

ON (NOT) ACCEPTING THE PUNISHMENT FOR CIVIL DISOBEDIENCE

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Many believe that a citizen who engages in civil disobedience is not exempt from the sanctions that apply to standard law-breaking conduct. Since he is responsible for a deliberate breach of the law, he is also liable to punishment. Focusing on a conception of responsibility as answerability, I argue that a civil disobedient is responsible (i.e. answerable) to his fellows for the charges of wrongdoing, yet he is not liable to punishment merely for breaching the law. To support this claim, I defend an account of political obligation framed in terms of respect for (rather than mere obedience to) the law, and argue that the mere illegality of civil disobedience does not suffice to establish wrongdoing. I then discuss and reject three objections to my argument.

Keywords: civil disobedience, political obligation, punishment, answerability.

INTRODUCTION

It is generally accepted that civil disobedience differs in important respects from common law-breaking. Acts of civil disobedience may draw attention to possible injustices in the legal system, give voice to marginalised groups in the public arena, and foster the deliberative process (Smith 2013; Lefkowitz 2007; Smith 2013; Talisse 2005; Young 2001). Many believe that a civil disobedient should often be praised (at least to some extent) for his active engagement with the political life of his community.

However, it is also generally accepted that citizens who engage in civil disobedience should submit to punishment like any other law-breaker. While a judge or jury may decide to treat the principled nature of the action as a mitigating factor, and thus to issue a lesser (or no) sentence, the civil disobedient should not claim exemption from the consequences of disobeying the law. As Socrates famously stated in *Crito*, the law-breaker should ‘patiently submit’ to whatever punishment the state may decide to impose on him.

This idea played a central role in John Rawls’s work, where the willingness to accept the punishment featured among the necessary conditions of justifiable

civil disobedience (Rawls 1999: 322). For Rawls, such willingness constituted one of the marks of the agent's civility, and helped distinguishing a civil from an uncivil act of disobedience. Many authors have since endorsed this idea, arguing that a civil disobedient should eschew strategies which seek to avoid the punishment: escaping police arrest, refusing to comply with the sentence or, for some (Bauer and Eckerstrom 1987; McEwen 1990) even appealing to legal defences, is deemed incompatible with the disposition of a civil disobedient. On the one hand, the state is at liberty to sanction the law-breaker, if it judges it appropriate; on the other hand, the civil disobedient, qua law-breaker, has no claim against being sanctioned for breaching the law. Hence, if the state decides to punish him for the law-breaking conduct, the civil disobedient should submit to the state's will and accept the punishment. For the purposes of this discussion, I refer to this as the *standard view*.¹

This view stems from the assumption that civil disobedience is still 'disobedience'. The principled nature of this conduct does not offset its law-defying character. Deliberately breaking the law, yet refusing to be punished for doing so, may be hypocritical, especially in cases where protesters disobey a law they accept in order to denounce another to which they object (i.e. *indirect* civil disobedience) (Edmundson 1998: 57). It seems that those who engage in such conduct should not deny their responsibility for engaging in an act of law-defiance. The standard view stresses that, notwithstanding the reasons motivating their conduct, the civil disobedients have done something wrong (i.e. breaching the law), something for which they may be blamed and, perhaps, punished.

In this paper, I challenge the standard view, arguing that citizens who resort to civil disobedience may not deserve to be punished for the mere breach of the law. I advance the following two claims:

1. By *merely* engaging in an act of civil disobedience, a citizen commits no wrong. Hence, he maintains a claim-right against being punished (i.e. has no *pro tanto* reason to submit to the punishment).²
2. A civil disobedient has a *pro tanto* duty to answer to his fellows for the deliberate choice to disobey the law.³

To defend these claims, I highlight two different moments in the interaction between a civil disobedient and the state. The first is the moment of *prosecution*,

¹ The label "standard" should be considered no more than a stipulation, since this view has also received a fair amount of criticism in the relevant literature. See for example Arendt (1972), Farrell (1977), Dworkin (1977), Zinn (1991), Brownlee (2012), Scheuerman (2015), and Celikates (2016). My account is heavily indebted to Brownlee's and, to some extent, also Dworkin's work.

² 'Punishment is an apt response only to unjustified and unexcused wrongdoing' (Gardner 2007: 197).

³ On the notion of *pro tanto* duties, see Kagan (1989: 17). Throughout the paper, the terms 'duty' and 'obligation' are used interchangeably (but see Simmons 1981: 11-6).

when the civil disobedient is called to account, at the criminal trial, for his law-breaking conduct; the other is the moment of *sentence*, when, at the end of the trial, he is faced with a verdict (and, possibly, a sanction). The debate on civil disobedience has focused almost exclusively on the latter moment, and neglected the normative role of the criminal trial in the communicative exchange between the civil disobedient and the state.⁴ This is an unfortunate oversight, because during the trial defendants face a crucial duty to answer to their fellows for their illegal conduct. I will argue that the duty to answer (during prosecution) is, at least in some cases, more stringent than the duty to later submit to the punishment (at the moment of sentence). My central contention is the following: provided he has appropriately answered for the charges at the criminal trial, a civil disobedient may not be morally at fault for then refusing to accept the punishment.

This paper has four sections. I first discuss, and criticise, the standard view, to undermine the claim that a civil disobedient has a *pro tanto* duty to accept the punishment. In the second section, I outline a conception of responsibility as answerability, to claim that while a citizen is responsible (i.e. answerable) for the act of disobedience, he may not be liable to punishment. While he has a duty to answer to his fellows for the deliberate choice to breach the law, he may have no *pro tanto* duty to accept the punishment. This is because the mere breach of the law in civil disobedience does not suffice to establish the agent's blameworthiness. To show why this is the case, in the third section I defend a natural-duty account of political obligation, grounded on the notion of respect for (rather than obedience to) the law. I argue that acts of civil disobedience, despite their law-breaking nature, often comply with such account. This, in turn, reveals that while responsible (i.e. answerable) to their fellows for the choice to breach the law, citizens who engage in civil disobedience may not be liable to legal sanctions: they maintain a (defeasible) claim-right against being punished for the mere breach of the law. Hence, the notion of answerability, discussed in section II, and the natural-duty account, discussed in section III, complement each other in my argument. The former shows that the community has the right to call the civil disobedient to account for the breach of the law, to which there corresponds the civil disobedient's duty to answer to his fellows; the natural-duty account shows that, despite being answerable, the civil disobedient may not be liable to sanctions, for his illegal conduct did not breach his duties qua member of the political community.

In the fourth section, I consider three objections to my argument: (a) it merely brushes aside the obligations arising at the moment of sentence, which still require the civil disobedient to accept the punishment; (b) it would justify acts of disobedience in support of morally flawed views, e.g. racism; (c) it ignores

⁴ One notable exception is Brownlee (2012: 209-253). However, she does not focus specifically on the duty to answer for civil disobedience, which I defend in this paper.

that sanctioning a civil disobedient is an essential part of acknowledging his status as a political agent.

I. THE STANDARD VIEW

Civil disobedience involves a public and deliberate violation of a law with the aim to draw attention to a possible injustice in the legal system. As a communicative act, civil disobedience is non-coercive and forward-looking: it aims to persuade the majority that a certain law or policy should be re-considered and, possibly, modified or even repealed. For this reason, despite its law-breaking nature, civil disobedience is non-revolutionary: its forward-looking nature implies the agent's willingness to cooperate with the state to advance the communicative enterprise (Sabl 2001). While he openly disobeys the law, the civil disobedient (as opposed to, for example, a revolutionary) usually acknowledges the state's role and prerogatives, i.e. its legitimate authority.

John Rawls emphasized this latter point when he stated that civil disobedience constitutes an illegal act performed 'within the limits of fidelity to the law' which, in his view, implied the agent's willingness to undergo the legal consequences by accepting the punishment (Rawls 1999: 322). For Rawls, this was one of the distinctive features separating 'civil' disobedience from other forms of law-breaking conduct.⁵ As already mentioned, many have endorsed this idea, with its underlying assumption that 'not having the right to complain about being punished . . . seems essential to being a civil disobedient' (Woozley 1976: 331). From this standpoint, a 'civil' breach of the law should rule out any attempt to evade the ensuing punishment.⁶

It is worth pausing here for a moment to consider what it means for a breach of the law to be 'civil' (or 'uncivil'). We generally think of 'civility' as a desirable trait in an agent's character: we refer to a 'civil' behaviour as to one that reveals a general disposition, in the agent, to get along with others by following shared rules and values (Calhoun 2000). It is no coincidence that, in everyday language, we often find the attributes 'civil' and 'responsible' in the same sentence, which suggests that civility involves a tendency to respond appropriately to reasons for action. We deem civil conduct praiseworthy, and

⁵ To be fair to Rawls, he also acknowledges that "the prosecution may be contested in court, should this prove appropriate" (*ibid.*, fn. 22). He, however, implies that the disobedient would still have a duty to accept the punishment, should his appeal fail, for "there comes a point beyond which dissent ceases to be civil disobedience" (*ibid.*). As I explain in section IV, I instead argue that a civil disobedient has no *pro tanto* reason to accept the punishment even if faced with a final 'guilty' verdict.

⁶ See also Cohen (1971: 287–8), Cohen (1972), Greenawalt (1987), Goodin (2005), Lefkowitz (2007), Kirkpatrick (2008: 15–6), Pettit (2012: 138) and, Smith (2013).

believe that, under normal circumstances, we should aim for actions that are ‘civil’ rather than ‘uncivil’.⁷

In light of these remarks, the standard view may be interpreted as claiming that the agent’s willingness to accept the punishment signals the kind of healthy disposition just mentioned. By submitting to the punishment after the breach of the law, the disobedient proves to be acting in good faith, and to abide by a common authority to resolve disagreements. This would reveal the agent’s civility, a disposition for which he (as opposed to someone who seeks to evade the punishment) should be praised.

However, provided this is a plausible interpretation of the standard view, one could object that there is nothing particularly praiseworthy in a mere willingness to pay the penalty. A citizen who carelessly disobeys the law, yet is willing to accept the punishment for it, may not be any more civil than one who disobeys yet refuses to be punished. Without knowing the agent’s specific circumstances, the fact that he is willing to accept the sanction need not imply any praiseworthy trait in his character. It may even be the case that, rather than ‘fidelity’ to the law, a mere willingness to pay the penalty reveals the agent’s failure to take the law seriously, and to display the required degree of civility in his conduct (Levine 2004; Zinn 1991: 911). As Michael Sandel points out (2005: 94), the penalty may be treated as a mere ‘fee’ to then be able to break the law, rather than a ‘fine’ signalling wrongful conduct. The fact that the agent is willing to accept the punishment, in and by itself, may have no direct bearing on whether his act constitutes a ‘civil’ breach of the law (Brownlee 2012: 204–5).

It may be replied that the standard view is based on instrumental considerations, concerning the communicative nature of civil disobedience. Submission to the punishment is not meant to display any intrinsically good disposition in the agent; rather, the citizen who breaches the law to draw public attention to a possible injustice, and is ready to suffer the punishment for it, enhances the persuasiveness of his act by showing his good faith to his fellows (King 1991). From this standpoint, the reason to endorse the standard view is pragmatic: for civil disobedience to succeed as a communicative act, the agent should be willing to pay the penalty for his breach of the law.

However, this instrumental stance also fails to establish a willing submission to the punishment as a *sine qua non* of civil disobedience. Firstly, it still involves the claim that accepting the punishment reveals some good trait in the agent’s character which, as already noticed, cannot be taken for granted. Secondly,

⁷ An anonymous referee has pointed out that the label “civil disobedience” was arguably introduced by Henry David Thoreau in his 1849 essay “Resistance to Civil Government (Thoreau 1983)”. Thoreau used it to indicate disobedience of the laws of a “civil” government, not, as I do in this paper, disobedience which displays civility. However, it is common nowadays to use this notion to distinguish civil from “uncivil” disobedience (Kirkpatrick 2008), and it is in this sense that I refer to it in this paper.

there may be other ways for the agent to persuade others of his good faith (hence to foster the communicative exchange), which may not involve submitting to the sanction. Edward Snowden's disclosure of classified US documents offers a case in point: notwithstanding the question as to whether his act constituted civil disobedience, his communicative aims were not weakened by his choice to go into hiding and avoid facing a US court (Harding 2014).⁸ A carefully organized media campaign provided large coverage of his revelations, and the resulting reaction from the community at large led the US Congress to amend, albeit marginally, the legislation. Despite seeking to evade the legal consequences of his act, Snowden paid the price of defending his convictions (a price involving, for example, permanent displacement from his family and friends). Thus, his conduct was still 'non-evasive' (Brownlee 2012: 37–42), i.e. based on a willingness to bear the costs of defending his convictions. This, at least in part, fostered the persuasiveness of his action.

These initial remarks aim to cast scepticism over the standard view, and over the support it has received in the literature on the topic. Depending on the circumstances, a disobedient may have other ways, beyond submitting to the punishment, to show his civility and foster the communicative enterprise with the state. As I argue in later sections, once these other ways are identified, they may downplay the importance of accepting the punishment in an act of civil disobedience.

Before moving to the next section, however, I should briefly discuss David Lefkowitz's treatment of this issue. Lefkowitz (2007) has argued that a civil disobedient should indeed accept the sanction following the breach of the law; however, following Joel Feinberg's distinction, he focuses on 'penalty' rather than 'punishment'. For Feinberg, a penalty lacks the 'expressive' character of a punishment, for it does not convey moral censure for the agent's conduct (Duff & Garland 1994: 73–4). Receiving a fine is different from being sent to jail, Feinberg argues, for only the latter expresses moral condemnation of the agent through hard treatment. On these premises, Lefkowitz claims that citizens enjoy a moral right to engage in suitably constrained acts of civil disobedience, hence, the state should not punish them merely for engaging in that kind of conduct (2007: 219). Nonetheless, Lefkowitz argues that the state is at liberty to penalise a civil disobedient, by imposing some costs upon the latter (e.g. heavy fines, or even short-term incarceration) following his choice to breach the law. On the one hand, this would allow the state to deter further (and possibly frivolous) acts of protest; on the other, by submitting to the 'penalty', the civil disobedient may symbolically purchase an 'ex post facto licencing fee' for engaging in a potentially disruptive kind of protest, thus showing acceptance of a 'collective authority to settle reasonable disagreements over

⁸ On whether Edward Snowden's case was an instance of civil disobedience, see Scheurman (2014) and Brownlee (2016).

the design of morally necessary collective-action schemes' (ibid: 220). In this way, Lefkowitz seeks to reconcile the claim that citizens enjoy a 'moral right to publicly disobey the law to contest any law or policy they believe to be unjust', with the claim that the state has the right to 'successfully and efficiently apply laws and policies' (ibid).

This shift from punishment to penalty does not address the key question, namely, whether the state should interfere at all with civil disobedience. As Brownlee has pointed out (2012: 244), it is hard to make sense of a right to civil disobedience that protects only from punishment but not from penalty; if a citizen enjoys a certain right, he then has a (defeasible) claim against any interference in the exercise of that right. It is also hard to be persuaded by the claim that paying the penalty for civil disobedience would be akin to a licencing fee for engaging in activities that might impose costs on others; while engaging in civil disobedience might indeed inconvenience others (in fact, it often does so intentionally), the same can be said of many other rights that we enjoy, e.g. free speech. The mere fact that, by expressing my view, I may cause inconvenience to others does not justify penalising me for expressing my view. Furthermore, the idea that a civil disobedient should submit to 'a collective authority' need not entail a passive submission to punishment. As I will argue below, the disobedient should submit to that authority by accepting to answer to his community for his illegal conduct.

Finally, like most deterrence-based justifications of punishment (and of penalty), Lefkowitz's argument runs into the familiar objection that a person should not be made to suffer merely to deter others from engaging in a certain activity. Lefkowitz defends the idea of a moral right to civil disobedience based on the non-instrumental value of individual autonomy; yet, his defence of deterrence is at odds with a requirement to treat autonomous agents as ends in themselves (Brownlee 2012: 243–7).⁹ I will discuss such requirement in the third section.

II. ANSWERABILITY AND ILLEGAL CONDUCT

The standard view assumes that, since a civil disobedient is responsible for breaching the law, he is also liable to punishment if the judge or jury deem it appropriate. In this section, I show this assumption to be wrong, for *responsibility* does not entail *liability*: there is an intermediate step between 'breaching the law' and 'being liable to punishment', which the standard view seemingly overlooks. To identify this step, we need to adopt a different conception of responsibility, whereby an agent is responsible *to* a specific audience *for* his

⁹ For a reply to Brownlee's criticisms, see [Lefkowitz \(forthcoming\)](#).

law-breaking conduct.¹⁰ In what follows, I will explain this conception; in the next section, I will then employ it to defend the claim that mere defiance of the law, in and by itself, is insufficient to establish blameworthiness. Therefore, I argue, a citizen may not be liable to punishment simply for his act of civil disobedience.

For the purposes of this discussion, I follow Antony Duff's conception of responsibility as answerability, according to which an agent X is responsible for his conduct S to an individual or group Y, who has the standing to call him to account for S. The special relation between X and Y means that Y has the right to call X to answer for S (Duff 2007: 23). Others may not have that same right: hence, X may be answerable to Y, but not to W, for X's conduct may not be W's business. For example, a football player is responsible for his football performance to his own team members; the latter have the right to demand that he answer to them for the way he played (e.g. 'Why did you not pass the ball?'). He could dismiss that demand if it came from a passing stranger, by arguing that the way he plays is not the stranger's business: but he could not ignore that same request from his team mates, given the special relationship he has with them. As team member, he owes *them* an explanation for his conduct on the football field.

Equally, one parent cannot dismiss the other's demand for an explanation concerning their child's education (e.g. 'Why did you let him watch so much TV?'). Under normal circumstances, parents do not owe this kind of explanations to strangers, for the way they raise their own kids is not the strangers' business. The latter are free to express their disapproval of the parents' educational style; however, strangers have no right to demand that the parents answer to them for their child-rearing conduct. Parents owe such explanations to each other though, because their child's education is each other's business.

From the standpoint of this answerability-based conception, *responsibility* does not imply *liability*. According to the standard view, discussed in the previous section, if the agent has committed the act (i.e. disobeyed the law), he is liable to blame and punishment; under the answerability-based approach just sketched, the fact that a person has committed the act does *not* imply he is blameworthy (Duff 2007: 20). The football player may indeed have failed to pass the ball, yet may have done so to avoid an off-side, or because he was being obstructed; the parent may have indeed allowed the child an extra half hour of TV, but did so to let the child watch a long documentary. These are explanations that are owed to the relevant parties (team members, partner) but which, once provided, may warrant a different attitude towards the agent. They show that although the latter is indeed responsible (i.e. answerable) for a certain conduct to those who have the right to call him to account, he may

¹⁰ Renzo (2013); Fischer and Tognazzini (2011); Duff (2007); Darwall (2006); Watson (2004: 260-88).

not be liable to blame or punishment, given the specific circumstances under which his conduct occurred. Upon answering for his conduct to the relevant party, he may not be deemed guilty or blameworthy. He may argue he deserves no blame, for he has not failed to act according to reasons that apply to him.

Several philosophers have argued that criminal responsibility should be understood along these same lines, i.e. as based on an offender's duty to answer to the community for the breach of the law (Renzo 2013). Citizens are, in this sense, answerable to each other for their conduct vis-à-vis the law. The state, acting on behalf of the community, has the right to call a law-breaker to answer, at the criminal trial, for his conduct, because a breach of the law is the business of all citizens. However, during the trial, the defendant may also be able to 'block the transition from responsibility to liability', by providing an explanation of his conduct (Duff 2007: 22). In those cases, his action, while against the letter of the law, may not defy the values on which the civic enterprise depends; rather, as I argue in more detail in the next section, it may enhance the connection between these values and the legal system.

As a form of law-breaking, civil disobedience should be analysed through this same perspective. Under the conception of responsibility-as-answerability I here endorse, the fact that a civil disobedient is responsible for his law-breaking actions does not imply that he ought to submit to the punishment (as the standard view contends). The civil disobedient should answer for his law-breaking conduct to his community, if summoned by the state at the criminal trial; he should provide an explanation for his decision to disobey the letter of the law, to show he did not flout his obligations qua member of the political community. As a citizen, he owes that explanation to his fellows; however, this does not imply *submission* to the punishment. A civil disobedient may contest the charges, and plead not guilty; he may argue that while he is responsible for disobeying the letter of the law, he should not be deemed liable to punishment.¹¹ This may be an integral component of his duty to answer for the charges of wrongdoing to his fellows.

To appreciate how an act of civil disobedience, despite its law-breaking nature, may fulfil the agent's duty, we need to focus on an account of political obligation that encompasses some acts of disobedience. I turn to this task in the next section.

III. THE DUTY TO RESPECT THE LAW

There is considerable disagreement among political philosophers concerning what, if anything, grounds a citizen's moral obligation to obey the law (Horton

¹¹ As I explain in the last section, I argue that he may have *all-things-considered*, but no *pro tanto*, reasons to accept the punishment.

2010; Wellman & Simmons 2005). For the purposes of this discussion, I adopt a natural-duty account of political obligation, according to which members of a political community have a duty to respect each other as autonomous agents, which in turn requires them to abide by the legal directives of the state.¹² The distinctive feature of my own account lies in its broader conception of political obligation. As I explain in what follows, citizens have a duty to respect, rather than merely obey, the law: under some circumstances, this duty may be fulfilled by an act of *disobedience*.

This account stems from the claim that each person, qua human being, has an innate right to autonomy, which I understand broadly as the capacity to be in control of his own life (Wall 1998: 128). Autonomous agents have the right to choose and pursue their own conception of the good, and to give directions to their lives according to that choice: they thus have a claim that others do not interfere in the formation and execution of their actions and choices, or that others do so to a minimum (Dagger 1997; Oshana 2006: vii; Raz 2001: 157). Interferences are only warranted by the equal claims of others; the right is reciprocal, thus generating mutual obligations among agents. This implies that nobody could have standing to limit the choices of others, except to protect the equal claim of each agent against undue interferences (Ripstein 2009:19).

Against this background, the rule of law constitutes a necessary institution for the fulfilment of the right to autonomy.¹³ The state plays a key coordinating function in this sense, by enforcing rules (i.e. laws) preventing agents from unduly infringing on each other's choices in the pursuit of their own ends in life. Furthermore, the state defines the content of other rights necessary for the fulfilment of the right to autonomy (Renzo 2011: 588; Stilz 2009: 27–56; Renzo 2011: 588), by settling reasonable disagreements concerning the interpretation and scope of many rights (e.g. does the right to sell one's own property extend to one's own body?). As Joseph Raz has argued (1986: 400–30), the state promotes its subjects' autonomy by providing them with valuable options from which to choose. These considerations highlight the central role of the state, hence of the legal system, in the fulfilment of citizens' right to autonomy.

What follows from the above is that the duty to respect others as autonomous agents implies an obligation for the citizen to support the state in its autonomy-protecting function. Where the law is structured so to preserve its subjects' equal right to autonomy, citizens face an obligation to abide by its directives; the mutual obligation to respect each other as autonomous agents, then, grounds a duty to respect the law in its autonomy-protecting function (Higgins 2004: 66; Stilz 2009: 87–8). The agent's obligation is, first and foremost, to his fellows

¹² Here I adopt Edmundson's distinction between 'law-abidance' and 'law-obedience' (2006). According to this view, an act of disobedience may still display law-abidance.

¹³ For the opposite view that the state is *incompatible* with the agent's autonomy, see Wolff (1970).

(as bearers of the right to autonomy); the obligation to the law is secondary, and only derives from the former (Walzer 1970: 22; Zwiebach 1975: 75–6).

The duty to *respect* the law, however, does not entail a duty to obey it. This may sound odd, since the debate on political obligation traditionally focuses on whether citizens have a duty to obey the laws of their state (Horton 2010; Wellman & Simmons 2005). There are two reasons, in my view, that support shifting from the notion of ‘obedience’ to that of respect. First, not every act of obedience to the law necessarily respects others as autonomous agents, as even reasonably well-functioning democracies issue defective laws that may unduly target some citizens’ basic rights (Lyons 1998). Obedience to these laws (and perhaps, in some extreme circumstances, even mere cooperation with the state implementing them) might conflict with the citizen’s requirement to respect others’ right to autonomy. Obviously, a lot depends on what is at stake, i.e. how serious the violation of the right to autonomy is, what overall implications the act of disobedience might have under the circumstances, etc. However, it seems plausible to argue that there is nothing *per se* admirable in mere obedience to the law, nor anything *per se* reprehensible in mere disobedience (Edmundson 2006: 42; see also Klosko 2011). Rather, the focus on the right to autonomy may suggest that disobedience of a legal directive might even be praiseworthy, if performed with the aim to foster the alignment between the law and the right to autonomy.

It could be objected that I misread the natural-duty account of political obligation, which prescribes obedience to the not-unreasonably-unjust laws of an overall just state. Where the law is structured so as to protect the autonomy of its subjects, the latter have a general obligation to obey all its directives, not only those they deem correct; the fact that a specific law may disrespect some citizen’s autonomy does not imply it can be disobeyed (Stilz 2009: 78; Wellman & Simmons 2005: 45). It is by submitting to a common juridical order, including its less desirable directives, that citizens respect each other as autonomous agents. Based on this objection, therefore, my claim that the right to autonomy may accommodate disobedience, in the way described, appears to be incorrect.

To address this point, I refer to the second reason we should focus on respect rather than mere obedience to the law: the emphasis on the latter has led to an enduring misconception about the nature of civil disobedience. Claiming that a citizen has a political duty to obey the law ignores the fact that civil disobedience is also a political act, one performed with the aim to contribute to the life of the political community (Parekh 1993). Obedience-based accounts of political obligation fail to make sense of this aspect of civil disobedience, for they deem the latter either (a) unjustified, as the agent’s failure to comply with his own political duties (e.g. disobedience of a just law); (b) justifiable, all things considered, when moral obligations override political ones (e.g. disobedience

of a law to resist a serious injustice);¹⁴ or (c) permissible, when political duties do not apply (e.g. disobedience of invalid or unreasonably unjust laws). In all these cases, civil disobedience is treated as falling outside the realm of political obligation and, at best, as an exception to the agent's political duty 'to obey'.¹⁵

Yet, in some cases civil disobedience should not be interpreted as a justified exception to the agent's political duty: rather, it often constitutes its fulfilment. There certainly are cases where the choice to engage in civil disobedience may be justified as the result of a conflict between 'law' and 'morality', where the person's duties as moral agent may override his duties as member of the political community. However, in my view this approach may overlook the *political* nature of civil disobedience: agents engage in this kind of conduct as citizens, i.e. to fulfil their role as members of their political community.¹⁶ The fact that they defy the letter of the law does not suffice to establish their failure to act on their political duties.

As an example, consider the draconian legislation introduced in the US in the immediate aftermath of the Twin Towers attack in 2001 (Dworkin 2008: 24–51). Shortly after that attack, the US congress introduced the Patriot Act which, while allowing improved communication among federal agencies, also granted the government new powers to invade citizens' privacy (e.g. by conducting secret searches of people's homes without even informing them, or by compelling libraries to report the books people had borrowed). Suppose that, in response to this new legislation, a group of activists sought to draw attention to the risk of an undue breach of citizens' equal status as autonomous agents, of which privacy constitutes a key element (Solove 2008). Suppose that, having tried legal means of protest, and having received no answer from government authorities, they decided to engage in an illegal, though peaceful, march in front of the US Congress. My contention is that these citizens may have fulfilled their *political* duty to respect the law: they have acted out of a concern for a possible serious, and unwarranted, violation of individual autonomy. Based on the natural duty account I sketched above, they have committed no wrong. Thus, they maintain their claim-right against punishment, which in turn implies they have no *pro tanto* duty to accept the punishment merely for engaging in an illegal form of protest.¹⁷

¹⁴ See, for example, Delmas (2017), who argues for a 'duty to resist injustice' as warranting disobedience of the law.

¹⁵ One major exception is Dworkin (1985: 105), who suggests that, by engaging in civil disobedience, agents might 'acquit rather than challenge. . . their duty as citizens', a suggestion I endorse below.

¹⁶ Lefkowitz (2007) and Smith (2013) agree that civil disobedience constitutes a form of political participation. They, nonetheless, also contend that civil disobedience requires accepting the punishment.

¹⁷ They may be liable to punishment if, during their protest, they acted in reckless ways, exposing others to unreasonable risks or harms (e.g. if their protest aimed to disrupt the work of

Notwithstanding its law-breaking nature, their illegal protest may represent an act of ‘fidelity to the law’, i.e. to the values underpinning the legal system. It aims to protect individual autonomy from the risk of unwarranted interferences; it may thus fulfil a broader political requirement to ‘contribute to the law, and to try to improve the alignment between the law and the central values of a liberal polity’ (Brownlee 2012: 225).¹⁸

We may think, with Joel Feinberg, that while there is a ‘statistical presumption’ that an illegal action be wrong, illegality ‘may be a more or less reliable index or clue to the presence of wrongness, nor its ground or basis’ (1994: 173). When citizens decide to resort to civil disobedience, the mere illegality of their conduct may signal no failure vis-à-vis their political duties, for their action may still show respect for the values the law is designed to protect. While owing their fellows an explanation for their act of disobedience, by answering publicly if called to account at the criminal trial, they may have no *pro tanto* reason to willingly submit to the punishment. It would not be ‘uncivil’, in this case, to seek to avoid the sanction.

This concludes the exposition of my argument. I have criticised what I have called the *standard view*, according to which civil disobedience, as a form of law-breaking, is *pro tanto* wrong, and therefore requires the agent’s willingness to accept the punishment. Contrary to this view, I have argued that a citizen commits no wrong by merely engaging in civil disobedience. To defend my claim, I have shifted the focus from the later stage of the sentence, i.e. when a verdict is issued upon the civil disobedient, to the earlier moment of prosecution, i.e. when he is called to account for his law-breaking conduct. I have then endorsed a conception of responsibility as answerability to argue that, while responsible for his illegal conduct to his community at the earlier stage of prosecution, the civil disobedient may not be liable to sanctions at the later stage when the sentence is issued. I have grounded this latter claim on a natural-duty account of political obligation, centred on the notion of respect for the law. I have argued that, under some circumstances, this account may be fulfilled by acts of civil disobedience: when this is the case, the civil disobedient may not be liable to punishment for the mere breach of the law.

IV. THREE OBJECTIONS

In criticising the standard view, I have claimed we should not confuse the obligations arising at the moment of prosecution, i.e. when the agent is called

hospital personnel). However, punishment would be warranted by the reckless conduct, rather than by the mere breach of the letter of the law.

¹⁸ As I explain in the last section, this may apply also in the case the protesters are wrong. This shows that my argument is not based on necessity, i.e. on the claim that disobeying law X is necessary to *avoid* a serious breach of autonomy.

to answer for his law-breaking conduct, with those arising at the later moment of sentence, when he is faced with the verdict. I have argued that the standard view overlooks the former, focusing exclusively on the latter, and that this leads to a flawed account of a civil disobedient's obligations towards his fellow citizens.

However, it may be objected that I commit the opposite mistake, namely that I focus exclusively on prosecution. Granted that a civil disobedient has an obligation to answer for his law-breaking conduct to the state, if called to account at the criminal trial, what happens if, after listening to his explanation, the judge or jury issue a guilty verdict? Does my argument imply that the civil disobedient can then refuse the punishment?

In reply, I should stress that I challenge the notion of a *pro tanto* duty to accept the punishment in civil disobedience. I do not deny that the disobedient may have all-things-considered reasons to submit to the sanction, at the moment of the sentence, having fulfilled his answerability-based obligations during prosecution. His refusal to accept the punishment might incite unlawful behaviour by individuals with less noble motivations; it might cause resentment in the population at large, and possibly encourage civil unrest (e.g. at the hands of citizens who do not share the protesters' political agenda); or, as already discussed, it might hinder the communicative process, alienating support from citizens and hampering the prospect of legislative change. Under such circumstances, the civil disobedient would indeed have reasons to accept the punishment, but this would be due to the specific context of his protest, rather than to a supposed *ex ante* right of the state to punish him simply for engaging in civil disobedience. It could be replied that, if the citizen accepts to be answerable in a court (on the assumption that the court represents a legitimate constitutional state or community), he is also liable to its judgement by the very fact that he recognizes the authority of the court in answering to its procedures. However, I contend the court is *not* at liberty to punish innocent people (i.e. it does not have the moral authority to punish people who commit no wrong): that is why, as Brownlee has argued (2012: 250–1), a court may have to apologise to the civil disobedient for having to punish him.

A second objection to my argument concerns its applicability. While I have described civil disobedience as based on citizens' attempts to communicate a sincere concern about a certain law or policy, I have remained silent as to the content of the message, i.e. the protesters' specific cause. This raises the question whether any act of civil disobedience, regardless of its content, could be an act of respect for the law. Could a racist use my argument to escape punishment after an act of civil disobedience supporting white supremacy? Could he be said to have fulfilled his political duties if, during the trial, he were to argue that his illegal action was based on a sincere concern with the danger of multiculturalism?

According to my view, a racist protester would still be answerable to the state for his decision to breach the law. Thus, he would have an obligation to appear at the criminal trial to answer for his law-breaking conduct. However, he would not be able to appeal to the account of political obligation I introduced above: his racist views would be incompatible with the idea of respecting the right to autonomy, which grounds my argument. This would prevent his attempt to block the transition from responsibility to liability, for his act could not qualify as an act of respect for the law.

This reply involves the claim that the right to autonomy, like all other rights, ‘protects’ only reasonable choices (Quong 2004: 141–9). A citizen cannot consistently claim to be committed to the value of autonomy, as the principle underlying the legal system, when supporting discriminatory or racist policies. Such policies deny the equality of persons and are, therefore, at odds with a commitment to individual autonomy. As Jeremy Waldron (1993: 223) points out, ‘[t]he speeches that [the racists] claim the right to make are calculated to bring an end to the form of life in relation to which the idea of free speech is conceived’. Thus, my argument does not condone every illegal communicative act of protest; the action cannot contradict the very principle upon which it claims to be grounded, namely the equal right of each person to be respected as an autonomous agent. Citizens who are not committed to this right cannot be said to satisfy the account of political obligation discussed above.¹⁹ My account may protect *reasonable* mistakes (Lefkowitz 2007: 232), as when protesters *wrongly* believe that a certain policy would unduly undermine the equal status of autonomous agents: but it would not allow for acts criticising the ideal of equal dignity intrinsic to the right to autonomy.

A third objection to my argument involves the idea that punishment is something owed to the civil disobedient: that is, protesters have a right to be punished as part of their communicative exchange with the state. William Edmundson has argued that a state that fails to punish protesters for breaching the law also fails to recognize their political message (1998: 58). By publicly sanctioning the illegal act of protest, the state shows that it takes the protesters and their message seriously; by letting them go unpunished, on the other hand, it might engage in what Herbert Marcuse (1965) called ‘repressive tolerance’. According to this view, punishment plays an important symbolic role in the communicative enterprise between the civil disobedient and the state, for it expresses the state’s appreciation of his opposition to a certain law or policy (Smith 2013: 98). From this perspective, an unwillingness to be punished may impair the communicative aims of civil disobedience.

¹⁹ Brownlee, on the other hand, grounds the right to civil disobedience on a ‘principle of humanism’ which, at least in principle, protects also unreasonable protesters, such as bigots and xenophobes (op. cit.: 147). For a critical discussion of her view, see Smith (2016).

This objection stresses the relevance of acknowledging the civil disobedient as a member in the communicative enterprise. While this is certainly correct, it does not lead to endorsing punishing a civil disobedient; rather, it may offer further support to the answerability-based view I have presented. Taking the civil disobedient seriously implies acknowledging his status as a responsible agent, i.e. as a subject who can offer reasons to explain his own conduct. But in simply punishing him for the illegal action, the state treats the civil disobedient with an ‘objective attitude’, i.e. as someone with whom it is not possible to engage in a rational exchange (Strawson 1993: 9). It is by calling the civil disobedient to answer for his conduct that the state acknowledges his status in the communicative enterprise, and his political message; it is the failure to do this, rather than the failure to simply punish him, which may make the state guilty of repression. Similarly, it is the agent’s unwillingness to answer to the state for his conduct, rather than his unwillingness to be punished, which may impair the communicative aims of civil disobedience.

V. CONCLUSION

A citizen who disobeys the law owes something to his fellows. Sometimes, this may involve going to jail, or paying a fine; other times, it may involve issuing an apology; in other cases, still, it might simply involve explaining his conduct to them. But the mere fact that his conduct contravened the letter of the law might not be enough to blame, and therefore to punish, him. Citizens ought to respect the law and even an act of disobedience, under some circumstances, might fulfil this *political* duty.

A liberal society requires citizens to take responsibility for their actions vis-à-vis the law, yet it is a mistake to think that this implies a passive submission to punishment. I have argued that responsibility often involves challenging, rather than merely accepting, the charges of wrongdoing. An unwillingness to be punished, by publicly defending one’s own conduct during the prosecution, might at times be more ‘civil’ than a passive submission to the sentence.²⁰

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