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ZiF Zentrum für interdisziplinäre Forschung
Center for Interdisciplinary Research
Universität Bielefeld

ReligionundPolitik
EXZELLENZCLUSTER | WWU MÜNSTER

Proceedings of the 2018 ZiF Workshop

Studying Migration Policies at the Interface between Empirical Research and Normative Analysis

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The Ethics of Resisting Deportation

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DOI: 10.17879/95189423213

This text is based on a talk at the workshop "Studying Migration Policies at the Interface between Empirical Research and Normative Analysis", held at ZiF Bielefeld, 2018 September 10-12.

The workshop as well as the publication of the proceedings were kindly supported by the Center for Interdisciplinary Research Bielefeld (ZiF), the Cluster of Excellence "Religion and Politics" Münster, and the Forum Internationale Wissenschaft Bonn (FIW Bonn).

Recommended citation: Birnie, Rutger 2019: "The Ethics of Resisting Deportation." In *Proceedings of the 2018 ZiF Workshop "Studying Migration Policies at the Interface between Empirical Research and Normative Analysis"*, ed. Matthias Hoesch and Lena Laube, ULB Münster (miami.uni-muenster.de), 191–214. doi: 10.17879/95189423213

The Ethics of Resisting Deportation

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Abstract

Can anti-deportation resistance be justified, and if so how and by whom may, or perhaps should, unjust deportations be resisted? In this paper, I seek to provide an answer to these questions. The paper starts by describing the main forms and agents of anti-deportation action in the contemporary context. Subsequently, I examine how different justifications for principled resistance and disobedience may each be invoked in the case of deportation resistance. I then explore how worries about the resister's motivation for engaging in the action and their epistemic position apply in the specific context of anti-deportation action and consider in what circumstances there is not merely a right but a duty to resist deportation. The upshot of this argument, I conclude, is that the liberal state ought to respond to anti-deportation action not by criminalising disobedience and resistance in this field, but rather by creating legal avenues for such actors to influence deportation decision-making.

Keywords

Deportation; anti-deportation; disobedience; resistance; right to resist; duty to resist

DOI

10.17879/95189423213

In the evening of Monday July 23rd 2018, 21-yeard old Swedish student Elin Ersson boarded a Turkish Airlines flight from Gothenburg to Istanbul, but once on board remained standing in the aisle and refused to sit down. She had in fact no intention of travelling to Turkey, but she had bought a plane ticket that morning, after finding out that a 26-year old Afghan asylum seeker would be deported on this plane from Sweden to Kabul via Istanbul. As it turned out, the young Afghan in question was

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not on the plane, but an older Afghan man in his 50s was on board for deportation (Anderson and Karasz 2018; Crouch 2018b). Elin declared that she would not sit down nor leave the plane until the man was removed from the flight, starting a Facebook livestream to broadcast the standoff (Ersson 2018). She initially faced mostly criticism from cabin crew as well as other passengers. A British man can be heard in the video telling her "I don't care what you think" and to sit down as she is delaying the flight and "frightening the children"—to which Elin defiantly responded "I don't want a man's life to be taken away just because you don't want to miss your flight" and "he is not safe in Afghanistan, (…) it's not right to send people to hell". Others can be heard yelling "shut up" and "these are the rules of your country". Eventually, she also garners support—from a Turkish man who voices his agreement and a football team near the back of the plane that stands up in solidarity. When a flight attendant announces that the Afghan man will be taken off the plane, there is applause. When the plane departs with a two-hour delay, both the Afghan man, the three security personnel guarding him, and Erin are back in the terminal.

While the man's deportation was called off for the moment, he remained in custody and was deported at a later date, possibly on a specially chartered flight. Ismail Khawari, the 26-year old whose deportation Elin originally tried to prevent, turned out to have been deported on a different flight the next day (Hakim 2018). Meanwhile, Elin has become somehow of a social media sensation. Her Facebook video had been viewed 4.7 million times by the end of the week and versions of the video on YouTube and news websites added significantly to that view count. While she declares in the video that what she was doing is "perfectly legal" and that she had "not committed a crime", in October Swedish prosecutors announced they would prosecute Elin "for crimes against aviation law" at Gothenburg district court, where she is now facing a fine and up to six months in jail (Crouch 2018a).

Elin's actions are one example of many attempts to resist or frustrate deportation proceedings that are considered manifestly unjust by those engaged in them. A variety of actors have increasingly sought to challenge deportation decisions taken by national immigration control bureaucracies and national government's deportation policies and their implementation more widely. These include would-be deportees themselves and ordinary citizens, but also civil society organisations, representatives of local authorities, and the receiving states to which they seek to send their deportees. Their acts of resistance can take the form of public contestation, non-cooperation, active frustration, or violent resistance. How should we morally evaluate such acts and the agents that engage in them? Can such anti-deportation resistance be

justified? If so, how and by whom may, or perhaps should, unjust deportations be resisted?

In this paper, I seek to provide an answer to these questions. There is a small but growing literature on the morality of resisting migration controls generally (Cabrera 2010; Hidalgo 2015, 2016; Yong 2018). However, this literature has thus far focused primarily on a) the rights of migrants *themselves* to evade or resist controls, not that of other actors; and b) the right to resist *entry controls* specifically, leaving aside the specificity of resisting deportation. This paper makes a novel contribution to this literature by having a narrower focus when it comes to the policy but a broader focus when it comes to the *agents* of resistance. The narrower focus is relevant because of deportation's distinctiveness from entry controls. Unlike the would-be immigrant, the would-be deportee is already present and as such has a different standing vis-à-vis the state that enforces migration control. The broader focus on different agents is necessary for the same reason, as the would-be deportee not only has different standing vis-à-vis the state but also vis-à-vis the other agents I wish to focus on here—ordinary citizens, local communities and destination states on whose cooperation the deporting states relies.

The paper is also a contribution to the debate on the justification of disobedience and resistance to state laws and dictates generally. Contributions to this debate often focus on specific types of action, most notably under the headers of "conscientious objection" and "civil disobedience", each supposedly neatly distinguishable and with their own justifications and restrictions. However, precise distinctions between such categories are difficult to maintain when we seek to apply it to a real-world case of disobedient action, such as deportation resistance. Often, such action can potentially invoke more than one type of justification, blurring the lines between categories established in the abstract by normative theorists. Most notably, the justification of different types of action may, even if the goal of the action is broadly the same, vary between the different *agents* which may be involved in the action. This brings to the fore the problem of the one-size-fits-all approach to justifying resistance and disobedience dominant in academic debates. Instead, this paper will argue that in order to defend a normative framework for disobedience in the real world, we need an agent-sensitive account of justified resistance.

The paper starts by describing the main forms and agents of anti-deportation action in the contemporary context. Subsequently, I examine how different justifications for principled resistance and disobedience, namely a necessity defence, a moral communication defence and a personal integrity defence, may each be invoked in the case of deportation resistance. I then explore how worries about the

resister's motivation for engaging in the action and their epistemic position apply in the specific context of anti-deportation action and consider in what circumstances there is not merely a right but a duty to resist deportation. The upshot of this argument, I conclude, is that the liberal state ought to respond to anti-deportation action not by criminalising disobedience and resistance in this field, as many states have done, but rather by creating legal avenues for such actors to influence deportation decision-making.

Forms and agents of anti-deportation action

There are several ways to distinguish between types of anti-deportation action. The first, and perhaps most obvious distinction is between legal and illegal types of action. Only the latter are arguably in need of a specific justification, but it is important to note that the distinction between ordinary political action and principled but unlawful disobedience is of course entirely relative to a given country's laws and policies—and there is wide variation in how states approach this. Nonetheless, the trend seems to be going in the direction of increasing criminalisation of deportation disobedience. A growing number of states are introducing laws that make it possible or easier to impose criminal sanctions on those resisting their own deportation or those helping others to do so. Of the 28 EU member states, for instance, 25 explicitly penalise irregular stay and 10 prescribe imprisonment as a punishment for non-cooperation with an obligation to leave the territory (European Union Agency for Fundamental Rights 2014: 5). Facilitating irregular entry is punishable in all EU states except Ireland, though most either require that those engaged in the facilitation have a profit motive or exempt certain forms of "humanitarian assistance" (or both).[2] However, eight EU states criminalise all forms of assistance, including humanitarian and non-profit assistance (European Union Agency for Fundamental Rights 2014: 11).

Another way of distinguishing within the category of anti-deportation action is by looking at the precise forms it takes. There are broadly three forms of anti-deportation action: public contestation, non-compliance and active resistance. Examples of public contestation include demonstrations, political or media interventions. These can be engaged in by would-be deportees themselves, such as when "deportables" go onto the streets to protest their deportability. One example

[2] Austria, France and Malta exempt assistance provided to family members. France additionally exempts the provision of legal advice. Germany exempts persons who carry out "specific professional or honorary duties". The United Kingdom exempts persons who act on behalf of an organisation that aims to assist asylum seekers and does not charge for its services (European Union Agency for Fundamental Rights 2014: 11).

are the 2006 protest marches in several US cities against proposed legislation which would raise penalties for illegal immigration and classify undocumented immigrants and anyone who helped them enter or remain in the US as felons. The most high-profile of these marches came on May 1st of that year and was nicknamed "a day without immigrants", when many undocumented Latino immigrants quit their job for a day to highlight the extent of their collective contribution to US society. These and other such peaceful protests ordinarily remain within the boundaries of the laws of liberal democracies. However, sometimes protest strategies by those vulnerable to deportation can include unlawful actions, such as the occupation of buildings. The first time the *sans-papiers* movement in France received worldwide media attention was in 1996 when the government ordered special police forces to break down the doors of a church in Paris to expel those *sans-papiers* who had been staging a hunger strike inside (Freedman 2008). More recently, a collective of failed asylum seekers in the Netherlands have occupied and squatted several public spaces and buildings since 2012 in protest against their deportability, including setting up tents in the streets and parks of Amsterdam and (visibly) squatting in an empty church, a garage, a warehouse, a former bank, a former arts academy, a school, flats and office buildings around the city (Wij Zijn Hier 2018). Such protests are also often instigated or facilitated by those who are not themselves subject to deportation, including friends and family members of the would-be deportee, schools, employers, work colleagues, neighbourhood associations, churches and other religious groups, migrant support groups and activist networks or organisations. Sometimes such protest does not have the state or wider society as its audience but rather private companies that profit from the detention and deportation industries, as in the case of the boycotts of Codex (a catering company) and Lufthansa (an airline) (Nyers 2003: 1081).

Non-compliance with deportation law, secondly, may include both evasion of authorities tasked with implementing removals and refusal to cooperate with such proceedings. Non-compliance occurs, of course, when deportees themselves do not obey the obligation to leave and make efforts to hide from the authorities to avoid detection. But it may also take the form of service providers who do not act on their obligation to ask for or pass on information about residence status as they are required, or public officials refusing to cooperate in effectuating a deportation order, such as when mayors order municipal police forces not to use their powers of arrest to detain those under an order to leave—or even actively help those targeted for deportation to go into hiding, as the mayor of the Dutch town of Weert did with a Syrian family in 2016 ("Burgemeester Weert helpt vluchtelingengezin onderduiken" 2006). While this regularly happens in specific cases where a mayor or local council

disagrees with the deportation of a particular individual or family, non-cooperation of a lower political level with a higher one is also sometimes adopted as policy. Sanctuary cities and states in the US are the best-known example of this, but similar practices are found in other countries. When the German federal government passed the *Übermittlungspflight* law requiring all public institutions to report on the legal status of those they came in touch with, several *Länder* including North Rhine-Westphalia, Berlin, Hamburg and Hessen issued ordinances exempting elementary and high schools and hospitals and doctors from this law (Lebuhn 2013: 44-45).

Active resistance, lastly, would be the best characterisation of deportees or others acting using physical force or the threat of force (at least as defensive force) to try and prevent their deportation. Would-be deportees who physically resist their arrest or deportation obviously fall under this header, but so do people who refuse to allow a plane carrying a deportee to take off, either as fellow passengers (such as Elin Ersson) or by chaining themselves to the aircraft or runway, as activists at Stansted airport in the UK did last year (Taylor 2017). Another example is the shutting down of pre-deportation detention centres (as has happened to Via Corelli in Milan and Campsfield House in England) (Nyers 2003: 1081). Forceful or active resistance is, at least in its violent variant, universally outlawed.

Three justifications for resistance and disobedience

There are good reasons for insisting that there is a general duty to obey the law in mostly just political orders, even if we disagree with any particular laws. Some emphasise that such political obligation derives from a natural duty to uphold institutions that are (at least mostly) just (Rawls 1999), others from our membership in political communities governed by laws (Horton 2010) or from the benefits we derive from the law as a system of mutual cooperation (Dagger 1997), and still others from the procedural (Christiano 2008) or epistemic (Estlund 2008) legitimacy of laws that are the product of democratic procedures. However, nearly all authors believe that there are limits to this political obligation and that there are conditions under which laws may be broken. As a type of action which breaks a particular state law or injunction for principled reasons but is distinguishable from revolutionary action in its more limited aims (in that it aims at changing particular parts of the system rather than overthrowing it), this category of permissible law-breaking is usually discussed under the header of "civil disobedience", a term coined by Henry David Thoreau in his 1848 (1996) essay justifying his refusal to pay a state poll tax he believed the US government used to finance its war with Mexico and enforce the Fugitive Slave Law. The case for civil disobedience, and for limiting its justification to very specific

circumstances and types of action, was elaborated by John Rawls in his 1971 *Theory of Justice*. While elements of Rawls' account have been criticised by political theorists since, and alternative accounts have been defended (Feinberg 1979; Raz 1979; Morreall 1991; Lefkowitz 2007; Brownlee 2012), Rawls' definition of civil disobedience remains highly influential.

There are at least three grounds on which principled law-breaking can be justified: grounds of necessity, moral communication, and personal integrity. Each will be discussed in turn below, along with their applicability to the case of anti-deportation action.

Necessity

The argument from necessity focuses on situations in which disobedience to laws or legal dictates may be the only way to prevent harm to vital interests or violation of fundamental rights. For such a situation to occur, it is not enough that a law or its implementation is merely unjust. Rather this injustice must be of a certain gravity and certainty. It must be, in Rawls' phrasing, a "substantial and clear injustice" and there must be "a lot at stake" (1999) for disobedience to be justified. But this way of justifying disobedience also implies certain restrictions on when and how it may be used to prevent or redress the injustice. It must be, first of all, a *proportional response* to the injustice in question, and it must be a *last resort* after other, legal, avenues of seeking redress have been exhausted. However, the last resort requirement must be sensitive to the circumstances of the sufferer of the injustice. As A. John Simmons writes, "the most pressing moral causes are often those most intransigently opposed by those in power, leading inevitably to intolerably long delays in the pursuit of legal means of redress" (2003: 56). Relatedly, in cases where the victims of the unjust law or policy are members of groups within society who are persistently marginalised in different spheres of life, this gives additional weight to the particular injustice suffered by an unjust law (Rawls 1999: 312).

Do cases of deportation reach the "substantial and clear injustice" threshold? There is of course widespread disagreement on this. Some believe all deportations are rights-violating and an unjustified exercise of political power (De Genova 2002; Walters 2002) while others insist that the state has broad discretionary powers to order non-nationals to leave the territories they control (Blake 2010; Miller 2016). Elsewhere, I have argued that deportation regularly (but not inevitably) risks violating fundamental rights, both through its end-result and through its execution. I have also argued that the right to stay in a place where one is a long-term and permanent resident and has extensive ties is a fundamental right limiting deportation practice

(Birnie 2019). While this not a fully-accepted part of the human rights cannon, some principles in international human rights documents and to some extent in state practice do support such a right. This right should be taken alongside more established human rights. The most notable of these is the right not to be returned to a situation where one faces an acute and serious threat to life, liberty or wellbeing, an integral part of the international asylum system meant to guarantee that political and war refugees are not sent back to their demise. Another prominent one is the right to family life, which covers not only the right to privacy but also the preservation of family unity, which forbids deportations which break apart family units, and thereby protects for instance parents of children with a right to stay from deportation. These two rights are familiar enough from human rights practice and constitute formal legal limits on states' power to deport—albeit ones not always respected in practice. When any of these three rights are in play, disobedience and resistance can be justified ways of seeking to prevent the territorial removal from taking place.

What adds to the case for disobedience here is that deportation is, in practice at least, usually an *irreversible* act. Once a deportation has been successfully carried out, it is exceedingly difficult for the deportee to seek redress and return to the deporting country, even when her deportation turns out to have been unjust. Given the speed with which many countries now carry out deportations and the increasingly limited possibilities of challenging a deportation order pre-removal, the last resort requirement must be interpreted very loosely in the case of deportation.

Rights violations may also occur in the *execution* of a deportation. For instance, the use of excessive force, the practice of detaining would-be deportees for long and sometimes indefinite periods of time, and the separation of families in the deportation procedure may constitute a violation of fundamental rights in certain circumstances. In those cases, resistance or disobedience may be justified when the aim is not so much to prevent the deportation itself, but rather to stop the injustices committed as part of the highly coercive deportation procedure. Relatedly, disobedience may be justified even when it is not aimed at preventing a deportation per se but rather seeks to alleviate and protest the unjust effects of *deportability*. The logic behind sanctuary cities, while being sometimes explicitly about defending the right to stay, often is (also) specifically justified with reference to the marginalising effects of deportability, and as such can be (and is) defended without reference to a right to stay.

Moral communication

A second way of justifying law-breaking and disobedience is by defending it as a way of communicating moral concern. The aim of such communicative disobedience is to

convey disavowal or condemnation of a particular law or policy and draw public attention to it, with the ultimate aim of instigating a change in the law or policy. It can thus be justified as a way of contributing to the overall justness of the polity and system of laws. As Rawls writes, "the social value of principled disobedience is that it acts as a stabilising force in society by inhibiting departures from justice and correcting departures when they occur" (1999: 336). In confronting state authorities openly, principled disobedients force them to justify their conduct in controversial policy areas (Brownlee 2007: 179). Moreover, against critique of actions by an individual or minority group against laws which enjoy the approval of a democratic majority, the moral communication argument emphasises that principled resistance to specific laws or injunctions can contribute to, rather than threaten, the democratic legitimacy of a liberal state. Disobedience can play a vital role in democratic processes, as a way of getting a particular issue which has been stalled or silenced on the political agenda (Markovits 2005; Smith 2011), or of addressing the imbalance of political power between minorities and majorities (Lefkowitz 2007; Brownlee 2012). Indeed, for Kimberly Brownlee the communicative value of disobedience is that it contributes "centrally to the democratic exchange of ideas by forcing the champions of dominant opinion to reflect upon and defend their views" (2012: 22).

It is perhaps not immediately clear how deportation resistance can be justified on grounds of moral and democratic communication. If, as Daniel Lefkowitz (2007) has argued, rights to principled disobedience are derived from the right to political participation, and seen as an extension of this right in the sense that is a right to continue contributing to the democratic debate even after a certain law has been decided on by a majority, it is not clear that those who are explicitly defined as non-members of the political community (exemplified by their deportability) can have that right. However, precisely because they lack access to many of the regular channels of political voice available to full citizens, those subject to deportation rely on irregular ways of getting their voices heard *more* than citizens and legal residents, and they may *more* justifiably rely on disobedient action as a counterbalance to their marginalised status. Moreover, as would-be deportees might be unjustly excluded from that community, the possibility of communicative disobedience is of democratic value to both them and those who speak up in their favour. Anti-deportation action frequently challenges precisely the democratic exclusion of long-term residents by challenging the state's definition of belonging and membership (Anderson et al. 2011). Anne McNevin interprets acts of contestation by irregular migrants themselves as the "new frontier of the political—that moment of confrontation and destabilization when one

account of justice competes with another to shape what we think of as 'common sense' justifications for particular status hierarchies" (2011: 5).

Personal integrity

A third argument concerns what is more commonly discussed under the header of "conscientious objection" and is about whether people's personal conscience should be accommodated by allowing them not to live up to formal expectations, either as subjects of the law or as occupants of official positions. The aim of allowing disobedience on this account is not (mainly) to prevent or correct injustice or contribute to the moral or democratic conversation, but rather to protect the sense or personal moral integrity of the disobedient herself—to, as Joseph Raz put it, "protect the agent from interference by public authority" (1979). When those in official positions responsible for executing governmental decisions with which they fundamentally disagree make a deliberate decision not to discharge the duties of their office, this is also known as what Joel Feinberg (1979) has referred to as "rule departure". While such acts involve dissociation from and condemnation of certain policies or practices, they are not necessarily communicative or even public. Following Rawls, we may distinguish two kinds of conscientious non-compliance: conscientious refusal with a more or less direct legal injunction or administrative order, when authorities are aware of the breach of the law, order or injunction, and conscientious evasion, when the act is covert (1999).

When it comes to deciding on the justifiability of top-down order refusal, a distinction should be drawn between those working for agencies whose main purpose is to enforce immigration law and those working for organisations which have an entirely unconnected purpose. In recent decades, deportation has been increasingly "outsourced" by national authorities to actors whose core tasks do not encompass deportation enforcement, including schools, hospitals and other service providers, regular police forces, local authorities, private actors such as airlines and their crew, and in some cases private citizens with a "reporting duty" (Aliverti 2015). All such actors may have a right to refuse to be made complicit in the state's deportation efforts, which cannot be legitimately expected from them given their job description. Moreover, their role in deportation enforcement may directly conflict with, or undermine their capacity to fulfil their core functions. For instance, police efforts to combat crime are undermined by their duty to report those with an irregular status as this prevents the latter from reporting crimes or assisting in criminal investigations.[3]

[3] A helpful analogy here is with doctors refusing to assist in carrying out death sentences since this conflicts with the Hippocratic Oath.

Having now discussed the three justifications which may be invoked to resist deportation, I turn to three questions which I believe to be central to the normative evaluation of acts of deportation disobedience. First, what if the three different motivations corresponding to the three justifications outlined above conflict? Second, how can the argument for justified deportation disobedience respond to what could be called the epistemic objection? Third, when is it merely permissible to resist deportation and when, if ever, is there a duty to do so? Each of these questions is discussed in turn below.

Motivation and communication

Often, the three arguments outlined above are assumed to be complimentary and mutually reinforcing. Particularly, the notion that the "clear and substantial injustice" and communication requirements must both be satisfied for disobedience to be justifiable, as Rawls seemed to argue, is one that remains dominant. On such views, resistance cannot be justified when motivated by purely self-interested reasons, and the disobedient must therefore prove "conscientiousness" through publicity of their actions and non-evasion of any punishment which is prescribed for the disobedient act. What sets principled disobedience apart from militant or radical action, then, is that it is aimed at moral persuasion rather than coercing change, making the communicative element all-important to disobedience's justification. Conscientiousness requires that a certain level of seriousness, sincerity and moral conviction is demonstrated, as well as a consideration of the interests of society as a whole, not just individual ones: they must, in Rawlsian terms, provide public reasons for their action. These "fidelity to law" requirements of publicity and non-evasion are also meant to sharply distinguish principled disobedience from ordinary law-breaking, with only the latter being characterised as acting wholly self-interestedly.[4]

But, as others have already noted, there is actually a fundamental tension between necessity and communication defences of disobedience, as they point at different motivations for engaging in the disobedient action and different-level ultimate goals which imply possibly contradictory strategies, namely directly preventing grave injustice on the one hand and achieving structural change on the other. It is unfair to demand those facing substantial injustice themselves to prove

[4] The ultimate goal of disobedience based on protecting the personal moral integrity of the disobedient is different still, namely to evade complicity in injustice. A similar conflict can occur between the aim of preventing an unjust deportation and the self-interested motive on the part of those not themselves victims of unjust deportation, who wish to protect their own moral integrity by not cooperating with the dictates of the national deportation authorities.

that their motivations are not wholly self-interested (which they may well be), let alone that they abide by publicity and non-evasion requirements. When the goal of disobedient action is to avoid severe injustice (rather than, say, to gain unfair advantages), whether one is motivated only by one's own wellbeing and not by society's as a whole is irrelevant. Often, in order to be an effective way of preventing harm to vital interests, such action must be the opposite of public: covert, done without exhausting legal avenues for contesting the laws in question, and evading punishment.[5] As Simmons writes, "the aim of paradigm civil disobedients (…) has just as often been simply to affect directly social practices, to frustrate evil, or to avoid complicity in wrongdoing; and these aims require neither public performance of illegal acts nor acceptance of legal penalties for disobedience" (2003: 43).

In the case of deportation action, the fact that the different ultimate goals require strategies that are often contradictory comes out clearly. To prevent deportation from happening, would-be deportees themselves and those who support them directly (by hiding them or shielding them from immigration authorities) must usually keep their action hidden in order for them to be successful. In this sense, the deportable are in a particular situation compared even to others facing systemic injustice and marginalisation. Monica Varsanyi (2008) contends that the constant vulnerability of irregular migrants to the whims of sovereign power when they make themselves public as rights-seizing subjects distinguishes their claims from the claims made by other marginalised groups whose formal citizenship status is not in question. As she writes "it is one thing for homeless individuals or protesters to struggle and fight for their rightful space and place in the city. The challenges they face are certainly dire at times, but these individuals do not, on the whole, face the added and very real possibility of deportation when attempting to claim their rights. (…) If [undocumented residents] come forward and claim their rights due to them, they may only gain a pyrrhic victory: a win accompanied by a deportation order" (Varsanyi 2008: 40). Ellerman also notes that acts of noncompliance by those on the polity's margins rarely amount to collective acts of civil disobedience (2010: 408). Being at risk of serious injustice has strong marginalising effects which mean that requirements

[5] The point about the tension here is not captured by Brownlee's comprehensive discussion of the topic. She does distinguish between civil disobedience (as law-breaching for the purpose of communicating our condemnation of a law of policy and, in the case of direct civil disobedience, for the purpose of not lending ourselves to the wrong we condemn) both from what she calls "assistive disobedience", which is acting for the purpose of aiding what one sees as a suffering being "openly and non-evasively because this will communicate opposition to laws" (2012: 28) and from "personal disobedience" as conscientious objection. But Brownlee's claim that assistive disobedience is necessarily communicative leaves out an important category of non-communicative assistive disobedience (in which some anti-deportation efforts may fall).

to abide by strict rules of "conscientiousness" are out of reach or directly contradict the aims of the disobedience.

Therefore, would-be deportees will often resort not to the communicative actions considered the archetype of justified disobedience but rather to what James Scott calls "the weapons of the weak", non-organised forms of everyday resistance in situations of serious marginalisation concerned with immediate, de facto gains rather than public and symbolic goals and often using passive forms of noncompliance, evasion and deception, such as "foot dragging, dissimulation, desertion, false compliance, pilfering, feigned ignorance, slander, arson, sabotage" (1985: xvi).[6] Feasible acts of resistance for would-be deportees are often limited to hunger strikes, self-mutilation, suicide attempts, physical struggle, escape, destruction of identity documents, adoption of false identities, concealing their irregular status from employers and public officials, or mutilating fingerprints to make them illegible (Broeders and Engbersen 2007: 1598; Ellermann 2010: 408).

The use of such non-organised, non-public strategies by deportation disobedients is not, I contend, more morally suspect than their public, communicative counterparts. What is more, it would be immoral for outside supporters to advertise the position of would-be deportees in order to convince others of the injustice of their deportation—even if to change minds and laws, such communication and publicity is indispensable. This puts those wishing to resist unjust deportations in a bind.[7] The dilemma is not purely academic. Much real-world deportation resistance is not easily categorisable as either aimed at solving individual cases or a focus on structural (legal) change. Often the two aims are combined when the contestation of deportation in individual cases is accompanied by arguments against deportation that apply to a larger category of people, even if this argument can be made more or less explicitly. Even within the category of anti-deportation action focused on individual

[6] Scott writes: "the most subordinate classes throughout most of history have rarely been afforded the luxury of open, organized, political activity. Or, better stated, such activity was dangerous, if not suicidal. Even when the option did exist, it is not clear that the same objectives might not also be pursued by other stratagems. Most subordinate classes are, after all, far less interested in changing the larger structures of the state and the law than in what Hobsbawm has appropriately called 'working the system….to their minimum advantage'" (1985: xv). He goes on: "everyday forms of resistance make no headlines" so the publicity requirement is not met, but also claims that "just as millions of anthozoan polyps create, willy-nilly, a coral reef, so do the multiple acts of peasant insubordination and evasion create political and economic barrier reefs of their own. It is largely in this fashion that the peasantry makes its political presence felt" (xvii).

[7] The problem of not distinguishing properly between the different goals and strategies of disobedience based on necessity and on communication, respectively, comes out well in the discussion between Luis Cabrera and William Smith on the morality of illegally crossing borders (Cabrera 2010; Smith and Cabrera 2015).

cases we can then draw a distinction between what Bader and Probst (2018) call "personifying" and "exemplifying" protests, between those aimed primarily at preventing an individual deportation and those who, rather, use their action in the individual case in order to achieve a broader change in public opinion and the law.[8] Some, following the traditional account of justified disobedience, have criticised the former type of action for focussing on the deservingness of individual would-be deportees or even on protecting specific categories (such as long-term residents, nationals from unsafe countries, families with school-going children) at the expense of the larger goal of ending all deportations (Maira 2010: 322). The *sans-papiers* and other anti-deportation campaigns have sometimes been criticised (McNevin 2006; Walters 2008; McNevin 2011; Tyler and Marciniak 2013; Barker 2015) for reinscribing and reinforcing the territorial and membership boundaries against which they should struggle. But this seems to put an unfair burden on those seeking to stop immediate rights-violations. In those cases in which the aims of preventing immediate injustice and that of achieving structural change conflict, it is important to establish that the priority always lies with necessity and the individual threatened with deportation rather than with moral communication and structural change (or, indeed, protecting personal integrity of those running the risk of complicity with injustice). Looking at the deportation case, the common assumption that disobedience aimed at communication is easier to justify than other types of disobedience[9] is wrong and possibly dangerous.[10]

[8] Which form of anti-deportation action is more common is unclear. In their longitudinal analysis of anti-deportation protests in Germany, Austria and Switzerland (1993-2013), Ruedin, Rosenberger and Merhaut (2018: 111) have found that their dominant form is as what they call "solidarity protests organised on a local level focusing on individual solutions rather than social or legal change of the migration and border regime", with "little evidence of diffusion or transnational mobilization". Yet the protests they studied are largely within the boundaries of the law, and there is some evidence that law-breaking anti-deportation action more often invokes the need for structural change.

[9] Brownlee, for instance, insists that from a moral perspective communicative disobedience is easier to justify than non-communicative disobedience because the willingness to run certain risks in order to communicate our convictions to others is evidence of our sincerity of our moral conviction, what she calls "the communicative principle of conscientiousness" (2012: 29). This is problematic when the main risks involved are carried by those whom we are assisting (as in the case of deportation resistance). According to Brownlee, "although intervening, thwarting and sabotaging are potential ways to honour our convictions in the short run, ultimately, on their own, they do not take other people seriously as reasoning moral agents with whom we can discuss the merits of our cause and whose conduct we should try to change through reasoned argument" (2012: 42-43).

[10] However, what does seem problematic is the invoking of what I believe are morally arbitrary features of the deportable: their level of cultural or social integration, their contribution to the community, etc. This does serve to strengthen an integrationist logic which has adverse effects for others.

The epistemic problem

One challenge to those who believe that resistance is justified when it is aimed at redressing a "clear and substantial injustice" is to ask simply: clear to whom? How does the disobedient know that their interpretation of the situation as unjust is the right one? Especially when such laws have been the outcome of legitimate democratic procedures, it may seem unlikely that the judgement of individuals should be trusted over that of the democratic community as a whole or its political or bureaucratic representatives—and it might be anti-democratic to do so in any case. This epistemic question also came up in the case of Elin's airplane protest. When a passenger complained that she was preventing many people from reaching their destination, Elin replied "but they're not going to die, he's going to die", to which the man replied "how do you know that?" (Elin responded "because it's Afghanistan"). Political scientist Andreas Heinemann-Grüder also commented disapprovingly on Elin's actions: "She wasn't familiar with the concrete case. Was the Afghan in danger? Where in Afghanistan was he being deported [sic]? Not all parts of the country are dangerous" (Oberhäuser 2018).

In response, we should start by noting that the strength of the epistemic objection varies with the precise aim of the disobedient act. I noted earlier that anti-deportation action can be found on a spectrum between those contesting individual case decisions and those who seek to demonstrate their belief that all deportations are illegitimate. The former do not (necessarily) contest the abstract principles or general rules of the deportation regime, but only how the executive authorities have used their discretionary power to decide on an individual case. Therefore, they are not discarding the democratic right of the community to decide on its laws and thus are not facing this objection. As I noted earlier, classical defences of civil disobedience either require or praise when disobedience is aimed at changing laws rather than the outcome of individual cases—and may thus find it easier to accept deportation resistance with more all-encompassing rather than with more limited aims. But from a democratic egalitarian perspective, saying that the discretionary interpretation of the law in a particular case was wrong seems less intrusive than saying that a democratically formulated law is unjust, and thus *easier* to justify.

We could also point out that certain actors are in a better epistemic position to know the (in)justice of a particular deportation. Those with direct relationships to the deportee may well have a better understanding of the individual circumstances of the would-be deportee than the democratic majority. Anti-deportation protests are often organised locally, and local communities may have a better understanding of who deserves to stay, who is well integrated, who would be harmed by deportation than

executive bureaucratic agencies which purportedly implement the abstract preferences of the national electorate. Moreover, even if we accept the epistemic value of democratic procedures to decide on the law, it is not clear where this leaves the argument when disagreement occurs between different levels of democratic government, in other words when democratically elected and accountable local governments or the democratically elected national governments of the countries to which the would-be deportee is destined to be sent frustrate deportation proceedings based on perceptions of justice and belonging that conflict with those of the democratically elected deporting government. Some have argued that the emancipatory and progressive potential of local conceptions of belonging and membership should lead us to empower urban communities to challenge national monopolies in immigration enforcement (Bauböck 2003; Lebuhn 2014).

This does not, however, yet justify the involvement in deportation resistance by those like Elin Ersson who do not know much about the individual circumstances of the deportee whose removal they are trying to prevent. Here we can again turn the epistemic argument on its head, though, by pointing out that deportation is a particularly murky policy field in which the full effects of the law and its implementation are not well understood by the general public. In such circumstances, disobedience and resistance may well be necessary strategies to render the effects of deportation visible, to reveal the extent to which deportation is not a "routine administrative process" but rather, as William Walters describes it, "a site where sovereignty is (violently) performed, either the state negotiating with the subjects (thereby recognising them as subjects) or the state as armed bodies of men smashing down church doors, seizing, arresting, pacifying, terrifying, removing bodies in full display of the public" (2002: 287).

A duty to resist deportation?

So far, I have assumed that the question of just resistance is about permissibility and impermissibility. The vast majority of theoretical discussions also take this as the core question. However, we should use more fine-grained distinctions in considering the moral status of anti-deportation action. It can not only be forbidden and (merely) permissible but also laudable and even obligatory. There are hints in the literature that "[d]eliberate conscientious or principled law-breaking, by virtue of its apparently laudable motive, appears to be itself laudable (unlike law breaking that is merely self-interested or malicious)" (Simmons 2003: 50), but precise analyses when disobedience is actually laudable rather than merely excusable remain rare.

In the case of deportation resistance, it is clear which category of action is laudable, namely that in which disobedients incur significant risks to prevent the deportation of others or publicise their own unjust deportability. Especially when those who are themselves at risk of deportation do engage in public and communicative action, despite thereby putting themselves at risk, this may be seen to contribute not to the *justifiability* of their action (as I argued earlier) but to its *laudability*. In very material ways, becoming visible and demanding rights "expose irregular migrants to the full force of state border controls" (Tyler and Marciniak 2013: 152). Those who protest while being held in pre-deportation detention centres, for instance, are sometimes fast-tracked for deportation. And by coming out of the shadows of irregularity, those in the *sans-papiers* and similar movements put themselves at considerably increased risk of deportation. Etienne Balibar wrote that "French citizens of all sexes, origins and professions, are greatly indebted to the '*sans-papiers*' [for] breathing life back into democracy" (2000).

The more difficult question is whether deportation resistance is ever obligatory. While most authors writing on principled disobedience mention that in certain circumstances there may not only be a right to disobey but in fact a duty to do so,[11] few of them specify when those conditions hold, and why and when a right to disobey turns into a duty to do so. In the deportation case, I want to suggest that there may be an obligation to resist and disobey for at least three types of actor. First are those whose actions are *instrumental* to the successful execution of an unjust deportation. These include the agents of the deportation machine, such as street-level bureaucrats and specialised police forces, as well as "enlisted" service providers, such as local officials, school and hospital employees, and (perhaps particularly) those private companies who benefit financially from the deportation system. The general public is also increasingly "enlisted" in the policing of immigration through legal obligations to monitor, report and refrain from interacting with irregular residents (Aliverti 2015), a process through which the actions (and non-actions) of ordinary citizens have become directly implicated in unjust deportation regimes. In those cases, the regular individuals in question may be under an obligation at least not to comply with such requirements. Javier Hidalgo (2016) goes even further by arguing that citizens of states that enforce unjust immigration restrictions have duties to actively disobey legal

[11] Rawls writes (in the context of unjust warfare and the right of conscientious refusal of draftees): "if the aims of the conflict are sufficiently dubious and the likelihood of receiving flagrantly unjust demands is sufficiently great, one may have a duty and not only a right to refuse" (1999: 334-335). Raz writes: "civil disobedience is sometimes justified and occasionally is even obligatory" (1979: 262).

obligations imposed on them by the state to refrain from interacting with unauthorised immigrants.

Second, those who by virtue of their institutional position have specific *responsibilities* towards the would-be deportees arguably have a duty to make efforts to stop their unjust deportation. Particularly, local authorities and destination countries come to mind here. Local political communities must generally comply with national dictates, but also have protection duties towards all those who are considered local citizens, and the conception of citizenship on the local level is, unlike national citizenship, based purely on residence (Bauböck 2015). Therefore, mayors and local councillors would have not only a right but a duty to disobey top-down deportation orders and to shield local residents from unjust deportation efforts. Those states to which deportation states seek to send their deportees have a legal duty to international legal duty to accept back their own nationals, but they also have a duty to protect the fundamental interests of their citizens, which includes efforts to protect their right to stay in their place of residence when this is beyond the confines of the national territory.[12] There is a difficulty that origin states face important epistemic limitations, as they are far removed from the case, and may be guided by mixed motivations, as they have a strong interest in keeping out unwanted, "unreformed" criminals or public security risks and ensuring the flow of remittances of citizens working abroad, which may cloud their judgement. In any case, when destination states simply frustrate deportations on other grounds than the injustice of the deportation (i.e. pretend not to believe the deportees are their nationals), this is unlikely to work towards changing the unjust laws and practices in the long term. Moreover, setting the precedent of barring entry to your own nationals risks leading to an infringement of the right to return to one's country of nationality. Rainer Bauböck has therefore argued against applauding the practice of refusing to accept one's own nationals as an appropriate response to unjust deportations, and that destination states must instead use diplomatic means to lobby for the rights of their nationals to stay in their country of residence (2009: 486). Of course, poor countries are not always in the best position to do this. Therefore, while intentional identity denial on the part of destination states is potentially problematic as it may render someone effectively stateless, in those cases where individuals themselves deny being from the country in question, the destination state could have a policy of non-cooperation (foot-dragging) with deportations that is permissible, laudable, or even obligatory.

[12] Here it is important to clearly contrast between deportation and extradition, as the latter concerns mainly the rights of states to try and punish those who committed crimes in their jurisdiction, and the obligation of other states to reasonably facilitate this.

Third, a more general (and necessarily weaker) duty of citizen and non-citizen residents to resist the unjust deportation of their co-residents may be grounded in the *associative* duties they have towards their fellow residents. Republican theory, with its emphasis on good citizenship as consisting in a "vigilant commitment to holding the state to its domination-reducing aims, while preventing it from becoming a source of domination itself" (Lovett and Pettit 2009: 23) may provide insights here. On such an account, we could argue that individuals have moral reasons to engage in anti-deportation activism not just for their friends, neighbours and colleagues, but because they share in the responsibility to keep their state's power non-dominating, both because they themselves enjoy a non-dominated status in this state and because domination in one area might spill over into others and thus start affecting them. On Philip Pettit's account, non-domination is a common good which "no one in a society enjoys unless everyone enjoys it" (1999). Matthew Hoye has on these grounds made the case that members of a political community have a duty to "stand up" for their fellow residents threatened with deportation in the interest of communitarian/republican liberty and non-domination "for immigrants and citizens alike" (2017: 164).

Concluding thoughts

In this paper I have argued that differently situated agents have different moral rights and duties to resist unjust deportations. An agent-sensitive normative framework for anti-deportation action must take into account the justifications which any particular agent may rely on and their motivation for engaging in the action, their epistemic position, and relationship to the injustice and its victim. I have tried to sketch what such a framework would look like. By way of conclusion, I want to consider what the arguments in this paper imply for how the state should respond to resistance from these diverse actors.

The first implication is that the state should listen to such signals and take them seriously, since some of these actors are epistemically better placed to judge whether someone's individual circumstances indicate that they have a moral right to stay. States should design the deportation regime in such a way that there are legal and regular ways of contesting deportation for a variety of actors. One example which could be emulated by other countries are the Hardship Commissions in Germany. The second is that the state should refrain from punishing disobedience harshly or even at all, since the state must recognise that deportation decisions have far-reaching consequences and it therefore must operate on the assumption that opposition comes from a place of deep and often justified moral conviction. Moreover, to some extent

the state should welcome such resistance as "the activism of non-status immigrants and refugees is re-creating citizenship in ways that demands recognition and support, not criminalisation and securitisation" (Nyers 2003: 1090). Thirdly, the state must design its rules and policies in a way that does not place unnecessarily heavy burdens on people in official capacities, so it cannot incorporate school, hospitals and other service providers in its deportation enforcement regime. Brownlee has rightly argued that "when many office-holders refuse to perform certain tasks, and appeal to the very spirit of their office to legitimate their refusals, this signals that the minimum moral burdens principle may not be satisfied and that revision of the office or institution may be required" (2012: 116). If there is widespread dissatisfaction among those who have been made agents of the enforcement state, the state should take this seriously.

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