From Self-Defense to Violent Protest[*]

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Abstract

It is an orthodoxy of modern political thought that violence is morally incompatible with politics, with the important exception of the permissible violence carried out by the state. The "commonsense argument" for permissible political violence denies this by extending the principles of defensive ethics to the context of state-subject interaction. This article has two aims: First, I critically investigate the commonsense argument and its limits. I argue that the scope of permissions it licenses is significantly more limited than its proponents allow. Second, I develop an alternative (and supplementary) framework for thinking about permissible political violence. I argue that under certain circumstances, subjects may violently protest their treatment, where protest is understood as an expression of rejection of those circumstances. On my view, protest, including violent protest, is permissible when it is the fitting response to those circumstances. This alternative framework accounts for an important class of cases of intuitively permissible political violence, including cases in which such violence does not serve strategic political ends or is even counterproductive towards those ends.

1 Introduction

It is commonly held among politicians and the public alike that, as Weber (1919/1994) wrote, the state possesses the "monopoly of the legitimate use of force" within its territory. While Weber offered this as a definition of the modern state, it also captures what many take to be a moral principle prohibiting the use of private violence toward political ends: in legitimate states, acts of violence by non-state actors in service of political ends are morally unacceptable. In contemporary contexts, this principle is wielded particularly against those engaged in riots, urban uprisings, and violent protest.

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This version of Weber's dictum is so widely espoused across otherwise significant dimensions of political difference that to call it an orthodoxy seems appropriate. Indeed, it is the *credo* of leaders the world over. Here are just some recent exemplars: Barack Obama,[1] Donald Trump,[2] Nicola Sturgeon,[3] Emmanuel Macron,[4] Carrie Lam,[5] Recep Tayyip Erdoğan,[6] and the Spokesperson for the UN High Commissioner on Human Rights.[7] What evidence there is on broader attitudes towards violent protest, moreover, suggests that these leaders' statements reflect the views of a large part of the general public (Clifford & Ferrell, 1992; Jackson et al., 2013; YouGov, 2020).

Like all good orthodoxies, however, this view has its apostates. Malcolm X expressed the contrary view when he said:

> If it must take violence to get the black man his human rights in this country, I'm *for* violence exactly as you know the Irish, the Poles, or Jews would be if they were flagrantly discriminated against. I am just as they would be in that case, and they would be for violence—no matter what the consequences, no matter who was hurt by the violence. (1966, p. 374)

Importantly, Malcolm X held such acts of violence to be permitted as a matter of *right*, not merely as costs outweighed in the final calculus by the good of black liberation versus the bad of others' lives lost.

Indeed, the Black Radical movement in the United States may represent the most substantial articulation of this idea. Specifically, a central philosophical theme of that movement has been that under circumstances of severe oppression, political violence is morally permitted as matter of *self-* (and other-) *defense*—not only of lives and bodies, but of rights and freedoms as well. [See Angela Davis in Brown (1972); Newton (1971); Carmichael & Hamilton (1992); Williams (1962); among many other examples.] This appeal to the framework of defensive ethics has also lately been taken up by a number of academic political philosophers (Brennan, 2018; Caney, 2015; Delmas, 2018, pp. 179–180; Pasternak, 2019). It is, indeed, the foundation upon which those who reject Weber's orthodoxy have built their church.

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[1] "There is never an excuse for violence against police, or for those who would use this tragedy as a cover for vandalism or looting" (Obama, 2015). (See also Obama, 2014.)

[2] "...we cannot allow the righteous cries and peaceful protesters to be drowned out by an angry mob. The biggest victims of the rioting are peace-loving citizens in our poorest communities. And as their president, I will fight to keep them safe. I will fight to protect you. I am your president of law and order, and an ally of all peaceful protesters" (Trump, 2020).

[3] "Violent protest is never acceptable. ... That is not acceptable behaviour at any time, but at this time of crisis that the country faces, I think it's particularly shameful behaviour" (Sturgeon quoted in Wood, 2020)

[4] "No cause justifies that police be attacked; that shops be pillaged; that public or private buildings be burned; that passers-by or journalists be threatened; that the Arc de Triomphe be stained" ("Expression sur les violences à Paris," 2018).

[5] "[T]he extreme use of violence and vandalism by protesters ... is something that we should seriously condemn, because nothing is more important than the rule of law..." (Lam, 2019).

[6] "Those who demand freedom and democracy should also act democratically" (Erdoğan quoted in Harding, 2013)—regarding violent protests in Istanbul's Gezi Park by those Erdoğan called "vandals."

[7] "The resort to extreme violence—including against the police force—by some engaged in the protests is ... deeply regretted and cannot be condoned" (Colville, 2019).

And yet, I think the framework of defensive ethics is an unpromising one by which to vindicate the full range of acts of intuitively justified violent resistance to oppression. This is not to say that the principles of defensive ethics cannot justify political violence; rather, it is to say that the scope of such acts which are justified by those principles is much more severely limited than is commonly acknowledged. The first aim of this paper is to point out and take stock of some of these limitations.

The second aim of this paper is to sketch the contours of an alternative—or more accurately, a supplement. Specifically, I'll argue that violent resistance to oppression may be understood as a form of *protest* against what I call the "circumstances of futility": roughly, the position of being forced by another (such as the state) into a dilemma between resigning oneself to oppression and fighting back against it without reasonable hope of success. My view is that acts of protest, including acts of violence, are sometimes the *fitting response* to such circumstances. When a response is fitting, it is (all else equal) permitted; and when it is permitted, it is justified.

Understanding some forms of violent resistance as taking *fit* as their normative standard helps make sense of an important range of intuitively justified acts of resistance which are *not* plausibly justified by their effectiveness toward strategic ends. Indeed, my view can help us see why certain acts of resistance may be justified even when they are strategically counterproductive. These conclusions add an important normative dimension to recent scholarship on the effectiveness of violent protest (Enos et al., 2019; Muñoz & Anduiza, 2019; Simpson et al., 2018; Stephan & Chenoweth, 2008; Wasow, 2020) as well as a counterpoint to other work on the political morality of non-violence (Mantena, 2012, 2020).[8]

2 Self-defense and politics

We know that the state sometimes mistreats its subjects, including by imposing undue violence on them. It wrongfully convicts and imprisons; it requires some to risk their own lives and to take the lives of others fighting unjust wars; it allows to die those whom it has a duty to save; it beats and sometimes kills those who have done nothing to warrant battery or death; and so on. Sometimes these things happen because its agents abuse their offices, but often enough they happen under the aegis of the law. The state *qua* state sometimes wrongfully *violates* those subject to it. When this happens, it is because the state treats its subjects in ways that go beyond what they have sufficient reason to accept,[9] or in other words because the limits of the law have been reached.

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[8] It is worth emphasizing that at no point will I argue that individuals *should* commit acts of political violence. I shall, however, argue that they *may*, morally speaking, do so, and I shall ask what we should make of this fact. This paper thus accepts the maxim that violence should not be part of politics but questions how we should understand and enact this maxim.

One common response to such violations is to invoke the framework of self-defense: According to what we may call the "commonsense argument" for political violence, when the state wrongfully[10] yet lawfully applies force or the threat of force to a person in the enforcement of its laws, she may defend herself against it. That is to say, subjects may defend themselves against violations by the state.

Briefly stated, the commonsense argument runs as follows:

1. People have defensive permissions to prevent themselves and others from suffering wrongful harm, subject to the regulative principles of defensive ethics;
2. These permissions apply between subjects and the state (and its agents);
3. The state's permission to inflict or threaten harm against its subjects, including through powers granted to its agents, is morally limited by the reasons subjects have to accept enforcement of the law;
4. Such limits may in fact be met;

Therefore,

5. In those cases in which acts or threatened acts by the state and its agents exceed these limits, people may exercise defensive permissions to prevent these acts from taking place.

These defensive acts, like all defensive acts, may in many circumstances be violent.

This argument is powerfully simple. It may also be quite radical.[11] However, it is important to note that the argument does not depend upon a commitment to the rejection of political obligation for its force or radicality. Rather, the commonsense argument is compatible with the 'some difference view' of political obligation: the view (or family of views) according to which the law makes *some difference*—not none, and not all—to subjects' moral reasons to do as the law demands and to accept enforcement of it.[12] Indeed, it is radical precisely in that it may license violent resistance *even while* accepting a general duty to obey the law.

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[9] Throughout the paper, when I speak of a person's reasons I mean her *moral* reasons. A person has sufficient reason to accept enforcement of the law if the moral considerations favoring its acceptance (including those arising from duties, benefits, and so on) outweigh or defeat the moral considerations against accepting it.

[10] When I say 'wrongfully,' I mean this word in its purely moral sense, since by hypothesis those invoking the commonsense argument believe their distinctively legal or political recourse to have run out. Thus, while (for instance) both Cliven Bundy and Robert F. Williams may invoke the commonsense argument to justify their threat of force against the state and its agents—Bundy against the U.S. government's administration of western grazing lands and Williams against police-sanctioned lynchings in the 1960's American South—their claims need not rise and fall together, since each claim depends on a further substantive moral claim about the limits of the law having been met, which cannot be judged by any purely legal or political standard. Similar remarks apply to my claims later in the paper about the justification of violent protest: such acts are called for only when the limits of the law have been reached and so depend on the truth of substantive moral claims about the law's limits for their justification. I thank an anonymous reviewer for encouraging me to clarify this point.

[11] Just how radical depends upon further commitments. At the extreme, Jason Brennan (2016, 2018) deploys a version of the argument to defend the thesis that there is no moral difference between the conditions for defense against government agents and those against civilians. A less radical view might take a certain commitment to the political, or the value of cooperative politics, as a source of reasons for subjects to accept some acts of enforcement that would be unacceptable in non-political contexts. (On the notion of a commitment to the political, see e.g. Adams (2018) and, differently, Allen (2004) on democratic sacrifice.)

3 Limitations

Despite its radical nature, the conclusion of the commonsense argument—that violent defense is permitted when the limits of the law are reached—may ring hollow to any subject actually facing undue violence at the hands of the state. For very often, the exercise of defensive permissions in the face of the overwhelming power of the state would be tragically futile. To violently resist wrongful arrest, for instance, even if initially successful, may invite only further and more serious acts of enforcement; and to violently escape wrongful confinement may predictably lead only to further confinement, perhaps for longer or in harsher conditions. This is true, moreover, not only for individuals but for groups. Of course, sometimes collective resistance against the state can be effective. But on many other occasions even organized resistance would stand no chance against the police, national guard, the edifice of the criminal justice system, or other institutions of the modern state. In this way, the permissions licensed by the commonsense argument may be importantly practically limited.

Defensive permissions are also subject to limitations arising from the regulatory principles of defensive ethics themselves—namely, the principles of necessity, proportionality, and liability. It is generally thought that joint satisfaction of these principles is a necessary condition on morally permissible defensive action.[13] Much of what follows in this section will discuss the manner in which these principles interact with defensive permissions in the specific context of state-subject interaction. They do so in a way that, I shall suggest, is often deeply problematic. By undertaking acts which only reinforce its own prior wrongful acts, the state can manipulate these limitations so as to *defeat* subjects' defensive permissions and thereby immunize itself from the prospect of defensive action—or so I shall argue. These limitations, too, apply to cases of collective defense just as they do to cases of individual defense.[14] Indeed,

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[12] I shall proceed here as though the *some difference view* is correct, although my conclusions of course hold *a fortiori* for philosophical anarchists.

[13] How exactly these principles relate and combine is a matter of debate. See Coons & Weber (2016) (including especially their introduction to that volume) for an overview of recent scholarship.

[14] Caney (2015), Delmas (2018), and Pasternak (2019), for instance, discuss cases of collective defense against the infringement of political rights, whereas Brennan (2018) discusses cases of

I believe that such circumstances are not only possible but that they pervade the realm of state-subject interaction. This is not merely regrettable; it is, I believe, perverse.

3.1 Prudence

"The Talk" is a conversation had very widely between parents and their Black (and especially male) children in the United States and elsewhere regarding interactions with the police (Gandbhir & Foster, 2018; Hughes, 2014). Parents' advice is simple: *don't talk back, take your hands out of your pockets, do what they say, be* very *polite*—no matter the conduct or attitudes of the police themselves. "The Talk" is obviously not advice about the right way to interact, morally, with agents of the state; nor is it about the moral permissions of subjects and limits of rightful state action. It is advice about how not to get hurt, which is to say advice about prudence.

The point is a general one. Subjects who would use their defensive permissions to resist or escape the state may find themselves facing the threat of subsequent harms or wrongs that are as great or greater than the harms or wrongs their defensive acts are taken to avert. The state, having had its agents suffer the consequences of a defensive act, may call in reinforcement, and so bring greater force to bear; or, having had its laws' sanction escaped, may attempt to re-confine escapees, perhaps in harsher conditions or for longer periods. Of course, if these subjects lack sufficient reason to accept their treatment by the state, they will *a fortiori* lack sufficient reason to accept these further acts of enforcement and sanction. But it may nevertheless be predictable that the state will act in these ways, and so as a matter of prudence it may be that very often subjects should not exercise the defensive permissions they possess—just as victims of muggings often should agree to hand over what is demanded of them despite their moral permission to refuse.

These reflections speak to a structural oddity to the limitation from prudence, and to the other limitations we shall discuss, which I want to highlight: The fact that these permissions are outweighed by prudential considerations is *made true by* the further acts of the very entity against which the defensive permissions are had. In this sense, the state controls the prudential concerns which limit, practically speaking, the use of subjects' defensive permissions against it.

3.2 Necessity and proportionality

The necessity and proportionality principles are core regulatory principles of defensive ethics. There is, moreover, as Lazar says, "a deep connection between necessity and proportionality" (2012, p. 17). The two principles work in concert in determination of a defensive act's permissibility.

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individual defense. While the circumstances and details of these kinds of cases differ, the structure of justification is common between them, and my discussion of the limitations of that structure applies to both.

The *necessity principle* requires that defensive acts be necessary in order to avert the harm or wrong that grounds the corresponding defensive permission. If an act is unnecessary, because doing nothing or doing less would suffice to accomplish the same ends, then it is impermissible. If you threaten to kill me, but I could avert your threat by (say) dissuading you or punching you, then killing you could not be justified by the ethics of self-defense, because it would be unnecessary. Similarly, if I could not avert your threat by (say) *merely* punching you (because *more* than a punch would be necessary), then I could not claim that punching you was necessary to avert your threat. The necessity principle as it is usually understood thus places both upper and lower bounds on permissible defensive action. Killing when assault would suffice is an example of a violation of the upper bound. Mere assault when only killing could succeed is an example of a violation of the lower bound. In other words, the necessity principle restricts permissible acts to those that would be both *effective* and at the same time *least harmful*.[15]

The *proportionality principle* requires us to compare the seriousness of a defensive act against the seriousness of the harm or wrong it is to avert in order to determine its permissibility, where the permissibility of the former is thought to depend upon the magnitude of the latter.[16] Often, though not strictly, this means that the defensive act may be no more than roughly equivalently serious compared to the seriousness of the act averted. Thus, stabbing a person in self-defense would be disproportionate if what were being defended against were a pinch, a tickle, an insult, and so on.

What unites these principles is a concern with prohibiting *gratuitous* harm: harm which is unnecessary or disproportionate to the achievement of one's defense. These principles practically limit the commonsense argument since, very often, defensive acts against agents of the state will fail either to be necessary, proportionate, or both. To see this, consider two cases:

> *Necessity failure:* Poe, an agent of the state, wrongfully threatens Vic's life. Because Poe bears the resources of the state, she wields far greater force than Vic, a law-abiding subject, ever could. Thus, while Vic could attempt to fight back against Poe, she has no reasonable chance of successfully averting Poe's threat.

In this case, the necessity principle forbids Vic from fighting back (on defensive grounds), since she could not hope to succeed. Her resistance could not be *effective*.[17] Very often, we might suppose, defensive acts against agents of the state would be of this kind. For how often can one successfully resist arrest or escape incarceration? Hopes for such outcomes are clearly slim.

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[15] Considerations of risk and uncertainty are also relevant (see Lazar, 2012), though not for the analysis here.

[16] I follow Suzanne Uniacke's (2011) proposal that we discuss proportionality in terms of 'seriousness' of the relevant comparands.

[17] Many wish to resist this conclusion because it delivers the wrong verdict in some important cases. This presents a puzzle, however, rather than reason to reject the necessity principle. I discuss this issue further in sec. 4.

Now consider another case:

> *Proportionality failure:* Imagine that Vic is stopped for a minor traffic infraction but faces the prospect of assault and lengthy detention or confinement. Assume that Vic lacks sufficient moral reason to accept this treatment, thereby giving her a *prima facie* defensive permission to resist it. If Poe is an agent of the state carrying a deadly weapon which she might use should Vic attempt to resist arrest, then to resist arrest might require lethally harming Poe.

In many (though not all) cases, the seriousness of Poe's death would be significantly greater than the seriousness of arrest faced by Vic—even when the seriousness of arrest is very serious. When this is the case, the proportionality principle prohibits Vic from defending herself against wrongful treatment, since Poe's death would therefore be disproportionate to the wrong faced by Vic. That is, the defensive act which would be *effective* would not be *proportionate*.[18] This is owed not to the fact that Poe's treatment is acceptable to Vic (it is not), but rather to the stakes of engaging in defensive action against well-protected and lethally armed agents of the state.

Again, that these limitations apply (when they do), and therefore that subjects defensive permissions are defeated, is often *made true by* prior acts of the same entity against whom a defensive permission would be had. Indeed, the police and other enforcement agents may be said to arm themselves precisely in order to limit the capacity of subjects to resist. The state thereby controls the conditions under which subjects may permissibly defend themselves against it.

3.3 Liability

It is widely agreed that at least part of what makes a defensive action permissible has to do with certain features of the person against whom that action will be taken—normally features arising from acts undertaken antecedently by him—and the relation of those features to the claims we each have not to suffer harm by others. Beyond this too-general statement there is controversy (Frowe, 2014, ch. 4; McMahan, 2016; Quong, 2012; Renzo, 2017), though a common more specific thought is that by bearing moral responsibility for, or responsible control over, threatened or ongoing wrongful acts, one can lose one's own standing to claim that one not be harmed in ways that would defend against those acts. For instance, by wrongfully threatening your life, I lose standing to claim that you not lethally harm me in self-defense. When I lose standing in this way, we say that I am *liable* to defensive harm at your hands or on your behalf.[19]

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[18] The moral mechanics of some cases of this kind are more complex: if Poe *escalates* the encounter such that she is culpably threatening Vic's life, then Vic's use of lethal force in order to defend herself would be proportionate, since Vic would then be responding to a lethal threat. However, this describes (I think) only a subset of the relevant cases. In addition, it is also widely thought that even when an attacker culpably threatens a victim's life, if the cost of compliance with the threat is comparatively small, the victim may nevertheless be forbidden from killing in self-defense. To kill a mugger rather than give him a dollar, for instance, is often thought to be impermissible, and so to kill a police officer rather than comply with her wrongful demands may in many cases likewise be impermissible. On escalation, see David Rodin (2002, p. 134) and Christopher Finlay (2015, pp. 69–72).

Now, I wish to call attention to a peculiar feature of liability in cases of group agency, including cases of state action divided between and carried out by multiple state agents. Think of a person who is wrongly imprisoned, beyond the limits of what she has reason to accept. Who bears responsibility (and so liability) for this outcome? The state, yes, but which of its agents? In many political and legal systems, there is a wide variety of candidates for this assessment—from legislators who make laws, to elected and appointed executives who manage the agencies that enforce the law and run confinement facilities, to prosecutors who decide whom to bring charges of lawbreaking against, to judges and jurors who determine legal guilt or innocence and sentence those found guilty, to ground-level enforcement agents such as police and guards who arrest and confine. However we distribute responsibility among such agents, one thing is clear: some will bear greater responsibility than others and so will bear greater liability than others on that basis.

And yet, those against whom violent resistance would be most effective are in many cases those who seem to bear the least responsibility; and those who seem to bear the greatest degree of responsibility may be those against whom opportunities for resistance will be scarcest. To see this, it may help to fix on a case:

> *Liability failure:* Imagine that Vic has been sentenced to death for a crime she did not commit and for which exculpatory evidence is now available, yet the state's judges and prosecutors refuse to consider this evidence. Imagine that Vic's only chance to avoid death is to kill Poe, a guard at the prison at which she is being held, thus enabling her to escape. Suppose however that Poe is neither aware of Vic's exculpatory evidence nor in a position to assess it if she were.

It seems plausible in this case that Poe does not bear sufficient moral responsibility, and thus liability, for Vic's fate so as to warrant her death as a means of Vic's defense. On the other hand, those who (perhaps) *do* bear such liability are (most plausibly) the prosecutors and judges who pursue and order Vic's death despite the availability of evidence of her innocence, or perhaps the legislators and executives whose laws these judicial agents carry out. Yet defensive action against them, we can imagine, would be either unavailable or ineffective in preventing Vic's death.

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[19] I shall make the further assumption in what follows that it is sensible to talk of the *extent* of a person's liability to defensive harm or wrong, and that there is a connection between the extent of one's liability and the extent of one's moral responsibility. One might thus be liable to defensive harm, but more or less so than some other also-liable person, or more or less so than one would have been in other circumstances. The extent of one's liability thus also affects the extent of the harm or wrong that may be wielded defensively against one on that basis.

Now, there are surely other cases in which ground-level enforcement agents do bear sufficient moral responsibility so as to be liable to defensive harm, and still other cases in which defensive harm against legislators, executives, or jurists might indeed be effective. But a great many cases will be like the one described above, in which, due to the diffuse nature of state agency, defensive action could not meet both the constraints of liability and effectiveness. Again, this would be not because the wrongful threat to Vic's life is removed, but rather simply because the structure of Vic's interaction with the state renders defensive action impermissible. Once again, moreover, this circumstance is brought about by prior acts and decisions of the state itself.

3.4 Taking stock

The foregoing reflections suggest that the scope of permissions countenanced by the commonsense argument is quite limited, since in the actual circumstances of politics, such permissions are often *outweighed*, as when limited by prudence, or else are *defeated*, as when limited by the regulative principles of defensive ethics.

What should we make of this? In a certain frame of mind, some might look on this fact with an attitude of approval. After all, the *point* of politics, for many theorists, is to organize and stabilize society, including through the use of force (Hobbes, 1996 (on the standard reading); Plato, 2002; Weber, 1919/1994). But we are here considering acts which are, by hypothesis, beyond the bounds of what subjects have reason to accept at the hands of the state. Whatever we think, we surely cannot *approve* of such acts.

Taking the opposite view, we might instead be led towards revolution. When the state exceeds the bounds of rightful action, the social contract is broken (or so we might think) and rebellion is permitted (e.g. Rousseau, 1913, III(X); or on an alternative reading of Hobbes, as per Sreedhar, 2010). But even if true, this fact may likewise ring hollow to anyone facing wrongdoing at the hands of the state. For against many modern states, even organized resistance is likely to be futile. Moreover, we should consider that some violations by the state, while perhaps permitting a forceful response, may not dissolve the bonds of government entirely.

Victims of state wrongdoing may thus be left with a difficult choice between accepting their fate and futile resistance. There is a tragic quality to this fact. It is tragic when permissions to defend oneself are outweighed by prudential considerations stemming from the predictable further conduct of one's very same aggressor. It is also tragic when one's defensive permissions are defeated by the structure of state-subject interaction rather than by the removal of the threat that would ground the permission.

Yet these are not simply tragedies to be lamented; they are, instead, social circumstances brought about by the acts of others—in particular, by the state and its agents. That is, those against whom defensive permissions are or would be had are *at the same time* those with the power to create and manipulate the circumstances that outweigh or defeat such permissions. This is not only tragic; it is, I suggest, perverse. This perversity is itself, I suggest, morally objectionable.

It is worth pausing to reflect on the nature of this perversity. What, more precisely, is objectionable about it? It is not simply that individuals' defensive permissions are defeated, nor (when they are not defeated) that it would be imprudent to exercise them, for in many other circumstances these outcomes are not at all objectionable. Nor could our objection lie in the deep difficulty of the choice faced by individuals in these cases—between futile resistance and resignation—since many deeply difficult choices (including true moral dilemmas) are precisely tragic *rather than* objectionable.[20]

Instead, I think that the wrong is a particular kind of compound wrong which lies in a victim's having her recourse for a prior wrong foreclosed by the very same actor responsible for the original offense. To place another into the "circumstances of futility" in this way—that is, into facing the choice between futile resistance and resignation—with respect to a wrong one is oneself *already responsible for* is to express a profound and odious disregard for her. It is a way of doubling down on wrongful conduct rather than treating one's victim as a holder of claims against such treatment. In interpersonal contexts, this is a way of failing to treat others as fellow members of the moral community who are owed respect and answerability. When the state does this to its subjects, it similarly fails to treat them as being owed justification for the state's rule over them.[21]

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[20] It might alternately be thought that the wrong lies in the state's *manipulation* of subjects' circumstances, or in its *dominating* them. For various reasons, however, I don't think these are promising candidates either. Wrongful manipulation most plausibly necessitates intent, which may be lacking in some state-subject interactions of the kind discussed above. Domination on the other hand seems like too generic a wrong to capture what seems specifically objectionable about the specific circumstances described here; and moreover, the precise nature of the wrong of domination remains somewhat opaque despite the great deal of research on the topic. I thank two referees for calling my attention to these possibilities.

[21] This is similar to how Amia Srinivasan describes what she calls the 'wrongness of affective injustice':

> Affective injustice is a second-order injustice … the wrongness [of which] … lies [] in the fact that it forces people, through no fault of their own, into profoundly difficult normative conflicts—an invidious choice between improving one's lot and justified rage. (2018, pp. 135–136)

Her view, however, takes only faultlessness of the victim as necessary to generate an objection to the dilemma she faces, whereas my view is that fault on the part of a wrongdoer is necessary, so that the objection is not to the dilemma *per se* but to the act of the person who wrongfully forces it upon one.

4 Protest

Such perversity (like its sibling cruelty) sometimes calls for a response. The question I shall take up now is what form that response may take, and whether it may include violent acts. In what follows, I shall argue that the *fitting response* to the perversities we have been discussing is *protest*, and that sometimes only violent protest is adequate to the wrong protested.

To begin to see the justification for this view, consider the case of

> *Bully:* Chet is a cruel schoolyard bully, who regularly shakes down other children for their lunch money. Chet is much larger than the other children, who have no hope of resisting his demands through force of their own. Loren is one such schoolchild, who, for the umpteenth time, faces Chet.

Suppose that this time, Loren is sick of giving up his lunch money, and he is tempted to kick Chet in the shin. He is tempted not because this act will scare Chet off, now or in the future; on the contrary, such an affront is likely to only fan the flames of Chet's rage. Loren also, let us suppose, rejects the notion that Chet deserves some comeuppance, perhaps because he knows that Chet's home life is troubled and that this is likely the source of his bullying ways. Nevertheless Loren feels pulled to say "no" to Chet, and to say so with his kicking foot. May he?

As a matter of intuition, the answer seems clearly to be *yes*, but there is a puzzle as to why that should be so. Since kicking Chet would be neither effective, nor deterrent, nor deserved, the worry is that it is gratuitous. And how could gratuitous harm be justified?[22]

This is a version of an old puzzle in defensive ethics to which there are few satisfactory solutions. Most prominently, Statman (2008) suggests that one may violently defend one's honor in such circumstances; McMahan (2016) suggests that one may violently defend one's dignity; and Frowe (2016) suggests that one may violently defend one's moral standing. But these solutions apply principles of self-defense to the defense of this other thing, *honor* or *dignity* or *standing*, leading to the problem that the necessity, proportionality, and liability principles constrain defense of *that* in familiar ways. For example, if Loren may defend his honor by drawing himself up and gravely stating, "I do not recognize your right to treat me in this manner!," then the necessity principle enjoins him from taking the more drastic measure of kicking Chet in the shin. Similarly, if Loren's plight is at the hands not of a single bully but of some network of agentially dispersed bullying, then the liability principle might prevent him from kicking the shins of the chump extracting his money, rather than, say, the ringleader, if only the latter would effectively defend his honor. It may also prohibit Loren from kicking several such bullies, if they were attacking in a group, should kicking just one suffice to preserve his honor. These prohibitions fly in the face of clear intuitions about these various cases.

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[22] I adapt the arguments in this section from my "Futile Resistance as Protest" (2020), which develops them at greater length and in greater detail with respect to interpersonal cases and the defensive ethics literature.

These objections to the honor-, dignity-, and standing-defense views take on greater force when we imagine much more serious cases: think of victims of rape, individuals beaten by groups of assailants, slaves in revolt, or small countries invaded by large aggressors. All of these cases seem to license permissions to futile resistance. Yet I doubt very much that such resistance, when it could not be effective, is nevertheless constrained in the ways that would follow from the view that what such resistance defends is honor or dignity or standing. These people are not defending those things, if indeed they are *defending* anything at all. They are fighting for their bodies and their lives and their countries[23]—and they do these things permissibly, even when they have no hope of success. And so the question remains, why should this be so?

We should, I believe, look elsewhere for an explanation of why such acts are both justified and non-gratuitious. Here is what I suggest instead: futile violence may be justified *in protest of* being placed by another—in our case, the state—into the circumstances of futility. Importantly, this is not to say that protest is called for in response to futility itself: as discussed already, some futile circumstances may be simply tragic. Rather, it is the special wrong of being forced into the circumstances of futility by one's very same aggressor to which protest is the fitting response.

What makes protest the fitting response to such wrongs? My answer will become clearer in what follows; however, the basic thought is clear enough: When we consider what makes these wrongs special—the profound and odious disregard wrongdoers express for their victims' basic moral and political claims—it becomes apparent that the fitting response is to reject the content of this expression and thereby to insist upon one's status as a holder of such claims, or in other words as one entitled to moral and political regard.

4.1 Expressing rejection

The idea that futile violence may be justified as a form of fitting protest demands a conception of protest. In a classic article on the topic, Bernard Boxill offers a suggestion:

> ... when a person protests his wrongs, he expresses a righteous and self-respecting concern for himself. (1976, p. 61)

Now, one thing about which Boxill seems surely correct is that protest involves *expression*. Archetypal cases of protest are exactly that, and even private acts of protest can express something to one's own self. Indeed, I am inclined to think that expression is an essential part of protest.

I also think, as Boxill subsequently argues, that an important aim and good of protest can be to provide victims with evidence and secure knowledge of their own self-respect (1976, p. 67). But *contra* Boxill, I do not think such an aim or good is essential to the justification of the practice—or indeed to the practice itself. If it were, it is not obvious that many ordinary cases of protest on others' behalf would make sense, since one cannot normally, through an act of protest, provide *another* with evidence of *her own* self-respect. More importantly, if insistence upon one's own self-respect were an essential part of protest, then protest might fail to be called for should one already possesses a secure sense of one's own worth. This seems especially the case when we consider violent protest. If securing a victim's self-respect were an essential end of protest, but if a victim were already secure in her self-worth, then how could violence toward that end be justified? Would it not, again, be simply gratuitous? Yet, other things equal, futile defense in cases of rape, slavery, invasion, and so on seems to me to be *always* permissible, regardless of the self-respect of the victim.[24]

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[23] Frederick Douglass relevantly writes, "when I was looking for the blow about to be inflicted upon my head, I was not thinking of my liberty; it was my life" (1855, p. 411).

Boxill recognizes in one way the difficulty about effectiveness and observes that protest seems called for *precisely when* there is no hope that the wrong protested will abate. "Typically," he writes, "people protest when the time for argument and persuasion is past." Protest is a response, indeed, to this fact:

> Protest is, essentially, an affirmation that a victim of injury has rights. It is not an argument for that position. (1976, p. 63)

Again, a point about which Boxill seems clearly correct is that although protest is essentially expressive, it need not at the same time take the form of persuasion. In other words, protest is not necessarily an appeal to others. Thus, while an important aim of some protest may be to address others—one's compatriots, the wider world, or indeed one's own oppressors—it need not have that aim. It is not a condition on permissible protest that it work to engender empathy or sympathy in others, a point important to remember when considering violent protest.

Boxill is also right to note that one thing an expressive act of protest may accomplish is to affirm or insist upon the rights or dignity of the victim. But while these may be important *ends* of protest, I think the more basic expressive *aim* of protest is purely negative: it is simply *rejection*—of the circumstances of one's oppression, of acts of injustice, of the position in which one finds oneself at the hands of others, and perhaps too of the cruelty or perversity of these things.[25]

Here is what I propose instead. According to the

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[24] For reasons of space, I can only treat Boxill's argument here cursorily. See Shelby (2010) for further (friendly) criticism of the view.

[25] This should be qualified. I shall argue in the next subsection that an expression of rejection is the fitting response to many wrongs, and I argue here that such expression is what protest most basically is. Now, when one expresses rejection of one's wrongs, one may also thereby *inevitably* also affirm or insist upon one's rights or dignity. Whether, if so, this makes such affirmation or insistence an essential part of protest is something about which I take no particular stand. I *do* claim however that protest is not justified by any independent value such affirmation or insistence may realize.

> *Rejection Conception of Protest*: Protest is an essentially expressive act of rejection of what are taken to be unjust or wrongful circumstances, directed at (though not necessarily addressed to) the agent taken to have responsible control over those circumstances.

To return to our earlier example, when Loren kicks Chet in the shin, Loren is saying "no"—that he rejects what in this instance he is being forced to accept: giving over his lunch money. His rejection is of the circumstances of futility in which he finds himself, and his rejection is directed at Chet, because it is Chet who is responsible for the creation and maintenance of those circumstances.[26]

4.2 Justification and fit

Because the conception of protest I have proposed does not essentially involve the achievement of some end (except the expression rejection itself), it may be mysterious what justifies it. Of course, merely saying "no" may need no justification. But expression may take more active and forceful forms: a stomp of the foot, a kick to the shins, and so on. Some of these acts may involve costs to others. What justifies *these* sorts of expressive acts, including acts of violent protest?

My further suggestion is that what justifies an instance of protest is not the fact that it is a necessary means to some end but rather its *fittingness* as a response to the circumstance of futility. When violent protest is justified, it is because *only* such a forceful expression of rejection would *adequately fit* the circumstances.

The fitting is a well-known (if under-theorized) normative category, and while I shall rely on it here, I'll not offer or endorse a particular analysis of it.[27] Here is the basic idea, however: to be *fitting* is to be *apt, adequate, called for, correct, appropriate,* and other synonyms; and for an expression (say) of protest to be any of these things is for there to be the *right sort of connection* between the expression of protest and the thing protested, regardless, importantly, of considerations of efficacy and consequence. The notion is familiar from philosophical work on emotions and reactive attitudes: anger and resentment may be apt in response to some circumstances but not others (Callard, 2019; D'Arms & Jacobson, 2000; Langton, 2001; Srinivasan, 2018), as may blame (Owens, 2012, chs. 1-2; Scanlon, 2008, ch. 4). It has figured in discussions of punishment, where certain forms of punishment have long been thought to fit certain crimes (Enker, 1991). Slightly farther afield, it also figures prominently in certain areas of normative ethics and meta-ethics—in debates regarding the correct analysis of value (Jacobson, 2011), in the related "wrong kind of reason" literature (Hieronymi, 2005), and in debates about normative fundamentality (Howard, 2019; McHugh & Way, 2016).

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[26] Juliette Hooker similarly analyzes riots/uprisings as "appropriate" forms of expression of anger and pain (2016, pp. 462–464). Her claim however is that in democratic societies, permissions for such expressions are owed as a form of civic redress for undue sacrifice, and moreover she is not using "appropriate" in its fittingness sense. Her claims therefore differ in several ways from my claims below about what justifies protest. Delmas (2018) and Pasternak (2019), drawing upon Srinivasan (2018), both also suggest that acts of resistance may be apt responses to oppression. In my discussion, I aim to offer an account that goes substantially beyond those suggestions.

[27] See Howard (2018) for a survey of approaches to the topic.

The idea that the normative standard for expression is one of fit is also a familiar one (Anderson & Pildes, 2000, p. 1512), as is the idea that acts may carry a principally expressive dimension (Austin, 1975, p. 118; Langton, 1993, p. 322). Together, these ideas suggest that fit provides the normative standard for expressive acts—or at least for the expressive dimension of such acts. If protest is an essentially expressive act, then its expressive dimension should be governed by a standard of fit. It would seem to follow that an expressive act is justified, in at least its expressive dimension, when and because it is fitting. The conclusion is that protest is justified when and because it is a fitting expression of rejection of the circumstances it responds to.

However, understanding protest as a fitting act of expression of rejection only takes us part of the way. Since the particular expression of rejection we are considering involves consequences, we need further standards for *their* justification. Why, we might ask again, may Loren say no *with his kicking foot*, rather than only with his voice? Why (and when) is *violent* protest justified?

The answer is that unlike defense and other efficacy-oriented acts, the orientation of expression, and so of expressive acts, is toward *adequacy*. Indeed, adequacy is a central dimension of fit. (For example, when we deem blame of the blameworthy to be called for, we mean that it is called for *in the correct measure*,[28] or in other words that it must be adequate.) Thus, for an act of protest, for instance, to be fitting is for it to adequately express rejection of the wrong it responds to.

Now, while adequacy does require a certain kind of effectiveness—you can only adequately express yourself if you successfully express yourself—it may sometimes also require quite a bit more than this. For just as adequately expressing your thanks may, when the debt of gratitude is great enough, require more than uttering "thank you," so too may adequately expressing rejection require more than uttering the word "no." Indeed, in both cases, sometimes words may fail entirely, such that expressive acts are called for instead. In cases of protest, when the wrong to which it responds is serious enough, forceful expression—including forceful or violent expressive acts—may be demanded. This is why fitting protest may demand that Loren do more than say "no," and indeed do more even than shout it. For when the circumstances are severe enough, it may be that only a kick will do.[29]

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[28] There is some question, which I take no stand on here, about whether fittingness is itself gradable–e.g. blame is *more fitting* in serious cases—or whether the fittingness of an attitude depends on its gradation—e.g. only *strong blame* would be fitting (see Maguire, 2018, pp. 790–794). The matter of adequacy as a dimension of fit, it seems to me, is indifferent between these alternatives.

[29] If adequate expression of rejection sometimes *demands* violent protest, is non-violence rendered impermissible on those occasions? This would contradict the very widely-held view that non-violence is always *at least* permitted. But to be called for or demanded as a matter of fit is not to be *required*. Since violence in such cases is not required, non-violence remains permitted. (For example, to blame the blameworthy, while certainly called for, does not seem to be required;

Despite the general nature of this claim, it is important to emphasize that violence will not be demanded in response to any or every serious political wrong. For my claim is not the old retributivist saw that violence is (simply) the fitting response to serious wrongs. Rather, my claim is that violence may be the only way to adequately express rejection of wrongs which cannot be averted and which themselves express the most serious disregard for their victims' basic moral and political claims. This kind of disregard calls for an expression of rejection; and when words fail, violence can be an important—and indeed sometimes the only—way of raising one's voice.[30] When one is being well and truly trampled upon by another, and when one's complaints fall on deaf ears, it is fitting to thrust one's fist out in protest *even if* the boot will nevertheless fall. In so doing, one rejects the other's disregard for oneself, and one also thereby insists upon one's status as a holder of claims and as one owed respect and answerability.

Although violent acts of protest may be called for in response to certain forms of oppression, they are nevertheless subject to internal limitations similar to those limiting defensive acts. This is because fitting responses generally (including therefore acts of fitting protest) must, as with acts of defense, obey constraints of proportionality and liability. Only a proportionate response is a fitting response; and a response is fitting only if it is directed at a target who is liable to face it.

It is easy to see how certain expressive harms, such as those involved in violent protest, might be proportionate (or not) to certain wrongs and injustices. For instance, for Loren to stab Chet through the hand with a freshly sharpened pencil may (or may not) be disproportionate to Chet's bullying, depending on the nature and extent of the abuse. Or, to take an example from politics, for Black Americans in the 1960s to engage in rioting, destroying public and private property and endangering the lives of public servants attempting to enforce order, may (or may not) have been proportionate to the conditions of economic and social ghettoization and subordination imposed on them.

It is also easy to see how considerations of liability bear on the justification of acts of violent protest. For Loren to kick Sally, Chet's younger sister, rather than Chet himself, would be to place the burden of the consequences of this form of protest on the wrong party, so violating the requirement of liability.[31] Likewise, for rioters in Detroit's Uprising of 1967 to have looted shops and burned buildings across the Detroit River in Windsor, Ontario, rather than in Detroit itself, would have been to impose the costs of this protest on those who were (presumably) not liable to bear them. Had those riots taken this

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magnanimity remains permitted.) See again my "Futile Resistance as Protest" (2020) for further remarks on this question.

[30] King famously called riots "the language of the unheard" (1967), and David Carter, summarizing contemporaneous accounts and interviews with participants in the Stonewall riots, characterizes those events as a "collective *crie de coeur*" (2013, p. 160).

[31] The apparent permissibility of forms of protest that involve harm to oneself, such as hunger strikes, self-immolation, and so on, suggest that the liability constraint confers upon those who are not liable a waivable claim against suffering the consequences of protest.

form, they could not therefore have been justified as instances of permissible violent protest.

Note however that because the constraints of proportionality and liability here are independent of the requirement of efficacy, they are more permissive than in cases of defensive action.[32] For instance, if (let us imagine) violent protest by prisoners is a fitting response to certain circumstances of incarceration, and if guards are liable subjects of such violence, then violence against them may be permitted as a matter of protest even though it is prohibited as a form of defense. Since the goal of such protest is *expression* rather than *defense*, it would not matter if such violence could not hope to help the protesting prisoners escape, or even if it were counterproductive.[33] Similarly, if in democratic societies citizens are complicit in the wrongs done in their names (Beerbohm, 2012; Stilz, 2011; Zakaras, 2018; though see also Lawford-Smith, 2019), they too may be liable to suffer the consequences of fitting violent protest. Indeed, I suspect we should think of many political uprisings as (in part) precisely such activities.

4.3 Summary

We can now state the argument in summary:

1. Protest is an expression of rejection of wrongful or unjust circumstances;
2. Expression of rejection is a fitting response to some such circumstances;
3. A fitting response to an act or circumstances is (all else equal) permissible;
4. A response is fitting only if it is adequate, proportionate and correctly directed (i.e. meeting the constraints of liability);

Therefore,

5. Fitting—i.e. adequate, proportionate, and correctly directed—protest is (all else equal) a permissible response to some wrongful or unjust circumstances.

The circumstances in question are, I have argued, those that communicate a profound disregard for the basic moral or political claims of those affected. In practice, I suggested that such disregard arises in what I called the "circumstances of futility": when individuals have their recourse for serious wrongs obviated by the same actor responsible for the original offense, and so are forced to choose between futile resistance and resignation to the wrongs done them. Protest is the fitting response to these circumstances because it correctly expresses rejection of this disregard. It also thereby insists upon victims' status as holders of basic moral and political claims, owed regard and answerability. Sometimes, only forceful or violent acts of protest can adequately express rejection of this kind of disregard.

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[32] To be precise (and as noted above), permissible protest must be effective *qua* expression, but it need not be effective as a means of averting the wrong protested in the way that, by comparison, permissible defensive action must be effective as a means of achieving a defensive aim.

[33] The ineffectiveness or counterproductivity of violence may of course matter on other grounds—morally, prudentially, or strategically, for instance.

We might wonder, finally, whether the kind of permission yielded by this argument amounts to a *moral right* to violent resistance of the kind asserted by Malcolm X in the passage quoted at the beginning of this paper. May the oppressed resist their oppressors *come what may*—"no matter what the consequences, no matter who was hurt by the violence?" The answer to this question is not straightforward. This is, first, because the deontic status of fitting responses is a matter of ongoing debate and research. (Do we have a right to blame the blameworthy? Perhaps, but not clearly so. No matter what the consequences? Probably not.) Second, this is because of complexities in rights theories themselves. For one to have a right to ϕ is not necessarily for ϕ-ing to be permissible *come what may*. Even rights must, on most views, be sensitive to considerations of consequence. The point, it seems to me, is not whether or in what sense the permission yielded by this argument amounts to a *right*; rather, that it yields a *moral permission* seems to me point enough. That by itself suffices to contradict Weber's Orthodoxy.

5 Conclusion

By way of concluding, it is worth reflecting on some implications of this view for the kinds of actual political circumstances that have lain only in the background of this discussion.

Suppose *arguendo* (as many firmly believe, e.g. Alexander (2010); Davis (2011)) that the practice of mass incarceration as it exists in the United States today is grossly unjust. The commonsense argument, grounded as it is in defensive ethics, might license prison breaks in such circumstances, either by inmates themselves or by their allies outside, if such attempts could succeed. But suppose that the power of the state would render any such attempt futile. This is, I have suggested, deeply perverse: the futility of the exercise of these defensive permissions is under the control of the very same agents against whom such permissions are, or would be, had. This is like being told that harming one's kidnapper to escape his home is morally forbidden because he has just built a fence to guard against just such an outcome. In light of the perversity of this further circumstance, the argument from the permissibility of violent protest nevertheless licenses further action. The kind of action that is licensed is constrained, yet it seems to me that the range of options available may nevertheless be very wide. First, consider the constraint of proportionality. Depending on how we imagine the injustice we are considering, proportionality may be very permissive indeed, ranging from civic disruption to destruction of property to the risking of lives. Wrongful confinement, after all, is a very serious injustice. Second, consider the constraint of liability. The *range* of those liable to suffer the effects of acts of protest against such circumstances—that is, people with responsible control of the circumstances of injustice—may also be very wide (though the *extent* of any particular individual's liability is affected by the extent of her responsibility and may remain small). In democratic societies, such individuals plausibly include citizens, as those with ultimate control of the laws and policies of society and, relatedly, perhaps as agents complicit in wrongs committed in their names. More clearly, those liable plausibly include lawmakers and policymakers themselves, as well as those who execute their laws and policies.

Whether mass incarceration, in particular, represents an injustice of the kind I have just described is a question that could not be settled here, of course. But we can confidently claim that injustices of this kind and magnitude *have existed* in recent memory, and we can very plausibly claim that such injustices *continue to exist* in various forms and places throughout the world, including in liberal democratic societies. We must consider, then, how often people possess moral permissions to enact violent protest against these injustices—much more often, I suggest, than we commonly allow—and how we, as individuals and as societies, should respond to this fact.

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