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# **The Role of Violent Protest in Democracies**

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Political Legitimacy and Justice

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## ***Abstract***

When liberal democratic regimes take actions that are opposed to the tenets of liberal democracy (for example: marginalising an ethnic group) and the regular sources of accountability fail to effectively stop these things from happening, protest movements erupt demanding change. In this thesis I will argue that violent protest movements can provide accountability in liberal democracies when other sources of accountability fail. Moreover that, violent protest is morally consistent with liberal democracy as it can in some cases preserve democracy by opposing governments committed to undemocratic/illegitimate laws and policies by holding them accountable. A moral opposition to violence limits a protest movement's ability to do this, potentially allowing for democratic erosion. Cases where the government is willing to accept the protestors' demands and reverse course are of little interest. Rather, when governments commit to illiberal or undemocratic behaviour in the face of protest movements and attempt to suppress protests, protest movements turn violent. I show that in these cases violence is permissible in order to prevent democratic erosion because they are in of themselves a form of democratic participation. In particular, they allow for marginalized people to participate in a democracy when those people do not necessarily have access to other forms of democratic participation.

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## **Introduction**

Over the last few years, we have seen a number of intense protest movements develop across the world. Black Lives Matter (BLM) protests re-surfed in the wake of the murder of George Floyd and protest movements in Belarus and Poland started this year, all in the midst of a deadly global pandemic. Not to mention, ongoing protests in France, Hong Kong, Iran and Nicaragua that have continued despite the incredibly contagious nature of COVID-19. Most of these protests have turned increasingly violent and clashes with police have become ubiquitous at most of these protests. While this direct violent conflict between police and protestors is the primary type of violence, we are seeing more expressive kinds of violent protest are also employed, mainly the toppling of statues but there has also been destruction of property and buildings.

The orthodox view on protest and civil disobedience in liberal philosophy is that violent protest is generally not permissible in liberal societies.(Moraro 2019, p.83) Civil disobedience, according to this point of view, is *necessarily non-violent*, although exceptions sometimes may be allowed in extreme cases, where violence would be a last resort.(ibid., Coady 2015, p.503) Although typically in these extreme cases—where violent protest would be necessary or for that matter justified—the society in question would no longer be viewed as liberal as the factors that allow for or necessitate violence would be the same ones that strongly erode or completely negate the liberal nature of that society.(Coady 2015, p.503, Pasternak 2019, p.385) The notion that these events must be peaceful because violence has no place in a liberal society is ingrained in our understanding of the nature of permissible protests in liberal societies. Indeed, in wider political discourse violent protests are often outrightly dismissed as criminal actions. Indeed, detractors of non-violent protests will often attempt to characterise them as violent in order to de-legitimise them.

Recently, this position has been challenged philosophically. Contemporary scholars have argued that there is either a moral right or a duty to engage in protest or disobedience in liberal democracies in cases of extreme injustice and oppression.(Pasternak 2019, p.397) Further, they have argued that the restricting legitimate demonstrations to just peaceful ones is an infringement of this right or duty. Contemporary political philosophy views disobedience and rioting as justified when rights are violated, particularly when groups are

disenfranchised, marginalised or otherwise systemically targeted.<sup>1</sup> Moreover in contemporary literature, the justifications for restricting protest to just peaceful or non-violent means is seen as inconsistent with the right to protest in the first place. (Adams 2019, Coady 2016, Delmas 2018, Pasternak 2019) All of these accounts examine violent protest from an individualist perspective—focusing on the rights of protestors rather than looking at the institutional relationship between protests and government entities.

Contemporary accounts on violent protest in democracies are primarily concerned with a moral account of the violence with regard to the individual protestors. That is when is it morally permissible for an individual person to violently protest or riot in a liberal democratic state. There is a noticeable gap in contemporary discourse about the institutional—as opposed to individualist—account of violent protest. In other words, the role of *violent* protest in democracy and the relationship between the institution of protests and other democratic institutions is largely unexplored. I intend to do this in this paper.

This can be rephrased as: What happens when the people want change—any change—and the government refuses to make it? Protest movements can provide accountability and effect change in cases where normal sources of accountability fail. This is not to say that there is necessarily resistance to the accountability provided by protests—clearly, in cases when the government co-operates with protestors and works towards meeting protestors’ demands there is no justification or in fact reason for protests to turn violent. So, the answer to the question about the permissibility of violent protest is rooted in the nature of this conflict between protest movements and the government being protested.

When looking at protest movements in democratic societies the permissibility of violent protest in a normative sense is based on the democratic justification and motivations of the protestors when they are in conflict with the government. That said both the government and the protest movement cannot be justified in order for violent protest to be permissible. In order for protests to be permitted to turn violent their position must be justified in a democratic sense and the government must be unjustified in the same context. These two criteria are independent of one another. The government must also be unwilling

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<sup>1</sup>The type of disenfranchisement is rarely if ever as explicit as the Jim Crow or Nuremberg Laws. The types of disenfranchisement we see now is ostensibly neutral, but this proportionately targets individual groups either intentionally or in its application. For example: voter identification laws that exclude forms of identifications used by minority groups; and traffic stop searches that are conducted “randomly”.

to concede its position. Put another way protestors in protest movements must be committed to a liberal democratic system and the government actions—but not the government itself—must be illegitimate. For example, the government is committed to passing a democratically illegitimate law.

This thesis will develop as follows. The first chapter will discuss the existing state of philosophical discussion on the topics of both civil and uncivil disobedience, it will also identify a gap in the literature I plan to address. Chapter 2 will discuss how protest movements can strengthen liberal democracies by providing accountability. Chapter 3 will elaborate on this accountability and focus on the conditions needed for violent protest to provide accountability. The penultimate chapter, chapter 4, will deal with the limitations and challenges of this account. And finally, the last chapter will conclude this thesis.

## **Chapter 1: (Un)civil disobedience**

### **1.1 Key Concepts**

In order to understand how violent protests provide accountability as well as understand the relationship between violent protests and democracies I need to explain exactly what I mean by protest movement, legitimacy, and violence. As much as these general concepts are fairly intuitive but I will try to narrow them down and define them clearly for the sake of rigor and clarity.

For the purposes of this thesis, I will focus on protest movements. What I mean by *protest movement* is an initially spontaneous protest that develops into a long-term, sustained series of protests that have a clear set of goals. Protest movements are not necessarily violent. While protest movements are basically the context in which *political rioting* occurs, I use a different term so that we are able to examine the moral structural relationship of protest in general to democracies rather than looking the morality of individuals involved in protests.

Some examples of protest movements are: The Black Lives Matter protests in response to the murder of George Floyd or the murder of Michael Brown in Ferguson; the *Wet'suwet'en* protest against the Coastal GasLink pipeline; or *des Gilets Jaunes* in response to a fuel price hike. Other examples of protest movements occurring outside of democracies would be the pro-democracy protest movements in Hong Kong protest and Belarus right now.

Stronger organization of protests later on in the movement is possible depending on how long the protests go on for. That said typically the protest movement themselves do not have any *strongly centralized* organization or clear organizational structure. While there may be associated organized groups, these pursue other avenues to achieve their goals, such as formal advocacy or legal action, even if those goals are in line with those of the protesters.

I take legitimacy to mean the type of legitimacy that Allen Buchanan (2002) discusses, that is: the justified wielding of—coercive—political power.(p. 68g) Justification in this case would mean justification in the context of a liberal democracy. That is actions that are in line with the core ideals of liberal democracies and respect the equality of all members of a society.

Violence for the purpose of this paper is characterized as *the use of force with a goal to cause harm*. While this definition is fairly naïve, the question of against whom or what,



this violence is directed plays a huge role in my overall argument. The question of what or who is being targeted is important because the justification for violence is dependant on the target of said violence. And, while all sorts of violence directed against various people and entities will naturally be part of protests, I will primarily examine the normative permissibility of violence directed against government entities—and individuals acting as a part of or as representatives of those entities—specifically government entities that are acting illegitimately.

A consequence of this line of reasoning is that other entities that are complicit or otherwise part of illegitimately or undemocratic aspects of the state can also be targets for protestors' violence. There is a scope problem here as well, as we can not clearly define the boundaries of government entities given that they are made up of individual people. For example, the unjustified use of force by a single police officer is different from a government leader ordering police to forcefully dispel protestors even though in both cases as police officer is using force in an unjustified way. In this paper, I will focus on the latter and examine the permissibility of violence against government entities and individuals acting on their behalf rather than individuals acting on their own. Individuals acting as a part of—or on behalf of—undemocratic entities or governments are permissible targets for violence. Moreover, those individuals' justification for their actions or lack there of is irrelevant in this case as long as the entity they are acting on behalf of is unjustified.(McMahan 2006, p.25) I will explain why in more detail later.

### **1.2 Recent developments in the ethics of civil disobedience**

Violent protest is often referred to as *uncivil* disobedience to differentiate it from civil disobedience. Typically, *civil disobedience* is seen as a peaceful or non-violent breaking of specific laws in order to have one's political opinion heard.(Moraro 2019, p.33) This can take two forms: either those engaging in civil disobedience can directly break the laws they object to, or they can break laws they do not have a problem with, in order to draw attention to ones that they find objectionable. Take, for example: smoking cannabis publicly in a jurisdiction where it is illegal; vs. blocking traffic to protest lax environmental laws, respectively as examples of both types of civil disobedience.(Moraro 2019, p.33-4) In either case, civil disobedience uses deliberately visible illegal activities in order to attempt to gain attention and communicate, with the goal of starting a wider discussion on the topic of the perceived wrong that is being protested.(Moraro 2019, p.35) This is different from using

illegal activities in order to directly achieve political goals.(Moraro 2019, p.35-6) The other defining feature of civil disobedience is that it is non-violent.

Recently there have been more theoretical discussions examining the prohibition of violence in the context of civil disobedience. In recent literature there are two ways of making the case for the moral permissibility of violent protest. One is based in the rights of groups and the other on the rights of individuals. A number of scholars have argued that violence is a morally justified part of protest. Moreover, they have argued that a prohibition of violent protest is incompatible with the right to protest in the first place.

These recent academic discussions of violent protest have focussed on the moral rights or obligations of individuals involved in the protest movement itself.(Delmas, 2018, p.5) They look at when and why individuals partaking in violent protests, or riots, should be permitted to do so.(Delmas, 2018, p.48) In other words, they are ethical assessments of individuals' actions.

Pasternak argues from the basis of group rights. Her argument is based in the theory of defensible harm and hinges on the marginalisation of a particular group in society.(Pasternak 2019, p.386) Specifically, she asks: what options are available to that group in order to restore their rights and achieve their political goals if they are marginalised in—and by—their political system? She argues that in certain cases violent protest is the *only* way for marginalised people to achieve their political goals.(Pasternak 2019, p.387) The idea that violent protest<sup>2</sup> is incompatible with democratic systems is simply false. If a group is marginalised, in a democratic context, members of that group should have the right to resist their marginalisation and fight to gain or regain their rights in that democracy. She argues that the constraints placed on violent protesters should be drawn from the ethic of self-defence and war.(Pasternak 2019, p.398) So, it follows that violent protests are permissible in a democracy if they are: necessary; have a reasonable chance of success; and are proportional.(Pasternak 2019, p.386) The necessity of violence stems from the assumption that protestors do not have a peaceful way of being heard, as all of the peaceful avenues have been exhausted and that protestors find themselves in the position that spontaneous violence is the only way to not only be heard but also to effect the political change needed to reverse marginalisation. This assumption is perfectly intuitive as

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<sup>2</sup> Political rioting as she calls it.

marginalised groups, by definition, have limited options for political participation. Therefore, that violence is necessary in order to successfully fight marginalisation, by allowing for effective democratic participation of people in marginalized groups.(Pasternak 2019, p.404)

Brownlee's argument is similar to Pasternak's, in that it is based in democratic rights, but she focuses on an individual's right to be heard. She maintains that the rights of people to voice their strongly held beliefs and that the law should not be valued above individual beliefs. She argues that privileging the law over *deeply held moral convictions* is destabilising for democracy because doing so discounts the value of rights that should be at the core of democratic systems.(Coady, 2015, p.502) The right to participation is at the core of democracy, strong convictions should not be limited in democratic systems.(Coady, 2015, p.503) In other words, there is a moral right of all citizens to be heard by any means necessary particularly regarding issues that they find important.(ibid.)

In either case, the recent literature primarily focuses on the question of protests and disobedience from the perspective of the protestors' personal rights. This is done by either showing the right to violent protest stems from an individuals' rights to be heard in a democracy, as Brownlee argues; or that the infringement of group rights is justification for self-defence, as per Pasternak's account. There is little attention paid to the institutional dimension of the violent protests. A violation of rights on its own does not necessarily lead to protests and riots nor does one riot change a system or topple a government, no matter how morally virtuous or, for that matter, violent that riot may be. Structurally there is something else at play here. I am not interested in discussing the empirical details of regime change here but rather, I am interested in the philosophical question of how do protests fit into the wider system of liberal ideals and democratic institutions.<sup>3</sup> Specifically can they provide accountability and is the accountability enough to justify their violence in liberal democracies?

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<sup>3</sup> Both formal and informal institutions.

## **Chapter 2: Protest Movements and Accountability**

I will examine how to view protest movements in the context of structural change and the accountability of democracies. Existing literature focuses on the morality of protestors and does not discuss the political morality of violent protests as a whole and what place—if any—they have in a liberal democratic society. In this thesis I set out to develop an assessment of the political morality of violent protest in liberal societies. That is, I will focus on the structural dimension of protests, namely the relationship between protest movements and government. Rather than examining individual rights and obligations, I will discuss how protest movements can hold governments accountable. This is best summed up by looking at how protests effect change. Not every protest elicits a response from a government and even fewer lead to substantive change. The question is what types of protests should affect legitimate change in democracies and under what conditions they should be allowed to do so? Specifically, under what conditions does the state of liberal democracy in a given country need protests in order for that democracy to continue? In order to limit this discussion somewhat without loss of generality I am going to focus on what I am calling a *protest movement*.

We must look at protest movements—including violent ones—not as something that challenges democracy but a key part of accountability in democracies. What is more, protests encourage democratization and maintain existing democracies by preventing backsliding<sup>4</sup>. I will examine how they do this, and more interestingly, why violence can potentially play a role in maintaining or improving liberal democracies. This is why I will focus on violence directed against entities and not necessarily individuals. My argument is not that the violence is necessary but, that violent protest can be beneficial to democracies in certain cases. In the cases where it is beneficial it is because violent protest movements provide vertical accountability in a democracy.

### **2.1 The Role of Protests in Pursuit of Democratic Accountability**

My main claim is that violent protest movements can provide ad hoc accountability in liberal democracies when other sources of accountability fail, and this failure leads to democratic erosion. Violent protest as a source of democratic accountability can prevent or

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<sup>4</sup> Backsliding in the form of more explicit marginalisation to be discussed in the following section.

reverse democratic erosion in certain cases. A moral opposition to violent protest in the context of democracies can be detrimental to the quality of that democracy in these cases.

Looking at my formulation of a *protest movement* at the beginning of last section, all of the elements of a protest movement point to an expression of the will of the people—or at least a well-defined subset thereof. The nature of protest movements based on these criteria is that they are representative of the will of a marginalized group and are the protest are—at least in part—attempting to garner support from the general public as a means to their goals—namely demarginalization. The representation of the public will does not necessarily need to be of the general population but of the people primarily affected by whatever is being protested. What is more, the impetus of protest movements is important enough to a relatively large section of the population and elicit a strong ongoing response until their concerns are addressed.

When governments lack functional accountability sometimes violence is the only way to provide accountability. This is obvious for authoritarian regimes, but less clear as the government in question becomes more liberal democratic. My basic argument is that protest movements arise in opposition to ostensibly liberal governments when government actions are at odds with basic tenets of liberal democracy (such as, uneven application of laws; ignoring the public will; or marginalisation of ethnic groups). The protest movements that arise attempt to provide vertical accountability by working to ensure that government power remains in check and—crucially—within the bounds of the liberal democratic framework. When a government is unwilling to meet the demands of the protestors and attempts to suppress or disperse these protests and confrontations between protestors and police or security forces can quickly turn violent. This violence should not be seen as a moral failing of the protest movement but as something used to hold an unwilling government accountable and prevent (further) democratic erosion under certain conditions that I specify later.

Accountability in this sense is based on O'Donnell's 1998 essay *Horizontal Accountability in New Democracies*. Ironically, I will be focussing on vertical accountability—that is, the ability of citizens to make demands on their leaders as well as to denounce or remove and replace them if they see fit to do so. (O'Donnell 1998, p.118-9) Elections being the primary example of vertical accountability as they clearly allow citizens to exert influence over their leaders. Other forms of vertical accountability are mechanisms like petitions and citizens initiative or a robust and impartial press. Basically, all methods of

vertical accountability give the people that are governed a say in which direction their government should move and remove governments that are not in line with the will of the people. It is easy to see why protest are a form of vertical accountability in non-democracies but harder in democracies.

A particular point that Pasternak makes is that riots are simply resisting unjust marginalisation, whether a small section of society or most of it participate, really does not matter.(Pasternak 2019, p.394) This can be generalised slightly to include not just marginalisation of a particular group but of any action by government that is contrary to the general ideals of a liberal democratic system and thus elicits outrage from the citizens on that basis. Marginalisation is simply the most prevalent contemporary example of this. In a functional liberal democracy, there are a number of mechanisms in place that would provide various forms of accountability and function to resolve the impasse, these range from elections to other branches or institutions of government. Protests should only be necessary when these mechanisms fail.

## **2.2 Commitment to democracy and justification in democratic systems**

Accountability by its very nature requires a commitment to the system in question. So, in the case of liberal democracies the entities enforcing accountability must themselves be committed to liberal democracy. While the entities being held accountable must not be necessary opposed to these same ideals their must be room for improvement in their relationship with these ideals; otherwise, there would be no need for accountability. In normal circumstances—as well as those of civil disobedience—everyone<sup>1</sup> is more or less strongly committed to democratic ideals. This commitment to democracy rules out the need for violence, as even when there are different views about how to achieve liberal democracy there is a clear *peaceful* path forward to achieve this vision, either through formal mechanism or through cooperation between the parties involved. Willingness to compromise is after all a lauded virtue in liberal democracies so as long as it is present and there is a general commitment to the continuation of a liberal democratic system there is not a need to resort to any particularly extreme measure to maintain or preserve the system. Extreme measures—specifically violence—are permissible when an entity is not committed to the democratic system. In other words, protestors are permitted to be violent when their

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<sup>1</sup> That is protestors and government entities.

position is justified in a liberal democratic context and the government's is not.<sup>5</sup> This is not to say that violence is the only way to preserve democracies in these cases, it is still possible to do it peacefully it just is not necessary to stay peacefully to remain democratic. In other words, violence is not necessarily a last resort, as is the classical view, it can be justified if peaceful means have not totally be exhausted. This is because detaching the permissibility of violent protest from the exhaustion of peaceful means is more fruitful philosophical than trying to precisely identify what the limit of *reasonable*<sup>2</sup> peacefully means is. That said violent protest requires a stronger justification than peaceful protest. What does follow though is that violence is only permitted in a liberal democracy when one side is unjustified—illegitimate—in its actions or position, this follows from the idea that if both sides are justified in a liberal democratic context then they will find a way to work together using the not extreme—non-violent—mechanisms of democracy.

Intuitively the side that is fighting for democracy is justified and the other is not, is the same as the idea that a system can/should protect itself. The use of violence in a democracy should be permitted if it is to protect the democracy itself, which is what justified protests opposing unjustified entities are doing. That said, a look at protestors demands in a coarse sense to see if they are asking for inclusion into a system, they *should* be part of is not enough to normatively determine the permissibility of violent protest. First is the one I have already discussed that the illegitimate entities in question may be willing to change ruling out the need for violence. So that in order for violent protest to be permissible we must see that there is a commitment to undemocratic behaviour on the part of the government executive—or at least an unwillingness to address this behaviour. The second is that violence—by its very nature—must be directed against something or someone not just abstract social institutions. So, the permissibility of violent protests in otherwise democratic states is normatively dependant on three things:

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<sup>5</sup> The inversion of this—government is justified, and protestors are not—is what theories of *militant democracy* grapple with.

<sup>2</sup> The identification of all peacefully means in of itself is a large epistemic task never mind actually trying all of these methods may be prohibitively difficult. Clearly there is some sort of limit of what is a '*reasonable*' in this context (this is the 'violent protest is permitted when all *reasonable* peacefully means have been exhausted' version of the exhausting peaceful means condition) but where exactly that boundary lies is difficult, if not impossible, to identify normatively.

- 1) the entities—government—being protested are illegitimate or unjustified in their positions;
- 2) protestors are committed to a liberal democratic system;
- 3) there are justified targets of protestors violence.

All three are conditions necessary and together they are sufficient to morally justify violent protest as a form of accountability in a democratic system. Moral permissibility of violent protest is dependent on protests' potential for providing—vertical—accountability. In order for violent protests to effectively provide accountability three conditions must be met. Note that this does not mean that the violence used or even the protests themselves actually succeed or have an at all any reasonable chance at providing accountability or stopping democratic erosion. These conditions are each necessary, and jointly sufficient, for a normative justification—in the context of a democratic system—for the use violence to preserve that system, without regard for the potential success or previous attempts at accountability. In other words, if these conditions are met then there is a moral justification for violent protest even if it is not as a last resort and has no chance preventing democratic erosion.



### **Chapter 3 : Conditions for violent protest**

Before I discuss how to normatively assess these conditions, I will briefly discuss what they are.

The first condition that *the entities—government—being protested are illegitimate or unjustified in their positions* basically boils down to that there is reason to protest. In cases where protest movements form and governments agree to and work towards the demands of protesters there is no need to further protest<sup>3</sup> much less for violent protests. It follows that protest movements should only be permitted to violent if there is an unwillingness to be held accountable on the part of the entities protested.

The second condition is fairly straightforward, *protestors are committed to a liberal democratic system*. The idea here is that protesters are participating in democracy even if it is forcefully. The dovetails with the idea that protests are justified in their positions as in order for them to want to correct undemocratic things they have to want democratic ones.

The third one is that *there are justified targets of protestors' violence* is essentially that protestors do not end up overstepping and acting in a way that is totally incompatible with democracy. By ensuring that not only the protest itself is justified in a democracy but that the targets of protests' violence are in fact justified in a democratic context. If a commitment to democracy is identifiable to some extent in protestors' actions especially violent ones, then these actions cannot themselves be unjustified.

#### **3.1 Unjust actions and policies of government entities**

In order for protests to engage in permissible violence they must be reacting to the unjustified and anti-democratic actions of a government.

In the context of liberal democracies this is basically that there is some institutional aspect of the democracy in question that in some way opposed liberal democratic ideals. Marginalization being the primary—but not only—example of this sort of thing. Moreover, it must also be clear that there is no willingness on the part of responsible entities—namely the government executive—to address the problems. In worst case scenarios there is even a commitment to illiberal or undemocratic behavior and entities. This is not to say that there is an expressed intention to maintain the problems, it could just be that there has been repeated commitment to fix them but no action. In other words: there is a reason to hold the

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<sup>3</sup> Except perhaps to ensure the government keep its word but that's a different problem.

government accountable and that said government is not willing to be held accountable by the normal mechanisms or by engaging with protestors. When this happens, irregular and more extreme methods of accountability and political engagement—violent ones—become options. Note this is similar to—albeit significantly weaker than—the violence as last resort condition in some accounts of uncivil disobedience, but it also rules out using violence immediately to hold the government accountable.

A crack down and a continued marginalisation of a group, after that group's marginalisation—particularly if this marginalisation has been brought into the general public discourse—shows a lack of commitment to a liberal democratic system. I should note that it does not matter how this marginalisation is brought into the limelight. Violence or, for that matter, protests are not necessary in order to draw light to a group's marginalisation (Pasternak pp. 403-4). In resisting accountability over something like marginalization there is a commitment to this policy. Clearly a commitment to things like marginalisation of a group is antithetical to the liberal democratic ideal. It is plain to see how this sort of commitment on the part of the government executive contributes to democratic erosion and is as such unjustified in a democracy. When secondary<sup>4</sup> anti-democratic behavior is evident there is more obvious need for accountability. The problem is given the nature of this secondary erosion, that is unwillingness to engage with regular forms of accountability or dialogue, other options—namely violence—for providing accountability become permissible.

This violence against protestors undermines the legitimacy of the system as a whole in a liberal democratic context because it forces the system to either change or to double down on the marginalisation. If the group is committed to the idea of a liberal democracy, then continuing its marginalisation pushes the whole project towards the illiberalism and authoritarianism. This does not mean that the system of government after the protest movement has subsided is less legitimate. If protestors are fighting injustices (such as their marginalisation) then government crackdown of these protests—regardless of whether or not they were violent to begin with—is a form of a democratic erosion. This is, because this sort of crackdown means that the government is committed to the lack of accountability or to elements of the system that should not be part of liberal democracies—namely

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<sup>4</sup> The primary anti-democratic behavior being marginalization or whatever else spurred the protests in the first place.

marginalisation of certain groups—laying the moral foundation for protest movements which pursue the goal of resisting or reversing democratic erosion to use violence.

There is also a further unjustified government behavior that happens around protests when governments clamp downs on protesters, by sanctioning or encouraging activities not in line with democratic ideals—particularly police or counter-protester’s violence against protest movements with legitimate grievances<sup>5</sup>.

When executive or legislative branches of government support the activities of police entities that are not within the democratically outlined scope of police work, they are eroding democracy. This erosion is due to the encroachment of the executive onto the judiciary via the police. The independence of judiciary is a key part of accountability in democracies. And in democracies police do not have the right to judge or punish people even if they are plainly guilty of a crime, this is the responsibility of the judiciary.

When police are justified to use violence in a democracy it is supposed to be in line with strict rules and oversight, they do not get a carte blanche to do whatever they want. The use of violence internally in a democratic state is supposed to be very limited and controlled, not at the whims of police or politicians. When politicians mandate violence or punishment either they are encroaching onto the mandate of the judiciary and contribute something that is not permissible in democracies (O’Donnell 1998 p121-2).

Violence as a means to accountability needs to be in response to an unwillingness to engage in democratic dialogue or play by the rules of democracy when it comes to the issues being protested. This does not mean that governments are totally illegitimate or even that they will continue with undemocratic behaviour after the protests have subsided or been crushed. All that this condition is, is that there is stepping back from the normal means of effecting change in democracies on the part of the entities being protested.

### ***3.2 What it means for protestor movements to be justified***

The typical way that political theorists would test for a commitment to democracy and liberal democratic ideals is by judging the protesters’ willingness to face the legal consequences of their actions (Rawls 2009 p336). This test of justification does not work and so another one must be found. The test for justification of protesters’ action and lack of

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<sup>5</sup> These need not be violent.

justification for government actions is based in examining the motivations for the protests in the first place and how the government chooses to respond to protestors' grievances. The reason that the Rawlsian test does not work for uncivil—violent—disobedience is because there is absolutely no reason to believe that those participating in the protest are at all concerned about the *legal consequences* of their actions. The main risks to protestors during violent confrontation are much more immediate and dangerous than the possibility of punishment from a just trial. Protestors are willing to get extrajudicially beaten and imprisoned—without any reason to believe they will even get a fair trial given the unjustified nature of government response in the eyes of protesters—when they partake in these protests. Clearly these are much more immediate and consequential than the hypothetical consequences of a fair trial. The assumption that Rawls makes that everyone in a democracy will get a fair trial does not necessarily hold for members of marginalized groups as Rawls' assumption is based on the recognition of everyone involved by everyone involved as equal. (Rawls 2009, p337) As by definition, members of marginalized groups are not treated as equals moreover, they do not have access to the same institutions as other members of that society, in this case they may not have access to fair and impartial judicial proceedings. And even if the protestors would be given a fair trial if the protestors do not believe that they will get one, for whatever reason, then we cannot examine them to be willing to stand trial. It follows that we cannot examine protestors willingness to stand trial to determine their commitment to a democratic system, when there is no reason to believe that they have given the potential consequences of a fair trial any thought, and so we must find a different way to normatively determine if protestors are committed to democracy.

Another distinct problem with the Rawlsian test is that in cases of democratic erosions and political marginalisation, situations arise where the government in question encroaches on the independence of the courts. Meaning that even if protestors are willing to face trial this could be seen as a tacit endorsement of undemocratic practices if there is an acknowledgment of illiberal court rulings. But more importantly, in order for protestors to be willing to accept those punishments they have to believe that they are doing something wrong and being punished by democracy for protecting that very same democracy is absurd.

An alternative test for commitment to liberal democracy is not as straight forward, but is the simplest—and normatively most useful—test would be an examination of a protest movement's goal and of the conditions or actions that the protest movement is responding to. From a normative perspective this means that the permissibility of violence during protest movements is based in part on the goal of those movements and the response to them, in order to avoid the case where the unjustified response justified the protest we must focus only on the goals. Protests with single clear goals are easier to assess, but generally if the main goal of a given protest movement is something that was an element of the democracy they are operating in and is no longer or something that should be an element of the democracy we can say the protest movement is justified.

Moreover, by limiting protestors' goals to just ends typical of vertical accountability mechanisms protestors can show that they are only interested in strengthening the democratic system. The ends of these goals would be ones such as: suggesting policy direction (e.g., removing marginalization or removing politicians) or more abstract goals such as reforming a judiciary so that it is impartial as it should be in a democracy. But crucially do not include actually exacting punishment or doing things that are the purview of horizontal forms of accountability, namely the judiciary, such as punishing politicians. There is a clear demonstration of commitment to a democratic system by protests with these types of goals as they are taking issue with specifically undemocratic elements of the wider system and are encouraging the function of the aspects of the system in line with liberal democratic ideals.

Further, the protests commitment to liberal democracy can also be seen in their choice of targets for violence as well as discriminant use of it. While the internal intentions of individual protestors are opaque and there is no point trying to normality ascertain what they are. Commitment to democracy can be identifiable in the expression of violence itself<sup>6</sup> and can be used to evaluate the permissibility of violent actions in the context of protests (this is basically the third condition).

### **3.3 *Justified targets of violence***

Ultimately a stated commitment to democracy on the part of the protestors is not enough to justify the use of violence because we cannot judge if there is truly agreement

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<sup>6</sup> This commitment can be seen by the deliberate use of violence only against targets that

between someone's stated goals and their intentions. Protests' commitment to democracy must be represented not only by their goals but also by their actions—that can more easily be morally evaluated as justified. Given that we are talking about the justification of violent actions' we need to examine what violent actions can demonstrate a commitment to democracy. The problem is that by examining violent actions we can only offer post facto justification of them, but if we can identify justified targets of violence prior to the violent actions then we can see if violence is justified in a given protest.

In order to understand what violence is justified we need to examine the relationship between protest movements and the entities that are being protested. This begins with the assumption that if both sides are justified then violence is not permissible so one side must be justified, and one must not be.<sup>6</sup> In this case the protesters are justified and the government is not as per the first two conditions. Individuals acting on behalf of the unjustified entities being protested and those bearing moral responsibility for democratic erosion or the immoral things being protested.

This relationship is largely based in Jeff McMahan's theories of war, particularly his account of the permissibility of defensive force. While Pasternak uses his account primarily to discuss the proportionality of violent protest, the structural relationship between the attacker and the defender in a conflict is relevant here (Pasternak 2019, p.407, McMahan 2006).<sup>7</sup> McMahan argues that it is immoral and unjustified to fight for an unjust cause. (McMahan 2006, p.23) He argues this from the premise that self-defence is attacking someone when your attacker creates conditions under which it is justified for you to attack them. These conditions are created by the attacker acting unjustly, *not from their attack itself*. In other words, it is the fact that the attack is unjustified that justifies self-defence. This means that an unjustified attacker is not justified in defending themselves from your response to their initial attack. (McMahan 2006, p.25) It follows that those fighting for the unjust side are themselves unjustified in their actions regardless of the reasons or their personal beliefs. But this goes further, anyone supporting or working to perpetuate an

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<sup>6</sup> If neither is justified and both are working to dismantle liberal democracy then the conflict in question is well outside of the scope of this account.

<sup>7</sup> Clashes between protestors and police are clearly not war. Both are though violent confrontation between groups albeit on different scales. It follows that we can generalise somewhat between the two.

unjustified side in violent conflict is morally responsible for that injustice to some extent and therefore can be a justified target of violence.

This argument can be generalized to the context of protest movements. And when it is, it follows from McMahan's account that police do not have the right to attack protestors or even defend themselves against protestors if those protestors are responding to injustice. For example, when those protestors are protesting an attack on their rights or their marginalisation. In other words, in cases where justification for protest—*violent or not*—there is no justification for violence against protestors. Moreover, in these cases protestors are justified in violently defending themselves. It follows that opposition—without the willingness to co-operate—to justified protest is unjust. It also follows that whenever protest is justified the possibility of violent protest is also justified.(McMahan 2006, p. 25)

This line of reasoning provides clarity for who are permissible targets of violence, when that violence is permissible in protest movements, it is not the whole picture. The problem is that certain types of violence are contrary to liberal democratic ideals and would themselves be unjustified. So there needs to be a qualification on the use of violence so that it does not invalidate the original justification for the protest. Clearly, people who are fighting on the unjustified side, that is against the protest movement, are valid targets of protestors' violence. These will primarily be police but can also include counter-protestors or vigilantes depending on the situation. More interestingly, from a normative perspective is that people who are not directly present at protests can be valid targets of violence if we are to follow McMahan's theory directly. In the case of protest movements, it would appear that politicians sanctioning the use of violence against justified protest movements or pushing for the undemocratic behaviour that sparked the protest movements would be valid targets for protestors violence. Therefore the generalization from McMahan's account of justification of violence in war to protest movements needs to be reigned in. Cases where violence would be justified against non-combatants in war are not always justified for protest movements as attacking these targets would weaken protestors commitment to liberal democracy. While there is strong justification for the use of violence against politicians responsible for democratic erosion in the theory of permissible defensive force, the normative justification for the use of this violence in the context of protest movements in democratic states is trickier. Primarily because of protestors' commitment to democratic norms, but also because of the nature of the type of accountability provided by protest movements. The vertical accountability protests provide is the same type as that provided by elections. If the

goals of violent protest are of roughly the same kind of goals that the ones elections have then they are clearly justified in the context of providing vertical accountability. These goals are things such as: setting policy direction—such as demarginalizing groups—for government as a whole or removing politicians responsible for democratic erosion.

The willingness of protestors to not directly use violence against politicians responsible but to simply remove them from office then let the courts deal with the question of punishment shows not only a commitment to liberal democratic norms but also a commitment to the preservation of democracy by not encroaching on other forms of accountability, even if the failure of those other forms is what instigated the protests in the first place. The reason for this is that there is a very clear commitment to democratic systems if protest movements goals are working to repair and maintain structural elements of a democracy—including the removal of undemocratic leaders—not the use of violence to punish those responsible for democratic backsliding. In this sense protest movements use violence as a tool to support democracy in the same way that civil disobedience uses illegal activity as a tool. Moreover, this unwillingness to directly punish shows a clear separation of power and forms of accountability because protest movements should only provide accountability that is lacking and not encroach on existing structures as this risks eroding the democratic system in its own right. By handing back the role of justice to judicial structures after it has been encroached on by the executive rather than taking it for themselves there is an obvious step away from democratic erosion.

This is not to say that protesters must trust the judiciary at a given time—particularly if the judiciary is unjust or the judiciary has lost independence to encroachment from other branches—but that there should be a goal to ensure that prosecution is carried about by a just legal system rather than simply focussing on punishment. And if that system does not exist then working to create it.

This commitment to structural change and unwillingness to directly punish culpable politicians can be contrasted to the political sanction of violence against protestors. If we are to take the latter as unjustified then similar action on the part of the protestors would also be unjustified. Therefore, the use of violence only against certain targets is necessary in order to maintain justification of the violent protest movement as a whole in a democratic context.



### **3.4 Conclusion About Justification and Violence**

All three conditions are individually necessary and jointly sufficient to morally allow protest movements to turn violent in democracies. All three conditions together mean that there is potential for the violence as a form of democratic political engagement, that both provide accountability and to reverses democratic erosion while working to rectify the initial problem being protested—such as marginalization of a group. When all conditions are satisfied it also means that there is little risk of protests inadvertently causing democratic erosion in their own right. The conditions entail that all violence is directed towards democratic ends and as soon as they are no longer satisfied then there is potential for violence to negatively effect democracy. The idea of a illiberal democracy is in itself somewhat nebulous and all of these conditions—particularly the third one—assume that the system in which these protest movements are occurring is reasonably democratic outside of these protests.

## **Chapter 4: Objections and rebuttals**

### **4.1 Reasonable limits on political influence**

A major objection to this line of reasoning is that liberal systems have mechanisms in place to deal with exclusion and marginalisation of groups. Marginalisation by definition denies marginalised people access to these mechanisms and so cannot reliably use the mechanisms to regain political rights. These mechanisms cannot easily or effectively be accessed. Horizontal accountability—that is structures within the government apparatus holding one another accountable—is not be a feasible option particularly if a groups marginalisation is not widely known or recognised or acknowledged. If sections of a democratic society are structurally marginalised with regard to political power, even if they are generally considered legitimate, this marginalisation, according to Pasternak, allows them the use of political violence. In other words, protest movements erupt when there is unaddressed democratic erosion and there are no signs that it will be addressed.

The problem with this is that certain groups *should have their rights and political influence limited* in a liberal democratic context. Ideally only groups that are opposed to the project of democracy as a whole (e.g., fascists and Stalinists, etc.) so how does this sort of denial of right to protest not cause democratic erosion in the way that marginalisation does? The reason groups who are not committed to democracy do not to violently challenge democracy is because they are not committed to democracy. While this is somewhat tautological, often these groups characterise themselves as being pro-democratic or at least for certain democratic ideals.<sup>7</sup> So the question is not so much *why* they should be excluded but *how does my account reconcile stated goals not being inline with actual ones*.

Adam's argument for when protesters can use limited violence is useful for addressing this problem.(Adams 2018, p.475) He argues that fighting for a voice in the system is not that same as fighting to tear the whole thing down. In other words, the idea of political commitment to a system—in particular to liberal democracy—is a key factor in whether or not a protest is legitimate.(Adams 2018, p.479) After all, the type of accountability I am arguing for is that protests provide is a key feature of liberal democratic regimes. The objectives of *legitimate* protest movements<sup>8</sup> are always core tenets of liberal democracy. For example: the Black Lives Matter (BLM) protests are to ensure that

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<sup>7</sup> Free speech and freedom of religion often feature prominently.

<sup>8</sup> That is ones that should have the option to turn violent.

everyone is equal before the law; the *Wet'suwet'en* protests are centred around ensuring a government does not ignore its obligations to a people when these obligations would extend the timeline of a economic project; and *des Gilets Jaunes* protests demand that the government simply listen to the public will with regard to the distributions of the cost of policies to address climate change. In every example the protestors are concerned that a law itself, or the application of a law, does not follow the basic principles of the wider political project of liberal democracy.(Adams 2018, p.497)

In other words, protests should be protesting for the *rule of law* and not adherence to a particular law but rather the set of principles that govern which laws can be enacted and how they should be applied. This means that the stated goals being liberal democratic ideals are not enough if they are selected specifically to weaken the project of liberal democracy as a whole. In the cases of authoritarian movements this is exactly what happens. For example, free speech is used to encourage hatred and marginalization; or religious freedom is used to justify existing marginalization and exclusion. A commitment to democracy means certain tenets are not strengthened explicitly at the expense of others, so demarginalization or inclusion of a group should never come at the expense of other rights freedoms etc. In the context of protest movements this can be seen when violence is directed not against valid targets but against groups not responsible for the exclusion or against institutions that are not complicit in that exclusion. In cases where violence is directed at institutions and groups not responsible there is a goal of less democracy on balance even if certain bits or democracy are strengthened.

#### **4.2 The Monopoly on Violence and Violent Protest Movements**

Normally a feature of a state is that it has a monopoly on violence, by allowing for violent protest is contrary to the idea that the state has a monopoly on violence. This is not the same thing as a rebellion or war in that the protestors are not challenging the state as a whole and are still recognizing the states authority. By allowing for legitimate violence not sanctioned by the state in cases where the state itself is still recognized why does not this account erode the rights of states?

In liberal democracies the monopoly on violence is based in the state's commitment to liberal democratic norms. Entities exercising violence on behalf of the state must keep to these norms to be legitimate—in general not just specifically when it comes to the use of violence. If an entity acting on behalf of the state is violating these norms, then it forfeits its

right to use violence. This is a specific case of legitimacy stemming from a of moral justification to exercise authority. If there is a lack of moral justification it means that there is no right to wield authority.(Buchanan 2002, pp.698-9) If an entity—such as the police—are not acting a way where they would be justified in exercising power much less violent power. While this rules out the use of violence against justified protests it does not clearly show that that protestor movement can turn violent without undermining the state.

The nature of these protest movements as providing accountability to a democratic system and more importantly doing this with a commitment to liberal democracy. This means that the protest movements are a legitimate—albeit ad hoc and fleeting—entity of the democratic state. Specifically, their actions are justified in a democratic context and they are not working to dismantle the state but strengthen democracy they are legitimate in their actions. In the context of the state as a whole they can be seen as the legitimate representatives of the state when it comes to the use of violence in the very specific context surrounding the reasons for protest.

This can also be looked at through the lens of McMahan's account of justified war. Where only one side can be justified in using violence, in this case the protest movement. The initial erosion of rights can be seen as the instigating act of violence, justifying defence against it. If the entities are committed to something contrary to liberal democratic norms and then use violence against protestors, those protestors are justified in defending themselves as those entities are not justified in then attacking them in the first place.(McMahan 2006, p. 25) As this is all happening in the scope of a democratic state, justification means justification in a democratic context and according to this account it must be the case that protestors are justified and government entities being protested are not.

## ***Conclusion***

In this thesis I argued that violent protest movements can under certain conditions provide accountability in democracies. In providing accountability to democracies this violence can in turn prevent or reverse democratic erosion. This accountability is ultimately based on a greater commitment to liberal democracy on the part of the protest movements than the entities being protested. By committing to undemocratic policies or law—particularly the marginalization of groups within a society—the entities being protested are contributing to democratic erosion. Protest movements provide accountability in these cases by allowing for political participation of marginalized people. This participation may be violent if it is normatively clear that the protest movement is committed to democracy but the entities being protested—typically the government executive—are not. Moreover, the violence used cannot itself go against liberal democratic ideals. Particularly it cannot encroach onto the purview of legitimate government entities or discourage clear separation of powers after the protest movement has subsided. At no point do I argue that violence is the only way for protest movements to fight marginalization; strengthen democracy; or resist and reverse democratic erosion, but rather that violence can be used to provide accountability in democracies when other forms of accountability fail. Ultimately violent protest should be seen as structurally compatible with liberal democratic systems because of its potential to provide vertical accountability.

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