

Uncivil Disobedience

Beyond the Orthodox View of
Resistance and Counter-Resistance

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This dissertation is solely the work of its author. No part of it has previously been submitted for any other degree, or is currently being submitted for any other degree. To the best of my knowledge, any help received in preparing this dissertation, and all sources used, have been duly acknowledged.

A handwritten signature in black ink, appearing to read 'Lai', positioned above a horizontal line.

Ten-Herng Lai

December 2019

Blessed are those who hunger and thirst for righteousness, for they will be filled.

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Abstract

What I call the *Orthodox View* of resistance and counter-resistance holds that at least in reasonably just societies a) political resistance is sometimes justified and b) the state and other citizens are justified in taking it seriously and treating it as relevantly different from other illegal acts but only when the resistance in question involves observing the requirements of so-called *civil disobedience*. In this dissertation, I argue that we should reject the Orthodox View in favour of a view that is both more inclusive with regard to the ethics of resistance and more nuanced with regard to the ethics of counter-resistance.

Most importantly, in the first part of the dissertation, I argue that we should reject what I call the *Orthodox Resistance Thesis*, which holds that political resistance is sometimes justified in reasonably just societies but only when it involves civil disobedience. I argue that we should embrace the more inclusive view that *uncivil disobedience*—illegal resistance that falls short of the relevant standards of civility—is also at least sometimes justified in reasonably just societies. I present four arguments for this key claim. First, I argue that, just as the purported grounds of our political obligations are often taken to support civil disobedience (as opposed to obedience) in special circumstances, so too the purported grounds of our political obligations sometimes support uncivil disobedience (as opposed to civil disobedience) in other special circumstances. Second, I argue that one important and undertheorized kind of uncivil disobedience—political vandalism—is justified when and because it amounts to a form of appropriate counter-hate-speech. Third, I argue that responding appropriately to the demands of fairness sometimes permits (and even requires) uncivil disobedience as opposed to civil disobedience since the targeted costs imposed by uncivil disobedience on responsible parties are sometimes more consistent with the demands of fairness than the indiscriminate costs imposed by civil disobedience on the general public. Fourth, I argue that impermissible counter-resistance on the part of the state can create situations where civil disobedience

would be futile, or that the counter-resistance in question itself constitutes severe injustice; and either possibilities can make uncivil disobedience both necessary and proportionate and, hence, justified.

In the second part of the dissertation, I argue that we should also reject what I call the *Orthodox Counter-Resistance Thesis*, which holds that the state and other citizens are justified in taking political resistance seriously and treating it as relevantly different from other illegal acts when, but only when, the resistance in question involves civil disobedience. I argue that we should embrace a more nuanced view of the ethics of counter-resistance according to which the state and other citizens are at least sometimes justified in taking uncivil disobedience seriously. Moreover, I suggest that the intuitively attractive idea that the state should refrain from punishing justified acts of civil disobedience has a number of paradoxical and problematic implications.

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1

Introduction

There is no shortage of injustice in the world, and states—even relatively well-functioning liberal democracies—and their laws and policies are, alas, sometimes part of the problem. Often we simply accept injustice and carry on with our day-to-day existence. Sometimes we engage in legal forms of political participation, e.g. voting, participating in polls, signing petitions, calling our local politicians, and attending legal protests and demonstrations, with the hope that change might happen. But, at other times, especially when we perceive that an injustice is sufficiently serious and come to believe that legal channels are more like artifices that give us a false sense of having influence or control, we may be tempted to engage in various forms of *political resistance*: namely, illegal political protest that aims at overcoming the injustice.

Here are a few recent real-world examples of political resistance:

Sunflower Movement. In 2014, the people of Taiwan occupied the legislative branch of their country, the Legislative Yuan, for 23 days, preventing the ruling party from passing the Cross-Strait Service Trade Agreement (CSSTA) with China, which protestors believed to tie their country's economy too closely to China's and grant too much political leverage to foreign power. The movement was a success not only in blocking the trade agreement, but also in leading to landslide victories of the opposition party in the 2014 local election and the 2016 presidential election.

Riots ignited by the Rape of Théo L. In 2017, civil unrest emerged in the suburbs of Paris. The rioters, as we may rightly call them, went to the streets and surrounded police stations in order to violently express their severe discontent and anger against systematic racial policing and unchecked police violence. As a result, at least one of the four police officers involved in the “rape of Théo L.” was charged with rape rather than mere aggravated assault.

Stop Adani. The ongoing Stop Adani movement in Australia involves nonviolent direct action to frustrate the government-approved Carmichael coal mine in the Galilee Basin, Queensland. The movement successfully imposed heavy financial burdens on the industries, to the extent of driving away various potential business partners, including several insurance companies and banks. However, it also prompted the government to pass new laws to curb the activists and protect businesses.

Cases like these raise two vitally important ethical questions. First, what sorts of acts of political resistance, if any, are morally justified? This is a question about the ethics of *resistance*. Second, what sorts of responses to acts of political resistance (on the part of the state and other citizens) are morally justified? This is a question about the ethics of *counter-resistance*.

According to what I shall call the *Orthodox View*,¹ the answer to both questions turns crucially, at least in part, on whether the resistance in question amounts to so-called *civil dis-*

¹ The Orthodox View, with John Rawls as the main proponent, is still influential nowadays. For example, the Umbrella Movement in Hong Kong in 2014 strictly follows the Rawlsian standards of nonviolence, publicity, and the acceptance of legal consequences, even if we may question whether Hong Kong as it is ruled by China meets the background conditions of Rawlsian civil disobedience. Another example is the global movement under the title of the Extinction Rebellion, especially the activities that occur in Western liberal democracies. The rebels breach the law with the aim of going to jail, in order to facilitate their communicative acts. I will discuss these movements respectively in chapter 6 and chapter 5. The recent trend of expanding the definition of civil disobedience, as I will discuss below, is an expansion of the Orthodox View in the sense that proponents still take the standards of civil disobedience, however redefined, as a necessary condition for the justifiability of illegal political activities,

obedience: that is, whether the acts of resistance satisfy certain requirements of *civility* such as not involving committing acts of nontrivial violence. At least in reasonably but imperfectly just societies, political resistance is indeed sometimes justified, and the state and other citizens are justified in taking it seriously and treating it as relevantly different from other illegal acts, when, but only when, the resistance in question involves observing the requirements of *civil disobedience* (as well as satisfying certain other conditions such as necessity and proportionality).

The Orthodox View, then, comprises two central theses. The first thesis holds that

- a) Illegal political resistance is sometimes morally justified in reasonably but imperfectly just societies but only so long as it involves civil disobedience (as well as satisfying certain other conditions such as necessity and proportionality).

Call this the *Orthodox Resistance Thesis*. The Orthodox Resistance Thesis says that whether or not an act of resistance involves civil disobedience is a crucial determinant of whether or not it is justified. That's because acts of civil disobedience are sometimes justified: namely, when they also satisfy the relevant extra conditions such as necessity and proportionality. By contrast, acts of *uncivil* disobedience—namely, acts of resistance that fall short of the standards of civility, such as those that involve nontrivial violence—are *never* justified. Perhaps such acts might sometimes be justified in a society that is not reasonably just: say, in a society in which injustice is rampant and widespread. But in a reasonably just society, acts of uncivil disobedience always and inevitably involve doing something wrong (whether or not they have certain desirable effects).

The second thesis holds that

- b) In reasonably just societies, the state and other citizens are justified in taking illegal political resistance seriously and treating it as relevantly different from other illegal acts when, but only when, the resistance in question involves civil disobedience.

and the demarcation of legitimate and illegitimate illegal political acts. There are, of course, those who challenge the Orthodox View, even the expanded version of it, including, most notably, Delmas (2018a) and myself (2019b).

dience (that satisfies certain other conditions such as necessity and proportionality).

Call this the *Orthodox Counter-Resistance Thesis*. The Orthodox Counter-Resistance Thesis says that whether or not an act of resistance involves civil disobedience is a crucial determinant of the appropriate response to it on the part of the state and other citizens. In the case of civil disobedience, since it constitutes a legitimate form of political participation, it is appropriate for the state and other citizens to take it seriously and exhibit openness to the complaints and convictions that are being espoused. Moreover, since acts of civil disobedience are categorically different from acts of “mere criminality,” it is inappropriate for the state to punish acts of civil disobedience—perhaps at all but certainly at least in the same way, and to the same extent, as ordinary acts of law-breaking. Uncivil disobedience—illegal political activity that falls short of the standards of civil disobedience such as violent protest—in contrast, does not constitute a legitimate form of political participation, and there is no sharp distinction between uncivil disobedience and “ordinary offending.” It is appropriate to ignore and dismiss acts of uncivil disobedience, and for the state to bring the full force of criminal sanctions to bear in sanctioning acts of uncivil disobedience.

The aim of this dissertation is to argue that we should reject the Orthodox View in favour of a view is both more *inclusive* than the Orthodox View regarding the ethics of resistance and more *nuanced* than the Orthodox View regarding the ethics of counter-resistance. First, and most importantly, I argue that we should reject the Orthodox Resistance Thesis in favour of the view that it is at least sometimes appropriate in reasonably but imperfectly just societies for citizens to engage in forms of resistance that count as *uncivil* (even by the lights of a broad understanding of civility) including even perhaps committing acts of violence. Second, I argue that we should reject the Orthodox Counter-Resistance Thesis in favour of the view that i) the state is at least sometimes justified in taking uncivil disobedience

seriously and in treating acts of uncivil disobedience as relevantly different from acts of mere criminality and ii) other citizens are justified in being open and receptive to uncivil forms of disobedience (and perhaps even to certain unjustified instances of disobedience).

The remainder of the Introduction will proceed as follows. First, I will say a bit more the Orthodox View (1.1), starting with the classic version of the Orthodox View proposed by John Rawls in *A Theory of Justice* (1.1.1), noting some of the ways in which the Rawlsian View has been thought to be objectionably restrictive (1.1.2), and discussing the possibility of responding to the undue restrictiveness of the Rawlsian view by embracing a less restrictive version of the Orthodox View (1.1.3). I will then say a bit more about my own preferred response—namely, to move beyond the Orthodox View—and indicate some of the important ways in which the alternative view and my arguments for it are different from a number of other views and arguments that have recently been proposed by others (1.2). Finally, I will close by providing a brief overview of the chapters of the dissertation (section 1.3).

1.1 The Orthodox View

The Orthodox View holds that in reasonably but imperfectly just societies, political resistance is sometimes justified, and the state and other citizens are justified in taking it seriously and treating it as relevantly different from other illegal acts, when, but only when, the resistance in question involves observing the requirements of civil disobedience (as well as satisfying certain other conditions such as necessity and proportionality). However, there are a number of different versions of the Orthodox View depending at least on how we understand i) the idea of a “society that is reasonably but imperfectly just;” ii) the idea of “civility;” and iii) the “other conditions” that must be satisfied.

1.1.1 The Rawlsian View

Let us begin with the classic statement of the Orthodox View due to John Rawls in *A Theory of Justice* (1971/1999). Rawls presents his view in the context of, and as a solution to, what he calls the “problem of civil disobedience.” The problem is taken to arise in contemporary liberal democracies, which Rawls takes to be nearly just.² In such circumstances, our natural duty of justice, which demands us to support just institutions, manifests in the form of a *pro tanto* duty to obey the law. Other things being equal, it is morally impermissible to engage in illegal activities and appropriate for the state and other citizens to regard such activities in a negative light and to respond with tangible and intangible sanctions. However, Rawls acknowledges that contemporary liberal democracies are not *perfectly* just. In particular, they might involve the violation of basic liberties, or fail to protect the fair equality of opportunity. Moreover, even if there are a good variety of measures in place to seek political change, they do not always work (in time) and, hence, it might be the case that political change can only be realized by illegal measures. In such circumstances it is hard to know what sorts of illegal resistance (if any) and counter-resistance are justified.

Rawls’s solution to this problem is to hold that, in spite of its illegal character, illegal resistance can indeed be justified in nearly just societies—and treating it as on par with other illegal acts is indeed unjustified—but only in the form of civil disobedience and only if it satisfies certain additional conditions. Following Hugo Bedau (1961), Rawls suggests that for an act of resistance to count as an act of civil disobedience, it must be “a public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government” (p. 320), which also “expresses disobedience to law within the limits of fidelity to law, although it is at the outer edge thereof” (p.

² Rawls’s description of the nearly-just society hardly fits either historical or contemporary societies (Lyons, 1998). That being said, my thesis will argue for the justifiability of certain acts of uncivil disobedience even under this highly idealized and unrealistic condition.

322). This involves satisfying at least four important conditions. First, the act must satisfy a *publicity* condition. That is to say that it must be performed openly with fair notice (p. 321). Second, it must satisfy a *nonviolence* condition. Civil disobedience is a communicative act that seeks to persuade rather than coerce, and violence is typically antithetical to successful communication (p. 321). Third, it must satisfy a *conscientiousness* condition. The agent's reason for breaking the law must be due to deeply held moral or political convictions, rather than narrow self-interest. Fourth, the action must also satisfy a *respect for law* condition. It must be performed within and in support of the system, and the agent must express their willingness to live by the law through pleading guilty and accepting legal punishment (in addition to refraining from violence) (p. 321).

Moreover, Rawls holds that for civil disobedience to be justified and deserving of being treated as different from other illegal actions in a nearly perfectly just society, it must satisfy three additional conditions. First, the resistance must have an *appropriate target*. Since civil disobedience appeals to the sense of justice of the majority and/or the powerful, the target must be easily recognizable as a clear and blatant injustice, which for Rawls will be a violation of a basic liberty or of fair equality of opportunity (p. 326). Second, the resistance must be a position of *last resort*. Only when legal measures have proven to be futile is it the case that civil disobedience becomes necessary and thereby permissible (p. 328). Third, the resistance must be *exercised with due restraint*. Those who engage in civil disobedience must avoid taxing the system too much, which may bring about the undesirable consequences of undermining the respect for law or constitution and/or or destabilizing the system (p. 328).

According to Rawls, resistance that satisfies the requirements of civility as well as these additional conditions plays an important role in contemporary liberal democratic near just societies. It is “a final device to maintain the stability of a just constitution” though being “an invocation of the recognized principles of cooperation among equals” (p. 337). Civil dis-

obedience is vastly different from ordinary offending, and among other things, “[c]ourts should take into account the civilly disobedient nature of the protester’s act...[and] reduce and in some cases suspend the legal sanction” (p. 339). And as it invokes the terms of cooperation among equals, the audience of civil disobedience ought to be open to the pleadings of civil disobedience. In contrast, there is no salient distinction between uncivil disobedience and “ordinary offending” or “mere criminality,” and uncivil disobedience does not constitute a legitimate form of political participation. Accordingly, it is apt to dismiss the demands made by uncivil disobedience. It may even be apt to treat uncivil disobedience as a threat to the society, law, and order that needs to be resolved.

1.1.2 The overrestrictiveness of the Rawlsian View

Since Rawls’s *A Theory of Justice*, many have objected to the Rawlsian View due to its *overrestrictiveness*. The Rawlsian View has been taken to be problematically restrictive in at least three important key ways.

First, many scholars have objected that the Rawlsian View is unduly restrictive in *application* since it is only supposed to apply in the case of societies that are “nearly just.” A. John Simmons (2010) observes that this means that it presumably fails to apply even to contemporary liberal democracies since such societies struggle to live up to anything near what Rawls calls a nearly-just society. David Lyons (1998) also highlights the oddity of proposing such a view to justify historical resistance against injustices. The historical reality was that people faced slavery, colonization, Jim Crow, and other extreme injustices. In such societies, there is no *pro tanto* duty to obey. To argue that historical resistances needed to be justified against a non-existent duty to obey the law suggests that this non-existent duty actually exists, and is insensitive to historical injustices. Thus the Rawlsian View lacks meaningful ap-

plication to both contemporary and historical examples of resistance, and thus risks being largely irrelevant.

Second, the Rawlsian View has also been thought to be problematically restrictive in light of Rawls additional conditions. For one, many scholars have objected that Rawls seems to be wrong in restricting the appropriate target of civil disobedience to the violations of basic liberties or of fair equality of opportunity. Other appropriate targets should include democratic deficits (Markovits, 2005; W. Smith, 2011, 2013), the illegitimacy of otherwise just laws (Simmons, 2010), unacceptable working conditions (Moraro, 2018a), war (Brownlee, 2012), and animal welfare (Singer, 1975)—just to name a few.

Third, many scholars have also objected that the Rawlsian View is unduly restrictive since it restricts justified resistance to resistance that satisfies a highly restrictive account of civility. For example, Candice Delmas (2018a) writes:

The ordinary conception of civil disobedience associated with Rawls tends to undermine emancipatory struggles (despite the emancipatory potential of an attentive reading of his theory). Shaped by an idealized theory and an unrealistic reading of the African American civil rights struggle, civil disobedience as ordinarily understood by the public and by philosophers deters noncompliance and reinforces the status quo (p. 23).

This is due to the fact that the Rawlsian View, in particular its narrow understanding of civility, places implausibly tight restrictions on what *means* disobedients may permissibly employ, to the extent that some of the maneuvers necessary for historical and contemporary struggles to succeed would often be ruled out. This becomes most salient once we see how the requirement of nonviolence, in spite of its intuitive appeal, can sometimes become problematic. For instance, referring to historical examples such as India's struggle against the British colonial rule, the Civil Rights Movement, and anti-war protests in the US, Peter Gelderloos (2007) argues that the façade of the successes of nonviolent struggles, in the sense of overstating the success as well as misrepresenting the movements as predominantly nonviolent, creates the narrative that social struggles must be nonviolent. Such domestication of social

struggles ultimately benefits those who have an interest in maintaining the existing social structures, as his book title *How nonviolence protects the state* unambiguously proclaims. Similarly, with irony, the NAACP chairman emeritus Julian Bond summarizes the conventional whitewashed narrative of the Civil Rights Movement as “Rosa sat down, Martin stood up; and then the white folks saw the light and saved the day” (as cited in Cobb, 2014, p. 247), as if the peaceful demonstration of love and one’s sincerity can really stir up the sense of justice of the majority and move oppressors to tears.

1.1.3 A less restrictive version of the Orthodox View?

There is reason to think, then, that we need a less restrictive view than the Rawlsian View. What might this look like? A natural thought is to hang onto the Orthodox View and to propose a less restrictive version of it: a version that has application to societies beyond those that are near just; that encompasses a broader range of appropriate targets and permissible means; and, most importantly, that is based on a broader conception of *civility*.

A number of scholars have suggested amending the Rawlsian View along just these lines. John Morreall (1976), Kimberley Brownlee (2004, 2012), Piero Moraro (2007, 2014, 2018b), William J. C. Smith (2016), Robin Celikates (2014, 2016a, 2016b), and many others, have all suggested that various ways of flouting Rawls’s strict standards of civil disobedience—by incorporating minor violence,³ rejecting punishment, being anonymous, or involving deception—do not by themselves render an illegal political protest uncivil and thereby unjustified. In such ways, resistance may still, on one hand, fulfil the requirements of civility,

³ Brownlee (2012), for instance, argued that throwing teddy bears may count as violence, but seems hardly morally problematic. Celikates (2016a) also points out that civil disobedience may involve certain degrees of property damage. Furthermore, he also argues that nonviolence is hardly a blanket moral requirement when the government tends to define violence unreasonably inclusively, for instance, when the police views sit-ins and blockades as violent due to the disruption such acts cause. My view instead, as I will soon show, endorses the justifiability of nontrivial violence, including those that may cause physical harms to others.

but on the other hand, maintain its effectiveness and relevance. The Orthodox view can thus be saved, as the expanded concept of civil disobedience still uniquely captures all relevant acts of justified disobedience, while uncivil disobedience is still taken to be categorically prohibited.

This is a promising and important strategy, and we shall have reason to revisit it in what follows. However, I am ultimately skeptical that it is successful. For one, as Delmas (2018a, p. 38) has noted, sometimes activists intentionally and explicitly refuse to comply with the standards of civility, and is highly dubious to continue to identify their activities as civil disobedience. For another, as I shall argue in chapter 2, to expand the concept of civil disobedience to each and every illegal political act that is potentially justifiable is not only a stretch, but threatens to void the very concept of civility. If we are inclined to revise the concept of civil disobedience to incorporate each and every act we originally thought to be uncivil whenever we see the possibility of it being justified, we can then no longer appeal to the concept of civil disobedience to evaluate whether an act is justified. A different response is required.

1.2 Beyond the Orthodox View

As noted above, my suggestion in this dissertation is that we should reject the Orthodox View—not merely the restrictive Rawlsian version of it but also less restrictive and, hence, more plausible versions—in favour of a more inclusive and nuanced alternative. This alternative is motivated, in large part, by the observation that morality, as many understand it, often imposes severe burdens on those who suffer from and struggle against injustice. Sticking to requirements of civility runs the risk of disempowering those who most desperately need political change: by limiting political struggle to domesticated and feeble methods.

My dissertation is by no means the first attempt to move beyond the Orthodox View.⁴ A number of theorists, including myself (2019b), have previously argued that we should reject the Orthodox Resistance Thesis on the grounds that acts of resistance that fall short of the standards of civil disobedience—by being covert, nontrivially violent,⁵ disrespectful, defiant of authority, etc.—can be potentially justified. Most notably, Candice Delmas’s *A duty to resist: When disobedience should be uncivil* (2018a), argues that four of our purported grounds of political obligation may sometimes demand uncivil disobedience. These grounds, accordingly, are justice, fairness, Samaritanism (duty to rescue), and political membership (and the requirement to respect the dignity of oneself and others). Under ideal circumstances, obedience may well be the most appropriate way to realize these grounds, and we thus have a duty to obey. However, under realistic circumstances, where the law is substantially flawed, sometimes disobeying the law serves as the best way to realize these grounds, either by promoting radical reform or directly responding to those grounds. Here, instead of having a duty to obey, we may obtain a duty to disobey. Delmas further argues that disobedience should not be limited to civil disobedience, as, first of all, sometimes certain forms of uncivil disobedience serve as the most effective means of resistance; and second, the requirements of civility—publicity, nonviolence, respectfulness, etc.—may be moot when uncivil disobedience is necessary. For instance, Delmas somberly points out that Black Live Matters rioters have been wrongfully accused of undermining civic friendship; for in a society where there is se-

⁴ I do not propose that moving beyond the Orthodox View entails that civil disobedience is not an important normative category. My view is quite compatible with, say, the right to civil disobedience. I only propose that civil disobedience isn’t *uniquely* justifiable.

⁵ I do not, however, intend to draw a fine line between what counts as trivial or nontrivial violence. Instead, I shall argue that we need to evaluate each and every violent political act on a case-by-case analysis. What I am not doing, it is worth emphasizing, is to define violence unreasonably inclusively and then reach a definitional victory that violence is justifiable because some trivial violence is justifiable. Furthermore, I do not propose that there’s nothing moral problematic about violence, just that even if there’s a presumption against violence, it can be overridden in the context of disobedience.

vere racism and racial violence, “[c]ivic friendship is dead long before rioters come to bury it” (Delmas, 2018a, p. 66).

How exactly does the current dissertation relate to the important work of Delmas and others? I suggest that it goes beyond it in at least three important ways. First, it *generalizes* the argumentative strategy that Delmas deploys against the Orthodox Resistance Thesis and in favour of the view that uncivil disobedience is sometimes justified. While I do consider grounds such as justice and Samaritanism, I also consider the same basic argumentative form with other grounds. These include Raz’s account of political authority, as well as democratic grounds, including deliberative democratic and neo-republican considerations. In particular, I engage with democratic considerations not merely on the level of how communicative uncivil disobedience can bring ignored points of views to the general public, but also on the level of how the readiness to impose costs on the system when the government forgets its place and ignores democratic procedures can help to stabilize the system.

Second, I offer a number of completely new arguments for the claim that uncivil disobedience is sometimes justified. First, I argue that one important and undertheorized kind of uncivil disobedience—political vandalism—is justified when and because it amounts to a form of appropriate counter-hate-speech. Second, I argue that responding appropriately to the demands of fairness sometimes permits (and perhaps even requires) uncivil disobedience as opposed to civil disobedience since the targeted costs imposed by uncivil disobedience on responsible parties is sometimes more consistent with the demands of fairness than the indiscriminate costs imposed by civil disobedience on the general public. Third, I argue that impermissible counter-resistance on the part of the state can create situations where civil disobedience would be futile or excessively costly and make uncivil disobedience both necessary and proportionate and, hence, justified.

Third, I pay much greater attention to the ethics of counter-resistance. As I see it, the Orthodox View encompasses a certain account of justified counter-resistance (the Orthodox Counter-Resistance Thesis) as well as a certain account of justified resistance. Existing work on the Orthodox View has had much less to say on this score. In contrast, the Orthodox Counter-Resistance Thesis looms large in the current dissertation both in its own right and because of what it promises to teach us about the ethics of resistance. I argue that there are deep and insufficiently appreciated connections between the ethics of resistance and the ethics of counter-resistance, since the justifiability of certain types of resistance has direct implications for the justifiability of certain types of responses and regulations, and *vice versa*.

1.3 Dissertation overview

Let me now provide a brief overview of the dissertation. This dissertation is in two parts. Part 1, *Beyond the Orthodox Resistance Thesis* provides four distinct arguments for the permissibility of certain acts of uncivil disobedience:

Chapter 2, *the Obedience argument for uncivil disobedience*, engages with the question “what justifies civil disobedience *vis-à-vis* the *pro tanto* duty to obey the law?,” draws from existing theories of civil disobedience, and shows that the moral foundations of political obedience, either substantive or procedural, are sometimes inconsistent with obeying the law, but more in line with civil disobedience. This is the obedience argument for civil disobedience. I then spell out a simple and natural implication of the obedience argument. Sometimes both obedience and civil disobedience are pointless if not detrimental to the realization of the moral foundations of political obedience, but different types of uncivil disobedience prove to be most responsive to those moral foundations. This is how and when uncivil disobedience is justified.

Chapter 3, *Political vandalism as counter-hate-speech*, provides a modus tollens argument against the Orthodox Resistance Thesis. Political vandalism, the unauthorized defacing, destruction, or removal of certain political symbols, such as statues and monuments, is justified when it serves as apt counter-hate speech against political symbols that subordinate, exclude, and assault. Political vandalism is irreducible to civil disobedience. Therefore, some uncivil disobedience is justified. Therefore, the Orthodox Resistance Thesis is incorrect.

Chapter 4, *Fairness and the impositions of costs*, starts with the question “how can civil disobedience be justified despite imposing costs on others against their will?” I show that a plausible answer can be derived from Rawls’s account of why we have a limited duty to obey unjust laws: because it is fair to bear the inevitable burdens of injustice equally. The costs imposed by civil disobedience can be justified when it is also the inevitable but fair burdens of rectifying injustice. However, when injustice arises not because it is inevitable, but because certain parties are responsible for it, equal or random cost imposition is no longer fair. Instead, fairness demands imposing costs in a way that traces responsibility. I show that sometimes uncivil disobedience can trace responsibility better than civil disobedience. In such cases, uncivil disobedience, instead of civil disobedience, is justified.

Chapter 5, *Countering counter-resistance, the Escalation argument*, argues that certain ways of responding to civil disobedience create room for justified uncivil disobedience. First, when civil disobedience is rendered ineffective by counter-resistance, uncivil disobedience may become necessary. Should the injustice resistance targets be severe enough, uncivil disobedience would then become both necessary and proportionate and thus permissible. Second, certain types of counter-resistance constitute severe injustice, and may render otherwise disproportionate uncivil disobedience proportionate and thus permissible. In this chapter, I also introduce two troubling self-fulfilling prophecies: the beliefs that violence is coun-

terproductive and that violence is wrong may play significant roles in making it the case that violence is counterproductive and thus wrong.

Part 2, *Beyond the Orthodox Counter-Resistance Thesis* argues that the ethics of counter-resistance is more nuanced than merely treating civil disobedience differently from ordinary offending:

Chapter 6, *Taking (unjustified) uncivil disobedience seriously*, aims to show that the Orthodox Counter-Resistance Thesis is problematic. Here I distinguish between acts of disobedience that are fully justified, unjustified due to unjust aims, and unjustified due to unjustified means. I propose that we should carefully consider the demands of acts of disobedience that fall under the last category, and take those demands as reasons to act if they prove to be reasonable. In this way, we can incorporate more comprehensive points of views to better the society. I then consider objections based on the purported low epistemic value of unjustified disobedience, the appeal to desert and moral standing, and the need to disincentivize unjustified disobedience, and argue that none of these constitutes remotely good reasons to refuse to consider or act upon the reasons presented by unjustified disobedience.

Chapter 7, *Punishing civil disobedience*, spells out a surprising theoretical outcome of observing a particular requirement of the Orthodox Counter-Resistance Thesis: justified civil disobedience ought not to be punished. By withholding punishment, civil disobedience may be rendered futile. This is because, according to a novel analysis I propose, civil disobedience works primarily as a costly social signal, and is costly mainly through incurring punishment. This may lead to surprising implications. First, the moral status of civil disobedience and its punishment may become unstable, which would in turn render the Orthodox Counter-Resistance Thesis incapable of providing action guidance under specific circumstances. Second, once civil disobedience is debilitated, should the injustice civil disobedience targets to

remedy be severe enough, escalation to uncivil disobedience then becomes potentially permissible.

Part 1

Beyond the Orthodox Resistance Thesis

2

The obedience argument for uncivil disobedience⁶

A prominent way of justifying civil disobedience is to start from the idea that there is a *pro tanto* duty to *obey* the law and to argue that the considerations that ground this duty to obey sometimes justify acts of civil disobedience.⁷ The basic idea is that we have a duty to obey the law that derives from certain important substantive or procedural values that are secured by compliance. However, even societies like ours, which seem reasonably just such that this *pro tanto* duty to obey the law holds, are likely to fall short of the substantive or procedural values that they aim to deliver. And while it will often be feasible to address these shortcomings within the bounds of the legal system, sometimes the only effective way of doing so will involve engaging in certain types of illegal political activities. *Disobeying* the law may be the best way of realizing the substantive or procedural values that underpin the duty to obey the law. Under these circumstances, disobedience may be justified.⁸ Call this the *obedience argument* for civil disobedience.

The aim of this chapter is to argue that exactly the same kind of obedience argument can be given on behalf of *uncivil* disobedience. That is, within a reasonably just society, un-

⁶ This chapter is a slightly revised version of Lai, T. H. (2019b). Justifying Uncivil Disobedience. *Oxford Studies in Political Philosophy*, 5, 90-114.

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⁷ Some argue that there is a moral right to engage in civil disobedience (Brownlee, 2012, 2018; Dworkin, 1978; Lefkowitz, 2007, 2018). (For objections to the moral right see, for example, Madsen (2019).) These accounts are beyond the scope of this research. However, I am inclined to believe that my argument can be extended to those accounts: the grounds of the right to civilly disobedience would most likely extend to support certain (though perhaps a more limited range of) acts of uncivil disobedience.

⁸ I avoid taking a stand on whether different forms of disobedience are justified as merely permissible or obligatory. This is an important issue, but beyond of the scope of my research.

civil disobedience sometimes constitutes the most appropriate way of responding to the considerations that ground the *pro tanto* duty to obey the law.⁹ So, if we hold that civil disobedience is sometimes justified in a reasonably just society, then we should also accept that uncivil disobedience is also sometimes justified. Civil disobedience does not pick out a normative category that is *uniquely* justified.

This chapter is in 4 sections. In section 2.1, I examine a number of different versions of the obedience argument for civil disobedience based on a number of different views of the grounds of the duty to obey the law. In section 2.2, I argue that, if they succeed in justifying civil disobedience, then uncivil disobedience can also be justified on the same grounds. In section 2.3, I consider and respond to the objection that the analogous obedience argument for uncivil disobedience ignores the fact that civil disobedience enjoys a special normative status over other forms of illegal resistance on account of instantiating certain special features: non-violence, acceptance of legal consequences, publicity, and conscientiousness, and thus avoids involving actions that are wrong in themselves. In section 2.4, I argue that the view that uncivil disobedience is sometimes justified in reasonably just societies is distinct from and superior to two rivals: the view that we should expand the notion of civility such that civil disobedience, expansively construed, is uniquely justified; and the view that uncivil disobedience is indeed sometimes justified but only in unfavourable conditions.

It should be emphasized that throughout the chapter, I do not take a stand on whether or why there is a general duty to obey the law. Instead, I simply work with the assumptions of

⁹ The term “uncivil disobedience” has been used by Jenet Kirkpatrick (2008) to refer to violent political activities such as the interracial abolitionists mob in 1854 that attempted to rescue the fugitive slave and Baptist preacher Anthony Burns from being returned to slavery under the Fugitive Slave Act of 1850, where one guard was killed during the incident. She holds that this type of violent activities should not be dismissed prematurely as “antidemocratic.” That being said, she does warn against how commendable motivations can lead to condemnable and indiscriminate violence. My use of the term “uncivil disobedience” is broader: any illegal political act that fails the standards of being civil, however expansively civility may be defined. Accordingly, political activities that involve little or no violence may also be instances of uncivil disobedience.

different accounts of civil disobedience, and show that the justification that they offer for civil disobedience *vis-à-vis* the duty to obey naturally extends to uncivil disobedience.

2.1 The obedience argument for civil disobedience

The obedience argument for civil disobedience begins from the presumption that in reasonably just societies there is a *pro tanto* duty to obey the law (e.g. Rawls, 1999; Smith, 2011). This duty to obey is supposed to extend to laws and policies that are nontrivially flawed. (Otherwise there would be no point in engaging in civil disobedience to fix anything, or there would be no need to justify civil disobedience against a duty to obey that does not exist.) But why think that there is any duty to obey laws that are far from perfect—say, laws that impose systematic disadvantages on certain minorities?

Consider, first, the duty to obey *perfectly just* laws. There are, broadly, two ways of grounding this duty: what I shall call *substantive* and *procedural* accounts.¹⁰ Substantive accounts appeal to certain substantive values that are realized through obedience: e.g. responding better to reasons (Raz, 1986),¹¹ promoting justice through supporting just institutions (Rawls, 1999), or fulfilling our “duty to rescue” in a fair way (Wellman, 2005).¹² Procedural accounts, in contrast, appeal to the non-instrumental quality of the (usually democratic) procedures in which political decisions are made. For example, the binding force of democratic

¹⁰ This dichotomy is employed in order not to over-complicate the discussion. It should, however, be pointed out that those who endorse a procedural account still give a certain weight to substantive considerations, and *vice versa*.

¹¹ The basic idea of Raz’s account of legitimate authority is that if, by following the directives of some agent or agency, we would better conform to the reasons which apply to us in a given domain than through reliance upon our own judgment, that agent or agency has practical authority over us.

¹² Wellman (2005) grounds the duty to obey the law in what he labels as “the Samaritan duty:” we ought to rescue others from great peril provided that such rescue is not too costly for us. He holds that the state of nature threatens everyone, and can only be prevented by establishing a state to maintain order. The burden of supporting the state, if fairly distributed through each obeying a fair law, is comparatively small. Given that the cost for each individual is small, whereas the benefit of rescuing everyone is great, each individual has a duty to obey the law.

decisions might be grounded on the fact that laws are constraints that we impose upon ourselves (Post, 1993; Markovits, 2005), or decisions made when all relevant points of views are properly considered (Jürgen Habermas, 1996; W. Smith, 2011).¹³

How might we extend these accounts to less than perfect laws?¹⁴ Take substantive accounts first. Joseph Raz (1986) holds that one ought to obey, if but only if, submitting one's judgment to imperfect law responds to reason better than relying on one's own judgment. Rawls (1999) holds that the natural duty towards justice demands that we support less than perfectly just institutions "as long as they do not exceed certain limits of injustice" (p. 311). That's because there is no guarantee that we can establish perfectly just institutions, while establishing and supporting institutions represents our best chance of approximating a just system. As for procedural accounts, it is often argued that we ought to respect others through respecting democratically made decisions, even when the outcomes fall short of being perfect.

At the same time, it is clear that when the quality of the law deviates from the ideal too much, obeying no longer contributes to realizing the substantive or procedural values that ground the duty to obey. Obeying in such cases is pointless if not detrimental. This brings us to civil disobedience. In such circumstances, the duty to obey is undermined. As a last resort to address serious flaws within the system, civil disobedience might very well represent the most appropriate way of responding to the substantive or procedural considerations that ground the duty to obey the law. Wellman (2005) for instance, states that if a law is unjust

¹³ It is important to point out that this is clearly not an exhaustive enumeration of the substantive and procedural accounts of the duty to obey. However, I am confident that my analysis can be easily applied to other versions of the substantive or procedural accounts.

¹⁴ Some simply admit that once the law falls short of being perfect, the duty to obey no longer applies. Wellman (2005), for example, points out that when a law is unjust, it either fails to play any positive role in fulfilling the duty to rescue and might even play a part in perpetuating injustice, or it places unfair burdens on particular individuals. Either way, the duty to rescue is not fairly distributed. Since cashing out that duty fairly is exactly what grounds the duty to obey, there is no duty to obey.

and if disobeying it in a particular way is effective in a certain circumstance to promote justice, one is “morally at liberty to break the particular laws [...one] disobeyed simply because they were unjust” (p. 86). For example, in a system that embodies racial discrimination, some might disobey the law publicly to draw attention to the oppression certain groups face and thus facilitate change. Because such illegal activities help to rescue others from immediate and persisting harm that arises from unjust systems, in contrast to obeying unjust laws and perpetuating injustice, they would actually be fulfilling the duty to rescue. Rawls holds that civil disobedience is permissible when dealing with clear and blatant injustice such as racial discrimination, and employed as a device to promote justice. Those who endorse procedural accounts appeal to the quality of the relevant procedures, and hold that democratic decisions are not binding if certain groups or individuals were excluded from the decision-making procedures, and that civil disobedience is justified when disobeying actually enables or promotes inclusion (Markovits, 2005; W. Smith, 2011): say, when the voices of certain groups are continuously ignored by the majority, and can only be brought to the table through illegal and disruptive activities; or when there are bureaucratic obstacles that can only be overcome by imposing costs on the system, e.g. inconvenience and public embarrassment, and forcing negotiation to take place (Fung, 2005).¹⁵

In each case, then, the idea is that civil disobedience is justified *vis-à-vis* the substantive or procedural considerations that ground the *pro tanto* duty to obey the law. Obeying imperfect laws or policies may be pointless if not detrimental with regard to realizing these con-

¹⁵ Note that civil disobedience does not necessarily breach the laws it purports to change. Sometimes breaching otherwise perfectly unproblematic laws represents the best way to respond to the underlying values that normally demand obedience. Civil disobedience that breaches the corresponding laws is labeled “direct” civil disobedience, and that breaches other laws “indirect civil disobedience.” The justification of direct and indirect civil disobedience is pretty much identical, so I do not emphasize the distinction in this chapter.

siderations; and civil disobedience may better realize these considerations. In such cases, there is no duty to obey the law. Rather, civil disobedience is justified.¹⁶

2.2 Extending the obedience argument to uncivil disobedience

I shall now argue that assuming that the obedience argument for civil disobedience succeeds, we should also accept an analogous obedience argument for *uncivil* disobedience. Acts of uncivil disobedience fall short of the relevant standards of civility. Paradigm examples include whistleblowing,¹⁷ hacktivism, ecotage, and the use or threat of violence in protests.¹⁸ *Whistleblowing*, or more precisely governmental whistleblowing, defined by Candice Delmas (2015), “involves the unauthorized acquisition [...] and disclosure [...] of classified information about the state or government” (p. 78) regarding “suspected illegal or unethical conduct...[such disclosure] amounts to an indictment of the wrongdoing” (p. 80). *Hacktivism* is activism using hacking techniques, “with the intent of disrupting normal operations but not causing serious damage” (Denning, 2001, p. 241). *Ecotage* is “sabotage of inanimate objects (machinery, buildings, fences) that contribute to ecological destruction” (Vanderheiden, 2005, p. 427). *The use or threat of violence in protests* includes politically motivated vandalism,

¹⁶ I have focused on unjust laws or policies. However, the justification of civil disobedience extends naturally to disobeying otherwise just laws or policies: sometimes disobeying them, e.g. for the sake of signalling the injustice, also serves the underlying values better than obeying those laws. The basic idea is the same: if obeying otherwise just laws does not realize the underlying political values, but disobeying them does, those values would demand disobedience.

¹⁷ I follow Candice Delmas (2015) in holding that whistleblowing falls short of civility, as it refuses to accept punishment and involves covert planning or even anonymity; but I acknowledge that some might find whistleblowing, at least highly idealized versions of it, compatible with the norms of civil disobedience. However, the main argument of my chapter does not rest on whether whistleblowing is civil, and I am confident that those who insist that whistleblowing is civil would agree that other activities, especially those that involve violence, are uncivil, and this would suffice for the argument in this chapter to work.

¹⁸ This list is clearly non-exhaustive, but should serve the purpose of discussion. I will omit cases such as secret tax evasion to dissociate with unjust governments or draft dodging when facing unjust wars, which are traditionally labelled as “conscientious refusals” or “conscientious objections.” There seems to be well developed and widely accepted accounts regarding such activities.

resisting arrest, threats to escalating to more radical measures, and the actual damaging of property or harming of persons.¹⁹

Note that the discussion of civil disobedience in the previous section was confined to cases where civil disobedience was a *last resort* to address *serious flaws* within the system. A more refined reading of this is that, to be justified, civil disobedience must be *necessary* to address the targeted issue effectively, and the costs or harm imposed by civil disobedience must be *proportionate* to the severity of injustice. When it comes to uncivil disobedience, it might be thought that uncivil activities are likely to be much costlier than civil activities. Thus, uncivil disobedience, even if necessary to realize significant value(s) effectively, may never be proportionate, and thereby never permissible.

However, the claim that uncivil disobedience is always going to be much costlier than civil disobedience is simply false. Certain forms of uncivil disobedience impose much lower costs on persons or society in general in comparison to civil disobedience. Whistleblowing, for example, often causes at most public embarrassment to the government, but that can hardly be counted as being harmful in any meaningful sense. Politically motivated vandalism indeed destroys public property, but the costs it imposes may be far outmatched by instances of civil disobedience that aim at causing large-scale inconvenience, e.g. occupying and thus paralyzing transportation hubs or even airport runways (where the latter can cause worldwide chaos in the airspace).

¹⁹ Here I use “violence” in a broader sense, as Bedau (1961) did when he discussed the non-violent condition of civil disobedience, which includes “deliberately destroying property, endangering life and limb, inciting to riot (e.g., sabotage, assassination, street fighting)” (p. 656). I am well aware that there is a fair amount of equivocation that occurs when this term is used, and it is an inexcusable (and arguably often a malicious) mistake to equivocate these different senses when engaging in normative arguments. In order to avoid this mistake, I will single out violence in a narrower sense—against persons—and have in-depth discussion thereon immediately after discussing violence against property in section 2.1. My argument, therefore, can also appeal to those who view only violence in a narrower sense as genuine violence.

In addition, even if certain forms of uncivil disobedience impose more costs on persons or the society, this does not necessarily prevent uncivil disobedience from being proportionate. First of all, whether an act is proportionate depends, at least in part, on how significant the values realized are. In cases where, say, ecotage helps to prevent massive environmental damages that threaten the ecosystem or people's health, or say, political violence deters severe racialized policing or racial violence, the values realized or protected are substantial, and thus speak in favor of those acts being proportionate. Second, and perhaps more importantly, it matters to proportionality exactly *who* bears the costs of particular actions. Regarding the ethics of self-defense and war, it is widely accepted that when it comes to the distribution of costs, it is better for those who are more responsible for the wrong being addressed to bear the costs in addressing that wrong; moreover, proportionality allows more costs to be distributed to the culpable—those who freely and knowingly engage in the wrongful activities that necessitate defensive actions—in comparison to their innocent counterparts (Bazargan, 2014; Draper, 2016; Montague, 2010; Tadros, 2011, 2012; Vallentyne, 2011, 2016). Applying this to uncivil disobedience, even if such activities sometimes cause much more overall harm, insofar as the harm is directed at those who are culpable, acts of uncivil disobedience can still be proportionate. This can be true of a variety of instances of uncivil disobedience, ranging from ecotage targeting industries that poses severe threats to the environment, to political violence that responds to racial violence, or a wide range of possible disruptive actions that can be taken against those who profit from selling firearms and/or from opposing gun control. In contrast, acts of uncivil disobedience that impose *indiscriminate* costs on others are more likely to be ruled out by proportionality. Taking this into consideration, one might even suspect that acts of uncivil disobedience that target the culpable are much more preferable in comparison to acts of civil disobedience that impose costs on people indiscriminately, as proportionality would more likely rule that the costs be imposed on the

culpable.²⁰ (In chapter 4, I will argue for this vary conclusion on grounds of fairness: uncivil disobedience that targets those responsible in various ways for unfair social schemes are preferable to civil disobedience that imposes indiscriminate costs.)

Having established the possibility that uncivil activities might be proportionate even if they might be thought to be much costlier, I will now consider what the obedience argument for uncivil disobedience might look like given the aforementioned substantive and procedural accounts of the grounds of the duty to obey.

2.2.1 Substantive versions of the obedience argument

First, consider substantive versions of the obedience argument. As we have seen, substantive versions of the obedience argument for civil disobedience hold that we are justified in engaging in civil disobedience since, at least in certain special circumstances, engaging in civil disobedience, rather than obeying the law, constitutes the best way of realizing the substantive values that ground the *pro tanto* duty to obey the law. I shall now show that such arguments can and should be extended to uncivil disobedience. That is, there are other special circumstances in which engaging in uncivil disobedience, rather than obeying the law or engaging in civil disobedience, constitutes the best way of realizing the substantive values that ground the *pro tanto* duty to obey the law, namely the value of responding to reasons better, fulfilling

²⁰ One can also understand this issue in terms of the distinction between *narrow* and *wide* proportionality introduced by Jeff McMahan (2009). Accordingly, wide proportionality is about defensive harm imposed on those who are not liable, while narrow proportionality concerns those who potentially are. The weight of the harm with regard to narrow proportionality is typically discounted in virtue of the target's liability; for the target has forfeited her rights against being harmed, and thus the harm does not *wrong* her (in contrast to being merely permissible but nevertheless *wronging* the target). This permits more harm to be imposed on the liable in comparison to their innocent counterparts, all other things being equal. The worry that uncivil disobedience is costlier and thus never proportionate might in part be a confusion that all the costs must be treated as rights-infringements, weighted equally in proportionality calculations. Rather, in at least some cases the extra costs are imposed on individuals who are liable to bear them, and so do not count against the wide proportionality of the disobedience.

our duty to rescue, or acting upon our general duty to promote justice. Where this is so, it seems clear that we should conclude that uncivil disobedience is indeed justified.

As we saw above, paradigm types of uncivil disobedience include whistleblowing, hacktivism, ecotage, and the use of violence in protests. These types of activities involve breaking laws prohibiting the leakage of classified information, laws governing the cyberspace, property laws or laws specifically introduced to target “eco-terrorism,” or laws prohibiting the use of violence against property, persons, or the police. Under many “normal” circumstances, obeying these laws will presumably contribute to the realization of the desirable substantive ends. But there is no reason to think that this will always be so. Consider governmental whistleblowing. To reiterate, governmental whistleblowing is “the unauthorized acquisition [...] and disclosure [...] of classified information about the state or government” (Delmas, 2015, p. 78) that involves state injustice. Obeying the law and concealing such secrets might eliminate the possibility of correcting, punishing, or preventing severe wrongdoings. The cases of Chelsea Manning²¹ and Edward Snowden²² fall into this category. In such cases, obeying the law would be positively detrimental to the substantive values underpinning the law, while whistleblowing would contribute most effectively to the realization of these values. Correcting and punishing seriously unjust activities amount to responding to reason better and to promoting justice, while preventing severe wrongdoings would be demanded by our duty to rescue, especially when the wrongdoings endanger people’s lives. Whistleblowing, therefore, under special but realistic circumstances, would be justifiable *vis-à-vis* the duty to obey by being demanded by the substantive sources of our political obligations.

²¹ Manning leaked a large amount of classified information regarding the U.S.’s military conduct, including the slaughter of non-combatants. See, for example, Rizzo, J. (2012). Bradley Manning charged. CNN. <http://security.blogs.cnn.com/2012/02/23/bradley-manning-charged/>

²² Snowden revealed information regarding NSA’s mass-surveillance programs, including PRISM. See, for example, Andrews, S., Burrough, B., & Ellison, S. (2014). The Snowden saga: A shadowland of secrets and light. Vanity Fair. <http://www.vanityfair.com/news/politics/2014/05/edward-snowden-politics-interview>

Hactivist techniques include paralyzing websites through virtual sit-ins, denial-of-service (DoS), or distributed-denial-of-service (DDoS) attacks, site defacements, site redirections, and information theft (Hampson, 2012). There are laws prohibiting most if not all of these techniques in many countries. Again, obeying these laws would amount to giving up a wide range of useful strategies in engaging in protests and forfeiting numerous opportunities to promoting justice. Site defacements and site redirections can raise awareness of certain issues or even provide (counter) information against problematic organizations and their websites.²³ Information theft can also be a form of whistleblowing.²⁴ Though hacking techniques can be used for selfish purposes and cause severe harm to the society, or sometimes represents nothing more than a simple display of the hacker's expertise, if used properly, they can help promote the substantive values that otherwise demand obedience better than obeying the law. Thus, hacktivism can be justified *vis-à-vis* the duty to obey the law.

What about the use or threat of violence against either property or persons? The thought that resorting to violence can be in line with the grounds of our duty to obey the law might seem counterintuitive. The private use of violence seems to be one of the most dangerous threats to social order, especially when it is targeted at persons and causes physical harm to others. It often incites retaliation, which leads to more violence, thereby undermining the secure and stable society that our way of life depends on. It might also be an indication that one has arrogated to oneself the license to behave in ways prohibited to others. It is not a surprise that many different accounts of our duty to obey the law insist that we do our part in establishing and maintaining a civil society that prohibits the private use of violence (e.g.

²³ For example, in 1999 Anonymous redirected the “traffic intended for a KKK Web site to Hatewatch” (Himma, 2007, p. 88).

²⁴ For example, in 2010 the hacktivist Andrew “weev” Auernheimer exposed AT&T's security breach (Delmas, 2018b). He was later sentenced for 41 months. See <https://www.wired.com/2013/03/att-hacker-gets-3-years/>

Locke, 1690; Rawls, 1999; Wellman, 2005). The use or threat of violence, some might conclude, is the exact opposite of what the grounds of our duty to obey the law demand.

It is simply not true, however, that under *no circumstances* is violence in line with the grounds of political obligation. At least in certain extreme cases, i.e. cases where resorting to violence is necessary and proportionate to bring about certain goods, the substantive considerations might demand resorting to violence instead of obeying laws that prohibit violence. First, consider violence against properties and objects. Consider laws banning “eco-terrorism.” Such laws prohibit direct actions against industries that cause serious harm to the environment. Environmental hazards, however, sometimes pose significant risks to people’s health. In specific circumstances, successful ecotage could help prevent such risks. This might be the outcome of the attention ecotage draws, which translates into public pressure, the economic costs that destroy the profit of the industries in question, or simply through direct prevention or hindrance of environmental hazards. In such cases, it is legitimate to ask what the substantive considerations demand. If one endorses the duty to rescue as the grounds of obedience, then since such laws prohibit rescue, one would have to admit that ecotage rather than obedience is demanded. Regarding the duty to promote justice through supporting just institutions, in such cases it could hardly be said that institutions are just with respect to environmental protection. Since obedience in this particular case does not support just institutions, while ecotage effectively promotes justice, the latter is demanded by such a duty. In addition, it is simply not the case that obeying laws that demand inaction with regard to severe environmental hazards that threaten people’s lives would amount to responding better to reason. In terms of responding to reason, then, there is no duty to obey such laws. Ecotage, if it will genuinely save people’s lives, constitutes the most appropriate response.

Now consider politically motivated vandalism, another type of violence against properties and objects. The British Suffragettes, for example, engaged in a certain amount of vio-

lent activities including smashing windows, blowing up mailboxes, and sabotaging telephone lines. They chose to do so because nothing less disruptive worked. Such disruption, however, is relatively minor in comparison to their disenfranchisement and the disadvantages they suffered from disenfranchisement. Or consider the vandalism of political symbols in Taiwan. Statues and monuments of the former despot Chiang Kai-shek were established long before the democratization of the regime. Countless people were persecuted and thousands tortured and murdered during the 38 years of the White Terror he initiated.²⁵ This so-called “beacon of freedom” personally altered the sentences of a number of innocent people to execution.²⁶ The display of political symbols in honor of this man, for example, praising this dictator as the “savior of mankind,” is extremely and unjustly offensive to the victims.²⁷ Based on such beliefs, and futile attempts to remove these symbols through legal channels, surviving victims and those who sympathize with them underwent several attempts to desecrate these state-displayed political symbols.²⁸ In either case, the use of violence to pursue just political ends is completely in line with whatever substantive values there might be.²⁹ (In chapter 3 I will

²⁵ See Huang, T. (20 May 2005). White Terror exhibit unveils part of the truth. *Taipei Times*. <http://www.taipeitimes.com/News/taiwan/archives/2005/05/20/2003255840>

²⁶ See Hsiao, A. (25 May 2015). DPP official urges nationwide Chiang Kai-shek purge. *Taipei Times*. <http://www.taipeitimes.com/News/front/archives/2015/03/25/2003614346>

²⁷ For the justificatory conditions of displaying political symbols, see, for example, Tsai (2016), where it is argued that first of all, the symbol must uphold genuine political values, and second, must be decided through a legitimate democratic procedure. Symbols that honour Chiang Kai-shek fail to meet either of these conditions.

²⁸ See, for example Su, C. & Chin, J. (1 March 2016). Bust of Chiang Kai-shek vandalized in Taichung. *Taipei Times*.

<http://www.taipeitimes.com/News/taiwan/archives/2016/03/01/2003640556> Similar acts of vandalism occurred constantly and regularly throughout the past several years. It wasn't until late 2017 that did the government finally yielded to the demands of the people, and started the legislation regarding the removal of symbols honoring Chiang and his authoritarian rule as part of the project of transitional justice. See, for example Hetherington, W. (7 Dec 2017) Transitional Justice Act: Schools named after Chiang Kai-shek to be renamed: education minister. *Taipei Times*.

<http://www.taipeitimes.com/News/taiwan/archives/2017/12/07/2003683572>

²⁹ It should be emphasized that, as I have suggested at the beginning of section 2, that there is a significant difference between violence imposing costs on the culpable and nonculpable. Acts of uncivil disobedience that impose costs on the culpable would be less likely to be

offer a detailed argument for the permissibility of vandalizing objectionable political symbols.)

Let us now turn to the use or threat of violence against persons in political protests. There are surely cases where resorting to violence is the only way of minimizing unnecessary conflict and casualties. Both legal and illegal protests occasionally face police brutality. In normal circumstances, it is uncontroversial that an innocent person has the right to engage in self-defense against unjust aggressors. However, the belief that activism and civil disobedience in particular must be committed to nonviolence might lead one to hold the view that the activists and civil disobedients ought never to resort to violence.³⁰ Once an activist or civil disobedient engages in self-defense, she has resorted to violence, and has breached the commitment to nonviolence. Accordingly, her action is unjustifiable. But this is absurd. The right to self-defense surely cannot be compromised or nullified just because one is engaging in political activities, or because the unjust aggressor is wearing a police uniform. Therefore, the view that violence must always be prohibited during political protests must be rejected. Note that, strictly speaking, such cases do not fall under the category of uncivil disobedience, as legitimate self-defense is typically legal or legally excused, and thus is not, technically, an act of “disobedience.” But some might view a protest in question (legal or illegal) and the violence employed by the protesters in self-defense as one single act, and thus dismiss the movement as “uncivil” because it “involves violence.” My discussion here is a response to those that hold such a view: if this counts as “uncivil disobedience,” so be it, but this shows that uncivil disobedience is actually justifiable.

ruled out by proportionality. Instances of political violence that target governmental officials who act unjustly or political vandalism that target unjust political symbols more often satisfy this.

³⁰ Hugo Bedau (1961) defended exactly this position: “[the civil disobedient] does not respond with violence or violent resistance during the course of his disobedience, regardless of the provocation he may have, and thus that he is prepared to suffer without defense the indignities and brutalities that often greet his act” (p. 656).

I have argued that the case of violent self-defense in political protests should at least not be in conflict with the substantive values that otherwise demand us to obey the law. In addition to self-defense, the use or threat of violence can sometimes promote substantive values more directly. The Ferguson Unrest might be one instance: the violence involved, e.g. violently resisting arrest or threatening to resort to retaliatory activities, demonstrates and forces the public to acknowledge the seriousness of racially biased law enforcement and abuses of power that are more often left unprosecuted (Hooker, 2016). The angry reaction from activists, some of which manifested in the form of riots, against systematic racist police violence following the rape of Théo L. in France is another instance. Without the more radical movements, severe police misconduct would more likely receive less than fitting punishment, for example charges against police officers for rape would have been reclassified as mere aggravated assault.³¹ In such cases, obeying laws prohibiting violence does not fulfil the duty to rescue, does not support just institutions, and does not respond to reason better than direct action. There is, therefore, no duty to obey such laws in such circumstances; resorting to violence, instead, would be demanded by the sources of our political obligations.

There is yet another way violence can contribute to the realization of the substantive grounds of our political obligation. Violent groups often “work in concert” with their nonviolent counterparts. This can lead to a *positive radical flank effect*, that is, the bargaining position of the nonviolent groups is strengthened in virtue of the presence of violent alternatives (Haines, 1984). Accordingly, the presence of violent groups increases the awareness of the issue(s) nonviolent groups attempt to address, as both groups aim at addressing the same issue(s). In addition, the presence of genuine violence helps people recognize that nonviolent groups are genuinely nonviolent. This prevents nonviolent groups from being mislabeled as

³¹ See McQueen, F. (2017). A horrific accusation against police reignites anger in Paris suburbs. *The Conversation*. <https://theconversation.com/a-horrific-accusation-against-police-reignites-anger-in-paris-suburbs-73314>

violent, and helps them avoid the backlash and aversion violent activities typically face. Moreover, since the government and the majority would worry that the failure of nonviolent approaches would drive people to join violent campaigns, negotiating with nonviolent groups would appear to be the better option. This kind of “good cop, bad cop” interaction occurred during the Civil Rights Movement when Martin Luther King Jr.’s nonviolent campaign seemingly conflicted with the violent approach of Malcolm X, as well as nowadays in certain environmental movements where the radical activists “assist” the mainstream nonviolent organizations by being there and being violent (Vanderheiden, 2005). It’s easy to overlook the contribution of violence. The Civil Rights Movement, most notably, has often been presented in a sanitized fashion, where the “success” is attributed primarily or even solely to the nonviolent campaigns (Hooker, 2016). This obsession with nonviolence is a mistake, to say the very least. The strategic use of violence, or at least maintaining the availability of violent alternatives, can contribute significantly to the realization of substantive values.³²

In sum, if we accept a substantive account of the grounds of political obligation, then it seems that we should conclude that these grounds might under special circumstances cease to demand obedience to laws prohibiting certain activities or even civil disobedience, but instead speak in favor of uncivil disobedience. If civil disobedience may be justified in this way, then it seems that uncivil disobedience may be justified in the same way.

³² According to Coretta Scott King in an interview, Malcolm X intended but was unable to visit Martin Luther King Jr. when the latter was jailed in Selma in February 1965. Malcolm X instead visited Coretta Scott King, and told her: “I want you to say to him that I did not come to Selma to make his job more difficult but I thought that if the White people understood what the alternative was that they would be more inclined to listen to your husband.” Accordingly, this “good cop, bad cop” strategy has been intentionally employed by at least some groups during the Civil Rights Movement. <http://digital.wustl.edu/e/eii/eiiweb/kin5427.0224.089corettascottking.html>

2.2.2 Procedural versions of the obedience argument

How about procedural versions of the obedience argument: that is versions based on procedural accounts of the grounds of the duty to obey the law? Procedural versions of the obedience argument for civil disobedience hold that when legal means fail to do the job, civil disobedience is justified in virtue of enhancing the quality of decision-making procedures: Ignored or marginalized but important points of views are brought to the attention of the public, and this enables more inclusive democratic decisions. Might we also extend such arguments to uncivil disobedience?

Certain types of uncivil disobedience, though failing to meet the standards of civility in numerous ways, are predominantly communicative, and it is not hard to see how they enhance the quality of democratic deliberation. Whistleblowing exposes illegal or unjust conduct, and such information is necessary for citizens to make fully informed decisions. Similarly, hacktivism, ecotage, and vandalism can also be used in a communicative way, often to raise the awareness of certain issues.³³ By contrast, it is less clear how other types of uncivil disobedience, especially those involving coercion, threats, or violence against persons could be consistent with a procedural account. Certain instances of hacktivism, such as Anonymous's cyber-attack "Operation Payback" against entities they perceive as being hostile towards WikiLeaks, are more attempts to retaliate than to communicate.³⁴ Ecotage is often performed as direct action with the primary intention "to make certain present and future acts more expensive, and hence to discourage" environmentally damaging industries

³³ For instance, in 1996 hacktivists hacked the homepage of the United States Department of Justice, and altered the title "Department of Justice" to "Department of Injustice," as part of the protest against the Communications Decency Act (Denning, 2015). Vandalism defacing statues and spray-painting messages like "murderer" or "BlackLivesMatter" also serves as obvious examples.

³⁴ See, for example, BBC (2010) "Anonymous Wikileaks supporters explain web attacks." BBC. <http://www.bbc.co.uk/news/technology-11971259>. Here I leave it an open question whether Operation Payback is justified. I have employed this example just to show that cyber-attacks often are not aimed to talk but to coerce.

(Vanderheiden, 2005, p. 438). The use or threat of violence against persons might seem to be the exact opposite of attempting to arrive at mutually acceptable solutions through deliberation. It might thus be held that most uncivil activities are incompatible with procedural considerations.

However, the conflict between procedural accounts and uncivil disobedience is not as stark as it might first appear. It could, sometimes, be questioned whether the laws targeted by uncivil disobedience are really justified in the first place, according to the standards of procedural accounts. If, for example, laws against ecotage were introduced solely under the influence of corporations whose profits would be protected by such laws, while laws in favor of environmental protection were never seriously reviewed, laws against ecotage simply lack the feature of being the outcome of an inclusive democratic decision. Another example would be governmental regulations of the cyberspace. It can be seriously doubted whether those who are regulated really had a say in the issuing of the regulations (Delmas, 2018b). In such cases, while uncivil disobedience does not *contribute* to the realization of procedural considerations, it does not *conflict* with such considerations either; for the laws that are targeted might be incompatible with the relevant procedural considerations in the first place.

Two additional points can be made concerning how to bring certain types of uncivil disobedience in line with procedural considerations, even if they do not primarily aim to be communicative. The first is about the enforcement and execution of inclusive democratic decisions. There is, to say the least, no guarantee that the government will carry out and stick to democratically made decisions in virtue of them being made democratically. For example, it is quite possible that laws regarding environmental protection or regulations concerning permissible policing tactics will be completely ignored by governmental officials. Moreover, it might be the case that governmental officials are known to constantly get away with misconduct, and that no legal measures taken by individual citizens, such as protests to expose such

misconduct, can get the government to stick to the rule of law. Compared to inaction in the face of the government's continuous neglect of the law, direct action, such as protecting the environment through ecotage or keeping policing in check through the use or threat of violence, might actually amount to enforcing the execution of democratic decisions, and, hence be more in line with procedural considerations.³⁵

The second point concerns the robustness and stability of deliberations. According to Locke (1690, secs. 224–226), and more recently revisited by Philip Pettit (2012), the government has disproportionate power over the people it governs. In order for the people to remain in charge of the government, instead of the government having arbitrary power over the people, the people need to be ready to rise up and overthrow the government should the government forget its place and step outside of its legitimate boundaries. In a similar vein, in order for all parties to stick to democratic procedures, instead of those in power diverging from deliberation whenever diverging is to their advantage, threats and coercions to check and balance their power might be thought to be needed. Certain types of uncivil disobedience, e.g. sabotages, hacktivism, vandalism, etc. might very well be effective means of imposing costs on those who disregard democratic procedures, and keep everyone at the table. It is worth noting that, unlike the previous point, this is not about privately enforcing democratic decisions, but about ensuring that the honoring of democratic procedures does not depend on the goodwill of the government.

Uncivil disobedience, therefore, even if it primarily involves threats or coercions instead of providing reasons, can still be in line with procedural accounts by making deliberation robust and stable.

³⁵ One instance is the Sea Shepherd Campaigns. Illegal commercial whaling has been often done under the guise of legal “scientific research.” Seeing that the international laws regarding whaling are often unenforced, the Sea Shepherds take the matters into their own hands and enforce the law themselves. See, for example, Dryzek (2000, p. 122), Smith (2016, p. 166), and O’Sullivan (2017).

All this being said, it is certainly possible that procedural accounts might justify a rather *different* set of uncivil activities compared to their substantive counterparts. It is not my intention to settle which account is better or to decide exactly which types of uncivil disobediences are justifiable. The aim of this chapter is simply to show that insofar as civil disobedience is taken to be justified with reference to certain (substantive or procedural) values that ground the duty to obey the law, then this mode of argument also extends to at least *some* instances of uncivil disobedience.

2.3 Is civil disobedience special?

However, extending the obedience argument from civil to uncivil disobedience in this way naturally invites an objection. The objection is that there is something *special* about civil disobedience that serves to distinguish it from uncivil disobedience and in virtue of which the former is uniquely justifiable. In virtue of what might civil disobedience be special?

2.3.1 Nonviolence.

The most straightforward possibility is that civil disobedience is special because it is necessarily nonviolent, while uncivil disobedience might involve violence. Some might believe that there is something inherently wrong with deploying or threatening violence, such that violence should always be avoided, or at least that there is always some sort of “moral stain” left behind even if violence is necessary. If this is the case, then it would follow that there is a fundamental normative difference between civil and uncivil disobedience.

However, it is quite difficult to understand what the inherent wrongness of violence is supposed to be. It is true that violent activities normally cause significantly more harm than nonviolent activities. This makes conditions such as necessity and proportionality more difficult to satisfy, other things being equal. It is also true that many activities that involve violence, especially those that involve physical harm, are considered *mala in se*, acts that are

wrong in themselves independent of the law, for example rape and murder (Ristroph, 2011). That being said, there seem to be plenty of cases where violence is completely justified and that do not fall under the category of *mala in se*. Violence in the context of justified self-defense is a familiar example. Another is policing according to just law. Thus, involving violence does not *ipso facto* make an act unjustifiable or *malum in se*. In the case of violent acts of uncivil disobedience, the question is exactly whether such acts can be justified instances of violence. To assume that violent uncivil disobedience is inherently wrong despite the fact that it can sometimes be necessary, proportionate, and furthermore promote our shared political values seems arbitrary.³⁶

Some might want to say that the state possesses the moral right to monopolize the use of violence. Again, self-defense, at least where the state is unable to provide the defense, serves as an obvious counterexample. Moreover, even in societies like ours it seems that resorting to violence might be at least sometimes necessary and proportionate. Certain injustices might be so severe that it would be proportionate to damage property or (threaten to) harm people to fix it. Moreover, the state might be sufficiently unresponsive to this particular issue and the relevant political movements for such extreme measures to be necessary. Thus, even if the state is functioning relatively well on other issues, it is highly questionable whether the state retains the power to monopolize violence on the particular issue in question.

Finally, it might be thought that violence often if not always incites additional violence and hatred, “while nonviolence civil disobedience leaves open the possibility of a just harmony in a scale of years rather than generations” (Sabl, 2001, p. 314). While I agree that nonviolent civil disobedience can be one way of maintaining “the possibility of a just harmony,” it is unclear why the use of constrained violence cannot be another. When violence is

³⁶ Here, of course, I am not endorsing violence as something of inherent value. Instead, I argue that even if there is a presumptive prohibition against violence, this presumption can be overridden.

carefully employed to promote just ends, or to deter one side from unilaterally abusing violence and, hence, to ensure that all parties stick to democratic procedures, instances of uncivil disobedience are also making a *just* harmony not only possible but stable. Instances of violent uncivil disobedience that are in line with the underlying values of the duty to obey are precisely of this kind. Thus, they should not be ruled out just because violence is involved.³⁷

2.3.2 Accepting legal consequences

A second possibility is that civil disobedience is special in virtue of expressing “respect for law.” Civil disobedients improve the law through illegal activities, but accept the legal consequences to demonstrate their loyalty to the regime (King Jr, 2002; Rawls, 1999). In contrast, people who engage in uncivil disobedience often attempt to avoid or resist punishment.³⁸ It might be said that this distinctive attitude towards punishment is at least part of what makes civil disobedience uniquely appropriate.

There are two things to be said in response. First, while accepting punishment is one way of expressing one’s loyalty to the regime, it is hardly the only way. Taking on great personal costs when exposing state injustice in order to make reform possible, such as in cases of whistleblowing, can surely also be a way of demonstrating one’s loyalty.³⁹ In addition, if be-

³⁷ My aim here has been to provide a limited defense of the use of violence in general. In chapter 5 I will provide a more detailed defense of the use of violence as a response to state repression in particular.

³⁸ It is typical for those who engage in whistleblowing, hacktivism, ecotage, and political vandalism to attempt to avoid punishment. This might be because the punishment is so severe that it is unreasonable for anyone to be willing to face such punishment. Chelsea Manning was sentenced to serve 35-years in prison, and served nearly 7 years (due to being commuted by then President Barack Obama). “Eco-terrorists” are treated like genuine terrorists in the U.S. It might also be because some activists just want to remain anonymous, as the Anonymous’s name suggests. Though I will not go so far as to maintain that those who engage in uncivil disobedience necessarily avoid punishment, it should be fair to say that being non-evasive is not a typical feature of uncivil disobedience.

³⁹ Sabl (2001) has made a similar point: accepting punishment suggests a willingness to cooperate in the future. However, it was also stated that “if the other costs of disobedience are sufficiently strong, and the disobedients show a willingness to incur them in the face of great

ing loyal is nothing but bearing and expressing some sort of positive attitudes towards the regime, it is unclear why incurring any costs apart from those which are necessary to make the regime better is necessary for being loyal. By doing something to improve the moral status of the state or enhancing state legitimacy, one has benefited the regime more than most law-abiding citizens. If doing more for the sake of the regime does not count as being more loyal, it's difficult to know what counts.

The second thing to say is that the idea that respect for law is important is surely itself in need of explanation. The most plausible explanation, I suggest, is that we express *mutual respect* through the respect for law. We interact with other persons under fair terms of cooperation, and refuse to claim any special privileges for ourselves. This is only the case, however, if the system is just. If the system incorporates a number of unjust laws, then expressing positive feelings and maintaining loyalty towards it would amount to expressing *disrespect* towards those who are systematically exploited. If mutual respect is genuinely what grounds the respect for law, then when respecting the law expresses disrespect towards others, we ought to *refrain* from respecting the law, in order to respect persons.⁴⁰

It is true that certain disobedients refuse to accept legal consequences. This might render them uncivil, but normatively speaking this is unimportant. One can express respect for the law while refusing to accept punishment. It might also be the case that one ought not to respect the law. Either way, refusing punishment does not by itself render an act of disobedience unjustified.

temptation, this may be sufficient to show a propensity to cooperate in the future" (p. 319). It seems that this naturally extends to cover uncivil disobedience.

⁴⁰ Delmas (2014a) argues that voluntarily participating in, benefiting from, and maintaining a system that is unfair amounts to freeriding and expresses disrespect towards those who are exploited. She further argues that this gives us reason to disobey the system.

2.3.3 Publicity

Civil disobedience was traditionally defined as a public act. Some might hold that if an activity lacks publicity, then it cannot be justifiable. To evaluate this suggestion, we need to look more closely at the idea of publicity and why it is supposed to be important.

One way of understanding publicity is to focus on whether the identities of the actors were voluntarily revealed. Call this “identity publicity.” Paradigm cases of civil disobedience seem to exhibit this kind of publicity. Those who engage in such activities typically openly declare their disobedience, and furthermore submit themselves to the authorities. This automatically entails that their identities are revealed. In contrast, uncivil disobedience might involve people breaching the laws anonymously, and furthermore putting effort into remaining anonymous.

However, it can be questioned why this sort of publicity is morally relevant. One answer might be that disobedients should be legally accountable for their actions in order to express the “respect for law.” This is incorrect, as I have argued in the previous subsection. A more plausible answer is that people should be morally accountable for their actions, and ought to be in a position to receive moral evaluation in order to engage in moral dialogue with the general public. However, if this is all there is to the moral importance of publicity, it seems that identity publicity is unnecessary. People can receive moral feedback from the general public insofar as their actions (even if not their identities) are known by the public. This is usually enough for disobedients to ascertain whether the public is passing moral judgment on their actions.

The importance of being morally accountable suggests another way of understanding publicity, something that I would like to refer to as “anonymous publicity.” Anonymous publicity concerns actions rather than actors. It’s about an act being done and being known to have been done, so that the public can pass their moral judgment to the actors. The revelation

of the identities of the actors is not necessary for moral dialogue to take place. Anonymous publicity is of moral relevance, while identity publicity is not. Therefore, even if uncivil disobedience is uncivil in virtue of lacking identity publicity, it is not thereby unjustifiable since it still maintains an important kind of publicity: anonymous publicity.

2.3.4 Conscientiousness.

Finally, some might hold that civil disobedience is special in virtue of enshrining a morally important kind of *conscientiousness*: firmly upholding one's deeply held moral convictions to the extent that one is willing to bear nontrivial costs to dissociate from and alter things one perceives as morally unacceptable. Some of the earliest and most prominent accounts of civil disobedience define it as requiring conscientiousness (e.g. Thoreau, 1849; Bedau, 1961; Rawls, 1999). Perhaps it is this feature that distinguishes civil disobedience from "ordinary offending" or "mere criminality" (Brownlee, 2012, p. 18).

Suppose that this is true. Does it distinguish civil disobedience from other types of illegal activities that are in line with the grounds of the duty to obey the law? The answer, I believe, is no. Consider what a conscientious person would do in a scenario where civil disobedience is futile if not detrimental, but uncivil alternatives can be effectively employed to address the issue. If the person is serious about fixing the problem, she will not exclude the possibility of engaging in justifiable but uncivil activities. In special circumstances, a conscientious person would blow the whistle or engage in certain types of violent activities. It might be true that conscientiousness would demand us to engage in civil disobedience under certain circumstances, but surely it would not limit us to doing so.

Indeed, we can even go a step further, and hold that conscientiousness is the mark of disobedience, both civil and uncivil. By being motivated by one's deeply held moral convictions, rather than mere self-interest or recklessness, the breaching of law in an attempt to re-

spond to the political values that otherwise ground the duty to obey the law is distinct from “mere criminality.” This distinctiveness is not solely enjoyed by justified disobedience. Disobedience can fall short of being justified in a number of ways; most commonly because disobedients sincerely hold misguided moral convictions or miscalculate the necessity or proportionality of their disobedient actions. Nevertheless, these shortcomings do not prevent unjustified acts of disobedience from being genuine attempts to respond to the grounds of our political obligations. Thus, disobedience, even if unjustified, should be viewed, and perhaps treated, differently from “mere criminality.” Especially in cases where the shortcomings relate to the miscalculation of necessity or proportionality, we should seriously consider what sorts of deficits in the society drove people to engage in acts of disobedience, rather than hastily dismissing them as unworthy of our attention.

2.4 Other approaches

I have presented an argument—the obedience argument—for the claim that uncivil disobedience is sometimes justified even in reasonably just societies and, hence, that the Orthodox Resistance Thesis is false. In conclusion, it will be instructive to contrast this claim with two alternatives: first, that the Orthodox Resistance Thesis is true so long as we *expand* the notion of civility; and second, that uncivil disobedience is indeed sometimes justified but only under in *unfavourable conditions*.

2.4.1 Expanding the concept of civility

As noted in chapter 1, a number of philosophers have suggested that the Rawlsian definition of civil disobedience is unduly narrow. For example, John Morreall (1976) and Piero Moraro (2007) argue that illegal activities may potentially involve violence yet still count as civil disobedience. In addition to violence, Kimberley Brownlee (2012) argues that justified civil

disobedience may also potentially involve covert planning and the rejection of legal punishment. Robin Celikates (2014) proposes a minimalist account of civil disobedience, according to which some degree of violence, covertness, or defiance can be incorporated. This suggests the following way of saving the Orthodox Resistance Thesis and, hence, the Orthodox View: Uncivil disobedience is never justified, but some of the activities that were dismissed by the Rawlsian definition as uncivil instead count as instances of civil disobedience, sufficiently broadly construed, and, hence, are perfectly justified.

It may well be right that we should adopt a broader concept of civility and interpret the Orthodox View accordingly. This would allow the Orthodox View to be more inclusive with respect to the kinds of activities that count as appropriate within a reasonably just society. But it is highly questionable that there is any plausible broadening that would encompass *all* the disruptive activities we mentioned above. There are clearly limits to what can count as civil. And it stretches credulity to suggest that whistleblowing, cyber-attacks, sabotages, and uses or threats of violence against persons really count as “civil” in any sense of the term that we would recognize.⁴¹

In addition, there is something unsavory about this approach. Proponents of this view tend to alter or expand the definition of civility to make it the case that all justified acts of disobedience turn out to count as civil. If a type of action that was previously viewed as uncivil (say, because it involves violence or the agent refusing punishment) turns out to be justifiable, it becomes civil in virtue of being justifiable. This surely undermines the justificatory role of civility. A type of action is supposed to be potentially justifiable because it’s civil. But

⁴¹ Delmas (2018b), for example, argues that hacktivism just cannot be all shoehorned into the traditional framework of civil disobedience: “To accommodate novel forms of digital resistance, what is called for is neither an unreflective application of an ill-fitting and too narrow concept of civil disobedience, nor an extension of the latter concept beyond recognition. Instead, we need to enrich our conceptual framework and devise additional lenses besides ECD [i.e. electronic civil disobedience] to approach these phenomena” (p. 80).

now it turns out that a type of action counts as civil because it's potentially justifiable. This is palpably circular.

In contrast to this approach, my view avoids the need to define civility to accurately capture all potentially justifiable activities, and, more importantly, averts the risk of prematurely excluding potentially justifiable activities due to overly narrow definitions. Moreover, my view stays clear of the strategy of re-definition, and thereby avoids the risk of running into a vicious circle.

2.4.2 Uncivil disobedience in unfavourable conditions

The other view that is worth mentioning holds that uncivil disobedience is indeed sometimes justified but only in unfavorable conditions. For example, A. John Simmons (2010) has argued that the application of Rawls's account of civil disobedience is extremely narrow: it only applies to cases that occur in what Rawls calls "near-just societies." This reaction can be extended to any version of the Orthodox View. The Orthodox View only applies to "reasonably just societies." It might be said that, whatever is required to count as "reasonably just," no existing society is likely to meet it. For example, no basic structure of any constitutional democracy is anything close to being designed according to the Rawlsian or any reasonable principles of justice, and rules governing any cooperative scheme are anything but fair. Perhaps the proponent of the Orthodox View is right that civil disobedience is uniquely justified within a reasonably just society. But the interesting question is not what is justified within a reasonably just society but what is justified within the less favourable conditions that characterize the actual societies we live in. According to Simmons and others, there is no reason to think that civil disobedience is uniquely justified in these less favourable conditions. Rather, we should expect uncivil disobedience at least sometimes to be justified as well.

Let us concede that uncivil disobedience is sometimes justified in unfavourable conditions. The question is whether these are the *only* conditions in which it is justified. In particular, is uncivil disobedience also sometimes justified in a reasonably just society? Reasonably just societies inevitably remain flawed in a number of different ways, and fall short of realizing the substantive or procedural values that ground the duty to obey the law in such societies. Indeed, civil disobedience will represent the best way of remedying some of the flaws, but other flaws, e.g. concealed state misconduct and urgent environmental hazards, are better addressed by certain forms of uncivil disobedience. Unless we have a separate argument showing that societies that are flawed in ways that can only be appropriately responded to by some form of uncivil disobedience always fall short of being reasonably just, we have to admit that appealing to “being reasonably just” does not exclude the justifiability of uncivil disobedience.

2.5 Conclusion

My aim in this chapter has been to extend a familiar argument for civil disobedience—the obedience argument—to uncivil disobedience. The obedience argument for civil disobedience justifies such illegal activities by appealing to the considerations that ground the duty to obey the law and suggests that civil disobedience constitutes the most appropriate response to situations where the quality of the law deviates from the ideal. I have argued that if this is correct, it also suffices to justify uncivil disobedience. Exactly the same considerations that, in some circumstances, will support civil disobedience will, in other circumstances (that are different but not necessarily more unjust), support uncivil disobedience instead. I have considered and rejected several versions of the objection that there is something special about civil disobedience, and distinguished the view from two rivals that seek to accommodate some of the same intuitive data in different ways.

Thus, we should be skeptical of the privileged normative place that civil disobedience is typically taken to occupy in political theory and practice, in the sense that acts of political resistance that fall under this special normative category are *uniquely* justified. It is a mistake to overplay the importance of the standards of civility, whatever they might be, when evaluating illegal dissent and considering what sorts of actions we should take in response to injustice. What is of fundamental importance is not whether an act is civil. Rather, what matters instead is whether acts of disobedience, civil or uncivil, are necessary, proportionate, and represent the best way of responding to the political values that purportedly ground the duty to obey the law.⁴²

⁴² My view leads to two potential practical implications: The first relates to punishment. The aims of punishment might be to deter undesirable actions, inflict deserved suffering, get back from free-riders, and/or express condemnation. It might very well also be the case that only those who owe something due to past wrongdoing are liable to be punished (Tadros, 2011). The punishment of justified acts of uncivil disobedience, even the more uncivil forms, might be inconsistent with the aims and constraints of punishment. The second is more political. According to Bernard Harcourt (2012), “the ability to brand a particular discourse as uncivil is itself a political accomplishment that reflects a certain position of privilege” (p. 348). The exact same thing might be said about those too ready to call out the incivility of certain acts of disobedience. Sometimes overplaying the importance of civility is more than a simple mistake. We should be wary of whether putting acts of disobedience under the strictest scrutiny are just deliberate attempts to silence and disempower vulnerable and desperate people.

3

Political vandalism as counter-hate speech⁴³

In the previous chapter, I provided a general argument for the justifiability of uncivil disobedience in reasonably just societies to the effect that the same values that underlie the purported duty to obey the law sometimes support uncivil disobedience, just as they sometimes support civil disobedience. In this chapter, I will provide a quite different kind of argument: one that focuses on one particular type of illegal political action (namely, the vandalism of political symbols that are associated with objectionable individuals or ideas); and that focuses on a special kind of value associated with it (namely, the value of repudiating hate speech). My main thesis is that vandalizing such problematic symbols is sometimes justified even in reasonably just societies because it constitutes a uniquely appropriate form of counter-hate speech. Since vandalizing political symbols seems to be a paradigmatic example of uncivil disobedience, it follows that uncivil disobedience is sometimes justified in reasonably just societies (and, hence, that the Orthodox Resistance Thesis is false). I shall call this the *counter-hate speech argument* for uncivil disobedience.

Of course, we inherit numerous political symbols from the past in the form of statues, monuments, public holidays, and road names, just to name a few, and many of them are relatively innocuous. Moreover, even in the case of problematic political symbols, there are a number of other ways in which we might respond to them. We might keep them as part of our cultural heritage, like the “Hitler Bell” still hanging in Herxheim am Berg, Germany. Or we

⁴³ A shorter and substantially modified version of this chapter has been accepted for publication in the *European Journal of Philosophy*: Lai, T. H. (Forthcoming b). Political vandalism as counter-speech: A defense of defacing and destroying tainted monuments. *European Journal of Philosophy*. DOI: 10.1111/ejop.12573 (Accepted 11 June 2020).

might continue to honor them in the highest manner possible, as in the case of the Chiang Kai-shek Memorial Hall in Taiwan, which is guarded by ceremonial guards and displays a tourist-attracting changing of guards hourly.

But sometimes contested political symbols face a different fate. Confederate symbols in the United States, Captain Cook statues in Australia, and several less well-guarded Chiang Kai-shek statues in Taiwan have all faced numerous successful attempts of vandalism, ranging from being dressed up in humiliating outfits, having messages spray-painted on them, to beheading. I want to focus on this last type of reaction: political vandalism. I shall provide one kind of justification for political vandalism in the case of one class of objectionable political symbols.⁴⁴ Sometimes political symbols are *hateful* in the sense that they do the objectionable things hate speech does: they subordinate people, undermine the public good of inclusion, or constitute direct assault. I go a step further than merely arguing that hateful symbols ought to be removed or recontextualized. I propose that to prevent such harms, unauthorized vandalism as a form of counter-speech may be called for when demands for removal and recontextualization prove to be futile. Moreover, under certain circumstances, this type of uncivil disobedience may even be obligatory. Through reaching this conclusion, I also attempt to bridge a gap between political theory and real-world activism. The morality of political symbols, whose importance has recently been highlighted by the murder of Heather Heyer,⁴⁵ is significantly undertheorized.⁴⁶ Discussion of vandalizing political symbols is virtually absent from the literature on civil and even *uncivil* disobedience, despite the regular occur-

⁴⁴ Political vandalism may be performed for other reasons, say, to protest against things not directly related to what the symbols represent. I am open to other ways of justifying such actions, but this lies beyond the scope of the current chapter.

⁴⁵ Civil Rights activist Heather Heyer protested against Confederate Monuments and the alt-right, and was murdered by a neo-Nazi in Charlottesville, Virginia on 12 August 2017.

⁴⁶ Noticeable exceptions include Burch-Brown (2017), Demetriou and Wingo (2018), Schulz (2019), Demetriou (Forthcoming), and Timmerman (Forthcoming) on racist and unjust symbols, and Tsai (2016) on the legitimate boundaries of state expression.

rences of this type of activism around the world.⁴⁷ I attempt to bridge this gap by drawing insight from theories of hate speech in order to explain the mechanisms through which speech harms and how it can be countered.

The chapter is in five sections. Section 3.1 introduces some of the most significant harms of hate speech, and highlights what I call “hateful pedestalling.” Section 3.2 argues that state-sponsored political symbols can function like hate speech. Section 3.3 elaborates on the notion of counter-speech, a practice that blocks instances of speech from doing what they otherwise would have done. Section 3.4 applies this to political symbols, argues that sometimes vandalism is the appropriate counter-speech against hateful symbols, and proposes a *pro tanto* duty to vandalize. Section 3.5 addresses some important objections.

3.1 Hate speech and hateful pedestalling

I shall understand hate speech to consist of expressions (broadly construed) which target people *qua* members of the group(s) to which they belong and which tend to produce three different (but frequently coexisting) kinds of harm: subordination, exclusion, and assault. According to this functional characterization, what hate speech *is* depends crucially on what it *does*: in particular, the distinctive ways in which it *harms*. Let us consider each of these harms in turn.

3.1.1 The harms

Subordination. Hate speech often subordinates. It ranks its targets as inferior, and places “people in hierarchies” (Langton, 2018b: 124). The alleged ways of being inferior include

⁴⁷ Absent from, e.g. the work of Brownlee (2012), Milligan (2013), Smith (2013), and Celikates (2014, 2016a) on civil disobedience, and Delmas (2018a) on uncivil disobedience. Schulz (2019) mentions a case of vandalism, but merely uses it to highlight the significance of the morality of commemoration, and does not engage with the morality of vandalism, as the latter wasn’t his focus. Lai (2019b) very briefly mentions that vandalism might be a justifiable type of violent uncivil disobedience, but does not go into the details.

being less or not human, being of less moral worth, lacking moral rights, being incompetent, being untrustworthy, being the enemy, etc.

Speech gets to successfully do things when certain conditions—what J. L. Austin (1975) calls “felicity conditions”—hold. For subordinating speech, the most notable felicity condition is to have authority, either by itself, or by derived or licensed authority. For example, when the law states that “blacks are not allowed to vote,” it becomes the case that blacks are legally incapable of voting. This is because the state has authority (Langton, 1993). Hate speech and misogynous speech often attempt to rank people of a certain race or gender as inferior. It becomes the case that the targets are situated lower in the social hierarchy—as unclean or mere sexual objects—when such speech gains *derived* or *licensed* authority through being accommodated by the silence of the state or others (Maitra, 2012). For example, racist tirades in public spaces where anyone could easily have interfered get to alter relative social statuses, when the speaker presumes, and is licensed by the silence of others, to have a certain degree of authority.⁴⁸

Exclusion. Distinct from subordination, hate speech can undermine the public good of inclusion and membership. On Jeremy Waldron’s (2012) influential analysis, a basic commitment of liberal states is that the society belongs to each and every person equally, and this public good must be assured to all.⁴⁹ Hate speech undermines this public good, especially among “members of vulnerable minorities, minorities who in the recent past have been hated or despised by others within the society” (p. 5), by expressing hostility towards the members

⁴⁸ Langton (2018b) distinguishes between *practical* and *epistemic* authority. The former can place people in social hierarchies, while the latter can alter the beliefs of others by being the (purported) expert (or spoken by the purported expert). Langton holds that the racist tirade example proposed by Maitra (2012) is a case involving practical authority. I focus on practical authority (henceforth “authority”) in Langton’s sense when providing examples of subordination. (This is not to deny that subordination may also involve epistemic authority, but it is not my primary focus in what follows.)

⁴⁹ Susan J. Brison (2017) points out that Waldron’s account is deeply influenced by the works of Catharine MacKinnon.

of the target groups. It furthermore speaks to other people in the society, encouraging them to be hostile towards the target groups.

Assault. Finally, speech can constitute assault. As Mari Matsuda (1989) suggests, along with empirical evidence provided by Katherine Gelber and Luke McNamara (2016), hate speech often inflicts psychological harms. The harms include emotional distress that results from the experience of being the target of hatred or being regarded as inferior, the restriction of one's own personal freedom and opportunities to avoid receiving hateful messages, and the damage to one's self-esteem. "However irrational racist speech may be, it hits right at the emotional place where we feel the most pain" (Matsuda, 1989, p. 2338).

Now, hate speech is often based on hateful attitudes, but not necessarily. Waldron (2012) explicitly argues that what matters is the "hateful effect" of exclusion. We may extend this to the other harms of hate speech. Here's an example that is not commonly classified as hate speech, though given the effects, it is wrongful in the same way: a male speaker's greeting "gentlemen, my talk..." The speaker may have not intentionally ignored people of other genders, but his negligence can be reasonably interpreted as not regarding non-males as academic peers (subordination), not acknowledging the aptness of their presence (exclusion), or disrespectfully singling them out by rendering them invisible, which reasonably leads to indignation and distress (assault). The lack of ill-intention hardly excuses one's behavior, as lack of intention does not mitigate the harm.⁵⁰ Appealing to the lack of awareness, on the other hand, just makes things worse. It exhibits the extent to which the speaker does not care.

⁵⁰ This presupposes some version of "meaning ain't (all) in the head." One can, say, accept an expressive theory defended by Anderson and Pildes (2000): "What attitudes people intend to express or think they are expressing can deviate from the public meaning of their action" (p. 1512). The public meaning is "socially constructed" and "*recognizable*...if people were to exercise enough interpretive self-scrutiny," while "a proposed interpretation must make sense in light of the community's other practices, its history, and shared meanings" (p. 1525). Accordingly, unintentional harms occur "in cases of negligent, inconsiderate, and reckless action" (p. 1529).

3.1.2 Hateful pedestalling

Hate speech is often blatant and outright, but, similar to the earlier “gentlemen” example, it is sometimes more indirect. Consider the following example adopted from Gelber and McNamara (2016):

People yelling hate speech (e.g. ‘fucking Jew’, ‘heil Hitler’) out of car windows when a man walks home from the synagogue on Friday evenings with his children, who get quite scared and intimidated (p. 333).

As they observe, both “fucking Jew” and “heil Hitler” constitute hate speech. Even without the former, the latter still does. The latter is not just about saluting someone. It is to salute an unjust oppressor of the target group. This glorification can be taken to be an endorsement and legitimization of Nazism. Among other things, it indirectly declares that the victim groups are inferior, of less or no moral worth, or not victims at all but rather liable to be tortured and killed.⁵¹ What might seem to be a simple salute is in fact rich in the malicious things it indirectly does, and that is how it constitutes hate speech.

This is an instance of what I shall call “hateful pedestalling.” I shall say that hateful pedestalling occurs when, by saluting, glorifying, or honoring an unjust oppressor or ideology, speakers indirectly rank their target(s) as inferior, convey hostility, or implicitly insult and assault their target(s). The specific details of how each case of hateful pedestaling occurs may differ, and there are different ways of modelling how speech can convey derogatory content or attitudes indirectly. Potentially plausible explanations might appeal to conversational implicatures, inferential roles, or other mechanisms. Here I will use *presupposition* as the pri-

⁵¹ One way to understand directness and indirectness is through the distinction between “at-issue” and “not-at-issue” content (Stanley, 2015): “The at-issue content of an utterance is the information *asserted* by the utterance,” where to assert something is “*to propose to add it to the common ground*.” (p. 134); “The not-at-issue content of an utterance is not advanced as a proposal of a content to be added to the common ground. Not-at-issue content is *directly* added to the common ground” (p. 135), often though not limited to through *presuppositions*. I understand direct speech as openly proposing to add the asserted to the common ground, and indirect speech as not proposing through open assertion but directly adding to the common ground.

mary device of elaboration, but the overarching scheme is compatible with various different explanations of indirect speech: through pedestalling we convey something negative, and the expression is made possible or more powerful by the *accommodation* of the audience(s).⁵²

How might hateful pedestalling communicate through presuppositions? The basic idea is that it does so through what Rae Langton (2018a) calls “backdoor speech acts?” In everyday dialogue, presuppositions come to be part of the common ground of the conversation following what David Lewis (1979) calls *the rule of accommodation for presupposition*:

If at time *t* something is said that requires presupposition *P* to be acceptable, and if *P* is not presupposed just before *t*, then—*ceteris paribus* and within certain limits—presupposition *P* comes into existence at *t* (p. 340).

Using Lewis’s example, saying “even George could win” in the context of watching sports is not just to communicate that “George could win,” but at the same time presupposes and thus smuggles into the common ground the thought “George is not a competent player.” This instance of backdoor speech act succeeds when the audiences remain silent and continue to listen or proceed with the conversation as if there wasn’t anything wrong with the “even.” Through their accommodation, the presupposition comes into existence. Racist hate speech and misogynous speech often engage in back door speech acts (Langton, 2018a). To speak of someone negatively with phrases such as “like an Asian,” “like a Muslim,” and “like a girl” are direct criticisms of the person, but at the same time also indirect but forceful degradations of people of a certain race, religion, or gender. Depending on the context, the presuppositions are often that the targets are inferior by being dangerous or incompetent.

⁵² Eric Swanson’s (Forthcoming) implicature account of slurs also fits the overarching scheme. Swanson argues that slurs “cue” harmful ideologies, that is, put objectionable sets of beliefs “in place” so that it becomes easier to refer to and to act upon them. Through the use of slurs, the speaker (conversationally) implicates that he accepts those beliefs, and that they should be acted upon. When slurs are used and not objected to, both the speaker and sympathetic audiences seem to gain evidence that the harmful ideologies are acceptable and should be acted upon, while the targets of the slurs suffer the subordination, exclusion, or the assault the harmful ideologies. Camp’s (2013) and Bolinger’s (2017) accounts of signalling also fit this scheme nicely.

When one says things like “heil Hitler,” plausible interpretations may include “I celebrate the achievements of Hitler” or “hooray for his achievements,” where the “achievements” include the Holocaust; or that instead of openly proposing “what Hitler did was great,” the speaker cheers as if “what Hitler did was great” can be taken for granted. Either way, the dehumanization of the target groups is achieved through presupposing their inferiority. By being accommodated, these assaultive presuppositions emerge into the common ground.⁵³ More generally, hate speech sometimes conveys the malicious content or attitudes indirectly, through the guise of “pedestaling,” potentially through back door speech acts or some other similar mechanism, and becomes more forceful when accommodated.

3.2 Hateful symbols

I now want to suggest that political symbols sometimes do the same objectionable things that hate speech does, often through hateful pedestaling and, hence, may count as instances of hate speech in the functional sense characterized above. I shall refer to such symbols as “hateful symbols.” State-sponsored hateful symbols are particularly troublesome, for they have authority, publicity, tend to bypass our rational scrutiny, and speak in the name of the people.

3.2.1 State-sponsored political symbols

Political symbols include statues, monuments, road and place names, political messages printed on currencies, the choice and naming of public holidays, etc. Examples include “IN GOD WE TRUST” printed on cash in the US, Mao’s portraits in China, and the Memorial to the Murdered Jews of Europe in Germany. I will mainly focus on state-sponsored symbols,

⁵³ Alternatively, it may be interpreted as following Swanson’s (Forthcoming) account: cueing the ideology of Nazism, signalling one’s support, imploring others to do likewise, and gaining evidence of aptness when no one objects.

though my account should extend to some private symbols insofar as they enjoy sufficient degrees of authority and publicity.

State speech is the paradigm of speech with authority. Within a fairly wide range, when the state declares such-and-such, if such-and-such was not already the case, it becomes the case. For example, if the state declares that there is a state of emergency, it becomes the case, if it wasn't already the case, that there is a state of emergency. The state speaks in many ways, and displaying political symbols is one of them. In virtue of being a form of state speech, political symbols have authority. For example, when the Australian government decided that Australia Day is to (continue to) be 26 January, the day the First Fleet arrived at Sydney Cove, it became and remains the case that 26 January is the day to “reflect on being Australian.”⁵⁴

Note that political symbols do not have to be established by the state to be perceived as state speech. There are numerous statues and monuments donated by private organizations and displayed on public properties such as parks and roundabouts. Daniel J. Hemel and Lisa L. Ouellette's (2017) surveys reveal that people tend to perceive that the state conveys whatever messages or attitudes the privately established political symbols stand for, insofar as the state accepts the donations and continues to display them. Insofar as they are perceived as instances of state speech, these privately-sponsored symbols also enjoy the authority of state speech.

State-sponsored political symbols often enjoy considerable publicity. Statues and monuments are often placed in some of the busiest intersections, and people cannot easily choose to ignore them. Historical figures that the state memorializes are printed on currencies, and we have to carry them in our purses or wallets. When we contemplate or discuss where to

⁵⁴ The Australia Day website: <https://www.australiaday.org.au/about-australia-day/history/>

go or how to get somewhere, terms such as “Freiheit Straße” come into our thoughts and conversations. In a way, we are conscripted to become megaphones of state expression.

Political symbols often speak indirectly. One paradigm example was when the US renamed its Department of War as the Department of Defense. “Defense,” in contrast to “war,” presupposes threats out there to be defended against (Goodin, 1980). Another example is using “Putonghua” or “Standard Chinese” to refer to Mandarin Chinese. (“Putonghua” literally translates into “the common/ordinary/normal speech.”) This ranks Mandarin Chinese as superior and other languages such as Cantonese, Uyghur, and Tibetan as inferior, and legitimizes the relegation of those languages.⁵⁵

When the state speaks, it also speaks in the name of the people. For example, when the state expresses approval or disapproval of certain types of actions or ways of life through the law, it speaks as if it the people hold those attitudes (Sunstein, 1996; Arnold, 2000). The same is true of political symbols. To see this, one only has to consider what a tourist who had minimal prior knowledge of a country would reasonably come to believe after she comes across a political symbol. For example, someone who recently visited the Chiang Kai-shek Memorial Hall could reasonably infer that the Taiwanese regard Chiang highly.

Speaking indirectly or in the name of the people often makes the message harder to reject. It suggests that the content is already part of the common ground and “does not need to be asserted outright” (Langton & West, 1999, p. 309). The message also falls “outside the focus of conversational attention” (Camp, 2013, p. 341). Furthermore, it suggests that whatever spoken is the default. This exploits the human tendencies to “choose” the default (Johnson & Goldstein, 2003) or what their fellows do (Cialdini, 2007), or revise their opin-

⁵⁵ It would be a blatant mistake to suggest that cultural genocide is the worst the Hong Kongers, the Uyghur, and the Tibetan face. See, for example, Ramzy, A. and Buckley, C. (16 November 2019). ‘Absolutely No Mercy’: Leaked Files Expose How China Organized Mass Detentions of Muslims. *The New York Times*.
<https://www.nytimes.com/interactive/2019/11/16/world/asia/china-xinjiang-documents.html>

ions (even wrongly) in light of what others believe (Asch, 1955; Edelson et al., 2011). State-sponsored political symbols, therefore, tend to bypass our rational scrutiny, and are thus harder to reject.

To recap: state-sponsored political symbols have the authority to make things the case, often enjoy a fair amount of publicity, smuggle things in through backdoor speech acts, and speak in the name of the people. Bearing these features in mind, I shall turn my focus towards contested state-sponsored symbols, argue that they are sometimes inappropriate in virtue of being instances of “hateful pedestalling,” and can be particularly problematic because of the above discussed features of state speech.

3.2.2 Symbols and hateful pedestalling

Many state-sponsored political symbols are controversial. For example, in 1988, the Wu Feng statue in Chiayi, Taiwan was torn down by thirty people of the tribe of Tsou, which kickstarted a nationwide debate, resulting in the government renaming districts named after Wu Feng, and removing the Myth of Wu Feng from the national curriculum.⁵⁶ Associated with the Myth, Wu Feng was identified and honored as “the man who civilized the ‘mountain barbarians,’” vilifying the indigenous Taiwanese as savages and presenting the Han colonizers as civilized saviors.

I suggest that symbols such as these are instances of hateful symbols—symbols that subordinate, exclude, and assault. Recall that political symbols convey things indirectly, through hateful pedestalling. Similar to the Myth and symbols of Wu Feng, a Captain Cook statue with the inscription “the man who discovered Australia” is also objectionable.⁵⁷ “The man who discovered Australia” would have been true if, as the term “discover” suggests, pri-

⁵⁶ Cheung, H. (2017) Taiwan in Time: The drastic downfall of Wu Feng. *Taipei Times*. <http://www.taipeitimes.com/News/feat/archives/2017/09/10/2003678150>

⁵⁷ Captain Cook wasn’t even the first European to set foot on Australia. However, such presentations nevertheless insult the First Australians most.

or to the British arrival, Australia was a piece of uninhabited land. However, this was far from the truth. Insisting on the aptness of the term “discover” presupposes that the traditional custodians were either nonexistent, or unqualified as proper human beings to first discover Australia. This presupposition makes the “discover” inscription subordinating speech. Similarly, symbols that glorify Wu Feng rank indigenous Taiwanese as inferior to the Han Chinese. With the authority of the state, these symbols get to place certain groups in a lower position within the social hierarchy.

Having explained how state-sponsored political symbols can subordinate, showing how they can exclude and assault should be straightforward. There are at least two ways political symbols can exclude. The first is through omission. When certain individuals, historical events, or ideologies are being revered by political symbols, certain groups seem to be left out, not have a say, or not have been taken into consideration. For example, Australia Day is supposed to be a day all Australians can celebrate. The choice of the date, however, is Eurocentric. It ignores that “[f]or Aboriginal and Torres Strait Islanders, 26th January 1788 marked the occupation of the continent by the British,” a day that initiated “[d]ispossession, discrimination, disadvantage, and death” (Pearson & O’Neill, 2009, p. 79). “It has been estimated that the Aboriginal population during the 1920s had fallen to only about 60,000 from perhaps 300,000 or even one million people in 1788.”⁵⁸ This omission is inconsistent with the common good of the Australian society being equally shared by all Australians; for if the history of all were recognized, this particular day would not have been chosen. Indigenous Australians thus legitimately feel excluded. In this way, hateful symbols exclude through making it clear that the history of some is not being taken seriously.

The second way political symbols exclude relates to the manner in which the state speaks in the name of the people. When the state speaks in the name of the people, it speaks

⁵⁸ 2008 Face the Facts, the Australian Human Rights Commission website.
<https://www.humanrights.gov.au/publications/2008-face-facts-chapter-1#fn58>

in the name of everyone. However, sometimes states honor individuals or ideologies certain groups find impossible to endorse. For example, as part of the remnants of what Jeremy E. Taylor (2006) calls a “personality cult” that was “promoted by the central government (and Chiang [Kai-shek] himself)” (p. 96), in Taiwan state-sponsored monuments honor Chiang as “the beacon of freedom” and “the savior of the nation.” While Chiang indeed “had to consolidate control over the island and keep it from descending into chaos and falling under communist rule...most agree his methods were excessive:” the estimation of civilians killed in the 1947 crackdown “ranges from 2,000 to more than 25,000;” during the 38 year-long “White Terror” he initiated thousands were tortured and murdered; “[u]nder his hands, many jail sentences were converted to death sentences.”⁵⁹ It would be deeply self-alienating for victims and their family to have pro-attitudes towards their oppressor. Political symbols, however, speak in the name of the people. Thus, one would be unable to identify with the people in whose name the state speaks. This is how hateful symbols exclude through glorifying what some cannot minimally endorse.

Finally, sometimes political symbols assault. Recall the example of “heil Hitler.” As an example of hateful pedestaling, this is at least as bad as “fucking Jews.” For the same reason, the Swastika (beyond Buddhists or Hindu contexts) demonstrates hatred and hostility (Maitra & McGowan, 2012). Assaultive effects are amplified once hateful symbols are adopted by the state. Just like many other state-sponsored symbols, they are often erected at some of the most visible locations or printed on currencies. Vulnerable groups are often forced to receive the assault on a daily basis. Again, those oppressed by Chiang Kai-shek still have no meaningful choice but to carry his portrait in their handbags or pockets, as coins are unavoidable. The hurt is most salient whenever one reflects upon it. For example, when one

⁵⁹ Sui, C. (13 March 2016). Taiwan Kuomintang: Revisiting the White Terror years. *BBC*. <https://www.bbc.com/news/world-asia-35723603> See also Rowen and Rowen (2017, pp. 99–100)

has to explain the meaning of the symbols to one's children, grim thoughts like "they get to make the decision, and they do not care about us" can creep easily in to one's mind.

3.2.3 Complex symbols

Political symbols are often complex. Just like the individuals they represent, they can be complex rather than single-dimensionally good or evil. In addition, they might mean different things to different people. Sympathizers of certain political symbols often appeal to such complexities to defend controversial political symbols.

One instance is the naming of the Woodrow Wilson School of Public and International Affairs at Princeton. (Though a private institution, the authority Princeton enjoys makes it a legitimate target of scrutiny.) Woodrow Wilson is still celebrated for his contributions as president of Princeton and president of the United States. Wilson, however, was also a practicing segregationist during his time in both offices. It is hard to argue that cases of this kind are clear cases of hateful symbols, but it is also hard to argue that they clearly are not.

Regarding such cases, I suggest that the burden is on those who establish and maintain the symbols to make it unquestionably clear that, first, they are not honoring the hateful part of what the symbols represent, and second, that the individuals or ideologies are worth honoring even after taking into consideration the condemnable things they represent. Difficult though this may be, it is of critical importance for the following reason: there is a stringent moral requirement against doing harm, and sympathizers of the symbols ought not to contribute to the harmful things the symbols do. One suggestion for how this might be done came from Nathan Connolly, an African-American historian, who spearheaded the demand to rename the Woodrow Wilson Fellowship in his home institution Johns Hopkins University,⁶⁰

⁶⁰ Morgan, O. (2 May 2019). Should the Woodrow Wilson Fellowship be renamed?. *The John Hopkins News-Letter*. <https://www.jhunewsletter.com/article/2019/05/should-the-woodrow-wilson-fellowship-be-renamed>

during the debate over renaming the Woodrow Wilson School. Connolly's suggestion was "to leave Wilson's name on the school but build, say, a monument to the occupation of Haiti in front."⁶¹ This might be constructive because having displayed messages that are as salient as the potentially hateful symbols makes it clear that the hateful part is not what is conveyed, and steers clear of doing hateful things.

I will develop something similar to Connolly's suggestion in the next two sections, but apply this to cases where sympathizers are unwilling to remove or even clarify the symbols. I will draw insight from a feminist approach of responding to hate speech—counter-speech—and argue that vandalism is sometimes the appropriate counter-speech in the face of hateful symbols.

3.3 Counter-speech

The basic idea of counter-speech is that in order for speech to do things the felicity conditions must hold, and that those conditions can sometimes be undermined by other speech. Recall the example "even George could win." This presupposes that George is not particularly promising. It successfully ranks George as inferior when no one objects to this presupposition; as without being objected to, through accommodation this presupposition comes into existence. (I would also add that through accommodation, this speech act may also gain the relative authority to successfully subordinate.) Langton (2018a) labels speech acts of this type "backdoor speech acts," as they add things to the common ground of the conversation not by saying them outright, but by smuggling them in through presupposing them.

However, as Langton observes, if someone questions the presupposition by simply asking, in this case, "what do you mean by 'even,'" the backdoor speech acts is blocked: au-

⁶¹ Schuessle, J. (29 Nov 2015). Woodrow Wilson's Legacy Gets Complicated. *The New York Times*.
<https://www.nytimes.com/2015/11/30/arts/woodrow-wilsons-legacy-gets-complicated.html>

tomatic accommodation no longer occurs, and the speaker has to justify the presupposition for it to be accepted. Furthermore, blocking would be more effective when one provides counter-evidence. Here, the original speaker has to meet an even higher requirement of justification, namely, refuting the counter-evidence. In short, blocking works as a form of counter-speech by questioning and challenging the presupposition, and thereby preventing the presupposition from automatically coming into existence.

Another way blocking as counter-speech works is to refuse to accommodate the authority of the speech. Speech sometimes has authority in virtue of being spoken by a speaker who has authority, for instance, a sentence declared by a judge in the name of the state. Sometimes, however, speech gains authority through accommodation: one speaks as if she has authority, and gains it through the silence of others (Langton, 2018b; Maitra, 2012). This is how hate speech and pornography can have authority despite being regarded as “low types:” they presume authority with regard to the status of people of color and women, and insofar as others remain silent, they gain the requisite degree of authority to successfully rank people.⁶² Since the authority is licensed through silence, others, especially bystanders, speaking back through things like “speak for yourself” or even a simple “hey” can challenge the presumed authority.

In addition, Langton points out that sometimes refusing to acknowledge the authority certain speakers typically enjoy can help to undermine their authority. For example, when Rosa Parks, and of course Claudette Colvin nine months before her, refused to move when demanded to give their seats to white passengers, they acted as if the demand had no authority.⁶³ Their acts by themselves were insufficient to undermine the state’s authority, but “[i]t

⁶² They also purport to be the *expert* of how their targets are to be treated, and gain the corresponding *epistemic* authority through accommodation.

⁶³ “[Claudette] Colvin was the first person to be arrested for challenging Montgomery’s bus segregation policies, so her story made a few local papers - but nine months later, the same act of defiance by Rosa Parks was reported all over the world.” Rumble, T. (10 March 2018).

was a protest, and part of a movement, a cumulative series of acts done with other speakers and actors—including, in the end, the authoritative speech of a greater law, which overturned the sign’s authority” (Langton, 2018a, p. 151). Noncompliance is to act as if the authority does not have authority, and once this “nonauthority” is accommodated by others, it becomes the case that the purported authority lacks authority.

Hate speech often conveys problematic messages indirectly. Blocking as counter-speech helps to “undo” hate speech by undermining its felicity conditions, either by interfering with the accommodation of the indirect content, or by preventing or making it more difficult for the presumed authority to be accommodated.

3.4 Political Vandalism as counter-speech

In 2017, Australians answered the national postal survey “Should the law be changed to allow same-sex couples to marry?” with an overwhelming yes. Many supporters, however, opposed holding this survey in the first place. One reason was that having such a survey and nationwide debate would provide platforms for haters.⁶⁴ Unfortunately, this fear proved to be well founded. For example, “VOTE NO!” graffiti appeared in various public spaces. However, in Lanyon Valley, Canberra, a particularly interesting counter-graffiti appeared: by altering the “!” into a “W,” someone transformed the original graffiti into “VOTE NOW.”⁶⁵

There were a number of interesting things going on. The counter-graffiti was in a way aesthetically pleasing, however ugly it was, as some sort of irony was present, as if the “VOTE NO!” was predestined to become “VOTE NOW.” The counter-graffiti might also have been (retributively) satisfying, as this message of hatred was turned against the haters.

Claudette Colvin: The 15-year-old who came before Rosa Parks. *BBC*. <https://www.bbc.com/news/stories-43171799>

⁶⁴ They are “haters” often because their attitudes are indeed hateful, but more importantly because the hateful things they *do* though hate speech.

⁶⁵ Lanyon Valley’s Facebook Page: <https://www.facebook.com/lanyonvalley/posts/2021118814832582>

However, I will omit these potentially fruitful discussions, to focus instead on how speech can be “undone,” and apply this to state-sponsored hateful symbols.

3.4.1 Political vandalism “undoes” hateful symbols

Regardless of the best efforts of seeking dialogue, sympathizers of hateful symbols are not always willing to remove or even to consider clarifying hateful symbols with plaques or counter-monuments. Furthermore, “[i]n public debate, symbolic politics...are often ridiculed...[as] politics for those privileged enough to ignore what really matters” (Schulz, 2019, p. 167). In such cases where the prospects of official removals are dim and “more speech” gets us nowhere, I propose that political vandalism—the unauthorized defacing, destroying, or removal of political symbols—sometimes serves as an effective form of counter-speech.

First, hateful symbols often enjoy considerable publicity.⁶⁶ They stand out. They are highly visible. Through defacing, destroying, or removing them, something as salient as the political symbols themselves comes into being. For example, in Taiwan Chiang Kai-shek statues are vandalized annually around 28 February, the anniversary of the 228 Massacre. Decapitating the statue, graffiti with messages like “butcher” and “unforgivable,” or dressing statues up with humiliating outfits, makes sure that every time someone receives the message of pedestalling, a disagreement, a counter-message, or a ridicule is also received.

Compare this to other forms of dissent. Petitions might in the long run lead to the removal of hateful political symbols. But they do not neutralize them immediately. Furthermore, they often do not work, at least on their own. By contrast, removals of prominent political symbols have been initiated by acts of vandalism, for example, the earlier mentioned Wu

⁶⁶ There may be neglected hateful symbols hidden in bushes in public parks. They are less of my concern insofar as people have not rediscovered them.

Feng symbols and the “Silent Sam” at the University of North Carolina at Chapel Hill.⁶⁷ Constant protests around political symbols might meet some degree of publicity the symbols have. However, never-ending protests are often too demanding for those assaulted by the symbols, and it is highly unfair that those who already suffer from unjust harm bear heavier burdens just to spare objects fit to be destroyed from being damaged. Other things being equal, the most effective method is preferable.

Second, through hateful pedestalling, hateful symbols indirectly declare that the oppressed matter less, and rank them as inferior. Political vandalism, especially those that provide counter-messages, can help to challenge the problematic indirect content, and prevent the otherwise automatic accommodation. “Black Lives Matter” graffiti on Confederate monuments, for example, challenge hateful messages not by pointing out that people misidentified who have fought and died for “the lost cause,” but by making vivid the fact that the Confederacy was founded upon slavery, and challenge the declaration of black inferiority.

Third, state-sponsored hateful symbols speak in our name. This excludes those who are unable to identify with the speech from being part of the people. Political vandalism, in response, makes it clear that others also disagree with the message, and pushes back against the presumption that the message or attitude expressed by the hateful symbol is something everyone endorses. This can also amount to sending a message of solidarity to the excluded: “you are not alone.”

Fourth, state-sponsored hateful symbols have the authority of the state. Having authority makes hateful symbols more harmful than individual hate speech. Political vandalism directly challenges the authority of hateful symbols. It not only refuses to pay respect to authority, but actively displays disrespect by treating those symbols as something to be de-

⁶⁷ Vera, A. (16 January 2019). UNC chancellor forced to leave job in 2 weeks after approving removal of the remains of 'Silent Sam' Confederate statue. *CNN*. <https://edition.cnn.com/2019/01/14/us/unc-chancellor-resignation-silent-sam/index.html>

stroyed or ridiculed. This is an attempt to make others unable to take the hateful symbols seriously, to presuppose “nonauthority” while seeking the accommodation of others—which may include explicitly expressed support for the vandal, or indifference and the lack of support for restoration—so to render hateful symbols practically inert.

3.4.2 The necessity condition

Even if nothing short of political vandalism works to mitigate the immediate and lasting harms of hateful symbols, we still need to bear in mind that political vandalism ranges from easily removable defacing such as dressing statues up with humiliating outfits or stickers with counter-messages, to more permanent damage such as spray-painting, decapitation, destruction, or removal. How can the more disruptive acts be appropriate *vis-à-vis* the necessity condition—something widely endorsed in the ethics of war and self-defense, that no force more than necessary to avert an evil is permissible?⁶⁸

First, effectiveness varies. Easily removable counters may just allow the symbols to continue to do hateful things immediately after simple restoration or cleaning. Against lasting political symbols, vandalism needs to stick, sometimes literally. This is why more disruptive acts of vandalism are often called for. Defacing, decapitation, destruction, and removal constitute more enduring forms of counter-speech.

Second, opportunities and risks involved in engaging in vandalism vary. Activists often need to get away from the scene as soon as possible to avoid being caught or becoming targets of violent responses, or they only have the opportunity to engage in hit-and-run tactics. Assuming that they plan to do something effective, a bucket of paint and a dozen eggs may well serve as good options.

⁶⁸ The necessity condition is much more complicated than merely demanding the least harmful means to avert threats. Morally weighted harms and prospects of success, among other things, also play significant roles in the calculation. See, for example, Lazar (2012).

Third, sometimes distorting hateful symbols beyond recognition is called for. Consider the linguistic behavior of slurs. There is an interesting linguistic phenomenon that when reporting, indirect quotations containing slurs are not acceptable, whereas direct quotations often are. Suppose Fox News said, “Jeremy is a chink,” and we want to make a complaint. It is less acceptable for us to say, “Fox News said that Jeremy is a chink,” or “Fox News was wrong, Jeremy is not a chink.” Instead, we should say “Fox News (inappropriately) called Jeremy a ‘chink.’” The difference between acceptable and unacceptable reports often concerns whether the slur is put in quotations. When it’s in quotations, the speaker mentions the slur; if not, the speaker uses it, even if the speaker is just reporting what someone else said. Mentioning, in contrast to using, exercises the force of slurs a lot less. Thus, putting things in quotations insulates the objectionable force better (Bolinger, 2017; Hornsby, 2001; Williamson, 2009).

However, insulation does not always work. Sometimes there is a “leak,” and the quotation does not completely prevent the slurs from being forceful (L. Anderson & Lepore, 2013; Langton, 2018a). This is why we do not normally spell out “the n-word,” not even in quotations, but refer to it with “the n-word.” The analogy goes back to hateful symbols. In certain cases, lesser forms of counters do not bracket the hateful symbols enough. Dressing a statue of Chiang Kai-shek up in humiliating outfits may appear funny to many, covering his statue up with red paint may make vivid the blood on his hands, but the knowledge that the honoring of him remains and will eventually be restored can still make many of his victims uneasy. The force still “leaks” out. In such cases, destruction or even total removal would be necessary to render hateful symbols unrecognizable and impotent.

In sum, political vandalism ranges from defacing, destruction, to total removal, where some acts are more disruptive than others. In addition, certain types are more communicative and more informative, and seek to persuade the majority for the case of removal; while others

are more coercive, and rely more on the prohibitive costs of restoration. Other things being equal, the less disruptive and more communicative acts are preferable. However, what the most fitting option is depends on various factors. When less disruptive measures are less effective such as when dialogic attempts have been exhausted or proven to be futile, when we need to cease the harm then and there, or simply because less disruptive opportunities do not present themselves, more is called for.

The necessity condition may have further implications for complex symbols. Unlike clearly unjust symbols (like Confederate monuments), complex symbols stand for individuals who have a mixed history.⁶⁹ As mentioned earlier, the best way to respond to complex symbols is to provide counter-messages. Thus, even if initial demands for displaying counter-messages were ignored, it would be better to protest by more communicative acts of vandalism. Only when the irresponsiveness of the majority puts activists into a situation where they have to choose between enduring hate speech and more severe vandalism, should the latter become a serious option.

3.4.3 A *pro tanto* duty to vandalize

I intend to go a step further and suggest that citizens may have a *pro tanto* duty to vandalize. There may be several different grounds for the duty to resist one's own oppression (Boxill, 1976, 2010; Hay, 2013; Hill, 1973), or the duty to prevent the oppression of others (Delmas, 2014b; Wellman, 2005). The duty to vandalize hateful symbols may just be a special instance of those duties. However, there is something special about accommodation I wish to single out.

Hateful symbols succeed in doing harmful things because they are accommodated. Sometimes, this is because *we* accommodate them. Saray Ayala and Nadya Vasilyeva (2016)

⁶⁹ One way to identify clearly unjust symbols is to see whether there have been any white-washing, deification, or personality cults involved in the establishment of the symbols.

argue that an interlocutor who remains silent in the face of problematic presuppositions provides the conditions without which the problematic presuppositions cannot come into being. Thus, one's silence actually contributes to part of the harm that is done through presuppositions, and one can thus be held at least in part morally responsible for the harm. In the case of state sponsored hateful symbols, all who pass by are the interlocutors of such instances of state speech. Their silence, or in many cases *our* silence, provides the conditions upon which the indirect speech is accommodated. Furthermore, the authority the state enjoys is also sustained by the continual accommodation of its people, of us. Therefore, should the state successfully harm through political symbols, those who fail to challenge either the content or authority are to be held (at least partially) responsible. Thus, one has reason to challenge hateful political symbols; and without sufficiently strong countervailing reasons, one gains a duty to challenge hateful symbols. As political vandalism serves as a way to counter hateful symbols, it is sometimes the most appropriate way to cash out this duty of non-accommodation. This gives us a *pro tanto* duty to vandalize.

This *pro tanto* duty may be defeasible in a number of ways. Most notably, the personal costs one might incur when engaging in this type of illegal action might *override* the *pro tanto* duty. Whether they do depends on a number of factors, such as the risk of being caught, the severity of the punishment, and whether such acts would be legally protected by the freedom of speech and expression clauses or receive other types of legal exemptions.⁷⁰ In the case of being fined for acts of vandalism, it also depends on whether others are willing to sponsor the vandals.

⁷⁰ For instance, in 2018 two defendants were acquitted of all charges for vandalising a bronze statue of Chiang Kai-shek in Yangmingshan National Park, for the statue was donated by private groups and not considered public property. This acquittal may just be an exception though. Pan, J. (28 Sep 2018). Court drops case against vandals of Chiang statue. *Taipei Times*. <http://www.taipetimes.com/News/taiwan/archives/2018/09/28/2003701315>

However, even in cases where this *pro tanto* duty is overridden by personal costs, personal costs would unlikely make this otherwise required act impermissible. On the contrary, such acts would become supererogatory and thus optional. In addition, the personal costs that prevent political vandalism from being obligatory might redirect the reasons supporting vandalism to demand something else. Another duty may emerge, say, a duty to show *disrespect* towards hateful symbols. For example, a while ago there was a photo that went viral on social media, inducing the outrage of many conservative Americans. The photo depicted three “migrants” giving the middle finger to Mount Rushmore National Memorial. It turned out that those “migrants” were actually Native Americans, whose sacred mountain had been violated by European migrants. The Native Americans surely had a legitimate complaint against the national memorial.⁷¹ I suggest that others doing something similar would sometimes be a fitting way to (at least partially) fulfil this duty to show disrespect. While individually showing disrespect is far less effective in comparison to political vandalism, it is most often costless and at least to some extent works against the harms of hateful symbols. Therefore, even when we are exempt from the duty to vandalize, the derived duty to display disrespect may still firmly hold.

3.5 Objections

Non-political vandalism is typically impermissible. Some might object that political vandalism is similarly morally problematic. In the following, I will consider several different objections.

⁷¹ Cotton, R. (10 Aug 2017). Viral Photo of People Giving Middle Finger to Mount Rushmore Causes Outrage. *Inquisitor*. <https://www.inquisitr.com/4423814/viral-photo-of-people-giving-middle-finger-to-mount-rushmore-causes-outrage/>

3.5.1 Erasing history

One often-raised objection is that political vandalism erases history. For example, Malcolm Turnbull, then Prime Minister of Australia, condemned political vandalism as “a deeply disturbing and totalitarian campaign to not just challenge our history but to deny it and obliterate it.” He also equated it with the burning of historical scripts, and Stalin’s execution and removal of all official photos of people who fell out of his favor.⁷² The accusation, in short, is that political vandalism is an attempt to erase historical records.

My response is very simple. Political vandalism can erase historical records as much as authorized removals of hateful symbols can. If it is already the case that a particular hateful symbol ought to be officially removed and destroyed, political vandalism is no more problematic in terms of erasing. Furthermore, and luckily, the records are most often well kept. If one looks into books, the internet, or museums, evidence of history can be easily found. What political vandalism and authorized removals do is merely to prevent hateful symbols from continuing to do hateful things. In addition, while it is important to preserve samples of hateful pedestalling to help current and future generations recognize past injustice and witness moral progress, preservation is compatible with both official removal and political vandalism. Enough samples may already be preserved in museums, and adding vandalized monuments to the collection may even reflect historical struggles more accurately.

3.5.2 Violates free speech

Some might be tempted to say that the inappropriateness of political vandalism lies in its interference with the speech of others. Accordingly, the display of political symbols is a form of speech, and is thus protected by the freedom of speech, one of the fundamental liberties.

⁷² Malcolm Turnbull’s Facebook:

<https://www.facebook.com/malcolmtturnbull/posts/10155761463461579>

The most straightforward reply is that there are limits to the freedom of speech. Hate speech falls beyond the scope of this fundamental liberty, for hate speech causes or constitutes harms to others. Hateful symbols—the target of political vandalism—harm in the same objectionable way as hate speech, and some do so more forcefully with the authority of the state. Therefore, vandalizing hateful symbols does not violate the freedom of speech.

Some might insist that despite its wrongfulness, individual hate speech should nevertheless be protected: the freedom of speech involves something like Waldron's (1981) "moral right to do wrong," where even if it is wrong to express pro-attitudes towards severe injustice, others have a duty to not interfere. Thus, people might have the right to privately display hateful political symbols. However, this right by no means entitles people to have their speech adopted by the *state* as one of the official statements. Therefore, insofar as political vandalism is targeted against state displayed political symbols, it does not constitute a violation of the freedom of speech.

3.5.3 Tolerance

Dan Demetriou and Ajume Wingo (2018) hold that "[e]very people needs its heroes, and any people with a developed material culture will remember them with monuments" (p. 351). What needs to be done, accordingly, is to commemorate the overlooked history and culture of traditionally oppressed groups, rather than to tear down racist monuments. Accordingly, "healthy racially diverse citizenry, will want their cohabitants to feel free to honor their ancestors and draw pride in their heritage" (p. 352). Political vandalism, some might thus hold, is intolerant and will threaten social harmony.

I am unsure whether we genuinely need "heroes." But, even if we do, I doubt that tolerating hateful symbols and telling the already disadvantaged to endure is "healthy." Especially when hateful symbols actually do harm because they possess the relevant authority and

publicity, demanding tolerance from the victims is nothing but perpetuating the unjust *status quo*. More generally, if we really need to celebrate heroes for the sake of social cohesion, we can surely find heroes whose conducts instantiate values the current generation can endorse; otherwise, there is something strange about finding pride in these “heroes.”

3.5.4 Incites unfavorable reaction

Vandalism is a form of violence and there is a general aversion to violence. Resorting to vandalism may drive away potential sympathizers. Furthermore, those who identify with desecrated symbols might be inclined to retaliate. Most notably, the decision to remove the Charlottesville Robert E. Lee sculpture led to white-supremacist rallies and violent attacks against counter-protesters, which resulted in several severe injuries and the death of the civil rights activist, Heather Heyer. If authorized removals already incite violence, unauthorized desecrations most likely would lead to more. Given that the removal of political symbols runs the risk of inciting atrocious actions, it is best avoided.

This is a good reminder of the need to proceed judiciously and with caution. However unfair, sometimes the wrongful reactions of others can make an otherwise permissible action impermissible (or at least ill advised). Thus, if resorting to political vandalism does indeed drive away potential sympathizers and make social struggles more difficult, or incites violence and puts the innocent in danger, it may well be wiser to refrain from political vandalism. At the same time, this is hardly going to be true in each and every case. It may very well be that the public is apathetic, and there are few potential supporters to be driven away. “Behaving” and refraining from vandalism may serve nothing of great value. Similarly, the threat of retaliatory violence may not be credible. Typically, there is sufficient legal protection against such violence. Furthermore, when there is a lingering threat of (racial) violence (especially when it is not unequivocally repudiated by state actors), violent incidents may be

likely to occur one way or another. Controversies surrounding political symbols may take the blame, but this does not mean they are the genuine cause.

3.6 Conclusion

I have argued for two main claims in this chapter. First, state-sponsored political symbols can be instances of hate speech in the sense that they do what hate speech does, and in a particularly pernicious way. Hateful symbols, as I call them, can subordinate, exclude, and assault, and often with the publicity and authority state speech typically has. They do these things through hateful pedestalling. They purport to speak in our name. Second, political vandalism is sometimes the appropriate response to hateful symbols. When the prospects of official removal are dim, political vandalism can help to expose and challenge problematic indirect content, so as to prevent its accommodation. It can help to deny that the hateful things are spoken in our name. It can do so in ways that challenge the authority of the state speech, and in ways that match the publicity of hateful symbols. In short, when all else fails, political vandalism is justified insofar as it “undoes” the harms of state-sponsored hateful symbols. We may have a duty to vandalize, and when this duty is defeated by personal costs, we may then have a duty to display disrespect towards hateful symbols.

These conclusions are important in their own right. For our purposes, they are especially important because of their implications for the Orthodox Resistance Thesis. Political vandalism is, of course, a paradigmatic example of uncivil disobedience. While it is in a sense communicative, it may not aim at changing laws or policies. The act is done with the primary aim to block expressive harms. Furthermore, it is violent, defiant, and can be disrespectful towards relevant authorities. Moreover, vandals need not accept legal punishment. Thus, if I am right that political vandalism is sometimes justified even in reasonably just so-

cieties, then it follows that uncivil disobedience is sometimes justified and, hence, that the Orthodox Resistance Thesis is mistaken.

4

Fairness and the imposition of costs

The two previous chapters have argued that uncivil disobedience is sometimes justified even in reasonably just societies. However, our case for uncivil disobedience remains importantly incomplete. For resistance often imposes significant *costs* on others: disturbing their everyday life, damaging their property, and sometimes even risking harm. These costs can be hard to justify in the case of any kind of illegal resistance. But they might seem especially hard to justify in the case of uncivil disobedience in particular. For instance, the 1967 Detroit Riot initiated as a protest against racial policing, but the deaths and injuries of the innocent make the rioting extremely difficult to justify. Even when struggling for a better society, the ends do not always justify the means. Those who are nontrivially negatively affected often have a grudge against being unwillingly entangled in the movements, and protestors, even civil disobedients, sometimes apologize for the disruption they cause. For instance, the Extinction Rebellion Australia spokesperson Miriam Robinson stated, “[the occupation] might be disruptive for some people and we apologise for that, but if the climate runs out of control this kind of disruption will be nothing to what will come.”⁷³

The aim of the current chapter is to offer a general account of when and why dissidents are justified in imposing costs on others and to apply this to both civil and uncivil disobedience. The account starts from the standard Rawlsian account of the limited duty to obey unjust laws. According to this account, the duty is grounded in a duty of fair play to share the

⁷³ Lam, C. (21 Jun 2019). Extinction Rebellion activists occupy four Australian cities protesting Adani. *SBS News*. <https://www.sbs.com.au/news/extinction-rebellion-activists-occupy-four-australian-cities-protesting-adani>

burdens of injustice equally, insofar as the burdens result from our best attempts to approximate justice. I suggest that this duty of fair play can justify the costs imposed by both civil and uncivil disobedience. It can justify the costs imposed by civil disobedience in relatively idealized circumstances, where the costs fall within the limits of the fair burdens we ought to bear, due to the inevitable failures of our best attempts to approximate justice. More surprisingly, I argue that it can also justify the costs imposed by uncivil disobedience under more realistic circumstances, where unjust laws and unfair social arrangements typically result, not from our best attempts to approximate justice, but from the deliberate actions of powerful agents in creating and maintaining unfair social schemes. Indeed, I argue that it can sometimes *uniquely* justify the imposition of such costs. Fairness may demand that those who are responsible for, or who have benefitted from, the injustices bear the costs, and this will sometimes require activities that fall short of the standards of civil disobedience. This is what I shall call the *fairness argument* for uncivil disobedience.

This chapter proceeds as follows. Section 4.1 shows that existing approaches are unsatisfactory on account of downplaying the importance of costs. Section 4.2 extends the fair play account of why we ought to obey limited unjust laws to account for the costs imposed by civil disobedience in relatively ideal conditions. Section 4.3 shows that this solution is problematic under more realistic circumstances, as certain parties may be responsible for creating, maintaining, and benefiting from the unfair system. Section 4.4 argues that these factors generate duties of fair play to resist. Section 4.5 argues that these duties are enforceable and that imposing costs through social movements on those who have such duties is morally unproblematic. Section 4.6 applies the aforementioned account to several instances of real-world environmental activism, and argues that fairness may demand direct action even if civil disobedience is equally effective. Section 4.7 addresses the important worry that my account, if accepted, would encourage widespread vigilantism.

4.1 The need for justification

In 2019, the freight rail operator Aurizon, a contractor of the controversial mining corporation Adani, sued environmental activists and sought \$375,000 in compensation amid “a series of recent protests that stopped coal trains.”⁷⁴ In 2008, 57 protestors briefly occupied runways of Stansted Airport, and “56 flights in and out of the airport had been cancelled.”⁷⁵ In 2011, the disruption of Arab Spring that brought down Hosni Mubarak cost Egypt \$310 million a day.⁷⁶ None of these costs are trivial and those who bear the costs do not always do so willingly.

Those affected often have a grudge. Why should they suffer the inconvenience, monetary costs, and sometimes risk of harm? Even if social movements can bring about much needed social change, methods that infringe upon the significant interests of others are questionable. But what exactly are the constraints social movements need to observe? When, if ever, is it appropriate when engaging in political resistance that imposes costs on others against their will?

As we have seen, the Orthodox View holds that in reasonably just societies, only under exceptional circumstances may activists deliberately breach the law, and those who do so must stay within the boundaries of civil disobedience. This undoubtedly provides some protection for the rights and interests of the general public. Nevertheless, these rights and interests can still be nontrivially affected by civil disobedience. Again, consider the occupation of

⁷⁴ Smee, B. (14 March 2019). Aurizon sues environmental activists and seeks \$375,000 after protests stop coal trains. *The Guardian*. <https://www.theguardian.com/australia-news/2019/mar/14/aurizon-sues-environmental-activists-and-seeks-375000-after-protests-stop-coal-trains>

⁷⁵ Percival, J. (8 Dec 2008). Climate activists held after Stansted runway protest. *The Guardian*. <https://www.theguardian.com/environment/2008/dec/08/stansted-runway-protest>

⁷⁶ Lally, K. (15 Feb 2011). Egypt economy awaits its lost tourists. https://www.washingtonpost.com/national/tourists-exodus-could-cost-egypt-15-billion/2011/02/14/ABJL7OG_story.html?utm_term=.2af9ced27789

Stansted Airport. The climate crisis is indeed something of significant importance. However, the passengers of the 56 flights whose travels were disruptive may also wonder why *they* ought to be affected, to be used as means by the activists to gain publicity for the cause. Their plans were disturbed. Their freedom of movement was affected. Activists surely at least owe them an explanation.

Most accounts of civil disobedience seem to have ignored this issue, but there are noticeable exceptions. For example, Piero Moraro (2014) has paid careful attention to this very occupation of Stansted Airport. He argues that while travelers did have to endure inconveniences and some restrictions on their freedom, the important thing is that their overall autonomy was not negatively affected. The use of “physical force”—as Moraro calls it—to prevent passengers from continuing their travels, does not involve forcing the passengers or the members of any other potential audiences to adopt the activists’ position on climate change. Instead, activists are merely forcing others to pay attention to their pleadings and the information regarding environmental risks. Accordingly, this is not a hindrance of anyone’s autonomy. “[C]hoosing to support a certain policy or government says something about the kind of persons we are, what values we subscribe to, what conception of society we endorse” (Moraro, 2014, p. 68), while choosing to board planes does not. Since protesters merely provided information to allow people to make better decisions with regard to essential choices, and only hindered these less essential ones, they enhanced rather than violated the autonomy of those affected.

However, even if autonomy with regard to essential choices is not compromised (and perhaps even enhanced), there might still seem to be something amiss. Choices like travelling and boarding planes may indeed not say much about what kind of persons we are (though arguably for some they do), but they can nevertheless be important to us. Telling those affected that they are being informed about politics and climate change does not amount to a

satisfactory explanation of why they have to suffer the inconvenience then and there. Neither does telling them that this is the last resort, that activists were nonviolent, and that the system was not destabilized into anarchy help. Perhaps nothing can be said, apart from the fact that the activists needed to choose between two undesirable options, and the inconvenience others suffered was the unfortunate sacrifice made for the greater good. Perhaps this is why activists sometimes apologize. While their acts were all-things-considered justified, they nevertheless wrong others.

This is the grim picture we get if we insist on sticking to the Orthodox View. However, engaging with the question “how social movements can be justified despite imposing costs on others against their will” will prove to be constructive. In the following section, I will show that within certain limits, fairness demands each of us to bear the costs of civil disobedience equally, in the same way it demands us to endure the burdens of unjust laws to a certain extent. I will then show that this account of fairness leads to highly surprising implications in more realistic circumstances.

4.2 Sharing the costs of improving society

Let us start with Rawls’s (1999) account of why we have a duty to obey unjust laws. For Rawls, we have a natural duty of justice, which requires us to establish just institutions when they do not exist, and to support them when they do. Many have also voluntarily assumed offices and positions, or have taken advantage of the opportunities the fair system provides, and are further bound to comply with the system. But what about unjust laws? Rawls admits that when the injustice of the law exceeds certain limits, we no longer have a duty to obey. But how can there be a duty to obey less-than-exceedingly unjust laws?

Rawls’s answer starts from the observation that, even if we have a clear understanding of, and all accept, the principles of justice, procedures through which we produce the

constitution, legislate, and issue administrative orders are at best what Rawls calls imperfect procedures: procedures designed to realize uncontroversial just ends, but cannot guarantee that just ends are always achieved (p. 173). However, insofar as the flaws produced by our best efforts to approximate justice do not exceed certain limits and the burdens of injustice are distributed evenly among the citizenry, we still have a duty to obey, for the sake of mutual trust and confidence in the system (p. 312). Rawls admits that in cases of persistent minorities or when basic liberties are violated, the duty to obey becomes problematic. However, normally it is fair that everyone shoulders these burdens equally.

We can draw insight from this *burden of injustice* account, and apply this to justify the costs imposed by civil disobedience. Arguably, if it is fair for all to shoulder an equal burden of the inevitable unjust laws produced by our best efforts to approximate justice, it is also fair for all to share an equal burden when it comes to tackling these unjust laws through civil disobedience. Here are some motivating considerations.

First, civil disobedience plays a distinct role in contemporary liberal democracies. While in any well-functioning democracies there are various legal channels to address the injustice produced by democratic failures, these legal channels do not always work (in time). Civil disobedience plays the auxiliary role of fixing those problems through promoting social or political change when no legal means can (do so in time) (Brownlee, 2012; Markovits, 2005; Rawls, 1999; W. Smith, 2013).

Second, sometimes the burdens of unjust laws are not evenly distributed. As Rawls acknowledges, persistent minorities present a serious problem for the duty to obey unjust laws. Persistent minorities often constantly bear the burdens of injustice, as their rights and interests are often ignored by the majority. Furthermore, those burdens can, and in many cases do, exceed tolerable limits. In liberal democracies, civil disobedience has been adopted to tackle racial segregation, disenfranchisement, extreme social and economic inequality, and

racial violence, just to name a few. The mere existence of these problems can threaten the duty to obey. Civil disobedience, through fixing these problems, can help the system to regain its standing to demand obedience.

Third, civil disobedience can be understood as an attempt to adjust the inevitable burdens of injustice. Civil disobedience is called for when the burdens of injustice are unfair or exceed legitimate boundaries. If successful, civil disobedience reduces these burdens to overall more acceptable ones by removing the unbearable burdens, while only making those affected bear a comparably much lighter burden. Insofar as these burdens do not exceed certain limits, but fall within the boundaries compatible with the duty to obey unjust laws, civil disobedience is a good intervention. Since the costs imposed by civil disobedience are consistent with and better than the burdens of unjust laws, those affected do not have a claim against enduring those costs.

In sum, civil disobedience can fix severe or urgent problems but only cause inconvenience, discomfort, or not too severe losses that are distributed randomly or evenly. While the costs imposed by civil disobedience are by no means trivial, they pale in comparison to what unjust law may legitimately demand of us. Thus, those who bear the costs of civil disobedience are bearing costs that are less onerous than what fairness can demand of them in the case of unjust laws. We may regret that someone has to bear the burdens of injustice, and activists can communicate their lament for this unfortunate fact. But within a certain range, those who bear the burdens have no legitimate complaint against bearing the costs.

4.3 Imposing costs equally vs. fairly

The qualification “within a certain range” is crucial because there are important possibilities in which those affected do have a legitimate complaint. These possibilities share a simple common feature: fairness demands something different from the imposition of equal costs. It

demands compensation from those who have disrupted the fair distribution of benefits and burdens.

In 2016, another airport in the UK, the London City Airport, was temporary shutdown by civil disobedience. Nine protestors occupied the runways and “disrupted the journeys of an estimated 9,000 passengers.”⁷⁷ The protestors were all found guilty but avoided jail. The judge acknowledged the sincerity of the protestors, who cared deeply about Black Lives Matter, but she also added, “I find it rather hard to see the link between the movement which started in America and goes by name of Black Lives Matter, which as I understand protests against the treatment of the black population by the police in America...to London City Airport.”⁷⁸ The judge’s perplexed response seems to be entirely reasonable. Why did not the activists bring their case to those who were responsible?

Indeed, if we reflect upon the duty to obey unjust laws and the fair burden of injustice that accounts for the appropriateness of imposing costs on others against their will, we can see that these burdens are acceptable because they are the unfortunate but inevitable outcomes of our best attempts to approximate justice. While these burdens are regrettable, they are fair. But sometimes the burdens are unfair.

Rawls acknowledges that when the burdens are consistently imposed upon persistent minorities, those who suffer from the unfair distribution may not have a duty to obey. By the same token, we may question the fairness of imposing equal (risks of bearing) costs through civil disobedience on those who are already disadvantaged by the system. This problem is most salient when some willingly benefit from the unequal terms of cooperation, in particu-

⁷⁷ Grierson, J. (14 September 2016). Black Lives Matter activists admit trespass after City airport protest. *The Guardian*. <https://www.theguardian.com/uk-news/2016/sep/14/city-airport-protesters-plead-guilty-trespassing-black-lives-matter>

⁷⁸ Sawyer, P. & Boyle, D. (14 September 2016). City Airport protest: Judge ‘finds it hard to see link’ between runway stunt and Black Lives Matter campaign. *The Telegraph*. <https://www.telegraph.co.uk/news/2016/09/14/city-airport-protest-judge-finds-it-hard-to-see-link-between-run/>

lar, when the unfair terms of cooperation are not the outcome of the inevitable flaws of our best attempts to approximate justice, but result from and persist because certain parties intend to benefit from unfair arrangements. Here, civil disobedience that imposes equal burdens may evince an insensitivity to the responsibility of creating and maintaining unfair social arrangements, and ignores the unfair advantages accumulated.

4.4 Tracing unfairness

There are at least two ways one can acquire a duty of compensation. Contributing to injustice typically creates strong duties towards the victims (Pogge, 2005a, 2005b). Benefiting, even innocently, from injustice sometimes creates certain duties, say, when benefiting also incentivizes or enables further injustice (Anwander, 2005; Haydar & Øverland, 2014; Malmqvist, 2013), or when holding onto the benefits sustains the wrongful harms (Barry & Wiens, 2016). Under such conditions, in order to avoid the adverse effects of holding on to the wrongful benefits, one ought to compensate, and should compensation be infeasible, one ought to disgorge the benefits.

The factors that generate a duty of compensation from contributing or benefiting from injustice can help us better understand the duties that arise from creating, maintaining, or benefiting from unfair social schemes. While there is a clear distinction between justice and fairness, unfairness without sufficient reason typically suffices for something to be unjust. Thus, other things being equal, those who are responsible for the existence or persistence of unfair social schemes have a duty of compensation, and so do those who benefit from such unfair arrangements if holding onto the benefits sustains existing or enables further injustice.

However, due to the nature of social schemes, mere compensation is often insufficient. This is because social schemes, especially those defined and enforced by the law, are ongoing. Unfair social schemes continuously reproduce unfair advantages and disadvantages.

Candice Delmas (2014a, p. 478) points out that even if those who have gained unfair advantages successfully compensate those who have suffered unfair disadvantages, the former will still play active roles in supporting the unfair system and producing more unfairness in the future, in virtue of continuing to participate in the unfair social schemes. Thus, compensation may be ineffective.

The ineffectiveness of compensation may lead us to consider other methods to steer clear of the wrong of participating in unfair social schemes. In principle, refusing to participate by exiting may also be possible. However, the only feasible way of exiting is emigration, and the costs of emigration are often prohibitively high. More importantly, this option leaves the unfair scheme intact (Delmas, 2014a, p. 477). It allows the unfair scheme to continue to create more unfair disadvantages, and is thus, like compensation, far from satisfactory.

Delmas (2014a, p. 479) concludes that promoting radical reform is the only viable option. Through promoting radical reform, those who have participated in, supported, and benefited from unfair social schemes can cease participating, supporting, and benefiting once and for all. Since different forms of resistance, ranging from legal protest, civil disobedience, to even violent protests, may turn out to be most appropriate to promote radical reform, Delmas further concludes that we sometimes have a duty to engage in these activities. Putting it simply, we sometimes have a duty to resist. Whether we do in fact have this duty depends in part on what works, and in part on how costly participation is. However,

When used to ground the moral duty to obey the law, fairness is understood to require relinquishing the discretion to act as one wishes, paying taxes to the state, and, in case of military draft, fighting in war. If discharging the duty of fair play can involve substantial sacrifices, the same may be presumed about the fairness-based duty to resist (Delmas, 2014a, p. 486).

Thus, the duty can be fairly demanding, at least as demanding as what the duty to obey the law may demand of us.

We may further add that one's responsibility in creating and participating in unfair social schemes, along with how much unfair advantage one has gained also factor in to determining how demanding the duty to resist is. The moral requirement to compensate or disgorge unjust benefits will at least demand us to sacrifice as much as we have unfairly benefited. The moral requirement to compensate the injustice we have contributed to may even be more demanding, requiring us to do our fair share in fully remedying the injustice we have contributed to if feasible, or to make compensations in ways proportionate to the harm we have caused.

In short, we sometimes have a defeasible fair play duty to resist, and the demandingness of this duty depends on our responsibility in contributing to and benefiting from unfair social schemes. This establishes a key component of how much costs, in relation to fixing an unfair social arrangement, we ought to bear without having any genuine moral complaint. However, we also need to figure out whether and when it is morally permissible for others to impose such costs on us through social movements, should we refuse to fulfil our duty to resist and bear the relevant costs, to fully account for the permissibility to impose costs.

4.5 Enforceable duties

Not all duties are equal. Some duties are not enforceable. For instance, we may have a duty of charity, which may require us to donate to effective (enough) charities. However, even if we fail to do so, it is morally problematic if someone hacks into our bank accounts and transfers the required amount to the relevant charities. On the other hand, some duties are obviously enforceable. For instance, those who unjustly assault the innocent acquire a duty to rescue their victim(s), and if they refuse to fulfil this urgent duty to rescue, others may enforce the duty upon them. Victor Tadros (2011) argues that this is essentially why we may use others

as means in cases of self- or other-defense, and expands this rationale to account for the permissibility to use the culpable as means to deter crime.

The pertinent question here is whether duties that result from contributing to or benefiting from unfair social schemes are enforceable. If they are, then struggles against unfair social schemes would not be morally problematic in virtue of imposing costs on those who have contributed to or benefited from unfair social schemes. I contend that these duties are enforceable, first, because the right to do wrong does not hold in the relevant cases, and having a right to do a particular wrong is equivalent to the lacking of an enforceable duty to refrain from doing that particular wrong; and second, they are even more stringent than the duty to obey the law, which is itself widely believed to be enforceable.

Pinpointing the necessary and sufficient conditions of a (moral) right to do (moral) wrong is beyond the scope of this dissertation. All that I will assume is that if there is a right to do a particular type of wrong, it must be because the value of being able to choose, free from the interference of others, is significant enough to outweigh the disvalue of wrongdoing committed (Herstein, 2012; Waldron, 1981). This assumption is widely shared by proponents of very different accounts of the right to do wrong. For instance, many believe that there is a right to free speech, even if this results in falsehoods and problematic ideologies. Supporters of this right believe that the value of the marketplace of ideas helps us better pursue moral and other truths (Mill, 1859, Ch. 2), that this right is necessary for democratic legitimacy (Brettschneider, 2012; Heinze, 2016), or that it enables the complex epistemic and moral cooperation with others (Shiffrin, 2016). Accordingly, the value of the right makes tolerating the wrongdoing acceptable.

With regard to the duties that result from unfair social schemes, we need to ask what the value of being able to choose not to fulfil these duties is supposed to amount to, and whether it outweighs the disvalue associated with not performing them. To say the least, it is

unclear what value there is in being able to choose not to compensate when contributing to unfair social schemes. Perhaps we can say that there is some additional value in voluntarily making compensations: say, the value of demonstrating sincere repentance or seeking reconciliation, and this value will be lost if compensation is forced. But even if we grant this, the additional value seems plainly insufficient to outweigh the disvalue of leaving those who have been treated unfairly uncompensated. Telling the victims that neither they nor anyone else can permissibly force those responsible for their plight to compensate because of the value of allowing perpetrators to repent and seek reconciliation would seem absurd: it would amount to downplaying the plight of the victims and focusing unduly on the perspective of the perpetrators.

The duty that results from benefiting from unfair social schemes may be less stringent than that which comes from contributing to unfairness. That being said, we still need to properly identify the purported value of being able to hold on to the unfair benefits, and weigh it against the perverse incentives provided and the wrongs sustained by allowing the beneficiaries to hold on to these benefits. Given that we may benefit from untraceable unfairness in the distant past, there may be some value in allowing beneficiaries to hold on to some benefits; otherwise it would be extremely difficult to plan our lives. But when the unfairness is clearly traceable, we have no claim to condition our lives on these benefits; and should this be the case, we surely also lack a right to hold on to unfair benefits.

Now let us turn to the comparison to the duty to obey the law. The duty to obey the law, while conceptually distinct from political legitimacy (i.e. the moral permissibility to enforce laws),⁷⁹ is commonly taken to be a paradigmatic example of an enforceable duty. If we grant this, it should be easy to see why duties that result from unfair social schemes are also

⁷⁹ See, for example, Estlund (2009, p. 2; Kolodny, 2014, p. 197).

enforceable. I suggest that the enforceability of duties should behave according to the following principle:

Comparative enforceability: a certain duty D is enforceable if compared to any enforceable duty E , a) D and E are equivalent on all normative dimensions, or b) D is stronger than E on at least one normative dimension while equivalent on all other normative dimensions.

Examples instantiating this principle can be easily found. For instance, in criminal punishment, sentencing needs to be proportionate to the crime committed. The comparative enforceability principle can explain this: the more severe the wrongdoing, the stronger the enforceable duty, and thus the more one can be used as means to deter crime. It is simply a mistake to hold that a more severe crime is not punishable while a less severe crime is.

Bearing the comparative enforceability principle in mind, we can now return to the duties that result from unfair social schemes. The fair play duty to obey binds everyone, even if no one is at fault in terms of creating unfair disadvantages or taking unfair advantages. This duty, as earlier shown, may even hold when the law is to a certain extent unfair and unjust. Now, the law may be unfair not because of the inevitable failures of our best attempts to approximate justice, but because certain parties intentionally made it so. Moreover, the law may remain unfair because those who have benefited from unfair social schemes have failed to fulfil their duties to facilitate radical reform. In terms of fairness, then, the duties that arise from unfair social schemes are much stronger than the duty to obey. The latter is simply the content of each person's fair share, while the former results from additional violations of fairness. The duty to obey is enforceable. According to the comparative enforceability principle, then, duties that arise from unfair social schemes are also enforceable.

To recap, duties that result from contributing to or benefiting from unfair social schemes are enforceable. There is no right to commit the wrong of not fulfilling these duties. Furthermore, these duties seem clearly stronger than another paradigmatic enforceable duty, namely, the duty to obey. Thus, struggles against unfair social schemes would not be morally

problematic in virtue of imposing costs on those who have contributed to or benefited from unfair social schemes. Sometimes, social struggles may simply amount to enforcing enforceable duties, and those who bear the costs have no legitimate complaint. No one is wronged, and there is no need to apologize.

4.6 Fairness, targeted direct action, and ecotage

It may be instructive to test my account by considering its applications to some real-world cases. Here I will focus on environmental activism, e.g. the Extinction Rebellion, the Frontline Action Against Coal in Australia, the Sea Shepherd, Earth First!, and the Earth Liberation Front. I will show that in terms of fairness, targeted direct actions in the form ecotage, a type of uncivil disobedience, are sometimes superior to indiscriminate civil disobedience.

The Extinction Rebellion—movements around the world protesting against the climate crisis—employs the strategy of mass civil disobedience, often with the aim of getting arrested.⁸⁰ Dissidents have constantly occupied transportation hubs, museums, and other noticeable sites, activities which have also achieved a fair amount of publicity. However, we have reason to believe that in at least some cases they would do better to incorporate targeted direct actions. This is not to say that raising public awareness is not important, or that seeking arrest is not a good strategy. Rather, targeted direct actions are going to do better with respect to fairness.

Indeed, the public may have a duty to bear certain costs for the environment. With our current attempts to balance economic growth and a sustainable future, we have miserably failed to deliver anything remotely acceptable, and current projections predict disastrous outcomes in mere decades (Ripple et al., 2019). In order to fulfil our duties to future generations,

⁸⁰ Taylor, M. (27 October 2018) ‘We have a duty to act’: hundreds ready to go to jail over climate crisis. *The Guardian*. <https://www.theguardian.com/environment/2018/oct/26/we-have-a-duty-to-act-hundreds-ready-to-go-to-jail-over-climate-crisis>

it is appropriate that each of us take up a fair share of the burden. Since most of us have not done nearly enough, it is fair to impose the costs on us to at least some extent. However, our failure to do our fair share pales in comparison to the unfair advantages environmentally unfriendly industries have created and secured. While most of us who live in affluent countries benefit from environmentally unfriendly industries, say, by having lower energy bills, most of the profits go to those who work for or invest in those industries. Moreover, “most environmental conflict pits a minority of short-term ‘extractors’ against a majority of ‘sustainers,’ or people with medium-term interests in the sustainable provision of things like clean air and water” (Ellis, 2016, p. 514). In addition, sometimes environmentally unfriendly industries play significant roles in shaping the unfair systems, for example, through political donations.⁸¹ These considerations suggest that the burdens that arise from unfairness weigh more heavily upon the environmentally unfriendly industries.

These considerations are exactly those that can justify the direct actions of the Frontline Action on Coal in Australia. Protesting against the government approved Carmichael coal mine in the Galilee Basin, Queensland, Frontline Action on Coal activists adopted diverse strategies to directly frustrate Adani’s mining operations, including locking themselves to drill rigs, suspending themselves from poles to stop land-clearing works, and blocking freight trains. These acts impose substantial costs on Adani and its business partners, who are actively seeking to profit from environmental devastation. These industries, while legally approved by the Australian Government, create and benefit from unfair social schemes. Thus, I

⁸¹ Murphy, K. (17 April 2019). Coalition MP says she does not know how much Adani donated to her campaign. *The Guardian*. <https://www.theguardian.com/australia-news/2019/apr/17/liberal-mp-says-she-doesnt-know-how-much-adani-donated-to-her-campaign>

See also Brulle (2014) and Mayer (2016) for how the wealthy frustrates actions against the climate crisis.

suggest that the costs imposed on Adani and its business partners lie well within the range of the costs they have an enforceable duty to bear.⁸²

Furthermore, even if similar costs can be imposed on the general public, so to achieve similar effects, the general public would have a legitimate complaint against bearing these costs. While the general public may indeed have some enforceable fair play duties with regard to the environment, enforcing these duties on them is morally problematic. In virtue of actively creating and benefiting from unfair social schemes, environmentally unfriendly industries have acquired much stronger enforceable duties. In achieving exactly the same goal, enforcing weaker duties but not enforcing stronger duties ignores an important consideration: imposing costs on the less responsible while letting the more responsible off the hook is deeply unfair. When struggling against unfair social schemes, it is fair to distribute the costs in a way that matches responsibility, and when the costs cannot be shared, it is fair to make the more responsible shoulder the burdens, insofar as those burdens do not exceed what their enforceable duties permit. Thus, as between civil disobedience that imposes indiscriminate costs on the general public and that which focuses the costs on parties bearing stronger enforceable duties, the latter is preferable.

We may go a step further. Activists sometimes conceptualize their direct actions as civil disobedience. For instance, Frontline Action on Coal activists claim that they are ready to go to jail for the “civil disobedience” in the form of “a blockade of the Adani site.”⁸³ Such descriptions are plausible given less restrictive accounts of civility discussed in chapters 1

⁸² I take it that companies are entities that can have duties. For similar views, see, for example, Pettit (2007), Werhane (2016), Pasternak (2017), and Collins (2019).

⁸³ Flanagan, R. (5 May 2019). I am willing to go to jail to stop Adani and save our beloved country. Will you stand with me?. *The Guardian*. <https://www.theguardian.com/business/2019/may/05/im-willing-to-go-to-jail-to-stop-adani-and-save-our-beloved-country-will-you-stand-with-me>

and 2.⁸⁴ However, there are also violent forms of direct action that clearly fall beyond the scope of civil disobedience (Vanderheiden, 2005), and can only reasonably be characterized as “uncivil disobedience.” In particular, I have in mind so-called “ecotage,” which we can define as “sabotage of inanimate objects (machinery, buildings, fences) that contribute to ecological destruction” (Vanderheiden, 2005, p. 427). For example, Earth First! has “dismantl[ed] tractors to prevent old-growth forests from being felled.”⁸⁵ The Sea Shepherds (before rendered impotent by technological advances of Japanese whaling ships and frustrated by anti-terrorist laws⁸⁶), chose tactics such as ramming whale hunting ships, and claimed to be “responsible for the sinking of 10 whaling ships and the destruction of millions of dollars worth of equipment.”⁸⁷ The Earth Liberation Front (ELF) “has claimed responsibility for attacks against property associated with urban sprawl, air pollution, animal testing, genetic engineering, and public lands logging, and has caused an estimated [US] \$100 million in damage” (Vanderheiden, 2005, p. 426). Admittedly, some of these violent direct actions are highly controversial. However, they are arguably sometimes more effective than their civil counterparts. Sabotaging equipment leads to immediately perceivable effects: the immediate disablement of environmental unfriendly activities (at least temporarily). In principle we can identify the particular trees or whales saved. Furthermore, they can directly affect the balance

⁸⁴ Some theorists insist that civil disobedience is primarily communicative, and never uses coercion to directly achieve whatever goals it aims to realize (Brownlee, 2012; Lefkowitz, 2007; Markovits, 2005; Rawls, 1999; W. Smith, 2013). Here, I am uninterested in this conceptual debate. Consistent with my position in chapter 2, I will simply grant that nonviolent coercion may still count as civil. Note that not granting this looser definition will just make my following argument much easier.

⁸⁵ Alberro, H. (12 December 2018). Radical environmentalists are fighting climate change—so why are they persecuted?. *The Conversation*. <https://theconversation.com/radical-environmentalists-are-fighting-climate-change-so-why-are-they-persecuted-107211>

⁸⁶ Doherty, B. (29 August 2017). Sea Shepherd says it will abandon pursuit of Japanese whalers. *The Guardian*. <https://www.theguardian.com/environment/2017/aug/29/sea-shepherd-says-it-will-abandon-pursuit-of-japanese-whalers>

⁸⁷ McIvor, K. (10 Jan 2010). Kerre Woodham: Lucky ocean crash. *NZ Herald*. https://www.nzherald.co.nz/world/news/article.cfm?c_id=2&objectid=10619295

sheet of the relevant companies (Vanderheiden, 2005, p. 439), even to the extent that the damages become uninsurable (Pickering, 2007, p. 54).

I am not proposing that all acts of uncivil disobedience in the form of ecotage are justified. Those that endanger the lives of employees of these industries (e.g. loggers or whale hunting crews) may very well be impermissible.⁸⁸ Indeed, some activists carefully avoid violence against persons. “The guidelines for the ELF specifically require members to take all necessary precautions to ensure no one is physically injured. In the history of the ELF internationally, no one has been injured from the group’s actions and that is not a coincidence” (Pickering, 2007, p. 61). Rather, I contend that considerations of fairness may sometimes give us reason to prefer violent activism that carefully targets equipment over certain acts of civil disobedience that seek similar goals. First, just like the case of direct action in the form of civil disobedience, ecotage focuses the costs on groups that have enforceable fair play duties, and is fairer than communicative civil disobedience that imposes indiscriminate costs on the general public. Second, in cases where ecotage is more effective, it leaves less unfairness unresolved, and is superior even to civil disobedience in the form of direct action.

An interesting implication is that the intuitive claim that uncivil disobedience can be justified only if civil disobedience has been tested and proven to be futile would seem to be mistaken. For instance, when arguing for the possibility of justified ecotage, Steve Vanderheiden (2005) explicitly states that “[e]cotage should never be used before both legal and nonviolent extralegal tactics have been exhausted” (p. 440). However, this prioritization of civil disobedience is incorrect. Even if civil disobedience and ecotage prove to be equally effective, fairness may sometimes give us reason to opt for the latter, namely when ecotage

⁸⁸ Whether humans can be liable to be killed for the sake of non-human animals is contested. For instance, Kenya’s decision to protect the last three northern white rhinos against poachers with armed guards seems intuitive correct. However, “if people who are harming animals are liable to third-party defense, then tens of thousands, possibly millions, of well-intentioned, law-abiding, good-natured, talented and otherwise reasonable people will be legitimate targets for violence” (Hadley, 2009, p. 168), which seems highly counterintuitive.

can target those who bear a more stringent enforceable duty. To reiterate, it is unfair to enforce weaker duties but leave stronger duties unresolved. Indeed, this way of understanding how burdens are to be distributed is consistent with a more nuanced interpretation of the necessity condition. The necessity condition should not be interpreted so as to require that we should always choose the option that imposes the least costs *simpliciter*. Rather, it should be interpreted so that the costs are subject to discount according to each person's responsibility in giving rise to the threat that is to be resolved (McMahan, 2009) and, hence, so as to require that, when preventing any given threat, we ought to choose the option that imposes the least *morally weighted* costs (Lazar, 2012). Here, those who have a stronger fair play duty are more responsible, and when performing the necessity calculation, their interests receive a larger discount. Thus, it may be that ecotage imposes less morally weighted costs than civil disobedience. Indeed, in such circumstances, the necessity condition (appropriately interpreted) might require that we engage in ecotage in the first instance, and only when ecotage has proven to be futile, to consider civil disobedience.

4.7 Widespread vigilantism?

I have argued that certain parties have enforceable fair play duties when they have played a role in creating or maintaining unfair social schemes, or when they have benefited from unfair social schemes. I have further argued that it is sometimes at least permissible to engage in acts of uncivil disobedience to resolve unfairness. In particular, ecotage may be permissibly employed against environmental unfriendly industries. There are, of course, legitimate worries that might be raised against this account. In particular, we might worry that, if accepted, it would lead to widespread vigilantism. People may be encouraged to take matters into their own hands whenever they feel that they are treated unfairly and act recklessly.

Exactly what my account implies depends on how responsive the legal system is: in particular, the extent and gravity of the unfairness that is left unresolved. The worse the system is in doing its job, the more the need for radical reform, and the more the need for direct actions. On environmental issues, my account may indeed vindicate a lot more direct action than that which is currently happening and, hence, what we might be tempted to call widespread “vigilantism.”

However, we need to ask whether this type of “vigilantism” is morally problematic. The climate crisis is called a *crisis* for a reason. Our current trajectory leads to nothing short of disaster, and we are not doing nearly enough to mitigate it. More action is needed. Furthermore, insofar as direct actions genuinely target industries that seek unfair advantage, and take sufficient precautions to refrain from causing physical injuries, there hardly seems to be anything morally problematic about this. This type of vigilantism in no way threatens the stability of the system, does not encourage retaliation in the form of interpersonal violence, is typically performed in relatively unpopulated areas, and does not threaten the general public.

To this it is important to add that my account does not encourage people to act whenever they *feel* that they have been treated unfairly. There is a difference between acting against genuine unfairness and acting on a mere feeling of unfairness. My account sometimes vindicates the former, but not the latter. Furthermore, in order to act against genuine unfairness, one must make sufficient efforts to properly identify whether those targeted by any form of direct action have genuinely created, maintained, or benefited from unfair social schemes. This requirement is inconsistent with action merely based on one’s own feelings.

The requirement to properly identify those affected by one’s actions and to properly evaluate whether those affected have (stronger) enforceable duties gives us further reason to doubt the prioritization of civil disobedience. Indeed, we may *feel* that civil disobedience is less controversial than ecotage. But feeling does not by itself vindicate any choice of action,

and to act merely out of feeling is no better than acting because one feels that one has been treated unfairly. Disregarding whether the indiscriminate costs imposed by civil disobedience is justifiable is simply irresponsible.

4.8 Conclusion

The costs imposed by social movements on others against their will require justification. I have argued that, under relatively ideal circumstances, the costs of civil disobedience can be justified because they fall within the limits of the fair burdens we ought to bear, due to the inevitable failures of our best attempts to approximate justice. However, in the real-world circumstances that we actually find ourselves, certain parties have a stronger enforceable duty due to their responsibility in creating, maintaining, or benefiting from unfair social schemes. Here, fairness demands that the costs be imposed on these parties according to their responsibilities when struggling to resolve the unfair social schemes and promote radical reform. When this is the case, and the costs can be imposed through direct actions, including uncivil disobedience in the form of ecotage, civil disobedience may be unjustified due to the existence of fairer alternatives. This is the surprising outcome if we take fairness seriously: uncivil disobedience may be justified, even if civil disobedience is available and equally effective. This gives us yet another reason to be skeptical of the Orthodox Resistance Thesis.

5

Countering counter-resistance: the escalation argument

A common feature of the arguments I have offered so far in defense of uncivil disobedience is that they purport to justify acts of uncivil disobedience in light of some prevailing injustice to which they are supposed to be an appropriate response. I shall now offer a quite different kind of argument according to which acts of uncivil disobedience may come to be justified in light of an unjust response to prior acts of resistance. This argument will involve attending to the dynamics between social actors and their targeted audience and drawing an important link between the ethics of resistance and the ethics of counter-resistance.

We know that the state may resort to either friendly responses (e.g. accommodating the protestors or withholding punishment), or hostile responses (e.g. violent repression or other tactics that may undermine social movements). I shall argue that the state's response to political resistance may alter the moral status of acts of resistance. In particular, certain forms of hostile counter-resistance can make otherwise unnecessary forms of resistance necessary. Moreover, since certain forms of hostile responses constitute oppression, they can make otherwise disproportionate methods proportionate. Either way, hostile responses can sometimes license an escalation to uncivil disobedience. I shall call this the *escalation argument* for uncivil disobedience.

This chapter is in four sections. Section 5.1 shows that certain hostile responses to acts of political resistance are unjust in themselves, and some are unjust because they hinder justified acts of civil disobedience. Section 5.2 will present the escalation argument. Section 5.3 considers what I take to be the strongest objection to the escalation argument, namely that violence threatens the prospects of a just harmony and that violence is counterproductive.

Section 5.4 will consider an important complication that arises from the fact that beliefs to the effect that violence is counterproductive and wrong can turn out to be self-fulfilling prophecies.

5.1 Unjust counter-resistance

Suppose that the members of a social movement start out by engaging in forms of political protest that satisfy even the restrictive Rawlsian definition of civil disobedience as “a public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government” (Rawls, 1999, p. 320).

⁸⁹ How should states respond to political resistance of this kind? What is the appropriate form of counter-resistance?

It might seem clear that such political resistance warrants being taken seriously and being treated as relevantly different from other illegal actions in light of its communicative nature and the potential role in tackling injustice or democratic deficits when all legal measures fail.⁹⁰ William J. C. Smith (2012), for example, argues that instead of attempting to prevent or frustrate civil disobedience, the best police response is “negotiated accommodation:” to constructively engage with activists, so to facilitate the expression of the disobedients’ conscientious protest (p. 830). Negotiated accommodation is compatible with the arrest of civil disobedients, but “the police should, in general, ascribe considerable weight to the good of allowing protesters to secure visibility for their protest” (p. 831). The benefits of responding to political resistance in this way are threefold. First, it allows the society to better

⁸⁹ I have pointed out in chapter 2 that there are a number of reasonable attempts to broaden the very notion of civil disobedience. However, since the definitional debates makes no difference to the arguments I make in this chapter, I will focus on cases of resistance that satisfy the restrictive Rawlsian account of civility.

⁹⁰ The Rawlsian restrictive interpretation of the Orthodox Counter-Resistance Thesis goes further and holds that *only* such political resistance warrants being taken seriously. I think this further claim is mistaken.

reap the benefits of civil disobedience. The public and the government can make better political decisions by incorporating the points of views presented by acts of civil disobedience. Second, it prevents civil disobedience from escalating into more violent activities. Third, it appropriately expresses the acknowledgement that civil disobedience is a legitimate form of political participation.

Of course, actual counter-resistance on the part of the state is often quite different. This may be because relevant authorities simply do not see civil disobedience as a legitimate form of political participation. Or it may be because the demands of particular acts of civil disobedience conflict with the interests of government officials or the dominant groups. For example, the Civil Rights Movement faced a tremendous backlash from the white majority. The 2014 Occupy Central in Hong Kong also met intricate forms of hostile responses. This was due to the fact that the demand for genuine democracy was something “the [Chinese] central government will not accept and [...] the Hong Kong government has no power to agree” (J. Chan, 2014, pp. 577–578), as “the Chinese leaders were and still are worried that genuine democracy could both reduce its control over the city as well as create a potential model for political reform that might threaten the control of the Communist Party” (Ortmann, 2015, p. 36).

It is important to acknowledge that some kinds of “hostile” counter-resistance on part of the state may sometimes be appropriate. Civil disobedients do not always aim at realizing just goals. Social actors can sincerely hold deeply objectionable moral beliefs, but still engage in activities that meet the standards of civil disobedience. For instance, the members of Operation Rescue (now known as Operation Save America) sincerely believe that *Roe v. Wade* is extremely unjust, and are thus motivated to act. Their actions mainly involve nonviolently blocking the entrances of abortion clinics, and an “important goal of Operation Rescue is to pressure lawmakers and judges to pass more restrictive abortion laws and rulings”

(Dixon, 1997, p. 22). Accordingly, their acts qualify as civil disobedience. However, as these disobedients aim to challenge a just law, and furthermore “have exacted very high social costs, including the violation of fundamental individual rights” (Dixon, 1997, p. 29), namely the rights of women seeking abortion, their acts of civil disobedience are clearly unjustified. Similarly, we can also imagine white supremacists who are deeply committed to racist beliefs, but also act in a communicative and nonviolent manner. We will also have to acknowledge that they might be engaging in civil disobedience (Brownlee, 2012, p. 7), albeit in an unjustified manner.

In response to civil disobedience that promotes easily identifiable unjust ends, the government may permissibly respond in a number of hostile ways. *Ignoring* civil disobedience that aims at unworthy or unjust goals in order to wait the movement out may sometimes be the most appropriate strategy, particularly when participants lack sufficient resources to persist through a longer period of time and refrain from violating the rights of others. Should the movement be resilient enough, certain attempts to *raise participation costs* may also be legitimate. For instance, having the court to issue injunctions to evict occupied areas or making public the fact that protestors are imposing costs on the general public in order to leverage public pressure against them may be reasonable. Ordering the police to *clear away protestors* by tackling, arresting, and carrying them away, insofar as such acts do not escalate into violent conflicts, (as in the case of policing Operation Rescue when disobedients do not resist arrest (Dixon, 1997, p. 22),) may also be permissible. Call these examples of *restrained* hostile counter-resistance.

However, even if restrained hostile counter-resistance may sometimes be appropriate when dealing with protesters that lack a just cause, hostile counter-resistance can be clearly *unjust* in at least two important ways. First, even restrained hostile counter-resistance may be unjust because it constitutes an inappropriate response to *justified* civil disobedience. Uphold-

ing law and order is normally of crucial importance. However, “law and order exist for the purpose of establishing justice, and that when they fail to do this they become dangerously structured dams that block the flow of social progress” (King Jr, 2002, p. 75). Certain means of regulating protests may be acceptable when dealing with unjustified protests, but when they are used to frustrate acts of civil disobedience that aim to realize just goals, those means become obstacles that hinder the pursuit of justice. The response on the part of the Hong Kong government to the earlier mentioned Occupy Central, despite its failure to secure genuine democratic elections, can be considered a textbook case of this kind. The protests were employed as a last resort after years of public deliberation and seeking negotiation with the government. The leaders of the protests were familiar with and adhered to Rawls’s account of civil disobedience, and argued that the movement was consistent with the rule of law (Tai, 2017). The movement itself was public, communicative, and nonviolent. The leaders submitted themselves to punishment, and all have been found guilty.⁹¹ The government’s response to the movement was, in part, to respond with restrained counter-resistance. The Hong Kong Government essentially waited the 79-day protest out. During the period of occupation, pro-regime groups also secured four civic injunctions to evict certain occupied areas (Yuen & Cheng, 2017, p. 624), which put the Occupy movement in a difficult position. Protestors had to either give ground or appear to have disrespected law and order, which caused internal debate among the protestors on whether they should comply. In virtue of their role in stabilizing an unjust social order, and contributing to the government’s ability to refuse demands that are both just and widely supported, I suggest that such restrained forms of hostile counter-resistance were plainly unjust.

⁹¹ Ramzy, A. (8 April 2019). “9 Hong Kong Democracy Advocates Convicted for Role in 2014 Protests.” *The New York Times*. <https://www.nytimes.com/2019/04/08/world/asia/hong-kong-umbrella-revolution-occupy-central.html>

Second, certain other hostile forms of counter-resistance may be unjust because they are simply morally unacceptable in themselves (whether the civil disobedience to which they are responding is justified or unjustified). Some of the other forms of counter-resistance employed by the Hong Kong government fall into this second category. For instance, the initial crackdown that involved the indiscriminate use of tear gas and pepper spray was widely perceived as excessive. The violent counter-protests were also widely believed to be financed by the government. Police inaction during the occurrence of these violent activities only lends credibility to this claim (J. Chan, 2014, p. 577). According to Yuen and Cheng (2017), evidence also suggests that the government was making deals with local criminal organizations to violently harass protestors. From an interview they have conducted, “a local triad boss admitted that he was approached with an offer: ‘I could not say who made the offer, but I received a message asking if I could send my people to ‘do something’ in Mongkok. I refused because I supported the students, but others accepted because they wanted the payoff” (p. 622).

I suggest that such *unrestrained* hostile forms of counter-resistance are simply morally unacceptable in themselves. The state should never reward criminal organizations for engaging in criminal activities. Even some of the thinnest conceptions of political legitimacy hold that one of the most basic functions of a legitimate state is to secure the safety of its citizens (Nozick, 1974). Collaborating with criminal organizations and employing them to terrorize citizens dishonors the commitment to secure the safety of the citizens. In addition, by providing financial rewards to such organizations, the state becomes a willing accomplice within these organizations’ criminal activities. Police inaction during severe violent counter-protests also indicates that the state tolerates, if not wholeheartedly condones, such violence.

Furthermore, police violence as a response to nonviolence is rarely if ever acceptable, especially when those on the receiving end of violence have demonstrated self-restraint and a

commitment to nonviolence. Even where civil disobedients are pursuing unworthy or even unjust goals, violent crackdowns are seldom necessary. Ignoring the protests and waiting them out often suffice. Furthermore, the police can negotiate prior to or during the movement with the protestors, establish boundaries and even the terms of arrest in order to protect the rights and interests of third parties, and avoid violent escalation. These are goals both the police and protestors share (W. Smith, 2012, pp. 831–832), or at least ought to share. And even if nothing less than a violent crackdown can clear the grounds, such acts would rarely be proportionate. Unless the state can convincingly show that the continuation of the movement is sufficiently harmful enough to justify the risks of harm associated with violent crackdowns, there is simply no justification for doing so.

Moreover, violence incites violence. When arguing that nonviolence is essential to civil disobedience, Andrew Sabl (2001) writes that “violence causes an escalation of tit-for-tat retributions and increasing hatred, while nonviolent civil disobedience leaves open the possibility of a just harmony in a scale of years rather than generations” (p. 314). The same standards must surely be applied to counter-resistance. Violent repression, especially against nonviolent movements, may cause an escalation, may lead to retributions, may incite hatred, and may threaten the possibility of a just harmony. Even if the violent reactions towards violence are unjustified, if they can make violent social movements unjustified, they can also make violent repression unjustified.⁹²

In sum, certain unrestrained forms of hostile counter-resistance, such as indiscriminate violent repression and collaborating with or tolerating criminal organizations, are unjust in themselves and threaten to undermine state legitimacy. Moreover, even restrained forms of hostile counter-resistance are unjust when they are employed against justified acts of civil

⁹² We may also add that police brutality undermines public trust in police. See, for example, Kochel’s (2015).

disobedience. In the following, I will explore how these unjust forms of counter-resistance can alter the moral status of forms of protest typically regarded as unacceptable.

5.2 The escalation argument for uncivil disobedience

I will now argue that unjust counter-resistance can create situations where uncivil disobedience may become both necessary to realize sufficiently worthy goals and proportionate and, hence, justified.

First, recall that even restrained forms of hostile counter-resistance may be unacceptable on account of defending the unjust status quo when the movement has a worthy and just goal. Civil disobedience is rendered futile by such responses. When civil disobedience fails, should the goal be worthy enough, escalation to the next stage becomes necessary.⁹³ Now, whether a particular escalation becomes permissible must obviously be determined on a case-by-case basis. However, to defend the position that no escalation is ever permissible, one would have to argue either that no political act that goes beyond civil disobedience is ever effective, or argue that any escalation, however slight, makes the act in question disproportionate. The former is simply historically inaccurate. The British Suffragettes fell short of the standards of civility and should not be sanitized and misrepresented as such. Insisting on nonviolent tactics got them nowhere, since such tactics were too easy to ignore. In contrast, resorting to certain forms of violence against inanimate objects and even persons advanced their cause. Smashing windows and other violent acts forced the public to pay more attention

⁹³ Some hold that necessity entails proportionality, that if by averting an unjust threat, more unjust harm is caused, the defensive action in question does not bring about a better state of affairs, and is thus not necessary for bring about a better state of affairs (see, for example, Lazar (2012)). What I propose here is compatible even with this strict understanding of necessity. Should the goal be worthy enough, even highly disruptive actions can bring about better states of affairs, and may qualify as necessary if no less harmful alternatives are available.

to their movement, while assaulting and spitting at the police helped to provoke arrest when dramatic effects were needed (Crawford, 2003).

The second possibility—that any escalation makes any political act disproportionate—is also highly questionable. Of course, it is logically possible that civil disobedience is just barely proportionate. In that case, should civil disobedience be necessary, it would then be permissible; but if civil disobedience is ineffective, nothing more would ever be permissible, as any greater harm or cost imposed on others, however slight, would make the action in question disproportionate. However, it is also highly unlikely that this logical possibility will often (let alone always) materialize. For this to be so, every single different legitimate target of civil disobedience would have to be unjust to exactly the same degree. Historically, there were many occasions where civil disobedience would have been justified due to grave injustices: severe social and economic inequality targeted by the Occupy Wallstreet movement in 2012; Jim Crow Laws, racial segregation, and systematic state-sponsored or condoned racial violence during the Civil Rights Movement; and colonialism that sparked anti-colonial movements after World War II. While all these instances of civil disobedience aimed to remedy severe injustices, to say that they were all unjust to exactly the same degree is highly implausible. Severe social and economic inequality is indeed problematic, and should by no means be underestimated, but to say that it is as bad as the combination of social and economic inequality, racial segregation, systematic racial violence, and race-based disenfranchisement simply ignores the fact that different aspects of injustice can interact with each other and create something much more serious (Bernstein, Forthcoming; Carastathis, 2014; Ruíz, 2017). Insofar as we can identify certain scenarios that are more unjust than a case where civil disobedience is justified, if civil disobedience is (rendered) futile in those scenarios, some escalation would still remain very much within the boundaries of proportionality.

Thus, when civil disobedience is rendered futile by policing or other hostile responses, it seems clear that it is at least sometimes permissible to resort to more drastic measures. This is because the more drastic measures become necessary and proportionate when the more modest civil disobedience is no longer a feasible option. How much more becomes permissible partly depends on what minimally works and also on how severe the injustice in question is.

Second, the severity of the injustice that social movements aim to remedy does not always remain fixed once the state interacts with the protestors. Certain dynamics between protestors and government agents or sympathizers can aggravate the overall severity of injustice. For example, indiscriminate violence employed to disperse and deter protestors, the attempt to vilify them, and dealings with criminal organizations to do the dirty work for the government, all mark the state as more unjust. It may locally license certain types of otherwise unacceptable measures against the government or governmental agents. For instance, sometimes self-defense against police brutality and pro-government mobs is obviously permissible (Brennan, 2018). The same is also true in the case other types of activities that are designed to frustrate policing, for example, refusing to deliver ordered food to them, distracting police officers who are aiming rubber bullets or other highly dangerous “nonlethal weapons” at protestors with laser pointers,⁹⁴ sabotaging riot control gear and surveillance equipment, returning tear gas canisters, and attempting to remove gas masks worn by the police, and so on and so forth. Surrounding and storming police stations when the police and the government condone police brutality and refuse to prosecute perpetrators also seems fit, as I argued in chapter 2.

⁹⁴ “[L]aser pointers, pens, or key rings...even if used inappropriately will not cause permanent eye damage” (Marshall, 1998, p. 1337). In contrast, rubber bullets are highly dangerous, and may cause irreversible injuries, disabilities (Khonsari et al., 2010; Lavy & Asleh, 2003), and even death (David, 2016). Thus, using something that will not cause permanent injury to frustrate potentially lethal threats is completely justifiable.

State injustice perpetrated against social movements may also undermine the state's overall legitimacy. Driving tanks to squash protestors and firing machineguns indiscriminately at them obviously warrant revolution and humanitarian intervention, should such acts prove to be effective instead of counterproductive, as these forms of repression mark the state as "a Resolute Severe Tyranny: a regime that persistently violates some of the basic human rights of large segments of the population, is extremely authoritarian (that is, wholly undemocratic), and is utterly impervious to efforts to reform it" (Buchanan, 2013, p. 296). Should the state resort to such forms of repression, resistance up to revolution "by any means necessary" would be permissible.⁹⁵

Even in cases where these oppressive tactics do not legitimize revolution, they may still affect the moral status of activists' conduct towards government agents, in particular, the police and other frontline agents. Should the police tolerate violent counter-protests, they fail to perform one of their essential tasks. Here, the state may no longer legitimately monopolize violence, as transferring the right to self-defense to the state that does not in turn protect its citizens would no longer produce the good outcomes such transfers purport to realize. When the police fail to do their jobs, private citizens, and in this case protestors, may organize their own self-defense. Furthermore, should the police be the source of unjustified violence, they commit a particularly pernicious type of moral wrongdoing, as "doing so is not a mere failure in, but rather an inversion of, one's duty as protector" (Gardner, 2012, p. 106). In addition to police injustice becoming a further problem protestors may seek to address, protestors are licensed to treat the police with suspicion and distrust, and may legitimately refuse to even minimally cooperate with the police. This is because the open hostility the police have displayed makes it reasonable for the protestors to suspect that the presence of the police is a

⁹⁵ Some argue that revolution is fitting even regimes that effectively oppressively rule non-violently, e.g. Kapelner (2019). If this is correct, then the case for my arguments would be even stronger.

threat to the movement, and that any demands or orders issued by the police may be part of a repressive scheme. More simply, when the police act like the enemy of the people, the people should be vigilant against police activity.

In sum, the government can act in ways that make activities beyond civil disobedience potentially necessary and proportionate. In such cases, it seems permissible to turn to acts of uncivil disobedience, should uncivil disobedience prove to be effective, unless there are additional special moral concerns prohibiting escalation. In the following, I will argue that it is not the case that there are always such special moral concerns.

5.3 A defense of violence

When civil disobedience faces unjustified hostile responses from the government, escalation to uncivil disobedience may be both necessary and proportionate. I believe that this should be quite obvious, but if so, why has an argument of this sort not been offered hitherto? One reason is that theorists have typically conceptualized state injustice as a fixed target, and overlooked how the state can become even more unjust when it engages in unjust forms of counter-resistance. (This is true even of those theorists who share my view that activities that fall short of civil disobedience may be appropriate responses to state injustice (e.g. Delmas, 2018a; Lyons, 1998).) Another reason is that civil disobedience has been taken to enjoy some special normative status, which places some sort of upper limit on the acceptable range of means of struggle. I offered a general line of resistance to the purported special normative status of civil disobedience in chapter 2. I now want to look more closely at several different versions of what I take to be the most powerful objection to opening the door to uncivil disobedience: namely, that it involves, or risks involving, violence.

5.3.1 Looking forward to just harmony

Sabl (2001) argues that, even if due to perpetuating injustice the government and the majority deserve to face a revolution, violence may not be an appropriate means of resistance. Sabl's argument is not based on whether violence is effective or not when it comes to alleviating the injustice the oppressed suffer, but on what we owe to others insofar as others possess a sense of justice. Sabl's understanding of Rawls's sense of justice involves the capacity to mutually cooperate with others on fair and just terms (p. 312). Accordingly, when oppressors cooperate with members of their own group on fair terms, they display the capacity to cooperate with others on fair and just terms, even if they do not currently treat non-members justly. Nonviolent civil disobedience can appeal to this sense of justice and have reasonable prospects of promoting social change, while violence runs the risk of "caus[ing] an escalation of tit-for-tat retributions and increasing hatred" (Sabl, 2001, p. 314) and thereby threatens the prospects of reconciliation and the realization of a just harmony. Relevant to our current discussion, it may be argued that even if certain hostile responses seem to license escalation, we should refrain from doing so in order to avoid the adverse effects of violence.

Now, even if we admit that violence may sometimes undermine the prospects of achieving a just harmony, there are a number of reasons not to rule out violent resistance too quickly. First, we can draw from Candice Delmas's (2018a) defense of Black Lives Matter riots against the charge that violence undermines civic friendship. Delmas understands civic friendship as people's "willingness to live together despite their differences and their common endorsement of mutual reciprocity" (p. 62). This overlaps in important ways with Sabl's sense of justice. In cases where the government resorts to violent repression or other means of undermining the struggle against injustice, we can seriously doubt whether there is any civic friendship left to be undermined. It may be that "civic friendship is long dead before rioters come to bury it" (p. 66). Indeed, Sabl himself admits that if the state and the majority

deliberately refuse the demands for change but resort to violent repression, “they progressively forfeit the right to be treated as potential social partners. If they persist, they will eventually provide evidence that their sense of justice cannot be relied on, and will forfeit the right to be met by peaceful and cooperative means” (Sabl, 2001, p. 326). In such cases, violent uncivil disobedience that may otherwise jeopardize the prospects of just harmony is not responsible for jeopardizing the prospects of just harmony, as the repressive violence has already done so.

Second, there is something deeply problematic about insisting upon nonviolence when facing violence, a strategy that I have elsewhere labeled *unilateral nonviolence* (Lai, 2019a). When the government and the majority can employ violent measures to safeguard the unjust status quo and get away with it, they seem to gain evidence that violent repression is both an effective and costless strategy. Insisting upon unilateral nonviolence therefore incentivizes and encourages violent repressions and other effective hostile responses (p. 715). If we are to take the forward-looking considerations of civil disobedience seriously, we should also acknowledge *this* adverse effect. Indeed, the use of violence in social movements, especially in self-defense, has proved to be instrumental in making nonviolent social movements possible. Citing Charles Cobb Jr.’s *This nonviolent stuff’ll get you killed: How guns made the Civil Rights Movement possible* (2014) and Akinyele Omowale Umoja’s *We will shoot back: Armed resistance in the Mississippi Freedom Movement* (2013), Jason Brennan (2018) writes

Whites initially responded to black activism by beating, killing, and lynching blacks. Armed blacked militias fought back, sometimes by killing cops or national guard members. Once whites learned that blacks would fight back, they turned to less violent forms of oppression, and blacks in turn began using the nonviolent tactics with which we are familiar. But this nonviolent phase would have been impossible had blacks not violently defended themselves (p. 101).

Thus, in order to avoid incentivizing and encouraging repressive violence and other hostile responses, the readiness to use violence may be necessary. In contrast, when facing violent repression, unilateral nonviolence is imprudent if not deeply objectionable.

In addition, there are important expressive reasons not to insist upon unilateral nonviolence. Failing to resist oppression, even if resistance is ineffective, can express a lack of self-respect (Boxill, 1976), or show that we misunderstand or are ignorant of our own moral rights (Hill, 1973). When we face violence but refuse to engage in justified self- or other-defense, we leave open similarly nasty interpretations. Thus, in order to steer clear of the expressive harms against ourselves and others, we need to cease overplaying the importance of nonviolence.

5.3.2 Nonviolence is effective while violence is counterproductive

When it comes to revolutionary acts of overthrowing unjust regimes, the empirical evidence suggests that nonviolence works better than violence in terms of success rate (Chenoweth & Stephan, 2011). The key contributing factors to a successful revolution are the high participation rate and the diversity of the participants (p. 61). Nonviolent campaigns are generally better in achieving both, in comparison to their violent counterparts, because both the physical barriers (p. 35) (how able-bodied the participants must be) and moral barriers (p. 37) (whether participants perceive participation as immoral) as well as the costs of participation are lower (the amount of training required (p. 37) and the likelihood of suffering state retaliation (p. 38)). In virtue of having more participants and more diverse participation, nonviolent campaigns can impose more costs on the system (e.g. paralyzing the economy through non-cooperation (p. 44)) and facilitate loyalty shifts of the police and the military (because the police and the military have family and friends among the rebels (p. 47), or because the moral weight of violently repressing nonviolent movements is too high (p. 50)). We may thus suspect that since violence is generally counterproductive, so is resorting to violence when facing violent repression.

Now, we may accept that violence is generally counterproductive. It may indeed often drive away potential participants and incite violent repression. However, we need to be careful not to make the inference from the general counterproductivity of violence to the categorical ban on violence in each and every case, especially when facing violence ourselves. While violence may not be the best strategy to draw sympathy from the general public, it may well prove to be an effective defensive strategy when the oppressed constantly face violent threats. For instance, the Levander Panthers' organized self-defense in the 1970s San Francisco helped to protect their fellows against persisting and immediate homophobic violence (Delmas, 2018a, p. 59), and proved to be effective not in the sense of promoting larger political change, but in stopping unjustified violence then and there.

A closer examination of the history of the Civil Rights Movement will also help us see the benefits of the readiness to resort to defensive violence. While in the early 1960s the Student Nonviolent Coordinating Committee (SNCC) still endorsed a strict doctrine of nonviolence, local field secretaries (especially those in rural southern communities) often took a more relaxed stance towards armed self-defense. For nonviolent acts, such as registering to vote, were often met with organized white retaliation. Such was the case in Glendora in 1964, when Janie Brewer's four sons registered to vote. On that night "the sheriff and a 'truckload' of klansmen [sic] approached the farmhouse" for a night raid, but the Brewers and the SNCC workers were informed and well prepared. "Before the raiders reached the house, someone shone a floodlight on them. Others fired into the air. [Janie] Brewer stood on the front porch ready to hurl a Molotov cocktail. Everyone, including the sheriff, fled. Night riders never returned to the Brewer farm" (Cobb, 2014, pp. 181–182). In this instance and many other struggles during the Civil Rights Era documented in less sanitized reports of history, it was this practical attitude towards armed self-defense, rather than the strict adherence to the abstract principle of nonviolence, that made social struggle possible.

Furthermore, even the proponents of nonviolent resistance must concede that “[t]here is no consensus among social scientists about the conditions under which radical flanks [i.e. the existence of violent counterparts struggling for similar goals] either harm or help a social movement” (Chenoweth & Stephan, 2011, p. 43). While their evidence may support the claim that nonviolence is in general more effective, there is also evidence, as mentioned above, that there are specific circumstances where the use of violence, especially defensive violence, makes nonviolent social movements possible (Brennan, 2018; Cobb, 2014; Umoja, 2013). While conducting empirical research to identify the specific conditions under which violence works is clearly beyond the scope of this dissertation, we can draw insight from the works that identify the conditions where nonviolence works, and hold that at least when those conditions fail to hold, violence should not automatically be ruled out.

Nonviolence generally works better than violence due to numerous factors at different levels. I wish to highlight and discuss four of them. First, nonviolence draws more participants and more diverse participation, which may contribute to loyalty shift due to there being familial or other ties between repressors and activists. However, this may not always be the case. Even if sticking to nonviolent strategies can draw more diverse participation, the diversity may not reach the level where dissidents can have meaningful connections with those tasked with repression. The more segregated and polarized the society is, the less likely there will be personal bonds between the oppressors and the oppressed. This may have been true during the early days of the Civil Rights Movement, where nonviolent activities were met with violent repression (Cobb, 2014; Umoja, 2013).

Second, the moral weight of violently repressing social movements may dissuade those tasked with violent repression. However, this also is not always the case. Again, in segregated and polarized societies, members of dominant groups may fail to acknowledge the moral worth of nonmembers. This may also be the case when the state has actively and suc-

cessfully vilified and dehumanized members of specific groups (Stanley, 2018; Tirrell, 2012, 2017). Conversely, repression without remorse may also occur exactly because the oppressors see that the oppressed are moral equals. When we see others as equals, instead of extending our moral concern to them, we may see others “as rivals, insubordinates, usurpers, betrayers, and enemies...[and] subsequently be disposed to try to defeat, chastise, trounce, punish, destroy, and permanently close the eyes of those we know full well are people like us” (Manne, 2017, p. 158).

Third, participation in nonviolent campaigns may indeed often be less costly to potential participants. It is easier to remain anonymous, and one can often return home or to work without fear of retaliation (Chenoweth & Stephan, 2011, p. 38). However, should the state already resort to indiscriminate violent repression, or is determined and has the capacity to punish participants of nonviolent movements harshly, the advantage of nonviolent campaigns no longer obtains (Kalyvas & Kocher, 2007). In such cases, nonviolence does not matter anymore.

Fourth, the moral barrier of participating in violent campaigns may be higher than that of engaging in nonviolent campaigns. This is true when there is a widespread belief that violence is morally problematic and should not be employed. However, this belief can be challenged, especially when the government is extremely nonresponsive and the police resort to morally problematic means of repression and spark public outrage. For instance, according to polls conducted by the Chinese University of Hong Kong, in 2019 the Hong Kong Government’s nonresponsiveness to the Anti-Extradition Bill movement and decisions to violently repress initially peaceful protests have raised the agreement with the statement “when large-scale protests cannot force the government to respond, it is understandable that protesters

would take radical actions” to 59%.⁹⁶ When potential participants, correctly or incorrectly, judge that violence is not that morally problematic, the advantage nonviolence campaigns hold over violence campaigns is significantly reduced.

To recap, even if we agree that nonviolence is generally better than violence in terms of forward-looking considerations and effectiveness, we can sometimes identify scenarios where particular instances of violence may be better. It is a simple mistake to endorse a categorical ban on violence, especially when violence is employed as a response to violent repression and other hostile responses.

5.4 Self-fulfilling prophecies

At the end of the previous section, I pointed out that whether violence dissuades potential participants depends heavily on whether potential participants *believe* that violence is problematic. I believe that this is worth further discussion. Here, I would like to highlight two ways that beliefs about violence can generate self-fulfilling prophecies. Both of them form barriers to social struggles, and are therefore morally problematic.

First, potential participants may believe that violence dissuades other potential participants, and that without sufficient participation, social movements are doomed to fail. Thus, upon seeing violence, potential participants judge that participating would not be worthwhile, as participation in a social movement doomed to fail is a waste of time, if not unnecessarily putting oneself in harm’s way. This is the most direct way the beliefs about violence can negatively affect the prospects of success. This is a straightforward self-fulfilling prophecy. The belief that violence is counterproductive can make it true that violence counterproductive.

⁹⁶ Lee, F. L. E. (16 October 2019). Our research in Hong Kong reveals what people really think of the protesters—and the police. *The Independent*.
<https://www.independent.co.uk/voices/hong-kong-protests-police-violence-public-opinion-polling-support-a9158061.html>

Second, potential participants may for whatever reason believe that violence is morally problematic. As discussed earlier, this is the moral barrier that violent campaigns set up for themselves. This moral barrier also dissuades participation (Chenoweth & Stephan, 2011, p. 38). Without sufficient participation, the campaign is doomed to fail. The moral barrier of violence that leads to the failure of violent campaigns may be already somewhat problematic, as I will explain forthwith. However, if potential participants believe that violence is morally problematic because violence is counterproductive and thus morally unacceptable, as we may believe that the success condition is essential for any revolutionary act (Buchanan, 2013), we come to have another self-fulfilling prophesy: violence is morally unacceptable because violence is believed to be morally unacceptable.

Both of these are highly problematic. Part of the problem, in particular in the second case, is that something like the Gettier Problem (Gettier, 1963) may be involved. For other reasons and with ample evidence, one can come to believe that violence is wrong. This may lead one to justifiably believe that violence in this particular social movement is wrong. The belief that violence in this particular instance is wrong may also be a true one. It is indeed wrong, but because enough people believe that violence is wrong and refuse to participate, which makes the movement futile and thus wrong. Thus, one may have a justified true belief that violence is wrong in this particular instance. While this belief does not seem to qualify as knowledge, the widespread of this belief may robustly dissuade participation.

But more generally, when one believes that violence dissuades participation and is thus wrong, one may indeed know that violence dissuades participation and is thus wrong, but know these two propositions in a special way, namely, through possessing “maker’s knowledge, the special knowledge you have of something in virtue of making it” (Langton, 2009, p. 301). Maker’s knowledge is often innocuous. For example, a designer knows what the final product would eventually look like. Here, there are non-accidental and reliable con-

nections between the belief and the world, and furthermore nothing morally questionable is involved. Yet, sometimes maker's knowledge can be harmful. When discussing how pornography can be a type of harmful maker's knowledge, Rae Langton writes

Part of the harm is in the *shape* that is projected: the vision of what women are like—servile, inferior, less-than-human. And part of the harm is also in the *shaping*, the fact that the projection becomes, in contexts of oppression, a self-fulfilling one. In shaping women, pornography undermines a woman's autonomy, undermines the power a woman might otherwise have had to shape herself (p. 307).

I contend that these self-fulfilling prophecies that arise from the beliefs that violence is counterproductive and thus wrong are also harmful. They are harmful in cases where the use of violence, especially in self-defense, would otherwise be justified, but is made to be all things considered unjustified because of the unfortunate outcomes it brings forth. Such acts are rendered counterproductive and thus wrong by the beliefs that violence is counterproductive and thus wrong. By holding on to these beliefs, violent-averse potential participants play a significant role in undercutting the mobilization of participation. In cases where the struggle aims at just ends, these individuals hinder the struggle for justice.

Moreover, we may also add that these individuals are unjustly arranging the moral requirements of those who face unjust repression. Simon Keller (2016, 2018) introduces a troubling phenomenon: moral blackmail. The basic idea is that the moral blackmailer alters certain situations to make it the case that the victim acquires new moral prohibitions, such that the victim, insofar as she intends to act morally, must also act according to the moral blackmailer's will. A standard example is to change the working conditions and salaries of teachers during periods when students most need their teachers, say, a week before the final exam. Since going on strike during that period will cause the most damage to students, the obligation to their students prevents teachers from going on strike, which in turn makes it more difficult for teachers to protest against the exploitation (Keller, 2018, p. 493).

Similarly, violent-averse potential participants can create situations where it is impermissible to engage in otherwise justified violent activities, especially otherwise justified self-defense, by being disposed to withdraw participation whenever violence is present. They do so, intentionally or unintentionally, to make sure that social movements stay clean and pure, untainted by violence. Once they have created such situations, other participants have to give in to their will, or engage in moral wrongdoing. Here, we may follow Keller and pinpoint what is morally problematic: “[t]he complaint of the victim of moral blackmail is that she has deliberately been made subject to moral standards to which she should not be subject” (Keller, 2016, p. 709). When violence is an otherwise justified means of social struggle or self- and other-defense, it should not be the case that there is a moral obligation to refrain from violence. The wrong of violence aversion, in such cases, is that it creates unfair burdens to those who are at risk of immediate unjust violence.

“I have almost reached the regrettable conclusion that the Negro’s great stumbling-block in the stride toward freedom is...the white moderate who is more devoted to ‘order’ than to justice; who prefers a negative peace which is the absence of tension to a positive peace which is the presence of justice; who constantly says, ‘I agree with you in the goal you seek, but I cannot agree with your methods of direct action’” (King Jr, 2002, p. 75)

Similarly, we may say that a significant obstacle to the struggle against oppression is this aversion to violence, which creates the self-fulfilling prophecies that violence is counterproductive and thus wrong. These self-fulfilling prophecies are particularly difficult to tackle, as the mere use of more force and violence only reinforces them.

Yet, we may learn from the 2019 Anti-Extradition Bill movement, also in Hong Kong. Both the Beijing and Hong Kong governments have devised and employed more diverse forms of hostile responses. These include waging a disinformation war,⁹⁷ employing

⁹⁷ Myers, S. L. and Mozur P. (13 August 2019). China Is Waging a Disinformation War Against Hong Kong Protesters. *The New York Times*.
<https://www.nytimes.com/2019/08/13/world/asia/hong-kong-protests-china.html>

more pro-China criminal organizations to physically attack pro-democracy protestors,⁹⁸ engaging in more violent policing and firing non-lethal weapons at lethally and illegally close range,⁹⁹ vilifying the protestors as terrorist,¹⁰⁰ pressuring foreign tech companies to remove apps that help protestors monitor the mobilization of the police,¹⁰¹ and perpetrating sexual violence against detainees.¹⁰² In return, protestors have learned to put on more protective gear and employ more intricate tactics to react. Most importantly, protestors started to work under the principle that “they would stick together, no matter their methods. Peaceful protesters would not disavow the more extreme, sometimes violent tactics of the front-liners,” and started to appreciate the fact that such acts “would distract [police] officers long enough for others to escape.”¹⁰³ This refusal to dissociate from violence allows protestors the tactical flexibility to choose violent tactics, without having to worry about much of the adverse effects normally associated with violence.

In similar ways, potential activists can learn the instrumental value of violence in social movements. Through appreciating this value, we can break the vicious cycle that gener-

⁹⁸ Ramzy, A. (22 July 2019). Mob Attack at Hong Kong Train Station Heightens Seething Tensions in City. *The New York Times*.
<https://www.nytimes.com/2019/07/22/world/asia/hong-kong-protest-mob-attack-yuen-long.html>

⁹⁹ Hale, E. (12 August 2019). Hong Kong protests: brutal undercover police tactics spark outcry. *The Guardian*. <https://www.theguardian.com/world/2019/aug/12/hong-kong-protests-brutal-undercover-police-tactics-spark-outcry>

¹⁰⁰ Withnall, A. (14 August 2019). Hong Kong protests: China calls demonstrators ‘terrorists’, amid fears of military escalation. *The Independent*.
<https://www.independent.co.uk/news/world/asia/hong-kong-protests-china-airport-latest-demonstrators-terrorists-military-a9057306.html>

¹⁰¹ Chen, F. (10 Oct 2019). Apple pulls HK app as Beijing ups the pressure. *Asia Times*.
<https://www.asiatimes.com/2019/10/article/apple-pulls-hk-app-as-beijing-ups-the-pressure/>

¹⁰² Lau, C. (11 October 2019). Hong Kong student who accused police of sexual violence against protestors has taken legal advice and plans further action. *South China Morning Post*.
<https://www.scmp.com/news/hong-kong/law-and-crime/article/3032610/hong-kong-student-who-accused-police-sexual-violence>

¹⁰³ Wang, Y. (26 August 2019). Tactics change on front line of protests. *The Standard*.
<http://www.thestandard.com.hk/section-news.php?id=210989&sid=5>

ates the self-fulfilling prophecies that violence is counterproductive and thus wrong, and overcome the general objection that violence is counterproductive.

5.5 Conclusion

Civil disobedience seeks to remedy injustice. The government may respond to civil disobedience with hostility. Hostile responses can effectively neutralize the threat to the government. But in adopting them, the government may license escalation. By rendering civil disobedience futile, it makes escalation potentially necessary. By committing further injustices, it makes further escalation potentially proportionate. Unjust responses towards civil disobedience can render otherwise unjustified uncivil disobedience justified.

We may rightly worry about violence. However, if we take the forward-looking considerations seriously, we should also worry about how unilateral nonviolence incentivizes additional state violence. We should also worry about the expressive harms committed by insisting upon unilateral nonviolence. Furthermore, if we worry about the counterproductivity of violence, we also need to be careful not to overgeneralize this worry to scenarios where nonviolence is clearly useless. Most importantly, we should be wary of self-fulfilling prophecies that result from the belief that violence is counterproductive and thus wrong.

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This concludes our case against the Orthodox Resistance Thesis. I have argued that we should reject the Orthodox Resistance Thesis in favour of a more inclusive view of the ethics of resistance according to which uncivil disobedience is sometimes justified even in reasonably just societies. In particular, I have offered four arguments for the more inclusive view: the obedience argument; the counter-hate speech argument; the fairness argument; and

the escalation argument. In the two remaining chapters of the dissertation, the focus shifts to the other part of the Orthodox View: namely, the Orthodox Counter-Resistance Thesis.

Part 2

Beyond the Orthodox Counter-Resistance Thesis

6

Taking (unjustified) uncivil disobedience seriously

The Orthodox Counter-Resistance Thesis holds that in reasonably just societies the state and other citizens are justified in taking illegal political resistance seriously and treating it as relevantly different from other illegal acts when, but only when, the resistance in question involves civil disobedience (that satisfies certain other conditions such as necessity and proportionality). We began to attend to the ethics of counter-resistance in the previous chapter when presenting the escalation argument for uncivil disobedience. However, we did not challenge the Orthodox Counter-Resistance Thesis itself. Rather, the escalation argument appealed to an account of when and why certain forms of resistance are unjustified that was perfectly compatible with—and indeed very much in the spirit of—the Orthodox Counter-Resistance Thesis. By contrast, the aim of the two remaining chapters of the dissertation is to suggest that we have reason to be skeptical of it.

It might seem that we already have at our disposal a quick and easy way of dispensing with the Orthodox Counter-Resistance Thesis: namely, to adduce the claim (that we have argued for in Part 1) that uncivil disobedience is sometimes *justified* in reasonably just societies in concert with the following (seemingly platitudinous) view of justified counter-resistance:

b*) In reasonably just societies, the state and other citizens are justified in taking illegal political resistance seriously and treating it as relevantly different from other illegal acts when, but only when, the resistance in question involves *justified* resistance.

As we shall see, however, I believe that this seemingly platitudinous view is false. A different argument is required.

I will present two such arguments. In chapter 7, I will argue that the intuitively compelling idea that the state should treat civil disobedience (and possibly also justified uncivil disobedience) as relevantly different from other illegal acts by refraining from punishing turns out to be importantly self-undermining. In the current chapter I will argue for the claim that the state and other citizens are sometimes justified in taking uncivil disobedience seriously even when the uncivil disobedience in question is unjustified. (I shall focus, in particular, on instances of uncivil disobedience that deploy unjustified uncivil means.)

This claim might seem hard to defend. Unjustified activities typically warrant various kinds of negative treatment rather than being taken seriously. When people speak out of turn, it seems permissible to shout them down. When people disobey the law without sufficient justification, it seems apt to treat them as criminals, rioters, or even terrorists. We censure unjustified activities in order to convey blame and disincentivize similar acts, and such practices seem to be of paramount importance for the sake of social order, stability, and the protection of the rights and interests of the innocent. While it is widely recognized that the disadvantaged often cannot afford to wait and do not have the luxury to speak in ways that always conform to social expectations (Young, 2001, 2002; Zerilli, 2014), these hardships hardly make all acts of disobedience performed by the disadvantaged justified. It may well be that more appropriate means were available, but social actors for whatever reason did not choose them; or it may be that, unfortunately, no morally acceptable options presented themselves, but social actors still chose to act. People sometimes commit wrongdoing in their struggle to be considered, but this should not be too surprising. The requirements of morality are often stringent, especially when the activities in question breach legal norms or involve imposing nontrivial costs on others. Reckless protestors can easily overstep these restrictions. When the crowd is involved, things can easily go out of control. Social movements may also encompass a high degree of spontaneity and decentralized decision-making procedures (J. M.

Chan & Lee, 2010), where “there is no guarantee that the best choice is always chosen” (p. 8).

The aim of this chapter is to push back against the tendency to dismiss uncivil disobedience because unjustified means were involved. I will argue that even if particular demands are brought forward through unjustified means, the intended audience (be it the government or the general public) has reason to take them seriously regardless of how they are brought forward. As I understand it, taking a demand seriously involves listening to the demand, trying to understand and evaluate it, and being potentially prepared to act accordingly. I will argue that taking seriously the demands of those who engage in acts of uncivil disobedience that are unjustified on account of employing unjustified means is important because such acts may bring forward important but overlooked considerations that enable the society to make better political decisions. Furthermore, withholding the prospects of making better political decisions in order to prevent or disincentivize unjustified acts of disobedience runs the risk of exploiting the rights and interests of the innocent.

The chapter is in five sections. Section 6.1 offers the key epistemic argument for taking unjustified acts of disobedience seriously. The following three sections examine some important objections. Section 6.2 evaluates and rejects an objection based on the apparent low expected epistemic value of disobedience that involve typically unjustified means. Section 6.3 engages with objections based on ideas of moral standing and desert. Section 6.4 considers the objection that taking unjustified acts of disobedience seriously would incentivize more unjustified acts. Section 6.5 tests my theory by applying it to two real-world cases.

6.1 The epistemic value of dissent

A number of philosophers have argued that dissent in general has epistemic value, and helps to improve the quality of political decisions. Michael P. Lynch (2018) offers two explana-

tions of how this can be so. The first is the classical Millian account. Dissent can enrich the marketplace of ideas, and provide challenges to prevailing beliefs that chosen policies are in the public's best interest. By responding to these challenges, the prevailing beliefs can either be weakened, maintained or strengthened. But regardless of what beliefs we eventually come to have, they are the outcome of a more rigorous epistemic procedure, and this increases the chances of approximating the truth. The second draws from Elizabeth Anderson's (2006) epistemic account of democracy. Dissent can bring ignored or marginalized but diverse and relevant points of views to the public, and can thereby help democracies to make better political decisions. "[T]he expression of disagreement during group deliberation draws decision makers' attention to asymmetrically distributed information and diverse problem-solving strategies that may be relevant to the solution of public problems" (pp. 15–16). In addition, dissent at the post-decision-making stage can help decision makers evaluate whether the initial decision has gone wrong, and potentially reconsider the decision.

Lynch is well aware that dissent does not always realize such epistemic values. Whether it does so depends on at least two things: first, the quality of the dissent in question; and second, the quality of what he calls the "epistemic environment" (Lynch, 2018, p. 131). Let us begin with the quality of the dissent. There are two distinct ways in which acts of resistance can be unjustified. First, the goal a movement aims to realize (or in some cases, struggles to maintain) can be something unjust. For example, there are those who oppose gender equality, e.g. "incels" or "Men's Rights Activists" in the US and far-right rioters who have attempted to stop women from entering temples in India.¹⁰⁴ Second, a political act may be unjustified due to the means it employs. For example, there are those who appeal to violence when doing so is clearly counterproductive to a just cause such as the dissident who

¹⁰⁴ Dhillon, A. (3 Jan 2019). Protests break out in India after two women enter temple. *The Guardian*. <https://www.theguardian.com/world/2019/jan/02/indian-women-form-620km-human-chain-in-support-of-lifting-of-temple-ban>

headbutted Tony Abbot—a leading opponent of same-sex marriage in Australia—in 2017. This chapter focuses on the latter type. As headbutting Abbot shows, it is at least possible that unjustifiable means are employed for just causes.

Acts of resistance that fall under the category of having a just cause but employing unjustified means are not especially rare. As previously mentioned, the requirements of morality are often strict and thus difficult to observe. Especially when a large number of participants are involved, social movements may easily get out of control. Or it may be that disobedients misjudge and overestimate the importance and urgency of their cause, and choose unnecessary or disproportionate means in pursuit of their goals. Or it may be that unfortunately there just happens to be no morally acceptable means of social struggle, but those who suffer from injustice nevertheless choose to resist. For instance, as noted in chapter 4, the 1967 Detroit Riot was presumably an unjustified example of uncivil disobedience due to the very significant harms it imposed on the innocent. In spite of this, it highlighted the injustice of racism and racial policing, and much could have been learned from it. More generally, despite the unjustified nature of acts of uncivil disobedience that fall under this category, they appear to be capable of bringing forward important considerations, and the targeted audience (be it the government or the general public) stands to make better political decisions by incorporating the relevant pleadings and demands.

Cases where there are no morally acceptable means of advancing social struggles might present a unique category. Here, there is a conflict between the requirements of morality and the realization of certain epistemic values. Should social actors act only according to the requirements of morality, then their plight may never be heard, which may lead to unresolvable injustices. If, instead, social actors choose to act, the government or the general public will be presented with unique opportunities to tackle certain injustices. We may say that these are cases where certain epistemic values are unique to unjustified acts of resistance.

This brings us to the second condition for dissent to realize its epistemic value, namely, the quality of the epistemic environment. According to Lynch (2018), the epistemic environment refers to some background conditions under which political discourses are held: whether there is legal protection for the freedom of assembly, speech, and press; how pervasive propaganda (as Jason Stanley (2015) characterizes it) is; how severe epistemic injustice (as Miranda Fricker (2007) characterizes it) is and how likely dissent is to fall upon deaf ears. Lynch highlights the importance of the last element. He labels the refusal to be open to and to consider the information provided by others, and in the cases relevant to this chapter, information provided by uncivil disobedience, “epistemic arrogance.” His simple and straightforward proposal is that epistemic arrogance is something to be discouraged, as it directly prevents dissent even of good quality to realize any epistemic value, and undermines the prospects of making better political decisions.

These considerations suggest the following simple argument in favor of taking unjustified acts of uncivil disobedience seriously. We are justified in taking seriously acts of uncivil disobedience that are unjustified on account of employing unjustified means since there is every reason to think that such acts will be of good epistemic quality and that taking them seriously will be likely to realize significant epistemic value. Conversely, refusing to do so runs the risk of evincing epistemic arrogance and forgoing the chance to make better political decisions.

6.2 The limited epistemic resource objection

This simple argument faces a number of objections. The first objection starts from the observation that public attention is a limited resource and that it is impractical for any decision-making procedure to constantly take every point of view into consideration.

When a democratic sovereign decides on a collective choice...the collective decision excludes certain considerations from the sovereign’s ongoing deliberations. One

might say, expressly adopting the language of practical politics, that these considerations are removed from the political agenda” (Markovits, 2005, p. 1925).

And when it comes to deciding which points of views to exclude, it seems apt to start with those that have lower expected epistemic value. It may thus be argued that while ideally, we ought to take acts of disobedience that aim at just cause but involve unjustified means seriously, given the evidence and limited resources we have, it is appropriate to exclude political activities due to the typically unjustified means involved. This is because the means typically prefigure the ends, and unjustified means reliably indicate unjust ends.

To further spell out this objection, we can first identify a number of means that are typically unjustified. For instance, bribery is probably always problematic, and so is vote buying (Umbers, Forthcoming). The threat of violence is antithetical to democratic deliberation—where reason giving is essential, for “if only one side can make credible threats, then the kind of communication at issue is more like command, while if both sides can make threats, then the situation is one of bargaining rather than arguing” (Dryzek, 2000, p. 70). The actual use of violence, especially interpersonal violence, is even worse. While it is possible that those who resort to these typically unjustified means do so because they suffer intolerable injustice and have no other options, more likely it is because they disregard the requirements of morality. While it is possible that those who disregard the requirements of morality just happen to pursue something that is moral, it is highly unlikely. There are just so many possible goals people may want to pursue, and many of them fall outside the boundaries of morality. Only out of pure coincidence will options that fall within the boundaries of morality be chosen, and those who disregard the requirements will more likely choose goals that fall outside. We may furthermore suspect that those who resort to coercion do so because what they propose lacks what some call the “unforced force of the better argument” (Habermas, 1998, p. 37). Thus, the expected epistemic value of taking seriously acts of uncivil disobedience that employ typically unjustified means is sufficiently low. Since the means typically

prefigure the ends in this way, we can use typically unjustified means as indicative of low epistemic value. Given the limited epistemic resources we have, it is appropriate to disregard the pleadings and demands of uncivil disobedients who adopt unjustified means.

This line of argument is problematic, for at least three reasons. First, typically acceptable means are often “cheap.” At least within the limits of legal dissent and protests, people can easily get away with making unjust demands, even if they do not eventually get what they want. For example, people are not sent to jail by merely attending racial supremacist rallies or posting dangerous speech—“speech that dangerously incites the incontrovertible violation of others’ moral rights” (Howard, 2019, p. 7)—online. The cheapness of acceptable means, especially legal means, of demanding political change, in no way disincentivizes people from making unjust demands. Though this by itself does not make typically unjustified means more likely to indicate just demands, it casts doubt on whether typically acceptable means indicate just demands *more* than typically unjustified means.

Second, we may question whether we can evaluate the means employed by acts of disobedience without properly assessing their ends. To judge whether a particular act of disobedience employs unjustified means is not as simple as “we know it when we see it.” Indeed, more disruptive and harmful means are more difficult to justify, but to dismiss these means just because they are typically unjustified without proper examination may be reckless. This is because whether a particular means is justified depends in part on what the ends are. In cases of severe injustice, otherwise uncivil movements (Delmas, 2018a), limited criminal activities (Shelby, 2007), or even (somewhat restrained) riots can potentially be justified (Pasternak, 2019). Of course, the severity of the injustice a political action aims to address does not by itself suffice to justify the action, but without taking the goals of those activities into consideration, we run a nontrivial risk of incorrectly judging justified activities as unjustified.

Third, even if certain unjustified acts of uncivil disobedience are genuinely of low or no epistemic value, and we only have limited resources to deliberate upon a limited range of points of views, outright exclusion without any consideration at all may not be the most responsible epistemic conduct. There is a completely feasible alternative: briefly evaluating the demands, goals, and causes of acts of disobedience before making the decision to exclude. The demands, goals, and causes of acts of disobedience are often easy to identify. Social movements often make their demands upfront. Even those that lack a rigid command structure and involve a high degree of spontaneity can have interpretable goals. For example, the goal of Occupy Wall Street was to address social and economic inequality, and the goal of the ongoing “Men’s Right Activism” is to secure male privileges and subjugate women through policing patriarchal gender norms (Manne, 2017). Thus, even if epistemic resources are limited, it may still be perfectly feasible to undertake a brief investigation before opting to exclude.

In sum, the employment of unjustified means does not give us sufficient epistemic reason to exclude the pleadings and demands of those who choose such means. Refusing to take them seriously by not even briefly considering their demands is a form of epistemic arrogance.

6.3 Standing and desert

The objection we considered in the previous section was an epistemic objection. A quite different kind of objection is that there is some significant *non-epistemic* reason to refuse to take seriously the demands of those who engage in unjustified acts of uncivil disobedience. One objection of this sort involves appealing to the wrongfulness of unjustified acts of uncivil disobedience. In virtue of their past wrongdoing, we may be morally entitled to treat unjust social actors differently. Here, despite being presented with reasons to act for their sake, it is

appropriate for the intended audience to disregard those reasons. Thus, even if we acknowledge that the cause they pursue is just, it may be appropriate to refrain (and perhaps even inappropriate not to refrain) from taking their demands seriously.

There appear to be two main ways of arguing for this conclusion, neither of which I find particularly promising. The first is to appeal to the idea of moral standing. Accordingly, it might be argued that when people engage in serious wrongdoing, they dissociate themselves from our moral community, which is defined by certain norms of reciprocity. Once they have dissociated themselves from our moral community, they lose their standing to make moral demands of us. They have violated the norms of reciprocity in the first place, and we are no longer bound by a duty of reciprocity towards them. Thus, even if what they demand of us through their acts of disobedience is otherwise just, we need not give in to those demands.

The second is to appeal instead to the idea of desert and to argue that when people engage in serious wrongdoings, they become undeserving, and it is fitting that their level of well-being is lowered or kept low to match their desert. When activists engage in unjustified uncivil disobedience, it is unfitting to increase their level of well-being by paying attention to what they demand. To do so would be at odds with the basic idea of desert. Thus, it is morally appropriate to refrain from taking serious unjustified acts of uncivil disobedience.

Both lines of argument are problematic. Most straightforwardly, the success of a political movement with a just cause normally would not just benefit those who have participated in the movement. There are those who, for various good or bad reasons, did not participate, and in cases relevant to our current discussion, did not engage in wrongdoing. In addition, it may also very well be that most participants within an unjustified political movement did not take part in the unjust acts that make the movement overall unjustified. By denying wrongdoers the raise of well-being by not paying attention to their demands, we also with-

hold what we owe to those who do not deserve suffering and still have proper standing to make demands of us. It may be thought that the government can distinguish between groups or particular individuals that have engaged in wrongdoing and those who have not, and give in to the demands where it affects those who have not engaged in wrongdoing, but still withhold those that will raise the wellbeing of the wrongdoers. Whether this is feasible can be doubted. However, the more straightforward problem is that there seem to be more sensible existing alternatives that involve making the political change to approximate justice, and punishing the wrongdoers so to match their wellbeing to desert.

In addition, in cases where the goals and demands of dissidents are directed against severe injustices, both the standing and desert arguments will backfire. If severe injustices persist because we withhold what we owe to others, then by the standing argument we may lack the moral standing to demand social actors act morally towards us; and by the desert argument, we may deserve suffering due to our past wrongdoings to those who suffer from injustice. By spelling out these odd theoretical consequences, I am not suggesting that the supposed unjustified means employed by those social actors may in fact be justified; that is equally implausible. Instead, the backfiring response simply shows that we should not have started with standing or desert in the first place.

6.4 The incentives objection

Finally, it might be objected that it is important to refrain from taking seriously the pleadings and demands of those who engage in unjustified uncivil disobedience because of the need to disincentivize such acts. Consider, by analogy, the idea that we should never negotiate with terrorists. This is a loaded claim that often overgeneralizes, and we should treat it with caution. However, it does appear to capture something important: that giving in to the demands of terrorists would risk incentivizing acts of terrorism. Consider paying a ransom to terrorist

kidnappers. While not paying the ransom seems to condemn hostages to horrific deaths, paying the ransom would not only incentivize future kidnappings, but would also fund other terrorist activities (Howard, 2018). Similar concerns seem highly relevant to cases of unjustified acts of uncivil disobedience.

It might be thought that if activists expect that employing questionable means would be counterproductive to their goals, they would refrain from engaging in such activities. Thus, if we hold firm and make it publicly known that we will refuse to consider their demands, or more feasibly, refuse to carry out their demands even if we find them reasonable, we will disincentivize unjustified acts of disobedience. This strategy leads to a clear and simple benefit: We will minimize the occurrence of questionable acts, and those who wish to make a plea will learn to choose the most appropriate methods. However, even if refusing to take unjustified acts of disobedience seriously will bring forth this benefit, whether it is morally acceptable depends in part on what alternatives we have.

In fact, we already have legal punishment as a feasible alternative. If unjustified means are unjust to the extent that they are illegal, then we already have a means of deterrence. Unlike the “real” terrorists—those who kidnap and murder the innocent, who typically avoid punishment—activists may find it harder to avoid punishment, and the punishment we have already provides substantial disincentives. Especially when there are legal methods to make demands, rational dissenters have very little reason to choose unjustified and illegal means. On the other hand, if unjustified means are not unjust enough to be illegal, then we might question whether it is proportionate to disregard just demands just to disincentivize (most likely) trivial wrongdoings.¹⁰⁵

¹⁰⁵ This might lead to the question of whether the state has the moral standing to punish those who have (unjustifiably) breached the law in order to promote social change. Anthony Duff (2010), for example, argues that if through the failure to provide a free and equal society, the state makes illegal activities reasonable options for the disadvantaged, the state may lack the moral standing to blame activities it is complicit in. Since punishment necessarily conveys

Furthermore, and more importantly, the very best way to disincentivize any political action with just demands, is to become more responsive to the pleadings of others. Acts of disobedience normally focus on realizing some goals. When those goals are realized, the reasons for continuing the movements no longer exist. Thus, by “giving in” to the just demands and realizing the goals of those movements, we can easily dissuade participants from participating any further. Indeed, if we have paid enough attention to the plight of others, few if any would be forced to choose between accepting their own oppression as it is and engaging in unjustified acts of uncivil disobedience (or even in any social movements at all). By being more responsive, we can prevent the problem of how to disincentivize unjustified acts of uncivil disobedience from emerging in the first place.

Some may worry that if we give in to the demands of unjustified acts of disobedience too easily, participants will feel entitled, and make further demands. This may be true, but we need to ask whether there is anything wrong with this. If the further demands social actors make are just, then giving in to those demands is also reasonable. In contrast, if those further demands ought to be rejected, then we should reject them. Surely giving in to just demands and refusing to give in to unjust demands sends exactly the right message to current and future social actors: demands are accepted not because we are coerced to give in, but because we have judged the content to be worthy. And should we be able to distinguish the worthiness of the content accurately enough, the signal can help to disincentivize acts of disobedience without a just cause: if the cause is less than just, escalation will not work.

A further worry is that if we become more responsive and also take unjustified acts of disobedience seriously, social actors will become inclined to choose unjustified means to bring forward their case. After all, there seems to be no reason, at least in terms of incentives,

blame, the state may thereby lack the moral standing to punish those activities. I agree that this is a legitimate challenge to punishment. However, just as I have argued previously, it also has implications for refusing to take the demands seriously. Thus, the next alternative that I examine, namely, to simply give in to just demands, seems far superior.

for social actors to observe the requirements of morality. Whether this worry is genuine depends on empirical evidence about human psychology, but we do have some evidence that points in the opposite direction. When accounting for why nonviolent revolutions are more effective than their violent counterparts, Erica Chenoweth and Maria J. Stephan (2011) point out that among other factors, the moral barriers to engaging in violent activities are higher than the barriers to engaging in nonviolent activities (p. 37). This suggests that at least a substantial portion of potential social actors do care about the requirements of morality. How troublesome this worry is depends on the portion of amoral potential social actors; it may not be as troublesome as it first appears.

In addition, if we are to take incentives into consideration, we should also reflect upon what incentives the government and dominant groups have. If the refusal to take unjustified disobedience seriously is widely regarded as a legitimate means to disincentivize unjustified disobedience, the government and dominant groups may be incentivized to become more irresponsible and adopt more repressive means to provoke social actors. Given the spontaneity and decentralized decision-making procedures of many social movements, these objectionable ways of responding to social movements can easily push social actors to adopt questionable means. And once this happens, the government and dominant groups get to legitimately dismiss the just demands and pleadings of social actors. As it is clearly objectionable to reward and encourage the government and dominant groups to become more objectionably irresponsible, or allow objectionable irresponsiveness to craft its own justification, the refusal to take unjustified disobedience seriously should not be regarded as an acceptable strategy.

6.5 Two Applications

I want to conclude this chapter by considering the application of my account to two real-world cases in order to see whether the account produces acceptable verdicts.

6.5.1 Threats and violence against the anti-gay campaign

In 2017, Australia held a non-compulsory postal survey on the legalization of same-sex marriage. During the debate prior to the survey, opponents of legalization launched a fierce campaign in an attempt to counter the overwhelming support for legalization. As expected, the campaign included spreading homophobic lies, which could be rightly described as “offensive and hurtful to LGBTI Australians and their families” and “disgraceful in its dishonesty.”¹⁰⁶ Anti-same-sex marriage groups have long been the target of protests. However, in response to the offensive and hurtful statements and advertisement made by those groups, some of the protests were less than civil. A prominent anti-gender equality group, the Australian Christian Lobby, for example, received death threats, had eggs thrown at their offices, and had packages containing white powder mailed to them (though the suspicious packages were discovered and intercepted by the postal service).¹⁰⁷

Let us just assume that at least some of these violent acts constituted unjustified forms of uncivil disobedience. The goals of the actors were well known: to express support for same-sex marriage; and to neutralize the offensive and hurtful things said by the anti-gender equality groups. To be sure, there is a genuine concern that these acts of violence may have been damaging to the public image of the pro-same-sex marriage campaign, but here we are more interested in the question of whether the unjustifiability of such acts would make us justified in refraining from taking seriously the demands contained therein.

¹⁰⁶ Koziol, M. (30 August 2017). Shorten blames Turnbull for 'total rubbish' TV ad from same-sex marriage opponents. *The Sydney Morning Herald*.
<https://www.smh.com.au/politics/federal/shorten-blames-turnbull-for-total-rubbish-tv-ad-from-samesex-marriage-opponents-20170829-gy6q02.html>

¹⁰⁷ Sibthorpe C. and Pianegonda B. (25 August 2017). Suspicious packages addressed to Australian Christian Lobby cause mail centre evacuation. *ABC*.
<https://www.abc.net.au/news/2017-08-25/suspicious-packages-addressed-to-acl-causes-evacuation/8844052>

The answer to this question, I believe, is no. My account provides a simple explanation. Regardless of the means that were employed, highlighting the offence and harm caused by the things anti-gender equality groups said and the attempt to deny marriage equality helps us better understand the plight suffered by vulnerable groups. The means they have chosen may well have been disproportionate, unnecessary, counterproductive, and arguably disrespectful, but nonetheless they presented demands that were worthy of our attention. Disregarding the injustice and denying what was rightfully theirs would, I suggest, have been to impose suffering on those who do not deserve it and to withhold what we owe to them.

6.5.2 The Anti-Extradition Movement

In 2019, the people of Hong Kong went to the streets to protest against the controversial extradition bill—the Fugitive Offenders and Mutual Legal Assistance in Criminal Matters Legislation (Amendment) Bill, which would enable Hong Kong to arrest and extradite criminal fugitives to China. Protestors held the view that the bill would give China legal leverage to silence political dissent in Hong Kong, and would in effect eliminate the protection of the rule of law. The movement was initially nonviolent. However, unchecked police violence and misconduct—which included assaulting journalists (and blinding an eye of an Indonesian journalist with rubber bullets),¹⁰⁸ arbitrary arrests and abusing detainees,¹⁰⁹ driving a motorcycle into the crowd and hitting people, firing live rounds and injuring protestors unneces-

¹⁰⁸ Graham-Harrison, E. (4 October 2019). Hong Kong protests: journalist blinded in one eye amid mounting violence. *The Guardian*.

<https://www.theguardian.com/world/2019/oct/03/hong-kong-protests-journalist-blinded-in-one-eye-as-attacks-on-media-escalate>

¹⁰⁹ Macfie, N. and McPherson, P. (20 September 2019). Amnesty accuses Hong Kong police of abuses, torture of protesters. *Reuters*. <https://www.reuters.com/article/us-hongkong-protests-amnesty/amnesty-accuses-hong-kong-police-of-arbitrary-arrests-torture-idUSKBN1W42C3>

sary,¹¹⁰ and invading the privacy of a woman who accused police officers of gang rape—¹¹¹ignited public outrage. “[A]bout half of Hong Kongers say that, on a scale of zero to 10, they would rate their trust in the police at zero.”¹¹² Some protestors went a step further and resorted to violence, including vandalizing public property and private shops, throwing bricks and Molotov cocktails and shooting arrows at the police.¹¹³ A person was also set on fire after arguing with protestors.¹¹⁴ Many of these violent acts were committed after 23 October, when the original demand of the protest was met, though further demands, most notably the investigation of police violence, were denied.¹¹⁵ In addition to denying that the police were “out of control,” Carrie Lam, the Chief Executive of Hong Kong, publicly stated, “If there’s still any wishful thinking that by escalating violence the Hong Kong SAR government will yield to pressure to satisfy the so-called political demands, I am making this statement clear and loud here: that will not happen.”¹¹⁶

¹¹⁰ Chan, H., Cheng, K. and Creery, C. (11 November 2019). Hong Kong police fire live rounds and tear gas as protesters disrupt morning traffic in citywide ‘general strike’ bid. *Hong Kong Free Press*. <https://www.hongkongfp.com/2019/11/11/hong-kong-police-fire-live-rounds-tear-gas-protesters-disrupt-morning-traffic-citywide-general-strike-bid/>

¹¹¹ Creery, J. (12 November 2019). ‘Grossly unprofessional’: Lawyers slam Hong Kong police for ‘privacy breach’ after woman accuses officers of gang rape. *Hong Kong Free Press*. <https://www.hongkongfp.com/2019/11/12/grossly-unprofessional-lawyers-slam-hong-kong-police-privacy-breach-woman-accuses-officers-gang-rape/>

¹¹² Tufekci, Z. (12 November 2019). UFEKCI

¹¹³ Smith, J. and Lamb, K. (14 November 2019). Flaming arrows and petrol bombs: Inside Hong Kong protesters’ ‘weapons factories’. *Reuters*. <https://www.reuters.com/article/us-hongkong-protests-weapons/flaming-arrows-and-petrol-bombs-inside-hong-kong-protesters-weapons-factories-idUSKBN1XO1A5>

¹¹⁴ Kuo, L. (11 November 2019). Hong Kong protests: man shot by police and burns victim in critical condition. *The Guardian*. <https://www.theguardian.com/world/2019/nov/11/hong-kong-police-shoot-demonstrator-during-morning-rush-hour>

¹¹⁵ Other demands include the retraction of the characterization of the protest as “riots,” the release and full exoneration of arrested protestors, the resignation of the Chief Executive Carrie Lam, and universal suffrage with civic nomination for the Chief Executive legislation.

¹¹⁶ Needham, K. (11 November 2019). Carrie Lam labels protesters enemy of the people, vows they ‘will never win’. *The Sydney Morning Herald*. <https://www.smh.com.au/world/asia/graphic-footage-shows-hong-kong-police-shooting-protester-at-close-range-20191111-p539f2.html>

I shall simply assume that, while the demands, especially to undertake a proper investigation of police violence, were highly reasonable, some of the means employed by protestors were plainly appalling. The crucial question for our purposes is whether these unambiguously wrongful acts justified the authority's refusal to take seriously the just demands. My account claims that they do not. Though unjust, many of these unjust acts of protest were provoked by the lack of responsiveness of the government and the brutality and misconduct of the police. The obvious key to de-escalation is being more responsive. Failing to be responsive will only make things worse. Refusing to give in is highly akin to collective punishment in terms of denying the rights of the innocent, as if they were also responsible for the unjust acts of others. If we apply the same moral standing or desert standards against the government and the police, we may have to admit that many unacceptable means of resistance are unproblematic, which seems highly absurd. Finally, if we take incentives into consideration, we may even suspect that the government and police were waiting for, or even provoking, the crowd to lose control, which would purportedly legitimize the government's refusal to be responsive. Thus, both in terms of incentives and protecting the innocent, refusing to give in is unacceptable.

6.6 Conclusion

Acts of uncivil disobedience, even those that are unjustified on account of employing unjustified means, often have significant epistemic value. Thus, in order to make the best political decisions we can, we ought to take such acts seriously. It might be thought that in spite of the epistemic value that unjustified acts of uncivil disobedience may realize, we are entitled to dismiss them because the expected value is too low to warrant our attention, or because the dissidents are undeserving or lack the proper moral standing to make demands of us, or be-

cause we need to disincentivize unjustified political actions and disregarding them is the best way to do so. I have argued that none of these arguments survives closer scrutiny.

Reflecting on how we should respond to apparently unjustified acts of uncivil disobedience, it might be tempting to respond by saying that perhaps these acts are not unjustified after all. I am obviously in favor of extending the range of justified acts of resistance beyond the Orthodox View; this was, in effect, my aim in Part 1 of the dissertation. However, there are also limits. Certain forms of violence are simply unjustifiable. My aim has been to show that, even in these cases, it may be inappropriate to prematurely dismiss acts of resistance. In thinking about how to respond to acts of resistance, perhaps the most important question is how we can incorporate the reasons presented by social actors—civil and uncivil, justified and unjustified—to better the society.

As I see it, this conclusion is of the first importance. Even if social actors engage in unjustified activities, we can and should seek to extract a significant benefit from them. This is by no means a justification for unjustifiable activities. Rather, it is just to say that there are benefits to be had, depending on how we ourselves respond to these non-ideal responses to a non-ideal world.

7

Punishing civil disobedience¹¹⁷

In the previous chapter, I focused on one key aspect of the Orthodox Counter-Resistance Thesis: the idea that we are justified in *taking seriously* acts of resistance only insofar as they involve civil disobedience. In this chapter I want to focus on another important aspect of the Orthodox Counter-Resistance Thesis: the idea that we are justified in treating resistance as relevantly different from other forms of illegal action by *refraining from punishing* acts of resistance when, but only when, they involve civil disobedience.

Given the arguments of the dissertation hitherto, one might expect that my strategy in the current chapter would be to concede the claim that such differential treatment is appropriate in the case of justified civil disobedience and then simply to extend it to justified uncivil disobedience. Certainly, the claim that the state should refrain from punishing justified acts of civil disobedience is extremely intuitively compelling. Many of those who have engaged in civil disobedience have faced legal punishment: leaders of the Hong Kong Occupy Central, Black Lives Matter activists, Occupy Wall Street participants, Civil Rights activists, Henry D. Thoreau, and as some have argued, Antigone of Thebes (Daube, 2011; Tiefenbrun, 1999). But there seems to be something deeply problematic about the treatment these civil disobedients have received. Many of them have sought to bring forth much needed political change without violating the demands of morality (Brownlee, 2012; Celikates, 2016a; Markovits, 2005; Rawls, 1999; W. Smith, 2013). Imposing such harsh sanctions seems a poor way of

¹¹⁷ A slightly modified version of this chapter has been accepted for publication in *Ergo*: Lai, T. H. (Forthcoming a). Civil disobedience, costly signals, and leveraging injustice. *Ergo*. (Accepted 29 May 2020).

repaying those who have fought for racial, gender, social and economic equality and against unjust wars and tyranny, especially when these problems persist precisely because ordinary citizens and the state did nothing to prevent, and even actively played a role in perpetuating, the injustices in question and, hence, made civil disobedience necessary in the first place. In light of these considerations, it may seem obviously true that when civil disobedience is justified, punishment is inapt. Indeed, the High Court of Taiwan has found the leaders of the Sunflower Movement—the 2014 mass civil disobedience—“not guilty on the basis that their actions were justified civil disobedience.”¹¹⁸ Surely, this is the model we should strive to adopt.¹¹⁹

In fact, however, my strategy will be quite different. I shall argue that the claim that the state should refrain from punishing justified acts of civil disobedience turns out to have certain implications that are surprising in themselves and hard to square with both theses of the Orthodox View. The central idea is that punishment plays an indispensable role in contributing to civil disobedience’s overall ability to serve as a *costly signal*: one that allows civil disobedients to distinguish themselves from speakers who lack the relevant sincerity and seriousness, which in turn constitutes the reliability and effectiveness of their communicative act. Without punishment, the effectiveness of civil disobedience is compromised. Spelling out this unfortunate consequence will help us better understand the nature of civil disobedience: civil disobedients leverage the punitive injustice they suffer to amplify their communicative force. This will lead to two implications. First, the moral status of civil disobedience

¹¹⁸ Hioe, B. (14 March 2018). Not Guilty Verdict Upheld for Sunflower Movement Protesters after Appeal by Prosecutors. *New Bloom*. <https://newbloommag.net/2018/03/14/second-ruling-sunflower/> See also Jones and Su (2017) for a democratic confrontational argument for the justifiability of the Sunflower Movement, and a democratic harmony argument against punishment.

¹¹⁹ Again, some go a step further and argue that regardless of whether civil disobedience is justified, it ought not to be punished, as there’s a moral right to civil disobedience, either grounded on the right to conscience (Brownlee, 2012) or the right to political participation (Lefkowitz, 2007).

and punishing it appear to be unstable: refraining from punishing civil disobedience may render civil disobedience ineffective, and thus unjustified, and thus liable to be punished; but punishing civil disobedience can make civil disobedience effective, and thus justified, and thus not liable to be punished. Here, under specific circumstances, the state may be left with no morally acceptable course of actions in light of intuitively plausible requirements of the Orthodox Counter-Resistance Thesis. Second, the state may make uncivil disobedience justified by adhering to a requirement of justice, namely, to not punish justified civil disobedience.

The chapter is in three sections. Section 7.1 provides an argument for the claim that the state should refrain from punishing justified acts of civil disobedience. Section 7.2 discusses the key claim that civil disobedience functions as a costly social signal and explains how punishment is vital for it to do so. Section 7.3 spells out the problematic implications.

7.1 The injustice of punishing justified civil disobedience

Civil disobedience is illegal, and illegal activities that are caught are normally punished. But is the state justified in punishing justified civil disobedience—activities that are so very distinct from “ordinary offending” (Brownlee, 2012)? To properly answer this question, we need to bear in mind that punishment itself requires moral justification, as “[p]unishment is probably the most awful thing that modern democratic states systematically do to their own citizens” (Tadros, 2011, p. 1). We need to closely examine what potentially justifies punishment, and see whether those justifications apply to punishing justified instances of civil disobedience. Here I will primarily focus on the fair play theory, as it provides a unified account of why we have a duty to obey, why illegal activities normally warrant punishment, and how civil disobedience can be justified. All these will add up to the conclusion that civil disobedience, if justified, ought not to be punished. I will then briefly consider other theories of pun-

ishment and the possibility that punishing civil disobedience can be justified on special considerations.

7.1.1 The fair play theory

The basic idea of the fair play theory of political obligation is that when people voluntarily benefit from a cooperative scheme, they have a duty to do their fair share in contributing to the cooperative scheme (Hart, 1955; Klosko, 2004). Enjoying the fruits of the cooperative scheme but refraining to contribute is free riding. While free riding does not necessarily threaten the efficiency or stability of the cooperative scheme (though it sometimes does), it involves a form of “unfair self-selection” (Simmons, 2001, p. 30) or “objectionably preferential treatment” (Cullity, 1995, p. 22) to oneself, and is thus morally dubious.

When the law is sufficiently just, a duty of fair play is present and grounds the *pro tanto* duty to obey the law. This is because the law specifies the terms of a fair cooperative scheme under which all citizens benefit. There may be different ways to understand the benefits this cooperative scheme provides. For example, it can be the most efficient way individuals can rescue each other from the threat of the state of nature (Wellman, 2005), or to safeguard the rule of law—that which enables individuals to exercise their individual autonomy (Dagger, 1997; Moraro, 2019; Raz, 1986). In virtue of benefiting from this cooperative scheme, individuals acquire a fair play duty to obey. Refusing to obey the law constitutes a *pro tanto* wrong by accumulating an unfair advantage: enjoying the benefits but not doing one’s fair share.

This leads to the grounds of punishment. When an individual hoards an unfair advantage, fairness demands that the unfair advantage be relinquished. It is the business of the state to get back from the perpetrator through inflicting punishment. “Justice—that is, punishing such individuals—restores the equilibrium of benefits and burdens by taking from the in-

dividual what he owes, that is, exacting the debt” (Morris, 1968, p. 487). The emphasis here is on getting back the unfair advantage. For punishment to be just, the punished must have gained unfair benefits. In the following, I will show that despite its illegal nature, sometimes civil disobedience has gained no unfair advantages, and can thereby be justified against both the duty to obey and punishment.

In cases where the law fails to meet the standards of fairness, but rather involves exploitative cooperative schemes, those who are on the privileged end of the law no longer contribute to and benefit from a fair cooperative scheme. Rather, they are enjoying unfair advantages over those who are on the other end of the law. In such cases, Candice Delmas (2014a) argues that in order to avoid accumulating unfair advantages, in principle the privileged have three options to fulfil their duty of fair play: “exit, restitution, and radical reform.” However, as “[e]xit is often excessively difficult, and is generally undesirable” and “[r]estitution is often practically impossible, and is generally insufficient” (p. 476), promoting radical reform is the only reasonable way to fulfil one’s duty of fair play. When legal methods of promoting radical reform is infeasible, civil disobedience is then sometimes the most fitting way to fulfil the duty of fair play. In this way, civil disobedience is justified *vis-à-vis* the duty to obey the law. Here, instead of demanding obedience, the duty of fair play demands civil disobedience.

Another way to justify civil disobedience on fair play is to point out that those who engage in civil disobedience perform an important and essential service to the cooperative scheme of the law. Piero Moraro (2019) points out that “cooperative schemes generally involve a division of labour, whereby all members must do their part to support the provision of the good,” where one crucial way to contribute “involves identifying possible risks that may endanger the provision of the good” (p. 302). Legal protests can often perform this important task, but they do not always work. In cases where legal protests prove to be futile, civil diso-

bedience may become the best option to perform this task. Here, despite breaching the law, those who engage in civil disobedience do not accumulate any unfair advantage to themselves, but instead do their part (and often much more) in the cooperative scheme. Civil disobedients normally voluntarily accept additional burdens: the time and effort spent in planning the movement, the hostility from the general public, the risks of facing police brutality, and legal punishment and criminal records (p. 306). In comparison to their law-abiding counterparts, civil disobedients have incurred no fewer burdens in supporting the cooperative scheme.

Either way, civil disobedience is justified *vis-à-vis* the duty to obey the law when it is performed not to acquire unfair advantages over one's fellow citizens, but to promote much needed radical reform or to highlight and resolve severe threats to the cooperative scheme. When civil disobedience is thus justified, it is also not the appropriate target of legal punishment. Legal punishment is to balance benefits and burdens through getting back from free riders. Actors who engage in justified civil disobedience do not gain unfair advantages, and there's nothing to get back from them. Therefore, punishing justified civil disobedience contradicts the fair play theory: "*it would be unfair to impose additional burdens upon them in the form of a legal sanction*" (Moraro, 2019, p. 306).

7.1.2 Other theories

I acknowledge that there are other plausible theories of the duty to obey. However, similar to how fair play can justify civil disobedience, other theories such as those grounded in a natural duty of justice (Delmas, 2014b; Wellman, 2005) or in democratic authority (Markovits, 2005; W. Smith, 2013) allow noticeable space for civil disobedience to be morally justified. The rationale is identical to that of the fair play justification. As I argued in chapter 2, when laws are nontrivially flawed, obedience no longer contributes to the realization of the underlying

values these theories build upon. Instead, sometimes civil disobedience serves as the best way to respond to those underlying values, in particular when legal methods prove to be futile and civil disobedience shows reasonable prospects of success. In such cases, civil disobedience is morally justified.

There are also a number of plausible theories of punishment. While I do not intend to exercise each in full detail, similar arguments can be made against punishing justified civil disobedience. The plausible theories of punishment converge on a simple common feature relevant to our discussion: those who are liable to punishment are those who have engaged in prior wrongdoing. For instance, while deterrence theorists hold that the purpose of punishment is to deter crime, they hold that only those who have engaged in wrongdoing and thus have either acquired an enforceable duty to protect others (Farrell, 1985; Tadros, 2011) or who have forfeited their own rights against harsh treatment can be used as means of deterrence (Wellman, 2012, 2017). Retributivists hold that wrongdoers deserve suffering and it is the business of the state to inflict suffering on, and only on, those who have engaged in wrongdoing (Kleinig, 2012; Moore, 1987). Communicative theorists point out that blame is necessarily expressed through punishment (Duff, 2010; Feinberg, 1965), and for blame to be apt the target of blame must be blameworthy.

Relevant to civil disobedience, the common implication of these theories is that if an act of civil disobedience is justified, then it would be unjust to punish it. If an act of civil disobedience is morally justified, disobedients do not commit any type of wrongdoing that creates any enforceable duty to protect others, that forfeits one's right against harsh treatment, that deserves suffering, or that makes one blameworthy. Punishing justified civil disobedience, accordingly, would be punishing those who have not made themselves liable to be punished in the ways proposed by these theories of punishment.

An additional note on blame. In order for the state to appropriately punish, it must also have the moral standing to blame. There are many ways people may lose the standing to blame, say, if they have committed similar wrongs, or were complicit in or have facilitated the wrong in question. Similarly, if the state has failed to protect the rights and interests of certain groups, and the disadvantages they suffer put them in difficult situations where illegal activities become serious options, the state loses the authority to punish these people. The state is responsible for the plight of the disadvantaged, and is thus at least partially responsible for the crimes the disadvantaged commit. Blaming the disadvantaged through punishment “whilst refusing to answer to [them] for the wrongs that [they have] suffered (and still suffer) at our collective hands” (Duff, 2010, p. 139) is illegitimate. This has a further implication on the punishment of civil disobedience. It is often the state’s failure to protect the rights and interests of certain groups, or failure to address serious flaws within the system, that made civil disobedience a serious option. Thus, within a certain range, even if an instance of civil disobedience is not fully justified, it may still be inappropriate for the state to exact punishment. It lacks the proper moral standing, and is as guilty as, if not guiltier than, those who have breached the law.

7.1.3 Other special considerations in favor of punishment

But is not civil disobedience special in the sense that those who engage in it must submit themselves to punishment? This may generate special considerations that make punishing justified civil disobedience permissible. Here I will consider two possibilities: that civil disobedients have consented to be punished; and that we need and can issue a special verdict, “guilty but civilly disobedient” (GBCD).

7.1.3.1 Consent

Consent has the moral power to alter normative statuses, typically making otherwise impermissible actions permissible. It may be that in virtue of engaging in civil disobedience, disobedients consent to be punished, and in virtue of their consent, punishing civil disobedience becomes permissible even if normally it is unjust to punish justified actions. To see whether this is correct, we need to go through at least two questions. The first is whether consent has really been given. It is not particularly clear that civil disobedients have openly declare something like “I consent to be punished.” Instead, it might be thought that civil disobedients have tacitly given consent to be punished when they have voluntarily breached the law with the knowledge that their illegal actions would lead to punishment, and have furthermore submitted themselves to punishment.

A complete account of what makes voluntary actions consent-giving is clearly beyond the scope of this chapter. However, there are certain conditions necessary for consent to be valid. The most prominent one is that there must be a reasonable set of options. If an actor chooses among a small set of undesirable options imposed upon her, when eventually one option is chosen, it can hardly be said the consequence suffered are morally unproblematic because it’s the product of consent. This is essentially how tacit consent theories fail: voluntarily remaining in a state does not amount to consenting to the rule of the state, because for most people leaving just is not a feasible option (Simmons, 2005). Apply this to civil disobedience. If civil disobedience is justified, it was chosen among a set of undesirable options: suffer injustice or disobey. This set of undesirable options was imposed upon the disobedients by the negligence or active oppression of the state or the majority. Choosing one or another is in no way consent giving; otherwise, those who do not disobey consent to oppression, which is absurd. Therefore, civil disobedients normally have not given valid consent to be punished.

The second question we need to ask is whether consent can fully justify punishment. It is debatable whether consent can forfeit each and every right, or whether there are limits to consent (E. S. Anderson, 2000; Baker, 2009; Schaber, 2020). Relevant to the discussion here, there is reason to doubt whether consenting to punishment can make punishment permissible. Consider, for example, someone who suffers from extreme poverty or simple boredom, and goes to whatever relevant authority, declares that she wants to be punished, to be locked in prison either to be fed or experience something new. Either way, it seems highly inappropriate for the state to actually punish that person. There are a few explanations that can capture this intuition: that punishment should be reserved for the guilty; that punishment implies blame, is apt only towards the blameworthy, and consenting to being blamed cannot make one blame worthy; that the state should support this person in more appropriate ways than putting her in prison. All these explanations suggest that even if (however unlikely) civil disobedients have given valid consent to be punished, the state still should not punish them.

7.1.3.2 “Guilty but civilly disobedient”

Matthew R. Hall (2006) proposes a special verdict for civil disobedience, what he calls “guilty but civilly disobedient” (GBCD). The GBCD verdict is reached when the offenders are found to have breached the law but in a way that meets the standards of civil disobedience: conscientiously, openly, respectfully, non-violently, and with minimum force and disruption. The verdict allows us “to recognize officially the special status of civil disobedience without having to do so in a hidden or backdoor manner” (p. 2116). The merits of having this distinctive verdict include properly recognizing the distinction between civil disobedience and ordinary offending, satisfying those who believe that civil disobedience is no less of a criminal offence, and maintaining the uniformity of law enforcement through punishing offenders.

An additional appeal of GBCD is that the state can pass sentences on civil disobedients without the blame normally attached to punishment. This effectively circumvents the problem communicative theories present against punishing civil disobedience. Since GBCD does not blame, it neither blames the blameless nor has problems with the standing of blame. Nevertheless, it still imposes harsh treatment on those who have not made themselves liable to or deserving of punishment. Thus, GBCD may be better than merely finding civil disobedience guilty of criminal offences, but falls short of being fully satisfactory.

In short, civil disobedience may not be special in the relevant way that makes punishment appropriate.

7.2 How civil disobedience works

Punishing justified civil disobedience is unjust. The solution should be simple: the state should refrain from punishing justified civil disobedience. By adhering to this demand of justice, we may think that we can have the best of both worlds: civil disobedients help the society to fix severe injustices, and they no longer receive the harsh and unjust treatment of punishment as a “reward” for their work. This picture, however, is too good to be true. We shall see this once we properly understand how civil disobedience works as a costly social signal.

7.2.1 Civil disobedience as a costly social signal

The basic idea of costly signals is that there are signals—observable traits other entities can alter behavior upon—that the sender actually or potentially incurs nontrivial costs to produce (Zahavi, 1975). These signals are typically honest—reliable indicators of the unobservable traits; for individuals without the relevant unobservable traits cannot afford to produce those signals. Paradigm examples include the flamboyant tail of a male peacock, stotting—the high jumping of a gazelle when spotting cheetahs, and the begging behavior of chicks. In each

case, individuals without the underlying traits would not benefit from producing the signals. A less than strong and agile male peacock would become easy prey when dragging around such an obvious attraction (Zahavi, 1975). A gazelle that cannot run away sufficiently fast would better start running instead of stotting (Alcock & Rubenstein, 2019). A less than hungry chick would not benefit as much from being fed for the exhausting intense begging (J. M. Smith & Harper, 2003). Since the “handicap”—the self-imposed cost—is difficult to fake, it prevents dishonesty. Costly signals are thus reliable indicators of unobservable traits.

Signaling theory is applicable to the social context, and many have employed the notion of costly signals to explain social interactions, for instance, on getting a higher education to look more competitive on the job market even if the education is irrelevant to the job (Spence, 1973), on donation and pro-sociality signaling (Brokensha et al., 2016), and on warranty and the quality of the product (Cowen & Tabarrok, 2015), just to name a few. My aim here is to provide an account of social signaling that explains how civil disobedience works. The gist is that civil disobedience is a reliable indicator of issues the society should pay more attention to because it is costly, and it is costly primarily because it is punished.

As previously mentioned, even liberal democratic societies suffer from nontrivial flaws in their systems. While liberal democratic societies have many mechanisms to detect these flaws, and incorporate several legal channels for citizens to bring forth their cases, a number of these flaws remain unresolved by any normal methods. There are a handful of explanations for such failures. One plausible explanation, which is also the assumption I make in this chapter, is that while we are somewhat inclined to act morally when we can easily see what morality demands, we are quite good at arranging our surroundings such that we do not see what morality demands (E. S. Anderson, 2010; Dana et al., 2007; Young, 2002). Civil disobedience breaches this barrier of (willful) ignorance, draws attention to important issues, and thus facilitates political change.

Civil disobedience is by no means the only channel to do so. People voice their concerns through a variety of methods. We can call or write to our local politicians. We can like posts or participate in polls on social media. We can attend rallies and join legal protests. While it may seem good that we have such a variety of options, all these different channels of political participation also produce a fair amount of “noise:” what has been raised may not deserve the attention of the public, but might be trivial concerns that can wait or should be entirely ignored. Afterall, nothing prevents those who have trivial or even objectionable demands from employing these methods. Furthermore, public attention may be viewed as a scarce resource different groups compete to secure (Markovits, 2005; W. Smith, 2013). While the public may be inclined to focus their attention on urgent and significant issues, they do not display the competence to distinguish between the important and trivial cases that are brought forward through the variety of channels.

As a costly signal, civil disobedience stands out, as Leslie G. Jacobs (1998) puts it, as a “moral shout” among all the noise. Civil disobedience is publicly and deliberately illegal, and many of the disobedients submit themselves to punishment as part of the movement. In this way they demonstrate a seriousness and sincerity other less costly means of political participation lack. To those who engage in civil disobedience, their case is so important, and furthermore so reasonable, that making the case is worth the costs incurred. They are confident enough that once they draw the attention of the public, there are reasonable prospects that others will take them seriously and consider their pleadings so that their self-sacrifice will not be in vain. In contrast, those who lack the relevant seriousness and sincerity would be unwilling to incur significant costs to make their case. The costs would not be worth it for them, either because their case would be quickly dismissed by the public upon closer scrutiny, or because even if the action happens to bring about the social change they desire, the change itself is not significant enough to outweigh what they have suffered.

There are many ways to produce costly social signals. The previously mentioned donation, or probably simply spending a large amount of money to purchase advertisement may be to some extent effective. However, there is something special about, though not unique to, civil disobedience. Unlike spending, which can be costly to most of us but insignificant to the affluent, there is something more equal about incurring costs in domains core to human functioning. Regardless of their social or economic status, individuals more or less value their own health, life, and freedom equally. It is thus easy to feel how much one has sacrificed when one willingly gives up these interests. Furthermore, these interests are for the most part non-transferable. Unlike incurring monetary costs, with (probably) rare exceptions, no one can sponsor or reimburse the health, life, or freedom of others. This makes the self-sacrifice more salient. Just like hunger strikes and in very extreme cases self-immolation, which incur costs by sacrificing one's health and life (and not to mention the excruciating pain suffered), civil disobedience incurs cost by sacrificing one's freedom by being jailed and sometimes risking one's own life when performed in more oppressive regimes. Civil disobedients incur certain costs, while others without the relevant sincerity and seriousness steer clear of these costs. By speaking in ways others are unwilling to speak, this costly social signal serves as reliable indicators for the public to more easily identify what it should pay attention to. Thus, civil disobedience is effective by being reliable, reliable by being costly, and costly by being punished.

This analysis leads us to a serious concern. The effectiveness of civil disobedience as a social signal hinges upon being punished. Without punishment, civil disobedience can no longer serve as a costly social signal. Without being able to serve as a costly social signal, its reliability is greatly diminished, and can no longer achieve the function of the "moral shout" that brings worthwhile issues to the attention of the public. Thus, if we intend to refrain from treating civil disobedients unjustly by refusing to punish them, we might actually be doing

them a disfavor. We would effectively disarm social struggles by rendering an otherwise effective means of protest ineffective. As a matter of fact, ignoring and refusing to arrest activists is a known strategy government agents employ to trivialize social movements, and “[p]erhaps only those who have tried unsuccessfully to get arrested can know how frustrating this tactic can be” (Edmundson, 2007, p. 58). (The Suffragettes, for example, had to attack and spit at the police to provoke arrest (Crawford, 2003).) While in comparison, we may have drastically different intentions when we advocate against punishment, we may be in effect trivializing civil disobedience the same way oppressive government agents refuse to arrest protestors and thereby deny protestors the dramatical effect they seek.

To further the problem, rendering civil disobedience ineffective is highly undesirable. Civil disobedience strikes a sweet spot by providing a channel to individuals whose concerns were ignored to voice their concerns, so that they will not have to engage in something more drastic and disruptive. Should we shut down this channel, we would be putting those in need in a difficult position: should they engaging in something more costly to themselves? That is hardly attractive to the oppressed. Should they resort to more drastic and disruptive activities? There may be moral concerns on whether this is acceptable; and even if it is, it seems much less desirable compared to less harmful measures. Should they simply give up and remain silent? That would leave serious flaws in the society unresolved and demanding the oppressed to continue to endure.

In all, instead of arriving at a wonderful picture where justice simply prevails, by adhering to the demands of justice and refraining from punishing civil disobedience, we inevitably arrive at a rather grim picture. Civil disobedience, an important means of social struggle, is debilitated by our attempt to fulfil an important requirement of justice.

7.2.2 Is punishment necessary for effectiveness?

It may be objected that I have sketched this grim picture too quickly. Perhaps civil disobedience works differently from what my costly social signal account describes. Here I will consider two alternative possibilities: civil disobedience may work but not as a costly signal; and civil disobedience may still be costly even without actually being punished due to the costs of trial, arrest, and the risk of punishment.

7.2.2.1 Effective without costs

There may be an alternative story of how civil disobedience works, one that has nothing to do with costs. Perhaps civil disobedience is effective because it draws sufficient attention to, and forces the public to consider, previously ignored facts or points of views. Civil disobedience, after all, is an illegal protest, and is thus quite different from legal protests. Perhaps the illegality alone suffices to make the movement salient enough. Civil disobedience is also disruptive. It sometimes blocks the traffic of the busiest intersections. It sometimes occupies the central business districts, governmental buildings, or museums and other tourist attractions. These acts are difficult to ignore, will often attract a fair amount of media coverage, and disobedients can take advantage of these opportunities to advertise their cause. Furthermore, civil disobedience sometimes does attract a fair number of participants. The sheer numbers represent the bargaining power the movement has, and perhaps it is the coercive force the numbers represent that brings about social change.

The mere illegality and the disruption may indeed contribute to the effectiveness of civil disobedience. The number of participants may also help. Granted, these factors seem to be insufficient to properly explain the success of civil disobedience. Illegality and disruption generate publicity, but publicity alone does not seem to be a decisive factor; otherwise advertisement campaigns that bombard the public with certain messages would probably suffice,

and there will be no need for large-scale demonstrations. Furthermore, in order to mobilize a large enough crowd, civil disobedience needs to first get enough people on board. How that is achieved requires additional explanation. If we leave the sincerity and seriousness demonstrated by the acceptance of punishment out of the picture, it will be more difficult to explain how civil disobedience is taken seriously by the public instead of being dismissed as another noise in the forum.

7.2.2.2 Costly without punishment: arrest and trial

The costs associated with engaging in illegal activities are not exhausted by punishment. Riot police are often armed with batons, tear gas, pepper spray, rubble bullets, and water cannons. The arrest disobedients go through is often quite brutal. Standing trial is time consuming. It can also be extremely burdensome (financially and otherwise) for those who lack proper legal resources. In addition, the uncertainty that lingers through the trial is also quite depressing. Furthermore, in certain cases where civil disobedients evade legal punishment, the costs they incur may even surpass those who undergo legal punishment, as in the case of Edward Snowden, where fleeing the country, being branded a “traitor,” and living the life of an exile is sufficiently costly.¹²⁰ Thus the objection: even without punishment, civil disobedience can still be costly enough to be a costly signal.

However, a few things need to be taken into consideration. First, however costly arrest and trial may be, punishment in addition to arrest and trial is always more costly than mere arrest and trial. Furthermore, in comparison, punishment is normally the most significant portion of the costs. By removing the most significant portion of the costs, there is an unignorable risk that the costs would be insufficient for civil disobedience to be a costly sig-

¹²⁰ There is disagreement on whether whistleblowing in general, or the case of Edward Snowden in particular, counts as civil disobedience (Boot, 2019; Delmas, 2015; Scheuerman, 2014).

nal that demonstrates sincerity and seriousness. Even if civil disobedience is not thereby rendered completely ineffective, it is surely compromised.

Second, remember that the conclusions we have arrived at through examining the theories of punishment is that civil disobedience, if justified, ought not to be punished. This is to establish a norm that civil disobedience, if justified, will not be punished. If we institutionalize this norm, then however costly arrest and trial actually are, they will just seem like mere routines: civil disobedients are arrested and tried with knowledge that they will not be punished. This trivializes the whole act, and will make it harder for civil disobedience to be taken seriously.

Third, it may well be that without punishment civil disobedience is still sufficiently costly, because arrest and trial can be extremely costly. However, brutal arrest and overly burdensome trial are unjust. If our solution to the effectiveness of civil disobedience hinges on these unjust practices, we will be solving one problem by creating another one. To avoid the undesirable consequences of adhering to a requirement of justice, we flout another requirement.

Fourth, the case of Snowden may be more an exception. He would have faced the charges under the Espionage Act, which would most likely land him in prison for at least 30 years, should he have not chosen to flee. The severity of the potential sentences at least partially explains his choice to flee. But in choosing exile, he also suffered extremely burdensome personal costs. However, as some (Delmas, 2015; Scheuerman, 2014) have argued, his act of whistleblowing was justified, and the punishment he would have faced would be unjust. If the norm of not punishing justified acts of civil disobedience were strictly adhered to, he would not have to face the severe unjust punishment, and may not have needed to flee. Thus, while it is quite true that Snowden did incur severe costs without punishment, the costs

he would have suffered if the state adhered to the demands of justice—in this case refraining from punishing him—would be significantly different, and presumably much lower.

7.2.2.3 Costly without punishment: the risk of punishment

In a society where civil disobedience is normally punished, those who engage in civil disobedience will expect to face punishment. Even if some instances of civil disobedience are not punished because they are justified, this expectation will still remain. Thus, civil disobedience will still be costly without actual punishment, as the risk of being punished is a high enough cost.

At first glance, this might seem plausible. Indeed, if we know that other instances of civil disobedience will be punished, and if it's in our power to decide whether a particular instance of justified civil disobedience is to be punished, we should rule against punishment. The disobedients have successfully demonstrated their sincerity and seriousness when they did what they did in the face of the risk of punishment. However, we are talking about institutionalizing the treatment of civil disobedience. If we establish a norm that civil disobedience, if justified, is not to be punished, then insofar as those who engage in civil disobedience are confident that they will be judged as justly breaching the law, no expectations of being punished will remain. The risk of punishment is thus no more, and the cost is thereby removed.

It might be thought that there are often reasonable disagreements on whether any particular instance of civil disobedience is justified, and even out of good faith the court can make mistakes and wrongfully punish justified civil disobedience. Thus, we can at most imperfectly follow the norm that civil disobedience, if justified, is not punished. Thus, there will always be false positives, and there will always be the risk of punishment.

We can admit that there will always be the risk of punishment. However, the relevant consideration is how severe the risk is. The more the court can reliably identify justified in-

stances of civil disobedience, the lower the risk. If the court can generally successfully identify and refrain from punishing justified civil disobedience, even if occasionally there are some errors, the expectation of punishment may be too low for civil disobedience to serve as a costly signal. On the other hand, if the court constantly judges justified civil disobedience as unjustified and proceeds to punish, the risk of punishment may indeed suffice for civil disobedience to serve as a costly social signal. However, we may question whether the practice of the court is just. Given that there are reasonable disagreements, the court ought to know that punishing what it sees as unjustified civil disobedience runs a significant risk of punishing those not liable to be punished. The more the court is committed to refraining from punishing those not liable to be punished, the more it will be reluctant to punish borderline cases. This tendency will again lower the risk of punishment, and undermine civil disobedience's ability to serve as a costly social signal. Thus, the choice is again to run the risk of perpetrating injustice or to undermine civil disobedience.

7.2.2.4 Costly without punishment: penalties

Punishment may not be the appropriate response to civil disobedience. This is because, in part, as earlier argued, punishment necessarily conveys blame. This has led some to consider imposing penalties on civil disobedience instead (Lefkowitz, 2007, 2018; W. Smith, 2013).¹²¹ There are many forms of penalties, e.g. temporary incarceration, community services, and, of course, fines. Here I will focus on the last possibility, as I don't see how the first two can be remotely costly enough to allow civil disobedience to effectively serve as a costly signal. However, fines may seem to be a genuine possibility. David Lefkowitz (2018) writes, "fines must be set high enough to impose a genuine sacrifice for those who carry out acts of public

¹²¹ Some theorists argue that regardless of whether civil disobedience is justified, it ought not to be punished. Lefkowitz and Smith, as cited in the main text, however, argue that it is permissible to impose a fine on civil disobedients. I draw from this literature and consider whether fines can save civil disobedience. I will engage with the right to civil disobedience near the end of this paper.

disobedience. At the same time, they should not be set so high that they discourage almost any protest at all” (p. 277). How does this possibility fare?

Similar to other forms of penalties, we may question whether fines can be sufficiently costly. A relatively low fine that can be easily paid off certainly doesn’t suffice. On the other hand, if the state imposes fines that are as costly as the punishment civil disobedience would otherwise incur, then the severity of the fine may make the imposition unjust. So here we face a practical difficulty: can we genuinely strike a balance? It may be possible, but here are four further obstacles against the very idea of fining civil disobedience.

First, as previously mentioned, monetary costs may be burdensome to some, but near costless to the affluent. We may then worry that a fixed fine will in effect make civil disobedience a luxury affordable only by the most advantaged. Lefkowitz (2018) indeed has considered this very possibility when defending fining civil disobedience, and proposes that “[t]his may require calculating fines as a percentage of an individual’s annual income or net worth” (fn. 9). A fine indexed to wealth or income may be a genuine possibility. However, it leaves us with two problems. First, we need a concrete policy proposal to evaluate the feasibility of this possibility. Second, and more importantly, associating civil disobedience with money will create additional complications, or so I shall argue.

Second, fines can be crowdfunded. This by itself may be unproblematic. Incurring a fine through civil disobedience, but then be reimbursed by sympathetic citizens may simply show that one’s action is widely endorsed by the general public. However, the affluent may also singlehandedly sponsor many civil disobedients, or even hire mercenaries to disobey. This will really mess up the reliability of the costly signals of fines. The willingness to incur a fine no longer indicates sincere moral convictions, because the fine can be easily paid off by someone who lacks the relevant sincerity and seriousness. The willingness to engage in

civil disobedience may then become more an indicator of the ability to attract external funding.

Third, fines may seem more a fee (Holmes Jr, 2009), and we need to worry about what Michael Sandel (2012) calls “corruption:” putting price tags on things that were otherwise good degrades or at least alters their value. With regard to civil disobedience, if it can be paid off, then it seems to be an act that is associated with monetary value. There is, then, a genuine risk that civil disobedience becomes a commodity. To be somewhat uncharitable, the serious act of engaging in civil disobedience is, at least from the perspective of a bystander, indistinguishable from paying to enter a theme park. This altered perception of civil disobedience may be one of the worst things that can happen to civil disobedients.

Fourth, and perhaps because of the two previous concerns, the civil disobedient may refuse to pay the fine. The refusal to pay itself may even be a further act of civil disobedience, as it can be performed as a public act of protest. We will then need to spell out whether the refusal to pay is a justified act of civil disobedience. I contend that it can be. If the original act of civil disobedience was justified, and paying the fine would undermine the communicative effort of civil disobedience, then the civil disobedient must refuse the fine. We need, then, to decide whether we are to punish or penalise. The former is unjust. The latter leads us in circles.

7.3 Leveraging injustice

Civil disobedience is effective insofar as it serves as a costly signal, and can serve as a costly signal mainly because it is punished. However, punishing justified civil disobedience is morally unacceptable. Furthermore, by treating civil disobedience justly and refraining from punishing justified instances of civil disobedience, the state runs the risk of undermining the effectiveness of civil disobedience. We may have to conclude that this is an unfortunate and

unavoidable consequence of adhering to the demands of justice. By spelling out this unfortunate and unavoidable consequence, we may have also arrived at a position to better understand civil disobedience and its paradoxical nature.

Here, a key feature of civil disobedience is revealed. Distinct from other types of costly social signals such as hunger strikes and self-immolation, civil disobedience functions not only by attempting to highlight the fact that one has been treated unjustly through bearing significant costs, but come to bear those costs *through* being unjustly punished. While it is uncontroversial that it is extremely unjust that some have to go through the suffering and pain of hunger strikes or self-immolation to bring forth their case, it is not clear that in virtue of being, for the lack of a better term, the object of hunger strikes or self-immolation, one suffers additional injustice. In these cases of self-harm, one is also the subject issuing the harm. In contrast, to be the object of unjust punishment is to suffer from additional injustice. But what's astonishing about civil disobedience is that the additional injustice disobedients suffer fuels their communicative force, or to say, amplifies the volume of the "moral shout." In short, justified civil disobedience leverages the punitive injustice it suffers into communicative force.

Of course, civil disobedience may not be unique in terms of leveraging injustice. When it comes to revolutions and nonviolent resistances, the prospects of success may increase when governments resort to indiscriminate violence. This is because indiscriminate violence sometimes helps rebels overcome a collective action problem on recruiting: not participating is normally safer than participating in a revolution, but when the government resorts to indiscriminate violence, not participating is no longer safer; in contrast, given that the rebels may selectively provide protection and other resources, participating becomes more prudent than not participating (Kalyvas & Kocher, 2007). Or it may be that indiscriminate violence sparks moral outrage that mobilizes otherwise apathetic citizens (Chenoweth &

Stephan, 2011; Smithey & Kurtz, 2018). Regardless, leveraging injustice is nevertheless a distinctive feature of civil disobedience, and will lead to two paradoxical implications.

The first is that the moral status of civil disobedience and of its punishment may become unstable. Civil disobedience is illegal. Civil disobedience is disruptive, and imposes costs on others against their will. Civil disobedience may be justified despite these apparent wrong making features when a particular instance has a reasonable prospect of success, either to bring about much needed social change or at least successfully raise awareness about certain plights. When there's no prospects of achieving either, there seems to be no clear way how civil disobedience can be justified, and engaging in civil disobedience is engaging in pointless wrongdoing.

Not punishing civil disobedience debilitates civil disobedience, as it can no longer achieve anything through being a costly signal. Thus, in a society where it has been established that justified civil disobedience is not to be punished, engaging in civil disobedience is wrong due to futility. Engaging in civil disobedience ceases to be admirable, regardless of how important and just the cause is. When there is no risk of any punishment, there is insignificant self-sacrifice involved, and disobedients can no longer leverage injustice to boost their communicative force. Individuals who genuinely care about bringing forth social change may have to resort to something else, something that works. Here, civil disobedience is rendered misguided and simply wrong.

However, and here's the paradoxical part, once civil disobedience is rendered ineffective, misguided, and thus simply wrong, punishing civil disobedience no longer remains indisputably unjust. The state may still lack the moral standing to punish, but punishing futile civil disobedience would no longer be punishing those who have not engaged in wrongdoing. Thus, it may become permissible to punish civil disobedience, insofar as there is some way to circumvent the problem of standing, say by issuing the "guilty but civilly disobedient"

(GBCD) verdict. By not punishing justified civil disobedience because the punishment would be unjust, the state can make it the case that punishing civil disobedience is no longer unjust, as the otherwise justified civil disobedience becomes futile and thus wrong. Thus, by adhering to a requirement of justice, the state circumvents the requirement.

However, once it is no longer unjust to punish civil disobedience, and should the state act accordingly and adopt a readiness to punish civil disobedience, the moral status of civil disobedience may alter yet again. Once the expectation of punishment is restored, civil disobedience can again serve as a costly signal, and the effectiveness of civil disobedience is restored. In scenarios where futility is the only factor that renders a particular instance of civil disobedience unjustified, that instance now becomes justified. Thus, the appropriate response to an unjustified act of civil disobedience makes the otherwise unjustified act justified.

However, once it is again justified to engage in civil disobedience, punishment becomes unjust. Adhering to the judgment that punishment becomes unjust, civil disobedience becomes unjustified, and then punishment becomes just, and adhering to that, civil disobedience becomes justified, and so on and so forth. We thereby arrive at two instabilities: whether it is just to punish civil disobedience, and whether civil disobedience is justified. This is the first paradoxical implication of civil disobedience leveraging injustice, and it occurs only and precisely when the state intends to adhere to the demand of justice regarding the punishment of civil disobedience.

The major upshot of these instabilities is that under specific circumstances, the Orthodox Counter-Resistance Thesis generates an impossibility. If, as the Orthodox Counter-Resistance Thesis suggests, the state is to punish all unjustified civil disobedience, and refrain from punishing all justified civil disobedience, then when the only factor determining whether a particular instance of civil disobedience is justified is whether it is punished, the state is left with no acceptable course of action. It will either have to choose between punishing justi-

fied civil disobedience, which is made justified by punishment, or not punishing unjustified civil disobedience, which is made unjustified by withholding punishment. This shows that intuitively plausible requirements of the Orthodox Counter-Resistance Thesis can't jointly hold, and that the Orthodox Counter-Resistance Thesis is self-undermining.¹²²

The second paradoxical implication is that by adhering to the requirement of justice with regard to punishing civil disobedience, the state makes room for more radical protests. This may be somewhat unexpected. It may be intuitive that when the state sinks lower on the scales of justice, more radical measures are warranted. Rawls, for instance, acknowledges that if there were to be “outrageous violation of equal liberty, say by forbidding the religion of a weak and defenseless minority...even civil disobedience might be much too mild” (p. 328). Furthermore, when the state improves its standing by adhering to more requirements of justice, it may regain its political legitimacy (Galoob & Winter, 2019). In contrast, the thought that the state can turn drastic measures into appropriate options by adhering to certain requirements of justice just seems incorrect.¹²³ But here's how.

Recall that civil disobedience is called for when there are some nontrivial flaws in the system that need to be fixed. These flaws may include, as Rawls (1999) points out, severe violations of basic liberties or of fair and equal opportunity. Or they may include issues that spring from globalization (Markovits, 2005), war, nuclear weapons, and the preservation of environmental goods (W. Smith, 2011), and animal rights (Celikates, 2016b), just to name a few. Civil disobedience serves as the appropriate response to these various issues when noth-

¹²² Those who endorse a moral right to civil disobedience can avoid this impossibility, but at the cost of rendering all civil disobedience ineffective, or so I shall soon argue. This will make their account more vulnerable to the second paradoxical implication.

¹²³ It seems possible to argue that the state does not become more just merely by adhering to particular requirements of justice. Estlund (2020, Ch. 14) points out that piecemeal improvements may sometimes lead to something worse, and to suppose that this is never the case commits what he calls “the fallacy of approximation.” This is compatible with my claim that the state can make uncivil disobedience permissible by adhering to a demand of justice, and the fallacy of approximation may help to make my claim more intuitive.

ing short of civil disobedience has reasonable prospects of solving them. What would happen if civil disobedience proves to be futile?

There are a number of possibilities. The first possibility is that there's an impasse. It is unfortunate that civil disobedience cannot solve whatever problem that needs to be solved, and it just happens that nothing else can do the job. This possibility is not particularly interesting. It's just something unfortunate if it ever occurs.

The second possibility is that there's a *moral* impasse. That is to say, while there may be ways to achieve the same or similar goals, those ways are morally prohibited. Genuine moral impasses in other contexts include, for instance, when the only means that may frustrate a minor unjust aggression is to resort to lethal force. To kill someone when that person is about to slap you on the face for no good reason is wrong even if killing is the only way to prevent being slapped on the face. This is because while slapping you on the face is morally wrong, the disvalue of killing even an unjust aggressor is disproportionate to the value promoted by preventing the slap. With regard to debilitating civil disobedience, it may be that while there are more drastic measures that can solve whatever that needs to be solved, none of them are morally permissible. I contend that this will not too often be the case, as more likely at least one of the following two possibilities may hold.

Third, it may be that there are other costly signals one can adopt. There are different forms of self-harm, and some are extremely dramatic. Self-immolation as a form of protest has been adopted in various regions including Vietnam (Murray Yang, 2011), Tibet (Whalen-Bridge, 2015), and Australia's refugee camps in Nauru.¹²⁴ I am not suggesting that costly signals in the form of self-harm are always effective. Instead, I am merely suggesting that they may sometimes be as effective as certain instances of civil disobedience in terms of

¹²⁴ Doherty, B. & Davidson, H. (3 May 2016). Self-immolation: desperate protests against Australia's detention regime. *The Guardian*. <https://www.theguardian.com/australia-news/2016/may/03/asylum-seekers-set-themselves-alight-nauru>

speaking in ways individuals without the relevant sincerity and seriousness are unwilling to speak. In addition, I am not suggesting that this is in any way a good option. It is extremely unfortunate that the oppressed sometimes can only voice their concerns by bearing extreme costs. Should there be other available options, those options would most likely be preferable. Being too ready to encourage self-immolation as if it were fireworks is irresponsible if not outright evil.

The fourth possibility is that activities that fall short of civil disobedience may become morally permissible. Civil disobedience, if available, is permissible if the injustice it aims to address is severe enough, and furthermore when it is the last resort in the sense that legal channels prove to be futile or unable to respond in time. More simply, civil disobedience is permissible when proportionate and necessary. Now, if civil disobedience is rendered futile, it is natural to ask what else works, and whether those options that work fall within the boundaries of proportionality. These options, if they genuinely exist, first, will not depend on being punished for their effectiveness, and second, may consist in flouting one or several norms of civil disobedience by being “covert, evasive, anonymous, violent, or deliberately offensive” (Delmas, 2018a, p. 17), and may be rightly labeled uncivil disobedience. To determine whether such activities are proportionate, we need to see how much costs or harms they inflict on others, and how severe the injustice they aim to prevent is. I admit that it is not impossible that the severity of the injustice in question just happens to be severe enough to make civil disobedience proportionate but anything beyond civil disobedience disproportionate. As I have pointed out in chapter 5, it may be possible, but highly unlikely: it would be an odd coincident that all sorts of different possible injustices that can be fixed by justified civil disobedience are all unjust to the exact same degree. Furthermore, consider the injustices civil disobedience has targeted in the past and are aiming to fix now: racial segregation, disenfranchisement, extreme social and economic inequality, and the climate crisis, just to name a

few. Given the scale and severity of these issues, one may rightly wonder why nothing beyond civil disobedience can ever be permissible.

In sum, a core feature of civil disobedience is that it functions primarily by leveraging injustice. This core feature leads to two unexpected and even paradoxical implications. First, the moral status of civil disobedience and its punishment becomes unstable insofar as the state intends to punish all and only the instances of unjustified civil disobedience. This leads to an impossibility where under specific circumstances, simply no course of action with regard to punishing civil disobedience is morally acceptable. Second, the state's reaction to civil disobedience may create room for uncivil disobedience. This can happen not just when the state responds unjustly and harshly to civil disobedience, but also when the state adheres to a demand of justice and refuses to punish civil disobedience. In the latter case, by rendering civil disobedience futile, the state makes other options potentially justifiable.

7.4 A note on the right to civil disobedience

Some support a right to civil disobedience. Brownlee (2012), for instance, holds that this right is grounded on one's right to conscience. She further argues that in virtue of possessing this right, the state has a duty to refrain from interfering with civil disobedience. This duty implies that neither punishment nor penalties are morally acceptable, as either violates the right to civil disobedience. In contrast, Lefkowitz (2007, 2018) argues that civil disobedience ought not to be punished, but may be permissibly penalized. This is, in part, to ensure that civil disobedience isn't carried out frivolously. William Smith (2013) further points out an important reason to issue the fine: it indicates the state's acknowledgment that civil disobedience has been engaged in. I do not intend to weigh in. Instead, I will simply spell out a troublesome implication my costly signal account has on this right.

Now, I have already argued that there are surmounting obstacles against fining civil disobedience (in 7.2.2.4). Whether these obstacles can be overcome depends on whether feasible concrete options are proposed in the future, but without actually seeing these proposals, I think it better to set aside the possibility of fines, at least for the moment. So, we are again left with two options, to punish, or not to punish civil disobedience. If there indeed is a right to civil disobedience, then punishing civil disobedience is unjust, as it fails to respect this right. However, if my account of costly signals is plausible, then not punishing civil disobedience also fails to respect the right to civil disobedience: in virtue of not punishing, the state undermines civil disobedience, and makes the possession of this right utterly meaningless. In short, neither punishing nor not punishing civil disobedience respects the right to civil disobedience. If the right to civil disobedience is a genuine right, then, it is an “irrespectable” right. Regardless of what the state does, it fails to respect that right.

7.5 Conclusion

I have argued that punishing justified civil disobedience is unjust. It goes against all the plausible ends of punishment, and there’s nothing special about civil disobedience that makes punishing justified civil disobedience morally unproblematic. However, should we follow this requirement of justice and refrain from punishing justified civil disobedience, we will create an unfortunate consequence: civil disobedience is rendered futile. This is because civil disobedience is most effective as a costly social signal, and it is costly through being punished. Through understanding the unjust nature of punishing justified civil disobedience, we arrive at a better understanding of civil disobedience: civil disobedients leverage the punitive injustice they suffer to amplify their communicative force. This fact points us to two paradoxical implications: first, the moral status of civil disobedience and its punishment may become unstable, and the Orthodox Counter-Resistance Thesis undermines itself by generating an

impossibility where seemingly intuitive requirements can't jointly hold; second by adhering to a demand of justice, namely, not punishing justified civil disobedience, the state can create room for uncivil disobedience.

8

Conclusion

Reality is always more complex than our means of representing it. Scientific language requires ever more complex terminology, to make distinctions that would be invisible without it. Social reality is at least as complex as the reality of physics. In a healthy liberal democracy, a public language with a rich and varied vocabulary to make distinctions is a vital democratic institution. Without it, healthy public discourse is impossible (Stanley, 2018, p. 53).

As I see it, part of the task of political philosophy is to enrich the normative vocabulary and concepts at our disposal. There is no doubt that the concept of civil disobedience has furnished dissidents with a way of characterizing what they are up to and distinguishing their conduct from “ordinary offending” and “mere criminality.” Armed with this concept, we can more easily see (or be reminded) that sometimes those who breach the law do so with sufficiently good justification and pose no genuine threat to the society and the supposedly innocent general public. We can be more receptive to reasons that help us to better the society. We can avoid overplaying the importance of law and order, a mistake that sometimes makes us accomplices in oppression. However, the concept of civil disobedience also has important limitations. We should not overestimate its role with regard to the ethics of resistance and counter-resistance. This is where the Orthodox View goes wrong. Even in reasonably just societies like ours, uncivil disobedience can sometimes be morally justified, and we can have reason to take it seriously (even when it is unjustified).

I write this dissertation in the hope of reclaiming and re-appropriating the concept of *incivility*. Just like civil disobedience, uncivil disobedience need not be linked to “ordinary offending” or “mere criminality.” It can be valuable in the same ways that civil disobedience

can be valuable. And it can be valuable in distinctive ways of its own. Even when it is unjustified on account of employing unjustified means, it can have important epistemic value, helping policymakers to make better political decisions. An adequate view of the ethics of resistance and counter-resistance must make room for uncivil disobedience. This dissertation is an important step in that direction.

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