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Ambiguity, Freedom, and Civil Disobedience: A Beauvoirian Account of Civil Disobedience

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Abstract

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By Betty Jean Stoneman

A perennial problem in social and political theory is how to navigate between the conflicting aims of protecting individual liberties while at the same time establishing an obligation to the political community. It is the problem of the individual versus the community. This problem becomes even more important when considering the practice of political disobedience. For this dissertation, I explore how Simone de Beauvoir's ethics of ambiguity can be applied to concrete cases of political disobedience and as such navigate in the ambiguity between the extremes of the individual versus the community. I defend a conception of freedom, for Beauvoir, as tripartite and as a social ontology; as ontological, situational, and relational. I define freedom for her as a continuous, interactive and collective process of creating meaning and value based on the ability to choose from the most expansive array of potential projects to either *reject* or *take up and carry forward*. One's projects can either 1) be forced onto others, 2) fall uselessly into oblivion, or 3) be taken up and furthered through the free acts of others. Only the third option allows for the continuity of freedom. I argue that if we understand freedom for Beauvoir as tripartite, then we can use her ethics to demarcate justified acts of political disobedience from unjustified acts. Justified acts are ones that strive to promote freedom in principle, as opposed to pseudo freedom. Understood in this way, only acts which promote the furtherance of freedom as a relational practice would be justified. I conclude by applying a Beauvoirian theory of civil disobedience to concrete case studies such as taking down a confederate flag and refusing to issue same-sex marriage licenses. The aim of this work is to provide a theory that allows for reconstructive acts of disobedience without giving cover for regressive acts.

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Writing a dissertation is hard. Writing this dissertation has been hard. I think almost anyone who has gone through the ordeal knows what I am talking about and probably has their own personal stories about the difficulties they encountered while undergoing this academic rite of passage. To all of you, I hear you and I see you. Let's grab tea or coffee sometime.

My personal journey included bouts of imposter syndrome, severe depression, anxiety, extreme loneliness and an overwhelming and relentless feeling of not belonging. Then along came COVID, which exacerbated my situation due to the shut down of public spaces that served as methods for me to escape my own mind. Ironically, several years after COVID first hit the scene, I am quite sick with COVID right now as I write this, despite being vaccinated and boosted. For the last year and half of finishing my dissertation, I chose to work full-time in order to support myself. Again, to all of you who have worked full-time while finishing school, you are amazing. Working full-time while finishing a PhD makes an already difficult task even more arduous. First round of tea or coffee is on me.

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Introduction – January 6, 2021

“A revolver is solid; it is made of steel; it is an object. To come up finally against the object,” Drieu writes at the end of *Le feu follet*, hereby giving us the reason for the right wing’s profound fascination with death. It is the sole *real* event that can take place within a life withdrawn into its own immanence, a life without content. Cut off from the world, cut off from his fellow men who are all stranger to him, without love and without aim, the man of the right is trapped in an empty subjectivity, where nothing takes place except in thought. Death alone *happens* to him while, at the same time, remaining interior to him. Absolutely solitary, without any relation with the other, without object, and without future, death realizes radical separation. One dies alone. This is the reason that the man of the right decides to see in death the truth of life. Death confirms his belief that everyone lives alone and separated. – Simone de Beauvoir, *Right-Wing Thought Today*¹

[Ashli] Babbitt wore a Trump flag as a cape. All around her, the slogans and chants seemed to have jumped the digital divide, echoing the Twitter feeds she prolifically shared. Babbitt sounded giddy about seeing the President speak in person that morning. “There is a sea of nothing but red, white and blue patriots for Trump,” she told viewers. “God bless America, patriots.” [...] Regardless of what Babbitt believed in life, in death she has become a symbol both for causes she fervently embraced and some she likely never even heard of. On pro-Trump message boards, apps like Parler, and even more explicitly extremist corners of the Internet, she has been hailed since the riot as a “freedom fighter,” the “first victim of the second Civil War,” a patriot who was sacrificed in an imagined revolution. “The beautiful young woman who was executed will be remembered as a martyr,” one user wrote on a pro-Trump board. Another post was titled “Innocent girl – only wanted free and fair elections.” One poster vowed, “Your blood will not be in vain. We will avenge you.” – Vera Bergengruen, ‘*Our First Martyr.*’ *How Ashli Babbitt Is Being Turned into a Far-Right Recruiting Tool*²

This project is very much embedded in a particular 21st century socio-political situation. On January 6th, 2021 between 2,000 and 2,500 of President Donald Trump’s supporters forced

¹ Simone de Beauvoir, “Right-Wing Thought Today,” in *Simone de Beauvoir: Political Writings*, ed. Margaret A. Simons and Marybeth Timmermann, (Chicago, IL: University of Illinois Press, 2012), 178-79

² Vera Bergengruen, “‘Our First Martyr.’ How Ashli Babbitt Is Being Turned Into a Far-Right Recruiting Tool,” *Time*, January 10, 2021, <https://time.com/5928249/ashli-babbitt-capitol-extremism/>

entry into the US Capitol building during the Electoral College vote confirming President-elect Joseph Biden's presidency.³ During the breach, these individuals publicly voiced threats of violence against several members of Congress as well as Trump's vice president.⁴ Some of these individuals were armed with Molotov cocktails and dressed in tactical gear.⁵ Stun guns, pepper spray, baseball bats and flag poles were among the weapons used to attack capitol police officers.⁶ At least five people died, four officers and one Trump supporter, and more than 140 people were injured in the attack.⁷ Among the injuries officers responding to the breach suffered were cracked ribs, gouged eyes and shattered spinal disks.⁸ Officers experienced PTSD symptoms similar to combat veterans, and four officers committed suicide after the attack.⁹ The property damage has been estimated to be anywhere between \$1.5 to \$30 million.¹⁰

In the immediate aftermath of the event both sides of the US political dichotomy, both Republican and Democratic lawmakers, nearly unanimously agreed this was an insurrectionist event and it posed a threat to US democracy.¹¹ Over the next several days to

³ Ryan Lucas, "Where the Jan. 6 Insurrection Investigation Stands, One Year Later," *NPR*, January 6, 2022, <https://www.npr.org/2022/01/06/1070736018/jan-6-anniversary-investigation-cases-defendants-justice>

⁴ Martin Pengelly, "Trump Defends Rioters Who Threatened to 'Hang Mike Pence,' Audio Reveals," *NPR*, November 12, 2021, <https://www.theguardian.com/us-news/2021/nov/12/trump-capitol-attack-rioters-mike-pence>

⁵ Jie Jenny Zou and Erin B. Logan, "Jan. 6: By the Numbers," *Los Angeles Times*, January 5, 2022, <https://www.latimes.com/politics/story/2022-01-05/by-the-numbers-jan-6-anniversary>

⁶ Tom Dreisbach and Tim Mak, "Yes Capitol Rioters were Armed. Here are the Weapons Prosecutors Say They Used," March 19, 2021, *NPR*, <https://www.npr.org/2021/03/19/977879589/yes-capitol-rioters-were-armed-here-are-the-weapons-prosecutors-say-they-used>

⁷ Zou and Logan, "Jan. 6: By the Numbers"

⁸ Dreisbach and Mak, "Yes Capitol Rioters were Armed"

⁹ Zou and Logan, "Jan. 6: By the Numbers"; Peter Hermann, "'Some are Still Suffering': Months After Capitol Riot, Police who Fought the Mob Contend with Physical, Psychological Pain," *The Washington Post*, July 24, 2021, https://www.washingtonpost.com/local/public-safety/capitol-riot-police-injuries-trauma/2021/07/23/e008f0f0-d8d8-11eb-9bbb-37c30dcf9363_story.html

¹⁰ Zou and Logan, "Jan. 6: By the Numbers"

¹¹ Steve Benen, "A Completed Evolution: Trump Sees Jan. 6 Rioters as 'Patriots,'" *MSNBC*, February 3, 2022, <https://www.msnbc.com/rachel-maddow-show/maddowblog/completed-evolution-trump-sees-jan-6-rioters-patriots-n1288524>

over a year later the political dialogue and divide surrounding the event has become more concerning. A Pew Research Center survey conducted in September 2021 showed 38% of Republican respondents felt the criminal penalties against the defendants were too severe and 39% felt the penalties were about right while 71% of Democratic respondents felt the penalties were not severe enough.¹² Republican lawmakers and media have portrayed the event as largely a peaceful protest.¹³ Rep. Andrew Clyde (R-Ga.) was quoted as saying that many of the individuals who breached the Capitol walked “in an orderly fashion staying between the stanchions and ropes, taking videos and pictures” as if it were “a normal tourist visit.”¹⁴ Fundraisers for the defendants present them as “patriots” and “political prisoners,” and as of December 2021 had raised nearly \$900,000 for the defendants.¹⁵ The one individual who breached the Capitol building and died after being shot by a police officer has been portrayed as “martyr.”¹⁶

The sentiment and dialogue surrounding the breach of the US Capitol on January 6, 2021 raises numerous questions regarding political obligation and the role of disobedience in a functioning democracy. The rhetorical move being made by actors on the far-right, actors admittedly associated with white supremacist organizations, is to equate the breach with political disobedience and political discourse in order to push the entire US political

¹² John Gramlich, “A Look Back at Americans’ Reactions to the Jan. 6 Riot at the U.S. Capitol,” *Pew Research Center*, January 4, 2022, <https://www.pewresearch.org/fact-tank/2022/01/04/a-look-back-at-americans-reactions-to-the-jan-6-riot-at-the-u-s-capitol/>

¹³ Ryan Bort, “A Guide to the Right’s Unhinged Conspiracy Theories about Jan. 6,” *Rolling Stone*, January 6, 2022, accessed March 26, 2022, <https://www.rollingstone.com/politics/politics-news/jan-6-conspiracy-theories-capitol-riot-antifa-1278597/>

¹⁴ *Ibid.*

¹⁵ Tom Dreisbach, “Experts See ‘Red Flags’ at Nonprofit Raising Big Money for Capitol Riot Defendants,” *NPR*, January 20, 2022, <https://www.npr.org/2022/01/20/1073061575/experts-see-red-flags-at-nonprofit-raising-big-money-for-capitol-riot-defendants>

¹⁶ Michael Biesecker, “Ashli Babbitt, Jan. 6 Insurrectionist Portrayed as Martyr by Some, had Violent Past,” *PBS News*, January 3, 2022, <https://www.pbs.org/newshour/nation/ashli-babbitt-jan-6-insurrectionist-portrayed-as-martyr-by-some-had-violent-past>

system further right of center.¹⁷ The questions my project seeks to explore are: What political obligation do we have to other members of our political community? What makes a disobedient act *civil*? What acts ought to be considered *civil disobedience*, and thus be justified and worthy of protection as legitimate political discourse? In exploring these questions, I engage with further questions concerning freedom and democracy. What does it mean to be “free”? How ought we understand our roles in a democracy? I want members of a political community to be able to pursue acts of *civil disobedience* for the sake of democracy, even acts that involve property damage, coercion or force, without at the same time providing cover for regressive acts.

This project’s aim is clear. This project aims to draw a clear distinction between acts of disobedience taken for the sake of reconstructive causes and acts of disobedience taken for the sake of regressive causes. I am using the terms reconstructive and regressive in ways that are perhaps unconventional in political theory. I define acts taken for the sake of reconstructive causes as acts which aim to expand the scope of moral and political consideration. On the contrary, I define acts taken for the sake of regressive causes as acts which aim to truncate the scope of moral and political consideration. My argument is that only acts taken for the sake of reconstructive causes ought to be considered acts of *civil disobedience*, and thus are the only acts that ought to be justified and protected as legitimate acts of *civil disobedience*.

Civily disobedient actors challenge authority for reconstructive purposes. They are challenging authority not in spite of the political community, but for the sake of the political

¹⁷ Michael Edison Hayden, “One Year After Jan. 6, the Hard Right Digs In,” *SPLC: Southern Poverty Law Center*, December 30, 2021, <https://www.splcenter.org/hatewatch/2021/12/30/one-year-after-jan-6-hard-right-digs>

community; for the sake of bringing the political community closer to a normative ideal. Where law-breaking in spite of the political community is often aimed at achieving self-interested personal gain to the detriment of the political community, law-breaking for the sake of the political community is aimed at the betterment of the political community. I want to maintain and clarify this distinction. Conflating too many illegal acts risks making such politically motivated acts unreadable; it makes *civil disobedience* seem like any other sort of law-breaking. If the political community misreads acts of *civil disobedience*, then these acts are not going to be effective at achieving the aims the actors seek to achieve. Moreover, misreading acts of *civil disobedience* risks emboldening regressive actors whose acts could escalate to more serious and deleterious acts of disobedience.

I set the stage for this discussion in Chapter One by contrasting two prominent theories of *civil disobedience*, namely the theories of John Rawls and Martin Luther King Jr. Rawls's theory is firmly placed in the liberal tradition which holds *civil disobedience* to be an individuated act. King's theory, conversely, holds *civil disobedience* to be for the sake of the "Beloved Community," that is to say, the political community. Both thinkers' positions rest on a concept of *fidelity to law*. However, while Rawls focuses on obligation to the state King focuses on obligation to the political community. While Rawls abstracts the individual from the socio-political context, King firmly places the individual within a shared socio-political context. My project defends and builds upon King's normative insight that what is most important for determining whether an act ought to be considered *civil disobedience* is whether it respects one's obligation to the political community. Moreover, following King, my project affirms the need to consider the socio-political context in which acts occur.

King's position rests on a moral normative principle. In King's case this principle is religious. In doing so it opens up questions surrounding whether a shared normative principle could be devised which both protects individual liberties while establishing an obligation to all members of the political community. It also opens up questions surrounding whether and how one should consider the socio-political context in which disobedient acts occur. And, it opens up questions as to whether this shared normative principle could be based on rational principles that are falsifiable, openly debatable, and capable of being endorsed by anyone.

My project seeks to find a moral normative principle that: 1) could be based on rational principles that are falsifiable, openly debatable, and capable of being endorsed by anyone, 2) is attuned to and accounts for the historical socio-political context of the situation, and 3) a. serves to protect individual liberties while at the same time b. generates an obligation to all members of the political community.

To find this principle, I turn in Chapter Two to analyzing Kimberley Brownlee's theory of *civil disobedience*. Brownlee's incisive theory holds that *civil disobedience* is both *conscientious* and communicative. Inasmuch, she offers us a theory that is based on a moral normative principle, and I take it as immediately given that this principle is based on rational principles that are falsifiable, openly debatable and capable of being endorsed by anyone. However, I argue her position ultimately rests on respect for individual freedom of conviction which recreates and perpetuates liberal moral ideals. While King's position rests on a relational social ontology, Brownlee's position operates based on an individualist social ontology. Her position removes the individual disobedient from both the political community and the historical socio-political context of the situation. Her position is, thus,

not attuned to and does not account for the historical socio-political context of the situation. And, while it serves to protect individual liberties, it does not generate an obligation to all members of the political community.

In Chapter Three I begin to formulate my argument for a theory of *civil disobedience* that does meet all of my proposed criteria, namely a Beauvoirian theory of democratic *civil disobedience*. In Chapter Three, I examine and offer my position on Simone de Beauvoir's theory of freedom. I support a reading of Beauvoir's theory of freedom which holds that freedom is tripartite. Freedom is ontological, situational, and relational. This conception of freedom affirms the ambiguity of human existence; how humans are both individuals and members of a political community, both same and different.

I ultimately define Beauvoirian freedom as a continuous, interactive and collective process of creating meaning and value based on the ability to choose from the most expansive array of potential projects to either reject or take up and carry forward. To this end, Beauvoirian freedom resonates with King's central insights and operates based on a relational social ontology. Moreover, it contrasts with Brownlee's position because it requires both that we respect our obligations to our shared political community and that we take seriously the historical socio-political context in which acts occur. In order to be free in the fullest sense, we cannot abrogate our freedom to any socio-political objects, we must consider the context in which we act, and our acts must promote freedom in principle for all members of the political community.

I fully lay out my case for a Beauvoirian theory of democratic *civil disobedience* in Chapter Four. I begin the chapter by making the case that Beauvoirian tripartite freedom is a moral normative principle that meets all three of my proposed criteria. I then argue that

Beauvoirian freedom, when applied politically, is a type of deliberative democracy. It is the sustained and communicative practice of the political community creating and giving meaning and value to our shared world through choosing to take up and carry forward or reject shared projects. I make the case for not only the compatibility of Beauvoirian tripartite freedom with deliberative democratic theories of *civil disobedience*, but also for how Beauvoirian tripartite freedom demands that we be deliberative and democratic. At the same time, I contrast a Beauvoirian theory of deliberative democracy with deliberative democratic theories that eschew difference and seek to subsume the individual in the collective. Finally, I argue that Beauvoirian tripartite freedom understands disobedient acts as *civil* in the sense that they are democratic, namely that they are communicative, public, ongoing and continuous, and accountable. It is these acts, I argue, that ought to be justified and protected as acts of *civil disobedience* because they support freedom in principle.

Next, in Chapter Five, I concretize this Beauvoirian theory of democratic *civil disobedience* by applying it to actual case studies. I examine the cases of taking down a confederate flag and refusing to issue same-sex marriage licenses. I argue the former case seeks to expand the scope of moral and political consideration by promoting freedom in principle. The latter case, conversely, seeks to truncate the scope of moral and political consideration and is a case of a serious person enacting *pseudo freedom*. Thus, I argue that the former case ought to be considered a justified and protected act of *civil disobedience* while the latter case should not. In exploring these two case studies, I also make the larger argument that the political community can legitimately limit regressive acts.

Furthermore, I explore how a Beauvoirian theory of democratic *civil disobedience* can expand the scope of moral and political consideration even further by examining the

case of disobedient acts taken for the sake of nonhuman animals. I lay out three hypothetical arguments for how disobedient acts taken for the sake of nonhuman animals could be considered justified and protected acts of *civil disobedience*. First, one could argue whether or not nonhuman animals are due moral consideration, humans can make nonhuman animals' wellbeing their project. Second, one could argue that humans and nonhuman animals coevolved together through a constant back and forth of taking up and carrying forward or rejecting each other's projects. Third, one could argue that nonhuman animals are due moral consideration based on sharing, or even potentially sharing, the quality that gives humans moral consideration, namely *ontological freedom*.

In the conclusion, I return the events of January 6th. I attempt to understand these events within the context of the larger discussion surrounding my theory of Beauvoirian democratic *civil disobedience*.

Chapter One – Defining *Civil Disobedience* through the Concept of *Fidelity to Law*

I. Introduction

My aim for this dissertation, broadly, is to provide a normative account of *civil disobedience* that clarifies a range of particular acts, explains what ought to justify them, and provides a general guideline to determine the justifiability of analogous future acts. Any act of law-breaking is an act that challenges social and legal norms; it is an act that goes against an authority. What reasons are politically and morally relevant to challenge authority?

For decades theorists and activists have argued that *civil disobedience* is justified law-breaking. But, what exactly is *civil disobedience*, and what justificatory reasons are there to protect these acts? The divergence of *civil disobedience* as a theoretical concept from *civil disobedience* as an active phenomenon makes it difficult to pin down *civil disobedience's* essential qualities.¹⁸ One could list all of the necessary conventional qualities that separate *civil disobedience* from other kinds of law-breaking, only to be presented with a phenomenon for which there is no good reason to think that it should not qualify as an act of *civil disobedience* even though it does not display all the conventional qualities.

The problem is this: *civil disobedience* is not only a concept; it is also an active and creative response to dynamic socio-political conditions. It is difficult to pin down something that is so fluid. Even as theorists such as Kimberley Brownlee eschew attempts to define *civil disobedience* because of the inevitable divergence between the concept and the phenomenon, they still seek to delimit paradigmatic acts of *civil disobedience* from

¹⁸ Cf Jennifer Welchman, "Is Ecosabotage Civil Disobedience?" *Philosophy and Geography* 4, no. 1 (2001): 99.

other illegal acts.¹⁹ And, for good reason. Clarifying what makes *civil disobedience* a specific type of law-breaking is of value to the political community as a whole.²⁰

Civily disobedient actors are challenging authority for reconstructive purposes. They are challenging authority not in spite of the political community, but for the sake of the political community; for the sake of bringing the political community closer to a normative ideal.²¹ Where law-breaking in spite of the political community is often aimed at achieving self-interested personal gain to the detriment of the political community, law-breaking for the sake of the political community is aimed at the betterment of the political community. I want to maintain and clarify this distinction. Conflating too many illegal acts risks making such politically motivated acts unreadable; it makes *civil disobedience* seem like any other sort of law-breaking. If the political community misreads acts of *civil disobedience*, then these acts are not going to be effective at achieving the aims the actors seek to achieve. It also risks emboldening regressive actors whose acts could escalate to more serious and deleterious acts of disobedience.

I begin by examining John Rawls's theory of *civil disobedience*. Rawls's theory is deeply influenced by liberal political thought. When we unpack Rawls's theory, we find that at its core it is a theory that utilizes a conception of *fidelity to law* in order to distinguish between justified and unjustified illegal acts. Next, I contrast Rawls's conception of *fidelity to law* with Martin Luther King, Jr.'s conception of *fidelity to law*. While Rawls's conception

¹⁹ Kimberley Brownlee, *Conscience and Conviction: The Case for Civil Disobedience* (Oxford: Oxford University Press, 2012), 18.

²⁰ I am purposefully avoiding defining "political community" at this time. For King, it would be the Beloved Community and extend across all of humanity. I take the political community to be contextually dependent, yet with the possibility of extending across not just all of humanity but also including nonhuman animals.

²¹ I understand political community to be a very broad concept. Globalization makes it much more possible for the political community to extend beyond traditionally defined nation-state borders.

of *fidelity to law* means fidelity to a constitutional system, King's conception means fidelity to one's political community, understood as the *Beloved Community*. Contra William Scheuerman, I argue that it is best to understand King's conception of *fidelity to law* not as an appeal to legal virtues, but instead as an appeal to us to take seriously our obligations to all members of our political community. It is King's Beloved Community that grounds equal respect for all members' individual liberties, not vice versa. In contrasting Rawls's and King's theories, I argue in favor of King's central insights. King's conception of *civil disobedience* is rooted in a relational social ontology where what is paramount is fidelity to one's political community and the need to take seriously the historical socio-political context in which acts of disobedience occur.

While I find a great deal of normative value in King's position, I acknowledge that our obligations to members of our political community need to be reconceptualized in a nonreligious way in order to protect individual liberties, such as freedom of religion. This examination opens up to a discussion in the next chapter about the importance of our obligations to all members of our political community within the historical context of structural injustice, and a discussion in the third chapter about how to effectively balance the protection of individual liberties while also fulfilling our obligations to all members of our political community.

II. Rawls and Civil Disobedience: Civility, Fidelity to Law, and Obligation to the Legitimate State

The conceptual crux of the matter – of how to understand what *civil disobedience* is and ought to be – seems primarily to be an issue of how to understand *civility*. *Civility* seems to

distinguish disobedience as self-interested law-breaking for personal gain from disobedience as law-breaking for the betterment of the political community.

A review of the literature reveals how *civility* has taken on numerous meanings, which at times appear to inextricably link the descriptive, normative, and political senses of the word.²² *Civility* in one sense could refer to persons who are citizens and/or civilians, i.e. not members of a military force.²³ This sense is descriptive. *Civility* could also indicate behaving according to particular norms of etiquette appropriate for the given situation. Jennifer Welchman notes how to be civil has been associated with “being respectful of civil authorities and of the personal and property rights of others.”²⁴ This sense is normative. *Civility*, Welchman notes, also is associated with “being intended to be part of the public debate about the administration of public affairs.”²⁵ This sense is political.

Across the literature, all three senses of *civility* – descriptive, normative, and political – often merge. The result is the idea that *civility* concerns citizens and/or civilians whose obligation to the state requires that they behave according to particular socio-political norms of etiquette, even when they perform illegal acts in order to initiate a public debate.

The leading proponent of this view is John Rawls. Rawls’s definition of *civil disobedience* is based on the idea that *civil disobedience* is only a problem for constitutionally just democratic states whose citizens accept the legitimacy of the state but are faced with a conflict between the duty to obey the state and the duty to disobey an

²² See for example, Cheshire Calhoun, “The Virtue of Civility,” *Philosophy & Public Affairs* 29 no. 3 (2000): 251-75.

²³ Robin Celikates, “Rethinking Civil Disobedience as a Practice of Contestation – Beyond the Liberal Paradigm,” *Constellations* 23, no. 1 (2016): 39.

²⁴ Welchman, 98. Welchman is critical of these senses of civility.

²⁵ *Ibid.*

unjust law.²⁶ He defines *civil disobedience* “as a public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government.”²⁷

Let’s unpack this definition. Rawls’s theory of *civil disobedience* asserts that what distinguishes criminal law-breaking from *civil disobedience* law-breaking is that, in the latter, the disobedient breaks the law with a reverence, or fidelity, to law. Because one is obligated to a legitimate state in a general sense, those who disobey a law in a civil manner must demonstrate *fidelity to law* even when they break the law. One demonstrates their *fidelity to law* by acting civilly, and one acts civilly by acting publicly, nonviolently, and conscientiously.

Regarding *publicness* and *conscientiousness*, *civil disobedience*, for Rawls, is a form of public address; a communicative act which gives “voice to conscientious and deeply held convictions.”²⁸ Inasmuch, disobedient acts must be public in two ways: first, they must appeal to public principles (i.e. justice), and second, they must be done in a public forum with advance notice, not covertly or secretly.²⁹ Acts of *civil disobedience* must be *conscientious* public appeals (as opposed to appeals based on self-interested personal gain) in order to effect legislative changes. The disobedient appeals to the public conception of justice – a conception encapsulated in the society’s constitutional system of law – in order to change unjust laws which do not cohere with such a conception. We can call this Rawls’s “publicness as fidelity to law principle.”

²⁶ John Rawls, *A Theory of Justice* (Cambridge: Belknap Press, 1971), 363.

²⁷ *Ibid.*, 364

²⁸ *Ibid.*, 363

²⁹ *Ibid.*, 366

In regard to *nonviolence*, Rawls offers two reasons for why *civil disobedience* must be nonviolent. First, violent acts are inimical to a successful communicative appeal to the public in that violence can obscure that the agent is acting on the basis of a conception of justice.³⁰ It is difficult to know whether a violent act is a *conscientious* one, which in turn undermines the act's communicative goals. Second, per Rawls, nonviolent acts express a *fidelity to law* in that *nonviolence* demonstrates that even though the disobedient breaks the law, they are doing so with restraint because their aim is to effect legislative changes in order to bring the society closer to its conception of justice.³¹ This conception of justice, for Rawls, primarily focuses on individual civil liberties which protect individual life and property and are enshrined in the US constitutional system of law.³² We can call this Rawls's "nonviolence as fidelity to law principle."

The *publicness* and *nonviolence* of the disobedient act work in tandem with a willingness to accept punishment for performing an illegal act.³³ In performing the act publicly and nonviolently one demonstrates that they do not seek to evade punishment. For Rawls, this willingness to accept punishment demonstrates to the public "that the act is indeed politically *conscientious* and sincere, and that it is intended to address the public's sense of justice."³⁴ *Fidelity to law*, in both the *publicness* and *nonviolence* principles, is fidelity to the constitutional system of law. One is obligated to this constitutional system of law because, per Rawls, it is in general legitimate.

III. Rawls's Critics

³⁰ Ibid.

³¹ Ibid.

³² Ibid.

³³ Ibid.

³⁴ Ibid., 366-67

I have unpacked Rawls's sense of *civility* by showing how it links *publicness*, *conscientiousness*, and *nonviolence* with fidelity to the constitutional system of law, which in turn entails a general obligation to the constitutional system of law due to the system's legitimacy. Many thinkers are critical of Rawls's socio-political norms of etiquette, arguing that Rawls's norms of *publicness* and *nonviolence* either do not align with or are too narrow to account for all legitimate acts of *civil disobedience*. In regard to *publicness* in the second sense, Brownlee, Brian Smart, Robin Celikates, and Tony Milligan all argue, from different perspectives, that many disobedient acts – for example, nonhuman animal rescues, blocking an intersection, or obstructing the deportation of immigrants – require covertness and/or not notifying authorities in advance in order for the acts to effectively achieve the intended aim.³⁵ Publicizing disobedient acts allows for opponents and authorities to thwart the acts and the disobedients' intended message.³⁶

In regard to *publicness* in the first sense (as an appeal to the public's shared conception of justice), Peter Singer argues that *civil disobedience* may also be a public plea for reconsideration; a plea for the public to reconsider its very conception of justice.³⁷ For example, the disobedient may be urging the public to extend moral and legal standing to nonhuman animals.

In regard to *nonviolence*, many have raised numerous concerns about either its necessity for defining an act as *civil disobedience* or its applicability to concrete instances of

³⁵ Tony Milligan, *Civil Disobedience: Protest, Justification and the Law* (New York: Bloomsbury Academic, 2013), 134; Celikates, 38; Kimberley Brownlee, "Features of a Paradigm Case of Civil Disobedience," *Res Publica* 10, no. 4 (2004): 348; Brian Smart, "Defining Civil Disobedience," in *Civil Disobedience in Focus*, ed. Hugo Bedau (New York: Routledge, 1991), 206.

³⁶ Brownlee, 348.

³⁷ Peter Singer, "Disobedience as a Plea for Reconsideration," in *Civil Disobedience in Focus*, ed. Hugo Bedau (New York: Routledge, 1991), 122-29.

civil disobedience. First, many disagree about what constitutes violence. While Rawls considers property damage violence, others like Howard Zinn do not. Zinn argues that a distinction ought to be made between physical violence and property damage and the two ought not be morally equated. He states, “A philosophy devoted to property as something holy, when carried to its extreme, leads policemen to shoot to death black people who are taking *things* from stores.”³⁸ Martin Luther King, Jr. has written:

I am aware that there are many who wince at a distinction between property and persons – who hold both sacrosanct. My views are not so rigid. A life is sacred. Property is intended to serve life, and no matter how much we surround it with rights and respect, it has no personal being. It is part of the earth man walks on; it is not man.³⁹

King argues that life ought to be respected in itself, not property. Property is of moral relevance only insofar as it serves life.

Regardless of one’s stance on the issue, the lack of a shared conception of what constitutes violence poses conceptual and concrete problems for determining what acts ought to be defined as *civil disobedience*. As Celikates argues, “the widespread assumption that *civil disobedience* is, by definition, non-violent is not particularly helpful” because “everything depends on how violence is socially, politically, and legally (re-)defined.”⁴⁰

Second, even if one does consider property damage violence, it may nonetheless be legitimate. If the issue for Rawls is about noninterference with other persons’ civil liberties in order for one’s communicative appeal to be effective, it is not clear that violence necessarily hinders an act’s effectiveness.⁴¹ Brownlee argues, implicitly in agreement with

³⁸ Howard Zinn, *Disobedience and Democracy: Nine Fallacies on Law and Order* (Chicago, IL: Haymarket Books, 1968), 46.

³⁹ Martin Luther King, Jr., *The Radical King*, ed. Cornel West (Boston, MA: Beacon Press, 2016), 148.

⁴⁰ Celikates, 42

⁴¹ Rawls, 366

Zinn, that discriminate, thoughtful, and strategic acts of violence, such as property damage, “can provide an eloquent statement of both the dissenter’s frustration and the importance of the issues he addresses.”⁴² Brownlee argues that discriminate property damage, such as the destruction of military equipment by anti-war protesters (and we could add the destruction of corporate oil pipelines by environmentalists), is neither necessarily coercive nor necessarily “incompatible with conscientious intentions.”⁴³ Thus, one’s communicative appeal could be more effective through the use of discriminate property damage when such damage functions as a normative appeal.

Third, building on the second point, property damage is not necessarily antithetical to *civility*, depending on what one means by *civility*. Milligan argues that if by *civility* we mean something like “respect for persons,” then depending on the context of the concrete situation, property damage does not necessarily disrespect persons.⁴⁴ For example, if someone breaks a lock in order to gain access to a laboratory where nonhuman animal experimentation occurs and then removes injured animals, “it is not obvious” that this person has “failed to respect your personhood or that of the other stakeholders.”⁴⁵ *Civility* does not require that all of your acts and choices be respected.⁴⁶ The negation of property in order to alleviate suffering is a provocation to individuals to expand their conception of the moral and political community, and concomitantly their roles and responsibilities in such an expanded community. The disobedient is actually demonstrating a deep respect for others as moral agents by calling them to be better selves. In short, when discriminate

⁴² Zinn, 47; Brownlee, “Features of a Paradigm Case of Civil Disobedience,” 349-50

⁴³ Brownlee, “Features of a Paradigm Case of Civil Disobedience,” 349

⁴⁴ Milligan, 16

⁴⁵ *Ibid.*

⁴⁶ *Ibid.*

property damage functions as a normative appeal, it can be both effective and plausibly defined as civil.

Fourth, if the question is the justifiability of illegal acts and the response is that sometimes it is justifiable for the sake of justice, then one could plausibly ask whether some sort of violence could ever be justifiable for the sake of justice. Joseph Raz states, “The evil disobedience is designed to rectify may be so great [...] that it may be right to use violence to bring it to an end.”⁴⁷ Property damage may be the best course of action to end an egregious wrong. Of course, in alignment with Candice Delmas, one could distinguish between political disobedience which utilizes violence (such as property damage) and *civil disobedience* which utilizes *nonviolence*, and argue both may be context-dependent and context-justified.⁴⁸ Thus, for Delmas, the use of property damage automatically makes the act political disobedience instead of *civil disobedience*.

IV. Fidelity to Law: King on the Legitimacy of the State and Political Obligation

In the foregoing discussion, I have shown how Rawls’s conception of *civility* is grounded in a conception of *fidelity to law*, which in turn is grounded in a political obligation to the legitimate state. I have also reviewed some critical responses to Rawls. While I am sympathetic with many of these responses, none address my fundamental concern. These critics resist how Rawls conceives of the socio-political norms of etiquette, particularly *publicness* and *nonviolence*. My concern, however, is with Rawls’s conception of *fidelity to law* as the demonstration of one’s political obligation to the legitimate state. His norms of

⁴⁷ Joseph Raz, *The Authority of Law* (Oxford: Clarendon Press, 1979), 267.

⁴⁸ Candice Delmas, *A Duty to Resist: When Disobedience Should be Uncivil* (Oxford: Oxford University Press, 2018), 37.

etiquette are at their core civil for him because they demonstrate a fidelity to the law, and fidelity to the law means fidelity to the constitutional system of law, i.e. the legitimate state.⁴⁹ This strikes me as a profound mistake.

In exploring this issue, it is tempting to do a deep dive into the literature about social contract theory, state legitimacy, and political obligation.⁵⁰ I am not taking this approach because it will take the discussion too far off course. However, there are two issues that are crucial for the discussion at hand. First, does demonstrating a *fidelity to law* require that one acknowledge the overall legitimacy of the state whose laws one is disobeying? Second, is *fidelity to law* principally an obligation to an existing regime or the people whose sovereignty that regime purportedly enacts?

Per Rawls, in order for an act to be considered *civil disobedience*, the disobedient must accept that they are obligated to the existing state because they accept the general legitimacy of that state.⁵¹ Rawls makes explicit what other theorists of his era only implicitly gestured toward. William Scheuerman notes several liberal thinkers of Rawls's era, including Carl Cohen, Marshall Cohen, Harrop Freeman, and Ronald Dworkin, who, like Rawls, believe that one aspect that makes *civil disobedience* civil is the disobedient's *fidelity to law* understood as obligation to a legitimate state.⁵²

⁴⁹ Cf William Scheuerman, *Civil Disobedience* (Cambridge: Polity Press, 2018), 49.

⁵⁰ For a discussion regarding the relation between civility, consent in social contract theory, legitimacy and obligation, see Burton Zwiebach, *Civility and Disobedience* (Cambridge: Cambridge University Press, 1975), 22-62.

⁵¹ William Scheuerman, "Recent Theories of Civil Disobedience: An Anti-Legal Turn?" *The Journal of Political Philosophy* 23, no. 4 (2015): 435.

⁵² *Ibid.*, 434-35. A possible exception may be Hugo Bedau who implicitly leaves open the question of state legitimacy and political obligation when he argues that "paradigm cases of civil disobedience" are acts committed "within the framework of the rule of law (and thus with a willingness on the part of the disobedient to accept the legal consequence so his act, save in the special case where his act is intended to overthrow the government)." See Bedau, "Civil Disobedience and Personal Responsibility for Injustice," in *Civil Disobedience in Focus*, ed. Hugo Bedau (New York: Routledge, 1991), 51.

The discussion about *civil disobedience* during this era was heavily influenced by activists in the Civil Rights Movement, particularly King. Let us examine how King understood *fidelity to law*, and if King considered the concept as entailing that one is primarily politically obligated to the legitimate state.

King's conception of *civil disobedience* does entail a conception of "fidelity to the law." In response to critics, King argued

One who breaks an unjust law must do so openly, lovingly, and with a willingness to accept the penalty. I submit that an individual who breaks a law that conscience tells him is unjust, and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for the law.⁵³

However, we need to contextualize King's argument. Yes, he argues for a conception of *fidelity to law*, but this is not the liberal social contract theorist's conception of *fidelity to law* grounded in obligation to a legitimate state. As Scheuerman argues, liberal theorists transformed King's conception of *civil disobedience* as consistent with the "highest respect for the law" into a requirement that "disobedients had to demonstrate loyalty to the fundamentals of the *existing* legal and constitutional system, though not to the specific (unjust) laws they opposed."⁵⁴

King was largely concerned with particular laws. Particular laws, argues King, are legitimate if and only if they are just, and just laws are laws which conform with "moral law or the law of God." Laws which conform with this higher moral law are laws which 1) "a majority compels a minority to follow and that it is willing to follow itself," and 2) are

⁵³ Martin Luther King, Jr., "Letter from Birmingham Jail," in *A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr.*, ed. James Melvin Washington (New York: HarperOne, 1991), 294.

⁵⁴ Scheuerman, "Recent Theories of Civil Disobedience: An Anti-Legal Turn?" 435

“democratically structured” in that the minority is able to participate in the creation and enactment of the law.⁵⁵ However, King’s concern with particular laws does not necessarily mean that he thought the existing US state was, in general, legitimate.

Celikates argues it is unclear that King and other Civil Rights activists “were aiming only at more or less local corrections within the existing system or that their disobedience was an expression of the recognition of the system’s general legitimacy.”⁵⁶ After all, King states: “The thing to do is get rid of the system.”⁵⁷ “The system,” for King, meant racial segregation, militarism, and a capitalist economy which immured persons in intergenerational poverty.⁵⁸ One would be correct to point out that there was a shift over time in the concepts undergirding King’s activism as he responded to the obstinacy of systemic racism. Raffaele Laudani argues King’s earlier version of *civil disobedience*, which aimed to construct a unified political community by disrupting the workings of the system, is appropriately defined as “constitutional obedience” because it sought integration.⁵⁹ King’s later position, when advocating for direct action in order to effect revolutionary changes to the system, no longer equated *civil disobedience* with direct action.⁶⁰ Even so, *civil disobedience* in King’s earlier version sought to challenge the existing system by demonstrating the incivility of a system in which injustice emerged.⁶¹

A more intriguing question concerns the constitutional framework of the US system, as opposed to the existing US state at the time. A more generous reading of Rawls would

⁵⁵ Martin Luther King, Jr., “Letter from Birmingham Jail,” 293-94

⁵⁶ Celikates, 39

⁵⁷ Ibid.

⁵⁸ Scheuerman, *Civil Disobedience*, 22

⁵⁹ Raffaele Laudani, *Disobedience in Western Political Thought* (Cambridge: Cambridge University Press, 2013), 107-09.

⁶⁰ Ibid., 112

⁶¹ Ibid., 113

plausibly assert that this is what he had in mind. The constitutional framework of the US system encapsulates a democratic ideal and as such is amendable through democratic input. The existing state may not at the time live up to that ideal, but is in general legitimate because it contains the means for changing existing laws in order to more closely approximate that ideal. Even so, as Laudani states, “In Rawls’s perspective, the whole element of *challenging* the political order is completely absent, an element that even King recognizes as an essential component of *civil disobedience*.”⁶² A Rawlsian disobedient only challenges the system by appealing to the system’s ideals in order to demonstrate that the system is not living up to the ideals it has encapsulated in its framework (“fidelity to the law” means “fidelity to the system”), whereas King’s disobedient challenges the fundamental framework of the system itself. The question is: Does King perceive of the US constitutional framework as intrinsically legitimate and, thus, the primary object of obligation?

The issue is how to understand King’s conception of *fidelity to law*. While Celikates claims that a disobedient need not be required to display a *fidelity to law* in order for their act to be defined as *civil disobedience*, King does.⁶³ Scheuerman argues, King “neither viewed the US as fundamentally legitimate nor its legal order as deserving of universal obedience. Nonetheless, he expected his disciples to evince respect for law because by doing so they could help construct a radically reformed polity more fully in sync with the unrealized ambitions of the *Declaration of Independence* and US Constitution.”⁶⁴ Scheuerman here aligns King with the more generous reading of Rawls I noted above. If

⁶² Ibid.

⁶³ Celikates, 39

⁶⁴ Scheuerman, *Civil Disobedience*, 26

Celikates means *fidelity to law* to mean the liberal constitutional system, then contra Scheuerman, I agree that King did not perceive of the disobedient as needing to demonstrate fidelity to the liberal constitutional system. However, Scheuerman is obviously correct in noting how King spoke reverentially of the principles contained in the *Declaration of Independence* and the US Constitution when referring to *civil disobedience*.

So, how do we understand King's conception of *fidelity to law* in such a way that: 1) accounts for the claim that King did not conceive of the disobedient as needing to demonstrate fidelity to the liberal constitutional system, and 2) acknowledges King's reverence for the principles contained in the *Declaration of Independence* and the US Constitution? King did indeed revere aspects of the US constitutional system, but the unrealized ambitions Scheuerman refers to are primarily moral, not legal, imperatives. King's assertion that conscientiously disobeying unjust laws is reflective of the "highest respect for the law" means that such acts demonstrate fidelity to a higher moral law. For example, in a 1965 interview with NBC's *Meet the Press* King was asked if he would consider the US Supreme Court unjust if it ruled to uphold the constitutionality of segregation, in which he responded carefully but affirmatively that such a decision would be unjust because such a decision would not "square with the moral law" and the constitution per such moral law ought to be "colorblind."⁶⁵

Scheuerman argues King vacillates between religious and political (or legal) appeals; the former as appeals to higher moral law and the latter as appeals for the

⁶⁵ Martin Luther King, Jr., "MLK: Interview on NBC's 'Meet the Press' in 1965 (Courtesy: NBC News Archives)," The Martin Luther King, Jr. Center for Nonviolent Social Change, August 31, 2015, video, 15:52-17:37, <https://www.youtube.com/watch?v=D7Y8Q9nSK5A>.

constitutional system to live up to its democratic ideals.⁶⁶ Scheuerman states, quoting King, that by drawing attention to injustice “lawbreakers could help America finally live up to the ‘idea of the dignity and worth of human personality ... expressed eloquently and unequivocally’ in its founding documents.”⁶⁷ Indeed, writing of the US Constitution, King states “never has a sociopolitical document proclaimed more profoundly and eloquently the sacredness of human personality.”⁶⁸ However, when King states “dignity and worth of the human personality” and “sacredness of human personality,” what he is expressing is his belief in the equal divinity of all persons due to all persons being God’s beloved creations. If and when King revered the US constitutional system, it was only because there were aspects of it which conformed to a higher moral law.⁶⁹

King understands our primary obligation as residing neither with the existing state nor the constitutional system, but instead with our political community. This becomes clearer when we examine his conception of the *Beloved Community*. James M. Patterson argues, King’s “Beloved Community was a covenant,” consistent with theological ethicist H. Richard Niebuhr’s Protestant covenant, which “shapes the mutual obligations among individuals, the community, and God.”⁷⁰ Patterson argues “the Beloved Community rested American politics on the human capacity to sacrifice willingly individual interests for the sake of others, the broader community, and their commitment to a personal God.”⁷¹

⁶⁶ Scheuerman, *Civil Disobedience*, 25-27

⁶⁷ *Ibid.*, 26

⁶⁸ Martin Luther King, Jr., “The Ethical Demands for Integration,” in *A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr.*, ed. James Melvin Washington (New York: HarperOne, 1991), 119.

⁶⁹ James M. Patterson, “A Covenant of the Heart: Martin Luther King Jr., Civil Disobedience, and the Beloved Community,” *American Political Thought: A Journal of Ideas, Institutions, and Culture* 7 (2018): 133; 140.

⁷⁰ *Ibid.*, 129

⁷¹ *Ibid.*, 136

Particular laws (and, we could add, particular constitutional principles) which conform with God's law "were an effect and not a cause of the Beloved Community."⁷² The aspects of the US constitution King revered were effects of the nascent Beloved Community, preparing the way for the full realization of that community.

To expound even further, for King, willing sacrifice for the sake of others and the political community is indicative of God's love (*agape*) as well as the moral realization of the divine essence all persons share, and thus, it is God's love that is the only source of legitimacy for the state.⁷³ King states God's love as *agape* "means understanding, redeeming good will for all [persons]"; it is a love which "seeks nothing in return" and in which "we love [persons] not because we like them, not because their attitudes and ways appeal to us, but because God loves us."⁷⁴ Andrew Sabl argues King's position on *nonviolence* was centered around the concern "with the conditions for future cooperation, with forward-looking morality"; "violence causes an escalation of tit-for-tat retributions and increasing hatred, while nonviolent *civil disobedience* leaves open the possibility of a just harmony in a scale of years rather than generations."⁷⁵ King advocated for *nonviolence* because *nonviolence* was necessary for hastening the emergence of the Beloved Community, that is, for fulfilling one's obligation to the political community.⁷⁶

⁷² Ibid., 140

⁷³ Ibid., 136; 138

⁷⁴ King, "Letter from Birmingham Jail," 140-41

⁷⁵ Andrew Sabl, "Looking Forward to Justice: Rawlsian Civil Disobedience and its Non-Rawlsian Lessons," *The Journal of Political Philosophy* 9, no. 3 (2001), 314.

⁷⁶ Martin Luther King, Jr., "An Experiment in Love," in *A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr.*, ed. James Melvin Washington (New York: HarperOne, 1991), 18; Martin Luther King, Jr., "My Trip to the Land of Gandhi," in *A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr.*, ed. James Melvin Washington (New York: HarperOne, 1991), 25; Martin Luther King, Jr., "The Current Crisis in Race Relations," in *A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr.*, ed. James Melvin Washington (New York: HarperOne, 1991), 87; Scheurman, *Civil Disobedience*, 26; Sabl, 314-15

Anthony E. Cook argues King's Beloved Community combined Howard Thurman's theology of unconditional love for oneself and others with Walter Rauschenbusch's gospel of social atonement.⁷⁷ Through the spiritual work of unconditional love and the process of social atonement we come to appreciate "the oneness of creation, the reality of common humanity and the interdependency of human existence."⁷⁸ Cook argues, contrary to liberal conceptions of justice based on self-interest, individualism and autonomy, King's conception of justice is loved-based and communitarian; love "nurtured the awareness of spiritual oneness and human interdependency that King thought to be so vitally important to the formation and sustenance of empowering communities."⁷⁹ Love is a normative socio-political principle; it serves as "the central transcendent value ... to regulate the interactions among individuals and groups in [King's] Beloved Community."⁸⁰ Understanding King in this way leads us to the conclusion that the constitution, for him, is not sacrosanct. King's *fidelity to law* is a fidelity to a higher moral law and his primary obligation is to God and the political community as the source in which the Beloved Community would emerge; obligation to the state and its constitution depends on if and only if it conforms to higher moral law.⁸¹

There are at least two conceptual shifts to King's arguments liberal theorists make:

1) King's "highest respect for the law" is transformed from meaning a higher moral, or God's, law to meaning existing or manmade law as codified in constitutional systems ("God's law" becomes "constitutional system") and 2) King is taken to be implying that

⁷⁷ Anthony E. Cook, "King and the Beloved Community: A Communitarian Defense of Black Reparations," *George Washington Law Review* 68, no. 5/6 (2000): 978; 981.

⁷⁸ *Ibid.*, 981

⁷⁹ *Ibid.*, 959; 965-66; 975

⁸⁰ *Ibid.*, 974

⁸¹ Scheuerman, *Civil Disobedience*, 22

one's primary obligation is to a state that is legitimized through being a constitutional system, when in fact he explicitly holds that one's primary obligation is to God and the Beloved Community as a fruition of God's love; one's obligation to the state emerges secondarily only insofar as the state conforms with such. One might object by pointing out that King explicitly states that disobedients must willingly accept punishment for breaking the law. Does this not demonstrate an obligation to the legitimate state?

In the 1965 *Meet the Press* interview, New York Times reporter Tom Wicker challenges King stating that his position creates the problem where "one man's conscience is set in fact above the conscience of society which has invoked the law" and asks King: "How are we to enforce law when a doctrine is preached that one man's conscience may tell him that the law is unjust when other men's conscience don't tell them that?"⁸² King responds that the solution is to not allow anarchy; he states

I do not believe in evading the law as many of the segregationists do. The fact is that most of the segregationists and racists that I see are not willing to suffer enough for their beliefs in segregation, and they are not willing to go to jail. I think the chief norm for guiding the situation is the willingness to accept the penalty, and I don't think any society can call an individual irresponsible who breaks a law and willingly accepts the penalty if conscience tells him that that law is unjust, I think that this is a long tradition in our society, it is a long tradition in Biblical history; Meshach and Abednego broke an unjust law and they did it because they had to be true to a higher moral law.⁸³

King's reluctance to precipitate anarchy and advocacy of willingness to accept the penalty for breaking the law is a response to the white supremacist violence that was pervasive during his era. It is not difficult to imagine that King would be immensely

⁸² King, "MLK: Interview on NBC's 'Meet the Press' in 1965 (Courtesy: NBC News Archives)," 12:18-12:44

⁸³ Ibid., 12:44-13:49

concerned about the potential for heightened white supremacist violence as a response to activists' law-breaking. He had to emphasize a clear moral distinction between the law-breaking of white supremacists and the law-breaking of Civil Rights activists, and to do so he had to demonstrate that Civil Rights activists took seriously their obligation to the political community. In a socio-political situation where white supremacist violence was rampant and went unpunished, one way for Civil Rights activists to demonstrate their obligation to the political community was a willingness to accept punishment for their moral beliefs grounded in a higher moral law. White supremacists' lack of willingness to accept punishment for their beliefs divulged their self-interest and lack of concern for the political community. Such willingness to accept punishment was dependent on the context of King's era, thus, may or may not hold given the context of other eras.⁸⁴

Of course, what many political theorists have sought to evade was the natural law underpinnings of King's conception of *civil disobedience* because religious conceptions cannot serve as a political foundation for a state that recognizes religious pluralism and respects individual liberties.⁸⁵ The problem, as Scheuerman puts it, is that "God – or at least: what one's subjective and always fallible 'inner voice' tells any given individual about God – trumps competing political and legal claims, potentially including the fundamental ideal of equal moral and political personhood on which democracy builds."⁸⁶ The benefits of liberal theories of *civil disobedience* which stipulate that disobedients' appeals be

⁸⁴ For another, arguably complimentary, argument from a different perspective regarding King and the Civil Rights Movement's context-dependent strategic aims for willingly accepting punishment, see Erin Pineda, "Civil Disobedience and Punishment: (Mis)reading Justification and Strategy from SNCC to Snowden," *History of the Present* 5, no. 1 (2015): 1-30.

⁸⁵ Rawls, 365; Scheuerman, *Civil Disobedience*, 28

⁸⁶ Scheuerman, *Civil Disobedience*, 31

sectarian is that such appeals would be based on rational principles which are falsifiable, openly debatable and “capable of being endorsed by anyone, believer or not.”⁸⁷ I agree.

However, many theorists have been too dismissive of several of King’s central insights; insights that if taken seriously change how *civil disobedience* is conceptually understood. Scheuerman agrees King’s work has been neglected, but instead argues anti-legal theorists working on *civil disobedience* have neglected King’s “law-based defense of civil disobedience” founded on legal virtues such as “substantial quotients of clarity, publicity, generality, and prospectiveness” as well as “consistency and constancy” which Scheuerman equates with “the rule of law.”⁸⁸ I agree with Scheuerman insofar as the two attributes of just laws King outlined above align with Scheuerman’s legal virtues.

Yet, why value such a thing as consistency in law? Scheuerman is downplaying how those legal virtues are virtuous for King because they are grounded in a higher moral law. This higher moral law posited that all persons are equal under God at a time when all persons were not considered equal within the state, a situation that is not as historically distant as some may think; Black Lives Matter’s stated mission in 2019 is “to build local power and to intervene in violence inflicted on Black communities by the state and vigilantes.”⁸⁹ Scheuerman notes how King’s Beloved Community is founded in “equality and mutual respect” and “Only in such a community, King argued, might we expect the practical realization of complete and universal ‘respect for the law.’”⁹⁰ Consistency, applying the same treatment to like cases which fall under the same law, is not normatively neutral for

⁸⁷ Ibid., 34

⁸⁸ Scheuerman, “Recent Theories of Civil Disobedience” 441-44; Scheuerman, *Civil Disobedience*, 51

⁸⁹ “About,” Black Live Matter, accessed November 19, 2019, <https://blacklivesmatter.com/about/>.

⁹⁰ Scheuerman, “Recent Theories of Civil Disobedience,” 431

King. Consistency is a legal virtue because it is grounded in a normative principle, the principle of egalitarianism.⁹¹

This normative principle of egalitarianism must ultimately be supported by another normative claim. Scheuerman argues that law-based governments provide “a valuable social good” in that absent binding laws, “egregious injustices are likely to occur.”⁹² These legal virtues serve as an ideal to which governments must be held accountable, and without such legal restraints “it becomes difficult to see how political actors could ever enjoy personal let alone political freedom.”⁹³ He states, “the rule of law provides essential protections to the politically and socially vulnerable.”⁹⁴ The rule of law based on the principle of egalitarianism, for Scheuerman, provides essential protections for all persons’ personal and political freedom.

Here is the normative foundation. Scheuerman is giving hefty normative weight to personal and political freedom. He has shifted from grounding *civil disobedience* in higher moral law (in turn grounded in God), to grounding *civil disobedience* in legal virtues (in turn grounded in personal and political freedom). Why disobey? For King, because of higher moral law (God), and for Scheuerman, because of legal virtues (personal and political freedom) akin to Rawls.

Yet, personal and political freedom was exactly what King’s work was all about, but that freedom was not taken as a given and had to be argued for based on legal appeals which in turn were based on *conscientious* moral appeals (higher moral law). Put another

⁹¹ Regarding Scheuerman and egalitarianism, see “Recent Theories of Civil Disobedience,” 431; 433; 444.

⁹² Scheuerman, *Civil Disobedience*, 50

⁹³ *Ibid.*, 51

⁹⁴ *Ibid.*, 90

way, King had to prove Black people in the US were due the same personal and political freedom as whites under the principle of egalitarianism as a legal appeal, but he could only do so using higher moral law because Black people at the time were largely not conceived of as being like white people.

Scheuerman stops this process short for King at legal appeals, and he does so because of his concern with *conscientious* moral appeals. Scheuerman argues, “In contrast to *conscientious* moral appeals, law implicitly takes the possibility of far-reaching disagreement seriously, while recognizing that we still need shared binding rules in order to coexist.”⁹⁵ With Scheuerman, I agree that *fidelity to law* need not mean obligation to a state that one recognizes as legitimate. *Fidelity to law* could mean obligation to the political community based on a shared normative principle. The shared normative principle could be respect for legal virtues, but it seems to me that those virtues themselves would need to be propped up by some other guiding principle. Contra Scheuerman, I foresee the possibility that *conscientious* moral appeals could take seriously both the protection of individual liberties and the need for a political community to be bound by a shared normative principle that establishes obligations amongst all members of the community. I develop my case for this in upcoming chapters.

V. Conclusion

Rawls’s theory of *civil disobedience* operates under an assumed individualist social ontology where what is of primary importance is individual freedom. Individuals committing acts of *civil disobedience* must demonstrate a *fidelity to law*, understood as fidelity to the legitimate state. Contrarily, King’s theory of *civil disobedience* is based on a

⁹⁵ Scheuerman, “Recent Theories of Civil Disobedience,” 443

relational social ontology. What is of primary importance for King is the relation between individuals, and one expresses their fidelity to high moral law by taking seriously their obligation to the political community – the Beloved Community. Moreover, the way in which one demonstrates this obligation is context dependent, based on the historical socio-political situation in which one exists. For this project, I seek to expand on King’s central insights, while at the same time avoiding the religious components of his position.

The central question then becomes: Could a shared normative principle be devised which could both protect individual liberties as well as establish obligations to all members of the political community? Is this principle based on rational principles that are falsifiable, openly debatable, and capable of being endorsed by anyone? If so, what is this normative principle? Scheuerman is largely in dialogue with Brownlee on this point. So, I turn now to Brownlee’s conception of *civil disobedience*. Her incisive conception of *civil disobedience* as both *conscientious* and *communicative* is an excellent starting point for examining these questions.

Chapter Two – Brownlee’s *Conscientious Convictions* and *Civil Disobedience* in Individual vs Communal Social Ontologies

I. Introduction: The Necessity of a Normative Principle that Establishes Individual Obligations to the Political Community

William Scheuerman argues, “In contrast to conscientious moral appeals, law implicitly takes the possibility of far-reaching disagreement seriously, while recognizing that we still need shared binding rules in order to coexist.”⁹⁶ Scheuerman holds that legal rules serve this function. In agreement with Scheuerman, I hold that there needs to be some sort of binding rule that establishes individual obligations to the political community. In contrast to Scheuerman, I seek to explore how a shared moral normative principle could serve as this binding rule making coexistence in a diverse society possible.

Recent events in the US are evidence of this need: political polarization, emboldening of hate groups, increases in white supremacist and citizen-militia violence, violence at protests, and the attempted takeover of the US Capitol during Congress’s joint session to confirm the Electoral College vote for Joe Biden on January 6, 2021. The stability and well-being of the political community is jeopardized if individual members are unable or unwilling to recognize that they are dependent on the political community to thrive both physically and psychologically and that this dependency entails having certain obligations to the political community.

Recent events in the US highlight one of Martin Luther King, Jr.’s central concerns. King distinguished acts of law-breaking by Civil Rights activists from acts of law-breaking

⁹⁶ William Scheuerman, “Recent Theories of Civil Disobedience: An Anti-Legal Turn?” *The Journal of Political Philosophy* 23, no. 4 (2015): 443.

by white supremacists. King recognized that some acts of law-breaking are justified responses to injustice. At the same time, he was concerned about the potential escalation of white supremacist violence and the complete breakdown of society if all acts of law-breaking were equated.⁹⁷ He recognized that a normative principle which defines what one's obligations are to the political community can serve as a method for distinguishing justified acts of law-breaking from unjustified ones.⁹⁸

The normative principle by which individual obligations to the political community are established could be legal, procedural, or moral. In the previous chapter I distinguished *civility* in a descriptive sense from *civility* in the normative and political senses. I want to identify and understand the normative force that justifies disobeying laws for the purpose of changing them and redressing their wrongs. To that end, I examined how *civility* is linked to conceptions of *fidelity to law*, and I argued that King's conception of *fidelity to law* means obligation to the political community based on a moral normative principle.

King's normative principle emerges from the moral idea of the *Beloved Community*. I explored Scheuerman's argument in which he supports legal virtues, as opposed to *conscientious* moral appeals, as the best candidate for King's normative principle. Scheuerman's legal virtues act as what I have termed legal normative principles while the moral appeals he is concerned about act as what I have termed moral normative principles. As explored in the previous chapter, Scheuerman is concerned with the inability of moral normative principles to be based on rational principles that are falsifiable, openly

⁹⁷ Martin Luther King, Jr., "MLK: Interview on NBC's 'Meet the Press' in 1965 (Courtesy: NBC News Archives)," The Martin Luther King, Jr. Center for Nonviolent Social Change, August 31, 2015, video, 12:18-12:44, <https://www.youtube.com/watch?v=D7Y8Q9nSK5A>.

⁹⁸ Ibid.

debatable, and capable of being endorsed by anyone because he associates such principles with religious thought and values freedom of *conscience* in a pluralistic society.⁹⁹ I argued that Scheuerman's concern with moral principles causes him to neglect how for King, given the historical socio-political context in which the Civil Rights struggle existed, legal principles had to ultimately be argued for based on moral principles.

At bottom, I argue, it is most apt to understand King's normative principle as moral as opposed to legal. As I note in the previous chapter, I take seriously Scheuerman's concerns. Yet, I am still drawn to King's central insight: A moral normative principle could potentially be the best option for establishing individual obligations to the political community and for demarcating justified acts of law-breaking from unjustified acts. My position holds that only justified acts of law-breaking ought to be protected. I argue in this and the following chapter that acts which threaten the stability and well-being of the political community on which individual well-being depends should not be considered justified nor protected.

My project explores whether a moral normative principle could be devised which: 1) could be based on rational principles that are falsifiable, openly debatable, and capable of being endorsed by anyone, 2) is attuned to and accounts for the historical socio-political context of the situation, and 3) a. serves to protect individual liberties while at the same time b. generating an obligation to all members of the political community. In the following chapters, I explore the possibility that a moral normative principle based on Simone de Beauvoir's conception of freedom could fill this role.

⁹⁹ William Scheuerman, *Civil Disobedience* (Cambridge: Polity Press, 2018), 34.

In this chapter, I explore Kimberley Brownlee's theory of *civil disobedience* in which she argues that *civil disobedience* is protected by a general moral right derived from the principle of humanism. As a rights theory, I argue Brownlee's theory does not provide us with a normative principle that meets criteria 2 and 3b. Through examining her theory, I make the larger case that these criteria ought to matter in whether acts of *civil disobedience* are considered justified, and thus worthy of protection.

I begin by explicating a concrete case of *civil disobedience* performed by Kim Davis, a Kentucky county clerk who refused to issue marriage licenses to same-sex couples after the US Supreme Court ruled that same-sex couples have a constitutional right to marriage. I then explicate Brownlee's theory of *civil disobedience* and analyze Davis's case through Brownlee's theory. Brownlee's position, in advocating for *civil disobedience* as a general moral right, considers neither the content of the disobedient's belief motivating the act nor the historical socio-political context in which the act occurs. All acts of *civil disobedience* are protected under a general moral right so long as the acts are based on *conscientious* moral convictions (i.e. are sincere and communicative) and are suitably constrained.

I have three interrelated responses. My first response concerns the normative status of the principle of humanism. For Brownlee, acts of *civil disobedience* ought to be protected if they fit the second-order descriptive and procedural criteria. Brownlee's position insightfully details what makes acts *conscientious* and the procedures by which one demonstrates *conscientiousness*. These second-order descriptive and procedural claims are morally neutral. However, this moral neutrality arises from the principle of humanism and the appeal to the principle of humanism is a first-order normative claim. The principle of humanism is not morally neutral and is ultimately the moral principle doing the

justificatory work in the theory. If it is indeed the case that the principle of humanism is ultimately the moral principle doing the justificatory work in the theory, then acts which violate the principle of humanism should not only be unjustifiable but unprotected.

My second response concerns the paradox of toleration. The paradox of toleration questions whether we ought to continue to tolerate intolerance. I argue that we are under no obligation to tolerate the intolerant if doing so poses a grave threat to the stability and security of the state, and in doing so hinders persons' abilities to enact their individual liberties equally. Of course, the point of disagreement is and has been what constitutes a "grave" threat. I hold that we need to consider the historical socio-political context of the situation in order to know at what point we are no longer obligated to tolerate the intolerant.

My third response is broken up into two sections and concerns the content of beliefs and, respectively, a. the scope of one's moral and political consideration and b. structural injustice. I argue truncated scopes of moral consideration reinforce and perpetuate structural injustice, and vice versa. Individual beliefs are both shaped by and give shape to social structures. Neither individual acts nor the content of the actor's belief is atomistic. Both have concrete impacts on people's lives and the impact depends on the historical socio-political context.

In my final section, I put acts of *civil disobedience* in context by examining individuals' socio-political experiences and how these experiences differ depending on race and class. Acts of *civil disobedience* are social acts that occur within and in response to particular social contexts, and have social aims and social consequences depending on that particular social context. I argue protecting intolerant disobedient acts could, firstly,

undermine others' security and ability to enact their individual liberties equally. Secondly, protecting intolerant acts could perpetuate and reinforce structural injustice.

II. Case of Kim Davis

On June 26, 2015, the US Supreme Court ruled that same-sex couples have the constitutional right to marry under the 14th Amendment's Due Process and Equal Protection Clauses.¹⁰⁰ One day later Kim Davis, a Rowan county clerk in Kentucky, refused to issue marriage licenses to all couples, heterosexual and same-sex alike.¹⁰¹ Davis was the most public voice of at least five Kentucky county clerks who all prohibited anyone in their offices from issuing marriage licenses to any couple so long as they had to issue licenses to same-sex couples.¹⁰² In an interview, Davis stated she refused to issue the licenses per her "deep religious convictions," because "marriage is ordained by God to be a man and a woman."¹⁰³

Davis maintained her position for months, continuing to publicly communicate her position. With news cameras ever present, Davis consistently refused to allow her office to issue marriage licenses, stating: "To issue a marriage license which conflicts with God's definition of marriage, with my name affixed to the certificate, would violate my conscience [...] I was elected by the people to serve as the County Clerk. I intend to continue to serve the people of Rowan County, but I cannot violate my conscience."¹⁰⁴ She was heralded among religious conservatives as a "religious freedom fighter" and her acts were equated

¹⁰⁰ Obergefell v. Hodges, 576 U.S. 644 (2015).

¹⁰¹ Davis v. Miller, 136 S. Ct. 23 (2015).

¹⁰² Andrew Wolfson, "Some Ky. Clerks Defy Same-sex Ruling," *USA Today*, June 29, 2015, <https://www.usatoday.com/story/news/nation/2015/06/29/gay-marriage-defiance-kentucky/29493337/>

¹⁰³ Ibid.

¹⁰⁴ CBS/AP, "Kentucky Clerk Still Refuses Same-sex Marriage 'Under God's Authority,'" *CBS News*, September 1, 2015, <https://www.cbsnews.com/news/kentucky-clerk-kim-davis-refuses-same-sex-marriage-gods-authority/>

with Martin Luther King, Jr. and Rosa Parks's acts of *civil disobedience*.¹⁰⁵ Among some progressive liberals, Davis was scrutinized, called a "bigot" and a "homophobe."¹⁰⁶

On August 12, US District Judge David Bunning ruled that Davis had to resume issuing licenses or be held in contempt of court.¹⁰⁷ Davis refused to abide by the court order. On September 3, Davis was found in contempt of court and arrested.¹⁰⁸ She was jailed for five days. Her release was predicated on her agreement to not interfere with the issuance of licenses by other employees in her office.¹⁰⁹ When asked if her time in jail was worth it, she simply replied, "Yes."¹¹⁰ She did not prevent her deputies from issuing marriage licenses to same-sex couples on her return to work in September 2015, but she refused to officially authorize the licenses stating "any unauthorized license that they issue will not have my name, my title or my authority on it [...] the license will state they are issued pursuant to a federal court order."¹¹¹

III. Brownlee's Position Applied to Davis's Case

¹⁰⁵ Wallace B. Henley, "Kim Davis and Rosa Parks," *The Christian Post*, September 6, 2015, <https://www.christianpost.com/news/kim-davis-and-rosa-parks.html>; Paul Strand, "Kim Davis: Why First American Jailed Defending Traditional Marriage May not be the Last," *CBS News*, June 20, 2018, <https://www1.cbn.com/cbnnews/us/2018/june/kim-davis-why-first-american-jailed-for-defending-traditional-marriage-may-not-be-the-last>

¹⁰⁶ CBS/AP, "Kentucky Clerk Still Refuses Same-sex Marriage 'Under God's Authority,'" *CBS News*, September 1, 2015, <https://www.cbsnews.com/news/kentucky-clerk-kim-davis-refuses-same-sex-marriage-gods-authority/>

¹⁰⁷ Mike Wynn and Chris Kenning, "Timeline of a Kentucky Clerk's Gay-marriage Defiance," *USA Today*, September 3, 2015, <https://www.usatoday.com/story/news/politics/2015/09/03/ky-clerk-gay-marriage-timeline/71670068/>

¹⁰⁸ *Ibid.*

¹⁰⁹ David Weigel, Abby Phillip, and Sarah Larimer, "Kim Davis Released from Jail, Ordered not to Interfere with Same-sex Marriage Licenses," *The Washington Post*, September 8, 2015, <https://www.washingtonpost.com/news/post-nation/wp/2015/09/08/judge-orders-kentucky-clerk-kim-davis-released-from-jail/>

¹¹⁰ *Ibid.*

¹¹¹ Marina Koren, "Kim Davis's First Day Back," *The Atlantic*, September 14, 2015, <https://www.theatlantic.com/national/archive/2015/09/kim-davis-gay-marriage-kentucky/405175/>. The Kentucky attorney general's office ruled that the same-sex marriage licenses were legally valid.

Brownlee's theory would, arguably, hold that Davis's act was protected by a moral right to engage in *civil disobedience*. Davis's act may not have been morally justified, but it could qualify as *conscientious* in her theory. Brownlee argues that a *conscientious* act is an act based on a sincere and serious belief that some law or policy is wrong, and such a belief obligates the person to communicate their belief to the political community in order to attempt to effect lasting change to the law or policy.¹¹² She argues that *conscientious* acts of *civil disobedience* "must include a deliberate breach of law taken on the basis of steadfast personal commitment in order to communicate our condemnation of a law or policy to a relevantly placed audience."¹¹³ An act is *conscientious* if it is sincere and communicative, and to be sincere and communicative it must satisfy four conditions: 1) consistency, 2) universality, 3) non-evasion, 4) dialogic effort.¹¹⁴ To be sincere and communicative: (1) one must consistently refrain from participating in the conduct that is believed to be wrong, (2) one must judge that the conduct is universally wrong, (3) one must not evade the consequences of honoring one's belief that the conduct is wrong, and (4) one must communicate to others the reasons why one believes the conduct is wrong.¹¹⁵

Brownlee is concerned with protecting freedom of conviction by respecting individuals as thinking, feeling, and expressive persons; recognizing that individuals are responsible and rational moral agents who are "capable of both deliberating about moral matters and providing reasons for their actions and positions."¹¹⁶ This is the principle of

¹¹² Kimberley Brownlee, "Features of a Paradigm Case of Civil Disobedience," *Res Publica* 10, no. 4 (2004): 341-42.

¹¹³ Kimberley Brownlee, *Conscience and Conviction: The Case for Civil Disobedience* (Oxford: Oxford University Press, 2012), 18.

¹¹⁴ *Ibid.*, 29-30

¹¹⁵ *Ibid.*, 29-46

¹¹⁶ Kimberley Brownlee, "The Communicative Aspects of Civil Disobedience and Lawful Punishment," *Criminal Law and Philosophy* 1, no. 2 (2007): 187.

humanism at work in her theory. Utilizing the principle of humanism, she seeks to disentangle the act of *civil disobedience* from the moral content, i.e. the rightness or goodness, of the act; an act is civilly disobedient if it is *conscientious*. If the disobedient sincerely believes that they are acting morally and they meet the four conditions, then their act ought to be protected regardless of whether they are in fact acting morally. So, regardless of whether Davis's act was actually right or good, her act was descriptively *conscientious* because it was based on her serious, sincere, and steadfast belief that not only is same-sex marriage is wrong but that she should not be forced by the state to issue marriage licenses to same-sex couples. Such belief compelled her to publicly communicate her conviction. She offered reasons in defense of her view and she was willing to bear the risk of going to jail for refusing to obey the court order.

To unpack this further, Brownlee distinguishes between *conscience* and *conscientiousness*. *Conscientiousness* is a descriptive property. It is a description of the necessary and sufficient conditions, as evinced in demonstrative actions, that must obtain in order for a person's belief to be considered a "moral" belief, i.e. a genuine (thought possibly mistaken) belief about what is morally right and wrong.¹¹⁷ To be described as a *conscientious* moral belief, the belief must be sincere and communicative; it does not matter whether it is erroneous.

Davis's case appears to check off all these boxes. To expound how, we first need to be clear about what exactly her position is and what the aim is of her disobedience. As a religious Christian, she believes all same-sex marriage is wrong. Her act of disobedience

¹¹⁷ Cf Thomas Hill, "Conscientious Conviction and Conscience," *Criminal Law and Philosophy* 10, no. 4 (2016): 679-80.

only indirectly targeted same-sex marriage. Her aim, at least immediately, was not to overturn the Supreme Court ruling in favor of same-sex marriage. Her aim was to obtain a “religious exemption” from having to issue licenses to same-sex couples, because she argued that her religious liberties were in conflict with same-sex couples’ individual liberties under the 14th amendment.¹¹⁸ There’s two issues that seem to be at play here, the underlying belief that same-sex marriage is wrong and the immediate conviction that she should not be required to issue same-sex marriage licenses because to do so goes against her deeply held religious convictions. Her wider general conviction was that the state should not be allowed to force individuals to act in ways that violate their deeply held religious convictions. She was putting pressure on a legitimate issue in liberal societies: When one person’s rights conflict with another person’s rights, whose rights win out?

In order to determine if she acted in ways consistent with her convictions, we would need detailed information about her life before and after her disobedient act. Has she acted contrary to this position by either expecting others to act contrary to their religious convictions or by herself unwarrantedly picking and choosing when to act against her religious convictions? We have no evidence to suggest either that she has or has not, and thus we ought to give her the benefit of the doubt and allow the possibility that she meets the consistency condition.

In regard to the non-evasion and the dialogic effort conditions, Davis maintained her position despite the consequences of being in the public eye and she accepted being arrested, meeting the non-evasion condition. And, she became the public face and voice for

¹¹⁸ Corky Siemaszko, “Kentucky Clerk Kim Davis, Who Refused to Issue Marriage Licenses to Gays, Seeks to End Case,” *NBC News*, June 21, 2016, <https://www.nbcnews.com/news/us-news/kentucky-clerk-kim-davis-who-refused-issue-marriage-licenses-gays-n596476>

other Kentucky county clerks, publicly giving the reasons why she should not be required to issue same-sex marriage licenses.

In regard to the universality condition, things become a bit more complicated because there are two issues at play. Davis was the clerk over the county office where she not only refused to issue licenses herself but also prohibited others in her office from issuing licenses in her name. She did not pass the job off to one of her employees who would then issue the license in her name. She argued that licenses issued in her name were akin to her giving her approval for the marriage. If one interprets Davis's conviction as a claim that it was universally wrong for anyone to perform same-sex marriages, then her refusal to allow her employees to issue marriage licenses would meet the universality condition.

One could argue that if one interprets her conviction as such, then if she referred same-sex couples to other county clerks, then she would not meet the universality condition. However, if her conviction was that the state should not be allowed to force individuals to act in ways that violate their deeply held religious convictions, then she would still meet the universality condition. If she did refer same-sex couples to other counties to obtain licenses, this does not disqualify her from meeting the universality condition because the operative conviction was that a person should not be required to issue same-sex licenses when doing so goes against their religious convictions and other county clerks at the time were choosing for themselves whether to issue licenses.

Brownlee explores the universality requirement in regard to anti-abortion doctors who refer patients to other doctors in order to obtain the procedure. She states "the universal judgement required for *conscientiousness* is a *pro tanto* judgement [...] When it

comes to universality of judgement the difference between the *conscientious* person and the hypocrite lies in their reasoning and their attitude toward others' conduct."¹¹⁹ Thus, Davis appears to meet all of Brownlee's conditions for protected acts of *civil disobedience*.

But, does Davis's case actually meet all of Brownlee's criteria? Brownlee seems to speak directly to this issue

the humanistic principle is an egalitarian principle that cannot accommodate assertions of rights that either violate the dignity of others or threaten their basic needs [...] the acts I have in mind are the parent's refusal to take her child with curable diabetes to see a doctor; the fire-fighter's refusal to assist the homosexual couple whose house is burning; the town registrar's refusal to marry homosexual couples; and the doctor's refusal to provide urgent medical services when no other doctor is available. There is no moral right of conscientious action in these cases.¹²⁰

The humanistic principle undergirding Brownlee's theory only protects disobedient acts that are suitably constrained; acts that violate others' dignity or threaten their basic needs would not be suitably constrained. Brownlee offers two responses to critics who might respond that so long as the public service is available by others who are willing to provide the service, then others' dignity is not violated and their basic needs are met. She states there are two problems with this response

First, for the equal dignity of all to be respected, important services must be provided in a non-discriminatory fashion. When persons have certain public services under their control, this limits their moral right to refuse to distribute those services in a non-discriminatory fashion. Second, if the doctor who recuses herself appeals to others' willingness to provide the service that she opposes, she may be engaging in a form of morally-inconsistent free-riding. There may be an inconsistency between her judgement that the procedure is wrong and her desire that others do it so that she doesn't have to refuse directly. By free-riding on the willingness of others to do what she finds

¹¹⁹ Brownlee, *Conscience and Conviction: The Case for Civil Disobedience*, 37

¹²⁰ *Ibid.*, 149-50

objectionable so that she may escape social pressure, she fails to respect the dignity and interests of those seeking to provide the service in a non-discriminatory way.¹²¹

In regard to the first point, it is difficult to ascertain how Davis's case would fit into this position. If Davis's solution to the rights vs rights dilemma was to refer same-sex couples to other county clerks, would this meet Brownlee's criteria for reasonable constraint? Brownlee's position would hold that it is case-specific, dependent upon how onerous and stigmatizing it would be for the couples to obtain the service.¹²² Referring individuals to where they could easily obtain the public service means that the individuals can obtain the service. They are not able to obtain the service from one provider because the provider is discriminating against them, but their basic needs are met by obtaining the service from another provider.

It could be argued that someone's house burning down is disanalogous to obtaining a marriage license, because the former is an immediately threatening issue. Context matters, and in the former context the discrimination would result in immediate loss of life and property. Referrals in this case would put a person's life and property at risk. Abortion in nonemergency situations may be a more analogous case to consider. Healthcare providers are not required to provide abortions if doing so goes against their deeply held moral beliefs and the need for the service in nonemergency situations does not immediately put anyone's life or property at risk.

With the universality condition, Brownlee acknowledges how the context of the situation matters for determining whether an act is indeed *conscientious*, and thus worthy

¹²¹ Ibid., 150

¹²² Brownlee, email to author, December 1, 2020

of protection.¹²³ Brownlee also acknowledges that context matters in regard to reasonable constraint when she states, it is “a question worth debating – given how many legal rights and privileges come with getting married – whether refusing to issue licenses to people (assuming those people cannot get a license easily elsewhere) is suitably constrained.”¹²⁴

The relevant aspect to consider the *conscientiousness* of the act seems to be how much of an undue burden referral to other providers places on individuals’ abilities to obtain nonemergency public services. Considering again abortion, in the case of *Planned Parenthood of Southeastern Pennsylvania v Casey* (1992), the US Supreme Court utilized the “undue burden test” to rule that states can regulate abortion services so long as the regulations do not place a “substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus.”¹²⁵ If the same-sex couples Davis referred to other county clerks were able to easily obtain marriage licenses from other county clerks, then it could be argued that Davis’s act meets Brownlee’s criteria for reasonable constraint.

Ultimately, it is unclear as to whether referring individuals to others who are willing to perform the public service is an acceptable solution, but it arguably could be and the lack of clarity on this issue fails to provide solid guidance for how to resolve the rights vs rights dilemma. This lack of guidance leaves us with no resolution as to whether Davis’s act ought to be protected. It arguably could be or not.

In regard to the second point, it is again critical to ascertain whether the conviction in play was that same-sex marriage is wrong or that the state should not be allowed to force individuals to act in ways that violate their deeply held religious convictions. If the

¹²³ Brownlee, *Conscience and Conviction: The Case for Civil Disobedience*, 35

¹²⁴ Brownlee, email to author, December 1, 2020

¹²⁵ *Planned Parenthood of Southeastern Pa. v. Casey* (91-744), 505 U.S. 833 (1992)

latter, then Davis would not be engaging in morally-inconsistent free riding by referring same-sex couples to other county clerks because the claim was not necessarily that same-sex marriage is wrong. Other county clerks could decide for themselves if it aligned with their religious convictions to issue same-sex marriage licenses. It is entirely morally consistent to claim that the state ought not force individuals to act in ways that violate their deeply held religious convictions and refer same-sex couples to other county clerks whose religious convictions do not hold that same-sex marriage is wrong.¹²⁶

While there are some unresolved hypotheticals surrounding Davis's case, ultimately even as Brownlee herself does not include Davis's case as a protected case, Brownlee's position could be reasonably used to argue that Davis's act ought to be protected. Protection of Davis's sincere, communicative, and suitably constrained act of *civil disobedience* does not equate with condoning her conviction; it does not justify her act of *civil disobedience*. The actual rightness or goodness of Davis's act would be a question concerning *conscience*. *Conscience*, Brownlee argues, is a moral property. It is "a moral property of genuine, self-conscious moral responsiveness" that can be developed to different degrees, and in its highest degree is "the cultivation of a genuinely valuable, a non-optional moral ideal."¹²⁷ It is the ability to appropriately negotiate complex moral situations by understanding and weighing all of the different and/or conflicting values involved, as well as one's concomitant responsibilities.¹²⁸ *Conscientiousness* and *conscience* are distinct but interrelated: "Conscience [...] means not just that we take morality

¹²⁶ Of course, following this argument, if all of the county clerks in the area refused to issue same-sex marriage licenses then it would violate reasonable constraint because same-sex couples would not be able to easily obtain the public service and meet their basic needs.

¹²⁷ Brownlee, *Conscience and Conviction: The Case for Civil Disobedience*, 83

¹²⁸ Candice Delmas, "False Convictions and True Conscience," *Oxford Journal of Legal Studies* 35, no. 2 (2015): 406.

seriously (*conscientiousness*), but also that we are genuinely, self-consciously morally responsive and aware of the actual moral quality of our own and others' conduct."¹²⁹

Whether Davis's act is morally justified does not matter for the question of whether her act ought to be tolerated or at least not punished by the state. What matters is that she has a *conscientious* conviction and acts on it in a sufficiently constrained way.

Using Brownlee's theory, in not protecting Davis's act, there is a sense in which Davis, as an expressive moral agent, is being disrespected and all expressive moral agents are due respect. This is a weaker, non-normative, conception of respect that entails toleration (not necessarily approval or laudation) for moral beliefs that one may find objectionable. Brownlee states, "That respect also is an acknowledgement that our society puts too much pressure on us when it requires us to always put the law ahead of our deep beliefs. And, society puts too much pressure on us when it always requires us to act non-communicatively, to be self-censoring when we do step outside the line in defense of our beliefs."¹³⁰ Davis's act ought to be respected, it could be argued, because of the psychological toil self-censorship and conformity has on thinking, feeling, and expressive individuals who are capable of developing and communicating deep beliefs.

IV. The Principle of Humanism and First-Order vs Second-Order Moral Justification

Brownlee's theory seeks to disentangle the actual morality of disobedient acts from whether the acts ought to be protected, yet her conception of *conscientiousness* involves a

¹²⁹ Brownlee, *Conscience and Conviction: The Case for Civil Disobedience*, 16

¹³⁰ Kimberley Brownlee, "The Philosophical Case for Civil Disobedience," Simon Fraser University, January 15, 2015, video, 37:27-37:57, <https://www.sfu.ca/gradstudies/life-community/news-events/events/pdc/2015-obedience-disobedience-climate-change/the-philosophical-case-for-civil-disobedience.html>

normative principle. This normative principle serves as the guiding moral principle undergirding the justifiability of disobedient acts.

It is evident that Brownlee is primarily concerned with respecting individual moral beliefs and the ability of agents to act on and communicate those beliefs. She states “the moral rights arising from moral conviction are rooted in the principle of humanism,” a principle which contends that “society has a duty to honor the fact that we are reasoning and feeling beings capable of forming deep moral commitments.”¹³¹ The principle of humanism is her summum bonum; it is her guiding moral principle. It is the guiding moral principle that places normative demands on persons to respect others’ disobedient acts, so long as those acts fit the descriptive and procedural criteria outlined.

The fact that we are thinking, feeling, and expressive beings is a descriptive ontological claim. Much of Brownlee’s discussion surrounding *conscientiousness* is descriptive; it is a second-order, meta-ethical and morally neutral account of what it means to be *conscientious*. That these descriptive aspects of our existence merit respect, is normative. In moving from describing what it means to be *conscientious* to asserting that these descriptive features ought to be respected, Brownlee moves to making a first-order ethical claim. At the second-order level, Brownlee’s theory is morally neutral. This is where her moral pluralism arises, and thus, where questions concerning moral justifiability would be misplaced. However, at the first-order level, her theory is not morally neutral.

We can ascertain this in her argument for a demands-of-conviction defense, i.e. a general moral right, for acts of *civil disobedience* and how this defense is based on the

¹³¹ Brownlee, *Conscience and Conviction: The Case for Civil Disobedience*, 120; 7

ground of autonomy.¹³² In agreement with Jeremy Horder, she argues the demand that citizens always sacrifice their moral beliefs and responsibilities for the sake of law-abidance hinders citizens' abilities "for realizing full personal autonomy, the value of which is key in a liberal democracy."¹³³ It erodes citizens' capacities to be the originator of, to account and take responsibility for their actions.¹³⁴ Regardless of whether Brownlee favors an individualist or relational conception of *autonomy*, and although she argues for moral pluralism, her theory rests on a primary fundamental moral value, freedom of conviction arising from the principle of humanism.

William Smith and Tine Hindkjaer Madsen also make this point. Smith states, "Humanism, on Brownlee's account, is a substantive moral view that imposes normative constraints on our treatment of others. This can be seen through recalling her claim that humanism is an *egalitarian* principle that does not sanction actions that 'violate the dignity of others' or 'threaten their basic needs.'"¹³⁵ Madsen argues that the principle of humanism cannot support a "belief-relative moral right" (i.e. what is paramount is that the disobedient believe that their position is morally right) for acts of *civil disobedience* because "A right to CD [i.e. *civil disobedience*] derived by HPR [i.e. humanistic principle of respect for human dignity and autonomy] is limited by the values that constitute HPR in the sense that the right does not extend to acts of CD violating the autonomy and dignity of others where

¹³² In regard to this issue, see David Lefkowitz, "Should the Law Convict those who Act from Conviction? Reflections on a Demands-of-Conscience Criminal Defense," *Criminal Law and Philosophy* 10, no. 4 (2016): 657-75 and Kimberley Brownlee, "Reply to Critics" *Criminal Law and Philosophy* 10, no. 4 (2016): 721-39.

¹³³ Brownlee, *Conscience and Conviction: The Case for Civil Disobedience*, 167-68

¹³⁴ *Ibid.*, 168

¹³⁵ William Smith, "The Burdens of Conviction: Brownlee on Civil Disobedience," *Criminal Law and Philosophy* 10, no. 4 (2016): 699-700.

this violation outweighs the concern for the autonomy and dignity of the dissenter.”¹³⁶

Madsen argues that the only disobedient acts the humanistic principle is able to serve as a theoretical foundation for protecting are disobedient acts based on causes which uphold humanistic aims.¹³⁷

Smith, Madsen, and I are proceeding along parallel conceptual trajectories. For Madsen, a belief-relative right is a right regardless of the content of the belief. She argues Brownlee’s general moral right cannot be a belief-relative right because acts, per Brownlee’s theory, ought to be limited by the principle of humanism. Thus, for Madsen, the implication might be that Brownlee’s general moral right to *civil disobedience* is actually a fact-relative right. The content of the belief cannot violate the principle of humanism.¹³⁸ To add to Smith and Madsen, I argue the principle of humanism is fundamentally a moral ideal based on liberal moral and political theory, and ultimately what becomes morally right and morally justifiable in Brownlee’s theory are acts which affirm the principle of humanism (i.e. freedom of conviction and liberal moral ideals).

To be sure, Brownlee argues that an act being morally justifiable is distinct from an act being protected by a moral right, and she clearly distinguishes between what is morally right (morally justified) and having the protection of a moral right to act for the sake of

¹³⁶ Tine Hindkjaer Madsen, “On a Belief-Relative Moral Right to Civil Disobedience,” *Res Publica* 25, no. 3 (2019): 342.

¹³⁷ Brownlee’s response: “My response to Tine would be that a (good society’s) principle of humanism can accommodate far more than just dissent animated by humanistic causes. The state is differently placed (and far more powerful) than ordinary individuals. We must adopt a stricter moral standard for the state than for individual members. The limit of the right to conscientious action that I defend – where this right won’t protect a breach of law – pertains to the limits of constrained action: when a dissenter violates others’ dignity, basic needs, or rights (when she essentially does violence to their needs or rights), then she is no longer acting in a constrained way and she can no longer invoke a right to conscientious action.” Email to author, November 19, 2021

¹³⁸ *Ibid.*

causes that may be immoral. However, the protection afforded by such a moral right is based on the principle of humanism and the principle of humanism is a moral claim based on liberal moral ideals. Liberal moral theory is a set of ideals about how humans ought to act and why based on liberal conceptions of human ontology that value individual liberties, individuality and autonomy. These are not morally neutral ideals.

The implication of her argument is that acts of *civil disobedience*, if they meet the descriptive and procedural criteria, are justified in a morally right sense because such acts affirm and uphold the principle of humanism (i.e. freedom of conviction, liberal moral ideals). In order to unpack this, we have to assess the question of what it means for an act to be “justified.” Moreover, there are several different conceptions of “justification” at play. We can assess the justifiability of acts at either the individual level or at the historical socio-political level.

Brownlee is separating the justifiability of acts from the acts being legally excusable at the individual level. At the individual level, Brownlee’s position holds that acts may or may not be justified morally, they may not actually be right or good, but still protected, i.e. legally excusable. Utilizing legal theory, her position also holds that it is a requirement that the actor have an undefeated reason in mind in order for the act to be justified, and the actor must act from this undefeated reason. So, if an actor breaks the law, the act may not be morally or even legally justified but it could be legally excusable and worthy of protection if the actor acts from the undefeated reason of opposing a law for the sake of a cause they sincerely believe in, i.e. based on their *conscientious* conviction.¹³⁹ Of course, if the actor both acts from an undefeated reason and the cause is actually right or good, then

¹³⁹ Brownlee, *Conscience and Conviction: The Case for Civil Disobedience*, 162-63

the actor would be both morally and legally justified. In either case and regardless of how one defines justifiability and being legally excusable, consistent with liberal moral and political theory, justifiability and being legally excusable is assessed based on the individual's atomized act and thought.

There is a distinction between the horizontal and the vertical coming into play here. It is a distinction between the constituting power of the political community and the constituted power of the state. Within deliberative democratic theory, it is the horizontal level that gives power to the vertical level. My position gives prominence to the horizontal level, while Brownlee's gives prominence to the vertical level. For Brownlee, white supremacist acts may or may not be justifiable, but if her specific conditions are met, the acts are excusable at the vertical level.

My concern, following deliberative democratic theory, is with the horizontal level, the level where the political community ought to deliberate democratically in order to bring about a stable and secure society where each person's voice is equally able to participate in the deliberation. This is the level that ought to give power to the state. This is where the moral resides. This is where acts of *civil disobedience* are either picked up and carried forward or rejected by others in the political community. On this level, disobedient acts can reverberate among members of the community. Acts on this level have the potential to contribute to the community's shared ways of existing within a historical socio-political context.

Brownlee's theory removes the disobedient actor from the community and from the shared historical socio-political context, and in doing so from this horizontal level. It is not the constituting power of the political community who gets to decide if a disobedient act is

legally excusable in her theory, it is the constituted power of the state. My position is that it is not the state, the constituted power, that ought to determine which disobedient acts ought to be excusable or justified, but the constituting power, the political community. Within this more holistic understanding that places primary importance on the horizontal level, I suspect that the distinction between being legally excusable and morally justified would break down. The political community should deliberate and together determine which acts of disobedience ought to be taken up and carried forward or rejected, but they need to have some framework for delimiting disobedient acts that respects 1) individual differences, 2) the individual's ongoing dependence on the political community, and 3) the historical socio-political context in which acts occur. In other words, the horizontal level needs a relational social ontology framework.

If we assess justifiability at the historical socio-political level and we do not separate justifiability from being legally excusable, then this opens up a whole host of other questions regarding the context of the historical socio-political situation in which the act occurs. At the historical socio-political level, in order for an act to be justifiable in any sense, we would have to assess how the act is shaped and informed by, recreates and perpetuates, or critiques and challenges historical socio-political conditions. We would also have to make value judgements about whether those historical socio-political conditions ought to be perpetuated or challenged. These questions are all engaged with on the horizontal level, among the political community members as the constituting power. What ideologies and structures is the act drawing on? Does the act affirm or challenge these ideologies and structures? How do these ideologies and structures serve to either promote or harm the well-being of both the individual and the political community? Ought these

ideologies and structures be perpetuated or challenged? It is at this level, I argue, that we are able to perceive the implications of Brownlee's theory.

At this level, Brownlee's theory is a defense of individual moral *conscientious* convictions which recreate and perpetuate liberal moral ideals. Acts of *civil disobedience* that meet the descriptive and procedural criteria are justified because they are a manifestation of *conscientious* convictions, and *conscientious* convictions merit respect.¹⁴⁰ These ideals posit that what is right or good is the respect for and protection of individual freedoms. Ultimately, what is right or good in Brownlee's theory are acts that protect individual freedoms. This why the white supremacist is afforded the same protection in Brownlee's theory for their acts as anti-racists, because even though the white supremacist has a reprehensible moral cause, they are still manifesting and perpetuating the basic liberal moral values of individual freedoms and this, overall, is right or good.

The implication of Brownlee's theory at this historical socio-political level is that freedom of conviction, as encapsulated in the principle of humanism, is the overriding consideration when determining the justifiability of disobedient acts. If an act violates freedom of conviction, which is fundamentally an affirmation of liberal moral ideals, then it would not be justified. Just like Scheuerman who falls back on personal and political freedom, Brownlee relies on a normative principle. That principle, for Brownlee, is freedom of conviction as encapsulated in the principle of humanism. Her account is not morally neutral, therefore, but functions as a defense of the primary importance of freedom of conviction, which in turn is a defense of liberal individualism.

¹⁴⁰ Cf David Lefkowitz, "Should the Law Convict Those Who Act from Conviction? Reflections on a Demands-of-Conscience Criminal Defense," 668-69

V. *The Paradox of Toleration and Freedom of Expression*

If what is of primary importance in Brownlee's theory is the protection of freedom of conviction, then it would seem that acts which serve to harm freedom of conviction would not be justified. However, Brownlee argues, explicitly in agreement with Bedau: "Although *conscientiousness* demands that a person sincerely believe that she has good reasons to act as she does, it does not demand that she be correct in her judgments about either her own actions or the law to which she objects," so, "there is no logical reason why, for example, a person could not commit *civil disobedience* against the desegregation of schools in the United States."¹⁴¹ The principle of humanism works in tandem with both a principle of freedom of expression and a principle of tolerance in her theory. She states

We have an inclination in liberal societies to be tolerant when people have very deep beliefs. [...] We do have an inclination in liberal societies to tolerate dissent that is grounded in deep belief. [...] In my view, the people who have the best claim to that toleration are actually the people who are engaging in communicative dissent, communicative disobedience. [...] A humanistic respect for persons doesn't discriminate amongst causes. A liberal toleration of a deep belief means tolerating the beliefs that are [...] highly objectionable. So, the Neo-Nazi, the animal rights activist, the anti-abortion activist, the US second amendment defender, the environmentalist, they all have the same moral right to engage in constrained disobedience in defense of their cause.¹⁴²

In regard to a principle of toleration, Smith argues that Brownlee's principle of humanism is incompatible with acts of *civil disobedience* that have racist aims because "the achievement of racist political goals would, one can safely assume, result in laws and

¹⁴¹ Brownlee, "Features of a Paradigm Case of Civil Disobedience," 342. Bedau includes *conscientiousness* in his necessary features for acts of civil disobedience, but he does not elaborate on what exactly "conscientiousness" means. He states only that "paradigm cases of civil disobedience" are acts which, among other aspects, are done "conscientiously (not impulsively, unwillingly, thoughtlessly, etc.)." See Hugo Bedau, "Civil Disobedience and Personal Responsibility for Injustice," in *Civil Disobedience in Focus* (New York: Routledge, 1991), 51.

¹⁴² Brownlee, "The Philosophical Case for Civil Disobedience," 35:33 – 39:07

policies that would clearly and substantially infringe on the rights of at least some citizens.”¹⁴³ He argues that the first-order normative demands of the principle of humanism would need to apply to all aspects of persons’ acts that harm others’ rights, agency, or dignity.¹⁴⁴ Thus, it is unclear in Brownlee’s position why society ought to protect racist acts of *civil disobedience*.¹⁴⁵ To add to Smith, within conditions of structural injustice, it is problematic to hold both that 1) freedom of conviction is the primary aspect of socio-political existence that ought to be protected, and 2) the public presentation of moral ideals which exclude entire groups of persons and their moral beliefs from protection ought to be protected.¹⁴⁶

This is Karl Popper’s “Paradox of Tolerance.” The paradox is this: “Unlimited tolerance must lead to the disappearance of tolerance.”¹⁴⁷ In a quote so immensely relevant to the socio-political situation today, thus very much deserving of being shared in its entirety, Popper states

If we extend unlimited tolerance even to those who are intolerant, if we are not prepared to defend a tolerant society against the onslaught of the intolerant, then the tolerant will be destroyed, and tolerance with them. [...] I do not imply, for instance, that we should always suppress the utterance of intolerant philosophies; as long as we can counter them by rational argument and keep them in check by public opinion, suppression would certainly be most unwise. But we should claim the *right* to suppress them if necessary even by force; for it may easily turn out that they are not prepared to meet us on the level of rational argument, but begin by denouncing all argument; they may forbid their followers to listen to rational argument, because it is deceptive, and teach them to answer arguments by the use of their fists or pistols. We should therefore claim, in the name of tolerance, the right not to tolerate the

¹⁴³ Smith, “The Burdens of Conviction: Brownlee on Civil Disobedience,” 700. For Brownlee’s reply, see “Reply to Critics,” 730-31.

¹⁴⁴ Smith, 700

¹⁴⁵ Ibid.

¹⁴⁶ Cf Scheuerman, *Civil Disobedience*, 159

¹⁴⁷ Karl Popper, *Open Society and Its Enemies* (Princeton, NJ: Princeton University Press, 1963), 265.

intolerant. We should claim that any movement preaching intolerance places itself outside the law, and we should consider incitement to intolerance and persecution as criminal, in the same way as we should consider incitement to murder, or to kidnapping, or to the revival of the slave trade, as criminal.¹⁴⁸

John Rawls agrees in some respect with Popper. Rawls argues that while equal individual liberties, such as freedom of conviction, ought to be protected in principle as derived from the original position, the state may restrict individual liberties for the sake of the “common interest in public order and security.”¹⁴⁹ He states “The government’s right to maintain public order and security is an enabling right, a right which the government must have if it is to carry out its duty of impartially supporting the conditions necessary for everyone’s pursuit of his interests and living up to his obligations as he understands them.”¹⁵⁰ Operating within the social contract tradition, Rawls takes seriously how the fundamental role of a just society is to preserve social stability. Without social stability, persons would not be able to enact their individual liberties. He states

Toleration is not derived from practical necessities or reasons of state. Moral and religious freedom follows from the principle of equal liberty; and assuming the priority of this principle, the only ground for denying the equal liberties is to avoid an even greater injustice, an even greater loss of liberty. [...] The limitation of liberty is justified only when it is necessary for liberty itself, to prevent an invasion of freedom that would be still worse. [...] Liberty is governed by the necessary conditions for liberty itself.¹⁵¹

For Rawls, in alignment with Popper, persons are under no obligation to tolerate the intolerant if the intolerant’s beliefs and actions threaten social stability and others’ security

¹⁴⁸ Ibid.; italics in the original

¹⁴⁹ John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap Press, 1971), 212.

¹⁵⁰ Ibid., 213

¹⁵¹ Ibid., 214-15

and ability to enact their individual liberties equally.¹⁵² Of course, the issue is what constitutes a threat to social stability.

Both Popper and Rawls acknowledge that the context of the concrete situation matters.¹⁵³ Stable societies can tolerate the intolerant. Stable societies are societies in which all individuals have the ability to enact their individual liberties equally because civil discourse and social institutions are able to protect everyone's liberties equally. However, in societies where the freedom of some is gained only through the oppression of others, where individual liberties are not able to be enacted equally, where appeals to reason fall uselessly to the wayside trampled underfoot by violence, there is no obligation to tolerate intolerant.

The complexity of the world means that one must be wary of dichotomous claims, but unfortunately this particular issue is a hard either/or choice given the context of the socio-political situation in which we exist; a context replete with systemic structural injustice and violence perpetrated over centuries. Something has to give. If one accepts the former disjunct in the paradox of toleration, then one must accept all groups of persons are equally due protection for their moral beliefs, but the latter disjunct denies this by holding that ideals which explicitly advocate for the exclusion of entire groups of persons and their moral beliefs from protection are to be protected. With Popper and Rawls, I am concerned about tolerating the intolerant. Individual liberties, such as freedom of conviction, ought to be protected, so much so that any moral beliefs which effectively undermine individual

¹⁵² Ibid., 218-19

¹⁵³ Rawls, 219: "Whether the liberty of the intolerant should be limited to preserve freedom under a just constitution depends on the circumstances."

liberties by excluding the moral beliefs of entire groups of persons from protection ought not be protected.

Brownlee's response is to refer to a principle of freedom of expression and the risks of not observing individuals' right to freedom of expression. Brownlee's strategy is to treat performative acts as a subset of acts of freedom of expression and then argue just as liberal societies ought to respect freedom of expression, they ought to respect suitably constrained and *conscientious* law-breaking. I have no concern with treating performative acts as subsets of expression. However, Brownlee is equating suitably constrained and *conscientious* acts of law-breaking with performative acts, and since there is a right to freedom of expression, she is taking suitably constrained and *conscientious* law-breaking to have the same protections. My concern is with moving from the protection of performative acts to protecting acts that break the law, even acts that are suitably constrained and *conscientious* as Brownlee defines it.

Are suitably constrained and *conscientious* acts of law-breaking equivalent to performative acts? Acts of law-breaking are and can be communicative. However, depending on the context, breaking the law in service of a cause seems to me to be strikingly different than a blog, podcast, work of art, newspaper article, book or street performance. Smith argues disobedient actors need to be accountable to the political community for their choice because, among other reasons, the proliferation of disobedient acts could threaten social stability as well as dilute the effectiveness of all acts of disobedience.¹⁵⁴ In regard to threatening social stability, he states the "risk that *civil disobedience* carried out in the name of just or important causes may encourage others to

¹⁵⁴ William Smith, *Civil Disobedience and Deliberative Democracy* (New York: Routledge, 2013), 5-7.

civily disobey in support of unjust or frivolous objectives. Given that *civil disobedience* imposes certain costs in terms of disruption and resource allocation, the risk of proliferation relates primarily to the stability of a democratic society.”¹⁵⁵

And, social stability matters. Thomas Hobbes’s observation, based on his experiences during the English Civil War, that life in an unstable society is devoid of technological advancement, commerce, culture, education and is “worst of all, continual fear of danger of violent death, and the life of man, solitary, poor nasty, brutish, and short” was, regardless of one’s thoughts about his work otherwise, spot on.¹⁵⁶ When societies become destabilized, things can and do go from bad to much worse very quickly. History provides numerous examples of destabilized societies either resulting in authoritarianism or all out violence. Sure, maybe there are times when society needs to be jolted in order to pave the way for freedom. My point is only this: The historical socio-political context determines whether particular disobedient acts have a disastrously destabilizing force or if particular disobedient acts are destabilizing in the service of freedom. Unfortunately, oftentimes, unable to foresee the future, we must act in the present with the best available knowledge we have at the time in order to ascertain whether a given act has the potential to be destabilizing.

Depending on the context, breaking the law can potentially threaten the stability of society as well as the lived and concrete fulfillment of others’ basic equal liberties much more than speech or performative acts. For example, consider a parade of Neo-Nazis marching illegally en masse down the street. First, if we consider the situation from a

¹⁵⁵ Ibid., 7

¹⁵⁶ Thomas Hobbes, *Leviathan*, ed. Edwin Curley (Indianapolis, IN: Hackett Publishing Company, 1994), 76.

historical socio-political perspective, there is no way a Neo-Nazi march could be nonviolent and non-intimidatory because the cause itself is inherently violent. Neo-Nazis are a manifestation and representation of a violent history, and their aim is to replicate that history. Their very presence is violent and intimidatory because of who they are and what they stand for. The historical socio-political context matters. A group of environmentalists who have no real power to harm anyone marching illegally down to the street and sitting in at the lobby of an international oil conglomerate would be contextually different than white supremacists marching through a Jewish neighborhood wearing swastikas or burning a cross on a Black church congregation's lawn. The latter is violent and intimidatory because of what the performative act signifies – direct physical harm.

Second, in a society with a history of violence perpetrated by white people against Black and brown citizens, violence that was either sanctioned or went unpunished by the state, Neo-Nazis breaking the law in service of their cause is a reinforcement and perpetuation of that history. White supremacists being allowed to break the law in order to advance their cause feeds into their entitlement; feeds into their notions that they are above the law and can achieve whatever political aims they desire by force. The US Capitol riots may not have met Brownlee's criteria for protected acts of *civil disobedience*, but they were the result of decades of white entitlement felt by white supremacists and far-right citizen militias who had either not been punished at all or not been adequately punished for their law-breaking. The stability of US society was threatened on Jan. 6, 2021, and continues to be threatened, because of a long history of white supremacist law-breaking not being taken seriously enough. Again, the act must not be understood as an isolated,

atomistic, act, but instead it must be understood historically; as a manifestation of a events that have been long in the making and as a potential point of departure for future acts.

The protection of intolerant beliefs, so long as those beliefs are done legally, may be justifiable under a right to freedom of expression that recognizes and respects individuals as autonomous and rational moral agents. However, even with a robust conception of freedom of expression and even if we do equate law-breaking with expression, there can be legitimate restrictions on expression. Thomas Scanlon, following John Stuart Mill, supports a robust conception of freedom of expression. However, Scanlon states, "It is quite consistent with a person's autonomy [...] for the law to restrict his freedom of action 'for his own good,' for instance by requiring him to wear a helmet while riding his motorcycle. The conflict arises only if compliance with this law is then promoted by forbidding, for example, expression of the view that wearing a helmet isn't worth it, or is only for sissies [sic]."¹⁵⁷ Moreover, Scanlon acknowledges that states may restrict expression when "under certain circumstances individuals are quite incapable of acting rationally."¹⁵⁸ The widespread proliferation of misinformation and alternative facts inundating US society in the recent decade could arguably qualify as impinging upon people's rational capacities. In sum, white supremacists under Scanlon's view are free to discuss how superior they think that they are, but that does not necessarily mean that their law-breaking to express that view ought to be protected.

It is a threat to democracy to protect disobedient acts that strive to and have a strong potential for undermining democracy. Disobedience is a form of speech, but it goes

¹⁵⁷ Thomas Scanlon, "A Theory of Freedom of Expression," *Philosophy & Public Affairs* 1, no. 2 (1972): 221.

¹⁵⁸ *Ibid.*, 220

beyond speech. On an individual level, it is communicative. On a social level, disobedience is an act which strives to bring about, reinforce and perpetuate, or alter and replace a socio-political situation. On the social level, it must be asked: Does the act promote democracy and freedom or does it seek to limit the freedom of some for the sake of others' maintaining their dominance?¹⁵⁹ On this social level, it is not merely the individual context that matters. It is the historical socio-political context that matters.

Supremacy groups may have "moral" beliefs in the sense that their beliefs shape how they normatively view and interact with the world, and they may be constitutionally entitled to those beliefs as well as entitled to communicate those beliefs via legal means. I am not taking a position on their constitutional entitlement to hold or legally communicate their beliefs. However, acts of *civil disobedience* are acts which break the law, and if acts which break the law can potentially undermine the basic values of and/or the stability of society, then society ought to take seriously who is breaking the law and the content of the moral beliefs behind the law-breaking.

Brownlee's position is that there is a general moral right protecting acts of *civil disobedience* based on a double harmony; that democratic society does benefit from a robust conception of freedom of expression. This double harmony consists of 1) the principle of humanism and 2) the deliberation-enhancing effects of *civil disobedience*. In regard to 2), she argues society benefits from civilly disobedient acts, even if the acts are not morally justified, in several ways. Society benefits: 1) from being exposed to ideas that are not typically represented in media, 2) from ideas that empower citizens to hold others

¹⁵⁹ I will speak more to what it means to promote democracy based on a Beauvoirian theory of freedom in Chapter Four.

and/or the government accountable, 3) from ideas that reinvigorate general discussion, and ideas that force the dominant view to defend itself.¹⁶⁰

Brownlee offers two points. First, she argues “when a person has a deep moral conviction, she has strong interests in having some freedom to act expressively and conscientiously to manifest that conviction in her life and to deliberate with others about its merits”; this is her principle of humanism.¹⁶¹ In this weak form, Brownlee is very persuasive. However, her second point is that moral rights “give us defeasible protection against any form of interference by any party.”¹⁶² Moral rights would indeed give us such protection, but by equating law-breaking with expression she is positing a much stronger position.

Having “some freedom to act expressively” and “deliberate with others” about the merits of one’s moral beliefs is not the same as having a general moral right to commit acts of disobedience. Smith makes a similar point; although the principle of humanism justifies the protection of “certain acts of *civil disobedience*, [it] does not appear to recommend general protection for this kind of protest.”¹⁶³ Why? Because “liberal societies typically provide a wide range of opportunities for such expression within the law,” especially, I would add, for those people whose voices are privileged in socio-political situations of structural injustice.¹⁶⁴

Despite Brownlee's attempts at considering the context of the situation, she follows classical liberals in abstracting the individual from their historical socio-political situation.

¹⁶⁰ Brownlee, *Conscience and Conviction: The Case for Civil Disobedience*, 146

¹⁶¹ Brownlee, “Reply to Critics,” 730

¹⁶² *Ibid.*, 731

¹⁶³ Smith, “The Burdens of Conviction,” 698

¹⁶⁴ *Ibid.*, 699

Individuals do not just pop into existence and create themselves out of nothing. People are social and historical; we exist within a historical socio-political situation already in process; a situation that shapes the way we experience the world, provides the structures by which we process information and respond to stimuli. I am concerned that she follows classical liberals in not fully considering the historical socio-political context in which acts of *civil disobedience* are performed. If we consider the wider historical and socio-political context, then disobedient acts performed by supremacist groups should not be protected.

VI. Content of Beliefs and One's Scope of Moral and Political Consideration

We should be wary of Brownlee's position because it does not consider the content of the disobedient's belief. There are at least two interrelated reasons why the content of beliefs matter. The first involves the issue of the scope of one's moral and political obligation. I am concerned about how politically inclusive Brownlee's disobedients' scope of moral obligation is if the normative moral principle undergirding her theory is freedom of conviction.

Thomas Hill raises a concern with Brownlee's "weak universality condition," arguing that for a judgment to be considered moral, it ought to instead "be a judgment that the agent takes to be defensible to others from an appropriately impartial point of view that includes the basic needs, interests and wills of others."¹⁶⁵ He argues, "some such putative moral judgements could be so far from reflecting basic elements of a moral point of view – so severely mistaken, as it were – that they should not count as moral judgments at all," for example Himmler's Nazi convictions.¹⁶⁶

¹⁶⁵ Hill, 684

¹⁶⁶ Ibid.

Even as Hill conjoins this concern with another concern about distinguishing moral judgments from judgments of law or etiquette, I read the two as separate. The concern, as I read it, aligns with my intuition; it is a concern with calling beliefs “moral” that are devoid of consideration for the needs, interests, and wills of all others with whom one shares a socio-political situation. Brownlee makes clear that she is distinguishing “moral” as a descriptive term from “moral” as a normative term. I read Hill’s concern as implying that elements of the normative ought to inform the descriptive, and one of those elements is the concern for others with whom one shares a socio-political situation.¹⁶⁷

It is concern about the scope of one’s obligation to others with whom one shares a socio-political situation. As Danielle Allen states, “Political order is secured not only by institutions, but also by ‘deep rules’ that prescribe specific interactions among citizens in public spaces; citizens enact what they are to each other not only in assemblies, where they make decisions about their mutually intertwined fates, but also when, as strangers, they speak to one another, or don’t, or otherwise respond to each other’s presence.”¹⁶⁸ The way members of the political community interact matters for the wellbeing of the community, and, to add to Allen, the way members of a political community interact is based on the scope of individual member’s moral consideration; the scope of one’s moral consideration informs what unwritten rules, rules proscribing how we are to treat each other and who the rules apply to, become socially accepted. I share Allen’s position and Hills’ concern.

¹⁶⁷ Analyzing this issue, the question of whether there is a clear dichotomy between understanding “moral” descriptively vs normatively, would be immensely interesting but take me too far away from my intended project. Brownlee’s argument is clearly a position that the descriptive aspects of what it means to hold a “moral” belief are completely disconnected from the normative aspects of what it means to hold a “moral” belief. King and Hill, as I understand them, would disagree. Their positions would appear to hold that what it means to hold a “moral” belief necessarily requires particular normative conditions.

¹⁶⁸ Danielle S. Allen, *Talking to Strangers: Anxieties of Citizenship Since Brown v. Board of Education* (Chicago: University of Chicago Press, 2004), 10.

Brownlee directly responds to Hill, arguing that the requirement that actors communicate and give reasons to others for their moral belief means that the actor must take their belief to be defensible from an impartial point of view.¹⁶⁹ Brownlee agrees, in response to critics, that she has in principle “given bigots, racists, and xenophobes of all stripes a moral right to break the law in defence of their causes.”¹⁷⁰ But, she offers a response.

She argues, firstly, that civilly disobedient actors want to bring about lasting change, so they will seek to rationally persuade others of the merits of their position, and do so by utilizing the objective intrinsic reasons noted above.¹⁷¹ Secondly, she argues that these disobedients will recognize others as interlocutors they are engaged in a moral dialogue with, thus the disobedients will be open to the possibility that they could be mistaken about their beliefs.¹⁷² These two aspects are supposed to constrain the disobedient’s acts; they are supposed to make the disobedient more self-reflective, morally responsive to others, and more attuned to the actual moral quality of their acts. Brownlee is implicitly arguing that her dialogic criteria would expand the scope of the disobedient’s moral and political obligation to include others with whom one shares a socio-political situation. While she argues that disobedients ought to be open to the possibility they could be wrong and ought to rationally persuade others of their position, they do not have to perceive all others with whom they share a socio-political situation as their interlocutors, only some others.

¹⁶⁹ Brownlee, “Reply to Critics,” 725

¹⁷⁰ Brownlee, *Conscience and Conviction: The Case for Civil Disobedience*, 148

¹⁷¹ Ibid.

¹⁷² Ibid.

Putting Scheuerman, Rawls, Allen, and Hill's points together, I argue there needs to be a baseline level of respect that is due to all members of the political community, everyone with whom one shares a socio-political situation. This baseline level of respect does not exist in current socio-political realities due to, among other things, conditions of structural injustice. As Candice Delmas argues, structural injustice causes "moral blindness" and "moral blindness typically restricts generosity and compassion to members of our own group."¹⁷³

When one's scope of moral consideration only includes members of one's own group, rational discourse becomes ineffectual and openness becomes truncated. Delmas doubts that the reason-giving process Brownlee outlines could change erroneous beliefs, such as the racist's beliefs. One reason is that racist dialogue is limited to a very narrow group of persons with whom the racist identifies, people who will not dialogically critique the racist's worldview because they share it.¹⁷⁴ As Tommie Shelby argues, being surrounded by others who share one's belief tends to provide sufficient justification for the person to uncritically hold onto their belief; prevalence is taken as justification.¹⁷⁵

Another reason Delmas provides, quoting Shelby, is that erroneous moral beliefs are intractable and obstinate, "even after they have been subjected to a number of telling, sometimes devastating, criticisms."¹⁷⁶ People have a tendency to hold onto erroneous moral beliefs, argues Shelby, for a variety of unconscious noncognitive motives "that have little to do with a concern for truth or justification."¹⁷⁷ If people are motivated to accept

¹⁷³ Delmas, 418

¹⁷⁴ Delmas, 418-19

¹⁷⁵ Tommie Shelby, "Ideology, Racism, and Critical Social Theory," *The Philosophical Forum* 34, no. 2 (2003): 171

¹⁷⁶ Delmas, 419; Shelby, 171

¹⁷⁷ Shelby, 171

erroneous beliefs for unconscious noncognitive reasons, then “we should not expect that criticism alone, however forceful, will typically lead to their repudiation.”¹⁷⁸

For example, when Tyrone Sanders, father of Tywanza Sanders, appealed in court to his daughter’s murderer, Dylann Roof, to look at him and look at all of the family members of the people he murdered in 2015 at Emanuel AME Church, Roof refused to verbally acknowledge or even look at any of the family members.¹⁷⁹ Roof’s scope of moral consideration did not include Black people. In 2017 a conglomerate of white supremacist groups, some carrying firearms, convened in Charlottesville, VA for a “Unite the Right” rally. Over two days, when they marched through the streets, chanting racist and antisemitic slogans, yelling “Dylann Roof was a hero!” they were not seeking to engage anyone who had different moral beliefs in dialogue.¹⁸⁰ Their intent was not rational dialogue, but a show of force. By the end of the white supremacist rally, one counter protester, Heather Heyer, was killed and 19 others injured when a white supremacist drove his car through their counter protest.

I want to be very clear here: I in no way intend to imply that Brownlee would consider these as acts of *civil disobedience* let alone as morally justified acts of *civil disobedience*. However, what I am arguing is that this is the historical context and concrete reality of the socio-political situation in which we exist and in which acts of *civil disobedience* in the US occur; a historical context pervaded with dense white supremacist affiliations and preconceived values; a society of escalating white supremacist and anti-

¹⁷⁸ Ibid., 172

¹⁷⁹ Emily Shapiro, “Charleston Victim’s Mother Tells Dylann Roof ‘I Forgive You’ as He’s Sentenced to Death,” *ABC News*, January 11, 2017, <https://abcnews.go.com/US/charleston-victims-mother-tells-dylann-roof-forgive/story?id=44704096>

¹⁸⁰ Joe Heim, “Recounting a Day of Rage, Hate, Violence and Death,” *The Washington Post*, August 14, 2017, <https://www.washingtonpost.com/graphics/2017/local/charlottesville-timeline/>

government citizen militia violence; a society so fractured there is no baseline level of respect for other members, all members, of the political community.

The impartiality Brownlee seeks to establish with the dialogic requirement is inhibited by, as Iris Marion Young states, “[f]eelings, desires, and commitments” which continue to “exist and motivate” people’s thoughts and acts despite theorists’ attempts to eschew them from our moral reasoning; feelings, desires, and commitments “lurk as inarticulate shadows, belying the claim to comprehensiveness of universalist reason.”¹⁸¹ Morality as an activity occurs in our everyday lives within “situated contexts of action, with all their particularities of history, affiliation, and preconceived value.”¹⁸² I argue that this historical socio-political context needs to be taken seriously.

This leads to another question: Who is being protected in Brownlee’s theory? At first glance it appears the individual actor is being protected over and above the political community. *Conscientious* acts of *civil disobedience* are justified, for her, because they protect freedom of conviction. But, acts of law-breaking do not occur in isolation of other people. Society benefits from having citizens who are responsible for their actions; citizens who deliberate about and answer for their actions. She argues there is a double harmony in the general moral right to *civil disobedience* in that it fosters deliberation and could open up conceptual space for alternative viewpoints.¹⁸³

Yet, there is a dearth of examination in Brownlee’s account about the moral relation between the individual disobedient and others with whom the disobedient shares a socio-

¹⁸¹ Iris Marion Young, *Justice and the Politics of Difference* (Princeton, NJ: Princeton University Press, 1990), 103.

¹⁸² Young, 102-03

¹⁸³ Brownlee, *Conscience and Conviction: The Case for Civil Disobedience*, 146

political situation. She does not offer any demonstration of how exactly the support and protection of acts of *civil disobedience* by racist actors benefits the political community as a whole.¹⁸⁴ The question I have is: How exactly does morality as a dialogic activity promote the development of moral relationships with others with whom one not only fundamentally disagrees, but with whom one does not even consider worthy of moral consideration?

She states that the dialogic requirement does not require the disobedient to engage with “the people who are most hostile and unreceptive to us,” only to “appeal to at least some people who do not share our outlook.”¹⁸⁵ This claim must be universally applied to every disobedient under a theory that posits a general moral right to perform acts of *civil disobedience*. This is tantamount to asserting that pro-security racists need not engage with Black and brown people protesting against the prison industrial complex, but only with other white people who mildly disagree with mass incarceration.

Morality is an activity that can only be performed and developed within moral relationships. As Delmas argues, based on the work of Amélie Rorty, our moral development is “deeply collaborative” in that we form and understand our moral beliefs and responsibilities under the influence of, in response to, and in continual engagement with others.¹⁸⁶ However, I question how expansive this scope of obligation is in Brownlee’s theory, and fear that it is more narrowly individualistic and self-interested than she may want it to be.¹⁸⁷

¹⁸⁴ Madsen also discusses a similar point, 343-44.

¹⁸⁵ Brownlee, *Conscience and Conviction: The Case for Civil Disobedience*, 20

¹⁸⁶ Delmas, 422

¹⁸⁷ Cf Delmas, 422-23

One's moral beliefs already determine whom one is going to recognize as having equal moral standing. For centuries, ethical theorists have delimited the scope of moral obligation despite their universalist pretensions. For Immanuel Kant, the scope of moral obligation includes all beings who are rational and autonomous.¹⁸⁸ For Jeremy Bentham, the scope of moral obligation includes all sentient beings.¹⁸⁹ For Arne Næss, the scope of moral obligation includes all life.¹⁹⁰ Kant would not seek to morally engage with a pangolin or a cherry tree. His moral activity effectively stopped with whom he considered rational and autonomous. The truncation of one's moral obligation restricts whom one enters into a moral relationship with, which in turn restricts the exercise of morality as an activity. If understood in this way, such truncated scopes of moral obligation actually hinder the development of moral dialogue.

My concern is that the moral content of the disobedient's acts matters, a lot. I am concerned with the truncating of one's moral responsibility and moral relationships to only a select group of people with whom one identifies. We need to take seriously the moral content of the actor's beliefs because the content of the actor's beliefs entails conceptions of who is included in their scope of moral consideration, and their scope of moral consideration in turn determines the scope of their moral and political obligation.¹⁹¹ Such a limitation has deleterious consequences for others with whom one shares a political

¹⁸⁸ Immanuel Kant, *Groundwork for Metaphysics of Morals*, ed. Allen W. Wood (New Haven, CT: Yale University Press, 2002).

¹⁸⁹ Jeremy Bentham, *An Introduction to the Principles of Morals and Legislation*, ed. J.H. Burns and H.L.A. Hart, (London: Athlone Press, 1970).

¹⁹⁰ Arne Næss, *Ecology, Community, Lifestyle*, ed. D. Rothenberg (Cambridge: Cambridge University Press, 1989).

¹⁹¹ Cf Shelby, 158-59

community as well as one's own moral development; neither the individual nor the political community is protected in such a theory.

VII. Content of Beliefs and Structural Injustice

The second, and interrelated, reason why the content of beliefs matter in the context of *civil disobedience* involves the issue of structural injustice. Brownlee's conception of *conscientiousness* separates, at the socio-political level, the development and communication of moral belief from the content of the belief. Her account allows for acts to be protected which go against basic values, such as equality, as if socio-political and legal structures are able to operate in a vacuum undetermined by individual moral beliefs. Following Smith, I do not conceive of how it is possible to make such a clean separation in concrete situations and am concerned about the socio-political consequences of this move.¹⁹² Such acts can be taken up by larger portions of society as well as by socio-political institutions to reinforce and perpetuate injustice.

To unpack this concern, Martin Luther King, Jr understood acts of *civil disobedience* to be grounded in some sort of guiding moral principle; a *summum bonum* that informs reasons to act. For him it was love; ontologically he conceived of all humans as manifestations of God's divine love. The guiding moral principle of love shaped how King's moral beliefs developed and were communicated; it was the foundation of his theory of nonviolent action and the Beloved Community.¹⁹³ At the individual level, the content of the

¹⁹² William Smith, "The Burdens of Conviction: Brownlee on Civil Disobedience," 700

¹⁹³ Martin Luther King, Jr., "Letter from Birmingham Jail," in *A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr.*, ed. James Melvin Washington (New York: HarperOne, 1991), 140-41; Martin Luther King, Jr., "An Experiment in Love," in *A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr.*, ed. James Melvin Washington (New York: HarperOne, 1991), 18; Martin Luther King, Jr., "My Trip to the Land of Gandhi," in *A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr.*, ed. James Melvin Washington (New York: HarperOne, 1991), 25; Martin Luther King, Jr., "The Current Crisis in Race Relations," in *A Testament of Hope: The Essential Writings and Speeches of Martin Luther*

moral belief cannot be separated from the development and communication of the belief. I do not think Brownlee would disagree with this point.

Where Brownlee and King conceptually part is at the socio-political level. In moving from the individual to the socio-political, the difficulty, and no doubt the impetus for Brownlee's position, is the question of who determines and how one determines what is moral in a world of conflicting values. In concrete situations, citizens must negotiate between conflicting values in order to determine what they ought to do. For Brownlee there is no single fundamental value to refer to in order to know what one's responsibility is in a given situation. There are multiple values, and it requires the cultivation of *conscience* to become cognizant of these values and acquire the ability to rank them, albeit imperfectly, in order to decide how to act when values conflict.¹⁹⁴ So, how does one negotiate between these values? How does one negotiate, for example, between security and autonomy when the two conflict?

For Brownlee, each individual must determine what weight to assign to each value; what value ultimately takes precedence in the given situation. Again, the individual might be mistaken about what they value or about the merits of how they rank various moral values, but so long as they meet the procedural requirements for *conscientiousness* their act, for Brownlee, ought to be protected. If the individual ultimately gives precedence to autonomy, then the individual's moral beliefs about any sort of conduct in question are going to be determined based on their conception of autonomy. When they communicate

King, Jr., ed. James Melvin Washington (New York: HarperOne, 1991), 87; Anthony E. Cook, "King and the Beloved Community: A Communitarian Defense of Black Reparations," *George Washington Law Review* 68, no. 5/6 (2000): 974

¹⁹⁴ Brownlee, *Conscience and Conviction: The Case for Civil Disobedience*, 61-67

their beliefs, they are not only going to appeal to autonomy. They are going to performatively communicate their beliefs as first and foremost conceiving of themselves and others ontologically as autonomous agents. King performatively communicated his beliefs as first and foremost conceiving of himself and others through a conception of love.

These individual moral beliefs are propagated throughout society and form the basis for socio-political structures. There is no way at the socio-political level, when persons interact, to separate the development and holding of a moral belief from the content of the belief. Individual moral beliefs do not emerge in isolation from the socio-political situation in which one exists, and socio-political structures do not emerge in isolation from individual moral beliefs. As Young argues, ontologically, individuals are actors “with meanings and purposes, who act with, against, or in relation to one another.”¹⁹⁵ She states, “We act with knowledge of existing institutions, rules, and the structural consequences of a multiplicity of actions, and those structures are enacted and reproduced through the confluence of actions.”¹⁹⁶ Structural injustice occurs through the confluence of individual actions; actions based on unconscious and unquestioned assumptions, norms, and habits that are reproduced as normal everyday processes within socio-political institutions (including cultural, legal, and economic institutions).¹⁹⁷ Structural injustice is when socio-political institutions offer some groups “a wide[r] range of opportunities for developing and exercising their capacities.”¹⁹⁸

¹⁹⁵ Young, 28

¹⁹⁶ Ibid., 28-29

¹⁹⁷ Ibid., 41

¹⁹⁸ Iris Marion Young, “Political Responsibility and Structural Injustice,” *University of Kansas Department of Philosophy Lindley Lecture* (Lawrence, KS), May 5, 2003; Candice Delmas, *A Duty to Resist: When Disobedience Should be Uncivil* (Oxford: Oxford University Press, 2018), 13.

“Individual” moral beliefs develop based on and in response to a socio-political situation and vice versa.¹⁹⁹ Subsequent generations inherit dominant moral beliefs through socialization, and may modify aspects of the beliefs in order to adapt to everchanging socio-political situations while retaining the core concepts of the beliefs.²⁰⁰ Consider, for example, how liberal societies have been concretely constructed by theorists who have first and foremost conceived of themselves and others as autonomous agents; how the individual moral beliefs of a few theorists centuries ago, based on and in response to their given societies’ ideals, have become solidified in liberal socio-political and legal structures. It is the content of moral beliefs that becomes solidified into socio-political formal systems, and when these moral beliefs include stereotypes and biases the result is structural injustice.²⁰¹

Erroneous moral beliefs propagated throughout society reinforce and perpetuate injustice. Delmas argues “the dominant ideology, buttressed by stereotypes, infects us with bias and obstructs our reading of social reality and of our own and others’ conduct.”²⁰² Dominant moral beliefs “promote a certain reading of reality” and are (mis)perceived to be fundamentally valuable because “they accord with others’ and animate our cognitive and motivational responsiveness to complex moral situations.”²⁰³ Erroneous individual moral beliefs, beliefs based on stereotypes and biases, are the result of injustice while at the same time they maintain and conceal that injustice.²⁰⁴ Such beliefs, as Shelby states, contribute “to establishing and stabilizing relations of oppression [...] by way of illusion and

¹⁹⁹ Cf Shelby, 158-59; 179

²⁰⁰ Ibid.

²⁰¹ Cf Delmas, 417-18

²⁰² Ibid., 417

²⁰³ Ibid., 418

²⁰⁴ Ibid. 418

misrepresentation.”²⁰⁵ They do so by making oppressive social structures and one’s own role in the maintenance of such structures appear as either legitimate, natural, or due to some act of fate.²⁰⁶

My concern is that some individual moral beliefs become the basis for entire socio-political systems, are used to maintain and conceal structural injustice, and/or are able to undermine basic values of society. My two concerns with Brownlee’s position are linked. Structural injustice creates the conditions for truncated scopes of moral and political obligation, and vice versa. If this is the case, then we ought to take seriously the content of the disobedient’s belief, even when they are acting in ways that meet Brownlee’s *conscientiousness* criteria.

VIII. Acts of Civil Disobedience in Context: Two Interrelated Further Points

Acts of *civil disobedience* are social acts that occur within and in response to particular social contexts, and have social aims and social consequences depending on that particular social context. Protecting intolerant disobedient acts could, firstly, undermine others’ security and ability to enact their individual liberties equally. Secondly, protecting intolerant acts could perpetuate and reinforce structural injustice.

Intolerant acts of *civil disobedience* could perpetuate and reinforce structural injustice. Someone could respond that acts of *civil disobedience* which do not respect the autonomy of others would not be protected. If the actor values autonomy, they also must support the autonomy of all others. Scheuerman argues that it is incoherent to think that acts by racists or fascists with supremacist aims are *civil disobedience* because such acts are

²⁰⁵ Shelby, 174

²⁰⁶ Shelby, 175-76; For an explication of structural injustice based on Shelby’s work, replete with detailed and concrete examples, see Candice Delmas, *A Duty to Resist: When Disobedience Should Be Uncivil*, 198-206.

“a direct assault” on shared fundamental moral values.²⁰⁷ Adding to Scheuerman, autonomy is one of the fundamental moral values that ought to be considered by a *conscientious* citizen. If autonomy is a shared fundamental moral value, then racists must respect the autonomy of all others with whom they share a socio-political situation. If they must respect the autonomy of all others with whom they share a socio-political situation, then they would not be able to justify their racism and, thus, commit justified acts of *civil disobedience*.

There is, however, a conceptual shift occurring in this response. The only criteria that protect acts of *civil disobedience*, for Brownlee, are that the acts be *conscientious* and suitably constrained in their mode or form of protest. The actor is not actually required to value the autonomy of others over and above other fundamental moral values. Brownlee values the actor’s autonomy. Society is supposed to value the actor’s autonomy. But, the actors themselves can value another objective intrinsic reason, say security.

Racist actors could consistently and universally hold that an entire group of people ought to be imprisoned based on a conception of security. They could communicate, with no attempt to evade the consequences of their position, their reasons for imprisoning an entire group of people based on their conception of security. This becomes concerning when understood in conjunction with the premise that it is individual moral beliefs that become solidified into socio-political systems.

Two examples will concretize my concerns. First, for decades Black men in the US have been five times more likely to be incarcerated than white men; a rate disproportionate to the perpetration of crime due to disparities in the criminal justice

²⁰⁷ Scheuerman, *Civil Disobedience*, 159

system.²⁰⁸ Michelle Alexander's work most notably explicates how implicit and unconscious biases within the criminal justice system make Black and brown men targets for higher rates of surveillance, incarceration and excessive force. She states

Viewed as a whole, the relevant research by cognitive and social psychologists to date suggests that racial bias in the drug war was inevitable, once a public consensus was constructed by political and media elites that drug crime is black and brown. Once blackness and crime, especially drug crime, became conflated in the public consciousness, the "criminalblackman," as termed by legal scholar Kathryn Russell, would inevitably become the primary target of law enforcement. Some discrimination would be conscious and deliberate, as many honestly and consciously would believe that black men deserve extra scrutiny and harsher treatment. Much racial bias, though, would operate unconsciously and automatically—even among law enforcement officials genuinely committed to equal treatment under the law.²⁰⁹

Erroneous moral beliefs have privileged white perpetrators and become solidified into the criminal justice system resulting in the disproportionate mass incarceration of Black and brown men.

Second, within the last 40 years the US has created a for-profit immigrant detention system in which people who are seeking asylum or migration are indefinitely held in squalid prison-like facilities where they are subjected to excessive force and prevented from communicating with their families and attorneys; nonviolent immigrants report being pepper-sprayed, shot with rubber bullets or air rifle pellets, and placed in solitary

²⁰⁸ The Sentencing Project, "Report to the United Nations on Racial Disparities in the U.S. Criminal Justice System," April 19, 2019, <https://www.sentencingproject.org/publications/un-report-on-racial-disparities/>; The Sentencing Project, "Criminal Justice Facts," accessed March 11, 2020, <https://www.sentencingproject.org/criminal-justice-facts/>.

²⁰⁹ Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2012), 135.

confinement.²¹⁰ At least seven children have died in ICE detention centers.²¹¹ Upwards of 500,000 people annually are detained for an average of 34 days, with some people being detained for more than four years.²¹²

The justification given is the claim that these immigrants are criminals. Rubén G. Rumbaut, et al. argue

In the absence of rigorous empirical research, myths and stereotypes about immigrants and crime often provide the underpinnings for public policies and practices, are amplified and diffused by the media, and shape public opinion and political behavior. Periods of increased immigration have historically been accompanied by nativist alarms and pervasive pejorative stereotypes of newcomers, particularly during economic downturns or national crises (such as the “war on terror” of the post-9/11 period), and when the immigrants have arrived en masse and differed substantially from the natives in such cultural markers as religion, language, phenotype, and region of origin.²¹³

According to Rumbaut, et al.’s research, incarceration rates are four times higher for native-born US citizens than for immigrants.²¹⁴ The finding that there is no positive correlation between crime rates and immigration, including for undocumented immigrants, has been

²¹⁰ Emily Kassie, “Detained: How the US Built the World’s Largest Immigrant Detention System,” *The Guardian*, September 24, 2019, <https://www.theguardian.com/us-news/2019/sep/24/detained-us-largest-immigrant-detention-trump>; Freedom for Immigrants, “Breaking: As Hunger Strikes Erupt Nationwide in Ice Detention, Immigrants Subjected to Retaliation and Excessive Force,” August 6, 2019, <https://www.freedomforimmigrants.org/news/2019/8/6/multiple-hunger-strikes-erupt-in-ice-jails-and-prisons-nationwide>; Ruthie Epstein and Shaw Drake, “Ban on Attorney Access for Asylum Proceedings in Inhumane CBP Jails Key to Trump’s Attack on Asylum,” *ACLU News*, February 26, 2020, <https://www.aclu.org/news/immigrants-rights/ban-on-attorney-access-for-asylum-proceedings-in-inhumane-cbp-jails-key-to-trumps-attack-on-asylum/>

²¹¹ Molly Hennessy-Fiske, “Six Migrant Children Have Died in U.S. Custody: Here’s What We Know About Them,” *Los Angeles Times*, May 24, 2019, <https://www.latimes.com/nation/la-na-migrant-child-border-deaths-20190524-story.html>; Jess Morales Rocketto, “Opinion: Seven Children Have Died in Immigration Custody: Remember Their Names,” *BuzzFeed News*, September 30, 2019, <https://www.buzzfeednews.com/article/jessmoralesrocketto/remember-their-names>

²¹² Ibid.; Freedom for Immigrants, “Detention by the Numbers,” accessed March 11, 2020, <https://www.freedomforimmigrants.org/detention-statistics>

²¹³ Rubén G. Rumbaut, Roberto G. Gonzales, Golnaz Komaie, and Charlie V. Morgan, “Debunking the Myth of Immigrant Criminality: Imprisonment Among First- and Second- Generation Young Men,” *Migration Policy Institute*, June 1, 2006, <https://www.migrationpolicy.org/article/debunking-myth-immigrant-criminality-imprisonment-among-first-and-second-generation-young>

²¹⁴ Ibid.

repeatedly demonstrated by several other think-tanks, including the Cato Institute, the Pew Research Center, and The Marshall Project.²¹⁵

Erroneous moral beliefs linking a propensity for criminality to entire groups of people have justified and perpetuated a vast for-profit empire built upon the mass incarceration of these groups of people. Acts of *civil disobedience* based on these erroneous moral beliefs about Black and brown men and women would be protected under Brownlee's theory. Such acts of *civil disobedience* perpetuate and reinforce the maintenance and concealment of structural injustice.

Intolerant acts of *civil disobedience* could undermine others' security and ability to enact their individual liberties equally. One might argue that just as speech ought not be censored, acts of *civil disobedience* ought not be censored either. If all *conscientious* acts of *civil disobedience* are supported and protected in a "marketplace of ideas," then anti-racists are able to use their moral right in order to argue a counter position. In a marketplace of ideas, racist acts of *civil disobedience* could be counterbalanced or thwarted by anti-racist acts of *civil disobedience*. Racist ideals are unable to be rationally upheld, so anti-racist ideals will win out in the marketplace.

Brownlee aligns with this view in that she argues racists' views ought not be censored because anti-racists ought to strive to understand racists' "motivations, underlying commitments, upbringing, and education" in order to gain insight into their "perspectives with their attendant fears, misperceptions, and cultural pressures" so as to

²¹⁵ Anna Flagg, "Is There a Connection Between Undocumented Immigrants and Crime?" *The New York Times*, May 13, 2019, <https://www.nytimes.com/2019/05/13/upshot/illegal-immigration-crime-rates-research.html>

change the racists' views.²¹⁶ She quotes John Stuart Mill: "Wrong opinions and practices gradually yield to fact and argument: but facts and arguments, to produce any effect on the mind, must be brought before it."²¹⁷

One problem with the "marketplace of ideas" scenario is structural injustice. Voices that challenge the status quo are, and have always been, vulnerable to harsh backlash by either the government or the public while voices that occupy a privileged position within conditions of structural injustice are treated with relative leniency.

Here are some concrete historical examples of this socio-political phenomenon. The Black Panther Party's stated aim was to support and protect Black communities by instituting a food program and defending their communities from police violence; they were not an offensive force.²¹⁸ Yet, they were heavily targeted by the FBI's COINTELPRO program whose stated purpose was to "expose, disrupt, misdirect, discredit or otherwise neutralize" the organization.²¹⁹ Martin Luther King, Jr. and the Southern Christian Leadership Conference were monitored by the same FBI program, with the aim of discrediting King and the organization. The Senate Select Committee, quoting FBI documents, states that King and the organization would be targeted "should [King] abandon his supposed 'obedience' to 'white liberal doctrines.'"²²⁰

²¹⁶ Brownlee, "Reply to Critics," 728

²¹⁷ Ibid.; John Stuart Mill, *On Liberty and Other Essays*, ed. Mark Philp and Frederick Rosen (Oxford: Oxford University Press, 2015), 22.

²¹⁸ Lilly Workneh and Taryn Finley, "27 Important Facts Everyone Should Know about the Black Panthers," *HuffPost*, February 19, 2018, https://www.huffpost.com/entry/27-important-facts-everyone-should-know-about-the-black-panthers_n_56c4d853e4b08ffac1276462

²¹⁹ Ibid.

²²⁰ The Martin Luther King, Jr. Research and Education Institute, "Federal Bureau of Investigation," *The King Encyclopedia*, accessed April 15, 2020, <https://kinginstitute.stanford.edu/encyclopedia/federal-bureau-investigation-fbi>

Consider these more recent cases. From January 2, 2016 to February 11, 2016 members of a right-wing, anti-government militia armed with firearms, including AR-15s, seized the US Fish and Wildlife headquarters of the Malheur National Wildlife Refuge with the aim of protesting and disrupting the federal management of national lands. By the end of the standoff, one militant was killed by a federal agent during arrest when he reached for a handgun. Others were indicted and arrested for felony conspiracy, weapons charges, and damage and theft of federal property. Charges against one militant were dropped, 7 were acquitted by a federal jury, 4 were convicted by a federal jury, and 14 pleaded guilty.²²¹ Of the 18 militants who were sentenced, 7 went to prison, the longest term was for 37 months, and these 18 were fined anywhere from \$1,000-\$10,000 each.

Compare the response to these militants with the response to the protests against the Dakota Access Pipeline. After the Army Corps of Engineers approved running a private corporate oil pipeline past the Standing Rock Sioux Tribe's reservation, a collective of indigenous nations from around the US and world gathered to protest the pipeline's construction and the escalating environmental devastation caused by the US's fossil fuel dependency.²²² In September 2016, when unarmed protestors reportedly broke down a fence and entered the construction area they were met with a private security force who

²²¹ Courtney Sherwood and Kirk Johnson, "Bundy Brothers Acquitted in Takeover of Oregon Wildlife Refuge," *New York Times*, October 27, 2016, <https://www.nytimes.com/2016/10/28/us/bundy-brothers-acquitted-in-takeover-of-oregon-wildlife-refuge.html>; Kirk Johnson, "Charges Against Bundys in Ranch Standoff Case are Dismissed," *New York Times*, January 8, 2018, <https://www.nytimes.com/2018/01/08/us/bundy-ranch-standoff-case-charges-dismissed.html>; Tay Wiles, "Acquitted, Convicted, Fined or Free: After the Oregon Standoff," *High Country News*, April 12, 2018, <https://www.hcn.org/articles/malheur-national-wildlife-refuge-acquitted-convicted-fined-or-free-malheur-sentences>

²²² Saul Elbein, "These are the Defiant 'Water Protectors' of Standing Rock," *National Geographic*, January 26, 2017, <https://www.nationalgeographic.com/news/2017/01/tribes-standing-rock-dakota-access-pipeline-advancement/>

responded with pepper spray and attack dogs.²²³ Over the course of several months, protestors were also met with a vast array of weaponry wielded by both private security forces and the local police force: water cannons, sponge rounds, bean bag rounds, stinger rounds, teargas grenades, Mace, Tasers, and sound cannons.²²⁴ In a November 2016 conflict, two dozen people were hospitalized, 300 injured, one woman's arm was nearly severed from her body when she was reportedly hit with a concussion grenade, and another woman was shot in the eye detaching her retina.²²⁵ The local sheriff described the protestors as "evil agitators."²²⁶

Compare the Unite the Right rally above with the case of Rakem Balogun and the case of the SHAC 6. To date, there is no official designation in the US for domestic white supremacist violence under the category of terrorism.²²⁷ Domestic white supremacist violence is charged under the category of hate crimes, not domestic terrorism. James Fields, Jr., the man who drove his car into counter protestors and killed Heyer, was not charged with terrorism.²²⁸ Jason Kessler, the man who organized the rally that resulted in one

²²³ Eyder Peralta, "Dakota Access Pipeline Protests in North Dakota Turn Violent," *NPR*, September 4, 2016, <https://www.npr.org/sections/thetwo-way/2016/09/04/492625850/dakota-access-pipeline-protests-in-north-dakota-turn-violent>

²²⁴ Julie Carrie Wong and Sam Levin, "Standing Rock Protestors Hold Out Against Extraordinary Police Violence," *The Guardian*, November 29, 2016, <https://www.theguardian.com/us-news/2016/nov/29/standing-rock-protest-north-dakota-shutdown-evacuation>

²²⁵ Ibid.; Camila Domonoske, "Woman Injured at Standing Rock Protest Might Lose Arm, Family Says," *NPR*, November 23, 2016, <https://www.npr.org/sections/thetwo-way/2016/11/23/503120449/woman-injured-at-standing-rock-protest-might-lose-arm-family-says>

²²⁶ Ibid.

²²⁷ Natasha Lennard, "Trump Administration is Making it Harder to Find out Whether It's Fighting White Supremacist Terror," *The Intercept*, June 8, 2019, <https://theintercept.com/2019/06/08/white-supremacist-domestic-terrorism-fbi-justice/>; Jennifer Hansler and Kylie Atwood, "In a first, State Department designates Russian White Supremacists as Global Terrorists," *CNN*, April 6, 2020, <https://www.cnn.com/2020/04/06/politics/state-department-rim-designation/index.html>. In April 2020, the US State Department designated a Russian white supremacist organization as terrorists. The designation has no effect on the legal standing of domestic white supremacist organizations, such as the organizers of the Unite the Right rally, because the US State Department is over foreign, not domestic, affairs.

²²⁸ Lennard, "Trump Administration is Making it Harder to Find out Whether It's Fighting White Supremacist Terror"

person being murdered and 19 others being assaulted, has not been charged with terrorism nor with inciting violence even after being investigated by the FBI.²²⁹

Rakem Balogun, however, was arrested by the FBI in December 2017 after being investigated for “domestic terrorism” as a “Black Identity Extremist.” He was arrested for attending a rally where marchers made anti-police statements as well as for posting comments on Facebook expressing “solidarity” with a murder suspect in a police officer’s death, calling the suspect a “hero,” and stating that police officers killed by a man in Texas “deserve what they got.”²³⁰ The FBI reportedly admitted that they had no evidence that Balogun ever made any specific threat to incite or commit any violent act.²³¹ Balogun was tried, but not convicted.

There is also the US Animal Enterprise Terrorism Act in which animal rights activists and protestors are vulnerable to being charged with terrorism. In the late 1990’s to early 2000’s, the animal rights group Stop Huntingdon Animal Cruelty, sought to shut down Huntingdon Life Sciences, a for-hire research facility that tested household cleaners, pharmaceuticals, pesticides, and food additives on approximately 75,000 animals per year.²³² In order to persuade businesses to disinvest from the lab, the group set up a website where anyone could post information about the executives of the lab as well as any

²²⁹ Thomas Brewster, “Revealed: FBI Raided Discord Chats of ‘Unite the Right’ Leader,” *Forbes*, January 8, 2020, <https://www.forbes.com/sites/thomasbrewster/2020/01/08/revealed-fbi-raided-discord-chats-of-unite-the-right-organizer/#6513a63878ed>

²³⁰ Sam Levin, “Black Activist Jailed for His Facebook Posts Speaks out About Secret FBI Surveillance,” *The Guardian*, May 11, 2018, <https://www.theguardian.com/world/2018/may/11/rakem-balogun-interview-black-identity-extremists-fbi-surveillance>

²³¹ *Ibid.*

²³² Natasha Lennard, “How the Prosecution of Animal Rights Activists as Terrorists Foretold Today’s Criminalization of Dissent,” *The Intercept*, December 12, 2019, <https://theintercept.com/2019/12/12/animal-people-documentary-shac-protest-terrorism/>

of the lab's business contacts.²³³ Activists posted public contact information for every business that contracted with or had any financial ties with the lab, including work, home, fax and cell phone numbers, email addresses, home addresses, church and country club memberships, as well as associates and family members.²³⁴ While most activists used the information to organize legal public protests, others used the information to commit minor property damage, steal credit cards, hack computers, perform various pranks, and make threatening phone calls.²³⁵ No one was killed by activists, but in one instance UK activists assaulted Brian Cass, the CEO of the lab.²³⁶

All activities, legal and illegal, were posted under the news section of the website.²³⁷ The organizers explicitly stated on the website that SHAC would not engage in illegal activities, but philosophically supported illegal direct actions.²³⁸ In May 2004, six US citizens, Kevin Kjonaas, Lauren Gazzola, Jacob Conroy, Darius Fullmer, Andrew Stepanian, and Joshua Harper, were arrested and indicted on conspiracy to commit terrorism charges via incitement to violence under the Animal Enterprise Terrorism Act for their roles in hosting and maintaining the website, posting information on the website, and/or participating in legal public protests.²³⁹ They were convicted in 2006 and sentenced to

²³³ Will Potter, *Green is the New Red: An Insider's Account of a Social Movement Under Siege* (San Francisco, CA: City Lights Books, 2011), 94; David Kocieniewski, "Six Animal Rights Advocates are Convicted of Terrorism," *The New York Times*, March 3, 2006, <https://www.nytimes.com/2006/03/03/nyregion/six-animal-rights-advocates-are-convicted-of-terrorism.html>

²³⁴ Ibid.

²³⁵ Ibid.

²³⁶ Lennard, "How the Prosecution of Animal Rights Activists as Terrorists Foretold Today's Criminalization of Dissent"

²³⁷ Potter, 96

²³⁸ Ibid.

²³⁹ Andrew Stepanian, "First Member of SHAC 7 Heads to Jail for Three Year Sentence," *Democracy Now*, October 3, 2006, https://www.democracynow.org/2006/10/3/first_member_of_shac_7_heads. There were seven individuals reportedly arrested, however, I am excluding one of the individuals whose identity has not been made publicly available and was never tried.

between one to six years in federal prison as well as ordered to pay \$1 million in restitution.²⁴⁰

The unarmed protestors at Standing Rock were met with a much more violent response than the armed militia at Malheur; it is not difficult to imagine that if the protestors at Standing Rock were armed many more of them would have been killed than the one militia member at Malheur. While white supremacists are afforded a high degree of protection for their speech, Black activists such as Balogun are arrested and tried for making non-specific comments. The SHAC 6 were given much harsher prison sentences and fines than the militia at Malheur. The SHAC 6 are now also convicted terrorists, while the Unite the Right white supremacists are free from the consequences of that designation.

The takeaway from these cases is that there is not a level playing field in the marketplace of ideas. Not all voices are treated equally within conditions of structural injustice. Marginalized groups have to put themselves at greater risk to communicate their beliefs, and such risk serves as a means of socio-political censorship. Marginalized groups should not be expected to pay higher costs for entering the dialogue than those who occupy privileged positions within conditions of structural injustice.

Brownlee appears to be following a distributive justice paradigm in advocating for a general moral right to commit *civil disobedience*. A distributive justice paradigm holds that rights can be distributed equally among citizens just like any material resource, and justice is achieved when everyone is distributed the same rights. However, as Young argues, the idea of rights as things to be distributed, as things that people can own, comes from an

²⁴⁰ Southern Poverty Law Center, "Animal Rights Activists Get Prison in Web Threat Case," January 16, 2007, <https://www.splcenter.org/fighting-hate/intelligence-report/2007/animal-rights-activists-get-prison-web-threat-case>

individualist social ontology.²⁴¹ The problem, Young argues, is that rights are actually about relations between people who are embedded within historical, economic, social and political situations governed by institutions; institutions that themselves are constructed of socially constructed meanings.²⁴² Rights define how people are to treat each other and act in relation to each other within this situated context. When we conceive of rights merely as abstract things, we fail to make sense of how it could be that everyone technically has the same legal, constitutional, and civil rights, but yet disparities in voting, healthcare, education, meaningful work, and income still exist. In order for rights to actually be effective, they have to be enacted within everyday institutionalized relations. In short, giving everyone a general moral right to commit acts of *civil disobedience* will not automatically result in people actually having the ability to exercise this right.

Brownlee may agree with these points. She may argue that all acts of *civil disobedience* ought to be treated equally. However, for all acts of *civil disobedience* to be treated equally, structural injustice must be addressed and mitigated. Yet, she does not address the issue of structural injustice and her theory allows for the protection of acts that could reinforce and perpetuate structural injustice.

IX. Conclusion: Individual vs Relational Social Ontologies

Moral development occurs within an already existing historical context and socio-political situation, and Brownlee does not seem to consider how different these contexts can be for variously raced, gendered, and classed agents, both with regard to their development and expressions of conviction. If we require persons to develop morally in an inclusive and

²⁴¹ Young, *Justice and the Politics of Difference*, 25

²⁴² *Ibid.*

responsive manner, we will need to require them to expand the scope of their felt obligations beyond the groups with which they identify. And that will require a moral principle that venerates more than freedom of conviction.

King's work, in honoring the political community, offers insight into such a moral principle. King states in regard to the political community, "Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny."²⁴³ Anthony Cook argues classical liberal theories postulated human existence as individuated and autonomous, eschewing King's more radical conceptions of human existence as relational and interdependent.²⁴⁴ While King offers a relational social ontology, liberal theories operate under an assumed individualist social ontology.

Brownlee's theory appears to follow classical liberals in this regard in that her position does not consider noncognitive motivations (e.g. implicit bias) and structural injustice. She does state, in agreement with Delmas, that the development of *conscience* requires striving to "see things as they really are," trying "to resist self-deception," and trying "to understand other people and learn about their experiences."²⁴⁵ I imagine racists and misogynists think that they do see things as they really are and are not deceiving themselves. Minority groups are not monoliths. There are self-identified women who adopt the term "feminist" yet whose positions reinforce gendered social norms that assign women a passive and subservient position in society. There are Black and brown men and women who hold positions which would align with far-right ideals. Racists and misogynists

²⁴³ King, "Letter from Birmingham Jail," 290

²⁴⁴ Cook, 965; 975

²⁴⁵ Brownlee, "Reply to Critics," 730; Delmas, "False Convictions and True Conscience," 17-18

can point to these positions as evidence for both their positions as well as evidence that they are trying to understand other people whom are different from them.

Trying to understand other people and learn about their experiences is certain to fail to bring about genuine understanding if the person's experiences are distorted by stereotypes and biases that they do not even consider to be false or deleterious; Kant's racist anthropology informed his study of morality and several members of the Third Reich were eugenicist anthropologists.²⁴⁶ Young argues, following Michel Foucault and Joel Kovel, the normalizing gaze of dominant groups (in comparing, differentiating, hierarchizing, homogenizing, and excluding) holds oppressed groups captive in objectified bodies resulting in the dominant group unconsciously acting in ways that serve to reinforce and perpetuate structural injustice.²⁴⁷ Changing these unconscious actions requires individuals be aware of how their attempts to try to understand others' perspectives are distorted by stereotypes and biases.²⁴⁸

To what principle or method do we refer in order to "see things as they really are" or "to understand other people and learn about their experiences"? Who is the ultimate authority over whether we have succeeded in our attempts to "resist self-deception"? It is problematic to: 1) assert that people should try to see things as they really are, try to not deceive themselves, and try to understand others' perspectives, 2) while not considering the concrete socio-political realities of how their stereotypes and biases work, and yet 3)

²⁴⁶ Gretchen E. Schafft, *From Racism to Genocide: Anthropology in the Third Reich* (Urbana, IL: University of Illinois Press, 2004); Emmanuel Chukwudi Eze, "The Color of Reason: The Idea of 'Race' in Kant's Anthropology," in *Postcolonial African Philosophy: A Critical Reader*, ed. Emmanuel Chukwudi Eze (Oxford: Blackwell Publishers, 1997), 107-08.

²⁴⁷ Young, *Justice and the Politics of Difference*, 125-127; 131-133; 140-41

²⁴⁸ *Ibid.*, 152

support and protect acts which serve to reinforce and perpetuate the conditions under which such stereotypes and biases function.

Young argues liberal individualist social ontologies rely on conceptions of individual identity as independent from the historical context and the socio-political situation in which one exists; conceptions of consciousness existing, developing, and entering independently into social interactions.²⁴⁹ Instead, like King, she offers a relational social ontology. She argues, citing Stephen Epstein, who we are exists and develops relationally through interacting with and integrating the perceptions of others; we exist and develop within a community.²⁵⁰ King and Young argue that a requirement of morality is that the disobedient ought to strive to expand beyond a very narrow group of persons with whom the disobedient may initially identify with, and this is so because we necessarily exist interconnected, whether we like it or not, with all others with whom we share a socio-political situation.

In sum, I am searching for a moral principle that both establishes an obligation to all members of the political community while at the same time protects individual liberties. Brownlee's theory of *civil disobedience* relies on an individualist social ontology. Insofar as it is built on her theory of *conscientiousness*, it does not consider the content of moral beliefs. The content of moral beliefs develops within the historical context of a socio-political situation replete with structural injustice and implicit biases. Such content can become propagated throughout society to construct socio-political systems, to undermine basic values of society, and to reinforce and perpetuate structural injustice. Such content

²⁴⁹ Ibid., 45

²⁵⁰ Ibid., 45

also restricts the actor's scope of moral consideration. The content of erroneous moral beliefs poses problems for oppressed groups' abilities to enact their individual liberties equally as well as for establishing a political obligation to all members of the political community. Thus, Brownlee's theory does not give me what I am searching for.

Is there another moral normative principle which promotes individual liberties while taking seriously how the moral content of a disobedient's acts could truncate the scope of their obligation? Whatever guiding moral principle grounds disobedient acts, it must be faithful to the moral relationship binding the individual to all others with whom one shares a socio-political situation; it must move beyond narrow, individualistic self-interest and recognize one's responsibility to everyone within the political community.

Chapter Three – Beauvoirian Tripartite Freedom: Morality and Political Action as a Continuous, Interactive and Collective Activity

I. Introduction

My project seeks to distinguish between two types of law-breaking: 1) law-breaking in spite of the political community, and 2) law-breaking for the sake of the political community. The former is law-breaking to the detriment of the political community in order to achieve self-interested personal gain. The latter is law-breaking for reconstructive purposes; for the sake of bringing the political community closer to a normative ideal. I claim that only the latter form of law-breaking ought to be understood, justified and protected as acts of *civil disobedience*. *Civil disobedience* is best understood as an active and creative response to a socio-political situation that challenges authority for the betterment of the political community.

Conflating too many illegal acts obscures the normative and reconstructive aspects of the second type of acts. It risks emboldening supremacist groups and/or perpetuating and reinforcing structural injustice. Conflating too many illegal acts also risks making such politically motivated acts unreadable; it makes *civil disobedience* appear as law-breaking in spite of the political community for personal gain. If the political community misreads acts of *civil disobedience*, then these acts are not going to be effective.

There needs to be some sort of method for determining whether acts of law-breaking are for the sake of or in spite of the political community. To this end, I am looking for a moral normative principle that: 1) could be based on rational principles that are falsifiable, openly debatable, and capable of being endorsed by anyone, 2) is attuned to and accounts for the historical socio-political context of the situation, and 3) a. serves to protect

individual liberties while at the same time b. generates an obligation to all members of the political community.

In the previous chapter I explored Kimberley Brownlee's argument for a general moral right protecting acts of *civil disobedience*. I examined how her position rests on the principle of humanism, and I argued that the principle of humanism constitutes a first-order normative claim. As a first-order normative claim, it values above all else individual liberty. Inasmuch, it fails to meet criteria 2 and 3b. The principle of humanism is derived from an individualist social ontology that fails to account for how the content of individual moral beliefs emerges in response to, is shaped by, and gives shape to socio-political structures. I argued that Brownlee's theory does not offer what I am searching for because it does not take into account how, firstly, the scope of one's moral consideration can be expanded or truncated by the content of one's moral beliefs, and secondly, the content of one's moral beliefs can serve to reinforce and perpetuate structural injustice.

In this chapter, I set the stage for a theory of *civil disobedience* based on Simone de Beauvoir's conception of freedom, a theory that will be outlined in the next chapter. In the next chapter I define the terms of my proposed criteria and argue that Beauvoir's conception of freedom is a moral normative principle that meets all three of the criteria.

In this chapter, I explore and support a reading of Beauvoir's freedom as tripartite. In doing so, I argue her conception of freedom is best conceptualized as a relational social ontology. For Beauvoir, humans exist and develop in relation to others. Freedom for her is a continuous, interactive and collective process of creating meaning and value based on the ability to choose from the most expansive array of potential projects to either reject or take up and carry forward. Our freedom cannot be fully realized if others are not also free. This

entails obligations to seek freedom for oneself and others, and thus offers criteria by which to demarcate acts undertaken for the sake of the political community from acts undertaken in spite of the political community. Moreover, I argue, under a Beauvoirian conception of freedom, we are under no obligation to tolerate the intolerant for the sake of any absolute value, including general rights.

II. Beauvoirian Tripartite Freedom as a Relational Social Ontology: Ontological, Situational, and Relational

I begin by offering a conceptual sketch of Beauvoir's tripartite conception of freedom so as to establish how it can better serve to protect both individual freedom of *conscience* as well as establish moral obligations to the political community. This conception is largely influenced by Karen Vintges and Kristana Arp's work and holds that freedom for Beauvoir is tripartite: ontological, situational, and relational.²⁵¹ Human existence is ambiguous. It is in constant flux. It is a continuous movement between the negative and positive, the immanent and transcendent, the subject as for-itself and as in-itself, and the individual and community. Beauvoir states, referencing Jean-Paul Sartre, human existence as ambiguous means humans are beings "whose being is not to be, that subjectivity which realizes itself only as a presence in the world, that engaged freedom, that surging of the for-oneself which

²⁵¹ Karen Vintges, *Philosophy as Passion: The Thinking of Simone de Beauvoir* (Bloomington, IN: Indiana University Press, 1996), 70-71. Vintges holds that existence for Beauvoir consists of "three levels": 1) "situatedness" in time and space which I take to be situational freedom, 2) "*pour-soi*" which I take to be ontological freedom, and 3) "positive ties with others" which I take to be relational freedom. See also Kristana Arp, "Conceptions of Freedom in Beauvoir's *The Ethics of Ambiguity*," *International Studies in Philosophy* 31, no. 2 (1999): 25-35. I follow Arp in recognizing a distinction between "ontological freedom" and "moral freedom," but I conceive of moral freedom as relational freedom, and I take Arp's third conception of freedom, "power" or "concrete freedom," to be situational freedom. See also Kristana Arp, *The Bonds of Freedom: Simone de Beauvoir's Existential Ethics* (Chicago: Open Court, 2001), 2-3; 54-55; 142. Sonia Kruks also distinguishes between ontological freedom and situational freedom, the latter she terms "effective freedom." See Sonia Kruks, *Situation in Human Existence* (London: Unwin Hyman, 1990), 90.

is immediately given for others.”²⁵² To say existence is ambiguous, states Beauvoir, “is to assert that its meaning is never fixed, that it must constantly be won.”²⁵³ Beauvoir here is speaking to the concept of *ontological freedom*.

Ontological freedom is the lack of being that through nullifying being makes itself be; humans’ “being is a lack of being, but this lack has a way of being which is precisely existence.”²⁵⁴ Human existence involves a nothingness, a lack of being, a negativity. As a subjectivity, humans transcend beyond themselves, that is to say they “cast [themselves] into the world,” “always project[ing] [themselves] toward something” in the world.²⁵⁵ In other words, humans are always *aiming at* or *aiming for something*. Human consciousness projects itself out into the world aiming at or for a particular project. For example, in this moment, as I sit at my desk writing these words, I am aiming at finding a suitable example that demonstrates the concept of existentialist transcendence with the further aim of finishing my dissertation, with the further aim of obtaining my PhD, with yet another further aim of finding academic employment.

The nothingness at the core of human existence is where human spontaneity and creativity resides. Beauvoir is entering the freewill debate and her position is that humans can and do act in spontaneous, creative, and unexpected, ways; humans are not determined because human consciousness contains a kernel of pure spontaneity. Beauvoir states, “I am not first a thing but a spontaneity that desires, that loves, that wants, that acts. [...] Nothing is decided before me.”²⁵⁶ What this means, Shannon Mussett explains, is that “if we go by

²⁵² Simone de Beauvoir, *The Ethics of Ambiguity* (New York: Citadel Press, 1976), 10.

²⁵³ *Ibid.*, 129

²⁵⁴ *Ibid.*, 12-13

²⁵⁵ *Ibid.*, 24-25

²⁵⁶ Simone de Beauvoir, “Pyrrhus and Cineas,” in *Simone de Beauvoir: Philosophical Writings*, ed. Margaret A. Simons (Urbana, IL: University of Illinois Press, 2004), 93.

Sartre's idea that consciousness is always consciousness *of* something *other* than itself, then tacit, non-positional consciousness is pure spontaneity."²⁵⁷ Human consciousness projects, or positions, itself toward something. At the same time, underneath that positional consciousness, is the subject of consciousness; the "I" who is projecting toward something. If, in those moments of projection, human consciousness is always of something other than itself, then that subjectivity disappears momentarily into nothing; engrossed in the present moment, that subjectivity disappears. That subjectivity only reappears when reflecting on itself as having the experience. Human freedom resides in the nothingness of non-positional consciousness; this negativity behind human consciousness outwardly directed toward the world.

Humans cast themselves into the world, Beauvoir states, by making themselves "a lack of being" and each one "thereby contributes to reinvesting it with human signification."²⁵⁸ In projecting oneself into the world, one moves to the positive, i.e. value creation, aspect of existence. Without such a projection, there would be no meaning or value. Beauvoir's "existentialist ontology" is this: "[T]he meaning of the situation does not impose itself on the consciousness of a passive subject, that it surges up only by the disclosure which a free subject effects in his project."²⁵⁹ To be an object is to be inert. It is to be determined by forces outside of it. To exist as a human is to actively engage with the world through choice. A consequence of the freewill granted humans by *ontological freedom* is that there are no universal values affixed to and solidifying human existence. Humans are not predetermined to do anything. Humans create value through actively

²⁵⁷ Shannon Mussett, email to author, July 10, 2021

²⁵⁸ Beauvoir, *Ethics of Ambiguity*, 41

²⁵⁹ *Ibid.*, 20

engaging with their chosen projects. What each and every person chooses to commit their time to is reflective of what matters to them; what humans choose to do is reflective of what they value.

Ontological freedom resides in taking up what is given as the facts of our situation and creatively responding to those facts in ways undetermined by those facts for the sake of aiming at or for something beyond those facts; it resides in my ability to creatively negotiate between the variables of my existence. I could choose to proceed with the example of myself at my desk, or spend more time thinking of possible other examples, or refuse to offer an example at all and leave the reader to conceptualize a concrete example of what existentialist transcendence is for themselves. I could scrap my entire dissertation and start anew, or choose to not finish my dissertation at all. I could choose to rewrite my dissertation as an epic poem, or make a movie about it, or transform it into a graphic novel.

And, this is entirely done within an interrelational world: "It is because my subjectivity is not inertia, folding in upon itself, separation, but, on the contrary movement toward the other that the difference between me and the other is abolished, and I can call the other mine. Only I can create the tie that unites me to the other. I create it from the fact that I am not a thing, but a project of self toward the other, a transcendence."²⁶⁰ What does it mean to act creatively? From a Beauvoirian perspective, it would not mean to create isolated from the social world. Allison B. Kaufman and James C. Kaufman et al define creativity along a spectrum including novelty recognition – as basic novelty recognition and novelty seeking – as well as observational learning and innovation.²⁶¹ Creativity is taking

²⁶⁰ Beauvoir, "Pyrrhus and Cineas," 93

²⁶¹ Allison B. Kaufman, James C. Kaufman, Allen E. Butt and Erin Colbert-White, "Towards a Neurobiology of Creativity in Nonhuman Animals," *Journal of Comparative Psychology* 125, no. 3 (2011): 55-72.

up others' projects and reworking them, synthesizing them, or using them as a springboard to go beyond them in new and unique ways. All of my projects stand on the shoulders of others' projects and are ultimately aimed at you, the other, the reader, within our shared world.

My dissertation, obtaining my PhD, procuring academic employment, these only have meaning and value because I myself and other humans attach meaning and value to them. These are mine and others' projects and in aiming for these projects we are ascribing meaning and value to them. If humans no longer valued dissertations, then all dissertations would be transformed into unread and ignored useless objects. No one would care to exert the time and effort to ever write a dissertation. The very concept of a dissertation would have no value or meaning. Existence is an activity, and my activity of ascribing meaning to my project of finishing my dissertation is correlatively an ascription of meaning to my existence. In picking up others' projects and making them a part of my dissertation, I am bestowing meaning and value on their projects. And, the reader's choice to engage with my dissertation bestows further meaning and value on my project.

Broadly, then, freedom is the constant and fluid activity within existence of creating and giving meaning and value to one's life and world.²⁶² Beauvoir states, "The goal toward which I surpass myself must appear to me as a point of departure toward a new act of surpassing. Thus, creative [i.e. ontological] freedom develops happily without ever congealing into unjustified facticity. The creator leans upon anterior creations in order to create the possibility of new creations."²⁶³ This movement must be constant and

²⁶² Beauvoir, *Ethics of Ambiguity*, 14-15; 24-25

²⁶³ *Ibid.*, 27-28

continuous, in that one must return again and again in each moment to the negative in order to actively reaffirm the positive.²⁶⁴

Whatever project one sets for oneself, one must constantly act toward endowing that project with meaning and value by constantly reaffirming one's choice of that project.²⁶⁵ Why? Because, explains Beauvoir, "If I leave behind an act which I have accomplished, it becomes a thing by falling into the past. It is no longer anything but a stupid and opaque fact. In order to prevent this metamorphosis, I must ceaselessly return to it and justify it in the unity of the project in which I am engaged."²⁶⁶ A past act becomes a mere fact of one's existence. Its value, like the value of anything at all, requires one to actively engage with it as a chosen project. Ignored projects have no value.

Beauvoir continues, "My freedom must not seek to trap being but to disclose it. The disclosure is the transition from being to existence. The goal which my freedom aims at is conquering existence across the always inadequate density of being."²⁶⁷ Again, to be an inert object is to be determined by forces outside of it, and to exist is to actively engage with the world through choice. Stagnating in past acts is an attempt to trap one's existence, to solidify it into an inert object. In doing so one is denying one's own *ontological freedom* and correlatively the ambiguity of one's existence. Such a denial is existential stagnation. *Ontological freedom* demands embracing how in this present moment each and every human is capable of spontaneous and creative action, regardless of their past actions.

²⁶⁴ Ibid.

²⁶⁵ Ibid., 26-28

²⁶⁶ Ibid., 27

²⁶⁷ Ibid., 30

Embracing *ontological freedom* entails embracing how each act serves as a departure point for a new act of transcendence, for new acts of creation.²⁶⁸ For example, suppose I choose to scrap my dissertation and transform it into a graphic novel. My choice to not write a traditional PhD dissertation becomes a fact of my existence and I have to live with whatever consequences occur because of this choice. Perhaps my dissertation committee is not thrilled about my dissertation turned graphic novel and I fail to obtain my PhD. Feeling defeated and ashamed, I could choose to destroy all evidence of my graphic novel on Beauvoirian *civil disobedience* and aim for a life in a different profession. Or, I could send my graphic novel to publishing houses who publish popular philosophy and make publishing an entire series of graphic novels featuring major philosophical figures my new aim. Or, I could use my foray into graphic novels to transition to writing existentialist children's books. In any case, my one choice opens up different possible trajectories for me to creatively navigate.

At the same time, each act occurs within a world we did not create, a world of other humans; an oppositional world that presents us with obstacles we are unable to entirely overcome and control.²⁶⁹ In the foregoing examples and explication, the ontological nothingness of human existence is deeply enmeshed within the concrete historical situation in which humans live. William Wilkerson states, for Beauvoir, "we never experience this lack of being, this ontological freedom, *as such* or *in itself*."²⁷⁰ We experience our existence as ambiguous because "we experience our ontological freedom through a

²⁶⁸ Ibid., 28

²⁶⁹ Ibid., 28-29

²⁷⁰ William Wilkerson, "Beauvoir and Merleau-Ponty on Freedom and Authenticity," in *A Companion to Simone de Beauvoir*, ed. Laura Hengehold and Nancy Bauer (Hoboken, NJ: John Wiley & Sons, 2017), 225.

continual absorption into a world that never occupies the totality of our existence.”²⁷¹ In other words, our ontological existence as spontaneous and creative is only ever experienced enmeshed within a historical socio-political context, but this context never fully takes over our existence. We experience our existence as a coalescence of our *ontological freedom*, the facts of our existence, and our historical socio-political situation.

Beauvoir takes seriously how one’s facticity, situated within a particular historical socio-political context, frames one’s lived experience. If there are particular social biases entrenched in social norms and socio-political structures that define what a philosopher ought to look and act like, and my body and actions do not fit those requirements, then my possibilities for actually achieving my aims are constrained; the variables available for me to negotiate are different. Arp explains that for Beauvoir consciousness is always “tied to the situation one finds oneself in,” and that situation is both embodied as well as infused with historical socio-politically constructed meanings assigned to facts about our embodied existence; such constructed meanings can serve to promote or hinder one’s possibilities for action.²⁷²

Beauvoir’s conception of freedom thus entails a relational social ontology. Consciousness is always consciousness from a particular embodied point of view and is always of something within a historical socio-political situated context, a context replete with other people; it “stretches itself back into the past and forward into the future.”²⁷³ As Wilkerson states, “Thrown forward into a future that develops out of past engagements and

²⁷¹ Ibid.

²⁷² Arp, *The Bonds of Freedom: Simone de Beauvoir’s Existentialist Ethics*, 9; 49. See also Sonia Kruks, *Simone de Beauvoir and the Politics of Ambiguity* (New York City: Oxford University Press, 2012), 34. See also Lori Jo Marso, “‘An Eye for an Eye’ with Hannah Arendt’s *Eichmann in Jerusalem*,” in *Politics with Beauvoir: Freedom in the Encounter* (Durham, NC: Duke University Press, 2017), 61.

²⁷³ Arp, *The Bonds of Freedom: Simone de Beauvoir’s Existentialist Ethics*, 9

projects, human existence always already finds itself intertwined and absorbed in its world."²⁷⁴ We are thrown, without our consent, into a shared world already pervaded with meanings constructed prior to our input and we find ourselves relationally interconnected with others whom we cannot control. Freedom, as the movement of creating meaning for one's life and world, can be hindered or promoted based on one's embodied existence within this historical socio-political situation.

Consider Angela Davis and George Yancy's readings of Frederick Douglass's autobiography in regard to this point. Davis argues, what is crucial in Douglass's autobiography, is the "transformation of the concept of freedom as a static, given principle into the concept of liberation, the dynamic, active struggle for freedom."²⁷⁵ She reads Douglass's situation of enslavement as one of alienation from his own freedom, because within such a condition he had "no determination whatsoever over the external circumstances of his life."²⁷⁶ Yancy points to Douglass's assertion, "however long I might remain a slave in form, the day had passed when I could be a slave in fact," as Douglass resolving to "embrace and affirm his freedom and agency."²⁷⁷ Douglass, in other words, is resolved to embrace and affirm his *ontological freedom* within a socio-political situation of subjugation. Davis highlights Douglass's *ontological freedom* as manifesting itself in an act of resistance; "In that act of resistance, the rudiments of freedom are already present."²⁷⁸

²⁷⁴ Wilkerson, 226

²⁷⁵ Angela Davis, "Lectures on Liberation," in *Narrative of the Life of Frederick Douglass* (San Francisco, City Lights Books, 2009), 45.

²⁷⁶ *Ibid.*, 53-54

²⁷⁷ George Yancy, "The Existential Dimensions of Frederick Douglass's Autobiographical Narrative: A Beauvoirian Examination," *Philosophy & Social Criticism* 28, no. 3 (2002): 311-12.

²⁷⁸ Davis, 52

Davis's reading of Douglass's autobiography also highlights how human existence is relational in a Beauvoirian sense. Davis argues that those who enslave others have only a "pseudo concept of freedom"; they think they are free because they exert some control over others but they fail to recognize that their freedom is dependent upon others.²⁷⁹ If there was no one to control, the oppressor would lose their sense of freedom.

Linking Davis's reading of Douglass to a question posed by Beauvoir, Beauvoir asks how it is possible to reconcile *ontological freedom* as infinite with *situational freedom* as limited, and her response is that one must aim toward the end of the "free movement of existence."²⁸⁰ The free movement of existence privileges "situations [...] which permit [freedom] to realize itself as indefinite movement."²⁸¹ Freedom can be realized as an indefinite movement, it can be prolonged, through the freedom of others and, thus, it can "realize itself as an indefinite unity."²⁸² In other words, one ought to not waste one's activity on the uncontrollable. One can oppress other people, enslave and violently subjugate them, but one is not able to absolutely control other people. One cannot force others to endow one's acts with meaning and value. Instead, one ought to promote freedom for others.

The relational aspect of freedom entails a correlative responsibility to promote freedom for others. This responsibility is inherent in how all humans are both ontologically free and inextricably linked with each other. This relationality is why she states

Freedom is the source from which all significations and all values spring. It is the original condition of all justification of existence. The man who seeks to justify his life must want freedom itself absolutely and above everything else.

²⁷⁹ Ibid., 49

²⁸⁰ Beauvoir, *Ethics of Ambiguity*, 28-29

²⁸¹ Ibid., 32

²⁸² Ibid.

At the same time that it requires the realization of concrete ends, of particular projects, it requires itself universally. It is not a ready-made value which offers itself from the outside to my abstract adherence, but it appears (not on the plane of facility, but on the moral plane) as a cause of itself. It is necessarily summoned up by the values which it sets up and through which it sets itself up. It cannot establish a denial of itself, for in denying itself, it would deny the possibility of any foundation. To will oneself moral and to will oneself free are one and the same decision.²⁸³

We can understand Beauvoir's point on two different yet interconnected conceptual levels. Firstly, the promotion of freedom could be understood normatively. If one values freedom, then one must universally promote freedom or else be in contradiction with oneself. Secondly, the promotion of freedom could be understood ontologically, through a relational social ontology. Even while all values are human-made, including freedom, freedom ought to be absolutely and universally valued, and thus promoted, because it is only through freedom that all meaning and value exists.²⁸⁴ It is only through the relation between individuals that freedom emerges.

Freedom conceptualized as a Beauvoirian relational social ontology does not fall into either side of the binary of the individual vs. the community. Freedom is at the core of individual human existence; it is our ability to act spontaneously and creatively. Yet, at the same time, freedom is not a universal value floating around somewhere as a Platonic form. Instead, it is a continuous and collective movement among individuals of creating and giving meaning and value to particular projects.

Beauvoir asks and answers the question inquiring as to whether her ethical theory is individualistic. In answering both yes and no, her answer highlights the ambiguity of

²⁸³ Ibid., 24

²⁸⁴ Cf Arp, *The Bonds of Freedom: Simone de Beauvoir's Existential Ethics*, 3; Vintges, 69

human existence. She states, “Yes, if one means by that that it accords to the individual an absolute value and that it recognizes in him alone the power of laying the foundations of his own existence,” but also no in the sense that “it is not solipsistic, since the individual is defined only by his relationship to the world and to other individuals; he exists only by transcending himself, and his freedom can be achieved only through the freedom of others.”²⁸⁵ As Wilkerson states, “while Beauvoir certainly thinks humans live in a world entirely of their making, and hence are the source of values and significations, she clearly denies that any *individual* can centrifugally create and bestow meaning upon a brute world [...] freedom always emerges enmeshed in situation and even *as our situation*”; freedom is “social, embodied, particular.”²⁸⁶ Freedom is groundless; our situation as embodied within a historical socio-political context and shared world with others is a site, as Emily Zakin states, “through which freedom might be enacted.”²⁸⁷

In effect, Beauvoir’s conception of freedom is asserting that if others are unfree, then your freedom is not fully realized. You may think that you are free, but what you have is only a *pseudo freedom*, using Davis’s apt term, because your “freedom” is dependent upon the oppression of others. Sally Scholz states, “The oppressor’s freedom, which manifests itself by denying the freedom of others, is a false freedom that inevitably results in the denial of the oppressor’s own freedom as well.”²⁸⁸ This is neither a case of egoism versus altruism nor individual versus community nor self vs others.

²⁸⁵ Beauvoir, *Ethics of Ambiguity*, 156

²⁸⁶ Wilkerson, 229

²⁸⁷ Emily Zakin, “Beauvoir’s Unsettling of the Universal,” in *Simone de Beauvoir’s Political Thinking*, ed. Lori Jo Marso and Patricia Moynagh (Urbana, IL: University of Chicago Press, 2006), 38.

²⁸⁸ Sally Scholz, “Sustained Praxis: The Challenge of Solidarity in *The Mandarins* and Beyond,” in *The Contradictions of Freedom: Philosophical Essays on Simone de Beauvoir’s The Mandarins*, ed. Sally J. Scholz and Shannon M. Mussett (Albany, NY: State University of New York Press, 2005), 51.

This is the ambiguity of existing in flux between being an individual and a social member of a community. Beauvoir defines oppression. While every human transcends themselves, situations occur where “this transcendence is condemned to fall uselessly back upon itself because it is cut off from its goals.”²⁸⁹ These are situations where one’s choices and actions are entirely ineffectual due to socio-political constraints. Mussett explains, for Beauvoir, existence is ambiguous in the sense that it is “the movement between poles (subject/object, individual/community, rational/animal, etc.) rather than the poles themselves. This means it emphasizes flux, change, action and transcendence. Oppression is always the fixing of individuals or groups into one of the poles and prohibiting this movement.”²⁹⁰ The fixing of individuals or groups, thereby cutting them off from their projects, severely inhibits those individuals’ and groups’ *situational freedom* but, within an interrelational world where meaning and value is actively in flux, also inhibits the larger movement of *relational freedom*.

III. Three Aspects of Beauvoirian Relational Freedom

There are three ways in which Beauvoir’s *relational freedom* is concretized. First, one’s projects only have *continued* meaning and value if others give the projects meaning and value by taking them up and carrying them forward. Beauvoir states

So here is my situation facing others: men are free, and I am thrown into the world among these foreign freedoms. I need them because once I have surpassed my own goals, my actions will fall back upon themselves, inert and useless, if they have not been carried off toward a new future by new projects [...] The movement of my transcendence appears futile to me as soon as I have transcended it, but if, through other men, my transcendence is always

²⁸⁹ Beauvoir, *Ethics of Ambiguity*, 81

²⁹⁰ Mussett, email to author, July 10, 2021

prolonged further than the project I am now forming, I could never surpass it.²⁹¹

Once I put my project out into the world, it becomes a thing existing independently of me in the shared world. I instill meaning and value on the project in a narrow sense as long as I put my creative efforts into it, but my project risks becoming useless and meaningless without being given continued meaning and value by others.²⁹² Our ambiguous existence means that we are neither entirely a sole self-creating individual nor a mere part determined by the collective. Due to this ambiguity, my project may have a sort of meaning and value to me independent of if others find it valuable, but this meaning and value is narrow; it is torpid and inert. My project would become a useless and meaningless thing unless others take it up and carry it forward.²⁹³ When others take up my project and make it apart of their projects, it becomes an active site of freedom. As Beauvoir states, “Only the freedom of others keeps each one of us from hardening in the absurdity of facticity.”²⁹⁴ Therefore, she states, “man must be engaged in two convergent directions. He finds objects where he finds the fixed reflection of his transcendence. He transcends himself by a forward movement that is his freedom itself, and at each step, he strives to pull men to himself.”²⁹⁵

Returning to my hypothetical dissertation as a graphic novel example, my graphic novel is done once I finish it and put it out into the world. It becomes a fact of my existence. It is an object that I at one time put my creative time and effort into. I endowed my project

²⁹¹ Beauvoir, “Pyrrhus and Cineas,” 135

²⁹² Arp, *The Bonds of Freedom: Simone de Beauvoir’s Existential Ethics*, 71

²⁹³ Ibid.

²⁹⁴ Beauvoir, *Ethics of Ambiguity*, 71

²⁹⁵ Beauvoir, “Pyrrhus and Cineas,” 137-38

with meaning and value because others in the world have endowed, separately, dissertations, graphic novels, Beauvoir's work and theories of *civil disobedience* each with meaning and value. In combining all these elements in my project, I had hoped that others would appreciate my creative efforts and find meaning and value in my project for themselves.

If others ignore my project, it becomes nothing but a useless and forgotten object; as a site for my existence, my project confers no meaning or value on my existence. It's just there in time and space, a metaphorical carving in a tree in the unexplored wilderness that I was here at this particular moment and place. If ignored by others, my existence and project become entirely forgotten and, thus, meaningless; my project and existence become mere facts. However, if others take up and carry forward my project, my project becomes an active and continuous site of freedom; it becomes re-created through others' interaction with it, and correlatively my existence as endowed within the project has continued meaning and value. If others continue to take up my project or take up the projects that had taken up my project, then my existence and project continue to have meaning and value.

To elaborate this point further, in *Pyrrhus and Cineas* Beauvoir speaks of how we project ourselves into the shared world through our projects. Who we are, our existence, is nothing but our actions and our actions are our projects in a shared world.²⁹⁶

Human freedom must then carve out a place for this new plenitude that we cause to spring forth in the world. This place was not, and neither are we the ones who made it; we have only made the object that fills it up. Only the other can create a need for what we give him; every appeal and every demand comes from his freedom. In order for the object that I founded to appear as good, the other must make it into his own good, and then I would be justified for having created it. The other's freedom alone is capable of necessitating my being. My

²⁹⁶ Vintges, 90

essential need is therefore to be faced with free men. My project loses all meaning not if my death is announced, but if the end of the world is announced to me.²⁹⁷

All meaning and value is human-made. Only others can ascribe *continued* meaning and value to my projects; meaning and value derived from a robust interaction between free persons. As Mussett states, “The ethical person realizes that choices are meaningless unless taken up by the projects of others.”²⁹⁸ We might be able to be other to ourselves, but if our projects are not taken up by others besides ourselves, then over time the meaning and possibility subsides.

For Beauvoir, freedom to create and give meaning and value to the world requires a reciprocal recognition of freedom. One’s existence is justified through the free recognition of others. Mary Caputi states, “The giving other whose existence does not thwart my self-understandings is the one whose presence bestows meaning. We therefore need the other and the other’s freedom, for it is only this freedom that permits the recognition on which we rely.”²⁹⁹ The oppressed cannot justify, as in give meaning and value, to the oppressor’s acts because they have been denied the ability to freely do so. In attempting to extort meaning and value from the oppressed, the oppressor is unable to acquire the meaning and value the oppressor seeks.³⁰⁰

Let us imagine a couple of other concrete scenarios. Suppose someone has your arm twisted behind your back and they are yelling at you, “Tell me I am smart, tell me I am

²⁹⁷ Beauvoir, “Pyrrhus and Cineas,” 129

²⁹⁸ Shannon Mussett, “Ethical Freedom,” in *50 Concepts for a Critical Phenomenology*, ed. Gail Weiss, Ann V. Murphy and Gayle Salamon (Evanston, IL: Northwestern University Press, 2019), 129; Arp, *The Bonds of Freedom: Simone de Beauvoir’s Existential Ethics*, 64.

²⁹⁹ Mary Caputi, “Beauvoir and the Case of Djamila Boupacha,” in *Simone de Beauvoir’s Political Thinking*, ed. Lori Jo Marso and Patricia Moynagh (Urbana, IL: University of Illinois Press, 2006), 116.

³⁰⁰ Arp, *The Bonds of Freedom: Simone de Beauvoir’s Existential Ethics*, 73

beautiful, tell me I am awesome!" You can say the words, but as much as the person desperately wants the words to have meaning, when said under duress the words have absolutely no meaning at all. Or, suppose you are performing an activity that you find meaning and value in but that meaning and value only obtains if others freely perform the activity with you. You can try to force others to perform the activity, but if they do not want to freely perform the activity, then they are not going to perform it enthusiastically which depletes the meaning and value of the activity for you. For example, trying to force someone to read and discuss a book with you that you enjoy. If the person does not want to read the book, you can try to force them, but they are not going to appreciate the book and discuss it enthusiastically, and thus, they are not going to bestow the meaning and value on the project which you seek.

Why not just seek meaning and value from a select group of others and not all others? This question leads to the second way in which freedom is relational: One's projects stand on the shoulders of others' projects.³⁰¹ My graphic novel dissertation would pick up and carry forward Beauvoir's projects, Beauvoirian scholars' projects, the projects of theorists' working on *civil disobedience*, and graphic novel artists' and authors' projects. These creative works directly and/or indirectly influence my project and had they not existed, then there would be a lacuna in the creative possibilities available in my world. Thus, having a vast array of projects to choose from promotes one's and humanity's freedom.

Situations of oppression create vast lacunae in the creative possibilities available in humanity's shared world. Beauvoir links the individual to the community through the

³⁰¹ Cf Arp, *The Bonds of Freedom: Simone de Beauvoir's Existential Ethics*, 64

creation of meaning. Freedom is an active and continuous movement among humans. Zakin argues that Beauvoir's concerns about maternity and her focus on birth control must be understood from the context of her historical socio-political situation, a context in which the possibility of not being a mother was not a fully realizable option; maternity, for Beauvoir, "must take place in a context of choice."³⁰² To add to Zakin, liberation understood in this way means opening up a horizon of possibilities for the liberated, giving them the most expansive array of possible choices of projects to pursue.

Beauvoir states, the liberation of the oppressed is sought after not only so that one is not complicit in tyranny.³⁰³ Liberation is primarily sought after so that "new possibilities might be opened up" by the liberated and through them to everyone.³⁰⁴ Scholz states, "Liberation is also the collective project because oppression cuts off the possibility for transcendence not only for those directly affected by it but also for others whose projects obtain meaning through interaction with the projects of others."³⁰⁵ What is irretrievably lost in situations of oppression are the free projects of the oppressed; projects that would open up a vast and diverse array of creative possibilities for each and every person's, for humanity's, projects. This is why Beauvoir argues "To want existence, to want to disclose the world, and to want [people] to be free are one and the same will."³⁰⁶

In other words, and more exactly, we can now define freedom as a continuous, interactive and collective process of creating meaning and value based on the ability to choose from the most expansive array of potential projects to either *reject* or *take up and*

³⁰² Zakin, 45

³⁰³ Beauvoir, *Ethics of Ambiguity*, 86

³⁰⁴ Ibid.

³⁰⁵ Scholz, 50

³⁰⁶ Ibid., 86-87. Cf Karen Vintges, *Philosophy as Passion* (Bloomington, IN: Indiana University Press, 1996), 58-59; 69.

carry forward. Lori Jo Marso states, “only when all others are able to take up (or reject) our projects with us (and the projects are transformed via our interaction) are we fully free [...] under conditions of oppression others may not be able to respond to my appeal nor take up my projects. Thus my freedom falls back onto itself and is denied as well.”³⁰⁷ The ability to *reject* a project is just as important as the ability to *take up* a project.

Just as we can learn from where we ourselves or others fail, a project that we oppose can still have meaning and value in our opposition to it. Taking up a project to reject it bestows a sort of converse, against-ness, value onto the project, but this value is still meaningful; both for and against value is disclosed through recognition and possibility. The project is meaningful because it became a site for the freedom of others. It is impossible to have such an expansive choice of projects if all others are unable to freely pursue their own projects. Thus, one has a responsibility to promote the freedom of all others insofar as in doing so freedom is not sacrificed for the sake of *pseudo freedom*.

What about tolerating the intolerant? Ought we tolerate the intolerant for the sake of freedom? Another way to understand the point here is to consider the relevance or significance of the project. If one rejects a project through opposition, then this project can still be significant, and thus meaningful. Being opposed to a project is not problematic so long as the project is compatible with freedom. If a person, if society, entirely ignores a project, then this project is insignificant; it is a useless, meaningless, inert object. The intolerant, i.e. supremacist groups, exist and have been given too much significance. They are impossible at this point to ignore because of this. Because their project is incompatible with freedom, the idea would be to make them insignificant and ignorable by either

³⁰⁷ Marso, 63

converting their agency (i.e. pseudo individualist freedom) to moral agency (i.e. fully realized freedom, coalesced tripartite freedom) or restricting their projects. Inasmuch, I argue in a following section that we are under no obligation to tolerate the intolerant per Beauvoir's ethics.

The third way in which freedom is relational is that some projects are too complicated and demanding for one person to accomplish by themselves.³⁰⁸ Some projects we may choose require the assistance of free others to complete. Arp provides an example, stating "I may decide that I have the solution to some contemporary political dilemma, but unless I engage myself with others this solution will never be realized. In order for my political views to be of any consequence, even to me, I must take the first steps toward political engagement, which necessarily involves me in other people's projects."³⁰⁹

A concrete example of this is a collective political action in response to a shared political problem. Suppose the shared problem is a lack of water resources. One person may have a solution to the problem, a new and more effective method for conserving water. But, in order for that project to be realized, it requires the person to present their case to the community of others in order to get the community's buy in as well as to get the community to participate in implementing the method. The shared community project is having enough water to meet the community's needs, but in order to implement a particular water conservation method, enough members of the community need to pick up the same project in order for it to be successful. And, one ultimately cannot force the

³⁰⁸ I would like to thank Sarah Dewitt Lucas, Keunchang Oh, and Stephen Setman for their incisive and engaging questions in regard to these issues during the 2020 Women in Philosophy Conference at Purdue University. I would especially like to thank Brian Eckley for commenting on my paper and introducing me to the work of Sally Scholz.

³⁰⁹ Arp, *The Bonds of Freedom: Simone de Beauvoir's Existential Ethics*, 71-72

members of the community to do so. If members of the community truly want to, they could find ways to continue to waste water despite being penalized. In order for the shared project to be concretely meaningful and valuable, a community of individuals must appeal to each other freely.

IV. In Defense of a Tripartite Conception of Beauvoirian Freedom

Sonia Kruks argues that Beauvoir's thinking about freedom and responsibility evolved over the course of her career.³¹⁰ Kruks, however, is more critical of the role of *ontological freedom* than Arp. Why treat Beauvoir's conception of freedom as tripartite? The issue really comes down to how to understand freedom in situations of oppression. The issue of how to understand freedom in situations of oppression from a Beauvoirian perspective has received a significant amount of attention in Beauvoirian scholarship from thinkers such as Arp, Kruks, Mussett, Eva Lundgren-Gothlin, and Nancy Bauer.³¹¹ Although delving too far into this literature would take me off course, I offer a brief defense of a tripartite conception of freedom.

One way of understanding freedom in situations of oppression is to hold that situations of oppression diminish *ontological freedom*. According to this view, we exist as embodied within a historical socio-political situation and that situation affects our ontological ability to be spontaneous and creative, and thus, to give meaning to our lives and world. Kruks states "Indeed, in most oppressive situations facticities may impinge on

³¹⁰ Sonia Kruks, *Simone de Beauvoir and the Politics of Ambiguity*, 12-13

³¹¹ See for example, Arp in *The Bonds of Freedom: Simone de Beauvoir's Existentialist Ethics*; Kruks in *Simone de Beauvoir and the Politics of Ambiguity*; Eva Lundgren-Gothlin in *Sex and Existence: Simone de Beauvoir's "The Second Sex"* (London: Athlone, 1996); Nancy Bauer in *Simone de Beauvoir, Philosophy, and Feminism* (New York City: Columbia University Press, 2001).

the ontological status of freedom itself. Then, unable even to conceive of projects that transcend the situation, subjects may become locked in immanence.”³¹² She continues,

[E]ven though freedom is an ontological quality of human existence, those oppressive situations that prevent meaningful action may impinge upon it so totally that its enactment will virtually cease (or in the most extreme, dehumanizing cases actually cease). Because ontological freedom is coextensive with its realization in action it is, de facto, inseparable from the conditions in which it may be practiced. Thus, in the most extreme cases oppression does not only constitute an ‘external’ impediment to effective action but, permeating subjectivity, may also suppress the potential for ontological freedom itself. Here, the oppressed cannot be said to be complicit in their oppression or to bear any responsibility for it.³¹³

Kruks’s position builds on the idea that *ontological freedom* is deeply enmeshed with *situational freedom*. So much so, that if one’s *situational freedom* is so severely impeded, then one’s *ontological freedom* is diminished. Under this view, victims of oppression become determined by their oppression. One potential benefit of this view is that it avoids holding victims of oppression responsible for not being able to transcend situations of oppression.

However, in asserting that one’s situation diminishes one’s *ontological freedom*, is Kruks denying the ambiguity of our existence as both an individual and as a member of a community? Perhaps. To explicate why, consider Penelope Deutscher’s explication, referencing Beauvoir’s *America Day by Day*

Marxism, she argued, erred in depicting the subject too radically as the product of ideology and alienation. By its lights, human wills are “the reflection of objective conditions by which the situation of the class or the people under consideration is defined.” On the one hand, Beauvoir considers that we do need an account of forces that incite individuals. On the other hand,

³¹² Kruks, *Simone de Beauvoir and the Politics of Ambiguity*, 35

³¹³ *Ibid.*, 71

subjectivity needs to be retheorized so that individuals are not considered only the product of social forces. She establishes this point through the alternating movements between the convictions of Marxism and existentialism.³¹⁴

We are both individuals with the capacity to create ourselves and members of a community whose choices can be hindered or promoted based on the context of the situation in which we are thrown. We are neither merely individuals who create ourselves *ex nihilo* nor beings completely behaviorally conditioned, and thus determined, by our societies.

How is it possible for a person to be free and unfree at the same time? Could a person be free yet not responsible? Is this an irresolvable contradiction? Kruks resolves the contradiction by arguing that diminished *situational freedom* diminishes *ontological freedom*. I would like to suggest another way of looking at the ambiguity of our existence.

I take *ontological freedom* to be constant, undiminishable; it is the nothingness that makes it possible for humans to respond to their world in spontaneous and creative ways. I take *situational freedom* to be the variables and the choices available to us based on the facts of our existence and our historical socio-political situation. One aspect of our situation is the fact that we necessarily exist in relation to others.³¹⁵ I take *relational freedom* to be how meaning and value emerges when ontologically free individuals take up or reject each other's projects. Altogether, I take these three aspects of our existence as coalesced, tripartite freedom.

Recall Wilkerson's quote above regarding how we can only ever *experience* our existence as a coalescence of our *ontological freedom*, the facts of our existence, and our

³¹⁴ Penelope Deutscher, *The Philosophy of Simone de Beauvoir: Ambiguity, Conversion, Resistance* (New York City: Cambridge University Press, 2008), 85.

³¹⁵ I take "others" to include nonhuman animals, and I will explore this in the last chapter.

historical socio-political situation. Coalesced, tripartite, freedom and responsibility are best understood as a matter of degree because we can only ever experience our *ontological freedom* enmeshed in a relational situation. Wilkerson's quote is a phenomenological claim, and this is what Kruks's argument insightfully underlines. Our *ontological freedom* is *experienced as* diminished when our *situational freedom* is diminished. Although Kruks uses this observation to further argue a strong claim that one's *ontological freedom* is in fact diminished, I am suggesting a weaker claim that one's *ontological freedom feels as if* it is diminished.

I do not mean to imply that the way we experience the world is inconsequential. The way we experience the world within a historical socio-political situation is tremendously consequential for how we live and the choices available to us. I agree that our choices can be limited by how we experience the world, just like our choices can be limited by our embodiment. Moreover, while phenomenological experiences of the world may reveal ontological aspects of existence, at the same time it is nonetheless true that people in a myriad of situations, both oppressive and not, think and act in unexpected and spontaneous ways. Douglass is just one example of this phenomenon.³¹⁶

I argue that it is most concretely and politically efficacious to conceive of our freedom as a coalescence of three distinct forms of freedom and that a limitation of choice diminishes our *situational freedom* but not our *ontological freedom*. Our freedom becomes gradational when we face a limitation of choice diminishing our *situational freedom*, but we still retain our ability to respond in spontaneous and creative ways to our situation. Such a

³¹⁶ See also Viktor Frankl, *Man's Search for Meaning* (Boston: Beacon Press, 2006).

reading takes seriously the ambiguity of our existence as both individuals and members of a community.

I read Kruks as placing too much emphasis on *situational freedom* and correlatively our existence as members of a community. In doing so she is denying the ambiguity of existing as both an individual and a member of a community. Arp states, “My position on this issue is that people, even the most severely oppressed, always retain their ontological freedom. In the context of existentialist ontology this is what makes them human. And it is because they are human beings that it is wrong to treat them in this way.”³¹⁷ Putting Deutscher and Arp’s positions together, placing too much emphasis on *situational freedom* denies the ambiguity of human existence as both spontaneous and creative while at the same time intricately interconnected with the world; it threatens to solidify human beings into mere objects determined by their socio-political situation.

One consequence of this solidification is the infantilization of the oppressed; treating the oppressed as children who need to be taught about their freedom. Beauvoir herself fell into this line of thought several times when she equated enslaved African Americans with ignorant children.³¹⁸ Patricia Hill Collins argues that Beauvoir uses “analogies of oppositional difference” to conflate enslaved African Americans with white women then compares both with children and in doing so hinders not only her own ability to examine the contours of heterogeneously situated oppressions and agency but also

³¹⁷ Arp, *The Bonds of Freedom: Simone de Beauvoir’s Existentialist Ethics*, 7

³¹⁸ Beauvoir, *Ethics of Ambiguity*, 85-86; e.g. “What must be done is to furnish the ignorant slave with the means of transcending his situation by means of revolt, to put an end to his ignorance,” 86. See also 37 where she states “Like the child, they can exercise their freedom, but only within this universe which has been set up before them, without them. This is the case, for example of slaves who have not raised themselves to the consciousness of their slavery. [...] To the extent that they respected the world of the whites the situation of black slaves was exactly an infantile situation.”

undercuts oppressed persons' ability to act freely.³¹⁹ Beauvoir is correct in arguing that people need opportunities to express and practice their *ontological freedom* and that situations of oppression strive to deny people such opportunities. At the same time, she was ignorant of the myriad of ways in which enslaved African Americans in the antebellum US South were enacting their *ontological freedom* through resistance, rebellion, revolts and subversion.³²⁰

Thomas P. Barker's exploration of the creative use of song by enslaved African Americans, while not engaging with Beauvoirian thought, exemplifies how enslaved African Americans creatively navigated extreme situational oppression and the lack of opportunities in order to express and practice their *ontological freedom*. Barker argues, for enslaved African Americans, creating and singing songs exemplified "freedom as material practice" expressing anger, satire, social criticism, hope, and spirituality. He states

The suffusion of religious ideals in the activities of everyday life to a great extent immunized Black religion from White colonization, preserving the sacred as a potential space of resistance. Consequently, it should come as little surprise that spirituals were sung primarily as rowing songs, field songs, work songs, and social songs, rather than exclusively within the church. However, through the use of metonymy (substituting associated words to ostensibly alter the semantic content), spirituals acted as a form of religious education, able to speak simultaneously of material and spiritual freedom. [...] In providing a forum for the venting of political frustrations, slave music, in particular spirituals, introduced into the sphere of everyday life a crucial experience of freedom. If the slaves were forced to adapt to the linguistic space

³¹⁹ Patricia Hill Collins, "Simone de Beauvoir, Women's Oppression and Existential Freedom," in *A Companion to Simone de Beauvoir*, ed. Laura Hengehold and Nancy Bauer (Hoboken, NJ: John Wiley & Sons, 2017), 325; 327-329; 332-33.

³²⁰ See, for example, Angela Davis, *Women, Race & Class* (New York: Vintage, 1983), 3-29. Davis explains how enslaved African American men and women practiced as much autonomy as they could as well as established equality among themselves within the domestic spheres of their existences, "aggressively [...] challenging the inhuman institution of slavey"; "They transformed that negative equality which emanated from the equal oppression they suffered as slaves into a positive quality: the egalitarianism characterizing their social relations," 18-19. See also: Thomas P. Barker, "Spatial Dialectics: Intimations of Freedom in Antebellum Slave Song," *Journal of Black Studies* 46, no. 4 (2015): 366-67.

of their masters, it would be in a form responsive to the demands of their own condition. This lived experience of freedom (“le vecu”) directly informed the ability of slaves to think freedom.³²¹

Barker argues song as freedom manifested in material practice led enslaved men and women to “a *consciousness* of freedom, the autonomy of which could be said to transcend the very structure of slavery.”³²² Following Herbert Marcuse, he argues the songs of the enslaved exemplify “freedom as the aesthetic imagination” in that “[w]hen reality denies the material realization of the beautiful, art may become the sublimated repository for these desires” thus producing a revolutionary consciousness capable of imagining a world beyond enslavement.³²³

Barker’s work demonstrates that enslaved African Americans did not need whites to teach them about their freedom. They were already enacting their freedom in a myriad of spontaneous and creative ways that went beyond the constraints of their situation. White imposition in defining how and to what extent African Americans should enact their freedom could be considered white paternalism and thus another form of denying enslaved African Americans the ability to create and give meaning to their own worlds on their own terms. Enslaved African Americans needed opportunities to practice their freedom, and when they did have such opportunities they prospered. Frederick Douglass and Black Wall Street in Tulsa, OK are just two examples of Black prosperity. In sum, if one holds that the diminishment of *situational freedom* also diminishes *ontological freedom*, then there is a correlative movement between the severity of situational oppression and the diminishment of *ontological freedom*. This then further risks diminishing either the severity

³²¹ Barker, 372-73

³²² Ibid., 373

³²³ Ibid., 373; 375-76

of the oppression enslaved African Americans faced or diminishing the import of enslaved African Americans creative and spontaneous responses to severe oppression.

Another consequence of conflating ontological and *situational freedom* is learned helplessness; people giving up and no longer resisting due to social habituation to failure. Learned helplessness is defined as “a phenomenon in which repeated exposure to uncontrollable stressors results in individuals failing to use any control options that may later become available. Essentially, individuals are said to learn that they lack behavioral control over environmental events, which, in turn, undermines the motivation to make changes or attempt to alter situations.”³²⁴ Learned helplessness is a psychological state induced when a person is repeatedly unable to resolve or remove stressful or traumatic conditions in one’s life. It is people telling themselves they have no choice, no ability, to do anything to improve their situation, even when they do, because society and other people have repeatedly thwarted their attempts to better their situation.

Barker’s research and argument is evidence of how enslaved African Americans, who were in all respects severely situationally disempowered, empowered themselves through their creativity; through their use of song they reimagined a world of possibility beyond the harsh constraints of their situation. They were empowered because they saw themselves as more than what society was telling them they were; using Douglass’s terms, they saw themselves not as “slaves in fact.” bell hooks also makes this exact point,

Women who are exploited and oppressed daily cannot afford to relinquish the belief that they exercise some measure of control, however relative, over their lives. They cannot afford to see themselves solely as 'victims' because their survival depends on continued exercise of whatever personal powers they

³²⁴ American Psychological Association, “Learned Helplessness,” *APA Dictionary of Psychology*, accessed July 6, 2021, <https://dictionary.apa.org/learned-helplessness>

possess. It would be psychologically demoralizing for these women to bond with other women on the basis of shared victimization. They bond with other women on the basis of shared strengths and resources.³²⁵

To be locked in perpetual victimhood is to relinquish *ontological freedom*. It is to be solidified into a “victim” who is determined by one’s situation. *Ontological freedom* is politically efficacious because it is empowering, and it is empowering because it tells people that they are more than the limitations society seeks to entrap them in. *Ontological freedom* counters learned helplessness. It is empowering because it tells people that they are spontaneous and creative; they do have the ability to do *something* about their situation.

Marso, reading Beauvoir and Frantz Fanon together, states

When we return to Beauvoir and Fanon we see that oppression itself is lived immanently and chaotically, is imprinted on bodies in comportment and repetitive habits, and yet can nevertheless be consciously (and narratively) rethought and redirected, even rejected by individuals and collectives to create something different and better. Most important, Beauvoir and Fanon never lose sight of agency as constituted in and through political life. [...] Fanon and Beauvoir theorize how, when, and why human agency is both made possible and constrained by political life, including structures, language, economies, and the accumulation of a collective unconscious about the meaning of certain forms of embodiment.³²⁶

Ontological freedom understood as distinct from but intricately linked with *situational freedom* is politically empowering while at the same time takes structural injustice seriously. In this way, one could be both free and unfree at the same time and one could be

³²⁵ bell hooks, *Feminist Theory: From Margin to Center* (Brooklyn, NY: South End Press, 2000), 46.

³²⁶ Marso, 101

free yet not responsible; one could be gradationally free and responsible.³²⁷ This is not a contradiction that requires resolving. It is one aspect of the ambiguity of human existence that we must embrace.

V. Beauvoir, Freedom in Principle, the Paradox of Toleration, and Rights

I now return to a question raised in the second section. It is the question of what obligation we ought to have in regard to the intolerant. Ought we tolerate the intolerant in the name of freedom? Posing the question in terms of the larger aim of this project: Ought we tolerate all acts of *civil disobedience* in the name of individual moral rights?

I argue here that a Beauvoirian position holds that we are under no obligation to tolerate the intolerant, even for the sake of individual moral rights. The reason is because humans exist relationally and human freedom is collective. Understanding freedom as a relational social ontology in which we are justified in limiting or restricting intolerance for the sake of freedom in principle leads to two questions: First, what does it mean to promote freedom in principle? In other words, what distinguishes *pseudo freedom* from freedom in principle? And, second, when are we justified in limiting *pseudo freedom* for the sake of freedom in principle? Or, how do we distinguish acts taken in spite of the political community from acts taken for the sake of the political community?

What does it mean to promote freedom in principle? To respond to the first question, we can ascertain the answer to this question by exploring one difficult case Beauvoir discusses: Suicide. In the case of suicide, Beauvoir argues that we are not justified in assuming that it would never be in the service of freedom in principle to allow a person

³²⁷ Cf Arp, *The Bonds of Freedom: Simone de Beauvoir's Existential Ethics*, 142. Arp holds that oppressed persons retain ontological freedom but do not have moral freedom. This differs from my view in that I hold that oppressed persons retain ontological freedom but have limited situational freedom.

to kill themselves. We are not justified in deferring to cultural, social, political, and/or legal precepts that deem suicide as absolutely wrong because “no behavior is ever authorized to begin with” and existentialist ethics “is the rejection of every principle of authority.”³²⁸ We must, she argues, analyze the concrete circumstances and context of the situation in order to determine how freedom would be best promoted.

In the case of suicide, Beauvoir discusses a young woman distraught over her lack of prospects to find love who tries to overdose on phenobarbital, but is saved by her friends.³²⁹ The young woman later becomes happily married with children. Beauvoir concludes that the young woman’s friends were justified in saving her life because the young woman acted hastily and rashly. Her friends promoted freedom by saving her life and giving her the possibility to choose to accept or reject her life. She contrasts this case with the case of a severely depressed person in a mental institution who has tried twenty times to commit suicide.³³⁰ She states this person devotes “their freedom to seeking the means of escaping their jailers and of putting an end to their intolerable anguish” and in this case “the doctor who gives them a friendly pat on the shoulder is their tyrant and their torturer.”³³¹ In this case, to prevent the person from committing suicide is not promoting freedom.

The difference between these two cases is the context of the situation. In the former case, the young woman’s distress is temporary and limited to a very narrow portion of her existence. Her distress is temporary in that if she has more time, she would be able to think

³²⁸ Beauvoir, *Ethics of Ambiguity*, 142

³²⁹ Ibid.

³³⁰ Ibid., 142-43

³³¹ Ibid., 143

more clearly about her situation to be able to make a more reasonable choice about whether to commit suicide. Moreover, her distress is not all encompassing. Her life contains a multitude of other aspects that afford her other avenues of possibility to embrace and reaffirm her freedom. For example, she had friends who care for her and we can assume she cares for in return.

In the latter case, the severely depressed person is not making a hasty and rash decision. Their mental anguish is not temporary, but enduring. Had they more time, they would probably be unable to think outside of their anguish; their anguish is all encompassing. It seeps into all aspects of their existence. There are much fewer options available to the severely depressed person for embracing and affirming their freedom. To be sure, the issue becomes more complicated if we take a relational perspective. Does the severely depressed person have loved ones? If so, then that aspect of their existence must be considered as part of the context of the situation and could change the justifiability of the act. But, suppose they have no friends or family who visit them and serve as emotional support, they only have jailers whom they perceive of as enemies. One real and available option for them is suicide; this is a descriptive not a normative claim. Descriptively, when a person has few real or available options, when they feel like they have little to no control over their situation, suicide is a way for them to take control of their situation. Normatively, the responsibility and blame should be placed on the situation they were put in that forced them to seek control over their situation in such a manner.

To promote freedom in principle is to promote possibility and choice; meaning and value emerges based on what we choose to take up or reject. In the former case, the young woman's life contained many more variables to negotiate, and she attempted to deny

herself the multitude of possibility and choice available to her. She was hastily truncating her ability to give meaning and value to her life and world. So, her friends were right to save her.

In the latter case, the severely depressed person had far fewer variables to negotiate. They were confined to a mental institution that severely limited their actions. They were locked in an all-encompassing anguish that limited their ability to not only conceive of but live a life beyond such anguish. And, they had no friends or family. For the severely depressed person, promoting possibility and choice means allowing the possibility of suicide, or else taking responsibility for ensuring adequate *situational freedom* for the person. In a situation of limited *situational freedom*, again descriptively, suicide is one of very few possibilities available to them for giving meaning and value to their life and world.

There is an understandable repulsion and reticence in attributing acts of suicide to freedom. To be clear, *ontological freedom* is what is at play here; the drive to take control over an uncontrollable situation, i.e. limited *situational freedom*, in any way one can. It would be difficult to argue that suicide in the severely depressed person's case was an act taken for the sake of the political community. Yet, assuming her suicide did not infringe upon others' freedom, in the given context the woman's relation to society was so severed, her ability to create, pick up and carry forward projects so hindered, it could be argued her act *was* for the sake of *ontological freedom*; her free project was a rejection of her situation in its entirety. Her *ontological freedom* remained despite a lack of *situational freedom*. In such a situation where she has so little control over her life, her *ontological freedom* manifests itself through a rejection of her situation.

In short, the answer to the first question is: To promote freedom in principle is to promote every person's ability to pick up and carry forward or reject others' projects, to be a part of the collective movement of creating and giving meaning to the world. The context of the situation determines how best to promote freedom in principle.

When are we justified in limiting *pseudo freedom* for the sake of freedom in principle? To respond to the second question, Beauvoir would argue we are under no obligation to tolerate the intolerant, and that our obligation to respect moral rights extends only insofar as those rights effectuate freedom. Beauvoir's position aligns with Karl Popper and John Rawls's positions. Popper argues that, depending on the context of the situation, if rational argument is no longer capable of countering intolerance and if intolerance has reached the point of instigating violence, then a society ought to be able to "claim the right to not tolerate the intolerant."³³² Rawls argues that the foundational normative principle of any society ought to be liberty, thus, limitations on liberty are justified for the sake of preventing "an even greater loss of liberty."³³³ Rawls states, "Liberty is governed by the necessary conditions for liberty itself."³³⁴

Beauvoir's position coheres with and expands on Popper and Rawls:

At once the oppressor raises an objection: under the pretext of freedom, he says, there you go oppressing me in turn; you deprive me of *my* freedom. [...] A claim of this kind does not outrage us in the name of abstract justice; but a contradiction is dishonestly concealed there. For a freedom wills itself genuinely only by willing itself as an indefinite movement through the freedom of others; as soon as it withdraws into itself, it denies itself on behalf of some object which it prefers to itself. [...] We have to respect freedom only when it is intended for freedom, not when it strays, flees itself, and resigns itself. *A freedom which is interested only in denying freedom must be denied.* And

³³² Karl Popper, *Open Society and Its Enemies* (Princeton, NJ: Princeton University Press, 1963), 265.

³³³ John Rawls, *A Theory of Justice* (Cambridge, MA: Belknap Press, 1971), 214-15.

³³⁴ *Ibid.*, 215

it is not true that the recognition of the freedom of others limits my own freedom: to be free is not to have the power to do anything you like; it is to be able to surpass the given toward an open future; the existence of others as a freedom defines my situation and is even the condition of my own freedom.³³⁵

Beauvoir's position holds that if oppressors were truly aware of *relational freedom*, then they would "denounce oppression."³³⁶ But in a non-ideal world, "the fact is that one finds himself forced to treat certain men as things in order to win the freedom of all."³³⁷ Anticipating Popper's position she argues, of course it would be best to appeal to reason, to "expose [to oppressors] the mystification" of their *pseudo freedom*, in order to overcome *pseudo freedom*.³³⁸ But, "the urgency of the situation forbids this slow labor."³³⁹ Within a context of oppression, we are justified in limiting the actions of those who seek their own *pseudo freedom over relational freedom*.

Beauvoir's position aligns with Popper and Rawls in that the foundational normative principle is freedom, and any act that strives to undermine others' freedom is not due protection. Beauvoir, however, expands this discussion in clarifying that freedom does not mean being able to do whatever you want. Freedom is a continuous, interactive and collective process of creating meaning and value based on the ability to choose from the most expansive array of potential projects to either reject or take up and carry forward. Intolerance within conditions of oppression and structural injustice strives to deny others and the community the ability to reject or take up and carry forward potential projects. Acts which strive to undermine freedom in this manner are not due protection.

³³⁵ Beauvoir, *Ethics of Ambiguity*, 90-91

³³⁶ *Ibid.*, 96

³³⁷ *Ibid.*, 97

³³⁸ *Ibid.*, 98

³³⁹ *Ibid.*

I imagine an objector being unsatisfied with this response. However, again, this is not an individualistic conception of freedom. Undermining others' freedom undermines one's own freedom because freedom is at the relational level something we all do together. When Beauvoir states that the existence of others' as free defines my situation and is the basis of my own freedom, she is speaking to the three ways in which our *ontological freedom* is intricately intertwined with our situational and *relational freedom*. The person who claims that their freedom is being denied when they are no longer able to oppress others is working with an individualist social ontology that conceives of persons as only individuals. They are failing to perceive how their ability to create and give meaning to their worlds in the fullest sense is dependent upon others being free to do the same; they are mistaking *pseudo freedom* for freedom. At its core, the objection here really amounts to a different ontological conception of human existence. If the objector is not convinced by my account of *relational freedom*, then they will remain unsatisfied with any Beauvoirian response I could offer.

I grant, however, that the difficulty with the way in which I have defined freedom for Beauvoir is that it does not straightaway universally restrict all projects we disagree with. Beauvoir states, a bit provocatively,

[...] we object to all forms of fascism which seek to fashion the happiness of man from without; and also the paternalism which thinks that it has done something for man by prohibiting him from certain possibilities of temptation, whereas *what is necessary is to give him reasons for resisting it*. [...] Thus, violence is not immediately justified when it opposes willful acts which one considers perverted; it becomes inadmissible if it uses the pretext of ignorance to deny a freedom which, as we have seen, can be practiced within ignorance itself. Let the 'enlightened elites' strive to change the situation of the child, the illiterate, the primitive crushed beneath his superstitions; that is one of their

most urgent tasks; but in this very effort they must respect a freedom which, like theirs, is absolute.³⁴⁰

There is no easy out in Beauvoir's existentialism. There is no ready-made solution to be universally applied to every situation for all time. Individuals and society must assess the given situation in order to determine the best course of action to ensure freedom in principle and then exercise their freedom to commit to enacting that course. Intolerance which serves to undermine freedom in principle ought not be protected, yet at the same time the context of the situation must be assessed in order to ascertain if *particular* projects are intolerant and serve to undermine freedom in principle. Similar to Popper, the situation must be assessed to determine if one can appeal to the other as free using reason and evidence because freedom in principle demands respecting, so far as possible, others as free. At the same time, Beauvoir insists: "violence is justified only if it opens concrete possibilities to the freedom which I am trying to save ... and whatever the purity of the intention which animates me, any dictatorship is a fault for which I have to get myself pardoned."³⁴¹

For example, white supremacist projects are intolerant and undermine freedom in principle in that such projects inherently strive to solidify the occupancy of one group of people in positions of power and privilege under the ideology that this group of people and their way of understanding and experiencing the world is by nature superior to other groups. White supremacist projects basically are an attempt to extort meaning and value. White supremacists are entitled to neither put such projects out into the world nor to have

³⁴⁰ Ibid., 138; italics mine.

³⁴¹ Ibid., 137

their projects recognized as meaningful by others because, as Arp states, “those actions that realize values antithetical to moral freedom cannot be justified by the end of defending freedom.”³⁴² Within a historical socio-political situation in which Black and brown people have endured racism and structural injustice limiting their *situational freedom*, projects to defend Black and brown people are projects which promote freedom in principle and are not only entitled to be put out in the world but also establish in others a responsibility for supporting such projects. In an upcoming chapter, I explore concrete case studies and make an argument for why, given the context of our historical socio-political situation, we ought not tolerate particular intolerant acts of disobedience.

Absolutely without any doubt there is an inherent conflict that arises when choosing not to tolerate the intolerant, in choosing to take up or reject projects. Kruks states

It is not possible unambiguously to justify injuries inflicted on others in the name of allegedly universal principles, precepts, values, or rights not even [...] in the name of the kind of freedom that Beauvoir herself values. To sacrifice others in pursuit of a valued end will always be what Beauvoir calls *une scandale*. [...] the claim to struggle to free all or to act for any other “universal” end, such as justice or human rights for “all,” can mask a dangerous refusal of responsibility for the injuries that may ensue. Thus, even as she persists in affirming the value of freedom and in demanding a politics that facilitates its widest possibilities, Beauvoir recognizes the risks that such a politics runs: It would be in bad faith to pursue her own commitment to freedom without regard to the failures and harms it will entail.³⁴³

Beauvoir is clear, the choice to pick up some projects is at the same time a refusal and denial of the converse projects which puts people in conflict with each other.³⁴⁴ When a choice must be made between two conflicting projects, someone is going to get hurt.

³⁴² Arp, *The Bonds of Freedom: Simone de Beauvoir's Existential Ethics*, 131

³⁴³ Kruks, *Simone de Beauvoir and the Politics of Ambiguity*, 40; 53

³⁴⁴ Beauvoir, “Pyrrhus and Cineas,” 108; Beauvoir, *Ethics of Ambiguity*, 99

Beauvoir argues this point: We are not entitled to having our projects recognized as meaningful.³⁴⁵ Other free persons are absolutely under no obligation to find any individual's or group's projects meaningful, despite having a moral and political responsibility to do so. We must accept the fact that other people may not find our projects meaningful and we cannot force them to do so. So long as our projects do not strive to undermine freedom in principle, all we are entitled to is the ability to put our projects out in the world.³⁴⁶ In putting our projects out into the world, each person is but one freedom appealing to the freedom of others. We put our projects out into the world as an appeal to others seeking their response to our appeal, but we cannot force them to respond even in cases where they may have a responsibility to do so.³⁴⁷ This process of separate freedoms appealing to each other is necessary for our projects to obtain continued meaning and is a communicative aspect of our freedom as tripartite; as individual *ontological freedoms* whose shared situation can promote or hinder their *situational freedom* and whose freedom is relationally intertwined.

As argued above, we are justified in limiting or restricting intolerant projects in order to support freedom in principle. And, under a Beauvoirian conception of freedom, others have a responsibility to support projects that strive to promote freedom in principle. In situations of oppression, in order to support freedom in principle we may have to resort to force or coercion and limit particular projects. Kruks states, "Since rational argument will rarely convert oppressors into advocates of others' freedom, Beauvoir concludes that

³⁴⁵ Beauvoir, "Pyrrhus and Cineas," 136

³⁴⁶ Ibid.

³⁴⁷ Marso, 57

coercion will sometimes be the most appropriate course of action.”³⁴⁸ However, Beauvoir states, coercion and force destroy the relational aspect of freedom; the relational aspect of freedom that relies so heavily on separate subjects appealing to each other as free.

Beauvoir states, “One cannot, therefore, lightheartedly accept resorting to force. It is the mark of a failure that nothing can offset.”³⁴⁹ Force or coercion for the sake of freedom in principle is both freedom in action in the service of freedom in principle as well as a failure of freedom to secure an appeal for freedom in principle.

Thus, as Kruks states, we are not unambiguously justified in limiting others’ projects.³⁵⁰ Taking up Kruks on this point, we are ambiguously justified. To limit one group’s ability to put their projects out into the world may be necessary for the sake of freedom in principle, but it is still a failure of freedom. People just need to be honest about what they are doing and why they are doing it, as well as honest about the fact that they are the ones choosing and giving meaning and value to this course of action. As Beauvoir states above, people need to be accountable for their dictatorship; they need to provide reasons and evidence justifying why and how limiting some projects serves to best promote freedom in principle. We can restrict the projects of the intolerant so long as we appeal to each other with reasons and evidence supporting why their projects given the context of the historical socio-political situation warrants it.

One might rightly be concerned about the risks involved and argue tolerating the intolerant is justified as necessary due to rights protecting freedom of speech and freedom of conscience. At the core of this concern is the very relevant worry about infringements on

³⁴⁸ Kruks, *Simone de Beauvoir and the Politics of Ambiguity*, 54

³⁴⁹ Beauvoir, “Pyrrhus and Cineas,” 138

³⁵⁰ Kruks, 54

individual liberties. Beauvoir shares this concern. Sliding too far on the side of the community, individual lives become “reduced to pure facticity,” and “congealed in [their] immanence”; each one “no longer appears as anything more than a thing among things which can be subtracted from the collectivity of other things without its leaving upon the earth any trace of its absence.”³⁵¹ Beauvoir makes it clear that she is concerned about protecting freedom in its fullest form, which entails respecting individual freedom. Sliding too far on the side of the community would be a grave error because it would deny the ambiguity of human existence as both an individual and as a member of the community.

Yet, from a Beauvoirian perspective the question might be asked: Are we subjugating our ability to creatively act and choose a course of action by asserting we cannot do otherwise but tolerate the intolerant? Recall the concept I noted above: We are not justified in deferring to cultural, social, political, and/or legal precepts that deem any act as absolutely wrong because “no behavior is ever authorized to begin with” and existentialist ethics “is the rejection of every principle of authority.”³⁵²

Beauvoir associates the strict and absolute adherence to rights with the serious person. She states

The serious man gets rid of his freedom by claiming to subordinate it to values which would be unconditioned. He imagines that the accession to these values likewise permanently confers value upon himself. Shielded with ‘rights,’ he fulfills himself as a *being* who is escaping from the stress of existence. The serious is not defined by the nature of the ends pursued. [...] There is the serious from the moment that freedom denies itself to the advantage of ends which one claims are absolute.³⁵³

³⁵¹ Beauvoir, *Ethics of Ambiguity*, 100

³⁵² *Ibid.*, 142

³⁵³ *Ibid.*, 46

The serious person sets up universal, absolute, and ready-made values to which the serious person refers to in order to avoid responsibility for choosing and enacting a course of action. It is the serious person who convinces themselves that they must or must not act in any particular way because these universal, absolute, and ready-made values prevent them from doing otherwise.

The serious person fails to perceive that it is they themselves who are giving meaning and value to these universal, absolute, and ready-made values. Arp states

The attitude taken by the serious man that certain values are eternal and immutable is the most widespread human attitude, Beauvoir asserts. She implies that many ethical systems, even those which appeal not to religious sanction but, like the liberal political tradition, to some underlying conception of human nature, serve simply as a way for humans to shield themselves from the full consequences of their ontological freedom.³⁵⁴

The serious person subordinates their freedom to universal, absolute, and ready-made ideals, thus abdicating their role and responsibility in being the true originator of meaning and value. Rights are a type of universal, absolute, and ready-made value to which a serious person could subordinate their freedom.

To be clear, Beauvoir is not anti-rights. Her concern resides in how we set up any value as absolute and in doing so are tempted to claim that we cannot take this or that action on a particular issue because we are bound by that value. Her point is that we give that value significance, and thus we can very well take other actions; we are choosing not to and we need to accept full responsibility for this choice. Zakin explains

Clearly Beauvoir is not denying the political import, perhaps even necessity, of rights; what she does challenge is the way in which rights are invoked as a kind of shield by which one evades one's finitude and responsibility. Rights

³⁵⁴ Arp, *Simone de Beauvoir and the Politics of Ambiguity*, 58

offer pregiven ends that appear to “emanate from the ethical universe,” and thereby they can negate freedom; in appealing to rights, we “dissimulate [our] subjectivity” into the identity of citizenship, a solidified subject purged of ambiguity. Any “objective moralism” that institutes a reification of rights in the political sphere can lead to suppression of the tension and risks of negativity, retreating from rather than embracing ambiguity.³⁵⁵

We are both a member of a defined political community, as well as an individual. In telling ourselves that we have no choice but to strictly and absolutely honor a particular right, we are lying to ourselves about our existence as an individual who can think critically about, choose, and commit to other actions. We are subjugating our freedom to a universal, absolute, ready-made value when we think that we must tolerate the intolerant for the sake of a general right.

Beauvoir was critical of the subordination of freedom to rights. Rights are not abstractions within an ideal world, they are enacted in concrete, situated, historical socio-political contexts. Marso explains, referencing *The Second Sex*, “Beauvoir warns that even when and if people have rights as citizens, the ability to exercise these rights is situated by the meaning accorded to bodies, meanings that condition the thoughts and actions of both perpetrators and victims.”³⁵⁶ As Iris Marion Young argues, rights ought not be understood as abstract things to be distributed but instead as relationships within a system of socio-political structures imbued with implicit biases that favor some embodied subjects over others.³⁵⁷ Depending on the context of the historical socio-political situation, if adherence to a general right actually serves to reinforce and perpetuate oppression, then we must

³⁵⁵ Zakin, 42-43

³⁵⁶ Marso, 64

³⁵⁷ Iris Marion Young, *Justice and the Politics of Difference* (Princeton, NJ: Princeton University Press, 1990), 103.

allow ourselves the freedom to reevaluate and respond to the situation to ensure freedom in principle. We must not simply defer to a general right and assert that we are unable to take action.

In short, the answer to the second question is: We are justified in limiting *pseudo freedom* for the sake of freedom in principle when *pseudo freedom* threatens to limit freedom in principle, i.e. limit possibility and choice, by extorting meaning from others. We are justified in restricting the projects of the intolerant if, given the content of the act and/or the context of the historical socio-political situation, such projects would limit the freedom of others. However, freedom in principle demands that we provide reasons and evidence to support our restrictions; freedom in principle demands that we make the appeal to others as free first.

Putting both answers to the two questions together: Acts that are for the sake of the political community are acts that promote freedom in principle given the historical socio-political context of the situation. If, given the historical socio-political context of the situation, an act threatens to undermine freedom in principle, then we are justified in limiting such acts. What is required of us, however, is that we give an appeal for why and how limiting such acts is conducive for promoting freedom in principle.

VI. Conclusion

Simone de Beauvoir's conception of freedom understood as tripartite entails understanding freedom as having ontological, situational, and relational dimensions. Even though we can only ever experience freedom as a coalescence of all three of these aspects, maintaining a distinction between the three preserves the ambiguity at the core of human existence. It maintains that humans are always both individuals who can respond to their

situations by taking up the facts of their existences in spontaneous and creative ways and are members of communities that can either hinder or promote the choices concretely available. Maintaining the ontological aspect of freedom prevents the infantilization of oppressed persons and is politically empowering. Maintaining the situational aspect takes seriously structural injustice. Maintaining the relational aspect respects and acknowledges how individuals develop and act within a community on which they depend. In maintaining the three aspects as distinct yet intricately interrelated, it is possible for individuals to be free yet not responsible or to be gradationally free and responsible.

Freedom, for Beauvoir, is a continuous, interactive and collective process of creating meaning and value based on the ability to choose from the most expansive array of potential projects to either *reject* or *take up and carry forward*. Beauvoir's tripartite conception of freedom, thus, entails a correlative responsibility to act for the sake of freedom in principle. Inasmuch it provides criteria by which to demarcate self-interested acts taken in spite of the political community from acts taken for the sake of the political community. Self-interested acts taken in spite of the political community are acts which refuse to acknowledge others as free, acts which strive to limit others' freedom for the sake of *pseudo freedom*, and/or acts which strive to secure one's own *pseudo freedom* over freedom in principle. Acts taken for the sake of the political community are acts which strive to promote freedom in principle in order to move the political community closer to the normative ideal.

This distinction between acts taken in spite of as compared to acts taken for the sake of the political community serves as the basis for a Beauvoirian inspired theory of *civil*

disobedience. I use this distinction to outline such a theory in the next chapter, and I apply the theory to concrete cases of disobedience in the chapter following the next.

Chapter Four – A Beauvoirian Theory of Democratic *Civil Disobedience*

I. Introduction

In this chapter, I present a Beauvoirian theory of democratic *civil disobedience*. My claim is that Beauvoirian tripartite freedom when applied politically is a type of deliberative democracy. It is the sustained and communicative practice of the political community creating and giving meaning and value to our shared world through choosing to take up and carry forward or reject shared projects.

I argue that a Beauvoirian theory of *civil disobedience* is a type of democratic theory of *civil disobedience* based on a Beauvoirian tripartite conception of freedom. I argue that this tripartite conception of freedom is a moral normative principle that: 1) is based on rational principles that are falsifiable, openly debatable, and capable of being endorsed by anyone, 2) is attuned to and accounts for the historical socio-political context of the situation, and 3) a. serves to protect individual liberties while at the same time b. generates an obligation to all members of the political community. I begin my argument in this chapter by defining the relevant terms of the three proposed criteria.

I argue this principle has two advantages. Firstly, it is based on rational principles that are falsifiable, openly debatable, and capable of being endorsed by anyone. In order to understand how, we need a sense of what it means for a principle to be rational, falsifiable, openly debatable, and capable of being endorsed by anyone. After defining these key terms, I make the case that deliberative democratic theory provides us with this understanding. Understanding democracy as deliberative gives us the context where we can think about normative principles and institutions.

Secondly, Beauvoirian freedom has the benefit of being completely compatible with deliberative democracy; it asks or even demands of us to be deliberative. Why does this matter for *civil disobedience*? Because *civil disobedience*, in order to promote freedom in principle, needs to be ongoing and communicative; it needs to be deliberative as opposed to being either dictatorial or atomistic and individualized.

II. How Does a Beauvoirian Theory of Freedom Meet the Three Proposed Criteria?

What does it mean to say that a principle is rational, falsifiable, openly debatable, and capable of being endorsed by anyone? Broadly speaking, rational principles are nonideological and nonreligious. Such principles do not rely on and thus can be adopted without recourse to religious belief or political ideology. The two rational principles particularly relevant for this discussion are the principles of non-contradiction and normative consistency. To say a principle is openly debatable and falsifiable is to say that the principle is an open question able to be proven false. Finally, to be capable of being endorsed by anyone does not mean that everyone will agree with the principle, only that anyone regardless of their ideological or religious beliefs could agree with the principle.

Now that the main terms of the three proposed criteria have been defined, how exactly does Beauvoirian freedom meet these criteria? I have defined freedom for Beauvoir as a continuous, interactive, and collective process of creating meaning and value based on the ability to choose from the most expansive array of potential projects to either reject or take up and carry forward. Beauvoirian freedom understands freedom as entailing possibility and choice. It is based on three aspects of how humans exist and experience the world: 1) humans act in creative and spontaneous ways, 2) human choice is susceptible to

being determined by historical socio-political factors that can enable and or/undermine agency, 3) individual humans are deeply interconnected to each other by meaning, choice, and possibility. These aspects rely on psychological, phenomenological, historical, and sociological claims.

Moreover, we can understand the promotion of Beauvoirian freedom in two interconnected ways. The promotion of freedom could be understood through a relational social ontology. Even while all values are human-made, including freedom, freedom ought to be absolutely and universally valued, and thus promoted extensively, because it is only through freedom that all meaning and value exists. It is only through the active relation between individuals that freedom emerges. This aspect of freedom is ontological, situational, and relational. These aspects of freedom are very much openly debatable and falsifiable. The position I offer here is situated within an ongoing discussion spanning psychology, sociology, and philosophy about determinism versus freewill and what it means to be “human.”

The promotion of freedom could also be understood normatively. If one values freedom, then one must universally promote freedom or else be in contradiction with oneself. This normative principle entails two rational principles: The principle of noncontradiction and the principle of normative consistency. A contradiction occurs when one attempts to act in two entirely opposed ways at the same time, like someone trying to jump while not jumping. As Arp states, “It is contradictory to deny freedom in order to defend it.”³⁵⁸ Normative consistency obtains when one’s normative beliefs are consistent

³⁵⁸ Kristana Arp, *The Bonds of Freedom: Simone de Beauvoir’s Existentialist Ethics* (Chicago: Open Court, 2001), 131. See my discussion in the previous chapter regarding the Paradox of Toleration, tolerating the intolerant.

with one's actions. It is normatively inconsistent for one to value freedom while at the same time strive to deny others' freedom, presuming their own pursuits are non-contradictory. How to apply the principles in any specific case is openly debatable and falsifiable.

Moving onto the second of the three criteria, how is the principle attuned to and how does it account for the historical socio-political context of the situation? A Beauvoirian theory of freedom takes seriously how freedom can be promoted or truncated based on the facts of our existence. The facts of our existence include the historical accumulation of meanings associated with particular forms of embodiment solidified into concrete socio-political structures. Acts of *civil disobedience* that take seriously Beauvoirian freedom need to be accountable to how freedom works concretely within such situated historical socio-political contexts.

Finally, how does a Beauvoirian conception of freedom serve to protect individual liberties while generating an obligation to all members of the political community? In short, because it takes seriously the ambiguity of human existence. Beauvoir states, "it is true that each is bound to all; but that is precisely the ambiguity of his condition: in his surpassing toward others, each one exists absolutely as for himself; each is interested in the liberation of all, but as a separate existence engaged in his own projects."³⁵⁹ Beauvoirian freedom takes seriously how we are both individuals and members of community, and it stresses

The issue is that the intolerant strive to deny freedom in order to promote their own "pseudo freedom." Beauvoir, as argued in the previous chapter, would not oppose denying the intolerant the ability to put their projects out in the world for the sake of freedom understood as I've defined it for her. If one takes seriously Beauvoir's conception of tripartite freedom, the intolerant's freedom both is and is not being denied. It is being denied in the sense that they would not be able to put their projects out in the world, but it is not being denied because their projects, in striving to promote their pseudo freedom over freedom in principle, are ultimately harming their own ability to be free (i.e. to create and give meaning and value to the world based on the most expansive array of possible projects to either take up and carry forward or reject).

³⁵⁹ Simone de Beauvoir, *The Ethics of Ambiguity* (New York: Citadel Press, 1976), 112.

that we need to navigate the world by acknowledging and respecting both aspects of our existence.

How do we navigate our ambiguity without reducing ourselves to atomized individuality or becoming subsumed in a collective? Based on Beauvoir's assertion that freedom requires active and continuous movement, Sally Scholz provides a solution: Individuals must be able to continuously reaffirm and commit to their choice of whether to take up and carry forward or reject the collective project. Referencing Sandra Bartky, Scholz states "Insofar as anyone is oppressed, the individual's freedom is constrained," yet at the same time

the individual's morally authentic project ought never to be subsumed by group endeavor. Sustaining praxis must then be an individual as much as a group project. [...] there is always the risk that collective praxis will devolve into the serious, that the cause will take on a life of its own and stand over against the individual participants. [...] I *choose* to be part of a collective movement engaged in praxis. [...] Choice – or, more accurately, commitment – holds the key to the question of sustaining praxis. Commitment is an individual's formal or informal pledge or promise to a collective cause. Commitment subsumes reciprocity in that it transforms the reciprocal other into the entire group, each individual makes the commitment to the group out of their particularity. The group does not thus take on a separate existence but exists through individual commitment.³⁶⁰

The continuity of reciprocal action between the individual and the collective, "sustaining praxis," is the key. The individual acts within and upon the collective as the collective acts within and upon the individual. If ever the individual is forced to comply or abrogates their ability to choose, then freedom is not served. The collective project of

³⁶⁰ Sally Scholz, "Sustained Praxis: The Challenge of Solidarity in *The Mandarins* and Beyond," in *The Contradictions of Freedom: Philosophical Essays on Simone de Beauvoir's The Mandarins*, ed. Sally J. Scholz and Shannon M. Mussett (Albany, NY: State University of New York Press, 2005), 54.

freedom as a continuous movement among members of the political community is possible only if individuals constantly and without coercion reaffirm their commitment to the project.³⁶¹

III. Deliberative Democracy and Freedom

My position is that a Beauvoirian theory of *civil disobedience* is based on the normative principle of tripartite freedom. I contend that this understanding of freedom is deeply democratic. A Beauvoirian act of *civil disobedience* is an appeal from one *ontological freedom* to another within a historical socio-political context in which persons exist in various degrees of *situational freedom*. This appeal is for the sake of expanding freedom across a political community. The process of justification requires a free appeal, accountability, and continuous reaffirmation or re-creation. To explicate a Beauvoirian theory of democratic civil disobedience, we need to understand the democratic features of Beauvoirian freedom. Before we can understand how Beauvoirian freedom is democratic, we need to get clear on what conception of democracy is in play here.

To be clear, by “democracy” I do not mean aggregative democracy. I do not mean what has been termed and critiqued as “liberal” or “thin” democracy, where political decision-making occurs outside the realm of political community members’ participation.

³⁶¹ I appreciate Shannon Mussett encouraging me to think more deeply about whether Beauvoir’s conception of freedom is ideal or nonideal, and John Lysaker discussing this topic with me. Along with Lysaker, I am inclined toward the position that Beauvoir’s conception of the ambiguity of existence would hold that the ideal/nonideal distinction in regard to freedom is a false dichotomy. In *Ethics of Ambiguity* p. 79, Beauvoir states: “It is not a matter of approaching a fixed limit: absolute Knowledge or the happiness of man or the perfection of beauty; all human effort would then be doomed to failure, for with each step forward the horizon recedes a step; for man it is a matter of pursuing the expansion of his existence and of retrieving this very effort as an absolute.” As Lysaker stated, in email to author April 7, 2022, “We idealize from what we have attained, [and] in what we have attain[ed] we continue to idealize.”

That is to say, where individuals simply vote for their representatives based on private interests and interest groups lobby public officials who then amongst themselves debate and create law for the given issue. By democracy, I mean deliberative democracy. Noëlle McAfee defines democratic politics as “the process of people having to decide together what to do about a common concern in the face of uncertainty”; it is “a collective act of trying to understand different perspectives, making difficult choices about what ought to be done, to win the consent of others.”³⁶²

Deliberative democracy is an active practice. McAfee’s work concretizes what practices are crucial for a deliberative democracy. She identifies six “key practices [...] aimed at collectively identifying and addressing problems and challenges.”³⁶³

1. Reimagining politics as public practice, including seeing how what publics do throughout the public sphere affects how the overall political system operates.
2. Having a self-understanding as citizens who work with others in their communities to engage in politics broadly understood, that is, as political agents who collectively constitute political institutions and policies and act as such with others in their communities.
3. Identifying and thematizing problems, consciousness raising, setting the agenda.
4. Deliberating with others and working through difficult choices to develop public will.
5. Harnessing public will to identify and commit civic resources, using the public judgement and energy that communities and citizens have created to bring about change.
6. Learning from the past, questioning radically, and judging anew.³⁶⁴

³⁶² Noëlle McAfee, *Fear of Breakdown: Politics and Psychoanalysis* (New York: Columbia University Press, 2019), 17.

³⁶³ *Ibid.*, 8

³⁶⁴ *Ibid.*, 8-9

The first practice underscores the public nature of politics. However, a “public” is not necessarily limited to formal institutionalized structures. McAfee argues that deliberation “occurs throughout the public sphere, not just in governmental structures but throughout civil society, in family life, in the workplace, and anywhere else people take up matters of public concern”; deliberation potentially occurs “throughout a decentered public sphere.”³⁶⁵ “Public,” conceived of much more broadly, takes seriously how political activity occurs throughout society, among individuals variously situated. Politics is something members of a political community *do together* and entails all acts that seek to engage others in addressing matters of public (i.e. shared) concern.³⁶⁶

The second, third and fourth practices underscore the public nature of politics as well as its communicative and accountability aspects. There is a distinction in democratic theory between vertical and horizontal power; between authority residing in the state as a constituted power or residing in the political community as a constituting power. The second practice supports horizontal power, holding that ultimately power resides in the political community; it is the members of the political community who legitimize political institutions and policies through their collective deliberative activity.

Democratic theorists affirm a point made by Martin Luther King, Jr.: Democratic legitimization requires that members of the political community have the ability to have a legitimate say about the formation or continuation of institutions and policies.³⁶⁷ McAfee, following Jürgen Habermas, states, “Democracy’s fundamental principle is that all who are

³⁶⁵ Ibid.

³⁶⁶ For McAfee’s explanation of each of the six practices, see pp. 71-74.

³⁶⁷ Martin Luther King, Jr., “Letter from Birmingham Jail,” in *A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr.*, ed. James Melvin Washington (New York: HarperOne, 1991), 294.

affected by matters of common concern should be able to shape those matters. No one should be subject to a law that he or she had no hand in making. Democracy's normative legitimacy rests on all affected having political agency."³⁶⁸ Democratic legitimacy rests on the political community being able to actively participate in the formation of institutions and policies; to be able to deliberate.³⁶⁹

Democratic deliberation, thus, requires accountability. It requires not rational argumentation, necessarily, but instead giving an account of one's position.³⁷⁰ Giving an account of one's position entails giving reasons for one's position or action, with the understanding that "reasons" can take the form of narratives, emotive descriptions and acts, and subjective experiences. The use of these reasons should not exclude or minimize the use of rational argumentation, scientific evidence, and facts.

It is important to have this expanded conception of accountability because norms of reasonableness that absolutely require deliberation to take the form of rational argumentation function as exclusionary and, thus, are undemocratic. Iris Marion Young argues that in situations of structural injustice, where disempowered groups' concerns are ignored, "Disorderliness is an important tool of critical communication aimed at calling attention to the unreasonableness of others – their domination over the terms of the

³⁶⁸ McAfee, 111

³⁶⁹ I am putting aside the question of how the results of deliberation are determined and if this slides back into majority rule. I am doing so because under a Beauvoirian conception of freedom, the results of the deliberation need to expand freedom in principle, which should in turn minimize the potential for regressive acts by the majority.

³⁷⁰ This is contra William Smith and Jürgen Habermas's view, but aligned with Iris Marion Young's view. See Smith, *Civil Disobedience and Deliberative Democracy* (New York: Routledge, 2013), Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy* (Cambridge: Polity, 1996), Young, "Activist Challenges to Deliberative Democracy," *Political Theory* 29, no. 5 (2001): 670-90 and Young, "Communication and the Other: Beyond Deliberative Democracy," *Democracy and Difference: Contesting the Boundaries of the Political*, ed. Seyla Benhabib (Princeton, NJ: Princeton University Press, 1996), 120-36.

debate, their acts of exclusion of some people or issues from consideration, their use of their power to cut off debate, their reliance on stereotypes and mere derision.”³⁷¹ No one is required to agree with anyone else’s account, but in the spirit of collective ownership, all are required to give each other’s accounts a fair hearing. The second, third and fourth practices highlight how members of political community ought to take ownership of their shared socio-political world, which requires an ongoing commitment to the project of democratic politics widely understood in both scope and form.

The fourth, fifth and sixth practices underscore the how politics is ongoing and continuous. Quoting Cornelius Castoriadis, McAfee states, “A society is autonomous when it sees itself engaged in a continuous process of self-instituting, that is, when it does not forget its mode of founding (with no antecedent metaphysical truth or foundation other than its own imaginary creative capacity) and when it sees this as an ongoing activity.”³⁷² The socio-political world is foundationless; it is solely a human creation. A deliberative democracy, for the sake of freedom, favors a politics of either reaffirmation or re-creation; either reaffirming one’s commitment to or re-creating through the replacement of the given institutional structures and policies; taking ownership.

Freedom, in this deliberative democratic sense, is understood as members of political community collectively and continuously either reaffirming or re-creating their socio-political world. McAfee states, “In a democracy, no one should be ruled by decisions made by a previous generation.”³⁷³ The process of politics must not stop at identifying and

³⁷¹ Iris Marion Young, *Inclusion and Democracy* (Oxford: Oxford University Press, 2000), 49.

³⁷² McAfee, 210

³⁷³ *Ibid.*, 74

thematizing issues. It must move towards re-creating the socio-political world; to changing political institutions and policies.³⁷⁴ The identification and thematization of issues would become a useless fact if not taken up and carried forward; such acts must have the possibility of being springboards for future acts. In short, politics (freedom as deliberative democracy) is not once and done, but a continuous and ongoing, collective and communicative, movement among members of the political community.

IV. Beauvoirian Freedom and Deliberative Democracy

How exactly does Beauvoirian freedom align with the four aspects of deliberative democracy? Freedom, for Beauvoir, is an ongoing, continuous and active movement between individuals within a historical socio-political situation. It is horizontal among the political community and it is necessarily communicative. At the same time, given the ambiguity of our existence, it protects individual projects. Freedom requires members of the political community appeal to each other as free; an appeal from one *ontological freedom* to another that one's projects are worthy of being taken up and carried forward. It requires communication and accountability among members of the political community. Crucially, as all members of the political community are also individuals who are ontologically free, all members are due a foundational level of respect for their projects insofar as those projects are compatible with freedom in principle.³⁷⁵

Liberal theorists are right to be concerned about the danger of populism and group-think for individual liberties. However, because Beauvoir's position takes seriously both

³⁷⁴ Ibid., 196-97

³⁷⁵ This aspect of Beauvoirian freedom protects individual liberties.

the individual and collective aspects of human existence, her position has a simple and elegant response to this liberal concern. If Beauvoirian freedom is, as I argue, democratic deliberation at the socio-political level, then just as one cannot use freedom to destroy freedom, groups cannot use democracy to destroy democracy. This would be contradictory and normatively inconsistent.

In regard to the communicative aspects of deliberative democracy, Beauvoir's conception of freedom does not confine communication to words. Beauvoir states, "I intend to save my being in the world, such as it is realized in my actions, my works, my life. Only through these objects that I make exist in the world can I communicate with others. If I make nothing exist, there is neither communication nor justification."³⁷⁶ Insofar as she includes both actions and creative "works" as projects through which we can engage with others in the socio-political world, she allows for a more expansive conception of communication to include performative, symbolic, and confrontational acts. These acts are types of political action conducive to decentered and radical democratic deliberation because such acts not only draw attention to democratic deficits but also identify and thematize problems within historical socio-political structures while at the same time not limiting themselves; such acts open up future possibilities.³⁷⁷ Sally Scholz states, "Beauvoir sees the aim of political action as not just the particularity of the situation but the opening up of future possibilities."³⁷⁸ Freedom, like democratic politics, occurs when individuals

³⁷⁶ Simone de Beauvoir, "Pyrrhus and Cineas," in *Simone de Beauvoir: Philosophical Writings*, ed. Margaret A. Simons (Urbana, IL: University of Illinois Press, 2004), 129.

³⁷⁷ See for example, Hannah Arendt, *The Human Condition* (Chicago: University of Chicago Press, 1958), 178-79; McAfee, *Fear of Breakdown: Politics and Psychoanalysis*, 72; 85-86; McAfee quoting Peter Dahlgren, *Fear of Breakdown: Politics and Psychoanalysis*, 19; Robin Celikates, "Democratizing Civil Disobedience," *Philosophy and Social Criticism* 42, no. 10 (2016): 984.

³⁷⁸ Scholz, "Sustained Praxis: The Challenge of Solidarity in the Mandarins and Beyond," 53

together communicatively create and give meaning and value to their shared socio-political world, creating a more diverse array of possibilities and opening up the future.

Relational social ontologies are at the core of both deliberative democracy and Beauvoirian freedom. Beauvoir's *relational freedom* takes seriously how we are not fully free unless others are free; others endow our projects with continued meaning and value, without others' projects there would be vast lacunae in available projects for us to pick up and carry forward or reject, and some projects require collective action. As Young states, societies "constitute individuals in their identities and capacities."³⁷⁹ And, Castoriadis, "Outside society [...] the human being is neither beast nor God (as Aristotle said) but quite simply *is not* and cannot exist either physically or, what is more, psychically."³⁸⁰ We are social beings, and this social aspect of our existence entails a normative demand to promote freedom for not just ourselves, but others. Our choices occur in world in which we are deeply interrelated with others. Our choices have continued meaning only through this relation to others; we are dependent upon others. So, we must appeal to others as free. We cannot force their consent without risking being fascists or dictators.³⁸¹

³⁷⁹ Iris Marion Young, *Justice and the Politics of Difference* (Princeton, NJ: Princeton University Press, 1990), 27.

³⁸⁰ Cornelius Castoriadis, "Democracy as Procedure and Democracy as Regime," *Constellations* 4, no. 1 (1997): 2.

³⁸¹ There is a qualification here that I addressed in the previous chapter regarding tolerating the intolerant. As argued in the previous chapter, Beauvoir does not foreclose the possibility of force or coercion. She does argue that we need to be accountable for our use of force or coercion; we need to provide an account of how and why force or coercion better promotes freedom in principle than not using force or coercion. The burden of proof would be on the use of force or coercion, because it is generally understood that force or coercion is a failure of freedom; it is a failed appeal. Democratic theorists, however, largely do foreclose the use of force or coercion. One exception to this rule in democratic theory is Robin Celikates, "Rethinking Civil Disobedience as a Practice of Contestation – Beyond the Liberal Paradigm," *Constellations* 23, no. 1 (2016): 37-45.

Appealing to others entails an obligation to be accountable to others for our positions and actions. Our obligation to provide an account of our position and actions stems from how meaning is created only through human activity.³⁸² Without absolute authorities to justify our actions – no authorities to grant meaning on our actions – we, as individuals interconnected within a shared political community, alone give meaning and value to our actions. In order to decide what is morally required of us, we must consider the historical socio-political situation in which we and others exist; others as much as ourselves because of our *relational freedom*. Appealing to each other as free also respects and promotes each other's freedom; this is another aspect of *relational freedom* discussed in the previous chapter. So, in order to determine what we must do as well as to effectively appeal to each other, we must make every effort to understand how others experience the world within a given historical socio-political context.

To explore this further, how others experience the world, the socio-political context in which acts occur, matters for how freedom is concretely lived for those members of the political community, and thus ought to be of concern for the entire political community. This aspect of freedom, as explicated by Castoriadis, aligns with Beauvoirian freedom. Castoriadis states

One must have the effective possibility to participate in the formation of the law (of the institution). I can be free under the law only if I can say that this law is mine, only if I had the effective possibility to participate in its formation and its positing (even if my preferences did not prevail). The law being necessarily universal in its content and, in a democracy, collective in its source

³⁸² Cf Castoriadis, 4

[...] the result is that, in a democracy, the autonomy (the effective freedom) of all is and has to be a fundamental concern.³⁸³

Castoriadis's "effective freedom" is Beauvoir's *situational freedom*. It is freedom concretized in the lived situation; the concrete expansion of possibility and choice. It is only through freedom that political institutions and laws have meaning and value (i.e. legitimization). Since freedom is collective (i.e. relational), individuals have a duty to promote the effective (i.e. situational) freedom of each and every member of the political community. Only then would political institutions and laws have ethical meaning and value.

In other words, if portions of the political community do not have the ability to freely give shape to the shared political institutions and laws, then those institutions and laws are not legitimized. It would be the socio-political equivalent of the oppressor holding the arms of the oppressed behind their backs and demanding that the oppressed endow the oppressor's acts with meaning and value. The oppressor is, in a very real sense, trying to extort meaning and value from that portion of the political community.

Beauvoir's conception of freedom is also democratic in that both freedom and politics are originaive and creative. Hannah Arendt states, "action has the closest connection with the human condition of natality; the new beginning inherent in birth can make itself felt in the world only because the newcomer possesses the capacity of beginning something new, that is, of acting. In this sense of initiative, an element of action, and therefore of natality, is inherent in all human activities."³⁸⁴ McAfee quoting Castoriadis states,

³⁸³ Castoriadis, 5-6

³⁸⁴ Arendt, *The Human Condition*, 9

Along with others, he used the term *imaginary* to describe this mental mode of how things are, but he also used it to signify the human capacity for creation. He also used the adjective *radical* to describe how people are able to change themselves and their societies, to imagine and construct something new. Our radical imagination is our capacity to question our current laws of existence, institutions, and representations of the world and to create new ones. In other words, the radical imagination is an *instituting* imagination.³⁸⁵

Beauvoir's conception of *ontological freedom* aligns with Arendt's sense of natality and McAfee and Castoriadis's sense of radical imagination. Even though humans are shaped by the social, they are not confined by it. Castoriadis states, "the psyche of each singular human being is not and can never be *completely* socialized and rendered exhaustively conformal to what institutions demand of it."³⁸⁶ For all of these thinkers, the individual has the ability to do something new and is not deterministically confined by the concrete situation in which they exist. Human existence entails an element of spontaneity and creativity that emerges in action.³⁸⁷

Moreover, Beauvoir's conception of *relational freedom* aligns with Arendt's sense of freedom. Sonia Kruks argues that for both Arendt and Beauvoir, "freedom is possible only through our being in the world with others" because freedom does not mean individual autonomy for either of these thinkers.³⁸⁸ Kruks associates Arendt's conception of natality with freedom and argues natality is "only possible within human multiplicity, which she [Arendt] describes as 'the paradoxical plurality of unique beings.'"³⁸⁹ Such a conception,

³⁸⁵ McAfee, 102

³⁸⁶ Castoriadis, 3

³⁸⁷ Notwithstanding the fact that for Beauvoir, our mortality is what motivates us to act, as opposed to Arendt's focus on natality. On another note, for a reading of Beauvoir and Arendt side by side, see Lori Jo Marso, "'An Eye for an Eye' with Hannah Arendt's *Eichmann in Jerusalem*" in *Politics with Beauvoir: Freedom in the Encounter* (Durham, NC: Duke University Press, 2017), 41-66.

³⁸⁸ Sonia Kruks, *Simone de Beauvoir and the Politics of Ambiguity* (New York City: Oxford University Press, 2012), 128.

³⁸⁹ *Ibid.*, 129

argues Kruks, is remarkably similar to Beauvoir's position that "the world would be meaningless without others and that freedom becomes possible only in concrete relations among men."³⁹⁰ Both thinkers recognize possibility and choice emerges relationally.

One significant difference between a Beauvoirian position and some theories of deliberative democracy is the issue of how to understand differences among members of the political community. Some deliberative democratic theories insist on eschewing differences among members of the political community out of concern that differences fracture or hinder the social cohesion needed for deliberative democracy to work.³⁹¹

Contrary to these theorists, a Beauvoirian position would be concerned about eschewing differences because the ambiguity of human existence is such that members of the political community are at the same time both the same and different. Beauvoir takes seriously how one is both an individual and a member of a community. Being an individual entails a sense of uniqueness and difference, while being a member of a community entails a sense of commonality and similarity. Young is very much, even if perhaps unintentionally, channeling Beauvoir when she argues for a politics of difference that understands difference as "ambiguous, relational, shifting, without clear borders that keep people straight."³⁹² Understanding difference as ambiguous "names relations of similarity and dissimilarity that can be reduced to neither coextensive identity nor nonoverlapping otherness."³⁹³

³⁹⁰ Ibid.

³⁹¹ See for example Sheldon Wolin, "Fugitive Democracy," in *Democracy and Difference: Contesting the Boundaries of the Political*, ed. Seyla Benhabib (Princeton, NJ: Princeton University Press, 1996), 31-45; Castoriadis, 4

³⁹² Young, *Justice and the Politics of Difference*, 171

³⁹³ Ibid.

Taking seriously how members of the political community are different is necessary for the promotion of freedom. It takes seriously how differently situated members of the political community phenomenologically experience historical socio-political situations differently due to historical socially constructed meanings attached to different forms of embodiment. These differences account for concrete differences in *situational freedom*, differences that need to be addressed in order to promote freedom. As Young argues,

In the assimilationist strategy, the privileged groups implicitly define the standards according to which all will be measured. Because their privilege involves not recognizing these standards as culturally and experientially specific, the ideal of a common humanity in which all can participate without regard to race, gender, religion or sexuality poses as neutral and universal. The real differences between oppressed groups and the dominant norm, however, tend to put them at a disadvantage in measuring up to these standards, and for that reason assimilationist policies perpetuate their disadvantage.³⁹⁴

Moreover, these differences open up a more expansive array of future possibility. If everyone thought and acted the same, creation would be truncated. A number of psychological studies have found that individuals' creative thinking capacities are heightened when they are introduced to thoughts and practices different from their own.³⁹⁵ Being introduced to diverse thoughts and practices has a number of benefits for fostering creativity, including enhancing individuals' ability to think flexibly and more complexly, as

³⁹⁴ Ibid., 164

³⁹⁵ C. Franzoni, G. Scellato, and P. Stephan, "The Mover's Advantage: The Superior Performance of Migrant Scientists," *Economics Letters* 122 (2014): 89–93; F.C. Godart, W.W. Maddux, A.V. Shipilov, and A.D. Galinsky, "Fashion with a Foreign Flair: Professional Experiences Abroad Facilitate the Creative Innovations of Organizations," *Academy of Management Journal* 58, no. 1 (2015): 195–220; A.K.Y. Leung, W.W. Maddux, A.D. Galinsky, and C.Y. Chiu, "Multicultural Experience Enhances Creativity: The When and How," *American Psychologist* 63, no. 3 (2008): 169–81; W.W. Maddux and A.D. Galinsky, "Cultural Borders and Mental Barriers: The Relationship Between Living Abroad and Creativity," *Journal of Personality and Social Psychology* 96, no. 5 (2009): 1047–61.

well as individuals' ability to be open to learning and incorporating new information and ideas.³⁹⁶ Diversity generates creativity, and creativity opens up a future of possibility.

In summary, there is no absolute authority above and beyond humans. McAfee, citing Castoriadis, explains "No society, no criteria, no norms exist naturally, meaning that none come into being without the artifice of creatures. If politics is itself an art, it is an art of self-making and world making of deciding together under the worst possible circumstances what merits being and what does not."³⁹⁷ We, individual members of the political community, create and give meaning to the socio-political world through our choices, and our choices cannot be justified by recourse to some absolute beyond us. Without absolutes to guide or lean on, our choices necessarily occur within uncertain conditions and we have to accept the possibility of failure. Yet, we cannot solidify our freedom in political objects by refusing to either reaffirm or re-create political institutions and policies. A Beauvoirian theory of freedom holds that we must sustain the practice by actively reaffirming or re-creating our commitment to the larger collective project of freedom and democracy.

V. A Beauvoirian Theory of Democratic Civil Disobedience

In the previous chapters, I have suggested that *civil disobedience* is best understood as law-breaking for the sake of bringing the political community closer to a normative ideal and that only acts which have such reconstructive aims ought to be justified and protected. A

³⁹⁶ Jackson G. Lu, Andrew C. Hafenbrack, Paul W. Eastwick, Dan J. Wang, William W. Maddux, and Adam D. Galinsky, "'Going Out' of the Box: Close Intercultural Friendships and Romantic Relationships Spark Creativity, Workplace Innovation, and Entrepreneurship," *Journal of Applied Psychology* 102, no. 7 (2017): 1093.

³⁹⁷ McAfee, 209

Beauvoirian inspired theory of *civil disobedience* builds on and expands this idea. For a Beauvoirian inspired theory, the paramount moral normative principle that ought to be given meaning and value is freedom in principle. Freedom in principle is paramount because it is only through freedom that meaning and value exists at all.

I maintain that a Beauvoirian theory of freedom is deeply deliberative and democratic, and this principle provides a normative foundation for delimiting acts of *civil disobedience* that ought to be considered justified and protected. However, Beauvoirian theory of democratic *civil disobedience* conceptually differs from other democratic theories of *civil disobedience*.

One type of democratic theory of *civil disobedience* exalts formalized democratic procedures, and thus, privileges disobedient acts that address democratic deficits over and above the content of the disobedient's act. In this type of theory, the disobedient act is justified if and only if it addresses a democratic deficit and reinvigorates ongoing debate about the law or policy in question; the motive or content of the act is inconsequential.³⁹⁸ What matters is the ongoing debate, not the results of the debate.³⁹⁹ This type of theory favors proceduralism for the sake of procedure.

A Beauvoirian theory of *civil disobedience* would value deliberation and participation widely among the public sphere for the sake freedom. Deliberation and participation promote freedom, concrete and lived. Formalized procedures can be

³⁹⁸ See Daniel Markovits, "Democratic Disobedience," *Yale Law Journal* 114, no. 8 (2005): 1933-48, especially 1940 and 1943. Markovits states: "it is natural (and perhaps preferable) for democratic disobedience to proceed without any positive agenda for replacing a protested policy, and unnatural (and perhaps mistaken) for democratic disobedience to insist on a specific policy outcome," p. 1940. See also William Smith, "Civil Disobedience and the Public Sphere," *The Journal of Political Philosophy* 19, no. 2 (2011): 147.

³⁹⁹ For a critique of this view, see William Smith "Civil Disobedience and the Public Sphere."

antithetical to freedom in that, as Young argues, they do not adequately account for structural injustice and implicit biases, oftentimes replicating such injustices and biases.⁴⁰⁰ Such proceduralism, following Young and adding in a Beauvoirian perspective, is insufficiently situational.

A proceduralist might argue that what Young is describing is a case of democratic deficits. However, even if there are no deficits, formalized procedures can become reified so that the procedures become the absolute arbitrator to which individuals refer, abrogating freedom to procedural constraints. In this sense, from a Beauvoirian perspective, proceduralism would become an absolute value hindering *ontological freedom*. For a Beauvoirian theory, freedom instead of formal institutionalized procedures ought to be the normative guide to consider the justifiability and protectability of disobedient acts.

To be sure, it is not that we cannot have formal institutionalized procedures.⁴⁰¹ Similar to the previous discussion regarding rights, we cannot abrogate our freedom to these political objects; we cannot treat them as absolute authority and, thus, artificially stifle our freedom. If we value such procedures and rights, then we must choose and constantly reaffirm our choice of taking them up and carrying them forward. If such political objects hinder freedom, then we can choose to reject them. Thus, this would be a more radical account of democratic deliberation.

If we understand deliberative democracy as occurring throughout decentered publics, as radical and as valuing the sustained practice of freedom, then a Beauvoirian

⁴⁰⁰ See Iris Marion Young's concerns with restricting deliberation to formal institutionalized procedures in "Activist Challenges to Deliberative Democracy," 670-90 and "Communication and the Other: Beyond Deliberative Democracy," 120-36.

⁴⁰¹ See my discussion of general rights in the third chapter.

theory of *civil disobedience* is a type of democratic theory of *civil disobedience*. Acts of *civil disobedience* would be democratic in this sense if they are: 1) communicative, 2) public, 3) ongoing and continuous, and 4) accountable. All of these aspects refer to Beauvoirian tripartite freedom. What is crucial is that acts of *civil disobedience* must keep open the deliberative space where members of the political community can deliberate about the law or policies being contested, and if disobedient acts do not or if these acts serve to exile persons from deliberation who are subject to or effected by the law or policies, then the disobedient acts are illegitimate.⁴⁰²

Acts of disobedience, thus, are civil insofar as they promote and/or are consistent with a continuous, interactive and collective process of creating meaning and value based on the ability to choose from the most expansive array of potential projects to either reject or take up and carry forward. *Civil* in a Beauvoirian sense has three aspects to it. Firstly, the ontological aspect holds that individuals are spontaneous and creative, and thus bear a degree of responsibility, for better or worse, for choosing to obey or disobey. Secondly, the situational aspect entails understanding that one is both shaped by and gives shape to the shared historical socio-political situation in which the political community exists. Thirdly, the relational aspect holds that one has a responsibility to promote freedom in principle for the sake of the political community. All three of these aspects coalesce.

Taking each of these points in turn, acts of *civil disobedience* are committed by ontologically free persons who recognize that they are not merely members of a collective to which they must absolutely obey. *Ontological freedom* grants disobedients the

⁴⁰² I thank John Lysaker for helping me formulate this point more clearly.

understanding that they are not absolutely bound by the laws of the state. Ontologically free persons recognize that they are capable of spontaneous and creative responses in support of freedom in principle.

If persons choose to obey the laws of the state, then they are the ones making the choice and through such a choice giving meaning and value to either those laws or to something else that would be harmed by the consequences of disobedience. Conversely, if persons choose to disobey the laws of the state, then they recognize that they are giving meaning and value to something that goes beyond and is being undermined by the laws of the state. Either way people must accept a degree of responsibility for the choice to either obey or disobey the laws of the state.⁴⁰³

Accepting responsibility in this sense should not be equated with accepting legal punishment. Accepting legal punishment, as explored in the first chapter, has for many liberal theorists implicitly entailed conceptions of *fidelity to law* and the legitimacy of the state. Conversely, accepting legal punishment for King was arguably a tactical move by which persons demonstrate concern and respect for their political community. Following King, accepting responsibility in a Beauvoirian sense would be to be accountable for one's act, which in turn entails demonstrating concern and respect for one's political community.

To be accountable would be to provide reasons for one's act, as well as to own one's act and whatever consequences emerge from it. Accepting responsibility in this sense is to accept if and how one's individual choice ripples out into the shared socio-political world

⁴⁰³ There is a qualification here. As argued in the second chapter, marginalized groups' disobedience is treated more harshly than dominant groups' disobedience. The choice to obey an unjust law because one is a member of marginalized group and would face harsh retaliation could be, depending on the context, a situation in which one is both free and not responsible.

and affects the lives of others with whom one shares a political community, which in turn affects one's own life. So, one owes the political community an account of why one chose disobedience and how the act supports freedom in principle. *Civil* in this first sense is being accountable for one's choice which entails taking seriously one's obligations to, interconnection with, and dependence upon the political community of which one is a member. *Civil* in this first sense entails the public, communicative, and accountability aspects of deliberative democracy.

This leads to the second way in which *civil* is understood in a Beauvoirian theory of *civil disobedience*. As members of a political community in which persons share a historical socio-political situation, the courses of action available for persons to pursue may be hindered or promoted by the context of the situation. For example, voter suppression in the US targeted at Black and brown people makes it onerous for these groups to vote. This hinders these groups' ability to have a representative voice in democratic processes which, evidence strongly suggests, perpetuates structural injustice and economic inequality.⁴⁰⁴ Laws may hinder the ability of individuals, groups, or the community to either reject or take up and carry forward projects. *Civil* in this second Kingian and Beauvoirian sense entails understanding that one is both shaped by and gives shape to the shared socio-

⁴⁰⁴ The re-enfranchisement of Black voters in some areas of the US South due to the Voting Rights Act of 1965 has been cited as contributing to Black Americans receiving at least some fairer treatment in the criminal justice system, state investments in programs designed to assist Black Americans, and at least some reductions in wage disparities between Black and white workers. See, David Mitchell, Austin Clemens, and Shanteal Lake, "The Consequences of Political Inequality and Voter Suppression for U.S. Economic Inequality and Growth," *Washington Center for Equitable Growth*, accessed April 8, 2021, <https://equitablegrowth.org/research-paper/the-consequences-of-political-inequality-and-voter-suppression-for-u-s-economic-inequality-and-growth/?longform=true>. This is not to suggest that injustice became completely ameliorated, but that the situation became relatively more equitable.

political situation in which the political community exists. *Civil* in this sense entails the public aspects of deliberative democracy, in particular how democratic legitimacy and freedom obtains only if all members of the political community have equal opportunity to deliberate on the given issue.

Finally, this leads to the third sense of *civil* in a Beauvoirian theory of *civil disobedience*. As relationally intertwined with others, persons have a responsibility to ensure the continuity of freedom in principle for the sake of the political community. Acts, laws, or any other socio-political policies and norms that either aim to or effectuate a dissolution of the continuity, interactive, and collective aspects of existence are immoral. Situations of oppression place a heavy moral burden on people to do whatever they can to rectify the oppression and ensure that people are free.

If the laws of the state support freedom in principle, then disobedience would be “uncivil” and for the sake of self-interested personal gain. If the laws of the state are detrimental to freedom in principle, then disobedience would be *civil* and for the sake of bringing the political community closer to the normative ideal. Beauvoir would again align with King on this point in that what is most important is bringing the community closer to the normative ideal. The significant difference is that the normative ideal in a Beauvoirian theory of *civil disobedience* is not based in religious belief. *Civil* in this sense entails both the public as well as the ongoing and continuous aspects of deliberative democracy.

Civil in a Beauvoirian theory of *civil disobedience* does not preclude the use of force or coercion. A significant amount of scholarship has been devoted to debating what violence is and whether violence could ever be considered “civil.” Kimberley Brownlee

argues that acts of discriminate property damage could be effective communicative appeals in that such acts demonstrate both the disobedient's frustration and sincere concern with the issue.⁴⁰⁵ Tony Milligan argues that if by *civility* we mean "respect for persons," then depending on the context, property damage does not necessarily disrespect persons.⁴⁰⁶ In fact, adding to Milligan, discriminate property damage may be a moral appeal to individuals; calling individuals to be better selves which demonstrates a deep respect for individuals as moral persons capable of expanding their conception of the moral and political community, and concomitantly their roles and responsibilities in such an expanded community. Finally, Joseph Raz argues that some forms of violence may be considered civil if such violence is necessary to bring about an end to an egregious wrong.⁴⁰⁷

A Beauvoirian theory of *civil disobedience* would align with these thinkers' positions because it redefines what it means to be *civil* and because the paramount normative moral principle is freedom as opposed to *fidelity to law*. To be *civil* in this theory is to promote freedom in principle. The relational aspect of freedom holds that free individuals ought to appeal to others as also free. However, as explored in the previous chapter, Beauvoir does not preclude the use of force or coercion for the sake of freedom in principle. The caveat is that the actor must be accountable for their use of force or coercion; the actor must provide reasons and evidence to account for how their use of force promotes freedom in principle

⁴⁰⁵ Kimberley Brownlee, "Features of a Paradigm Case of Civil Disobedience," *Res Publica* 10, no. 4 (2004): 349-50.

⁴⁰⁶ Tony Milligan, *Civil Disobedience: Protest, Justification and the Law* (New York: Bloomsbury Academic, 2013), 16-17.

⁴⁰⁷ Joseph Raz, *The Authority of Law: Essays on Law and Morality* (Oxford: Clarendon Press, 1979), 267.

over the other available courses of action. For example, in the following chapter, I make the case for justifiably limiting white supremacist acts of disobedience.

Coinciding with Brownlee, a Beauvoirian theory of *civil disobedience* would hold that civilly disobedient acts are reflective of the actor's chosen project and are communicative appeals. Civilly disobedient acts demonstrate a commitment to the aim of freedom in principle and are an appeal to others to also commit to this aim by taking up and carrying forward the disobedient's project. These acts are demonstrations of what the actor ascribes meaning and value to consistent with freedom in principle and are appeals to others to find meaning and value in the same. Similar to Milligan, individual freedoms appeal to each other by calling on each other to understand their roles and responsibilities to each other as members of a moral and political community interconnected within a shared socio-political situation. But, at times these appeals may fail. An egregious wrong is a situation of oppression where freedom is sacrificed for the sake of *pseudo freedom*.⁴⁰⁸ Thus, similar to Raz, such appeals may require force or coercion for the sake of freedom in principle.

Another central feature of *civil disobedience* is *publicness*. *Publicness* in this sense is conceived of differently than *public* in the sense that I have been using it. I have been using *public* to convey interrelatedness between ontologically free actors within a shared historical socio-political situation. *Publicness* in John Rawls's theory of *civil disobedience* is a form of public address; a communicative act which gives "voice to conscientious and deeply held convictions."⁴⁰⁹ Inasmuch, disobedient acts for Rawls must be public in two ways:

⁴⁰⁸ One of the most notable historical examples being the rhetoric surrounding "state's rights" in the antebellum US South.

⁴⁰⁹ John Rawls, *A Theory of Justice* (Cambridge: Belknap Press, 1971), 363.

first, they must appeal to public principles (i.e. justice), and second, they must be done in a public forum with advance notice, not covertly or secretly.⁴¹⁰

In regard to *publicness* in the second sense, Brownlee, Brian Smart, Robin Celikates, and Milligan all argue, from different perspectives, that many disobedient acts – for example, nonhuman animal rescues, blocking an intersection, or obstructing the deportation of immigrants – require covertness and/or not notifying authorities in advance in order for the acts to effectively achieve the intended aim.⁴¹¹ Publicizing disobedient acts allows for opponents and authorities to thwart the acts and the disobedients' intended message.⁴¹² In regard to *publicness* in the first sense (as an appeal to the public's shared conception of justice), Peter Singer argues that *civil disobedience* may also be a public plea for reconsideration; a plea for the public to reconsider its very conception of justice.⁴¹³ For example, the disobedient may be urging the public to extend moral and legal standing to nonhuman animals.

In a Beauvoirian theory of *civil disobedience* freedom is something that members of a political community do together. One person may endow a project with meaning and value in a very narrow sense so long as they put their creative efforts into the project, but if others are unable to pick up and carry the project forward, then the project threatens to become meaningless. A disobedient who breaks an unjust law in secret, that is to say the act involves no other person whatsoever and no one is ever aware of it, would not be

⁴¹⁰ Ibid., 366

⁴¹¹ Milligan, 134; Celikates, 38; Brownlee, "Features of a Paradigm Case of Civil Disobedience," 348; Brian Smart, "Defining Civil Disobedience," in *Civil Disobedience in Focus*, ed. Hugo Bedau (New York: Routledge, 1991), 206.

⁴¹² Brownlee, "Features of a Paradigm Case of Civil Disobedience," 348

⁴¹³ Peter Singer, "Disobedience as a Plea for Reconsideration," in *Civil Disobedience in Focus*, ed. Hugo Bedau (New York: Routledge, 1991), 122-29.

committing an act of *civil* disobedience in a Beauvoirian theory. The disobedient's act would become a useless object, a fact.

Relational freedom relies on individuals being able to make communicative appeals to each other as free subjects. A civilly disobedient act takes seriously one's interconnection with and dependence upon others within the political community, as well as one's responsibility to promoting freedom in principle in order to bring the political community closer to the normative ideal. As freedom is continuous, interactive, and collective, in order to promote freedom in principle one's act must appeal to others within the political community. Thus, a Beauvoirian theory of *civil disobedience* must hold that acts of disobedience be "public" in some sense.

However, a Beauvoirian theory of *civil disobedience* would allow for a less restrictive conception of *publicness* because it acknowledges the context of the situation matters. A Beauvoirian theory of *civil disobedience* would somewhat align with *publicness* in Rawls's first sense (i.e. an appeal to the community's shared conception of justice) in that a Beauvoirian theory would hold that one's act must appeal to others as free subjects for the sake of freedom in principle. The crucial difference is the foundational normative moral principle doing the work; instead of justice, it is freedom.

The significance of this shift in principles is evident in regard to *publicness* in Rawls's second sense (i.e. an act performed in a public forum with advance notice). As argued in the first chapter, Rawls connected *publicness* in this second sense with a *fidelity to law*. A Beauvoirian theory, however, would hold that the paramount normative principle is freedom, and so would disregard the *fidelity to law* undertones. Thus, depending on the

context, if covert acts better serve the aim of freedom in principle, then covert acts are permissible. The caveat, however, would be that the act cannot be done by a sole individual and kept secret so that nobody ever knows the act occurred. An act may be done covertly involving a sole individual, but then be publicized. Or, an act may never be publicized but involve other persons. The key for *publicness* in a Beauvoirian theory is that the act must expand the possibility of choices available to others; it must be available as a possible spring-board for the acts of others.

Consider the examples noted previously – nonhuman animal rescues, blocking an intersection, and obstructing the deportation of immigrants. Regarding blocking an intersection without advance notice, so long as the act appeals to freedom in principle, this would be a public act in a Beauvoirian theory. It makes a publicized appeal to others as free subjects, an appeal that others are able to reject or take up and carry forward.

Regarding obstructing the deportation of immigrants, perhaps by assisting immigrants in evading arrest, this would also be a public act. Even if it is never publicized, the act would be *public* in the sense that it directly affects the lives of others who are able to take up the act and carry it forward. Notice the trade-off that occurs in this example. If the act requires covertness to secure freedom in principle, then the lack of being publicized to the wider political community does not diminish the act's *publicness* so long as the act involves other persons.

Regarding nonhuman animal rescue, this would also be a public act if after the covert operation the rescuer publicizes the act. In publicizing the act, it becomes a project that others can either choose to reject or take up and carry forward. I would argue that

even if the act is not publicized it could still be considered a public act if one reconsiders the status of nonhuman animals and humanity's relationship with them. I make this case in a following chapter when I examine nonhuman animal rescue through the perspective of a Beauvoirian theory of *civil disobedience*.

VI. Conclusion

Insofar as Beauvoir's tripartite conception of freedom understands freedom as something ontologically free individuals relationally do together within a shared situation, when applied politically it is a type of deliberative democracy. It is originaive and creative, ongoing and collective, public and communicative. It takes seriously how humans are both individuals who are ontologically free as well as relationally interconnected members of a community. Thus, it seeks to expand possibility and choice through the promotion of diversity and creativity, protecting individual liberties, while at the same time affirming a relational ontology that acknowledges and respects individual's obligations to the shared political community. If understood in this way, acts of *civil disobedience*, acts that ought to be justified and protected, are acts that navigate this ambiguity of human existence.

Acts of *civil disobedience* that ought to be justified and protected are public, accountable and communicative acts in which the actor promotes the ongoing and collective project of creating and giving meaning to our shared world. Extending this argument further, when people engage in acts of *civil disobedience*, they are addressing the political community and asking for a response; contra a liberal theory where someone can commit an act of disobedience without asking for a response.

In a Beauvoirian theory of democratic *civil disobedience*, we cannot be indifferent to each other. When someone addresses us, that is to say when we witness an act that wills freedom in principle, we would be responsible for responding and if we do not then we are responsible for willing unfreedom. Under a Beauvoirian theory, we can be answerable to acts that we disagree with and deliberate about which acts will further freedom in principle. What is important is the ongoing and collective process of creating and giving meaning and value to our shared political world, and that demands that we act and be accountable to each other for our choices.

Chapter Five – A Beauvoirian Theory of Democratic *Civil Disobedience* Applied to Concrete Cases

I. Introduction

In this chapter, I apply the Beauvoirian theory of democratic *civil disobedience* I outlined in the previous chapter to concrete cases of disobedience. Ultimately, I argue that disobedient acts taken for the sake of expanding individuals' scopes of moral consideration ought to be justified and protected as acts of *civil disobedience*; these acts are reconstructive. Acts which truncate the scope of moral consideration and seek to extort meaning and value for the disobedient's beliefs are not worthy of justifiability or protection; these acts are regressive.

I begin by exploring the difficulty of applying a Beauvoirian theory of democratic *civil disobedience* to concrete case studies. Insofar as freedom is originaive and creative, we are unable to defer to preestablished social, political or legal precepts when determining whether an act is justified and protected. We must carefully provide an account for how the act promotes freedom in principle given the context of the situation.

Next, I examine the cases of taking down a confederate flag and refusing to issue same-sex marriage licenses. I argue that the former is a case of promoting freedom in principle and the latter is not. The former case sought to promote both the *situational freedom* of Black and brown peoples and the *relational freedom* of the political community by expanding the scope of moral consideration. The latter case, conversely, truncated the scope of moral consideration and sought to extort meaning and value for the disobedient's beliefs; it was a case of *pseudo freedom*.

Finally, I explore how a Beauvoirian theory of democratic *civil disobedience* could expand the scope of moral consideration even further by applying it to the case of disobedient acts taken for the sake of nonhuman animals. I do so by examining three hypothetical arguments that could be made to justify such acts. The first hypothetical argument is that humans can justifiably make nonhuman animals' welfare their project. The second hypothetical argument is that human and nonhuman animals' projects are co-evolutionarily intertwined in such a way that human freedom is diminished when human animals are unable to act in some sense freely. The third hypothetical argument is that nonhuman animals could potentially have *ontological freedom*, and that it is better safe than sorry that we treat them as if they do.

II. Beauvoirian Freedom and the Lack of Preestablished Justificatory Precepts

To apply a Beauvoirian theory of *civil disobedience* to concrete cases, we need to start with understanding the difficulties associated with such application. It is not as easy as deferring to preestablished social, political, or legal precepts. Beauvoir states

[...] the good of an individual or group of individuals requires that it be taken as an absolute end of our action; but we are not authorized to decide upon this end *a priori*. The fact is that no behavior is ever authorized to begin with, and one of the concrete consequences of existentialist ethics is the rejection of all the previous justifications which might be drawn from the civilization, the age, and the culture; it is the rejection of every principle of authority. To put it positively, the precept will be to treat the other (to the extent that he is the only one concerned [...]) as a freedom so that his end may be freedom; in using this conducting wire one will have to incur the risk, in each case, of inventing an original solution.⁴¹⁴

⁴¹⁴ Simone de Beauvoir, *The Ethics of Ambiguity* (New York: Citadel Press, 1976), 142.

Our actions are unable to be justified by simply deferring to preestablished social, political or legal precepts because in doing so we are subordinating our freedom to such precepts. We are not justified in providing such precepts as reason for either our use of force or coercion to limit another's actions or for our own actions. We must accept that we are the ones choosing a particular course of action and we must be accountable for that choice. We must analyze the given situation, replete with all of its historical socio-political meanings solidified into institutions and structures that act to either promote or hinder possibility and choice, and determine as much as we are able the full context of the situation.

Patricia Hill Collins states,

Freedom is always a state of becoming, because acting on our choices influences not only the experiences that we have but, more importantly, our understanding of our experiences. Ambiguity shapes both the patterns of our choices – of never knowing with certainty in the moment of choice whether one choice is better than another – as well as our inability to know with certainty all possible choices in any given situation.⁴¹⁵

We must strive to understand as much as possible how others experience our shared historical socio-political situation. Ultimately, however, we must accept that we are finite with a finite understanding of our shared world and a finite ability to foresee the future. We cannot know for certain the vast array of possible courses of action before us. Nor can we know for certain how our actions will play out in the future.

Due to the inherent risk associated with being unable to defer to preestablished social, political and legal precepts as well as due to us being finite, we may be tempted to

⁴¹⁵ Patricia Hill Collins, "Simone de Beauvoir, Women's Oppression and Existential Freedom," in *A Companion to Simone de Beauvoir*, ed. Laura Hengehold and Nancy Bauer (Hoboken, NJ: John Wiley & Sons, 2017), 326.

justify our current choices in a future “greater good.” Beauvoir’s position does not allow for this strategy. She states

There is an art only because at every moment art has willed itself absolutely; likewise there is a liberation of man only if, in aiming at itself, freedom is achieved absolutely in the very fact of aiming at itself. This requires that each action be considered as a finished form whose different moments, instead of fleeing toward the future in order to find there their justification, reflect and confirm one another so well that there is no longer a sharp separation between present and future, between means and ends.⁴¹⁶

Attempting to find justification in a future “greater good” sacrifices the individual for the “greater good” and in doing so does not acknowledge the ambiguity of existing as both an individual and a member of a political community.

Scholz further explains Beauvoir’s point here: “Sacrifices will sometimes have to be made in order to promote freedom, but these sacrifices are not costless. Each case requires a confrontation between the values realized the values aimed at as well as the meaning with the content of each act. [...] the key is to ensure that the means used to advance a cause are consistent with that cause.”⁴¹⁷ One’s means to advance a cause must not contradict or be normatively inconsistent with the end of one’s cause. Freedom as an end demands that one’s means promote freedom. In other words, one’s disobedient act must appeal to others as free and give an account for why and how their disobedient act promotes freedom in principle, even if sacrifices must be made. This is the core of a Beauvoirian democratic theory of *civil disobedience*.

⁴¹⁶ Beauvoir, 130-31

⁴¹⁷ Sally Scholz, “Sustained Praxis: The Challenge of Solidarity in *The Mandarins* and Beyond,” in *The Contradictions of Freedom: Philosophical Essays on Simone de Beauvoir’s The Mandarins*, ed. Sally J. Scholz and Shannon M. Mussett (Albany, NY: State University of New York Press, 2005), 59-60.

Moreover, another difficulty arises when discussing the scope of the political community. I have purposefully avoided defining “political community” until after explicating Beauvoir’s tripartite freedom because the political community would be ambiguous; it would be dependent on the context of the situation. For King, the political community would be the Beloved Community and extend across all of humanity. In a Beauvoirian theory, the political community would extend across all ontologically free persons. We could consider this an ontologically informed conception of political community.

However, in a Beauvoirian theory, situation matters. There is a sense in which Beauvoir’s political community, for the sake of understanding the justifiability and protectability of an act, is contextually dependent because of *situational freedom*. In a globalized world, with commerce, communication, and information reaching across national boundaries, one’s project might be picked up and carried forward tens of thousands of miles away by someone they have never met. However, other acts one commits, for example like buying a houseless person, may only be picked up and carried forward locally. Thus, the political community is potentially global, but in effect may only be local.⁴¹⁸ Who exactly the political community is would be one of the context dependent questions one would need to ask themselves before acting to promote freedom in principle.

How would my action promote freedom in principle? This question raises further questions: Who is potentially going to be impacted and how are they impacted? How far and to what extent are my actions likely to ripple out to affect others? What is the historical

⁴¹⁸ Even more, as I argue in a following chapter, that the political community could also include nonhuman animals.

socio-political context in which my acts occur? What historical socio-political constructs and structures remain operative in our present context? How do historical socio-political constructs and structures hinder or promote individuals' abilities to pursue their projects? How does my act either reinforce and promote or hinder and thwart historical socio-political constructs and structures that serve to limit freedom? How does limiting others' projects truncate or expand possibility and choice for the entire political community?

This brings us to a few concrete cases. These actors have made an appeal through their disobedient acts, and they have provided an account of each of their acts. They put their projects out into the political community. The discussion here is whether their acts are "justified" and ethical. Justification in a Beauvoirian sense occurs when others take up and carry forward one's projects. Acts are ethical when they promote freedom in principle. So, the question I seek to examine is whether these actors' projects, their acts of disobedience and the content of the acts, ought to be taken up and carried forward. The question is: Are these acts indeed *civil* disobedience from a Beauvoirian perspective?

III. Taking Down a Confederate Flag

On June 27, 2015, Bree Newsome Bass climbed to the top of a flag pole and removed the Confederate battle flag that flew over the State Capitol building in Columbia, S.C. White anti-racist activist James Tyson worked with Newsome Bass to arrange the act of *civil disobedience* and helped her jump a four-foot fence while she was weighed down with climbing gear. Tyson reportedly, "stood quietly at the base of the pole while she climbed, remained in the background. That was the plan, to show white support without

dominating.”⁴¹⁹ He stated, “Bree became a hero to a whole community that needed a hero.”⁴²⁰ Another interview with Newsome Bass reported, “It could have been someone else climbing the pole. She and the other activists involved thought about it, but ultimately decided that it would be meaningful for a black woman to remove it. Ms. Newsome Bass said the activists understood that the political power of black women is often overlooked and taken for granted.”⁴²¹

This disobedient act from a Beauvoirian perspective would be a justified act of *civil disobedience*. Newsome Bass and Tyson took into consideration the concrete details of the historical socio-political situation. Newsome Bass removing the flag while Tyson stood in the background to offer silent support concretized and enacted Black women’s freedom. Black peoples’, and especially Black women’s freedom, was what needed to be promoted. Had Tyson took on a more prominent role, he would have been rightly considered as impeding the very freedom that he had professed to be an advocate for. In conditions of oppression where some peoples’ freedom is denied, the promotion of their freedom requires concrete instances of them acting freely so that they themselves can give meaning and value to their worlds. Tyson would have denied Newsome Bass, and all of the people who identify with her, of this ability if he had taken a more prominent role in the act. The means would have contradicted and been normatively inconsistent with the end.

⁴¹⁹ Ann Doss Helms, “Bree Newsome, James Tyson Talk about SC Confederate Flag Grab,” *Charlotte Observer*, July 6, 2016, <https://www.charlotteobserver.com/news/local/article26578984.html>

⁴²⁰ Ibid.

⁴²¹ Tariro Mzezewa, “The Woman Who Took Down a Confederate Flag on What Came Next,” *The New York Times*, June 14, 2020, <https://www.nytimes.com/2020/06/14/us/politics/bree-newsome-bass-confederate-flag.html>

Moreover, Newsome Bass's disobedient act was civil in all three senses that I have discussed. She used a performative and public act as a communicative appeal. She not only demonstrated her own freedom, she appealed to others as free giving them the choice to take up or reject her project; she was accountable to the larger political community, giving reasons for her act. Her communicative appeal was a significant contribution to the political community's deliberation about structural injustice and racism in the US, reported on both the local and national levels.

She challenged the historical socio-political structures that are symbolized by the Confederate flag and that continue to limit the freedom of Black and brown peoples. In doing so, her project understood and respected the historical socio-political context as well as aimed at expanding freedom for the entire political community. She was not seeking to limit others' freedom for the sake of her own *pseudo freedom*. As argued in the previous chapter, freedom does not mean having the ability to do whatever one wants. Freedom does not mean having the ability to fly a Confederate flag at a building that is supposed to represent democracy and freedom for all of the political community. As much as advocates for the flag might contend that it is merely a symbol of their culture, the culture of the US South that it is directly linked to is white supremacy. Objects that at their very core symbolize the limitation of others' freedom cannot be symbols for freedom – this is contradiction. Newsome Bass's act was to seek the expansion of freedom over *pseudo freedom*. As argued in the previous chapter, the expansion of freedom for the oppressed opens up a future of possibility and choice for everyone in the political community. Newsome Bass's act promoted not just Black and brown peoples' *situational freedom*, but also *relational freedom* for the entire political community.

IV. Refusing to Issue Same-Sex Marriage Licenses

The second is the case of Kim Davis. In August 2015, after the US Supreme court ruled that same-sex couples have the constitutional right to marry, a Kentucky county clerk, Davis, citing religious freedom, was arrested for refusing to issue marriage licenses to same-sex couples. From a Beauvoirian perspective, disobedient acts that seek to promote one's *situational freedom* over the freedom of others are not justified. Davis's act would be an example of *pseudo freedom*, and thus would not be a justified act of *civil disobedience*.

What Davis wants is not just for there not to be same-sex marriage. What she explicitly stated, as I noted in the second chapter, is that she wants her religious belief that same-sex marriage is wrong to be recognized as meaningful and valuable. The problem is that this recognition would only have meaning and value if it is free. By trying to force others to recognize this belief, in restricting marriage to heterosexual couples, people are not able to freely recognize her belief.

There is a distinction between act and belief. One can believe whatever one would like, but what one cannot do is force others to act in ways that support that belief. If marriage is restricted to heterosexual couples, then Davis would be able to believe that same-sex marriage is wrong as well as marry whomever she would like. At the same time, while LGBTQIA+ people would be able to believe that same-sex marriage is not wrong, they would not be able to marry whomever they would like. Conversely, if same-sex marriage is allowed, then Davis can still believe same-sex marriage is wrong and still marry whomever she would like, while LGBTQIA+ people can also believe same-sex marriage is not wrong and marry whomever they would like.

Davis's act might be considered *civil* in the sense of accountability because she gave an account of her act, but it was certainly not *civil* in the sense of understanding and respecting the historical socio-political context in which she acted nor in the sense of appreciating how meaning and value for her act can only emerge in relation to others within the political community. She claimed that she was being forced to act in ways against her beliefs by issuing marriage licenses to same-sex couples. However, similar in context to the Newsome Bass case, a government office that is supposed to be a site of freedom for all members of the political community needs to be site for the expansion of freedom, not the limiting of freedom.

Davis's acts align with Beauvoir's "serious" person. The serious person subordinates their freedom to absolute, unconditional, values.⁴²² In doing so, they refuse to accept they and others are ontologically free beings from whom all meaning and value emerges. Beauvoir states, "Dishonestly ignoring the subjectivity of his choice, he pretends the unconditioned value of the object is being asserted through him; and by the same token he also ignores the value of the subjectivity and the freedom of others, to such an extent that, sacrificing them to the thing, he persuades himself that what he sacrifices is nothing."⁴²³ In attempting to deny others the ability to give meaning and value to their own lives and world, Davis sought to sacrifice others to an absolute value.

Davis is not being forced to marry anyone of her sex. Instead, she is trying to force others to act in ways that support her beliefs. If she really wants her belief to be recognized as meaningful and valuable, she must, in order to be noncontradictory and normatively

⁴²² Beauvoir, 46

⁴²³ Ibid., 49

consistent, grant the choice to people to either take up or reject her belief. Her act was an attempt to not allow people the choice to reject her belief. This is *pseudo freedom* and an attempt to stifle democratic deliberation. Disobedient acts committed for the sake of *pseudo freedom* can never be justified per a Beauvoirian theory of *civil disobedience*.⁴²⁴

V. Beauvoirian Freedom: Expanding the Scope of Moral Consideration for Acts of Civil

Disobedience to Nonhuman Animals

My project aims to draw a clear distinction between acts of disobedience taken for the sake of reconstructive causes and acts of disobedience taken for the sake of regressive causes. I define acts taken for the sake of reconstructive causes as acts which aim to expand the scope of moral and political consideration. On the contrary, I define acts taken for the sake of regressive causes as acts which aim to truncate the scope of moral and political consideration. My argument is that only acts taken for the sake of reconstructive causes expand the scope of moral and political consideration, and thus are the only acts which ought to be justified and protected as legitimate acts of *civil disobedience*. I explore further how a Beauvoirian theory of democratic *civil disobedience* could expand the scope of moral and political consideration. I do this by examining a much more difficult case study.

It is the case of disobedient acts taken for the sake of nonhuman animals. I will not attempt here to explicate fully the case that these acts are justified. Even as I strongly suspect that these acts are, I will save the full explication for another more suitable project. What I will explore here is the case how, that is to say under what conditions, these acts

⁴²⁴ In rejecting Davis's act by writing about it am I taking it up and carrying it forward, and thus giving it a degree of justification? I will leave that as an open question. The discussion here is if the act is a justified act of *civil disobedience*. I would argue it is not. The disobedient act should not be taken up and carried forward.

would be justified. The difficulty in this case is the question of whether, and if so how, freedom is promoted by committing disobedient acts for the sake of nonhuman animals.

There are three ways in which one could argue that disobedient acts taken for the sake of nonhuman animals would be justified under a Beauvoirian theory of *civil disobedience*. First, one could argue whether or not nonhuman animals are due moral consideration, humans can make nonhuman animals' wellbeing their project.

Second, one could argue that humans and nonhuman animals coevolved together through a constant back and forth of taking up and carrying forward or rejecting each other's projects. This is an extension of *relational freedom* to nonhuman animals.

Third, one could argue that nonhuman animals are due moral consideration based on sharing, or even potentially sharing, the quality that gives humans moral consideration, namely *ontological freedom*. If any or all three of these arguments were true, then disobedient acts taken for the sake of nonhuman animals would be justified acts of *civil disobedience*.

By examining how a Beauvoirian theory of *civil disobedience* could be applied to the case of acts taken for the sake of nonhuman animals we can understand how adaptable and expansive the theory is. The theory is adaptable to ever changing socio-political circumstances, allowing for an ever-expanding scope of moral consideration.

The first hypothetical argument is that whether or not nonhuman animals are due moral consideration, humans can make nonhuman animals' wellbeing their project. The promotion of freedom requires humans to appeal to each other as free and to provide an account for their acts. One puts their project out into the world as an appeal to others to

find it meaningful and valuable; to take it up and carry it forward. There are no absolute values dictating meaning and value. Humans determine meaning and value by what they choose to give their time and attention to. If humans find meaning and value by promoting the wellbeing of nonhuman animals, make a communicative appeal to other humans as free, and give an account for their actions, then disobedient acts taken for the sake of nonhuman animals would be justified.

What kind of account could be made? I argued above that such an account would have to make the case for how the disobedient act promotes freedom in principle. The freedom being promoted in this approach would not be nonhuman animals', because this approach begins in the assumed premise that nonhuman animals may not have the moral quality that gives humans moral consideration, namely *ontological freedom*. The idea here would be for humans to consider how human freedom is promoted through these disobedient acts. The point I am stressing is that even if other humans do not think that nonhuman animals are due moral consideration, moral consideration for other humans could justify disobedient acts for the sake of nonhuman animals.⁴²⁵ If such an account could be made, then disobedient acts taken for the sake of nonhuman animals would be justified acts of *civil disobedience*.

The second hypothetical argument is that humans and nonhuman animals evolved together through a constant back and forth of taking up and carrying forward or rejecting each other's projects. Graham H. Pyke explains "Co-evolution occurs when one species

⁴²⁵ Admittedly, this sort of humancentric focus is no doubt considered problematic from an animal rights activist perspective. While not fully satisfactory from such a perspective, it is a pragmatic approach to reach a sought for end.

evolves in response to evolutionary changes in another, the result being an evolutionary feedback involving two or more species.”⁴²⁶ T.P. Craig states, “Coevolution involves at least three steps: first one species evolves a response to a trait of a second species, and this is followed by a response of the second species to the first.”⁴²⁷ The coevolution of humans and domesticated dogs and cats is the most documented.⁴²⁸ Such studies typically argue that the domestication of dogs and cats has been beneficial for both humans as well as dogs and cats. There is an underlying concern, however, that nonhuman animals are oftentimes regarded merely as useful evolutionary tools for humans.

However, Shannon Mussett explains for Beauvoir, while holding onto some Sartrean conceptions of nature as standing “against us as either *de trop* [...] or as an original undifferentiated totality,” also “describes nature as a site of wonder and possibility, revelatory of the ambiguity of existence.”⁴²⁹ John M. Marzluff and Tony Angell point out “art, literature, film and popular culture are influenced by nature’s beauty, power, and wonder.” They argue

when humans interact with other social species, who themselves have the ability to evolve culture, then simple feedbacks from a culturally evolving “environment” can stimulate rapid cultural evolution in humans. We term the reciprocal adjustments in two or more species’ cultures “cultural coevolution” [...] Cultural coevolution may involve genetic fitness benefits or may depend on migration and the diffusion of ideas, cultural drift, differential modeling and

⁴²⁶ Graham H. Pyke, “Volume 2,” in *Encyclopedia of Animal Behavior* (Second Edition), accessed December 31, 2021, <https://www.sciencedirect.com/topics/biochemistry-genetics-and-molecular-biology/coevolution>.

⁴²⁷ T.P. Craig, “Geographic Mosaic of Coevolution” in *Encyclopedia of Evolutionary Biology*, accessed December 31, 2021, <https://www.sciencedirect.com/topics/biochemistry-genetics-and-molecular-biology/coevolution>.

⁴²⁸ See for example, Jaime Chambers, Marsha B. Quinlan, Alexis Evans, and Robert J. Quinlan, “Dog-Human Coevolution: Cross-Cultural Analysis of Multiple Hypotheses,” *Journal of Ethnobiology* 40, no. 4 (2020): 414-33.

⁴²⁹ Shannon Mussett, “Nature as Threat and Escape in the Philosophies of Sartre and Beauvoir,” in *The Sartrean Mind*, ed. Matthew C. Eshleman and Constance L. Mui (New York: Routledge, 2020), 516.

role selection, or societal choice and imposition, all of which are important to cultural evolution.

Building on Mussett, Marzluff and Angell, humans and nonhuman animals exist together, coevolving, in shared situation – the world. Nonhuman animals interacting in some sense freely with humans creates a coevolutionary back and forth between species. As noted previously, we ought to strive for diversity because diversity of thought and action promotes possibility and choice. Without the diversity of nonhuman animal projects, without nonhuman animals being able to act in some sense freely in response to humans or if nonhuman animals were to go extinct, there would be vast lacunae in the possibility and choice available for both human and nonhuman projects.

This is an extension of *relational freedom* to include nonhuman animals based solely on the fact that they act in response to humans, regardless of if that action is instinctual. Nonhuman animals are not mere objects that conform or break to our wills, and as such are due a modicum of moral consideration due to the reciprocal nature of humans' coevolutionary relationship with them. If this is the case, then certain human practices that prevent nonhuman animals from acting in any sense freely or that lead to the extinction of nonhuman animal species would be prohibited. Thus, if so, certain acts of disobedience for the sake of nonhuman animals against these prohibited practices would be justified acts of *civil disobedience*. For example, acts taken to give nonhuman animals the ability to respond in some sense freely to human actions (i.e. acts against Confined Feeding Operations) or to save endangered species would be most justifiable.⁴³⁰

⁴³⁰ Admittedly, this argument is unsatisfactory when it comes to animal rights. It only argues that humans should not prevent nonhuman animals from acting in some sense freely and should do what they can to prevent nonhuman animal species from going extinct. It does not, however, by itself grant nonhuman animals

The third hypothetical argument is that nonhuman animals are due moral consideration based on sharing, or potentially sharing, the quality that gives humans moral consideration. There are two ways this second approach could go. Firstly, it is common in nonhuman animal ethics to pinpoint whatever quality delineates those who are due moral consideration from those who are not. Then, to expand the scope of moral consideration by showing that those who were previously considered as not having this quality, actually do have this quality.⁴³¹ If it could be shown that nonhuman animals do act in spontaneous and creative ways, then this would be strong evidence to suggest that they do have *ontological freedom*, and thus are due moral consideration. Ethnological and neurobiological studies on animals' individual and social behaviors which have provided evidence of nonhuman animal creativity would be an excellent resource to make this case.⁴³²

Furthermore, the bar for *ontological freedom* set by Sartre and Beauvoir is not actually that high. Non-positional consciousness is pure spontaneity, and *ontological freedom* resides in the nothingness of non-positional consciousness. There is strong evidence to suggest that nonhuman animals from a wide variety of species possess both non-positional and pre-reflective consciousness.⁴³³ Non-positional consciousness requires

rights. In order to make the argument more conducive to animal rights, one could supplement it with the argument that nonhuman animals are also ontologically free or, based on the Precautionary Principle, ought to be treated as if they are ontologically free. On another note, it would be an argument conducive to protecting the environment altogether, not just nonhuman animals.

⁴³¹ See for example, Tom Regan, *The Case for Animal Rights* (Berkeley, CA: University of California Press, 1983) and Peter Singer's *Animal Liberation: The Definitive Classic of the Animal Movement* (New York: Harper Perennial Modern Classics, 2009). Regan argues the morally relevant quality is being a subject-of-a-life while Singer argues it is sentience, both, they argue apply to nonhuman animals.

⁴³² See for example Lucy A. Bates and Richard W. Byrne, "Methods Special Issue: Using Anecdotes to Investigate the Study of Creativity in Animals and Man," *Methods* 42, no. 1 (2007): 12-21 and Allison B. Kaufman, James C. Kaufman, Allen E. Butt and Erin Colbert-White, "Towards a Neurobiology of Creativity in Nonhuman Animals," *Journal of Comparative Psychology* 125, no. 3 (2011): 255-72.

⁴³³ In regard to pre-reflective consciousness and nonhuman animals, see Mark Rowlands, "Are Animals Persons?" *Animal Sentience* 10, no. 1 (2016), DOI: 10.51291/2377-7478.1110.

only that there be something that it is like to exist in and experience the world, not necessarily subjectivity.⁴³⁴ Pre-reflective consciousness is the awareness of oneself as a subject experiencing a unified constant stream of experiences, even if one does not reflect on those experiences.⁴³⁵ If nonhuman animals have non-positional consciousness, and even one step further pre-reflective consciousness, then arguably they are due moral consideration. Moreover, there is additional evidence that several animals can reflect on their actions and adapt their behaviors based on external stimuli, for example adjusting their behaviors consistent with the moral ideals of fair play and compassion.⁴³⁶ This approach would make a strong case for the justifiability of disobedient acts taken for the sake of nonhuman animals.

The second way one could argue that animals are due moral consideration is a weaker argument that relies on epistemic humility. Since our actions can never be justified by simply deferring to preestablished social, political or legal precepts, and I would add cultural norms, everything is in question – including the moral status of nonhuman animals.

Moreover, we are finite, with a finite understanding of the world and others. The biggest obstacle to understanding nonhuman animal minds is the fact that we have not

⁴³⁴ See Peter Carruthers, "Suffering Without Subjectivity," *Philosophical Studies* 121 (2004): 99-125 and Rocco J. Gennaro, "Unconscious Higher-order Thoughts (HOTs) as Pre-reflective Self-awareness?" *Animal Sentience* 10, no. 18 (2016), DOI: 10.51291/2377-7478.1174.

⁴³⁵ Joel Smith, "Self-Consciousness", *The Stanford Encyclopedia of Philosophy*, May 12, 2020, <https://plato.stanford.edu/entries/self-consciousness/>

⁴³⁶ See for example, Frans de Waal, "The Animal Roots of Human Morality," *New Scientist* 192, no. 2573 (2006): 60-61 and Marc Bekoff and Jessica Pierce, *Wild Justice: The Moral Lives of Animals* (Chicago: University of Chicago Press, 2009).

established an indisputably shared language.⁴³⁷ We assume the lack of an indisputably shared language is because nonhuman animals lack thought, but it could just as possibly be because we lack the ability to comprehend their phenomenological worlds and minds. We can experience glimmers of communication with nonhuman animals through body language.

We can also observe glimmers of creativity as Allison B. Kaufman and James C. Kaufman et al define it; along a spectrum including novelty recognition, understood as basic novelty recognition and novelty seeking, as well as observational learning and innovation.⁴³⁸ However, we cannot communicate clearly with nonhuman animals. So, there is this gap in our understanding of nonhuman animal minds, some might argue, that scientific observation cannot bridge. Yet, if performative acts can be communicative and reflective of creativity as Kaufman and Kaufman define it, then body language ought to at least be granted the possibility of being reflective of thought.

There is something of the spirit of seriousness in offhandedly appealing to preestablished cultural norms that hold only humans are capable of spontaneous and creative action while animals simply act instinctually; a seriousness deeply enmeshed in cultural narcissism and dichotomous thinking.⁴³⁹ If we truly embrace these three premises – 1. our acts cannot be justified by simply deferring to preestablished cultural norms, 2. we

⁴³⁷ See for example, René Descartes, “Animals are Machines” in *Animal Rights and Human Obligations*, ed. Tom Regan and Peter Singer (Englewood Cliffs, NJ: Prentice Hall, 1989), 13-19.

⁴³⁸ Kaufman et al., “Towards a Neurobiology of Creativity in Nonhuman Animals,” 255-57

⁴³⁹ Cf Kelly Oliver, “What is Wrong with (Animal) Rights?” *The Journal of Speculative Philosophy* 22, no. 3 (2008): 214-24, Stephanie Jenkins “Returning the Ethical and Political to Animal Studies,” *Hypatia* 27, no. 2 (2012): 504-10 and Syl Ko, “Revaluing the Human as a Way to Revalue the Animal” in *Aphro-ism: Essays on Pop Culture, Feminism, and Black Veganism from Two Sisters* (Brooklyn, NY: Lantern Publishing & Media, 2017), 67-72.

are finite with a finite understanding of the world and others, and 3. performative acts can be communicative and reflective of creativity – then we would embrace at the very least an epistemic humility when it comes to nonhuman animal minds.

If this is so, then we cannot offhandedly dismiss the possibility that nonhuman animals may act creatively and spontaneously. This is not an appeal to ignorance. This argument only makes the weaker claim that we ought to at least grant the possibility that nonhuman animals could have *ontological freedom*. Thus, we cannot dismiss the possibility that disobedient acts taken for the sake of nonhuman animals are justified.⁴⁴⁰

We seem to be in a sort of justificatory limbo, where we can neither dismiss nor affirm justifiability for disobedient acts taken for the sake of nonhuman animals. I would add another ethical principle to complete the weaker version of this argument and get us out of this limbo. It is known as the Precautionary, or “Better Safe than Sorry,” Principle. One version of this principle goes like this: In cases of epistemic uncertainty, if the worst-case scenario for not committing an act is worse than the worst-case scenario for committing an act, then one should commit the act. If the worst-case scenario for treating nonhuman animals as if they are not due moral consideration is worse than the worst-case scenario for treating nonhuman animals as if they are due moral consideration, then one should treat nonhuman animals as if they are due moral consideration.

⁴⁴⁰ Again, this is unsatisfactory from an animal rights activist perspective. The stronger case that would demonstrate that nonhuman animals do in fact act creatively and spontaneously would be more appealing to animal rights activists. However, again, the point here is that even if one’s interlocutor does not believe absolutely that nonhuman animals do act creatively and spontaneously, there is sufficient reason to at least be epistemically humble about their abilities. And, if that is so, then that is sufficient justification to grant them moral consideration.

What is the worst-case scenario for treating nonhuman animals as if they are due moral consideration, and what is the worst-case scenario for treating nonhuman animals as if they are not due moral consideration? The worst-case scenario for treating nonhuman animals as if they are due moral consideration, when it turns out that they do not actually have *ontological freedom*, is that humans will no longer use nonhuman animals in all of the ways that humans currently use nonhuman animals. Humans do not lose much. Arguably, humans do not need to use nonhuman animals in all of the ways that they currently do; much of the use of nonhuman animals for food, clothing, cosmetics and household product testing is unnecessary and, evidence has suggested, harmful for humans and the environment.⁴⁴¹ Even if nonhuman animals did not have *ontological freedom* but were treated as if they do, all humans lose is the ability to use nonhuman animals in ways that are unnecessary and potentially harmful to humans and the planet.

The worst-case scenario for treating nonhuman animals as if they are not due moral consideration would be much worse. Nonhuman animals lose a lot. The worst-case scenario is that nonhuman animals do actually have *ontological freedom* and are being treated like objects. Nonhuman animals lose their freedom; they live in constant suffering until they are killed, oftentimes in brutal ways. It is demonstrably worse to lose one's

⁴⁴¹ In a larger project additional evidence supporting this claim would be provided. For now, see for example: M.M. Mekonnen, A.Y. Hoekstra, "A Global Assessment of the Water Footprint of Farm Animal Products," *Ecosystems* 15 (2012): 401-15. See also, H. Kim, L.E. Caulfield, V. Garcia-Larsen, L.M. Steffen, J. Coresh, and C.M. Rebholz, "Plant-Based Diets are Associated with a Lower Risk of Incident Cardiovascular Disease, Cardiovascular Disease Mortality, and All-Cause Mortality in a General Population of Middle-Aged Adults," *Journal of the American Heart Association* 8, no. 16 (2019), DOI: <https://www.ahajournals.org/doi/pdf/10.1161/JAHA.119.012865?fbclid=IwAR2XyTLhNdXB0m2t-7816Tceilli1YG5p2VLCmMoB5LfTuWvUh470qUc6Js&>. See also, Aysha Akhtar, "The Flaws and Human Harms of Animal Experimentation," *Cambridge Quarterly of Healthcare Ethics: CQ: The International Journal of Healthcare Ethics Committees* 24, no. 4 (2015): 407-19. The use of nonhuman animals for pharmaceuticals is a much more complicated topic that I am putting aside for this present discussion. It would be best addressed in a larger project devoted solely to the issue of nonhuman animal acts of civil disobedience.

freedom, to exist entirely in suffering and be killed brutally than to not be able to use “objects” in ways that are unnecessary and potentially harmful. Thus, per the “Better Safe than Sorry” Principle, we ought to treat nonhuman animals as if they do have *ontological freedom*. If we ought to treat nonhuman animals as if they do have *ontological freedom*, then disobedient acts taken for the sake of nonhuman animals would be justified acts of *civil disobedience*.

VI. Conclusion

In this chapter I explored three case studies through the lens of a Beauvoirian theory of democratic *civil disobedience*. In regard to the case studies of taking down a confederate flag and refusing to issue same sex marriage licenses, the same reasons why disobedient acts against same-sex marriage would be unjustified are the same reasons why supremacist groups’ disobedient acts would be unjustified. It is also the same reason why the disobedient acts committed at the US Capitol on January 6th, 2021 are unjustified. In short, because such acts strive to extort recognition for the meaning and value of their beliefs.

The obligation to promote freedom is for *all* members of the community, as far as possible. We have an obligation to promote the freedom of even the racist or the sexist. Newsome Bass, whether the racist or sexist feels this way or not, was not only promoting her and Black and brown peoples’ *situational freedom* but also the racist or sexist’s *relational freedom*. The racist, sexist, homophobe, or transphobe’s freedom is harmed by having a truncated scope of moral consideration. What this means is that disobedient acts that hinder the supremacist’s *relational freedom* by truncating the supremacist’s scope of

moral consideration are not justified. In other words, the supremacist is not only acting contradictorily and normatively inconsistently, but is also limiting their own freedom by committing disobedient acts for the sake of supremacist causes. Such acts would never be justified per a Beauvoirian theory of *civil disobedience*.

To be clear on this point. Beauvoir is asking us to embrace the ambiguity of existence, and thus to respect both individual *ontological freedom* and *relational freedom*. What this means is that people are individually free to believe whatever they would like and to put whatever projects they would like out into the world. Diversity of thought is crucial for the expansion of possibility and choice, crucial for freedom.

There is a caveat, however. People are not free to try to extort meaning for their projects or to force others to act in ways that support their projects. Whether extortion occurs or whether others are being forced to act in ways that support others' projects depends on the context of the historical socio-political situation. In the context of a racist, sexist, homophobic, and transphobic society, the expansion of freedom requires limiting supremacist projects that break the law. Within this context, breaking the law in support of supremacist projects carries substantially more risk to the expansion of freedom for the political community; it carries substantially more risk to the *situational freedom* of the oppressed and thus the *relational freedom* of the entire community. Thus, disobedient acts for supremacist causes are justifiably limited for the sake of freedom.

In regard to the case study involving disobedience for the sake of nonhuman animals, a Beauvoirian theory of *civil disobedience* holds that the expansion of freedom is paramount. Disobedient acts taken for the sake of nonhuman animals would be justified

under this theory under several circumstances. Humans can and do make nonhuman animal welfare the focus of human projects. Humans can appeal and provide an account for why nonhuman animal welfare ought to be shared project for all humans. Also, if humans and nonhuman animals co-evolved through a reciprocal taking up and carrying forward or rejecting of each-others projects, then the loss of nonhuman animals' ability to act in some sense freely would limit human freedom. Finally, if nonhuman animals are ontologically free, or if there is a possibility that they could ontologically free and it is worse to treat them as if they are not than it is to treat them as if they are, then humans ought to treat them as if they are ontologically free.

By examining how a Beauvoirian theory of *civil disobedience* could be applied to the case of acts taken for the sake of nonhuman animals we can understand how adaptable and expansive the theory is. The theory is adaptable to ever changing socio-political circumstances in that it disallows us from sublimating our freedom to any pre-established socio-political, cultural, legal precepts or norms. We must take into full account the context of the situation along with all available information on the given issue. It allows for an ever-expanding scope of moral consideration for the same reasons. We cannot offhandedly defer to cultural norms that automatically assign an inferior status to some lives. We are responsible for our choices. In order for us to be ethical, we must take a more proactive approach to understanding our world and others.

Conclusion – Returning to Washington, DC January 6, 2021

The events of January 6th highlight the need to understand the historical socio-political context in which acts of disobedience occur as well as the importance of establishing an obligation to all members of the political community. To be clear, none of the interlocutors I have engaged with for this project would consider the events of January 6th as either being justified or as being worthy of protection. The issue, rather, is how we ought to understand *civil disobedience* within a historical socio-political situation of normative ideals and confrontational politics.

Disobedient acts do not occur removed from a historically situated context. Disobedient actors are taking up the projects of others and carrying those projects forward, oftentimes in new ways. These actors are responding to and inserting themselves into a political conversation, a conversation that has been centuries in the making. And, these actors are paving the way for future acts of disobedience.

Why should we care about disobedient acts? Because disobedient acts are a double-edged sword. They are both powerful performative statements that foster democratic deliberation, challenge unjust laws and policies, demand authorities to be accountable to the constituting power of the political community, and push the political community to make a normative ideal more concrete in political community members' lives. They are also capable of pushing the political sentiments of a political community further in one direction over another, for either reconstructive or regressive causes. Disobedient acts are capable of legitimizing, normalizing, and perpetuating structural injustice. They are capable of causing increased instability and violence within a political community.

My project has argued that the normative ideal that ought to be at the core of determining the justifiability and protectability of disobedient acts is Beauvoir's tripartite conception of freedom. This normative ideal allows for the protection of individual liberties while at the same time protects everyone in the political community, as much as possible. It navigates between the ideal normative world and the nonideal confrontational world. It respects the historical socio-political context in which acts of disobedience occur. It expands the scope of moral and political consideration, disallowing the justifiability and protectability of acts taken for the sake of *pseudo freedom* and self-interested personal gain. Moreover, it puts the power back into the hands of the political community as the constituting power to determine whether a disobedient act ought to be justified and protected.

In order to be *civil*, in this sense, acts of disobedience would need to promote freedom in principle. Politically, this is a democratic practice. It is communicative, public, ongoing and accountable. Not just for the civilly disobedient actor, but for the community member witnessing the act of *civil disobedience*. Acts of *civil disobedience* are appeals from one freedom to another freedom. They are appeals asking members of the political community to engage with the act by taking it up and carrying it forward through deliberation as well as through social and legislative action.

Of course, members of the political community are free to ignore the act or reject it. But, in doing so these members also must be accountable for their choice to either ignore or reject the act. They have no choice but to choose, and that choice to do nothing still occurs within the context of situation in which they are interconnected with the lives of other members of the political community. If they choose to reject an act that aims at promoting

other political community members' freedom, then they are responsible for giving reasons why they think the act either does not actually promote freedom or why other community members' freedom ought to be legitimately limited. If they choose to do nothing, and other community members' freedom is being limited, then they are responsible for choosing to do nothing about that limitation. In this way, the Beauvoirian theory of democratic *civil disobedience* I propose, demands that if there are members of the political community whose freedom is being limited, then other members of the community *must do something* about the situation.

I am directly equating moral obligation with political obligation for Beauvoir. This is not, however, an egoistic vs altruistic assertion. It is not the case that one must give up or lose something in order to promote another's freedom. Since our existence is ambiguous, since we all are at the same time both individuals and members of a political community, our freedoms are interconnected. In order for any one person to be fully free, all members of the community must be free, as much as possible. We are all, as King says, caught in an inescapable web of destiny.

How far and to what extent the events of January 6th ripple out to cause instability and further violence to US democracy remains to be seen. What seems to be the case, however, is that that event has been centuries in the making and was precipitated by a long history of the lack of punishing disobedient acts by white people in the US. My interlocutors and myself can firmly agree that the events of that day ought not be considered justified and protected. However, my position is that the events of January 6th occurred within a historical socio-political context in which the disobedience of some members of the political community is protected while the disobedience of other members of the

community is severely punished. For me, the events highlight the lack of a clear and distinct distinction between disobedient acts taken for the sake of the political community versus acts taken in spite of the political community.

Moreover, the events of that day were a type of democratic *pseudo freedom* in that they sought to undermine democracy through the rhetoric of freedom. To be free is not to be able to do whatever one wants. To be free is to have an expansive variety of possibility and choice, and in order to have such an expansive variety of possibility and choice all members of the political community need to be as free as possible. *Pseudo freedom*, on the other hand, seeks to extort meaning and value from others. The events of that day sought to extort meaning and value from the political community by attempting to subvert the democratic processes set in place. It was an attempt by those who have historically not been punished as severely for their acts of disobedience to force their will on the entire political community. Within this historical socio-political context, the events of January 6th, if we are not careful, can push the central questions surrounding what it means to perform an act of *civil disobedience* in a direction that is deleterious for democracy.

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