Self-Defense and Violent Protest*

Edmund Tweedy Flanigan

Abstract

It is an orthodoxy of modern political thought that violence is morally incompatible with politics, with the important exception of the permissible violence carried out by the state. The commonsense argument for permissible political violence denies this by extending principles of defensive ethics to the context of state-subject interaction. I investigate this argument and its limits, and I find that defensively grounded permissions to self-defense are often perversely defeated in that context. I argue that in light of this, subjects enjoy permissions to violent protest, understood as apt expressions of rejection of this perversity. This proposal offers a novel solution to puzzles arising from the effectiveness (or ‘success’) condition on defensive action. I also conclude that when we condemn violence in politics, the object of our opprobrium should often be the state rather than the subject who engages in violence against it.

Introduction

It is an orthodoxy of modern political thought — we might call it Weber’s Orthodoxy — that violence is morally incompatible with politics, with the important exception of the permissible violence carried out by the state (Weber 1994). Like most orthodoxies, however, this view has its apostates. Malcolm X (1966, 374) expressed the contrary view when he said:

If it must take violence to get the black man his human rights in this country, I’m for violence exactly as you know the Irish, the Poles, or Jews would be if they were flagrantly discriminated against. I am just as they would be in that case, and they would be for violence — no matter what the consequences, no matter who was hurt by the violence.

He also held such acts of violence to be permitted as a matter of right, not merely as costs outweighed in the final calculus by the good of black liberation versus the bad of others’ lives lost.

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Malcolm X’s view has struck many, then as well as now, as deeply difficult to accept. Now, ‘no matter what the consequences, no matter who was hurt’ may indeed be too difficult to accept. Yet when we look past these overstatements, I think Malcolm X’s view is closer to the truth than many of us suppose.

My focus in this essay is on what I call the commonsense argument for political violence — the argument that, in virtue of possessing ordinary permissions of self- and other-defense, subjects possess defensive permissions against the state and its agents — and on the limits of that argument. The argument’s limits, are, I think, more fruitful objects of reflection than its conclusion. When we see both that individuals possess defeasible permissions against the state, but also that those permissions are often perversely defeated by the structure of state-subject interaction, two important conclusions follow: first, that subjects may violently protest this arrangement; and second, that when we condemn violence in politics, the object of our moral opprobrium should often be the state rather than the individual who commits violence against it.¹ These conclusions add an important normative dimension to recent scholarship on the effectiveness of violent protest (Enos, Kaufman, and Sands 2019; Stephan and Chenoweth 2008) as well as a counterpoint to other work in political theory on the political morality of non-violence movements (Mantena 2012, 2020).

This essay also presents a new solution to an old problem: that of intuitively permissible yet ineffective, and so apparently gratuitous, acts of self-defense. I argue that many such cases are better understood as acts of protest than defense, and that this points to protest as an independent ground of liability to harm. If violence is morally permissible not only in (appropriately structured) cases of defense but also in cases of protest, we must rethink our attitudes towards many instances of violence in politics.

I. Self-defense and politics

We know that the state sometimes mistreats its subjects, including by imposing undue violence on them. It wrongfully convict and imprisons; it requires some to risk their own lives and to take the lives of others fighting unjust wars; it allows to die those whom it has a duty to save; it beats and sometimes kills those who have done nothing to warrant battery or death; and so on. Sometimes these things happen because its agents abuse their offices, but often enough they happen under

¹It is worth emphasizing that at no point will I argue that individuals should commit acts of political violence. I will, however, argue that they may, morally speaking, do so, and I shall ask what we should make of this fact. This paper thus accepts the maxim that violence should not be part of politics but questions how we should understand and enact this maxim.
the aegis of the law. The state *qua* state, we can all agree, sometimes wrongfully violates those subject to it.

This paper’s starting point is what I call the *commonsense argument* in favor of permissions to violently resist the state in such circumstances. That argument, accepting the truth of the premise above, extends the principles of defensive ethics to interactions between subjects and the state, suggesting that when the state (through its agents) wrongfully yet lawfully applies force or the threat of force to a person in the enforcement of its laws, she may resist, using violence if necessary. Similarly, third parties are permitted to violently intervene against the state in at least some such cases, such as (for instance) those in which a wrongfully treated subject is unable to come to her own defense.²

Briefly stated, the commonsense argument as applied to state-subject permissions goes as follows:

1. People have defensive permissions to prevent themselves and others from suffering wrongful harm, subject to the regulative principles of defensive ethics;
2. These permissions apply between subjects and the state (and its agents);
3. The state’s permission to inflict or threaten harm against its subjects, including through powers granted to its agents, is morally limited by the reasons subjects have to accept enforcement of the law;
4. Such limits may in fact be met;

Therefore,

5. In those cases in which acts or threatened acts by the state and its agents exceed these limits, people may exercise defensive permissions to prevent these acts from taking place.

These defensive acts, like all defensive acts, may in many circumstances be violent.

This argument is powerfully simple. It may also be quite radical.³ However, while it is at home with philosophical anarchism and similarly radical positions regarding the moral force of the law, it is important to note that the argument is compatible with what I call the ‘some difference view’ of political obligation: the view (or family of views) according to which the law makes *some difference* — not none, and not all the difference — to subjects’ moral reasons to do as the law demands and to accept

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²For an overview of recent scholarship in the ethics of defense, see Coons and Weber (2016).
³Jason Brennan (2016, 2018) deploys a version of the argument to defend the thesis that there is no moral difference between the conditions for defense against government agents and those against civilians. Michael Huemer (2010) deploys a version of it to argue against restrictions on immigration.
enforcement of it. I shall proceed here as though the some difference view is correct, although my conclusions hold a fortiori for anarchists.

To be clear, the commonsense argument’s compatibility with the some difference view, while it renders the argument less radical than it may otherwise appear, nevertheless leaves room for a very wide range of permissibly violent acts of resistance to the state. Indeed, I take it to be a strength of the argument that it may license violent resistance even while accepting a general duty to obey the law. It is very commonly thought that subjects may sometimes act contrary to law; it is much less commonly thought that subjects may violently resist it — including in ways that do not show ‘fidelity to the law’ or any similar form of respect. The commonsense argument distinguishes itself by insisting upon the latter conclusion. It therefore remains, in my judgment, a radical argument.

Finally, it is worth noting that the conclusion of the commonsense argument is a conditional one: if the limits of the law are reached, then subjects may resist its enforcement. It is silent on the further question of when and whether these limits are in fact ever reached. This is partly a question of the scope of application the reader is interested in: surely such limits are and have been reached in some societies, though one might doubt that they are reached in one’s own society. It is also partly a question of the scope of this paper: when and whether such limits are in fact reached depends on one’s view of the strength of the law’s claims in particular cases as well as on the significance of injustices faced by subjects in such cases. It is beyond the scope of this paper to take a general stand on these issues, which involve (presumably) complex empirical considerations as well as (perhaps) the exercise of first-order moral judgment, about which people may simply differ. My own view is that such limits are indeed met, regularly, including in modern liberal democratic societies. While I believe the arguments which follow will be of greatest interest to those who agree, nothing turns on such agreement.

II. Limitations

Despite its radical nature, the conclusion of the commonsense argument — that violent defense is permitted when the limits of the law are reached — may ring

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4There is also a tradition according to which (alternately) the state may enforce the law even when subjects have no duty to obey, or subjects have a duty to accept the law’s enforcement despite lacking a duty to obey. See Ladenson (1980); Applbaum (2010). Like philosophical anarchism, these views are also compatible with the commonsense argument, and the conclusions I draw will apply likewise to them.

5See Rawls (1999, sec. 55–59) for the classic statement of the principles of civil disobedience, which, according to Rawls, require both non-violence and fidelity to the law.
hollow to any subject actually facing undue violence at the hands of the state. For very often, the exercise of defensive permissions in the face of the overwhelming power of the state would be tragically futile. To violently resist wrongful arrest, for instance, even if initially successful, may invite only further and more serious acts of enforcement; and to violently escape wrongful confinement may predictably lead only to further confinement, perhaps for longer or in harsher conditions.

Indeed, to have a permission is not to have a reason; and whether one ought to exercise a permission is a function of the wider set of reasons one has, including prudential reasons. If exercising a defensive permission would predictably lead only to further violence against oneself by subsequent acts of enforcement, it may be imprudent, and perhaps even wrong, to do so. In this way, the permissions licensed by the commonsense argument may be externally limited.

Defensive permissions are also subject to internal limitations arising from the regulatory principles of defensive ethics — namely, the principles of necessity, proportionality, and liability. It is generally thought that joint satisfaction of each principle is a necessary condition on morally permissible defensive action, and that the seriousness of a permissible defensive act may be no greater than that allowed by the least permissible of the three principles in a given circumstance. (For instance, whereas killing in self-defense against a liable attacker might be proportionate, it may be that only some lesser assault is necessary to achieve this end. Since the necessity principle permits less than what proportionality would permit, only this lesser assault would be morally permitted. More on this and other such cases very soon.)

Much of what follows in this section will discuss the manner in which these principles interact with defensive permissions in the specific context of state-subject interaction. They do so in a way that, I shall suggest, is often deeply problematic. By undertaking acts which only reinforce its own prior wrongful acts, the state can manipulate these limitations so as to immunize itself from the prospect of defensive action — or so I shall argue. Indeed, I believe that such circumstances are not only possible but that they pervade the realm of state-subject interaction. This is not merely regrettable; it is, I believe, perverse.

Before proceeding to explain how this is so, two notes are in order. The first is

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6I have in mind here views according to which (at least some) prudential reasons are a species of moral reasons. See, e.g. Worsnip (2018).

7Predictable further costs to oneself are not normally thought to contribute to the proportionality (or disproportionalitity) of a defensive action, and so may safely be termed ‘external’ in the way I have suggested. Predictable further costs to others, such as (for instance) to the families of those initially wronged, may however so-contribute, depending on one’s view of the scope of proportionality considerations. See McMahan’s (2009, 20–25) distinction between ‘narrow’ and ‘wide’ proportionality.
Ordinarily, when the conditions set out by the regulatory principles of defensive ethics are not met, what would otherwise constitute defensive permissions simply fail. The circumstances of state-subject interaction, however, often ensure that they fail in a way that is itself objectionable (or so I shall argue). When what would otherwise amount to defensive permissions fail in this way, I shall instead say that they are defeated. This is because failures of this kind leave behind a moral remainder: a subject in such circumstances can, I believe, claim to hold a normatively significant complaint on that basis. We can therefore sensibly say that such subjects possess a ‘defeasible’ (ex ante) or ‘defeated’ (ex post) permission to defensive violence.

Second, a note on wider issues in defensive ethics: I shall treat the necessity, proportionality, and liability principles as co-equal regulatory principles of defensive ethics, which together (but independently) determine the permissibility of defensive acts; and I shall treat what is called the ‘effectiveness’ (or ‘success’) condition — that permissible defensive acts must effectively accomplish their defensive aim — as an entailment of the necessity principle. Both of these choices are disputable. Necessity and proportionality are sometimes discussed as subsidiary conditions on liability (called ‘internalism’ about liability), which is itself taken to be the ultimate condition on permissible defensive action. The necessity condition is also sometimes dropped altogether (Firth and Quong 2012; Frowe 2016). I support liability externalism, though I believe my arguments are compatible with internalism as well. The issue of eliminating the necessity constraint is one I shall return to later. Finally, the choice to treat the effectiveness condition as part of the necessity principle is only a matter of preference; my argument is compatible with treating it as independent.

a) Prudence

“The Talk” is a conversation had very widely between parents and their black (and especially male) children in the United States and elsewhere regarding interactions with the police (Gandbhir and Foster 2018; Hughes 2014). Parents’ advice is simple: don’t talk back, take your hands out of your pockets, do what they say, be very polite — no matter the conduct or attitudes of the police themselves. “The Talk” is not advice about the right way to interact, morally, with agents of the state; nor is it about the moral permissions of subjects and limits of rightful state action. It is advice about how not to get hurt, which is to say advice about prudence.

The point is a general one. Subjects who would use their defensive permissions to resist or escape the state may find themselves facing the threat of subsequent harms or wrongs that are as great or greater than the harms or wrongs their defensive
acts are taken to avert. The state, having had its agents suffer the consequences of a defensive act, may call in reinforcement, and so bring greater force to bear; or, having had its laws' sanction escaped, may attempt to re-confine escapees, perhaps in harsher conditions or for longer periods. Of course, if these subjects lack sufficient reason to accept their treatment by the state, they will *a fortiori* lack sufficient reason to accept these further acts of enforcement and sanction. But it may nevertheless be predictable that the state will act in these ways, and so as a matter of prudence it may be that very often subjects should not exercise the defensive permissions they possess — just as victims of muggings often should agree to hand over what’s demanded of them despite their moral permission to refuse.

These reflections speak to a structural oddity to the limitation from prudence, and to the other limitations we shall discuss, which I want to highlight: The fact that these permissions are outweighed by prudential considerations is made true by the further acts of the very entity against which the defensive permissions are had. In this sense, the state controls the prudential concerns which limit, practically speaking, the use of subjects’ defensive permissions against it. I do not know what other word to use, so I call this oddity *perverse*.

**b) Necessity and proportionality**

The necessity and proportionality principles are core regulatory principles of defensive ethics. There is, moreover, as Lazar (2012, 17) says, “a deep connection between necessity and proportionality.” The two principles often work in concert in determination of a defensive act’s permissibility.

The *necessity principle* requires that defensive acts be necessary in order to avert the harm or wrong that grounds the corresponding defensive permission. If an act is unnecessary, because doing nothing or doing less would suffice to accomplish the same ends, then it is impermissible. If you threaten to kill me, but I could avert your threat by (say) dissuading you or punching you, then killing you could not be justified by the ethics of self-defense, because it would be unnecessary. Similarly, if I could not avert your threat by (say) merely punching you, then I could not claim that merely punching you was necessary to avert your threat. The necessity principle as it is usually understood thus places both upper and lower bounds on permissible action. Killing when assault would suffice is an example of a violation of the upper bound. Mere assault when only killing would succeed is an example of a violation of the lower bound. In other words, the necessity principle restricts permissible acts to those that would be both *effective* and at the same time *least harmful*.  

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8 Considerations of risk and uncertainty are also relevant, though not for the analysis here.
The *proportionality principle* requires us to compare the seriousness of a defensive act against the seriousness of the harm or wrong it is to avert in order to determine its permissibility, where the permissibility of the former is thought to depend upon the magnitude of the latter. Often, though not strictly, this means that the defensive act may be no more than roughly equivalently serious compared to the seriousness of the act averted. Thus, stabbing a person in self-defense would be disproportionate if what were being defended against were a pinch, a tickle, an insult, and so on.

What unites these principles is a concern with prohibiting *gratuitous* harm: harm which is unnecessary or disproportionate to the achievement of one’s defense. These principles practically limit the commonsense argument since, very often, defensive acts against agents of the state will fail either to be necessary, proportionate, or both.

To see this, consider two cases:

**Necessity failure:** Poe, an agent of the state, wrongfully threatens Vic’s life. Because Poe bears the resources of the state, she wields far greater force than Vic, a law-abiding subject, ever could. Thus, while Vic could attempt to fight back against Poe, she has no reasonable chance of successfully averting Poe’s threat.

In this case, the necessity principle forbids Vic from fighting back, since she could not hope to succeed. Her resistance could not be *effective*. Very often, we might suppose, defensive acts against agents of the state would be of this kind. For how often can one successfully resist arrest, or escape incarceration? Hopes for such outcomes are clearly slim.

Now consider

**Proportionality failure:** Poe, an agent of the state, threatens to arrest and imprison Vic, an act which would be wrongful. Call the seriousness of this wrong to Vic the ‘seriousness of arrest’ (though let it include further consequences of arrest, including imprisonment). In order to successfully avoid this fate, Vic would have to seriously harm, indeed perhaps kill, Poe. Call the seriousness of this harm the ‘seriousness of defense’.

Whenever the seriousness of defense is sufficiently greater than the seriousness of arrest, the proportionality principle enjoins Vic from resisting the state. Now, in many of the cases we’ve been considering, the consequences of arrest — death, life

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9Many wish to resist this conclusion because it may seem to deliver the wrong verdict in several important cases. I’ll discuss this issue extensively in Section III. For now I ask that the reader grant the point, for the sake of argument.
imprisonment — and therefore the seriousness of arrest, are extremely high, so that this might be a moot issue. Yet in many more mundane cases they are not. Imagine that Vic is stopped for a minor traffic infraction but faces the prospect of assault or battery and lengthy detention or confinement. Assume for the sake of argument that Vic lacks sufficient moral reason to accept this treatment, thereby giving her a prima facie defensive permission to resist it. If Poe is an agent of the state carrying a deadly weapon which she might use should Vic attempt to resist arrest, very plausibly the seriousness of defense is much higher than the seriousness of arrest, since to resist arrest might require killing Poe. Given this fact, the proportionality principle prohibits Vic from resisting this wrongful treatment. Put simply, if you must kill a police officer in order to successfully resist arrest, proportionality prohibits you from doing so.

Like the limitation from prudence, I believe these limitations point to a perversity. It is perverse that agents of the state may ensure that the necessity principle would be violated by any defensive action against them, simply by arming themselves heavily, thus making themselves near-impossible to defeat. Similarly, it is perverse that agents of the state can ensure that the proportionality principle is violated by threatening lethal force in the process of enforcing relatively minor violations of the law.

c) Liability

It is widely agreed that at least part of what makes a defensive action permissible has to do with certain features of the person against whom that action will be taken — normally features arising from acts undertaken antecedently by him — and the relation of those features to the claims we each have not to suffer harm by others. Beyond this too-general statement there is controversy (Frowe 2014, ch. 4; Mc Mahan 2016; Quong 2012; Renzo 2017), though a common more specific thought is that by bearing moral responsibility for, or responsible control over, threatened or ongoing wrongful acts, one can lose one’s own claim not to be harmed in ways that would defend against those acts. For instance, by threatening your life, I may forfeit my standing to claim that you not harm or wrong me in ways that would allow you to prevent my threat from succeeding. When I lose standing in this way, we say that I am liable to defensive harm or wrong at your hands or on your behalf.

I shall make the further assumption in what follows that it is sensible to talk of the extent of a person’s liability to defensive harm or wrong, and that there is a connection between the extent of one’s liability and the extent of one’s moral responsibility. One might thus be liable to defensive action, but more or less so than some other also-liable person, or more or less so than one would have been oneself in other
circumstances. The extent of one’s liability thus also affects the extent of the harm or wrong that can be wielded defensively against one on that basis.

With these preliminary remarks in hand, I wish to call attention to a peculiar feature of liability in cases of group agency, including cases of state action divided between and carried out by multiple state agents. Think of a person who is convicted of a crime and imprisoned. Who bears responsibility for this outcome? In many political and legal systems, there is a wide variety of candidates for this assessment — from legislators who make laws, to elected and appointed executives who manage the agencies that enforce the law and run confinement facilities, to prosecutors who decide whom to bring charges of lawbreaking against, to judges and jurors who determine legal guilt or innocence and sentence those found guilty, to ground-level enforcement agents such as police and guards who arrest and confine. While some of these actors may be thought more responsible than others — I have ordered this list in terms of what I take to be in general terms (plausibly) the magnitude of responsibility borne by these officeholders — in ordinary cases it is doubtful that any one person bears what we might call ‘sole’ responsibility, precisely because the process that results in conviction and imprisonment is distributed across a diffuse and lengthy chain of action. Indeed, it seems possible in principle that there should be cases in which a subject faces serious injustice at the hands of the state, beyond the limits of what she has reason to accept, yet in which no individual is morally responsible for that being so.

More commonly, we might imagine that the agents of the state who are most morally responsible for the wrongs committed by it are not those against whom defensive action would be effective. If ground-level enforcement agents bear little or no responsibility for the wrongs of the state against its subjects, they may bear limited liability to defensive action taken in order to prevent such wrongs. And yet, it may be that only against them would such action be effective (or even possible). Those responsible for the creation of, change to, and application of the law — legislators, executive administrators, even judges and juries — and who are thus more plausibly the bearers of moral responsibility for wrongs of the kind we are considering, will typically be removed from the point of the law’s enforcement such that defensive harm, to which they might otherwise be liable, would in no case be effective, and so would fail to be permitted. In this manner, those subject to injustices at the hands of the state for which they might in other circumstances gain defensive permissions will find those permissions severely weakened or erased by the diffuse agential structure of the state.

Here then is another perversity. Subjects facing wrongful treatment by the state may find themselves without permissions to defend themselves, not because the
wrongful treatment is abated, and not because there is no group agent that may be said to be responsible, but because those particular agents of the state against whom defensive action might be effective are not liable to it. In modern states with large and diffuse agential chains, this may indeed be the norm. A further perversity, as with the others we have already discussed, is that the circumstances of politics may be manipulated to achieve precisely this effect.

III. Protest

The reflections in the previous section suggest that the scope of permissions countenanced by the commonsense argument is quite limited, since in the actual circumstances of politics, such permissions are often outweighed, as when limited by prudence, or else are defeated, as when limited by the regulative principles of defensive ethics.

There is a tragic quality to this fact. It is tragic when permissions to defend oneself are outweighed by prudential considerations stemming from the predictable further conduct of one’s very same aggressor. It is also tragic when one’s defeasible permissions are defeated by the structure of state-subject interaction, rather than by the removal of the threat that grounds the permission.

Yet while we can affirm the tragedy of these circumstances, it is unclear that tragedy as such admits of practical consequences. When a life is cut short by some natural phenomenon, such as an avalanche or incurable disease, or when the Fates conspire against a person to bring him ruin or sorrow — these are tragedies. They are cause for sadness, and perhaps too for regret. They are not, however, clearly cause for reform or reaction.

But the tragedies we are concerned with are not like many others; they are, instead, under the control of others. Specifically, they are under the control of the state and its agents. That is, those against whom defensive permissions are or would be had are at the same time those with the power to create and manipulate the circumstances that outweigh or defeat such permissions. This is not only tragic; it is, I suggest, perverse.10

What I am here calling ‘perversity’ may be close to what Srinivasan (2018, 135–136) calls the ‘wrongness of affective injustice’:

…the wrongness of affective injustice … lies [] in the fact that it forces people, through no fault of their own, into profoundly difficult normative conflicts—an invidious choice between improving one’s lot and justified rage.
Facing such a perversity, we can then ask, what is one to do? Here there is a strong case for reform. Perhaps political societies should organize themselves so as to minimize circumstances in which subjects possess defeasible defensive permissions against the state and its subjects. They should, that is, take Weber's Orthodoxy as a goal to live up to rather than as a truth to be enforced. This is a plausible conclusion, and one to which I believe societies committed to the orthodoxy with which we began this paper should be committed. But we can, I believe, go further.

Consider the case of

_Bully:_ Chet is a cruel schoolyard bully, who regularly shakes down other children for their lunch money. Chet is much larger than the other children, who have no hope of resisting his demands through force of their own. Loren is one such schoolchild, who, for the umpteenth time, faces Chet.

Suppose that this time, Loren is sick of giving up his lunch money, and he is tempted to kick Chet in the shin. He is tempted not because this act will scare Chet off, now or in the future; on the contrary, such an affront is likely to only fan the flames of Chet’s rage. Loren also, let us suppose, rejects the notion that Chet deserves some comeuppance; he knows that Chet’s home life is troubled, and that this is likely the source of his bullying ways. Nevertheless Loren feels pulled to say no to Chet, and to say so with his kicking foot. May he?

The answer seems clearly to be yes, but there is a puzzle as to why that should be so. Since kicking Chet would be neither effective, nor deterrent, nor deserved, the worry is that it is gratuitous. And how could gratuitous harm be justified?

Statman (2008) suggests that one may violently defend one’s honor in such circumstances; McMahan (2016) suggests that one may violently defend one’s dignity; and Frowe (2016) suggests that one may violently defend one’s moral standing. But these solutions apply principles of self-defense to the defense of this other thing, honor or dignity or standing, leading to the problem that the necessity, proportionality, and liability principles constrain such defense of that in familiar ways. If Loren may defend his honor by drawing himself up and gravely stating, ‘I do not recognize your right to treat me in this manner!’ , then these principles enjoin him from taking the more drastic measure of kicking Chet in the shin. Similarly, if Loren’s plight were at the hands not of a single bully but of some network of agentially dispersed bullying, then the liability principle might prevent him from kicking the shins of the chump extracting his money, rather than, say, the ring leader, if only the latter would effectively defend his honor. It may also prohibit Loren from kicking several such bullies, if they were attacking in a group, should kicking just one suffice to preserve
his honor.

These objections to the honor-, dignity-, and standing-defense views take on greater force, I believe, when we imagine much more serious cases: think of victims of rape; individuals beaten by groups of assailants; slaves in revolt; or small countries invaded by large aggressors. All of these cases seem to license permissions, like Loren’s, to futile resistance. Yet I doubt very much that such resistance, when it could not be effective, is nevertheless constrained in the ways that would follow from the view that what such resistance defends is honor or dignity or standing. These people are not defending those things, if indeed they are defending anything at all. They are simply fighting for their bodies and their lives and their countries — and they do these things permissibly, even when they have no hope of success. Or so it seems to me. And so the question remains, why should this be so?

We should, I believe, look elsewhere for an explanation of why such acts are both justified and non-gratuitous. Here is what I suggest instead. I am inclined to think that futile violence may be justified in protest of some person’s (or some people’s) wrongful subjection to circumstances over which another has responsible control. This idea demands a conception of protest. In a classic article on the topic, Boxill (1976, 61) offers a suggestion:

… when a person protests his wrongs, he expresses a righteous and self-respecting concern for himself.

One thing about which Boxill seems surely correct is that protest involves expression. Archetypal cases of protest are exactly that, and even private acts of protest can express something to one’s own self. Indeed, I am inclined to think that expression is an essential aspect of the very concept of protest.

I also think, following Boxill, that an important aim of protest can be the insistence upon a victim’s worth, or dignity, and hence an important good of protest is the shoring up of a victim’s righteous self-respect. But contra Boxill, I do not think such aims or goods are essential to the practice. If they were, it is not obvious that many ordinary cases of protest on others’ behalf would make sense, since such acts on another’s behalf might be either patronizing or unnecessary. Nor does it seem as though protest on others’ behalf should be understood as insistence upon respect for those others by third parties. This may be a goal of such protest, but it seems clear that other-regarding protest would nevertheless be justified for even if one

11Frederick Douglass (1855) relevantly writes, “When I was looking for the blow about to be inflicted upon my head, I was not thinking of my liberty; it was my life.” I owe the quotation to Boxill (2010). Boxill there develops Douglass’s claim, which goes beyond mine, that the oppressed are morally required, rather than merely permitted, to resist their oppression.
were certain that it would, so to speak, fall on deaf ears. If so, then insistence upon one’s own self-respect or upon respect for others cannot be essential to the concept of protest.

More importantly, if insistence upon one’s own self-respect were an essential component of protest, then protest might fail to be called for should one already possesses a secure sense of one’s own self-worth. This seems especially the case when we consider violent protest. If securing a victim’s self-worth were an essential aim of protest, but if a victim were already secure in her self-worth, then how could violence toward that end be justified? Would it not, again, simply be gratuitous? Yet, other things equal, futile defense in cases of rape, slavery, invasion, and so on seems to me to be always permissible, regardless of the self-respect of the victim. This is another version of the critique I offered of honor- and dignity-defense views above.\footnote{For reasons of space, I can only treat Boxill’s argument here cursorily. See Shelby (2010) for further (friendly) criticism of the view.}

Boxill recognizes in one way the conundrum about effectiveness, and observes that protest seems called for precisely when there is no hope that the wrong protested will abate. “Typically,” he writes, “people protest when the time for argument and persuasion is past.” Protest is a response, indeed, to this fact:

Protest is, essentially, an affirmation that a victim of injury has rights. It is not an argument for that position. (Boxill 1976, 63)

Again, a point about which Boxill seems clearly correct is that although protest is essentially expressive, it need not at the same time take the form of persuasion. In other words, protest is not necessarily an appeal to others. Thus, while an important aim of some protest may be to address others — one’s compatriots, the wider world, or indeed one’s own oppressors — it need not have that aim. It is thus not a condition on permissible protest that it work to engender empathy or sympathy in others — a point important to remember when considering violent protest.

Boxill is also right to note that one thing the expressive act of protest may accomplish is to affirm the rights of the victim. But again, affirmation of one’s rights, or of the rights of others, is not, in my view, essential to the concept of protest. Rather, I think the more basic expressive content of protest is purely negative: it is simply rejection — of the circumstances of one’s oppression, of acts of injustice, of the position in which one finds oneself at the hands of others, and perhaps too of the perversity of these things. Such rejection may have the further consequence of affirming the rights of the victim, or of providing her evidence of her own self-respect, and so on, and these goods may even count in further favor of particular acts of protest; but
these consequences are not essential to the concept nor to the justification of the practice.

Here is what I propose instead. According to the

*Rejection Conception of Protest*: Protest is an essentially expressive act of rejection of what are taken to be unjust or wrongful circumstances, directed at (though not necessarily addressed to) the agent taken to have responsible control over those circumstances.

To return to our earlier example, when Loren kicks Chet in the shin, Loren is saying *no* — that he rejects what in this instance he is being forced to accept: giving over his lunch money. His rejection is of the wrongful circumstances in which he finds himself, and his rejection is directed at Chet, because it is Chet who is responsible for the creation and maintenance of those circumstances.

Because the conception of protest I have proposed does not essentially involve the achievement of some end (except the expression rejection itself), it may be mysterious what justifies it. Of course, merely saying 'no' may need no justification. But expression may take more active forms: a stomp of the foot, a kick to the shins, and so on. Some of these acts may involve costs to others. What justifies these sorts of expressive acts, including acts of violent protest?

My further suggestion is that what justifies an instance of protest (including violent protest) is not the fact that it is a necessary means to some end but rather its *aptness* as a response to wrongful or unjust circumstances, together with criteria of *proportionality* and *liability* — which together may license violence as an apt, proportionate, and correctly directed expression of such protest. We therefore ask three questions of any instance of putatively permissible violent protest: (1) is protest (understood as an expression of rejection) apt to the circumstances?; (2) is this expression of protest — a kick to the shin, say — proportionate in its seriousness to the seriousness of the injustice or wrong protested?; and (3) is the person at whom this expression is directed, including in the sense of bearing its consequences, liable to do so? If, for some candidate instance of protest, we can answer *yes* to all three of these questions, I submit that it is (all else equal) justified.

Let me next say a bit more about each condition, starting with aptness. Aptness is a familiar relation, and while I shall rely on it here, I’ll not offer or endorse a particular analysis of it.\(^{13}\) The basic idea, however, is plain: to be *apt* is to be *fitting*, *warranted*, *appropriate*, and other synonyms; and for an expression (say) of protest to be any of these things is for there to be the *right sort of connection* between the expression of

\(^{13}\)See Howard (2018) for a survey of approaches to the topic.
protest and the thing protested, regardless, importantly, of considerations of efficacy and consequence. Thus, for instance, to express rejection of one’s unfair working conditions by refusing to work would be apt whereas expressing rejection of the same by refusing to dance the Merengue during break times would likely not be — even if we imagine (with difficulty) that both would be similarly effective or ineffective in changing the relevant conditions. Aptness is familiar from philosophical work on emotions and reactive attitudes: anger and resentment may be apt in response to some circumstances but not others (Langton 2001; Srinivasan 2018), as may blame (Owens 2012, chs. 1-2). It has also figured in discussions of punishment, where certain forms of punishment have been thought to be apt to certain crimes (Enker 1991).

There are no widely agreed-upon conditions for aptness, and so I am limited in my argument as to why the expression of rejection is an apt response to, in this instance, the circumstances of injustice. Instead, I can only claim that it is, and insist that to me this seems clear. It may help to add too that it is commonly thought that wrongs and injustices are those things that, whether by definition or consequence, people who suffer them have reason to reject. If one has such reason, then it also seems that an expression of rejection would be an apt response to facing such circumstances.

However, understanding protest as an apt expression of rejection only takes us part of the way. Since the particular expression of rejection we are considering involves consequences, we need further standards for their justification. Why, we might ask again, may Loren say no with his kicking foot?

Here we turn to the proportionality and liability conditions, which are familiar from the earlier discussion of defensive ethics. It is easy to see how certain expressive harms, such as those involved in violent protest, might be proportionate to certain wrongs and injustices. For instance, for Loren to stab Chet through the hand with a freshly sharpened pencil may (or may not) be disproportionate to Chet’s bullying. Or, to take an example from politics, for black Americans in the 1960s to engage in rioting, destroying public and private property and endangering the lives of public servants attempting to enforce order, may (or may not) have been proportionate to the conditions of economic and social ghettoization and subordination imposed on them.

It is also easy to see how considerations of liability bear on the justification of acts of violent protest. For Loren to kick Sally, Chet’s younger sister, rather than Chet himself, would be to place the burden of the consequences of this form of protest on the wrong party, so violating the requirement of liability.\textsuperscript{14} Likewise, for rioters in

\textsuperscript{14} The apparent permissibility of forms of protest that involve harm to oneself, such as hunger strikes,
the Uprising of 1967 to have looted shops and burned buildings across the Detroit River in Windsor, Ontario, rather than in Detroit itself, would have been to impose the costs of this protest on those who were (presumably) not liable to bear them. Had those riots taken this form, they could not therefore have been justified as instances of permissible violent protest.

Taken together, then, I believe we can begin to see in these principles the contours of a robust ethics of permissible violent protest. Many instances of apparently permissible yet defensively unnecessary violence should, I submit, be understood as acts of protest — expressions of rejection of unjust or wrongful conditions. When these acts are apt, proportionate, and correctly directed with respect to the conditions protested, I suggest that they are, all else equal, permissible.

Now, this proposal may invite a series of objections. First, we might ask why permissible protest should be subject to an aptness condition rather than a necessity condition. (Or a further question: why not aptness in addition to necessity?) One answer is to note that insofar as the necessity condition sets a lower bound on permissible acts, it is in fact subsumed by the aptness condition and is therefore partly included in the standards for permissible protest. This is because an expressive act of protest, in order to aptly express rejection, must succeed in expressing rejection. It just so happens that whereas to successfully defend oneself can be quite difficult, to successfully express rejection will often not be.

Insofar as the necessity principle imposes an upper bound on permissible action, however, it is clear that (in this respect) aptness serves an alternative rather than supplementary standard. Recall that the necessity condition requires that one do no more than what is necessary to achieve one’s end. Because the success threshold for protest is often very low, to impose a necessity standard on such acts would require that no more than these very minimal acts of expression be undertaken. For Loren to express rejection of Chet’s bullying by kicking him in the shin would, on this view, be unnecessary, since he could express rejection by doing far less — say, by stating, ‘you have no right to treat me so!’ Given the intuitive verdict that Loren may kick Chet, and if we accept that Loren’s act is indeed an act of protest, we must reject a necessity condition on protest for the reason that it would preclude this act.

Beyond this appeal to our intuitive verdict about the cases (which may seem to only restate rather than answer the puzzle), there are also theoretical grounds for thinking an aptness standard should apply to protest whereas a necessity standard should apply to defense. Defensive ethics aims at a concrete practical end — successful pro-

self-immolation, and so on, suggest that the liability constraint confers upon those who are not liable a waivable right against suffering the consequences of another’s (or one’s own).
tection of oneself or another from the threat of wrongful harm — and so should naturally license only defensive acts that achieve, and stop at, this end. To do less, it seems to me, simply fails to be an act of defense at all, and to do more is to act gratuitously.\textsuperscript{15}

Protest, by contrast, is fundamentally about apt expression; or so I’ve argued. The orientation of its aims, and so its standards both for justification and for success, are thus different. I suggest that, in order to be apt, protest must not only succeed at expressing rejection but must also do so \textit{adequately}. In Loren’s case, to do less than to confront Chet physically may not adequately express his rejection of the circumstances Chet has imposed upon him, and so may be inapt. This is not because for Loren to do less, or to do more, would be \textit{unnecessary}; it is because it would not be \textit{fitting}. To see this more clearly, it may help to think of a case of justified anger (a reaction also thought to be subject to aptness conditions): When one (or, as may be easier to imagine, one’s loved one) has been seriously wronged, it may not be fitting to feel only mildly annoyed; only anger apt to the circumstances may be adequate. Similarly, although uttering the words ‘I reject these circumstances’ may express protest, it may not do so adequately — it may be that only some more forceful expression of rejection will do.

This response invites a further objection. If for Loren to do less than to physically confront Chet would be inapt, would it not then be \textit{impermissible} for him to do less? — say, to yell and cry, to spit on the ground in front of Chet, or simply to state his objection to Chet’s behavior? Yet surely Loren does not act wrongly by doing only these lesser things. We may thus seem to be stuck on the horns of a sharp dilemma: on the one hand, admitting a necessity requirement, such that violent protest is ruled out; or on the other, rejecting it, such that violent protest may be perversely \textit{required} of those subject to severe injustice.

There are several replies to this objection. The most important is that when a particular protest succeeds at expressing rejection but nonetheless fails to be apt, the problem is (as I have suggested) a failure of \textit{adequacy} — in the sense that the particular protest is inadequate to the wrong or injustice protested. But whereas a failure of necessity clearly gives rise to a concern of gratuitousness, a failure of adequacy gives rise to no such similar concern. Indeed, inadequate but successful expressions of rejection are not clearly objectionable at all; and if they are, it is not because they wrong the person against whom they are directed. This points to a second reply. Were Loren merely to give Chet a pinch, say, when only a kick would be adequate (and so, apt), the only person he fails — if anyone is failed at all — is himself. Loren

\textsuperscript{15}As Frowe (2016, 157–158) says, “harms that cannot avert a threat simply fail to be defensive altogether” because “for a harm to count as defensive, it must be capable of averting a threat.”
succeeds, after all, in expressing his rejection of Chet’s bullying with this lesser act (let us assume), he merely fails to do so adequately. This points toward a third reply, which is that if one is both the subject of an injustice and an agent of protest, one may enjoy a prerogative to do less than what adequacy demands. (If instead Loren were protesting Chet’s bullying of, say, Loren’s much younger sibling, Loren may indeed fail in some normatively significant respect by doing less than what apt protest demands.) Finally, it is worth noting that what apt protest permits, and what apt protest demands, is subject to interaction with other moral considerations. If doing less than what would be apt would also be most effective at alleviating the injustice in question, for instance, it may be that in an all-things-considered sense, Loren should bite his tongue or stay his hand. For all of these reasons, I believe we can accept that apt protest may demand (and thereby permit) more than what would nonetheless be permitted, were some lesser protest enacted instead.

Lastly, some may be tempted to think of the cases I’ve been describing not as cases of justified violence but rather as cases of unjustified but blameless violence. This mirrors a natural yet (in my view) mistaken thought about the aptness of certain reactions: that anger is never justified, yet it may be apt and therefore blameless. I am less sure what turns on this difference in appraisal with respect to anger and other similar reactions, but I am quite sure it is inappropriate to cases of apt violence. Think again of the more serious cases for which Loren and Chet have been standing in: rape, battery, slavery, invasion. When victims of these gross wrongs engage in futile violence against their aggressors, or when others do so on their behalf, I am quite sure that they are justified in doing so rather than wrong but blameless. Since I take my account to describe and explain the permissions in these cases, I conclude that apt violent protest justifies rather than excuses those who engage in it.

We can now state the argument in summary:

1. Protest is an expression of rejection of wrongful or unjust circumstances over which another has responsible control;
2. Expression of rejection is an apt response to such circumstances;
3. An apt response to an act or circumstances is (all else equal) permissible if it is also proportionate and correctly directed (i.e. meeting the constraints of liability);

Therefore,

4. Apt, proportionate, and correctly directed protest is (all else equal) a permissible response to wrongful or unjust circumstances.

16Though see again Boxill (2010) for a contrary view.
Note that because the constraints of proportionality and liability here are independent of the requirement of efficacy, they are more permissive than in cases of defensive action. If (let us imagine) violent protest by prisoners is an apt and proportionate response to certain circumstances of incarceration, for instance, and if guards are liable subjects of such violence, then violence against them may be permitted as a matter of protest even though it is prohibited as a form of defense. Since the goal of such protest is *expression* rather than *defense*, it would not matter if such violence could not hope to help the protesting prisoners escape, or even if it were counterproductive.\(^{17}\) Similarly, if in democratic societies citizens are complicit in the wrongs done in their names (Beerbohm 2012; Stilz 2011; Zakaras 2018), they too may be liable to suffer the consequences of apt violent protest. Indeed, I suspect we should think of many riots as (in part) precisely such activities (Pasternak 2019).

**Conclusion**

By way of concluding, it is worth reflecting on some implications of this view for the kinds of actual political circumstances we have been discussing. I shall make only brief and suggestive remarks, as they are all I can afford in the space that remains.

Suppose *arguendo* — though as some firmly believe (Davis 2011; McLeod 2015) — that the practice of mass incarceration as it exists in the United States today is grossly unjust. The commonsense argument, grounded as it is in defensive ethics, may license prison breaks in such circumstances, either by inmates themselves or by their allies outside. But suppose that the power of the state would render any such attempt futile. This is, I have suggested, deeply perverse: the futility of the exercise of these defensive permissions is under the control of the very same agents against whom such permissions are had. In light of the perversity of this further circumstance, the argument from the permissibility of violent protest nevertheless licenses further action. The kind of action that is licensed is constrained, yet it seems to me that the range of options available may nevertheless be very wide. First, consider the constraint of proportionality. Depending on how we imagine the injustice we are considering, proportionality may be very permissive indeed, ranging from civic disruption to destruction of property to the risking of lives. Wrongful confinement, after all, is a very serious injustice. Second, consider the constraint of liability. The range of those liable to suffer the effects of acts of protest against such circumstances — that is, people with responsible control of the circumstances of injustice — may also be very wide (though the extent of any particular individual’s liability is

\(^{17}\)The ineffectiveness or counterproductivity of such violence may of course matter — morally, prudentially, strategically — on other grounds.
affected by the extent of her responsibility). In democratic societies, such individu-
als plausibly include citizens, as those with ultimate control of the laws and policies
of society and, relatedly, perhaps as agents complicit in wrongs committed in their
names. More clearly, those liable plausibly include lawmakers and policymakers
themselves, as well as those who execute their laws and policies.

Whether mass incarceration, in particular, represents an injustice of the kind I have
just described is a question that could not be settled here, of course. But we can
confidently claim that injustices of this kind and magnitude have existed in recent
memory, and we can very plausibly claim that such injustices continue to exist in vari-
ous forms and places throughout the world, including in liberal democratic societies.
We must consider, then, how often people possess moral permissions to violence in
protest of these injustices — very often, I suggest — and how we, as individuals and
as societies, should react to this fact.18

18 Whether violent protest is wise as a matter of strategy is an important question whose answer
is not settled. (See e.g. English (2016); Enos, Kaufman, and Sands (2019); Pearlman (2011); and
see Stephan and Chenoweth (2008).) But that question is, except in an all-things-considered sense,
distinct from the question of whether violent protest is morally permitted.
References


