

A Gravity Model of Civic Deviance: Justice, Natural Duties, and Reparative Responsibilities¹

“[O]ne has a moral responsibility to disobey unjust laws.”

— Martin Luther King Jr., *Letter from a Birmingham Jail*

What conditions justify a citizen’s deviance from their civic obligations in a constitutional democracy? More importantly, whom does the scope of justified civic deviance encompass? A common way of justifying uncivil actions is to accept that citizens are only under a *prima facie* duty to obey particular laws (i.e. when incivility poses seriously untoward consequences or involves an act that is *mala in se*) and that they have no such obligation to obey all laws.² When some laws surpass a given threshold of injustice, citizens may be justified in disobeying those laws.³ Of this justification, some have argued that all individuals who are subject to unjust institutions should be allowed to challenge injustice by shirking their civic norms of reciprocity. Others propose that only those who face situations that fall beyond the scope of tolerable injustice should be allowed to shirk their civic obligations. So, where should the threshold for justified civic deviance be drawn among members bound to a scheme of reciprocity and social cooperation? Is there a way to account for the level of injustices suffered individually along some sort of tolerability gradient while also extending the scope of justified civic deviance to all those within the broader scope of unjust institutions?

This paper will explain why an approach that selectively permits civic deviance (henceforth ‘CD’)—proposed in Tommie Shelby’s “Justice, Deviance, and the Dark Ghetto”—must be reconsidered.⁴ It will then offer an alternative structure for consideration. While recognizing that the main aim of Shelby’s paper is only to stake out the conceptual grounds for these claims and to illustrate that these are conceptual categories worth mining, this response centers on the failure of Shelby’s argument to offer details on setting thresholds as to when

deviant behavior is justified or at least excused. This paper engages further in that mining process and offers an original contribution to the debate by closely re-examining Shelby's threshold account. It introduces what will be called a "gravity model" of CD and the principle of reparative responsibilities to permit varying degrees of CD for particular oppressed groups, while sustaining permission for all to exercise CD—provided an unjust social structure, and a positive difference of natural duties wherein CD-enabling natural duties outweigh CD-restricting natural duties. CD-justified will come to mean not CD-forbidden or CD-permissible, and in select cases, CD-obligatory. The model is metaphorical in nature and is not meant to be a scientific derivation of normative theory.

This paper is organized as follows: Part I draws upon Shelby's article, "Justice, Deviance, and the Dark Ghetto," and reviews some of the basic building blocks of CD.⁵ It shall outline Shelby's Rawlsian justification for CD, reconstruct his application of CD to the "Black ghetto underclass" of the United States, and elaborate on the inadequacies of Shelby's view. When only a particular subset of the population is permitted to deviate from their civic obligations, there arises an imbalance of burden-sharing. This paper claims that it is unfair for those who do not suffer from intolerable injustice—and those who suffer from greater levels of intolerable injustice—to continue upholding reciprocity wherewith unjust institutions, especially if continuing to do so clashes with their natural duties.

Part II lays out the elements of what could be a more adequate approach. It begins by building upon Shelby's conception of the natural duty of justice. In this light, one can come to understand CD as that which extends to those within the limits of tolerable injustice, and the differences in the level of intolerable injustice will be accounted for through the gravity model of CD along with the principle of reparative responsibilities (RR). Provided an unjust social

structure, all affected individuals are justified in shirking civic obligations although they remain bound to natural duties and reparative responsibilities. To conclude, this paper elaborates on the guiding conditions of permissible and obligatory CD, drawing from the works of contemporary analytical political philosophers, including John Rawls, Robert Nozick, and Candice Delmas.

Part I: Reflections on “Justice, Deviance, and the Dark Ghetto”

In “Justice, Deviance, and the Dark Ghetto,” Shelby advances Rawls’s apparatus of justice as fairness. Shelby builds his argument from the premise that within a liberal framework, justice, at least in part, is rooted in the political value of “*reciprocity* between persons who regard each other as equals,” bound together under a cooperative scheme for mutual advantage.⁶

The social, political, and economic institutions of the basic structure of society fix an individual’s initial position within society, favoring some individuals in the distribution of benefits and burdens—of liberties, duties, opportunities, and material advantages. Given that the basic structure bears an immense and wide-ranging influence over an individual’s lifetime prospects over which individuals had no choice over, Shelby claims that social arrangements should be formed by institutions—for instance, governments, schools, firms, markets, and families—as to provide each individual with a “fair chance to flourish.”⁷ In this grander scheme of reciprocity, each participant of the social structure has a legitimate claim to a fair chance not to have their lifetime prospects diminished by the social scheme in ways that cannot be justified on impartial grounds.

It is in virtue of this groundwork of reciprocity, known as the principle of fair play, that “civic obligations” have normative force. As a beneficiary of the primary goods afforded by the cooperative enterprise, each citizen⁸ is expected to shoulder an obligation to do their share as the arrangement requires, such that benefits and costs are divided in an equitable way. Citizens then

have a duty to bear a share of the costs that are involved in the production of collective public goods. For example, they should pay taxes, obey the law, and so forth. This obligation is owed to those with whom one is cooperating in order to maintain a fair basic structure. Each citizen of a democratic polity is ipso facto bound to civic obligations as required by the basic institutions. When a citizen evades or refuses to fulfill her civic obligations, they attempt to gain from or exploit the cooperative labor of others (“free-riding”) without doing their fair share.⁹ The law-breaker acquires an unfair advantage over their fellow citizens, and this, in turn, warrants punishment to remove this advantage and re-establish a fair distribution of benefits and burdens among all members of the society.

Shelby further claims that an individual’s fair chance to thrive is a necessary condition for reciprocity. Each citizen is bound to civic obligations only “when these institutions are just. Citizens therefore are *modus tollens* not obligated to submit to unjust institutions, or at least not to institutions that “*exceed the limits of tolerable injustice*.” Institutions that bring about injustice that is so serious as to be intolerable allows special civic permissions for disadvantaged individuals, that is, deviance from civic obligations (CD).¹⁰ Since those who suffer from intolerable injustice have been deprived of their fair share of benefits from the social scheme, they are not bound by the civic norms of reciprocity they have as citizens.

As to determine who falls beyond and beneath the radius of intolerable injustice, Shelby proposes the constitutional essentials standard, based on a loose criterion of adequacy. These include the basic rights of a liberal democratic regime, such as freedom of speech, conscience, assembly and association, political rights and other supplementary rights.¹¹ For all citizens to be provided adequate exercise of these rights, Shelby adds, these rights should be impartially and

effectively enforced, not merely codified in law, such that all citizens can have confidence that their rights will be respected by those with institutional power.

Consider a society wherein constitutional essentials remain unsecured for certain peoples, that is, the social structure deprives certain peoples of their fair share of benefits. Shelby contends that in such a society, those affected by intolerable injustice should not be expected to fulfill the civic obligations demanded by unjust institutions. This is *not* to say, however, that those affected by intolerable injustice should be released from moral duties altogether. Here, Shelby provides a clear distinction between civic obligations required by all proper citizens, versus natural duties, which unconditionally bind to all moral persons regardless of their associational or institutional ties. Thus, while an individual beyond the limits of tolerable injustice may deviate from civic obligations, at no point in time can any person permissibly abandon natural duties.¹²

One striking natural duty that Shelby highlights is the natural duty of justice. Drawing from the Rawlsian project, the two sub-principles of this natural duty are as follows: For each individual to 1) uphold and comply with just and efficient institutions when they do exist, and 2) support the establishment of just and efficient institutions when they do not yet exist.¹³ The “positive” natural duty of justice provides reason for CD, while its “negative” restatement provides reasons for individuals not to deviate from their civic obligations.

Implementing these concepts into practice, Shelby pictures the plight of the Black underclass in the United States.¹⁴ Shelby describes a widely assumed narrative about the urban poor, wherein residents live in the dark ghetto due to their self-defeating attitudes and malicious conduct, and thus violate legitimate expectations for civic reciprocity, including a duty to obey the law and support themselves through licit jobs.¹⁵ Under such misinformed narratives, when

the poor engage in criminal activity (i.e., theft, drug-dealing, prostitution) or refuse to accept menial, low-paying, unsatisfying jobs, these actions appears to be “a failure of reciprocity on their part”. Such attitudes call for acts of CD to be characterized as irresponsible lawbreaking and unenterprising criminality, and for such acts to be rightfully prosecuted and punished.

Shelby contends that this is the wrong conclusion to draw, however, since the mere existence of the “dark ghetto”—with its “combination of social stigma, extreme poverty, racial segregation... and shocking incarceration rates”—proves its incompatibility with any meaningful form of reciprocity among free and equal citizens. There is sufficient reason to believe that the constitutional essentials standard is not currently met in dark ghettos of the United States. Since the Black poor live under the rule of institutions that exceeds the limits of tolerable injustice, they thereby have a legitimate claim of deviance from civic obligations. That is to say, when the poor engage in criminal activity, refuse to accept menial jobs, or bear contempt for society, disrespecting the authority of the law qua law, they do not “violate the principle of reciprocity or shirk valid civic obligations.”¹⁶

If the social scheme miserably fails to embody the value of reciprocity for a certain group of peoples, those who are deprived of their fair share of benefits from social cooperation should not be required to reciprocate in civic obligations. There exist no valid civic obligations demandable from the victims of intolerable injustice, especially when the unaffected others—albeit unknowingly—profit from the unjust social structure.¹⁷

Again, even if a society is deeply stained by injustice, moral duties remain owed to one another in the form of natural duties. Natural duties, including the duty not to be cruel, to help the needy and the vulnerable, not to cause unnecessary suffering, to respect the moral personhood of others, to help bring about just institutions, must be satisfied in the enactment of

CD. Forms of deviant behavior that are compatible with natural duties, for instance, shoplifting and petty theft, may be conceived as permissible. Other extremes of deviance—for instance, some forms of gangsterism, which involves the use of “violence, threats, and intimidation, to forcibly extract money, goods, and services from others... [maiming] and even [killing]”—violate natural duties, namely the duty not to be cruel, not to cause unnecessary suffering, to show respect for the moral personhood of others, etc., and thus are always morally unjustified for all people, regardless of the inequity of a social scheme. On this regard, forms of CD that involve *mala per se* can be ruled out, while still permitting CD acts that involve *mala prohibita*.

To briefly recapitulate, Shelby’s discussion brings to light a discussion of fairness and political obligations. Shelby’s view is that the empirical facts show that the conditions of political obligations do not hold. He proposes that in unfair, oppressive, or unjust social structures, individuals are no longer bound to a scheme of reciprocity, while nonetheless having natural duties.

Up to this point, Shelby’s discussion has revolved around the implications of justifiable civic deviance for the “ghetto poor,” or those beyond the threshold of intolerable injustice. The question now extends to what civic obligations, permissible deviance, and natural duties are to be for those within the limits of tolerable injustice, including the benefactors of the unjust social regime.

For individuals not affected by intolerable injustice, Shelby’s understanding of CD asserts that they remain bound to the duties of the unjust regime, and they would not be justified in shirking their valid civic obligations. With Shelby’s account, such individuals remain bound to a cooperative reciprocal scheme to do their fair share as a beneficiary of the primary goods

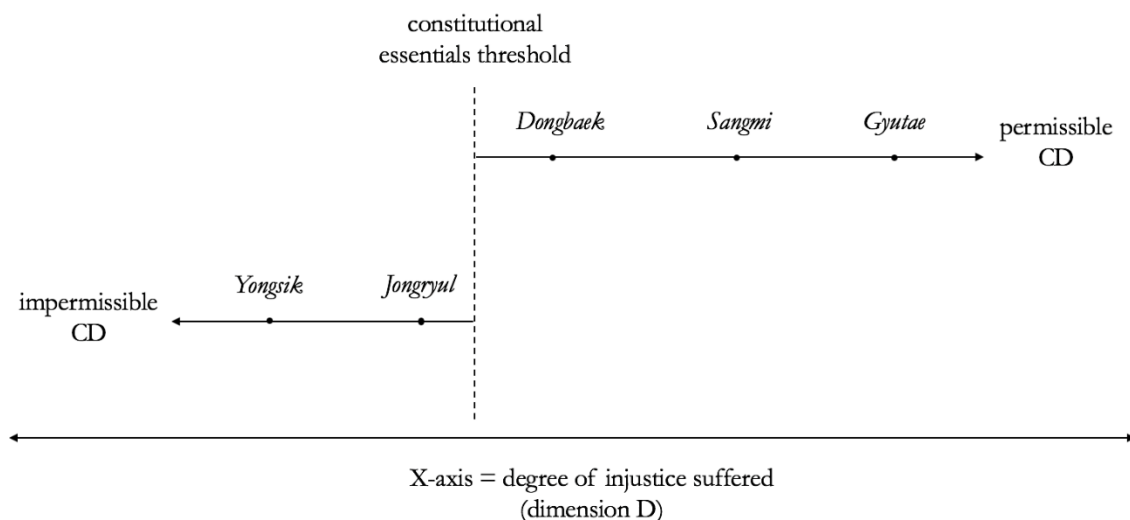
afforded by the social scheme, even if there are those who may not be bound to it (i.e. the ghetto poor).

A hypothetical example can illustrate this point: Imagine a team of laborers—Dongbaek, Yongsik, and Jongryul—who sign a contract to work cooperatively under a scheme of mutual advantage in a table-lifting business.¹⁸ If laborer Dongbaek does not receive a fair share of benefits for the work that she performs in lifting an equivalent proportion of the table's weight, and if this were to amount to Shelby's standard of intolerable injustice, then Dongbaek may permissibly deviate from her civic obligations, that is, to drop her end of the table and walk away without being subject to moral criticism on this basis. Shelby's argument continues in the implication that Dongbaek's deviance does not render null the civic obligations (to move the table) owed by laborers Yongsik and Jongryul, who remain fairly compensated for lifting the table. Since Shelby's standard of fairness is merely that of adequacy, imagine that Yongsik well-beyond meets the fairness requirement (i.e. Yongsik receives an attractive bonus on top of his standard compensation), whereas Jongryul barely meets the adequacy threshold (i.e. Jongryul is provided with minimally adequate wage compensation for his labor).¹⁹ Regardless of Yongsik's and Jongryul's differing proximities from the threshold of tolerable injustice, insofar as they are *fairly compensated*—according to Shelby's definition, not the Rawlsian standard—as beneficiaries of the (unjust) reciprocal scheme, Yongsik and Jongryul, who are not themselves affected by intolerable injustice, may not exercise CD.

There seems to arise an interesting conflict here. Shelby's initial words on what establishes civic obligation is as follows: "[E]ach citizen has an obligation to fulfill the requirements of the basic institutions... *when these institutions are just.*" This implies, in converse, that when these institutions are unjust, each citizen bears no obligation to fulfill the

civic requirements of the basic institutions. Extending on this suggestion, perhaps the standard of appropriate CD should be set at a lower bar, more broadly, such that the mere existence of unjust institutions invalidates a baseline of civic obligations for all citizens.²⁰ As to delineating precisely what set of civic obligations consists of this threshold is a subject for further study. When Yongsik and Jongryul—after Dongbaek’s departure—now must lift heavier weights of the table for the same wage, they may decide that this entire table-lifting venture is fundamentally exploitative, skewed from the ground up, since the social structure generates enormously unfair distributions. In continuing to uphold this scheme along with its unjust institutions, Yongsik and Jongryul sustain injustice, perhaps contravening on positive natural duties, notably that of justice. All the while, other negative natural duties, such as the duty not to cause unnecessary suffering, prevent an extended of abuse of CD for the wrong reasons.²¹ There is sufficient reason to think that those unaffected by intolerable injustice may be permitted to shirk a baseline of civic obligations given a persisting unjust social structure (defined by some standard of *unfairness*).²²

Figure I.



On the other side of the spectrum, imagine workers Sangmi and Gyutae, who similar to Dongbaek, suffer from Shelby's conception of intolerable injustice: the lack of constitutional essentials. Both Sangmi and Gyutae suffer from great intolerable injustice, falling far beyond adequacy conditions. Whereas Sangmi exercises CD, Gyutae does not.²³ Here, Dongbaek's exercise of CD, which seems to extend symmetrically for all those affected by intolerable injustice, takes advantage of Sangmi and Gyutae (and Yongsik and Jongryul), while Sangmi's exercise of CD gains from the persisting social cooperation of Gyutae (and Yongsik and Jongryul). Imagine a case where Dongbaek steals a loaf of bread to eat, having starved for three days. Presume that the number of days starved—of one's and one's dependents—is the dimension by which we measure “unfairness.” If Sangmi also hopes to steal a loaf of bread for himself and his entire family who have starved for seven days, but if Dongbaek's deviance necessarily prevents Sangmi from doing so, it seems as if Dongbaek's CD (indirectly) takes advantage of Sangmi, and wrongly so. Both Dongbaek and Sangmi would be taking advantage of Gyutae, who, having already completed one excruciating day of work, still has no purchasable food from the bakery to feed himself and his family, starving for twelve days.²⁴ Given that Gyutae continues to hold onto the table while suffering from greater intolerable injustice—defined by a more pressing need for constitutional essentials—than compared to Dongbaek and Sangmi, it seems that Dongbaek harms the innocent Sangmi and Gyutae, and Sangmi takes advantage of Gyutae, and in both cases, the worst off is harmed.²⁵ Thus, a CD permissibility condition of proportionality to one's status of injustice faced appears relevant here. Given an initial baseline of permissible CD, it is necessary that an additional permission to CD considers the level of intolerable injustice each person suffers as a result of the unjust basic structure, establishing a gradient of tolerability.

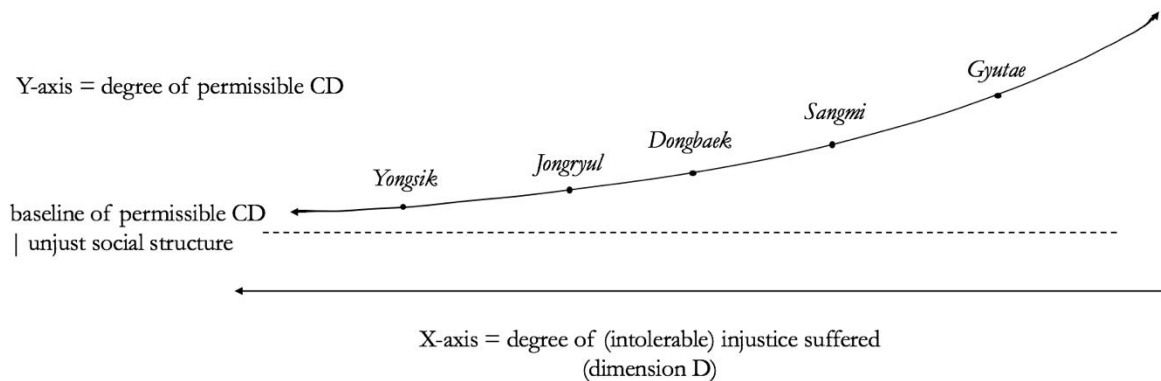
Part II: Outlining a More Adequate Approach

The real puzzle of CD is, then, not how to draw a threshold line for the fairness of institutions and for the adequacy of constitutional essentials, but instead, how society should be accounting for the level of injustice suffered by individuals while also extending the scope of justified CD to all individuals within the broader scope of unjust structures and institutions.

Hence, this paper proposes a gravity model of justified CD. This model is not intended to be taken as a literal, mathematic formula that citizens can employ to meticulously calculate their degree of permissible CD. Rather, this model is presented in the spirit of opening up alternative ways to think about CD and its implications. The model (first pass), taking into account the discussion on burden-sharing (§I.3, *supra*) is as follows:

Permissible CD (first pass) = extent of the unfairness of the basic structure (measure of unfairness of institutions) • extent of injustice faced (measure of tolerability)

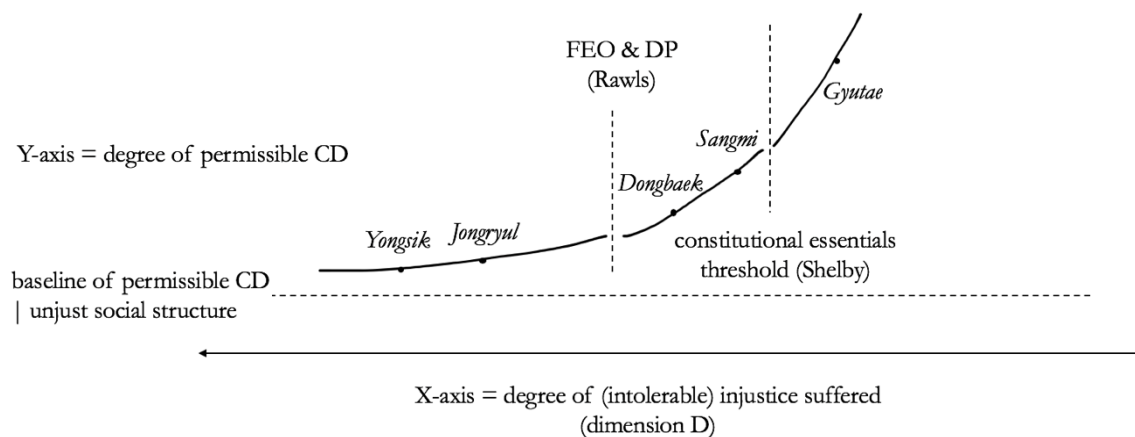
Figure 2.1



The first equational factor is the baseline concerning the fairness of the rules, laws, principles, and institutions that constitute the basic social structure, or the fairness of the basic structure itself. Since this first factor is more broadly applicable, Rawls's more demanding standard of justice as fairness could be applied here.²⁶ The second factor refers to the individual measure of injustice faced: those who are subject to greater forms of (intolerable) injustice may

be allowed greater CD permissions. This relation is modeled in *Figure 2.1*. Both Rawls's and Shelby's standards of fairness, the FEO and DP versus constitutional essentials, are not mutually exclusive, for they may be modeled on the same gradient as follows in *Figure 2.2*, with steeper inclines for each threshold crossing. Other models of fairness could be introduced here (i.e. insert dimension-D along the x-axis or add in threshold-T in place of Rawls and Shelby's standards). In *Figure 2.2*, Rawls's threshold is positioned to the left of Shelby's since it is an ideal of justice that makes it harder for unjust societies to fulfill: it is more likely for unjust institutions not to meet the requisites of Rawls's standard of justice as FEO and DP (footnote 7, *supra*) than to achieve Shelby's fairly looser standard of adequacy.

Figure 2.2



Natural duties, particularly that of justice, also play a significant role as a factor regulating CD. The second sub-principle of the natural duty of justice holds that each moral agent has a duty—in helping to bring about just rules, laws, principles, and institutions—to fight against unjust rules, laws, principles, and institutions, plausibly by means of CD. These CD-enabling (positive) natural duties may also be limited by CD-restricting (negative) natural duties, for instance, to not be cruel, etc., which impose restrictions on the exercise of CD.

Considerations of alternative (i.e. legal) forms of resistance to the unjust basic structure (i.e. peaceful protests, petitions, authorized public events, and other law-respecting acts of solidarity) also fall under the category of CD-restricting natural duties.²⁷ On this basis, indiscriminate and unwarranted forms of ex ante violence on the innocent can be restricted. What this paper calls the difference of natural duties (ND difference) thus permits CD if and only if the CD-enabling factors outweigh the CD-restricting factors; if the natural duty of justice to upturn severely unjust structures compels the exercise of CD over all other natural duties.²⁸ If the CD-restricting factors override the CD-enabling features, then CD may, at the very least, face moral limits. If the CD-restricting factors are so great as to cancel out the extent of the unfairness of the basic structure and the extent of intolerable injustice faced, then CD may not be justified.²⁹

At this point, there arises another relevant concern on whether or not CD could be, in select cases, not only permissible or encouraged but also necessary or required. Building upon the brief mention of alternative forms of action (subsumed under ND difference), certain forms of CD may be morally necessary to fulfill natural duties when all other alternatives to CD and its weak forms have been completely exhausted. When members of the ghetto poor, having exhausted all other (i.e. legal) alternatives of securing adequate resources to feed himself and his family, decide to steal a morsel of bread from the bakery next door, they may not merely be permitted but rather obligated to do so. For if they refuse to steal bread and feed their families, they violate the natural duties of self-respect, respect for the moral personhood of others, and duty not to cause unnecessary suffering, among others.³⁰ The pressing immediacy of respect and preventable suffering for their family outweighs the dues of respect for the bakery-owners.

Under some circumstances, a failure to exercise CD represents a failure to do one's own part in upholding one's natural duty of justice: Those who blindly obey, rather than those who

disobey the law, may be accused of perpetuating and sustaining vehement forms of injustice, and be accused of free-riding on their fellow citizens' cooperative moral efforts. The need for solidarity may call upon CD not merely as a supererogatory act but rather as an obligation: when Gyutae, for instance, fails to exercise CD—which incurs on his, others', and their shared natural duties—he might be contravening valid CD obligations.

By invoking familiar normative categories, one may formulate “CD-justified” in the following forms: CD-permissible or not CD-forbidden, and CD-obligatory. At the very least, provided an unjust social structure with its set of unjust institutions and so forth, one necessarily has CD-permissible—though to varying degrees depending on the gravity model equation—and not CD-forbidden.³¹ In select cases, determinable by when a neglect of CD seriously contravenes on ND, we may have CD-obligatory.³²

This model can be even more nuanced by appending an original condition to CD: the principle of reparative responsibilities (RR).³³ Provided a case of justified CD, not only do citizens retain their natural duties (i.e. to respect others' humanity, etc.) but also come to bear a new set of obligations—in varying degrees—to restore or re-establish reciprocity, trust, and civic cooperation in the long run. This need not be immediate. Returning to the table-lifting example, when a member drops their portion of the table, and when others express solidarity by dropping their portion of the table in an act of radical reform, all members are still due respect to another as equal moral persons (and perhaps the table-dropping is a vehement expression that this has not been the case), and now may be tasked with another duty to work in reallocating the burdens (or benefits) so as to provide for a fairer share of benefits (or burdens). In addition, all individuals—including those who do not eventually engage in CD—now bear the responsibility to amend these damaged social bonds, restore justice, and provide closure to affected victims.³⁴ RR

imposes a duty on all to work towards the adjusting and redrafting of the fundamental social conventions so as to reduce unjust laws and practices in a continued process of reflective equilibrium.

In carrying forth the duty of justice, individuals equipped with greater powers and benefits (as a result of unjust institutions) should be bound to a correspondingly greater set of RR to countermand injustice; individuals (i.e. Yongsik in the table-lifters case) with a greater capacity and ability to prevent or counter injustice, in a better situated position to influence change, as well as those who are greater beneficiaries of and contributors to injustices, should be held to a greater degree of responsibility in amending unjust institutions.³⁵ That said, the underlying RR extends also to the victims of intolerable injustice, as they play a part, albeit small, in sustaining unjust social structures.³⁶ The ghetto poor, for instance, may not be held to the same degree of RR as the uber rich, provided that RR varies depending on an individual's relational status in the social scheme. Since justice as fairness demands an unequal distribution of primary goods, RR extends unequally depending on the individual stake in injustice, capacity for political sway, beneficiary, and contributory status until at least society is tolerably just. RR, like any obligations, compel individuals to take action. Given these additions, the gravity model of CD can be revised as follows:

Justified (Permissible/Obligatory) CD = [extent of the unfairness of the basic structure • extent of (intolerable) injustice faced] • [ND difference] in line with [ND • RR]³⁷

An act of CD is *justified* if and only if—and to the extent that—the basic structure is unjust and the individual faces an extent of intolerable injustice, or CD-enabling factors override CD-preventing factors. Acts of CD should be undertaken with natural duties of justice and reparative responsibilities in mind, which—to varying degrees—impose the normative considerations of respect for humanity and the (eventual) restoration of social cooperation. Acts

of CD are *obligatory*, as opposed to merely permissible, provided the exhaustion of non-CD alternatives and of the least harmful forms of CD, or when unanimously called for by the natural duty of justice.

Working in tandem, the ND difference and RR ensure that CD does not arise out of cathartic or exploitative motivations or aims but rather occurs in line with ND and RR. It is important to note that in the equation of justified CD, concerns surrounding political effectiveness or pragmatism are precluded.³⁸ Similar to Rawls's reasoning, the effectiveness of CD does not establish the right of deviance, but once that right is independently established, CD should be shouldered with political effectiveness in mind.³⁹ As Shelby declares, if street capital is to be converted into "political capital in a resistance movement," the oppressed should, whenever possible, publicly register dissent.

The justification of CD provides an inquiry into the nature of justice, civic obligations, natural duties, and reparative responsibilities. This gravity model of CD provides a different way of thinking about questions of civic and moral agency, and the duties that individuals should carry depending on the justness of their social structure, alongside the special obligations and responsibilities that follow from their unique standing in the basic structure. Members within unjust structures who exercise CD with respect to their natural duties and reparative responsibilities should not be, echoing Shelby's words, "demonized, stigmatized, or otherwise dehumanized, just as surely as they should not be romanticized." The goal is, after all, to shape meaningful bonds of solidarity, to build meaningful political alliances, and to invite the joint action needed to establish and maintain justice.

ENDNOTES

¹ I would like to thank my professors, teaching fellows, Pi Gamma Mu's ISSR editorial team, and all the participants at the Mid-Atlantic Philosophy Conference at John Hopkins University in April 2019 for comments and discussion. In particular, I would like to thank my professors Lucas Stanczyk for introducing me to John Rawls's political philosophy in first-year fall, and Selim Berker for his engaging seminar on Nozick's *Philosophical Explanations* in first-year spring, which further drew me to the study of philosophy.

² The terms "duty" and "obligation" are used interchangeably but see John Rawls, "Legal Obligation and the Duty of Fair Play" from *Law and Philosophy*, 1964.

³ See M. B. E. Smith, "Is There a Prima Facie Obligation to Obey the Law?" *The Yale Law Journal*, vol. 82, no. 5, 1973, pp. 950-976; Ronald Dworkin, *Taking Rights Seriously*, Chapters 7 and 8. (Cambridge, Mass.: Harvard University Press, 1977). For standard accounts on the justification of civil and uncivil disobedience, see Andrew Sabl, "Looking Forward to Justice: Rawlsian Civil Disobedience and its Non-Rawlsian Lessons." *The Journal of Political Philosophy*, vol. 9, no. 3, 2001, pp. 307-330; Kimberley Brownlee, *Conscience and Conviction: The Case for Civil Disobedience*. (Oxford University Press, 2012); Ten-Herng Lai, "Justifying Uncivil Disobedience." *Oxford Studies in Political Philosophy*, vol. 5, 2019, pp. 90-114.

⁴ Tommie Shelby, "Justice, Deviance, and the Dark Ghetto." *Philosophy & Public Affairs*, vol. 35, no. 2, 2007, pp. 126-160.

⁵ Shelby is careful to use the term "deviance." Shelby notes that he intends to use "deviant" and its cognates in an impartial, literal sense as to describe "what is sharply divergent from widely accepted norms" (p. 128). Recent literature, however, (for instance, Lai 2019) has reclaimed the term "incivility" or "uncivil." For the sake of consistency, this paper utilizes Shelby's word "deviance," but the term does not intend to bear a negative or aberrant connotation.

⁶ The notion that reciprocity is fundamental to social cooperation has a long history within social contract theories. Generally speaking, social contracts are a model of justification that shows that members of society have reason to comply with the fundamental rules, laws, and institutions of that society. See Fred D'Agostino, "Contemporary Approaches to the Social Contract." *Stanford Encyclopedia of Philosophy*, 2017.

⁷ Shelby takes a thin reading of Rawls, that is, he claims only to rely on relatively weak normative principles drawn from Rawls to articulate his argument. Shelby considers Rawls's apparatus as an analytical framework for surveying the priority of justice as fairness and reciprocity, and then extrapolates his arguments for permissibly 'deviant' behavior. In constructing his view, Shelby deliberately precludes the Rawlsian principle of fair equality of opportunity (FEO), a principle of justice that requires equal life prospects for all—measured by primary social goods—given similar natural talents and motivation. Striving away from Rawls's "most demanding egalitarian claims" (p. 128), Shelby notes that FEO might "set the bar too high for tolerable injustice" (p. 149).

⁸ It is unclear as to what Shelby's term 'citizen' encompasses. This paper interprets him more broadly as to include refugees, undocumented immigrants, DACA recipients, and other individuals who (though not 'citizens') share stakes in some larger structure of cooperation designed for mutual advantage. However, to expand this definition may require a re-working of the details assumed in Shelby's account.

⁹ For more on the principle of fairness and the free-rider problem and the principle of fair play, refer to Garrett Cullity, “Moral Free Riding.” *Philosophy & Public Affairs*, vol. 24, no. 1, 1995, pp. 3-34; Candice Delmas, “Political Resistance: A Matter of Fairness.” *Law and Philosophy*, vol. 33, 2014, pp. 465-488; Avia Pasternak, “Fair Play and Wrongful Benefits.” *Journal of Moral Philosophy*, vol. 14, 2017, pp. 515-534; Piero Moraro, “Punishment, Fair Play and the Burdens of Citizenship.” *Law and Philosophy*, vol. 38, no. 3, 2019, pp. 289-311.

¹⁰ CD differs from traditional accounts of civil disobedience on several levels, though both share overlaps. The most notable difference is that civil disobedience is tied to some account of obligations one has qua citizenship, which aims towards the service of society via the reform of unjust laws. In CD, one deviates from such civic obligations and need not continue holding onto unjust social structures. Civil disobedience is a deliberate, public, collective violation of a law to put pressure on authorities to change their policies. Shelby, in some of his work, considers whether resistance (“impure dissent”) can be political even if it does not involve a hopeful strategy for changing the social order. See Kimberley Brownlee, “Civil Disobedience.” *Stanford Encyclopedia of Philosophy*, 2013; cf. Tommie Shelby, “Impure Dissent: Hip Hop and the Political Ethics of Marginalized Black Urban Youth” in *From Voice to Influence: Understanding Citizenship in a Digital Age*, edited by Danielle Allen and Jennifer S. Light, (Chicago: University of Chicago Press, 2015), pp. 59-79.

In her book *A Duty to Resist: When Disobedience Should Be Uncivil* (Oxford: Oxford University Press, 2018), Candice Delmas writes that an act of “uncivil disobedience” can be described as covert, evasive, more than minimally destructive, anonymous, or deliberately offensive. This cluster concept contrasts from standard accounts of civil disobedience, which are public, nonviolent, non-evasive, broadly civil, respectful, principled breaches of the law, and so forth. Examples of uncivil disobedience mentioned by Delmas (p. 45) include “coercive strikes, riots, guerilla street art, DDoS [distributed-denial-of service] actions, hunger strikes, covert assistance to undocumented immigrants, unauthorized whistleblowing, vigilantism, and the strategies commonly labeled as direct action, such as eco-sabotage and animal rescue operations.” Delmas’s conception of uncivil disobedience can be understood generally as synonymous with CD.

¹¹ These supplementary rights include “the right to vote and run for office; the right to due process and judicial fairness—and the political procedures that ensure democratic rule. The constitutional essentials also include freedom of movement, free choice of occupation, formal justice, and a social minimum that secures the basic material needs of all citizens” (p. 145). This standard precludes the Rawlsian FEO and the Difference Principle (DP), see footnote 7. In addition to this standard, Shelby includes the material essentials standard, which is that everyone should have adequate access to a minimum income sufficient to meet basic needs, with the adequate opportunity to develop one’s marketable abilities and to earn an adequate income.

¹² This refers back to Dworkin (1977, p. 191) when he notes that not all legal rights, or even Constitutional rights, represent moral rights (or natural duties) that citizens have or ought to have. Though the constitutional system adds to the protection of such moral rights, the law falls far short of establishing what they precisely are. Dworkin characterizes natural duties as owed to God and to conscience (1977, p. 186). Sabl expands the possible grounds of such duties as “religion, natural law, Kantian deontology, aristocratic virtue” (2001, p. 309). For more on natural duties, refer to David Lyons, “Moral Judgment, Historical Reality, and Civil Disobedience” *Philosophy and Public Affairs*, vol. 27, no. 1, 1998, pp. 31-49.

¹³ For more on the Rawlsian project, see Rawls 1999; David Lyons “The Natural Duty of Justice” in *A Rawls Lexicon*. (Cambridge, U.K.: Cambridge University Press, 2015).

¹⁴ In his article, Shelby focuses specifically on predominantly Black urban neighborhoods with a high concentration of poverty because “they figure most prominently in the public imagination as enclaves of the pathological *underclass*” (p. 135). The CD established here, however, extends to all general victims of intolerable injustice. Shelby acknowledges in his footnote 15 that other ethnoracial minorities (i.e. Asian enclaves, Latino barrios, Native American reserves, etc.) present complications for the questions of justice.

¹⁵ These expectations for civic obligations are based on the scheme of reciprocity. “Each citizen reasonably expects other citizens to fulfill their basic obligations as a citizen, to do their fair share in sustaining an institutional arrangement that works to everyone’s advantage” (p. 146).

¹⁶ In light of recent events in the United States as of summer 2020, including the killings of George Floyd, Breonna Taylor, and Ahmaud Arbery, in addition to violent police crackdowns on peaceful protesters, it may be suggested that constitutional essentials have not been met in places beyond the “Black ghettos.” See my interview with George Yancy in *Truthout*, July 18, 2020. <<https://truthout.org/articles/george-yancy-to-be-black-in-the-us-is-to-have-a-knee-against-your-neck-each-day/>>.

¹⁷ Pasternak (2014) notes that as it may happen a beneficiary may not have known and could not have reasonably been expected to know that a benefit is sourced in wrongdoing. However, once they become aware of the source of the benefit, they “have a duty”, Pasternak notes, to “transfer compensation to the victims” (p. 519).

¹⁸ The names of these characters are derived from a popular South Korean television series, *When the Camellia Blooms*.

¹⁹ What is important to note in this overall example is the unfair distribution of benefits in relation to burdens. When burdens are unevenly distributed, differences in wages may be consistent with a fair scheme. For instance, imagine that Yongsik carries a heavier portion of the table and is therefore rewarded with more wages than the others due to his work. This is consistent with a fair scheme. However, when Yongsik reaps a greater set of benefits provided an even distribution of burdens, this is unjust. Flipping the example, when all workers of equal powers and capacities are provided with the same wage in a case where some are burdened with harder, heavier jobs than others, this might be unjust.

²⁰ Martin Luther King Jr. speaks to the interrelatedness of all communities in “Letter from a Birmingham Jail” (1963). King writes, “Injustice anywhere is a threat to justice everywhere. We are caught in an inescapable network of mutuality, tied in a single garment of destiny. Whatever affects one directly, affects all indirectly.”

²¹ If the ghetto poor 1) burn cars or break store windows for amusement, driven by a *purposeless, irrational and chaotic impulse*, or 2) rob banks or establish large drug trafficking channels *for money, status, and power* beyond what meets the adequacy threshold of material and constitutional essentials, then they are not justified in doing so, especially if their actions are not guided by ends purposed to the eradication of injustice, grounded by ND and RR. For instance, opportunistic or exploitative aims violate the natural duty of justice in several ways. This kind of deviance 1) is primarily motivated by a goal other than the securement of constitutional essentials or the combatting of injustice, driven instead by opportunistic ends, *for money, status, and power*, 2) further sustains current unjust social structures and often creates in place new unjust hierarchies and institutions (like that of the criminal gang), and 3) often exploits, or at the very least, comes at the expense of others who may likewise suffer from the quagmire of

intolerable injustice. At the end of his article, Shelby is clear that such behavior does not come within the range of permissible CD: deviant behavior must be appropriately channeled to bring about just constitutions. In a more recent article on “Impure Dissent” (see Shelby 2015), he mentions a ‘sincerity’ condition. Though some acts of CD are primarily communicative, they need not aim to persuade an audience (see Delmas 2018).

²² If a significant reason why Shelby avoids incorporating the Rawlsian framework of justice as fairness into his theory is because the FEO and the DP sets the bar too high as to what consists of intolerable injustice, then it seems that a plausible alternative to lowering the bar for what constitutes fairness is to lower the bar for what permits a base allowance of CD.

²³ Christopher Wellman argues that CD is often “too costly” of an option for some agents. The exercise of some high-stake acts of CD may incur serious risk or harm to individual agents. For more, see Christopher Wellman and John Simmons. *Is There a Duty to Obey the Law?* (New York: Cambridge University Press, 2005).

²⁴ A parallel of the table-lifting business example is that Gyutae and Sangmi hold onto already heavy weights of the table without fair compensation for labor. When Dongbaek backs out of the venture, they must bear even greater sums and weights.

²⁵ According to Shelby, a core aspect of resistance to injustice is the notion of “solidarity.” Shelby’s argument relies on the notion that resistance to injustice is a group enterprise. If some individuals refuse to resist, then perhaps that is not a sufficient reason that undercuts the justified exercise of CD by others who are also victims of injustice. On this thought, perhaps it is perverse to say that the latter unfairly disadvantage the former. For more on the notion of solidarity and fate-sharing, see Michael Zhao “Solidarity, Fate-Sharing, and Community” *Philosopher’s Imprint*, vol. 19, no. 46, 2019, pp. 1-18. Also see the section below on CD-obligations.

²⁶ For more on the two principles of justice as fairness, the FEO and the DP, see John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, Mass.: Harvard University Press, 1999).

²⁷ In reply, CD is often deemed a “last resort” option available only when legal alternatives have been employed to no avail. Rawls in “The Justification of Civil Disobedience” (1971) views the concept of last resort itself as a *condition* for civil disobedience, that is, civil disobedience may be exercised if and only if all other alternatives have been closed off or already realized. Here, instead of making the permissibility of CD a “last resort” option, this paper gives weight to the consideration of alternatives as one of many factors subsumed in the ND difference.

²⁸ The inspiration for this principle comes from W. D. Ross’s theory of *prima facie* duties, which Nozick discusses at length in *Philosophical Explanations* (Cambridge, Mass.: Harvard University Press, 1981).

²⁹ To get into the nitty-gritty, building off Nozick’s discussion of the complex ethical balancing structure in *Philosophical Explanations*, a further condition can be proposed: If there is an act CD_B available to the person instead of CD_A such that CD_B’s CD-features (enabling factors minus preventing factors) outweigh CD_A’s CD-features, then it is morally impermissible to perform act A. Plausibly, an analogue of this principle is as follows: Even if CD_A’s CD-features are such that CD-preventing factors override CD-enabling factors (negative ND difference), if every other act CD_B available to the person is such that the wrongness of CD_B’s CD-features outweigh the wrongness of CD_A’s CD-features, then it is morally permissible to perform act A. Regarding larger courses of action, if some act CD_A, where the ND difference is negative, is (a necessary) part of a larger course of act CD_B or general action A, such that the ND difference becomes positive, then it seems that the ND difference being in the negative may not be sufficient for the impermissibility of CD_A, for CD_A may be a necessary part of a larger course of action.

³⁰ For more on self-respect, see Bernard R. Boxill, “Self-Respect and Protest.” *Philosophy & Public Affairs*, vol. 6, no. 1, 1976, pp. 58-69.

³¹ Some authors have argued that even when society is just, forms of CD might be necessary to keep the society in check. Rawls (1999, p. 383), for instance, writes, “A general disposition to engage in justified civil disobedience introduces stability into a well-ordered society, or one that is nearly just.” I will not take up that argument here.

³² Delmas (2014, p.466) writes that forms of CD are often considered as a permission or a right, rather than as a moral requirement. She clarifies that King’s “Letter from a Birmingham Jail,” for instance, is not merely a plea for the license to break an unjust law, but rather an ardent declaration of the moral obligation or duty to disobey unjust laws. For more on what she calls the radical reform argument and the resistance argument, see Delmas 2014.

³³ In contemporary political debates, the term ‘reparation’ commonly refers to compensation for past injustice, specifically racial injustice and even more precisely the legacy of slavery and de jure racism. That said, the force of the arguments in this paper refer to the rights and responsibilities of living individuals, designed to establish a ‘citizenly’ obligation to address and correct the extent of unsecured rights of citizens.

³⁴ Here, this paper slightly diverges from Shelby’s discussion in “Impure Dissent” (2015) where he contends that symbolic impure ‘hip hop’ dissent can be a meaningful mode of public protest and resistance to illegitimate authorities, even if it is not always aimed at shaping debate within the broader public sphere. Though impure dissent is meaningful as an expression of solidarity with the oppressed and as a means of resisting injustice, this paper asserts that CD should aim to some RR (that is, restoring social cooperation) in the long run, in as long as there remains the viable prospect of reform and social cooperation beyond unjust institutions. That said, RR is not a condition that justifies CD; CD should be undertaken with RR in mind. Ideally, ND and RR are duties we *ought* to bear: these duties may be construed as our responsibility to work towards reinstating the damaged social bonds of cooperation, and to bear this as a long-term goal in mind. Of course, as I mention below, the oppressed may be held to a lesser set of CD-obligations. Perhaps merely expressing the occurrence of injustice might be an apt response of the moment. In non-ideal scenarios where all hope is lost for meaningful social progress, however, we may wonder whether social cooperation is even possible at all. For in such cases, “civic friendship is dead long before rioters come to bury it” (p. 66).

³⁵ For more on this preventative responsibility, refer to Lucas Stanczyk’s 2019 colloquium on “Climate Change and the Structure of Intergenerational Justice.” For more discussion on structural injustice and political responsibility, see Iris Marion Young, “Responsibility and Global Labor Justice.” *The Journal of Political Philosophy*, vol. 12, no. 1, 2004, pp. 365-388; Catherine Lu “Responsibility, Structural Injustice, and Structural Transformation.” *Ethics & Global Politics*, vol. 11, no. 1, 2018, pp. 42-57.

³⁶ In some cases, victims of injustice may best appreciate the nature and sources of injustice. That said, it is unfair to expect such victims to be the sole or predominant engines of practical change if that means that those who accrue advantage are under no comparable duty. However, it would be false to conclude that victims of injustice are under no normatively demanding duty to bring about just institutions, especially if they know best what stands wrong. As well, one must be careful here not to reproduce a morally condescending view of the victims of injustice as somehow unable to help themselves. It has been pointed out to me that on the other hand, the necessity condition may be more pressing. For instance, the most well-off (i.e. the dictator of an

unjust state) may not be permitted to exercise CD if they simply could have ordered justice to be realized (and RR may compel them to do so).

³⁷ The bullet sign (•) here intends to show some kind of relation that is yet to be determined. It is not meant to be taken in a literal, mathematical sense.

³⁸ Even if ineffective, CD may be morally justified, if not obligatory—and to the degree that—the reasons motivating CD (i.e. ND and RR) outweigh CD-negating reasons (see footnote 28). Nor need CD be performed in the open public, as non-evasive, non-violent, and so forth (see footnote 11).

³⁹ For more on effectiveness and counterproductivity, see Daniel Statman, “On the Success Condition for Legitimate Self-Defense.” *Ethics*, vol. 118, no. 4, 2008, pp. 659-686; Amia Srinivasan, “The Aptness of Anger.” *The Journal of Political Philosophy*, vol. 26, no. 2, 2018, pp. 123-144. Statman discusses a ‘success condition’ for justified self-defense. Otherwise immoral acts are justified under the right to self-defense “only if they actually achieve the intended defense from the perceived threat” (p. 123). In contrast, Delmas and Srinivasan hold that promoting social change is not the sole purpose of social movements. CD, however unproductive, may still be an apt, affective response to injustice. Delmas (2018, p. 67) writes that “it is worthwhile for uncivil disobedients to express their indignation at the inauthenticity of the public commitment to mutual reciprocity, even if it turns out to be counterproductive to the goal of persuading the public.”