"Can Political Institutions Commit Civil Disobedience?"

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"Constructive disobedience," former Greek Finance Minister Yanis Varoufakis and the Democracy in Europe Movement (DiEM25) have recently announced, is the best way to challenge the top-down fashion in which "European elites do business."[1] Given the virtual impossibility of EU reform via ordinary legal channels, as well as the dire crisis at hand, violations of select EU laws and directives are "a Europeanist's duty" when accompanied by constructive proposals universalizable "in the Kantian sense" that they cohere with the EU's common good.[2] If controversial EU legal measures were to be publicly disobeyed, progressive pan-European political constituencies could be successfully mobilized, and the tottering EU not just saved but reconstructed along more democratic lines. DiEM25 is by no means alone with this call: signatories to the leftist "Plan B for Europe" advocate "civil European disobedience" against an "authoritarian Eurogroup" dominated by Germany, the European Central Bank, European Commission, and International Monetary Fund. Because of their disastrous austerity and financial measures, the EU finds itself in an emergency situation that justifies a "duty to disobey undemocratic dictates."[3]

For those versed in longstanding debates about civil disobedience, such calls may seem familiar. Civil disobedience, after all, has been widely interpreted as a justifiable response to political crises or emergencies in which elites pursue authoritarian courses of action that have badly clogged the ordinary channels of political contestation.[4] Some of civil disobedience's most prominent advocates --Mahatma Gandhi and Martin Luther King come immediately to mind-- have interpreted politically motivated lawbreaking as resting on a moral "duty." Its defenders typically view civil disobedience's legitimacy as premised on an illegal protest's consistency

with the public, and not just the private, interest. Certain theorists of civil disobedience (e.g., radical democrats) also envision it as prospectively conducive not just to narrow, limited reforms but to a radical overhaul of existing institutions.[5]

It would nonetheless be a mistake to ignore a major difference. While standard accounts of civil disobedience envision grassroots activists and social movements as its agents, with their illegal acts directed at governments whose policies they aim to change, DiEm25 calls for civil disobedience by "cities, regions, and nation-states."[6] Civil disobedience's agency is located in state or institutional, rather than the usual non-state, extra-institutional, actors. In the same vein, Plan B proposes disobedience not just by social movements but also by sympathizers located "in government."[7] Diverging sharply from older ideas of civil disobedience as directed against government, state or political-institutional disobedience is now recommended: only politically motivated lawbreaking by key institutions, so the argument goes, has a real chance of igniting lasting reform. The underlying political logic initially seems plausible: given the EU's multi-layered system of governance, insulation from grassroots activism, and the fact that controversial policies and directives bind firstly governments and not citizens, governmental disobedience (by member-states, for example) might credibly proffer an effective device for disrupting "business as usual" and bringing possible political alternatives to public attention.[8] State or political-institutional disobedience, rather than its well-known grassroots prototype, seems advantageous if EU policies are going to be successfully resisted and far-reaching reform ignited.[9]

Present-day critics of the EU are only the latest converts to the idea of institutional or state-based civil disobedience. Writing in the aftermath of NATO's 1999 airstrikes against Serbia, Allen Buchanan portrayed humanitarian intervention as "illegal legal reform" analogous to (domestic) civil disobedience and thus potentially worthy of support if certain conditions, akin

to those basic to civil disobedience's justification, could be met. Just as John Rawls and other liberal theorists accepted the moral viability of conscientious, reform-minded political illegalities resting on what Martin Luther King famously dubbed the "highest respect for law," so too should a liberal theory of international law provide space for illegal, state-based activity that deepens the international rule of law and buttresses human rights.[10] A few years later, Robert Goodin -- struggling to delineate defensible international delicts from US unilateralism in the Second Gulf War-- defended a sharp distinction in customary international law between illegal but reform-minded state "rule-making" and destructive, anti-legal "rule-breaking," again by drawing parallels to civil disobedience.[11] States that acted illegally while meeting the usual conditions for justifiable civil disobedience (e.g., publicity, respect for law, accepting legal consequences) could be viewed as potentially contributing to international reform, Goodin claimed, whereas those that failed to do so should be condemned.

In the meantime, activists and scholars have turned to ideas of civil disobedience to countenance lawbreaking by developing countries (e.g., Argentina, Bolivia, Brazil, India, and South Africa) that have openly violated intellectual property laws, international investment rules, IMF rules on national debt, and other international economic legal regulations they consider rigged in favor of rich and powerful states. When doing so, countries have often acted publicly, respected norms of nonviolence, and justified their acts as part of a broader demand for global reform. So why not characterize them as state civil disobedience?[12] Their lawbreaking, and not that of powerful countries employing military force under the rubric of humanitarian intervention, best meshes with the original idea of civil disobedience as a nonviolent tool of the weak and vulnerable.[13]

In short, within the last decade or so, a wide-ranging political and scholarly debate about state disobedience has emerged, with a diverse variety of voices endorsing the idea that political institutions represent legitimate agents of civil disobedience. Some participants are inspired by Rawls' influential liberal approach to civil disobedience,[14] others by republicanism[15] or radical theories of destituent power,[16] and yet others by the "English School" of international relations.[17] However, they generally support some version of the intuition that our present-day globalizing institutional constellation calls not just for civil disobedience by transnational social movements but also conscientious lawbreaking by well-situated state institutions. Some authors hope that states as a whole will play the requisite role; others suggest that national parliaments[18] or courts[19] offer appropriate sites for disobedience against unjust laws and measures. In the context of complex, multi-layered postnational decision making systems (many of which lack democratic legitimacy), the idea of government or institutional disobedience seems increasingly appealing -- and not just within the EU. Similarly, it is easy to understand why so many theorists are turning to the veritable idea of civil disobedience to justify lawbreaking by their preferred institutional complexes: civil disobedience has long represented a singularly attractive approach to morally conscientious, nonviolent, politically motivated lawbreaking. It provides sizable moral and political capital that alternative ideas or concepts (e.g., "legal violation" or "crime") lack, and this capital has generated, in some jurisdictions, noteworthy capital gains: when politically inspired lawbreakers persuade a judge or jury that their actions represent civil disobedience, they can sometimes count on less severe treatment than those who fail to do so.

What should we make of this embrace of institutional civil disobedience? Though perhaps appealing, the move to justify political institutions engaging in conscientious, politically-motivated, nonviolent lawbreaking raises difficult questions its exponents have not

yet fully answered. Civil disobedience, as we will see, comes in different shapes and sizes. At a minimum, however, it has usually referred to politically motivated lawbreaking that is supposed to be morally conscientious, nonviolent, and show basic respect for law (I). Downplaying the modern state's normatively ambivalent traits (most importantly: its monopoly on legitimate coercion), the idea of state civil disobedience proves incongruent with minimally acceptable interpretations of civil disobedience's core components. Institutional civil disobedience's advocates tend to mischaracterize what they really seek, namely: disobedience to the law by government or state officials (II). About such official disobedience there is already a significant literature; it suggests we should differentiate it from civil disobedience. Given the modern state's specific institutional contours, its dangers seem more pronounced than its extra-institutional predecessors (III).

I. What is Civil Disobedience?

To evaluate its state or institutional rendition we need to say more about how best to conceive civil disobedience. Unfortunately, this task is complicated by the fact that civil disobedience remains an object of contestation. As I have tried to document elsewhere, there is no single classical or orthodox idea of civil disobedience: rival political traditions have developed overlapping yet diverging models of civil disobedience.[20] Accordingly, we can identify three main recent accounts of civil disobedience --that is, competing religious-spiritual, liberal, and radical democratic (or republican) renditions. The idea of civil disobedience has been articulated in conflicting ways: its presuppositions, normative justifications, and political aspirations are grasped best when situated in the context of rival political (and philosophical) traditions.

For religious exponents such as Gandhi and King civil disobedience has principally been a device to counter moral evil, a form of divine witness requiring of practitioners a strict spiritual comportment. Every element of this view, correspondingly, possesses a directly religious-spiritual significance. In contrast, the liberal model of civil disobedience, as fashioned by Rawls, Ronald Dworkin, and other Anglophone liberals in the 1960s and early '70s, frees civil disobedience from its initial religious bearings, recognizing that it can only remain politically relevant when presupposing modern pluralism. Liberals interpret civil disobedience primarily as a corrective to overbearing political majorities that periodically threaten minority rights. The radical democratic or republican model of civil disobedience, whose most significant defenders have included Hannah Arendt and Habermas, challenges liberalism's relatively limited view of democracy and its insufficiently critical diagnosis of the liberal political status quo. Civil disobedience, on their view, potentially helps overcome far-reaching democratic deficits and opens the door to extensive political and social reform.

Civil disobedience's pluralistic conceptual parameters generate some difficulties for our inquiry here. At first glance, it seems as though we might be forced to use a preferred rendition of civil disobedience as a critical measuring rod. By embracing a potentially sectarian version of civil disobedience, however, we risk "talking past" versions of state-based civil disobedience built on rival theoretical pillars. Rather than being able to identify the distinctive merits (and demerits) of institutional civil disobedience as a general political and theoretical genre, we might simply reproduce old divisions between liberal versions of civil disobedience, for example, and their religious-spiritual or radical democratic rivals. We would likely find ourselves refighting familiar theoretical battles and missing what is special about institutional disobedience.

Fortunately, we can locate another path. Despite striking differences between and among rival models of civil disobedience, they rest on shared components and aspirations. Religious-spiritual, liberal, and radical-democratic versions possess family resemblances, even if they sometimes seem akin to distant cousins.

Significantly, religious, liberal, and radical democratic accounts all view civil disobedience as a distinctive mode of lawbreaking premised, however paradoxically, on a fundamental respect for law or legality. As King famously commented in "Letter from Birmingham City Jail"

> I submit that an individual who breaks a law that conscience tells him is unjust, and willingly accepts the penalty by staying in jail to arouse the conscience of the community over its injustice, is in reality expressing the very highest respect for the law.[21]

Though formulated in myriad ways, the notion of lawbreaking for the sake of law, or illegality in the name of legality, has long constituted an ideational mainstay of civil disobedience; without it, disobedients probably could not effectively counter critics who accuse them of irresponsible lawlessness or ordinary criminality. On this matter, as on others, rival versions of civil disobedience typically make use of a joint conceptual language, even as they employ that language for different goals. When push comes to shove, for example, most exponents also view civil disobedience's legitimacy as premised on moral conscientiousness and nonviolence, though they still conceive such components in strikingly dissimilar ways. Civil disobedience is not an empty pot into which rival political and theoretical traditions pour, willy-nilly, their own potions. Its exponents depend on a common ideational language. Even when employing that language's key concepts in ways that are so heavily accented that others may find them difficult to fathom,

theirs remains a common tongue. As such, it provides minimal constraints on what can or cannot be meaningfully expressed by it.

Nonviolence, for example, has been the subject of heated controversies. For some, it has entailed nonviolence against persons but not objects (e.g., property); others have interpreted it strictly as prohibiting damage to both persons and property. Faced with such disagreements, some have dropped nonviolence altogether from their accounts of civil disobedience. When doing so, however, they tend to reproduce the very problems they hope to solve: Kimberley Brownlee, for example, worries about nonviolence's conceptual ambiguities, but her proposal to focus on "the more salient issue of harm" promises no more conceptual determinacy.[22] Not surprisingly, some version of the idea of nonviolence, despite its unavoidable ambiguities, has typically served to distinguish civil disobedience from other types of political lawbreaking (e.g., violent resistance or armed revolution). Just as an ordinary English speaker hoping to communicate successfully would not arbitrarily redefine "dog" to mean "cat," so too would those interpreting "civility" to describe verbal or physical harassment, or "nonviolence" to enable corporal abuse, seem confused and probably incoherent to most users of civil disobedience's common conceptual language.

II. Who Does Civil Disobedience?

Civil disobedience, as already noted, has generally been conceived as a type of grassroots political action, undertaken by groups of individuals or movements, and typically directed at state institutions. Institutional disobedience abandons its prototype's grassroots political agency. But what about its relationship to other facets of its common language? As I hope to show in this section, institutional disobedience meshes poorly with some core elements.

1. *The Problem of Collective Institutional Agency*

Fundamentally, state civil disobedience probably has to presuppose that political institutions (e.g., the state as a whole, parliaments, courts) can exercise agency akin to that of conventional civil disobedients. Although usually claiming that they merely aim to identify analogies between institutional and conventional modes of extra-institutional civil disobedience, most theorists proceed to describe the analogy as more-or-less clear cut, that is, they fail to thematize major structural differences between prospective institutional and extra-institutional agents of civil disobedience.[23] State institutions are not, in fact, strictly parallel to grassroots activists or political groups coming together to engage in joint action, as Buchanan implicitly concedes when defining the state as possessing "a persisting [institutional] structure" in which the "wielding of political power" and "supremacy in the use of coercion" are crucial.[24] How best to define an "institution," political or otherwise, remains an object of wide-ranging debate; we say more about this matter below. At a minimum, the notion of political-institutional disobedience probably requires some minimal notion of collective or corporate institutional agency, perhaps even that institutions "can deliberate and arrive at a unified course of action," and demonstrate "a capacity for reasoning and decision-making" akin to that of grassroots activists and the joint action they pursue. Nor should political institutions probably be viewed as "reducible to descriptions of the actions of its individual members,"[25] at least if we are to take them seriously as collective agents. Notably, the institutional collectivity "state" possesses privileged assess to an imposing collection of power and coercive instruments typically denied other social organizations or institutions.

When viewed in this light, we can begin to see why it seems wrong to push the analogy between institutional and extra-institutional disobedience too far. Grassroots lawbreakers, to be

sure, sometimes act with support from political organizations having a "persisting structure," yet such organizations typically lack direct access to the instruments of state power. When the state or one of its institutional elements (courts, parliaments) acts, it does so legally on behalf of people who may not in fact agree with its acts. If a left-wing majority in the Greek parliament were in fact publicly to disobey EU austerity directives, for example, it would speak as the binding, institutionalized, legal representative of "the Greek people," even if many Greeks disagreed with its approach. In contrast, in conventional civil disobedience activists and political organizations can always simply refuse to participate, and even when participants claim to speak "in their name" or "on their behalf," their assertion possesses symbolic political value but only limited legal significance.

To be sure, activist political organizations often possess an organized legal status, speak on behalf of members, and sometimes demand that members "toe the line" on core issues. Yet significant differences remain: knottier questions of binding authorization and political representation arise in the context of institutional than in familiar extra-institutional modes of civil disobedience. Why? Political institutions possess a binding, collective legal agency disanalogous to the political agency we find at work in grassroots civil disobedience. Institutional disobedience, by its very nature, means that potentially those "represented" (e.g., conservative Greeks disagreeing with "their" left-wing government's refusal to enforce EU austerity measures) might want nothing to do with the acts in question. To the extent that legitimate civil disobedience is supposed to rest on consensual action and presupposes an implicit commitment to ideals of political freedom and equality, its state or institutional variant raises tough questions we can usually bracket in other contexts.

To their credit, some defenders of institutional dependence have acknowledged the underlying dilemma. Rather than attributing a fictional cohesion to disobedient institutions, Jonathan White suggests in a recent discussion focused on the EU, we instead might focus on intermediary actors such as political parties and social movements, some of which can be defined by shared purposes and something along the lines of collective intentionality. If they were to gain majority control of political institutions it might make sense to view them as purposeful political agents, capable of exercising judgement and bearing the attendant risks, in a manner analogous to grassroots political activists and social movements.[26] The problem with this view, as White ultimately concedes, is that it presupposes an idealized view of political parties increasingly unrelated to the realities of contemporary political life in the EU or elsewhere.[27] More fundamentally, it remains unclear how it solves the underlying structural problem: political institutions represent collective "agents" having a special legal status backed up by coercive power. This familiar fact of political life necessarily limits the scope of any analogy we might draw between institutional and extra-institutional civil disobedience.

Revealingly, others acknowledge the problem but move to resolve it by effectively abandoning the idea of <u>distinctly</u> institutional disobedience:

> Critics would argue…that institutions and individuals are in a very different position with regard to the political and legal systems. Individuals often find themselves in a position of weakness, of subjection: they are subjects. Disobedience may sometimes be their last desperate resort. Institutions, in contrast, are often in a privileged position: they are vested with special responsibilities and the power to decide. It is that power and those responsibilities that would bar the possibility of institutional disobedience. Against these objections, I should like to defend the idea that…institutions may also sometimes [engage

> in civil disobedience]… Institutions are, after all, composed of human beings endowed with conscience. Those human beings should not necessarily be and in any event are not mechanical and blind executors of the law. Sometimes they may feel that for very important reasons they are bound to disobey…[28]

Notwithstanding its analytic virtues (about which I have more to say below), this position reduces the idea of disobedience by a collective or corporate institutional agency to something akin to conscientious disobedience by individual government officials who feel obliged to break the law. But why then hold onto the idea of identifiably state or institutional disobedience? It only makes sense to do so, I suspect, under the controversial assumption that institutions can be viewed as nothing more than the collection or sum of some group of individuals and their acts.

By day's end, we are left with a call for official disobedience, a scenario that has long interested many scholars, rather than a proposal for a basically novel variety of institutional obedience. References to state or institutional disobedience arguably confuse an already vexing topic.

Not surprisingly perhaps, Buchanan has occasionally admitted that there are dangers to overstating the analogy between institutional and conventional civil disobedience,[29] and even as he ignited the ensuing debate criticized any idea of government as a collective agent with an "independent moral status."[30] This concession may be more impactful than he seems to realize, however. To the extent that that the idea of institutional or state civil disobedience presupposes not only collective agency, but also a shared institutional capacity for conscientious moral action, its misleading contours become even more evident.

2. *Conscientious Moral Agency*

If we are to characterize its actions as somehow analogous to extra-institutional civil disobedience, institutional disobedience needs to be interpreted as potentially possessing some collective capacity for conscientious moral deliberation. To be sure, competing (religious-spiritual, liberal, radical democratic, anarchist) activists and intellectuals have interpreted moral conscientiousness in different and sometimes opposing ways, with spiritual thinkers such as Gandhi and King, not surprisingly, envisioning it as the centerpiece of civil disobedience and offering demanding accounts of its basic requirements. Liberals and radical democrats, in contrast, have tended both to downplay moral conscientiousness' overall significance and provide looser readings of its demands, in part as a way of acknowledging the dictates of modern moral and religious pluralism.[31] With rare exceptions (e.g., Arendt), practitioners and theorists of civil disobedience have nonetheless described its legitimacy as resting on some evidence of more-or-less sustained conscientious moral reflection.

Does it make sense to transfer this idea to state and political institutions? Their efforts notwithstanding, theorists of institutional disobedience have failed to make a sufficiently persuasive case for doing so.

Moral agency might be robustly interpreted so as to entail the possession of consciousness, self-awareness of an "inner life," the ability to follow a moral law, a sense of remorse or empathy, rationality, and other demanding moral conditions we might identify.[32] Conscientiousness, presumably a key component of moral agency, has been conceived in a variety of ways, some of which have indeed entailed strict moral rigorism.[33] Revealingly, even theorists who have endorsed the idea that political institutions exhibit moral agency admit that they cannot realistically be viewed as possessing it in this strict sense: "[f]ormal organizations are quite clearly not, for example, 'conscious.'"[34] In fact, it seems farfetched to attribute to the

"collective agency" of the state (or any of its specific institutional components) something like the "internal voice" or capacity for "inner reflection" associated with strict notions of moral conscience. If it is to carry any water, the idea of state moral agency will have to be conceived more modestly.

In this alternative vein, the international relations theorist Tone Erskine characterizes state moral agency as evinced by a "deliberative capacity, discernible in the ability of some institutions to access and process information," in conjunction with an ability to pursue purposive action independently and autonomously.[35] The problem with her more restricted view, however, is that it remains unclear why we should describe the resulting form of collective agency as moral and not, perhaps, simply political (and legal). Even if we accept the (arguably controversial) thesis that political institutions engage in deliberation, access information, act purposively and independently, why does it follow that they should be viewed as conscientious moral agents? It is true that we often talk about the "responsibility of government" or of specific institutional players. At least since Max Weber delineated the ethic of responsibility from the ethic of conscience, however, we are obliged to acknowledge that political responsibility cannot simply be reduced to --or equated with-- traditional conceptions of moral agency or responsibility.[36] The danger here is a misleadingly one-sided moralization of political institutions that ignores or at least downplays their distinctive attributes, what Weber famously described as their monopoly over legitimate violence, a trait whose employment necessarily generates deep normative paradoxes: most obviously, the use of (oftentimes morally deplorable) coercive power or force may be necessary to advance politically sensible goals, while a failure to do so can produce politically (and perhaps also: morally) undesirable consequences.[37] In the immediate context of state action, as in no other social arena, the prospect of force and violence means that

gaps between intentions and real-life consequences can take on potentially explosive significance.

To be sure, in extra-institutional civil disobedience, moral motives and aspirations get mixed with personal self-interest, the struggle for power, and so on. Gandhi was not just a spiritual leader but a hard-headed political animal who knew how to mobilize power: all political actors, and not simply those exercising political-institutional authority, find themselves grappling with normative paradoxes linked to the role played by force and violence.[38] Within political institutions, however, moral aims and motives are unavoidably intermingled with --and tainted by—the looming specter of force and coercion. The state is not just another moral or political "agent" but one preoccupied with the successful employment of binding political power and the terrible exigencies of organized violence. This complicates any attempt to attribute moral conscientiousness to it.

The point is not to defend a one-sided "realist" view of the state in which its relationship to coercion, force, and violence necessarily predominate. Still, those who attribute moral agency to political institutions make things too easy for themselves by neglecting modern state power's normatively ambivalent coercive functions. Simultaneously, they turn on its head one of the more appealing features of traditional ideas of moral conscience: the "call of conscience" has provided a powerful check or restraint on the political community and its employment of organized force, playing a pivotal justificatory role for defenders of conscientious lawbreaking (e.g., Henry Thoreau) in challenging state acts they viewed as morally unacceptable. By instead viewing the state as potentially embodying conscientiousness, we lose conscience's restraining function: institutional disobedience effectively attributes to political institutions, not individuals, what has periodically been viewed as one of humanity's more admirable moral-deliberative

capacities. The idea of state civil disobedience, in sum, may contain worrisome authoritarian connotations.

Not surprisingly, theorists of institutional disobedience have struggled to flesh out how the demand for moral conscientiousness can be satisfactorily met. Buchanan, for example, probably conflates his own theoretical and moral justification for state civil disobedience with state conscientiousness: he provides a detailed moral justification for "illegal legal reform" without sufficiently explaining how states (or state officials) might themselves in fact exhibit the requisite conscientious moral reflection.[39] The two tasks are related but remain distinct. Like Buchanan, Nathan Miller wants to build a theory of legitimate (and potentially military) humanitarian intervention on the basis of liberal models of civil disobedience. But his reconstruction of Rawls tends to conflate conscientiousness with other standard liberal "tests" of legitimate civil disobedience: lawbreaking states need 1) to have first exhausted existing legal channels, 2) be ready to accept legal consequences, and 3) act on the basis of principles of justice.[40] Only the requirement that states provide evidence of their sincerity, based on an "objectively defined good faith," can be described as properly evincing moral conscientiousness. Unfortunately, Miller fails to demonstrate that an "objectively defined good faith" can be readily identified in our morally and politically divided universe. Other theorists of institutional disobedience think that conscientiousness is demonstrated by moral unease in the face of laws that can be challenged on the basis of universal moral arguments or principles of global justice.[41] However appealing, this position still fails to show how moral deliberation can be attributed to the collective agency of state institutions rather than individual government officials. Though Gerald Neubauer, for example, defends the possibility of conscientious state civil disobedience, what he actually wants is "responsible state representatives" to justify lawbreaking on the basis

of "universal moral arguments instead [of]…particular, national reasons."[42] Here again, state disobedience in fact means disobedience by individual state officials, an important --but by no means altogether novel-- scenario about which we will need to say more. And once again, we might ask whether references to state or institutional (e.g., judicial, parliamentary) lawbreaking do not in fact unnecessarily confuse the messy issues at hand.

3. *State Nonviolence?*

It is hard to see how political-institutional disobedience could hold onto some sensible rendition of the old idea that civil disobedience requires nonviolence "especially against persons."[43] If we once again recall that state institutions should be characterized in part as resting on a monopoly on legitimate coercion, the idea of nonviolent institutional disobedience seems implausible. Can we reasonably posit a fundamental analogy between extra-institutional lawbreaking and illegal acts by the modern state, tasked with the (potentially) coercive enforcement of law, and outfitted with awesome organized power and destructive instruments?[44] Predictably, those who have reinterpreted humanitarian intervention, including its military variants, as analogous to civil disobedience conveniently downplay the nonviolence requirement.[45] Others qualify or even abandon it by arguing that nonviolence can be trumped by more fundamental justificatory components of civil disobedience. Republican nondomination, Danny Michelsen argues, permits military intervention against oppressive governments that commit crimes against humanity.[46] Since an updated version of Rawlsian shared "principles of justices" should be interpreted as resting on an emerging global "right to protect" (R2P), Miller claims, Rawls' defense of civil disobedience can now be reinterpreted as congruent with R2P-based military intervention. Against Rawls' own views, nonviolence should generally be respected but in exceptional cases can be scrapped.[47] For other defenders of institutional

disobedience as well, violence can be justified as long as "extraordinary care to avoid collateral casualties" is taken and "strict conditions of proportionality" respected.[48]

The immediate flaw with this move is that it fails to pay sufficient attention to the myriad grounds theorists of civil disobedience have provided for nonviolence.[49] Religious activists such as Gandhi and King, for example, would legitimately have worried that it occludes how civil disobedience is supposed to prefigure an improved, future social order: if one seeks a nonviolent future, violent lawbreaking seems more likely to impede than contribute to its realization. For their parts, liberal proponents of civil disobedience have widely condemned violence as inconsistent with the basic respect we owe political equals: violent acts are incompatible with the quest to convince or persuade them to alter their political position. Nonviolence is a prerequisite of an "ideal political discourse" in which rational exchange, tolerance, and patience with one's political foes are supposed to prevail.[50] By abandoning it, we revert to paternalistic and elitist lawbreaking that belies civil disobedience's core egalitarian normative premises.

Admittedly, conventional liberal accounts of civil disobedience have often presupposed something along the lines of what Rawls famously described as "shared principles of justice" ensconced within a specific constitutional democracy. For him and many others, civil disobedience, as a mode of redress available to political actors in constitutional orders based on ideals of freedom and equality, presupposed a viable nation state-based liberal democracy.[51] Revealingly, even Rawls conceded that if such shared principles could not be identified, or if the preconditions of a "basically just" liberal democracy were missing, more militant --and potentially violent-- forms of protest might prove justified.[52]

If we then interpret the existing global order as basically unjust and failing to meet minimal liberal and democratic standards, even on strictly Rawlsian grounds we might identify

grounds for militant and potentially violent resistance.[53] In the postnational and global institutional contexts in which the possibility of institutional disobedience is now being discussed, it perhaps makes some sense to relax the nonviolence requirement: many key political decisions are in fact being made "beyond the nation state" in undemocratic and arguably illegitimate ways. If the WTO or so-called EU "troika," for example, fail to respect sufficiently just shared principles, or some modicum of liberal and democratic ideals, why limit politically motivated institutional lawbreaking there to its "civil," nonviolent forms?[54]

When faced with this and related questions, theorists of institutional disobedience apparently want to have their cake and eat it as well. On the one hand, they strive to show that the postnational and global political contexts they have in mind already rest on far-reaching "shared principles of justices," that is, widely shared moral and legal commitments (e.g., R2P, some shared vision of core human rights, the rule of law). This is vital to their espousal of institutional disobedience because state conscientious lawbreaking is not supposed to embody "moral subjectivism," that is, narrowly partisan ideas of morality out of sync with those held by other key global players.[55] On the other hand, they condone violence, though doing so remains in tension with the shared respect and common principles of justice they find operative in the existing global order. As they move to endorse cosmopolitan views of justice and law, in sum, they undercut their allowance for violent lawbreaking, instead implicitly suggesting that institutional disobedience should preferably take nonviolent forms.

To avoid these pitfalls, some writers have sensibly purged the idea of state civil disobedience of any justification for militarily-based humanitarian intervention. However, even then the idea of nonviolent institutional disobedience remains paradoxical. What in fact can it amount to since the "state depends on latent or actual police violence"?[56] Admittedly, in the case

of lawbreaking by parliaments or courts, for example, where the specter of state coercion looms less large than in executive-based police or military action, the dilemmas are perhaps reduced somewhat. To the extent that parliaments and the courts remain state institutions irrepressibly entangled in the use of force and the resulting ethical paradoxes, however, the underlying dilemma remains. Some have tried to salvage the idea of nonviolent state disobedience by asserting that when the state abides the rule of law, its power takes an essentially "civilian" form and the nonviolence criterion can be satisfied.[57] But if states are simply following the rule of law and refuse extra-legal violence, it becomes unclear how they are acting illegally in the first place: the indispensable idea of civil disobedience as a "political act contrary to law" then vanishes altogether.[58]

4. *Respect for Law?*

Civil disobedience has been widely depicted as politically motivated lawbreaking that simultaneously exhibits fundamental respect for or "fidelity to law."[59] Unfortunately, institutional disobedience seems unlikely to mesh adequately with this core component either.

Determining whether a state or one of its institutions has even committed an illegality proves particularly arduous at the postnational or global, partly because of the underdeveloped contours of some features of law there, and partly because states ---and especially: powerful states-- still disproportionately shape adjudication and enforcement "beyond the nation state." Proponents of the idea of state civil disobedience have argued that for actions to fall under its rubric their illegality must be admitted and officials have to submit them to an independent court (the International Court of Justice, for example) or a neutral arbitrator.[60] Unless officials concede illegality and willingly accept legal consequences, it would also be difficult to characterize their acts as public or open. However, as Buchanan correctly concedes:

> in the typical case illegal acts directed toward reform of the international legal system are perpetrated by actors who will not be subject to legal penalty, not simply because the international legal system is weak in enforcement capacity but because the lawbreaker will tend to be a powerful state or coalition against whom punitive action is not likely to be taken.[61]

Relatively powerful states, after all, are more likely to possesses the presumed prerequisites of collective institutional agency (e.g., a capacity for purposive action, relative independence) than weak or underdeveloped states. On purely institutional and organizational grounds, powerful states are generally better situated to pursue --and benefit from-- state civil disobedience (SCD): "the real inequality of states makes SCD selective and mainly a strategy for states that enjoy high status."[62] Such states are not only best positioned to circumvent legal penalties but also get away scot free with denying that their activities were illegal in the first place.[63] Guaranteeing that their endeavors, even when their illegality has been acknowledged, deepens rather than discredits respect for basic rights or the rule of law also seems far more tenuous than in lawbreaking by extra-institutional protestors. Even well-organized political and social movements lack the modern state's arsenal of power instruments, an arsenal that often proves decisive in warding off legal consequences for egregiously illegal acts. It would have been politically and strategically unrealistic for Gandhi in colonial India, or King in the segregated US South, to have tried to circumvent legal penalties, let alone deny that they had committed illegalities. For powerful state and institutional players, in contrast, precisely such a strategy may prove both politically appealing and realistic.

Here again the problem goes deeper. The normative valorization of institutional lawbreaking risks obscuring that liberal-democratic political institutions are constituted by "a

public system of rules which defines offices and positions with their rights and duties, powers, and immunities, and the like."[64] By definition, political institutions are supposed to pursue actions "regularly carried out in accordance with a public understanding that the system of rules defining the institution is to be followed."[65] There are many reasons for this, but the simplest one perhaps is that it would make no sense for any rational agent to outfit political institutions with "supremacy in the use of coercion" unless the rules governing them minimally exhibit a measure of formal justice, meaning that they are general, public, clearly defined, and treat similar cases similarly.[66] Such rules are not something we can willy-nilly ignore or discard: they make up the core identity of liberal institutions, since without them we would be ruled by lawless, potentially arbitrary individuals, rather than legally-constituted officials acting in accordance with impersonal rules and legally defined official roles. Strictly speaking, it makes no sense, in a liberal democracy, to speak of institutional lawbreaking since legitimate institutions necessarily rest on some public system of general rules. We might still speak coherently of lawbreaking by government officials or representatives, who have decided that they can no longer abide duties as defined by the existing system of rules, and on the basis of conscience or political principles disobey them. Yet it potentially remains

> a dangerous idea to award institutional actors, who bring their own interests to the table, the right to decide when it is necessary to engage in rule-breaking. We need to be careful not to provide [legally] constituted powers –against whose arbitrary interference we safeguard ourselves with the rule of law—with an easy justification for illegal action. Otherwise, the defense of democracy might become a pretext for measures that are in fact undermining the citizens' capacities for self-government."[67]

When extra-institutional actors engage in lawbreaking their acts can pose risks to others; the nonviolence criterion, in part, aims to reduce them. Because of their ready access to a significant array of coercive instruments, however, state or official lawbreakers possibly generate far greater perils: state officials, like no other social actors, occupy an institutional universe where organized coercive power looms large. We may, of course, find this feature of modern politics normatively unappealing and perhaps hope for a day when "the state," as we know it, vanishes. Until then, however, it would be irresponsible to sugarcoat the harsh facts of contemporary political-institutional existence.

III. Official Disobedience: Its Perils

I have suggested that the idea of state or institutional disobedience is either misconceived or simply mischaracterizes legal disobedience by government officials (in the executive, parliament, and judiciary). Official disobedience raises complex questions about which there has long been extensive debate; for my limited purposes I focus here on its most relevant lessons.

The standard position in the longstanding discussion, I believe, has probably been that

> rule departures by state officials, those of policemen who do not arrest lawbreakers, prosecutors who don't prosecute them, jurors who acquit obviously guilty defendants, judges who depart from judicial rules –in general, deliberate failures, often for conscientious reasons, to discharge the duties of one's office[68]

are properly distinguishable from civil disobedience, in part because official disobedience raises justificatory questions beyond those we normally associate with civil disobedience. Numerous reasons have been provided, but perhaps the most common one derives from some version of Rawls' intuition that public officials, having agreed to and benefited from a specific "scheme of

social cooperation," should be viewed (in contrast to ordinary citizens) as having a strict general obligation to follow the law.[69] Unlike average citizens, who neither consistently gain from a particular system of social cooperation nor freely accept its benefits, anyone who has actively acquired public office is always "obligated to his [sic] fellow citizens whose trust and confidence he has sought and with whom he is cooperating in running a democratic society."[70] As Rawls correctly grasped, the modern state possesses a "comprehensive scope" and "substantial regulative powers with respect to other institutions," making it imperative that we subject it to the rule of law in the minimal yet indispensable sense of clear, general, prospective legal rules, as well as independent courts.[71] It is difficult to fathom how such a system of legal rules, for Rawls a sine qua non of any broader vision of justice, could flourish without officials rigorously abiding their legally defined duties and respecting legal norms, even when clashing with their own moral or political views. For the orthodox Rawlsian, in fact, the idea of institutional or official disobedience as civil disobedience arguably makes no sense: civil disobedience is a political option for citizens but not officials because the latter are properly subject to a strict obligation to law.[72]

This standard account has been subjected to astute criticism, most recently by Brownlee, who suggests that it neglects the sizable gap between "the formal codifiable dictates of normatively legitimate offices and positions, and the broadly non-codifiable moral responsibilities of the moral roles that underpin and legitimate those positions."[73] Given the ineliminable tension between codified official duties and our moral responsibilities, Brownlee posits, officials should be ready to override the former when clashing with the latter. The real danger, she believes, are not officials who ignore the law and follow private moral dictates but instead the "rigidifying and generalizing nature of formal institutions" which allegedly regularly

threaten to lead officials to engage in morally problematic practices.[74] Not surprisingly, Brownlee is willing not only to countenance but in fact appreciatively endorse disobedience by government officials, while viewing it as directly analogous to civil disobedience.

Brownlee identifies a real problem: situations can easily arise when dutifully complying with lawful official responsibilities produces grave inequities or harms. Nonetheless, the standard account should not simply be discarded. Some crucial features of modern constitutional government (e.g., impeachment mechanisms for elected officials) build directly on it. Rawls and others rightly grasped that political institutions, because of their "comprehensive scope" and impressive coercive instruments, posed specific dangers that could only be checked by the rule of law and officials who took their legally defined responsibilities seriously: the "power and prestige" of government officials, in conjunction with the oftentimes unmatched power instruments they control, require that they follow both the law and their official duties reliably and predictably.[75] For good reasons, Rawls and others could not have endorsed Brownlee's overstated hostility to the standard view that "individual officials are routinely in a position to interfere in democratic processes in more serious ways than ordinary citizens," a denial that seems to downplay the harsh realities of the modern state and its coercive traits.[76] Nor could they have abided her discounting of formal justice and the rule of law, conceived in terms of "procedural norms of generality and predictability," which she now characterizes as "subordinate to the substantive, context-sensitive, non-codifiable" moral responsibilities to which state officials primarily owe fidelity.[77]

The key implication of the standard view, at any rate, is to suggest that justifiable official disobedience will have to meet a particularly stringent series of tests: because the perils posed by lawless state officials tend to be greater than those posed by ordinary citizens (and especially

nonviolent civil disobedients), officials who break the law should be required to clear high hurdles.[78] What this specifically entails will depend on a number of complicated factors --most important perhaps, the purpose or aim of the lawbreaking in question. Are officials simply try to cleanse themselves of a law they consider morally deplorable? If so, their actions might overlap to some extent with conscientious objection or refusal.[79] Is disclosing unethical or illegal practices by other officials their main goal? Then we need a proper theoretical analysis of official "whistleblowing."[80] Or are they instead hoping to raise political awareness of a policy's ills, seeking to bring about significant political change? Their acts then, to be sure, may recall some distinguishing features of civil disobedience, except for the crucial caveat, as I have argued, that official disobedience ultimately is a different creature generating some unique challenges. Any fully developed theory of legitimate official disobedience will need to take such differences seriously. Only by doing so can it properly weigh and evaluate the specific dangers at hand, distinguishing acceptable from unacceptable official disobedience. Despite its own possible ills, official whistleblowing aimed at increasing public awareness of legally suspect acts by officials, for example, arguably supports the rule of law and the legal accountability of officials. In contrast, official refusal to enforce legislation that emerged in a relatively free-wheeling deliberative process, in which a full range of competing interests was properly represented, probably poses greater justificatory challenges.[81]

Obviously, I cannot offer a complete theory of official disobedience here. But perhaps something constructive, by way of a brief conclusion, can be modestly ascertained about the call for institutional disobedience by Varoufakis and other current EU critics. The concept of institutional or state disobedience, I believe, tends to confuse rather than clarify some of the complicated political issues at hand. What Varoufakis and others in fact desire is lawbreaking by

government officials, situated in a variety of institutions (in municipalities, provinces, nation states, and within the executive, legislature, and judiciary), who refuse to comply with certain EU laws and directives, as part of a broader effort at far-reaching political reform. Much can perhaps be said in favor of this strategy. Nonetheless, the fact that legal disobedience is apparently supposed to be committed not just by officials (e.g., lower level bureaucrats) but preferably the most powerful and influential officials, ranging from mayors and regional governors to prime ministers and members of parliament, should give us pause. They, like no others, have their hands on the modern state's imposing arsenal of coercive instruments (the police, military, etc.). They enjoy great prestige and extensive possibilities for shaping mass opinion. By hurriedly endorsing political illegality on their part, we may end up paying too high a price: where the accountability of government officials to the electorate already seems badly frayed, official disobedience may simply exacerbate the serious political crisis Europeans --and many others elsewhere today --now face.

[1] Varoufakis V (2016) Europe's Left After Brexit. Available at: www.jacobinmag.com/2016/09/european-union-strategy-democracy-yanis-varoufakis-diem25 (accessed 30 July 2018); Varoufakis (2017) *Adults in the Room: My Battle with Europe's Deep Establishment*. New York: Vintage, p. 60.

[2] Democracy in Europe Movement (2017). A Guide to "Constructive Disobedience." Available at: www.opendemocracy.net/can-europe-make-it/diem25/guide-to-constructive-disobedience (accessed 30 July 2018).

[3] Plan B (2015). A Plan B in Europe. Available at: www.euro-planb.eu (accessed 30 July 2018). There may parallels to developments elsewhere, e.g., the emergence of "sanctuary cities" (or municipalities) in the US, widely lauded by defenders of "resistance" to Trump, in which local authorities promise to protect immigrants by refusing to cooperate with federal authorities. But the parallels may only go so far: "Far from exemplars of civil disobedience, sanctuary cities…require employees to 'follow the law to a T.' When the federal government issues warrants, for example, city officials must cooperate or face criminal penalties. Despite the tough talk…no sanctuary city calls for summary noncooperation with ICE" (Leon JK [27 February 2017] Sanctuary Cities in an Age of Resistance. Available at https://progressive.org/magazine/sanctuary-cities-in-an-age-of-resistance/ (accessed 19 September 2018).

[4] Arendt H (1972) *Crises of the Republic.* New York. Harcourt, Brace & Jovanovich, pp. 74-5, 101-2; Scheuerman WE (2016) Crises and Extra-Legality from Above and from Below. In: Kjaer PF and Olsen N (eds) *Critical Theories of Crisis in Europe*. London. Rowman & Littlefield, pp. 197-212.

[5] Scheuerman WE (2018) *Civil Disobedience.* Cambridge: Polity, pp. 11-31, 55-80. For a radical democratic approach see Celikates R (2016) Rethinking Civil Disobedience as a Practice of Contestation: Beyond the Liberal Paradigm. *Constellations.* 23:37-45.

[6] Varoufakis, Europe's Left After Brexit; Democracy in Europe Movement, A Guide to Constructive Disobedience.

[7] Plan B (2016) Declaration for a Democratic Rebellion in Europe. Available at: www.planbeuropa.es/declaration-for-ademocratic-rebellion-in-europe (accessed 30 July 2018).

[8] White JP (2017) Principled Disobedience in the EU. *Constellations*. 17: 1-13.

[9] Critically on institutional disobedience within the EU, however, see Melissaris E (2017). "Constructive Disobedience": A Critique. Available at: www.opendemocracy.net/can-europe-make-it/emmanuel-melisaris/constructive-disobedience-critique (accessed 30 July 2018). The existing scholarly and political debate employs a variety of terms, including "governmental disobedience," "state disobedience," and "international civil disobedience" (Allen M [2011] Civil Disobedience, International. In: *Encyclopedia of Global Justice*. London: Springer, pp. 133-35). Because "political-institutional disobedience" (or, for shorthand, "institutional disobedience") best captures the rich variety of proposals being discussed, I tend to use it here. Historically, there are perhaps some loose conceptual parallels to John C. Calhoun's (that is, the antebellum slaveholding US South's greatest political theorist's) defense of "interposition" or "nullification," whereby individual states can legitimately negate or nullify federal laws they view as unconstitutional (Calhoun, *A Disquisition on Government* New York: Poli Sci Classics, 1947 [1853]). Like contemporary defenders of state civil disobedience, Calhoun interpreted such action as basically civil, nonviolent, and supportive of enhanced political dialogue between and among otherwise deeply conflicting interests. In contrast, however, he viewed interposition and nullification as resting directly on the US constitutional order, that is, as lawful and constitutional. Local state officials would only be empowered to nullify federal law by state-level conventions, modeled on the original state constitutional conventions, expressly called for the purpose of considering the controversy at hand.

[10] King ML (1991 [1963]) Letter from Birmingham City Jail. In: Bedau H (ed) *Civil Disobedience in Focus.* New York: Routledge, p. 74; Buchanan A (2001) From Nuremberg to Kosovo: The Morality of Illegal International Reform. *Ethics* 111:4: 673-705; Buchanan (2004) *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law.* Oxford: Oxford University Press, pp. 456-72.

[11] Goodin R (2004) Toward an International Rule of Law: Distinguishing International Law-Breakers from Would-Be-Law-Makers. *Journal of Ethics* 9(1-2): 225-46.

[12] Kokaz N (2005) Theorizing International Fairness. *Metaphilosophy* 36(1-2): 68-92; Neubauer G (2009). State Civil Disobedience: Morally Justified Violations of International Law Considered as Civil Disobedience. In: TranState Working Papers, No. 86, University of Bremen, Collaborative Research Center: Transformations of the State.

[13] Franceschet A (2015). Theorizing State Civil Disobedience in International Politics. *Journal of international Political Theory* 11(2): 239-56.

[14] Follesdal A (2015) Law Making by Law Breaking? A Theory of Parliamentary Civil Disobedience Against International Human Rights Courts? In: *Multirights Workshop on 'the International Human Rights Judiciary and National Parliaments'*, Oslo, 12-13 March 2015; Kokaz, Theorizing International Fairness; Miller NJ (2015) International Civil Disobedience: Unauthorized Intervention and the Conscience of the International Community. *Maryland Law Review* 74: 314-75.

[15] Michelsen D (2018) State Civil Disobedience: A Republican Perspective. *Journal of International Political Theory.* Epub ahead of print. DOI: 10.1.177.1755088218783232.

[16] Franceschet A (2015) Theorizing State Civil Disobedience, who relies on Agamben G (2014) What is Destituent Power? *Environment and Planning D: Society and Space* 32; 65-74;

[17] Hjorth R (2016) State Civil Disobedience and International Society. *Review of International Studies* 43(2): 330-44.

[18] Follesdal, Law Making by Law Breaking? A Theory of Parliamentary Civil Disobedience.

[19] Cruz JB (2012) Legal Pluralism and Institutional Disobedience in the European Union. In: Avbelj M and Komarek J (eds) *Constitutional Pluralism in the European Union and Beyond.* Oxford: Hart, pp. 249-68; Isiksel NT (2010) fundamental Rights in the EU after *Kadi and Al Barakaat. European Law Journal* 16(5): 551-77; Kumm M (2012) Constitutionalism and the Moral Point of Constitutional Pluralism: Institutional Civil Disobedience and Conscientious Objection. In: Dickson J and Eleftheriadis P (eds) *Philosophical Foundations of EU Law.* Oxford: Oxford University Press, pp. 216-46.

[20] This section relies heavily on my recent book (Scheuerman [2018] *Civil Disobedience*) where readers can turn for more supporting evidence. The literature on civil disobedience is vast but see the important recent contributions by Brownlee K (2012) *Conscience and Conviction: The Case for Civil Disobedience.* Oxford: Oxford University Press; Milligan T (2013) *Civil Disobedience: Protest, Justification, and the Law*. London: Bloomsbury.

[21] King, Letter from Birmingham City Jail, p. 74

[22] Brownlee K (2012) *Conscience and Conviction*, pp. 21-2, 98-9. Why the concept of "harm" is any less open to competing interpretations than "violence" is unclear. Raz rejects the nonviolence test because "[t]he evil the disobedience is designed to rectify may be so great;" as an example, he refers to Soviet-era labor camps, where it would seem hard to have limited disobedience to nonviolent means (Raz J [2009] *The Authority of Law* [2nd. ed]. Oxford: Oxford University Press, p. 267). This criticism ignores the fact that nonviolent civil disobedience, at least for some liberals, is suited to more-or-less democratic (in Rawls' terminology: "nearly just") polities. They conceded, however, that in dictatorships violent resistance, a form of lawbreaking very different from civil disobedience, may be justified (see my discussion in II.3).

[23] Among many other examples: Miller NJ (2015) International Civil Disobedience, p. 316; Hoag RW (2007) Violent Civil disobedience: Defending Human Rights, Rethinking Just War. In: Brough MW, Lango JW, Van der Linden H (eds) *Rethinking the Just War Tradition.* Albany: SUNY Press, p. 224.

[24] Buchanan, *Justice, Legitimacy, and Self-Determination,* p. 237.

[25] Erskine T (2001) Assigning Responsibilities to Institutional Moral Agents: The Case of States and Quasi-States. *Ethics and International Affairs* 15(2): 74-5.

[26] White, Principled Disobedience in the EU, pp. 6-7.

[27] White, Principled Disobedience in the EU, p. 11n5. On the crisis of European party democracy: Mair P (2013) *Ruling the Void: The Hollowing of Western Democracy.* London: Verso.

[28] Cruz, Legal Pluralism and Institutional Disobedience in the European Union, p. 263.

[29] Buchanan, From Nuremberg to Kosovo, pp. 676-78.

[30] Buchanan, *Justice, Legitimacy, and Self-Determination,* p. 102.

[31] Scheuerman, *Civil Disobedience,* pp. 11-40.

[32] Erskine T (2003) Introduction: Making Sense of "Responsibility" in International Relations –Key Questions and Concepts. In: Erskine T (ed) *Can Institutions Have Responsibilities? Collective Moral Agency and International Relations.* London: Palgrave, p. 6; Haksar V (1998) Moral Agents. In: *Routledge Encyclopedia of Philosophy*. Available at: https://www.rep.routledge.com, accessed 30 July 2018.

[33] Sorabji R (2014) *Moral Conscience Through the Ages.* Chicago: University of Chicago Press.

[34] Erskine, Introduction: Making Sense of "Responsibility" in International Relations –Key Questions and Concepts, p. 6.

[35] Erskine, Assigning Responsibilities to Institutional Moral Agents, pp. 75-6; Erskine, Introduction: Making Sense of "Responsibility" in International Relations –Key Questions and Concepts, pp. 6-7.

[36] Beardsworth R (2015) Moral Responsibility and the Problem of Representing the State. *Ethics and International Affairs* 29(1): 71-92; Runciman D (2003) Moral Responsibility and the Problem of Representing the State. In: Erskine T (ed) *Can Institutions Have Responsibilities? Collective Moral Agency and International Relations,* pp. 41-50.

[37] Weber M (2004 [1919]) Politics as a Vocation. In: Owen D and Strong T (eds) *The Vocation Lectures.* Indianapolis: Hackett, pp. 32-94. Even in the contemporary EU, as Habermas has observed, member-states "retain their monopoly on the legitimate use of force" (Habermas J [2012], *The Crisis of the European Union.* Cambridge: Polity, p. 13.

[38] Mantena K (2012) Another Realism: The Politics of Gandhian Nonviolence. *American Political Science Review* 106(2): 455-70.

[39] Buchanan, *Justice, Legitimacy, and Self-Determination*, pp. 456-72.

[40] Miller, International Civil Disobedience, p. 314.

[41] Neubauer, State Civil Disobedience, p. 8; Follesdal, Law making by Law breaking? A Theory of Parliamentary Civil Disobedience, p. 16.

[42] Neubauer, State Civil Disobedience, p. 8 [my emphasis, WES].

[43] Rawls (1971) *A Theory of Justice.* Cambridge: Harvard University Press, p. 366.

[44] On the nexus between law and the possibility of coercion see Schauer F (2015) *The Force of Law*. Cambridge, USA: Harvard University Press.

[45] For example: Buchanan, *Justice, Legitimacy, and Self-Determination*, pp. 456-72; Goodin, Toward an International Rule of Law.

[46] Michelsen, State Civil Disobedience, p. 11.

[47] Miller, International Civil Disobedience, pp. 315-17.

[48] Follesdal, Law Making by Law Breaking? A Theory of Parliamentary Civil Disobedience, p. 14; Hoag, Violent civil Disobedience, p. 224.

[49] For a recent defense of nonviolence see Vinthagen S (2015) *A Theory of Nonviolent Action: How Civil Resistance Works.* London: Zed Books.

[50] Bedau H (1991) Introduction. In: Bedau (ed) *Civil Disobedience in Focus,* p. 8.

[51] Scheuerman, *Civil Disobedience*, pp. 101-21.

[52] Rawls, *Theory of Justice*, pp. 365-68.

[53] In this spirit, see Caney S (2015) Responding to Global Injustice: on the Right of Resistance. *Social Philosophy and Policy* 32(1): 51-73.

[54] We still might ask whether it makes sense to gloss the violent acts in question with the normatively appealing term "civil disobedience." For a critical take on EU austerity and fiscal policies see Streeck W (2014). *Buying Time: The Delayed Crisis of Democratic Capitalism*. London: Verso, pp. 97-164.

[55] Buchanan, *Justice, Legitimacy, and Self-Determination,* p. 466.

[56] Neubauer, State Civil Disobedience, p. 10.

[57] Neubauer, State Civil Disobedience, p. 10.

[58] Rawls, *Theory of Justice*, p. 364.

[59] Rawls, *Theory of Justice*, p. 366.

[60] Goodin, Toward an International Rule of Law, pp. 236-38; Miller, International Civil Disobedience, 369-73.

[61] Buchanan, From Nuremberg to Kosovo, p. 676.

[62] Hjorth, State Civil Disobedience and International Society, p. 340.

[63] For example, think of how George W. Bush's administration bogusly claimed a legal veneer for (illegal) torture and never meaningfully faced any legal sanctions for doing so.

[64] Rawls, *Theory of Justice*, p. 55.

[65] Rawls, *Theory of Justice*, p. 55.

[66] Rawls, *Theory of Justice*, p. 59, p. 238.

[67] Patberg M (2019) Destituent Power in the European Union: On the Limits of a Negativistic Logic of Constitutional Politics. *Journal of International Political Theory* (forthcoming).

[68] Feinberg J (1979) Civil Disobedience in the Modern World. *Humanities in Society* 2(1): 37.

[69] Rawls, *Theory of Justice*, p. 72.

[70] Rawls, *Theory of Justice*, p. 113; also, Greenawalt K (1979) *Conflicts of Law and Morality*. Oxford: Oxford University Press, p. 279.

[71] Rawls, *Theory of Justice*, p. 236.

[72] A point, I fear, usually missed by those who deploy Rawls to justify institutional disobedience.

[73] Brownlee, *Conscience and Conviction,* p. 86. For an earlier critique, see Applbaum AI (1999) *Ethics for Adversaries: The Morality of Roles in Public and Professional Life.* Princeton: Princeton University Press, pp. 72-3.

[74] Brownlee, *Conscience and Conviction,* p. 87.

[75] Greenawalt, *Conflicts of Law and Morality*, p. 279.

[76] Brownlee, *Conscience and Conviction*, p. 110. Brownlee tends to downplay what is distinctive about state or government roles and responsibilities. Of course, those occupying non-state positions or offices can also do harm (e.g., a negligent or incompetent physician, or a CEO who exploits his or her employees). But those involved directly in the exercise of state power have ready access to coercive and destructive instruments generally unmatched elsewhere.

[77] Brownlee, *Conscience and Conviction*, p. 96.

[78] In fairness, some defenders of state civil disobedience endorse stringent tests for analogous reasons. As Neubauer, for example, notes, "[s]ince state violations of international law pose a bigger threat to the whole legal system than individual law violations, a rather strict approach is needed" (State Civil Disobedience, p. 7).

[79] Smith W and Brownlee K (2017) Civil Disobedience and Conscientious Objection. In: *Oxford Research Encyclopedia of Politics.* Available at: www.politics.oxfordre.com (accessed 30 July 2018). Conscientious objection by institutional actors also raises distinct questions distinct from those raised when committed by nonstate actors.

[80] Delmas C (2015) The Ethics of Government Whistleblowing. *Social Theory and Practice* 41(1): 77-105. Also, Fagelson D and Klusmeyer DB (2017) Justifying Official Disobedience. *Law, Culture and the Humanities.* Epub ahead of print. DOI 10.1177/1743872117721987.

[81] Or consider, for example, of the active refusal by local and state officials in the segregated US South to enforce a range of US Supreme Court rulings, beginning with *Brown v. Board of Education*, to desegregate education.