

Civil Disobedience in Defense of International Law: Sketch for a Theoretical Argument¹

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During the interwar, a number of German pacifists and journalists denounced Germany's secret rearmament to the Allies, in violation of its Versailles commitments. Some were tried for High Treason before German courts. An argument that defendants in one of these cases raised before the Supreme Court was that they could not have committed treason or violated German law, as they were really only carrying out their acts to uphold Germany's own commitments (against the then current German government), the sanctity of treaties and international law. The Supreme Court, perhaps predictably, rejected this line of reasoning, arguing among other things that the citizen's duty to remain loyal to his fatherland took precedence over any other obligation.² It was not, in other words, for individuals to second-guess the state's intentions or to take the defense of international law in their own hands.

In 2006, four Dominican nuns in Ithaca faced trial in the US for pouring their own blood on recruitment materials and the American flag in protest against the Iraq war, a non violent incident in which no one was hurt. The defense of the "Saint Patrick's Four" – as they became know - was that they were legally justified by virtue of trying to stop the war in Iraq, a war that was illegal under international law. The trial judge, however, barred witnesses who would have testified about Nuremberg, the Geneva Conventions or any other international agreement. The defendants were eventually condemned without the international legal arguments having been heard.

At 70 years interval, one seems to be confronted with very similar arguments based on the authority of international law to, essentially, violate domestic law, with a view to effecting some form of significant political protest aimed at changing a policy. Both these incidents can be subsumed under the broad heading of "civil disobedience", which I would define as the tradition of political thought and action which claims that it is in some circumstances legitimate to violate the laws of the state when these laws or the other laws or policies of the state are deemed fundamentally unjust. Civil disobedience, therefore, is distinct from mere political protest in that it involves a conscious and deliberate violation of the law; furthermore, civil disobedience claims to be different

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² "As for the question concerning treason in the sense of article 92(1) of the Penal Code, someone betraying military secrets cannot be excused from his culpability by claiming that he wanted to reproof a behavior contrary to international law; he cannot claim that he believed to have a right to a public reproof on these grounds. Every citizen must remain loyal to his own country; he must call upon the proper state organs to enforce the laws and can never do so by reporting to foreign governments or their organs." (Reichsgericht Leipzig, 23 November 1931, 7 J 35/29 at 26) [references omitted].

from ordinary crime in that it has a political goal (which means, for example, that it typically does not elude and even seeks out punishment as a means of driving its point). But the two above examples are also peculiar instances of civil disobedience since they are premised on the “unjustness” of some state law or practice on the basis of its being *in violation of international law*. Civil disobedience in favor of international law, I will define as civil disobedience to domestic laws where the unjustness of domestic law is evaluated on the basis of international norms and where, furthermore, the authority of international law is invoked as a valid basis for disobedience. Analytically and technically, therefore, what I am interested in are those instances where international law might justify violations of domestic law, a radical and potentially very disruptive practice.

The above cases testify to the existence of an aspiration and even a certain lineage of situations in which individuals, at very different times and in very different circumstances, have sought international law’s authority to ground their claims to acting fundamentally justly in the face of state repression. Somewhat depressingly, however, both cases also illustrate the difficulty of making these arguments in domestic courts. There are a number of reasons why such cases have failed domestically that I cannot go into except to underline the obvious which is that, often, states and their courts are deeply unsympathetic to the idea of civil disobedience generally, and the idea of violations of the law ever being either legal or even simply justified on the basis of some higher ground.

In both these cases, not even international law (which one might surmise would at least have a little more traction before courts than simply an appeal to individual conscience) managed to shake domestic courts’ resistance to the idea of legal disobedience. Without going into the question of whether these decisions were correct even under their own narrow grounds, I would like to point that such defense strategies have often failed in the past not so much on some strong principled ground (international law cannot possibly legitimize violations of domestic law), than on some weak sociological (indifference to international law) or normative (non-applicability of international law) judicial resistance to entertaining international legal arguments at all.

Be that as it may, one thing which neither of these cases (or a number of other similar ones) tell us, is what *international law* would have to “say” on the matter, “if it were asked” so to speak, either in a domestic forum receptive to at least hearing international law arguments or in an international judicial forum. In this paper and because this is a very large question that it the object of a separate long term research project, I want to ask a narrower, more principled and more exploratory question: *should* international law have anything to say on the legality/legitimacy of acts of civil disobedience carried out in its own name? What I am interested in, therefore, is developing a larger normative and theoretical argument about what an international legal system consistent with its premises might want to say about civil disobedience. My argument will be broadly ethical and normative, rather than a strictly legal one.

To begin with, however, I do want to give a rough sense of what international law has said on the matter – or maybe rather what it has not said. International law does not have nor has had any obvious, articulated or explicit discernible stance on civil disobedience, which suggests that it has been at best indifferent to it. Partly this is because the occasion

has not arisen. The issue has simply not elevated to the international plane that often, at least as such. However, I suspect that international law's silence on the issue has more to do than with simply the lack of cases. There is also a *culture* of international law, one committed to sovereignty, order and the maintenance of the supremacy of institutions of international regulation, which is broadly unsympathetic to what will probably be perceived as agitation by individuals. Indeed, there is quite a cultural chiasm between grass root activists who at one time or other have invoked what they saw as the authority of international law to resist certain domestic policies through civil disobedience, and the rarefied, often elitist culture of professional public international lawyers, one which is simultaneously progressist in its project and characteristically conservative in its assumptions.³

At a preliminary level, I think this lack of interest by international lawyers is unfair, and I am worried that the profession might be and might be seen as dismissive of the very real efforts undertaken by a handful of individuals, often at great considerable risk and cost, however naïve and legally unsophisticated their view of international law may seem at first. I am worried, also, about the sort of rigid distribution of domestic/international, authority/allegiance, this sort of view is implicitly based on (where the international is the only locus of responsibility and decision, and non-state actors are just asked to stay put).⁴ More importantly, I sense a risk that public international law may find itself in a situation where it is increasingly irrelevant if it fails to keep up with the times and follow up logically some of the avenues it has itself contributed to open. It is bad enough that international law had strictly nothing to say about Gandhian non-violence or Martin Luther King's own form of civil disobedience: but the continuation of this indifference in today's very different circumstances and amidst landslide changes in the role of civil society could fundamentally weaken international law.

In order to slightly dramatize the stakes, and give an illustration of why international law's silence is problematic, let me restate the question thus. Let us imagine that a country knew of a situation of apartheid, and that a group of individuals, headed by some charismatic leader, decided to protest. But let us imagine that the protests were going nowhere because the demonstrations led only to the imprisonment of the protesters, in a context where basic freedoms (thought, expression) were being suppressed. There is no democracy and the courts are neither impartial nor independent. Let us imagine then that the group decided to refuse to pay taxes in protest; or to occupy buses that were reserved to people of the dominant ethnic group. Let us imagine further that in the course of doing so they acted "reasonably", that no violence was caused, and that they could not be suspected of engaging in this action for any other motive than the legitimate political one which they claimed. In doing so, then, these individuals might be advancing a key goal of international law, one which the system has put at the very apex of its norms (in this case, the prohibition on Apartheid). Would international law have nothing to say to the issue, and decide that the repression of civil disobedience was irrelevant to its inter-state reality? What if the Apartheid turned into genocide? Should international law stand idly by or should it on the contrary be willing to forcefully legitimize what may be the only

³ On an anecdotic note, I have heard international lawyers referring to members of civil society basing actions of civil disobedience on a mandate supposedly granted by international law as "NGO loonies".

⁴ For a criticism of this particular internationalist tone, see F. Mégret, "Responsibility to Protect (Others) v. the Power of Protecting Oneself: Beyond the "Salvation" Paradigm" (submitted).

active voice of dissent and resistance (especially when the international community for reasons of its own may not want/ not be in a position to do much)?

Of course, this is not an entirely hypothetical scenario. In the last decade, inhabitants of Kosovo, the Ukraine, Myanmar or Tibet have all engaged in various forms of civil disobedience as a way to remedy what they considered to be grave injustices. Those injustices could almost always be analyzed as violations of international law, be it only (and in fact most often) international human rights law. In many of these cases, the individuals involved were not trying to enforce international law in far-flung locations and for the benefits of others, but very much standing up for their dignity in the face of harsh and continuously oppressive treatment. With a few exceptions, they did so in ways that emphasized dialogue, dignity and non-violence. The international community's response has been to deploy the traditional (and relatively weak) arsenal of the international human rights protecting apparatus (reports, special rapporteurs, diplomatic pressures, occasionally sanctions). But there has been a distinct unease with taking a more principled stance in favor of the disobeyers, even when by most accounts their treatment is recognized as exceptionally unfair and, indeed, illegal. Are there opportunities missed here, or at least difficult choices involved?

Clearly these are relatively pressing questions, especially if one is willing to envisage the evolution of the international system in a forward looking, normatively dynamic way. The challenge is to imagine what a more systematic, mature, thought out international legal stance on civil disobedience might be. This paper is part of a larger project to critically resurrect the tradition of resistance to oppression and tyranny as it emerged in 18th Century liberal philosophy. The idea is to reclaim some of the subversive potential of that tradition, while participating in the now urgent reflection on the conditions of international law's renewal. In doing so, I want to move beyond state centrism, but not through the usual, favored route which is essentially a top-down one: world government, more institutions, more UN, "global governance", and the "international community. Instead, I want to explore a more bottom-up, radical and cosmopolitan approach, one which can allow us to move beyond the paternalism of much of international law by relying on what I consider to be the *forces vives* of an increasingly global polity: individuals, social movements, aspirations to resistance. The vision I promote, therefore, is based on a relative skepticism on the sustainability of an "international community" that would not be based on some sort of popular empowerment and, by contrast, in a relative faith in the reality and salutary character of the popular challenge of established orders.

I have chosen civil disobedience in defense of international law because it should in a sense be one of the easiest cases to prove the point that international law can and should be part and parcel of processes of challenge of particular regimes. Indeed if international law has a position on any form of civil disobedience, then it should be disobedience in favor of international law. Moreover civil disobedience more generally does not raise some of the much more complex and sui generis difficulties which a legitimization of armed or violent resistance raises, difficulties which are better left for other reflections.

My principal argument will be that the lack of a clear position on civil disobedience in international law has been problematic for international law, but that civil disobedience has also suffered from insufficient explicit recourse to international law, leaving ample

room for convergence (I). I will then look in very broad terms at what a contemporary “right to civil disobedience under international law” might look like. The challenge, obviously, is not for international law to legitimize any civil disobedience, but (in legitimizing some) to help define the conditions when it might be internationally legitimate (II).

I. International law and Civil Disobedience: the Need for Convergence

A. Why International Law Might Need Civil Disobedience

1. A Crisis of Compliance

It is trite to say that international law suffers from deficiencies in compliance and enforcement, although as always that diagnosis needs to be refined in specific cases, according to specific norms etc. I can see three broad paradigms of compliance with international law. The most traditional one is focused on interstate regulation, whether in its political, legal, or judicial forms. The essential idea is that compliance with international law is a matter for states and states only. A second paradigm locates the prime or at least a key role for compliance in supra national institutions, whether they be of a more or less judicial or political nature. A third paradigm allocates a key role to implementation of international law domestically and its application through the state.

As can be seen, therefore, international law’s means of ensuring compliance are varied and complementary. They combine the interstate, supranational and domestic dimensions. By and large the system may suffice for the enforcement of many international norms. But there are several known deficiencies and problems with the system. One of them is what I would call the system’s “black holes”, namely situations of violation of international law that fall through the cracks of these various means of implementation, or for which at least they prove to be insufficient to correct violations of international norms. These may be situations where no state has any particular interest or at least the wherewithal to seek the enforcement of the norm in question; a situation where international mechanisms are not competent or ineffective; or a situation where no obvious domestic remedy is available.

A second problem, is what I would call the problem of the “persistent offender”, namely states which, for a variety of reasons (not all of which need be bad), decide not to “play the game” and successfully develop strategies to remain outside the purview of international law. The existing mechanisms have proved quite good at ensuring a certain normative disciplines within states that habitually respect international law, but are not very good at dealing with crises and persistent delinquency.

A third problematic area is the lack of enforcement even if some measure of recognition of the violation is obtained so that the “cost” of violating an international norm is not felt. This is the realm of unenforced judgments, unheeded resolutions and the general

indifference to norms uttered by a decentralized, faceless and relatively toothless international community.

A fourth problem is the fact that the system has for a long time and still tends to be slanted in favor of the state. Norms which articulate state interests are more likely to be enforced than those that articulate purely human-oriented values because states are the prime agents to enforce the norms (whether through access to international bodies, power to lobby or influence other actors, or the state's own courts).

Combining all these factors, one can see emerge a number of nightmare scenarios for enforcement where prospects for compliance with international norms are extremely low. These are situations of high concern for international law, as they truly question its ability to be enforced in some of the instances where its enforcement is most required. They are also increasingly frequent and at times enduring situations. There is a sense that, confronted with periodic crises of enforcement, the "international community" eventually puts itself in a position where it has no choice but to use force, a particularly unwieldy tool to enforce norms that can backfire dangerously.

It is no secret, therefore, that international law has been going through a persistent crisis of enforcement that challenges some of its claim to act as the international community's legal system. It is not, therefore, as if international law can do without all the energies and good will that might be made available. The system is not only practically inefficient, it is also arguably *theoretically incomplete*, almost implicitly anticipating a number of "enforcement loopholes" where it resigns itself to non-enforcement or the occasional outburst of violence. This suggests that the incremental improvements may in some respect never fundamentally remedy the flaws in the system.

2. A Crisis of Legitimacy

International law is facing, simultaneously, a crisis of legitimacy, or rather several crises of legitimacy. I cannot go in any detail here as to what these crises are, except that one is clearly a crisis of *popular* legitimacy. This is partly a consequence of the crisis of compliance, and partly a cause of it. It is a consequence of weaknesses in enforcement since civil society is likely to lose faith in international norms in favor for example of more direct political action. It may also be a cause, in that failure to enlist the support of civil society will deprive international law of an occasionally crucial ally, one which can have a notable impact on forcing states to comply with certain norms.

Most importantly, international law's crisis of legitimacy is a result of its continuing exclusion, partial or complete, of civil society, individuals, and various non state actors from participation in international law. In a context of globalization and increasing waning of the state/non-state divide, in which international law, this exclusion has at times risked severely weakening international law's claim to speak on behalf of the system's supposed ultimate beneficiaries. International law's claims to be transforming itself from a system of inter-state regulation into the normative backbone of a system of cosmopolitan governance are crucially weakened by its inability to entrust more power in the hands of civil society. Moves to create more political space for non-state actors⁵ are

⁵ NGO participation is one such issue, and has proceeded slowly in at least some international fora. But the issue of more institutionalised forms of global popular representation still remains something of a utopia.

still at a very early stage and, what is more, are often formalist to the point of not reflecting the already existing contribution that these actors make.

3. What Civil Disobedience Could Contribute

This double crisis which international law is experimenting makes it all the more striking that it has seemed largely oblivious to the tradition of civil disobedience. One can frame an argument that civil disobedience could contribute to remedying both these crises.

First, civil disobedience could clearly make a contribution in terms of securing a higher degree of compliance with fundamental norms, international ones in particular. For example Ghandian civil disobedience was an extremely significant development in bringing about the end of British colonial domination and Indian independence. Although it preceded the heyday of decolonization at the UN, it can be seen as having ushered in that era and acted as a powerful early actualization of the international ideal of decolonization. The civil rights movement's successes in bringing about the demise of the US system of segregation was also largely based on very strong campaigns of civil disobedience. Its actors may not have particularly framed their struggle in terms of international norms (as opposed, say, to US constitutional norms or religious thought), but there is no doubt that their accomplishments were deeply consonant with at least the proclaimed objectives of the international community at the time.

Civil disobedience can be used to secure a variety of goals, but it is maybe in its nature and because of its methods uniquely suited to secure certain legal ends. Civil disobedience, as it has been defined in this essay, entails the deliberate violation of the law sometimes in protest against some of the state's policies, but also more specifically often in protest of some of the state's laws. Indeed, even though civil disobeyers may violate laws other than those they deem unjust, there is generally a close correlation between the impugned law/policy and the deliberate legal violation involved. Furthermore, civil disobedience will often have as its goal the repeal of certain laws or certain changes of policies that are either straightforwardly illegal, or in violation of some higher legal obligation, or which do not meet certain basic criteria of justness that would even allow them to qualify as law. Civil disobedience, therefore, is immersed in normative struggles that have as their goal the securing of certain legal positions.

Second, civil disobedience would seem to have something significant to contribute in terms of partly alleviating international law's crisis of legitimacy. Civil disobedience is largely a device of popular empowerment against the dictates of the state. It has a profoundly emancipatory and liberating potential. It relies almost exclusively on the resolve, often heroic, of individuals or coalitions of individuals. It has the potential to act as a unifying magnet for otherwise dispersed and idiosyncratic action. If civil disobeyers were to more systematically invoke international norms to back their action, international law would be highlighted as truly having the potential of being a key arbiter of normative disputes between state and citizen.

Because civil disobedience is embarked on its own quest for legitimacy (see *infra*), furthermore, manifestations of support by international law would be sure to enhance international law's status as a system of norms that is capable of challenging authority in

the name of some higher concept of justice, and dissociate international law further from some of its statism.

B. Why Civil Disobedience Needs International Law

Although international law could clearly benefit from civil disobedience efforts undertaken in its name, it is also the case that civil disobedience and more generally resistance initiatives could gain a lot from casting their rhetoric in the language of international law.

1. Crises of Civil Disobedience

Civil disobedience, a respectable tradition with roots in long held ideas within several religions and secular philosophies about the right to stand up against unjust laws, suffers from its own series of crises, which in some ways mirror international law's.

First, although civil disobedience has achieved great and momentous things in 20th century politics for example, it is an intrinsically perilous and extreme venture which pits civil society forces against the dangers of a repressive state. Because civil disobedience asks much of individuals and groups of individuals (including the risk of repression, criminal sanction, imprisonment, possibly worse in some cases), it is also relatively rare, and hardly always successful. Civil disobedience remains a largely marginal, exceptional and precarious means of political struggle that is dependent on very peculiar conditions. Indeed, one might say that civil disobedience suffers from its own crisis, if not of compliance, at least of potency and efficiency. On the "legitivist" side, civil disobedience is attacked as too willing to break the law, shun normal routes of democratic participation or judicial redress, and for being presumptuous in claiming to enforce some "higher law"; on the "radical" side, civil disobedience is criticized by those who would resort to violence as too "civil" and possibly complicit at a certain level with the very violations it is trying to correct (witness, for example, the criticism of the new Tibetan generation of the Dalai Lama's leadership).

At least one reason for these difficulties is what one might call civil disobedience's own enduring crisis of legitimacy or authority. Clearly few political practices have been as enmeshed in jurisprudential dilemmas as has been the case of civil disobedience. Civil disobedience, in raising the question of its own legitimacy, raises the issue of what makes law, authority and power worthy of obedience in the first place. Stated in simple terms, the foundational problem of civil disobedience is that, as a claim to political or legal action, it cannot rest on any authority granted by the state since it is precisely the state that it seeks to challenge. Any purported "legality" of civil disobedience, therefore, can almost by definition not be rooted in positive legality.

This has always raised considerable jurisprudential problems, and confined civil disobedience to a relatively precarious philosophical foothold based on appeals to conscience and a mix of supra-legal values. Civil disobedience must appeal to non-statist principles of justification, typically either higher religious principles (a notable Christian tradition that runs from Saint Augustine to Martin Luther King) or a secularized version of those (e.g.: natural law). These have historically provided strong motivation to spur individuals into action and will undeniably continue to do so, but they have also put civil

disobedience at odds with much of the modern legal project. As a result, for example, civil disobedience has been based on an anti-positivist, naturalist ethos which has its force but is also one of its major weaknesses, notably in a modern or post-modern world where such appeals have ceased to be grounded in a common world view. Civil disobedience as it has often been practiced leaves its individual practitioner(s) entirely vulnerable to the state, even in those situations “resisters” are actively engaged in seeking to uphold international principles. The difficulty of grounding civil disobedience in something less subjective than appeals to one’s conscience has also arguably in all but exceptional cases hindered civil disobedience’s ability to act as a rallying platform for broad concerted political action.

2. What International Law Might Contribute

International law could contribute to strengthening civil disobedience by providing a normative reference point for it, at least in those cases where civil disobedience is conducted in its name.

First, international law might contribute some, if not incontrovertible, at least significantly more solid principle of justification for civil disobedience, by attempting to ground civil disobedience within positive legality and frame general principles regarding the conditions in which the international legal order would be sympathetic to it. At the very least, the international community, which is so concerned with sovereignty and its limitations, might provide an appropriately pluralist forum to discuss the issue. In doing so it might also help us to distinguish between the “good” and the “bad” sorts of civil disobedience (on the basis of international legal principles) from within classical paradigms of legal analysis (e.g.: the axiological superiority of international law), rather than by having to resort to mystical or metaphysical arguments.

Second, international sanction might make would-be civil resisters more prone to resort to resistance in the knowledge that, whatever repression or disapproval they may encounter from their state, the international community is standing by their side, even if only symbolically. Given the moral, social, political and psychological difficulties involved in standing up to one’s state, one can see how such support might be helpful in the taking of personal and collective decisions that will often be inherently risky.

Third, to the extent that international law does provide substantive authority for the legality of certain acts of civil disobedience, it can powerfully reinforce the legal protection of civil disobeyers. After the facts, international law might provide a modicum of more concrete protection for civil disobeyers. For example, a person engaged in civil disobedience against his or her state would at least be able to argue (domestically or internationally) that he or she was seeking to enforce international obligations of the state. If that argument were heard in court, it might help recast civil disobedience as either legal or at least excusable. If it were not, at least once a change of regime had occurred and, for example, in the context of transitional justice arrangements, the relevant individuals would have incontrovertible grounds to claim some measure of retrospective rehabilitation, something which has often been missing. Moreover, even if, as is likely, the state targeted would remain unsympathetic to claims derived from civil disobedience, the repression of forms of civil disobedience that were otherwise considered legal would

itself be illegal under international law and could engage the responsibility of the state that commits it, and even the responsibility of those who assist that repression.

II. International Law and Civil Disobedience: The Possibility Of Convergence

A. Problems and Obstacles

1. For International Law

There are obviously considerable problems in suggesting that international law devote any amount of normative energy to legitimizing civil disobedience. Civil disobedience is intensely challenging of state authority. It is, in fact, a form of provocation against the state and contains the seeds of rebellion. States are obviously generally very skeptical and wary of it, even though there are some exceptions.

International law, by the same token, for all its evolutions in the last decades, remains a system of norm wedded to the protection of a certain vision of sovereignty. For international law to legitimize civil disobedience (conceptually, but therefore also sooner or later, concretely) is likely to be seen as a blatant form of interference by the international community in states' domestic affairs. Indeed, many international lawyers would resist a move that would threaten to put international law at odds with some of its fundamental tenets.

2. For Civil Disobedience

Essentially what the idea of legitimizing some form of civil disobedience points to is the prospect of a certain "normalization" of civil disobedience. Historically, civil disobedience has occupied a rather unique position conceptually as a form of political action that cannot – maybe even can never – be captured by the Law. The question is whether this somehow defines the essence of civil disobedience, or is only really contingent to it in the absence of a strong cosmopolitan legal order to challenge the state's law.

The main principled argument against *any* legalization of civil disobedience is that legalization "takes the sting" out of civil disobedience. To be what it is, or at least to be effective, civil disobedience arguably needs to speak from a position of non-law (a position of pure morality or politics) to the law. Moreover and perhaps most importantly, civil disobedience needs to *violate* the law, or otherwise dissolve into merely (legal) protest. It is the violation of the law that makes it a particularly potent form of political protest. Legalizing civil disobedience, regardless of the particular parameters international law might set, would be doing it (or so the argument goes) a fundamental disservice. Indeed, it is to unduly extend the domain of the Law in an area which should

remain purely political, an individual variant of the sovereign's ultimate test of sovereignty: its ability to "define the exceptional". A further more jurisprudential argument, is that the law cannot define the conditions of its own violation, without ceasing to be law.

An argument specifically against the *international* legalization of civil disobedience, is that international law may unduly restrict the conditions of disobedience. The international agenda may at times be benign and emancipatory, but it has also often itself been oppressive, hegemonic and partial. Moreover, the internationalist project has tended to be centralizing and centrifugal, where disobedience is constantly reinventing itself and often defies categorization. Civil disobedience should be capable of being exercised differently in different loci, according to the political culture of a people for example. There is an aspect of self-determination inherent in civil disobedience that cautions against trying to set up a uniform formula for it (in a context where international law would presumably have to come up with some sort of broad formula if it were not to risk legitimizing all forms of disobedience).

B. Prospects and openings

1. From International Law

There is no easy answer to the conservative international legal argument that civil disobedience is simply more than the international legal order can bear without sawing the branch on which it is sitting.

One possibility is that even on its own grounds, the "sovereignist" argument is only partly compelling. International "regulation" of civil disobedience might at least promise to rationalize a type of political practice that is otherwise worryingly unpredictable for states, and thus reinforce rather than weaken state sovereignty. That is a tenuous argument at best and it is not particularly attractive from a civil disobedience point of view to see the essence of "international legalization" as a project to make disobedience "safe for the state", but at least one can see how a collective exercise of international legal definition might paradoxically help states combat the most outrageous forms of disobedience (e.g.: sectarian disobedience that is in no way geared towards a collective project and potentially very dangerous for society).

More significantly, while arguments based on the sheer resilience of sovereignty as a concept and political reality are not to be dismissed lightly, they are also at serious risk of reifying what international law is and has been. In many ways, although an international legitimization of certain cases of civil disobedience in this day and age would constitute quite a significant step, it would probably constitute less of one than it would have ever done before. Such a legitimization would come on top of and crown, so to speak, decades of evolution of the international legal order that have already purportedly reordered the system around values that are substantially oriented towards protection of the human being and made sovereignty into the shadow of what it may once have been.

The sovereignty argument, in this context, can be a bad way of raising the problem, at least when it is reified into the simplistic idea that legitimizing civil disobedience would

run against the central tenets of sovereignty. First sovereignty is, like the international law that conditions and flows from it, a complex, evolutive, and somewhat fluid concept. Second, at any moment sovereignty is an ambiguous concept, capable of several meanings, some of which at least are largely compatible with some degree of international legitimization of civil disobedience. Third, international law's role is not simply to "protect" a sovereignty that is previously defined at a distance from it, but, in good constructivist logic, to define what sovereignty is in the process of protecting it. If international law is both constitutive of the reality it claims to regulate and eminently evolutive, it may well want to evolve in a way that acknowledges a greater role for civil disobedience. For a long time, there existed a schism between the ends pursued by civil disobeyers and international law. For example, Ghandi's campaign of civil disobedience to reach the independence of India were arguably pursued against the background of an international legal system that had largely justified colonization. International lawyers of the time had accordingly strictly nothing to say of the issue, because civil disobedience, in a sense, anticipated on international legal developments (which it eventually helped bring about).

The conditions of the debate, conversely, become substantially modified once international law's ends become substantively aligned with at least some of the causes pursued by civil disobeyers. Human rights are perhaps the most crystal clear case of this convergence: it is respect for elementary human rights (civil, political, even economic, social and cultural) that the new generation of civil disobeyers, trained and socialized as it is in the ways of "international civil society", is invoking in increasingly sophisticated ways; those human rights are the very rights which the international community otherwise claims to want to uphold arguably above any other value. There thus emerges a situation of at least *objective collusion* between international law's aims and civil disobedience actions undertaken to pursue these aims (directly or indirectly, explicitly or implicitly). This puts international law in the not altogether untenable but complex situation where it may disapprove action (civil disobedience) taken in defense of its own substantive norms (presumably on account that the action violates some higher order norm such as sovereignty which is seen as more important, contingently or in general, than the particular substantive norm that the civil disobeyers seek to enforce).

Of course, this is only superficially a paradoxical situation. The international system may aspire to some end, but not so much so that it is willing to fundamentally change its preferred means of attaining that end (which in the case of human rights would be the sort of moderate means of political and legal persuasion that I have suggested have become part of the system's enforcement crisis). By the same token, ends and means, as will be more familiar to students of politics maybe than those of international law, are hardly rigidly dissociable. The end itself (for example, a world oriented towards the protection of some concept of human dignity) may condition a certain vision of the means to implement it (e.g.: civil disobedience, in at least some cases); inversely, the means themselves (say, sovereignty's toolbox) project and are predated by a certain vision of ends (an international legal system geared towards the maintenance of sovereignty as its ordering concept). To want a certain end all other things being equal but without being willing to pay the price of what may in some circumstances may be the most effective means, is to ultimately want that end less than the particular end implicit in the means one is clinging to. There is a danger, therefore, in treating ends and means as belonging to

irreducible analytical categories which is, again, a danger of reification: that the methods of compliance become more important than the substantive goals, and that the system end up “losing its soul” as it were by not recognizing the debate between ends and means for what it ultimately, namely as ultimately a debate *between ends*.

Once the system becomes aware of this, it opens itself up to some fundamental possibilities for reordering which may well have as one of their dominant themes a reassessment of the means of compliance available to it. One way to further ground such speculation is to suggest that, *on the long run, a legal system’s compliance mechanisms are likely to emulate its substantive aspirations*. To the extent therefore that international law is increasingly governed by concerns for the human being at the level of its substantive norms, one can conjecture that it may also increasingly seek to rely on human beings to promote compliance with those norms.

Indeed, this is already significantly the case. Individuals and non-state actors’ role in fostering compliance is growingly recognized. That role, however, is still only partial and formal. Individuals, in particular, are not on a par with the privileges granted to states historically in that their contribution to compliance has so far been narrowly confined within the parameters defined by the state’s law (there is no right of individuals to adopt countermeasures or to resort to self-help even in case where crucial obligations owed to them are violated). Typically, the vision of civil society promoted by international law is one where NGOs and social movements for example are gentle helpers and promoters of international law, rather than at the vanguard of risk taking in its defense on the ground (except as, say, providers of humanitarian assistance to others).

Recognizing the legitimacy of civil disobedience in certain cases would also at least partly align the modes of compliance action available to individuals with those of states, such as “self-help”, counter-measures, self-defense, etc. The justification for decentralized enforcement via civil disobedience would be essentially the same that it is for the inter-state system: in the international system decentralized means of enforcement are justified on account of the system’s own decentralized character (more precisely, both are correlated: decentralized means are justified to the extent that the system is decentralized). Decentralized responses to breaches of international norms are therefore justified because of the anarchic character of the system, and also on account of certain concepts of subsidiarity that see the state as ultimately the best guarantor of its now interest when it is affected by violations of international law.

Of course, the domestic system defined by the state is in a sense exactly the contrary of a decentralized system and under normal conditions its constituent parts (individuals, citizens) are characteristically not supposed to “take the law in their own hands”; but if that system is fundamentally unjust and in contravention of fundamental international norms one can argue that the domestic legal order either dissolves or is sidelined by international law, so that the individual finds himself something like the direct inheritor of the international legal obligations normally vested by the international system in the state, and in a situation where it becomes the ultimate guarantor of adherence to certain values. The civil disobeyer thus operates in a multiplicity of decentralized systems: that left vacant by the waning of a fundamentally “unjust” domestic order; and that of the international system at large, in which he/she now finds himself.

2. From Civil Disobedience

It is hard not to have sympathy for the argument that one should not under the guise of promoting civil disobedience end up destroying it. However, the argument is at least partly flawed.

First, the issue is obviously not to comprehensively legalize civil disobedience under international law, thus depriving it of much of its “bite”. The argument made in this paper is that civil disobedience should in certain cases be legal under the particular legal order that is international law. This merely implies that it is legal under that legal order and that there will be valid arguments that it should not be repressed domestically (as far as international law is concerned), but it will in all likelihood not de facto make it legal under domestic law. Presumably the point is that the state who is engaged in the unjust/illegal practice will a priori not consider that violating its own laws is open to its citizens, even if international law says it should be.⁶

From there, two avenues are open. If the state is swayed by international law’s authoritative statement that civil disobedience is in fact legal (it is not inconceivable that independent domestic courts at least would recognize this) then the state may have no other choice than to repeal the incriminated law against which civil disobedience is being exercised (one cannot maintain the law as law and simultaneously accept that it is legal to disobey it). If such is the outcome, then one is tempted to say, so much the better. In that case, international law, by precipitating the repeal of the unjust/illegal law, helps civil disobedience achieve its ends by, in a sense, averting the need for civil disobedience in the first place. Surely this cannot be a bad thing, even if it means that civil disobedience is deprived of an outlet and thus of a *raison d’être*. Civil disobedience is certainly not something that international law would want to encourage in and by itself, short of some very weighty goal (see *infra*). Indeed, civil disobedience is not something which most theorists of civil disobedience, who are often deeply impressed by the tragic experience of having to choose between one’s conscience and obedience to one’s state, and who are neither nihilists nor anarchists, would want to encourage for its own sake. Civil disobedience, in short, can only be a means to an end, the real end being the repeal of an unjust law or policy. To claim otherwise is to submit civil disobedience to its own reification (the means is the end).

If, on the other hand, the state is not convinced by international legal arguments that what it deems illegal is in fact legal (and we know that domestic courts are very good at not hearing or not adopting arguments taken from international law), then international law will at least provide a modicum of symbolic and political support to those facing domestic sanction for their acts. That is not the same thing as simply “winning” one’s civil disobedience before the courts, but given the remarkable solitude of those who take it upon themselves to challenge the state by breaking its laws, one can imagine that it would at least provide a modicum of comfort to know that one is standing up for a larger idea of international legality. International law could also help those engaged in acts of civil disobedience better understand their acts as embedded in a larger collective

⁶ One might ask, what then is the point of international law legalizing civil disobedience in certain cases? The answer is: not necessarily preventing the state from repressing civil disobedience, but instead providing some of the international remedies that have been outlined in the introduction.

normative project, and thus promote a sense of cosmopolitan solidarity from which civil disobedience can only come out reinforced.

Moreover, I would contend that there is a tendency to romanticize civil disobedience's "outlaw" character. In practice, civil disobeyers have rarely been content with casting themselves as entirely outside the purview of the law and offering themselves up as sacrificial victims on the altar of social change. Typically many of them at least attempt to argue their case in courts when given the chance, from the point of view of the law, be it to undermine it from within and emphasize its contradictions. Civil disobeyers are interested (one would presume) in their ends, and gain little from being punished in and for itself when they could have not been punished, or from experiencing radical solitude when they could have enlisted the support of the international community. In this latter case, the history of civil disobedience attests to many attempts to forge strong alliances between local and international voices for dissent.

Finally, the idea that Law could not possibly regulate the conditions under which civil disobedience is exercised without unduly limiting and compromising the diversity of modes of civil disobedience is one that cannot be dealt with fully in so little space. It may be that a certain absolute diversity may be lost by international law attempting to legislate the conditions of civil disobedience, but (i) international law is quite good at coming up with formulations that allow for a sometimes large degree of diversity (e.g.: "margin of appreciation" doctrines, (ii) whatever loss is incurred in terms of diversity is likely to be more than compensated by the fact that that civil disobedience that is considered legitimate in international law will have secured a much stronger foothold as a result, (iii) international law may assist in excluding forms of civil disobedience that are clearly unwarranted, which surely can only be beneficial to civil disobedience in general.

3. Civil Disobedience and International Law: an "Air of Reality"

Before I go on, I want to point out that although international law has not had much in the way of a systematic theory of what it should do about civil disobedience, nor is the idea that it should legitimize such disobedience totally incongruous. Indeed, there are a number of specific clues that point towards at least a certain international sympathy towards civil disobedience. The Universal Declaration on Human Rights indicates in its Preamble that it is "essential that human rights should be protected by the rule of law" lest man "be compelled to have recourse, as a last resort, to rebellion against tyranny and oppression". The Nuremberg precedent, and in particular the idea that it is not a defense to an accusation of international crime that one was obeying orders, opens the way for an obligation to disobey certain orders, which might be a preliminary to arguing that one can also legally disobey certain laws. The international community, through the General Assembly, has on countless occasions insisted that people have a right to resistance in certain circumstances which goes as far as armed resistance (and therefore surely encompasses, a fortiori, less anomalous forms of resistance such as civil disobedience). Quite a significant number of countries have constitutionalized a right to resist oppression, which is commonly understood to authorize at least acts of civil disobedience.

There are therefore at least scattered traces of civil disobedience being made legal and legitimate in at least some cases. These examples are worth mentioning to suggest that this normative theory has an “air of reality” to the extent it is based on some amount of international practice and pronouncements.

III. What Might an Internationally Legitimate Civil Disobedience Look Like?

The point of this paper is merely to open a debate. I do not, therefore, claim to outline a comprehensive model of which civil disobedience international law should recognize as legitimate. What I can point to, however, are *the key parameters that should be taken into account* both from the point of view of civil disobedience itself and international law. The main point here is that international law should only recognize civil disobedience in very limited cases, but that it should very much recognize it in those few cases.

The greatest fear raised by an increased legitimization of civil disobedience is that it becomes a recipe for chaos. It is one thing to think that sovereignty can be abused in some cases, it would be quite another to unleash the potentially disruptive force of civil disobedience without adequate thought about what is thus set in motion. The point of international law legitimizing civil disobedience, of course, is also that it can be discriminating about what it considers to be legitimate civil disobedience, and the illegitimate sort.

Two major questions are raised: a substantive one (civil disobedience for or because of what?), and a variety of procedural ones (civil disobedience by whom, when and how?), although neither are watertight analytical categories (for example the “what”, “when” and “how” questions are somewhat linked).

A. The Substantive Question: What?

In terms of the substantive threshold it is easy to conceive that there would be extreme cases where international law should have no qualms about supporting individuals who violate domestic law as part of campaigns of civil disobedience. If a genocide is underway in a country, for example, surely international law is not so sovereignty-oriented that it could remain indifferent to those who seek to oppose genocide by peaceful means.

By the same token, it is clear that international law could not legitimize civil disobedience each time international law, even human rights law, was violated by a state. Civil disobedience is a radical means of upholding certain essential norms which should be reserved for radical violations of these essential norms. To claim otherwise, would be deeply destructive of any sovereign order, something which would be surely rejected by the states that make up the international community.

In order to avoid unduly opening or unduly narrowing the legitimization of civil disobedience, one needs to spell out a number of general criteria, which can then find particular instantiations in violations of certain international norms.

1. The General Criteria

I can see three general criteria that can help us map the conceptual terrain of legitimate civil disobedience: connection to international law, involvement of a fundamental value and gravity.⁷

(i) Connection to International Law

Since I am only preoccupied in this paper with civil disobedience that is legitimized by international law, one of the minimum requirements for civil disobedience to be legitimate would be that it clearly relate to some adequately recognized international norm or value.⁸ However, it would be sufficient for civil disobedience to objectively contribute to some internationally promoted value, even though its actors were not particularly subjectively aware that this was the case, or that they could cast their action in this manner.⁹

(ii) “Fundamental Human Value”

To that general requirement I would add that civil disobedience only be internationally legitimized in instances in which it emerges to protect some fundamental human value. I realize this is a hopelessly vague threshold at this stage, but I do want to make the point that to the extent civil disobedience is a very exorbitant remedy it should really be reserved for violations that entail more than a passing state interest. Moreover, there is a logic to the idea of a popular form of political action such as civil disobedience being mostly geared towards the protection of fundamental human values. Purely interstate violations of international law (to the extent that there are any such violations), for example, would not be adequate grounds for civil disobedience and would as a rule always better be left to states (e.g.: a violation of a trade treaty or of a rule relating to the law of the seas).

(iii) Gravity

Linked to the above criterion, is the idea that violations, even when they *prima facie* impact fundamental human values, should have a certain degree of gravity. Gravity of violations might be evaluated in a variety of ways, which could include a mixture of both the type of human right involved (is loss of life or torture involved, or something less?) and the generalized, systematic, repeated or perverse character of the violations.

⁷ In addition, one should probably add a non-criterion which is the issue of whether the state laws/policy involved are either domestic or international. I think that should be largely irrelevant, if the laws/policies involved actually intersect with any of the listed criteria. Although civil disobedience will often be primarily geared towards domestic decisions, it may very well target the state’s foreign policy or, more likely, a mix of domestic and foreign policies (draft dodging in the context of the Vietnam war for example was based both on anti-imperialist “international” grounds, and a “domestic” resistance against the draft which, at least in the circumstances, was seen as an abuse of its power by the state).

⁸ I am not thereby excluding the legitimacy of forms of civil disobedience that do not purport to promote some internationally condoned value – I am merely saying these should not particularly benefit from international validation.

⁹ Given the level of sophistication of civil society these days and the tendency to reach for outside support it is unlikely that a civil disobedience movement would not become aware of the benefit it can derive from forging some connection with international law. By the same token, international law is not and should not be formalistic about such things, so that even an action that merely objectively coincides with international goals should be worthy of protection.

2. Some Specific Instances

Without going into too much detail, one possibility would be for international law to at the very least legitimize instances of civil disobedience that have as their aim the avoidance, minimization, or interruption of the commission of *international crimes*, at the very least the International Criminal Court's so-called core-crimes (genocide, crimes against humanity¹⁰ and war crimes). I believe it would be fundamentally contradictory if the international community were to promote these norms on the one hand as essential to its very survival and as truly constitutive of its normative aspirations and, on the other hand, out of an anachronistic reification of sovereignty, demand of individuals that they be led by their state "like lambs to the slaughter" and entirely defer to international law's traditional compliance mechanisms even when those have been found wanting.

In line with international law's supposed normative move towards a legal order more concerned with the dignity of the individual, I would also argue that certain generalized or systematic violations of human rights, even though they may not fit the definition of crimes against humanity, might also internationally justify actions of civil disobedience. In addition, the severe undermining of democracy, and instances of tyranny, dictatorship or totalitarianism, would all correspond to the sort of situation where civil disobedience is internationally legitimate both on account of the rights dimension and human values involved, and international law's own increasing support of forms of democratic entitlement.

Some international crimes that involve both a human dimension and an interstate one, pose particular problems. Would it be open for example for individuals to engage in acts of civil disobedience to prevent/stop an act of aggression carried out against another state? Aggression is often characterized primarily (e.g.: in the UN Charter) as a violation of the sovereignty of another state, but it is also clear that few aggression occur that do not have significant human fallouts.

However, the substantive threshold for justifying civil disobedience may in many cases be less important in the absolute than a variety of contextual circumstances surrounding it. In other words, the commission of some core crimes might not warrant civil disobedience, and some crimes or violations of international law that are much less grave than core crimes might occasionally warrant civil disobedience. In that respect the important element seems to be less which violations of international law would entitle the populace to civil disobedience, but the actual conditions in which that disobedience might be actualized.

B. The Procedural Questions

1. Who?

Civil disobedience raises a classic dilemma of political theory. Since civil disobedience arises to challenge unjust/illegal state policies to which the state is likely to be strongly wedded, the state's structures of deliberation and representation are likely to be part of the problem. In other words, the normal mechanisms for identifying authority and

¹⁰ Which in its current formulation includes apartheid.

responsibility are precisely what will be found wanting. This means that civil disobedience can and has only ever emerged, in “ground-up” fashion as it were, from an effort at self-organization of civil society which must per hypothesis proceed bereft of any prior legitimacy, or procedures to establish it. Civil disobedience’s only legitimacy is and has been historically, an appeal to certain higher principles, the ability to coalesce individuals under a common struggle, and ultimately to convince society (and, arguably, the world at large) of the justness of its cause. The history of civil disobedience, therefore, belongs more to the history of grass root political movements, than it does to the reality of formal and organized democratic political representation.

This is unavoidable to an extent, but it can also create intractable dilemmas of legitimacy, especially when the authority that is claimed by such movements is to violate the law in order to challenge the state. It is not impossible to see History as the only judge and measure of retrospective success of any given effort at civil disobedience. But international law here could have a role to play in identifying certain minimal criteria to establish the legitimacy of certain groups (aside from the legitimacy of their cause). This could be beneficial to both the groups involved (who would become endowed with an added international legitimacy) and for international law (which would only lend its support to groups that fitted within its overarching purposes).

A first criterion would be the ability of the relevant groups to respect the other conditions set out for civil disobedience (see *infra*, when and how). Other criteria might be less purpose oriented, and more related to a number of organic characteristics of the groups. One of these might be that they be minimally representative of the population or groups they claim to represent or in whose name at least they claim to act. Another might be that they be at least proto-democratic so that for example a civil disobedience movement that was based on the cult status of some charismatic figure might not be considered as legitimate as one that was born from peoples’ assemblies. The idea here would not be for international law to demand of groups behind civil disobedience that they exhibit all the characteristics of formal political organizations (for example, some measure of secrecy and clandestinity may be an unavoidable feature of bodies involved in civil disobedience), but at least that their internal functioning should not be too far apart from the values which they profess on the one hand, and international law’s own slant in favor of representative and democratic governance.

2. When?

International law should not want to legitimize civil disobedience too early (at the risk of unnecessarily undermining the authority of the state) or too late (at the risk of failing to stand by the values that it and civil disobedience jointly seek to uphold). I propose that *subsidiarity* be the key legal criterion of whether civil disobedience is chronologically opportune. International legitimization of civil disobedience should be reserved to those cases where all means that do not involve violating the law have been exhausted. It would, in other terms, clearly have to be a last resort.

Specifically, I can see two sorts of alternative avenues whose impossibility would have to be established before civil disobedience was internationally legally recognized. First, political action not involving violation of the law would have to be the preferred option.

International law could not want to encourage frivolous manifestations of civil disobedience when changes to laws or policies could be obtained through democratic means. Whether such action is possible will of course depend on the availability and openness of democratic institutions. One would have to be able to invoke a very substantial absence or dysfunction of democratic institutions to avail oneself of international law's authority in disobeying domestic law. In particular, international law should not legitimize civil disobedience of a democratic minority which simply finds itself on the "losing side" of any or a number of democratic decisions.

It is in the nature of democracy that it will make discontents, and to allow these to resist the law is something that would clearly undermine democratic arrangements and popular sovereignty, something that international law clearly cannot contemplate. On the other hand, if those on the "losing side" of democratic decision-making are so on the basis of some discriminatory ground (race, ethnicity, religion, disability, sexual orientation), and if there seems no prospect of their obtaining fundamental political change through the normal routes and within a reasonable time, then civil disobedience may be the only means available. This would seem to be the case in most cases of substantive grounds for civil disobedience: for example a state engaged in Apartheid or genocide is unlikely to simultaneously be receptive to political forces engaged in stopping these practices. But the overlap may not be complete, and one can see how democratic action could in some cases effectively obtain changes in policies involving even relatively grave human rights violations.

A second type of avenue that would need to be explored prior to any action in civil disobedience being launched, is the availability of legal and judicial remedies. Particularly (although not only) in cases where democracy is dysfunctional, the court system can continue to provide, if it is itself functional, a measure of remedy for violations of rights and policies that infringe the constitution, for example. At the very least, therefore, in the same way receivability of a case before international mechanisms (particularly the human rights sort) is conditional upon the exhaustion of domestic remedies, individuals contemplating civil disobedience should have exhausted both domestic and (arguably) international remedies.

However, in the same way the rule of exhaustion of domestic remedies knows of exceptions when it is very unlikely that such a remedy could be obtained, civil disobedience should be susceptible of being contemplated if the domestic and international remedies are unavailable or illusory. For example, if it is obvious that a state engaged in Apartheid or dictatorial policies will not respond kindly to legal challenges to that policy and will even expose those who author these challenges to severe repression, then clearly international law could not require of individuals that they unnecessarily expose themselves by going through the formal channels, and would instead legitimize resort to civil disobedience.

3. How?

The key word here is proportionality. Civil disobedience is and should remain in any event an exorbitant exception to international law's otherwise very legitimist stance in favor of state sovereignty (and its ability to sanction its citizens for violations of the law)

and the normal functioning of institutions. Civil disobedience, therefore, should only be legitimized because and to the extent that it is strictly necessary to obtain the repeal of a particular law or policy. In other words, it should not become a blank cheque for disobedience *tout court*. There should be clear limits to how much civil disobedience can be exercised based on the setting out of clear criteria. Typically, the violation of criminal law would not be contemplated by internationally legitimate civil disobedience, except and to the extent the criminal law is itself manifestly unjust (for example a criminal law that punishes individuals belonging to certain racial groups from sitting in certain buses). The use of violence would in itself, and by definition, be incompatible with civil disobedience. The extent, gravity and timing of civil disobedience should be orchestrated to maximize its political impact whilst minimizing its disruption potential, if need be through symbolic action, rather than simply on the basis of individuals' sense of personal outrage at a certain law or policy. Civil disobedience that would exceed these (admittedly hard to define precisely) boundaries might well lose the legal backing that it might otherwise get from international law.

Concluding remarks

I have sought to argue that international law and civil disobedience operate on two apparently irreducible dimensions, but that there are in fact more links to these two ideas than catches the eye. I have argued, in fact, that both could gain from greater conceptual interaction with each other. International law in its current state certainly needs all the resources it can find to promote compliance and advance its historical ambition to become a world law. It is dubious that it can do so by relying exclusively on the aporia of the interstate world. Civil disobedience, on the other hand, is a formidable idea but one which has often been caught in inextricable dilemmas which have been transcended only in very peculiar historical circumstances. This project can also do with some source of legitimization that is external to the state.

I believe that there is a deep normative logic to aligning international law's compliance mechanisms with the orientation its substantive norms are taking. If it is the case that the international legal order is "serious" about focusing on the fate of individuals, as has certainly long been its promise, then individuals, and more generally the *forces vives* of society (both domestic and global) should be increasingly empowered to stand up to unjust orders. I foresee much prospect for challenge and reordering of hierarchies in this process, but also the freeing of untold energies that have the potential to reshape international law and the way we think of it.