

Lefkowitz, Disobedience and Political Authority: North Carolina's Moral Mondays as a Paradigmatic Case of Civil Disobedience

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Abstract

This paper examines political philosopher David Lefkowitz's (2007) framework of public disobedience and argues that the acts of civil disobedience employed in the nonviolent Moral Monday protests held at the State Legislative building in the city of Raleigh, North Carolina (United States) during the summer of 2013, are consistent with his account. By definition, public disobedience is a "suitably constrained form of civil disobedience," compatible with political authority, or a legitimate state's right to rule, because citizens are recognized as holding a moral right to engage in such acts.³ Specifically, I argue that North Carolina's Moral Mondays activism is a paradigmatic instance of civil, nonviolent resistance by demonstrating how the protests satisfy three necessary conditions of civil disobedience that are also present in Lefkowitz's framework. In my final analysis, I conclude that Moral Mondays are distinguishable from forthright, lawless acts of dissidence that undermine rather than safeguard political authority.⁴

Keywords: anarchy, civil disobedience, Moral Mondays, state legislation, North Carolina (United States).

³ David Lefkowitz, "On the Moral Right to Civil Disobedience," *Ethics* 117, no. 2 (2007): 206, 215. Lefkowitz argues that within a democratic state with recognized political authority, citizens have a political obligation to the state. On his view, the moral right to public disobedience derives from the understanding that political obligation entails a *disjunctive duty* for citizens to either obey the law or engage in a public act of disobedience. Hence, it follows that "agents act rightly when they disobey the law, or at least they do not act wrongly merely in virtue of having disobeyed it." (203). I also consider that in this sense compliance with the law and defiance of the law are compatible, in that the decision to do either comes as a result of one's judgment of the degree that particular laws or policies are just.

⁴ I use the term "safeguard" in respect to the way that Lefkowitz's defense of civil disobedience operates in concert with democracy. Lefkowitz contends, "a state's recognition of the moral right to public disobedience is not only compatible with this defense of political authority but also necessary for it" (209). See also footnote 15 in Lefkowitz's article.

Introduction

Were Moral Monday protests at the North Carolina Legislative Building consistent with David Lefkowitz's framework of public disobedience? This central question will be thoroughly considered throughout the essay since, in my view, Moral Mondays held during Summer 2013 in Raleigh, North Carolina not only exemplify acts of public disobedience but also illustrate key characteristics of civil breaches of the law. Despite the manner that the peaceful nonviolent protests at the capitol building have been herald as important examples of political engagement, other media sources have characterized Moral Monday demonstrations as little more than political stunts imbued with disorder and chaos.⁵ Furthermore, in a deliberate yet unsuccessful attempt to prevent future demonstrations, in 2014, amidst the execution of a second wave of protests at the capitol building, North Carolina lawmakers passed regulations that banned Moral Monday activism as a "disturbance" and "imminent threat."⁶ However, I challenge that contention, suggesting that protests rightly be thought of as less anarchic in nature and more democratic in spirit. In this essay, I will also address potential criticisms and counter arguments directed at my overarching claim. Furthermore, I will attempt to demonstrate the degree to which Lefkowitz's theory may fall short in conceptualizing a mode of civil disobedience that is essential to the preservation of political authority, or a legitimate state's right to rule.

I open my argument with David Lefkowitz's definition of civil disobedience: "As I understand it here, [civil disobedience] consists in deliberate disobedience to one or more laws of a state for the purpose of advocating a change to that state's laws or policies."⁷ He asserts that his account of civil disobedience is distinct from criminal acts of disobedience, revolution as well as conscientious objections that seek not to perfect unjust laws but only to excuse one from the responsibility to uphold specific law and policies.⁸ Lefkowitz expounds on the moral aspect of public disobedience and its critical relationship to political authority:

Citizens of a state with a justified claim to political authority have a moral right to commit civil disobedience (or, more precisely, a moral right to a suitably constrained form of civil disobedience which I label public disobedience). If correct, this claim entails that citizens act within their moral rights when they commit an act of public disobedience, even when in doing so they fails to act rightly...a moral right to public disobedience consists of a right to do wrong.⁹

In turn, the central feature of Lefkowitz's public disobedience concerns moral agents' aim to modify existing laws, while also recognizing the legitimate state's *right* to rule--that is why moral agents do not seek to replace the prevailing structure of government. As a means to draw a more apparent connection between public disobedience and civil disobedience, I also consider it useful to merely expand Lefkowitz's definition by presenting a similar, generally accepted

⁵ A prime concern with Moral Mondays is the threat of disorder and social disintegration. State authorities were authorized to identify and properly apprehend anarchists at the Moral Monday demonstrations. Anne Blythe of the Raleigh News & Observer reports: "the chief at the helm of the law enforcement agency that arrested more than 930 people this past summer testified that his officers had scanned the many "Moral Monday" rallies with eyes trained for 'anarchists,'" (par. 4). See Anne Blythe, "Police Were on the Lookout for Anarchists at Moral Monday Protests," *News & Observer*, October 7, 2013.

⁶ Lucy Butcher, "Moral Monday Protests return to Raleigh under new Legislative Building rules," *The Carolina Mercury*, May 19, 2014, par. 5, 6.

⁷ Lefkowitz, "On a Moral Right to Civil Disobedience," 204.

⁸ Ibid.

⁹ Lefkowitz, "On a Moral Right to Civil Disobedience," 206.

definition of civil disobedience, offered by American philosopher John Rawls.¹⁰ According to Rawls, civil disobedience is a “public, nonviolent, and conscientious act contrary to law usually done with the intent to bring about a change in the policies or law of the government.”¹¹ This definition is consistent with the view that civil disobedience is a form of political dissent that signifies more than a refusal to obey the law. Rawls understands civil disobedience to characterize a political act that is inextricably bound up with morality:

It is an act justified by moral principles which define a conception of civil society and the public good. It rests, then, on political conviction as opposed to a search for self or group interest; and in the case of constitutional democracy, we may assume that this conviction involves the conception of justice (say that expressed by the contract doctrine) which underlies the constitution itself. That is, in a viable democratic regime there is a common conception of justice by reference to which its citizens regulate their political affairs and interpret the constitution. Civil disobedience is a public act which the dissenter believes to be justified by this conception of justice, and for this reason it may be understood as addressing the sense of justice of the majority in order to urge reconsideration of the measures protested and to warn that, in the sincere opinion of the dissenters, the conditions of social cooperation are not being honored.¹²

In a similar way that a Lefkowitzian framework accepts that agents of public disobedience have a moral right to public disobedience, Rawls’ conception of disobedience is one that also validates the moral component of civil disobedience, placing it within the context of a common, public conception of justice. More important, public disobedience as a category of civil disobedience will act as a mechanism to improve upon and perfect the rule of law and order within a society--within the bounds of existing democratic authority.¹³ Rawls’ characterization of civil disobedience is significant to degree that it contains three relevant features for my argument, which I will, hereafter, treat within Lefkowitz’s framework: First, the notion that dissenting actions that fall within the category of civilly disobedient behavior must be public acts; second, that acts of civil disobedience must be relatively nonviolent; and, third, that engagement in civil disobedience must be grounded in principles of good faith. My attention to these three defining characteristics of civil disobedience, keeps with the viewpoint that I argue for, that Moral Mondays demonstrate consistency with Lefkowitz’s framework and thereby represent an archetypal example of civil disobedience. Yet, before I turn to my analysis of Lefkowitz’s theory, I will provide a detailed account of the Moral Mondays demonstrations.

The Case in Point: Moral Mondays Protests at the Capitol Building

The thirteen, weekly Moral Monday demonstrations held at the State Capitol building in Raleigh, North Carolina from April to June 2013 gained national attention and, also, were controversial. In an outcry against Tea Party state legislators’ alignment with the American Legislative

¹⁰ Rawls places his framework in the context of constitutional democracy in which

¹¹ John Rawls, “The Justification of Civil Disobedience,” in *Civil Disobedience: Theory and Practice*, ed. Hugo Adam Bedau (New York: Pegasus, 1969), 246. Extending from the social contract doctrine, members of a society “should comply with and do...[their] part in just and efficient social arrangements...to *support* just and efficient institutions (241). Therefore, it follows that in the event that certain laws or policies are viewed incompatible to this social arrangement, citizens have an obligation to engage in actions to improve the arrangement.

¹² Ibid.

¹³ I also make this assertion to further the point that in light of its purpose to object practices that impede the progress of democracy civil disobedience cannot be viewed as anarchic.

Exchange Council (ALEC), a nonpartisan association comprised of conservative policymakers, hundreds of protestors and bystanders gathered each week, and nearly one thousand activists endured arrest over the thirteen week-period, in order to voice concerns about what they perceived to be socially regressive and economically debasing state legislative policies. Participants protested against voter ID laws, restrictions on abortion rights, funding cuts for Pre-K education, reductions in unemployment benefits, and Republican lawmakers' decision not to expand Medicaid benefits, amongst other policy concerns.¹⁴

Spearheaded by community leader and the North Carolina chapter NAACP President Reverend Dr. William Barber II, the movement, at its core, is founded on Christian values concerning collective moral responsibility, naming a common understanding of justice. A distinctive element of the Raleigh demonstrations were the success in bringing together individuals from all backgrounds, regardless of theological convictions, political affiliations, race and ethnicity, age, gender and social class. Moral Monday protests at the capitol offered a different way to view politics and for citizens to engage in the democratic process. Through the protests, civil disobedients demonstrated the necessity of their activism and the imperative for increased activism in the future. Additionally, through these mass acts of civil disobedience, dissenters also urged citizens to recognize their power to effect social change through the exercise of political participation.¹⁵

A prime concern with the extreme politics of North Carolina lies in what has been described as a warning of what is to come for the future of the United States. Specifically, extremist Republican state legislation has the potential to expand to the federal government. Moral Mondays are not only an effectual example of nonviolent political action but are also one of the core components of a much larger People's Movement, or as it is known as, the Forward Together Movement. As Moral Mondays continue to thrive in different regions of the United States, I also consider that these mass political demonstrations hold striking similarity to the street protests in countries abroad. While very different in respect to the violence and unrest that ensued in these politically distressed nations, simultaneous demonstrations in Egypt, Turkey, and Brazil held similar characteristics to Moral Mondays. In each case, as a means to voice concerns about perceived social injustices, civil society engaged in public demonstrations to challenge different aspects of democratic governance.¹⁶ At the core of these political protests, whether one focus on North Carolina, Egypt, Turkey or Brazil, lays an effort for citizens to keep checks on a government they determined to be less reflective of their values and principles. While I reason that the grassroots movement in North Carolina serves as a skilled execution of civil disobedience, it would be too ambitious of a claim to argue that Moral Mondays have paradigmatic implications for countries abroad (particularly those with liberal democracies). Concerning the work that Moral Monday protests undertake in appealing to the morale of fellow

¹⁴ Concerning the wide-ranging issues that led protesters to Moral Monday demonstrations, it should be noted protesters and other Moral Monday participants remain divided on a number of the issues under debate.

¹⁵ Led once again by Reverend Dr. William Barber, Moral Monday demonstrations at the State Legislative building recommenced in May 2014, this time to rally support around issues involving workers' rights and labor unions, environmental and healthcare justice, in addition to other concerns.

¹⁶ When I refer to "democratic governance," I mean government authorities who have been elected through a democratic process, although Egypt's military regime is not consistent with democracy. For a more detailed account of the protests against democratically elected governments in Egypt, Turkey and Brazil, see Khouri, Rami. "Historic Street Politics in Egypt, Turkey and Brazil." *Agence Global*, June 25, 2013.

citizens and state legislators by communicating a vision for justice and fairness, I consider it especially worthwhile to speak to circumstances that may warrant disobedience against the state, including illiberal states that deny its citizens the right to engage in acts of civil disobedience. But since my central project is devoted to the analysis of civil disobedience in liberal states, I will briefly reference illiberal states in my concluding remarks.

Disobedience and Political Authority

In Lefkowitz's view, liberal democratic authority is contingent on civil disobedience as a hallmark of a social and political institution.¹⁷ By that public disobedience is correlative to political authority because agents of civil disobedience have consented to comply with the laws of the government. Yet, as he contends, "where citizens have a duty to obey the law...the duty to obey the law may be a *pro tanto* or prima facie moral reason that is in some cases defeated by other moral considerations that favor (or even require) acting illegally, such that citizens act rightly."¹⁸ That is to say, the duty to obey the law is outweighed not by a moral right to defy a state's right to rule but to challenge the constitutionality of a law. Hence, acts of public disobedience do not disavow political authority but, rather, are indicative of citizens' grievances with particular laws or policies in respect to the state.

I develop a defense of Lefkowitz's view as to why public disobedience is such a vital component of liberal democratic authority by engaging with philosopher David Estlund's (2008) normative consent theory of authority. According to Estlund, agents consent not to authority, but only to leadership. This is for the reason that non-consent is nullified in any condition of authority, which suggests, "even in cases where you have not consented [because consent is not qualified], you are under authority just as you would have been if you had consented [if consent had been qualified]."¹⁹ Therefore, non-consent under an authority condition is always disqualified because non-consent would be unjustified, "resulting in authority in any case."²⁰

In his scenario involving a flight attendant and passenger in the aftermath of a crash, the passenger "has a duty to follow her so long as she *leads* well under these urgent conditions, but authority is something more."²¹ And within a Lefkowitzian framework, acts of disobedience are compatible with political authority, since the condition of authority precludes non-consent.

Moral and political philosopher Kimberley Brownlee (2004) asserts a similar understanding in the manner that moral agents seek to express their dissatisfaction and distance from a disagreeable law. However, she advances a somewhat divergent viewpoint in assessing the relationship between civil disobedience and political authority: "In civilly disobeying the law, a person seeks

¹⁷ When I make reference to the term *liberal* democracy, I speak only in terms of a democratic political institution that regards its citizens as free and equal agents who are also recognized as possessing broad rights of political participation. Joseph Raz (1979) argues, "all states can accordingly be divided into those in which the liberal principle is adequately recognized and protected in law and those in which it is not. Let states of the first kind be called 'liberal states' and others 'illiberal states,'" see Joseph Raz, "A Right to Dissent? I. Civil Disobedience," in *The Authority of Law: Essays on Law and Morality* (Oxford: Clarendon Press, New York: Oxford University Press, 1979), 272.

¹⁸ Lefkowitz, "On a Moral Right to Civil Disobedience," 205.

¹⁹ David M. Estlund, "Authority and Normative Consent," in *Democratic Authority* (Princeton and Oxford: Princeton University Press, 2008), 123.

²⁰ David M. Estlund, "Original Authority and the Democracy/Jury Analogy," in *Democratic Authority* (Princeton and Oxford: Princeton University Press, 2008), 140.

²¹ Estlund, "Authority and Normative Consent," 124.

to convey her disavowal and condemnation of a law, as well as her dissociation from both that law *and the government* that enacted it.”²² I argue that Brownlee makes too strong of a claim that through their act of civil disobedience agents distance themselves from the government.

To validate such a claim would advance the view that acts of civil disobedience serve the prime purpose to undermine the government and obstruct democracy rather than to cooperate with political authority. Brownlee’s contention runs counter to the viewpoint I argue, as well as the pattern of consistency that underlines Lefkowitz’s framework of disobedience. But more than that her claim ultimately puts forth the idea that agents of civil disobedience are opposed to, and question, the government itself, in addition to particular laws or policies they might regard as unjust. But this view is incorrect. While individuals may disagree with a specific policy enacted by a government, and thereby engage in an act of civil disobedience to oppose the measure, it is not the case, nor can it be, for the purposes of Lefkowitz’s argument, that moral agents oppose the government. Brownlee’s contention that civil disobedients dissociate themselves from the government is based on two flawed assumptions. One, that dissenters view themselves as existing outside the structure of government; and, two, that the aims of civil disobedients are inconsistent with, and far removed from, the existing structure of government.²³ For instance, Brownlee contends that dissociation “involves a public declaration by the dissenter that she is wholly *unconnected...to demonstrate her personal detachment*.”²⁴ To assert that an agent seeks to detach him or herself from a specific law as well as the government itself, suggests that political authority is in question. As I have argued before, since authority is legitimated without regard for consent, it is not the case that political authority is challenged.

In Brownlee’s view, dissenters act with the understanding that the government itself, not merely some laws and policies, are in need of reform.²⁵ The motivations of Moral Monday protesters undercut these assumptions surrounding the illegitimacy of law and government.

Rather than the demonstrations serving as a means for protesters to distance themselves from an illegitimate government, those acts of civil disobedience were an attempt to exercise First Amendment rights as citizens of the government, and also to demand inclusion and that their voice be heard in said government. Furthermore, dissenters did not share a general impression that the Republican legislative body was corrupt nor that it was an illegitimate form of governance. Instead, Moral Monday concerns lie with more extreme Republican politics, not with Republican governance itself. Michael Walzer argues that to engage in civil disobedience does not mean that moral agents question the political authority of a government, only “its authority in this or that case or type of case or over persons of this or that sort. It does not seek

²² Kimberley Brownlee, “Features of a Paradigm Case of Civil Disobedience,” *Res Publica* 10, no. 1 (2004): 345.

²³ In light of my above points, I am led to consider Michael Walzer’s compelling argument on the obligation to disobey, in which he posits that even while at odds with certain aspects of governmental authority, dissenting parties with morally serious commitments to disobedience need not question political authority, and thereby wholly remove themselves from the larger society: “None of them absolutely denies that sovereignty or supremacy [of the existing state]. They are, then, partial members...” See Michael Walzer, “The Obligation to Disobey,” in *Ethics, An International Journal of Social, Political, and Legal Philosophy* 77, no. 3 (1967): 170.

²⁴ Ibid.

²⁵ I argue that this underlying assumption of Brownlee’s claim is characteristic of revolutionary disobedience, rather than civil disobedience. Joseph Raz (1982) defines revolutionary disobedience as an act initiated to “change or contribute directly to a change in *government* or of the constitutional arrangements—the system of government” (263). Hence, Brownlee’s assertion runs counter to the very character of civil disobedience.

to replace one sovereign power with another, only to call into question the precise range and incidence of sovereignty."²⁶ Hence, Moral Monday protests were a diplomatic display of citizens' concerns about perceived unjust policies. And so their actions in fact acknowledged the state's right to rule.

Similar to the manner that Lefkowitz conceives a mode of disobedience that is compatible with democracy, Michael Walzer (1970) bases his argument for the obligations of oppressed minorities on the principle that they opt to disobey "in political ways, which do not call into question the survival of the democratic system."²⁷ By presenting an example that demonstrates the congruity of civil disobedience and political authority, it is my aim to convey how the view that disobedience is compatible with democracy and notions of fidelity toward the law should be taken as a plausible.²⁸

Civil Disobedience as a Public Act

A moral right to civil disobedience is further supported by the view that these acts constitute a *public* act of communication. Lefkowitz asserts that "not all forms of civil disobedience are morally permissible...morally justifiable acts of civil disobedience *must* be acts of public communication."²⁹ Hence, it is at this point that I devote discussion to the first of the three defining characteristics of civil disobedience, that is, the first condition of public disobedience. In a public display of disobedience, there is an attempt to appeal to the moral character of one's fellow citizens and, in most instances, the state. For this reason, the aim of effective communication is a guiding principle of public disobedience.

In the same respect, Moral Mondays also exhibit this communicative quality, in that the demonstrations at the State Legislative building were marked by an attempt to appeal to the less politically active members of the North Carolina electorate, and also to urge citizens to take a stand for issues with clear and significant implications for the polity. In his thoughtful and direct *Huffington Post* editorial, civil disobedient and Duke Law professor Jedediah Purdy captures Moral Mondays' public communicative aspect:

Moral Monday protests are all about fumbling toward some answers. The rallies outside the capitol have been chances to explain how the Tea Party agenda adds up to a vision of society and to *articulate* a progressive *alternative*, committed to equality, tolerance, and mutual care. These are the first steps toward defining what's at stake the next time North Carolina goes to the polls. By resisting the law [one hopes] to make an appeal from the people to themselves, that is, their higher consciences. That's why civil disobedience makes sense, and why it's part of the compact a civilized country makes with itself. [It is] a way citizens tell one another that an issue is very

²⁶ Michael Walzer, "The Obligation to Disobey," 168.

²⁷ Michael Walzer, "The Obligations of Oppressed Minorities," in *Obligations: Essays on Disobedience, War, and Citizenship* (Cambridge: Harvard University Press, 1970), 47.

²⁸ Rawls also argues that civil disobedience is civil in the manner that its agents uphold a respect for the law in their willingness to accept legal ramifications: "Civil disobedience expresses disobedience to law *within* the limits of fidelity to law." See John Rawls, "The Justification of Civil Disobedience," 247.

²⁹ *Ibid.*, 215.

important, that it might be worth real attention and thought. It's a way of trying to start serious conversations.³⁰

The description above illustrates the way Moral Mondays exemplify the aim to inform the public of the stakes involved that warrant an act of civil disobedience, but also expounds on the role that civil disobedience assumes within a society. Civil disobedience acts as an essential element of the mutual agreement or social contract among members of a society. This is so due to the manner, through the social contract doctrine, that citizens give up their sovereignty and accept their duty to the state. Moreover, such public acts of disobedience are distinguishable from private interests, denoting the significance of common interest in, and concern for, measures that Moral Monday protesters regard as detrimental to the social community—as well as an obstruction to the conception of justice invoked by the public institution. In light of their collective interest of justice, moral agents employ civil disobedience as a public display of their esteem for the law. Lefkowitz argues, within a liberal-democratic state with recognized political authority, citizens have a political obligation to the state: “in a state with a justifiable claim to political authority citizens of such a state have a duty to obey the law that correlates to the state’s right to rule them.”³¹ In fact, in Lefkowitz’s view, political obligation entails disjunctive principles of action: either the duty to obey the law, or the duty to disobey the law through civil disobedience.³² Hence, the duty to disobey is a constituent part of the agreement between the democratic state and its members, because it represents the obligation that citizens have to breach the agreement in the event that the state fails to uphold its end to honor the basic liberties of its people, and thereby the prime tenets of a political community.

Civil Disobedience as Nonviolent

I now argue that another characteristic of Lefkowitz’s framework of public disobedience, and a defining characteristic of civil disobedience, is that of nonviolence. I will also engage in a discussion on viewpoints that denote civil disobedience as idealistically nonviolent. In his “Letter from a Birmingham Jail,” Reverend Dr. Martin Luther King gives credence to the view that the acts of civil disobedience implemented in the American Civil Rights Movement be nonviolent:

One who breaks an unjust law must do so openly, lovingly, and with a willingness to accept the penalty. Nonviolence demands that the means we use must be as pure as the ends we seek. It is wrong to use immoral means to attain moral ends.³³

In this sense, King demonstrates that the success of state resistance depends, in large part, on a nonviolent approach. In King’s view, nonviolence speaks to the moral imperative of civil disobedience, in that its agents exercise sincerity and truth in motive as to indicate good means

³⁰ Jedediah Purdy, “Why I Got Arrested in Raleigh: The States Are the New Front Line,” *Huffington Post Politics*, June 11, 2013. http://www.huffingtonpost.com/jedediah-purdy/why-i-got-arrested-in-ral_b_3420683.html.

³¹ Lefkowitz, “On a Moral Right to Civil Disobedience,” 205.

³² Ibid., 215. I also consider that, in this sense, the duty to comply with the law and the duty to disobey the law are compatible, in that, the decision to do either comes as a result of one’s judgment of the degree that particular laws or policies contribute to a good and civil society.

³³ Martin Luther King, Jr., “Letter From a Birmingham Jail.” Alton Hornsby, Jr., ed. *The Journal of Negro History* 71, no. 1 (1986): 41, 43.

are correlative to good ends. An understanding that nonviolence calls for its agents to use moral means in order to reach moral ends suggests that civil disobedience possesses an inherent character of nonviolent resistance.

Furthermore, if one should question the place of nonviolence in acts of civil disobedience, one should consider a scenario in which nonviolence is not employed. For instance, the success of the American Civil Rights Movement can be attributed to the fact that agents of civil disobedience were peaceful in their acts of resisting Jim Crow legislation. One can imagine the outcome would have been different had the protesters resorted to violence, especially in response to the violence that law enforcement officials directed toward them. Political theorist Andrew Sabl (2001) argues that nonviolent resistance is an optimal choice in those instances when coercive and violent behavior may seem more justified. That is the case for the manner that agents of nonviolent resistance view their actions as part of a larger, long-term aim to foster future negotiations with the oppressor. These future possibilities are contingent on what Sabl defines as piecewise justice, in which the dominant group in a society possesses the capacity to act fairly towards its own, even if that group does not necessarily extend such a degree of fairness to the marginalized members of a society.³⁴

In the example of the American Civil Rights Movement, activists envisioned the prospect of met aims. That is to say, there was far more at stake than the present injustice, but a need to evaluate and consider not only how relations between civil rights activists and the state may fair in the future, but also how the mode of resistance might shape those relations and future possibilities. Thus, if moral agents had resorted to guerilla warfare tactics, or more coercive and potentially violent measures of resistance, law enforcement would have had good reason to exact brute force on participants.³⁵ Furthermore, there is a stronger likelihood that violent protests would have curbed the efforts to reform the policies supporting racial segregation and discrimination. In fact, the nonviolence of civil rights activists not only speak to the importance of nonviolence as a defining characteristic of civil disobedience, but also hearken back to communication and how well nonviolence facilitates effective communication of civil disobedients' aims. For instance, the public communicative aspect of the 1950s and 1960s civil rights activism was so potent due to the manner that media coverage of the demonstrations depicted people enduring maltreatment in response to their peaceful and nonviolent resistance. Similar to the manner that civil rights activists were constrained in their mode of resistance, Moral Monday demonstrations were well thought-out and scripted, to the degree that agents of disobedience sought to garner mass public appeal through their nonviolent demonstrations.³⁶

³⁴ Andrew Sabl, "Looking Forward to Justice: Rawlsian Civil Disobedience and its Non-Rawlsian Lessons." *The Journal of Political Philosophy* 9, no. 3 (2001): 308-312.

³⁵ This point also gives way to a discussion regarding Lefkowitz's view on state interference and the insistence that a moral right to public disobedience also includes a claim against punishment. I will devote space to an extensive argument about specific point later in the paper.

³⁶ When I offer a comparison of the success in the nonviolent strategies employed in both the Civil Rights and Moral Monday movements, I do not make such a comparison to suggest the Moral Monday demonstrations were met with violence, as they were not. Nor do I desire that one imagine such a scenario, though it would not hurt to do so. Rather, the juxtaposition of these two case studies speaks specifically to the importance of media in garnering national attention and public morale. Additionally, exhibiting nonviolence in light of media coverage increases the likelihood that protesters will achieve the kind of response that they seek: one that is influenced by having accepted the consequences of breaking the law. A commentator on Moral Mondays has said: "In order to be successful, one of the primary ways a movement gets its message out is through media. In that way, it's

Lefkowitz does not engage extensively with the question of nonviolence in his framework, but instead remains mum regarding whether violent or nonviolent action is a more suitable measure when engaging in public disobedience. However, he does cite that public disobedience should be non-coercive, and he permits violence as a reasonable course of action.³⁷ In advancing his viewpoint, Lefkowitz discusses state interference and the liberty the state has to penalize acts of public disobedience. When the state intervenes in public disobedience in order to assert order and stability, Lefkowitz contends, “the state may justifiably impose certain types of costs or *penalties*, including fines and perhaps even temporary incarceration, on those who engage in such acts.”³⁸ When considering the permissibility of violence in Lefkowitz’s theory it should be understood to be in favor of non-coercion to the degree that non-coercive acts will have a positive influence on state inference, namely, that the state will impose penalties as opposed to punishments. That is to say, Lefkowitz’s admissibility of violence is conditional, in that, it is feasible insofar as it must also be non-coercive, in order to lay claim to his point that the right to public disobedience also entails a claim against punishment.

I would like to expand on Lefkowitz’s requirement that public disobedience be non-coercive, in order to advance my view for how I perceive his discussion of penalties and punishments to lend support to my side argument that public disobedience is most effective when it is both nonviolent *and* non-coercive. Lefkowitz offers a discussion of the manner that the state can issue penalties instead of punishments when interfering in the affairs of moral agents. In his discussion on state interference, he emphasizes that imposition of penalties is a favorable and legitimate measure *if* the penalties avoid casting a judgment on the behalf of the state in disapproval of the *act* of disobedience. Furthermore, to impose punishment would convey to agents of civil disobedience, as well as the larger social and political community, that the state condemns acts of public disobedience and therefore denies the claim right to civil disobedience.³⁹ Known as the expressive function of punishment, American philosopher Joel Feinberg (1965) asserts that punishment is “a conventional device for the *expression* of attitudes of resentment and indignation, and of *judgments* of disapproval and reprobation.”⁴⁰ When considering modes of state interference, I argue that nonviolent resistance is critical.

For example, if the state were to honor its duty not to impose punishments in response to acts of public disobedience, then it would fall on the responsibility of the moral agents to ensure that their mode of resistance could be met with a penalty.⁴¹ Ultimately, I argue that coercive acts of

been quite successful. It peaks the interest of the average news reader” (par. 11). See Nicole Campbell and Frank Stasio, “Moral Mondays: Modern Day Civil Disobedience In the State Capitol,” *The State of Things*, May 22, 2013.

³⁷ Lefkowitz, “On the Moral Right to Civil Disobedience,” 216. Lefkowitz contends that civil disobedients should abstain from actions given to “coercing the state into abandoning or adopting certain policies, but should “display their commitment to the equal authority of all citizens to determine what the law ought to be.” However, violence is permitted as long as it remains non-coercive. These assertions, taken together in full, also further Lefkowitz’s overarching claim concerning the compatibility of civil disobedience and democratic political authority.

³⁸ Lefkowitz, “On the Moral Right to Civil Disobedience,” 218.

³⁹ *Ibid.*, 218-219. Moreover, the discussion on penalties and punishment is significant for the way Lefkowitz understands the moral right to civil disobedience to derive from political participation, those rights extended to a person by virtue of citizenship and recognition as an autonomous individual (221). Hence, the use of punishment poses an even greater issue for the reason that it would express the state’s disavowal of moral agents’ basic rights.

⁴⁰ Joel Feinberg, “The Expressive Function of Punishment,” *The Monist* 49, no. 3 (1965): 400.

⁴¹ Yet, arguably, the legal proceedings for the Moral Monday protests demonstrate the degree to which civil disobedients’ constrained acts alone, did not ensure that the state would issue penalties rather than resorting to expressive punishments. For

civil disobedience should not be employed to any degree, for the reason that what may begin as coercive nonviolence could escalate to coercive violence. When employing non-coercive nonviolence, I consider that there is a strong likelihood those measures could quickly become coercive, depending on the degree of injustice that moral agents confront. For example, Brownlee argues that it is permissible for agents of civil disobedience to employ violence on the grounds that the wrong they seek to right be so outrageously evil that only a violent response properly matches its own coercive measures.⁴² But consent to a level-playing field is problematic.⁴³

I consider this to be the case for the reason that coercion implies a threat of violence, in that it acts as a precursor for violence to ensue, even if that is not the intended course that dissenters intend to take. I argue that to resist *coercive* practices with violence in an attempt to

“re-establish the rights and civil liberties that [such] practices seek to suspend,” is to express a noncommittal to the aims that one seeks to accomplish by engaging in public disobedience.

To hearken back to King’s view concerning how civil disobedience should be characterized by correlative means and ends, it would follow that to impute coercion in an attempt to oppose coercive practices is not only morally hazardous, but also raises question concerning sincerity.

But, more important, such action is likely to provoke acts of resistance that overstep the bounds of public disobedience. In turn, it is plausible that such a scenario would result in a circumstance where the state ignores its duty to refrain from punishing acts of public disobedience.

Let us take into consideration the potential harm such a scenario would bring to Lefkowitz’s claim about interference and the state’s duty to refrain from punishment. That is but one reason why Lefkowitz should adopt a clear stance, one way or the other, for whether his account supports a claim that acts of public disobedience are ideally violent or ideally nonviolent. In other words, to permit acts of public disobedience to be violent, but only under the condition that they be restricted to non-coercive acts, is not feasible. I continue that to allow violence of any degree presents possibilities for those acts to spiral out of control, and in doing so, defeats the purpose of civil disobedience. In addition, public disobedience would cease to be the constrained mode of civil disobedience that is suitable to political authority.

instance, the convictions that have come down from the cases have been various, although civil disobedients were all engaged in a mass act of breaching the law. While some protesters were ordered to complete community service hours, or fined court fees, “others had their cases dismissed. Some were found not guilty, and some were found guilty of all the charges and have filed appeals.” See Anne Blythe, “Barber, ‘Moral Monday’ Protesters Appeal Convictions,” par. 23-24. Such a state response might be indicative of the possibility that the state, by issuing varied sanctions, expressed disapproval of the exercise of civil disobedience. This degree of state interference runs counter to Lefkowitz’s defense of public disobedience as a mode of opposition that is compatible with political authority. In turn, those decisions handed down for Moral Monday activism would serve to question the moral right and disjunctive duty protesters might have to engage in acts of civil disobedience.

⁴² Brownlee, “Paradigm Case of Civil Disobedience,” 349.

⁴³ Political theorist Hannah Arendt also argues that violence is uncharacteristic of civil disobedience—and in turn, would be incompatible with political authority since, citing philosopher Carl Cohen, she writes “the civil disobedient accepts...the frame of established authority and the general legitimacy of the system of laws.” See Hannah Arendt, “Civil Disobedience,” in *Crises of The Republic: Lying in Politics; Civil Disobedience; On Violence; Thoughts on Politics and Revolution* (New York: Harcourt Brace Jovanovich, Inc., 1972), 77. However, Arendt does not dismiss the use of violence entirely, granting it employment as defining element of other modes of political dissidence, such as revolution.

Civil Disobedience and Conscientiousness

The third and final aspect of civil disobedience that I will engage with concerns moral conscientiousness, or the conviction to be civilly disobedient. Conscientiousness assumes a critical role in Lefkowitz's framework of public disobedience, through the manner that he argues no person has a claim right to prevent others from supporting different, yet, otherwise reasonable views.⁴⁴ From the assertion, it follows that one is at liberty to do wrong. In fact, this *liberty right* component distinguishes public disobedience from other forms of disobedience, through the manner that the liberty right to civil disobedience calls for citizens on either side of a political issue to engage in acts of civil disobedience in support of their respective viewpoint. For instance, in the case of the Moral Monday demonstrations, Lefkowitz's view would hold that because protesters retained a liberty right to advocate their views, it was impermissible for anyone, the state and its legal authorities, spectators, or the political opponents, to keep them from exercising resistance. Likewise, because Lefkowitz argues that Moral Mondays protesters cannot be refrained from exercising their liberty right to civil disobedience, it also holds that state legislators have the same right to advocate their views, even if that means engaging in civil disobedience. This may be viewed by critics as, more or less, one of the main drawbacks of Lefkowitz's framework.

To permit political opponents to engage in similar acts of disobedience in support of very different and, possibly, diametrically opposed viewpoints would seemingly defeat the purpose of employing public disobedience as a means to achieve just ends. What side could be said to fight for the just cause, and at what point would certain views be deemed too extreme for moral justification? Raz (1979) contends that a moral agent *can* in fairness deny others the right to civil disobedience, in the event that the opponent's aims are unjust: "He [moral agent] allows others to perform *similar* actions in pursuit of *similarly* just aims. He denies both himself and others the right to disobey in support of morally wrong aims."⁴⁵ Hence, an individual's obligation to perform an act of public disobedience derives from the understanding that the act *must* appeal to, what I argue is, human dignity and decency.

Therefore, let one consider the following line of argument. We are aware that Lefkowitz argues that public disobedience is compatible with democracy in the manner that a right to public disobedience contributes to the stability of democracy. Now, it is also understood that the duty allows members of society to essentially become judges of what constitutes a just social arrangement. Hence, to then validate such a claim right on something as obscure as the reasonableness of a given viewpoint would seem to be a disservice to public disobedience. But I argue that especially in the case of Moral Mondays Lefkowitz's assertion about an equal *liberty right* is sound because it stems from the basic right to political participation that is entitled to all citizens of liberal democracies. Brownlee summarizes Lefkowitz's point when she asserts that as

⁴⁴ Lefkowitz argues, "I might disagree with others' assessment of the laws and policies they advocate; that is, while I may recognize that their beliefs are reasonable, I may nonetheless think that they are erroneous. But I have *no* claim against them that they refrain from advocating such views. If I have no claim against others that they refrain from advocating reasonable views regarding the requirements of justice, and this is *true* for *all* others agents as well, then those others enjoy a *liberty* to advocate such views" (229).

⁴⁵ Raz, "A Right to Dissent? I. Civil Disobedience," in *The Authority of Law: Essays on Law and Morality* (Oxford: Clarendon Press, New York: Oxford University Press, 1979), 270.

a form of political participation public disobedience entails “respect for other citizens as persons who have *equal* authority to determine what the law ought to be.”⁴⁶

Still, opponents of this particular argument for a liberty right to civil disobedience, based on the reasonableness of a viewpoint, may contend that the argument does not hold unless there first be a consistent means to determine the reasonableness of viewpoints. I consider that to be a valid point, and, thus, I do find Lefkowitz’s argument to be weak, not on the point of equal *liberty right* to civil disobedience, but on the point of reasonableness as a decisive factor in whether public disobedience can be enacted. Nevertheless, Lefkowitz’s conceptualization is grounded in conscientious duty, in that agents of public disobedience have determined the wrongness of certain laws to outweigh the duty to comply.⁴⁷ Moral Mondays protesters regarded actions of state lawmakers to be serious enough to justify activism that would knowingly lead to their arrest. Historian William Chafe describes the rationale of those who chose arrest:

We saw ourselves as really speaking as people who have worked hard on both documenting and creating the history of North Carolina that this legislature is now trying to dismantle. We wanted to set an example of how people...were willing to demonstrate their conviction that the legislature is pursuing a totally wrong direction. We are protecting against this determination to hurt people and destroy the common good.⁴⁸

This idea that civil disobedients act in good faith, or with moral certainty of their actions, speaks to the degree of sincerity that comprises an act of civil disobedience. Furthermore, the willingness to demonstrate on behalf of the oppressed illustrates both the moral imperative and collective understanding regarding what democracy should resemble. But more than offering an appeal to the public about one’s vision of a good society, I argue that conscientiousness also derives its importance from the manner that it identifies those groups most disadvantaged by the injustice. As political theorist William Smith argues “it [civil disobedience] reveals that an injustice that may appear trivial to those not affected by it is, in fact, a matter of great sensitivity or hurt to its victims.”⁴⁹ And so, to engage in civil disobedience with an aim to demonstrate how a particular law or policy is harmful to members of society, speaks to a high level of moral conscientiousness on behalf of the civil disobedient.

Furthermore, such actions effectively speak to Lefkowitz’s view of public disobedience as a duty. Brownlee contends, “the person who believes that a law or policy requires revision and that the values behind her judgment are sufficiently weighty to warrant a breach of law in their defense would be *morally inconsistent* to deny that she has reasons to engage in civil disobedience against that law or policy.”⁵⁰ To further her point, Brownlee argues that moral inconsistency is indicative of a lack of self-respect, and I add to her point, it also illuminates the way in which, on

⁴⁶ Kimberly Brownlee, “Penalizing Public Disobedience,” *Ethics* 118, no. 1 (2008): 713.

⁴⁷ “In relation to civil disobedience, conscientiousness takes the form of a sincere and serious belief that a law or policy warrants revision and that the values that underpin that belief are sufficiently weighty to require a breach of law in their defense.” See Brownlee, “Features of a Paradigm Case of Civil Disobedience,” 341.

⁴⁸ Danielle Muoio, “Duke Professors Arrested for Civil Protest,” *Duke Chronicle*, May 23, 2013. <http://www.dukechronicle.com/articles/2013/05/23/duke-professors-arrested-civil-protest>

⁴⁹ William Smith, “Civil Disobedience Against Injustice,” *Civil Disobedience and Deliberative Democracy* (Milton Park, Abingdon, Oxon: Routledge, 2013), 54.

⁵⁰ Brownlee, “Paradigm Case of Civil Disobedience,” 341-342.

Lefkowitz's view, the moral agent ignores her disjunctive duty to engage in civil disobedience.⁵¹ In consideration of this final point as it pertains to Moral Mondays, it comes down to an understanding that protesters' collective act of civil disobedience constituted more than strong feelings, or a right to be civilly disobedient. More than that these demonstrations were the product of a conscientious duty each civil disobedient determined to be the course of action to best articulate his or her judgment of an efficient social arrangement.

Further Considerations

I have laid the stakes of my argument, having presented and supported the means that the Moral Mondays protests meet the conditions of civil disobedience as I have analyzed them within the scope of Lefkowitz's framework of public disobedience, and the general view of civil disobedience. Although I have attended to criticisms in my analysis, I now provide room for reflection on additional criticisms not previously discussed. I consider it important to engage with these dissenting views as a way to acknowledge the shortcomings of my view, and also to demonstrate my openness to points that may allow for reconsideration of the claims I make. But, more important, I seek to address opposing views in a fashion that will further substantiate the ideas I expressed in this paper. Likewise, in my response any of these dissenting points, I will attempt to illustrate, when feasible and appropriate, how the views may not necessarily undermine the overarching claim that Moral Mondays are consistent with Lefkowitz's framework and also serve as an archetypal example of civil disobedience. Rather, attention to these counterarguments might, in reality, work to strengthen the points I have made by reaffirming the main premises of my argument.

One apparent criticism of my argument concerns the manner that Lefkowitz's framework of civil disobedience may be viewed as a mode of resistance that is too constrained. For instance, a critic might advance a scenario in which the state refused to recognize the liberty right to engage in acts of civil disobedience. For the purpose of addressing this particular rebuttal,

I will reference a potential drawback in Lefkowitz's framework, in respect to the constraints it places on civil disobedience in its compatibility to political authority. Although I have already discussed this point quite extensively in my analysis, I will revisit it for the sole purpose to relate it to the present criticism. Let us reconsider one of the conditions of public disobedience, that state interference be limited to penalties. As I have done in the analysis, let us again imagine a scenario where the state evades its duty not to impose punishment. But in these circumstances, let us assume that the reasons for refusing to comply with the duty are independent of actions taken by moral agents, other than their constrained act of public disobedience. Therefore, for reasons unknown, the state has chosen to disavow the right to public disobedience. And, in this view, it would be difficult for agents of public disobedience to respond to this infraction. This is so, because, since the state has essentially refused to recognize public disobedience as a liberty right, then the decision to employ future acts of public disobedience would simply be met with punishments, and plausibly harsher ones. But the prime point that I seek to make in addressing this criticism is the manner it may be rightly argued that public disobedience is *too* compatible with political authority. In fact, so compatible to the degree that it may authorize its own demise. Thus, in presenting my counter point, I would urge critics to consider another

⁵¹ Kimberly Brownlee, "A Paradigmatic Case of Civil Disobedience," 241-242.

important feature of Lefkowitz's framework; that is, the manner that political authority, and essentially the stability of the social arrangement, depends on the recognition of the right to public disobedience. Based on the framework, because disobedience derives from the right to political participation, even in an instance where acts of public disobedience are met with punishments, it could not be the case that the state could succeed in an attempt to deny the right citizens have to public disobedience.

Another criticism of my argument lies in the degree that political authority may be understood to remain unchallenged in the efforts for civil disobedients to rectify laws and politics. The potential concern with the view of public disobedience as dispensable to political authority lies in the requirement that authority warrant the nullification of non-consent. Harking back to Estlund's normative consent theory of authority, and the manner that I use it to defend Lefkowitz's framework, there are those who may argue that it is implausible to assume that citizens of a liberal democracy will never question a legitimate state's right to rule. In addition, I consider that there are instances when authority and leadership are not so easily distinguishable. For instance, in the example of Moral Mondays, one may point to the excessive measures of governance as evidence of corrupt leadership, also extending that view to the *authority* of the leadership. However, in response to such a criticism, I must appeal to the fact that political authority entails political obligations. While political obligations may allow dissenting behavior (in the case of Lefkowitz's disjunctive duty), it is not permissible to resist the legitimacy of a political institution.

Conclusion

No state could readily succeed in disallowing civilly disobedient acts since any action on part of the state to undermine political participation would inadvertently call for justification to engage in such acts against the state. Joseph Raz (1979) argues, even in illiberal states where the individual right to civil disobedience is not recognized, "individuals whose rights are violated are entitled, other things being equal to disregard the offending laws and exercise their moral right as if it *were recognized* by law."⁵² This assertion also follows from the manner that Walzer argues, in a democracy, even one in which citizens have an *evident* obligation to obey the law, in return, the government has an obligation to protect the interests of its members: "that state provides equally to all its members certain essential services...the existence of a *prima facie* obligation to obey means no more than that disobedience must always be justified."⁵³ And so, according to Walzer, members of society are never forbidden to exercise civil disobedience, even in light of what may be an apparent responsibility to obey the law; rather they have and *only* have legitimate reasons for disobeying, or strong moral justifications that do not threaten the existing government nor the well-being of its citizens. Moral justification of one's actions is important for the reason that a moral agent is forced to carefully evaluate her motives and also determine whether those aims are consistent with democratic governance.

⁵² Joseph Raz, "A Right to Dissent? I. Civil Disobedience," in *The Authority of Law: Essays on Law and Morality* (Oxford: Clarendon Press, New York: Oxford University Press, 1979), 272-273.

⁵³ Michael Walzer, "The Obligation to Disobey," *Ethics, An International Journal of Social, Political, and Legal Philosophy* 77, no. 3 (1967): 170.

I have attempted to present a convincing argument for the manner that I view Moral Monday protests to be consistent with Lefkowitz's public disobedience, in turn rendering them a paradigmatic case of civil disobedience. I have given appropriate consideration to opposing arguments, and I have also anticipated and addressed further criticisms. The viewpoint that I have presented should by no means be taken to represent a precise answer to the question I posed in the introduction. Rather, I have accomplished my aim to provide a *persuasive* answer to that question. Furthermore, it is my intention that the argument advanced in this paper should serve only as one possible account to determine if civil disobedience should be employed in a given circumstance. In the words of Lefkowitz, "whether or when agents are morally permitted (or even required) to engage in civil disobedience remains an open question."⁵⁴

⁵⁴ Lefkowitz, "On the Moral Right to Civil Disobedience," 205.

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