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Responsive Government and Duties of Conscience

Abstract

Many political philosophers have defended the importance of enabling citizens to participate in law-making. Some argue that widespread citizen participation makes the law making process more likely to produce just law.¹ Others argue that government must enable citizens to participate in law-making for law to be legitimate or to have legitimate authority.² Still others argue that government must give citizens an equal share of political power in order to express equal respect for them.³ I will not dispute any of these arguments, but I believe they need to be supplemented, in part because they do not fully capture the reasons that enabling citizen participation matters morally, in part because they do not completely explain what democratic governments owe to citizens with minority political views. I claim that citizens need genuine opportunities to participate in law-making for another reason: they need to be able to satisfy individual duties of conscience.

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Responsive Government and Duties of Conscience

Robert C. Hughes*

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Many political philosophers have defended the importance of enabling citizens to participate in law-making. Some argue that widespread citizen participation makes the law-making process more likely to produce just law.¹ Others argue that government must enable citizens to participate in law-making for law to be legitimate or to have legitimate authority.² Still others argue that government must give citizens an equal share of political power in order to express equal respect for them.³ I will not dispute any of these arguments, but I believe they need to be supplemented, in part because they do not fully capture the reasons that enabling citizen

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¹ Among them are Aristotle and John Stuart Mill. Aristotle suggests that democracies may make better laws because a collective body may be wiser than any of the individuals who make it up. *Politics* III.xi. Mill argues that enabling all citizens to participate in government helps to produce just laws because it helps to ensure that the interests of the lower classes are taken into account. *Representative Government* (1861) Ch. 3.

² See, e.g., Allen Buchanan, 'Political Legitimacy and Democracy' (2002) 112 *Ethics* 689; Joshua Cohen, 'Procedure and Substance in Deliberative Democracy' in Seyla Benhabib (ed), *Democracy and Difference: Changing Boundaries of the Political* (Princeton University Press, 1996); Thomas Christiano, 'The Authority of Democracy' (2004) 12 *Journal of Political Philosophy* 266; David Estlund, *Democratic Authority: A Philosophical Framework* (Princeton University Press, 2008). Jürgen Habermas, *Between Facts and Norms* (William Rehg trans.) (MIT Press, 1996).

³ See, e.g., John Rawls, *A Theory of Justice* (Harvard University Press, 1971) 544-545; Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Harvard University Press, 2000) 200-201.

participation matters morally, in part because they do not completely explain what democratic governments owe to citizens with minority political views. I claim that citizens need genuine opportunities to participate in law-making for another reason: they need to be able to satisfy individual duties of conscience.

These duties of conscience arise from a conflict between two moral pressures. The first is that the need to organise social cooperation provides moral reason to obey some laws even when they have not been democratically created and even when they are less than fully just.⁴ More specifically, citizens have moral reason to obey systems of closely-related laws that are *partially unjust*. A system of related laws is partially unjust if it serves a morally important purpose but is nonetheless unjust in significant ways. An example is a tax system that supports important public goods but whose benefits are distributed unfairly. When citizens sensibly judge that a system of laws is partially unjust, they may find themselves in a bind. Though they have a *pro tanto* duty to promote the important purpose these laws serve, they also have a *pro tanto* duty not to participate willingly in any activity or practice they sensibly regard as unjust.⁵ The only way to fulfil both of these duties, I argue, is to make a genuine attempt to change the law. Only by genuinely trying to change the law can citizens respond adequately both to a partially unjust system's failings and to the valuable purpose it serves. But opportunities to make genuine attempts to change the law, as opposed to mere shows of protest, are not always available. To enable citizens to satisfy their duties of conscience, government must make the political process

⁴ The question whether people have a moral duty to obey a particular law is not the same as the question whether the government that made it is legitimate. Sometimes there are moral reasons to do some of the things that a government demands though the government is less than fully legitimate. See Christiano (n 2) 285.

⁵ A *pro tanto* duty is a duty that may be outweighed or overridden by other moral duties but whose violation is regrettable even when justified.

responsive, in the following sense. Citizens who regard the law as unjust and who diligently advance a sensible argument for changing it must be justified in believing that their efforts could, in time, help to bring about the change they seek. Likewise, citizens who believe that just laws are under threat and who diligently advance a sensible argument for preserving them must be justified in believing their efforts could succeed.

This argument entails that the ideal of democracy must include considerably more than universal equal suffrage and legal protection of political speech. Though freedom of speech and universal suffrage facilitate responsiveness in government, they are not sufficient to guarantee it. If an entrenched majority firmly believes that a certain feature of current law is just and is not open to considering arguments to the contrary, criticism of this feature of current law may fall on deaf ears. Dissenters will thus lack genuine opportunities to try to change the law. They may protest, but their futile protest would not constitute an attempt to change the law for the same reason that flapping one's arms does not constitute an attempt to fly. For everyone to have genuine opportunities to try to address injustice in the law, either there must be formal procedures requiring law-making bodies to consider minority views, or there must be a robust culture of speech in which people sincerely listen to and respond to alternative viewpoints.

My argument for responsive government also bolsters the non-instrumentalist view that enabling citizen participation has moral significance even if we do not have good reason to believe that increased citizen participation will tend to make the law more just. If people hold sensible views about justice, it is important for them to be able to act consistently with these views even if they are mistaken. If people falsely believe that a law is unjust and they nonetheless comply with the law voluntarily and without trying to change it, they violate a *pro tanto* moral duty of conscience. Depending on the source and severity of their error in judgment,

it may be morally worse for them to comply willingly with laws they regard as unjust than to promote a change that they incorrectly see as an improvement. People thus have a non-instrumental moral interest in being able to participate in legislation.⁶

1. Partial Injustice and the Moral Pull of Obedience

I will begin by arguing that individuals sometimes have a moral duty to try to change laws that they perceive to be unjust.⁷ In particular, I will argue that individuals have a duty to try to address injustice in systems of closely related laws that serve morally important purposes despite the injustices they contain. I will refer to such systems of laws as partially unjust systems. Of course, I do not mean to deny that there is a moral duty to try to change unjust laws that serve no good purpose. I focus on partially unjust systems of laws because they present a special problem for us. We cannot ignore their flaws, but they also deserve a degree of loyalty because of the morally important purposes they promote.

My argument that individuals have a duty to try to address partial injustice in systems of laws will come in two parts. First I will argue (in Sections 1 and 2) that if citizens do not try to change systems of laws they regard as partially unjust, whether because they are unable or

⁶ My position is thus opposed to the purely instrumentalist position, defended, e.g., in Richard Arneson, 'The Supposed Right to a Democratic Say,' in John Christman and Thomas Christiano (eds), *Contemporary Debates in Contemporary Political Philosophy* (Wiley-Blackwell, 2009). I also argue against a suggestion Ronald Dworkin makes in *Sovereign Virtue*. Dworkin acknowledges non-instrumental reasons for enabling citizen participation, including that it enables citizens to exercise their moral agency, but he doubts that these non-instrumental considerations conflict with the demand for a political system that tends to produce substantively just law. Dworkin (n 3) 200-203, 207-208. I argue that there is a real possibility that these demands conflict.

⁷ A closely parallel argument shows that there is a duty to try to preserve just systems of law that are under threat. I will briefly discuss this argument at the end of Section 3.

because they are unwilling, they will face a choice between two problematic responses to perceived partial injustice. Each response violates a *pro tanto* moral duty. I will then argue (in Section 3) that citizens can avoid violating either of these *pro tanto* duties only by trying to change the law. There is therefore a *pro tanto* moral duty to try to change systems of laws one regards as partially unjust.

To see why partially unjust systems of laws can pose a special moral problem, consider first how citizens can respond to an individual law they regard as unjust. If citizens regard a law as unjust and either cannot or will not try to change it, there will then be broadly two ways for them to respond to this law. First, they can accept the law as a standard of conduct. Someone who accepts a law as a standard of conduct regards it as reason-giving not merely because violation carries legal or social sanctions. She may not think the law is a *good* law, but she thinks it ought to be followed. She will thus attempt to guide her conduct in accordance with the law, and she will expect others to do the same. Second, people can reject the law as a standard of conduct. Someone who rejects a law as a standard of conduct is aware of this law but does not regard the law itself as a reason to modify her conduct. This attitude may manifest itself in her conduct in various ways. She may ignore the law, she may wilfully flout it, or she may consciously acquiesce to governmental or social coercion.⁸ These responses are morally of a piece. If it would be morally objectionable to ignore or to flout a law, complying solely to avoid

⁸ The sort of disregard for law I have in mind here is not aimed at changing the law. An opportunity to engage in effective civil disobedience would count as a genuine opportunity to try to change the law. Note also that if a law does not impose a direct requirement on conduct, but instead constitutes a power-conferring rule, rejecting the law as a standard of conduct does not involve a willingness to disobey the law. Instead, it involves a willingness to treat the law as null. For instance, rejecting a law that regulates the validity of wills would involve treating a purported will as valid even if it violates the regulation.

sanctions would reflect an immoral willingness to disobey a law that should be respected.⁹ If ignoring or flouting a law is morally permitted (but not required), complying solely to avoid sanctions is morally acceptable as well.

Rejecting a law as a standard of conduct can be an entirely appropriate response to a law that is unjust and on which no other, valuable laws depend, such as a law requiring racial segregation. But it is often a morally problematic response to an unjust law that forms part of a system. By a system of laws, I do not mean all the laws of a nation. A system of laws is a set of laws such that each law in the set adequately fulfils its purpose only if most of the laws in the set are generally respected. An example of a system of laws is a tax system. A tax system includes laws specifying what taxes people owe, laws specifying how taxes are to be collected, and laws specifying how tax money is to be allocated. It is not possible to have a fair and effective tax system unless there are widely respected laws of all three kinds. Another example of a system of laws is a system of property laws.¹⁰ By a system of property, I mean a system of laws or other rules governing the allocation of physical resources, including not only land, but also food, cars, gold, and radio frequencies.¹¹ Though societies can have customary systems of property,

⁹ It would also be objectionable to comply solely because of other forms of enforcement. For example, under-reporting one's wages and claiming a tax refund will be futile if one's employer has already reported one's wages to the government. If there is a moral duty to report one's income honestly, it is objectionable to report honestly merely because dishonest reporting would be futile.

¹⁰ I do not mean to deny that taxes are part of a society's system of property. See Liam Murphy and Thomas Nagel, 'Taxes, Redistribution, and Public Provision' (2001) 30 *Philosophy & Public Affairs* 53.

¹¹ I limit my discussion of property here to property interests in physical resources. The successful functioning of laws regarding the allocation of physical resources does not depend on the successful functioning of laws concerning intellectual property, so the latter laws form separate systems, distinct from a society's main system of property.

allocation of physical resources is regulated by law in modern, developed societies.¹² A property system includes direct prohibitions, both criminal and civil, such as rules against theft and trespass. It also includes rules specifying how property rights may be acquired and transferred—rules specifying how to make a valid will, for instance. It also includes rules identifying what rights come with property ownership.¹³ Unless there are generally accepted, reasonably determinate rules specifying how property may be acquired and transferred and what rights come with property ownership, rules against theft or trespass will be either meaningless or ineffective.

When a system of laws is unjust, people can respond by rejecting the entire system as a standard of conduct or by rejecting individual component laws. One is justified in rejecting an entire system of laws as a standard of conduct if it serves no good purpose or if its injustice is profound. But wholesale rejection of a system of laws is unjustified if the system serves a morally important purpose despite its injustice. A system of property law, in particular, must contain *gross* injustices for people to be justified in rejecting the system as a whole. Even an unjust system of property law serves morally important purposes. A populous society needs widely respected, reasonably determinate rules of property to have an economy sophisticated enough to meet everyone's needs. Individuals also need property to have a sphere in which they are able to make choices without needing others' permission. If I have no entitlements to use physical resources, including entitlements to use common or collective property, I will need

¹² There are actual examples of sophisticated rules of property arising without the assistance of a formal legal system. For example, American whalers in the eighteenth and nineteenth centuries developed elaborate norms for deciding which ship may claim a whale that has been pursued by several ships. Robert Ellickson, *Order Without Law* (Harvard University Press, 1991) 191-206.

¹³ These may include zoning laws, for instance, or rules specifying the extent to which private landowners must allow people to use rights-of-way.

others' permission to use any resource. I will thus need others' permission to engage in any activity, since all human activities involve the use of physical resources.¹⁴ Because systems of property serve morally vital purposes, significant but not gross injustice will not justify ignoring all the property rules of one's society.

Though it is typically unreasonable to respond to a partially unjust system of laws by rejecting the entire system as a standard of conduct, it can be reasonable to reject particular unjust laws. Often, however, the way in which laws are interrelated makes it inappropriate to respond to partial injustice by rejecting particular laws as standards of conduct. To see why accepting and rejecting different parts of a system of laws often does not work, consider a tax system that supports important public services but whose benefits are unfairly distributed. It is a delicate question whether the victims of injustice—the underserved—are justified in trying to mitigate the injustice by unilaterally withholding some of the money they legally owe. It is clear, however, that those who are *not* unjustly underserved may not respond to the system's injustice by paying less than they owe.¹⁵ If they benefit from public goods the tax supports, paying less than their assigned shares would be unjust free-riding. If they are not among the system's beneficiaries, but the system serves a morally important purpose that only a public institution can serve, withholding tax money would involve a failure to respond adequately to this purpose.

As another example, suppose that the rules of inheritance make it difficult or impossible for gay people to inherit property from their long-term partners, though there are no obstacles to

¹⁴ This view of the importance of property is inspired by the Kantian view Arthur Ripstein advocates in *Force and Freedom: Kant's Legal and Political Philosophy* (Harvard University Press, 2009).

¹⁵ Paying more than they owe, which would not involve disobedience, would fail to address the problem since the injustice is in the distribution of benefits, not the distribution of burdens.

inheritance in heterosexual marriages.¹⁶ As a result, John is forced to leave his home of forty years after his partner dies. The home is put up for sale, and Jane buys it. I know about the situation and think it unjust. As a private citizen, I cannot respond appropriately to this injustice in the rules of inheritance by rejecting only this particular unjust rule, because I cannot reject this rule without being prepared to violate other rules that are essential to the property system's stability. If I am interested in buying this piece of property, should I make John an offer, rather than making an offer to the legal title-holder? If I want permission to walk through the back yard as a shortcut, should I ask John for permission, rather than asking Jane? Should I regard myself as free to interfere with Jane's use of the property in question as long as I can avoid legal or social sanction for doing so? Should I avoid having anything to do with this home or this land on the ground that title to it is tainted? I have reason to respect Jane's title, and not merely for reasons of prudence. It is morally important for there to be social consensus about who may use what land, and it is more important for people to recognise the same allocation of resources than it is for them to recognise the right allocation. I must therefore treat Jane's title as legitimate even if her claim to the land arises from the application of an unjust law.

So rejecting laws as standards of conduct is often a morally inappropriate response to partial injustice. Partially unjust systems of law serve morally important purposes, despite their injustice, and citizens have *pro tanto* duties to promote these purposes. To reject *all* the laws of a partially unjust system would be a failure to respond adequately to the important purposes the

¹⁶ The obstacle could take the form of a rule requiring that only certain legally recognised family members inherit real property, or it could take the form of an estate or inheritance tax.

system serves. At least for those who are not victims of injustice, rejecting individual laws is morally inappropriate when those laws are integral parts of the system.¹⁷

2. Compliance with Perceived Injustice

If citizens do not try to remedy injustice in the law (whether because they cannot try or will not try), there is one other available response to laws they regard as unjust, namely, to accept existing law as a standard of conduct and to comply willingly. Willing compliance with a partially unjust system of laws is no less morally problematic than rejecting it as a standard of conduct. It is *pro tanto* wrong to participate willingly in an unjust activity or practice without doing anything to try to change that activity or practice. Arguably, it is always *pro tanto* wrong to participate in injustice, whether one's participation is willing or not. When people participate in injustice because they have been coerced, it is a delicate question whether their participation is *pro tanto* wrong but all-things-considered justified, wrong but excused, or not wrong at all. When people's participation in injustice is willing, however, it is *pro tanto* wrong, even if legal or social sanctions were in place for noncompliance. Since these people's participation was willing, and thus not motivated by social or legal sanctions, they cannot plead that the presence of coercive pressures renders their conduct morally innocent.

One might object that willing participation in injustice is not wrong if it is the morally best alternative. Consider the earlier example in which a city's tax system distributes the benefits

¹⁷ This position is compatible with the view that there is no perfectly general obligation to obey the laws of one's country. See, e.g., A. John Simmons, *Moral Principles and Political Obligations* (Princeton University Press, 1979); M.B.E. Smith, 'Is There a Prima Facie Obligation to Obey the Law?' (1973) 82 *Yale Law Journal* 950. Not all laws belong to a system of laws that serves a morally important purpose. My position is also compatible with the view that there is a *pro tanto* obligation to obey all laws made by a legitimate state.

of taxation unfairly and in which most citizens can do nothing to change the law. These citizens face a choice between noncompliance (by withholding tax money), unwilling compliance (full payment motivated only by fear of sanctions), and willing compliance. Since the first two options involve either wrongful free-riding or willingness to free-ride, citizens do no wrong by pursuing the least bad of the available options, willing compliance.

It is true that citizens who willingly comply with tax law do not do wrong all things considered. It would be a mistake to conclude that willing participation in injustice is not *pro tanto* wrong merely because willing participation is morally the best available option. As a comparison, suppose that someone has made two promises and that an unforeseen and unforeseeable change of circumstances has made it impossible to fulfil both. Breaking the less important of the two promises is all-things-considered the right thing to do, but it is *pro tanto* wrong nonetheless.

Willing participation in an activity is also *pro tanto* wrong if one incorrectly believes that the activity is unjust. To treat others in a way one thinks unjust is to treat others disrespectfully, even if one's conduct is not objectively unjust. If I mistakenly think that I owe a debt to a friend, and I wilfully choose not to pay this debt, my friend has a legitimate complaint. I may not have *wronged* my friend or violated her rights, but I have treated her disrespectfully. If a person mistakenly believes that justice prohibits some activity, when in fact justice is silent on the question, this person has moral reason not to participate in that activity. If a person believes that justice prohibits some activity, when in fact justice requires it, this person will violate a *pro tanto* duty whatever she chooses. Either she will act contrary to what justice in fact requires, or she will comply with justice against her conscience, thereby showing disrespect for the people she believes she wrongs.

In some cases, acting against conscience is a more serious wrong than contributing to an injustice in good conscience. There are broadly two types of cases in which it is a more serious wrong to act against conscience (while doing what justice in fact requires) than it is to promote violations of justice (while thinking that one is promoting justice). First, people can believe that the law is unjust on the basis of a justified but mistaken empirical belief. Often, whether laws are just depends on their causal consequences. Whether economic policies are just, for instance, depends in part on whether they tend to alleviate or to exacerbate poverty. Whether a law intended to prevent wrongful discrimination is just depends in part on what effects it has on the occurrence of wrongful discrimination. If people justifiably believe that the consequences of a new law would alleviate an injustice, they show disrespect for the victims of this perceived injustice if they comply willingly with existing law (which they perceive to be unjust) while doing nothing to promote the enactment of the new law. They show disrespect for the perceived victims even if, for reasons no one is in a position to know, the new law would in fact have no effect or a harmful effect. The disrespect they would show is a worse wrong than the wrong they would arguably commit by promoting a proposed law that is actually unjust and harmful but that appears to be just and beneficial. The latter wrong would be excused, as it would be motivated by a mistaken but justified belief about matters of empirical fact.

There are also cases in which promoting injustice as a result of a non-empirical error of moral judgment is a less severe wrong than acting against conscience. Of course, there are cases in which it is better to do what is objectively right but against one's conscience than to comply with one's erring conscience.¹⁸ But there are also many cases—typically cases in which errors in

¹⁸ The classic example is Huckleberry Finn, who thought that it was wrong to help a slave escape and did so anyway, against his conscience. Jonathan Bennett, 'The Conscience of Huckleberry Finn' (1974) 49 *Philosophy* 123.

moral judgment are less severe—in which the opposite is true. To see that there must be many such cases, suppose that A makes all of his important moral decisions by consulting B and following B’s advice, even when A thinks the advice is unsound. A has no evidence that B is a better moral reasoner than A, and his reliance on B is not based on epistemic trust. (Perhaps B is A’s parent, and A has not grown out of his childhood habit of asking B for advice. Or perhaps A thinks that relying on B’s advice enables him to pass blame on to B when A makes bad decisions.) As it happens, B is in fact a better moral reasoner than A. So A will in fact do what morality requires, including what justice requires, more often than he would if he obeyed his own conscience. But his willingness to act against conscience, without *evidence* that acting against conscience would make him more likely to comply with morality, shows that A does not take his moral duties sufficiently seriously. He thus shows disrespect for those to whom he owes these duties. It would be morally better for A to abandon his policy of always accepting B’s advice. If this is right, there must be a significant number of cases in which it is a worse breach of duty to act against conscience while doing what justice actually requires than it is to do something objectively unjust that one believes to be right.

Call a mistaken moral belief ‘sensible’ if people who hold it commit a worse wrong if they act against conscience (but as morality actually requires) than they do if they act as the mistaken belief demands. Call an argument for judging the law unjust a ‘sensible’ argument if its moral premises are sensible, its empirical premises are justified, and it is free of logical fallacies. If some citizens accept a sensible argument that a law or system of related laws is unjust, and they nonetheless accept this system of laws as a standard of conduct without trying to change it, they violate a *pro tanto* duty of conscience. They owe to this duty to the people they believe the law wrongs; by willingly participating in what they take to be an injustice, they show disrespect

for the people they perceive as victims.¹⁹ Moreover, this duty of conscience is weightier than the duty of justice that may push in the other direction. If the change these citizens sensibly think would be an improvement would in fact make the law *less* just, then pursuing a change in the law would violate a duty of justice. But this duty of justice matters less than the duty of conscience because the belief that justice requires change is sensible, in the sense just defined: acting against this belief is a worse wrong than doing what the mistaken belief demands. Of course, sometimes promoting political change on the basis of a mistaken but sensible argument violates no duty of justice because the change advocated is in fact neither required nor forbidden.

So it seems that if people are either unwilling or unable to try to change systems of laws they regard as partially unjust, they cannot avoid doing something that is *pro tanto* wrong. If they reject this system of laws as a standard of conduct—that is, if they ignore these laws, wilfully flout them, or obey them solely to escape sanctions—they fail to respond adequately to the important purpose this system of laws serves despite its injustice. If they accept this system of laws as a standard of conduct without trying to change it, they participate willingly in a practice they regard as unjust. If they are correct to judge the system unjust, they do wrong by participating willingly in injustice. Even if their judgment is incorrect, their willing participation in a practice they regard as unjust is a *pro tanto* wrong because of the disrespect they show for the perceived victims.

¹⁹ The duty is arguably also a duty to self. One might defend this thought by appealing to Rawls's idea that the exercise of the sense of justice is experienced as good. John Rawls, *Political Liberalism* (Columbia University Press, 2005), pp. 202-203. But I do not think the duty to act compatibly with conscience is primarily a duty to oneself. It is a duty to the people one thinks one might wrong. If I justifiably but mistakenly think that I owe a friend a debt, I may not owe her the *money*, but I do owe it to her to treat her as I believe she is entitled to be treated.

3. Political Participation as a Morally Better Alternative

Individuals can avoid either of these two wrongs if they are both able and willing to try to address injustice in the systems of laws they regard as partially unjust. They can avoid the moral problems associated with rejecting laws as standards of conduct and with willing compliance if they accept existing laws as provisional standards of conduct while genuinely trying to change them. If individuals respond to a partially unjust system of laws by rejecting some or all of the laws—thus either disobeying them or consciously acquiescing to coercion—they respond inadequately to the valuable purposes the existing system achieves despite its injustice. Willing compliance, whether or not accompanied by an attempt to change the system, avoids this failure. If individuals comply willingly with a partially unjust system without making an effort to change it, they thereby commit a *pro tanto* wrong. If individuals comply willingly while genuinely trying to change the system, however, their effort to address the system's injustice alters the character of their participation. Though it is normally wrong to participate willingly in injustice, it is not wrong to participate in an unjust activity if one participates with the active aim of making the activity just. Or, at least, it is much less seriously wrong.

To see this, consider first the moral significance of participation in unalloyed wrongs. Suppose that a group's activities are entirely wrongful, and that someone joins the group with the aim of obstructing or sabotaging the group's activities from the inside. This person may do wrong things as a member of the group. For instance, someone who joins a criminal operation with the aim of sabotaging its operations may commit minor crimes in order to disguise her motive. If she does, she may be blameworthy for these lesser crimes. But the acts of joining a bad group and partially cooperating with it are not *themselves* wrongful acts if their aim is to prevent the group from engaging in a serious wrong. Or, at least, the moral character of one's

participation in the group is different from and better than the character of other members' participation if one's aim is obstruction. Compare this situation to cases in which a group's activity has a mixed moral valence—it pursues a genuinely good purpose, but it also commits injustices or does other wrongs in the process. Suppose someone joins such a group with the active intention of changing the group's activity from one with mixed moral valence to one that is an unalloyed good. This is not sabotage, since the aim is not to stop the group from pursuing the good it has been pursuing. But it has the same redeeming feature as the case of the person who joined a thoroughly bad group to stop its activities—namely, the aim of changing the group's action for the better. The effort to make the group's partially wrongful activities morally innocent changes the character of willing participation.

One way to understand how an effort to change a group's activity changes the character of one's participation is to consider the effort's effect on one's participatory intention. For people to engage in joint action, they must each have an intention of a particular sort. According to some accounts, participants must each intend to participate in something the group does. On other accounts, each person must have an intention that the group do something.²⁰ It is not necessary for all participants' intentions to have identical content.²¹ Group members' participatory intentions could vary because not all of them are fully aware of what the group is doing. For instance, people could intend to throw a party, and to do their parts in organizing the

²⁰ For an example of the former view, see Christopher Kutz, *Complicity* (Cambridge University Press, 2000). For an example of the latter, see Michael E. Bratman, 'Shared Intention' (1993) 104 *Ethics* 97. Tuomela and Miller propose that intentions of both sorts are required. Raimo Tuomela and Kaarlo Miller, 'We-intentions' (1988), 53 *Philosophical Studies* 367.

²¹ For more argument that group action does not require participants' intentions to have the same content, see Kutz (n 20) 89-96.

party, without all of them knowing that the party is to be a birthday party. The driver of a getaway car may intend to contribute to a crime without knowing (and perhaps without ever finding out) precisely what the crime was. Group members' participatory intentions could also differ because they have different aims for the group. For instance, if two people go for a walk together, the first person may intend only to go for a walk with the second, while the second intends for the walk to pass a particular site.²² Now, suppose that a group is currently doing X, and that most group members intend either to participate in doing X or for the group to do X or both. One group member believes that an effort to change the group's activity could lead to the group's doing Y instead. If this group member tries to bring about this change, she can intend for the group to do Y instead of X, and she can intend to participate in doing Y instead of X. Because her intention in participating in the group differs from the intentions of other members, her participation may be assessed differently from other members' participation. For this reason, someone who willingly does her part in a law-governed social practice may be assessed differently if she tries to change the practice than if she does not.

An attempt to change an unjust activity or practice alters the character of an individual's participation only if it counts as a genuine attempt. For individuals to be able to make genuine attempts to change the law, they do not have to be assured of success, but they must have a realistic hope that their efforts may bear fruit. People cannot genuinely try to do things they know to be impossible. I cannot genuinely attempt to fly by flapping my arms or to turn lead into gold. If I know that nothing I say or do could contribute to bringing about a change in a system of laws, I cannot make a genuine attempt to change those laws. So, for example, in an

²² This is a variant of the central example in Margaret Gilbert, 'Walking Together: A Paradigmatic Social Phenomenon' (1990) 15 *Midwest Studies in Philosophy* 1.

autocratically governed society, in which leaders are not elected, complaints fall on deaf ears, and the regime has a firm grip on power, nothing citizens say or do has any significant chance of bringing about change. They thus cannot genuinely attempt to change law or policy. So the political process gives citizens a way to escape the dilemma partial injustice presents if and only if it is responsive in the following sense: citizens who perceive partial injustice and diligently advance a good argument for change can justifiably believe that their efforts may, in time, help to bring about the change they seek. It is not possible to quantify precisely the probability of success required for speech or protest to count as a genuine attempt to change the law.²³ People can genuinely try to do things knowing they have less than even odds of success, but an action does not count as an attempt to do something if the chances of achieving it are vanishingly small. If one knows that others with the collective power to change the law will listen to one's argument with an open mind, then diligently advancing an argument about what the law should be counts as an attempt to make it so.²⁴

One might think that protest changes the character of participation in injustice even if this protest is purely expressive—that is, if it is performed with no hope of contributing to change.

²³ It is also not possible to quantify precisely how soon advocates must be entitled to hope that change will occur. A responsive government need not respond immediately to every argument for changing the law; in any society, building support for change may take some time. It is a failure of responsiveness, however, if advocates can only hope for change in the distant future.

²⁴ This does not mean that one must have a chance of changing the law by advocating a cause single-handedly. Effective advocacy often requires many people. An individual's advocacy qualifies as an attempt to change the law if it is part of or could become part of a collective effort that has a significant chance of success. For an interesting discussion of the conditions under which individuals are entitled to take credit for the good effects of efforts they make together with others, see Derek Parfit, 'Five Errors of Moral Mathematics' in Derek Parfit, *Reasons and Persons* (Oxford University Press, 1986).

Some forms of purely expressive protest amount to little more than grumbling—writing a letter to a government official expecting to be dismissed as a crank, for instance, or posting comments on Internet forums expecting them to go unread. It is implausible to think that such trivial forms of protest would alter the character of participation in injustice. Other forms of purely expressive protest involve taking on substantial risks or burdens. For instance, one could publicly protest a law knowing that the protest could result in the loss of one’s job or even in imprisonment, and also knowing that this protest has no chance of contributing to change. Suppose that the protestor continues to treat the law as a provisional standard of conduct and willingly complies with it, in the sense that her compliance is not motivated by coercion. One might think that such protest changes the moral character of the protestor’s compliance with unjust law. This is a mistake. If protestors have no realistic hope that their protest will change what a group is doing, and they participate willingly in the group’s activity, their protest does not alter their participatory intentions. They may *wish* that the group were pursuing different ends, but they can only *intend* the ends that the group actually pursues.²⁵

Thus far, I have argued that by complying willingly with the law while genuinely trying to change it, citizens can avoid the dilemma that partial injustice poses. They violate neither the *pro tanto* duty to support the law’s good purposes nor the *pro tanto* duty not to participate willingly in injustice. There is one other way for citizens to try to escape the dilemma. Instead of complying with the law willingly while trying to change it, citizens can try to change the law *by* disobeying it. That is, they can engage in civil disobedience. Since civil disobedience aims to

²⁵ The same points also apply to protestors who have no hope of changing their own society in the foreseeable future, but who justifiably hope either to bring about change in the distant future or to influence more progressive societies abroad. Though such protest is not purely expressive, it does not relieve protestors of the dilemma partial injustice poses, since it cannot alter their intention in participating in their own society’s institutions.

change the law, it is not morally problematic in the same way as conscientious refusal. Conscientious refusal is disobedience aimed not at changing the law, but only at avoiding participation in the injustice law directs.²⁶ Conscientious refusal is a problematic response to partial injustice because the laws disobeyed, though significantly unjust, are integral parts of a system that serves morally important purposes. When people try to *change* the law by disobeying it, however, their disobedience responds both to the system's flaws and to its value. It responds to the system's morally important purposes because the improved system the protesters seek would serve those purposes as well. People who engage in civil disobedience also avoid the wrong of willing participation in injustice. If their disobedience of an unjust system of laws is systematic, they do not participate in the system's injustice at all. If they disobey the law in some contexts and obey willingly in others, their attempt to bring about a better system changes the character of their obedience on the occasions when they do obey.

Like legal means of trying to change the law, civil disobedience only provides a way of avoiding the dilemma partial injustice poses if it constitutes a genuine attempt to change the law. If people who disobey the law have no realistic hope that their disobedience may help to bring about a change in the law, their disobedience does not have the character of civil disobedience. If these people disobey the very laws to which they object, their disobedience counts as conscientious refusal, and it is problematic for the reasons just described. If they disobey a law that is unrelated to the system of laws they protest—for instance, if they protest a tax law by blocking traffic—their futile protest will not change the moral character of their compliance with the system they protest. If their compliance with the unjust system of related laws is not motivated only by coercion, then they participate in injustice willingly, and their futile protest

²⁶ For the distinction between civil disobedience and conscientious refusal, see Rawls (n 3) 363-371.

does not change this fact. If they comply only because of coercion, they respond inadequately to the good purposes the partially unjust system serves.

So it seems that if citizens are either unable or unwilling to make a genuine attempt to change the law, they will have to violate either the *pro tanto* duty not to participate willingly in injustice or the *pro tanto* duty to promote the valuable purpose the system serves. Citizens can avoid committing either wrong, however, if they genuinely try to change the law. This may involve complying willingly with the system of laws in question while genuinely trying to change the aspects of it they regard as unjust. Alternatively, it may involve civil disobedience. Since trying to change the law is the only way to avoid committing either of the two *pro tanto* wrongs, citizens have a *pro tanto* duty to try to change systems of related laws that they regard as partially unjust.

A closely parallel argument shows that citizens have a *pro tanto* duty to try to preserve systems of laws that they regard as just and under threat. Suppose that there is a political movement to change an important system of laws, and that some citizens believe this movement is misguided. They think that current law is just and that the proposed change would introduce a significant injustice. If these citizens do not try to prevent this change, and the change is enacted, they will have to violate one of two *pro tanto* duties. Either they will reject the revised system of laws as a standard of conduct, thus responding inadequately to the important purpose it continues to serve, or they will comply with the revised system willingly, thus responding inadequately to the system's injustice. Waiting until the change is enacted and then trying to reverse it would partly mitigate their responsibility for participating willingly in an unjust system. But the best response to the prospect of a harmful change in the law is to try to prevent it. For brevity, in what follows, I will refer only to citizens' duty to try to change systems of laws they regard as unjust,

but the discussion applies equally to citizens' duty to try to preserve laws they regard as just and under threat.

4. Why Government Should Help Citizens to Fulfil Duties of Conscience

It should be clear at this point that citizens who regard a system of laws as partially unjust will not always be able to fulfil the *pro tanto* duty to try to change this system. Citizens can genuinely try to change the law only if the political process is responsive in the following sense: citizens who perceive partial injustice and diligently advance a good argument for change can justifiably believe that their efforts may help to bring about the change they seek. In some political circumstances, citizens know that there is nothing they could do that would have a significant chance of contributing to a change in the law. Opportunities neither for effective political speech nor for effective civil disobedience are available. Most obviously, this scenario can arise under a monarchical or aristocratic government that is deaf to the concerns of citizens who are not among the rulers. Later, I will argue that this scenario can also arise under a government that is democratic in form. First, I must explain why it is a problem if citizens cannot fulfil their *pro tanto* duty to try to change the law and why it is government's responsibility to remedy the problem. Of course, if citizens *correctly* believe that a law is partially unjust, and they say so, government has a reason to change the law in response, since government should make the law fully just. But it is not obvious that government should consider changing laws in order to enable citizens to fulfil duties of conscience.

Government has two reasons to avoid putting citizens in a situation in which they cannot avoid violating a *pro tanto* duty.²⁷ First, there is a general ethical principle that all agents should avoid putting others in a position in which they cannot avoid violating a *pro tanto* moral duty. Examples of this in interpersonal ethics abound. If I know that you have made someone else a promise, I should not ask you to make me a conflicting promise, because I should not put you in a position in which you will have to violate one of the promises you have made. Or suppose that someone wants to share a secret with a friend but knows that this friend will face questioning from others and that it will be impossible to keep the secret without lying. There is a reason—not necessarily a decisive reason, but a strong one—not to put a friend in a position of having to choose between breaking a confidence and telling a lie.

The reason one should not put others in a position of having to violate a *pro tanto* duty is not merely that it is inconsiderate. The reason is that taking morality seriously involves taking moral duties seriously whether they are one's own or others'. Consider first how one has to think about one's own future decisions. Anyone who takes the *pro tanto* duty not to break promises seriously will avoid making conflicting promises and promises that will be impossible to keep. More generally, knowingly putting oneself in a situation in which one will have to violate a *pro tanto* moral duty typically involves a failure to take this duty seriously. Now, if taking a duty seriously requires me to avoid putting my future self in situations in which I will have to violate it, why would it not also require me to avoid putting other people in situations in which they must violate that duty? If I must exercise moral prudence—if I must take steps to avoid making

²⁷ The idea that the state should accommodate individual morality—that it should make it possible for individuals to live fully moral lives, or at least that it should not interfere—is not the same as legal moralism, the view that the state should promote or enforce moral behavior. See Seana Valentine Shiffrin, 'The Divergence of Contract and Promise' (2007), 120 *Harvard Law Review* 708.

wrongdoing inevitable for myself—I must also exercise moral altruism. I should avoid making wrongdoing inevitable for other people.²⁸

Government also has a special reason to enable citizens to act on duties of conscience. Government is supposed to act on citizens' behalf, or as their agent. Any time one person or institution acts as another person's agent, the agent has a *pro tanto* moral duty to act in a way that is compatible with the represented person's conscience. Now, government acts as many people's agent, and these people often (sensibly) disagree about what justice requires, so government cannot always act in ways of which all citizens approve. But it can act in a way that is compatible with all citizens' fulfilment of duties of conscience: it can give all citizens opportunities to try to make the law consistent with their views about justice. Since government acts as citizens' agent, if it can act in ways that enable all citizens to comply with duties of conscience, it should.

For both of these reasons, government has reason to make the political process responsive. Since citizens who sensibly judge the law to be partially unjust have a duty to try to change it, government has reason to structure the political process in a way that enables citizens to fulfil this duty. If government does not do this, the laws that it has established will put citizens in a position of having to violate a *pro tanto* duty. Recall that there are two ways in which citizens can fulfil the *pro tanto* duty to try to change systems of law they sensibly regard as partially unjust. One is to try to change the law while accepting it as a provisional standard of conduct. The other is to engage in civil disobedience. Though civil disobedience is sometimes an appropriate response to partial injustice, it is not appropriate for government to try to make the

²⁸ The structure of the argument follows that of Thomas Nagel, *The Possibility of Altruism* (Princeton University Press, 1970).

political process responsive by ensuring that citizens have opportunities for effective civil disobedience. If the political process is responsive to civil disobedience but not to legal forms of expression, then the process makes it necessary to break the law in order to be a good citizen. Even if breaking the law is morally permissible and not a violation of a *pro tanto* duty, there is something wrong with a government that compels citizens to break the law if they wish to be good citizens. So government ought to ensure that citizens can make genuine attempts to change the law without having to engage in civil disobedience. It should make the political process responsive to political speech, in such a way that citizens who advance a sensible argument for change should be justified in believing that their efforts may bear fruit.

5. Responsiveness to Incorrect Views

There is a natural objection to the claim that government ought to make the political process responsive to sensible arguments for changing the law. Recall that not all sensible arguments for changing the law are sound. Some are based on false but justified empirical beliefs. Others are based on incorrect but sensible moral beliefs—beliefs such that those who hold them would commit a worse wrong by acting against conscience (but as the correct view of morality demands) than by acting as the correct view of morality demands (but against conscience). People who believe the law unjust for sensible but unsound reasons have a *pro tanto* moral duty to try to change the law. If they lack genuine opportunities to try to change the law, they will have to violate this *pro tanto* duty. This duty is a weightier duty than the duty they would violate by trying to promote an unjust law they sensibly believe to be just. So if government must avoid putting people in a position in which they have to violate important *pro tanto* moral duties, it must make the political process responsive to sensible but unsound arguments for changing the law. But making the political process responsive to sensible but

unsound arguments will presumably have bad results for the content of the law. Government may have reasons to avoid making citizens violate *pro tanto* duties, but government is also supposed to produce substantively just laws. Why should government sacrifice substantive justice to enable citizens to fulfil duties of conscience?

Before answering this question, I first want to note that there are limits on the extent to which responsiveness to sensible but unsound arguments would involve sacrificing substantive justice. For the political process to be responsive to sensible arguments, citizens must be able genuinely to try to change the law by advancing a sensible argument for changing it. So it must be the case that citizens who diligently advance a sensible argument for change are justified in believing that their efforts could contribute to a change in the law. But responsiveness does not require that there actually *be* a chance that the law will change in response to a sensible argument for change. An argument for change might turn on an empirical premise that is justified from the point of view of the person advancing the argument but unjustified from the point of view of others who have access to better information. A sensible argument might also turn on a moral premise that is sensible when its proponent begins to advance it but that ceases to be sensible after public discussion. Under a responsive political system, someone who advances an argument of either type will be justified in thinking that their argument could contribute to change when they begin to advance it. It is important for these sensible but unsound arguments to receive a public response, but responsiveness does not require these arguments actually to have a chance of success. Responsiveness only requires that an argument will have a significant chance of bringing about change if it is not publicly refuted.²⁹

²⁹ This does not entail that government is permitted to help citizens satisfy their duty to try to change the law by misleading them into falsely thinking their efforts to change the law may succeed. To do so would involve

That said, there are reasons to think that a fully responsive political process—a process that responds to all unrefuted sensible arguments for change on grounds of justice—may tend to produce less just law than a process that is more resistant to change. First, there is reason to expect that efforts to make the law more just will often fail as a result of empirical error, since people can directly observe the bad effects of current laws, but the effects of proposed new laws can only be very imperfectly predicted. For instance, a law intended to alleviate poverty may end up exacerbating it, or a new law could succeed in its aim of decreasing income inequality but have the unintended effect of reducing social mobility. Of course people can protest new injustices that result from efforts to fix old ones, but the proposed fixes to these problems may themselves introduce new problems in the law. An iterated process of change may eventually result in a fully just arrangement, or it may not. Since people often have a legitimate interest in having stable expectations, frequent change in some systems of law, notably including systems of property, is *pro tanto* unjust.³⁰

Second, a fully responsive political system may tend to be less just than a more change-resistant system because of the way it will respond to persistent, sensible moral disagreement. Suppose that there are some moral questions about justice that are so difficult to think about that people can sensibly continue to hold different views on these questions after extensive, thoughtful debate. Responsiveness in a system of government can enable people on both sides of such an issue to avoid the dilemma that perceived injustice poses. Again, an *attempt* at change is all that is needed to change the character of willing participation in injustice. So as long as

objectionable deception.

³⁰ For an argument for the importance of stability in rules governing human interaction, including rules of property, see Michael Oakeshott, 'On Being Conservative,' in *Rationalism in Politics* (Methuen, 1962) 168-196.

principled opponents of current law have a meaningful chance of bringing about the change they seek, both they and the current law's defenders can avoid committing a wrong when they comply willingly with the law. People can have this chance of bringing about change if there is always a real possibility that people who sincerely listen to sensible arguments will change their views in response, even if they had sensible reasons for holding their earlier positions. But if the opponents of current policy on this issue are always to have a chance of bringing about change over time, in the long run policy may tend to oscillate between the positions the two sides favour. This oscillation is itself *pro tanto* unjust because of the value of stable expectations.

In light of these considerations, I think it is not obvious whether a fully responsive political process will tend to produce more substantively just law than a more conservative political system. If it turns out that responsiveness requires a sacrifice of justice in political outcomes, it is difficult to say whether substantive justice or procedural considerations should take precedence. I do not claim that government must be responsive to all sensible arguments even if responsiveness will have disastrous consequences for substantive justice. I do claim this. Suppose that we do not *know* whether a responsive political process would tend to produce substantively better law than a more change-resistant process. (In light of the above discussion, it seems likely that we do not know this.) Then we do not have instrumental reason either to prefer a responsive political process or to prefer a more change-resistant process. The need to enable citizens to satisfy duties of conscience still gives us a powerful non-instrumental reason to pursue responsive government.

6. The Demands of Responsiveness

The argument for responsiveness in systems of law has consequences both for the moral responsibilities of citizens and for the law-making process and the political culture a democratic

state should have. Regarding the demands responsiveness places on the state, it is clear that a governing body is not responsive if it is autocratic, that is, if its officials are unelected and deaf to the concerns of citizens outside of the ruling elite. Responsiveness requires more than universal voting rights and legal protection of free speech, however. It requires that all citizens, including those with minority views, have opportunities for effective political speech.

It is difficult to design a political system that is responsive to the concerns of all of the governed, not only the concerns of an elite or the concerns of the majority. A system of majority rule, together with legal protection of free speech, does not guarantee all citizens the possibility of effective speech if an entrenched political majority is deaf to the concerns of those in the minority. Suppose that all citizens are able to vote on the laws that govern them, either directly or indirectly through representatives. Suppose further that a large majority of citizens have a fixed view about what a particular system of laws should be like. This could be because they are not willing to consider other views, or it could be because they are not exposed to other views. (Perhaps the mainstream media regard minority views about this system as eccentric and not worth discussing.) Furthermore, suppose there is no formal mechanism in the legislative procedure to ensure that minority views are considered. Then someone with a minority view about how this system of laws should be arranged will have no realistic hope of bringing about change to it. Presenting a sensible argument for change in a public forum will be futile if the argument will fall on deaf ears.

There are broadly two ways of ensuring that people with minority views will have an opportunity to have their views considered. One is to structure the law-making process in a way that ensures that concerns of people not in the majority are formally considered and discussed. The process of litigation is in some ways a good model. Litigation enables someone who may or

may not have a majority view about what the law should be to ask a court to consider certain changes to the law (e.g., to strike down a statute as unconstitutional, or to clarify an unclear law's application to a particular circumstance). Judicial opinions explaining a court's reasons for its decision provide assurance to the parties and to others that the plaintiff's and the defendant's reasons for changing or preserving the law have been considered. Now, courts are limited in the kinds of changes to the law they can make and in the reasons for change they can consider. Legislative procedures can be structured in a way that requires legislatures to consider minority views and to give reasons for or against taking them up. For example, legislatures can hold hearings in which witnesses can speak in favour of or against legislation. Rulemaking bodies can be required to give notice of proposed new rules and to solicit and consider comments. There can also be an initiative procedure whereby a significant minority of citizens can compel the legislature to debate and to vote on a proposed law.

The second way of ensuring that minority views will be considered is to have a robust culture of political speech in which people from different parts of society talk with each other and in which decision-makers are responsive to this debate. If legislators and other decision-makers are responsive to public opinion, individuals can try to influence policy by trying to influence public opinion. They can do this by speaking in the press. They can also do this by speaking to others in private; the private conversations people have about politics can play an important role in developing their views. For political speech to be an effective means of bringing about political change, legal protection of freedom of speech is not sufficient. There also needs to be a culture in which different parts of society listen to each other. If people only read or listen to political speech by people of like mind, a member of a political minority does

not have a realistic hope of altering public opinion. A strong culture of political speech is one in which people regularly encounter and sincerely listen to views they do not share.

Either of these methods of making the political process responsive can at least partly make up for the other's absence. A strictly majoritarian legislature with no formal procedures for the consideration of minority views can be responsive to a wide range of views on some issues if the informal political culture is sufficiently healthy. In a society with a strong culture of political speech, citizens whose views on major issues are currently in the minority will often be able to win a majority through public debate. When the culture of political speech is weak, whether because many citizens are not exposed to diverse views or because many citizens are closed-minded, formal procedures for the consideration of minority views can help to secure responsiveness in government. Even in a society with a strong culture of political speech the government has reason to establish formal procedures for the consideration of minority views, since the political culture may change for the worse. Moreover, even in the best political culture, a majority of citizens can give serious attention to only a limited range of political issues. It may be valuable to have formal mechanisms for the consideration of minority views on issues that are not currently receiving public attention but that need to be addressed.

Though government has a duty to make the law-making process responsive, ensuring responsiveness in government is also partly a responsibility of individual citizens. This individual duty is particularly pressing when the government has failed to establish formal mechanisms to ensure political responsiveness. Recall that it is not only government that has a moral duty not to put citizens in a position of having to commit a *pro tanto* wrong. All individuals have this duty. So citizens must not engage in political actions that prevent other citizens from having genuine opportunities to try to change the law. For instance, citizens who

vote have a duty not to vote on the basis of inflexible opinions. Voting citizens have a duty to listen sincerely to a variety of political views and not to live in an ideological echo chamber. The argument for the importance of responsiveness in government thus has implications not only for the shape political institutions should have, but also for individual morality.

The argument also entails that there is an affirmative individual duty to participate in politics. When individuals have genuine opportunities to try to change the law, they have a moral duty to take these opportunities when they sensibly judge that there is injustice in the law. If they made no attempt to change the law, they would have to choose between the morally problematic options they would have to choose between were the opportunity to try to change the law unavailable. Moreover, the argument also implies that individuals have a duty to be sufficiently well-informed about the law to form an opinion about whether the systems of law in which they participate are just. Ignorance does not relieve participants in injustice of responsibility. Money launderers who avoid asking questions about the source of the funds they transfer are complicit in organised crime; their ignorance is no excuse.³¹ Likewise, those who willingly comply with unjust systems of law without inquiring into those systems' justice are open to blame.

The duties to learn of and to try to address injustice threaten to be overwhelming. Modern societies have extremely complex legal systems, and neither laypeople nor lawyers can be expected to have an informed opinion about the justice of every aspect. Even if it were possible for a single individual to form an opinion about the justice of every aspect of a society's systems of laws, no individual would have the resources to take even minimal action to address every injustice. If the law-making process is sensitive to public opinion, citizens can take *minimal*

³¹ Kutz points out that organised crime often requires participants to have an incomplete understanding of their role. Kutz (n 20) 90-91.

action to address a great many injustices. Again, private conversations about politics have an important influence on people's views, and people can have conversations about many topics. But no one can or should talk about politics all the time, and though the importance of ordinary conversation should not be underestimated, injustice often calls for a more vigorous response.

The duty to try to change injustice is not a duty to try to address every injustice in the laws of the society in which one lives. If individuals make adequate efforts to address the injustices they reasonably regard as most significant, their efforts suffice to alter the moral character of their compliance with partially unjust systems of laws in their society. The duty to try to change unjust laws is akin to the duty of beneficence, the duty to help others in need, in that both duties are imperfect duties. There are many people in the world who are in need of help, and no one person has the resources to help everyone who is in need. Though nobody has a duty to try to help every needy person, one must always take the needs of others as an important reason for action. It would be wrong to refrain from helping others because their needs are so overwhelming, or because it is difficult to gather the information necessary to help effectively, or because one is simply not interested. Likewise, though nobody has a duty to try to address every injustice in the law, one must always take injustice as an important reason for action. It would be wrong to refrain from trying to address injustice because the law's injustices are overwhelming, or because it is difficult to gather the information necessary to participate effectively, or because one is not interested in politics.

Though my argument for responsive government does not entail that there is an overwhelming duty to participate in politics, it does imply that citizens' political obligations are more extensive than is commonly supposed. In this way, it goes beyond the claims some civic republicans have made about the importance of political participation. These civic republicans

hold that political activity is important because it is central to human fulfilment.³² I suggest that political activity is central to moral uprightness. To lead an upright life, it is necessary to be engaged with politics, and one's engagement must involve more than voting. It is necessary to stay informed of political issues that raise questions of justice and to listen with an open mind to a variety of political views. It is sometimes also necessary to take action when one regards the law as unjust, whether by asking for legislators' help, initiating a ballot measure, pursuing a lawsuit, speaking in the press, or speaking in private about one's concerns.

For these actions to count as genuine attempts to change a system of laws, they need to have a significant chance of contributing to change. Without the opportunity to take action that will have a real chance of contributing to change, citizens who regard the system as partially unjust will have no way out of the dilemma it poses for them. Either they must reject these laws as standards of conduct, thus responding inadequately to the system's value, or they must comply willingly while doing nothing to change the laws, thus responding inadequately to the system's injustice. Thus, citizens have a moral interest in having genuine opportunities to try to change the law. Responsive government enables people to fulfil duties of conscience.³³

³² For an example of this view, see Hannah Arendt, *The Human Condition* (University of Chicago Press, 2nd edn 1998).

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