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Beaten, Silenced, Caged: The Costs of Activism

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From the Freedom Rides to the students' lunch counter sit-ins, the campaigns of the civil rights movement are seen as the archetypes of civil disobedience. Pineda's wonderful and brilliant book draws on rich archival and historical research to peel the layers of idealization, romanticization, and ideology that have turned the classical phase of the civil rights movement (1954–1965) into both myth and protest template. This illuminating, insightful, and beautifully written book is a must-read for anyone interested in civil disobedience.

Pineda shows how influential philosophers like John Rawls shaped the public narrative of the civil rights movement by imposing assumptions and questions which gave a false idea of civil rights activists' dilemmas and questions. These philosophers saw civil disobedience not only "like a state," by assuming that the constitutional order was overall just and legitimate, but also "like a white state," given their belief that racial injustice was a remediable anomaly. Pineda shows that civil rights activists constructed civil disobedience as a decolonizing praxis, in concert with anticolonial activists across the globe. To see "like an activist" involves thinking civil disobedience in this global context and taking activists and organizers seriously as political thinkers who worked out the connections between ethics and strategy, on the basis of an astute analysis of racial domination.

I focus on chapter 3, "Incarceration as Liberation," which examines civil rights organizers' and student activists' experiences of arrest and incarceration in Mississippi in the early 1960s. Philosophers generally conceive of arrest and incarceration as the costs of civil activism: by willingly accepting the legal consequences of their lawbreaking, the disobedient agents demonstrate their commitment to preserving the stability of the legal and constitutional order and their respect for democracy. Contra this, Pineda argues that activism entailed "many risks other than arrest, among them grave bodily harm and even death, both inside and outside the jail" (123); and that civil rights activists innovatively transformed "arrest and incarceration

[into] a means of protest rather than simply a consequence of it" (98), by bringing civil disobedience into the prison.

I complement Pineda's discussion in three directions, by detailing what the normative ideal of civility may demand of disobedient agents in the street (at arrest), in the courtroom (at arraignment and trial), and in jail (during detention). My aim is to put into sharper relief activists' actual practices and to highlight the opportunities philosophers missed to understand not only the costs of activism but also the workings of racial domination.

1. Seeing the legal system like a philosopher

Chapter 3 opens with Pineda's harrowing description of the brutal arrest of civil rights organizers in Winona, Mississippi, in 1963. Philosophers do not require that civil disobedients submit to the excessive use of force by police (although authorities and the white majority tend to demand just that) and they can denounce the violent repression of dissidents. But by focusing on what can reasonably be expected of activists in a liberal democratic state, they render invisible the unfair costs that activists face.

Philosophers further miss the opportunity to understand the workings of racial domination by confronting their conceptions of law with the "critical continuities between legal and extralegal violence that defined the Jim Crow order" (97)—that is, the combination of *de jure* racial segregation and anti-Black discrimination with pervasive extralegal violence, including terror lynching. According to H. L. A. Hart, a legal system is "the union of primary and secondary rules."¹ Primary rules impose obligations and create rights, while secondary rules detail how to change, create, and identify the valid rules of the system. In a functioning legal system the people generally comply with the legally valid primary rules, and officials reflectively accept both sets of rules.

The US racial caste system was arguably a counterexample to Hart's criteria for identifying a functioning legal system (or a special kind of "pathology"²) insofar as: ordinary white citizens and officials routinely violated the primary rules, such as the criminal prohibitions on murder, bombing, and assault, without incurring any legal sanctions; white citizens often did so as vigilantes or self-deputized agents of the state, in violation of the distribution of public powers (the state's monopoly on the use of violence); and officials openly flouted the rule of recognition (the Constitution) as the basic source and marker of legal validity to enforce white supremacy instead. Philosophers of law did not find the vexing reality of the Jim Crow order worthy of

¹H. L. A. Hart, *The Concept of Law* (Oxford: Clarendon, 2012), 94.

²Hart considered revolution and enemy occupation the main modalities of pathology (*ibid.*, 117–23).

philosophical investigation. They missed the opportunity to see the legal system before them like a philosopher.

2. Seeing the courtroom like an activist

While Pineda details how activists used the tactic of “jail, no bail” to refuse compliance with an unjust system, she does not fully consider the courtroom as a space of activist praxis. This, too, has been an area broadly neglected by philosophers. As I detail elsewhere, some (though not Rawls) have argued that civil disobedients ought not contest the charges at trial and ought to plead “guilty.”³ Such submission may be a reasonable demand in a legitimate, nearly just liberal democratic state, but in the real world activists are charged with crimes they did not commit. Pleading “not guilty” and challenging the prosecution may be essential to affirm their dignity and to alert the public about the state’s treatment of dissidents.

What is more, a “guilty” plea generally waives the constitutional right to a trial, which would undermine both philosophers’ paradigmatic act of justified civil disobedience—the constitutional test case—and the common view that the trial offers civil disobedients the opportunity to “have their day in court.” However, Pineda shows that the civil rights organizers and student activists (the Friendship Nine) faced travesties of justice, quasi-kangaroo courts with all-white judges and jurors. They had neither the opportunity to speak up nor the standing to be listened to, as credible witnesses to their own oppression, and heard, as activists working toward justice. Here philosophers interested in civil disobedience missed the opportunity to think about the forms of epistemic and testimonial injustice that pervade the courtroom for activists, Blacks, and women.

Civility, as philosophers and the public ordinarily understand it, requires abiding by courtroom decorum and showing deference to the judge, including submitting without complaint to the jury’s verdict and the judge’s sentence. The paradigmatic disobedient conduct is “contempt of court,” which includes heckling, interrupting, and refusing to obey direct orders. In 1969, Bobby Seale (chairman of the Black Panther Party) repeatedly interrupted the proceedings of what came to be known as the Chicago Eight Conspiracy Trial to demand legal representation. He was gagged and shackled during the trial, charged with sixteen counts of contempt, and sentenced to four years in prison. It would have been useful to compare civil rights activists’ commitment to civility in the courtroom with other Black radical activists’ willingness to treat the courtroom with the contempt they thought it was due. Such comparison would illuminate activists’ different views about

³Candice Delmas, “Civil Disobedience, Punishment, and Injustice,” in *The Palgrave Handbook of Applied Ethics and the Criminal Law*, ed. Kimberley Kessler Ferzan and Larry Alexander (London: Palgrave Macmillan, 2019), 167–88.

the courts' role in maintaining the racial order and potential contribution to dismantling it.

3. Seeing the prison like a political prisoner

It is plausible to argue that the civil disobedient ought to comply with the rules and display good behavior in prison to demonstrate her special status as a conscientious agent unlike other "criminals." Contrary to this, Pineda shows that activists brought civil disobedience to jail by disobeying prison rules and withholding expressions of deference to guards, imposing great financial costs on local state authorities in the process (and nearly bankrupting CORE, too). Activists sang spirituals, went on hunger strikes, and engaged in work slowdowns. They were placed in solitary confinement in retaliation and subjected to torturous treatments. And yet activists experienced incarceration as a space of self-making and self-emancipation, characterized by fearlessness and solidarity.

Pineda gestures at a possible array of emancipatory practices in prison by noting activists' discussions and experimentations but does not identify other such practices. Here again, a comparative analysis would have illuminated the meaning and stakes of incarcerated activists' practices. Bayard Rustin brought nonviolence to the prison to dismantle its rigid authoritarian hierarchy, to build solidarity, and to better himself.⁴ Yet he did so by following the rules, treating guards with respect and courtesy, and even working hard on the chain gang. He showed compassion and kindness toward fellow prisoners and inspired everyone to be their best selves.

Two decades later, incarcerated Black Panthers would transform the prison into their standing ground and experienced themselves as "more-than-half-free," like Frederick Douglass after fighting the slave-breaker (101–4). Huey P. Newton spent months in solitary for defying guards. He writes: "I did not break, nor did I retreat from my position. I grew strong. Strong. If I had submitted to their exploitation and done their will, it would have killed my spirit and condemned me to a living death."⁵ Incarcerated Black Panthers saw themselves as political prisoners and focused on educating and organizing fellow incarcerated people, raising their consciousness as potential participants in the anticapitalist revolution.

To see the prison like a political prisoner is to see its central place in the racial caste system and to see all incarcerated people as victims and potential allies in the fight for freedom. This vision was pivotal in transforming the Black freedom struggle into the new abolitionist movement around the slogan: "Free All Political Prisoners."

⁴*Time on Two Crosses: The Collected Writings of Bayard Rustin*, ed. Devon W. Carbado and Donald Weise (New York: Cleis, 2015), 58–65.

⁵Huey P. Newton, *Revolutionary Suicide* (Black Panthers Publishing, 1967), 7.