

The Persistence of the Past: When Historical Injustice can be a Reason for Present-day Agents to Resort to Civil Disobedience

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## Introduction

Throughout the years, agents from various walks of life have been determined to change particular policies or laws of the state they deemed unjust. From the boycotts, sit-ins, and marches organized by the Civil Rights Movement against the Jim Crow laws in Southern United States to the similar actions taken by the Anti-Apartheid Movement against Apartheid in South Africa, agents have engaged in the act of civil disobedience. Those are just among the numerous examples of how the history of states is marked by injustices that agents fought to change.

Injustices cast a long shadow, as their effect can still be present many years after their occurrence. Through the years, agents claimed reparations for the injustice they endured. In a similar vein, we are also witnessing descendants of victims claiming reparations for historical injustices.<sup>1</sup> When speaking of historical injustices, the literature has focused on the discussion of whether descendants of victims can be entitled to reparations, as they are not the direct victims of the injustice. However, scant academic attention has been paid to whether descendants can claim historical injustices as a reason to resort to civil disobedience.<sup>2</sup> Thus, this thesis provides an exploratory discussion concerning the possibility of agents to resort to civil disobedience by claiming historical injustices.

This thesis begins by sketching the definition of civil disobedience and provides additional information concerning the characteristics of the act of civil disobedience, as outlined in the definition. Furthermore, an overview of the issues surrounding the notion of historical injustices is developed. Topics that are touched upon with regard to historical injustices are memory, responsibility and entitlement. These three topics are considered to play a vital role for finding out why and who could nowadays be held

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<sup>1</sup> See for instance: Martin, M. T., & Yaquinto, M. (Eds.). (2007). *Redress for Historical Injustices in The United States: On Reparations for Slavery, Jim Crow, and their Legacies*. London: Duke University Press.

<sup>2</sup> To my knowledge, the only scholarly piece of work has been published by A. John Simmons in his book *Boundaries of Authority*. However, Simmons' work does not significantly elaborate when agents could resort to civil disobedience by claiming historical injustices.

responsible for historical injustices, and who can be entitled to potential reparations. Furthermore, on the basis of the information that is provided with regard to civil disobedience and historical injustice it is examined when agents can resort to civil disobedience by claiming historical injustice as a reason for their act of civil disobedience. Topics that are discussed include the causal link argument and the obstacles that the causal link argument faces. Finally, based on examination, criteria are formulated for agents to claim historical injustices as a reason to resort to civil disobedience.



## Civil Disobedience

From Gandhi's engagement in nonviolent resistance that eventually led to the independence of India, to the American Civil Rights Movement actions that resulted in the abolishment of the Jim Crow laws, the practice of civil disobedience has been discussed in significant depth. The term civil disobedience, on the other hand, has its origins in the writings of David Henry Thoreau and became a frequent topic of discussion among scholars in the early 1950s (Bedau, 1991). In order to understand what civil disobedience is, we will look into the definition of civil disobedience and examine its characteristics.

While some scholars provide narrow definitions of civil disobedience, others define it in broader terms. For instance, Michael Bayles (1970) defines civil disobedience as "selective and public performance of actions (commissions or omissions) truly believed to be illegal for reasons which the agent takes to be morally compelling" (p.4). Robert T. Hall (1971), on the contrary, defines civil disobedience as "an act of violation of a law (or a specific group of laws) which is undertaken for moral reasons" (p. 15). Even though morality plays a vital role in distinguishing civil disobedience from ordinary criminal activities (Miller, 1979), both definitions appear to be too broad in nature. The aforementioned definitions do not specify any additional characteristics, among which could be the *purpose* of civil disobedience, and the *act*<sup>3</sup> of civil disobedience, which can further distinguish the act of civil disobedience from criminal activities. Thus, in order to define the characteristics of civil disobedience, an extensive analysis will be required. However, it is not the purpose of this thesis to come up with a definition that is conclusive.

A definition that fits well for the purposes of examining the characteristics of civil disobedience is provided by John Rawls. According to Rawls (1999) civil disobedience is "[a] public, nonviolent, conscientious yet political act contrary to the law usually done with the aim of bringing about a change in the law or policies of the government" (p.

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<sup>3</sup> In other words, who is involved in resorting to civil disobedience and how exactly one resorts to civil disobedience.

320).<sup>4</sup> A similar approach in defining civil disobedience has been taken by Martin Luther King Jr. (1991) defining civil disobedience as a direct, public action, nonviolent in nature, which aims to bring to the attention of a community an issue that has not been discussed between a state and unfairly treated group of people. For the purpose of understanding what constitutes the act of civil disobedience, we will look into the characteristics provided in Rawls' definition mentioned above.

### **Civil Disobedience as a Public Act**

Civil disobedience is a (symbolic) public act because the disobedient agents act in favor of the common good, rather than for private gains (Cohen, 1971). The effectiveness of the act is due to the fact that civil disobedience is performed in front of the public eye (Cohen, 1971; Rawls, 1999). However, this publicity is not focused on disobedient agents but, rather, on the reasons for which civil disobedience started in the first place. Publicity goes hand in hand with disobedient agents announcing their plans to the authorities in advance (Rawls, 1999; Bedau, 1961); for instance, the location of the disobedient agents and their demands. However, this is sometimes considered to be a self-defeating step, as the actions of the disobedient agents might be stopped abruptly by police forces and their goals might not be reached (Cohen, 1971). Even though agents can be running the risk of not reaching their goal, retaining the public nature of civil disobedience is of fundamental importance as this portrays the fidelity to the law of the disobedient agents (Brownlee, 2012). This shows, according to Kimberley Brownlee (2012), that the disobedience of the agents is not only a “political act, but it is [also] a conscientious one that invokes the common conception of justice” (p. 79). Civil disobedience is also an illegal act.

### **Civil Disobedience as an Illegal Act**

The violation of the law according to Cohen (1971) is “a universal and necessary feature” of civil disobedience (p. 4). Besides the act of civil disobedience being portrayed as illegal, it is also a political act, as disobedient agents' actions are, according to Rawls (1999), “guided and justified by political principles, that is, by the principles of justice which regulate the constitution and social institutions generally” (p. 321). It is suggested

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<sup>4</sup> A similar definition is also developed by Hugo A. Bedau. See: Bedau, H. A. (1961). On civil disobedience. *The Journal of Philosophy*, 58(1), 653-665.

that agents resorting to civil disobedience violate the law of the country they are members of, knowingly and deliberately (Cohen, 1971). However, it is not only necessary that the act of civil disobedience be directed against an objectionable law or policy of the state; the act itself should also frustrate that law (Bedau, 1961). In order to do this, agents can violate a law that they consider immoral as well as violate a law they find moral (Bayles, 1970). These two different actions of violation of the law are respectively defined as direct and indirect civil disobedience.

By resorting to direct civil disobedience, agents violate a law that is the *object* of civil disobedience (Bedau, 1961, 1999; Cohen 1971). An example of direct civil disobedience is African-Americans in Southern United States (hereinafter US) demanding to sit at a lunch counter designed only for whites, as a way to object to the Jim Crow laws. In this situation, the law broken is the law that is considered immoral. On the contrary, by resorting to indirect civil disobedience, agents break a law that is different from the objectionable (immoral) law (*ibid.*). For instance, an agent refusing to pay his taxes because he finds the war his government is waging to be unjust is an example of indirect civil disobedience. The reason for this is that the violated law is not considered in itself immoral but the conduct of the state is. In this situation, what is essential when resorting to indirect civil disobedience is to demonstrate that there is a (symbolic) connection between the issue at hand and the violated (moral) law (Cohen, 1971). For instance, on the face of it, it might appear that tax law, which in the aforementioned example is violated, has nothing to do with the waging of war. However, agents could argue, and demonstrate to the public, that parts of their taxes are distributed for military purposes and, specifically, to the funding of the unjust war their government is waging.

In both cases of direct and indirect civil disobedience, there is a connection (even if symbolic as in the case of indirect civil disobedience) between the issue that is protested against and the violated law. This leaves us with room for the introduction of an additional option of indirect civil disobedience. In the first option of indirect civil disobedience, we see a symbolic connection between the problem at hand and the violated law. In the second option, a connection, even symbolic, is not required. In other

words, agents can violate a law of their choice for expressing their concerns. An example of the second option can be traffic obstruction, as a method of informing the public about a particular issue. Blocking traffic was one of the tactics of the protesters against the Vietnam War. The goal of the disobedient agents was to prevent government employees reaching their jobs in the Washington D.C.<sup>5</sup> An additional point worth noting is that even though agents violate the law when resorting to civil disobedience, they do so in a nonviolent way.

### **Civil Disobedience as a Nonviolent Act**

When it comes to defining civil disobedience, the notion of nonviolence<sup>6</sup> has been considered to be of fundamental importance (Rawls, 1999; Cohen 1970, 1971; Bedau 1970; Brownlee, 2012; LeGrande, 1967). Nonviolence communicates two values, namely, those of dignity and equality (May, 2015). Through nonviolent action disobedient agents demonstrate that the dignity and the equality of others (such as opponents and the public) are respected (ibid.). Specifically, the nonviolent aspect sets civil disobedience aside from revolutionary acts.<sup>7</sup> Although, before looking at what could constitute nonviolent actions, we need to consider what “violent” actions refer to. Violent actions include, but are not limited to, the deliberately inflicted physical injury on others or intentionally caused damage to the property of others by the disobedient agents (ibid.). Besides deliberately inflicted injuries and damages, any acts or events that potentially pose a *risk* but do not cause damage or injury per se are also considered violent (Brownlee, 2012). For instance, throwing objects at random during a march could potentially pose a threat to the well-being of the public and could potentially cause damage to surrounding buildings. Violent actions, Carl Cohen (1970) says, do not fall

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<sup>5</sup> The disobedient agents were called the Mayday Tribe and were claiming that if the government does not stop the war, they will stop the government. See Holloran, R. (1971, May 9). Vietnam. Retrieved from *The New York Times*: <https://www.nytimes.com/1971/05/09/archives/the-mayday-tribe-vs-the-us-government-vietnam.html>

<sup>6</sup> The characteristic of nonviolence in civil disobedience has been significantly debated, as it is suggested that nonviolence could cause more damage than violence (Raz, 1979). For additional work in favor of violent civil disobedience see: Morreall, J. (1976). The justifiability of violent civil disobedience. *Canadian Journal of Philosophy*, 6(1), 35-47; Moraro, P. (2007). Violent civil disobedience and the willingness to accept punishment. *Essays in Philosophy*, 8(2), 2-15.

<sup>7</sup> Agents attempting a revolution are aiming to overthrow a government. In contrast, when it comes to civil disobedience, disobedient agents recognize and approve of the legitimacy of the government, see: Cohen, C. (1970). Defining civil disobedience. *The Monist*, 54(4), 469-487.

under the act of civil disobedience but, even if they do, “such conduct is not very likely to prove justifiable” (p. 469).

Nonviolent actions, in contrast, are those that do not threaten or cause physical damage to the public or damage property (Chenoweth & Cunningham, 2013). Nonviolent actions include, among others, marches, sit-ins, and boycotts (LeGrande, 1967). Examples of these nonviolent acts can be illustrated by the actions of the American Civil Rights Movement. Perhaps an example of the most famous march of the Movement is the march on Washington in 1963 when Martin Luther King, Jr. delivered his speech “I have a dream”. An example of a sit-in, on the other hand, are the sit-ins organized in Greensboro, North Carolina during which African-American students remained at segregated lunch counters and demanded to be served. Finally, a good example of a boycott is the Montgomery Bus Boycott that started as a result of Rosa Park’s refusal to give up her seat to a white passenger.

Additionally, civil disobedience is considered nonviolent as it is performed in situations in which consequences, such as arrest and punishment, are expected by the disobedient agents and are not resisted (Rawls, 2009). Conducted in this way, agents express their respect for the legal system of the country and demonstrate that their intentions are not to create tension (King, Jr., 1991). Rather, agents’ intentions are to oppose a law or a policy of a state by protecting not only their dignity but also the dignity of their opponents (May, 2015). The characteristic of accepting the consequences of violating a law, and the fact that disobedient agents act for the common good, distinguishes disobedient agents from criminals who act for their private gains (Cohen, 1969). As has been illustrated, there are several vital characteristics concerning civil disobedience, which leaves us with the question of why would agents resort to civil disobedience in the first place?

### **The Purpose of Civil Disobedience**

Agents engage in civil disobedience conscientiously as they are convinced that it would be worse for everybody to suffer the consequences of an operating unjust law than it would be if everybody faced the consequences of resorting to civil disobedience (Bedau,

1961). By resorting to civil disobedience, agents aim to *prevent* the adoption of a law or a policy considered unjust or to *protest* about the operation of a particular law or a policy that is thought unjust (Bedau, 1970). Considering *prevention*, Bart de Ligt (1989) focuses on the prevention of war and argues that war cannot only be prevented with the refusal of agents signing up for military service but their actions should go beyond that. Ligt further claims that anti-war activists should engage in multiple forms of campaigns, ranging from boycotts to the refusal to pay taxes. An example of an anti-war campaign is the Pledge of Resistance campaign from 1984 during which anti-war activists stipulated that they would engage in civil disobedience if the US invaded Central America. By 1986 thousands of Pledge of Resistance groups formed across the country establishing training and communication networks which, it is argued, could have caused a significant disruption if the US decided to invade Central America (Smith, 1996).

When it comes to *protesting* about unjust law or policy, in his *Letter from Birmingham City Jail*, Martin Luther King, Jr. (1991) argues that agents have a moral duty to challenge the unjust laws<sup>8</sup> of the state, as “an unjust law is not law at all” (p. 73). Examples of a protest of unjust law are the actions of the American Civil Rights Movement taken against the Jim Crow laws. The Jim Crow laws were the state and local laws implemented across the Southern US enforcing racial segregation (Fremon, 2015). Adopted in the late 1800s, the Jim Crow laws ensured a clear separation between African-Americans and whites. Besides studying in schools established only for coloreds, African-Americans were supposed to be seated in designated areas in public transport, other public facilities, and they were even buried in separate cemeteries from the white Americans (ibid.). Now that we have settled what the act of civil disobedience refers to, I wish to introduce the idea of historical injustice.

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<sup>8</sup> Whether individuals have the moral duty to challenge unjust laws has been discussed significantly, as scholars argue that agents have the moral obligation to obey the law, see: Cohen, M. (1972). Liberalism and disobedience. *Philosophy and Public Affairs*, 1(3), 283-314; Bedau, H. A. (Ed.). (1969). *Civil Disobedience: Theory and Practice*. New York: Pegasus; Murphy, J. G. (1970). *Civil Disobedience and Violence*. Belmont, Calif.: Wadsworth; Harris, P. (Ed.). (1989). *Civil Disobedience*. Lanham, MD.: University Presses of America; Rawls, J. (1964). Legal obligation and the duty of fair play. In S. Freeman (Ed.), *John Rawls, Collected Papers* (pp. 117-130). United States of America: Harvard University Press.; Singer, P. (1973). *Democracy and Disobedience*. Oxford: Clarendon Press.

## Historical Injustice

Similarly to civil disobedience, historical injustice has been defined in broad and narrow terms. For instance, it is suggested that the concept of historical injustice refers to wrongs committed by past people to past people (Thompson, 2000). Duncan Ivison (2009), on the other hand, provides a narrow definition, suggesting that historical injustice refers to “harms or wrongs committed by individuals, groups or institutions against other individuals and groups who are now dead, but whose descendants live today” (p. 509). When thinking of historical injustice, two points should be kept in mind. First, the actual wrongdoers and victims have passed away. Second, the injustice committed is severe in nature; in other words, it is not a minor case in which, for instance, Janet’s wallet was stolen in 1870 by Michael (Perez, 2011). To illustrate what historical injustice entails, we will look at several historical events.

The gloomy history of states shows that many injustices have been committed by states towards various groups of peoples. To name a few, take for instance the practices and policies of the Australian government in the nineteenth century when children from indigenous descent were forcibly removed from their families and were exploited for cheap labor.<sup>9</sup> Another example is Nazi Germany targeting Jewish people during the Second World War (hereinafter WWII). Furthermore, we could also look at African-American people who were enslaved, and later on racially segregated and discriminated against before and during the Jim Crow era in the Southern US. However, in the US, the African-Americans were not the only ones who were treated unfairly. During WWII, people with Japanese ancestry were forcefully relocated to “relocation centers” as they were seen by the US government to pose a threat to the security of the state.<sup>10</sup> Another example is the exodus, willing and forceful, of Palestinians after the adoption of the 1947 United Nations Partition Resolution that allocated certain areas occupied by Palestinians

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<sup>9</sup> See Lavarch, M. (1995). *Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*. Retrieved from the Australian Human Rights Commission: [https://www.humanrights.gov.au/sites/default/files/content/pdf/social\\_justice/bringing\\_them\\_home\\_report.pdf](https://www.humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf)

<sup>10</sup> See The U.S. National Archives and Records Administration (December, 1982). *Personal justice denied*. Retrieved from <https://www.archives.gov/research/japanese-americans/justice-denied>

to the Israeli state (Flapan, 1987). Even though states have committed certain injustices in the past, we also witness a change in states' behavior.

Historical injustices impose burdens on the present and, according to Thomas McCarthy (2002), "the stronger the memories of it [the injustice], the greater the burden" (p. 627). However, in (relatively) recent years, we witness states apologizing for their past unjust practices. Among the apologies are those in 2008 in the House of Parliament, when the former Prime Minister Kevin Rudd apologized to the indigenous peoples on behalf of the Australian nation for forcefully taking children from their families.<sup>11</sup> In a similar vein, in 2008 the US House of Representatives passed a Resolution apologizing for the enslavement and the racial segregation and discrimination against African-Americans.<sup>12</sup> Apologies provide not only recognition of victims and their descendants but they also challenge the distorted and alarming visions portrayed about historical injustices (Mihai, 2013). However, why do we remember past injustices and why do we feel the need to apologize for them? The question can partly be answered through the concept of *memory*, as memory plays a vital role for individuals and collectives to remember particular historical events. Since memory also instills the feeling of *responsibility* in agents, they can feel responsible to apologize (or in certain occasions provide reparations)<sup>13</sup>. Besides having agents who are responsible give their apologies (or provide reparations), there are agents who are also *entitled* to receive them. Now we will focus on the concepts of memory, responsibility and entitlement in greater detail in order to understand why particular historical injustices are remembered and why we currently feel responsible for them.

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<sup>11</sup> See: Australian Institute of Aboriginal and Torres Strait Islander Studies (n.d.). Apology to Australia's Indigenous Peoples. Retrieved from: <https://aiatsis.gov.au/explore/articles/apology-australias-indigenous-peoples>

<sup>12</sup> See: The United States House of Representatives (July, 2008). *Apologizing for the Enslavement and Racial Segregation of African-Americans*. Retrieved from: <https://www.govtrack.us/congress/bills/110/hres194/text>

<sup>13</sup> See Termin, D., M., & Dahl, A. (2017). Narrating historical injustice: Political Responsibility and the Politics of Memory. *Political Research Quarterly*, 70(4), 905-917.



## Memory

The concept of memory is concerned with past events and the effects these events have on the present (Huysen, 2015). Besides the fact that the concept is concerned with possible effects, memory can also inflict the sense of forward-looking responsibility in agents (Radzik, 2014). In other words, memory plays a fundamental role in terms of remembering<sup>14</sup> past unjust practices of states and ensuring that they never occur again (ibid.). In order to ensure that past injustices never occur again, perhaps we should ensure that we never forget those past injustices. The sense that we should never forget past injustices has been often outlined in works related to the Holocaust.<sup>15</sup> Memory and its forward-looking sense of responsibility can be inflicted not only on single individuals but also on groups (Huysen, 2015). Group memory is referred to as collective memory but what does collective memory entail?

In order to understand collective memory, we need first to consider individual memory. Research shows that memory is usually concerned with individuals remembering a specific event on their *own*. In the literature, individual memory has been described as involving three processes, namely: (1) encoding; (2) storage; and (3) retrieval.<sup>16</sup> In simple terms, encoding allows certain events of interest to be processed and ‘stored’ in our memory (Reinheld, 2018). On the other hand, the stage of storage allows us to retain the information acquired from events of interest in our memory. Finally, the process of retrieval is the final stage of memory processing, which allows the stored information to become “consciously available” to us (ibid., p. 382). An example to illustrate memory processing is, for instance, when our best friend tells us when her birthday is, and we would ensure to remember the date and congratulate her on her special day. We are,

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<sup>14</sup> Remembering and forgetting are memory *behaviors*, see: Reinheld, A. (2018). Rightly or for ill: the ethics of individual memory. *Kennedy Institute of Ethics Journal*, 28(4), 377-410.

<sup>15</sup> Wiesel, E. (1982). *Night*. New York: Bantam; Margalit, A. (2002). *The Ethics of Memory*. Cambridge: Harvard University Press.; Levi, P. (2013). *Survival in Auschwitz*. CreateSpace Independent Publishing Platform.

<sup>16</sup> For more information concerning the three stages of processing see: Tulving, E., & Thompson, D. M. (1973). Encoding specificity and retrieval processes in episodic memory. *Psychological Review*, 80(5), 352-373.; Weniger R., & Adams. W. (2005). Memory encoding, storage, and retrieval in normal aging. *Clinical Neuropsychologist*, 19(3-4), 549-549.; Lampinen, J. M., & Beike, D.R. (2015). *Memory 101*. New York: Springer Publishing Company.

however, members of social groups and that can make the process of our remembering collective and, as a result, our memory collective (Roediger & Abel, 2015).

Collective memory is described as shared group knowledge about past events, which is of fundamental importance to the identity of the group members (Wertsch & Roediger, 2008; Hirst and Manier, 2008). The creation and further preservation of historical events, according to James W. Pennebaker and Becky L. Banasik (1997), is “a dynamic social and psychological process”, which comprises the continuous talking and thinking of particular events that have affected members of society (p. 3). Memories of particular historical events, including historical injustices, are remembered if they are found by agents to be unique, trigger emotional reactions, and are the cause of the eventual change in the behavior of agents (Pennebaker & Banasik, 1997). Some historical events create stronger collective memories than others, and memory plays a vital role when society remembers them through, for instance, commemorative activities<sup>17</sup> (ibid.). These activities can include, but are not limited to, public remembrance days and art (McCarthy, 2002). The repetition of these activities establishes a sense of common association between members of a collective, so the members know, according to Hendrix (2005), “what it means to be one of us” (p. 772). However, it is also argued that as some agents belong to groups that have committed injustices in the past, they currently should be held responsible for the injustices committed by their ancestors (Hendrix, 2005).

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<sup>17</sup> Among the many examples are the dates 8-9 May, which are recognized as days to remember and pay tribute to all victims of WWII. See: <https://www.un.org/en/events/remembranceday/background.shtml>

## Responsibility

When speaking of responsibility for historical injustices, we often look into collective responsibility<sup>18</sup> rather than personal responsibility.<sup>19</sup> According to David Miller (2001) “to be [...] responsible for a bad situation means to have an obligation to put the bad situation right, in other words to be picked out, either individually or along with others, as having a responsibility towards the deprived or suffering party that is not shared equally among all agents” (p. 454).

There are two approaches that we can take when thinking of collective responsibility. The first one is to argue that agents are members of a political community who have the duty to support that community (Iverson, 2000). The political community is portrayed as a collective venture that is extended across generations and it provides some form of benefits that make the lives of its members decent (ibid.). If members X of that community intentionally bring about negative consequences to other members Y of the community, then members X can be held morally responsible for their actions (Miller, 2004). Moral responsibility, according to Ted Honderich (2005), entails that agents have moral obligations, and agents, depending on their actions, might deserve blame or praise (punishment and reward) for “morally significant act or omission” (p. 815).

Under the first approach, responsibility for historical injustices focuses on the actions of the members of the community and entails that agents can be held morally responsible if they still involuntarily benefit from the injustice committed by their ancestors (Thomson, 1995; Butt, 2007). In such circumstances, if moral agents are still benefiting from the injustice, they will have an obligation to compensate the descendants of victims who are

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<sup>18</sup> See, among others, Thompson, J. (2002). *Taking Responsibility for the Past. Reparation and Historical Justice*. Cambridge: Polity Press.; Kukathas, C. (2003). Responsibility for the past: how to shift the burden. *Politics, Philosophy & Economics*, 2(2), 165-190.; Butt, D. (2009). *Rectifying International Injustice: Principles of Compensation and Restitution Between Nations*. Oxford: Oxford University Press.; Thompson, J. (2006). Collective responsibility for historic injustices. *Midwest Studies in Philosophy*, 30(1), 154-167.

<sup>19</sup> It is suggested personal responsibility refers to responsibility for an agent’s personal conduct (Cane, 2002). It is argued that personal responsibility is the only type of responsibility that exists, as responsibility is a function attributed to human agents.

still suffering (ibid.). Daniel Butt (2007) argues that moral agents will have an obligation to compensate for the injustices “up to the point where there are no longer beneficiaries of the injustice in question (p. 142). In the context of injustices, Judith Jarvis Thomson (1995) makes a general argument related to discrimination, arguing that we can levy costs on white young and old males who have benefited from injustices committed against blacks and women regardless of the fact that they have not individually committed any wrongs to blacks and women. Following this train of thought, in the context of historical injustices, we can argue that agents who have benefited from slavery or any other kind of historical injustice, can be held responsible and be required to compensate for the injustices.

However, the argument that agents who *involuntarily* benefit from historical injustices are morally responsible is not compelling. The reason for that is descendants of agents who have committed historical injustices did not desire these benefits nor are the benefits voluntarily accepted by the descendants (Fullinwider, 1975). Rather, the benefits are imposed on them. Thus, it is arguable whether agents can currently be held morally responsible for the historical injustices committed by their ancestors. Additionally, compensating for injustices up to a point that agents are no longer beneficiaries of past injustice is also inadequate suggestion. As in certain circumstances, historical claims can be replaced by the needs of the present-day agents and changes which agents encounter overtime (Waldron, 1992). Suppose that indigenous peoples in the US are demanding their land to be returned. However, on this land the US government has built houses that are distributed to low-income families. By returning the land back to the indigenous peoples, low-income families will be left without homes. As a result, we encounter a paradox in which compensation for historical injustices has to be given at the expense of committing current injustices. In such circumstances, the acts of claiming that present-day agents are responsible for historical injustices and demanding reparations can be annulled.

The second approach that we can take is to argue that agents acquire responsibility as a virtue of being citizens of a particular state (Iverson, 2000). In this case, we will not be

focusing on whether agents involuntarily benefited from the historical injustices but rather on the *wrongs* that have been done to a certain group of people by the nation (Fullinwider, 2000). Joe Feinberg (1970) provides an example of responsibility of citizens. Feinberg's example focuses on the racial discrimination in post-bellum Southern US. Besides the fact that there was specific legislation in place, which placed African-Americans in a disadvantaged position, the violence against African-Americans, Feinberg argues, was carried out in such a way that whites showed "passive sympathy" towards that violence (p. 247). In such circumstances, considering the solidarity of the whites towards people who did terrorize the African-American community, whites in Southern US should be held collectively responsible, even if they did not participate nor did support the violence against African-Americans. Therefore, agents who do not do anything still express passive support and cannot be saved from responsibility (Miller, 2004). However, this example portrays the unwillingness of citizens who *personally witnessed* this unfair treatment, and it does not help us with finding out how *present-day* citizens of the state can be held responsible for historical injustices.

George Klosko (2004) argues that agents feel strongly that they are in certain ways obliged to obey the laws of the state, and they feel especially strongly "that they are bound [...] to the societies of which they are citizens" (p. 4). As such, it can be considered that agents acquire responsibility for historical injustice by virtue of the fact that they commit to the decisions of state institutions (both past and present) (Gilbert, 1999). Their commitment to the decisions of state institutions can be illustrated by the pronoun "we", which agents often use when referring to the decisions made by the state (ibid.). Additionally, the responsibility can also be illustrated by agents' commitment to official documents such as the constitution of a state (Corlett, 2003). Since the principles of such document are intergenerational, present-day agents acquire responsibility for historical injustices (ibid.). However, this raises the question whether agents are obliged to obey the law of unjust institutions, as at the time the historical injustices were committed, the institutions were not just.<sup>20</sup> For the sake of argument, let us assume that

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<sup>20</sup> I will not elaborate on this question as it falls outside of the scope of this thesis. However, for further information on this topic see: Rawls, J. (1999). *A Theory of Justice*. United States: Harvard University

indeed agents can be responsible (based on the two approaches mentioned above) for historical injustices. This raises the question: who can be entitled to potential reparations?

### **Entitlement**

Literature shows that descendants of victims are the ones that are entitled to reparations.<sup>21</sup> Descendants of victims of injustices can claim that they inherit the right to reparations or they can argue that the injustice is continuing (Boxill, 2003). Considering the inheritance argument, Boxill claims that former slaves had the right to reparations for what they have endured, however, the US government has never provided them with any kind of reparations. As a result, the descendants of the victims inherit the right to reparations. Part of the reparations that former slaves could have been entitled to was the property owned by the former slave holders. However, as they were deprived from the right of reparation, the property was further transferred to the descendants of the slave holders. In this situation, Boxill argues, present-day African-Americans “have titles to a part of the estate white US citizens have inherited from the slave holders and those who assisted or consented to their transgression” (p. 74).

When it comes to the continuing injustice argument, Boxill claims that descendants of former slaves are owed reparations because they “probably grew up in ignorance and strained conditions, and in general with all the disadvantages of having a father and mother who had been enslaved and then prevented from recovering from the harms and disabilities of the experience, and never compensated for either injustice” (p. 88). By assuming that descendants were indeed harmed as a result of the lack of compensation, descendants will have a claim against the US to compensate them up to a point that they no longer will be experiencing the injustice (ibid.). The wrong, in this case, that descendants are encountering is not the original injustice but rather the continuous failure

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Press.; Simmons, A. J. (1979). *Moral Principles and Political Obligations*. Princeton: Princeton University Press.

<sup>21</sup> See: Thompson, J. (2001). Historical injustice and reparation: justifying claims of descendants. *Ethics*, 11(2), 114-135.; Spinner-Halev, J. (2007). From historical to enduring injustice. *Political Theory*, 35(5), 574-597.

of the state to compensate for the original injustice.<sup>22</sup> Under this argument the history of slavery is relevant to reparation claims as it connects earlier and current injustices. Now that we have established what role the notions of memory, responsibility, and entitlement play with regard to historical injustices, we will focus on the examination and potential establishment of criteria for agents to resort to civil disobedience by claiming historical injustices.

### **Claiming Historical Injustices as a Reason to Resort to Civil Disobedience**

As illustrated above, agents resort to civil disobedience with the aim of protesting about the operation of a current law or preventing the adoption of a law or a policy of a state that they deem unjust. In contrast to reparations and the notion of entitlement mentioned earlier, agents resorting to civil disobedience can constitute a specific group of victims of injustice, for instance, African-Americans in the 1960s, or they can come from all walks of life, for example, agents protesting against the Vietnam War in 1967.<sup>23</sup> This being said, the number of agents who can resort to civil disobedience by claiming historical injustices should not be limited to descendants of victims but it should, instead, include a like-minded group of people who are seeking a positive change.<sup>24</sup> This like-minded group of people can include not only descendants of victims but also sympathizers who are striving to achieve the same goal. The goal, however, should not only be limited to the reasons for the protests *against* the operation of a current law or the *prevention* of the adoption of a law but it should also include protest *for* the adoption of a law. Depending on the situation, agents can achieve their goals by resorting to direct or indirect civil disobedience. However, in order for agents to protest against, for, or to prevent the

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<sup>22</sup> This argument challenges the non-identity problem that is brought about when discussing claims for reparations from descendants of victims of injustices. In other words, the argument goes along the lines that if certain historical injustices have never occurred, the descendants of the victims would have never been born. For more information concerning the non-identity problem, see: Morris, C. (1984). Existential limits to the rectification of past wrongs. *American Philosophical Quarterly*, 21(2), 175-182.

<sup>23</sup> See: Mettler, K. (October, 2017). The anti-Vietnam War Protesters Tried to Levitate the Pentagon. Retrieved from *The Washington Post*: [https://www.washingtonpost.com/news/retropolis/wp/2017/10/19/the-day-anti-vietnam-war-protesters-tried-to-levitate-the-pentagon/?noredirect=on&utm\\_term=.57e4f7382e76](https://www.washingtonpost.com/news/retropolis/wp/2017/10/19/the-day-anti-vietnam-war-protesters-tried-to-levitate-the-pentagon/?noredirect=on&utm_term=.57e4f7382e76)

<sup>24</sup> Unlike the concept of entitlement mentioned earlier, in which descendants of victims should demonstrate that they are entitled to reparations, the definition of civil disobedience does not require only descendants of victims to resort to civil disobedience. Rather, agents who are convinced that particular laws of the state are unjust, or the lack of such laws causes particular injustices can resort to civil disobedience.

adoption of a law by claiming historical injustices we need to build a bridge between the past and the present. Thus, we will need to establish that a causal connection between the past and (potential) present unjust law or policy exists. Further detail is elaborated hereunder.

### **The Causal Link Argument**

The causal link argument suggests that historical injustices are the reason for current injustices (Spinner-Halev, 2012). Following this train of thought, agents can resort to civil disobedience because they aim to protest against the operation of a current law, prevent the adoption of law, or protest for the adoption of law. Now, the obstacles that we are encountering in these three situations are that we need to prove there is a causal connection between historical injustices and a current unjust law or the potential adoption of such law, or that a particular situation requires the adoption of a law.

Considering the execution of a current unjust law, for instance, we can trace back the abolishment of slavery in the US to the adoption of the Jim Crow laws. In this example, nothing significant changed in the situation of the African-American community and the laws were adopted subsequent to the abolishment of slavery. Even after the abolishment of slavery, people from the African-American community were treated unjustly. Therefore, we can assume that there is a connection between the practice of slavery, and the continuous lawful unjust treatment of African-Americans, after the abolishment of slavery. For this reason, agents can resort to civil disobedience. However, this argument would certainly not stand for the 21<sup>st</sup> century African-American community to resort to civil disobedience. The reason for that is similar unjust laws against the African-American community do not exist nowadays.

On the other hand, when it comes to preventing the adoption of an unjust law, the notion of memory can play a fundamental role. When we are speaking of the behavior of remembering, agents argue that we should never forget tragic events, among which are genocides committed against a particular group of people, and the mass discrimination and degrading treatment against groups of people due to adopted laws. If nowadays



officials aim to channel hatred against a group of people (which was wronged in history), and attempt the proposal of unjust laws ensuring that this group is mistreated again, the ideology of these officials would seem that it is inspired by historical injustices. The notion of memory would allow us, indeed, to associate the current ideology with the past injustice committed against that group and, as a result, agents can resort to civil disobedience by claiming historical injustices.

Undoubtedly, however, both of the above-mentioned arguments seem to be significantly weak, as the ideas of the connection between the past and the present still appear somehow vague. Thus, instead of arguing for protesting *against* the execution of a current law, or aiming at *preventing* the adoption of a law, agents could protest *for* the adoption of a law. Under the third option, protesting for the adoption of a law, we would need to prove that the current economic, political, and cultural disadvantages or psychological issues that a group of individuals faces is due to historical injustices, and because of the group's current disadvantaged position, the state would be required to take measures to improve the situation. To illustrate this, we can look at the racial discrimination that the African-American community faced in the past. Besides not being allowed to purchase houses, they were also given a low quality of education.<sup>25</sup> The purchase of a house is a method of accumulating wealth, better education and, on the other hand, ensures good chances of finding a better job. The racial discrimination that forebears experienced in the past could have easily affected several generations negatively up until today. Again, however, the obstacle that we are encountering is to prove that, precisely, historical injustices are the reason for the disadvantaged position of the victim's descendants. Establishing a causal link between the past and the present will require tracing back through series of events that connect current injustice with historical injustice.

### **The Problem of Tracing Back**

Nowadays, agents can be experiencing political, economic, and cultural disadvantages or psychological issues for multiple reasons. Tracing back the root causes (in this case

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<sup>25</sup> See Fremon, D. K. (2015). *The Jim Crow Laws and Racism in the United States History*. United States: Enslow Publishers Inc.

proving that current disadvantages are the result of particular historical injustice) of current injustice is a challenging endeavor. However, the notion of memory can play an essential, yet still limited, role in establishing a causal link between the past and present historical injustices. It has been argued earlier that we choose to remember events that make us feel in a certain way. Therefore, since we are selective in our choices to remember, we might undermine particular events in the past. In order to ensure that this is not the case, we can rely on the continuing injustice argument made by Bernard Boxill (2003) earlier. Following Boxill's argument, agents should demonstrate that since the point that the original injustice ceased to exist, the state has been continuously unwilling or failing to (acknowledge and) improve the situation of a particular group of people.

However, some might argue that even if we trace back the root causes of current injustices, we still cannot prove that, due to historical injustices current generations are experiencing injustices. The reason is that we simply cannot be certain what the lives of victims of historical injustices and their descendants would be if the historical injustices did not occur in the first place. Jeremy Waldron (1992) claims that if a particular historical injustice did not occur, it is still a matter of personal choice what agents would do with their lives. As such, if the historical injustice did not take place, some Aboriginal peoples might have sold their land, African-Americans might have chosen not to pursue higher education and, as a result, land better jobs, have nicer houses, etcetera. However, empirical research shows that descendants of victims of injustices do suffer from what their ancestors have endured. Therefore, we can actually prove that current generations are somehow affected by historical injustices. For instance, it is argued that similarly to the survivors of the Holocaust, their descendants show symptoms such as depression, anxiety and paranoia (Steinberg, 1989; Ryn, 1990; Zilberfein, 1996; Rowland-Klein & Dunlop, 1997; Perlstein & Motta, 2013). Adding to that, the increase in anti-Semitism (Kingsley, 2019), agents, we can argue, have the right to resort to civil disobedience to ensure that states take action to protect the Jewish population through the adoption of laws, for instance.

### **The Criteria**

For the sake of clarity, by taking into consideration the information mentioned above, we can conclude that agents from various walks of life can resort to civil disobedience by claiming historical injustice, *if* they have a common goal. Besides protesting about the execution of a current law and the prevention of the adoption of a law, agents can also protest for the adoption of a law. Depending on the situation, agents can resort to direct and indirect civil disobedience, however, they will be required to demonstrate that there is a causal link between the historical injustice and the present injustice.

## **Conclusion**

On the basis of the information provided about civil disobedience and historical injustice, this thesis aimed to establish criteria for present-day agents to claim historical injustice as a reason to resort to civil disobedience. In order to find out when agents could resort to civil disobedience by claiming historical injustices, we firstly looked into the definition of civil disobedience. The definition and its characteristics, as provided by John Rawls (1999), were studied in detail. The characteristics studied focused on the publicity of civil disobedience, its illegal and non-violent nature, and also the purpose of civil disobedience.

After consulting the literature on civil disobedience, the literature on historical injustices was assessed. Historical injustices, it has been suggested, constitute wrongs of a significant magnitude, such as slavery, social segregation, discrimination, and genocide, committed from and to persons that are no longer alive. Literature showed that states in recent years have the tendency to apologize for such historical injustices. Thus, when thinking of historical injustices we were concerned with why do we feel the need to apologize or provide reparations for historical injustice and who is entitled to that? In order to answer this question, we looked into the concepts of memory, responsibility and entitlement.

Considering the literature on civil disobedience and historical injustices, it was concluded that present-day agents can resort to civil disobedience by claiming historical injustices *if* the wish to: (1) protest against a current law or a policy of the state are deemed unjust; (2) prevent the adoption of an unjust law; and (3) protest for the adoption of a law. However, in order to resort to civil disobedience under any of these three options, agents will be required to prove that there is a causal link between the historical injustice and present injustice.

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