Clarifying Our Duties to Resist

Introduction

In this essay, I consider one prominent defence of political resistance: that citizens living in unjust conditions have a *duty* to resist injustice. The shared conceptions of moral and political principles that ground a duty to comply with the law in just conditions are argued to ground a duty to resist or disobey in unjust conditions. This approach to resistance (and even political disobedience) is appealing. It dispels the idea that citizens' default relationship to the state – especially in unjust conditions – is one of compliance, and moreover obviates the need for them to find or cite considerations that render their resistance or disobedience permissible or justifiable. This view has received significant attention over recent years.

I argue that the duty to resist cannot always be grounded in such a way. I focus on contexts involving institutionally entrenched and socially normalised injustice – where moral principles are marshalled in support of injustice. In these contexts, I argue, it is mistaken to claim that citizens are under a duty to resist on the basis of shared conceptions of moral and political principles, and that their resistance is justified by the demand to satisfy that duty. If their actions are justified – as we may believe they are – it would have to be on the basis of something other than an appeal to shared conceptions of principles. The discussions thus constitute an important qualification on the scope of our duty to resist.

The essay proceeds as follows. In Section 1, I outline the general structure of the duty to resist by tracing its roots to John Rawls' statements concerning the duty of justice, which requires citizens in unjust conditions to act in ways (including resistance or disobedience) that bring about just institutions. In Section 2, and looking back at the earliest stages of activism for women's suffrage, I discuss how injustice can also lie in the problematic conceptions of moral and political principles that undergird public institutions and social practices. In Section 3, I clarify my argument in light of some worries. In Section 4, I conclude with a brief consideration of how my discussions can be applied to clarify a contemporary problem about engaging in resistance or disobedience to aid potential migrants who have been turned away by states in accordance with widely accepted rules.

1 Duties

According to John Rawls, the natural duty of justice imposes two related requirements. It requires citizens to support and comply with just (or nearly just) institutions that exist and apply to them. It also requires citizens to bring about just institutions which do not yet exist, at least when this can be done without undue cost to themselves (Rawls 1999, 99, 293–301). Among other things, just institutions are those situated within, and guided by, a constitution satisfying the principle of equality or equal liberty – according to which each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties. When just conditions obtain, citizens have a requirement – deriving from the duty of justice – to comply with the law. In less-than-fully just conditions, however, the requirement to comply with the law ceases

to bind citizens. They are instead *required* (and *a fortiori* permitted) – again, deriving from the duty of justice – to transform or overturn the unjust conditions in order to bring about just institutions, subject to the consideration of the costs to themselves (Rawls 1999, 99, 310–12, 319).

Rawls restricts his focus to how citizens in *nearly just* societies ought to act in discharging the duty of justice. Among other things, a nearly just society has a basic structure that is reasonably just. There also exists a conception of justice that is publicly recognised as specifying and undergirding the fundamental terms of citizens' cooperation (Rawls 1999, 321, 325, 329, among others). However, some serious violations of justice may nonetheless occur. In such circumstances, citizens are required by the duty of justice to bring about just institutions which are in line with the conception of justice. In justifying their political actions (including resistance and disobedience), citizens appeal to the 'commonly shared conception of justice that underlies the political order', specifically, the 'principles of justice which regulate the constitution and social institutions generally' (Rawls 1999, 320–21).[1]

Rawls' narrow focus has received sustained criticism. Among other things, it is problematic because we do not inhabit nearly just societies. Indeed, most of our societies are marred by corruption and injustice, and may have been so from the very start.[2] If so, Rawls' discussions of civil disobedience appear to provide us with little (if any) guidance as to how citizens like us, living in the societies we find ourselves in, should think about or discharge our duty of justice – especially if doing so requires us to engage in resistance or disobedience. Contemporary political philosophers have set about to extend or revise Rawls' account, or to reject its relevance or usefulness, for our current times (Brownlee 2012; Lyons 2013; Shelby 2016; Delmas 2018).

Regardless of their endorsement or rejection of Rawls' narrow focus, however, many philosophers embrace the general idea that there is a *duty* to resist injustice. While they put the idea of this duty to different work, and ground it in various ways, many of them accept the idea that the duty of justice requires compliance in some contexts and resistance in others. This duty is typically specified in relation to some particular *conception* of justice (Delmas 2018, 73–74; Waldron 1993; Smith 2013, chap. 1; Christiano 2010; Stilz 2009; C. Wellman and Simmons 2005; Viehoff 2014; Finlay 2015).[3]

In what follows, I examine one version of this idea. Drawing from Rawls, this idea appeals to the shared conceptions of moral and political principles within a society. It may be presented as follows:

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[1] Rawls subsequently weakens this formulation, allowing that citizens in a nearly just society can have different conceptions of justice, *provided that* those conceptions nonetheless lead to similar political judgements (in our context, about the justice of the laws and policies against which activists react). The point I make holds regardless of which formulation is adopted. See (Rawls 1999, 340).

[2] I set aside one potentially radical implication of the observation that our societies are deeply unjust – that it is difficult or impossible to sustain a *general* moral or political duty or obligation to comply with the law in such conditions. For further discussions, see (Feinberg 1979; Simmons 1979; Greenawalt 1989; Gans 1992; Brownlee 2007, 39–75; Lyons 2013, 154–55; Jubb 2019).

[3] For a critical take on the relationship between natural duty and the obligation to comply with the law, see (Klosko 1994).

> *Duty*: Shared conceptions of certain moral and political principles ground citizens' duty to comply with the law in just conditions, and their duty to resist or disobey in unjust ones.[4]

Here, note that *Duty* refers to *conceptions*, rather than concepts of the relevant principles. A clarification is important. We may understand a concept as detailing an idea in the abstract. For instance, the concept of political equality may be understood as encapsulating the abstract idea that 'all citizens are equal'. This concept, being abstract, does not yet provide us with concrete evaluations of, or guidance on, a whole range of practical affairs. For instance, who counts as citizens? What does it mean to treat them as equals? In what domains must we treat them as equals? And so on. These are questions that may be answered in many ways, depending on the context and community with which we are concerned. Conceptions enter at this point. A conception specifies or concretises a concept – the former gives the latter content. This may be done explicitly, as in a constitution (or any similar document) that clearly and directly specifies the concept. Or it may be done implicitly, as established by a body of common law, or by how various public and political institutions operate. In the case of political equality, a *conception* provides us with answers to the earlier questions, by telling us, among other things, which features are to be taken as salient and relevant when thinking about who counts as citizens, what it means to treat them as equals, and in which domains we need to treat them as equals. Only when we have these conceptions at hand, can we 'proceed to criticize laws or other social arrangements' as just or unjust (Hart 1994, 157–67, especially 159-160).[5] That is, we need to rely on these conceptions to show that, and explain how, certain conditions are just or unjust. My subsequent discussions centre on conceptions rather than concepts. For ease of reference, mentions of 'principles' or 'ideas' should be taken as referring to conceptions, unless otherwise stated.

As it is stated, *Duty* assumes that the relevant principles are not themselves morally problematic. Rawls assumes as much, by narrowing his focus to nearly-just societies whose basic institutions, and the principles undergirding them, are reasonably just. What happens, however, when these principles are themselves deeply morally flawed? Rawls' comments about such circumstances are sketchy. He suggests that in some severely unjust conditions – as when a society is regulated by principles favouring the interest of members of a certain class, citizens 'may have no recourse but to oppose the prevailing conception and the institutions it justifies in such ways as promise some success' (Rawls 1999, 310). He adds, further, that if civil disobedience turns out to be unsuccessful, sometimes even 'forceful resistance' may be entertained (Rawls 1999, 321–22). He sets aside the possibility of, and complications surrounding, militant action and resistance in these circumstances, saying only that '*if* any means to this end [of transforming or even overturning such an unjust and corrupt system are justified], then surely nonviolent opposition is justified' (Rawls 1999, 319 my emphasis). Some explanation is thus needed for what citizens ought to do in such unjust circumstances. If they ought to resist, some explanation is also needed for what they may appeal to, in order to ground their resistance.

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[4] Rawls restricts his discussion of civil disobedience to citizens; he does not consider the possibility of non-citizen resistance or disobedience. Not all who accept *Duty* accept this restriction. While I focus on citizens in this essay, I do not think that non-citizen resistance is, in principle, unjustifiable. For further discussion, see (Lenard 2010).

[5] For further discussions of the distinction, see (Gallie 1955; Rawls 1999, 5).

Before proceeding, three clarifications are important. First, I construe resistance broadly, as involving the refusal to fully comply with laws and policies that cause or enable injustice, as well as the social practices that may produce or sustain them. A duty of resistance is not necessarily a duty of *disobedience*. Second, recall that the duty to resist is subject to considerations of costs. In my discussions, I assume both that the resistance does bring about just institutions in some sense and to some degree, and that the costs of resistance are not so great as to override the duty to resist.[6] While there are interesting questions about the relationships between (the stringency of) the duty to resist and the extent to which any given action satisfies the broader aim of societal transformation, and how we are to assess the costs in relation to the payoffs, I cannot address them here. Finally, while my discussions are specific to *Duty*, there are broader implications for other specifications of the idea of the duty to resist, which appeal in some way to conceptions of justice or other grounding ideas or principles.

2 Resistance

In 1872, Susan B. Anthony was arrested for voting in the presidential elects in Rochester, New York. This was an illegal act of resistance – state laws then permitted only men to vote. Prior to the election, Anthony had walked into a voter registration office with her sisters and demanded to be registered to vote. In her conversation with the registration officials, she cited the Fourteenth Amendment to the United States Constitution, which had recently been adopted in 1868. Specifically, she cited the part of the Amendment which read that 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States'. Anthony argued that since women were citizens, and since states were prohibited from abridging their privileges or immunities, women had the right to vote. The registration officials proceeded to register the women. After the incident, almost fifty other women proceeded to register to vote. On election day, Anthony and fourteen other women were allowed to vote, while the rest of the women were turned away by election officials. The women and the election officials were subsequently arrested (Barry 1988; Gordon 2005; McMillen 2008).

At a first glance, this brief recount appears to be a straightforward case to which *Duty* is and can be applied. It appears that the prohibition against abridging the privileges or immunities of citizens is undergirded by a principle of equality. And it appears that this principle of equality is violated by the state laws which deny women the right to vote. This violation constitutes an injustice. The principle of justice, then, grounds and requires actions that bring about just institutions, including resistance. This reading is bolstered by the fact that the activists also appealed to the idea of equality to justify their disobedience to their fellow citizens.

The history of the activism leading up to the enfranchisement of women is complex and resists simple summary. However, a brief discussion of two sets of details of this case can destabilise the thought that the application of *Duty* to this case is appropriate.

First, from the perspective of the law (and public institutions more generally) at the time, voting was not regarded as a *right* arising from citizenship of the United States, but a *privilege* accorded by state laws (Gordon 2005, 15). At Anthony's trial, Justice Ward Hunt argued that

[6] That is, I assume that resistance satisfies the broader requirements on harm- or risk-imposing actions, such as those concerning proportionality, necessity and efficiency.

suffrage was not among the privileges or immunities of citizenship, and therefore that the amendment prohibiting their abridgement did not prohibit excluding women from the vote (Anthony 1874, 59–66; Gordon 2005, 6). His claim was not an anomaly – it was consonant with, and directly referred to, earlier Supreme Court rulings that narrowly defined the privileges and immunities of citizenship (Gordon 2005, 6). Hunt's argument was later reaffirmed by the Supreme Court, which *unanimously* concluded in *Minor v. Happersett* (1875) that the Fourteenth Amendment did not guarantee women the right to vote. As the ruling indicates, the fact that a subsequent Fifteenth Amendment was needed to secure the voting rights of black men may provide adequate indication that the Fourteenth Amendment was regarded as leaving unaddressed the issue of citizens' right to vote (Minor v. Happersett, 88 U.S. 162 1874).[7] In this context, then, the position advanced by Anthony was regarded as constitutionally and political extreme (Lobel 2003, 91).

Despite this, the courts were careful to address what they took to be an important worry underlying the suffragists' complaint: that women would, in virtue of their disenfranchisement, not count as equal citizens. This might have been due to their recognition of the importance of the *concept* of equality that the suffragists relied on. Indeed, much of the ruling in *Minor v. Happersett* was spent arguing that women *were* in fact citizens and 'have always been considered citizens *the same as men*' (Minor v. Happersett, 88 U.S. 162 1874 at 169, emphasis mine), in addition to the argument that suffrage was not coextensive with citizenship. Women's disenfranchisement was judged, from the perspective of the law, not to call into question their equality as citizens. This is because the shared *conception* of equality – which undergirded the law and operation of the public institutions – was regarded as pertaining narrowly to issues such as being entitled to protection, the standing to sue or be sued, to inherit or transmit inheritance, or to purchase and settle on land, and so on (Minor v. Happersett, 88 U.S. 162 1874 at 166, 169, 170). Equality was not generally understood as applying to *all* aspects of social and political life. Importantly, it was not regarded as applying to the issue of suffrage, and as such did not require the enfranchisement of women. This conception of the principle of equality was not regarded as violated by women's disenfranchisement. From the perspective of the law and public institutions undergirded by such a conception of equality, there was no injustice in the circumstances that women found themselves in. The duty to resist, if it exists, cannot be grounded in an appeal to such a conception.

My reference to the shared conception of equality has to be carefully qualified. Ordinarily, a society's law and public institutions are accompanied by a complex structure of extra- or non-legal sources of support. Indeed, it is due to such support that these public institutions tend to persist over time. One reason for such support is the general tendency among those subject to a set of rules to develop and adopt certain attitudes towards them. They regard a set or pattern of behaviour as a general standard to be followed not only by themselves but by the group as a whole; they take the existence of the relevant rules or norms as giving a reason and justification for their behaving in certain ways; they take the mere fact of a citizen's deviation from those rules or norms as constituting (or giving) a good reason for criticism; and so on. These constitute a complex internal point of view from which the relevant rules or norms are accepted (Hart 1994, 55–61).

[7] For a discussion of the broader context and reception of the two Amendments, see (Carter 1985, 242–44)

However, we must be cautious not to construe this point too strongly. While the existence and organisation of public institutions constitute an important part of the way of life of a group – including the beliefs people have, and their expectations concerning their interactions with each other – they do not exhaustively delineate the plausibility of judgements or views that may be held at any point. Crucially, they neither necessarily determine nor constrain what is regarded as right. People may comply or act in accordance with laws they do not regard as morally binding – they may regard themselves as being coerced. People may also comply for self-interested reasons, for strategic reasons, or the mere wish to behave as others do (Hart 1994, 203). There is always room for deviation or dissent. That is to say, the conceptions of principles undergirding the law and public institutions may not coincide with those which citizens generally actually endorse. This leaves open the possibility that activists may appeal to the latter conceptions in grounding their resistance.

This is where the second set of details of the case – concerning the broader social context in which Anthony and her peers attempted to vote – is critical. Attending to this reveals that the legal and political decisions made against Anthony and her peers were not regarded as aberrations. They coincided with, and were supported by, widely held views about the natural characteristics of women, especially as they were different from men. Among other things, people generally endorsed views that women were inferior to men, that women were destined for submission to men, or that women's delicateness and purity meant that they were naturally suited to the domestic sphere, or to other non-political roles. These views about the inferiority of women were bolstered by what were regarded as the facts of women's dependence on men (especially financially), and by the observation of a general indifference or hostility even among women to the issue of suffrage or women's rights more generally (McMillen 2008, 136–39). These views did not constrain women specifically in terms of their right to vote, but extended to their public engagements (or even appearance) more generally. For instance, even women's act of speaking in public was regarded as offensive – as women overstepping their rightful domestic sphere (McMillen 2008, 63).

The views about the purportedly natural characteristics of women and of their inferiority to men were regarded as *naturally* supporting a narrow and constrained conception of equality – as concerning only a very few domains where women were equal to men. It is important to note that this connection is not *analytic*. A quick reference to some (purportedly "conservative") sections of contemporary society reveals that views about the natural inferiority of women is not (and need not be) accompanied by the thought that women are not equal to men in the political domain – at least in terms of their right to vote. In any case, and during Anthony's time, the thought that equality required treating women and men as equals in the exercise of political authority (through voting) or in the domain of politics more generally, was regarded as ignoring the purportedly important differences between the nature and capacities of women and men. It was regarded as a kind of abstract thinking that had *gone astray* because it had lost traction with reality.[8] They were regarded as specifying a conception of equality that was implausible because it ignored these crucial and purportedly real

[8] Cora Diamond suggests this as one way of understanding the disagreements between pro-slavery and anti-slavery thinkers, with the former thinking that the latter's conception of equality as applying to all had gone astray in ignoring the different natures and capacities of black and white people. If so, the employment of the general strategy in the case of the duty to resist pro-slavery laws – at least at the very earliest stages of abolitionism – may also not be fully appropriate. See (Diamond 2019, 285–303) For a discussion of the changes in the interpretation of the statement that 'all men are created equal', see (Maier 1999)

differences. All this is to say that there was general support for the view – undergirding the law and public institutions, and espoused by the judges – that women's disenfranchisement did not render them unequal to men, qua citizens. Indeed, their disenfranchisement was supported by a plurality of sources beyond the law. Women's disenfranchisement was not regarded as *unjust* on the basis of such a conception of equality. The duty to resist disenfranchisement, if it exists, cannot be grounded on an appeal to such a conception.

This point must, again, not be construed too strongly. Just as citizens may possess views different from those undergirding the law and public institutions, so they may also hold ideas deviating or dissenting from those undergirding social practices (Sunstein 1996, 919, 929). We should resist the naïve claim that the enculturation of citizens – their being educated and having to live within a particular social and cultural context – simply renders them *incapable* of forming different ideas or holding views different from those which are prevalent within their society.[9] There is always a heterogeneity of views within any society or social group – even if such heterogeneity may at times be minimal (Moody-Adams 1994, 296 n. 14; 1997, 68–71; Walker 2007, 163). This observation is essential; otherwise we would not be able to properly account for the fact that suffragists were themselves able to come up with a conception of equality that deviated from what was generally accepted *despite* being enculturated in those unjust conditions, or the fact that they found allies amongst some men (some of whom served as their attorneys).

With these observations, we may reject the implicit assumption that undergirds the application of *Duty* to this case – that the principles were morally unproblematic and may be relied on to diagnose injustice and to ground resistance. What we see, instead, is that the problem of injustice lies crucially in the principles themselves. Specifically, the problem also resides in the deeply flawed conception of equality which undergirded the law and public institutions, and which was supported by a variety of derogatory views about women.

Moreover, the application of *Duty* to the case of the suffragists mischaracterises the nature of their activism. Specifically, it obscures the fact that the suffragists' appealed to, and were acting on the basis of, a *different conception* of equality – one that is broader and more inclusive. This conception was not only rejected as an erroneous understanding of the conception which undergirded the law and public institutions but was also more generally regarded as implausible given the kinds of people women were. The application of *Duty* mischaracterises the suffragists' arguments, and diminishes the *innovation* they accomplished given the conditions they found themselves in. These activists are not merely cheerleaders – getting people to live up to their own, already-existing, commitments. They are more aptly described as 'moral pioneers' – they come up with and propound moral ideas that 'outstrip' those of others in their social world (Calhoun 2016, 50–51).[10] It is only in light of *this* conception of equality – novel and radical for its time – that the *injustice* of women's disenfranchisement even comes into

[9] For various reasons, however, this claim has been made of individuals inhabiting various historical societies. For instance, Michael Slote suggests that individuals in ancient Greece 'were *unable* to see what virtue required in regard to slavery'. Such claims, I take it, are sociologically naïve. See (Slote 1982, emphasis mine)

[10] Calhoun appears to think that moral pioneers are those who have gotten it *right*. Indeed, she characterises the frontiers of moral knowledge as a context in which some individuals 'made advances in moral knowledge faster than they can be disseminated to and assimilated by the general public'. However, it appears that such contexts may also occur when some individuals in society produces regressions. Pioneer status need not always involve advances in moral knowledge. See (Calhoun 2016, 196).

view at all. And it is only when they *accept* this conception of equality as correct, that they can ground the duty to resist the circumstances they find themselves in.

Of course, the novel conception may itself be problematic. Even though it was broader than the existing conception that undergirded the law and public institutions, it did not go the "full way" in terms of inclusiveness. Among other things, prominent suffragists thought that disabled, immigrant, poor or uneducated people were undeserving of the vote. Ironically, this thought appealed to the purported fact that the differences between these individuals, and those who deserved the right to vote, were simply too great (Stanton 1978; McMillen 2008, 164).

While I do not consider further examples, these discussions suffice to secure a more general point. At least sometimes, and especially in conditions where the injustice is institutionally entrenched and normalised, the problem is also because of the shared conceptions of moral principles themselves. Given this, we should rethink the application of *Duty* to specific cases. Consider, first, *Duty*'s claim that those who live under such unjust conditions are under a duty to resist which is grounded in shared conceptions of certain moral principles that already exist and to which people are committed. In some conditions that some citizens find themselves in, shared conceptions of moral principles may be construed in such a way that there were not violated by the exclusion of certain groups of people from certain rights or liberties. Correspondingly, the institutions which authorised their exclusion would not be regarded as unjust. Indeed, and as we have seen, what we now regard as injustice may have been actively endorsed and supported. If so, the duty of justice to bring about just institutions – through resistance or otherwise – could not have been grounded in the appeal to such conceptions.

In these circumstances, activists' political resistance would not be readily intelligible or understandable by their fellow citizens as acts of resistance, and much less so as acts which seek to fulfil a duty of justice to bring about just institutions. Instead, they would 'simply look like doing the wrong thing' (Calhoun 2016, 36–38). As we have seen, suffragists were regarded as behaving inappropriately by speaking in public or agitating for suffrage. Similar criticisms were laid against civil rights activists, especially when they engaged in what was regarded as transgressive behaviour – such as when black activists occupied segregated spaces reserved for white people. This problem is connected to the novel conceptions of moral principles upon which the activists rely for their actions, which differ from those which are shared by the rest of the society. In such cases, it is not enough for activists to simply reiterate the grounds of their actions. Instead, they would also have to *persuade* their audience that their conceptions of the relevant principles are correct.[11] This task of persuasion is a critical aspect of their activism.[12]

[11] As part their project of persuasion, activists may often have to present themselves "respectably", even if doing so frustrates their other goals. For instance, suffragists had to give up their preference for wearing pantaloons rather than dresses, due to worries about ruining their reputation and crippling the social movement before its hour had come. See (McMillen 2008, 132) This is not to say, of course, that activists may never engage in transgressive action. I discuss this issue in (C.-M. Lim 2021).

[12] Focusing on the case of sexual harassment, Alice Crary suggests – drawing from Jean Grimshaw and Catherine MacKinnon – that the introduction of the term 'sexual harassment' constituted a 'proposal' for others to see certain behaviour in a different way. Rather than see them as mere *annoyances* at worst, they instead should be seen as 'unpleasant, intrusive and coercive imposition' which moreover rises up to the level of significant *abuses*. See (Crary 2018, 57–58).

While my discussions in this section have centred on historical cases, they are not merely of historical interest. Getting the analysis of historical cases right is important because it reveals a limitation of the application of *Duty* that is not immediately apparent, namely, that *Duty* does not apply to all cases of injustice. Many conditions of injustice may be institutionally entrenched and socially normalised, such that they are not even be noticed (or regarded) as injustice at all. This limitation may be especially unobvious, given that in contemporary discussions of citizens' duties to resist, we often assume that we have gotten it right about our moral principles, and that all that we need to do is to live up to them (or to cajole or coerce others into doing so). Keeping this limitation in mind may constitute a reminder for us to keep a lookout for how we may fail to recognise certain conditions as unjust, because of our shared conceptions of certain moral principles. An examination of the past is important, even if our concerns are firmly about the present. I return to this in the final section.

3 Clarifications

Two brief clarifications about the character of my claims are in order. First, my claim is compatible with the broad applicability of *Duty* to other unjust conditions – specifically, those societies that are *in fact* committed to certain conceptions of principles, but whose practices deviate from the demands of those principles. For instance, we might want to say of a blanket prohibition on the entry of members of certain groups into our country (thus including refugees and asylum seekers) that it clearly violates core commitments that we have – perhaps of a principle that requires us to avoid harm (including foreseeable harm) subject to the considerations of costs. Such a principle may undergird the non-refoulement principle in international law, which requires that we do not return migrants (especially refugees and asylum seekers) to countries where they face a likely risk of being persecuted on the basis of certain morally irrelevant features (such as race or religious beliefs) or face other human rights violations (High Commissioner for Refugees, article 33). Of course, and as I hope the earlier discussions indicate, whether this (or any given injustice) may in fact be thus characterised, will have to rely on careful historical and sociological analyses rather than sweeping statements. My complaint is not about the application of *Duty per se*, but about its application to *all* unjust conditions.

This clarification has two exegetical payoffs. First, it brings into focus Rawls' reasons for narrowly situating his discussions of resistance and disobedience within a nearly just society. As we recall, such a society is characterised by there being a shared conception of justice that is publicly recognised as constituting or undergirding the fundamental terms of cooperation, and by reference to which citizens regulate or justify their political activities. As we now see, it is only in such a society, where the relevant moral principles are unproblematic, and where citizens are indeed committed to them, that the application of *Duty* is appropriate. Only in such a society does the natural duty of justice unproblematically grounds a duty to resist, if doing so would bring about just institutions.

Second, it explains Rawls' narrow focus on one *type* of nearly just societies. Rawls suggests that there are two ways in which institutions can be unjust. One is when laws and policies deviate from publicly recognised standards or principles. Another is when institutional arrangements conform to a society's shared conception of justice, but where that *conception itself is unreasonable or flawed* – which is what we have been considering. Rawls' discussions

of resistance and disobedience are situated within the first type of injustice. He does not say much about the latter, except to note in passing that how our duties and obligations are affected by the two types of unjust conditions are 'very different' (Rawls 1999, 309–10). The discussions here constitute a partial explanation for this claim. In conditions where a particular state of affairs is not even regarded as unjust to begin with, citizens generally will not regard themselves as having a duty to resist. If there is indeed such a duty, it would have to be grounded in something other than the shared conceptions of moral principles.[13]

The second clarification is that I am not committed to any form of relativism about the *truth* of moral principles – that what *is* morally right in a particular context may not be so in a different one. Instead, my arguments rely on the uncontroversial point that what is *regarded as right* is context dependent. My claim is that citizens in some unjust conditions may not, on the basis of shared conceptions of moral principles, regard there to be any injustice and may thus reject the claim that they have a duty to resist. They may also regard those who appeal to different conceptions of moral principles as mistaken. This claim is compatible with the claim that these citizens have actually gotten it wrong in an "objective" sense (however we may specify it). My arguments are, in this sense, compatible with a range of meta-ethical views about the truth of moral ideas.

4 Conclusion

In this essay, I have articulated a constrained challenge to the application of *Duty*. In some conditions where the conceptions of moral principles undergirding public institutions are flawed or problematic and endorsed by citizens within them, *Duty* does not apply. The grounds for the duty to resist will have to be found elsewhere – in the novel conceptions of moral principles that activists propose.

I conclude by very briefly considering how my discussions clarify an aspect of a contemporary problem concerning migration. The conventional view which dominates public discussions is that states have the right to exclude non-citizens.[14] According to this view, additionally, states may freely select potential citizens, as long as their selection is not marred by wrongful discrimination (Miller 2014). Usually, a range of reasons is given for these border control measures. Among other things, they concern preserving culture or cultural continuity (Miller 2014, 363–75), exercising states' freedom of association (C. H. Wellman 2008), or ensuring the employment of existing citizens (Macedo 2007). These reasons are situated within, and supported by, a complex web of other beliefs about, among other things, the nature and purpose

[13] I set aside the difficulties arising from conditions in which there are deep and pervasive *disagreements* about justice, but where the operative conceptions of justice are not clearly unreasonable or flawed. I take it that the extensive discussions within political and public reason liberalism are intended to address issues in these conditions. I do not address them here. For representative contemporary texts (beyond Rawls), see (Gaus 2011; Quong 2011)

[14] Subject, of course, to the non-refoulement principle in international law (supra note 50). However, states' commitment to this principle has also come under strain as states increasingly opt for giving refugees the bare minimum levels of protection consistent with the requirements of principle. See (Price 2009, especially pp. 1-18) In this context, and unsurprisingly, even decisions to accept refugees *at all* are presented as supererogatory – something that is good for them to do, but which they have no duty to do. Consider, for instance, the presentation of the UK government's decision in 2015 to take in refugees (at a smaller number than was recommended by activists and human rights groups) as an act of 'extraordinary compassion'. See (Wintour 2015)

of political association, the role of the state in relation to its citizens, the value of membership in a bounded group and the importance of enforcing those boundaries, and so on.

Consider, now, the following case based on a common feature of many immigration systems around the world. Anne is a member of country A, and has recently gotten married to Bill, who was originally born in country B. They decide to settle permanently in country A. However, Bill's attempts to apply for permanent residence are repeatedly rejected. This is due to country A's adoption of a "points-based" system that assesses applicants by assigning them "points" based on characteristics such as level of income, occupation, level of education and so on. Bill is a low-skilled and low-wage worker who, upon such assessment, fails to accrue the required number of points for permanent residence. Anne's and Bill's relationship and their lives more generally are thrown into disarray. The transnational couple is faced with the option of living apart, or living together in country B – options which they regard as inferior to settling in country A.

When presented with cases like this, it is common to hear people express *sympathy* or *pity* for the couple. However, few people think that this case shows that the immigration system which selects migrants in this way is *unjust*, or even more minimally, that it calls into question the justice of the system. This judgement is typically stable in the face of the claim that the immigration system protects the interests of members of country A *at the expense* of others. This may be due, I suggest, to a general acceptance of the view that the reasons for border control measures clearly and securely outweigh the reasons for systematically accepting people like Bill. The claim that the immigration system should be reformed in such a way as to systematically allow people like Bill permanently into the country are likely to be rejected – regarded, among other things, as sentimental or unreasonable.

Given these conditions, what are we to make of the claim that we have a *duty*, grounded in shared conceptions of moral principles, to resist the existing institutions – perhaps by helping Bill *illegally* settle in society A, or, if he is already here, to help him resist deportation?[15] This claim is likely to be controversial. Many people are likely to deny that the shared conceptions of moral principles *require* that we permit people like Bill to settle permanently in the country, and are moreover likely to reject the claim that his not being allowed to do so is a failure on our part to live up to the requirements of our shared principles. This, as is obvious, is intimately connected to the view that the institutions as they are set up are *not* unjust. If citizens have a duty to resist in these circumstances, it cannot be of the form sketched out by *Duty*. Grounds other than the existing shared conceptions of moral principles undergirding the immigration rules will have to be found.

While the application of *Duty* to this case is inappropriate, our discussions suggest a way forward. One of the things that citizens and activists would need to do is to persuade others that the institutions are indeed unjust. This may be done by broadening the principle of anti-discrimination such that exclusions of people like Bill based on talent or skills are regarded as wrongful, (D. Lim 2017; Erez forthcoming) or by expanding our shared conceptions of citizenship or membership so as to include people like Bill as "one of us" (Tam 2020), or by showing how our honour or social reputation are impugned by the failure to include people like

[15] For further discussion of the reasons we have to resist or even disobey immigration laws, see (Hidalgo 2016; 2019)

Bill (Appiah 2010), or even by arguing that our interests (including Anne's) in family life are weighty enough that our shared conceptions of moral principles need to be reworked to properly accommodate them. Whether any of these may be successfully done, and be regarded as persuasive, will partly depend on how well these broadened conceptions reconfigure – rather than outrightly dismiss – the complex web of beliefs supporting people's views on membership and migration. That is, our discussions show that what we need is a reimagining or reinterpretation of the moral world (Moody-Adams 1997, 106).

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