

OPPRESSION, CIVILITY, AND THE POLITICS OF RESISTANCE

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If the injustice is part of the necessary friction of the machine of government, let it go, let it go: perchance it will wear smooth—certainly the machine will wear out... but if it is of such a nature that it requires you to be the agent of injustice to another, then I say, break the law. Let your life be a counter-friction to stop the machine. What I have to do is to see, at any rate, that I do not lend myself to the wrong which I condemn.

- Henry David Thoreau, *Civil Disobedience*

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ABSTRACT

Oppression based on social group membership has been and remains a major injustice which thrives in modern liberal democracies like the United States. Organized political resistance to oppression and the structures that perpetuate it has taken many forms throughout history, from the early acts of revolution that founded the United States, to the nineteenth century abolitionist movement against slavery, to the New Deal-era labor struggles and Black civil rights movement of the twentieth century and the LGBTQ+ rights movement of recent history. The moral and political legacy of these historical struggles, as well as the extent to which the surrounding culture has responded (or failed to respond) to them well characterize resistant attitudes toward our present social and political ills.

This dissertation critically engages with the project of resisting political oppression, inquiring after its forms and justification. In Chapter 1, I define and clarify the nature of oppression, with a particular focus on racial oppression at the site of criminal justice and policing in the United States. Chapters 2 and 3 criticize two common frameworks for understanding political resistance: civil disobedience and political violence. Given the shortcomings of these frameworks, I advance a novel if intuitive framework for understanding and evaluating resistance in Chapter 4. There, I argue that our understanding benefits from (a) a commitment to political constructiveness, which I think captures what is valuable about the liberal virtue of civility, and (b) a commitment to transformational societal change, which I think captures a central thread in more total or violent responses to oppression. To conclude, I recommend two initiatives to

approach the problem of oppression from both ends, as it were: (a) what I call constructive political resistance, drawing on the framework I develop in Chapter 4, and (b) deliberative civic education programs which emphasize the modeling and practice of substantive equality and liberal reciprocity.

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CHAPTER 1:

PAST AND PROLOGUE: THE PERSISTENCE AND CHARACTER OF OPPRESSION

Introduction and Roadmap

Oppression based on social group membership has been and remains a central injustice which thrives in modern liberal democracies like the United States. Organized political resistance to oppression and the structures that perpetuate it has taken many forms throughout history, from the early acts of revolution that founded the United States, to the nineteenth century abolitionist movement against slavery, to the New Deal-era labor struggles and Black civil rights movement of the twentieth century and the LGBTQ+ rights movement of recent history. The moral and political legacy of these struggles, as well as the extent to which the surrounding culture has responded (or failed to respond) to them well characterize attitudes and acts of resistance toward our present social and political ills. This project critically engages with the act of resisting oppression, making distinctions between its forms, inquiring after its justifiability in various cases, and exploring those moral and political considerations which ought to constrain such acts. In so doing, I advance important considerations for those resisting their own oppression, as well as those who understand, take up, and respond to that resistance.

If we take seriously the opening contention of John Rawls's *A Theory of Justice*—that “justice is the first virtue of social institutions as truth is of systems of thought,” (1999b, 3) and if we understand that virtue as being a measure of a structure's basic responsiveness to its citizens under terms of social cooperation and mutual dignity and respect, then we are led to recognize oppression as a primary and fundamental social ill which keeps liberal democracies from living up to their professed ideals. As Rawls's theory of justice attempts to show, the ideals which organize and order liberal democracy are manifold and complex, but clearly take as their north star a recognition and protection of the fundamental status and value of citizens themselves. This amounts to a recognition, to use Rawls's language, that “each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override” (3). It is this sense of citizens' status and standing which is clearly violated in instances of oppression, as both historical examples and our own thoroughly non-ideal state of affairs in the present-day United States clearly attest.

This project will proceed from the basic assumption that oppression is a central case of injustice in a modern liberal democracy like our own and explore various conditions and justifications for its amelioration. More specifically, I aim to examine the politics of resistance through a conceptual lens which informs a standard treatment of protest in the American context in particular: the liberal ideal of civility. It has often been argued that a clear commitment to civility lies at the heart of modern-day liberal democracy. It is understood as an important set

of constraints on behavior toward one's fellow citizens, though the exact content of those constraints are contested. As the lionization of some of the essential figures of the American civil rights movement shows, a romanticized version of this ideal is also central to the narratives by which we understand our own society, its problems, and its prospects—for better or for worse. I argue that our commitment to an over-romanticized conception of civility is, at its best, a case of political conviction misplaced, and at worst, an actively disingenuous and pernicious force in our increasingly fraught and often anti-democratic politics. Furthermore, I contend that what is truly important about the idea of civility is a deep sense of commitment to mutual cooperation—a kind of political constructiveness with respect to a shared end—in this case, the end of living together amidst disagreement and difference, in a society which can reasonably be thought of as just. It is this core idea which I think should inform our thinking about the project of resisting oppression.

Structurally, this dissertation will proceed as follows. Chapter 1 will proceed from the above claim about the centrality of oppression to defining the non-ideal circumstances of contemporary American democracy. I will begin with a brief account of this phenomenon as I am employing it, drawing on the work of Iris Marion Young (1990, 2003), Ann Cudd (2006), and others. Then, I will illustrate the persistence and resilience of oppression in the practical context of the contemporary United States, specifically using the lens of continuing racial oppression. There, I show the manifold ways in which Black Americans are

denied equal citizenship and consideration—an important moral and political mainstay for aspiring liberal democracies—by systemic and often violent racism. In view of the stakes here, particularly the denial of equal standing and consideration, I submit that various forms of political resistance to the oppression of Black Americans are justified, and indeed may even be required. Given the dire circumstances I outline in this chapter, this includes forms of uncivil resistance. In my view, this is the case both for those who are oppressed themselves and for those who stand to benefit from that oppression, i.e., white Americans, many of whom merely observe the circumstances as a benign status quo—just as Martin Luther King, Jr. famously feared in his *Letter from Birmingham Jail* (1963).

However, not just any form of resistance will do, for a variety of important reasons, and it is to this caveat that I devote attention in Chapters 2 and 3. In those discussions, I distinguish between what norms and values often do guide our thinking about oppression and resistance and those which should. As the following pages demonstrate, there is much space between what we, as a society, do and what we ought to do. Our own circumstances are thoroughly non-ideal in nature, to the point where the legitimacy of the system which perpetuates those arrangements is at best questionable and at worst, impossible.¹ Of course, this is true and experienced daily for those whose citizenship, basic rights and

¹ Cf. Shelby (2016, 2007).

constitutional essentials, livelihoods, and lives are disrupted by oppression. But moreover, it is also all the worse for any claim we might have to being a functional democracy, much less one that is just.

In Chapter 2, I advance one common line of thinking about the problem of oppression, and the prospect of resisting it through political means by taking up the normative framework of civil disobedience.² This approach, of course, is centered around the concept of civility—a key tenet of political liberalism, stipulating how citizens of a liberal democracy ought to interact. In clarifying civility’s significance, I find the framework of civil disobedience wanting for a variety of reasons. First, while its practitioners have been lionized in the wake of the American Civil Rights Movement, their strategy has not had the staying power many had hoped it would in responding to systemic racism. As I demonstrate throughout this project, many of the battles fought today bear striking and non-incidental similarity to those fought during the Civil Rights Movement. In fact, in many cases, there are direct structural relationships between those battles and our current ills which go far beyond similarity or coincidental cases of history repeating itself.³

² By “framework” here, I mean *both* philosophical accounts of what civil disobedience consists in, definitionally and normatively (e.g., from Martin Luther King, Jr. (1963, 1991, 2003) and John Rawls (1999b)) and how the idea of civil disobedience has been taken up, used, and often misused in the political and cultural context of American democracy.

³ For instance, consider the extent to which elected officials in the United States are currently relitigating some of the very same battles over issues like voting rights that were purportedly won in the 1960s.

Furthermore, as a matter of deeper concern than the strategy's historical effectiveness, I argue in Chapter 2 that the concept of civility which lies at the center of the framework justifying civil disobedience has been misunderstood, misdirected, and misapplied over time, to the peril of those who fall outside the bounds of civility's seemingly impossible demands, and thus, of its protection. Here, I contend that a conflation of civility with important related concepts like politeness or respectability leads to a harmful and often willful misunderstanding of civility as involving meekness, polite complicity, or silent submission to oppression. These misappropriations serve to further silence and exclude those who would speak or act against their oppression or the oppression of others. Whether incidental or insidious, these understandings perform a status quo maintenance function that harms some and protects others. So, our prevailing conception of civility is, in my view, not as crucial as it appears—or more to the point, it *should not* be.

Through this examination, I aim to clarify that what is actually valuable about civility is the kind of mutual intelligibility it prescribes for citizens. Far from being the central guiding feature of our politics, where it is (mis)understood as being tied up with the mannerisms I mentioned above, I argue that a kind of performative (and often disingenuous) civility politics serves to reproduce and reinforce norms of oppression against the already marginalized via discriminate silencing and exclusion from meaningful participation in social and political life. To overcome these problems caused by the misunderstanding and

misapplication of civility norms, I submit that we ought to refocus our attention on what is truly important about the virtue of civility itself—a shared and constructive commitment to a joint political enterprise, namely, the cause of achieving a just society. Ultimately, I submit that it is this very sense of constructiveness and cooperation which should chiefly inform and constrain acts of protest. In other words, a clear understanding of civility in its relationship to a political ideal of constructiveness will help us both better understand and more clearly evaluate acts of resistance to oppression. In particular, it will help move us beyond the various rhetorical and political impasses contemporary civility politics have created with respect to questions about political resistance (e.g., where civility is coextensive with justification and incivility condemnation in overly simplistic ways, where violence is nearly always considered beyond the pale and senseless, etc.).

Chapter 3 will establish a further framing device and additional bounds for my inquiry, and take up questions about resistance of the uncivil sort. This type of reasoning is often associated with liberalism's critics, writing in the tradition of Karl Marx and post-Marx feminist and critical race theorists, and it is gaining steam among outspoken factions within the political left on the ground. We may distinguish various forms and instances of political violence along numerous vectors: by contrasting those at whom acts are targeted, the reasonableness or justifiability of their underlying cause, the particular tactics employed, etc. In Chapter 3, I attempt to do just this by taking up important questions about the

requirements, potential justifications, and often unintended consequences of revolutionary politics and political violence.

I find this framework, too, lacking for several reasons. First, there exist a range of conceptual concerns about the justification of revolutionary tactics which lie outside typical norms and criteria for a just war. Problems ascribing key theoretical notions like authority and consent are fraught in circumstances so unstable so as to prompt revolutionary thinking, to say nothing of many problems binding revolutionaries to typical *jus in bello* or engagement norms. Furthermore, there are important reasons to be skeptical of political violence in general, which have to do with the political instability and threat of social collapse which often stems from rendering fellow citizens as enemy combatants. These kinds of consequences, I submit, while usually unintended, are more than sufficient to give the would-be revolutionary pause. Ultimately, I find that while violence is in general morally problematic and tends to be politically destructive, there is something instructive about particular forms of violent political action. I submit that a close examination of such action yields important normative resources which may carry forward and contribute to our understanding of the politics of resisting oppression, namely, a logic of just cause and proportional response adapted from just war theory and a notion of deeply transformative political action and its accompanying moral psychology adapted from norms associated with revolution.

So, given that neither the classical liberal idea of civility and the closely related framework of civil disobedience nor the critical framework of revolution and political violence seems to fit the bill here, I submit that a better approach is needed. That these normative frameworks often cause harm (intentional or otherwise) need not mean that they are totally inert in terms of aiding our understanding of oppression and resistance. Far from it, in fact. I argue that we should remain interested in some important guiding concepts and resources from these frameworks and attempt to synthesize and reconcile them in our thinking. From Chapter 2, I suggest that we take seriously the underlying value of civility as an aspirational political virtue that allows us to live, communicate, and ultimately cooperate with each other on terms which are recognizable, reasonable, and, ultimately equal. It is my contention that we can keep civility in sight without falling into the pits I mention above and causing harm by refocusing on what is actually valuable about it, namely, a sense of recognition and reciprocity for and with one's fellow citizens. From Chapter 3, I suggest that we adopt the moral psychology that is so key to revolutionary thinking—a demand for truly structural or transformative political change when circumstances are so bad that mere reform just does not seem to be up to the task. While there are deep dangers associated with employing a warlike footing with respect to one's fellow citizens, the notion of oppression as something to be fought, resisted, and overturned makes a compelling case for a kind of militant logic, particularly when injustices are deeply ingrained in the fabric of our society. We are, in my view,

quickly approaching such a state with respect to racial (in)justice in the United States, assuming we have not reached it already.⁴

Chapter 4 will bring these seemingly divergent threads together in a clear synthesis, and further examine the requirements of a truly *constructive* politics of resistance. There, I will sketch a set of moral and political considerations for those engaging in acts of resistance and for the broader society which is tasked with taking up the issues and institutions identified by protests, and operationalizing the political will to make changes to bring about justice. This will necessarily include attention to considerations of constructiveness, uptake, targets and audiences, and the like. This approach provides a new framework for thinking about political action which defies the easy, insufficient, and often harmful binary ways of thinking we have long labored under—civility vs. incivility, peacefulness vs. violence, etc.

In Chapter 4, I make use of examples both historical and contemporary to identify common features and important contrasts among American resistance movements: the ACT-UP movement advocating for people living with AIDS, and the contemporary Black Lives Matter movement against mass incarceration, police violence, and other forms of anti-Black racism. My analysis of each will focus on making distinctions between cases along vectors of those moral concepts importantly related to (though not necessarily coextensive with) the

⁴ Cf. Shelby (2007, 2016).

ideal of civility: seriousness, norm transgression, violence, communicative intelligibility, and ultimately, political constructiveness. Breaking down various acts of protest along these vectors will clarify the limits of civility as an organizational concept, as well as the need for a new conceptual tool to aid our understanding and evaluation.

In view of that need, I outline a novel if intuitive conception of political constructiveness as involving a commitment to making positive political change in ways which sufficiently address other citizens, demand their attention, and motivate them to act. I ultimately argue that whether an act of resistance is either understandable or justifiable is at least partly a function of whether it is politically constructive, in view of the goals of ameliorating oppression and realizing egalitarian justice. It is my hope that rethinking civility as a lens for considering political resistance can inform acts of protest in social and political arrangements characterized by oppression. Given the account of these conceptual relations I advocate, I'll examine forms of resistance which go beyond the typical liberal pale of civil disobedience by exploring how constructiveness and civility (as typically understood) come apart. For instance, an uncivil act of protest like property destruction may be both communicative and instructive, even though its being uncivil might make it less likely to be immediately effective (due precisely to a faulty understanding of the demands of civility, as above and throughout).

Those acts which are politically constructive in terms of generating change or public will for the same, or which reinforce the agency of the resistant parties,

may well be justifiable and useful under non-ideal circumstances, and may in fact be so justified using broadly liberal premises. By emphasizing the spirit of constructive political cooperation and action at the heart of a liberal ideal of civility, I aim to put that notion of civility in its place, both by minimizing the misconception of civility as politesse and the harms it causes, and by centering the sense in which it is truly integral to liberal democracy—as a kind of commitment to addressing each other constructively as fellow citizens.

I ultimately submit that we must work strategically from both ends when it comes to combatting and ameliorating oppression in liberal democracies—from the bottom up by rethinking resistance activity and its justifications as a matter of politics, and from the top down by reinforcing and recreating a sense of recognition and justice (not to mention the ability to spot, recognize, and respond to injustice) in future generations as a part of civic education in liberal democracies. As throughout, we must embrace a commitment to constructive action, eschewing warlike violence against other citizens, *but* importantly retaining a psychology oriented toward transformational change to society to raise up, benefit, and ultimately substantively equalize those for whom it is demonstrably broken. In so doing, we can keep in sight *both* the aspirations of political liberalism and the key ways in which it has fallen short for many. Overall, in putting the commitments of liberalism to work in this way, I pursue a kind of

strategy broadly associated with some feminists and theorists of racial justice⁵ who attempt to show that liberals should advocate dramatic political change in order to fight oppression. It is my contention that this kind of approach strengthens liberal theory in pursuit of its central aims, and allows it to more fully move toward its ideals, at a time when such a framework is (perhaps unfairly or prematurely) maligned as austere, exclusive, and ineffective.

The Persistence and Character of Racial Oppression

As a central form of injustice which plagues liberal societies, oppression operates in vast and various ways. The distinction between individual and structural injustice is helpful to our understanding here, as oppression can operate at both of these levels. *Individual injustice*, we might think, consists in the direct and intentional imposition of harms by individual agents on other individual agents based on their group membership. By contrast, *structural injustice* refers to the unjust outcomes of broader social processes that are associated with harm, domination, deprivation, etc. Iris Marion Young uses the latter concept to refer to injustice amongst the structures which govern and constrain our social interactions, and, more specifically, the ways our social positioning (which, of course, are often determined by those structures) affects the real opportunities and prospects we have, for better or for worse. For Young:

⁵ I have in mind theorists like Carole Pateman (1988), Iris Marion Young (1990, 2003), Sally Haslanger (2004), Claudia Card (1991, 2009), Tommie Shelby (2005, 2007, 2016), Rae Langton (2009), Carol Hay (2011) and Candace Delmas (2018), among others.

Structural injustice exists when social processes put large categories of persons under a systematic threat of domination or deprivation of the means to develop and exercise their capacities, at the same time as these processes enable others to dominate or have a wide range of opportunities for developing and exercising their capacities (2003, 3-4).

The crucially connected concept of oppression describes the inhibition of human abilities and opportunities as a result of this kind of structural injustice.

Ann Cudd defines oppression as “an institutionally structured harm perpetrated on groups by other groups using direct and indirect material and psychological forces that violate justice” (2006, 26).⁶ The kinds of harms caused by oppression are further elucidated by Young (1990) as various disabling structural constraints including exploitation, marginalization, powerlessness, cultural imperialism, and violence. These forms or “faces” of oppression and the social structures which produce and reproduce them involve the complicated interplay of laws and policies, institutions, various cultural and epistemic understandings and norms, as well as individual and group practices.

While Young’s opening point in *Justice and the Politics of Difference*—that “many people in the United States would not choose the term ‘oppression’ to name injustice in our society” (1990, 39)—rings as true as it ever has, we have plenty of evidence to the contrary at our disposal. For the purposes of this

⁶ Cudd’s analysis of oppression follows a similar definition offered by Marilyn Frye, namely that oppression is “a network of forces and barriers which are systematically related and which conspire to the immobilization, reduction and molding” of people and their lives (1983, 4-5).

project, I will now sketch some of the relevant phenomena in order to show that oppression rises to the level of making the full legitimacy of our social arrangements (or at least, to use a Rawlsian term, their “near-just” status) questionable, and ought to demonstrate the necessity and priority of its amelioration on broadly liberal grounds.

One of the foremost groups structural oppression harms in the United States—and whose struggles I will briefly describe here—is the African American population, whose historically continuous and well-documented⁷ struggles with various systemic harms have been illuminated and brought to the forefront by a growing humanities and social science literature in the academy and the Black Lives Matter (BLM) and related resistance and advocacy movements in our broader public culture.

Founded by a small group of Black women in 2013 as a framework for awareness-boosting activism and resistance in response to the high-profile acquittal of George Zimmerman for the killing of unarmed Black teenager Trayvon Martin, the BLM movement has since evolved into a broad and powerful movement demanding redress for the often brutal and unjustified treatment of Black Americans by individuals, officials, and institutions, as well as the norms which support them in the U.S. The movement has, in its founders’ own words, been expansively employed “to amplify anti-Black racism across the country, in

⁷ See, for instance, recent work by Chris Lebron (2017), Michelle Alexander (2012), Tommie Shelby (2005, 2007, 2016), A.J. Davis (2017), etc., among many others.

all the ways it shows up.”⁸ The BLM movement and its advocacy has remained at the forefront of public life in the wake of massive, frequent, and geographically wide-ranging protests against state-sanctioned or state-enabled violence inflicted on Black Americans in the wake of several high-profile and publicly witnessed killings.

A cursory examination of a large literature theorizing Black oppression gives us a sense of the subject and urgency of BLM’s resistance. Black Americans, as a social group, experience all of Young’s “faces” of oppression in ways which collide and cut across each other, mutually reinforcing each other in a feedback loop which harms affected parties’ agency, opportunities, and standing in society. We might start our brief discussion here as Young (1990) herself does (following Karl Marx’s “alienation”-focused critique of capitalism), with the phenomena of economic exploitation. While economic struggle and poverty crosses demographic borders easily, American poverty substantially and disproportionately affects racial minorities.⁹ A recent study conducted by the

⁸ See Black Lives Matter, “Herstory,” <https://blacklivesmatter.com/about/herstory/>

⁹ The approach I take to the interconnections between race and class in this dissertation is primarily a focus on that which is practical as a point of departure for a broader approach typical of applied political philosophy, which is to say, beginning we (as a polity) are in a general sense. There is, as a (contingent) matter of popular and political culture, a great deal more conversation, organizing, etc. around issues of race than around issues of class. At least in recent history, people tend to experience and frame their experiences primarily through one of these lenses (race) and not the other (class). My focus on the former as a lens in this project is not meant to operate in isolation, or to designate the latter as a less important tool for analysis. While I will not attempt to parse out the interconnections between race and class here, I hope that a theorist or activist pursuing a class-first analysis of similar issues of injustice and oppression can gain something instructive from this project. There are important connections between racial and class analysis which would be fruitful if incorporated together, but I have not done

Kaiser Family Foundation (2019) reveals that 9% of white American families live in impoverished conditions. In poverty rates among minority groups, the gap is clear and substantial. 19% of Latino families and over 22% of Black families live in poverty.¹⁰ More generalized accounts of Americans' income distribution and long-term wealth gaps across different racial groups tell a similar story (U.S. Census Bureau 2018). While it is certainly the case that not all economic hardship is necessarily oppressive, compelling evidence has correlated racialized poverty to opportunity struggles of other sorts.

As an important corollary to the exploitation of Black Americans, they are disproportionately marginalized in Young's sense by being relegated into low-wage, menial labor in the retail and service sectors (D. Cooper 2018). This, in turn, can cause feelings and experiences of powerlessness—both political and economic—among Black communities when compared to their wealthier white counterparts. These interrelated phenomena and the feedback loop they seem to operate within is well illustrated in Tommie Shelby's (2007, 2016) treatment of the plight of Black communities. As Shelby argues, Black people are relegated (both politically and physically) to the margins of American cities by

that here. It is my intention that the framework I develop be portable with respect to other framing devices like class, gender and orientation (though these are importantly different than class), etc.

¹⁰ The U.S. Census Bureau's poverty threshold for a family with two adults and one child was \$20,578 in 2019. This is the official measurement of poverty used by the Federal Government, and the measure used for poverty-based data presented by the Kaiser Family Foundation.

discriminatory housing and employment policies, and continue to suffer under the economic, social, and often physical hardships those policies cause.

Charles Mills (2007), Kristie Dotson (2012), and Gaile Pohlhaus (2012), among others, have also remarked upon the subtler, yet no less pervasive epistemic forms that the oppression of African Americans in the United States can take. Mills's account of "white ignorance", whereby predominantly white epistemic frameworks and social-cultural understandings are centered and used to structure society's own hermeneutical resources, theorizes a clear instance of Young's conception of cultural imperialism, which acts to cause harm on its own as well as enabling other forms of material oppression (Mills 2007). A particularly notable instance of this sort of concern, for example, is the surprising resilience and effectiveness of the cultural myth of criminality that surrounds Black men in particular, and authorizes and suffuses various other forms of oppression.

The criminal justice system, too, systemically and disproportionately affects African Americans in oppressive ways. Michelle Alexander (2012) argues that a modern-day system of mass incarceration and the laws, norms, and practices which authorize and support it constitute a third major system of social control for Black Americans, picking up, in a sense, where chattel slavery of the 19th century and the repressive Jim Crow regime of the 20th century left off. The United States' incarcerated population—which has exploded at a rate of over 700% since the early 1970s and is now the highest per capita in the world (Walmsley 2018)—disproportionately skews toward Black people in general, and

Black men in particular (though Black women are also substantially overrepresented among the incarcerated). Researchers have estimated that around 34% of all those incarcerated in the United States are Black (Carson 2018). This is notable given that this racial group makes up a comparatively small 12.7% of the U.S. population (U.S. Census Bureau 2018). As a chilling final point in this necessarily brief treatment, it is estimated, assuming current trends continue, that 1 in 3 young Black men can expect to be incarcerated in their lifetimes, compared to about 1 in 17 among their white counterparts (Bonczar 2003).

Additionally, Black Americans are regularly subjected to state-sanctioned violence, brutality, and abuse at the hands of law enforcement agents. While this phenomenon seems perennial, it has received renewed focus in recent years in the wake of highly publicized killings of unarmed Black people. Many of these killings occurred after arguable instances of racial profiling. In all these high-profile killings, officers claimed they felt threatened, although the victims were typically unarmed and often running away or retreating. By some estimates, Black men are more than twice as likely than white men to be killed in an interaction with law enforcement officers during their lifetime (Edwards, Lee, and Esposito 2019). This is true without regard to the fact that Black people who are fatally shot by police are around twice as likely to be unarmed (Nix et al. 2017). Trayvon Martin, Michael Brown, Tamir Rice, Eric Garner, Freddie Gray, Philando Castile—the names of murdered Black men (in some cases, children) are now

familiar, and many more have died since Martin's killing in 2012 served as the catalyst which created the Black Lives Matter movement. Most recently, movement activism has focused on the 2020 killings of Ahmaud Arbery in Georgia, Breonna Taylor in Kentucky, and George Floyd in Minnesota.¹¹ I will take up these most recent examples and the protest movements which have grown out of them in subsequent chapters.

Taken as a mutually-reinforcing system, our structures of policing and incarceration cause great harms to Black Americans—physical, psychological, and otherwise—at strikingly and unjustifiably exaggerated rates in comparison both to the group's size relative to the general population and to other social groups. If understood as an attempt to communicate the values of the surrounding society, in keeping with a prominent philosophical views about punishment¹², the American criminal justice system “express[es] a commitment to racially derogatory, subordinating ideologies in much the same way that objectionable forms of racial discourse do” (Swartz 2019). These interlocking phenomena, the harms they cause, and the racially subjugating ideologies they

¹¹ While Breonna Taylor and George Floyd were killed in direct interactions with police, Ahmaud Arbery was pursued and killed by a civilian former police officer, who greatly benefitted from police and other investigative institutions turning a blind eye (or worse, actively obfuscating the investigation into) the killing. I will clarify some of the key differences below, while maintaining that Arbery's death is connected to the very same systems and understandings of criminality which authorize violence against Black citizens.

¹² I have in mind so-called communicative theories of punishment like those advanced by Feinberg (1965), Hampton (1984), Nozick (1981), and others, which hold that the purpose of a system of punishment or social control is to articulate, endorse, and defend a society's central values.

perpetuate are simply incompatible with the meaningful inclusion of Black citizens in American public life. They are oriented at no recognizable or reasonable political ideal, and they serve to exclude, marginalize, silence, and even publicly execute those who fall victim.

To characterize our own circumstances in relation to an ideal of justice, I find it helpful to follow Tommie Shelby (2007) in distinguishing three possible assessments for the justice of a social structure. In the first option, we judge a structure to be fully just. Based on the circumstances I have discussed above, I will follow Shelby in assuming that this cannot meaningfully be the case. Even the most basic constitutional essentials and protections are denied to Black Americans in systemic ways. On the second view, a society can have injustices which need to be addressed, but is not, itself, fundamentally unjust. I see this territory as making space for typical conceptions of civil disobedience which move that society which is not structurally broken in the direction of its ideals by calling clear and unavoidable attention to its problems. The third option Shelby outlines is one where “we judge that the society is *fundamentally* unjust and will require radical reform to bring it in line with what basic justice demands” (2007, 144). On my view, and as I will develop throughout this project, our own social order lies somewhere between the second and third assessments Shelby provides. On the one hand, it does seem as though the country has made progress with respect to racial injustice, and that progress should not be bracketed any more than it should be considered a laurel to rest upon. The basic

structure of our society, in many ways, is catching up to the extension of full citizenship to its most marginalized members.¹³ On the other hand, however, there are many reasons we might find Shelby's third line of assessment compelling. As I have outlined above, African Americans are substantively excluded from many meaningful aspects of American public life, and, under covertly prevailing myths of inferiority, criminality, and dispensability, are targeted for state-sanctioned and state-enabled oppression—often of the most violent sort.

There is an important point at which the second assessment crosses into the third, which Shelby refers to as “the limit of tolerable injustice” (2007, 145). From the perspective of many Black Americans, this has no doubt been reached, given that their guarantees to the most basic rights and liberties (much less relative equality of opportunity) seem to be of little real status under a regime which allows such substantial injustices to persist. In fact, in many cases, the institutions of that regime serve as drivers or perpetrators of the very injustices in question. Under circumstances like these, a social order is so deeply and fundamentally unjust that it becomes, at least from the perspective of the

¹³ We have, for instance, remedied structural injustices by ending chattel slavery and extending the franchise, expanding and defending (at least some) civil rights through the end of the Jim Crow era, and have greatly expanded representation of marginalized groups in our governing bodies and bureaucracies. But these moves in the direction of an ideal do not count as attaining said ideal, and many of these advances are in danger of being rolled back, as recent backslides have occurred in terms of voting rights, public segregation, instances of anti-Black racism, anti-LGBTQ+ animus, religious discrimination and violence, ever-escalating rhetoric and accompanying violence against immigrants, etc.

oppressed (if not more generally), illegitimate.¹⁴ At the limit of tolerable injustice, various forms of political resistance, including not only civil disobedience, but protests of a more uncivil sort, too, may be not only understandable, but justifiable. It is to questions about civility in resistance which I will now turn.

¹⁴ I suspect that this line of reasoning renders such an illegitimacy thesis commonly intelligible across racial identity and without regard to perspectival knowledge. However, I use the language of perspective here to suggest that this is acutely the case for Black Americans, who have the everyday experience of oppression at the hands of social institutions which are meant to include, support, and protect them. This can be, on my view, reasonably rendered as a kind of failure on social contractarian terms and may justify responses that are beyond typical political organizing, and which reject the authority of oppressive social institutions. Cf., Shelby (2016).

CHAPTER 2: THE REQUIREMENTS AND SHORTCOMINGS OF CIVIL DISOBEDIENCE

With respect to the project of resisting the kinds of oppression I outline in Chapter 1, various normative frameworks may serve as useful points of orientation and situation. These frameworks might be said to loosely represent two extremities of a spectrum. At the one end lies those modes of political action and advocacy which are most common in liberal democracies—legal opposition, e.g., organizing or lobbying within typical political norms. When these modes fail, citizens often turn to those forms of advocacy which are more confrontational, but which remain consistent with the assumption that the society is not rendered illegitimate by rampant injustices. For these forms of direct action, civil disobedience is a useful umbrella term. Civil disobedience might be undertaken when a political system sometimes allows unjust outcomes but is otherwise “near just,” or at least oriented at the right ideals.¹⁵ The objective of such political action is a kind of “course correction.” As public officials and activists alike render things, the central goal in this kind of action is to bring the surrounding polity into closer, more consistent alignment with its stated values, based on claims that those ideals are not currently being met.

¹⁵ Cf. Rawls (1999b).

On the other end of this spectrum lie frameworks for action when a political arrangement is *not* assumed to be fundamentally just, well-meaning, or even legitimate. We might find an extreme version of this framing in the motivations of the colonists who led the American Revolution in the 18th century. When a society is so thoroughly unjust that it loses claim to legitimacy in the eyes of its citizens, action of a different sort may be called for, and constrained disobedience crosses into rebellion or revolution. Rather than reform of an otherwise-legitimate governing authority, the goal in this kind of case is the rejection of authority and deposition or dissolution of an illegitimate oppressor. Along this spectrum of political action in response to injustices, we can identify an intuitive logic of proportionality, whereby the further the injustice reaches, the more forceful and total the justifiable political response.

Treatments of the unique injustice of oppression are often framed by the relative extremity of these frameworks. Political solutions to the problem are often relegated to either “end” of the spectrum I have laid out above. In the United States, for instance, many insist that class exploitation, increasingly violent racial oppression, and the ongoing subjugation of many women and LGBTQ+ people are inconsistent with the greater arc of the nation’s closely held commitments. On this view, these injustices can be combatted by reemphasizing those very same commitments. Exemplifying this type of approach, conversations often draw on Martin Luther King Jr.’s famous refrain that “the arc of the moral universe is long, but it bends toward justice” (1968b). Individual instances and even longer

histories of oppression are surmountable obstacles in our lengthy if inexorable road to a more perfect union—a union best accomplished by exemplifying the very values on which it was founded. Civility, democracy, and advocacy for the less advantaged (importantly, within the confines of the former), so a common story goes, will provide the needed resources to move toward a just society. However, others say, this kind of approach tends to ignore the fact that King and his followers, among others, fought tirelessly to accomplish the metaphorical “moral arc” we are on today. They often did so at great personal cost, as harassment and violence against civil rights leaders, as well as King’s own assassination in 1968 illustrate.

Another approach to this question, then, insists that the ideas, meanings, and material conditions of oppression are not inconsistent with, but rather essential to American democracy. Racial oppression, specifically, on this sort of view, is essential to our material and economic history, as well as to the conceptual lexicon of the polity. Critics of a kind of incrementalist, civilitarian politics argue that we, as a society, have never fully reckoned with the legacy of chattel slavery, its place as a cornerstone of the American economy, and the extent to which anti-Black racism suffuses and informs our political culture and institutions. On this view, one can recognize a case for a fundamental lack of legitimacy in the United States—certainly from the perspective of Black Americans, who remain subject to exclusion and marginalization across many sectors of public and private life.

This chapter and the next stem from a dissatisfaction with the competing approaches I have outlined, and that dissatisfaction motivates my project more generally. As above, I follow Tommie Shelby (2007) in distinguishing three possible assessments for the justice of a social structure. In the first option, we judge a structure to be fully just. Based on the ongoing systems of oppression detailed in Chapter 1, I will take for granted that this is not the case. On a second assessment, a society has some injustices which need to be addressed, but is not, itself, fundamentally unjust. I see this territory as making space for both traditional legal opposition as well as a more radical conception of civil disobedience of the sort outlined by King, John Rawls, and others. These forms of advocacy can be effective in moving a society which is not structurally broken in the direction of its ideals by calling clear and unavoidable attention to its social and political ills. The third assessment Shelby outlines is one where fundamental injustice is present and radical reforms are necessary. Here, as in the case of the pre-revolutionary American colonies, the society constitutionally fails to reconcile its institutions with the moral and political status of its citizens, sometimes in violent or other repressive ways.¹⁶

On my view, our own social order likely lies—though perhaps not neatly—somewhere between the second and third assessments Shelby provides. As above, we have made important progress with respect to racial injustice.

¹⁶ Rawls (2003) argues that this is a fundamental aim of political theory and of politics, a move which Shelby (2007, 2016) uses to characterize a truly systemic failure of the state in cases like these.

However, we should recognize that this is not comprehensively the case. As such, there are many reasons we fear reaching the third level of Shelby's taxonomy. More specifically, we should be deeply concerned with wide-ranging racial oppression across various sectors of American life I detail in Chapter 1. The limit of tolerable injustice, where the second assessment crosses into the third, has surely been reached, given that Black Americans' guarantees to basic rights and liberties seem at the very least of be of unclear status. This analysis of the clearly non-ideal nature of our own society troubles conventional ideas of what sort of resistance is appropriate in such circumstances.

However, there remains much theoretical and practical space between these two parts of Shelby's taxonomy—between the idea that a society requires targeted opposition or disobedience and the conclusion that a society is effectively irredeemable to the point that more radical reforms should be undertaken. This is particularly the case if we think of the kind of radical reform Shelby might advocate in the latter case as requiring changes which are total, violent, or in other ways trending toward a revolutionary extremity. It is true of our own society both (a) that the country has made hard fought and historic strides with respect to the project of democratic inclusion and (b) that substantive and systematic injustices persist which threaten our pursuit of the ideals we claim to organize our polity around.

In what follows, I will attempt to clarify the nature of this theoretical space by taking up some important questions and concerns about each framework on

the spectrum I have identified. In this chapter, I present some important shortcomings of civil disobedience as a mechanism for understanding and responding to the thoroughly non-ideal nature of our own society, particularly as it concerns the continuing oppression of Black Americans. These shortcomings are variant in kind, scope, and consequence, and are presented in the service of offering constructive theoretical and practical considerations to aid our understanding of and response to oppression. In my view, the worries about a framework of civil disobedience which follow warrant a reconceptualization of the core normative essentials involved in resisting oppression. I contend that misappropriations and misapplications of the idea of civility encouraged by this framework motivate important revisions to the liberal ideal of civility more generally, and to those ideas which are closely related to it (e.g., political obligation and fidelity to the law, a commitment to non-violence, etc.).

This critical analysis creates space for a hybridized view which resists the insufficient and potentially harmful framing I would associate with civil disobedience as a primary solution. This view also resists (as I will clarify in Chapter 3) the other extremity of the political action spectrum I advanced above—rebellion or revolution, which I worry involves turning citizens of a democratic society on one another as enemies. My approach to these questions aims to (re-)emphasize the fundamentals of liberal democracy, including a suitably reconceptualized notion of what is valuable about civility. I also want to take seriously those parts of the logic of political violence which may help to

define and constrain our responses to oppression—a commitment to transformative change and norms from just war theory like just cause, last resort, and proportionality of intervention.

John Rawls on Civil Disobedience

John Rawls (1999b) develops his account of civil disobedience as a symbolic or communicative rejoinder against unjust laws and structures when traditional avenues of legal opposition have been closed off. For Rawls, who wrote partly in response to the civil rights movement, civil disobedience is “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” (320). In addition to these features of his definition, Rawls’s account includes several stringent specifications of the conditions under which civil disobedience is appropriate and justifiable.

First, Rawls explains that civil disobedience must be conscientious in its motivation. That is to say that it ought not be undertaken for reasons of self- or group-interest. Underlying this requirement is a sense of fidelity to the rule of law and the society itself. In acting disobediently, Rawls contends that resisters ought to be concerned with, and act for the sake of, the best interests of society at large, rather than their own provincial interests. Relatedly, only certain conscientious acts with distinctively political motivation qualify as acts of civil disobedience. This provides further specification to the prescribed motivations above, requiring that parties act from a common conception of justice which

establishes and perpetuates the conditions of fair and equal social cooperation in a constitutional democracy—in Rawls’s words, “the sense of justice of the majority” (1999b, 335).

Accordingly, civil disobedience must act on these requirements by aiming at changing established law as a matter of political engagement. It follows that acts of civil disobedience must be committed under conditions of publicity, as they cannot be effectively addressed toward a shared conception of justice or fulfill Rawls’s other stated goals unless done in full public view. This criterion entails an expectation and acceptance of the likelihood of arrest and punishment for law-breaking as an extension of the requirement of fidelity to law. Finally, acts of civil disobedience should be non-violent. As Rawls contends:

To engage in violent acts likely to injure and to hurt is incompatible with civil disobedience as a mode of address. Indeed, any interference with the civil liberties of others tends to obscure the civilly disobedient quality of one’s act... Civil disobedience is giving voice to conscientious and deeply held convictions; while it may warn and admonish, it is not itself a threat (1999b, 321-322).

Thus, on Rawls’s conception, civil disobedience draws a stark contrast to other forms of “organized forcible resistance”—be it armed or coercive action, rebellion, revolution, etc., which make use of violence and subversion, and whose practitioners reject and seek to undermine the broader society’s claims to legitimacy.¹⁷

¹⁷ It is worth noting that Rawls does not deny that these methods can ever be justified, only that they do not constitute civil disobedience, and that their justification is a question

Aside from these key requirements for an act's counting as civil disobedience, Rawls offers similarly stringent conditions under which disobedience can be justified. First, he argues that all ordinary avenues of changing purportedly unjust laws must be closed off first—that civil disobedience must be a last resort. Furthermore, disobedient acts must only target clear and drastic violations of his principles of justice—particularly the first, which prescribes equal basic constitutional liberties for all.

Rawls's account of civil disobedience raises important questions at the level of the various theoretical considerations he employs. More specifically, I think there is sufficient reason to question both his publicity criterion and his insistence that acts of disobedience be directed at the sense of justice of a reasonable majority. With respect to the publicity criterion, Rawls's view seems to center a kind of openness to punishment which may undermine the point of the disobedience itself in various ways. For example, many forms of civil disobedience, e.g., blocking a street or staging a sit-in, depend on at least parts of their planning and execution not being sufficiently public to allow for disruption. This practical point is supplemented by an additional one when it comes to cases of protest against police violence, where openness to punishment is not advisable, if even meaningfully possible under the broader conditions of the

that lies outside the scope of his inquiry, which is focused on assumed conditions of complete or near-complete political compliance—of a “near-just” society (1999b, 323).

society. In this case, it is notable that the society's notion of punishment, as well as how and to whom it is applied, is the very thing at issue in acts of unrest.

Furthermore, there is reason to question the wisdom of Rawls's claim that acts of civil disobedience ought to be directed such that they implicate the majority's sense of justice. As a foray into the history and tactics of the American civil rights movement shows, disobedience is most justified, and maybe even required, in precisely those cases where the majority's sense of justice has failed or is misguided. In the case of the civil rights movement, as is the case today, acts of political resistance were in a very real way diametrically opposed to the sentiments of the majority, as I illustrate below.

Rawls's conceptual account was inspired by acts of disobedience of the sort pursued by Martin Luther King, Jr., and other ideologically similar Black civil rights leaders in the 1950s and 60s. Direct action campaigns such as marches across the South, student sit-ins at lunch counters in segregated restaurants, and the now-famous Freedom Rides satisfy Rawls's demanding criteria. These programs, while clearly illegal against the institutional backdrop of the Jim Crow South, ostensibly made appeals to constitutional principles of justice and pursued the goals of legal and political reform.¹⁸ This is best illustrated by the Civil Rights

¹⁸ Note, for example, the appeal to a conception of human personality across King's writings, which was often (though not always) explained in terms of the very political liberties which Rawls's principles would extend on an equal basis. Though, it is additionally worth noting that he often justified this in terms of a broadly theological natural law-based account of moral personhood (which is by definition *not* a fully public conception of political justice).

Act of 1964 and the Voting Rights Act of 1965—both of which, while relatively modest from a contemporary perspective, have been hailed as being among the key moral and political victories of the era. Unfortunately, many of the hard-won protections in both legislative packages have been dramatically weakened in the decades since.¹⁹

Following King's program of civil disobedience, most famously and concisely laid out in his 1963 "Letter from Birmingham City Jail," Black activists and their white allies exhaustively trained in non-violence. They broke the law peacefully and publicly, even reverently. They continued to do so even in the face of retributive and terroristic violence from authorities and white southerners who supported segregation—as many of the movement's most enduring images attest. They willingly submitted to arrest and incarceration, displaying all the hallmarks of the liberal ideal of civility—which may seem surprising given the

¹⁹ The Voting Rights Act of 1965, for instance, was rendered functionally inert by the U.S. Supreme Court in *Shelby County vs. Holder* (2013), which held that the provision which targets areas of the country with extant histories of voter suppression and discrimination for additional Justice Department scrutiny is unconstitutional. The holding in this case additionally struck down the provision of the law which requires any of these states or municipalities to seek pre-clearance for changing their voting procedures by arguing that it constituted an unacceptable burden on the sovereignty of the states. In the years since, laws which effectively and disproportionately target Black Americans for voter suppression have promulgated across the country. The Civil Rights Act of 1964 has been similarly eroded, though not directly invalidated by the Court. Provisions which prohibit unequal application of voter registration requirements have fallen by the wayside, again disproportionately affecting Black voters and majority-Black areas of the country. Public education in the United States, ostensibly and historically desegregated by the Court's holding in *Brown v. Board of Education* (1954) and aided by provisions in the Civil Rights Act, remains as racially segregated as ever (Stroub and Richards 2013).

extent to which their very public presence, much less their engagement in protest, was often deemed markedly uncivil by white southerners.

However, in my view, images like these problematically contort the political realities of the civil rights movement. More specifically, it misidentifies the moral judgments of the architects of that movement, chiefly by mistaking activists' ostensible acquiescence to the legitimacy of oppressive systems as their taking onboard a substantive moral duty to obey the law. David Lyons (1998) and Candice Delmas (2018) have convincingly argued that many of the considerations which so endear King-style civil disobedience to political theorists (not to mention political commentators) were pragmatic and tactical choices, rather than absolutist moral convictions. In King's case, specifically, the misattribution seems rather clear. During the height of the movement he led, he often denied that the legal infrastructure of the Jim Crow South had any legitimacy and routinely called that system "unjust" and "evil" (King 2003, 47)—far from language espousing fealty or obligation, much less reverence. In fact, King went so far in many cases as to directly reject the legitimacy of the social order, characteristically expressed in his exhortation that "The thing to do is get rid of the system" (King 1991, 47).

King's now-famous and lionized commitment to non-violence, rather than being the bedrock moral principle it is often portrayed as, seems instead to have been somewhat a strategic consideration, even if a closely-held one. As Martha Nussbaum (2016, 2018) and Brandon Terry (2017) have compellingly shown,

King did acknowledge the moral aptness of anger, as well as the legitimacy of violence in self-defense, even while arguing that the movement ought to have a clear prudential commitment to non-violence to avoid further frightening the so-called “white moderate” and inviting backlash against its cause. That backlash ultimately came anyway with King’s assassination in 1968, among other developments since. Furthermore, King denied a standard connection between violence and coercion by seeking to ratchet up a kind of coercive tension in order to force Southern communities to reckon with their racism (King 1963; Delmas 2018).

On the Shortcomings of the Civil Disobedience Framework

Beyond the theoretical concerns I have noted above, my criticism of civil disobedience as a framework for understanding and responding to manifest racial injustices in our current political arrangements²⁰ is essentially twofold: (1) While lionized throughout our history as being consistent with the spirit of our ideals, civil disobedience has not been a consistently effective means of combating racial oppression. More seriously, (2) emphasis on the norms and demands of civility invites conceptual misapplication and misappropriation, allowing the framework to be weaponized in ways which frustrate rather than

²⁰ By using the language of a “framework” here, I mean to pick out both the theoretical conception outlined by Rawls (discussed in the previous section) and the common understandings and uses of the politics of civility in American popular and political culture. The liberal ideal of civility in protest and resistance has important problems at both of these levels, and this section attempts to synthesize them productively.

advance the cause of justice. Civility norms (or exaggerated versions of them) have been lionized and internalized as among the core tenets of liberal democracy, due at least partially to misunderstanding of the commitments, tactics, etc. of the 20th century civil rights movement and related social movements throughout our history. Thus, I am concerned with the extent to which an insistence on civility, understood as being associated with tone and manner rather than substance, functions as a kind of counter-resistance ideology.²¹

Today, in the wake of an overly romanticized narrative of the civil rights movement, as well as the remarkably stable place the Rawlsian conception of civil disobedience has occupied in American political culture, the risk of misapplication and misappropriation runs high.²² The phrase “civil disobedience” evokes a venerable tradition of heroes whose ideals we like to think of ourselves as pursuing—people like Rosa Parks, Martin Luther King, Jr., and John Lewis. We think of them as heroic in their calmness and non-violent collectedness, and often hold them up as paragons of the virtue of civility and respectability. The term “civil disobedience” is not merely used to classify, but, it seems, to evaluate, in a way which focuses much more clearly on the included component of “civility” than the component of “disobedience.” To classify an action as *civilly* disobedient

²¹ I have borrowed this terminology from Candice Delmas (2018).

²² While I don’t completely lay this at Rawls’s feet, I think his development of civil disobedience does invite this sort of treatment via its characterization as a brief foray into “partial compliance” or non-ideal theory.

seems to equate to taking the first steps toward its moral or political justification, as recent treatments might show.

For instance, consider the far right-wing's comparison of Kentucky county clerk Kim Davis's refusal to issue marriage licenses to same-sex couples to the refusal of Rosa Parks to give up her bus seat to a white man during the civil rights movement (P. Buchanan 2015). Given that the function of this rejoinder is to legitimize with the force of law discrimination in the provision of crucial services, rather than to express the moral and political status of a group of oppressed people, the problem of concept (mis)application becomes clear. The language of civilitarianism can be and is being operationalized as a counter strategy against modern-day social and political movements seeking to ameliorate oppression.²³

We might evaluate the civil rights protests of the 20th century along several vectors nearby to the key ideal of civility, including their seriousness, their commitment to non-violence, the extent to which they worked within or flouted prevailing social norms, etc. They were undoubtedly deeply morally serious in the sense of being "conscientious," insofar as they were committed to recognizing and reifying the agency of Black Americans as a matter of greater moral good

²³ This is somewhat of a cursory treatment of the phenomenon I am trying to get at, but similar examples of a strange obsession with stability abound, e.g., the weaponization of the ideal of "respectability" in various forms of activism, the proliferation of insinuations that drug use, choices of clothing, etc. can justify violent aggression against black defendants, etc.

and increased social stability.²⁴ These concerns are not narrowly parochial or self-interested in a pejorative sense. They do not involve remedying an inconvenience, and they certainly do not involve granting to Black citizens any greater powers or prerogatives than their white counterparts. They merely insist on recognition of equal consideration under law—the moral concept central to King’s conception of a just law as that which legally enforces sameness.

On the question of whether protests were violent, the categorization is obvious. Events during the civil rights movement seldom turned to violence until white citizens brought it to bear via harassing, spitting on, and physically attacking protestors, or until police introduced violent tactics into the equation.²⁵ In fact, in a feat of self-control and solemnity, many of King’s followers across the south trained extensively in not reacting to the jeers, harassment, and attacks of their oppressors. On the question of social normativity of ideas like politeness or respectability, civil rights protesters have been historically venerated precisely because they acted in just the ways expected by the prevailing norms of the time, save their being present in “whites-only” spaces. They often dressed in their Sunday best, interacted with others politely even in the face of unabashed racist

²⁴ See, for instance, King’s (1963) discussion of segregation as a sort of moral objectification (i.e., reduction to a mere thing or means to an end).

²⁵ White southerners’ reactionary rage at public acts of protest by black citizens is demonstrated by the most enduring images of the era—protestors being sprayed with water cannons and attacked by dogs, for instance (to say nothing of the numerous and gratuitous acts of terrorism, e.g., lynchings, draggings, etc., committed against black Americans even when not protesting).

hate speech, and carried themselves with dignity as a marker of the seriousness with which they were treating the occasion.

These commitments to a kind of politesse, which was typically racially coded as white and upper/middle class, served to subvert prevailing stereotypes of black people and render them and their cause more intelligible, sympathetic, and, we might say, respectable to the average white citizen. In a campaign to change hearts and minds by presenting protestors' very bodies as a kind of bargaining collateral, these tactics have provided enduring and powerful imagery, and are thus often listed as chief among the reasons for the relative success of the civil rights movement.

Thus, it would seem, at least on its face, that the tactics of the civil rights era have fared favorably. The cause of justice here, as well as the continual stream of imagery this combination of tactics prompted, received gradual uptake from an increasingly sympathetic government and citizenry, and ended up motivating some cornerstone legislative and constitutional achievements. Even more persistent over time has been the greater sense of cultural and public racial integration that grew out of this period. The tactics of the civil rights movement are held up as a moral exemplar among similar movements in history, I suspect, precisely because they can be straightforwardly and positively appraised along the lines I have outlined above. However, the pure effectiveness of tactics

associated with the civil rights movement might not hold up longer term, given contemporary challenges that remain.²⁶

On the Risks of Misappropriating Civility

More deeply concerning than any worries about the effectiveness of civil disobedience, however, are those about the framework's use of an easily misapplied conception of civility. More specifically, I think the conversation around civil disobedience encourages us to conflate civility with other closely related ideals like manners, respect, decency, etc. In focusing on "civility" more so than "disobedience", we tend to focus on mode of address and tone rather than on political substance.²⁷ We now tend to use "civil" as a stand-in for decent—and thus permissible, justifiable, etc. We can and have cynically framed even unjustifiable and illiberal claims and causes in terms of civility. It is possible (and not uncommon) to *politely* oppress people.²⁸

²⁶ I offer a hedge here because many of the legislative and constitutional accomplishments of that era have been rolled back and/or reconstituted by other means, norms, and social structures. See, e.g., Alexander (2012) on the reconstruction of Jim Crow by means of the various norms and structures which have motivated a system of mass incarceration in the United States.

²⁷ Audre Lorde puts a similar point succinctly with her exhortation: "Tell me how you feel, but don't say it too harshly or I cannot hear you" (1984). The phenomenon of tone policing in discussions of racism, in particular, is discussed at length by Mills (2007) and DiAngelo (2018), among others. Barbara Applebaum (2021) compellingly argues that insistence on civil modes of address over the substance of the claim being made is a way of maintaining a kind of willful ignorance, in the sense advanced by Mills (2007), Pohlhaus (2012), Dotson (2012), et al.

²⁸ To give an explicitly political example, this type of reframing is a key premise behind Lee Atwater's "Southern Strategy" for the turn of the century GOP—moving from overt racist slurs to "forced busing" to "tax cuts," with the same underlying goal: anti-Black public policy; Cf. Inwood (2015). Tracy Owens Patton calls this sort of phenomenon

The damage that these kinds of conceptual errors can cause occur in at least two ways. They can (1) be epistemically damaging to the project of understanding and taking up acts of resistance and the social ills they point out—through misdirection or diversion. This often manifests as a kind of rhetorical “whataboutism,” or through direct appropriation, where the language of protest is co-opted to advance dominant causes. The counter-resistance “Blue Lives Matter” movement and in a dramatic resurgence of the so-called “law and order” politics of the 20th century both serve as clear examples. These sorts of error serve a status quo maintenance function and can also cause further (2) moral harms to those very people who are disadvantaged and oppressed by the system being resisted. Consider, for instance, cases where civility is used to claim the moral and rhetorical high ground, e.g., over “looters and rioters.” The underlying thinking or narrative is perhaps something like: “Because we are civil, we are decent. And if *those people* (read: Black people protesting their oppression in increasingly exasperated and desperate ways) are uncivil, they must be indecent. Criminal even, depending on the mode. If they could just act civilly, maybe law enforcement would treat them better.” This sort of reasoning relies on myths of Black criminality, and not only reinforces, but exacerbates

(primarily as it occurs in the context of classrooms in higher education) *hegemonic civility*; Cf. Patton (2004). Cris Mayo (2001, 2002) provides some examples of precisely this kind of interaction, where students from gender and sexual minorities are commonly met with charges of incivility for drawing attention to sexism, homophobia, or transphobia. Mayo characterizes this as a kind of distancing strategy whereby “those whose presence disrupts the bias that presumes their absence” are ignored (2002, 174).

cycles of oppression by marking out particular modes of being, speaking, and otherwise engaging as beyond the conflated pale of civility, decency, and respectability.²⁹

The idea that an insistence on civility norms can cause harm to those who are already marginalized is not a completely novel one. As I will discuss more in Chapter 4, critics of the early modern liberal conception of civility frequently note the extent to which a bloody history of European colonialism has been, in many ways, a mission to “civilize the savages” of the world.³⁰ In worrying about civility politics in a broadly American context, it is appropriate to follow Rawls in beginning with the civil rights movement. As above, we think of the leaders of this movement as paradigmatic and admirable instantiations of a civil way of being, engaging, and protesting.

However, there are two key problems that I see with holding up the civil rights movement and its leaders as paragons of the virtue of civility. The first is that they were notably not regarded as such during the movement itself (Chafe 1980). Civil rights activists who disrupted the status quo of everyday life in the American South were treated with rejection, derision, and often violence, prompting Martin Luther King, Jr. to address his now famous criticism to the “white moderate,” who often rejected his movement as uncivil or “un-American”:

²⁹ This is notably a form of cultural imperialism (Young 1990) which involves both the universalization of a dominant group’s culture and prevailing norms and the exclusion of norms which diverge from the very same.

³⁰ See also Berenstain (2020).

I have almost reached the regrettable conclusion that the Negro's great stumbling block in the stride toward freedom is not the White Citizen's Councilor or the Ku Klux Klanner, but 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 can't agree with your methods of direct action;' who paternalistically feels he can set the timetable for another man's freedom; who lives by the myth of time and who constantly advises the Negro to wait until a 'more convenient season' (King 1963).

King was here responding to a conference of church leaders who precisely fit this description, showing that even those who agreed with him on the moral fundamentals were skeptical of his movement based on its tone and manner rather than its substance. King found this sort of challenge more concerning than even the overt violence Black Americans were subjected to in streets across the South, precisely because it renders civil rights activists' dramatization of their plight as operating outside the prevailing norms of civility, and thus, King feared, outside the scope of what the society was willing to hear and act upon.

Furthermore, the urging of civility during the civil rights movement often constituted a kind of unilateral disarmament—often chiefly directed at civil rights activists rather than the public opposition to the movement or to individual white antagonists. While King and his followers were asked to wait for the sake of order, similar calls were seldom extended to white citizens who participated in public acts of incivility like verbal abuse and hate speech (or worse). Perversely, these people were regarded as upholding public order by keeping Black Americans in their place. This is in addition to a lengthy terrorist campaign against Black Southerners, whose methods included beatings, lynchings,

draggings, bombings, and other acts of public violence and cruelty. This terror was enacted by not only the angry white southerner resisting greater integration, but by law enforcement officers and other civil servants tasked with keeping the peace and protecting citizens.

This phenomenon was far from being an isolated problem with individual bad actors. Once Black people were marked beyond the pale of normal or civil society, more institutionalized forms of abuse directed at them, like mass arrests, reluctance to prosecute individual perpetrators of anti-Black terrorism, violent police tactics, etc. were routinely authorized and justified under the guise of keeping the peace. At that point, in the American South, such a peace was clearly understood as preserving the oppressive status quo of segregation and exclusion. The city of Birmingham's public safety director, Bull Connor, put this line justification colorfully when describing the lengths to which he would go to disrupt civil rights activism and keep the streets of Birmingham safe: "All you've got to do is tell them you're going to bring the dogs. Look at 'em run. I want to see the dogs work" (Hakim 2002).

My point about the language of civility being weaponized against those who are marginalized is not merely meant as a push for historical accuracy. It remains relevant even (and especially) now. In our own social and political context, norms of civility are regularly turned against protest movements in remarkably similar ways. Ta-Nehisi Coates (2015) dramatizes the strange effects emphasizing the civility of resistance movements has in the face of rampant

injustices in *Between the World and Me*, writing of his experience of Black

History Month:

Every February my classmates and I were herded into assemblies for a ritual review of the civil-rights movement. Our teachers urged us toward the example of freedom marchers, Freedom Riders, and Freedom Summers, and it seemed that the month could not pass without a series of films dedicated to the glories of being beaten on camera. *Why are they showing this to us?* Why were only our heroes nonviolent? Back then all I could do was measure these freedom-lovers by what I knew. Which is to say, I measured them against children pulling out [guns] in the 7-Eleven parking lot, against parents wielding extension cords, and the threatening intonations of armed Black gangs saying, “Yeah, n****r, what’s up now?” I judged them against the country I knew, which had acquired the land through murder and tamed it under slavery, against the country whose armies fanned out across the world to extend their dominion. The world, the real one, was civilization secured and ruled by savage means. How could the schools valorize men and women whose values society actively scorned? How could they send us out into the streets of Baltimore, knowing all that they were, and then speak of nonviolence?

Coates well-highlights the relative absurdity of foisting civility norms upon students whose everyday existence is colored by the converse—a long history of violence and victimization.³¹

³¹ Angela Davis remarks upon the extent to which this sort of narrative obscures state-sanctioned violence against Black Americans, and the extent to which incivility is often in response to incivility: “...And then you ask me whether I approve of violence. . . That just doesn’t make any sense at all. Whether I approve of guns? I grew up in Birmingham, Alabama. Some very, very good friends of mine were killed by bombs—bombs that were planted by racists. From the time I was very small I remember the sound of bombs exploding across the street, our house shaking...” (Olsson 2012). Kwame Ture (then known as Stokely Carmichael) also (in)famously dramatized this idea, remarking of King’s brand of activism, “he only made one fallacious assumption: In order for nonviolence to work, your opponent has to have a conscience. The United States has none” (Olsson 2012).

The kind of narrative which is often upheld around civil rights activism encourages compliance and rules out those forms of resistance which are deemed uncivil or disruptive of polite society. This categorization often ambitiously excludes even paradigmatic instances of civil disobedience.³² Moreover, calls for civility in the face of injustice often actively obscure the drastic gap between those in power and those who are marginalized, for the latter often have a hard time speaking and being heard, and thus fulfilling the requirements of civility. This is the case across multiple identity vectors, as civility norms are commonly enacted in ways which favor the comparatively powerful—the male, the white, and the wealthy.³³ For these reasons, uneven enforcement of civility norms effectively serves to quiet and prevent political resistance in many of its forms.

Consider too, the role considerations of tone and respectability play in the extent to which the broader whole of American culture responds (or fails to respond to) to contemporary anti-racist activism. In many public cases, messages are lost because the conversation is relegated to focusing on tone rather than substance. An incident with former President Bill Clinton during the 2016 Presidential election illustrates this well. Speaking at a rally in support of his

³² Consider, for example, the remarkably durable phenomenon of onlookers unilaterally reacting to public obstruction (e.g., of roads, pedestrian centers, or buildings) with violence, e.g., by attacking otherwise peaceful protestors, hitting them with cars, etc. (Morrison 2020).

³³ Cf., Le Espiritu, Puar, and Salaita (2015).

wife's candidacy for President, Clinton recounted ways in which the criminal justice system had evolved since the passage of his now-roundly-criticized 1994 Omnibus Crime Bill. When BLM protestors challenged his argument, Clinton reacted by quite literally shouting and wagging his finger: "I listened to them, and they don't want to listen to me... You will never learn anything when you're talking" (2016).

Clinton's supporters in the room reacted rather raucously, drowning out the protestors' challenges. Essentially, Clinton's comments about their manner effectively ensured that they had no chance of being heard, on a matter of great importance, and about which they could likely have offered the conversation important insight. In a further step to weaponize the concept of civility, Clinton seemed to lay the social ills of the era in question at the feet of the protestors, tacitly accusing them of endorsing the sorts of violence driven by the drug trade and policing thereof in the 1990s:

I don't know how you would characterize the gang leaders who got thirteen-year-old kids hopped up on crack and sent them out on the street to murder African American children. Maybe you thought they were good citizens. She [Hillary] didn't! You are defending the people who kill the lives you say matter. Tell the truth! (2016).

Similarly, this kind of silencing-by-reframing is well-illustrated by the promulgation of nascent alternative movements such as "All Lives Matter," which portrays anti-racist activism of BLM and similar groups as being essentialist and divisive—the phrase "race baiting" is sometimes bandied about—as well as the "Blue Lives Matter" movement, which has attempted to recast anti-racist

narratives as organized and “uncivil” attacks on both the rule of law and against law enforcement agents themselves. This is done by reframing the BLM movement as being predominantly associated with shocking images of burning storefronts and blocked highways in cities like Ferguson and Baltimore, rather than with more palatable challenges to the very real mistreatment of Black people in American society. As Norman Finklestein succinctly puts this problem, charges of incivility can, in the course of a conversation, serve as “a politically motivated excuse to change the subject” (2008, 300).

Examples like these highlight serious problems with the pride of place we give a romanticized notion of civility when thinking about our responses to injustice. The notion does real harm in contexts of oppression—in many cases, more harm than good. Given these harms, I submit that clarification and revision of our conception of civility and its requirements is called for. I will take up this task in Chapter 4. Before doing so, however, a treatment of the other end of the political action spectrum I developed above is necessary to establish another important bound for my project. Namely, I will argue that problems with civility are not sufficient justification for dispensing with the idea in its entirety in favor of a violent or revolutionary alternative.

CHAPTER 3: ON ABANDONING CIVILITY: THE COSTS OF POLITICAL VIOLENCE

In the previous two chapters, I have taken up the persistent injustice of oppression and considered a common strategy for resisting it: civil disobedience. Given the shortcomings I identify with the broad framework of civility politics I sketch in Chapter 2, I now wish to consider an alternative framework that tends toward the opposing extreme of incivility—that of political violence. By this I mean to engage with those acts which make destructive use of force against property or people, toward a distinctively political end. We may distinguish various forms and instances of political violence along numerous vectors: by contrasting those at whom acts are targeted, the reasonableness or justifiability of their underlying cause, the particular tactics employed, etc. In what follows, I attempt just this by making some principled distinctions which are informed by important examples, both historical and contemporary.

Ultimately, while it remains true that violence is in general morally concerning and tends to be politically destructive, there is something instructive (and indeed *constructive*) about specific forms of violent political action. I submit that a close examination of such action yields important normative resources which may carry forward and contribute to our understanding of the politics of resisting oppression, namely, a logic of just cause and proportional response adapted from just war theory and a notion of deeply transformative political action

and its accompanying moral psychology adapted from norms of revolutionary action.

Distinguishing Everyday and Political Violence

Acts of violence, more than most other acts, engage our moral judgments quickly and decisively. On broadly consequentialist views, violence is typically impermissible pursuant to the harm it inflicts. Such harms are presumed in the typical case to be physical: a paradigmatic case of violent conflict is one in which a party inflicts bodily harm on another. However, this need not be a strictly limiting case. Feminist scholars have long written about the unique harms of sexual and domestic violence, and recent scholarship has begun a productive conversation on the nature of psychological or epistemic violence which may stem from speech and other acts of expression. Concerns about the sort of harm inflicted by violence equally concern non-consequentialists in that violence is at its heart a form of coercion, where one person substitutes their will for the will of another, and seeks to enforce that will by harmful means or threat of the same. We might additionally worry that acts of violence are an expression of a more general disposition to disregard the well-being, safety, rights or expectations, or the very lives, of others. Violence is, in most typical everyday cases, uncontroversially morally problematic.

But what about violence of a more systemic sort? What about violence deployed in the social or political sphere? In the context of a project which takes social oppression seriously, we may take as a concern violence occurring in the

spirit of oppression or in the cause of its maintenance. Iris Marion Young (1990) distinguishes systemic violence as a political phenomenon from violence as a merely moral wrong³⁴:

What makes violence a face of oppression is less the particular acts themselves, though these are often utterly horrible, than the social context surrounding them, which makes them possible and even acceptable. What makes violence a phenomenon of social injustice, and not merely an individual moral wrong, is its systemic character, its existence as a social practice (1990, 62).

Young goes on to argue that oppressive violence is inflicted on members of social groups as such, simply by virtue of their membership. To make this case, she cites trends of authorized and normalized violence against women in the form of physical and sexual assault, against the poor and economically marginalized, and against Black Americans in the form of the physical harassment and attacks which were commonplace in the Jim Crow Era. These are strikingly similar to modern day instances of racist violence, where presence in the wrong space can invite violent attack, as well as to violence against gender and sexual minorities whose expressions of gender identity or orientation remain in many jurisdictions an extenuating factor in the justification of violent attacks against them.

For Young, this sort of violence finds its way into our social and political lives through its toleration and authorization—“it is a social given that everyone

³⁴ For compelling further developments of the idea of distinctively political violence, see Veltman and Norlock (2009).

knows happens and will happen again. It is always at the horizon of social imagination, even for those who do not perpetrate it” (1990, 62). Of particular concern in this regard, as I have argued in previous chapters, is gratuitous violence of this systemic sort which is enabled or endorsed by the state—as in the killing of Ahmaud Arbery by a former police officer and subsequent delay in prosecution of the suspect, or which is inflicted by the state itself—as in the killing of George Floyd by a Minneapolis police officer, as citizens watched and recorded. Such public and state-sanctioned acts of violence may encourage many to ponder the ethics of violence in responsive kind.

Political Violence: Revolutionary Action and Just War Theory

Beyond its status as a particular kind of moral wrong and its social function in some cases as a tool of coercion or oppression, there are legitimate instances of coercion and political violence. Beyond law enforcement and punishment, a paradigmatic case of violence in the broadly political sphere is that of war. While my project will not be concerned with a theory of just war between state actors as such, I am interested in a framework informed by some of the very same normative ideas—that of revolutionary political action. Recall once more from the previous chapters Shelby’s three potential assessments of the justice of a social arrangement: (a) that arrangement is fully just, (b) the arrangement is such that some injustices persist, but the society itself is not so fundamentally unjust so as to lack legitimacy, and (c) the arrangement is

fundamentally unjust, is arguably illegitimate for this reason, and requires radical reform (Shelby 2007).

Given the persistence of social oppression, the state of affairs in (a) clearly does not obtain in the case of our own social arrangements. As before, it is likely that we lie between (b) and (c) in that there is much persistent injustice, but that the question of whether these injustices are so deep and resilient so as to affect our society's legitimacy at a basic level remains open. As I advanced in Chapter 2, (b) here clearly defines the purview and purpose of civil disobedience as a method of resistance. This chapter will be devoted to largely to the state of affairs in (c) if and when it occurs, and to more extreme political responses to deep and fundamental injustices like the kinds of oppression I have discussed thus far.

If a society is so unjust that it constitutes tyranny and thus fundamentally lacks legitimacy in the eyes of its citizens, many theorists have argued that the flouting or dissolution of the governing authority of that society is morally and politically justifiable. Thomas Jefferson, resolving on behalf of the Continental Congress, puts just this justification of revolutionary politics famously in the United States' foundational document—just as much a declaration of war as a Declaration of Independence. The Congress resolves:

That whenever any Form of Government becomes destructive of these ends [Life, Liberty, and the pursuit of Happiness], it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect

their Safety and Happiness. Prudence, indeed, will dictate that Governments long established should not be changed for light and transient causes; and accordingly all experience hath shewn, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same Object evinces a design to reduce them under absolute Despotism, it is their right, it is their duty, to throw off such Government, and to provide new Guards for their future security (US 1776).

Jefferson's revolutionary resolution here, while aspirationally democratic in nature, was out of step with much of what came before in thinking about revolution.

The Western tradition's skeptical attitude toward revolution tracks all the way to the medieval period when St. Augustine and Thomas Aquinas both unambiguously rejected the permissibility of rebellion against governing authority (read: the church). This continued into the modern era. Thomas Hobbes (1994) famously foreclosed on revolution as a justifiable response to even the worst despotism. He argued that subjects could resist the authority of his eponymous governing *Leviathan* if and only if such resistance was required for self-defense from imminent and lethal harm. Given Hobbes's development of the now infamous state of nature thought experiment, where life was rendered as "solitary, poor, nasty, brutish, and short" (1994, 89), it makes sense that he would be skeptical or fearful of the dissolution of civil society that may come with the rejection of its authority, and thus stability.

Immanuel Kant, too, rejected the idea of justified revolution, though on very different grounds than Hobbes. While Hobbes's argument stemmed from a

worry about the consequences of revolution, Kant's stemmed from a conceptual confusion that lies at the heart of the revolutionary project (Korsgaard 2008). For revolution to be justified, on Kant's view, such a change to political authority would need to be justified by the general will of those governed, as opposed to by any private will. But, in Kant's view, the only legitimate expression of that will is the existing form of political authority. Therefore, the argument goes, revolution cannot be justified because those declaring it do not possess the authority to do so.³⁵

The advent of classical liberalism began to change this skeptical perspective. Thinkers in the liberal tradition hold dear the notion that individuals possess inviolable rights, quite like those Jefferson begins to enumerate in the Declaration of Independence. These rights exist in some sense or another prior to the institutions of government, and it is these very entitlements which give institutions their purpose.³⁶ As a central tenet of this tradition, government stands in a relation of trusteeship to those it governs. It acts as their agent, and, if it fails to do so faithfully, a new agent of the will of the governed can and ought to be

³⁵ Contemporary thinkers trouble this sort of reasoning by pointing out that, in cases of dire oppression or tyranny, it is a lesser of evils for a revolutionary actor to act illegitimately and without the requisite authority, provided they do so in a way that is not objectionable in other broadly Kantian terms, i.e., with minimal possible coercion, a commitment to the common good of justice, and so long as the revolution is likely to succeed in creating order. For a development of this view, see A. Buchanan (2016).

³⁶ See, for instance, Rawls's (2003) insistence that a central goal of political theorizing itself is to clarify, via institutional arrangements and their justification, the nature of the status all democratic citizens are afforded by virtue of their citizenship.

chosen. We can see the beginnings of the more permissive attitude toward revolution that Jefferson, James Madison, and the other constitutional framers picked up on in the treatises of John Locke. For Locke, government relies on the continuous consent of those governed, and the government is an expression of the will of the citizenry—rather than the will of the sovereign, as in Hobbes. On this familiar picture, a right of revolution is preserved when the ruling authority violates the natural rights of its subjects (Locke 1980; Ashcraft 1986).

In addition to its interesting pride of place in the liberal tradition, revolutionary resistance has received some attention from just war theorists thinking about the conditions of justice in declaring or initiating war (*jus ad bellum*) and the rules of engagement during war itself (*jus in bello*). In terms of initiating revolution, the question of authority that came up for Kant comes up again. Rightful authority, it is commonly argued, is the first step toward a justifiable declaration of war. But in revolutionary contexts, insofar as they differ from conventional armed conflict, these questions about who has rightful authority to initiate the conflict seldom have straightforward answers. Allen Buchanan (2018) outlines several candidate considerations which may help. The revolutionary should stand in a certain kind of relation to those on whose behalf she claims to revolt—the oppressed, the downtrodden, the everyman. The revolutionary must operate with their consent or approval, act as their representative, or otherwise act in pursuit of their general good—in this case, understood as freedom from oppression.

A key problem with the consent requirement, Buchanan notes, is that consent of the people in contexts of revolution is very difficult to secure at all, much less in a way which is unanimous or incontrovertible. In virtually every real-world case, he suggests, consent is never unanimous, which raises additional questions: (1) whether there can even be a legitimate exercise of revolutionary authority on behalf of those among the oppressed who do not consent, and (2) what extent of consent among the people is sufficient to grant authority in cases where unanimity is not possible. This is particularly concerning in the contemporary case when it comes to ameliorating, for instance, the kinds of racial oppression I outline in Chapter 1. First, there is not clear consensus among the class of the oppressed as to how to respond to their oppression—there is much disagreement even in an ideal case where all is clear and straightforward. Secondly, and as I have argued elsewhere, our own social arrangements are far from ideal in this regard. In the very circumstances where one might consider revolution, the oppressive regime retains a vested interest in disincentivizing and disallowing the very kind of authority consent or approval in question.

Consider cases involving an oppressive majority coercively or violently inflicting its will on a minority, or an oligarchic minority inflicting the same on a larger portion of the population. In cases like these, not only is there risk of consensus being squashed in a practical sense by straightforward coercion, there is the further matter of epistemic interference and motivated reasoning to

consider.³⁷ The idea of authority stemming from representation, too, is likely a non-starter in an oppressive social arrangement, as such a regime simply would not allow recognizable and public democratic processes of representation which compete with those of the broader social arrangement, as evidenced by the United States' extrajudicial surveillance, harassment, and even murder, of Black civil rights leaders during the height of their movement.³⁸

³⁷ The idea here, drawing on work theorizing so-called epistemologies of ignorance (Mills 1997, 2007; Pateman and Mills 2013; Pohlhaus 2012), is that an oppressive regime (or even other citizens acting to uphold the status quo) can distort the preferences, consciousness, and epistemic resources of its subjects such that valid or meaningful consent is impossible to obtain. Consider, for instance, the 19th century popularity of the anti-abolitionist idea that enslaved people were suited for or deserving of their enslavement, or, in a line popular among southern planters, that enslaved people took to their enslavement well, enjoying their “work” as part of planters’ families. This phenomenon is also observable in the drug war era of the 1990s, when myths and media surrounding Black criminality encouraged not only the broader public, but Black community members themselves, to actively advocate for “tough on crime” policies which had the effect of criminalizing and incarcerating their own children (Alexander 2012). This can also be illustrated by more recent public support (even among Black communities and erstwhile supporters of the Movement for Black Lives) for militaristic action in American streets to quell the unrest brought by “rioters” and “looters” among BLM protestors (Cotton 2020). This was driven by coverage and public conversation which portrayed a nation in chaos and cities on fire, which tended to minimize the now-ubiquitous fact that most protests of that year were peaceful, and that scenes only turned violent after police advanced with overwhelmingly violent tactics, weaponry, etc.

³⁸ One exception that Buchanan considers here is the idea of a prior authorization in the society’s constitutional arrangement for revolution under specified conditions. He cites the French Declaration of the Rights of Man as an instance of just this. It is possible that the passage I excerpt above from the Declaration of Independence could be read as serving a similar pre-authorization function. However, it is far from clear how we should understand its implications if so. The language is vague, and invites cynical and disingenuous co-opting, e.g., as in drastic expansion of gun rights jurisprudence to serve as a kind of check on government power, and in more recent far-right militia attempts to “liberate” citizens and states from an “oppressive” rule of law during the COVID-19 pandemic.

The treatment of *jus in bello* norms in revolutionary contexts, too, is fraught. The question here turns on whether revolutionaries are, can be, or should be bound by widely accepted norms of engagement like proportionality, constraints on combatant targeting, etc. from conventional warfare contexts. Where the boundaries between citizen and combatant are blurred, the risk of similarly blurring the moral and political lines between warfare and terrorism is high. This is particularly concerning in view of what Buchanan calls the revolutionary mobilization collective action problem (REMCAP)—which incentivizes both the revolutionary and the existing regime to compete, coercively and violently if necessary, for the favor or allegiance of those in the middle. It is not difficult to imagine a case where terroristic violence is committed against subjects (or would-be subjects, in the case of the revolutionary) to curry favor or frighten compliance. This, theorists like Buchanan fear, does nothing but worsen the state of affairs for all—obviously for the victims of this violence caught in the middle, but also for the regime in terms of further threatening its legitimacy and driving an uptick in revolutionary fervor, and for would-be revolutionaries, who risk becoming an oppressor themselves.³⁹

Two Instructive Examples of Political Violence

Even in view of these conceptual questions about the initiation and sustaining of a just revolution, and the prevailing moral norm that violence should

³⁹ Cf. Tessman (2005).

be approached with skepticism and care, there is something attractive about at least parts the logic of just war theory when it comes to combatting oppression. This is particularly so given the shortcomings and potential pitfalls of the kinds of civil resistance discourse I consider in Chapter 2. Here, I would like to consider two cases of violent resistance for which a just war or revolutionary lens could offer some clarity to our evaluations: rioting. The two cases stand in stark contrast, and I hope their differences in kind will be instructive in terms of what normative resources I will attempt to carry forward from this approach to political action.

Much has been said about Martin Luther King Jr.'s admonition that riots are "the language of the unheard" in his speech, "The Other America":

...It is as necessary for me to be as vigorous in condemning the conditions which cause persons to feel that they must engage in riotous activities as it is for me to condemn riots. I think America must see that riots do not develop out of thin air. Certain conditions continue to exist in our society which must be condemned as vigorously as we condemn riots... And so in a real sense our nation's summers of riots are caused by our nation's winters of delay. And as long as America postpones justice, we stand in the position of having these recurrences of violence and riots over and over again. Social justice and progress are the absolute guarantors of riot prevention (King 1968a).

The point to take away here isn't that King was necessarily pro-riot, but that he was adamant that we should not be so distracted by the riots that we lose track of their underlying causes, namely economic deprivation and desperation. His now famous line about riots as "the language of the unheard" indicates their

expressive function as a path toward understanding, if to say nothing straightforward of the underlying justification of the act of rioting.

I think that this expressive function is worth asking after. After all, something's being expressive does not require its being *merely* so. If riots articulate those social problems which are unheard, recent history indicates that there much we are not hearing—and in fact substantively *refuse* to hear in various ways⁴⁰, as a polity (especially one with such a long history of violent white supremacy). So: What is expressed by riots? There is unfortunately similar cause for desperation among Black communities today as there was when King wrote the lines above as part of his program of advocacy for a national jobs guarantee and other economic policies designed to aid the poor. Recent studies reveal that income distributions and poverty rates remain severely disproportional among Black families and have in fact worsened over time (U.S. Census Bureau 2018). Beyond their economic struggles, Black Americans are disproportionately marginalized in terms of an anti-Black criminal justice system which authorizes or enables extrajudicial violence and killing (Brunson 2007; Edwards, Lee, and Esposito 2019; Weitzer and Tuch 2002; A.J. Davis 2017), cultural and social understandings which take their roots in violent white supremacy⁴¹, and at the level of individual racially-motivated violent behaviors (Harrell 2007).

⁴⁰ Cf. Mills (2007); Pohlhaus (2012); Dotson (2012); DiAngelo (2018).

⁴¹ I have in mind prevailing myths like the inherent criminality and violent nature of Black men (Stark 1993), and their status as a sexual threat to white women, in particular (A.Y. Davis 1981). This was given a contemporary spin during the drug war of the 1980s and 1990s by the promulgation of tropes like the Black crack user, the urban “welfare

Moreover, these markedly unjust background conditions are notably all effective prior to any additional acute injustices or harms. Consider that, in recent history, Black people in America have been subject to disproportionate impacts of a global pandemic and an early national response which left much to be desired, while a 90%+ white legislature and executive branch diverted economic relief aid to large (and frequently white-owned) businesses. In 2020, they watched predominantly white and stunningly militant protests take over state houses across the country and storm the United States Capitol building, only to be met with restraint and even deference from authorities, all whilst trends of over-policing in Black neighborhoods have continued if not intensified in recent years. Then, most recently, consider the added acute burden of incidents of highly publicized police killings like those of George Floyd, Breonna Taylor, and Ahmaud Arbery in 2020, as well as the additional chronic burdens (psychological, emotional, etc.) of the ever-present threat of the same, which some researchers have begun to classify as a threat to public health (H.L.F. Cooper and Fullilove 2016).

Riots, insofar as they signal exasperation, desperation, and dissatisfaction with states of affairs like these serve an important expressive function against the

queen,” and other harmful forms of stereotyping which have been remarkably stable in American culture (Hancock 2004; Carpenter 2012). These (mis)understandings can have deep impacts on the way Americans observe and move around the world, with recent research indicating that Black men are often perceived as larger, more physically threatening, etc., than their white counterparts (Alinor and Tinkler 2021; Todd, Thiem, and Neel 2016). This concern about threat assessment also has important implications for evaluating acts of political resistance (Peay and Camarillo 2021).

backdrop of a thoroughly unjust social order.⁴² They might be said to occupy a kind of quasi-revolutionary space, i.e., where civil resistance has been attempted and failed or proves to be insufficiently communicative to drive changes. Riots can serve as an agential rejection and refutation of the injustice of that very order and the oppression it inflicts—a wresting back of some proto-sense of agency or autonomy⁴³ (if *only* to call attention to one’s plight) when, given the above picture, little else seems available. The only surefire strategy to prevent riots, as King compellingly argued, is to address the underlying issues which motivate them. But this is only, thus far, to follow King in rendering riots understandable, if not yet justifiable. Kimberly Jones, a protestor interviewed amongst the Minnesota unrest in 2020, puts one potential line of justification in contractual terms:

So, when they say, ‘Why do you burn down the community? Why do you burn down your own neighborhood?’... It’s not ours! We don’t own anything!... There’s a social contract that we all have that if you steal or if I steal, then the person who is the authority, they come in and fix the situation. But the person who fixes the situation is killing us! So the social contract is broken... You broke the

⁴² I mean to distinguish a merely expressive function here from a more broadly communicative aim. In the expressive case, the goal is wresting back agency, control, or even basic emotional expression, whereas the goal in the latter, communicative case is to get broader uptake through some intelligible plea or demand addressed to a wider audience (including people who are not themselves oppressed). King’s criticisms of the so-called “white moderate” or the #SayTheirNames campaign on social media in the wake of police killings are of the latter sort, while something like rioting or property destruction may be more appropriately understood as the former, depending on its goals, outcomes, etc.

⁴³ For accounts of resistance to oppression as an expression of self-respect and autonomy see Hill (1973, 1979) and Hay (2011, 2013). Notably, Carol Hay does not extend her approach to rioting, but I contend that in such thoroughly unjust circumstances, such an extension is more straightforward than is commonly granted.

contract when you killed us in the streets and didn't give a fuck (K. Jones 2020).

If rioting is ever to be justified, it is important that such acts of resistance be targeted and undertaken in such a way that they do not run afoul of other (prior) moral obligations.⁴⁴ In Minnesota, protestors demonstrated this when they targeted Minneapolis's 3rd Police Precinct in the summer of 2020. On the night of May 28, 2020, the building was overrun and set on fire by a large group of demonstrators, and all police personnel were evacuated. The building burned through the night and was ultimately destroyed.

Our collective moral appraisal of this act has been swift—those protestors presumed responsible have been roundly and consistently criticized in media and other public contexts. However, the logic motivating it is straightforward in such a way that a context for understanding, and potential for limited justification, is not likely far behind. Of particular normative interest here is the idea that the targeting of a police precinct seems to indicate not-unreasonable remedial or retributive aims which are tempered by concerns of proportionality. This sort of approach is outlined in the *jus ad bellum* convention typical of many theories of just war, whereby acts of violence should be understood and evaluated in terms of: (a) having just cause, (b) being a last resort when other channels of conflict abatement have been exhausted, (c) being targeted appropriately so as not to wantonly harm those innocent of wrongdoing, (d) constituting responses to an

⁴⁴ Cf. Shelby (2016, 2007); (Rawls 1999b) on civic and natural duties.

inflicted harm which are proportional in character, extent, etc., (e) being expressive of right intention, and (f) having a reasonable chance of success. To be clear, I am not suggesting that we ought to always understand the act of political protest in a context of war, nor presume its justification accordingly—merely that one can understand how a similar logic might apply in the Minneapolis context, and in a broader American context which is often experienced by those affected as unjustifiable and unprovoked warlike violence.

To clarify, consider that the struggle for Black equality has been ongoing for 200 years in American society. In many ways, it is fundamentally defining of our society, as there are few if any reasonable routes to understanding the structures of power, wealth, and the rule of law in American history and culture which do not inextricably connect to race.⁴⁵ Persisting from the time of slavery, the systems which support Black subjugation have undergone change over time, but the central thread of commonality is clear.⁴⁶ Now, imagine several high-profile focusing events which result in the deaths of Black Americans with striking

⁴⁵ I have in mind the basic idea that uncompensated or undercompensated Black labor built and continues to sustain much of the country in a literal sense, and that many of our institutions have grown up around, and indeed, as *instruments of* the subjugation of Black Americans. Much public conversation has erupted around this issue, particularly its presence in educational venues, as arguments over the New York Times Magazine's *1619 Project* (Hannah-Jones et al. 2019)—which examines much of American history in this light—attest.

⁴⁶ See, for instance Michelle Alexander's (2012) account of mass incarceration as a reinvention of slavery and Jim Crow as systems of social control for Black Americans.

regularity, and that employment by one American institution—law enforcement⁴⁷ is the common denominator among perpetrators.

The situational fit of a warlike logic becomes evident, particularly when we observe the ever-greater militarization of even small, local American police forces and the increased prevalence of those forces both ambiently in predominantly Black neighborhoods, in addition to their in often disproportionately violent responses to acts of predominantly Black dissent (Balko 2013). Militarized equipment and tactics are particularly concerning when deployed as a response to the kind of non-violent civil disobedience I mentioned above—which accounts for the vast majority of protest activity from the Black Lives Matter Movement (93%) in recent history (Kishi and Jones 2020). Recently, we have seen numerous instances across the country of paramilitary police officers violently and unjustifiably exercising force against otherwise peaceful protestors, which has the obvious impact of escalating situations further than need be.

If we consider this kind of logic as a backdrop for the act of burning down a police station, a couple of understandings of that act emerge: (a) property destruction as a communicative act and (b) property destruction as a retributive ameliorative act. In terms of the former, the communicative content is clear. The destruction of a police precinct can be understood as a dramatic act of dissent against a violent, unilaterally armed/authorized, and frequently unprovoked

⁴⁷ Law enforcement is an institution whose origins many historians and sociologists trace to the runaway slave patrols of the 19th century. Cf. Durr (2015); B. Jones and Mendieta (2021).

oppressor in circumstances where all other meaningful options have been foreclosed upon if not rendered completely inert by the actions of those very same oppressors. The act itself can be understood as expressing not only dissent in general, but the desperation that comes from having all other meaningful options of expressing that dissent closed off. The scene of a burning police station powerfully communicates the plight of Black communities who are being policed into submission (and in many cases literally to death) by an out-of-control institution whose historical purpose has almost always coincided with their exploitation, marginalization, and subjugation.

Beyond the communicative understanding of the act is a substantive one. Burning down a police station is a strike (however small) against the law enforcement's ability to wantonly inflict harm. This arguably meets the proportionality requirement that drives military strategists toward selecting military supply and infrastructure targets as valuable ones in combat contexts. In this case, personnel were evacuated and there were no injuries or casualties directly attributable to the burning of the precinct. In short, while I make no claim to its full moral justification here, we can certainly find and track an underlying logic to protestors' targeted destruction of property in this case. When met with unprovoked warlike violence, deployment of paramilitary equipment against civilians, and tactics typically reserved for so-called enemy combatants, it seems in many ways coarse and aloof to recommend restraint, reverence, and order.

The case of rioting on the occasion of 2020's racial justice protests and the logic therein stands in stark contrast to what is perhaps one of the more stunning acts of violent political action in recent history: the 2021 attack on the United States Capitol by militant supporters of former President Donald Trump. Considering this contrast at length is instructive when thinking about the contours of whether and when violence may ever be justified as a political means.

On January 6, 2021, supporters of then-President Trump descended upon the U.S. Capitol immediately following a rally given by the President, his family, and his most ardent surrogates. At the rally, speakers, including the President himself, encouraged their supporters to “march on the Capitol” to support a small minority of members of the United States Congress seeking to interrupt the official certification of the results of the democratic Presidential election of November 2020, which would displace the incumbent, elevating rival Joseph Biden to the U.S. Presidency. Trump urged a showing of strength, chiding the crowd that showing weakness would get them nowhere. Other speakers urged a reckoning—a “trial by combat”—comparing this moment for the American political right to the year 1776, when Jefferson and others signed the Declaration of Independence, beginning the American Revolutionary War.

Attendees of the rally, maybe unsurprisingly given this incitement, marched on as an emboldened mob, breaching overwhelmed and outnumbered security at the Capitol building for the first time in modern American history. Once they reached the seat of government, they broke windows, destroyed paintings,

ransacked and stole from Congressional offices, and skirmished with Capitol and local police officers, all in the name of disrupting the day's proceedings—which had been a pro forma gesture of all previous Presidential transitions (and which, in the end, was only delayed for a few hours). During this attack, multiple people were killed, including a police officer and some of the rioters themselves. The angry crowd that breached the Capitol, at multiple points during the afternoon, was mere feet away from the chambers where U.S. Senators had sheltered in place in fear for their own safety. In the time since, hundreds of arrests have been made across the country in the wake of manifold evidence of coordinated campaigns of right-wing extremism, and amid indications that at least some of the rioters had intended to rendition, harm, or assassinate sitting members of the United States government at its highest levels—including opposition legislators and their own party's then-Vice President, Mike Pence, whom they, following the rally's incitement, now regarded as insufficiently loyal to their cause (Pengelly 2020).

While similar in some ways on its face to the racial justice protests which erupted across the country in 2020, the similarities end there. It is by interrogating this contrast that I hope some useful distinctions will emerge. The first and clearest contrast to draw is between the type and extent of damage caused in these two cases. In the case of the Minneapolis riots, a police station was destroyed after being emptied of personnel. While the property itself was destroyed by the fire, no loss of life has been reported stemming from this case.

In the case of the Capitol riots, five people were killed, and numerous other injuries—both mundane and serious—were reported. While I will grant that both riots are reasonably categorized as violent, the difference in type is important. Destruction of property for communicative or other political ends is one moral concern, while causing the deaths of other people is quite another, and is in my view dramatically more serious a transgression. The deaths which occurred at the Capitol riots are varied in their circumstances—in one instance, a police officer died after being struck with a fire extinguisher whilst defending the Capitol’s security perimeter (Santora, Specia, and Baker 2021), in another, a rioter was shot and killed in a standoff with police while trying to enter the chamber of the House of Representatives (D. Jones 2021), and still others died from unspecified medical emergencies stemming from the riots. While human deaths are tragedies wherever they occur, the fact that these were directly and needlessly caused by an act of political aggression which was stoked by deliberate misinformation and anti-democratic muckraking makes them all the more tragic. While political norms may be forgiving of the destruction of property in limited cases (such as those I outline above), our most deeply held moral norms (on almost any approach to normative ethics) compel against causing death for political ends.⁴⁸

⁴⁸ That is, most would hold, outside the context of a just war. I take for granted that the conditions for a just war theoretic justification of the Capitol riots are nowhere near met.

Of additional concern in my view is the difference in tactics and demeanor exhibited by those committing the violent acts in question in these two cases. In the Minneapolis case, as I contend above, the burning of a police station can be reasonably understood as both a symbolic and a practical deterrent against systemic and unyielding police violence. Such an act is a strike against a symbol of hegemonic policing power, when that power has been used and abused to oppress, injure, and kill Black Americans at rates far greater than any other social group. The action in this case, while not necessarily revolutionary in its intent, strictly speaking, does seek transformative change for the better if it is in fact committed in the cause of advancing justice.⁴⁹ In the case of the Capitol riots, what is communicated may be less clear, but is much more disturbing, almost any way it is understood. At its heart lies an attempt to disrupt the constitutional government of the United States—in principle if not in practice—by overturning the will of the voters in a democratic election. Rather than being revolutionary in character, the Capitol insurrection was (at least ostensibly) intended not to depose a tyrannical or overreaching leader, but to help an incumbent remain in office after voters had resoundingly made another decision by historic margins. Rather than pursuing the cause of reform or justice through extraordinary means, the Capitol rioters sought the preservation of their own hegemony as an aggrieved and perceptibly threatened racial and class-based group. Notably,

⁴⁹ Given the difficulty in assessing our own motives at times, much less those of other people, I should say that whether this was verifiably the case remains unclear.

rather than fighting against unjust domination or oppression, the aim was essentially the maintenance of the same. The attack on the Capitol was wildly disproportionate in tone, tactic, etc. to any perceived slights its participants have been able to cite—and the possibility of actual unfairness or injustice (e.g., alleged election irregularities or fraud) has been foreclosed upon by a complete lack of evidence of the same (Bump 2021). This attempt ended up being futile, but a deeply concerning attempt it remains.

Moreover, the Capitol effort was made in excessively violent ways, which involved not only property damage but bodily harms to people and threats to others. Graphic footage has since emerged of violence against the officers defending the building and its inhabitants. In one instance, a Washington, D.C. police officer was dragged down a flight of stairs, kicked, stomped, and beaten with a flagpole. And this is to say nothing of the secondary effects of the insurrection, which was rife with threats and symbols designed to intimidate, coerce, and stoke fear. Rather than constituting the revolution many of the rioters welcomed, some commentators have criticized the attack as deeply unserious and detached from reality, while others have insisted the Capitol insurrection is more akin to a form of domestic terrorism.

Of additional complication for the contrast between these two cases is the hypocrisy present not only in the cases themselves but the public treatment of them in the time since they occurred. The irony of these violent tactics directed at police from a movement whose supporters mere months ago insisted that “Blue

lives matter” and insisted on deference to police authority defies irony. This is in addition to the fact that the demonstrators themselves were met with comparative restraint by police at the Capitol—with many being allowed to leave the area, and serious charges being sought against comparably few—quite the contrast to the scenes of military equipment and tactics, tear gas, and mass arrests which met Black Lives Matter protestors in American streets in 2020.

The Costs of Abandoning Civility

In addition to the dangers of political violence I have alluded to above, the framework itself is troubling on both pragmatic and broader normative grounds. In terms of practical concern, the risk of dangerous backlash to uncivil tactics in both the short and longer term is substantial. In the immediate term, an escalation to violence even in the attenuated sense of property damage and destruction (so-called “victimless” crimes) invites authorities to do the same. Given the disparity of power (both in a political sense and the sense of literal firepower) between oppressor and oppressed in the case of American policing, even proportional violence may set back the cause of justice by threatening the lives and safety of those resisting oppression. In the longer term, and associated with the communicative function of protest I alluded to above, escalations to violence risk alienating the very public those resisting their oppression wish to (and in some cases *need to*) motivate to join, or at least not reject, their cause. In a broader normative sense, there is a clear worry about the kinds of people those

resisting their own oppression become—particularly if they escalate their resistance in ways which cause harm to themselves or others.⁵⁰

This type of concern is troublesome from the perspective of transitional justice, as well. In view of using violence for political ends, there should be, I submit, a real worry about becoming similar in kind to that which one is resisting. It is not difficult to imagine a society which ameliorates oppression by oppressing the oppressors in turn. Such a retributive approach runs the risk of our founding a more just society upon markedly unjust ground of its own.⁵¹ Furthermore, such an escalation risks the further erosion and potential dissolution of bonds between citizens which, while already strained under our unjust social arrangements, are necessary for rendering us as engaged in a shared project of social cooperation. In short, regarding one's fellow citizens as enemies in a sense well beyond the rhetorical could cause more damage (intended or otherwise) to the project of democracy than the partisan polarization decried by so many theorists and officials could ever hope to. Thomas Hobbes perhaps had a point in suggesting that even an oppressive government—one that, in our on case, we are working to improve in other ways—is superior to the dissolution of the fundamental bonds of citizenship. Those connections are, as I will argue in Chapter 4, an important

⁵⁰ Cf. Tessman (2005); Shelby (2007, 2016).

⁵¹ For more on this risk and other concerns presented in the unique context of transitional justice between repressive regimes and more democratic ones, see Murphy (2017).

resource which might help ameliorate oppression. Those committed to fighting injustice would be wise to be wary of the instability that such dissolution risks.

Anger and Transformation: The Value of Revolutionary Thinking

Even given these problems, however, there do remain interesting normative resources to be gleaned from thinking through a more militant type of political resistance. Of help here is a conceptual distinction made by Buchanan (2013, 2016, 2018) between rebellion and revolution. While both strategies involve extra-constitutional means, rebellion, Buchanan suggests, involves a purely negative or destructive aim—rejecting the governing authority of a regime and seeking its dissolution as such. The point of rebellion on Buchanan’s telling is to root out the source of injustice or oppression without much of in the way of clear requirements for the transitional context I consider above—without clear implication as to what comes next. Rebellions can take as their goal full dissolution of governing authority generally (e.g., consistent with a form of political anarchism), or to make territorial or other changes to the governed domain (secession, e.g., as in the case of the American South during the Civil War is a prime example of this).

Revolution, by contrast, has both this kind of destructive aim with respect to governing authority and a more positive attempt to replace that authority with something different—better, even. Revolution, in its romanticized retellings and in its central form, has at its heart an aim which is importantly *constructive*. An important lesson from revolutionary politics is the nod toward a fully

transformative mindset that tends to get lost in the kind of civil resistance I discuss in Chapter 2. The operative aim of civil disobedience is something like reform of an unjust social structure, where underlying credibility, obligation, or legitimacy is not in question. This type of transformative mindset that accompanies a more revolutionary context may be a useful concept when thinking about the moral psychology of resisting oppression.

Colleen Murphy (2017) details the process of societal transformation in thinking about the context of transitional justice as a distinct domain from either distributive or corrective justice. Murphy's framework is designed with those societies making deep transformations from fundamentally repressive regimes to democracies in mind, like those of Apartheid South Africa, post-genocide Rwanda, and post Mubarak-era Egypt. Its focus as a framework for transitional justice is primarily backward looking, having to do with addressing past wrongdoings in an effort to democratize (Murphy 2017, 2-6; UNSG 2004).

I leave it an open question as to whether the United States' own circumstances with respect to racial injustice rise to a level where transitional justice should be the primary framing device for ameliorating oppression, though Murphy has recently indicated that she thinks this framing appropriate in our context (2021). For the reasons I outline above, I am skeptical of the wisdom of wholesale revolutionary repudiation of our political order by violent means. However, our own society's position on Shelby's taxonomy that I have used to frame previous discussions indicates, at the very least, that we can learn from

the transitional justice analogue. In much the same way Young argues that it would not occur to us to think of oppression as something which occurs within our own society, a similar form of American exceptionalism perhaps causes us to ignore the resources a framework of transitional justice might offer.

American society is, as I argue in Chapter 1, clearly outside the realm of “near just” status and has progressed to at least a space where substantial reform is necessary. On Murphy’s approximation, such is the case when “limited and localized structural inequality exists, and so actual institutions fail to live up to the values at the foundation of the institutional order” (2017, 109). Some reform may be accomplished by civil disobedience, however, I have suggested that our own circumstances of racial oppression reach into territory where more transformative change is called for—beyond Shelby’s “limit of tolerable injustice” (2007, 2016). Murphy defines the context of transitional justice in a helpfully similar way, and in terms of transformative change:

Transformation denotes a need to repudiate the basic institutional order governing a community and the values underpinning that order. The institutional framework governing interaction must be overhauled and the terms of interaction, including the definition of what is permissible and impermissible, fundamentally altered (2017, 109-110).⁵²

⁵² Murphy thinks of this approach as a structural analogue for *jus ad bellum* norms in just war theory, and recommends what she calls “relational transformation” which focuses on redefining the core moral and political relationships between citizens in the society to be transformed (2017, 120-125). For Murphy, this sort of transformation involves three core requirements: a (re)commitment to the rule of law, a basic threshold level of relational capabilities for victims, in accordance with the capabilities approach to social justice (Sen 1999, 2009; Nussbaum 2000, 2006, 2011; Wolff and De-Shalit 2007), and a basic

Three key conditions which give rise to these circumstances, Murphy argues, are (a) pervasive structural inequality, (b) normalized political wrongdoing, and (c) serious existential uncertainty. Assuming these conditions hold, a commitment to dramatic transformation, even if not to violent revolution, is called for. In Chapter 1, I demonstrated many ways in which pervasive structural inequalities persist for Black Americans, including persistent racialized poverty, marginalization in terms of being relegated to low-paying jobs and sectors, and the disenfranchisement that follows from disproportionate rates of arrest and incarceration. Acts of state-sanctioned or enabled violence, when they are disproportionately authorized, targeted, and carried out may constitute a culture of normalized wrongdoing against Black Americans, to say nothing of individual, interpersonal acts of racism (which I suggest cause important status harms). Recent political events, Murphy contends, causes serious uncertainty about our society's future. For instance, the 2021 capitol riots I discuss in the previous section indicate that peaceful transitions of democratic authority no longer seem to be a given.

Without committing to revolutionary upheaval, a mindset associated with transformation is a clear and common thread among the some of the examples I have cited above. Kimberly Jones and Martin Luther King, Jr. alike draw on claims about moral psychology in their discussions of riotous protest. Jones'

level of trust which holds both between victims and their fellow citizens and between victims and the institutions that govern their society.

remarks zero in on the hurt and anger felt by people who have been failed and failed again by the governing authority that is supposed to protect them and uphold their status. King invokes the biblical prophet Amos, offering a glimpse of the transformative mindset of revolution. He writes in an essay for *The Nation*:

‘Let Justice roll down like waters in a mighty stream,’ said the Prophet Amos. He was seeking not consensus but the cleansing action of revolutionary change. America has made progress toward freedom, but measured against the goal the road ahead is still long and hard. This could be the worst possible moment for slowing down (1965).

Amos, for his part, was invoking God’s anger and wrath, having been roused in sympathy with the downtrodden and powerless as the powerful exploit them for their own gain. He was not seeking incrementalist reform, but, as King goes on to suggest, a deeper form of transformative change.

John Stuart Mill gives clear expression to this idea in *Utilitarianism*. There, he considers what he calls the sentiment of justice, which he defines thus:

...the animal desire to repel or retaliate a hurt or damage to oneself, or to those with whom one sympathizes, widened so as to include all persons, by the human capacity of enlarged sympathy, and the human conception of intelligent self-interest. From the latter elements the feeling derives its morality; from the former, its peculiar impressiveness and energy of self-assertion (2002, 65).

As was the case in King’s retelling of Amos, a kind of fellow feeling with the powerless and exploited turns quickly to anger at those people and structures inflicting the injustice. They are so powerful, says Mill, “that ought and should grow into must, and recognized indispensability becomes a moral necessity, analogous to physical, and often not inferior to it in binding force” (2002, 67).

Anger can be concerning from a moral point of view—Mill himself warns that it isn't a moral feeling in itself. But it can be channeled into and used to motivate moral action.⁵³ I submit that something similar is to be gleaned from the constructive or transformative mindset that accompanies a revolutionary brand of politics—a moral psychology of transformative resistance to supplement the reform-focused approach of civil disobedience and other forms of political advocacy. It is this element of transformation that comprises the constructive aim of revolutionary thinking. It is my hope that such a resource, suitably constrained and deployed alongside the idea of political constructiveness I develop in the next chapter, will help us synthesize a normative politics of resistance that fulfills its desiderata, but remains consistent with the virtues and requirements of democratic citizenship.

⁵³ Cf. Nussbaum (2016, 2018)

CHAPTER 4: TOWARD A CONSTRUCTIVE POLITICS OF RESISTANCE

In Chapters 2 and 3, I examined two key frameworks for thinking about the project of resisting oppression: civil disobedience on the one hand and political violence on the other. While the shortcomings of these frameworks are substantial, and errors in their application have the potential to cause harms beyond mere conceptual confusion, there remain important normative resources to glean from each. In what follows, I will consider those conceptual prospects I have identified in previous chapters and further clarify and illuminate them through the extended treatment of some examples from recent history. I will consider in turn (1) the idea of political constructiveness implied by the spirit of the liberal virtue of civility (if not its application), and (2) the commitment to transformative (as opposed to incremental) action inherent in justifications of political violence. Ultimately, I aim to synthesize these resources to develop and defend an account of the politics of resistance which is both politically constructive in a broadly liberal sense and properly responsive to claims and instances of oppression which require radical social change.

Civility, Respect, and a Commitment to Constructiveness

We regularly attempt to evaluate various acts of political resistance by sorting them into neatly bifurcated categories: civil and uncivil—where the former is understood as not only permissible but a venerable part of American political tradition, and the latter is understood as beyond the pale and actively deleterious to the cause of those doing the protesting. I think, and have suggested in the preceding chapters, that this conceptual move is a mistake which actively and harmfully obscures the purpose and content of political resistance, and further serves to silence and marginalize people resisting their own oppression. In what follows, I sketch an alternate normative framing device for thinking about the purpose, content, and ultimately, evaluation of acts of resistance: *political constructiveness*. This framework for thinking about political resistance, on my view, captures what is important to political liberals about civility without falling prey to many of the problems I sketch in the previous chapter.

By political constructiveness, I loosely mean not only the project of engaging in cooperative ventures with one's fellow citizens, but taking oneself to be doing so, and doing so for that very reason. This primarily involves something like intelligibility—the process of addressing your claims to fellow citizens and ensuring that they can understand and take them up. Acting—or in the present case—resisting constructively necessarily involves a sense of reciprocity, of checking and adjusting one's actions depending on their effects, outcomes, and uptake among others. It also involves a disposition to hear and recognize

others—which will be important in thinking about the obligations of those who are not themselves oppressed. While this idea of constructiveness is importantly related to civility, it is not one and the same, and what follows will attempt to parse out the relationship between the two concepts.

Theorists of liberal democracy tend to think of civility as the kind of virtue that makes communicative interactions and civic relationships both possible and, insofar as possible, peaceful. While conversations about civility commonly reduce it to a matter of good manners and refraining from rudeness, it seems much more is at stake. “Civility,” according to one such theorist, “is a disposition which makes political life possible because it allows those with different and conflicting views of good to live peacefully side-by-side under conditions where a deeper moral agreement about shared purposes or comprehensive systems would be impossible” (Boyd 2006, 865). One might colloquially think of the requirements of civility as those constraints on our behavior which allow or encourage us to engage with others to allow conversation or cooperation to happen in the first instance. But it is less than clear what this notion requires of us in everyday contexts.

It is important to consider two related but distinctive senses in which we ought to engage with our fellow citizens which in turn invite us to consider two distinctive senses of civility itself: a conversational or *mere* sense of civility (understood as constraints on manner and mode) and a fuller sense which involves deep, reciprocal acknowledgement of the status of one’s fellow citizens.

This distinction will help us understand the relationship between civility and respect—a more fundamental ideal that, while closely related to civility, comes apart from it in important ways. The latter, fuller, sense of civility also gives us important resources for thinking about political constructiveness. Indeed, political constructiveness is an *expression of a fully realized conception of civility* whereby one recognizes the status of one's fellow citizens sufficiently to address one's political claims and advocacy to them. In making these distinctions, I aim to give credence to the idea of political constructiveness as acting in ways which are consistent with the kinds of respect and recognition we ought to show our fellow citizens (e.g., by engaging in cooperation with them), whether or not those interactions themselves are *conventionally civil*.

It is important first to clarify what the value of civility is, though views on this vary. Deep and fundamental disagreements are an everyday mainstay of living in a democratic society. Liberal political theorists have long held that civility in some form or another is key to a harmonious and tolerant society, in which we might regard those with whom we most fundamentally disagree not as bitter adversaries, but as friends, in some sense—at the very least, a civic one. In focusing on this social ideal of harmony or concord, liberals draw on an evergreen idea—the notion, popularized by theorists and candidates alike, that we all converge on just enough to make a harmonious coexistence possible—that “we have so much more in common than what separates us.” This is ostensibly the central value of an idea like civility—it is what allows us to move

past our differences to promote social cohesion and harmony around the project of living together.

This important kind of value for civility is alluded to in the work of liberalism's central historical influences and exemplars. While he does not spell out a full normative account of the virtue itself, Thomas Hobbes routinely uses the adjective-form "civil" as a synonym for peaceful and enlightened. He frequently discusses "civil society" in contrast to man's natural "savage" or warlike state—the set of psychological impulses which characterize life in Hobbes's (in)famous "state of nature" thought experiment as "solitary, poor, nasty, brutish, and short" (1994, 89). Scholars have attributed various conceptions of civility to Hobbes based on this usage, and many (probably rightly) criticize this kind of view as nakedly imperialistic colonialism (Maloy 2011; Berenstain 2020). But, as recent commentators like Jeffrey Collins (2005) and Teresa Bejan (2017) have suggested, there might be more of value in Hobbes's work here than initially meets the eye. Hobbes was, after all, and for all his faults, very concerned with just how much disagreement a civil society could bear and still allow for peaceful coexistence.

In *Leviathan*, Hobbes renders what he calls "contumely, in words or gesture," which includes "trifles, as a word, a smile, a different opinion, and in any other signe of undervalue" dangerous enough to be considered a "principall cause of quarrell" in society (1994, 88-89). The human condition that motivates his (in)famous "state of nature" thought experiment, in which all remain

convinced of the superior worth of their interests, would also necessarily lead, Hobbes suggests, to relations of contempt among citizens. Contempt, in turn, gives way to what Hobbes characterizes as the incendiary danger of incivility:

For in those things men hate, they find a continuall, and unavoydable molestation; whereby either a man's patience must be everlasting, or he must be eased by removing the power of that which molesteth him... (1994, 206).

Based on the connections between contempt and Hobbes's conception of human nature, he seemed to think this relation as inevitable as it was concerning. This is unsurprising given the extent to which his broader philosophical contributions are based on a deep-seated fear of never-ending warfare brought on by our psychological nature.

Hobbes's vision of the "tolerant" society would likely put off contemporary liberals, as well it probably should. A central source of disagreement and contempt in Hobbes's time was religious sectarianism. His response to this, in keeping with the seemingly totalitarian "commonwealth" he develops in *Leviathan*, he thought that, in addition to self-regulation among citizens, the commonwealth's sovereign must coercively regulate civil expression to uphold the society's stability. We might characterize this as a system of difference without disagreement⁵⁴, whereby citizens may hold whatever sectarian memberships or affirm any doctrines they wish, however disagreeable, while only

⁵⁴ I have borrowed this helpful terminology from Bejan (2017).

publicly voicing and advancing those things which citizens unite and converge on. Private difference is to be allowed, but public disagreement, it seems, is not. For Hobbes, this idea of deliberate civil silence was crucial to keeping the commonwealth from devolving into chaos and war. Civility, for Hobbes, is importantly about what we refrain from saying to or about each other.

If Hobbes's conception of civility promotes difference without disagreement, John Locke advances a view which takes up a similar question, but provides a distinctive answer which is quite different than Hobbes's own—that is to say, by promoting disagreement without difference. The ubiquity of Locke's continued presence in ongoing conversations about liberal civility is justified by claims made in his *Letter and Essays Concerning Toleration*—particularly, in this context, the demand that no individual ought to be excluded from the body politic based on their religious beliefs or practice. While Hobbes rendered religious sectarianism as an inevitable problem for a society's stability, Locke saw the two as clearly capable of coexistence.

Rather than a call for civil silence on matters of deep disagreement, Locke issued a call for a kind of civil charity. By addressing the *manner* of our disagreements rather than its substance, necessarily, Locke believe that we might civilize it, and thus forestall some of its incendiary effects that Hobbes so colorfully identified. Absent civility, Locke feared a similar worst, but with it, he suggested that religious disagreements could themselves be the basis for charity and fellow feeling among citizens. If these disagreements were navigated civilly,

they could help each of us in our basic recognition of our peers. It is worth noting, however, that this is a relatively minimal requirement—it seems to require only something like basic indifference or a lack of active contempt—and that Locke likely thought it admitted of notable exceptions.

Modern liberal theorists combine elements of both the Hobbesian and the Lockean approaches to the virtue of civility, and envision a society in which civility means more than mere toleration.⁵⁵ They render liberal democracy itself as governance by disagreement, beginning from the “fact of reasonable disagreements in society, and the existence of a reasonable plurality of comprehensive doctrines about the good” (Nussbaum 2001). This conception of liberalism, famously advanced by John Rawls (1999a, 1999b, 2003, 2005) and others, depends on the idea that it is simply not reasonable for any one community of people who converge on a comprehensive doctrine to declare publicly that their beliefs are definitively true as a basis for advancing political claims, making policy decisions, etc. Moreover, the coexistence of a wide variety of reasonable doctrines does not threaten others (Larmore 1987). By practicing a liberal neutrality—a kind of avoidance with respect to the concept of publicly endorsed truth—Rawls renders his famous duty of civility as being all about what

⁵⁵ The phrase “mere toleration” often invites a negative connotation, seeming to indicate a begrudging “live and let live” approach to difference and disagreement, as opposed to something like full acceptance or respect. The general point is that toleration is a much lower bar than the kind of respect which ought to be afforded to equal citizens of a democratic polity.

we do not do or claim in the context of our public lives. Civility, then, can be understood as constraining our behavior in those same contexts.

In taking seriously this idea of pluralism, we recognize others as they are in relation to us, which is to say, equally situated to us in terms of circumstance. Other citizens, like us, hold views associated with various conceptions of the good and seek to advance those goals against the backdrop of a society which remains agnostic on their truth or falsehood. On this kind of picture, we spend our lives seeking to make ourselves intelligible to others as a matter of communicative interaction. We want them to understand our claims, and, in many cases, to accept them. It is this goal of interpersonal and political intelligibility which I want to identify with the political sense in which we ought to engage with fellow citizens, and thus with the political function of civility.

Put concisely then, civility serves as a prerequisite for the kind of dialogue that lies at the heart of liberal democracy. It is not, at least in this political sense, a “first order” virtue to be valued and pursued in and of itself.⁵⁶ Understood in this way, civility is an instrumental virtue, oriented toward making a society (understood, à la Rawls, as a system of social cooperation for mutual advantage), for better or worse, possible in the face of vigorous disagreement. As Martha Nussbaum writes, “the test of liberalism lies not in the way we deal with views we like, but in the way we deal with what makes us uncomfortable or

⁵⁶ For an interesting account of the instrumentality of civility, see Sandel (2005).

even angry” (2001, 903). It stands to reason on such a view that what enables us to do this is something like civility, and it is valuable (perhaps only) insofar as it enables political ends such as constructive dialogue, stability, and other democratic hallmarks.

Undergirding and informing—but probably coming apart from—this sort of commitment to others to render and advance our claims in intelligible terms, though, is a fuller sense of recognition, namely, that we ought to recognize each other as full (rather than merely circumstantial) equals based on our shared capacity for agency or some other underlying normative fundamental.⁵⁷ This sort of ideal causes some theorists to maintain that rules of civility closely track not only instrumental norms of political engagement (as above), but those rules and norms which are deeper and more stringent. We might call the duty in question one of mutual respect. Far from being simple breaches of manners on this view, acts of incivility might signal a kind of disdain for their targets as agents—a departure from the recognition of equal dignity that we generally take as an important object of concern. To treat someone contemptuously is to send the clear message that you do not regard them as your equal. It is to treat them as though the conception of the good to which they are committed is unintelligible,

⁵⁷ While its place in a justificatory scheme is the subject of disagreement, this ideal is a common feature across normative ethical theories of various content and commitments (e.g., consequentialist claims about moral status, broadly deontological claims about dignity or rights, etc.). This sort of fundamental is one of few shared essentials which crosses normative “borders” with relative ease.

or worse, worthy of scorn or derision. It is, by extension, to treat them with disrespect.

Of explanatory utility here is Stephen Darwall's (1977) distinction between two sorts of respect: recognition respect and appraisal respect. Recognition respect, according to Darwall, requires giving appropriate weight to some fact about the object of one's respect, and, in turn, regulating conduct based on some derivation from that fact. To make use of the formulation above: what underlies civility in the fullest sense, on my understanding, is the requirement that we recognize each other as the kinds of things which possess a kind of agency which might be compromised, harmed, or in serious cases destroyed by chronic expressions of disdain, contempt, ridicule, etc. The requirement of respect is one which goes well beyond the merely instrumental sense of political civility I sketched above. It exhorts us not to value others' interests for the sake of order or the project of social cooperation, but because their interests constitute expressions of just the kind of agency worthy of recognition respect.

On this approach, we do treat people civilly and temper our interactions with them (even and especially in cases of deep disagreement) in a political sense because we value them as citizens aiding in a mutually advantageous project. But I think we should value civility in a deeper sense because we value others as agents, at least in this very basic way. Darwall's taxonomy offers another important note here, though: recognition respect comes apart from and does not require positive appraisal respect, understood as a kind of evaluative

esteem for a person or her projects. To put the point succinctly: while recognition respect does require us to value others as agents, it does *not* require us to take their projects as our own, or, as a much lower bar, to positively appraise their beliefs or actions. This more stringent foundation for civility is closely related to the requirements of recognition respect, and figures prominently in my strategy of refocusing conversations about civility on the concept of political constructiveness.

An important question that arises in this discussion of the requirements of civility with respect to engaging people with whom you vigorously disagree is one of limitations. We might wonder whether some people's ideas and expressions are worthy of scorn or disdain, particularly in cases where those ideas go beyond mere disagreement or contestation and cross into causing harm. Put differently, what does civility require of us when responding to the thoroughgoing racist, sexist, or homophobic who advances their views in public? Does it require our response at all? The harms of hateful speech are well-documented across literature in political theory, law, social epistemology, and social psychology.⁵⁸ We might wonder whether and why we should make any sort of accommodations for hateful views, particularly in view of these distinctive, chronic, and destabilizing harms.

⁵⁸ For a clear and compelling account of the political and agency-based harms associated with hate speech, see Waldron (2012) and Gelber and McNamara (2016).

One potential answer may seem straightforward—we do not *have* such an obligation. But is this type of response a matter of answering injustice with further injustice? In cases like this, a distinction between an instrumental political sense of civility and the deeper recognition-based one I want to emphasize might be instructive. On my view, it is possible to undermine the (ideally) shared commitment to political civility such that it is no longer owed.⁵⁹ For instance, if an avowed racist, for example, demonstrably undermines democratic or egalitarian norms by, e.g., hurling racist epithets, engaging in (or supporting) various forms of harmful discrimination, engaging in racially targeted acts of silencing, epistemic injustice, physical violence, etc.⁶⁰, she no longer is owed duties of civility beyond a certain point. By consistently demonstrating her lack of commitment to recognizing basic equality among citizens, she has forfeited her own, at least in the sense of being owed the conversational “benefit of the doubt” that comes with relations of political civility.

⁵⁹ I am thinking of this idea of political civility as an instrumental good pointing toward something like stability or peaceful coexistence, like other liberal democratic fundamentals, as having a broadly *contractual* sort of justification, where stability is only achieved if everyone (or nearly everyone) in a scheme of social cooperation is compliant. Those who undermine the scheme in demonstrable ways, it stands to reason, can (and perhaps should) lose out on the benefits of the shared project.

⁶⁰ I take for granted that these types of expression undermine egalitarian norms as they tend to threaten the substantive equality of those at whom they are directed, e.g., by undermining their self-worth or self-conception, send the message that they, their ideas, expressions, etc. are not to be substantively included in the space of democratic deliberation, and so on. For examples of this which emphasize racist speech in particular see Tirrell (2017); Jeshion (2013, 2018).

In short, one is not required to meet the racist where they are because the position she occupies is one of actively threatening other citizens with agential harms.⁶¹ Political incivility in cases of injustice like this one, I would argue, is permissible where incivility is understood as subjecting the target to a kind of appraisal disrespect—say, by reacting to their expressions with disdain or mockery. This type of basic incivility, while it might threaten the political status of such a person’s views, typically will not threaten their status as a matter of recognition respect. This is particularly the case given that, in my example, the person in question is the beneficiary of a differential power structure that is effective across nearly all areas of society. Given the extent to which insistence on civility norms can mask, rather than engage with disagreement, conflict, etc., we might think of a targeted burst of incivility in this case as a corrective akin to a rhetorical “punching up,” either in terms of a victim of the injustice doing the “punching” themselves or in terms of a similarly situated speaker doing so on

⁶¹ It is a truism that liberal democracy instantiates a fundamental and inherent tension between equality (loosely corresponding to an identity of interests—the very fact *that* we all have conceptions of the good to live by and advance in a project of mutual advantage) and liberty (loosely corresponding to a conflict of interests—the fact that our conceptions are different, and we are free to advance them in various ways). Construed in terms relevant to this discussion, we might think of this as an ongoing tug of war between the kind of egalitarian equality of standing or consideration I have cited, and a sort of unrestricted liberty in the form of how we consider and treat others. Allowing a kind of political incivility in the way I have sketched above seems risky because it upsets a precarious balance between these ideals, and thus risks a kind of instability. However, I think it plausible to regard acts of political incivility as a sort of correctional burst meant to resolve excesses or deficiencies in this balance. For instance, in cases of injustice where the liberty of some (our racist exemplar, for example) infringes upon the equality of others, an act of political civility can have the effect of challenging the unchecked liberty of some to more fully express and affirm the equal standing of others (those to whose oppression the racist contributes).

their behalf.⁶² Importantly, these acts can be not only consistent with recognition respect, but *constructive* in the broader political sense of engaging in the shared project of combating (in this case small-scale, conversational) contributions to oppression. While those obligations associated with the merely political sense of civility I sketched above can ostensibly be satisfied by a kind of polite avoidance of our fellow citizens in the sense I have attributed to Hobbes, the deeper recognition-based obligations of civility we owe to them are best expressed in terms of a commitment to political constructiveness even in contexts of injustice. Resisting oppression in constructive ways is not only crucial to the success of social movements, but to the success of the society itself in terms of moving toward a just state of affairs, persisting with stability, etc.

⁶² The fuller sense of recognition-based civility I have sketched here raises a different and more difficult question in response to the type of case above. While I think it plausible that some egregious injustices can justify acts of political incivility, I am more skeptical that the kind of recognition respect that I have associated with a fuller moral sense of civility should ever be forfeited. We might interpret this intuition as a kind of constraint on resistant behavior, particularly of the uncivil sort, which I referenced in Chapter 3 whilst outlining some worries with revolutionary politics.

See also Tommie Shelby's (2007) discussion of civic vs. moral or "natural" constraints on resistance movements (particularly among black American communities in urban poverty). The central idea here is something like: Even if, under circumstances of great and chronic injustice, oppressed people may be justified in jettisoning some of their civic duties (in particular for my discussion, those duties associated with relations of political civility with other citizens), they are rarely if ever justified in losing sight of higher-order moral constraints on their behavior (e.g., the obligation to avoid inflicting wanton harm on their communities or the communities that contribute to their oppression). The latter sort of constraint can be justified with various normative strategies, among which is one associated with the kind of broadly deontic recognition respect I have discussed here.

Specifying Constructive Forms of Resistance

I'll now turn to applying this idea of constructiveness more explicitly to the context of political resistance. In the context of resisting oppression, we might distinguish a positive sense of constructiveness from a negative one. In the positive sense, the fullest expression of a constructive act of resistance is one which clearly defines opposition to and makes efforts to ameliorate the injustice in question, regardless of whether those efforts are actually or immediately effective in ameliorating the injustice. In a negative sense, and as a lower bar to clear, we might insist that our efforts be constructive insofar as they not actively risk making the problem worse or frustrating the overarching cause. It is, of course deceptively easy to evaluate protests for constructiveness when the examples are purportedly consigned to history.

The tradition I refer to above (and in Chapter 2) which takes civility, and, I think, a certain conception of constructiveness as its target, is most often associated with the American civil rights movement. The treatment of this movement, its tactics, and, importantly, the extent to which its cause has been taken up in American society more broadly speaking, suggests a key (though not exhaustive) understanding that I find instructive as a starting point: that of constructiveness as political effectiveness. In understanding a constructive act of protest as one which is politically effective, we remind ourselves of a central if not primary purpose of the act of protest more generally—to generate positive social change (or more minimally, at least to prompt movement toward such change).

The ability of protestors to motivate and promote social change is, in many ways, directly proportional to their ability to move and engage the surrounding society as a whole. In making their concerns, criticisms, and goals intelligible to the citizenry in a general way, protestors increase their chances of seeing concessions toward their cause. In this way, we might think of one key function or feature of a constructive protest as being politically effective as a specific sort of communicative act, which can, as a success condition, be taken up, understood, and regarded as motivational for action, advocacy, or change.

This understanding of constructiveness collides with the concept of civility in interesting, if not always productive ways, illustrating risks posed to the already oppressed or marginalized by the cynical co-opting or active weaponization of civility against them and their interests, which I discussed in Chapter 2. As before, I am concerned about the marginalizing and silencing effects calls for civility can have on the already marginalized in societies like our own. In such cases, prescribing civility in protest as a basic condition for uptake effectively serves to publicly proscribe the act itself, marking it out as beyond the pale of intelligibility and justification.

A near-constant concern for this sort of political or communicative effectiveness in protest is well exemplified by the now common insistence that engaging in violent or otherwise “uncivil” resistance, rather than being effective (and ultimately becoming revered as a part of American cultural history), will dramatically set back the cause of justice—and that many of the relevant

historical battles had been won precisely because of the civil and non-violent tone of those who fought them. King himself held a similar prudential commitment not to further invite backlash from the so-called “white moderate” southerner. It is worthy of note, however, that the feared backlash came anyway, and long before King’s assassination in 1968. While King and his followers worked for justice patiently (and, by our contemporary definition, civilly), white Americans raged against the movement’s efforts in violent ways. Once they were marked beyond the pale, as above, acts of abuse and violence directed at Black Southerners were routinely authorized by the highest authorities.

Importantly, however, I think there are clear ways in which the notion of constructiveness I have in mind might come apart from an act of protest’s being taken up, and thus its being politically effective in a conventional and straightforward sense. For instance, one could easily imagine an act which is targeted appropriately, and designed to garner attention, but which occurs at the wrong time, or fails to be taken up for other reasons. This is particularly instructive when considering how an uncivil act of protest may be both communicative and constructive, even though its incivility makes it less likely to garner the kind of broad political uptake that civil disobedience might. Consider those recent acts of protest like riots, looting, and other targeted forms of property theft or destruction exemplified in Chapter 3.

While the events of more recent history are still fresh and their ultimate ends unknown, there is much which is already notable about their effectiveness.

While protests like those we see today against police violence and carceral institutions more generally have been a mainstay of American political culture for a while, those of late differ in terms of their intensity and speed. They have, to paraphrase King, ratcheted up such tension that the issues which underlie them are scarcely ignorable. The protests, while largely peaceful in the tradition of the civil rights movement, have been punctuated and accentuated with high profile instances of attention-grabbing incivility like those I have cited above. While the general character has been a civil one, acts of violence can serve as an important catalyst in communicating urgency, desperation, and a need for action. Importantly, catalyzing violence need not only be committed by protestors themselves. Many have been struck by recent scenes of rampant, unchecked, and unprovoked police violence against protestors, journalists, and in particularly indiscriminate cases, even public officials.

In a relatively short time as of this writing, we have seen direct effectiveness in terms of policies to prevent police violence, at least over the short-term. We have seen movement on use of force policies for law enforcement agencies in multiple large-scale jurisdictions across the United States, as well as a recognition that past policing reforms (e.g., body cameras, implicit bias training for police officers, etc.) have fallen short of their professed goals. As only a few examples: several jurisdictions have moved to ban the use of chokeholds for restraining suspects during arrests, others have moved to establish not only comprehensive de-escalation training but an additional “duty of

intervention” on behalf of police officers who witness abuses of power by their colleagues. These efforts are backed in many jurisdictions by larger institutional safeguards like increased reporting obligations, “last resort” revisions to department-wide use of force policies, etc. While these are perhaps of limited staying power given the wider trends of police militarization (Balko 2013; B. Jones and Mendieta 2021), a broad public conversation has emerged on the prospect of divesting public funds from, or “defunding” police. In some jurisdictions, broader abolitionist conversations are being entertained by local decision-makers (e.g., San Francisco and Minneapolis agreeing to disband, restructure, and dramatically reduce the duties of their respective police departments). In some cases, awareness of and responsiveness to these issues is being evidenced in law enforcement’s engagements with protestors. Instances of violence have generally gone down while protests have continued at a steady clip across the country in frequency, size, etc. In some instances, police officers have resigned, joined protests in solidarity, etc.

This focus brought by recent events has not only moved some policy levers, but has shifted public opinion as well. Polls on public support for the Black Lives Matter movement are at an all-time-high, as more and more Americans who are not themselves disposed to protest are taking up the protestors ’cause in other ways. In particular, statements of public support and increased awareness from institutions in politics, academia, and the private sector are becoming commonplace. Not satisfied with mere statements, many institutions are

releasing anti-racism action and advocacy plans for their clients and stakeholders. Donations to relevant interest groups and charities have markedly increased, and public conversations about divesting, defunding, and in some cases radically changing police departments are happening with substantial regularity in places one would not expect.

Important risks, however, accompany those acts of resistance which are framed as predominantly communicative acts in the way I have developed here. The risk for disruption or co-opting for the kind of communicative messaging central to protests 'effectiveness is quite high, as the broader social and cultural uptake and understanding of events from recent weeks has now begun to show. While initially promising (as above) in their focus areas, demands, and early successes, the public conversation around recent police violence protests has prioritized, in many cases, anything but the problem at hand. The statements of support and solidarity I mentioned above, in many cases, have thus far proven to be relatively empty gestures, as many of the very same institutions which have participated in the "pile on" we have seen for these purposes continue to benefit from, and, in some cases, actively uphold the institutions being criticized by recent protests.

I am thinking particularly of corporations and institutions which, almost immediately after making statements about their solidarity with the goals of the of the BLM movement and its adherents, return to practices which hit Black employees and communities harder than others. More specifically, I worry that

gestures like this are at best merely performative unless accompanied by a more or less concrete commitment to not just stating, but operationalizing a commitment to change, advocacy, justice, etc. At worst, these sorts of performative practices can cause further harm to affected communities by shifting the conversation away from clear political action and toward broader cultural, aesthetic, or even economic goals.

In other cases, the message has transmuted to all sorts of contexts where the specter of racism can be driven out in primarily performative fashion. It is no accident that these sorts of instances have all centered around communicative gestures and not substantive ones which actually and directly address the problem at hand (i.e., police violence and the institutional structure which authorizes and defends it) or make life better for Black Americans. I am thinking of gestures like a recent push to rethink and overhaul brands which contain racialized imagery, characters, or stereotypes (e.g., Aunt Jemima, Uncle Ben's, Mrs. Butterworth's, etc.), a recent announcement by the Houston Association of Realtors that their group will no longer use the term "master" to describe the primary bedroom of homes in their housing listings, widely performative recognition of the Juneteenth holiday, and other such gestural changes which I take to largely be performative rather than substantive in nature.

To some extent, this type of worry could also apply to the seemingly evergreen public debate over the continued prevalence of Confederate monuments, memorabilia, and other white supremacist imagery, particularly in

the American South. To be clear, I don't think any of the changes I have mentioned here are necessarily bad. In fact they may be necessary—interrogating and ultimately eliminating the kinds of corrosively harmful (in a psychological/epistemic sense) racial stereotyping that permeates American marketing, media, and cultural trends is, on balance, a good thing. But, to focus on these things right now and in response to a movement whose primary demand quite literally consists in a plea for Black citizens to no longer be the victims of grotesque violence and state sanctioned killings in American streets is, to put it quite mildly, to miss the point in a huge way. This sort of distraction can function in either benign or actively harmful ways, e.g., recent legislation to divert more funding—not less—to policing institutions even after the high-profile abuses of recent history.

This tendency, however, is instructive when it comes to the idea of constructiveness, particularly when we ask the pivotal question as to how we can translate the sorts of focusing events I mention above, and the public interest in those events, into substantive and lasting structural changes to the lot of people who are harmed by oppression. In undertaking the project of constructive protest for positive social change, we should keep the potential risks of the sort I have outlined above in view. This likely serves as a mark in favor of exactly those kinds of protest which focus attention the most effectively—those which seek, to adopt language from King: “to create such a crisis and foster such a tension that a community which has constantly refused to negotiate is forced to confront the

issue. [Direct action] seeks so to dramatize the issue that it can no longer be ignored” (1963). King, of course, focused on a specifically non-violent, even reverent form of civil disobedience. However, the current media landscape and admittedly distractible nature (given what we’ve seen) of the American public may push us even and ever further into the realm of the non-ideal such that those acts of resistance which advance beyond the merely civil may be necessary for truly constructive engagement with acts of meaningful protest. In terms of their communicative content, the acts of protest we have seen as of late indicate a promising level of solidarity and “focusing” power among those protesting—not only in terms of their engaging in massive acts of resistance together in a sustained and geographically dispersed way across the U.S., but in terms of a relative unity of demands, unity of messaging, and power to focus attention on the cause. It is worth noting that general public focus—expressible in outrage, concern, and other ideas in proximity to something like “solidarity”—seemed to be at its highest when protests were not only at their most widespread, but, crucially, at their most uncivil. It seems no accident that coverage has waned (in favor of performative conversations about rebrandings, recastings, and public apologies) as protests have returned to a general state of civil demonstration. The extent to which these events will convert into lasting social change is, of course, still to be seen, but there remains reason to recommend more frequent or more intensive protest action to keep a distractible public focused on the issue for longer and in more substantive ways.

However, care and caution are called for as well, given the concerns about movement backlash I mentioned above, as well as the concerns about more violent forms of protest I outline in Chapter 3. In the case of recent police violence protests, this too, is starting to make its way into the mainstream in various cases beyond the high profile instances of police violence used to disperse protests in their early days (e.g., former President Trump tweeting explicitly racist, threatening, etc. rhetoric, celebrating residents aiming weapons at protestors, an increased frequency of incidents involving attacks on protestors, etc.). With respect to constructiveness, then, a key takeaway is that the communicative content of protests, while complicated by an insistent romanticizing of civility politics in American public life, is also ignored at the peril of the relevant movements and their adherents. At some point, conversion from symbolic victories, solidarity, and expressions of grief, rage, etc., is necessary—and a certain extent of intelligibility will thus be necessary to this end.

And so, ultimately, I submit that the purpose and focus of our understanding and evaluation of acts of political resistance should look toward a broadly construed understanding of constructiveness rather than a narrowly understood conception of civility, particularly given the contributory harms I argue (mis)applications of this idea can cause to the already vulnerable. It is my hope that such a refocusing on what I take to be the central spirit of liberal ideas about civility will help us separate, among other things, constructive resistance from its destructive extremes, legitimate resistance from opportunism, and justifiable,

righteous resistance from the unjustifiable, indiscriminate chaos regularly attributed to those resisting their own oppression. I aim to move us beyond the current conceptual stalemate surrounding attributions of (in)civility in our public political culture, and help us, as citizens, make sense of the shared project we must take on as a polity: substantive democratic inclusion and the amelioration of group-based oppression.

Constructive Resistance in Practice

To further illuminate how a concern for political constructiveness can come apart from civility, I'll briefly consider a couple of examples. The first example is the tactics employed by ACT-UP in New York City in the 1980s and 90s, at the height of the HIV/AIDS epidemic that was decimating already oppressed and excluded populations (i.e., gay men, and Black gay men in particular). These protest tactics, like King's, were designed to inflame, ratchet up tension, and garner attention from an unsympathetic public and disengaged federal government. Then-President Ronald Reagan had not even so much as mentioned the crisis in public until several years (and many thousands of deaths) after its onset and spread. The mode of resistance, however, in many ways couldn't be more different than the quiet reverence we've come to associate with the civil rights movement. ACT-UP protesters routinely held large, loud, and increasingly disruptive public demonstrations in high-traffic areas of major US cities where the epidemic was at its worst. As more people were infected with

and succumbed to the then-deadly (and untreatable) virus, protest tactics became increasingly morbid and sensationalized.

A prominent show of resistance at these demonstrations was the so-called “die in,” where protestors laid down, lining the streets as if dead, to illustrate the human cost of inaction on the AIDS crisis. At a demonstration at the National Institutes of Health in 1990 designed to speed treatment research and medical trials, protestors covered the grounds of the NIH campus with mocked-up gravestones with inscriptions such as “Dead from drug profiteers” and “Poisoned from AZT” (a then-popular retroviral therapy with limited effectiveness and various harmful side effects). A demonstration on the steps of the Food and Drug Administration in New York went so far as to see Ronald Reagan hanged in effigy below the now synonymous ACT-UP tagline, “Silence = death,” as FDA employees looked on in shock. To generate one of the more memorable images of protest in American history, protestors associated with ACT-UP vandalized the home of Republican Senator Jesse Helms in 1991 by covering it in a giant likeness of a condom. Helms, a far-right extremist from North Carolina and outspoken opponent of HIV/AIDS research funding and safe sex education, had made a career on racist and homophobic sensationalism. “We need protection against Helms’ bigotry and ignorance,” said Jim Serafini, one of the protestors involved. “Condoms have worked pretty well in protecting against HIV, so we decided to try one on the senator” (Strub 2008).

These sensational tactics, while diverging from the romanticized civil disobedience of the mid-20th century in important ways, occupy an interesting place along the vectors I mention above. While just as serious in focus (i.e., conscientiously concerned with matters of deep public moral and political interest), these tactics are markedly transgressive and potentially violently inflected, at least in an attenuated or thematic sense. As a form of attention-grabbing illustration, the ACT-UP movement cleverly turned some of the imagery associated with an exceedingly violent era on itself in many ways. 1980s New York City was neither geographically nor temporally distant from the violent beginnings of the modern LGBTQ+ rights movement—a 1969 riot and ensuing skirmish with police at the Stonewall Inn in Greenwich Village. The early decades of that movement were defined by discrimination, contempt, and outright violence toward LGBTQ+ people, and the AIDS crisis only intensified this posture. Social oppression and physical violence entered into a vicious feedback loop with thousands of members of the same demographic groups dying under isolated, deprived, and comparatively harrowing conditions.

The violent inflection of the protests and an understandable preoccupation with death effectively demonstrated the high stakes and the feelings of helplessness experienced by affected communities. The modes of protest here were meant to transgress norms openly (we might say *impolitely*) by forcing onlookers and officials to sympathize, sometimes graphically (e.g., via portrayals of all the less appetizing parts of human experience—sex, decay, death), with the

phenomenology of living with and dying of HIV/AIDS, in all of its shock and horror, by destroying symbols, property, and a sense of public comfort. In terms of constructiveness, it is perhaps these very shock-driven tactics which have burned the AIDS crisis into the American cultural lexicon long after the epidemic has subsided.

The immediate uptake sense of constructiveness too, reflects favorably on ACT-UP's strategy. The group's protests and actions lead to dramatic reforms of policies governing drug trials, greater commitments (both financial and cultural) to education, research, and treatment, and a greater sense of understanding that HIV/AIDS was not some sort of "gay cancer," as initially reported in the 1980s. Today, HIV/AIDS is manageable with drug treatments, and transmission and fatality rates have lowered drastically in the decades since. This is not wholly causally attributable to ACT-UP's resistance program, of course, but much of the social change around the disease has been motivated in part by these constructive, if at least thematically violent efforts at consciousness raising—largely because of, not in spite of, the use of socially and politically transgressive tactics.

As another and comparatively recent example, consider the kinds of racially-motivated social unrest that prompted many to compare suburban American streets in Ferguson, MO to active war zones in 2014, as well as the now-reinvigorated protests associated with that movement in the Summer of 2020. In the early days of the Black Lives Matter movement, riots erupted there

in the wake of the shooting of Mike Brown, an unarmed black teenager, by a white Ferguson police officer, Darren Wilson. The shooting was not an isolated incident of police misconduct in Ferguson. In the preceding months and years, predominantly black residents had reported gratuitous neighborhood policing, overrepresentation in traffic stops and low-level arrests, and a general atmosphere of mistrust and conflict with a majority-white police department. As details of the shooting continued to emerge, police established curfews and increased their field presence to keep order. Both peaceful protests and violent confrontations persisted, due to various community impressions of the shooting—including eyewitness accounts that Brown had been in the process of surrendering when shot, accounts of police defacing makeshift memorials to brown, and upheaval over violent and militarized tactics to suppress protests in the wake of the shooting. Of particular concern to commentators since have been instances of violent clashes with police, looting, and the destruction of property.

In the Summer of 2020, demonstrations and other acts of protest spread across the United States in response to several high-profile acts of state-sanctioned or state-enabled violence against Black Americans—some perpetrated by police, and others by private citizens. In particular, people were moved by three central cases which unfolded in quick and public succession, each aided in causing (justified) public outrage by the prevalence of social media: the murder of Ahmaud Arbery in Georgia, the murder of Breonna Taylor in Kentucky, and the catalyzing murder of George Floyd in Minnesota. Each of

these cases, according to protestors, serve as examples of the ongoing social oppression of Black Americans, and a stark reminder that racism pervades the core institutions that comprise American society.

On February 23, 2020, Ahmaud Arbery, an unarmed Black jogger was shot and killed near Brunswick, GA. Arbery had been pursued through his neighborhood by two white residents, Travis and George McMichael, who were armed and driving a large truck. Their shooting of Arbery was recorded by a third local resident, William Bryan, who followed Arbery in a second car. It was not until video recording of the killing was made public and shared widely on May 5 that investigations into the McMichaels proceeded. After international outcry, they were arrested on May 7 and charged with felony murder and aggravated assault. On May 21, Bryan, too was arrested on similar charges. As of early June, additional information has been presented by prosecutors to support the charges, including a statement from Bryan that the McMichaels had used racial slurs in the lead-up to the killing—which could prompt additional charges under federal hate crime statutes.

Shortly after midnight on March 13, 2020, police officers in Louisville, KY executed a search warrant on the apartment of Breonna Taylor, a 26-year-old EMT. They used a battering ram to crash into her home, and, after a brief confrontation, fired several shots, striking Taylor at least eight times. The Louisville Police were investigating two men who they believed were trafficking drugs from a house far from Taylor's, though a judge had granted them a warrant

to search Taylor's apartment based on their assertion that one of those two suspects had received packages at her address. The order allowed police to enter Taylor's apartment without warning or identifying themselves.

On May 25, 2020, George Floyd was killed, handcuffed and face down on a Minneapolis, MN street, while Derek Chauvin, a white local police officer, knelt on his neck for nearly nine minutes. Two other officers aided in restraining Floyd, while a fourth kept the area clear and prevented onlookers from intervening in the confrontation. In his final moments, Floyd begged for his life and repeatedly told officers, "I can't breathe." Chauvin held Floyd in restraint for a full three minutes after he had visibly lost consciousness, and did not remove his knee, even (according to a New York Times reconstruction from eyewitnesses) as medics arrived to attempt to treat Floyd.

These violent murders have several features in common that have made them the primary catalyst for a nationwide protest movement that, as of early July, has engulfed cities in all 50 U.S. states in anxious (and sometimes violent) turmoil. All three cases highlight particularly egregious instances of violence which is at the least state-enabled (as in the case of Arbery) or at the most state-sanctioned and enacted (in the cases of Taylor and Floyd). Protests in the wake of all these cases have been framed as responses to a callous disregard for the lives of Black citizens by American police officers, prosecutors, and the manifold of law enforcement institutions they represent. The problem exemplified here is a

uniquely American one, and one which is well-documented in both recent and farther-flung history.

The first (obvious) feature they have in common is the pre- or extra-judicial targeting of Black citizens. In each case, the victim had been charged or convicted of no crime, and in two of the three cases, seem to have been largely going about their daily activity and minding their own business. Arbery was jogging around his neighborhood, and was targeted because he allegedly looked like a suspect in local burglary cases. Taylor was asleep in her own home after a long shift at the hospital where she worked, and targeted based on a (to date) uncorroborated allegation by the Louisville police of association with a drug trafficking suspect who had in fact already been arrested at the time of Taylor's murder. Only Floyd's case was precipitated by a criminal investigation of which he was the subject. A Minneapolis convenience store owner alleged in a 911 call that Floyd had purchased a pack of cigarettes with a counterfeit \$20 bill.

Also present in each case were clear violations on the part of the law enforcement agencies involved—actions either excessive or insufficient in terms of use of force policies, standards of proportionality, and rules of engagement, investigation, and indictment for criminal suspects. In Taylor's case, typical rules of engagement were neglected when 3 plain-clothed agents allegedly entered Taylor's home in the middle of the night without notification, insignia, or verbal identification. Taylor's partner, Kenneth Walker, fired shots with a licensed personal handgun, thinking the police officers were intruders. In Floyd's case, the

complaint which accused Floyd of having used counterfeit money was hardly an offense which justified the level of violence with which it was met. Moreover, the complaint, and any related formal investigation or charges were rendered moot by the fact that Floyd was unconscious and showing no signs of life less than twenty minutes after the first police officer arrived on the scene. Neither Derek Chauvin, the officer whose restraint caused Floyd's death, nor his attorneys have commented publicly on his reasons for escalating the confrontation with Floyd. Attorneys for the other officers on the scene have communicated that their clients "were rookies who tried to intervene verbally to help Floyd, but that they had no choice but to defer to Chauvin, the most senior officer at the scene" (Karnowski 2020). In the Arbery case, beyond the violence inflicted by the McMichaels and recorded by William Bryan, the Georgia authorities who initially investigated Arbery's death are now also under state investigation for their initial inaction. After all, arrests were only made months later, and after a viral video of the killing (which had been in police custody) captured (inter)national attention and near-universal condemnation and outrage.

While early localized protests in response to the Ahmaud Arbery and Breonna Taylor killings were infrequent and small (likely due to the COVID-19 pandemic and related stay-at-home orders), George Floyd's death at the hands of Minneapolis officer Derek Chauvin sparked a much wider movement oriented at reckoning with police violence and the institutions and structures which authorize it. The actions began as local demonstrations in the Minneapolis and

St. Paul area of Minnesota, where Floyd was killed. Within a week of Floyd's death, these had spread across the United States, with protests occurring nearly nightly in many major American cities (and several international ones) as of early June. While the majority of these protests have been peaceful demonstrations and marches in the style of the American civil rights movement (Kishi and Jones 2020), some have escalated to riots, looting, and other methods and tactics typically marked out as extreme, uncivil, violent, destabilizing, etc.

I will assume for my purposes here that the circumstances I set out above warrant civil disobedience in the generally understood sense developed by King, Rawls, and others. Given the seriousness of the focusing events above as high-profile instances of a chronically unjust kind (i.e., police/carceral violence against African Americans), I think it non-controversial that making use of tactics like mass demonstration with protest signs/chants/etc., occupying and shutting down public spaces like parks, plazas, streets, landmarks, etc. are justifiable both legally and morally. However, and more controversially, I submit that tactics which exceed the typically defined bounds of civil disobedience, in these dire cases, can at the very least be intelligible, and, as a further, distinctive question, potentially justifiable under the criterion of constructiveness.

Constructiveness, Revolutionary Thinking, and Transformative Change

A lens of political constructiveness provides important resources for thinking about the project of resisting oppression, moving us beyond a tired dialectic of civility and incivility, and recognizing the ways in which those concepts importantly related to civility can cut across each other. If we are as skeptical of civility talk as I argue we should be, we might ask how to define the opposite boundary. Put succinctly: If we reframe discussions of protest and resistance around constructiveness, and this causes us to change our appraisals of uncivil acts, even of a potentially violent sort, where do we stop? Are there things we should still disallow, and if so, why?

As above, an important minimal demand of political constructiveness is to act in those ways which do not obviously worsen the circumstances for those involved, or for the society writ large from the standpoint of justice. As King's example during the Jim Crow era clearly shows us, oppressed people need not even act violently against the forces of their oppression in order to invite violent backlash. As in Chapter 1, structures of oppression are deep-seated and resilient, and many of the dominantly situated who benefit from those structures have a vested interest in seeing them maintained as a part of the status quo. Furthermore, even marginally violent resistance to oppression invites responses from those who benefit which are frequently disproportionate and escalatory in nature, as images from recent protests against police violence attest. This is to say nothing of the potentially destabilizing power of fully expressed or

accomplished revolutionary aims. The problems I raised in Chapter 3 remain concerning whether such destabilization is intended as part of a revolutionary aspiration or, as has often been the case in historical revolutions, an unintended longer term consequence.

While worries abound about the stability and transitional challenges presented by a revolutionary brand of thinking about resistance, an important conceptual resource contained in such thinking remains helpful to us: a mindset of anger and transformation. In Chapter 3, I cited King's invocation of the prophet Amos to exhort his followers to "let justice roll down like waters in a mighty stream" as an instance of just this psychology at work. In the surrounding passage, Amos was invoking the wrath of God on the powerful of Israel who oppressed and exploited their fellow citizens.⁶³ John Stuart Mill captures a similar sentiment—the so-called sentiment of justice—describing a retributive desire to repair damage done to oneself by inflicting it on wrongdoers. This sort of righteous anger which so commonly accompanies revolutionary political thinking can be instructive for us, even if we do not adopt a revolutionary political stance wholesale. What it aims at is nothing less than transformation—destruction, yes, but with the positive, or dare I say, constructive aim of (re)building something

⁶³ See Amos 5 (NIV): "Seek the Lord and live, or he will sweep through the tribes of Joseph like a fire; it will devour them, and Bethel will have no one to quench it. There are those who turn justice into bitterness and cast righteousness to the ground. He who made the Pleiades and Orion, who turns midnight into dawn and darkens day into night who calls for the waters of the sea and pours them out over the face of the land—the Lord is his name. With a blinding flash he destroys the stronghold and brings the fortified city to ruin."

better. While I have raised numerous problems with taking up the revolutionary's mantle in Chapter 3, this kind of transformational framing and refusal to settle for status quo maintenance has an important thread of connection to many of the examples I have discussed above, and there is much we can learn from a broad transitional justice framework like Murphy's. This is particularly the case when a commitment to political transformation is paired with key normative constraints from just war theory: violence as a last resort, violence in tactical proportion to original offense, and employing those means which are, insofar as possible, just.

Enacting and Teaching a Constructive Politics of Resistance

What might a broadly liberal politics, reframed in the terms I have suggested, look like? Importantly, this reframing has implications concerning the norms of understanding, undertaking, justifying, and observing the project of resisting oppression. I submit that we should work from both ends of the problem by (a) actively seeking to transform actual circumstances on the ground with individual and collective acts of constructive resistance and (b) undertaking a civic (re-)education project which inculcates the anti-oppressive norms that I believe lie at the heart of liberal democracy.

On the one end, my approach provides new ground from which to take up those acts of resistance we see from increasingly desperate populations who have long been excluded from public life. Crucially, those acts which go beyond the pale of civil disobedience, like those in my examples above, can be understood in broader terms of constructiveness, rather than in terms of

stultifying civility norms which stand to further harm and exclude already oppressed people. This approach allows us to consider the problem of oppression from a politically transformative perspective that takes seriously the thoroughly non-ideal circumstances of our society and the implications of those circumstances for our behavior. In so doing, citizens are empowered to demand radical departure from the status quo when necessary, which I contend is more likely to lead to lasting structural change. While I submit that those resisting oppression on this view should be empowered to undertake those uncivil acts of protest which are ultimately politically constructive (e.g., uncivil protest tactics, symbolic or targeted property crimes, etc.), they should regard this criterion as an important limiting constraint on their action as well. A commitment to the kind of constructiveness I have in mind would *not* allow for wanton violence, the disproportionate destruction of livelihoods, or the obvious violation of other deeply held moral norms.⁶⁴ Rather than being quick to file away acts of political resistance into pre-determined moral categories stemming from misunderstandings of civility, observers are obliged to take note of what is happening, learn to recognize oppression, and engage in the kind of listening, advocacy, and ultimately, transformation that King once recommended as the only surefire strategy to prevent uncivil resistance.

⁶⁴ Cf. Footnote 61, Shelby (2016); (Shelby 2007); Rawls (1999b)

In view of this reframed project of resisting and ameliorating social oppression, some further obligations come into focus to work from another end of the problem, namely those to promote a sense and sentiment of justice which is consistent with the approach I have taken here. On my view, this can be accomplished by the design and implementation of particular kinds of moral and civic education initiatives, namely ones which promulgate the sense of equality and respect I have argued drives a broadly liberal focus on constructiveness. Since the events of January 6, 2021 I discussed in Chapter 3, there has been a renewed interest in civic education among political theorists and among the general public.⁶⁵ A key fact being borne of this renewed interest is a growing recognition that those civic education initiatives which we do have are inadequate for various reasons. Some of those reasons have to do with basic historical and institutional proficiency, while others have to do with the relative lack of attention shown to civic education among other educational initiatives and outcomes—particularly those driving the development of STEM fields and the accompanying promise of greater innovation and economic development.⁶⁶ Other civic

⁶⁵ See, for instance Allen and Carrese (2021); Packer (2021)

⁶⁶ For example, a recent study by the Woodrow Wilson National Fellowship Foundation found dramatic gaps in American adults' basic knowledge of American history and political institutions, reporting a key finding that "only one in three Americans (36%) can actually pass a multiple choice test consisting of items taken from the U.S. Citizenship Test, which has a passing score of 60" (Riccards 2018). With respect to the relative priority civics education is assigned, Danielle Allen and Paul Carrese (2021) highlight that the U.S. spends about \$0.05 federal dollars per student, per year on civics education, and, closer to \$50 per student per year on investments in science, technology, engineering, or math (STEM) education. Cf., U.S. Department of Education (2019). By pointing this out, I do not intend to insinuate that these STEM investments are

education initiatives focusing on greater push for historical accuracy, particularly around issues of national shame like chattel slavery, seem to be quickly becoming fodder for another front in ongoing partisan culture wars in the United States (Packer 2021; Stanley 2021).⁶⁷

The kinds of initiative I have in mind provide an important contrast to many extant civic education programs, which focus primarily on descriptive information about the structure, history, and development of American social institutions, or in some cases, direct inculcation of those rhetorical norms we might think central to democratic practice like speech and debate.⁶⁸ A body politic with members who not only understand their institutions' history and development, but the underlying attitudes of democratic deliberation and cooperation at its core, is indispensable when it comes to the project of building a genuinely inclusive democratic society.

unnneeded or unserious. I merely point this out to illustrate that the investment differential among these types of initiative is stark, and a clear indication of a lack of (at least federal) prioritization.

⁶⁷ Much of this conversation has centered on *The New York Times'* *The 1619 Project* (Hannah-Jones et al. 2019)—designed to “reframe the country’s history by placing the consequences of slavery and the contributions of black Americans at the very center of our national narrative” (Silverstein 2019). The focus on narratives concerning slavery and racial oppression, in particular, is fueling a kind of moral panic around the presence of “critical race theory” in public education (Stanley 2021).

⁶⁸ While I do not intend to argue that these types of programs are without value, I exclude them from the types of programs I advocate for in this section because of their focus on a kind of adversarial discursive combat, where the focus is on contestation for the sake of argumentative victory, rather than for the sake of pursuing meaningful consensus or those conclusions which are reasonable or true. For more developments of this worry, see Robertson (Forthcoming 2021); Ellis and Hovagimian (2019).

Meaningful civic education programs must include efforts which actively develop those capabilities central to engaging in constructive political cooperation with others on terms of reciprocity and substantive equality of consideration. A potential example of the kind of program I have in mind is the Ethics Bowl, which currently exists for various age and grade levels around the United States and the world.⁶⁹ Created by philosopher Robert Ladenson in 1993, the Ethics Bowl format is designed to help students reason through moral and political challenges while also engaging them in the practice and development of those responsibilities and habits of mind central to democratic citizenship.⁷⁰ This program and its focus on deliberative pedagogy, in my estimation, is promising with respect to fostering precisely the sense and sentiment of justice I have in mind based on the extent to which it not only emphasizes the substantive equality of its participants via its organizational norms, but demonstrates it in persistent practice for participants.

As students engage each other in conversation on a controversial issue, usually presented by a case study, the format encourages them to request (or even demand) justification from each other by retaining a conversational

⁶⁹ The two largest such programs are the National High School Ethics Bowl, based at the Parr Center for Ethics at the University of North Carolina (2021), and the Intercollegiate Ethics Bowl, a signature program of the Association for Practical and Professional Ethics (2020). For a full survey of the scope and recent growth of Ethics Bowl programs in the U.S. and around the world, see Lee (2021).

⁷⁰ For a detailed accounting of the Ethics Bowl's format and pedagogical goals see Ladenson (2001) and Parr Center for Ethics (2021).

structure. In an Ethics Bowl match, one team outlines a position on a case, the other gives them live commentary, and then the first team is allowed a right of reply. In between each of these pieces, teams work together to deliberate on their next remarks. Both teams get a chance to do this in respective halves of a match. In these spaces—respectively, dialogical and deliberative—students learn and exemplify the practice of reasoning together on an equal and constructive basis about hard things.⁷¹ The Ethics Bowl helps students navigate complex issues in the context of their various communities, in ways informed by active engagement with each other and diverse perspectives, patience, and self-restraint (Ladenson 2012).

Beyond modeling and allowing students to practice these key democratic virtues, deliberative pedagogy can prompt a specific kind of empowerment for participants belonging to underrepresented or oppressed groups, and a kind of humility or empathy for students who are comparatively dominantly situated. Student participants in this program at the high school level report a growing

⁷¹ This approach is generally consistent with an approach to civic pedagogy taken by Anthony Laden (2012, 2013), and is influenced by those habits of democratic deliberation discussed by theorists like Amy Gutmann (1987) and Danielle Allen (2013), among others. Laden, for his part, emphasizes “skills like listening to others, understanding them and allowing their words to matter, as well as, when appropriate, being able to trust others, which may require openness to being vulnerable to them” (2013). For Laden, this kind of democratic pedagogical practice is part of a larger practice of *reasoning* understood as “an essentially social and responsive activity rather than a process of calculation and problem solving” (Laden 2013, 68). Reasoning with someone on this view, rather than being associated primarily with persuasion and superior argumentation, is a kind of “joint exploration of whether those [who are] reasoning can stand together on the ground proposed” (2012, clarification added). For more on the non-persuasive objective of the Ethics Bowl format, see Robertson (Forthcoming 2021).

sense of confidence in themselves, their own value judgments, and their own agency. One student explains that Ethics Bowl provides a venue to discuss issues they cared about “and actually be listened to” (Parr Center for Ethics 2020). Another explained that before participating, they often felt powerless, and that their views on important social or political issues were treated dismissively, but Ethics Bowl is “such a great environment to speak out and share what you know, because finally I’m not silenced from speaking out about these topics” (Parr Center for Ethics 2020). Still another student launched a club for members of their community, and attributes that to their participation:

The school doesn't encourage talking about political topics, however when those have effected [sic] my community so much, it has become more important to talk about it. Without Ethics Bowl, I wouldn't have had enough courage to speak out about these topics (Parr Center for Ethics 2020).

The program does this by making use of case-based pedagogy which revolves not only around the substantive equality of dialogical contributions outlined above, but topically engages students on issues of injustice or oppression directly.⁷² Done well, Ethics Bowl not only teaches students to recognize and navigate the conceptual issues at play, but to navigate the space between formal or mere civility qua politeness and constructive empathy and action. In addressing issues of injustice in a careful, deliberative fashion alongside their

⁷² For instance, cases with which Ethics Bowl students have in engaged in recent years include examinations of some of those very things I have taken up in previous chapters of this dissertation, e.g., racist humor, political responses to police violence, the ethics of protest, the permissibility of violence, etc. (National High School Ethics Bowl 2021).

peers who may or may not actually *experience* that injustice, they can learn to sympathize with the plight of others, and, it is my hope, begin to take on, share, and promulgate the transformative commitments I have argued are necessary to stop actively reproducing the problems of social oppression.

Conclusion: A New Kind of Civic Radicalism

In the first chapter of *Justice as Fairness: A Restatement*, Rawls sets out his aim in theorizing about justice—to craft an approach to political philosophy which would make sense of the idea of a *realistic utopia*. With this metaphor, Rawls attempts to balance some of the inherent tensions of political liberalism: those between liberty and equality, between abstraction and the particulars of citizens' lives and experiences, and, in a strategic sense, between ideal and non-ideal political theorizing. While firmly grounded in a sense of realism, in that Rawls wanted his vision to be achievable in social circumstances like our own, his envisioned just society is utopian in that it “probes the limits of practical political possibility” (2003, 4) and sets out important hopes and aspirations for the future of a democracy. At the level of ideals, Rawls's view is unquestionably radical in its assertion that “the limits of the possible are not given by the actual, for we can to a greater or lesser extent change political and social institutions, and much else” (2003, 5). However, Rawls has been criticized by communitarians, feminists, theorists of racial justice, and others for being insufficiently cognizant of real-world conditions like those forms of oppression detailed in the preceding pages.

Without offering comment, exegetical or otherwise, on the state of ongoing debates over Rawls's theoretical and political commitments, I wish to frame the project I have undertaken with a metaphor which is similar in spirit. With the shifts in understanding I have advocated in this dissertation, I hope to have shown that a new kind of broadly liberal approach to political problems like oppression is called for. My approach advocates a kind of *civic radicalism* which can be provisionally defined by both its adherence to core principles of political liberalism and its critical distance from the norms which have developed out of that same tradition. My conception of civic radicalism is broadly *civically minded* in its aim to center and reinforce the fundamental status of the citizen, and to promulgate a greater sense of justice (as well as the corresponding ability to spot and respond to injustice) in young citizens who will one day inherit responsibility for the direction of American democracy. Civic education programs which not only give normative exhortations for substantive equality, but engage participants in the practice of equality are crucial to pursuing the ideal of a society without oppression.

My view is *radical* insofar as it takes seriously those claims and criticisms of liberalism from the perspective of anti-oppression politics. In response to these important criticisms, my approach troubles central liberal norms of civility and political advocacy. My view refuses to leave important questions of non-ideal theory unanswered (though I certainly have not answered them *all* in this venue), and it takes as a central part of its goal to ameliorate forms of oppression which

effectively and systematically exclude whole classes of people from the powers and prerogatives of democratic citizenship. These projects, as I have begun to demonstrate here, are not fundamentally oppositional, but complementary to the core spirit and liberatory potential of political liberalism.⁷³

As I suggest throughout, I mean for this approach to be a synthetic one, which remains compatible with a broadly liberal outlook. This is to say, I take seriously both those norms of liberalism which show great promise for our society's future and the ways in which misappropriations of some of those same norms have harmed people throughout our own society's history, both far-flung and recent. By reframing our discourse around resisting oppression in terms of constructiveness on the one hand, and in terms of a demand for transformative change on the other, we can better understand tensions in political liberalism which, while difficult to navigate at times, are *not* intractable. A focus on reasonableness and political cooperation lies at the heart of the liberal tradition, but it remains important to recognize that tradition's perceived shortcomings where developing a truly responsive non-ideal theory is concerned.

In marginalizing our focus on the mere civility of mode or manner and focusing instead on the idea of political constructiveness which lies at the heart of civility, I hope to have moved the conversation beyond a conceptual stalemate surrounding ascriptions of civility and incivility in our public political culture,

⁷³ Cf. Anthony Laden's approach to integrating these concerns—a view he calls *deliberative liberalism*—in *Reasonably Radical* (2001).

particularly when it comes to acts of protest and resistance. Furthermore, by emphasizing the moral psychology of transformative change and showing that civility can be divorced from justification norms, I hope to have given credence to the radical aspirations which are near and dear to the liberal project. Ultimately, seeking to extend these conceptual applications will help us, as citizens, make better sense of the shared project we must take on as a polity: substantive democratic inclusion and the amelioration of group-based oppression. This kind of ameliorative approach strengthens liberal political theorizing in pursuit of its central aims and allows it to more fully achieve its ideals, at a time when the tradition is, I believe, prematurely maligned as having failed.

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APPENDIX

VITA

Alex M. Richardson was born in Chattanooga, TN and grew up in a small town in the mountains of North Georgia, where he attended LaFayette High School. After struggling through many major changes and career aspirations in college, he settled on studying Philosophy after some life-changing introductory coursework. Alex earned a B.A. in Philosophy from the University of West Georgia, after which he decided to pursue further study in the discipline. Entering the Ph.D. Program in Philosophy at the University of Tennessee, Knoxville in 2013, Alex honed and deepened the love of moral and political inquiry which had so captivated him as an undergraduate, as well as cultivating a love of teaching and of bringing the power and promise of philosophical inquiry to wider public audiences. This dissertation represents a culmination and expression of those commitments, and the beginning of a career dedicated to sharing them with others.