptually deficient account of an imaginary one.

dermine any sense that even this marginal remainder properly belongs under the liberal rubric.[91]

That said, but remaining still on the theme of stunt activism's comparative innocuousness, there is another reason to doubt that the liberal idea captures even this rump tendency in real-world disobedience. Even granted that these one-off direct actions likely do have no greater ambition than publicity — than mounting a discursive intervention into the public deliberations (and therefore depart enormously from the historic cases discussed in this chapter), this constrained ambition likely reflects not a principled *self*-limiting of the action's horizons, but rather the activist's acknowledgement of the unassailability of the status quo by other means. In other words, I do not think that these activists *choose*, as a matter of principle, to forego cost-raising in favour of rhetoric; I think that these activists simply realise that they lack the means to meaningfully coerce (hence that these actions are, in some sense, the 'second best'). I suspect, for instance, that anti-ICE activists would prefer to see mass and persistent occupations of immigrant detention centres (rather than short-lived, symbolic occupations at a handful of sites); I suspect that the F4J Batman would rather have seen a campaign of cost-raising sit-ins at the family courts; and I suspect that Greenpeace activists would prefer to see an effective blockade of coal-fired power stations across the country, rather than a banner being unfurled from the cooling tower at one or two of them. I also suspect that if one of their temporary shutdowns accidentally rendered the plant permanently inoperable, they would not regret their action — they would not think that they had gone too far, in stepping from symbolic intervention in the public debate on climate change to material attack on heavy emitters (rather, I suspect that

[91] Even if the reader finds this move unpersuasive, rejecting my marrying together of liberal civil disobedience's form and function, we must still acknowledge that the really crucial question remains unaddressed. These stunt actions, even if they be discursive in form, do not perform the political function assigned them in liberal theory. Indeed, their political function in reality is opaque, though it is a safe enough conclusion that they do not in any substantive sense democratise and legitimise the status quo (much less move it appreciably in the direction of justice). For that reason we still lack by far the most important element in a theoretical reckoning with them — not their bare descriptive form, but an account of their *value* in this actual world. In other words, the important thing to take away from this concluding discussion would seem to be not that the liberal concept *possibly* describes a current of really existing activism, but that it *definitely* doesn't describe that current's purpose and value. The point might be more forceful put the other way round: if the impetus for the liberal engagement with civil disobedience is to identify and praise a particular form of unlawful activism for its impressive power to democratise, legitimise and ameliorate the status quo, it would not be this fairly impotent and innocuous form of protest that theorists would seize upon. I return to this theme in §5.2.

they would be delighted, that they had got what they really wanted, but could not have expected or hoped for).[92]

What I am suggesting, in other words, is that these actions are 'civil' only reluctantly and pragmatically. While these actions perhaps preserve the characteristic *form* of liberal civil disobedience, they emanate from a different moral hinterland: they do not preserve the attitudinal qualities of the liberal civil disobedient.[93] And in suggesting that, I am suggesting this: that the difference between stunt activism and the classic cases of civil disobedience surveyed earlier is not, properly speaking, one of *kind*, but rather one of numbers and circumstance. Civil rights activists possessed the organisational means and the right political-economic conditions to coerce effectively, and so they did. Contemporary anti-capitalist activists do not, and so they do not try to.

So that is why I hedged slightly in this chapter, and the reader will have to judge whether this hedging was warranted. Once we've pierced the veil of liberal civil disobedience, we see that the discursive breach of law, far from being an endemic, historically significant and politically vital form of engagement, is in fact *largely* illusory. It does not describe the classic cases, the ones that established civil disobedience in the political and theoretical pantheon, and in light of my arguments in this concluding section, I am not sure that it describes any current of really-existing activism at all. But *if* indeed it describes a species of really-existing activism (albeit a historically marginal and usually ineffective one), it seems to me that the proper conclusion to be drawn there is perhaps not that the liberal concept is to that extent vindi-

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[92] Indeed, Tony Milligan finds that 'civil disobedience, when thought of as a *special kind of communication*, has come to be regarded [among today's activists] as second-best and perhaps even a waste of time.' We may translate this point into the language I introduced in a note above: stunt activism is not resistance, but *protest* (which is why it appears to fall more naturally under the resolutely rhetorical ambit of the liberal concept). And being protest, rather than resistance, it is regarded by activists as inadequate to the task at hand: something to fall back on where there is no viable option for resistance, or to conduct as a 'kitchen sink' complement on top of their strategies of resistance. Tony Milligan, *Civil Disobedience: Protest, Justification, and the Law* (London: Bloomsbury, 2013), 29, my emphasis; and see more generally 28-31.

[93] These actions embody a spirit far distant from that imagined, for instance, in Brownlee's praise for the social service that activists do in *choosing* persuasion over coercion (and thereby indicating that there is a nobler way to resolve our disagreements): '[civil disobedients] also model for others a suitably constrained mode of dissent, which is part of their gadfly service. They *opt* to be a gadfly, not a scorpion.' 'Reply to Critics', 734, my emphasis. These actions also embody a spirit far distant from that assumed in Brownlee's view that '[civil disobedients'] self-restraint shows both that they realise they may be mistaken about their views and they desire to engage with people [only] at the level of reason.' [726]. Not so, it simply shows that there is no viable strategic alternative!

cated, but that this 'liberal' form of action is inadequate, and that activists believe it to be so. In the next chapter I develop that idea, and in so doing I turn away from this backwards-looking engagement with civil disobedience as it is and was, and towards a treatment of civil disobedience as it might be: I argue that the discursive breach of law, as well as having little historical life, cannot work as a *model* for future disobedience.

Chapter 4: 'Civil Disobedience' vs. The Future

Hitherto in this part I have tried to puncture the myth that historic and historical civil disobedience has taken a discursive, reason-giving form. I now change gear and change tack, focussing not on the historical and political life of disobedient activism to date, but on disobedience as it might be tomorrow. My aim in this chapter, in other words, is to undermine the notion that disobedience after the liberal fashion *could* flourish in our society — to shake our confidence that the world is fertile ground for the discursive breach of law *per se*.

Now, the reader need not accept everything I say here, and I admit that my claims — because their scope is so broad — are far from watertight. That ought not to much jeopardise my project, however. I do not strive to construct an inarguable projective case against the liberal model of disobedience-driven reform, and nor do I claim anything so categorical as that liberal civil disobedience will never work. Rather, I aim simply to create sufficient pessimism about the democratic, deliberative, reason-sensitive propriety of our world to weaken any general faith that, regardless of what disobedient activism has looked like historically, the liberal archetype could yet have a life as a moral exemplar — could yet serve as a regulative ideal of dissident conduct in this actual world.

I make that case impressionistically, tracing the implied route of a reason-giving disobedient communiqué from its initial voicing to its eventual acknowledgement in law or policy. And against the liberal impression of the social and political circumstances opening up this route — to wit, authorities generally receptive, even if reluctantly, to disobedient arguments of principle, and a political culture undergirded by robust public moral deliberation of the kind wherein those arguments of principle (if they are convincing) will find some traction, I see it thusly: the police — first contact with the movement — aim to insulate protest from the general population and to deter future displays of dissent (from which fact we may infer that their commanding au-

thorities have little interest in the epistemic boon of the disobedient perspective). The news media — the presumed facilitator of reasoned communion between activist, ordinary citizen, and legislator — is at best indifferent to the fact of civil disobedience, the quality of its arguments, and the 'objective' merit of its cause, and at worst a hostile machine dedicated to marginalising and distorting the kind of criticism that disobedients have historically been given to offer. Legislators themselves, meanwhile — the final constitutional authority — are reliably insensitive to the moral merits of given policy positions, so attuned are they to the exigencies of personal ambition and the donor's yoke (which fact, I must point out, the liberal view itself acknowledges in its quiet moments). Lastly, any prospect of the public at large — the ultimate democratic constituency — managing, despite all of this, to rein in their errant representatives (having been inspired to the ballot box by some resonant disobedient claim of principle), is very remote — and not only because the extant public moral conversation, such as it is, resembles more a great vertiginous noise than any hospitable environment for reasoned suasion.

Once again, I do not pretend to defend these claims exhaustively in what follows, though defend them I do. Some will find them glib and hyperbolic, others will find them so obvious that they hardly need stating. I myself regard them as self-evident: indeed, it seems to me a truism that reason-sensitive legislators and a reliable media — the bare minimum necessary to lend substance to the liberal model of disobedient politics — would not and could not have produced the society in which we live — viz. one urgently requiring dissent of the most momentous kind.[1]

In any event, if the reader finds my case here unconvincing (or, though having the ring of truth, far too quick), I beg patience until Chapter Five, where we will get a fuller sense of what work this material does in my holistic endgame in this thesis.[2] For now I reiterate that my aim here is not to prove

[1] Crucially, I focus only on the state's insulation from disobedient criticism here, avoiding any sustained engagement with the question of what — substantively — might be wrong with the present politico-economic settlement. I trust that we all find the status quo egregious in any number of ways, and Reader, I encourage you to bring your own politics with you. The question I level in this chapter might then be translated thusly: what hope that civil disobedience could advance them, given the realities I draw attention to here?

[2] I shall preview that sense now, even at the risk of muddying the waters here. It will become apparent in Chapter Five that this 'regulative' construal of the liberal idea of civil disobedience is exegetically unsound, in the sense that liberal theorists are quite explicit that they do not intend any such reading. My case in this chapter, then, is one I undertake more for the sake of argumentative charity and comprehensiveness than to address any definite liberal claim — viz. of the kind that even in circumstances

that liberal civil disobedience will never succeed, but rather to suggest that the deck is stacked against it — so much so that we must question the wisdom of concentrating so exclusively and so extensively on this fairly forlorn mechanism of political engagement.

Enough preamble. Let the doom-mongering begin.

4.1. Shouting In An Anechoic Chamber

I begin with the following observation: if the authorities are, as the liberal view imagines them to be, broadly receptive (even if begrudgingly) to the pro-democratic shot of principled dissent — broadly disposed to engage in moral dialogue with the dissenting citizen, there is no evidence of this disposition in the conduct of those state representatives in first contact with the demonstration: the police.[3] Indeed, the police response to protest resembles nothing so much as a paramilitary operation: the infamous and ubiquitous 'command and control', 'strategic incapacitation', and 'order maintenance'[4] models of protest policing ensure that pre-emptive

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such as ours, activism ought to take a non-coercive, discursive, reason-giving, didactic form. I draw no further attention to the charitable status of my enterprise on this count until Chapter Five (largely for the sake of argumentative clarity), though I bring it up now in part because the reader may feel that it permits me a relatively abbreviated treatment of the underlying empirical issues.

[3] As Brownlee has it, for instance: the state, though a 'morally complex and often morally tainted entity', nevertheless possesses the 'moral credibility to engage in a moral dialogue [with protesters]'. In the same vein, Smith locates civil disobedience's reformist value in the 'moral dialogue with authorities and the public that citizens trigger by engaging in civil disobedience', and in the fact that the attendant decision 'whether or not to prosecute and punish the actions of civilly disobedient citizens' may force the authorities to 'reflect on the merits of the contested law and policy as well as the appropriateness of the action taken against it by disobedient citizens'. Brownlee, *Conscience and Conviction*, 229; Smith, 'Public Sphere', 162.

[4] For in-depth treatments of these endemic styles of policing, and for detailed discussion of the law enforcement tactics I survey here, see e.g. Patrick F. Gillham, Bob Edwards and John A. Noakes, 'Strategic Incapacitation and the Policing of Occupy Wall Street Protests in New York City, 2011', *Policing and Society* 23:1 (2013): 81-102; Kylie Bourne, 'Commanding and Controlling Protest Crowds', *Critical Horizons* 12:2 (2011): 189-210; Lesley J. Wood, *Crisis and Control: The Militarization of Protest Policing* (London: Pluto, 2014); Alex Vitale, 'The Command and Control and Miami Models of the 2004 Republican National Convention: New Forms of Policing Protests', *Mobilization: The International Quarterly* 12:4 (2007): 403–15; Luis Fernandez ed., *Policing Dissent: Social Control and the Anti-Globalization Movement* (New Brunswick, NJ: Rutgers University Press, 2008); John A. Noakes and Peter F. Gillham, 'Aspects of the "New Penology" in the Police Response to Major Political Protests in the United States, 1999–2000', in Donatella della Porta, Abby Peterson and Herbert Reiter eds, *The Policing of Transnational Protest* (Aldershot: Ashgate, 2006); Abby Peterson, 'Policing Contentious Politics at Transnational Summits: Darth Vader or the Key-

arrests,[5] stop and searches, mass arrest campaigns, blockading, site fortification, kettling, police brutality,[6] CS gas, pepper spray, sound weapons, water cannon, beanbag rounds, rubber bullets, armoured personnel carriers, *agents provocateurs*, police spies, the confiscation of civilian cameras, the rebuffing of the news media, the jamming and interception of protester communications, on-the-ground surveillance of dissenters, and the use of facial recognition technologies to identify, log and track activists[7] — that all of this is quite

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stone Cops?', in della Porta and Reiter eds, *Policing of Transnational Protest*; Donatella della Porta and Herbert Reiter, 'The Policing of Transnational Protest: A Conclusion', in della Porta and Reiter eds, *Policing of Transnational Protest*; and Robert Reiner, 'Policing, Protest, and Disorder in Britain', in Donatella della Porta and Herbert Reiter eds, *Policing Protest: The Control of Mass Demonstration in Western Democracies* (Minneapolis: U. Minnesota Press, 1998): 35–48.

[5] For a vivid activist's-eye view of the NYPD pre-emptive arrest drive in the run-up to the 2004 Republican National Convention (which drive saw over a thousand activists detained without charge), see Benjamin Shepard, 'Creative Direct Action in the Era of the Patriot Act: Arrested for Stickering, Biking and Other Misadventures', *Counterpunch*, 18 June 2005; arrest figure from Alex Vitale, 'NYPD and OWS: A Clash of Styles', in Astra Taylor ed., *Occupy! Scenes from Occupied America* (London: Verso, 2011): 74-81, 78. On pre-emptive arrest in the UK context, see e.g. Kevin Rawlinson, 'Revealed: Police Using Pre-Charge Bail to Muzzle Protesters', *Guardian*, 25 December 2014.

[6] A comparative analysis commissioned by the Los Angeles Independent Media Center finds that US demonstrations routinely see: 'widespread police brutality, mass false arrest, brutal treatment after arrest, broad zones — up to 50 city blocks — declared off-limits for free speech; literature and political artwork confiscated and destroyed; police raids against organizing centers to intimidate participants, confiscate property, and shut down operations … peaceful protests deliberately misrepresented as violent and terroristic in order to discredit them and discourage others from participating; false claims misrepresenting innocent objects as weapons or bombs; the harassment and intimidation of activists during pre-demonstration organizing; the detention, jailing, and/or deportation of targeted individual activists while engaged in no overt political actions … [the] filing [of] absurd charges (in Philadelphia, 70+ people arrested inside a puppet-making warehouse space were charged with obstructing traffic); [and] the use of sealed indictments to hide [the state's] dirty war on the Constitution from public view and legal challenge.' Paul Rosenberg, 'The Empire Strikes Back: Police Repression of Protest from Seattle to L.A', LA Independent Media Center Special Report, 13 August 2000, 2-3. Documenting the same tendencies, the US National Lawyers Guild finds that law enforcement strategies tend to revolve around 'blocking access, intimidating activists, conducting broad scale (illegal) searches, raids and mass arrests, and confiscating or incapacitating protesters' resources' [quoted in Donatella della Porta, *Can Democracy Be Saved? Participation, Deliberation and Social Movements* (London: Polity, 2013), 156]. For another excellent case study of protest policing in the US context, see 'Out of Control: Seattle's Flawed Response to Protests Against the World Trade Organization', American Civil Liberties Union Special Report, June 2000. For a discussion of the National Guard's military role in policing the demonstrations at Ferguson, see Nadine El-Elnany, 'Ferguson and the Politics of Policing Radical Protest', *Law Critique* 26:1 (2015): 3–6.

[7] For a case study of Chicago police surveillance (including CPD's use of facial recognition technologies), see Adam Schwartz, 'Chicago's Video Sur-

routine even in the 'management' of *lawful* demonstrations today.[8]

'*This* is what democracy looks like!' — so goes the traditional activist refrain; and they are right, painfully so: beleaguered crowds of protesters, confined behind barricades, watched by massed lines of face-masked and body-armoured paramilitary police. And yet this is to report only on the treatment of dissenters themselves. What of their place in the public space? What of their putative lines of dialogic communication to the world outside the cordon? It ought not to escape our notice that law enforcement today appears not to police the demonstration itself, as much as its *border*. Today's demonstrations are subject to curfew, bounded by 'no-go' zones, and committed to strictly-enforced marching routes designed to minimise disruption to the surrounding society.[9]

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veillance Cameras: A Pervasive and Poorly Regulated Threat to Our Privacy', *Northwestern Journal of Technology and Intellectual Property* 11:2 (2013): 47-60. For more on Chicago Mayor Rahm Emanuel's powers to surveil protesters, intercept their communications, and to deputise and marshal agents of the FBI, DEA and DOJ, as well as for a wider analysis of the US Patriot Act's implications for dissent, see Bernard Harcourt, 'Political Disobedience', 73-80ff.

[8] The camps at Standing Rock, for instance, saw all of these tactics, including: body-armoured police in armoured military vehicles firing tasers, tear gas, sound cannon, rubber bullets and beanbag rounds in order to force activists to disperse; police spraying activists with fire-hoses in sub-zero temperatures (leaving more than three hundred demonstrators requiring treatment for hypothermia); police using concussion grenades to halt activist marches (leaving a women with her arm half blown off); the sheriff in charge blaming this injury on a makeshift bomb that protesters had made — later admitting that he had 'misspoken' and that there was no such bomb; police using 'stingray' devices to intercept and/or jam protester communications; police and private security *agents provocateurs* attempting to incite riots that would give law enforcement a pretext for forcibly evicting the camps; police arresting and detaining credentialed journalists attempting to report on the demonstrations; the FAA imposing a no-fly zone over Standing Rock to prevent reporters from covering the police actions aerially (with law enforcement shooting down any camera drones defying the FAA order); and local and federal law enforcement illegally collaborating with private military contractors retained by the pipeline company in order to use 'military-style counterterrorism' measures against demonstrators. This review distilled from Brendan McQuade's long-form coverage in 'Guns, Grenades, and Facebook', *Jacobin*, 5 December 2016. The collusion between law enforcement and private military contractors is reported in Alleen Brown, Will Parrish, and Alice Speri, 'Leaked Documents Reveal Counterterrorism Tactics Used at Standing Rock to "Defeat Pipeline Insurgencies"', *Intercept*, 27 May 2017.

[9] As Waddington notes: 'The police have much to offer a protest organizer, but they seek something in return; it is, after all, a negotiation and that implies that the police have aims they wish to achieve. Those aims go well beyond strict compliance with law: they seek a minimally disruptive demonstration, not just something that avoids "serious disruption to the life of the community"; they want *control*, not just compliance.' Peter Waddington, *Liberty and Order: Public Order Policing* (London: University College London Press, 1994), 102. And this is by no means a novel development, of course. As I discussed in Chapter Three, the March on Washington (that

Traffic diversions are put in place, side-streets are barricaded off, police and stewards form a wall along the side of the marching route, diverting people on the outside away from the demonstration, stopping people on the inside from leaving it, thus ensuring that most demonstrators have no choice but to march into the kettle, and perhaps more to the point, that no spontaneous breakaway groups can make a bid for more heavily-trafficked areas of the city. Ordinary life — civil life — goes on as normal outside the demonstration's event horizon, and for all the thousands marching, those co-citizens living and working nearby are scrupulously spared the spectacle of dissent — the attempt at political communication.[10] Thus is protest quarantined from the normal world and from the citizens and authorities whom it traditionally addresses, and thus is the right to political assembly preserved in attenuated form only, while in practice the authorities contrive to sever such demonstrations from their proper audience.[11]

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enduring symbol of grassroots democratic engagement) was subject to several constraints, including a pre-approval requirement for speakers and their orations (James Baldwin, who'd flown in from Paris, was prevented from taking the microphone); a strict sundown curfew; and a route forbidding rallies at the White House or at the Capitol (forcing King to deliver his famous speech on the steps of the Lincoln Memorial instead). Four thousand troops were stationed around the city, and a further 15,000 paratroopers were placed on alert at Air Force bases in North Carolina. Indeed, so stage-managed was the march that Malcolm X called it 'a circus, a performance that beat anything Hollywood could ever do, the performance of the year'. George Breitman ed., *Malcolm X Speaks* (New York: Grove and Weidenfeld, 1965), 14-15.

[10] Brownlee refers to a Texas Judge ordering an activist to stay away from demonstrations (and likening his order to routine injunctions that drunk drivers stay away from bars, paedophiles stay away from schools, and so on) as a 'potent example of the dialogue-stifling potential of lawful punishment'. I raise this here because I do not see that there is any functional difference between forbidding an activist to attend demonstrations and coordinating national policing strategy such that demonstrations are contained where they can most easily be ignored — in both cases protest is represented as obnoxious behaviour from which the ordinary society should be delivered, and in both cases the state's actions are, to use Brownlee's formulation, 'dialogue-stifling'. For this reason, it might look increasingly unwarranted to mandate that civil disobedience take a strictly dialogic form. *Conscience and Conviction*, 210.

[11] This quarantining tendency is most obvious in the now-endemic practice of banning demonstrations in the vicinity of a target venue, and then designating compensatory (and ostensibly free-speech-saving) 'protest zones' — often little more than chain-link cages on vacant lots — miles away from government buildings, summit sites, or any nexus of ordinary civil life. For more on this strategy see, e.g. Ronald Bailey, 'Speakers Cornered: Orwellian "Free Speech Zones" Violate the Constitution', *Reason*, 5 February 2004. And see also the ACLU's reports on the pervasive use of 'no-go zones' in policing even quotidian political events — presidential appearances, party conventions, and the like. 'Out of Control', esp. 18-22; and 'Freedom Under Fire: Dissent in Post-9/11 America', American Civil Liberties Union Report, May 2003. For sociological commentary on no-go zones

This, then, is the reality of first contact. Demonstrators — even law-abiding ones — are met by a paramilitarised force bent on intimidating them, keeping their protest away from the eyes and ears of lawmakers and ordinary citizens, obstructing those who might move to join them, and deterring those like them from coming out in future.[12]

Of course, with this breakneck review of the situation I have addressed only the phenomenon of lawful protest. And it might yet be that civil disobedience's power to bypass the hermetic seal surrounding the conventional demonstration — to escape the suffocating machinery of the police response — is precisely what makes it an especially valuable tool of dissent. I do not mean to deny this possibility, and I will not categorically rule out that liberal civil disobedience could — in virtue of its characteristic unpredictability and manoeuvrability — breach quarantine. No, what I mean to do here is to raise a *diagnostic* point — viz. that *if* the authorities were inclined to engage in moral dialogue with dissenters, or were at least receptive to the deliberative spur of principled activism, or still less than this were merely *indifferent* to it, this is not how lawful protest would be policed.[13] I am suggesting, in other words, that these facts — that even lawful protest, even in the liberal-democratic world, is carefully boxed into physical spaces where it will trouble people least; that even lawful protesters, even in the liberal-democratic world, are pre-emptively arrested, harassed, CS-

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as a form of 'protest deterrence', see della Porta, *Can Democracy Be Saved?*, 156ff.

[12] William Smith is the only liberal theorist to discuss real-world policing strategies. And at the risk of pre-empting one of my arguments in Chapter Five, I point out here the following strange blind spot in his analysis. He observes, with some concern, that it is far from unusual for activists to be prevented from demonstrating 'apparently on the basis of exaggerated concerns about the likelihood of violence and disorder'. And he thinks, as we saw in Chapter One, that this police habit is 'unreasonable', for law enforcement ought to abet citizens in their dissident endeavours. It does not appear to occur to him, however, that police officials *know what they're doing*, and that this tendency (i.e. to 'sacrifice the [public] advantages of civil disobedience'), is not the product of a corrigible error — viz. that of failing to realise that a draconian response makes it difficult to protest, but is rather the product of precisely that realisation — that a draconian response makes it difficult to protest. See Smith, 'Policing Civil Disobedience', 833; and see more generally my §1.3. I return to this theme in §5.3.

[13] I hardly need point out that the law enforcement response to protest varies according to how its cause is perceived by the relevant powers. Thus, for instance, do pro-gun-control marches in Washington DC and pro-Remain marches in London pass largely without incident or intimidation: these are mainstream positions, and positions which pose little threat to the balance of power. But the causes that civil disobedience (that traditional resort of the powerless) has usually been undertaken to advance, and that we might think it especially important to advance, are those inimical to power's interests, and so they cannot count on so accommodating a police response.

gassed, beaten, kettled, and surveilled — that these facts tell us something important about the priorities of the powers that be. This is not the programme of a regime remotely well-disposed to principled dissent. This is not the conduct of a regime interested in *dialogue*.[14]

4.2. Mike Check

If the police lines are the most immediate audience for any demonstration, reporters are the audience of immediate relevance.[15] And yet the national media is, in the main, a propagandistic cesspit of innuendo and half-truth.[16] At the very

[14] Brownlee is signally pessimistic about the possibility of discursive civil disobedience in situations where the state 'disrupts the conditions of rough communicative equality and reciprocity necessary for genuine moral dialogue', as when it imposes punishment on civil disobedience 'in a way that is insensitive to the communicative efforts of the offender'. *Conscience and Conviction*, 229. But if acting without sensitivity to the communicative efforts of the activist is to have foreclosed the possibility of dialogue in Brownlee's sense, then it is simply unthinkable that her idea of civil disobedience could have a life in our world. What is modern protest policing, if not a programme of gross insensitivity to dissenters' communicative efforts?

[15] Smith, for instance, defends civil disobedience 'as a mechanism for publicising issues that, because of the stifling effects of prevailing orthodoxies, receive insufficient attention in the public sphere' ['Public Sphere', 146]. And his defence relies on the notion that 'civil disobedience, in virtue of being an unlawful form of protest, is a particularly efficacious means of generating publicity for oppositional arguments and thus promoting potentially beneficial society-wide deliberation ... [because] the possibilities of arrest, incarceration and punishment that attend an act of civil disobedience may increase the publicity generated for a particular cause ... [t]his consideration in favour of civil disobedience is particularly strong in liberal societies where news media, for whatever reasons, often tend not to give thorough coverage to lawful political campaigns.' [161-162]. More generally, it is truistic that if civil disobedience is to have the deliberation-firing effect that every liberal theorist ascribes to it, it will have to be picked up and widely broadcast by the news media. How else could one, in the Rawlsian formulation, 'address' the wider society? Or, in the Dworkinian fashion, 'force the majority to listen to arguments against its program, in the expectation that the majority will change its mind and disapprove that program'? Rawls, *Theory of Justice*, 321; Dworkin, *Matter of Principle*, 109.

[16] Not for nothing did Malcolm X warn: 'if you're not careful, the newspapers will have you hating the people who are being oppressed, and loving the people who are doing the oppressing'. Breitman ed., *Malcolm X Speaks*, 93. And even Bertrand Russell, a considerably more cautious commentator than Malcolm, would remark that: 'the forces that control opinion are heavily weighted upon the side of the rich and powerful. Those who are neither rich nor powerful can find no ways of counter-balancing this overweight except such as the Establishment can decry with the support of all who profit by the status quo. There is in every great modern State, a vast mechanism intended to prevent the truth from being known'. Now, I mention Russell here because his own actions with the Committee of 100 had a degree of success in eroding 'this massive artificial ignorance' (insofar as '[they] were reported, and here and there, a newspaper would allow us to

least, and as I discussed in Chapter One, it is answerable to a publishing and ownership model that tends to push outlets to reconfirm their readership's existing worldview. In other words: the national media prints what its controlling interests are happy to see printed, or it prints what its readership wants to read.[17] Neither editorial rationale is consistent with

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say why we did what we did'); and, more to the point, because Brownlee uses this success to buttress her case for civil disobedience's capacity to speak truth to power. In reply, I must clarify that I do not claim that civil disobedience will *never* be reported — the media history of the world proves that a ludicrous view. I simply claim that the media is no friend and sympathetic translator of dissident opinion — or rather, dissident opinion from the marginal quarters for whom civil disobedience has been a traditional resort. And I simply observe that Russell's success was modest, and that CND then had two advantages that no contemporary movement may easily claim: the country's pre-eminent public intellectual (and one with impeccable 'Establishment' credentials to boot) getting himself arrested in their cause; and, more pointedly, the comparative novelty of the strategy of civil disobedience itself. See Russell, *Autobiography*, 635-637; Brownlee, *Conscience and Conviction*, 143 n.48.

If I might continue with this quasi-immanent turn, note that William Smith himself acknowledges (seemingly *pace* his enthusiastic remarks, quoted in my note above, on direct action as a 'particularly efficacious means of generating publicity for oppositional arguments and thus promoting potentially beneficial society-wide deliberation') that 'there is, for example, sobering evidence about the limitations of direct action as a trigger for society-wide deliberation about contentious practices'. Concretely, he reviews the reporting of a climate direct action carried out at a UK airport, writing that 'the coverage was mostly "episodic", in that it provided superficial reporting of the event, rather than "thematic", in that it did not explore the underlying issues and motivations of protesters. The reports were, furthermore, generally negative across a broad spectrum of papers, with journalists tending to emphasize the canceled flights and inconvenience to passengers.' Smith, 'Boundaries of a Deliberative System', 161; drawing from N.T. Gavin, 'Pressure Group Direct Action on Climate Change: The Role of the Media and the Web in Britain, A Case Study', *British Journal of Politics & International Relations* 12:3 (2010): 459–475. For a detailed study of press reporting on environmental disobedience (and its reliance on language and tropes borrowed from the 'war on terror') see Travis Wagner, 'Reframing Ecotage as Ecoterrorism: News and the Discourse of Fear', *Environmental Communication* 2:1 (2008): 25-39. And immanence and environmentalism aside, there is no lack of evidence on bias in the reporting of dissent more generally, nor on the tendency of the media to defer to mendacious police accounts of demonstrations as e.g. violent or riotous. See for instance James Halloran, Philip Elliott, and Graham Murdock, *Demonstrations and Communication: A Case Study* (Harmondsworth: Penguin, 1970); Chris Greer, 'News Media Criminology', in Eugene McLaughlin and Tim Newburn eds, *The Sage Handbook of Criminological Theory* (London: Sage, 2010); Richard Ericson, Patricia Baranek, and Janet Chan, *Representing Order: Crime, Law and Justice in the News Media* (Toronto: U. Toronto Press, 1991); Ericson, Baranek, and Chan, *Negotiating Control: A Study of News Sources* (Toronto: U. Toronto Press, 1989); Regina Lawrence, *The Politics of Force: Media and the Construction of Police Brutality* (Berkeley: U. California Press, 2000); and R.C. Mawby, 'Continuity and Change, Convergence and Divergence: The Policy and Practice of Police–Media Relations', *Criminal Justice* 2:3 (2002): 303–324.

[17] Brownlee herself notes that 'CNN president Walter Isaacson is said to have authorised his news service to provide two different versions of their coverage of the Iraq War, a more critical one for global audiences and a

the liberal model's impression of discursive civil disobedience as a potent — and media-mediated — edifying force.

The local media, by way of contrast, reports widely and without the same slant, though superficially.[18] Indeed, it is difficult to get a clear sense of the issues at stake in any given demonstration, or of the principled reasons that activists offer for undertaking it. And it is still more difficult to find court reporting on disobedient trials and sentencing, and thereby to discover what activists might have said in their own defence. In other words, even the comparatively unbiased local media, which is usually desperate for content (hence without the paucity of spare column inches that might see protest coverage dropped from a national title), cannot be relied upon to give much more than a sketch of an action's form and rationale.[19]

Now, the general truth that I am trying to draw out here, albeit hurriedly and starkly, is that civil disobedience in the world is typically reported infrequently, cursorily, inaccu-

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watered down one for Americans.' In light of this — that Brownlee herself acknowledges that news is tailored to the tastes of the audience buying it, and in particular that the main cable news service in the US produced softball domestic coverage of a much-protested war — my remarks here may appear a little less outré. *Conscience and Conviction*, 146 n.53.

[18] In making this point I ignore that many local television stations in the US are owned by conservative networks known to push a central editorial line (and one occasionally disguised as the spontaneous opinion of one's friendly neighbourhood news anchor, on which see e.g. Lucia Graves, 'Sinclair, The Most Dangerous US Company You've Never Heard Of', *Guardian*, 17 August 2017; and Jacey Fortin, 'Sinclair Made Dozens of Local News Anchors Recite the Same Script', *New York Times*, 2 April 2018). Though virtually all of the local news titles in the UK are owned by Trinity Mirror or Newsquest, I do not think that there is any comparable top-down editorial control over what e.g. *The Greenock Telegraph* prints. That said, these outlets are deeply reluctant to report 'politically', and so we may not have much faith in their propensity to provide an honest counterweight to the national coverage of civilly disobedient demonstrations.

[19] My evidence here is largely anecdotal, since, for whatever reason, local media coverage of dissent appears a subject as yet unknown to social science. But in defence of the unorthodox provenance of these claims, let me first admit that I used to work as a local media strategist for a political campaign (an avenue to which we turned precisely because the national media would not give us a fair hearing), and let me thereafter point out that I have a professional interest in hearing what civil disobedients have to say, and the AHRC-subsidised time to satisfy that interest (which I do by means of a Google news aggregator providing a weekly index of more or less every new report featuring variations on 'civil disobedience', 'direct action', and so on). The point of this autobiographical interlude being that if even I — I who have a professional interest in civil disobedience and the time and resources to go looking into it — find it difficult to get a satisfying picture of what's at stake in most direct actions, what hope can there be that ordinary citizens — people with jobs, people with more pressing claims on their time and attention, could, as a general matter, be reached by those actions?

rately (if not slanderously), and hyper-locally.[20] In other words, that our society is not supported by a media apparatus disposed to report even the basic facts of a demonstration widely or accurately, never mind to broadcast a transparent rendering of activists' moral reasoning to the national audience at home. Given this, I cannot see that there is any reliable prospect of civil disobedience after the liberal archetype securing a foothold in the fourth estate, and thereby transmitting its principled claims — uncensored — to a mass audience.[21]

In any case, that activists themselves doubt the reliability and transparency of the conventional media apparatus is surely one reason why they remain invested in the production of *samizdat*. Yet this cottage industry of DIY publications (now existing largely online), despite its many virtues, and though it often carries in-depth reporting on actions and their rationales, is no more promising an avenue of moral communication to strategically pertinent audiences. The radical blogosphere is a very difficult place to stumble upon, and so the kind of person who might hear about an action through this activist grapevine is the kind of person already plugged in to the dissident network — the kind of person already sympathetic to politics outside the mainstream and to causes at the margins.[22] Precisely the kind of person, in other words, who does not *need* to be reached through civil disobedience, on the liberal impression of its workings.

We must retain a pronounced scepticism, then, that there exists in this concrete world the right media infrastructure for a civilly disobedient politics of reason to flourish. And we must therefore retain a corresponding scepticism that there is good reason for civil disobedience to aspire to the liberal discursive ideal. Of course, with this judgement I am not

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[20] Reader, ask yourself this: when was the last time you heard news of civil disobedience? And if you have done so recently, do you remember getting a reasonably satisfying overview of the disobedients' claims and arguments?

[21] I have not mentioned social media, of course. In 2019 no-one can have faith in what was once promised us: that citizen journalism would weaken our dependence on the traditional press and help to forge a new and better-informed citizenry. If anything, the pendulum seems to have swung the other way: we now cling desperately to the epistemic authority of the traditional press as we float in a great sea of rumour and disinformation. And even notwithstanding the murky question of 'fact' in this digital age, the vision of social media as a new virtual agora is dead. Whatever Twitter and Facebook might be, they are not a fertile environment for a revitalised discourse of reason and principle.

[22] To place this remark in context, and to draw on the same style of argument as supported my comments above on local media, even I — a professional researcher of civil disobedience — found it difficult to stumble across 'www.unicornriot.ninja', one of the principal outlets of the US disobedient left.

suggesting anything so categorical as that the principled claims articulated in civil disobedience will never be picked up, or that they will never be reported in detail, or even that they will never be put to a mass audience hitherto unsympathetic to the cause. Rather, I mean only to suggest that there is sufficient doubt about the reliability and 'objectivity' of the prevailing media apparatus to weaken any presumption that civil disobedience *ought* to take an essentially didactic form — that it ought to aim just for 'public moral education', that it ought to restrict itself only to trying to foment, through media channels, a lively and principled debate of the kind that might bring pressure for a change in the law.[23]

4.3. The Powers That Be

The demonstration is over. The law is breached and the newswires are ablaze. But what of the other half of the liberal equation? What of the idea that — once out there in the public domain — disobedient arguments of principle will gain traction in the national conversation and be carried forth in good faith by legislators, parties, pressure groups, and voters?

I reserve comment on these latter constituencies for now, and return instead to the one of ultimate relevance — viz. the legislators, the executive, the officeholders charged by the ordinary constitutional system with making and enforcing the law. And while I suggested above that if these authorities were interested in the epistemic boon of the disobedient perspective, demonstrations would not be policed in the way that they are, I circle back to this theme now in order to reach a fuller judgement on the amenability of our elected representatives to the force of disobedient reason.

In doing so I shall dial back the occasionally swivel-eyed character of my remarks hitherto in this chapter. I shall confine myself only to the claim that the liberal defence of civil disobedience *itself* presumes (and correctly, I believe) that

[23] Incidentally, let me clarify at this stage that the liberal model's perennial focus on civil disobedience as a mechanism of *publicity* is somewhat misguided. In practice, the object of disobedient criticism is usually common knowledge, and that goes doubly in the age of the internet, and triply given what most actions protest. Everyone knows, for instance, that our society is vastly unequal; and everyone knows that the climate is warming — *everyone* knows this. Who hears about climate change for the first time from a cursory Guardian report on anti-fracking direct action? Who first hears about family separations at the US-Mexico border from a Buzzfeed article on a sit-in at the US Capitol? To put it plainly: practically speaking, the challenge is not one of raising awareness of these ills, but the much more difficult one of moving people to take action — moving them to act on what they *already* know.

the governing classes are, in the main, uninterested in policy's rational-moral merits. So I will not recount the sordid history of unlawful state surveillance of dissenters,[24] nor the endemic habit of politicians to engage in bad-faith smearing of protest actions (to say nothing of lawful civil society campaigns, or even their officially elected opposition),[25] nor the scandalous history and present of voter suppression in the US, in order to buttress my suspicion that the powers that be have little interest in reasoned engagement with dissident criticism.[26] And nor will I reprise my observations from Chapter Three on the absolute recalcitrance of the Southern authorities in the face of the moral and constitutional case

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[24] As I noted in Chapter Three, the Kennedy Administration unlawfully surveilled several civil rights leaders (including, and perhaps especially, King). And in the years thereafter, activists and organisers of all progressive stripes were illegally wiretapped, framed, intimidated, or entrapped under the aegis of COINTELPRO. [On which see Aaron Leonard and Connor Gallagher's excellent *A Threat of the First Magnitude: FBI Counterintelligence and Infiltration from the Communist Party to the Revolutionary Union, 1962-1974* (London: Repeater, 2018)]. Surveillance of dissident social movements continues into the present day, of course, and perhaps on an even wider scale. Black Lives Matter activists, for instance, are under surveillance by local and federal law enforcement, and the sordid recent history of Metropolitan Police infiltration of various socialist, antiwar and environmentalist groups is now widely known (though it rather seems to have dropped off the radar that the Met surveilled several sitting Labour MPs for decades, and that it maintained a file on Caroline Lucas MP at least until 2016). See e.g. George Joseph, 'NYPD Officers Accessed Black Lives Matter Activists' Texts, Documents Show', *Guardian*, 4 April 2017; Taryn Finley, 'Memo Suggests FBI Secretly Monitored Black Lives Matter Protests', *Huffington Post*, 29 November 2017; George Joseph and Murtaza Hussain, 'FBI Tracked an Activist Involved with Black Lives Matter as they Travelled Across the U.S., Documents Show', *Intercept*, 19 March 2018; Shanelle Matthews, 'We Say Black Lives Matter. The FBI Says That Makes Us a Security Threat', *Washington Post*, 19 October 2017; Rob Evans, 'Police Spies Infiltrated UK Leftwing Groups For Decades', *Guardian*, 15 October 2018; and Rob Evans, 'Police Anti-Extremism Unit Monitoring Senior Green Party Figures', *Guardian*, 28 April 2016. In light of all of this I offer the following rejoinder to the liberal impression of disobedient politics. It's not that civil disobedience can bring to the government's attention some moral claim hitherto neglected: since all of these activists are under surveillance, I take it that the state is already perfectly aware of what they claim. Indeed, I take it that this is *why* they are surveilled.

[25] della Porta and Reiter, for instance, discern a general pattern in Europe of 'bipartisan agreement between right-wing and centre-left parties to label any form of direct action (such as occupations or roadblocks), or even symbolic actions of civil disobedience (such as paying only half-price for public services or books), as violent'. 'The Policing of Transnational Protest: A Conclusion', 184-185. See also in this connection my note above on the media tendency to uncritically reproduce the mendacious police narrative of dissident actions.

[26] On which see e.g. Carol Anderson, 'A Threat to Democracy: Republicans' War on Minority Voters', *Guardian*, 3 October 2018; and Ari Berman, 'How Voter Suppression Could Swing the Midterms', *New York Times*, 27 October 2018. Voter suppression does not seem to me a uniquely American problem: the UK's *Electoral Registration and Administration Act (2013)* was a fairly transparent attempt to purge student voters from the electoral roll.

for civil rights, nor on the federal government's characteristic indifference to the moral urgency of intervention, in order to shore up my view that politicians are not disposed to heed the clarion call of a good argument well put.

Instead I shall rely only on that observation telegraphed above — viz. that liberal theorists *themselves* acknowledge that legislators are minded to choose what is expedient over what is right, and moreover that this political fact is crucial to their case for the necessity and moral unimpeachability of civilly disobedient intervention. Kimberley Brownlee, for instance, defends civil disobedience from a familiar conservative objection — viz. the epistemic one that the governing classes are better qualified to rule than are civil disobedients (that is, ordinary citizens), by noting — quite correctly — that it's empirically doubtful whether MPs and Congressional Members really do have a clearer-eyed view in the domains of, say, environmental regulation, urban planning, immigration, or national defence, than do, for instance, disobedient environmentalists, housing rights campaigners, immigration reform protesters, or ex-soldier activists. And that is so, says Brownlee, because: 'time-pressures, media, opposing parties, party ideology, political capital, and well-funded lobbyists with profit-driven agendas' often blind legislators to the moral reasons recommending support for a given reform.[27] In other words, because party ideology, corporate lobbying efforts, the necessity of donor favour, and the lure of personal advancement conspire to leave legislators at an epistemic disadvantage. These considerations dull their will to know and critically reflect: the great advantage of political expediency hardens their minds against moral reason.

And nor is this co-dependence between the moral case for civil disobedience and the acknowledged capital-hypersensitivity of our parliamentary representatives unique to Brownlee. William Smith, for instance, remarks that: 'certain groups may be able to use financial clout to buy advertising time for their view, to ensure greater access to or control of mass media, or even to ensure direct access to and influence within political parties.' And further that in virtue of this 'capacity of corporations to exercise disproportionate influence over democratic discussions and decisions … civil disobedience might become a justified means for groups to contest [these corporate] biasing effects'.[28]

Now, it will be obvious enough that I do not dissent from this liberal impression of the venality of legislative politics — this idea that politicians are, to put it crudely, more interest-

[27] Brownlee, *Conscience and Conviction*, 175.

[28] Smith, 'Democracy, Deliberation and Disobedience', 366-367.

ed in keeping vested interests happy (and thereby advancing their own careers) than they are in weighing the rational-moral merits of the bills in front of them.[29] No, my suggestion here is simply that if this *is* what legislative politics is like — if it's true that our representatives ignore what is best in favour of what is expedient for themselves and their backers — then no quantity of principled argument will bend the law towards justice.

Indeed, sensitivity to reason is, as I argued in Chapter Three, the essential precondition of a dissident politics in the liberal mould. And the dearth of such a sensitivity therefore does not — *pace* the liberal theory — establish the permissibility and necessity of the remedial discursive breach of law; rather, it establishes the *hopelessness* of such breaches of law. There is no sense in supposing, as Brownlee and Smith do, that politicians who have closed their ears to principled argument could be brought round by more — or more vivid — arguments of principle. What the situation requires, if anything, is not to supply more of the *same* reason which politicians have proven themselves wilfully deaf to, but to give them a different *kind* of reason to change course. Thus while there may yet be other grounds for idealising the didactic, reason-giving vision of civil disobedience, there can be no presumption in favour of discursiveness and didacticism on this traditional ground — viz. that moral reason is a potent enough language with which to engage our elected representatives.

4.4. Changing the Conversation

So much for our elected representatives: deaf to moral argument, and — if their tacit approval of paramilitarised protest policing is any guide — hostile to the very fact of dissent. But what hope of their reining in by the people at large? What[30] hope that — despite the media distortion —

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[29] Incidentally, and to give this point a more sober spin: I cannot see that there would be much call for the vast discipline of political science, were it a reliable heuristic that good arguments prevail in politics. If that were really how the world works, there would be no great mystery about how particular political outcomes arise. Indeed, Robert Goodin rebukes Dworkin on precisely this point, writing that the liberal impression of a politics founded on reason, argument, and good-faith debate is 'highly contentious', and would be rejected by 'political scientists ranging from pluralists to Marxists', all of whom 'argue that policy is made rather by the pushing and hauling of private interests'. Goodin, 'Nuclear Protest', 466. I take up this theme again in §5.2.

[30] At the risk of pre-empting some strands of argument in Chapter Five, let me point out here that to accept this premise — viz. that the political matter at hand is one of the people at large counterbalancing the anti-democratic inclination of government — is already to have moved well

disobedient arguments of principle might renew the public conversation, and by force of moral reason animate a sufficient mass of the electorate to bring pressure against the government at the ballot box?[31]

If there be any such hope, that hope rests on a more fundamental one — viz. that our public political discourse is not the boiling madness that from every angle it appears to be. Yet the suspicion is difficult to shake: are we not living in the post-truth, fake news age?[32] An era no longer bounded by a tacitly agreed shared public reality — an era where sophistry and rhetorical sleight of hand are the political *sine qua non*? The point I am gesturing at here, if I might put it with more sobriety, is that our public moral conversation falls some way short of the deliberative standards implicit in the liberal

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away from the canonical circumstances of liberal civil disobedience. So far away, in fact, that the traditional focus of the liberal normative engagement with civil disobedience — viz. its permissibility and proper treatment by the state — may begin to look inappropriate, even perverse.

[31] As we saw above, this reformist hope resides, for William Smith, 'in the moral dialogue with authorities and the public that citizens trigger by engaging in civil disobedience'. For though 'it may be possible for *authorities* to limit their focus to condemnation of the actions of civilly disobedient citizens, thus avoiding a dialogue over the merits of the contested law or policy, in such circumstances, *civil disobedience can still trigger moral dialogue in the public sphere* as commentators, opinion-formers and concerned citizens debate the merits of the protest and the institutional condemnation it provokes.' ['Public Sphere', 162, my emphasis]. In other words, disobedient activism can help to build popular mobilisation for reform by intervening in the 'public sphere' — viz., the forum that 'houses *informed processes of public debate geared towards discovering the best resolution of social and political problems*', and by appealing to the '*willingness of citizens to revise their pre-deliberative preferences* about law and policy in the light of what appear to be the *most compelling reasons and arguments*' [150, my emphasis]. We find a similar vision in Brownlee, of course. One where reason-giving disobedients — activists 'aim[ing] rationally to persuade their hearers of the merits of their cause', and 'recognis[ing] the importance of engaging policymakers and society in a moral dialogue' — foment a debate of principle robust enough to stir people to action in ways that might rein in an overreaching government [*Conscience and Conviction*, 221; 221 n.23]. Thus does Brownlee appeal to 'the deliberation-enhancing effects of this kind of constrained breach of law. For example, the civilly disobedient soldier may serve his society's interests in addition to his own. There is a double harmony between his interests in the right to civil disobedience grounded in the principle of humanism, on the one hand, and society's interests in hearing his concerns about the war, on the other. His efforts to communicate may expose his society to a view not presented by the mainstream media. And, this may empower society to hold government more accountable and thereby reinvigorate general discussion about the merits of the war. It may force the champions of dominant opinion to defend their views. And, his disobedience can perform at least some of these services even when he is mistaken about either the facts or his principles. And, when his cause is well-founded, he may serve society not only by questioning, but by inhibiting a moral wrong or rectifying a moral wrong, thereby acting as a stabilizing force within society.' [146].

[32] I believe that we are, though I do not want to say that there was ever a time when truth reigned.

model of disobedience-driven reform, standards that have the Millian ring much more of a passionately argued philosophy seminar — the constructive, purposive cut and thrust of point and counterpoint — than the hollow, cacophonous, ill-informed, and often duplicitous noise that is our existing national debate.[33]

And yet, this is only to say that our public political discourse is debased, not that a reason-led campaign of unlawful dissent could not redeem it. But against this notion I offer the following heuristic: that politicians and the campaigning media tend to use the rhetorical strategies that work most effectively. I take it as read, in other words, that if reasoned argument were more effective a politicking tool than sophistry, scaremongering, dog-whistling, mudslinging, blind rhetoric, sloganeering (and so on), then our public political culture would be rife with reasoned argument (and these other oratorical phenomena would be comparatively thin on the ground). After all, if reasoned argument *did* work better than sophistry to rally voters around a cause, wouldn't the professional army of political consultants, campaign strategists, social media advisors, PR gurus, branding experts, focus-groupers (and the like) have *noticed*?

Once again, I am reasoning here from two virtually truistic premises: first, that reason is a device rarely used in our pub-

[33] Quotes Brownlee, on the case for civil disobedience's necessity and possibility: 'The source of everything respectable in man either as an intellectual or as a moral being [is], namely, that his errors are corrigible. He is capable of rectifying his mistakes, by discussion and experience. Not by experience alone. There must be discussion, to show how experience is to be interpreted. Wrong opinions and practices gradually yield to fact and argument: but facts and arguments, to produce any effect on the mind, must be brought before it. Very few facts are able to tell their own story, without comments to bring out their meaning … The whole strength and value, then, of human judgment, depending on the one property, that it can be set right when it is wrong, reliance can be placed on it only when the means of setting it right are kept constantly at hand. In the case of any person whose judgment is really deserving of confidence, how has it become so? Because he has kept his mind open to criticism of his opinions and conduct. Because it has been his practice to listen to all that could be said against him; to profit by as much of it as was just, and expound to himself, and upon occasion to others, the fallacy of what was fallacious. Because he has felt, that the only way in which a human being can make some approach to knowing the whole of a subject, is by hearing what can be said about it by persons of every variety of opinion, and studying all modes in which it can be looked at by every character of mind. No wise man ever acquired his wisdom in any mode but this; nor is it in the nature of human intellect to become wise in any other manner.' ['Reply to Critics', 728-729; quoting J.S. Mill, On Liberty (edition unspecified)]. And quote I in reply, accepting only for the length of this note that the problem to be overcome is popular support for unjust policy: 'it is an historical fact that privileged groups seldom give up their privileges voluntarily. Individuals may see the moral light and voluntarily give up their unjust posture; but, as Reinhold Niebuhr has reminded us, groups tend to be more immoral than individuals.' King, 'Letter', 80.

lic political discourse; second, that what's used in politics is what works in politics. And if I am right, we must concede that while there may be a certain nobility in staunchly arming oneself only with the weapon of principled argument — in refusing to stoop to the gutter level of our ordinary politics, or in refusing to forego words altogether — there is no strategic wisdom in it. Activists after the liberal fashion might well serve as the torchbearers of reason, but they would neither intervene in an extant deliberation of principle, nor have much hope of starting one — much less one apt to rally an electoral coalition behind their cause.[34]

Of course, and in keeping with my general habit here of shying away from strong inductive claims, I do not say that there will never be a reason-driven coalescing of public opinion around some issue of disobedient concern. Rather, I say only that we ought to retain a pronounced scepticism that — as a reliable and categorical matter of fact — there is real leverage in our world for a disobedient politics of reason, fertile discursive space for good arguments interestingly put. And more to the point, I put it that the threadbare state of our present and foreseeable discourse must weaken any general presumption that unlawful activism should aspire to the discursive, didactic, reason-giving archetype laid down in the liberal view.[35]

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[34] It's worth noting here that converting public sympathy into electoral success has been *the* hard problem of social movement organising. Certainly, it is not an automatic process to be easily assumed — as in, for example, Brownlee's glossing of the purpose of civil disobedience: viz., 'to draw attention to the reasons for the protest so as to persuade the relevant audience to accept our position, and thereby, to instigate a lasting change in law or policy'. Hard as the first step is, it is by far the easier of the two. *Conscience and Conviction*, 18.

[35] I must clarify here that not every liberal theorist insists that civil disobedience be a vehicle of reason *per se*. Smith and Dworkin, for instance, though they consistently refer to civil disobedience in discursive and didactic fashion as a means of prosecuting an argument, leave unspecified the precise *conduct* of that argument (thereby opening the door, we might think, to the disobedient use of sentimental appeal and other non-reasoned rhetorical strategies). See e.g. Smith, 'Public Sphere', 163; Dworkin, *Matter of Principle*, 109. In light of this, I shall offer a reason-free translation of my point in this chapter. To wit: the repressive police response even to lawful activism, coupled with the unreliable and propagandistic character of the news media apparatus, further coupled with the state's hostility to dissent, and still further coupled with the state's insensitivity to the principled merit of policy (and especially policy of a left bent, a fact of relevance here because insofar as civil disobedience is a resort of the powerless, it has been and always will be an inescapably left proclivity) — all of this erodes any presumption that civil disobedience ought to take a solely didactic, discursive, symbolic form. And moreover, all of this invites a different pair of questions than those which have been the foundation of the liberal project hitherto, a pair of questions that I develop in the next chapter, but shall anticipate now for clarificatory purposes: what is to be done? And what value is there in what we do?

4.5. 'Civil Disobedience' vs The Future: Summary Conclusion

With that last judgement I adjourn this brief and impressionistic review of the contemporary political situation: a situation marked by pervasive surveillance and smearing of dissident organisers; by highly repressive policing even of lawful protest actions; by a media apparatus unable — or unwilling — to report the disobedient perspective widely (much less accurately). A situation governed by a legislating class actively hostile to the fact of dissent, and beholden more to vested interests and private ambition than to the demands of moral reason. A situation buttressed and suffused by a national public conversation in no way resembling an agora 'hous[ing] informed processes of public debate geared towards discovering the best resolution of social and political problems', by means of which citizens might 'revise their predeliberative preferences about law and policy in light of what appear to be the most compelling reasons and arguments'.[36]

Now, the reader may of course find this picture somewhat hyperbolic. And I certainly admit that there is little nuance in it. But my intention in this abbreviated chapter was not to undertake a rigorous evaluation of the prospects for a disobedient politics of reason, still less to claim that civil disobedience after the liberal archetype will never have success. Rather, I aimed simply to undermine our confidence that — whatever the character of civilly disobedient activism to date, and no matter its divergence from the liberal vision — we could yet hold up that vision as a moral model for activism in our world.

And I aimed to undermine something else here too, though I reserve the elaboration of this holistic claim till the next and final chapter of the thesis — viz. that *given* this sordid political reality, the traditional normative preoccupations with the permissibility and proper state treatment of civil disobedience remain viable. That given this sordid political reality, in other words, we ought not to turn away from these preoccupations, and towards a more elemental engagement with where we are, and what we can do about it.

[36] Smith, 'Public Sphere', 150.

Chapter 5: Endgame

All the pieces of my argument are now in place, and it has come time to set in motion my endgame in this thesis. I shall offer two holistic and meta-theoretical judgements here at the last: the first of them concerning the viability of the liberal account in view of the empirical reality surveyed over the last two chapters; the second of them concerning that reality's implications for the very project of thinking normatively about dissent and disobedience.

Concretely, my judgements are these: fifty years of liberal work have failed to shed light on the moral dynamics of civil disobedience. And worse, civil disobedience, in this actual world, requires no such illumination.

5.1 Says Nothing

For five decades liberal theorists have been parsing and probing a practice that does not exist and could not flourish in our society. In light of this — the combined force of my arguments in Chapters Three and Four — I hand down my first holistic, meta-theoretical judgement in this final act of the thesis: the liberal view fails to do what a normative theory of civil disobedience ought to do — to wit, *shed normative light on civil disobedience as we find it in the world*. The inference to this rather drastic conclusion is not as straightforward as it may appear, however, and so I devote this section to its long-form elaboration and defence.

First, we shall require clarity on the proximate results of the last two chapters, beginning with my case in Chapter Three. I argued there that the fifty-year object of liberal inquiry — the discursive breach of law, the strictly rhetorical-symbolic attempt to jump-start society's principled deliberations — has virtually nothing to do with the organised, movement-supported, cost-raising realpolitik of historic and historical activism. So far, so familiar — and perhaps tediously so, for I am sure I have rather belaboured this point by now. But we should not lose sight of the implication, nor its force: it means that the liberal body of work leaves untheorised the great mass of really-existing activism. It means that the most

momentous dissent of our age, as well as the bread-and-butter actions of rank-and-file activists of all stripes, from environmentalists to anti-abortionists, remains normatively unprobed by successive generations of liberal theorist.[1]

Or does it? While this alone may seem ample indictment of the liberal view, no definite conclusion can be drawn from these facts in isolation. After all, there remains an alternative way of construing the liberal engagement, one I broached in Chapter Four, but assessed only indicatively at that stage: we could understand it not as an attempt to assess *directly* the normative character of unlawful activism in the world, but to offer *indirect or regulative* commentary thereon. In other words, we could position the object of liberal inquiry — no matter its descriptive distance from activism's real historical life — as an ideal of conduct to which really-existing activists (if they wish their actions to be justified) ought to aspire.

Now, as I have just suggested, I undertook my case in Chapter Four precisely to foreclose this alternative reading of the liberal engagement, and with it any uncomplicated assertion of that engagement's world-relevance. My crucial claim there was, in essence, that it is not only the liberal *practice* which is fictional, but also the liberal political *context*. Neither our society, nor any society in prospect, approximates the political circumstance presumed in the liberal account — viz. one involving, at the very least, a reliable national media apparatus, a reason-sensitive political class disposed to engage in good faith with dissident minorities, and a reasonably literate and reason-focussed public moral conversation. And given this — that we do not have the fortune to possess a public political culture within which a disobedient politics of reason after the liberal archetype might flourish — our

[1] I clarify that even if the liberal concept captures the form of what I earlier termed — with no pejorative intent — 'stunt activism', we may say at most then that it merely *describes* a comparatively innocuous style of 'second best' activism amidst a great unremarked-upon sea of historic disobedience. This minimal grasp of the world is no ground for acclaim, however. For one thing, in this actual world the permissibility of these actions is surely no vexatious question — who could reasonably object, for instance, to someone unfurling a pro-Dreamer banner from the Statue of Liberty? Or to a group of people sitting-in for a few hours at the US Capitol? Or to a pair of activists breaching the peace inside a Brighton Starbucks in protest of corporate sales to Guantanamo? I remark more in this vein later in the chapter, but for now note also that while the liberal descriptive impression of these actions — i.e. as symbolic breaches of law undertaken largely in pursuit of publicity for their cause — may be correct, the liberal account of their *value* is considerably more dubious. It is implausible, I think, to invest this sort of activism with the kind of pro-democratic, legitimacy-enhancing power much discussed in Chapter One. It is implausible, in other words, to model this sort of activism as an effective enough means of political participation to ground the pro-democratic, pro-deliberative, pro-justice value claims that are the republican variant of the liberal view's stock in trade.

mooted regulative interpretation of that archetype simply will not work. Normative constraints on dissident conduct are sensitive to the political circumstances under which dissidents act, and if the circumstances differ markedly (and so much for the worse), then those constraints no longer bind: any notion that disobedience ought to take a solely discursive, didactic, reason-giving form must give way.[2] After all, what can it mean to ask of civil disobedience that it restrict itself to reason in a society deaf to reason? That it restrict itself to PR in a media climate structurally incapable of disseminating dissident viewpoints (especially those from marginal and left quarters)? That it restrict itself just to the pursuit of a second reading in the very same legislative process forcing people to dissent in the first place? That it restrict itself merely to seeking the ear of a political class not receptive to dissent (even begrudgingly), but disdainful and repressive of it?[3]

This, then, is the salient lesson of Chapter Four: no moral judgement may be inferred from the distance between really-existing activism and the liberal concept of civil disobedience. To be sure, in a better world than ours we might rebuke civil disobedience for eschewing argument in favour of nonviolent cost-raising, but the liberal view provides no cause for rebuking such action in this actual world. And I am not going out on a limb here: liberal theorists *themselves* deny that regulative judgements of this variety should be inferred from their analysis. Sensing what is true — that it would be implausible to hold that this and *only* this style of unlawful activism is justifiable, whatever the context — liberal theorists wisely avoid making any such claim. Rather, they insist only that actions falling outside their rubric of 'civil disobedience' are — whatever their moral status, and though they may well be justified — not justified *qua civil disobedience*.[4] Thus the liberal prohibition on civilly disobe-

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[2] Incidentally, to the extent that we may dig out of the view some general principles that do have a life in our world — that activism should be no more militant than is necessary, that it ought not to harm innocents, that it ought to adopt the methods of nonviolence where possible (and so on), these principles, which are in essence principles of proportionality, are not the fruit of a theory of civil disobedience *per se*, but all-purpose guidelines for better conduct in general. I say much more on this count in §5.2 below.

[3] I shall moderate my point slightly: even if one disagrees with me that there is no or little hope of a viable dissident politics after the liberal fashion, one must surely concede that the going for it will be much tougher than the liberal accounts are given to imagine. That the deck is stacked against it, in other words, and therefore that the pertinent question starts to become the one I ask towards the end of this thesis — viz. '*what is to be done?*'.

[4] Rawls, for example, warns that '[he will] not discuss this mode of protest [i.e. civil disobedience], along with militant action and resistance, as a tactic for transforming or even overturning an unjust and corrupt system'

dient coercion, for instance, is more a taxonomical judgement than a moral one: it does not describe the shape of the moral law (in the sense that it is not a proscription against coercion *as such*), it simply defines the limits of the liberal concept of civil disobedience.[5] Quite simply, theorists have never intended to imply anything definite about the permissibility or lack thereof of actions not conforming to their (highly rarefied) idea of civil disobedience.

Now, this exegetical aside has perhaps put us off our course, and I should like to set us back on it. The point of all of the foregoing — this reprise and extension of the metatheoretical ramifications of my arguments in Chapters Three

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[*Theory of Justice*, 319], and further that 'there comes a point beyond which dissent ceases to be civil disobedience as defined here' [322 n.22], thus while 'in certain circumstances militant action and other kinds of resistance are surely justified ... [he will] not, however, consider these cases' [323]. More definitely, he remarks that in cases of 'the majority having already convicted itself of wantonly unjust and overly hostile aims ... civil disobedience might be much too mild' [328]; and that 'we have to recognise then that justifiable civil disobedience is normally a reasonable and effective form of dissent only in a society regulated to some considerable degree by a sense of justice' [339]. In the same vein, Kimberley Brownlee clarifies that while civil disobedience after her vision may be 'impossible' during a 'national crisis' or 'state of emergency' (i.e. in circumstances where there is no 'possibility for deliberative discussion between government and citizenry'), other, though unspecified, varieties of activism may nonetheless be 'defensible (worthy of protection) in these circumstances'. *Conscience and Conviction*, 148 n.58. And David Lefkowitz, lastly, adopts a similar scope restriction: his concept of civil disobedience is merely 'but one form' of principled disobedience to law, and moreover one explicitly bearing no relation to the (presumably justified) actions of nonviolent revolutionaries in the Gandhian mould. 'On a Moral Right', 204 n.4.

[5] Incidentally, Brian Barry's spiritually accurate criticism of Rawls goes wrong on this point. He takes Rawls to task for forbidding oppressed people to use coercion, sabotage (and so on) as a means of resisting their subjugation — claiming in effect, and echoing Anatole de France as he does so, that it's a fine moral principle indeed which forbids the powerful and the powerless alike from protecting their interests through vandalism, petty theft, and property damage. If what I have argued here is right, however, then this criticism misses its target: Rawls does not forbid people from coercing their way out of subjugation, he simply says that such a case is outside the purview of his account. The failure — and there is a distinct failure here, one which is the theme of my argument towards the end of this chapter — lies not in giving a morally indefensible answer to an important question (i.e. 'what may people do to resist their subjugation?'), but in giving *no* answer to that vital question. Brian Barry, *The Liberal Theory of Justice* (Oxford: Clarendon, 1973), 150-155ff. And nor is Brian Barry the only commentator to misinterpret Rawls on this count: A. John Simmons, for instance, declares (*pace Theory of Justice*) that 'it is implausible to suppose that in the face of significant injustice, even in an otherwise just society, violence — and especially violence against *property* only — could never be morally justified'. This rebuke of Rawls (though righteous in spirit) also ignores the unduly restricted scope of his account: Rawls does not say that violent resistance against injustice could never be justified, he says only that it could never be justified *qua* civil disobedience, hence that it's not his business to discuss it — 'no comment', not 'no'. A. John Simmons, 'Disobedience and its Objects', 1808.

and Four — is to bring us to the following intermediate verdict. With the regulative option foreclosed (both substantively and exegetically), there is no denying it any longer: the liberal view sheds no normative light — not even any reflected light — on activism in this actual world.[6]

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[6] I must partially exempt three liberal theorists from my criticism here — Ronald Dworkin, Daniel Markovits, and Andrew Sabl. First, Dworkin does provide a faint ray of worldly illumination: he argues that cost-raising civil disobedience is permissible where activists believe the government to have seriously violated their basic rights (though not where activists believe merely that the government is engaged in an unwise — even a catastrophically unwise — programme, as in the case of Greenham Common). As I elaborated in §3.1, he does not think that civil rights disobedients *were* engaged in a programme of cost-raising activism (rather, one of moral suasion), but it is plain enough that he thinks they *would have* been justified in bringing coercive pressure against Jim Crow. That said, and though this is not the place to criticise the particulars of his view, that view is untenable: as I related in Chapter Two, it is straightforwardly implausible that *beliefs* about justice *do* license coercive activism; and moreover, to have couched the discussion of this historical travesty in terms of the subjective language of belief is already to have made a politically dangerous mistake [see *Matter of Principle*, 107-112]. Second, Andrew Sabl largely eschews any descriptive claims about civil disobedience as historically conducted, instead elaborating the conditions under which activists may be (morally) expected to stick to the sort of persuasive, reason-giving protest embodied in the liberal archetype — viz. where there exists a robust possibility of state–protester engagement and negotiation, what he calls the circumstances of 'piecewise' justice. Now, Sabl thinks that this is the world we live in (and that this was the world inhabited by King). I do not, as is by now quite plain, and as will become still plainer later. Regardless, this account also illuminates the moral contours of our actual world, if truistically: activists need restrict themselves to reason-giving dialogue with the state only in cases where reason-giving dialogue with the state is possible. [See Andrew Sabl, 'Looking Forward to Justice: Rawlsian Civil Disobedience and its Non-Rawlsian Lessons', *Journal of Political Philosophy* 9:3 (2001): 307–330; esp. §2 and §4]. Daniel Markovits, lastly, has a more esoteric project — viz. that of offering a kind of third-personal account of civil disobedience's (republican) value to democracy. Thus he argues, for instance, that anti-globalisation activism invigorated the open-ended public discussion of trade and investment policy in ways that are worth cherishing. Now, this empirical judgement is plausible enough, and so I concede the evaluative concomitant, and so I also concede that Markovits thereby furnishes us with a true moral judgement about real-world activism. That said, the value he identifies here is deathly thin, and this leaves him open to the sort of criticism I develop at the end of this chapter — viz. that there is no comfort in the suggestion that (say) trade policy, though still decisively and damagingly undemocratic, is perhaps *more* democratic now than it was in the late 1980s [see 'Democratic Disobedience', 1946-1951]. In any event, Markovits does not make good on his other promise — viz. to rectify the theoretical situation hitherto, wherein 'an important form of political engagement, which is experienced as legitimate by those who participate in it, cannot be understood through the prevailing theoretical accounts of legal and political authority' [1902]. I say this because he thinks it conceptually and morally irrelevant to civil disobedience whether activists actually get their way, and indeed that it would be *better* if they had no particular outcome in mind (contenting themselves only with re-firing the public conversation, whatever direction it might take thereafter) [1944-1946]. Thus, in his estimation, when Foot's Labour Party was eviscerated on a platform of unilateral disarmament, 'CND [nonetheless] achieved a

But while this may look an even surer and starker indictment of the liberal body of work, we cannot rest here. We must delve deeper to secure the first of my two holistic judgements in this chapter — viz. that the liberal view does not do what a normative theory of civil disobedience ought to do. After all, I have not provided any indication that a moral accounting of really-existing activism *is* the sort of thing that a normative theory of civil disobedience ought to provide. And our present question, therefore, is this: does it *matter*, from the point of view of the account's meta-theoretical viability, that liberal civil disobedience — whether we consider it an 'is' or an 'ought' — has precious little grasp on the real state of things?[7]

In one important way it does, for the avowed intention of the liberal theorists is to develop just such a normative grasp on the real state of things.[8] And in light of this we may then

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form of success in the 1980s that had eluded it in the 1960s' [1946]. I say in reply: I doubt CND thought it a success that they helped unilateralism into the manifesto, only to have it crushingly rejected at the ballot box and knocked off the political agenda for a generation or more.

[7] I use this inelegant language of 'meta-theoretical viability' to try to impress again that — quite apart from the criticisms I levelled against the view in Part One (which, for clarity, count against its merely 'internal' or 'theoretical' viability) — there is a much more elemental failing in the offing here: viz. that of departing entirely from the proper theoretical terrain. In other words, while Part One demonstrates that the liberal view offers a conceptually and normatively defective account of *a* terrain, my arguments here show that this terrain is (in any case) the wrong one.

[8] For one thing, and as I mentioned in Chapter Three, Brownlee's 'classic examples' of civil disobedience are: Rosa Parks's 1955 bus defiance, the ensuing Montgomery Bus Boycott, the sit-ins at Greensboro and beyond in 1960, the Birmingham March, and the actions of 'many anti-Vietnam war protesters, anti-Iraq war protesters, animal rights defenders and anti-abortion activists' [*Conscience and Conviction*, 18-19]. And this implied motivation to offer commentary on real political phenomena may also be seen in her rebuking Rawls for providing no indication of how to extend his account from the rarefied circumstance of near-justice to the more sordid non-ideal world [6 n.7]; and in her chiding the objection that liberal democracies 'would not engage in or tolerate the kinds of abuses that could make civil disobedience necessary' with the reply that 'such a definition would be a non-standard one, and would set such a society at a distance from *existing societies and likely societies*' [194, my emphasis]. Moreover, and as I explored at length in Chapter Two, Brownlee's signature theoretical ambition is to claim for civil disobedience the kind of legal protections that exist at present for conscientious objection in certain real-life jurisdictions (as in, for example, Illinois) [6]. Brownlee aside, William Smith makes frequent and detailed reference to real-world actions (including those by Greenpeace, and those against the WTO), and his perennial concern is to argue that corporate influence in government creates ample democratic justification for civil disobedience. These preoccupations, I take it, indicate in transparent fashion his ultimate intention to comment on the real political world. [On anti-WTO activism, see his 'Boundaries of a Deliberative System', 163; 'Public Sphere', 158ff; and 'Policing Civil Disobedience', 834-835. On Greenpeace and sundry other contemporary activism see 'Boundaries of a Deliberative System', 163-170. On corporate capture of government see 'Democracy, Deliberation and Disobedience', 367ff]. Brownlee

say, at the very least, that the view fails by its *own* lights. This, of course, is a significant result, though not one sufficient to establish the verdict I seek here. And so we must put the question again, now with a different emphasis: does it *really* matter, notwithstanding the declared ambitions of the liberal theorists, that their idea of civil disobedience has neither historical life, nor any role to play in the regulative illumination of activism in this actual world?

I go down this road because there remains one other way of getting some sense out of the view: to understand it not as an attempt to articulate the normative stakes in real-world activism, nor as an attempt to define a model for justified action in our world, but as an attempt at theory of a much more abstract kind. To understand it, that is, and despite the avowed motivation of the liberal theorists, as legislating an *ex nihilo* sense of 'civil disobedience' — a civil disobedience in thought alone, and one designed in answer to the abstract question of when, if ever, one might permissibly break normatively authoritative law for principled political purposes. A sense of civil disobedience that, though it does not attach to anything in the world, nor illuminate the world in indirect fashion, nonetheless reveals a moral or conceptual truth — i.e. that a given ground of political obligation permits disobedience to law in certain circumstances. Or, to put it differently, that citizens in a hypothetical state X would be justified in resorting to unlawful dissent of a hypothetical form Y (and further, that the authorities in X would be duty-bound to permit or facilitate the citizen's resort to Y).

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and Smith aside, Daniel Markovits is more explicit about his intention to rectify a world-relevant theoretical lacuna — viz. that 'an important form of political engagement, which is experienced as legitimate by those who participate in it, cannot be understood through the prevailing theoretical accounts of legal and political authority ['Democratic Disobedience', 1902]. And similarly explicit mission statements of world-facing intent are not difficult to find in still other liberal theorists: Ronald Dworkin, for instance, packages his treatment of civil disobedience inside 'a practical book about urgent practical issues', and Rex Martin announces his intention to illuminate the 'relatively widespread' practice of civil disobedience, including that brought to bear 'in a spirit of opposition to many things in this country — to the Vietnam War and the draft, to laws and court injunctions in support of one racial policy or another, to the anti-abortion statutes of various states, to legal prohibitions on the use of marijuana and LSD'. [Dworkin, *Matter of Principle*, 1; Martin, 'Civil Disobedience', 123]. Lastly, while Raz and Lefkowitz warn, respectively, that 'no claim is here made that [Raz's concepts] represent the ordinary meanings of the defined terms', and that Lefkowitz's analysis does not pretend to compass 'all (or almost all) of those who have either identified themselves as civil disobedients or had that term applied to them', I take it that they mean this to indicate only that their commentaries will not track the ordinary language usage of 'civil disobedience', rather than that they hereby renounce the project of making normative sense of this world of ours and the people and actions we find in it. Raz, *Authority of Law*, 264; Lefkowitz, 'On a Moral Right', 204 n.4.

Let me forestall for a moment a meta-theoretical assessment of this alternative in order to offer an important contextual remark. This is not merely *a* way of understanding five decades of liberal work on the question of civil disobedience — a remnant option to be explored as an act of scholarly charity (charitable because it is better to believe not that theorists have made a colossal failure of what they try consciously to do, but rather that they have made the much smaller error of misdescribing what they try consciously to do). No, I believe that this is the *right* way of understanding it.

I say that in the first instance simply because I struggle to believe that such capable theorists as these could truly have *tried* to comment on (say) the civil rights movement, and yet to have misread it so badly.[9] And I say that also because — and this seems to me a still more persuasive consideration — it is too much to believe that liberal theorists could be so morally deaf as to write *knowingly* what they do of the real historical cases.

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[9] Brownlee's idea of civil disobedience is perhaps most obviously an *ex nihilo* construct, rather than a distillation or composite of important phenomena in the world. After all, she adjudicates what 'civil disobedience' truly describes by means of an appeal to our linguistic intuitions about the concept of 'civility' — thus violent demonstrations may still be counted as acts of civil disobedience because there is no conceptual contradiction between violence and civility: 'conceptually, civility contrasts with depravity, barbarity, disrespect, and rudeness, not with violence. To see that civility and violence are not necessarily in tension, consider the sport of fencing. It is a highly civil yet violent form of engagement governed by strict norms of fair play.' [*Conscience and Conviction,* 22]. Now, I put it that the context-free concept of civility has nothing to do with 'civil disobedience' in its living, public sense. Indeed, the only sound way to adjudicate what 'civil disobedience' truly describes (and whether or not it is consistent with violence) is to undertake reasonably sustained analysis of, for example, polemical tracts, activist memoirs and interviews, oral histories, contemporary newspaper reports (and so on). There is none of that in Brownlee's work, of course, and so either she commits a bizarre methodological error — viz. that of supposing that the semantics of the public idea of 'civil disobedience' can be discovered through *ex ante* conceptual analysis of the word 'civility', a mistake akin to thinking that it would not be in character for the GDR to outlaw opposition parties, because to do so would be inconsistent with our linguistic intuitions about the context-free concept of democracy. Or she is, without declaring it, making no serious attempt to define a sense of 'civil disobedience' bearing some fidelity to the world, but simply creating one out of thin air, one that she would like (for whatever reason) to be 'civil' in the common, dictionary, sense. The latter of these interpretations is the more charitable one, I think, though the artificiality of that project — its distance from historic activism and from what is urgent and interesting — may be seen not only in my general commentary in this chapter, and not only in the strange analogy with fencing that Brownlee uses to buttress her claim that civil disobedience may take violent forms (we may be sure, after all, that dissident action is not ordinarily a kind of rule-bound, fair-play-governed *sport* between citizen and state); but simply in the fact that, inaugurally, the 'civil' in 'civil disobedience' described the *target* of the action, not the manner of its conduct. The title of Thoreau's originating work was, of course, 'Resistance to Civil Government' — truly, the liberal construct has a life of its own.

Permit me a digression in defence of this contextual view. I am thinking here, for instance, of judgements like that due to William Smith — viz. that in situations like the South of the civil rights era, where 'some groups are explicitly prevented from taking part in democratic politics … or where electoral procedures are alleged to make easy and effective voting harder for particular citizens or groups of citizens … civil disobedience becomes a justifiable alternative means for [a group] to advance its interests' — i.e. as recompense for the fact that 'it cannot effectively vote for its interests to be represented in ongoing deliberation').[10] Thus far, I have no quarrel with Smith, of course. But the moral overstep comes in his insistence that disobedients conduct themselves 'in such a way that they respect the principles of public deliberation, in particular that deliberation is geared in the first instance towards reason-giving and persuasion, only in the final instance towards a strategic compromise, and *never towards coercion*'. Indeed, there can be no justification for 'civil disobedience carried out to coerce or harm others. In this case the aim is not to persuade or appeal, but to *bully and demand*; such civil disobedience is not a contribution to deliberation, but a *show of brute strength or power*. This form of communication is inconsistent with the idea of democratic deliberation upon which the justification of civil disobedience is grounded.'[11]

We know, of course, that the reason black southerners could not 'effectively vote for [their] interests to be represented in ongoing deliberation' is that a decades-long campaign of physical and verbal intimidation, extrajudicial police harassment, arson, torture, murder, and bombings (in addition to the merely formal apparatus of the poll tax and the literacy test) had made it impossible for any voter registration drive to succeed, and thereafter for black voters to make it to the polls in large numbers. Given which, Smith's moralising rebuke of action not aiming to 'persuade or appeal' as 'bullying', and as a 'show of brute strength or power', must indicate that despite his explicit reference to 'the black population in American society', and to 'Iris Marion Young's work on the civil rights movement', he is not *really* offering moral judgement on action against Jim Crow (nor, indeed, action in the face of the present programme of voter suppression discussed in Chapter Four).[12] The alternative is so obtuse and insensitive as to defy credulity.

And we may infer the same thing — i.e. that despite their billing, these engagements are not in fact commentaries on

[10] Smith, 'Democracy, Deliberation and Disobedience', 364.

[11] Smith, 'Democracy, Deliberation and Disobedience', 375, my emphasis.

[12] Smith, 'Democracy, Deliberation and Disobedience', 364.

the real historic and historical life of civil disobedience — from Brownlee's insistence that activists adopt not merely reason-giving *tactics*, but also a certain *affect or attitude:* one of open-mindedness, mutual respect, and epistemic humility — one of *dialogic willingness*. In her formulation, '[the activist's] self-restraint shows both that they realise they may be mistaken about their views and they desire to engage with people at the level of reason'. Indeed, 'the committed dissenter [Rosa Parks, in this case] must walk a tightrope between having sufficient confidence in her view that she is willing to bear the risks of defending it through suitably constrained, communicative disobedience, and having sufficient modesty about her epistemic position and moral understanding that she is genuinely open to hearing competing views in a spirit of respectful, dialogic engagement. If her views gain traction over time, then she may feel more secure in her adherence to them, but must still appreciate Mill's important dictum that we not presume that we are infallible'.[13]

Now, I think it plain that civil rights activists did not have any obligation whatsoever — never mind a non-instrumental, non-strategic obligation — to take into account the attempts of their racist oppressors to defend by argument their racist state, nor to ponder whether their mode of action (even down to their vernacular, physical comportment, and facial expressions) unduly jeopardised what it was their alleged responsibility to strive for — viz. a respectful, reciprocal understanding with those oppressors.[14] And more to the point, I think it plain that anyone *really* attempting normative commentary on civil disobedience in this actual world would see this too — would see this kind of requirement as scandalously moralising. In other words: whether or not the dialogic imperative is plausible as a moral constraint on disobedience in cases where the rightness of the law truly is a matter of reasonable disagreement, and where neither of the opposed constituencies dominates the other, it is egregious in the extreme to apply it to the civil rights case, or to any situation in which an oppressed constituency confronts its oppressor.[15] I simply do not see that

[13] Brownlee, 'Reply to Critics', 729, my emphasis.

[14] If we are true civil disobedients, in Brownlee's estimation, we do not 'wilfully immunise ourselves from [others'] communicative efforts', and we consider carefully whether our own 'words, actions, images, body movements, [and] facial expressions' are 'likely to foster understanding in a way that is compatible with the reason-governed, reciprocal, and respectful nature of a dialogue'. *Conscience and Conviction*, 44. To set this invasive, moralising, and plainly supererogatory demand in context, recall Brownlee's view that 'civil disobedients are, almost by definition, members of minorities, and, they are typically members of *persistent, vulnerable minorities*' [253, my emphasis].

[15] The dialogic willingness requirement aside, there are two companion errors here worth remarking on. First, that of thinking that this style of

Parks should have tried to walk a mile in the shoes of segregationist enforcers and officials — that she should have tried truly and genuinely to see things from their point of view, to keep in mind at all times that it might well have been *she* who held the dubious moral view.[16] All of this is plain, I think. And because it is, we may have confidence that this normative commentary, despite advertisements to the contrary, cannot really be the fruit of an attempt to theorise civil disobedience in the real world.[17]

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symbolic, self-expressive, respectful protest could be any kind of politically useful counteraction in these brutally unjust circumstances. Second, making it — polite dissociation from the white terror state — the object of such sustained and cringing moral concern. After all, we're not talking about assassinating segregationist cadres here, we're talking about symbolically breaching the law, in deference to one's conscience, in order to express one's moral opposition to the status quo. Brownlee's exacting, invasive, virtuous standard — i.e. of dialogic willingness and epistemic humility — is the moral constraint on Black southerners being permitted to do even *that*.

[16] Note that Brownlee is not without critics here, though only Chris Cowley sees the moral offence. William Smith, for instance, rejects the dialogic willingness requirement because he thinks that publicly unverifiable affective attitudes of this sort can play no useful role in an action-guiding theory of civil disobedience. In other words: we ought to evaluate civil disobedience only by the evidence of our five senses, and none of those senses can verify what activists *feel* about their opponents and interlocutors. [Brownlee, 'Reply to Critics', 726-728; and cf. Smith, 'Burdens of Conviction', 696]. Cowley, by way of contrast, argues more pointedly that: 'Parks might have "tried to understand" her racist interlocutors from the point of view of political strategy — in a bid to "know thy enemy", but it is essential to the nature of her unperplexed moral conviction that she would not even try to understand her interlocutors from the moral point of view.' This, I take it, is a descriptive criticism of Brownlee's view — i.e. that because Parks, as a matter of fact, had no interest in trying to engage in good faith with the moral views of her racist oppressors, Brownlee's dialogic reconstruction of her defiance dramatically (and perhaps offensively) misrepresents her and her moral perspective. I certainly agree with that, of course, though my own criticism of Brownlee's view targets the idea that Parks *ought* to have had such an inclination, or that her action would have been better or more justifiable had she had such an inclination. In any event, Brownlee's reply to Cowley simply doubles down on the normative injunction: she reasserts that '*if* conscientious, Rosa Parks *would have* tried to understand her opponents' motivations, underlying commitments, upbringing and education in that spirit of Gandhian nonviolent, non-hating resistance that distinguished the movement that Martin Luther King Jr led. She would also have sought to see things from her opponents' perspectives with their attendant fears, misperceptions, and cultural pressures. She would have sought to know what common ground there was, if any, between their outlook and hers in order to move toward mutual understanding.' I say again in reply: this sentiment is so repugnant that I simply cannot believe it could have been expressed by someone who knew anything of the situation in the South. Of course, if my argument in this section is sound, it was not. Brownlee, 'Reply to Critics', 728, my emphasis; Cowley quoted at 728.

[17] I have been suggesting here that liberal theorists, despite their declared intentions, offer not an account of this actual world, but an analysis of a hypothetical style of political lawbreaking taking root in similarly hypo-

We are at risk here of straying too far from the point. Again, I mean only to suggest — by way of contextual *obiter dictum* en-route to my meta-theoretical verdict in this section — that the abstract or hypothetical reading of the liberal body of work is the right one. In practice, and perhaps largely unconsciously, liberal theorists have tended to see the whole sweep of disobedient activism — which is of course a complex, centuries-old, ideologically laden political and social activity, and one which has been a lightning rod for much lay discussion of the metaphysics of dissident ideals and means — as, at most, an instantiation of the abstract theoretical problem: 'when and why may the general obligation to obey the law be defused or eclipsed?'.[18]

And with that out in the open — that while liberal theorists think and claim that they are offering a moral accounting of the historico-political phenomenon of civil disobedience, they are in fact probing the abstract question of the force and limits of political obligation, drawing up blueprints for a paradigmatically justifiable form of unlawful action in the hypothetical society under their particular brand of microscope[19] — we are now in a position to resume the argument with a clearer view of what's at stake here. And in particular, we are well placed to inquire whether it is any vindication of the liberal body of work to re-found it, more transparently, in this way.

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thetical (and much idealised) political circumstances. And with that out in the open, we are now in a position to understand the real meaning of Brownlee's frequent reference to 'paradigm cases' of civil disobedience — viz. not, as I have in mind here, activism representative of important or ubiquitous historical types, but *ex nihilo* cases that exemplify her own theory. Thus when she writes that '*paradigmatically*, civil disobedients are suitably constrained in their methods; they show their dialogic ambitions by being neither unduly violent nor excessively coercive. Their self-restraint shows both that they realise they may be mistaken about their views and they desire to engage with people at the level of reason', we ought not to take this as a baldly false claim about the paradigmatic reality of worldly activism — a botched attempt to distill political reality, but as a *stipulative* claim about what *her* hypothetical 'civil disobedients' are like. 'Reply to Critics', 726, my emphasis.

[18] Theorists then appear to have assumed that in answering this abstract, theory-dependent question, one also — necessarily and unproblematically — makes sense of really-existing activism. I can see no other explanation for the misdescription that I discuss here.

[19] Indeed, the liberal engagements are better translated thusly: not 'On the Justification of Civil Disobedience', but (variously) 'That the Natural Duty of Justice Permits Certain Breaches of Law in Near-Just Circumstances'; 'That a Deliberative Democratic Regime Would Not be Undermined by Specific Kinds of Political Lawbreaking'; 'That Contractualist Theories of Political Obligation Do Not Imply Absolute Fidelity to Law'; 'That the Humanistic Principle Undergirding the Idea of Liberal Democracy Provides Reason to Permit Certain Specified Breaches of Law' (and so on).

So I ask again, does it *really* matter that liberal civil disobedience — the strictly discursive breach of law *per se* — does not exist, and offers no normative grasp on reality? Does it really matter that theorists have not, in the end, attempted to shed normative light on the political world we live in, nor the activism we find in it, but to deal in the abstract problem of political obligation?

Yes! Because what matters here *is* the world. What matters here is to make normative sense of that thing of political importance and historical ubiquity — activism outside the law! It is no vindication of the liberal engagement to concede that it tells us nothing of all that going on out there — nothing of what we learn about in the history books, nothing of what we see on the streets and in the news (and have perhaps been involved in ourselves), nothing of what is the object of reactionary doubt and fear, nothing of what has shaped our current world, nothing of what continues to pervade our political experience.[20]

I admit that I have no argument on this point. Indeed, it seems to me self-evident that the purpose of a normative theory of the non-ideal world is to make sense of our actual political circumstances, and that the purpose of a normative theory of civil disobedience in particular is to tell us what to think about the permissibility or impermissibility, the value or disvalue, of *that stuff going on out there* — people refusing to leave lunch counters until they get served, people refusing to go home when the authorities demand it, people marching in the streets when the authorities forbid it, people refusing to budge until a pipeline is abandoned, people refusing to pay until a tax is dropped, people sabotaging logging machinery until a forest is saved, people preventing deportations, people preventing abortions — in short, people defying authority and taking matters into their own hands.[21]

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[20] As I suggested above, it's worth noting here that even if 'liberal-style' activism — i.e. that trading on the self-limited, symbolic, didactic breach of law *per se* — did exist, this activism would not be the activism that we — the silent majority, the society at large — *worry* about. Even if the liberal account *did* single out a really-existing activist tendency for normative analysis, in other words, our thirst for moral perspective on worldly disobedience would still not be quenched — we would lack still an accounting of the more militant and historically significant alternatives.

[21] I say I have no real argument on this point — viz. that our interest in the phenomenon of civil disobedience is inescapably an interest in its real historical life, in the real actions and personalities of 20th and 21st Century political history. But my discussion above provides one weighty reason to endorse this view: liberal theorists themselves claim consistently to be illuminating exactly this historical life. Indeed, were this not what really matters, it's difficult to see that their real project — viz. that of exploring the conceptual possibilities of whichever account of state legitimacy they are sympathetic to — would not be more prominently declared.

But we learn nothing of that from the liberal body of work, we learn only the truths of a hypothetical world. And it is of little interest to us, I think, that a certain kind of fictitious disobedient, one who lives in circumstances that are not ours, may disobey because she does not try to win the day coercively; or that her action would do a great service to that hypothetical society, and perhaps set it on a more just path (even if these are, in some sense, truths).[22] Indeed, I am reminded here of William James's criticism of the conjectural universe of the rationalist philosophers, a world that he likens to a 'marble temple shining on a hill'. He goes on:

> [I]t is far less an account of this actual world than a clear addition built upon it, a classic sanctuary in which the rationalist fancy may take refuge from the intolerably confused and gothic character which

[22] The comparatively scholastic nature of this hypothetical project might be indicated thusly: why stop at an elaboration of political lawbreaking in deliberative democracies, republican democracies, near-just regimes, societies regulated by the humanistic principle (and so on)? Why not enquire whether the theological underpinnings of the caliphate also licence disobedience? Or whether the divine right of kings establishes a correlative right to disobey the Crown under certain conditions? Or whether the *fuhrerprinzip* admits of complementary grounds for disobedience? Or whether the logic of the *phalanstère* generates dispensation for occasional departures from mandated order? After all, these latter investigations would involve the same degree of nuanced argument as do the former, and because their legitimating principles of state no more characterise our world than does, say, deliberative democracy, we could not appeal to the criterion of worldly relevance to dismiss them. To be sure, we would rather live under a deliberative democracy than the divine right of kings, and we may even prefer to live under a deliberative democracy than under any other form of government, but the desirability of the end-state does not lend interest to the project of discerning how such a state ought to treat a certain style of political lawbreaking. And if the reader will indulge me in a moment of speculation, I am tempted to put the point with more force: if we are friends of deliberative democracy, we would do better to study really-existing activism in its manifold organisational complexity, and in its precise manner of probing and testing power (and the historical reaction of power to same), than to wonder what would justify civil disobedience *in* a deliberative democracy. The former study sheds some light on deliberative politics in practice (insofar as social movements are, internally, laboratories of democratic experiment); and more to the point, it reveals what are the real obstacles to a more deliberative society (viz. that society is controlled by forces with much to lose from effective citizen participation). The latter study, even if it stems from sound conviction in the rightness of deliberative democracy, tells us much less of use or interest about it.

All that aside, the scholasticism of the hypothetical project goes hand in hand with a certain arbitrariness: even were the 'truths' of this enterprise viable on their face, it cannot be denied that they have a certain truistic character. Once we are dealing with mental phenomena, rather than with real, fixed, worldly phenomena, the project of justification, the project of reconciliation, the pursuit of right — these all become much more straightforward, insofar as the form and conduct of disobedience is liable to be filigreed in advance in order to evade the anticipated objections.

> mere facts present. It is no *explanation* of our concrete universe, it is another thing altogether, a substitute for it, a remedy, a way of escape.[23]

With that I adjourn the case for my first holistic verdict on the liberal body of work in meta-theoretical perspective. One can read the whole fifty year corpus, as I have read the whole fifty year corpus, and yet discover nothing about the morality or the value of whatever stripe of activism one finds particularly inspiring or troubling. One learns instead only what is at stake in a practice bearing meagre resemblance to 'civil disobedience' under any living political sense of that term.[24] The fifty year object of liberal enquiry does not exist, and in the end it really does matter that it does not exist: a moral accounting of civil disobedience — that really-existing phenomenon — is still to be undertaken.

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[23] William James, *Pragmatism and Other Writings* (New York: Penguin, 2000), 15.

[24] I am not calling for a grinding realism here: we profit from some abstraction in our theory. I simply say that theory should float free from the world only to the extent that such distance is functional for the illumination of it. I take it that this is roughly what Weberian ideal types are supposed to do: isolate and illuminate something true about the empirical world by assuming away certain other things. Indeed, abstraction in this sense is, as Hamlin and Stemplowska note, an important way of getting to the nub of a problem — of 'bracketing off some complexities … without assuming any falsehoods about them. It is a form of simplification undertaken to focus on the most important aspects of the problem in hand.' Certainly that is roughly what I was trying to do in Chapters Three and Four — offer a slightly stylised distillation of historical tendencies, so as to bring out what is important from them under the terms of our present inquiry. My case here, however, is that the liberal view abstracts so much from the world and from the reality of civil disobedience that we get not a *clearer* (because more refined) view of disobedient activism in this actual world, but rather *no* view at all. I return to this theme — viz. the various forms of idealisation and abstraction, and their theoretical uses and misuses — in §5.2. See Alan Hamlin and Zofia Stemplowska, 'Theory, Ideal Theory and the Theory of Ideals', *Political Studies Review* 10:1 (2012): 48-62, 50.

5.2 Nothing To Say

Five decades of liberal work on civil disobedience have provided no real illumination of our political reality, nor any moral guidance on the activism we find in it. No moral accounting of a practice to which people have devoted their lives, and which is associated with some of the most famous progressive victories of the last century, and which exerts an enduring hold on society's political imagination.

There is a void in the literature, then.[25] And the reader might think that it falls to me to fill it — to undertake the moral accounting of civil disobedience that liberal theorists have shirked. This I will do, but only as a means of establishing my second and final holistic judgement here: that the reality of the world reveals not only the failure of the liberal body of work, but also the inviability of its underlying normative agenda. That normative agenda — the inquiry into civil disobedience's permissibility and proper reception by the state — is rendered largely moot, even unseemly, by the political circumstances that confront us.

What I urge here at the last, then, is not a renewed normative engagement with civil disobedience (this time proceeding from an accurate assessment of the relevant political-historical facts), but rather the *abandonment* of that project. There is little of normative interest to say about disobedient activism in this actual world — and much danger in the attempt to pretend otherwise.

5.2.1. A Matter Of Principle

I should like to begin this deflationary treatment of civil disobedience's normative intrigue by pre-emptively defusing the two extant grounds of principled scepticism about it — viz. that, because illegal, it commits at least the *pro tanto* wrong of lawbreaking; and that, because coercive, it betrays an autocratic streak that ought to give us pause.[26] These matters

[25] I am not the only commentator to have noticed this: Jennifer Welchman and Tony Milligan both argue that the liberal view has little to say about much real-world activism. But where they call for a more capacious idea of 'civil disobedience', and a renewed normative engagement under that expanded rubric, I argue here that this project is largely moot. See Welchman, 'Is Ecotage Civil Disobedience?', 97-102; and Milligan, *Civil Disobedience: Protest, Justification, and the Law*, esp. 13-25.

[26] Writes Lefkowitz, representatively: 'In a state without justifiable claim

of principle — those of noncompliance with normatively authoritative law and of undemocratic challenge to democratically authored policy — simply are not brooked by disobedient activism in this actual world, I shall argue here. Quite the contrary: there is no thorny moral problem to be found in real activism on these counts.[27]

I say that in the first instance because it is scandalous, and not merely implausible, to suppose that the law had any moral weight in civil disobedience's most famous incarnation. My arguments in Chapter Three have made that abundantly clear, and at this late stage I only remind the reader that civil rights activists and the wider black community had no hand in drafting the segregation laws; that many of those

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to political authority, civil disobedience in itself presents no moral difficulty … no moral significance attaches to the mere fact that it involves disobedience to the law.' But in states with 'justifiable claim to political authority … civil disobedience at least appears to conflict with this duty [i.e. to obey the law] and so is morally problematic in itself and independent of other moral considerations that may bear contingently on any particular act of civil disobedience' — for instance whether 'the act in question directly harms innocent third parties'. ['On a Moral Right', 205, my emphasis]. And see also here Markovits's pithier framing of the issue — viz. that 'political disobedience in a democracy carries a taint of autocracy', as well as Dworkin's rendering of the problem as one involving a distasteful 'elitism or paternalism' — i.e. an 'attack' on the principle of majority rule. [Markovits, 'Democratic Disobedience', 1898; Dworkin, *Matter of Principle*, 111]. Now, when I refer to the 'principled' question of civil disobedience hereafter, it is this idea that I have in mind — i.e. that regardless of its consequences or the manner of its conduct, there is something prima facie objectionable in the very *idea* of civil disobedience — in the very idea of breaking the law for political purposes, or of challenging or frustrating the law by means foreign to the consensual, deliberative impetus of the ordinary constitutional system. (On this point see also Rawls's view that 'the problem of civil disobedience … arises only within a more or less just democratic state for those citizens who recognise and accept the legitimacy of the constitution' … 'the difficulty is one of a conflict of duties' [*Theory of Justice*, 319; and cf. 'Justification of Civil Disobedience', 176-177]; Brownlee's stance that, regardless of any instrumental considerations, civil disobedience is prima facie objectionable because activists 'improperly arrogate to themselves licence to disregard laws by which others hold themselves to be bound', and thereby demonstrate 'disrespect for other citizens who have exercised their judgement in making the laws in a fair, deliberative, and democratic way' [*Conscience and Conviction*, 157]; and Smith's claim that civil disobedience 'stands in need of justification in a democratic society because it goes against the moral requirement that citizens comply with democratic institutions'. 'Public Sphere', 145).

[27] It's worth pointing out before we go any further that the principled question of political lawbreaking may not be very troublesome in the rarefied world of liberal theory either. As Chapters One and Two made clear, and as my note above on the arbitrariness of the hypothetical project also suggests, theorists have found it very easy to justify civil disobedience, even in the face of an assumedly weighty obligation to obey the law. In other words, even in the thoroughly and *ex hypothesi* legitimate states of liberal theory, theorists have come down quickly on the side of the defeasibility of political obligation, or else of its pluralistic eclipsing by other values.

laws were unconstitutional (hence not only *normatively* invalid); that their substance was the perpetuation of systemic injustice of a most vindictive kind; and that when it came to black residents of the south, they were about the only body of law that the state governments were at all interested in enforcing.[28]

It displays neither humanity nor theoretical nous, I am suggesting here, to hold civil rights activists even *pro tanto* bound to obey southern law.[29] Asking the traditional liberal question — i.e. whether civil rights activists were justified in breaking the law to protest the segregationist regime, even *thinking* about asking it, never mind treating it as a live and vexing one — is, in the classical parlance, to have one thought too many.[30] It is to demonstrate an unseemly readiness to bind civil rights activists to a grotesquely unjust institution, and moreover, one that their oppressors did not feel themselves bound by. No doubt I am bursting through an open door here, the point is obvious: there is no principled question brooked by civil disobedience's illegality in this, its most famous case.[31]

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[28] This goes well beyond the moral wrong of the breach of law, of course. As I remark more on below, it is obvious that civil rights activism had no moral case to answer at any level — the situation was grotesque, and so everything was on the table.

[29] In making my case here and throughout I rely on no particular view of political obligation, largely because liberal theorists do not agree on any single view, and it would therefore seem wise for me to avoid assuming one. I rely instead on an implicit composite of the grounds suggested by the liberal framing of the problem — viz. that the normative authority of policy is a matter of its having been made, for instance, by co-citizens engaged in a 'fair, deliberative and democratic' process, or by a majority of citizens exercising their right to determine what is 'their common interest'. [Brownlee, *Conscience and Conviction*, 157; Dworkin, *Matter of Principle*, 111]. I rely on this implicit composite and on the 'truism' suggested by David Lyons — viz. that 'there are limits to the injustice that is compatible with political obligation'. 'Moral Judgement', 35.

[30] This is more or less David Lyons's view, and I endorse its full force: 'The judgment of those of us who took political obligation for granted despite the obvious existence of intolerable, deeply entrenched, systematic injustice against clearly identified groups within our society was distorted by inadequate sensitivity to the palpable impact of the oppression, especially on those of color … My suggestion, then, is that theorists' endorsement of political obligation, while possessing sufficient knowledge of settings like Jim Crow, can reasonably be characterized as a derivative but socially important form of racism'. 'Moral Judgement', 48-49.

[31] And yet theorists do not appear to have seen it this way: Brownlee in particular seems to consider it a live moral issue whether Parks had a right to disobey, and holds that if she *did* have such a right, then she did so only insofar as she maintained the highly demanding affective attitude of epistemic humility and respect for the oppressor discussed at length in §3.1. To be sure, Brownlee eventually concludes that 'it's onerous to ask of Rosa Parks that she wait for a better season to challenge segregation laws', but I say in reply: what implied interlocutor worth engaging with would think it even passingly credible that Parks should wait? *Conscience and Conviction*,

It may be less obvious, however, though no less an important fact to be grappled with as we reflect on the continuing viability of the liberal normative project, that it has been a historical commonplace for activists — and especially for the holy triumvirate of the liberal imaginary — to explicitly reject that there *is* a moral problem of civil disobedience in the traditional liberal sense — i.e. one founded on the moral authority of law.[32] Thus did King write after Birmingham that:

> Law is unjust if it is inflicted on a minority that, as a result of being denied the right to vote, had no part in enacting or devising the law … Throughout Alabama all sorts of devious methods are used to prevent Negroes from becoming registered voters, and there are some counties in which, even though Negroes constitute a majority of the population, not a single Negro is registered. Can any law enacted under such circumstances be considered democratically structured?[33]

And thus did Thoreau write — *pace* Hugo Bedau's claim that this inaugural act of civil disobedience signalled (merely) Thoreau's '*objection*' to US Government policy — that he disobeyed not because he objected to the status quo, but because he did not '*recognise the authority of* … the state which buys and sells men, women, and children like cattle at the door of its senate house'.[34]

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[32] It is for this reason that Simmons writes: 'While Rawls and those who engage his account are, of course, free to use the term "civil disobedience" as they choose, their discussion thus threatens to be irrelevant to any analysis of the arguments of those we think of as the paradigm practitioners of civil disobedience'. A. John Simmons, 'Disobedience and its Objects', 1810.

[33] King, 'Letter', 82. He also said, more pointedly: 'I would agree with St. Augustine that "an unjust law is no law at all"' [81]. And this sentiment — that Southern law had no moral weight — was also expressed in the SNCC tactic of 'Jail No Bail', by means of which activists intended to signal that they had not, in any pertinent respect (whether moral or constitutional), committed a crime. On 'Jail No Bail' see e.g. Zinn, *The New Abolitionists*, 37-39. More generally, and for an excellent proof that neither Thoreau, Gandhi, nor King — the three canonical practitioners of civil disobedience — recognised an obligation of obedience, see David Lyons, 'Moral Judgement', §2.

[34] Henry David Thoreau, *Walden and Other Writings*, ed. Brooks Atkinson (London: Penguin, 2000), 155, my emphasis. Of course we find a similar sentiment in his famous declaration that 'I cannot for an instant recognize that political organization as *my* government which is the *slave's* government also.' Thoreau, 'Resistance to Civil Government', in Nancy L. Rosenblum ed., *Political Writings* (Cambridge: Cambridge University Press, 1996): 1-21, 4. Such an attitude is, as I suggest here, far distant from that imputed

He ought not to have recognised otherwise, of course. Just as King was correct to declare himself unbound by laws that his people had no part in making, and Gandhi correct to declare himself unbound by the laws of an alien empire, so was Thoreau correct that no such recognition was due a brutally imperialist slave state. In light of which we may then say not only that the liberal project's habitual focus on the moral weight of law has little purchase on civil disobedience in these archetypal cases, but also that it renders unintelligible what it has been a historical purpose of civil disobedience to declare — viz. that the state's law is *illegitimate*, that there is no clash of duties of the sort it has been the liberal project to parse and balance.[35]

That point, of course, goes only so far. We may think that the law has moral weight in other cases, though I confess once again that I see no reason why, if it did, that weight should present a thornier problem in reality than it does in the idealised world of liberal theory. In any case, I address that point now, at the same time as I try to defuse the other ground of principled doubt mentioned above — viz. that because really-existing civil disobedience goes further than merely breaking the law, in fact striving to frustrate it or by cost-raising means to change it, this activism displays an autocratic streak that cries out for sustained normative treatment.[36]

My case against that principled qualm is prosaic. The idea that, as a matter of democratic principle, law or policy should not be countered by cost-raising means — by means

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to him by Bedau — viz. that 'Thoreau's refusal in the 1840s to pay his poll tax was [merely] *symbolic of his objection* to the federal government's aggressive war against Mexico, support for Chattel slavery in the southern states, and continued violation of the rights of the native Indian population'. [Hugo Adam Bedau, *Civil Disobedience in Focus* (Abingdon: Routledge, 1991), 2, my emphasis]. This misreading is not, however, Bedau's alone: for a discussion of Rawls's misidentification of Thoreau as a conscientious objector, see Lyons, 'Moral Judgement', 4. And for a brilliant dissection of Thoreau's rejection of state legitimacy (as well as for contextual commentary on US society's unwillingness to admit the proto-'philosophical anarchist' bent of his writings) see Simmons, 'Disobedience and its Objects', 1810-1814.

[35] This dynamic is not localised only to these historic cases, of course. I take it that contemporary anti-capitalist activists, for instance, would not much dissent from Marcuse's view: viz. that 'law and order are always and everywhere the law and order which protect the established hierarchy; it is nonsensical to invoke the absolute authority of this law and this order against those who suffer from it and struggle against it — not for personal advantages and revenge, but for their share of humanity.' Herbert Marcuse, 'Repressive Tolerance', in Herbert Marcuse, Barrington Moore Jr., and RP. Wolff eds, *A Critique of Pure Tolerance* (Boston: Beacon, 1965), 116-117.

[36] Quite apart from the question of political obligation, I need not point out that there can be no principled doubt whether civil rights activists were justified in trying coercively to end southern white tyranny.

foreign in kind to those deliberative ones employed in the official political process — is, *in our world*, of sufficient dubiety to largely foreclose the principled question of real activism's justifiability. Indeed, let me suggest as a crude but plausible generalisation that 'even' today's western liberal democracies are of sufficiently bankrupt morals to undermine not only any serious suggestion of a weighty obligation to obey the law, but also any moratorium on cost-raising, 'undemocratic' challenge to policy. Might not anti-Iraq-war protesters, for instance, have been correct to think that the government which — through disinformation — dupes parliament into signing off on a predictably catastrophic conflict thereby forfeits its claim to obedience, or to be met with only rhetorical, discursive protest? Might not the poll tax resisters have justly thought the same of a morally bankrupt government, for which no-one in the charge's place of introduction had voted, when it imposed an enormously regressive charge partly designed to disenfranchise the poor?[37] Might not anti-capitalist activists be right to think that so corrupt and inegalitarian a regime as ours lacks the moral standing to require obedience of the ordinary citizen, or to ask that she limit her protest to rhetoric and symbolism alone? Might not climate activists be correct to think that no state which sits on its hands while the earth boils has the right to claim obedience, or the right to go about its business without material hindrance? And might not Black Lives Matter activists have cause to think that they owe nothing to the state which permits the suppression of their vote and their routine brutalising at the hands of law enforcement?[38]

What I am suggesting here is that any vestigial squeamishness we may have about particular historical cases of lawbreaking (or of cost-raising challenge to policy) derives from viewing those cases at too high a level of abstraction. In other words, from viewing them as what they are not — viz.

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[37] That is not to say that the moral case in favour of nonpayment was cut-and-dried. One might well have reasoned — as the Scottish Labour Party did — that nonpayment would, by starving local authorities of funds, lead to worse outcomes in the medium term. As Bellamy writes: 'The [SLP's] "Stop It" campaign, for example, which consisted of a form of legal "work to rule" whereby people were urged to return their forms with nit-picking queries designed to hinder the implementation of the tax, deliberately stopped short of non-payment on the grounds that this would damage the interests of the very people the protestors were attempting to help by withdrawing much needed resources from local authorities.' Bellamy, 'The Anti–Poll Tax Non–Payment Campaign', 27.

[38] I focus hereafter on the coercive problem alone, and I do so on the presumption that any weakening in the case against coercion will tend to weaken in tandem (indeed, in greater proportion) the case against lawbreaking as such. After all, it is surely worse — as a matter of principle — to break the law coercively in an attempt to change or frustrate it than it is to break the law symbolically in order to signal one's opposition to it.

avatars of more abstract questions of democratic principle.[39] And in particular, what is abstracted from is the means by which policies are made *in practice*. 'One person, one vote' might be the mechanism by which *governments* are elected (*might* be, I emphasise with all judicious scepticism), but it is not the mechanism by which laws and policies are made, priorities developed, departmental orders issued (and so on). *That* is a function not of democratic deliberation robust and inclusive enough to lend these determinations normative authority, but of strategic bargaining — horse-trading — among parties with skin in the game.[40]

Thus if we turn again to my rhetorical review above, it is plain that the policies and programmes at issue there — matters of defence and national security, of climate and the environment, of tax and the money supply, of industrial relations, of electoral logistics — are shaped not by exercise of the sovereign will, but rather by lobbying, political favours, the threat of capital flight (and so on).[41]

From this vantage point, and despite the traditional liberal framing of the dilemma, cost-raising outside the law is not,

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[39] If I might return now to a theme left over from §5.1 — viz. that of the theoretical uses and misuses of abstraction and idealisation, we may put the force of my criticism here in a different way. The liberal engagement has not abstracted and idealised in such a manner as to cut to the core of the moral problem of civil disobedience — i.e. the conflict between political obligation and some other compelling good, or the conflict between that good and the value of democracy; rather, this abstraction and idealisation has *created* a moral problem where there is none. And while I do not doubt that this over-idealisation is ideologically pernicious, in the sense elaborated by Charles Mills, I shall not address that concern at this stage. I wish here only to diagnose the root of the problem, and to clarify that I have no quarrel with abstraction or idealisation as such, but simply with this improper variant of it — with its obscuring the world, rather than clarifying it. See Charles W. Mills, '"Ideal Theory" as Ideology', *Hypatia* 20:3 (2005): 165-184.

[40] As Robert Goodin has it: 'Many [CND activists] suppose that nuclear policy, like all other policy, has been made on the basis of the pushing and hauling of private interests. That is an image of the policy process promulgated by political scientists ranging from pluralists to Marxists … We cannot just presume the truth of one particular model of the policy process. We cannot just presume that facts, reasoned argument and regard for the common good — and these things alone — guided the initial policy choice. Our theory of civil disobedience, to do the work assigned it, must also be open to the possibility that the initial policy choice reflected no more than some earlier balancing of comparative costs.' Goodin, 'Nuclear Protest', 466.

[41] This is a point of some significance: even if one accepts, as a general matter, that we live under a broadly democratic regime, one cannot easily deny that the policy areas historically most prone to disobedient attention are also those best-insulated from popular oversight. Climate and environmental regulation, trade policy, military policy, security policy, monetary policy (and so on) — these areas, the most contentious areas, are the ones marked most heavily by the pushing and hauling of private interests.

properly speaking, a *challenge* to democracy, but simply a continuation of 'democracy' in its practical form. And that would seem to erode any qualm of principle about this form of action, in the sense that when pipeline activists put cost-raising pressure against a drilling project, they offer an inducement no different in *kind* to that by which we came to have a drilling project in the first place — viz. the lobbying activities of the energy sector.[42] After all, the threat of capital flight, or the threat of an investment strike, or the threat of hefty financial support for one's primary opponent — these gambits are no more deliberative, no more democratic, no less coercive than is an extended sit-in campaign.[43] In light of which I put it thus: anyone given to think that there is anything intrinsically wrong with cost-raising obstruction of a pipeline project — i.e. because it replaces reason with force, and so strikes at the very principle of democracy — simply holds a mistaken view of how 'democracy' works in practice.[44]

I will say no more on the matter of principle — on the canonical idea that civil disobedience is, as Lefkowitz has it, 'morally problematic in itself and independent of other moral considerations'.[45] The presumptions necessary to give life to that problem — viz. state legitimacy and robustly democratic policy in (at least) the areas that disobedients have been prone to target — are in practice dubious enough to

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[42] I am making a thinly-veiled allusion to Standing Rock here, and if I might remove the veil now, it's worth noting that the pertinent countervailing consideration in this case is not only that the drilling permits were likely granted as a lobbying-won political favour, but also that they may well have been granted in violation of pre-existing US treaty obligations — in particular those incurred in the 1851 and 1868 Treaties of Fort Laramie between the United States and the Yanktonai Dakota, Arapaho Nation, and Oglala, Miniconjou, and Brulé bands of Lakota people. For a detailed discussion of the 1868 treaty and its likely infraction by the Dakota Access pipeline, see Robert A. Bell, 'The Fort Laramie Treaty of 1868 and the Sioux: Is the United States Honoring the Agreements it Made?', *Indigenous Policy Journal* 28:3 (2017).

[43] As Goodin has it once again: 'if the only reason we have nuclear weapons is that various segments of the community would have made a lot of trouble if we did not, then trying to get rid of them by showing the government that other segments of the community will make a lot of trouble if they stay is just to provide another reason of just the same kind for their elimination. It is no better and no worse than the reason we had for accepting nuclear weapons in the first place.' Goodin, 'Nuclear Protest', 466.

[44] And what also works to calm this anxiety: civil disobedience is nearly always ineffective, and even in its more effective moments it has never — never in history — actually *forced* a party into acquiescence. Not even in the civil rights heyday did it give the federal government or segregationist business owners literally no option but to accede. Civil disobedience is an *attempt* to change the incentive matrix facing the relevant authority (and even then, rarely in drastic ways). It is not a gun to the head.

[45] Lefkowitz, 'On a Moral Right', 205.

largely foreclose the principled question of really-existing activism's permissibility. There is little grist for the normative mill in the particular *kind* of action that really-existing civil disobedience is — viz. that involving defiance of law and cost-raising challenge to procedurally valid policy. What is left — from the point of view of moral accounting, from the point of view of the liberal normative project — is simply the bare question of ends and means, of *proportionality*, of its specific character in particular cases.[46]

5.2.2. Proportionalismo

And yet there is little normative-theoretical meat here either, for the right judgements quickly reveal themselves. No-one can doubt, for instance, that civil rights activism — though it did no principled wrong *qua* lawbreaking, or *qua* coercive challenge to procedurally valid law — also did no wrong in virtue of its substantive character. Its ends were heartbreakingly righteous and its means judicious. There is nothing for a theorist of civil disobedience's permissibility to see here.

At the other end of the spectrum, the few examples of cost-raising reactionary disobedience lend themselves immediately to similarly stark judgement. It is screamingly obvious, for example, that Operation Rescue's intimidatory abortion clinic blockades, being a repugnant means to a dubious end, were not permissible and ought to be deplored.

The ends of 'stunt' or 'second best' activism, meanwhile, are a mixed bag: in the main they are righteous, occasionally they are reactionary. The *means* of this activism, however, are in all instances perfectly innocuous, it being the rare case where protesters do intend little more than to symbolically breach the law. For that reason it would be churlish to doubt stunt activism's permissibility. Could anyone reasonably object, for instance, to an activist unfurling a banner from the Statue of Liberty in solidarity with tens of thousands of *de facto* Americans facing deportation? Could anyone reasonably object to the temporary blockades at Faslane? Could anyone summon up any reasonable qualm about two people in Guantanamo orange breaching the peace inside a Brighton

[46] The general questions whether the end justifies the means, or whether there is a metaphysical connection between certain ends and certain means, are not at all trivial, of course. They are perennial — and in my estimation, vital — questions both of political theory and of dissident strategy. I must clarify then that I do not wish to suggest that the question of ends and means is, in any *general* sense, straightforward or theoretically uninteresting. Rather, I suggest only that in the concrete cases of really-existing civil disobedience, the question is of strictly limited interest: we are talking about nonviolent resistance, after all; not terrorism or armed insurrection.

Starbucks? Could anyone reasonably think — to throw in a reactionary example for the sake of balance — that the permissibility of the Fathers4Justice Batman's solitary protest atop Buckingham Palace is a particularly vexing issue?

Now, my intention here is not to enumerate decisively the permissibility of these various actions, but simply to draw out that the question of their permissibility is not an especially thorny one — not one that normative political theorists could get much excited about. Thus while I have no doubt that the reader will be able to bring to mind cases that are perhaps more difficult to adjudicate than those I mention here, I shall point out that the business of adjudicating these harder cases will owe more to investigations of an essentially sociological nature than it will to a grand normative theory of civil disobedience. We will have to evaluate an action's end, to be sure, though in doing so we will not refer to a theory of civil disobedience as such, but outsource our working to the wider fields of political theory and normative ethics; but mainly we will need to have a good sense of the relevant complex counterfactuals — those combining relatively mundane non-moral facts concerning, for instance, an action's chances of success, its social and political risks in the short, medium and longer terms, the feasibility of any alternative paths to the same good (and so on).[47]

[47] Mightn't one object that the thorny normative issue here is not the permissibility of the means that activists *do* use, but the permissibility of those that they could or might use? This is certainly to think more along the right lines, though such a project sits uncomfortably with the traditionally conservative spirit of the liberal engagement (Brownlee, for instance, carefully weighs the permissibility of activists ironically catapulting teddy bears at heavily armoured riot police. [*Conscience and Conviction*, 21]). That aside, and if I might continue a line of thought from the note above, it seems to me that the reality of the world must diminish the normative interest even in this alternative project: all progressive movements in the liberal-democratic world are committed to nonviolence of some form or other, in large part because organisers sense — correctly — that an organised campaign of violence (much less a frontal assault on the state) is strategic suicide. In other words, the set of *feasible* resistance tactics is much smaller than the set of resistance tactics that might be assessed in free-floating normative analysis, and this will tend to undercut the interest in, for instance, the question of whether corrupt public officials may permissibly be kidnapped. In this connection see Kaufman's view that the disaster of the Weatherpeople's 1969 Days of Rage — easily and brutally crushed, a propaganda nightmare — taught the US New Left that nonviolence was the only strategic game in town. Kaufman, *Direct Action*, 16-18.

5.2.3. Checkpoint

With that judgement I bring this deflationary engagement with the question of civil disobedience's permissibility to a close.[48] The sordid nature of the world defuses the presuppositions that give that question bite — viz. that because civil disobedience is illegal when one ought to obey, and because it raises costs when one ought to appeal to reason, civil disobedience is, regardless of its consequences, 'problematic in itself'. There is no such intrinsic problem, and if that is where civil disobedience's normative interest lies, then civil disobedience is a phenomenon of no special normative interest.[49] With the principled questions of lawbreaking and cost-raising dissolved (and only the humdrum question of consequences remaining), I cannot see that there is much 'political theory' — in the conventional normative sense — in the worldly phenomenon of civil disobedience.[50]

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[48] It may be objected that I am too crude here — that while the *permissibility* of these actions is easily settled, it is a different and more difficult question whether there is a *right* to this sort of activity. Now, in the first instance, I am not certain that this is really so: civil rights activism, for example, is unproblematically subsumed under a right to resist one's own subjugation; and climate activism, it seems to me, may well be protected under some version of the right of necessity. But more to the point, I do not claim here that there is literally nothing to say on the moral accounting of really-existing activism; rather, I claim that the kind of question still open — 'is anti-fracking activism protected by right, or is it simply the right thing to do?' — surely indicates (in tandem with the diminution of the interest in rights talk established in Chapter One and fortified in §5.3) that the traditional normative project has largely run out of steam.

[49] I allude here to Markovits's claim that 'political disobedience is legally and philosophically interesting only when it arises in basically legitimate and especially in democratic states'. ['Democratic Disobedience', 1936]. Now, from the point of view of moral permissibility, he is correct. But I cannot agree that this exhausts civil disobedience's philosophical interest. Indeed, the question of this activism's *value* — as opposed to the question of its classification under the categories of 'forbidden', 'permissible', and 'protected by right' — remains live and urgent (especially given its frequently dim prospect of success, we might think). At any rate, platitudes about the Millian educative value of principled dissent will not do, and though this question has traditionally been the preserve of left and 'continental' theorists, I see no reason why it should not be considered by a larger congregation. That said, my suspicion is that any compelling answer to this question will owe more to an ingenious parsing of the prevailing political conditions, and to a similarly ingenious interpretation of the sociology of activism in particular cases, than it will to the debates of normative political theory.

[50] I stress the 'conventional' here, and I should like now to clear up exactly what I mean by this (and by the comparable locutions on which I have occasionally relied). When I refer to political theory in the conventional normative sense, or to the 'traditional normative project', I mean to rebuke

My second holistic, meta-theoretical judgement here at the last, then, is that though the liberal view offers moral scrutiny only of a hypothetical practice, hence leaving a theoretical void when it comes to civil disobedience in this actual world, there is little to profit from trying to fill in that void. This basic project — the basic enterprise of normatively assessing civil disobedience — cannot be redeemed even through a new and descriptively accurate engagement with the historical reality of that practice. The nature of civilly disobedient activism in the world, and more to the point, the nature of the world provoking it, render this traditional liberal enterprise of only very attenuated theoretical interest.

But I confess now that my aim in making this case is only partially to warn, from the perspective of the disinterested theorist, against investing any urgency or interest in the moral adjudication of really-existing civil disobedience. Indeed, the more important conclusion to be drawn here is not this deflationary one, but rather that the traditional liberal question — 'is civil disobedience justified?' — is misguided

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that style of theory defining the liberal engagement hitherto — that aimed at assessing the permissibility or otherwise of definite behaviours, and at drawing up prescriptions for how those behaviours ought to be treated by the relevant authorities. I mean, in other words, action-guiding non-ideal theory, or perhaps what is sometimes called 'applied ethics' or 'practical ethics' — theory addressed (in this case) to the following 'practical' questions: whether citizens ought to refrain from disobeying the law for political reasons, and whether the state ought to take punitive action if they do disobey. These questions — this theoretical tendency — is foreclosed, I think, by the reality of the world. Indeed, the case of civil disobedience in this actual world is one to which we might apply the meta-theoretical perspective due to Adam Swift and Stuart White — viz. that 'what is morally urgent, and what repays serious attention by the political theorist, do not necessarily coincide'. About the former phenomena, in other words, it may be that 'there is little of normative interest to say', hence 'difficult to see that there would be much political theory in [them]'. That is more or less the attitude — and implied conception of political theory — I have in mind when I try to deflate the normative theoretical interest in the worldly phenomenon of civil disobedience. But as I have already suggested, and as I will suggest again in due course, this is not to say that there is nothing for political theorists *simpliciter* to say — even normatively — about civil disobedience. Rather, the question of existing activism's *value* in this concrete world is live and vital, though (and as I mentioned in the note above) my suspicion is that no serious answer can be given to it which does not start from an ingenious perception of the real political and social situation. The difficultly, in other words, seems to me less one of normative or value theory at all — even in this minimal sense of 'articulating values' — and more one of social and political ontology. That project is still substantially philosophical, I think — or it cannot be left to social scientists, at any rate. But it leads us into a terrain quite foreign to the methodological and theoretical hinterland of the liberal theorists, and of most 'analytic' political philosophy written today. In any case, I leave my remarks on this front abbreviated here, and I shall return to this theme in §5.4. See Adam Swift and Stuart White, 'Political Theory, Social Science, and Real Politics', in David Leopold and Marc Stears eds, *Political Theory: Methods and Approaches* (Oxford: Oxford University Press, 2008): 49-69, 51.

morally, as well as theoretically.

This question misses the point, I think. It would be a quietist mistake to behold this world of ours and still to single out *activism* for moral scrutiny — to continue peering, hawk-eyed, at the symptom and perhaps the cure, rather than the disease. This endemic, single-minded focus on the question of permissibility tends to obscure a fundamental fact, one I have often remarked upon here, and will put again now, namely that virtually all really-existing activism, past and present, is righteous and judicious — is so achingly, self-evidently, *right*. And how could it not be, given the moral cataclysm of the status quo in so many respects? Given what is going on — what has always been going on?

Now, this holistic verdict of mine — viz. that the liberal normative project, by missing the point, commits a moral error of some kind — will become more transparent as I move on to address the other half of the orthodox enterprise and the remaining liberal question: '*how ought the state to treat disobedient offenders?*'.

5.3 Nothing to Say Redux

The repressive and congenitally dysfunctional reality of the state has been an omni-salient premise in my arguments here. This reality has forced historical disobedients far beyond didactic, symbolic protest in their efforts for reform, and this reality today guarantees the practical inviability of civil disobedience after the liberal archetype. We may then say that this repressive reality — or the liberal unwillingness to acknowledge it — is the root cause of the account's failure *qua* normative political theory of civil disobedience. And not only that, this repressive reality — because it weakens the bedrock presumptions of political obligation and the democratic sanctity of state policy upon which the traditional question of civil disobedience's permissibility depends — renders that question, the basic enterprise of offering a moral adjudication of civil disobedience, a theoretically uninspiring and unduly quietist one.

With that result in hand, I move on now to examine the ramifications of this dysfunctional and repressive political reality for the *other* traditional liberal question — viz. that of civil disobedience's proper reception by the state. And in doing so I shall be going forwards and backwards at the same time: forwards towards the real nub of my argument in this thesis; backwards to treat empirically and meta-theoretically here at

the last what I treated conceptually in Chapter One — the project of reconciliation.

In any event, there is no more life in this second half of the liberal project than there is in the first. Indeed, much less: our sordid political reality renders the question of state response practically unintelligible; and worse, asking it is implicitly to deny what it has been a historical purpose of civil disobedience to demonstrate — viz. that the state *is* repressive.[51]

I shall offer no involved argument for the first of those claims — i.e. that the question is practically unintelligible, hence that the liberal normative project is, on this count too, foreclosed by the nature of the political world. Instead I shall simply ask what sense there is in the thought that George Wallace's Alabama, for instance, ought to have cherished King's public service — ought not to have hounded and harassed him, but to have carved out space for his actions and spared him the Birmingham City Jail.[52] And I simply ask what sense there is in the thought that the Thatcher Government, for example, ought to have facilitated CND activism, and to have recognised and acknowledged the democratic service it did by calling UK nuclear defence policy to account. It seems to me an obvious, elemental fact that these authorities, being the authorities that they were, could do no other than repress, disdain, smear, marginalise, and deter the protesters taking action against them.[53] It seems to me

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[51] I don't mean to suggest that the repression of dissent always takes an overt or bloody form, of course. The other, quieter, ways of disincentivising, quarantining, and marginalising protest — many of them described in Chapter Four — are also on my mind here.

[52] Lay aside, once again, my argument in Chapter One, viz. that this sort of 'truth' — that the state ought to accommodate civil disobedience — is fatally incoherent. My project here is to lay bare a different kind of unintelligibility.

[53] The alternative construal of the liberal enterprise that I broached in §5.1 above — viz. that theorists are not making moral demands of real states, but exploring the responsibilities of a more ideal regime — offers no vindication here. First, and even bracketing my 'incoherence' arguments in Chapter One, this hypothetical alternative faces the same difficulty I documented above on the project of justification — i.e. that it is of little interest absent any illuminating connection to political reality. Second, and more fundamentally, it seems to me that the same principle recommending leniency for disobedient offenders would, if respected, also tend to obviate the *need* for civil disobedience in the first place. Indeed, even the principle that the state ought to respect the moral rights of its citizens — which is the truistic bare minimum that a (hypothetically) action-guiding theory of state conduct could presume — recommends that the state refrain from perpetrating the sort of excesses that would really merit disobedient opposition. Of course, this is not to say that disobedient protest would be *impossible* in such a rarefied regime, but it is to say that it would be distinctly *non-urgent*. To imagine a state where officials accepted and endorsed civil disobedience for its invigorating effect on the public moral conversation, and for its epistemically invaluable role in bringing im-

an obvious, elemental fact, I mean to say, that these authorities wouldn't have been the authorities that they were had they been capable of welcoming the dissident service that activists did them — they wouldn't have been the authorities that so richly merited they dissent they saw, were they at all minded to respect the citizen's prerogative of unlawful activism. Alabama in 1963 wouldn't have *been* Alabama in 1963 were it prone to do anything other than harass and brutalise black protesters. The Thatcher Government wouldn't have *been* the Thatcher Government were it not guaranteed to surveil, infiltrate, destabilise and demonise the dissident movements protesting it. Thus is the practical unintelligibility — indeed, the perversity — of the project of reconciliation laid bare: I simply do not know what one can make of the idea that the moral truth of the matter is that the segregation authorities ought to have abetted and commended anti-segregation activism. Such an idea seems to lose sight of some essential dynamic — it seems to lose sight of what made the segregation authorities the gruesome authorities that they were, hence of what necessitated civil rights activism in the first place. Whatever kind of truth that is, the truth that the segregation authorities ought to have abetted and commended anti-segregation civil disobedience, it is a truth offensively orthogonal to what really matters here — viz. that the segregation authorities would sooner have seen King burnt alive in his church or strung up in a tree than commended from the bench.[54]

I will not belabour the point: the question of state response abstracts from something of essential importance, and it does so in ways that make the question practically unintelligible. But not only that, what it abstracts from is precisely what it has been civil disobedience's historical vocation to demonstrate — viz. that the state *is* repressive, that the authorities are *not* reasonable. Part of the purpose of civil disobedience, part of its practical service, in other words, is to cause the state's mask to slip — to let light in on the real nature of the order under which we live, to viscerally *prove* the real basis of things: that the state represses dissent because the state itself is repressive! That the protest police are brutal because the state itself is brutal![55]

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portant moral reasons to light — that is precisely to imagine a state where civil disobedience would not be necessary.

[54] Brownlee asks that the state have 'mercy' on disobedient offenders. In practice, however, it has usually been the state which ought to beg theirs. *Conscience and Conviction*, 135.

[55] A student at Columbia University seems to have had just this sort of realisation after he witnessed the arrest of 711 people (and the injury of 160 of them) during a brutal police eviction of a campus occupation in 1968: 'The thing that really affected me was the simple fact that this was how

This point — that the deeper reality of the state is revealed, writ small, in its treatment of disobedient protest — is most obvious in the civil rights case, where part of the point of having activists attacked by dogs and assaulted by police was to paint the state response to peaceful disobedience as a synecdoche for its real nature — i.e. as an order of violent racial domination.[56] Thus when civil rights protesters were violently assaulted while declaiming the South as a racist, lawless, repressive nightmare, or when the police did nothing while they were assaulted by third parties, that was not — as it appears to the liberal eye — savvy PR work, a sensationalistic means of generating publicity for their claims. That was *proof* of their claims — viz. that the southern states were a racist, lawless, repressive nightmare. And this dynamic is no less evident in more recent cases: when anti-WTO protesters (say) are teargassed, fired on with rubber bullets, water-cannoned, and violently arrested as they claim peacefully (and while besieged well outside the summit security cordon) that the state is an authoritarian front for capital, this treatment — the paramilitary response — is *proof* of their claims.[57]

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they [the Columbia authorities] had chosen to deal with us, that this was how they'd chosen to respond to the demands of everyone, of the students, the Harlem community, the involved faculty — everyone, me included. *That's what really changed my thinking, because it made me realize that it was true, everything the radicals had been saying about the way the system works in this country, about how power is used when the demands for change reach a certain level.*' Quoted in Richard Rosenkrantz, *Across the Barricades* (New York: Lippincott, 1971), 42, my emphasis.

[56] King, for instance, wrote that the point of the demonstrations was for the black man to 'force his oppressor to commit his brutality openly — in the light of day — with the rest of the world looking on.' Martin Luther King, Jr., *Why We Can't Wait* (New York: Harper & Row, 1964), 27. Writing in retrospect, Colaiaco elaborates this rationale: 'although King repeatedly preached that violence was immoral, his critics were correct in noting that his nonviolent method was most successful when it provoked violence from defenders of the racist order ... the purpose of King's nonviolent direct action campaigns was to compel racist communities to reveal their injustice and brutality, and to compel the government, whether local or federal, to institute legislative reform.' Colaiaco, 'Paradox of Nonviolent Direct Action', 17-18. For more on civil rights attempts to trigger white supremacist repression, see e.g. Jan Howard, 'The Provocation of Violence: A Civil Rights Tactic?', *Dissent* (November-December, 1966): 94-99.

[57] Committee of 100 organisers deemed their blockade of the US Air Force base at Wethersfield in December 1961 a ringing success for just this sort of reason — i.e. that it revealed the 'iron fist inside the velvet glove', and 'showed our rulers up in their true colours'. The blockade was preceded by several days of pre-dawn raids and hysterical warnings from government ministers that protesters were liable to be shot on approach (or, at the very least, that they would be sentenced to at least seven years in prison). And indeed, the blockaders were met at the perimeter of the base by thousands of UK Military Police and additional hundreds of machine-gun-wielding USAF troops. In other words: their point was proved — and perhaps even in a more visceral sense than did Southern police brutality prove the point

Again, what I am drawing out here is not only that the congenitally repressive and dysfunctional reality of the state obviates the second half of the liberal normative enterprise, but that this enterprise also denies what it has been a historical purpose of civil disobedience to give visceral proof of — viz. that the state *is* repressive and dysfunctional. And with that point in hand, we might take a moment to make contextual sense, here at the death, of a phenomenon I discussed in Chapter One — viz. the peculiarity of William Smith's scenting that the state reaction to civil disobedience is of a mysterious dramaturgical importance to its success, and then his urging that the state authorities should therefore discharge their duty of facilitation not by standing back and letting activists have their moment in the sun (as other liberal theorists recommend), but — bizarrely — by *pretending* to repress them.[58]

And yet there is no great mystery why the state's response to civil disobedience should play a crucial dramaturgical role in its success: the state's response *proves* the activist's point — it stands in for and dramatises the real nature of the state in general. But for our purposes, the more important lesson here is this: the connection *appears* mysterious to Smith because he simply does not see that the state *is* repressive (otherwise he would not be able to join in the project of reconciliation by urging that the police aid protesters in their dissident endeavours by means of self-conscious and pantomimic shows of 'repression'). And because he does not see that the state *is* repressive, this habitual rationale for disobedient protest must appear eternally opaque to him, with these gestures towards the 'transgressive', 'dramaturgical' character of the civil disobedient vs. riot police standoff being a bowdlerised translation of civil disobedience's historical purpose from a language and context he does not understand to one that he can just about manage.[59]

Now, I do not mean for this contextual remark to knock us off our course. Indeed, I believe that it has a certain diagnostic value: this sort of contortion — Smith's arguing that the state ought to facilitate civil disobedience by pretending to repress it (since if it were seen to be aiding activists in their dissident endeavours, those endeavours would lose their potency) — indicates the basic inviability of the project of rec-

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of civil rights demonstrators. After all, this action was supposed to highlight that paranoid militarism was driving the world to nuclear armageddon, and there could be no more effective dramatisation of this view than to march peacefully and be intercepted by thousands of skittish, overarmed troops. For a vivid retelling of this action, see '100 vs The State', Solidarity and Independent Labour Party joint pamphlet (London, 1962).

[58] Smith, 'Policing Civil Disobedience', 832-840.

[59] Smith, 'Policing Civil Disobedience', 832.

onciliation and the practical unintelligibility of the question of state response. Smith is the liberal theorist who comes closest to seeing that there is a vital connection between civil disobedience and the state that it resists, but in attempting to preserve that connection while remaining attentive all the while to the question of state response, he attempts to square the circle.

We may add that question to the list, then, and complete this holistic, meta-theoretical reflection as we do. The sordid nature of the status quo pushes disobedient activism well outside the discursive, didactic ambit of the liberal theory (thus guaranteeing that theory's failure to normatively illuminate the real political world and the dissident actions that we encounter in it). And worse, there can be no redemption for the attempt at such illumination: the question of civil disobedience's permissibility is, in our world, theoretically mundane and politically quietist; the question of civil disobedience's proper reception by the state, meanwhile, is still less viable, and still more perverse.

5.4 Grim Reality

The grim reality of the world reveals the futility of fifty years of liberal debate on civil disobedience. That, in essence, has been my holistic, meta-theoretical judgement here at the last. This grim reality exposes the practical inviability of the discursive breach of law, and insofar as it demonstrates the wrongheadedness of the liberal normative project's two habitual questions, it forecloses a theory of civil disobedience as hitherto conducted. It suggests that there is little political theory, in the conventional normative sense, in civil disobedience.

But if I might sign off with a final reflection: none of this forecloses a theoretical engagement with civil disobedience as such. It simply demands a different sort of engagement, one that does not abstract from this grim reality — from the disheartening and gothic and thoroughly reactionary character of the political settlement — but rather makes it the first fact and foundational premise of the investigation. I say again: the repressive, reactionary character of even the best existing regimes, their seeming imperviousness to dissident progressivism — this ought to be the basic assumption and essential preoccupation of any theoretical treatment of disobedience. It is the only thing worth grappling with, if we are going to grapple with dissent and disobedience.

In particular, it seems to me that we ought to acknowledge that this grim political reality explains *why* there has been so much disobedience, and what it really *is*, historically and vocationally — viz. inescapably a product of and reaction to politico-economic dysfunction.[60] We ought to acknowledge, in other words, that civil disobedience is a 'feature of our political experience' not because, as Ronald Dworkin supposes, reasonable disagreement between 'independent people with a lively sense of justice' is inevitable, but because the world is a chronically and breathtakingly unjust place, and because in every society the great brunt of that injustice is borne by people with no effective means of constitutional recourse.[61]

And we ought to pay heed not only to the historical reality of the disobedient dynamic — that civil disobedience is not a way of conducting good faith policy disagreement between roughly co-equal citizens, but a resistance tactic of those beset by injustice and dysfunction[62] — but also to how entrenched and carefully maintained is this injustice and dysfunction: how invulnerable, generally speaking, the status quo is to disobedient efforts for reform.

For that, it seems to me, is the real issue here — the *sine qua non* of a theory of civil disobedience. And I can find no better avatar for this point than the anarchist pamphleteer Morrison I. Swift's anguished plea against the abstractions of religious philosophy — viz. that a blacklisted labourer shoot-

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[60] I mean that sociologically, but it has also been in it consciously and rhetorically even from the start. Did not Thoreau write, in the founding text of civil disobedience, that: 'all machines have their friction … but when the friction comes to have its machine, and oppression and robbery are organised, I say, let us not have such a machine any longer'? Thoreau, 'Resistance to Civil Government', 4.

[61] Dworkin, *Matter of Principle*, 105-106. He also declares, by way of contrast, that civil disobedience is expressly *not* a feature of our political experience because 'some people are virtuous and others wicked' [106]. Now, notwithstanding the anthropic gloss, my claim here is that that's *precisely* why civil disobedience is a feature of our political experience — because there are now, and always have been, wicked forces at work; because every historical regime has been dysfunctional to some great degree or other. Civil disobedience just *is*, in its real historical life, a reaction to wickedness. And we find another avatar of this liberal insensitivity to the real historical character of civil disobedience in the fact that it is only in passing, and only towards the end of a reply to critics of her lengthy treatise on civil disobedience, that Brownlee for the first and last time mentions what has always been the historical starting point and basic preoccupation of disobedient activism — viz. the necessity of 'checking' powerful elites who have turned the system to their own advantage ['Reply to Critics', 735]. *That* tells you how left-field the liberal engagement really is, how far removed it is — morally, politically, theoretically — from the motivating concerns of historical disobedience.

[62] Or, at the very least, of those acting on behalf of people at the sharp end of that injustice and dysfunction.

ing his own children and then himself because he could not find work to feed them is:

> one of the elemental stupendous facts of this modern world and of this universe. It cannot be glozed [sic] over or minimised away by all the treatises on God, and Love, and Being, helplessly existing in their monumental vacuity … it is in the mental world what atoms or sub-atoms are in the physical. Primary, indestructible. And what it [and the wider epidemic of gruesome working class suicides to which Swift also refers] blazons to man is the imposture of all philosophy which does not see in such events the consummate factor of all conscious experience.[63]

Swift's point, I take it, is that any theory which regards this social fact — blacklisted workingmen being driven to shoot themselves or drink carbolic acid rather than starve to death — as mere detail, as incidental to the real or a deviation from it, rather than as central to the real and microcosmic of it, is *for that reason* defective. And I think the same of the facts that I have adduced in this thesis — that the segregation authorities would sooner have seen King murdered than engage with him in good faith; that it took decades of mass activism on a sustained and likely unrepeatable scale — and eventually the prospect of a race war — just to partially erode a regime so baldly and colossally unjust that not even arch-segregationists could rhetorically defend it;[64] that even the most liberal states today are morally bankrupt in all sorts of ways, and spend billions annually on surveilling and destabilising progressive dissident movements of all stripes; that *pace* the traditional liberal panic about civil disobedience undermining the regime, civil disobedience has barely made a dent in the regime.[65]

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[63] Morrison I. Swift, *Human Submission: Part Second* (Philadelphia: Liberty Press, 1905), 10.

[64] And nor is it a fact to be ignored or abstracted from that activist faith in the effectiveness of nonviolent direct action declined steadily over the civil rights period: SNCC joined forces with the Panthers in 1967, and King spent the same year drawing up plans to paralyse northern cities by means of a general strike. In other words, it is not a fact to be ignored or abstracted from that *even this* activism was deemed, by those instrumental in organising it, inadequate to the task of winning justice. For more on this perceptual shift in the movement, see e.g. Peniel E. Joseph ed., *The Black Power Movement: Rethinking the Civil Rights – Black Power Era* (New York: Routledge, 2006).

[65] Rex Martin, for instance, entertains at some length the prospect that civil disobedience may usher in a generalised anarchy and disorder, en-

Let us acknowledge these facts. Let us acknowledge them as among the most basic in our political reality — not only the historical constancy of crushing injustice, but its seeming impregnability: that it seems almost impossible for grassroots dissent to change it. To abstract from this grim reality, to continue to subject civil disobedience to quietist moral scrutiny, to continue drawing up blueprints for the enlightened state facilitation of disobedient protest, to continue probing the abstract question of political obligation, whether or not disguised as an account of this actual world — that is to abdicate theoretical and moral responsibility. It is to fail to take seriously what is the real problem of dissent and disobedience: to wit, given the seemingly imperviously unjust and hostile nature of even the best existing regimes, *what is to be done?*[66] And what value is there in what we do?[67]

I do not insist that theorists should be able to say anything useful about that situation — the injustice and impregnability of the status quo. But I do insist that *if* we cannot say anything about it, then we ought not to say anything at all. We have, I think, a responsibility to take seriously the actual political predicament, even if doing so means staying quiet. What is to be done? And what value is there in what we do? *These* are the questions. These have always been the questions. And I do not see what profit there has been in the liberal project's fifty years of abstraction from them.

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couraging the state therefore 'to uphold the value of obedience to law and to defend in public forums the laws that it has decreed'. ['Civil Disobedience', 136]. In the same vein, Rawls frets that disobedient activism 'invites anarchy by encouraging everyone to decide for himself, and to abandon the public rendering of political principles' [*Theory of Justice*, 341]. And William Smith, 'in order to ameliorate fears that [his] theory is too permissive' — i.e. that it grants 'too much license to civilly disobedient citizens', stresses the necessity of '[placing] a burden of proof on the shoulders of protesters'. ['Democracy, Deliberation and Disobedience', 373-374]. Indeed, Ronald Dworkin is the only liberal theorist I know to dismiss this anarchic worry out of hand, writing that 'I know of no genuine evidence to the effect that tolerating some civil disobedience, out of respect for the moral position of its authors, will increase such disobedience, let alone crime in general.' *Taking Rights Seriously*, 195.

[66] Once again, I do not mean this in the normative sense — i.e. of 'what more would we be justified in doing?'. As I noted above, this avenue of inquiry is less urgent than it may perhaps appear: for compelling strategic reasons, all progressive movements today are committed to nonviolence.

[67] As I suggested at the close of §5.2, the ontological or functional half of this question is much the more difficult one. The hard problem, in other words, is not the 'what value is there', but the 'what we do': the prior question of what — politically, socially, functionally — civil disobedience may be said to do in this concrete world, and for whom (or to whom) it may be said to do it.

Postscript

That adjourns my case, and I have little to offer in the way of further comment. I note only that we have covered a great deal of ground to get here, and that it may therefore serve the reader if I provide — right at the last — a brief post-mortem of the argument. Or rather, the *arguments* — for though it seems a long while ago now, I began this thesis with two ancillary criticisms of the liberal body of work, in addition to the broad-brush meta-theoretical critique just completed.

Those criticisms — the substance of Part One — were more concessive in strategy, though no less consequential in implication (if, certainly, in a more local sense). I shall not reprise their fine details here, nor their force against the liberal view, for its poverty cannot now be in doubt. Rather, I shall divorce their sense from that initial dialectical framing — from their role in demonstrating, by a different and more conciliatory route, the liberal view's defectiveness — and try to draw out from them, by way of a last word, some threads of wider resonance.

One such thread leaps immediately to mind. My case in Chapter Two may function — independently of its nominated part in undermining the cathartic variant of the liberal tendency — as a general-purpose rallying cry against the lay and theoretical temptation to conceive dissident activism — indeed, any form of political activity — in fundamentally conscientious terms (i.e. as making good on a self-owed demand of moral integrity). And this rallying cry may then set a bound on what counts as a convincing answer to the live and urgent moral question I left open at the end of Part Two — viz. that of the value of our existing activist praxis, given the seeming imperviousness of the political settlement to dissident pressure. An engagement with this question, I am suggesting here, ought not to fall back on any invocation of activism's value *for the activist*.[1]

That aside, I fear that there is less of wider interest to be excavated from Chapter One — after all, it was the section of my argument most enthusiastically accepting of the various liberal shibboleths. And yet there is one theoretical guideline

[1] At any rate, this personal good cannot be held exhaustive of activism's value, or even primary to it.

perhaps worth bringing forwards from there, one also germane to the project of articulating real activism's value in this actual world. To wit: that whatever this value consists in, it will not reside in the breach of law *per se* — it will not reside in the bare juridical fact of transgressing the positive law, but rather in the social fact of subversion, or in the material fact of coercive obstruction.

And these threads may then be wound together thusly. Part One's more conciliatory and concessive case draws out an important activist truth, one that is — or ought to be — plain enough, and one that is consonant with my more polemical themes in Part Two, though it is a truth nowhere found in five decades of liberal thought and writing on the matter of civil disobedience: that civil disobedience is a fundamentally *political* activity, and one standing in a necessarily antagonistic aspect *vis a vis* the powers that be. This, it seems to me, is one of the basic verities and constraints that any political theoretical engagement with civil disobedience ought to acknowledge and abide by, though, and as I suggest, it is a truth hardly revelatory, and a constraint not especially difficult to respect.

That, I think, will suffice for a closing reflection on Part One. Indeed, I cannot deny it: the narrower and more credulous strands making up my arguments in that earlier part of the thesis were not my priority here. Rather, my priority was the widescreen meta-theoretical endgame of Part Two. My priority was to demonstrate that — quite apart from any internal defect in the liberal concept of civil disobedience — this fifty year body of work offers neither a true likeness and moral appraisal of a ubiquitous and historically significant style of activism, nor a plausible moral model for civil disobedience as it might be conducted. My priority was to show that it offers instead a byzantine account of an immaterial fiction — and more than this, an account troublingly orthogonal to the proper responsibilities of the political theorist.

This, after all, is our reality: repressive, congenitally unjust, stitched-up regimes displaying little but contempt for democracy in general, and still more contempt for grassroots dissent in particular; regimes that are in turn resisted — nonviolently, but coercively, and in a manner having virtually nothing to do with the breach of law itself — by activists who themselves deny any obligation of obedience, and who themselves doubt that the coercive resistance they offer is adequate to the task of reform.

And what this reality demands is not a continuation of the fifty year habit — of the back and forth stipulation of the fine-grained circumstances under which a public or private interest in a certain kind of phlogistonic, silver-bullet speech

overrides the moral obligation to obey the law. No, it has been an absurd and genuinely tragic error to treat the live worldly phenomenon of disobedient resistance to unjust and hostile regimes *as if* it were a matter of reasonable disagreement between good-faith co-citizens of a robustly democratic society.

And nor does our actual world demand a grittier take on that traditional project — one proceeding from a descriptively accurate assessment of the relevant political-historical facts. Rather, what this world demands — and forgive me for belabouring the point — is a different sort of engagement.

There is no normative problem of civil disobedience in this actual world, and to pretend otherwise is to make a quietist mistake. It is to commit an error akin to that Michael Walzer saw in the philosophical furore over the riots at Newark — in the contorted attempts to determine the permissibility of that bubbling over of legitimate, centuries-old pain and rage into amorphous street violence:

> About this, there is painfully little that a moral theorist can say, and much that has been said suggests only that silence is sometimes the most appropriate form of moral discourse.[2]

[2] Walzer, *Obligations*, 65.

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