Responding to Global Injustice: On the Right of Resistance[i]

Simon Caney

Forthcoming
Social Philosophy & Policy vol.32 no.1 (2015)

"[F]reedom is never voluntarily given by the oppressor; it must be demanded by the oppressed"
Martin Luther King 'Letter from Birmingham City Jail'.[ii]

Imagine that you are a farmer living in Kenya. Though you work hard to sell your produce to foreign markets you find yourself unable to do so because affluent countries subsidize their own farmers and erect barriers to trade, like tariffs, thereby undercutting you in the marketplace. As a consequence of their actions you languish in poverty despite your very best efforts. Or, imagine that you are a peasant whose livelihood depends on working in the fields in Indonesia and you are forcibly displaced from your land by a biofuels company because corrupt government officials have stolen the land and sold it to the company. Or, suppose that you work on the coast of Bangladesh but find that increasingly you are unable to cope with salination resulting from sealevel rise – a product of anthropogenic climate change.

These, I believe, are cases of global injustice. My question is: What are those who bear the brunt of global injustice entitled to do to secure their, and other people's, entitlements? In the last three decades a great deal has been written by political philosophers on what principles of economic justice, if any, apply at the global level. This debate is characterised by much diversity. However, there is one striking feature of the analyses which almost all participants share: that is, that they focus on the responsibilities of affluent countries and their citizens. For Thomas Pogge, the emphasis is on the negative duties not to harm, whereas for others like Henry Shue the affluent have positive duties as well as negative duties to aid those in need.[iii] Notwithstanding their differences, however, both focus on what *we* (the generally affluent members of the world) owe *them*. This focus on the duties of the affluent to uphold these rights is understandable. But there is a striking omission. Rarely do people analyze, or even mention, what those who lack their entitlements are entitled to do to secure their own rights.[iv] This is my focus in this paper. More specifically, I examine what agents are entitled to do to change the underlying social, economic and political practices and structures in a more just direction. I refer to this as the 'Right of Resistance against Global Injustice' (hereafter RRGI).

The paper is structured as follows. Section I provides an account of what I mean by RGGI; Section II identifies six key questions that a comprehensive normative account of resistance to global injustice should address; and Sections III-X then seek to develop such an account by examining, and providing answers to, these key questions.[v]

I: Introducing the Right of Resistance

§1. Meaning. For the purposes of this article I define the 'right of resistance against global injustice' as:

> *a right that agents have to act*
> *[1] in ways that are contrary either to (a) existing domestic law or (b) to international law*
> *[2] in order in order to attempt to change certain practices, policies, or political systems*
> *[3] so that the agents in question, or others, are better able to enjoy what they are entitled to as a matter of global justice.*

I will add one further constraint to my analysis, namely

> [4] my focus here is on modes of action that stop short of war.

[4] is not intended to be part of the definition of RRGI. I think that we should conceive of the RRGI in a broad sense where it would include 'waging war' as one of the means included under [1]. My aim here, though, is to focus on non-warlike modes of action (where these will be described more fully below). I do so for several reasons. First, there are very many ways of promoting greater justice that do not involve war and these are routinely neglected. We thus have good reason to give them an extended treatment. Second, as I argue below, the methods to be discussed below differ from war in morally relevant ways and so we have good reason not to treat them in exactly the same way. In addition to this, a standard condition of just war is that other less harmful options should be explored first, so we have another reason for subjecting them to an extended analysis. Finally, the non-warlike methods I discuss will, in general, be much more available to victims of injustice than is the option of waging war, and so for this reason too it is worth making them the focus of a sustained normative analysis.[vi]

Returning now to the definition of RRGI, several other points should be made. First, I should make clear the nature of the right that is being affirmed. I take the right of resistance to include two Hohfeldian rights. It includes a liberty right (or privilege). Those who are victims of injustice (and indeed others) lack a moral duty to comply: they may break laws in order to bring about necessary change.[vii] Furthermore, as I interpret RRGI, it entails duties on others not to stop people from acting in ways needed to secure their rights (though they may be entitled to

stop people from doing so in certain specific ways). Indeed, they might have duties to support such actions. So the right of resistance includes a Hohfeldian claim right (to non-interference and in some cases assistance) as well as a liberty right.[viii]

Second, note that RRGI is deliberately phrased very broadly. It can include attempts to: (i) render existing unjust laws and practices ineffective so that they do not in practice sustain injustice in the future; (ii) prevent unjust laws from being passed or ensure that unjust laws are repealed; (iii) reform existing political systems; or even, (iv) overthrow existing political systems.

Third, note also that RGGI is framed so that it allows, in principle, that persons can act on it either to secure their own rights (self-protection) or those of others (other-protection). To elaborate on the second case: it might, for example, comprise government officials violating international law to protect their citizens, or it might involve activists working on behalf of others. As we shall see, it is arguable that the normative standards for self-protection differ from those for other-protection (Section IX), although it should be immediately acknowledged that, in practice, some may be acting for both self-protection and other-protection.

§2. Examples of Injustice. Second, to *illustrate* the points I wish to make later in this paper it is helpful to employ some examples. It would be a quixotic quest to attempt to defend a particular account in a short space. At the same time, to abstain from giving any indication of what I take to be a just world would make the ensuing analysis unduly abstract, and it would be hard to assess what is at stake. Given these two considerations then I shall, therefore, simply introduce some cases which I take to be cases of global injustice, and, moreover, which I hope and believe would be seen as such from a variety of different perspectives and not just my own. I stress that I use these examples to *illustrate* the arguments that follow. Those who do not think them examples of injustice should – I hope – nonetheless continue reading because the questions I pose arise for any theory which affirms some global principles of justice.

In what follows I shall rely on the following kind of cases.

Example I: Theft: cases where foreign companies collude with corrupt government officials in a developing country to steal land from those who have a legitimate title to it. According to Michael Klare this is occurring in African states, and he gives examples from the Democratic Republic of the Congo, Kenya, Liberia, Mali and Senegal where corrupt governments sell off land that belongs to others to foreign companies and governments.[ix]

Example II: Unjust Debt Repayment. cases where a despot takes out a loan, is eventually removed from office and then the following democratic government and its citizens (who played no part

in its decisions and indeed suffered because the loan enabled their oppressors to maintain their rule) are expected to pay back the loan.[x]

Example III: *Unjust Harm Imposition*: cases where people act in ways which cause serious harm to others. Consider, for example, factories which cause air pollution that leads to acid rain, or that release waste into rivers and oceans and thereby harm others. Or consider anthropogenic dangerous climate change. Here the actions of many combine to threaten the core human interests of many others – undermining, so I have argued, human rights not to be deprived of life, health and means of subsistence, and destroying people's property and land.[xi]

§3. *Examples of Resistance.* Having introduced some examples of what I take to be global injustice I turn to my third preliminary task. The topic we are examining is one that has not received much discussion by political philosophers and so it may not be immediately obvious what courses of action are available. Some may also wonder what those suffering injustice are able to do. I shall therefore set out some of the different ways in which agents can engage in resistance.

To do so it is helpful to consider the different stages in the political process at which people are able to resist.

[a] First, one kind of resistance targets the decision-making process and seeks to prevent unjust policies from being made or, more modestly, to encourage less unjust policies.

[b] A second kind of resistance involves refusing to comply with the decisions that have been made. To develop this more fully, it is helpful to consider what legal requirements are imposed on persons (including those who suffer from injustice) and then to think of ways in which they can engage in non-compliance. Those who bear the brunt of injustice, and their representatives, are often required to do the following:

i. respect border controls on the movement of people;
ii. respect border controls on the movement of goods and services (including pay export/import taxes and tariffs);
iii. respect intellectual property rights such as copyright, patents, and trademarks;
iv. respect property rights in land, capital, and economic resources;
v. to comply with company terms and conditions (in the case of those employed by foreign companies);
vi. not obstruct the business, and other, activities of others;
vii. pay debts possibly incurred by others, as well as themselves;
viii. pay taxes or charges or fees;
ix. comply with the terms of international loans (IMF or World Bank); and,
x. comply with the membership criteria of international institutions (eg WTO).

Agents can resist by refusing to comply with any of the above. This means that the RRGI can take very many forms.

II: Six Normative Questions

Having provided some necessary background, I turn in this section to identify the core issues that a normative account of resistance to global injustice must satisfy. I think that there are, at least, six key issues, which I shall list as follows:

Question 1: **Who** may engage in resistance?

Question 2: What would constitute a **Just Cause** for resistance?

Question 3: **Against whom** may resisters target their action?

Question 4: **How** should agents engage in resistance?

Question 5: **In what circumstances** may people engage in resistance?

Question 6: Is there a **Duty** to resist?

Each of these, I submit, raises some complex normative issues. In order to address them, however, we need to confront an important methodological question.

III: A Methodological Question

This concerns how we should go about addressing the questions identified in Section II. There is not, to my knowledge, a well-worked out account of what considerations should govern how victims of global injustice may seek to realize their rights. Given this we might look to the extensive discussions of other cases of responding to injustice. We have, for example, quite comprehensive normative analyses of (i) the nature of a just war, (ii) justified civil disobedience and conscientious refusal, and (iii) humanitarian intervention. In addition to this, there is some discussion of, (iv), anti-colonial national liberation movements, and, (v), the ethics of revolution. Given this, should we answer the normative questions simply by adopting one of the normative accounts that have been developed for (i)-(v) and applying them to this case? And, if so, which one? And, why *that* one?

In what follows I advance two methodological claims. First, reflecting on the traditions of thought that have grown up around (i)-(v) does shed light on RRGI. All of them are concerned, in some way, with how agents, in radically different contexts, may respond to injustice. I think that they provide some useful ideas for thinking about the right of resistance. Second, however, the right of resistance against global injustice is not reducible to any of these five accounts. The problems it addresses are distinct in morally relevant ways from each so we cannot simply apply the specific *principles* appropriate in one context to another.[xii]

In support of this second claim in this Section, I shall note some key disanalogies between the phenomena that I am examining and the questions addressed by these other literatures, disanalogies that might be thought to show at least a *prima facie* difference. In

subsequent sections I then note cases where the disanalogies identified in this section are indeed *morally relevant*, and consider what difference they make.

Identifying the Disanalogies. Let us turn then to consider principles of just war, justified civil disobedience, and justified humanitarian intervention. In each case, there are some reasons specific to each situation as to why they cannot be uncritically used as a template for justified resistance of the kind I am discussing here. Furthermore, as we shall see, there is one particular feature of the right of resistance to global injustice that none of them adequately captures.

§1. Just War Let us consider just war theory first. As I stressed above, my interest here is on non-warlike means. Someone might argue, however, that notwithstanding this difference, the conditions for using non-warlike methods should also draw on the criteria associated with (the best version of) just war theory. In what follows, I argue that this quick route is not available to us. The fact that the modes of action I am focusing on do not involve killing people is a morally relevant difference, and it entails that different normative criteria should be used. More specifically it affects [a] what constitutes a just cause (it is compatible with a lower threshold), and [b] who may be targeted – that is the bases of liability. I shall postpone discussion of these differences until Sections VI and VIII, respectively.

§2. Humanitarian Intervention. Consider now humanitarian intervention. This too is relevant because its concern is with what actions agents may perform if they are faced with injustice. However, one key difference that some believe is morally relevant is that whereas humanitarian intervention is concerned with what *outsiders* may, or may not, (or should, or should not, do) to assist victims of injustice, my concern here also includes (though it is not restricted to) what *those suffering the injustice* may themselves may do. We need thus to explore whether the ethics of protecting one's own legitimate interests differ from the ethics of protecting the legitimate interests of others. I shall argue below that the normative criteria for acts of self-protection differ from those for other-protection in at least one respect (Section IX). We cannot, therefore, simply apply the same normative framework that should guide humanitarian intervention to this kind of case

§3. Civil Disobedience. Consider now civil disobedience. As in the preceding cases, this is addressed to cases where some fail to act justly. However, there are some marked differences with the cases I am considering. One central difference stems from that fact that this literature, following Rawls, assumes a "nearly just" state.[xiii] I make no such restriction here. I am concerned with what agents may do – even in severely unjust circumstances – to rectify that situation. As we shall see in Section VII, this difference has normative implications for the form that resistance may take.

Someone seeking guidance as to how think about the question I am posing might then turn to the literatures on (iv) A*nti-Colonial Resistance* and (v) *Revolution.* These two are, of course, themselves, distinct. Anticolonial resistance is concerned with repelling rule by a 'foreign' power, whereas revolution is concerned with removing a 'domestic' oppressor. Should we turn to the writings of Frantz Fanon, Kwame Nkrumah, M K Gandhi and others who wrote about resisting colonialism? Should we turn to those who have discussed the ethics of revolution?[xiv] As with the earlier issues, I think that we can learn enormously from reflecting from these contributions. However, notwithstanding their differences, they share a common limitation (indeed they share it with the three preceding literatures too), namely that in both cases there is a clearly defined target. In the case of colonialism there is an oppressive agent (the colonial power like Britain for India). Likewise in the case of revolution, there is a clearly defined agent that needs to be displaced.

By contrast with this, global injustice (as I have defined it) can occur even where is not necessarily a single clearly defined unified agent behind the injustice. It can occur in cases characterised by three features

(a) a person lacks his or her entitlement

(b) this is brought about by a collective causal process: that is, (a) is the result of acts by very many (possibly billions) of people. [collective causation]

(c) the lack of entitlement is overdetermined; that is, (a) will occur whenever a certain number of acts are performed. The acts of each are, therefore, all individually unnecessary to cause the lack of entitlement [overdetermination]

Consider, for example, climate change or rapid spikes in food prices. Now when (a)-(c) occurs, someone lacks what they are entitled to, but it is not immediately obvious who is a legitimate focus of any attempts to rectify the injustice. I will say more about this in Section VIII, but for the meantime the key point is that identifying who may be targeted is more straightforward in cases where one is responding to subjection by a colonial power (anti-colonial cases) or an unjust domestic regime (revolution) than it is in *some* of the cases that I am concerned about, where there is no clearly delineated agent who may be targeted but rather a diffuse group of (potentially) very many actors. Note that this also distinguishes responses to this kind of systemic global injustice from civil disobedience, just war and humanitarian intervention, for in all of these cases too there is a particular unified agent causing injustice.

In short, then, while theorizing about RRGI can profitably draw on reflections about other kinds of response to other kinds of injustice, none of the existing normative frameworks for addressing these other kinds of injustice can simply be exported to deal with this case.

IV: Justifying the Right of Resistance

How, then, should we think about the right of resistance to global injustice? I believe that it is helpful to begin by asking why we should accept a right of resistance. What is the argument for it?[xv] My answer employs the following two step argument. First, we should note that the reasons that we have for endorsing X's having a (claim) right to Y - reasons for imposing duties on others not to deprive X and maybe to assist in ensuring that X enjoys Y – also give us reason to think that X is morally entitled to take some steps to ensure that X enjoys Y. Rights are entitlements: they specify what people can demand from others. Given this, it would seem very odd to say that X is entitled to Y (say, enter a country) and thus that others have a duty of justice not to prevent them from doing so, and yet also insist that notwithstanding Y's noncompliance X is morally forbidden from taking steps to secure Y. Furthermore, we recognize that if someone's rights have been violated then he or she may seek to rectify that.

For those endorse an interest theory the puzzle would be acute. This position would have to say that there is an interest that grounds the performance of a duty by others (and a duty which is *pro tanto* enforceable), but at the same time does not also ground a permission on the part of the rightsholder to protect that same interest to the same extent. If others are not just permitted to secure the right (but actually required to do so), why is this permission not extended to the rightsholder herself?

We now need to add in a second step. For the first consideration is insufficient to establish that there is a right of resistance as I have defined it above for it shows only that rightsholders (and maybe others) may take action. It does not show that they may take *illegal* action. Establishing that sometimes it is permissible to break the law in order to secure injustice does not, however, pose a serious obstacle. For the claim to go through, all I need is the claim that there are at least some occasions when one can be justified in acting unlawfully in the pursuit of justice. The critic will have to make the case that it is never justified, even in the face of serious injustice. In addition to this, the standard accounts of political obligation – such as 'consent' or 'gratitude' or 'fairplay' – have well established limitations anyway. So, although I cannot argue the point here, I would be sceptical that any of these could show that all suffering injustice (and others) have an overriding political obligation to obey laws and political systems that deny them core entitlements. For example, few, if any, will have consented to the political system that is inflicting the injustice (however we describe that system). Similarly the Rawls/Hart principle of 'fair play' does not generate overriding obligations to obey when there is injustice.[xvi] Furthermore, Rawls's duty to support 'just institutions' will have little purchase here.[xvii] Indeed, those who endorse any of these accounts of political obligation themselves do not think it issues

overriding obligations of obedience in the face of severe injustice. The real issue here is not, it seems, *whether* it is ever permissible to disobey laws in the service of the pursuit of justice but *when* it is. I return to this later.

Note a further point. Someone may say that there are limits on what the rightsholder may do. X is not morally permitted to do *anything* to ensure that she enjoys Y. This is absolutely right. There *are* moral parameters see on *how* as well as *when* X can secure his or her rights and the rights of others. However, it does not give us reason to deny the very existence of a right of resistance. It just has the implication that aside from legal limits there are also moral limits on what resistors can do. After all, the same is true of duty-bearers too. Though they may have a positive duty to assist X to enjoy Y, various ways of doing so will be ruled out. The right of resistance is, therefore, what we might term a 'morally bounded' right: there will be limits on when it applies and how it can be exercised. In what follows whenever I refer to the right of resistance it should understood as including various (yet to be specified) moral parameters. Our goal later is to identify them.

V: Question 1 – Who may engage in Resistance?

Our answer to the question of what grounds the RRGI can also shed light on the next question, namely: 'What kind of actor is entitled to engage in illegal acts in order to bring about the necessary change in existing practices, laws and institutions?' Consider warfare. It is sometimes argued that warfare may only justly be waged by certain kinds of agents (namely, legitimate states). Whatever the truth of that, I see no reason to restrict the relevant agents to states. I adopt a more inclusive approach. Some have argued that governments can engage in such action. They discuss cases where governments break international law, with the aim of helping to create more equitable international laws.[xviii]

Though governments may be a very plausible candidate, there is no reason why only they would have the right of resistance. Indeed the reasoning adduced in the previous Section implies that *all* rights holders with the ability to do so, have the right to resist. Its central claim, recall, is that the reasons for thinking that some are under obligations to respect and uphold certain rights gives us pro tanto reason to think that the rightsholders themselves may take action to ensure that their rights are upheld. But, if this is right, then surely individuals – and any entities that have rights including groups (such as churches or firms), have this pro tanto reason for having a right of resistance.

Furthermore stipulating that only governments, say, are entitled to resist global injustice – such as unjust trade laws or laws imposing unjust restrictions on access to water or unjust intellectual property rights – has extremely implausible implications. If the government is either powerless or corrupt then this approach would leave the individual victims without any recourse to protect themselves, and this is surely unacceptable. I conclude, therefore, that all rightsholders who are able to do so have a right to engage in resistance against global justice (and those not able to are entitled to recruit others to do so).

VI: Question 2 - What constitutes a Just Cause for Resistance?

One question that we must now consider is what constitutes a 'just cause' for resistance. In the writing on just war some simply enumerate intuitively plausible cases of a 'just cause' – referring for example, to 'self-defence' or 'humanitarian intervention'. But such an approach is rather *ad hoc* and invites the questions: Why these? What grounds these suggestions? A more systematic approach is developed by Jeff McMahan who argues that there is a link between, on the one hand, the means being used and, on the other hand, the concept of a just cause. So the fact that war involves *killing* should inform our account of just cause for waging war. We can only have a just cause for engaging in this activity if is of the kind that is serious enough to merit this kind of response. As he puts it, "[a] just cause … has to be a goal of a type that can justify killing and maiming. … Only aims that are sufficiently serious and significant to justify killing can be just causes. Beyond this, however, considerations of scale are irrelevant to just cause."[xix] This principle fits with many intuitively appealing proposals of a just cause for war. For the standard examples of just causes for waging war (such as self-defence) are cases where killing someone is an appropriate response to the kind of injustice involved.

Although McMahan applies this suggestion in order to understand the concept of a just cause in war, his point can be generalized. The claim would be that there should be a fit between the just cause, on the one hand, and the means used, on the other. Let us call this the Fittingness Principle.

With this in mind let us consider the kinds of actions that I said fitted under the heading of the RRGI. These range from disobeying, say, a state's restrictive immigration laws to refusing to comply with protectionist barriers to trade, to occupying land or buildings and thereby impeding the normal course of events to defaulting on debts. What implications would these have for RRGI?

Two points need to be made here. First, as I have intimated above, the methods for exercising RRGI vary enormously in their impacts. Some (such as hacking into a company of

government's computer systems or occupying land) might potentially result in some financial loss. So too will governments defaulting on loans and refusing to pay 'odious debt'. Others, such as illegal protests, may not.

Notwithstanding this diversity, my second point is that the negative impacts that result from the acts of resistance as I have described them in Section I are as, a general rule, much less severe than those involved in war. Crucially, they do not involve killing people, and in many cases the harm is not irreversible either (so can be compensated later).[xx]

With these points in mind, suppose that we apply the Fittingness Principle to this situation. Then we would reason as follows: given that we should think of a 'just cause' for RRGI in terms of what kind of injustice would justify *these kinds of harms on* others, and given that the harms involved by these means are relatively minor (as compared to war) it follows that the threshold of injustice needed to justify action is quite low. Comparatively minor injustices would suffice to constitute a just cause for at least some kinds of RRGI. Certainly, the kinds of injustice required to trigger the RRGI would, for example, be of a much lesser order than the sorts of injustice needed to justify war. For example: whereas it would be inappropriate to wage war over unhealthy (but not life threatening) working conditions, it is not inappropriate to engage in an illegal demonstration or strike for such a cause. Similarly, whereas being subject to unjust demands to repay debts undertaken by a prior despotic government provides just cause for illegally refusing to pay them even if one could afford to pay it: it does not provide just cause for killing officials. Indeed, given that some means – such as a peaceful protest – may not have any harmful effects - it is not clear why we should not conclude that *any* infraction of global justice can constitute a just cause for illegal action that imposes very little harm.

VII: Question 3 - What means may those engaged in Resistance employ?

Having noted that what constitutes a just cause depends, in part, on the nature of the action being considered we, therefore, turn in this Section to consider in more detail what kinds of behaviour agents may engage in when resisting global injustice. In particular, we need to know what kinds of limits there are on the means that resistors may employ. May they, for example, use violence? May they impose burdens on innocent parties? Must the actions be public? I have stipulated earlier that my focus is non warlike means, but this leaves a very great deal open. Another crucial question is: Will the same guidelines apply whichever actor is engaged in resistance? In addition to these *substantive* questions of what means resistors may employ, we also face the *methodological* question of how we may derive the substantive principles. How do we determine which 'means' are appropriate (and which inappropriate) to achieve the ends of a fairer world? By what method?

I begin with the methodological question. We can distinguish here between three approaches. One takes an instrumental approach: it starts with the ends that we should be seeking to realize and then selects means solely according to whether they effectively promote the given ends. In other words, it adopts the maxim that the ends justify the means. A second approach adopts what Norman Geras has termed a "figurative" approach.[xxi] This maintains that when agents engage in acts of resistance they should adhere to the values that they think people ought to adhere to in the ideally just society that they are striving to realize. This approach has been commended by some anarchists and environmental activists.[xxii] So, on this second – figurative – approach the form of resistance should be determined by understanding how people should behave in a just society (say, in a cooperative, nonviolent, respectful way) and then acting in that way now.

Neither of these is, however, promising. The first simply rides roughshod over core liberal values and is willing to treat some people merely as means to an end. And the second is sometimes naïve. It overlooks the point that in some cases agents are required to comply with certain values *only if* they can be assured that others will reciprocate, or at the very least that others will not exploit the vulnerability of the first agent. Where this assurance of reciprocation is absent, however, then the agents are often not required to comply with the putative value. Doing so may achieve nothing; and it may leave those working to realize justice more vulnerable to exploitation or domination and thus set back the cause of justice.[xxiii]

Drawing on this, then, a third more promising approach derives an account of the appropriate means by reflecting both on [1] the values that underlie the society to which we are aspiring (say one committed to freedom, equality, reciprocity and democratic decision making governed by norms of reasonableness), and also [2] facts about the nature of the existing situation, including for example, facts about the extent to which the status quo has just civil and political procedures, facts about people's openness to argument, and facts about their willingness to use force to silence dissent. This third approach is nicely described by Geras, who writes that the means that resistors should use "are doubly determined: not only [1] by what they are intended to achieve, the putative goal, but by [2] that situation which is their starting point as well".[xxiv] That is, the appropriate means should be guided by both our account of the just society and the values underlying that vision (the first element) as well as an appreciation of the political constraints they are under (the second element).

We can see what this means in practice by examining several values often proposed in the context of civil disobedience for we can then see how the reasons given for adhering to such values often crucially depend on empirical preconditions that may not hold in the situation that we currently face – namely one of grave global injustice. In other words, we can see how the factual considerations influence which modes of conduct are required by the background normative theory.

1. Nonviolence? Consider first the use of violence. As I made clear at the start, my focus here is on ways of securing rights that do not involve killing people, but this does not, of course, in itself preclude the use of violence in ways that do not involve killing – such as, for example, acts which damage property (or even physical acts that result in physical harm that stops short of killing people – as strikes sometimes do.) Is violence then permissible?

To answer this, it is worth noting at the outset that some of the reasons Rawls gives for insisting that civil disobedience be nonviolent presuppose that certain conditions hold, and, moreover, that those conditions may not hold in some cases of global injustice. For example, one reason Rawls gives for holding that nonviolence is appropriate is that civil disobedience is a form of dialogue with others.[xxv] But in cases when people are intransigently and irrevocably closed to discussion, and when there is an imminent threat of severe injustice, then we might very reluctantly conclude that, *in such cases*, nothing may be gained by seeking such dialogue. A further reason he gives for nonviolence is that it expresses an attitude of "fidelity to law" in a nearly just legal situation.[xxvi] However, if the situation is not a "nearly just" one and is thus *not* one that merits an attitude of respect then, of course, as Rawls would accept, this particular argument for nonviolence does not apply.

Of course, the fact that Rawls's reflections on violence and civil disobedience do not establish that resistance should be nonviolent does *not*, of course, entail that resistance may be violent. There are many very powerful reasons why there should be a strong presumption against the use of violence. Violence against persons can cause severe harm, misery and pain. Furthermore, violence against persons (and sometimes violence against property) is also likely to antagonize some potential allies and thus makes the chances of a successful transition hard; and, it can make those in charge even more intransigent and thus lower the prospects for future negotiation. Furthermore, there can be a case for peaceful dialogue, even when others do not honour that, when there is reason to believe that this evident commitment to nonviolence might help *produce* in others in the future a willingness to listen and talk, and when doing so does not run the risk of severe harmful repercussions now. So even when the (*present-oriented*) argument that nonviolence is required to show respect for the fact that the resistors operate within nearly just political institutions does not apply (because the political arrangements are seriously unjust) that does not preclude giving a distinct, more *future-oriented* argument for nonviolence which maintains that even with stubborn unjust political elites there is sometimes a case for nonviolence as part of a process of engendering trust and initiating a process of dialogue which, in time, may lead to a more flexible approach from political elites and a transition towards a more just political order.[xxvii]

Two points should, however, be noted. The first is that as Joseph Raz points out, the focus on violence is somewhat misleading. Violence matters in part because it harms people's

legitimate interests, but nonviolent action may also do so, and to an even worse extent. Raz gives the example of ambulance staff who strike. Though nonviolent, their actions may result in more harm than the use of violence.[xxviii]

The second point is this: Clearly in an ideally just society violence is not an appropriate means of bringing about change. However, while the considerations adduced above show that violence against persons is a very great evil, they do not show that such violence is always worse than other options (such as tolerating a grotesque injustice). Indeed, it is very implausible to think that the badness of *any* act of violence (say damaging property by protesting at a trade summit or sabotaging attempts by others to steal one's privately owned land) is in *every* case worse than *any* instance of global injustice that some might be experiencing. Given this, then, it is hard to maintain a clear redline and to insist that violence may never be adopted. Of course, one would want to add that further conditions must be met before any violence can be countenanced. (These will be explored in the next section.) My point here, is simply that we lack reason to endorse a total prohibition on the use of violence.

2. publicity? Similar considerations apply to the idea that civilly disobedient acts should be public. As Rawls makes clear, this is predicated on the society being "nearly just".[xxix] In such a society insisting that protests be public is an appropriate expression of fidelity to the law. However, this consideration does not necessarily apply in seriously unjust circumstances. It might in some cases be relevant: consider governments seeking to change international law through noncompliance with existing law, such publicity is essential. However, for other actors, it may well be very ill advised to adopt this approach if there are vindictive political actors determined to root out any dissent.

3. accepting punishment? For exactly the same reason, Rawls's requirement that those engaged in acts of civil disobedience should accept the legal penalty may not apply in cases of radical injustice.[xxx] Again, Rawls's particular argument presupposes a nearly just society. In such a society accepting the penalty makes sense as a way of expressing a good faith commitment to the system. However, as Rawls recognizes, such a response is not merited here if the political system is not nearly just – which is not to deny that it might be strategically valuable.[xxxi]

In short, then, resistors need not necessarily act publicly nor need they necessarily accept the legal penalty. They should adopt means which minimize harms to others, but there is not an outright prohibition on violence. Rather they should act in ways that realize the values that underpin the vision we should be striving towards.

VIII: Question 4 – Who is liable to bear the Burdens of Resistance?

In many cases acts of resistance impose some burden on others. Non-cooperation with an unjust migration law might result in worse employment opportunities for the indigenous working class or enflamed social divisions between the majority culture and members of minority cultures (including legal migrants as well as illegal ones). Anti-nuclear protests might result in harm to property. Or consider those whose land is taken by their government and sold to a biofuels company. Acts of protest against this – say making the land unusable – are likely to impose financial burdens on the company and its shareholders. It is this with this in mind that we turn now to the next question: Who is liable to bear the costs that result from acts of resistance? On whom may resisters legitimately impose burdens? In what follows I identify three criteria by which we can identify who may be disadvantaged through acts of resistance.

Criterion 1. Contribution to Injustice.

First, one obvious criterion for specifying who may be targeted is 'those who are morally responsible for causing the injustice'. When thinking about who to target it is natural to think that those who have failed in their duties not to impose unjust conditions on others are an appropriate focus of one's efforts. This principle is thus a very plausible one. However, it needs to be clarified in two ways.

A. Contribution to Injustice and Liability. The first point concerns what level of involvement is required for someone to be eligible to bear a burden. My suggestion here is that the degree of involvement in the commission of injustice that is necessary for someone to be liable to bear some burdens of the kinds that I have defended above can be much weaker than that which we could require for war. Since the penalty is so much less severe than war (and in some cases is not permanent and is reversible) it can be appropriate to target some whom it would be wrong to seek to kill. Consider people who vote for unjust policies. Barring extraordinary circumstances it would be wrong to kill them. However, by committing this act they may be liable to bear *some* kind of burden – including financial burdens or blockades (although, of course, there are epistemic problems in identifying who is culpable here).[xxxii] Or consider shareholders in a company that engages in a landgrab: it is entirely permissible for the rightful owners to act in a way that lowers the profit margin of the shareholders.

B: Collectively Caused Harms. Consider now a second point. In some cases the first criterion is straightforward: if A wrongly prevents people from crossing its borders or releases toxic waste into waters that cause devastation on others, then it is appropriate to target A. However, other

cases are not so clear cut. Consider, for example, those cases of injustice, introduced in Section III, in which the injustice does not result from the wrongful acts of one identifiable agent A, but rather arises from collective process involving very many actors and actions. This kind of phenomenon is quite common. Consider, for example, global environmental degradation. Phenomena like biodiversity loss or climate change occur when many actors interact in such a way that their cumulative effect is severe environmental harm, but none of their actions is necessary or sufficient for the harm. This then poses a challenge for the first criterion: which of these actors is liable to bear the burdens?

To answer this I suggest the following procedure. First, we need first to distinguish between those who contribute to the causal process who have a duty not to do so (duty-bearers) and those who contribute to the causal process but in doing so do not violate any duties (non-duty bearers). Not all those who participate in the causal process (of bringing about climate change) are acting unjustly, and it is important that, other things being equal, we identify those subject to duties of justice. In the case of climate change, we might identify the duty-bearers according to principles like the 'polluter pays principle' and the 'ability to pay' principle.[xxxiii] This will, of course, still involve very many actors. I see no reason to regard this as a problem. However, can we say more to guide resistors here?

In reply: one guiding principle might be 'prospects of success'. This has two implications. (a) It entails that, other things being equal, resistors should target those who contribute the most to injustice. Getting them to change their ways is obviously more important than getting those who play only a minor role to do so (*magnitude of positive impact*). Second, (b), it may not be possible to impose any pressure on some actors, and, of those actors whom one can put pressure on some may be more likely to desist their unjust action than others. So, other things being equal, resistors have a reason to focus their efforts on those whose conduct they can most affect in a positive way (*likelihood of positive impact*). (a) and (b) may pull in different directions. Which combination is best should be determined in light of what would bring us closer to a fairer society.

Criterion 2: Unjustly Advantaged.

I would now like to propose a second criterion for determining liability. My suggestion is that it can be appropriate to impose burdens on some even if they are not imposing injustice on others if they nonetheless have more than their fair share because they benefit from injustice.[xxxiv] Consider, for example, a British farmer. Suppose that the current system of barriers to trade in agricultural produce is unjust and that as a result she has more than her fair share because of this injustice. Suppose, however, that she does not play any causal role in maintaining these privileges. As such, although she is not a cause of injustice she has more than her fair share

because of injustice. In such a case it seems entirely reasonable for resistors to take action that burdens her. Suppose that they engage in illegal trade (evading customs) and that by selling more goods they lower her profit margin. In this case she can have no cause for complaint. She is not being rendered worse off than she is entitled to be for, *ex hypothesi*, she was receiving more than her fair share. If this is right then one can be liable to bear a burden even if one is not imposing the injustice on others.

> *Criterion 3: Burdening those who neither contribute to, nor benefit from, injustice if it helps realize a fairer society?*

Criteria 1 and 2 are ideal. However, there may be cases where one may permissibly burden people not covered by 1 and 2. Consider, for example, cases where the only option available to some whose core rights are violated is to engage in unlawful resistance that imposes some inconvenience on some third parties who neither cause nor benefit from injustice. Consider, for example, an illegal strike. This may impose some burdens on some who are neither contributors to, nor beneficiaries of, injustice. Nonetheless, if the harm to the third parties is sufficiently small when compared to the importance of the cause then such action can be justified.

IX: Question 5 – In what Circumstances is Resistance permissible?

The account developed so far remains incomplete. We have yet to consider *when* agents are entitled to exercise the right of resistance? Even if we *know* who can undertake it, for *what reason*, and what *means* they can employ we also need to know *in what circumstances* is resistance justified.

1. Least Bad Option. One intuitively plausible condition is that resistance is justified only if other less bad options have been explored first. This requirement is, of course, similar to the principle of 'last resort' invoked in both just war theory and analyses of civil disobedience. Indeed, the principle that one should consider less harmful options before employing any given means is a sensible one in all walks of life.

What this principle entails in practice will vary enormously, and will depend on the agent in question and the legal and political opportunities and constraint, that they face to shape public policy. Since the types of agents entitled to exercise the RRGI are very diverse (ranging from individuals to social movements to governments), and since the types of injustice also vary (ranging from cases where an identifiable agent is responsible for the injustice to ones where there is systemic injustice) and since, finally, the opportunities they have to change policy lawfully vary enormously, it is not possible to outline a single set of political steps that agents must go through.

Some examples may, however, illustrate the kind of options available. For example, governments faced with unjust international laws that arise from international treaties may be required to consider legal means for renegotiating the treaty as an alternative to international lawbreaking.[xxxv] Peasants who have been dispossessed might be required to lobby the political process or engage in peaceful lawful demonstrations. Representatives of those who lack access to affordable medicines can sometimes use the legal process to protect people's rights. Others – including most famously Gandhi – have gone on hunger strikes to register their protest (though by including this I do not mean to suggest that protestors are required to make such onerous sacrifices).

2. Prospects of Success. Consider now an additional possible condition. Standard accounts of just war theory state that people should wage war only if it is likely to succeed. Should we accept such a condition here?

Some complications need to be introduced. In particular, note that this principle is a reasonable one when the action undertaken imposes *unjust* burdens on others. It would be wrong to inflict unjust harms on others if there is no serious prospect of success. Suppose, however, that (a) there are no harmful effects on anyone, or (b) that there are but they are borne by the resistors or by others who consent to the resistance. In such cases it seems implausible to insist that there must be reasonable chances of success. No third party is being wronged here. Now suppose, (c), that there are likely costs on others – but that they are borne by those who perpetrate and/or benefit from the ongoing injustice. May resistors not engage in a venture with little chance of success if the (not excessive) costs are borne by people not entitled to the advantages that are set back? The latter cannot complain about being wronged here if, because, and to the extent that they are being deprived of something to which, *ex hypothesi*, they do not have a right. In light of these, then, I suggest that if resistance imposes *unjust* burdens on some then it is justified only if there are decent chances that it will succeed.

3. An agent-relative dimension. My analysis thus far has not distinguished between cases of resistance undertaken by those who are the victims of injustice and those undertaken by others. Many, however, would argue that there is a morally relevant difference between the conditions for justified self-protection (where agent-relative considerations may apply) and cases of other-protection such as humanitarian intervention and assistance (where the relevant considerations are agent-neutral). [xxxvi]

One way in which there is a difference concerns the autonomy of the resistors. Suppose that some victims of injustice decide – in a fully informed choice - that they do not want 'outsiders' to bring about all the political changes to which they are entitled. Then, to the extent that their decision to refuse outside assistance is a relevantly free choice based on sufficient

information, outsiders have a duty to respect that choice. However, if this is so, it follows that resistance by those suffering from injustice may be justified when external action by others is not – namely in cases where the latter do not enjoy the consent of those who are the victims of injustice.[xxxvii] Now, of course, it will be very hard to tell when this is the case. Furthermore, there will be many complex scenarios in which some subjected to injustice welcome outsider action but others do not. So, in practice, the distinction may be hard to apply. My point is only that, as a matter of principle, self-protection by victims of injustice may be defensible when other-protection by outsiders is not.

X: Concluding Remarks

This concludes my analysis. My aim in the above has been to develop an account of *who* may engage in resistance, *what form* it may take, for *what reason*, *against whom* and *when*. In addition to these normative claims, I have also advanced the methodological claim that the case of RRGI cannot be assimilated to any of the existing prevailing frameworks employed to address other kinds of injustice.

Of course, the capacity of those treated unjustly to promote their own rights is very often enormously circumscribed. Furthermore, even when it is possible to exercise agency doing so may come with high costs and considerable danger. In this context it is worth noting that my claim here is not that all those subject to injustice are either able to, or are obligated to, engage in resistance. My claim is only that those who bear the brunt of global injustice are *permitted* to engage in resistance in order to secure their rights and those of others, and this is so especially in light of the longstanding noncompliance of the powerful and wealthy. Identifying the nature, content, limit, grounds and bearers of this right has been the aim of this essay.

[i] I am indebted to discussions with Anahi Wiedenbrug on this topic concerning her research on the responsibilities of dominated states to resist injustice. I am also grateful to the participants and my commentator (François Tanguay-Renaud) at the 'Wrongs across Borders' Conference (Toronto, 4th-6th April 2014); and the participants of the 'International Justice' Conference (London, 30th-31st May 2014), and especially to David Schmidtz, an anonymous referee for this journal, Chris Armstrong, James Christensen and Violetta Igneski for their excellent written comments. My research on this is funded by the Oxford Martin School 'Human Rights for Future Generations' project, and I am grateful for its support.

[ii] *A Testament of Hope: The Essential Writings and Speeches of Martin Luther King, Jr* (New York: Harper Collins, 1991) edited by James Melvin Washington, 292.

[iii] Thomas Pogge, *World Poverty and Human Rights: Cosmopolitan Responsibilities and Reforms* (Cambridge: Polity, 2008) second edition; and Henry Shue, *Basic Rights: Subsistence, Affluence, and U. S. Foreign Policy* (Princeton: Princeton University Press, 1996) second edition with a new afterword.

[iv] For a rare exception see the interesting discussion by Gwilym David Blunt, "Transnational Socio-Economic Justice and the Right of Resistance," *Politics* 31, no.1 (2011): 1-8. Blunt focuses on Pogge's analysis of global justice and argues that if it is correct, then there is a case for a right of resistance.

[v] I leave the sixth question aside to explore at a later date.

[vi] There is now an important literature on global justice and waging wars. See Cécile Fabre, *Cosmopolitan War* (Oxford: Oxford University Press, 2012), chapter 3; Kasper Lippert-Rasmussen, "Global Injustice and Redistributive Wars," *Law, Ethics and Philosophy* 1, (2013): 65-86.

[vii] Wesley N. Hohfeld, *Fundamental Legal Conceptions, As Applied in Judicial Reasoning and Other Legal Essays* (New Haven: Yale University Press, 1919), 38-39 & 40-50.

[viii] *Fundamental Legal Conceptions*, 36 & 38.

[ix] Michael T. Klare, *The Race for What's Left: the Global Scramble for the World's Last Resources* (New York: Metropolitan Books, 2012), 198-201. For further analysis of the normative issues see Pogge *World Poverty and Human Rights*, 118-120 and Leif Wenar 'Property Rights and the Resource Curse', *Philosophy & Public Affairs* 6, no.1 (2008): 2-32.

[x] For a compelling account of just how deeply entrenched is the idea that states must always repay loans see Odette Lienau, *Rethinking Sovereign Debt: Politics, Reputation, and Legitimacy in Modern Finance* (Cambridge, Massachusetts and London, England: Harvard University Press, 2014).

[xi] Simon Caney, "Climate Change, Human Rights and Moral Thresholds," in Stephen Humphreys ed. *Human Rights and Climate Change* (Cambridge: Cambridge University Press, 2010): 69-90.

[xii] I also believe, third, that to the extent that there are similarities between the right of resistance and these other cases that is because they all draw on a more general basic normative framework for addressing injustice. So any similarities between Right of Resistance and Just War theory, for example, arise not because Just War theory is more basic and Right of Resistance is conforming to it, but because both are grounded in a more fundamental normative framework. I shall not argue for this here.

[xiii] *A Theory of Justice* (Oxford: Oxford University Press, 1999), 319.

[xiv] For an important recent discussion of revolution see Allen Buchanan, "The Ethics of Revolution and Its Implications for the Ethics of Intervention," *Philosophy & Public Affairs* 41, no.4 (2013): 291-323.

[xv] In an interesting discussion Tony Honoré argues that the concept of a right includes within it an endorsement of the right of resistance (See Honoré, "The Right to Rebel," *Oxford Journal of Legal Studies* 8, no.1 (1988): 34-54, esp 35, and Honoré 'Rights and the Rightless' in *Making Law Bind: Essays Legal and Philosophical* (Oxford: Clarendon Press, 1987), 241-255.) Honoré's argument strikes me as being too quick, but I lack the space to raise my concerns here.

[xvi] Note that, though both Rawls and Hart agree that unjust institutions do not generate binding obligations, they differ on how they characterise this: H. L. A. Hart "Are There Any Natural Rights?," *The Philosophical Review* 64, no.2, (1955), 185-6, and Rawls *A Theory of Justice*, 96-8.

[xvii] Rawls *A Theory of Justice*, 99-100.

[xviii] Allen Buchanan, "From Nuremburg to Kosovo: The Morality of Illegal International Legal Reform," *Ethics* 111, no.4 (2001): 673-705; Buchanan, *Justice, Legitimacy, and Self-Determination: Moral Foundations for International Law* (Oxford: Oxford University Press, 2004), chapter 11; Robert E. Goodin, "Toward an International Rule of Law: Distinguishing International Law-Breakers from Would-Be Law-Makers," *Journal of Ethics* 9, nos.1-2 (2005), 225-246.

[xix] Jeff McMahan "Just Cause for War", *Ethics & International Affairs* 19, no.3 (2005): 11.

[xx] I will explore what upper limits there might be on the means used in the next Section. My point here is that the means I have outlined in Section I are, as a rule, less harmful (sometimes inflicting very little harm) than those sanctioned by war.

[xxi] Norman Geras, *The Legacy of Rosa Luxemburg* (London: Verso, 1983), 141ff, Geras, "Our Morals: The Ethics of Revolution," *Socialist Register* 25, (1989): 188-9.

[xxii] Murray Bookchin, *Post-Scarcity Anarchism* (Montreal-Buffalo: Black Rose Books, 1986 [1971]), second edition with a new introduction, 67-68 & 70; Emma Goldman, *My Disillusionment in Russia* (Mineola, New York: Dover Publications, 2003 [1923/1924]), 261-3.

[xxiii] That said, there are cases where practising the ideals that constitute the good society is the only – or most likely - way in which to help realize such a society. For a strong version of this claim see Gandhi's discussion of "brute force" in 'Indian Home Rule [or *Hind Swaraj*]' in Anthony J. Parel ed., *'Hind Swaraj' and Other Writings* (Cambridge: Cambridge University Press, 2010 [1909]), 79.

[xxiv] Geras "Our Morals," 188 (numbers added).

[xxv] Rawls *A Theory of Justice*, 321.

[xxvi] Rawls *A Theory of Justice*, 322.

[xxvii] For a powerful repudiation of the use of violence for similar reasons see Václav Havel, "The Power of the Powerless" in Jan Vladislav ed. *Living in Truth* (London: Faber and Faber, 1987), 92-93.

[xxviii] Joseph Raz, "A Right to Dissent? I. Civil Disobedience," in *The Authority of Law: Essays on Law and Morality* (Oxford: Oxford University Press, 2009) second edition, 267.

[xxix] *A Theory of Justice*, 322.

[xxx] *A Theory of Justice*, 322.

[xxxi] *A Theory of Justice*, 323.

[xxxii] For pertinent discussion see McMahan, *Killing in War* (Oxford: Clarendon Press, 2009), especially 218-21 (on liability to burdens that fall short of killing) as well as his discussion of killing civilians (on 221-35).

[xxxiii] Or so I have argued in "Climate Change and the Duties of the Advantaged," *Critical Review of International Social and Political Philosophy* 13, no.1 (2010): 203-28.

[xxxiv] For a discussion of benefiting from injustice see Daniel Butt, *Rectifying International Injustice: Principles of Compensation and Restitution Between Nations* (Oxford: Oxford University Press, 2009), 117-33.

[xxxv] See Buchanan on this: *Justice, Legitimacy, and Self-Determination*, 446ff.

[xxxvi] In an interesting discussion, Ned Dobos suggests that those engaged in self-protection, by contrast with those engaged in humanitarian intervention, are subject to weaker normative constraints. First they are, in certain circumstances, exempt from the prospects of success principle (eg when conditions like (a), (b) and (c) as set out in the previous paragraph do not hold); and, second, they may disregard certain side-effects resulting from their response to injustice when they are calculating whether their response is proportionate, (*Insurrection and Intervention: the Two Faces of Sovereignty* (Cambridge: Cambridge University Press, 2012), ch3.) I do not agree with this but lack the space to argue this here.

[xxxvii] This view is suggested (if cryptically) by Michael Walzer, *Just and Unjust Wars: A Moral Argument with Historical Illustrations* (Middlesex: Penguin, 1977), 89; 'The Moral Standing of States: A Response to Four Critics', *Philosophy & Public Affairs* 9, no.3, (1980): 214-6. Walzer, though, couches his argument in communitarian terms, referring to the rights of communities, whereas my commitment here is to the self-determination of individuals.