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Doing What the Law Requires by Breaking Mandatory Laws

Stefano Bertea
University of Messina, Italy
Email: bertea.stefano@gmail.com

Abstract

In this work, I contribute to the debate on the status and legitimacy of principled disobedience in a democratic polity. After introducing the notion, I move to argue that principled disobedience can be framed not only as a moral and political stance but also, and without contradiction, as a legal requirement. As a result, it will be maintained that not only can we engage in principled disobedience without necessarily violating our legal obligations, but these obligations may actually mandate principled disobedience. This framing of the problem of principled lawbreaking makes the proposed discussion distinctive and original in virtue of its claim—namely, that we may have not only a moral justification to disobey the law but a legal obligation to do so, an obligation to break the law on principled legal grounds.

Keywords: *Disobedience; Obligation; Law*

1. Introduction

Our lives under the law unfold within a space delimited by normative standards set forth in national, intranational, and international legal systems. The normative standards that shape our legal world are in turn claimed to rest on a foundation of their own: a general obligation to follow the rules and instructions of those vested with legal authority. Undergirding the standards of law, in short, is a presumptive obligation to obey the law.[1] Such an overarching obligation is often invoked to

1. The very proposition that there exists a general obligation to obey the law is highly controversial in legal philosophy and political theory, as are the scope and justification of such an obligation. For some of the classic contributions to the debate, see HLA Hart, "Are There Any Natural Rights?" (1955) 64:2 Philosophical Rev 175; Richard A Wasserstrom, "The Obligation to Obey the Law" (1963) 10:4 UCLA L Rev 780; John Rawls, "Legal Obligation and the Duty of Fair Play" in Sidney Hook, ed, *Law and Philosophy: A Symposium* (New York University,1964) 3; John Rawls, *A Theory of Justice*, revised ed (Belknap Press,1999) [Rawls, *Theory of Justice*]; Thomas McPherson, *Political Obligation* (Routledge & K Paul, 1967); Robert Paul Wolff, *In Defense of Anarchism* (Harper & Row, 1970); MBE Smith, "Is There a Prima Facie Obligation to Obey the Law?" (1973) 82:5 Yale LJ 950; Harry Beran, "In Defense of the Consent Theory of Political Obligation and Authority" (1977) 87:3 Ethics 260; A John Simmons, *Moral Principles and Political Obligations* (Princeton University Press, 1979); A John Simmons, *On the Edge of Anarchy: Locke, Consent, and the Limits of Society* (Princeton University Press, 1993); A John Simmons, "Associative Political Obligations" (1996) 106:2 Ethics 247; Joseph Raz, "Authority and Consent" (1981) 67:1 Va L Rev 103; Richard J Arneson, "The Principle of

explain the stigma that attaches to behaviour violating the law—a sense felt across the board, not only among legal professionals and academics but also as a matter of general opinion. Even when it is not primarily out of expediency or personal gain that people break the law but out of a genuine concern for interests that are widely sharable within the political community, there seems to be something presumptively objectionable about such behaviour. No less than ordinary, exclusively self-interested—and even criminal—lawbreaking, the breaking of the law engaged in by those who appeal to ethical principles is widely regarded as incompatible with the rule of law, even if such defiance may well prove to be morally or politically justified.[2]

But not everyone feels this way. For some, the general presumption in favour of following rather than breaking the law is untenable, since it fails to distinguish, and so arbitrarily conflates, two broad forms of lawbreaking that, conceptually, are neatly distinct and mutually irreducible: the self-interested lawbreaking associated with standard illegality, and the legal disobedience engaged in on

Fairness and Free-Rider Problems" (1982) 92:4 Ethics 616; Kent Greenawalt, "The Natural Duty to Obey the Law" (1985) 84:1 Mich L Rev 1; Kent Greenawalt, *Conflicts of Law and Morality* (Oxford University Press, 1987); Ronald Dworkin, *Law's Empire* (Fontana, 1986) at 190-216; Noël O'Sullivan, *The Problem of Political Obligation* (Garland,1987); ADM Walker, "Political Obligation and the Argument from Gratitude" (1988) 17:3 Philosophy & Public Affairs 191; John Horton, *Political Obligation* (Macmillan, 1992); John Horton, "In Defence of Associative Political Obligations: Part One" (2006) 54:3 Political Studies 427; John Horton, "In Defence of Associative Political Obligations: Part Two" (2007) 55:1 Political Studies 1; George Klosko, *The Principle of Fairness and Political Obligation* (Rowman & Littlefield, 1992); George Klosko, "Political Obligation and the Natural Duties of Justice" (1994) 23:3 Philosophy & Public Affairs 251; Margaret Gilbert, "Group Membership and Political Obligation" (1993) 76:1 The Monist 119; Richard Dagger, "Membership, Fair Play, and Political Obligation" (2000) 48:1 Political Studies 104; Richard Dagger, "Authority, Legitimacy, and the Obligation to Obey the Law" (2018) 24:2 Leg Theory 77; William A Edmundson, "State of the Art: The Duty to Obey the Law" (2004) 10:4 Leg Theory 215; Leslie Green, "Associative Obligations and the State" in Justine Burley, ed, *Dworkin and His Critics: with replies by Dworkin* (Blackwell, 2004) 267; Ruth CA Higgins, *The Moral Limits of Law: Obedience, Respect, and Legitimacy* (Oxford University Press, 2004); Daniel McDermott, "Fair-Play Obligations" (2004) 52:2 Political Studies 216; Stephen Perry, "Law and Obligation" (2005) 50:1 Am J Juris 263; Stephen Perry, "Associative Obligations and the Obligation to Obey the Law" in Scott Hershovitz, ed, *Exploring Law's Empire: The Jurisprudence of Ronald Dworkin* (Oxford University Press, 2006) 183; Christopher Heath Wellman & A John Simmons, *Is There a Duty to Obey the Law?* (Cambridge University Press, 2005); David Lefkowitz, "The Duty to Obey the Law" (2006) 1:6 Philosophy Compass 571; Zachary Hoskins, "Fair Play, Political Obligation, and Punishment" (2011) 5:1 Crim L & Philosophy 53; Massimo Renzo, "Associative Responsibilities and Political Obligation" (2012) 62:246 Philosophical Q 106; Massimo Renzo, "Fairness, self-deception and political obligation" (2014) 169:3 Philosophical Studies 467; John Hasnas, "Is There a Moral Duty to Obey the Law?" (2013) 30:1-2 Social Philosophy & Policy 450; Candice Delmas, *A Duty to Resist: When Disobedience Should Be Uncivil* (Oxford University Press, 2018) [Delmas, *A Duty to Resist*]; Piero Moraro, *Civil Disobedience: A Philosophical Overview* (Rowman & Littlefield, 2019) [Moraro, *Civil Disobedience*].

2. For statements of this tenor, see e.g. Frank M Johnson Jr, "Civil Disobedience and the Law" (1969) 22:5 Vand L Rev 1089; Herbert J Storing, "The Case Against Civil Disobedience" in Robert A Goldwin, ed, *On Civil Disobedience: American Essays, Old and New* (Rand McNally, 1969) 95; Steven R Schlesinger, "Civil Disobedience: The Problem of Selective Obedience to Law" (1976) 3:4 Hastings Const LQ 947; Avi Sagi & Ron Shapira, "Civil Disobedience and Conscientious Objection" (2002) 36:3 Israel LR 181.

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principled grounds. On this alternative view, it is one thing to break the law for personal gain—and here the presumption does cut in favour of compliance—and quite another to do so on principled grounds, in which case the lawbreaking is far less objectionable, if it is objectionable at all. For it is not inconceivable that the law we are required to follow cannot be rationally justified or is simply bad law. In fact, history provides plenty of examples of law so described, and in these cases an argument can be made that we are not only justified in resisting the law (consistent with pondered principles of critical morality), but we even have a *duty* to do so.

Once we establish this distinction between two kinds of lawbreaking—self-interested illegality, on the one hand, and ethically motivated lawbreaking, on the other—we can reason about the conditions under which the latter—a kind of lawbreaking grounded in morality or in political conviction—may be justified.[3] And that is in fact one of the basic insights in the debate that has traditionally engaged legal philosophers and political theorists over ethically motivated disobedience in its various forms, particularly civil disobedience, conscientious objection, and, more recently, 'uncivil disobedience'.[4] Indeed, even if legal

3. Implicit in this statement is a terminological stipulation: in this contribution, 'ethics' is taken to stand for a broad category encompassing both morality and politics. In turn, morality and politics are conceived as different and more specific departments of ethics. In the proposed stipulation, then, ethics includes both morality—its principles and codes; and politics—its standards and norms. In other words, ethics is introduced here as an overarching domain that spans across moral issues and concerns pertaining to the political sphere.

4. For a defence of principled lawbreaking in the form of civil disobedience, see Hugo A Bedau, "On Civil Disobedience" (1961) 58:21 J Philosophy 653; Carl Cohen, "Civil Disobedience and the Law" (1966) 21:1 Rutgers L Rev 1 [Cohen, "Civil Disobedience"]; Carl Cohen, *Civil Disobedience: Conscience, Tactics, and the Law* (Columbia University Press, 1971); Howard Zinn, *Disobedience and Democracy: Nine Fallacies on Law and Order* (Random House, 1968); Hannah Arendt, "Civil Disobedience" in Hannah Arendt, *Crises of the Republic: Lying in Politics, Civil Disobedience, On Violence, Thoughts on Politics and Revolution* (Harcourt Brace Jovanovich, 1972) 49; Peter Singer, *Democracy and Disobedience* (Clarendon Press, 1973); Ronald Dworkin, *Taking Rights Seriously* (Harvard University Press, 1977) at 206-22; Jürgen Habermas, "Civil Disobedience: Litmus Test for the Democratic Constitutional State" (1985) 30 Berkeley J Sociology 95 [Habermas, "Civil Disobedience"]; Jürgen Habermas, *Between Facts and Norms: Contributions to a Discourse Theory of Law and Democracy*, translated by William Rehg (MIT Press, 1996) at 379-84; Rawls, *Theory of Justice*, *supra note* 1 at 326-31; Andrew Sabl, "Looking Forward to Justice: Rawlsian Civil Disobedience and its Non-Rawlsian Lessons" (2001) 9:3 J Political Philosophy 331; Vinit Haksar, "The Right to Civil Disobedience" (2003) 41:2/3 Osgoode Hall LJ 407; William Smith, "Democracy, Deliberation and Disobedience" (2004) 10:4 Res Publica 353; William Smith, "Civil Disobedience and the Public Sphere" (2011) 19:2 J Political Philosophy 145; William Smith, *Civil Disobedience and Deliberative Democracy* (Routledge, 2013) [Smith, *Civil Disobedience*]; Daniel Markovits, "Democratic Disobedience" (2005) 114:8 Yale LJ 1897; David Lefkowitz, "On a Moral Right to Civil Disobedience" (2007) 117:2 Ethics 202 [Lefkowitz, "On a Moral Right"]; Kimberley Brownlee, *Conscience and Conviction: The Case for Civil Disobedience* (Oxford University Press, 2012) [Brownlee, *Conscience and Conviction*]; Kimberley Brownlee, "Conscientious Objection and Civil Disobedience" in Andrei Marmor, ed, *The Routledge Companion to the Philosophy of Law* (Routledge, 2012) 527 [Brownlee, "Conscientious Objection"]; Lewis Perry, *Civil Disobedience: An American Tradition* (Yale University Press, 2013); Moraro, *Civil Disobedience, supra* note 1. For a defence of 'uncivil' disobedience, see Alan Carter, "In Defence of Radical Disobedience" (1998) 15:1 J Applied Philosophy 29; Jennet Kirkpatrick, *Uncivil Disobedience: Studies in Violence and Democratic*

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philosophers and political theorists disagree over the definition, justification, and social role of ethically motivated disobedience, they do broadly agree that this conduct is sometimes justified even in a democratic polity, and that it may even be upheld as a right.

It is to ethically motivated disobedience that this essay turns, hoping to contribute to the debate on its status and legitimacy in a democratic polity. In this work, 'ethically motivated disobedience' means the kind of lawbreaking that is grounded either in moral principles or in political creeds (or in a combination of the two). This is a sort of illegality that must be kept distinct from the kind of lawbreaking engaged in *primarily*, or even *exclusively*, to advance one's own interests.[5] However, it will not be further broken down into any of its more specific variants, which have often been discussed in the literature, and which have a long and well-established history.[6] Rather, I will be framing a comprehensive

Politics (Princeton University Press, 2008); Jarret S Lovell, *Crimes of Dissent: Civil Disobedience, Criminal Justice, and the Politics of Conscience* (New York University Press, 2009); Benjamin Barber, "Occupy Wall Street: 'We Are What Democracy Looks Like!'" (2011) Logos 10:4, online: logosjournal.com/article/occupy-wall-street-we-are-what-democracy-looks-like; Bernard E Harcourt, "Political Disobedience" (2012) 39:1 Critical Inquiry 33; Raffaele Laudani, *Disobedience in Western Political Thought: A Genealogy* (Cambridge University Press, 2013); Costas Douzinas, *Philosophy and Resistance in the Crisis: Greece and the Future of Europe* (Polity, 2013); Tony Milligan, *Civil Disobedience: Protest, Justification and the Law* (Bloomsbury Academic, 2013); Robin Celikates, "Civil Disobedience as a Practice of Civic Freedom" in David Owen, ed, *Global Citizenship: James Tully in Dialogue* (Bloomsbury, 2014) 207 [Celikates, "Civil Disobedience"]; Robin Celikates, "Democratizing Civil Disobedience" (2016) 42:10 Philosophy & Social Criticism 982; Linda MG Zerilli, "Against Civility: A Feminist Perspective" in Austin Sarat, ed, *Civility, Legality, and Justice in America* (Cambridge University Press, 2014) 107; Simon Caney, "Responding to Global Injustice: On the Right of Resistance" (2015) 32:1 Social Philosophy & Policy 51; Martha Biondi, "The Radicalism of Black Lives Matter", *In These Times* 40:9 (September 2016) 16; Candice Delmas, "Civil Disobedience" (2016) 11:11 Philosophy Compass 681; Candice Delmas, "Disobedience, Civil and Otherwise" (2017) 11:1 Crim L & Philosophy 195; Derek Edyvane & Enes Kulenovic, "Disruptive Disobedience" (2017) 79:4 J Politics 1359; NP Adams, "Uncivil Disobedience: Political Commitment and Violence" (2018) 24:4 Res Publica 475; Guy Aitchinson, "Coercion, Resistance and the Radical Side of Non-Violent Action" (2018) 69:1 Raisons Politiques: Études de Pensée Politique 45; Jason Brennan, *When All Else Fails: The Ethics of Resistance to State Injustice* (Princeton University Press, 2019); Ten-Herng Lai, "Justifying Uncivil Disobedience" in David Sobel, Peter Vallentyne & Steven Wall, eds, *Oxford Studies in Political Philosophy Volume 5* (Oxford University Press, 2019); Derek Edyvane, "Incivility as Dissent" (2020) 68:1 Political Studies 93; Chong-Ming Lim, "Differentiating Disobedients" (2021) 20:2 J Ethics & Social Philosophy 119; Chong-Ming Lim, "Clarifying Our Duties to Resist" (2024) 67:9 Inquiry 3527 [Lim, "Clarifying Our Duties"]; Ten-Herng Lai & Chong-Ming Lim, "Environmental Activism and the Fairness of Costs Argument for Uncivil Disobedience" (2023) 9:3 J American Philosophical Assoc 490.

5. This statement indicates that, conditional on the fact that a breach of law is grounded in some ethical principle, even the forms of disobedience serving the interests of the group of which the disobedient is a member lie within the scope of the discussion carried out here. In other words, for a kind of lawbreaking to be regarded as an instantiation of (what I refer to as) 'ethically motivated disobedience', it is not necessary that it *solely* benefits others; it is sufficient that the action (a) is not primarily, or even entirely, self-serving and self-interested—it does not seek to promote just the interests of the lawbreaker and their inner circle; and (b) appeals to some moral principle or political ideal that is rationally defensible.

6. While the main concern of scholarship on principled disobedience has been with the specific forms this idea and practice have historically taken, it is not unique to this essay to zoom out

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concept, inclusive of all lawbreaking that is not merely self-serving, and instead is grounded in some moral or political view. This framing concept I will call 'principled disobedience' (co-opting and redefining an idea that Candice Delmas recently described in her account of ethically motivated disobedience).[7] I will devote Section 2 to a description of this concept.

I will then argue that principled disobedience can be framed not only as a moral and political stance but also, and without contradiction, as a *legal requirement*. In other words, not only can we engage in principled disobedience without necessarily violating our legal obligations (once legal obligation is aptly conceptualised), but these obligations may actually *mandate* principled disobedience. The proposition that I intend to specifically support, therefore, is not that we may be *morally* entitled to break the law, or that we may be *morally* justified in so doing, but that occasionally we may have a *legal obligation* to do so on principled grounds. In this context, I will endeavour to dispel the sense that there is something contradictory, or at least paradoxical, in asserting that one may have a *legal* obligation to *break some laws*. In Section 3, I argue that the key to resolving this apparent contradiction and circumventing the supposed paradox consists in rejecting the forms of legal reductionism equating the law to a mere set of authoritative issuances and legal obligation to an enforceable demand made by legal officials. I then provide a real-world example for this argument in Section 4.

This framing of the problem of principled lawbreaking makes this discussion distinctive not only in virtue of its scope—inclusive of all types of ethically motivated illegality, such as civil disobedience, conscientious objection, and uncivil disobedience—but also in virtue of its claim, namely, that we may have not only a moral justification to disobey the law but a *legal obligation* to break the law on principled grounds that are rooted in the *law* itself. In short, while the bulk of the literature focuses on specific types of ethically motivated illegality and on the moral justification for such illegality, this contribution seeks to make a case for principled illegality at large on *legal* grounds.

A caveat before we proceed: In what follows, I will deploy a *conceptual* argument, as distinct from a *normative* one. This means that, on the one hand, I will be concerned with establishing a *conceptual continuity* between fulfilling one's

and frame that practice as a whole, under a broad idea that takes in the full spectrum of ethically motivated disobedience (as distinguished from unprincipled lawbreaking). For recent investigations carried out under such an umbrella category, see Smith and Brownlee discussing civil disobedience and conscientious objection under the heading of "conscientious disobedience." William Smith & Kimberley Brownlee, "Civil Disobedience and Conscientious Objection" (24 May 2017), online: *Oxford Research Encyclopedia of Politics* oxfordre.com/politics/politics/view/10.1093/acrefore/9780190228637.001.0001/acrefore-9780190228637-e-114. See also Delmas, who similarly speaks of "principled disobedience." Delmas, *A Duty to Resist*, *supra* note 1 at ch 1.

7. See *ibid*. What this means is that, on the one hand, my notion of principled disobedience shares some common ground with Delmas's—both are ethically motivated, and both are in that sense broadly encompassing concepts. But, on the other hand, the two notions single out two different modes of such principled breaking of the law, with two accordingly different arguments in favour of the idea and practice.

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legal obligations and disobeying a posited law on principled grounds—a continuity that has escaped the traditional schools of legal thought. On the other hand, I will make no attempt to isolate the specific conditions under which such a convergence materialises. In other words, in this contribution, readers should not expect to find any set of conditions under which engaging in an act of principled disobedience can be equated with fulfilling, as opposed to violating, one's legal obligation. Rather, the discussion will be geared toward showing that engaging in principled disobedience does not necessarily stand in contradiction to complying with a legal obligation, in that the two kinds of action (engaging in principled disobedience and doing what is required by law) share the same conceptual space and so can, at least occasionally, stand not in opposition to each other but in a relation of continuity—so much so that the latter kind of action (fulfilling a legal obligation) may take the former (principled disobedience) as its object.

2. Conceptualising Principled Disobedience

The discussion that follows will mainly be concerned with what I call 'principled disobedience'. As noted, this is constructed as a broad, overarching category that has not yet been systematically explored, since the literature has instead been primarily concerned with other, often more specific varieties of ethically motivated lawbreaking.[8] For this reason, before putting forward my argument—which is aimed at showing that principled disobedience may be a legal obligation—I consider it essential to introduce this somewhat novel category as it is understood here. In doing so, I will also delimit the scope and validity of the argument, which therefore does not necessarily cover the forms of ethically motivated illegality that do not match the notion of principled disobedience as I conceptualise it in this work.[9]

The different forms of illegality grounded in principle, as opposed to expediency, that one may practice (or may merely conceive of) are quite varied. Their differences depend on several properties: (a) the *nature* of the act through which the ethically motivated disobedience is expressed;[10] (b) the *motives* driving the

8. See generally *supra* note 1. An exception to this trend is Delmas, whose discussion stretches across a richer repertoire of ethically motivated disobedience: see Delmas, *A Duty to Resist*, *supra* note 1.

9. In fact, the notion of principled disobedience is being introduced here precisely for this reason—that is, to clarify what forms of lawbreaking do not fall squarely within the scope of the argument. Nor is the notion understood to enjoy some kind of priority, either conceptual or normative, over other forms of breaches of law grounded in principle.

10. Some instances of conscientious refusal tend to take the shape of peaceful, nonviolent, and public disobedience grounded in principle. By contrast, uncivil disobedience is constitutively disruptive, coercive, and covert. Recent theorisations of civil disobedience allow for the possibility that it too may be disruptive, coercive, and covert (even if it does not need to be). See e.g. Piero Moraro, "Violent Civil Disobedience and Willingness to Accept Punishment" (2007) 8:2 Essays in Philosophy 279 [Moraro, "Violent Civil Disobedience"]; Moraro, *Civil Disobedience*, *supra* note 1; Adams, *supra* note 4.

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action of the disobedient;[11] (c) the kind of *agent* who engages in the illegal act;[12] (d) the *object* that is disobeyed;[13] and (e) the kind of *response* we can expect from those who hold legal authority when someone engages in legal disobedience grounded in principle.[14] There is, then, a wide variety of forms that ethically motivated disobedience can take. This makes it possible to outline a general form of theoretical interest: a general category of lawbreaking—principled disobedience—that, as will be argued, may amount to a legal obligation. But before I can get to that argument, I will need a description of the category itself, to which end some main features can be singled out.

To begin with, and in a sense by definition, principled disobedience is an *illegal* practice: a course of conduct that those in power qualify as a breach of posited law. This makes the conduct illegal in the conventional sense, as conduct that breaches a law or runs contrary to a policy on an established or widely accepted understanding of either.

Second, as an ethical undertaking—one behind which lies a moral and political motive—principled disobedience is *civic-minded*: it is a form of lawbreaking undertaken with an eye to the general welfare of a community, or polity, as a whole.[15]

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11. Worth mentioning in connection with these various grounds of action is Rawls, who makes it part of the very definition of civil disobedience that those who engage in it should do so by appealing specifically to principles of justice, understood as principles about what can reasonably be justified to others who may not share our own moral or political views: see Rawls, *Theory of Justice*, *supra* note 1 at 319-43. This excludes acting on conscientious or religious grounds, an exclusion that has been criticised by many: see e.g. Singer, *supra* note 4 at 84-92.

12. One form of principled breach of law typically carried out by a single individual acting in a private capacity in isolation from others is 'conscientious refusal'. Other forms, by contrast, require a group, examples being 'occupation' and 'rioting' (where it would be all but contradictory to imagine a lone occupier or rioter). Finally, 'whistleblowing' requires a high degree of insider knowledge and so is typically carried out by someone who works for the organisation in question. Thus, for example, we should expect government whistleblowing to come from government officials rather than from ordinary citizens.

13. A common distinction in the literature is the distinction between practices of disobedience that directly break the law or policy that is claimed to be objectionable as a matter of principle—a practice known as '*direct* principled disobedience'—and practices of disobedience infringing upon laws and policies that by themselves are far from ethically problematic, in order to bring the attention to the fact that another law or policy is wrong in principle—known as '*indirect* principled disobedience'. An example of *direct* principled disobedience consists in illegally breaking into an immigration camp and setting the detainees free. By contrast, staging a sit-in inside a government building in order to protest against the environmental policies of that government would be an instance of *indirect* principled disobedience. A concise introduction to this distinction and its implications can be found in Marshall Cohen, "Civil Disobedience in a Constitutional Democracy" (1969) 10:2 Massachusetts Rev 211 at 224-26; and more recently, see Candice Delmas & Kimberley Brownlee, "Civil Disobedience" in Edward N Zalta, ed, *The Stanford Encyclopedia of Philosophy* (Winter 2021), online: plato.stanford.edu/archives/win2021/entries/civil-disobedience/#PrinDis at §1.1.

14. Thus, in certain Western democracies, acts of conscientious refusal and civil disobedience may be punished leniently or not at all. In others, by contrast, these acts may amount to serious offences and be punished accordingly (a case in point being hacktivism in the United States and the United Kingdom).

15. The conscientious nature of principled disobedience, as I define it, mirrors the importance that conscience-based considerations have in the practice of non-self-oriented breaches of law. In fact, most instances of ethically motivated lawbreaking, such as conscientious refusal, civil disobedience, eco-sabotage, animal rescue, see disobedients appealing to their own conscience to justify their action. In the recent literature, the clearest statement of the central role that

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Principled disobedience then appeals to what can be argued to be in everyone's best interest, and seeks to advance collective objectives that can be shown to be rationally defensible (that is, goals the relevant political community can reasonably be asked to recognise as a basis of generally shared practices).

This takes us to the third fundamental feature of principled disobedience, which is that principled disobedience is broadly *reformist* in its aims. As such it can be distinguished from revolutionary illegality, which seeks to overturn an entire social, political, or legal order.[16] Whilst both principled disobedience and revolutionary illegality break the law and pursue a public interest, the two forms of non-compliance with the law have distinct scope. Principled disobedience is concerned with changing *one specific law or policy* considered to be wrong or illegitimate. By contrast, revolutionary illegality takes issue with *the whole system* of which the law or policy in question is a part—along with its underlying structure. The change sought in revolutionary illegality is therefore system-wide and reaches to the core.[17]

These features of principled disobedience—its illegality, civic-mindedness, and reformism—can be used as building blocks to further specify its concept by spelling out additional, fundamental features. In this context, it should be noted that if principled disobedience is aimed at reforming a law or policy, this aim needs to be *publicizable* to the targeted audience (which may comprise, and in fact typically includes, both those vested with authority and the general public).[18] This dimension of the relevant practice is conceptually basic: Insofar as those carrying out ethically motivated breaches of the law need to put their message out to the public, for conceptual reasons, principled disobedience is to be characterised as an inherently publicizable kind of lawbreaking.

This brings me to a further fundamental trait of principled disobedience: If the message it aims to convey and the goal it seeks to achieve are to be effective,

conscientious motives play in civil disobedience is offered by Brownlee: see Brownlee, *Conscience and Conviction, supra* note 4 at 15-84.

16. Apparently, this means that some practices of collective resistance and generalised disobedience grounded in principle, such as India's fight for independence led by Gandhi, are not to be regarded as instances of 'principled disobedience' as defined in this work. Similarly, in the conceptual framework embraced in this essay, the principled action of those who do not aim at reforming a law or policy, but rather seek merely to exempt themselves from some law or policy, should not be understood as a case of principled disobedience.

17. The breadth and depth of the change sought in revolutionary illegality is why revolution is often associated with, or treated alongside, armed resistance and terrorism. In fact, it is commonplace in the literature on both conscientious refusal and civil disobedience to treat ethically motivated disobedience as one broad category as distinguished from revolution, armed resistance, and terrorism. See e.g. William E Scheuerman, *Civil Disobedience* (Polity Press, 2018) at 63-71; Bedau, *supra* note 4; Cohen, "Civil Disobedience", *supra* note 4; Rawls, *Theory of Justice, supra* note 1 at 319-23; Singer, *supra* note 4 at 83; Habermas, "Civil Disobedience", *supra* note 4; Sabl, *supra* note 4; Smith, *Civil Disobedience*, *supra* note 4 at 2-5.

18. This trait of principled disobedience is paradigmatic of civil disobedience, especially when the latter is understood as an inherently communicative move. For a systematic discussion of this point, see Kimberley Brownlee, "Features of a Paradigm Case of Civil Disobedience" (2004) 10:4 Res Publica 337 [Brownlee, "Paradigm Case"]; Kimberley Brownlee, "The Communicative Aspects of Civil Disobedience and Lawful Punishment" (2007) 1:2 Crim L & Philosophy 179.

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principled disobedience may on occasion cause *disruption*, use *coercion*, and even resort to *violence*. To be sure, principled disobedience does not have to be disruptive, coercive, and violent. In fact, it is not an ideal method of engagement when bringing forward a political project. But neither can these disordering components be excluded from the concept of principled disobedience.[19] In the proposed theoretical construction, incivility—by which I mean the fact that the practice of a disobedient may on occasion be disruptive, resort to coercive means, and even incorporate violent undertakings—does not *ipso facto* turn an ethically motivated act of lawbreaking into a form of unprincipled disobedience. In this context, as a matter of fact (and strategy), such means seem to be almost unavoidable for ethically motivated disobedience to try and put pressure on those empowered with reforming the law. Denying the very possibility that principled disobedience is associated with some degree of disruption, coercion, and violence—however modest it may be—seems to amount to an ideological constraint, as opposed to a plausible conceptual demand. That is to say, there is no conceptual reason to exclude the resort to disruption, coercion, and violence from the concept of principled disobedience.[20] Accordingly, principled disobedience, as I conceive of it, can be argued to consist in more than just a symbolic objection to a given law or policy and to necessitate a dimension of real confrontation.[21]

19. The view that if legal disobedience is to be deemed legitimate, it needs to at least be nonviolent, is central to the liberal approach to lawbreaking. For instance, Rawls explicitly includes nonviolence in his definition of civil disobedience: see Rawls, *Theory of Justice*, *supra* note 1 at 320. The historical reasons explaining why this evaluative move has gained some traction in the contemporary literature are elucidated by Souza dos Santos: see Eraldo Souza dos Santos, "Resisting in Times of Law and Order" (2023) 31:1 Annual Rev L & Ethics 127. The contrary view—that disruption, coercion, and violence do not *ipso facto* disqualify principled disobedience—has been systematically defended: see e.g. Brownlee, "Paradigm Case", *supra* note 18; Brownlee, "Conscientious Objection", *supra* note 4; Moraro, "Violent Civil Disobedience", *supra* note 10; Piero Moraro, "Respecting Autonomy Through the Use of Force: The Case of Civil Disobedience" (2014) 31:1 J Applied Philosophy 63; Moraro, *Civil Disobedience, supra* note 1; Celikates, "Civil Disobedience", *supra* note 4; Celikates, "Democratizing Civil Disobedience", *supra* note 4; Robin Celikates, "Rethinking Civil Disobedience as a Practice of Contestation—Beyond the Liberal Paradigm" (2016) 23:1 Constellations 37 [Celikates, "Rethinking Civil Disobedience"]; Adams, *supra* note 4.

20. Similar views are defended by both Lai and Lim, who argue that including the complete absence of disruption, coercion, and violence from the conceptualisation of principled disobedience is to be understood as an arbitrary and evaluatively loaded move that ultimately imposes too demanding and stringent constraints on the general notion of ethically motivated lawbreaking. See Lai, *supra* note 4; Lim, "Differentiating Disobedients", *supra* note 4; Lai & Lim, *supra* note 4.

21. This point has been specifically made by others: see Celikates, "Rethinking Civil Disobedience", *supra* note 19 at 42-43; Edyvane & Kulenovic, *supra* note 4. This is not to claim that any form of disruption, coercion, and violence is conceptually compatible with principled disobedience. Insofar as principled disobedience is acknowledged to be an act through which a dissenter voices their opposition to a law or policy, by thus entering into communication with fellow members of the community, the resort to disruption, coercion, and violence should be carefully calibrated in order for it not to be incompatible with the overall purpose of engaging with certain others.

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Finally, in consideration of the fact that principled disobedience works within the accepted system, with its underlying values (rather than aiming to overthrow that system), the principles appealed to in this practice are typically those sitting at the very core of the democratic order or constitution.[22] These are the *fundamental political ideals* to which everyone in the relevant community, or polity, can be reasonably assumed to subscribe, as they form the basis of their system of government and political society at large. For conceptual reasons, then, in principled disobedience, lawbreakers engage with others on terms that everyone living in the relevant polity should reasonably be expected to share; that is, principled disobedience is undertaken in the context of a common framework of fundamental political values.[23]

Related to this point, principled disobedients will be bound by that framework and what it entails. So, especially when the penalties for breaking the law imposed by those in power are not blatantly unjust, it is reasonable to expect that those undertaking ethically motivated disobedience should accept the consequences of their breach of the law. This *qualified* and (merely) *presumptive* commitment on the part of a disobedient to go along with the penalties for their lawbreaking is justified as a matter of personal integrity: By assenting to the official reaction, those engaged in principled disobedience show allegiance to the

22. In this context, I would like to refer to the potentially broader approach to ethically motivated disobedience defended by Lim, who allows for the possibility that those undertaking principled disobedience appeal to moral and political principles not necessarily shared within the relevant polity: see Lim, "Clarifying Our Duties", *supra* note 4. I take Lim's approach to be only *potentially* broader than the one I am endorsing here, since in my view principled disobedience must be justified not by values that are *in fact shared* within a polity—this is the view Lim specifically takes issue with—but rather by the fundamental values that *reasonable persons* living in that polity *can legitimately be expected to share*. In other words, Lim criticises the thesis that the principles justifying ethically motivated disobedience need to be widely *accepted* by those living in the relevant political community; the stance I defend here, by contrast, can be summarised in the claim that the principles justifying ethically motivated disobedience need to be *acceptable* by reasonable individuals. This statement is also revealing of the fact that, ultimately, I connect the (ethical) justification of practices of principled disobedience to the ideal of 'public reason'. In other words, I take ethically motivated lawbreaking to be justified insofar as it conforms to, implements, or is coherent with, moral and political considerations that reasonable agents regard as widely shareable and so suitable to be rationally endorsed. In consideration of the fact that the argument I am deploying in this work concerns the *legal* justification, vis-à-vis the *ethical* justification, of principled disobedience, I will not expand on this dimension of my stance any further here.

23. The importance of this component of principled lawbreaking has been emphasised, in different terms and to a different extent, by both Habermas and Rawls in their discussions of civil disobedience: see Habermas, "Civil Disobedience", *supra* note 4; Rawls, *Theory of Justice*, *supra* note 1 at 320, 335-43. At least in pluralistic societies, I take this feature of principled disobedience to be a (substantive) barrier against the possibility to rely on this practice to promote bigotries and other intolerant values. True, principled disobedience can be used to promote several alternative visions of a political community, some of which may well be initially valued by only a minority of the population, and may be anchored to worldviews primarily associated with specific social groups. However, the quality of principled disobedience, as it is introduced here, is not purely formal. In fact, it is best characterised as at least minimally substantial, for (as per the conception devised in this work) principled disobedience is conceptually associated with the appeal to values and ideals that are *rationally defensible* in the public discourse, carried out in the relevant polity. Accordingly, for conceptual reasons, principled disobedience, as I understand it here, should be acknowledged to be unfit to serve every ethical ideal.

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political and institutional system of which they are a part. Such a system is thus recognised as fundamentally valid, however flawed and in need of reform. The justificatory principle underpinning this stance is that the political community and its officials cannot reasonably be expected to cooperate toward a reformist goal if those who disruptively propose the reform selectively embrace the system and its core values by enjoying its benefits while rejecting its non-patently-unfair penalties.[24]

If we condense the foregoing remarks, we get the following concept of principled disobedience. Principled disobedience is a *civic-minded* and *publicizable breach of formal law*, which may even be *disruptive*, *coercive*, and *violent*. Moreover, principled disobedience constitutively incorporates an *intent to reform* some law or policy and *appeals to a set of political ideals* it would be *unreasonable* for its audience public to reject. Precisely in virtue of this appeal, undertaking principled disobedience is associated to a *qualified commitment to accept the consequences of one's challenge to the law or policy at issue*.

Importantly, while this statement offers a snapshot of how principled disobedience is conceptualised in this work—so that we are clear about what we are talking about—it should not be understood as a list of necessary and sufficient conditions to be met in order for a practice to count as 'principled disobedience'. Indeed, for all the clarity such a *more geometrico* approach may bring in identifying the practice and isolating it within the rich panoply of possible kinds of ethically motivated illegality that have emerged historically or may yet emerge in the future, it seems rigid to a fault, and thus phenomenologically inaccurate. It is unfit to take into account the manifold types of principled lawbreaking, for it constructs a theoretical straitjacket that winds up imposing an artificial uniformity on a variegated world.

But while the concept of principled disobedience cannot be straitjacketed into a list of necessary and sufficient conditions without unduly stylising the phenomena to which it is meant to apply, it does afford a set of criteria for differentiating the practice from others that are similar. What the proposed conceptualisation captures is not a checklist of conditions to be met for a practice to be deemed 'principled disobedience', but a *paradigm*, or *model*, of the practice that enables us to pick out its standard cases. The advantage of this paradigm-oriented approach is that it is more flexible than a checklist method for identifying principled disobedience, and thus better equipped to reflect the reality of the practice on the ground, while at the same time setting out constraints through which it may be possible to exclude practices that do *not* qualify as principled disobedience.[25] The paradigmatic model can thus be used as a benchmark to both include and

24. The willingness to accept the punishment or penalty for breaking the law is regarded as key to ethically motivated disobedience by Raz, Sabl, Moraro, and, with greater qualifications, Brownlee, among others. See Joseph Raz, *The Authority of Law: Essays on Law and Morality* (Oxford University Press, 1979); Sabl, *supra* note 4; Moraro, "Violent Civil Disobedience", *supra* note 10; Brownlee, *Conscience and Conviction*, *supra* note 4 at 239-53.

25. On the virtues of the paradigm-oriented methodology, see Brownlee, "Paradigm Case", *supra* note 18 at 337-40.

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exclude practices depending on how they compare to the model. So, on the one hand, one can recognise new practices as principled disobedience if they resemble the model closely enough to capture what is essential or meet its core criteria without satisfying a list of necessary and sufficient conditions. On the other hand, one can exclude other practices that superficially resemble the paradigmatic model but differ from it in other important respects. The paradigm-model approach can therefore serve a useful theoretical purpose in making it possible to discern principled disobedience from conceptually akin—and yet not fully comparable—breaches of law, whilst not locking the distinction into a formula.

3. A Legally Framed Defence of Principled Disobedience

As with any kind of human conduct, ethically motivated lawbreaking can be subjected to rational scrutiny. It is no surprise, then, that legal theorists and political philosophers have long argued for or against the legitimacy of different practices of legal disobedience grounded in principle. In this debate, disobedience has also been defended from the charge that lawbreaking is generally incompatible with the presumptive obligation to obey the laws of the country in which one lives. Such an obligation, insofar as it can be claimed to exist, provides a strong reason against the practice of principled disobedience. This reason, however, is inherently inconclusive. For, on the one hand, a blanket obligation to obey the law may well prove to be unjustifiable (as a number of contemporary legal philosophers and political theorists have argued).[26] On the other hand, this is a merely presumptive, or *prima facie*, obligation, meaning that we can recognise an obligation to obey the law and still claim, without contradiction, that we sometimes have a right to disobey the law or may be morally justified in doing so. So, while there may be a strong presumption against ethically motivated lawbreaking, we should not thereby conclude that the practice has no basis and cannot be defended.[27]

In fact, it is just such a defence that will be mounted in this section, where I will attack the problem of ethically motivated disobedience from a specific theoretical angle: that of the revisionary Kantian approach, a conception I originally introduced to account for the notion of legal obligation.[28] This approach has not yet been explored in relation to principled disobedience. The attempt here will be to do just that, and to provide a *legally* framed defence of principled disobedience as defined in Section 2.[29] But let me first introduce the revisionary Kantian

26. *Cf* generally *supra* note 1.

27. In fact, a number of traditions in moral, political, and legal philosophy have endeavoured to show as much. A systematic and insightful discussion of these traditions, with an emphasis on how they have grappled with the problem of civil disobedience in particular, is offered in Scheuerman, *supra* note 17 at ch 1-4.

28. See Stefano Bertea, *A Theory of Legal Obligation* (Cambridge University Press, 2019) at chs 7, 8.

29. The *legal* quality of the justification offered here is a distinctively unique and innovative dimension of my argument, when compared to other studies of principled disobedience.

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account, because it outlines a distinctive concept of legal obligation that is essential to appreciating the argument that will be offered in what follows.

Two caveats are in order here, before I can proceed. Firstly, my argument justifying (certain forms of) ethically motivated lawbreaking applies specifically and exclusively to instances of *direct principled disobedience*, as distinct from *indirect* principled disobedience. The justification of indirect principled disobedience typically requires a two-part argument to support it. In addition to arguing for the legitimacy of objecting on principled grounds to the law or policy with which they critically engage, disobedients must also justify the decision to single out and break another law or policy that is ethically flawless in order to bring attention to the law or policy they claim to be wrong in principle—this is what, by definition, indirect principled disobedience involves. The argument presented below has the potential to justify (contribute to) the breach of laws and policies that are objectionable in principle. Hence, indirect principled disobedience, which consists in a breach of a non-defective law or policy, does not directly fall within the scope of my justificatory strategy. By construction, then, the latter alone does not have the basis to legitimise instances of principled disobedience wherein no morally or politically faulty law or policy is broken. Which is not to suggest that the argument that follows has no bearing at all on the discussion of indirect principled disobedience. In fact, I believe that it may well play an important role in the *partial* justification of indirect principled disobedience, too: Namely, it can still be relied on to justify the decision to target the law or policy that is regarded as objectionable on principled grounds. However, by itself alone it cannot legitimise the breach of the law or policy that, in the instances of indirect principled disobedience, is disobeyed in order to lead those in authority to reconsider the (different) law or policy that is ethically defective.

Secondly, the argument that follows is to be understood as a contribution to a general, as opposed to a particular and contextualised, justification of principled disobedience. That is, the validity and scope of the argument is not delimited to a

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Take Lefkowitz's and Delmas's accounts of ethically motivated disobedience, for instance. In a nutshell, Lefkowitz claims that those living in a liberal-democratic state have a *moral* right to engage in public acts of civil disobedience. Then, he moves to show that such a right is not inconsistent with the obligation, which is also understood as moral in quality, to obey the law. On this basis, Lefkowitz concludes that those living in a liberal-democratic state have a disjunctive duty: either they have the obligation to obey the law, or they are under the duty to publicly disobey it. In Lefkowitz's construction, such a disjunctive duty is specifically *moral*. See Lefkowitz, "On a Moral Right", *supra* note 4. A related point is made by Delmas, who argues that most of the arguments used to ground political obligation—that is, the presumptive *moral* duty to obey the law—can be shown to justify the requirement to break the law, which accordingly should be disobeyed on principled grounds. See Delmas, *A Duty to Resist*, *supra* note 1. Now, apparently, Lefkowitz's and Delmas's arguments, as well as their conclusions, are *moral* in quality. Likewise *moral* are both the disjunctive obligation (Lefkowitz) and the presumptive obligation (Delmas) that we have to disobey the law. By contrast, the point that I am making in this contribution is that we have a *legal*, as distinct from a *moral*, obligation to undertake principled disobedience when certain circumstances occur. In other words, my claim is that the obligation to disobey the law on principled grounds has a characteristically legal quality—it is a legal duty, not a moral one. Hence the originality of the proposed account of principled disobedience, when compared to Delmas's.

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specific jurisdiction, with its own distinctive and peculiar standards of law. As a matter of fact, the historically and spatially situated legal systems we are familiar with may be more or less tolerant toward ethically motivated disobedience. And, depending on the time and location where principled disobedience takes place, those engaging in principled disobedience are (or are not) in the position to rely on certain specific contents of the legal system that applies to them—general standards as well as past case laws—when arguing for the legitimacy of their conduct in breach of law. Hence, it may be the case that disobedients are able to count on justificatory arguments that are specific to, and rooted in, the particular legal context in which the relevant instance of ethically and motivated breach of law occurs. By contrast, the argument that I am about to introduce is claimed to have some force in all legal systems, independent of their specific contents. In that sense, then, it should be considered a part of a general theory aimed at justifying (some instances of) principled disobedience.

3.1 The Revisionary Kantian Account in a Nutshell

The revisionary Kantian account conceptualises legal obligation as a *justificatory reason sourced in law* and *categorically requiring* certain courses of conduct to be carried out on *grounds of intersubjectivity*. The main thrust of legal obligation so defined is that it places on our action certain constraints that cannot be overridden on the basis of self-interested or otherwise personal considerations, for these constraints are grounded in a rational understanding of what is required of us in a setting that cannot be made to depend on our own subjective sense of what ought to be done where others are concerned. More analytically, legal obligation can be described as marked by four related features. First, it states what *ought* to be done, as opposed to what it *would be advisable* to do or what *the best course of action* would be. It is therefore a normative statement of action that is *necessitating* rather than just recommendatory. Second, what is prescribed by a legal obligation holds *categorically*, independently of what those who are subject to it may think. Stated otherwise, that someone should take exception to a legal obligation for any reason relating to what *they* view as right does not make the obligation any less binding as a matter of what the law requires. Third, legal obligations bind in a genuine sense rather than in a perspectival, or otherwise confined, sense, meaning they are grounded in practical rationality rather than being conditional on our recognising the validity of the legal system and our role within it. Fourth, the rationality by which legal obligations are underpinned is one of 'intersubjective justificatory reasons', meaning that these obligations bind us even if the prescribed behaviour does not correspond to our advantage (paradigmatically construed as self-interest).

It is this last feature—intersubjectivity—that is pivotal to legal obligation, as the revisionary Kantian account conceptualises the kind of obligation engendered by the law. For all the other distinguishing features of legal obligation introduced above—necessitating, categorical, and non-perspectival quality—are ultimately dependent on the recognition of the intersubjective nature of the type of

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justificatory reasons in terms of which an obligation is accounted.[30] Hence, the revisionary Kantian account establishes a conceptual dependence between certain kinds of reasons and legal obligations: A legal obligation exists by virtue of the fact that a requirement of law is justified by intersubjective reasons making the violation of that requirement genuinely wrong and, thus, categorically necessitating the compliance with that requirement. That is, legal obligation is a categorical demand to act as prescribed by law that is fundamentally and distinctively justified by reasons that pertain not just to one person in isolation from everyone else but to all persons who are interconnected in virtue of a broader community to which they all belong, such that the action of one affects the welfare of at least some of the other people so networked. This makes intersubjective reasons—the reasons fundamentally defining legal obligation—other-regarding. On this basis, they can be contrasted with subjective reasons, which are self-regarding. Subjective reasons are self-regarding in that (a) they only take into account the good, interests, needs, or welfare of one person (the acting self); or (b) they do take a broader range of interests into account, but do so from the standpoint of what the *acting self* values and believes in, regardless of what others may value or believe in. Intersubjective reasons are, instead, other-regarding in both of those senses: (a) they take a broader range of interests into account (ones that are not exclusive to the acting self); and (b) they do so from a standpoint that is not specific to the acting self but is inclusive, appealing to values, beliefs, and concerns that can be shared by others as well (those with whom the acting self interacts or is otherwise connected).[31] The space of intersubjective reasons, then, is not that of an individual's advantage over others but that of what can be *justified to others*, and is not complete until all interests and viewpoints are taken into account (including those of people, beings, and entities that cannot speak for themselves).

This means that to ignore or contradict an intersubjective reason is not to ignore good counsel or strategy (something that might be useful to us regardless of how others stand affected by our decision to act in one way or another). It amounts to doing something *wrong*, something that we ought not to do even if doing it would be to our advantage, and we ought not to do it because, if we did that thing, that would be tantamount to ignoring the interests and concerns of others. Accordingly, we are exposed to one kind of criticism if we ignore subjective reasons, and to another kind of criticism if we ignore intersubjective ones. In the former case we can be criticised as having acted *ill-advisedly*, and we need not justify that course of conduct to anyone else (because it is only our own

30. In this work, I do not have the space to support this (potentially controversial) claim by argument. However, a detailed and analytic argument for this statement is provided in a previous work: see Bertea, *supra* note 28 at 217-25.

31. Importantly as well, the broader range of interests taken into account in proffering intersubjective reasons is not limited to those of fellow human beings but also includes those of social groups, nonhuman animals, and future generations of human and nonhuman animals. It therefore includes instrumental interests in protecting public goods and the environment, among many others.

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interest that is at stake). In the latter case we can be criticised for acting *wrongly* (not just inadvisably) precisely because at stake are not just our own interests but also those of others affected by our action.

Intersubjective reasons are therefore endowed with a kind of justificatory force that subjective reasons lack. At the same time, and for the same reason—i.e., the need to take everyone's interests into account and justify our action in virtue of those interests—the force of intersubjective reasons is mandatory, or necessitating, as distinct from the less demanding, recommendatory force of subjective reasons. And the inclusive standpoint that lends intersubjective reasons their distinctive mandatory force—a standpoint necessitated by the inclusive (intersubjective) framing of the problem they are meant to solve—also makes them not only conceptually bound up with obligation, inclusive of legal obligation, but also uniquely equipped to serve as a *ground* for obligation, legal or otherwise.

3.2 Principled Disobedience as Legal Obligation

The conception of legal obligation just summarised as part of the revisionary Kantian account can be used to shed new light on the debate on ethically motivated lawbreaking. To see this, we need to start from the intersubjective basis on which—according to this account—obligation is understood to rest, for this will make it possible to appreciate the conceptual continuity that exists between principled disobedience and legal obligation. This continuity forms the basis of the argument that will be unpacked in what follows, and the claim will be twofold. Firstly, it will be noticed that principled disobedience speaks the same language as legal obligation, in that both constitutively appeal to intersubjective reasons as their basis. The second claim, flowing from the first, is that there will be occasions on which principled disobedience will actually amount to a legal obligation, and will do so in particular when the underlying reasons match, such that to break the law on a principled basis is to act in accordance with what intersubjective reasons grounded in law support. Or, stated otherwise, when the case can be successfully made that principled disobedience is in fact supported by the same intersubjective practical reasons underpinning the law, then we will have a legal obligation not to comply with the law, this despite what those in authority think.

Let me expand on this dual claim. I have just asserted that, on the revisionary Kantian account, it is only on the basis of intersubjective reasons that the law can obligate us to do anything. The same is true of principled disobedience: By its very internal structure, principled disobedience too appeals to non-subjective reasons, since principled disobedience, as it is defined here, consists in an appeal to collective, and, thus, widely shareable, or not-merely-subjective, political ideals. Hence, in either case, we need an intersubjectively valid justification for doing what it is that we are doing. Which is to say that whether we are *breaking* the law on principled grounds or doing what the law *requires* us to do, we need to be acting on the basis of practical considerations at once rational and intersubjective. This means that complying with one's legal obligations and undertaking

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principled disobedience share an essential trait: Both a course of conduct carried out in compliance with a legal obligation and an act of principled disobedience are forms of behaviour that are *grounded in intersubjective reasons*. For complying with a legal obligation means to act in accordance with legal provisions buttressed by rational and intersubjective considerations; likewise, engaging in an action of principled disobedience consists in opting for a course of conduct that finds its justification in intersubjective reasons—the performance of principled disobedience is dictated by the concerns of the legal community at large, which concerns, as distinct from the sole interests of the agent, are used by disobedients to establish which course of conduct ought to be undertaken. There is, thus, a parallel between (i) doing what a legal obligation requires, and (ii) engaging in principled disobedience. The parallel is secured by the fact that both activities are supported by the same kind of considerations.

This continuity is hardly menial. For, once the common basis that principled disobedience shares with legal obligation is recognised, we should also be able to envision scenarios in which the reasons that principled disobedience and legal obligation share are not just broadly *intersubjective* reasons but also specifically *legal* reasons. And when that happens, principled disobedience becomes a *legal* obligation. So, we have it that when (a) noncompliance is principled (it is not self-interested and is supported by intersubjective reasons, vis-à-vis subjective considerations), and (b) the reasons appealed to are grounded in the law, it actually becomes a legal obligation to break the law. That is, in those cases in which the *very same* intersubjective reasons that back a legal requirement are appealed to by those engaging in principled disobedience in order to support their lawbreaking, principled disobedience is best conceptualised as the compliance with one's legal obligation. As a result, possibly (albeit not necessarily) in performing an act of principled disobedience, the agent aligns their behaviour with what is supported by the very practical reasons that trigger legal obligations.

One might be tempted to ask at this point, how likely are these scenarios to occur, in which the reasons for noncompliance specifically align with those for legal obligation (in that they are at once intersubjective and grounded in the law)? What I would suggest in response to this question is that these scenarios are more than a mere theoretical possibility, especially in legal systems which consist not only of rules but also of open-textured standards and constitutional ideals, and which also recognise human rights. Indeed, unlike rules—which tend to be straightforward, with largely uncontroversial interpretations based on a well-established legal practice—open-textured standards, constitutional ideals, and human rights are typically apt to be interpreted in different, even divergent, ways within a legal community. As a result, in legal systems inclusive of open-textured standards, constitutional ideals, and human rights, the act of breaching the law has the potential to be conceptualised as an *appeal* to the law itself—that is, to an interpretation of the law that is not recognised by officials. This is key to the argument being made here: that principled disobedience can be sourced in the law even as officials disagree with that interpretation. The sourcing and the disagreement can be held together without contradiction precisely because

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the legal material appealed to (open-textured standards, constitutional principles, and human rights) is malleable at the interpretative stage. In a nutshell, whenever (a) an act of noncompliance is principled and based on intersubjective reasons, (b) these reasons are specifically legal, that is, grounded in the law, and (c) the law appealed to is open-textured, we have a scenario in which such noncompliance can be recognised as a legal obligation. It is (c), in particular, which secures the *actual* possibility of the convergence, for in an open-textured legal system the conventional understanding of what the law says can always be challenged by pointing out an unconventional understanding that contradicts the established line on the basis of the very reasons and concerns in which that line of interpretation is grounded. Nothing can guarantee that the orthodox interpretation of the law should prevail over the radical one by which it is being challenged. But if the orthodox interpretation does not prevail, the unorthodox challenge will make noncompliance an obligation.

The point here is not so much about how likely it is that an unorthodox reading of the law can successfully challenge the orthodox one, perhaps depending on the cultural or political mood of the moment. Rather, the point is that the open texture of the law (in systems of law that do have this characteristic) makes such a dual reading possible to begin with. Also important is that this possibility resolves the apparent paradox whereby we can fulfil our legal obligations not by doing what the law requires and what those in authority expect and demand from us, but by *breaking* the law. This is why principled disobedience is traditionally described as an unlawful or illegal practice. And now we can understand how this practice can instead be qualified as the fulfilment of a legal obligation. For it prompts us to rethink what counts as legally due in the first place. It can do so when the intersubjective reasons to which it appeals cut to the heart of what the law itself understands as its own legal reasons, and when this appeal is made in an open-textured system—one that allows for such a deeper probing of the law, making it possible for the 'mainline' or official understanding of the law to yield to the challenge posed by the noncompliant. Once the challenge gains a foothold, it has already invited us to cast a fresh look at what the law requires. What is conventionally understood to be legally obligatory now takes on the flavour of a simple demand made by those in power. And it becomes apparent that this demand, previously understood as law, needs to be disobeyed because this is what the law itself requires, at a deeper, more genuine level than that of ordinary compliance with legal prescriptions, which by now begin to look more and more like mere demands to comply with the issuances of those holding the political power.

There emerges here a key distinction that helps us dispel the apparent paradox in the idea of *doing what the law requires by breaking certain mandatory laws*. This is the distinction between what the law requires *as a matter of enforcement and authoritative issuance*, or what the law commands us to do, and what the law requires *as a matter of principle*, on the basis of the intersubjective reasons in which the law itself is grounded. There is no doubt that both elements coexist in any system of law—for what would the law be without the power to issue orders and enforce legal provisions and their authoritative interpretation? But

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it is equally misconceived to reduce the law to this coercive element. Indeed, such an extreme brand of legal reductionism would make it conceptually impossible for principled disobedience to amount to anything like a legal obligation. For if legal obligation is reduced to its authoritative issuance, then anything that is in violation of the law, including principled disobedience, would be illegal, and that would be the end of that—no further discussion. So, it is only when we can distinguish authoritative demands from legal obligation that it becomes possible to make a case for principled disobedience as something other than plain lawbreaking. This anti-reductionist distinction between authoritative issuance and legal obligation—along with the attendant possibility of reading more into the law than what it authoritatively commands—is precisely what the revisionary Kantian account of legal obligation argues for. On this account, as noted, legal obligation cannot be reduced to any set of requirements set forth in the law and enforced through the state's coercive apparatus. For a legal obligation contains the *reasons* why any such set of requirements must be complied with. These reasons, as discussed, are intersubjective and grounded in legal principle. Only with that recognition, then, can principled disobedience be made out to be anything other than what it looks like at a cursory glance—namely, an illegal practice, and instead be conceptualised as something we may actually have an obligation to engage in.

In a nutshell, on the account I am defending here, (i) to engage in principled disobedience is to depart from what officials say the law is; (ii) however, when we do so by appealing to intersubjective reasons, and (iii) when these intersubjective reasons are sourced in the law, then (iv) the principled disobedience they support is best conceived as the fulfilment of a legal obligation. This conclusion is possible on the revisionary Kantian account, on which it is one thing to comply with an official statement of the law and another to be committed to its underlying intersubjective reasons for action. On this account, there can be no obligation without the support of those reasons. When these two sources of obligation are aligned, legal obligation does not give rise to any issue (for what the law requires as a matter of formal statement or authoritative issuance is also what intersubjective practical rationality recognises as obligatory). But when they are not aligned—that is, when the official statement of what the law requires is contradicted by intersubjective reasons for action sourced in the law itself—then the principled disobedience grounded in those reasons becomes a legal obligation.

What needs stressing here is the distinction drawn between the official statement of what is legally required and what the law demands of us on the basis of intersubjective reasons sourced in the law itself, where an appeal is made to the law's core principles. If these two ideas are conflated into a single one—equating authoritative issuance, or what the authorities command, with the reasons for those issuances and commands—we will be locked into a mode of thinking in which principled disobedience is always, by definition, illegal—a straightforward breaking of the law. Only by recognising these two levels of operation, as the revisionary Kantian account of obligation calls for, is it possible to understand legal obligation as something that cannot be reduced to an official statement

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of what the law requires us to do but rather couples this statement with the reasons that back it up. Only in this way can these statements of law and what is officially demanded of us be put to critical scrutiny—under the test of what practical rationality requires of us on the basis of the intersubjective reasons that are grounded in legal material. And only through such critical scrutiny can the official statement of law be challenged. In this scenario, the intersubjective reasons on which the challenge is based are sourced in the law. Accordingly, the challenge is mounted not in opposition to the law but *within its boundaries*. This means that principled disobedience can assert itself as a legal obligation despite the conventional understanding of it as an act of lawbreaking.

3.3 Further Remarks and Family Resemblances

The account of legal obligation just introduced is conceptually akin to the legal strategy known as 'reconciliation'.[32] On a reconciliatory perspective, principled disobedience is an act that only superficially conflicts with existing law: Whilst principled disobedience or noncompliance breaks the law as understood by those in authority and as conventionally applied, it is best understood not as a breach of law but as a challenge to the way in which the rule of law has been followed up to that point. Reconciliation is thus aimed at harmonising legal compliance with certain forms of legal disobedience, showing that any inconsistency between the two is not deep but superficial, such that what appears at first sight to be an illegal act is actually a way to engage with the law at a deep level, where disobedience does not depart from what the law requires but rather converges toward it. Not unlike the standard reconciliation strategy, my revisionary Kantian argument urges us to focus not on conflict at the surface level but on the compatibility that can be found at a deep level.

What fundamentally *distinguishes* my argument from the reconciliation strategy, though, is its insistence on legal obligation rather than on law. This means that, far from entailing a redefinition of the law, as is the case with standard reconciliation strategies, the revisionary Kantian argument set out above is grounded in the distinction between what the authorities require us to do on the basis of their reading of the law and legal obligation, by which is meant what the law requires, as this requirement is supported by practical rationality in its intersubjective mode. It follows that whenever those in power fail to ground their directives in intersubjective reasons, a gap potentially opens between such directives

32. An overview (and criticism) of this approach is offered by Schauer, who notes that the reconciliation strategy has a "distinguished history," with contributions by legal theorists (i.e., Dworkin) as well as politicians (Schauer refers to the actions of US presidents with different political outlooks, such as Abraham Lincoln, George W. Bush, and Barack Obama). Frederick Schauer, "Official Obedience and the Politics of Defining 'Law'" (2013) 86:6 S Cal L Rev 1165 at 1180. TRS Allan also offers a discussion of legal disobedience deeply shaped by a reconciliatory perspective: see TRS Allan, "Disclosure of Journalists' Sources, Civil Disobedience and the Rule of Law" (1991) 50:1 Cambridge LJ 131; TRS Allan, "Citizenship and Obligation: Civil Disobedience and Civil Dissent" (1996) 55:1 Cambridge LJ 89.

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and our legal obligations. This gap is what enables one to conceive of principled disobedience as a legal demand, precisely by calling attention to the perceived misalignment between the authoritative pronouncement of what we are obligated to do and what the law requires us to do as a matter of legal principle. If this argument stands, then it becomes a matter of legal obligation to disobey the authoritative pronouncement at issue. Accordingly, the act of noncompliance cannot be construed as contrary to a requirement of law. Quite the opposite: Because the noncompliance is principled *and* based on intersubjective reasons appealing to legal standards, it must be understood as an *affirmation* of the obligations engendered by the law. That is, disobedience is to be regarded as an attempt to engage critically with—and uphold the demands of—law, even if that means acting contrary to the issuances of those in positions of authority.

Key to this conception, and what uniquely distinguishes it from the reconciliation strategy in all its variants, is this last remark about *fulfilling* a legal obligation, rather than re-envisioning the law, and about the emphasis the conception places on the distinction between what is demanded of us by authorities issuing directives on the basis of what *they* take the law to be and what the law *itself* requires on the basis of the intersubjective reasons exchanged in working out the law's core principles. Importantly, the point of this proffering of reasons is not to *reshape* the law but to come to an understanding of what it really requires of us. In other words, the conception does not ask us to intervene on the law itself, where the law might be argued to say one thing at a first stage and another at a second, all-things-considered stage that would give us a more genuine picture of the law. Nor does the conception ask us to devise a conceptual framework that converts the narrowly illegal into the broadly legal, as is the case with standard reconciliatory theories. Rather, what the revisionary Kantian conception of legal obligation does ask us to do is to consider the law itself as a source of obligations in a way that may or may not coincide with obligation under an authoritative issuance—that is, with what the authorities require us to do on the basis of the powers conferred on them or on the basis of what they say is required of us under the law. None of this is to reconceptualise the law itself.[33]

Apart from this difference between the revisionary Kantian conception of legal obligation and the reconciliation strategy, the two approaches reach a

33. Incidentally, this means that, in the theoretical framework put forward in this essay, instances of principled disobedience are not (to be primarily understood as) designed to raise legal test cases against the constitutionality, or even the legality, of the authoritative understanding of existing provisions. True, the argument that, on occasion, disobeying the law on principled grounds is tantamount to fulfilling a legal obligation that those in power fail to recognise is legal in quality. Accordingly, the argument could well be used in court, should a legal action be brought at some point. However, the main purpose of an act of principled disobedience, as it is conceptualised here, does not consist in making a court rule on the relevant issue. Quite the contrary: in the proposed theoretical construction, principled disobedience is better understood chiefly as the (out-of-court) statement of an existing legal obligation than as the manufacturing of a dispute giving certain individuals or groups the opportunity to take a legal action with the intention of challenging the consolidated interpretation of existing standards of law. Hence, in my view there remains a *conceptual* distinction between principled disobedience and legal test cases.

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similar conclusion when it comes to principled disobedience. For on both approaches we are asked to recognise that this practice does not necessarily conflict with the law, even if it is contrary to the law such as it is enforced by those with legal authority. The conceptual kinship between the two approaches, then, is owed to the distinction they both introduce between two ways in which the law can bind those who are subject to it: by way of authoritative issuance and enforcement, on the one hand, and by way of its inherent rational force, on the other. This also means that, despite the difference between the two approaches, they are both alike in conceiving the rule of law as a genuinely *normative* construction, on which the law is subject to rational critical scrutiny and cannot be reduced to a command model—one that views the law as whatever the authorities say the law is, such that to observe the rule of law is to observe a behaviour of compliance with that authoritative statement of the law.

This takes us to a further commonality worth noting. Which is to say that the revisionary Kantian conception of legal obligation shares with the standard version of the reconciliation strategy an approach to legal obligation that is neither essentially moral nor political but legal. On this legal approach, principled disobedience does not put itself forward as a moral stance or a political statement—a commitment to a moral or political conception of the way law and society ought to look like—but rather chooses to work *within* the law. Or, to put it more accurately, even when principled disobedience does seek change on a moral or political basis, it understands itself as an expression of allegiance to the law. As much as the practice may count as a form of *ethically* motivated lawbreaking, what it means for it to be *legal* in its approach is that the practice is undertaken as a form of engaging with the law and thus acknowledging its rule. In the legal tradition, in short, principled disobedience consists in *breaking* the law (in the official sense) as a way of *upholding* the law—that is, for the sake of law and in the name of legality.

Importantly, and this goes to the core of the revisionary Kantian conception just outlined, the only way in which it is even conceivable that one could uphold the law by breaking the law is if we recognise the dual dimension of legal obligation. On this view, what the law requires (i.e., what legal obligation comes down to) is compliance not with a set of posited standards and orders but with the principles the law is understood to express at its core. It is here that principled disobedience can carry out its function as a practice devoted to critiquing the legal order, and doing so from within, on its own terms. As a result, principled disobedience can be described as suspended between lawbreaking and legal compliance—as an act that, in breaking the law, addresses the intersubjective concerns of the legal community in which it is carried out, and that on this principled and legal basis shows that it may actually be an obligation to break the law.[34]

34. In that respect, not unlike civil disobedience as conceptualised by Jürgen Habermas, principled disobedience, as I construct it, is best understood as an act "suspended between legitimacy and

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4. A Real-World Case

The argument just introduced is designed as a general template for the justification of (some instances of) principled disobedience. As a result, its validity and force are not established by reference to practices of ethically motivated lawbreaking, as those practices find their ways into existing legal systems and societies around the world. However, the theoretical framework introduced in this study is not completely detached from the real world and its practices of principled disobedience. In fact, it bears a close connection with at least some instantiations of such a form of lawbreaking. That is to say, it is not unprecedented that those engaging in principled disobedience present their action as an engagement with the existing law and the obligations it engenders. In this section, I will introduce one real case of principled disobedience that can be at least partly justified on legal grounds and thus can be framed as a legitimate understanding of the obligations one has under the law along the lines theorised here.

This is the practice of 'eviction resistance' initiated in Spain in the early 2000s. The practice can be summarised as follows. Since 2008, a significant number of Spanish families have been at risk of losing, or indeed have lost, their homes for not being able to pay their mortgages when the economy collapsed.[35] As a result of the global financial crisis at that time, Spanish individuals and businesses alike experienced a dramatic predicament resulting from a combination of job insecurity and a real estate bubble leading to the devaluation of their houses. In that context, an extraordinary number of people were suddenly and unexpectedly unable to continue paying their mortgages. As a reaction to this circumstance, the Platform for People Affected by Mortgage (PAH) was established, with the aim of providing support to the affected families, stopping evictions, and influencing the agenda of the political parties in Spain.[36] The activists of the PAH engaged in a variety of activities and national campaigns, among which it featured a practice of principled disobedience aimed at preventing evictions from taking place. This practice consisted in gathering a sufficient number of people and peacefully blocking the entrance to the properties where eviction orders were to be delivered. That way, the legal process leading to the eviction of those living in properties for which the mortgages were unpaid could not be completed. In addition, the activists of the PAH occupied empty properties

legality," namely, an act appealing to the very foundations of the legitimacy of the legal system within which it takes place. Habermas, "Civil Disobedience", *supra* note 4 at 112.

35. García-Lamarca and Kaika claim that in Spain, approximately half a million people lost their homes in the eight years since 2008: see Melissa García-Lamarca & Maria Kaika, "'Mortgaged Lives': The Biopolitics of Debt and Housing Financialisation" (2016) 41:3 Transactions—Institute of British Geographers (2016) 313.

36. The Platform for People Affected by Mortgage (PAH) was originally established in Barcelona and subsequently expanded to different regions in Spain. As of March 2017, the PAH had 239 nodes that worked independently on a local basis, although coming together in regional and national assemblies to discuss general strategies and tactics. See PAH, "From the real estate bubble to the right to housing" (last accessed 11 February 2025), online: afectadosporlahipoteca.com.

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owned by the banks that had successfully evicted people from their properties, and reallocated them to evicted families.

The Spanish political authorities regarded this set of practices as breaches of the Spanish law, especially of the *Mortgage Law* in force in Spain at the time.[37] On their part, in addition to appealing to ethical grounds to justify their eviction resistance, the activists of the PAH offered a distinctively legal defence of their practice.[38] They claimed that resisting eviction under the circumstances was justifiable under Spanish Law. In their argument, they specifically appealed to Article 47 of the *Spanish Constitution* and Article 25 of the *Universal Declaration of Human Rights*, both of which protect the right to housing.[39] Article 47 of the *Spanish Constitution* could be argued to provide an especially strong protection to the right to housing. For not only does it entitle Spanish citizens to "enjoy decent and adequate housing" but it also introduces an obligation for public authorities to "promote the necessary conditions" and "establish appropriate standards" instrumental to "make this right effective, regulating land use in accordance with the general interest in order to prevent speculation."[40]

The right to housing, as it is enshrined in both the *Spanish Constitution* and the *Universal Declaration of Human Rights*, was thus understood by the activists of the PAH as a safeguard from eviction under the circumstances in which people found themselves in Spain in the early 2000s. In particular, the activists of the PAH found it legally objectionable for a bank that benefitted from the taxpayers' contributions enabling it to continue operating—from the very start of the financial crisis the Spanish government had bailed out some banks with public funds—to evict some of those same taxpayers from their own homes. It was then claimed that the Spanish *Mortgage Law*, which allowed banks to evict those who failed to pay their mortgages, had to be read in conjunction with the right to housing declared in the *Spanish Constitution* and, on this basis, applied in a more lenient and tolerant way under the exceptional circumstances Spain was going through. That way, the argument continued, people in financial distress due to unforeseen and unpredictable occurrences had to be afforded the *legal right* not to be evicted, in accordance with the constitutional right to housing. Correspondingly, political authorities were claimed to have a *legal obligation* to find a distinctive and unprecedented balance between the financial interests of the lenders and the right to housing of those who became suddenly and unpredictably unable to pay their debts. That is to say, on this legal construction, in the exceptional situation Spain was experiencing in the early 2000s, most of the planned evictions had to be considered not just morally questionable and

37. See *Mortgage Law 1946* (Spain), BOE Document-A-1946-2453 [*Mortgage Law*].

38. Peiteado Fernández conducted a detailed analysis of this dimension of the action taken by the activists of the PAH: see Vítor Peiteado Fernández, "The struggle for the right to housing in Spain" in Jens Kaae Fisker et al, eds, *The Production of Alternative Urban Spaces* (Routledge, 2019) ch 7.

39. See *Constitution Española (Spanish Constitution),* 29 December 1978, BOE-A-1978-40001 at art 47 [*Spanish Constitution*]; *Universal Declaration of Human Rights*, GA Res 217A (III), UNGAOR, 3rd Sess, Supp No 13, UN Doc A/810 (1948) 71 at art 25.

40. *Spanish Constitution*, *supra* note 39 at art 47.

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politically objectionable but also legally dubious. Therefore, one should be able to rely on the legal obligation of political authorities to protect the right of housing, pursuant to Article 47 of the *Spanish Constitution*, to justify the practice of disobeying the Spanish *Mortgage Law*.

The legal grounds of the evictions that were taking place in Spain at the time was further challenged by the European Court of Justice (ECJ) which, in a landmark 2013 ruling, established that the Spanish *Mortgage Law* was not compatible with the EU Council Directive on unfair terms in consumer contracts, insofar as it prevented courts from stopping evictions based on unfair mortgage agreements and predatory lending clauses.[41] As EU directives are legally binding standards on Member States—this is the so-called 'vertical direct effect' of an EU directive—and become directly applicable once the time limit for implementation by Member States has expired, the ruling bound the Spanish Government to reconsider the legality of the *Mortgage Law* in force in Spain at the time. The ECJ's decision struck a chord among the activists of the PAH, who used it to integrate their original argument and to reinforce their conclusion that the harshness of Spanish law and practice concerning eviction was legally untenable, as it conflicted with a legal obligation political authorities have under EU law.

This is of course not the place to either comment on the merits of the argumentative strategy relied on by the activists of the PAH, or to assess the legal wisdom of the ruling of the ECJ. Instead, what the practice of eviction resistance undertaken by activists of the PAH is instrumental in showing in this context is the fact that understanding certain forms of principled disobedience as the implementation of the obligations one has under the law—the understanding outlined in this work—is more than just a theoretical hypothesis.

5. Conclusion

What does it mean to be bound by the law, and what, if anything, does the law require us to do beyond complying with its rules such as they are enforced? And can the law require us to so comply to begin with? It is within these framing questions that the foregoing discussion unfolded. It did so not by diving directly into them but by testing the limits of legal obligation, and specifically by looking at cases in which we may actually have an obligation to break the law. These cases fall under the general heading of what I have termed 'principled disobedience', understood as a capacious notion of ethically motivated lawbreaking, as distinguished from the standard lawbreaking of the self-interested individual and conceptualised as an open and deliberate breaking of a given law or a violation of policy—a breach that needs to be made public. While, as noted, the

41. See *Mohamed Aziz v Caixa d'Estalvis de Catalunya, Tarragona i Manresa (Catalunyacaixa)*, C-415/11, [2013] 3 CMLR 5; EC, *Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts*, [1993] OJ, L95/29.

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practice is ethically motivated, the case for it was argued not on moral or political grounds but rather on legal grounds—namely, by appealing to intersubjective reasons invoking distinctly legal principles and constitutional ideals. In order to complete the argument, I appealed to the revisionary Kantian account of legal obligation on which the latter cannot be reduced to an authoritative issuance. On this account, the law couples these issuances—what the *authorities* say the law requires us to do—with supporting reasons by which they can be justified. And only with those reasons do we have an adequate view of legal obligation. While this does not work out to a general right to engage in principled disobedience, nor is the point to show that the practice is morally or politically justified, the account does enable us to see that principled disobedience can conceptually be framed as an obligation—a presumptive obligation to disobey the law on grounds rooted in the law itself. The thrust of the argument was therefore that there is a conceptual space in which principled disobedience can be conceived, without contradiction, not just as a practice we *can* engage in but one we *ought to* engage in *as a matter of law*.

In making this last claim, the argument builds on a legal tradition that sets itself up in opposition to the recent anti-legalist turn in the debate on principled disobedience.[42] This means that, as much as ethical considerations may factor into a justification of principled disobedience and those who engage in the practice may well do so out of moral conviction or may have a political project they are trying to advance, that is not the basis on which the revisionary Kantian account of legal obligation here defended seeks to justify principled disobedience. Stated otherwise, it is on a distinctly *legal* basis that the revisionary Kantian account proceeds in offering such a justification. The reason for this choice is that, in this age of pluralism, there is no single ethical worldview that can hold sway as a common normative basis on which a polity can conceivably be governed. That is, today there is no single conception of the good, be it moral or political, that can be put forward as a basis on which to justify the binding force of the law, with the obligations the law imposes on its subjects, precisely because they hold a plurality of legitimate worldviews and therefore cannot be made to commit to a single one of those views. Hence the idea of seeking a legal framing for our social conduct. The idea, in other words, is to construct the law as a vehicle for what different individuals can reasonably expect of one another given the different, and even incompatible, interests and conceptions they espouse. This is the idea of the law as a relational construct, a framework enabling different people who depend on one another for their welfare and well-being to find a common basis on which to interact without wronging one another. This basis, as discussed, is one of intersubjective reasons—reasons that different individuals can be asked

42. Among the proponents of the anti-legalist approach to ethically motivated disobedience are Lovell, *supra* note 4; Douzinas, *supra* note 4; (2013), Milligan, *supra* note 4; Celikates, "Civil Disobedience", *supra* note 4. For a critical view of the anti-legalist approach see William E Scheuerman, "Recent Theories of Civil Disobedience: An Anti-Legal Turn?" (2015) 23:4 J Political Philosophy 427.

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to accept despite their competing interests. These intersubjective reasons are at the same time about what each person (a) *may* do without harming others with whom they are in a relation of interdependence, and (b) *ought to* do on that same rationale. It is within this interrelational framework that principled disobedience finds its justification as a practice that is not just permissible but may also be obligatory. And the basis for this justification lies in the need to uphold the law as an architecture for the interchange that must take place among interdependent individuals, an architecture for resolving normative controversies arising within pluralist societies.

Now, I do recognise that even in a democratic order the law—however conceptualised, even as an overarching framework for resolving the social divergencies—bears in itself the risk of ending up marginalising some people and social groups. But it is nonetheless the best tool we have to achieve inclusion. Or, at least, law *at its best* enables an inclusive conversation on public affairs. What ultimately explains the choice for a legally framed and law-bound approach to principled disobedience, then, is the need to work our way around the ethical gridlock we would be sure to grind into if we had to base our polity on a common notion of what is good for us as individuals and as a society. If the law can serve as a common normative framework within which to work out the divergencies experienced in our interchanges in society, as I believe it can, and if we can appreciate that this framework cannot sustain itself on the basis of authoritative edicts alone but must be nurtured through a critical appeal to intersubjective reasons, then we have an argument for resting principled disobedience on a legal basis. For otherwise we would lose the all-encompassing reach which the law, at its best, can afford—and which, at any rate, is unlikely to be achieved through any alternative system of social governance.

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Stefano Bertea is currently an Associate Professor at the Law Department of the University of Messina. In his academic career, Stefano Bertea was a Marie Skłodowska-Curie research fellow at the University of Edinburgh and at the Goethe University, a Maria Zambrano research fellow at the University of Barcelona, a senior research fellow at the University of Antwerp, an associate professor at the School of Law of the University of Leicester, a DFG research fellow at the Goethe Universität in Frankfurt am Main, a visiting research fellow at the University of Amsterdam, an Alexander von Humboldt research fellow at the University of Kiel, a visiting research fellow at the Max Planck Institute for "Comparative Public Law and International Law" in Heidelberg, a visiting research fellow at the Max Planck Institute for "Crime, Society, and Law" in Freiburg, a visiting professor at the University of Verona, and a visiting professor at the University of Modena. The output of Stefano's research work has taken the form of monographs published by leading academic publishers, such as Cambridge University Press and Hart/Bloomsbury, articles appeared in world-class specialist journals,

and contributions to internationally renowned edited collections. He has also edited (or co-edited) three collections in legal philosophy (for Routledge, Hart/Bloomsbury, and Springer) and has been invited to present the results of his research activities at academic institutions around the world. Stefano regularly serves as a book reviewer for major academic publishers and as a journal referee for leading academic journals. Email: bertea.stefano@gmail.com

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