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NONCIVIL DISOBEDIENCE AND THE RIGHT OF NECESSITY
A POINT OF CONVERGENCE

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[I]t is an easy matter to talk philosophically, whilst we do not ourselves feel the hardship any farther than in speculation'
– Samuel von Pufendorf (1729: 210).

Until the end of the twelfth century, in a world where massive famines and chronic poverty were a constant and very present threat, the sermons delivered to the Christian congregations – following the doctrine of the Church Fathers – focused on what the rich ought to do in the face of such suffering and deprivation. 'Feed him that is dying of hunger; if thou hast not fed him, thou hast slain him' (Aquinas 1892: 385), famously commanded Saint Ambrose of Milan. For the needy, meanwhile, the recommendation was that to starve was preferable than to sin; in this case, by stealing from the rich man's estate.

Today, in a world that has never confronted so much wealth and misery co-existing side by side, moral and political theorists appeal to their afflu-

ent audiences much in the same vein as the Church Fathers. 'What if I told you that you, too, can save a life, even many lives?', asks Peter Singer to his readers, enticing them to be generous and to donate to charitable causes (Singer 2009: ix). 'I invoke the very core of [Western] morality: that it is wrong severely to harm innocent people for minor gains' (Pogge 2008: 32)¹, claims Thomas Pogge, one of the best-known figures in the global justice debate, in an effort to make the more empowered in our global society realize that they must reshape those institutions that allow foreseeable and avoidable human rights deficits to persist on a massive scale. Although these and other related discourses are mostly founded on the rights of the needy² (*human, basic, social*, or whatever they get called³), little is actually said of what these rights entitle their holders to do for themselves, and little moral guidance is given to the latter as to what they may do in the face of such serious deprivations.

At the end of the twelfth century, the established view presented by the Church Fathers as to how to deal with poverty and misery was challenged by a small group of Christian theologians and philosophers, who started looking at the problem from the other side – namely, not from the armchair of the wealthy landlords, but from the place of the destitute. Their focus was on what the needy may do for themselves in order to alleviate their plight, and their answer was that they had a *right of necessity* to claim what they needed to survive. The idea was basically that, because God had given the earth to all human beings, in the original state everyone was free to take what they needed to subsist. This was understood as a state of *negative community*, that is to say, the earth was not owned by anyone in particular, but everyone could get from it what was required for their immediate consumption. At a later period, human laws and institutions – private property among them – had been created to preserve that original equity in the best possible way, while advancing the well-being of everyone. If it ever was the case, however, that in civil society someone came to be in a situation of extreme need, she may demand to be helped and, if this help was denied, she may take what she needed without moral or legal sanction.

The best-known medieval version of the right of necessity was that of Aquinas, who claimed that '[p]roperly speaking, to take or use another's

property secretly in a case of extreme necessity does not have the character of theft, because that which someone takes in order to support his own life becomes his own by reason of that necessity' (Aquinas 2002: 217).

For the following five centuries, the idea of a right of necessity was also endorsed by philosophical figures like Hugo Grotius, Samuel Pufendorf and Francis Hutcheson (Grotius 1964: 193-195, Pufendorf 1729: 202-212, Hutcheson 1755: 117-140). Given certain conditions, they thought, a person in need was morally permitted to take and use someone else's property in order to escape his plight. Although it would have been anachronistic for these authors to call it a *human* or *cosmopolitan* right, this is in fact how they understood it: a *universal* right held by every *individual* that deserved *general* recognition.⁴ Moreover, they took this right to be claimable by actual force, even if this went against the established laws and mainstream moral norms.

Given the conceptual gap in the global justice debate today (where most of the talk is about the duties of the rich, but little is said about what the poor may do for themselves), in this article I reintroduce the idea of a *right of necessity*. I first delineate a normative framework for such a right, inspired by these historical accounts. I then offer a contemporary case where the exercise of the right of necessity would be morally legitimate according to that framework – even though illegal and probably condemned by the standard moral norms. The case is that of a small group of Paraguayan *campesinos* (small farmers) suffering from the effects of a severe drought. In the third part, I introduce the concept of *noncivil disobedience*: I call an act of noncivil disobedience a *conscientious, public, illegal* and *forcible* act whose performance, while not necessarily intended directly as a means to bring about social and/or political change, may help to trigger these changes indirectly. In the fourth part, I suggest that certain instances where the right of necessity is overtly exercised – as in the case of the famine-struck Paraguayan *campesinos* – may also be interpreted in terms of noncivil disobedience, insofar as they serve a double function: as a means of satisfying immediate need, and as a marker of discontent in a society where the equal rights of individuals are a nominal ideal which remains unfulfilled in practice. I then address two objections that may be raised against resurrecting the idea of a right of necessity and

identifying it in certain instances with noncivil disobedience. I conclude by suggesting that, at the point of convergence between the two, a basic right like the right of necessity recovers its value as an active, (rather than passive) entitlement of its holders, while the use of force enters the picture as a legitimate means that – at least under certain circumstances – may be resorted to within the limits of civil society.

I. The right of necessity

Given certain conditions, if a person in need takes and uses someone else's property openly or secretly – and even forcibly (if the owner refuses) – in order to escape her plight, this is not to be regarded as theft. What the person is doing, on the contrary, is morally permissible and ought to be considered as a legitimate exception to the established laws and standard moral norms. Such is, in a nutshell, the view of authors like Grotius, Pufendorf and Hutcheson when it comes to defining the right of necessity of individuals who are suffering from extreme material deprivation. The justifications given for granting this moral and legal exception differ: the first two are contractarian-based and start from a modern natural law perspective, while the latter is utilitarian-based. What these authors firmly agree on, nonetheless, is in the existence of such a right vis-à-vis perfect and imperfect rights which are, respectively, the subject-matter of justice and beneficence.

I can neither offer here a detailed analysis of these different accounts, nor pause on the tensions that each of them present.⁵ Rather, what I do is take these authors as a source of inspiration from which to draw a normative framework for a right of necessity. In terms of the justification, I offer one that is contractarian-based and owes much to Pufendorf. I have shown elsewhere, however, that it is not contradictory, but follows from utilitarianism's most basic moral principle to include this exception within such a morality too (Mancilla 2012).⁶

To start with the justification, from the pessimistically Hobbesian to the optimistically Pufendorfian, a basic assumption of social contract theories

is that living in society is better overall than living in a pre-civil state, where individuals compete against each other and the only law is the arbitrary will of the strongest. On the contrary, by agreeing to respect some basic rules, individuals living in an organized society may pursue their own ends in relative security and harmony with others. One of the most important of these basic rules is that of private property.

While in the state of nature nothing belongs to anyone in particular and everything is up for grabs by everyone, in civil society we are not merely in contingent *possession* of what we need for our immediate consumption, but we may come to *own* an extended range of things. The institution of private property is taken to be essential for a well-functioning society and for the well-being of its members. This is true insofar as it promotes human industry and allows individuals to be better-off than they would have been without it. Consequently, once it is put in place, those who violate private property become liable both to moral condemnation and legal punishment.

Now, while the whole point of accepting to live in society and to abide by its rules is that it is overall beneficial for its members, exceptional cases might appear where following these rules would not only be disadvantageous, but would put our very lives at stake. In these cases, the contractarian says, it would be reasonable to leave a space for an exception. The idea is basically this: self-preservation is the strongest instinct of human nature. Therefore, we cannot expect someone whose very life is in danger to respect certain moral obligations, when doing so jeopardizes her chance of survival. In the specific case of material want, we cannot expect a person who is on the brink of starvation, for example, to refrain from violating private property laws and stealing someone else's loaf of bread, when doing so is the only way to appease her hunger. Instead of penalising the needy person in such a case, those judging ought to recognize this as an exception to the general norms, both legal and moral.⁷ In order to prevent the exception from becoming a rule and thus a disruptive force within society, however, a set of conditions is required to set strict limits to the exercise of this right. These conditions are what reasonable agents participating in the social agreement would demand before granting it.⁸

Two things have to be kept in mind before spelling out these four conditions. The first is that they are taken to be either present or absent, i.e. they are interpreted in binary rather than scalar terms. Even though this strategy may sound oversimplistic (given that all of them can also be understood as coming in degrees along a continuum), it allows one to focus on those cases where the right of necessity appears uncontroversially. The second is that this is not purported to be a list of necessary and jointly sufficient conditions. Rather, when all are met, they mark a minimal area where cases of necessity appear quite indisputably. The point, then, is not to deny that a more inclusionary normative account for necessity claims may also be couched in contractarian terms, but rather that different arguments would have to be offered to support such an account – arguments that are not provided here.

So, what are these four conditions? Pufendorf condenses them in the following paragraph:

'If a man, *not through his own fault*, happens to be in *extreme want of victuals and clothes* necessary to preserve him from the cold, and cannot procure them from *those who are wealthy and have great store*, either by *intreaties*, or by *offering their value*, or by *proposing to do work equivalent*; he may, without being chargeable with theft or rapine, furnish his necessities out of their abundance, either by force or secretly' (Pufendorf 2003: 93, my emphases).

First of all, then, the need in question must be basic; i.e. it must be of such a kind that jeopardizes the very self-preservation of the agent if he is not able to satisfy it, and prevents him from leading a minimally acceptable human life. This explains why the right of necessity normally appears next to the right to self-defense. Both are about survival, even though the means to secure them are different: the latter, by reacting against some sort of aggression; the former, by taking positive action directed toward the fulfilment of some pressing need. To claim necessity for anything less than one's own subsistence is thus ruled out.

A second condition is that the agent has to be morally innocent: to wit, not responsible for her plight. This condition is thus understood in a nar-

row, backward-looking sense: it is narrow, because what matters is not the general character of the agent, but the causal role she played in falling into this particular situation; and it is backward-looking, because it does not focus on what the agent may do now and in the future, but on what she has already done regarding her situation. By putting this condition in place, an incentive is given to individuals to look after themselves and avoid falling in dire need through their own fault.⁹

Third, the needy person must not take from those who are equally (or almost as) needy. It is normally taken for granted that those who already have something have a better claim over that thing than those who demand it from them. Even in the state of nature there is already an assumption that, once an individual has taken concrete, physical possession of a thing, that thing becomes his and ceases to be part of the communal bounty. This tacit agreement is what Pufendorf takes to be the foundation of the right of primitive seizure or first acquisition, and what leads him to echo Curtius's words that 'he who refuses to deliver what is his own, has a fairer cause than he who demands what is another man's' (Pufendorf: 209).

In contractarian terms, this condition is justified by that tacit agreement: those who accept to leave an exception of necessity among the standard rules will want to limit its application to cases where the owners of the property at stake are not (or are not going to end up) as deprived as those who claimed the right in the first place. To ask someone to give away his last meal, after all, would defeat the very purpose for which this prerogative was originally intended.

Finally, the exercise of this right must be left as a last resort after all other paths of action have been tried unsuccessfully. Again, the rationale here is to disincentivize people from abusing this claim: it is only sensible to limit this principle by making sure that the agents will only have recourse to it after trying other less disruptive options.¹⁰

At this point, the readers may be wondering what the actual application of such a strictly limited moral prerogative can be today. If the idea of a right of necessity fell into oblivion from the eighteenth century onwards,

one may think that it was because cases where all the above conditions were met became less and less frequent due to the enrichment of the nascent capitalist society, the rise of the welfare state and the increasing importance given to the ideals of distributive or social justice and socio-economic rights. Why let the individuals fall into dire need when it was more efficient for the whole system to guarantee a minimal threshold for everyone, below which no one should ever fall?

Although this may be partly true (or even wholly true in most cases), I propose that, if we take the list of conditions enumerated above and apply them to some specific scenarios in the world today, we will realize that cases of necessity still arise or may arise – for example, in certain instances of pickpocketing, shoplifting and even pirating (Mancilla 2012). What happens nowadays, however, is that these are criminalized across the board as theft or violation of private property, and those who engage in them are condemned as moral and social pariahs, even though what they are doing (or may do) is simply claiming their legitimate right. I analyze one of these cases in the next section.

II. The famine-struck campesinos

On January 2012, the recently ousted Paraguayan President Fernando Lugo signed a decree for a food emergency for 90 days, due to an acute drought in the Eastern and Western regions of that South American country. The most damaged by the drought were 110,000 people from at least 313 indigenous communities, whose subsistence crops were lost and faced famine as a result (USDA 2012). Especially in Alto Paraná and Canindeyú, two of the most critical areas, not only the local *campesinos* were affected, but also the *Braziguayos*. The latter are industrial soy producers from Brazil who, since the 1970s, have been buying thousands of hectares of arable land in this landlocked country to grow this crop, mainly for export for animal feed and biofuels. For them, however, the recent drought did not threaten their lives, but rather their pockets: due to it, the soy production is expected to fall to 6.4 million tonnes in 2011/2012 (compared to the record 7.5 million yield in 2010/2011, which represented

an export value of 1.59 billion USD) (D'Angelo 2012).

Today, Paraguay is the world's sixth producer of soy beans, with over 2.6 million hectares cultivated, and the fourth largest exporter. Despite an impressive economic growth of 14.5 percent in 2010 (mainly thanks to this crop), Paraguay remains nonetheless the second poorest country in South America: 20 per cent of the population live with less than 1 USD a day, while almost half of the population live with less than 2 USD a day (World Bank 2002: 237). In terms of the Human Development Index, moreover, the country ranks 107 from a total of 187 (UNDP 2011: 126). The distribution of land is also extremely inequitable: 351 families and multinational companies control 40 percent of the total arable land, while 1.2 million small farmers occupy only 6 percent of the total arable land, half of whom live with less than 1 USD a day (Fogel 2005: 443).

Now, if that were not enough, thousands of farmers are threatened by famine. While the government has been sluggish to attend their most urgent need, the big agribusinesses around them keep loading their trucks with protein-rich soybeans, to be eaten by foreign cows, chickens and pigs, or to be used as biofuel to feed 'sustainable' cars in Europe. Given these circumstances, I pose the following question: may the Paraguayan *campesinos* take these trucks and fetch their produce for their own consumption, or enter the soy plantations and help themselves to the crops? May they claim necessity in this scenario?

To answer this, it might be illuminating to start by presenting *Open Granaries*, one of the paradigmatic examples of necessity used by Pufendorf. In times of famine, the authorities have to order the opening of the granaries to feed the population. But, 'must the poor therefore be content to starve, when the magistrates neglect to make due provision for their sustenance?' Pufendorf's answer is that they mustn't, and that, as long as the conditions to claim necessity are met, 'the law which forbids theft is not to be extended to this present case' (Pufendorf 1729: 210). In short, the agents are empowered to take what they need to guarantee their sustenance.

Let us review if the conditions to claim necessity are present in the Paraguayan case. Starting with the kind of need in question, what is at stake for the *campesinos* is their very subsistence. As one of the farmers put it simply: 'If it doesn't rain, we will have no food' (Hernández 2012). There is no doubt that the need in question is basic.

Second, the agents are not responsible for their plight. The *campesinos* were hit by an unexpected drought which destroyed most of their plantations. Moreover, because they are among the poorest of the poor, even if they had known that a drought was coming, they could not have shielded themselves from this climatic emergency. Their plight, then, is not due to their negligence, or their idleness, or their engagement in risky activities.¹¹

Third, the owners of the resources are clearly not equally needy. For one thing, the food they grow – as already mentioned – is not for their consumption, nor for the consumption of other people, but for animal feed and biofuel. That the owners of these crops do not depend on them for their subsistence is also clear from the fact that they do not live on these lands, not even close to them; on the contrary, most of them are Brazilian and Argentinian businessmen, or multinational companies for whom soy is solely about profit. The cost of letting the needy take a part of their crop would indeed constitute a negligible percentage of their total production and would affect – if anything – their million dollar profits by a few thousands in total.¹²

Fourth, if the presidential order that 'all necessary administrative and financial measures are taken to provide an immediate response to problems related to food production' remains ineffectual (ABC Color 2012), the last-resort condition is also met. For the farmers, their only means of subsistence has been ruined and, considering that extreme poverty is especially prevalent in the rural areas, presumably they do not have enough money to buy the food they need. In terms of political power, moreover, the detailed normative and legislative system in Paraguay contrasts with the lack of enforcement of the law by the State and the prevalence of a corrupt political elite, within which the *campesinos*, as a marginal group, have no representation. On the contrary, the big agribusinesses are politically well-protected and represented.¹³

A final consideration is pragmatic. As stated in a report from OXFAM, ‘[i]n Alto Paraná, smallholder farmer settlements look like tiny islands in the midst of uniform seas of soy’ (Itriago 2012: 9). That is, the food needed to prevent starvation is right there, in the soy fields at the very edge of the farmer’s lands, and in the trucks that carry them through the dusty country roads to Argentina and Brazil, from where they are exported.¹⁴

In sum, my claim is that, faced with starvation and with their authorities failing to act effectively, the Paraguayan farmers may exercise their right of necessity by taking and consuming the crops from the vast plantations that surround them, even if this violates Paraguayan laws and directly affects the property of the big soy agribusiness.¹⁵

There is one important complication in this case that I have deliberately left aside so far: namely, the question of the legitimacy of the soy business itself, both regarding their claims to the land and the production methods they use. Regarding the first point, because many of the land transfers took place thanks to Stroessner’s corrupt agrarian reform, during the 70s and 80s, it could be pointed out that – together with a claim of necessity – the *campesinos* have a claim of justice against those who legally but illegitimately displaced them from their lands. By claiming necessity, as I will suggest in the next sections, the *campesinos* may nonetheless contribute towards reinforcing this latter claim too. Regarding the second point, there is a growing concern that, despite contributing to the country’s economic growth, the soy business has produced massive environmental degradation, raised rural unemployment and brought health problems to the neighboring communities, due to the heavy use of agrochemicals. If this is the case, again, the *campesinos* would have a claim of justice against the soy businesses to compensate them for the harm done to them; a claim that would strengthen their more basic claim of necessity. It is important to make clear, however, that even if these accusations were not true and the big farmers were neither responsible in any way for the plight of the *campesinos*, nor beneficiaries of some past injustice, the claim of necessity of the latter to let them take and use their produce would still stand.¹⁶

III. Civil and noncivil disobedience

There is a growing sense among moral and political philosophers today that the traditional concept of civil disobedience has become insufficient to account for a number of social and political movements that are taking shape at the global level.

Acts of civil disobedience, as theorists like Hugo Bedau and John Rawls proposed in the 60s and 70s, are *conscientious*, *illegal* and *public* acts, *political* in nature, whose purpose is to protest against some specific law, policy or government decision which is deemed to be illegitimate (Bedau 1961, Rawls 1971). What is paradigmatic and essential to civil disobedients, according to these authors, is that they never resort to force in order to achieve their aims but, on the contrary, seek change only through peaceful means. Moreover, they are even willing to accept official punishment as a way of nodding to the general institutional framework of that society. Rather than revolutionary, civil disobedients are reformists, and the system within which they work for these reforms is – to a greater or lesser extent – open to attend to their claims.

While the *disobedience* straightforwardly points to the fact that they go against some established rules, the use of the term *civil* to qualify these acts can be understood in two different ways. In a first sense, an act of disobedience is *civil* insofar as it is performed by *citizens* – i.e. ‘full-time’ members of that society, with the duties (like paying taxes), but also with the privileges (like voting and using the State’s social services) that their status entails.

In a second sense, acts of disobedience are *civil* insofar as they are *civilized* and peaceful, as opposed to disorderly and violent. Here, the word *civil* refers to the fact that those engaging in these acts do not use direct physical force – as they maybe would in a pre-civil, state-of-nature scenario. Civil disobedience, in this sense, is overall about *civility* in one’s conduct.¹⁷

Some authors have contested the first sense whereby the practice of civil disobedience is limited to citizens only. David Lyons, for example, presents the Afro-american slaves before the end of chattel slavery as a paradig-

matic example of civil disobedients, even though they were not citizens, but part of the white man's estate (Lyons 1998). Others, like John Morreall, have contested the second sense and have claimed that violence should be allowed if that is the only way in which citizens can achieve their political ends (Morreall 1976).

Despite these attempts to extend the boundaries of civil disobedience, it remains true that when we use this concept today most of us still have in mind what Bedau and Rawls had in mind too; namely, acts of disobedience that are *civil* in the double sense expounded above: to acts that are paradigmatically nonviolent, and whose performers are active members of civil society, confident that the institutional system will listen to their peaceful demands and will treat them with respect – even if they have to undergo some sort of punishment as a consequence of their refusal to abide by the law. Civil disobedience, to put it differently, is mostly associated with organized, pacific protest done by dignified citizens who are conscious of their entitlements as such, as opposed to spontaneous and sometimes violent acts performed by those who remain at the margins of the social system, either officially (for example, illegal immigrants) or in practice (as in the case of those whose basic rights as citizens are formally recognized but ignored and disrespected on a daily basis).

However useful it might have been to conceptualize phenomena like the civil rights movement and Gandhi's tactics of nonviolent resistance, the classic understanding of civil disobedience is clearly not enough to account for certain social movements emerging today. Instead of giving arguments to extend its scope (like Lyons and Morreall), I propose that *noncivil disobedience* is a better term to conceptualize some of them.¹⁸ Let us say that an individual performs an act of noncivil disobedience when he/she acts *conscientiously*, *publicly* and *forcibly* against a law, policy or decision of the government which ignores or violates a basic right.¹⁹ Even though his/her primary aim may not necessarily be to effect a change in that law, policy or decision, his/her acting in such a way may contribute to bring about that change.²⁰

Like civil disobedients, noncivil disobedients thus *conscientiously* and *publicly* engage in *illegal* acts. But there are at least four features that distinguish them.

First, their disobedience is *noncivil* because the use of force is not excluded but, on the contrary, may be the only practicable way to fulfill some basic right or rights after all other paths of action (including those of civil disobedience) have been tried unsuccessfully.

Second, it is *noncivil* because it is paradigmatically exercised by those who, even while enjoying the privileges of citizenship in theory, remain marginalized and excluded from even the most minimal benefits of their status in practice.

Third, while acts of civil disobedience are first and foremost political, aiming directly at a change in a law, policy or provision of the government,²¹ the primary aim of noncivil disobedients does not necessarily have to be political. Rather, political change may well be an indirect effect of their actions. This is reaffirmed by the fact that the target of those disobeying the law does not have to be the State and its institutions, but may be any individual or group, public or private, against whom (or against whose property) they are forced to act by the circumstances.

Finally, noncivil disobedients are not necessarily willing to accept the punishment imposed on them. When political change is a secondary aim, however, accepting punishment (for example, by going to prison) may make sense in pragmatic terms; for example, as an expressive means of publicizing their plight more broadly and informing society about what they take to be a just claim.

Rather than constituting a break in the social contract, acts of noncivil disobedience should be regarded as a reaction to something that previously broke or threatened to break the contract – by violating the basic rights of certain members of society, or by failing to fulfill them. In this sense, noncivil disobedience may be given a place within civil society as an escape valve or last resort.

In the next section I suggest that, when done publicly, the exercise of the right of necessity may also be interpreted as an act of noncivil disobedience, and I bring back the case of the Paraguayan *campesinos* to exemplify this point. It is important to stress that I am neither saying that all instances where the right of necessity may be invoked also correspond to instances of noncivil disobedience, nor that all acts of noncivil disobedience may be subsumed under the label of necessity.²² My claim, rather, is that there is at least one type of cases where both converge: i.e. those where necessity is openly claimed and exercised, and the political force of that claim comes as an indirect effect of it.

IV. Noncivil disobedience and the right of necessity

By stopping the trucks with the soy beans and fetching their produce, the *campesinos* perform an act that is *conscientious* (they know what they are doing, and what they are doing it for), and *public* (they are aware that they will appear in the national news the next morning, and may even be willing to get that extra attention). Their action, moreover, is *illegal*: they are violating the laws of private property and sometimes also other laws – for example, through the obstruction of public roads and the occupation of private land.

Unlike civil disobedients, however, the illegal actions they perform require the use of force, especially given that they are met by armed resistance, if not from the owners of the property in question (who live hundreds of miles away), then from their private gunmen or the police.

Second, although they are recognized as citizens by the Paraguayan law, in practice the *campesinos* have little or no chance of participating or influencing the politics of their country. When the recently impeached President Lugo was elected in 2008, one of the slogans of his campaign was to empower the rural population and carry out a much needed agrarian reform. Four years later and with a new right-wing President running the country, this slogan remains unrealized and the repression against the demands of the *campesinos* is as strong as ever.

Third, the target of the *campesinos* when claiming necessity is not directly the State and its institutions, but anyone whose property is at hand to help them out of their plight. Moved by hunger, the first purpose of taking the soy beans for their own consumption is then not political, but pre-political and pre-civil: it is about bare subsistence. That performing these acts has a political impact is thereby a secondary effect and not necessarily the main (or sole) motivation for their actions.

Lastly, the *campesinos* are not necessarily willing to accept the punishment imposed on them, given that what they take to be doing is merely to claim a basic right. Although accepting the punishment imposed by the authorities is not precluded, the rationale behind such an acceptance would be merely pragmatic; namely, to make their claim widely known and hopefully to put pressure on those who could change the law to their benefit.

Two objections may be raised at this point.

A first objection is that claiming necessity in this type of case does not address the *real* problem. Stealing trucks with soybeans for their own consumption is not the solution to the plight of the *campesinos* and in fact, the objection would continue, acts of this sort have been rare or in-existent occurrences. What these small farmers ought to do is not merely to appease their hunger, but to strive to redesign the laws concerning land ownership. Their claim, in other words, is not about immediate necessity, but about long-term justice: while the danger of famine at the beginning of 2012 was a contingent situation, the problem of unequal land distribution is structural and has permeated the Paraguayan society for decades.

While not denying that this might be true, as I said before, here my limited purpose has been to point to the fact that claiming necessity under their circumstances would not be out of place but, on the contrary, would be perfectly legitimate and could also serve to reinforce their claim of justice to a more equitable land distribution. After all, there is nothing reasonable in expecting the needy to wait quietly, with *civility*, until the institutions are changed for their benefit, while those who have the means to effect that change have failed and keep failing to do so. While exercising

the right of necessity forcibly may not be the optimal solution for those who go hungry in a world of abundance, it should be at least regarded as a legitimate path when all other paths have been closed. That the *campesinos* have not at all (or only rarely) resorted to the tactics here described does not preclude the possibility that they may do so in the future, at least so long as the emergency persists.²³

A second objection relates to a cost-benefit calculation. Considering the stark repression with which they have been met in the past (it suffices to see the growing list of dead farmers and policemen during clashes in recent years²⁴), claiming necessity by stealing trucks filled with food may be *just*, but futile and therefore *morally impermissible* – to use the language of some *jus ad bellum* theorists.²⁵ In other words, given the high costs that stealing the food would entail overall, the *campesinos* ought not to resort to the use of force.

Assuming that they have already tried other paths of action – peaceful protest, finding a job in the agribusiness, appealing to the local authorities – to this one may reply that, given their desperate situation, it is actually prudent for the *campesinos*, i.e. it makes sense in utilitarian terms, to engage in such conduct as a last resort. Neglected by the government and by the rest of society, they have nothing to lose but something to gain. If one wants to be cynical about it, apart from the publicity that their cause will get, going to prison could actually be seen as an improvement in their quality of life: there at least they will get shelter and two meals a day.

V. Concluding remarks

It is a standard philosophical maxim that one ought to search for simplicity and avoid, as much as possible, to multiply the categories unnecessarily. In this article, however, I have sought to show that at least with regard to the concept of civil disobedience, having such a wide umbrella to account for so many different types of acts does not enlighten the discussion, but obscures it. By introducing the concept of *noncivil disobedience*, I have identified those acts performed by people who are often at the

margins of society both in terms of social and political representation, and who use force as a means to get their claims heard. Moreover, I have claimed that an old moral concept – the *right of necessity* – may still have a role to play today and have suggested that, when carried out in an open, public way, its exercise may also be interpreted as an act of noncivil disobedience.

By putting forward this proposal, my aim has been threefold. First, I have sought to reinforce a conception of basic human rights (and, more specifically, of the right of necessity understood as a right to subsistence) as entitlements of their holders to do certain things, rather than as mere triggers for certain anointed duty-bearers to act on behalf of the rights-holders. This active conception of basic rights is much needed in a context where most of the talk on the topic takes their holders to be passive (and patient) recipients. Second, I have suggested that the traditional means of civil disobedience used for adjusting the laws, policies and provisions of the state may not be enough to effect the changes needed in order to fulfill (and not to violate) basic rights. Especially in societies with entrenched structural injustices and deeply asymmetrical powers of representation among their members, leaving noncivil disobedience as an option for those whose basic rights remain violated or unfulfilled may not be the optimal solution, but still ought to be regarded – at least under certain circumstances – as a legitimate last resort. Third, in an attempt to put the theory into practice, I have pointed toward a concrete contemporary scenario where these ideas converge, i.e. that of the Paraguayan *campesinos*.

There are, of course, some pending tasks, which suggest that this point of convergence should also be seen as a point of departure for future explorations. Among them: to offer a more systematic account both of noncivil disobedience and the right of necessity (and of the relationship between them), and a more detailed analysis of other cases that may be couched under one or both of these terms; to inquire into the amount and type of *force* required for an act to be regarded as *noncivil*, as opposed to *civil*, disobedience; and to evaluate the potential side-effects if these principles were ever to be widely applied.²⁶

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¹ Hereafter, square brackets indicate that the text quoted has been changed.

² I say mostly, because philosophers in the utilitarian tradition, like Singer himself, avoid using the language of individual rights or, if they do, they use it above all as a rhetorical tool. Cf., for example, Campbell 2007.

³ For *human* rights, cf. Pogge 2008. For *basic* rights, cf. Shue 1980. For *social* rights, cf. the International Covenant on Economic, Social and Cultural Rights 1966.

⁴ Moral cosmopolitanism, which underlies all human rights declarations, rests on three main tenets. First, *individualism*: its ultimate focus of concern are individual human beings, rather than larger collectives. Second, *universality*: every member of the human community is taken to have an equal moral status. And third, *generality*: this universal and equal moral status is to be recognized by everyone else (Pogge 2008: 175).

⁵ For a comparison between Grotius and Pufendorf on this topic, cf. Swanson 1997 and Salter 2005. For Hutcheson's account, cf. Mancilla 2012.

⁶ Considered as the forefather of utilitarianism, Hutcheson thus justifies exceptions of necessity upon the greatest good of the system. So long as we can tell a plausible story of how respecting the right of necessity of an individual in certain situations brings about the best short and long-term total outcomes, then the person may exercise his right. Thus, for example, 'the public interest is really promoted, when an innocent man saves himself from some great evil by some small damage done to another' (Hutcheson 1755: 139).

⁷ In Pufendorf's words, the right of necessity should 'not [be] comprehended in the general words of a law' (Pufendorf 1729: 203). It is not, then, a *legal* right that can be systematized and turned into a norm, but a *moral* right that the law and the standard moral rules have to recognize and accept as an exception, if they care to preserve equity.

⁸ Apart from its most basic assumption (namely, that the institution of private property does in effect guarantee that the members of society will be better-off than they would have been without it), there are two other assumptions in place here. First, that there is at least some material surplus: in times of generalized famine, other rules would apply. And second, that the agents will fully or almost fully comply with the rules, avoiding the use or misuse of this exceptional prerogative.

⁹ Although hereafter I limit my analysis to individual acts, the same rationale could be applied to collectives; i.e. only those groups who are not collectively responsible for their plight may legitimately claim necessity.

¹⁰ There is another condition that Pufendorf and the other authors mention, but that I here omit; namely, the intention to compensate the owners of the resources taken and used. I leave it aside because of the difficulty – if not plain impossibility – to judge intentions, not only for external observers, but even for the agents themselves (who may be self-deluded). Why not demand actual restitution as a condition instead? Mainly because there are cases where, even if no restitution were possible, it would still be plausible to say that the grounds for claiming necessity would be met.

¹¹ I am not denying that those who are responsible for their plight ought also to be helped in this scenario. My point is rather that claims of this kind – at least for the pur-

poses of the present discussion – ought to be distinguished from what I am trying to identify and isolate as clear-cut necessity claims.

¹² To have an idea: the price of a metric ton of soy beans in April 2012 was 530 USD.

¹³ In recent years, *campesino* protests against the big soy producers have increased due to various reasons: among them, the heavy use of agrochemicals which contaminate air and water and affects the adjacent rural communities; and the displacement of thousands of families from the countryside to the urban slums, as a result of the pressure to sell or lease their lands and turn them into soy fields. Each time, these protests have been harshly repressed.

¹⁴ Apart from its water efficient growth habit, the soy fields use large-scale modern agricultural technology and irrigation, which under these extreme circumstances makes them fare better than the crops planted by the farmers.

¹⁵ At this preliminary stage, I leave unanswered many questions that will arise when turning to the actual execution of the principle. Among them: how much are they allowed to take, and for how long? How should the soy owners respond to their claims? May the government compensate the soy owners, given that the *campesinos* will not be able to? Etc.

¹⁶ A similar situation takes place in Ethiopia. Due to the worst drought in 60 years in the Horn of Africa, in 2011 4.5 million people (mainly farmers and pastoral cattle-raisers) were in need of emergency food assistance. At the same time, an increasing number of multinational companies were growing food for export. In the biggest greenhouse in the country, in Awassa, which occupies the area of 20 soccer fields, around 15 tons of fresh produce are harvested every day. As a journalist vividly describes it: 'Commercial farms dot the northbound highway to Addis Ababa. In the evenings, a steady stream of trucks loaded with fat, sumptuous berries and cherry-red tomatoes rumble past, rushing to Bole International Airport and Gulf-state grocery stores beyond. The highway's dusty shoulders, meanwhile, are littered with the carcasses of animals dead from starvation and disease, the bones bleached white from the sun' (MacDonald 2010, Vidal 2010). May the hungry Ethiopians claim that food? The answer should be no different to the Paraguayan case.

¹⁷ Civil disobedience may be said to be *civil* yet in a third sense, insofar as it is performed by *civilians* as opposed to paramilitary forces. For the purposes of this discussion, I leave this use aside.

¹⁸ I use the term *noncivil disobedience* to distinguish it from what Jenet Kirkpatrick calls *uncivil disobedience*, which carries a negative connotation. Among uncivil disobedients, Kirkpatrick includes certain violent and radicalized political groups in the U.S., such as frontier vigilantes, Southern lynch mobs and militant abolitionists. What unites them is their ideal of righteous violence and the firm belief that they represent the will of the People and thus the true Law, which they uphold against a government that they refuse to recognize as their legitimate representative (Kirkpatrick 2008).

¹⁹ This law, policy or decision does not have to violate or ignore basic rights *systematically*. For example, the laws of private property are regarded most of the time as legitimate, but upholding them without exceptions may under specific circumstances deprive a person of the fulfilment of her most basic right to subsistence or even life. Under such circumstances, the person could engage in an act of noncivil disobedience and go against those laws in order to preserve herself.

²⁰ I hereafter assume that, for an act of noncivil disobedience to be legitimate, those engaging in it are neither individually nor collectively responsible for their deprived situation. The idea of setting this clause in place is to prevent abuses and to incentivize individuals and groups to look for other paths of action before appealing to it.

²¹ This is true regardless of the fact that, to achieve this aim, the disobedients may use indirect means to attack that law, policy or provision.

²² On the one hand, a shoplifter who secretly steals milk for her children would be a case of necessity without noncivil disobedience, as would be a hiker who breaks into a mountain hut to seek shelter from an unexpected storm. On the other hand, the following could be interpreted as cases of noncivil disobedience without necessity: squatting illegally in private lands to demand an agrarian reform; infringing certain copyrights or patents in order to use information that one wants to make publicly accessible; and appropriating a public service like transport or schools to demand an improvement in one's

freedom of movement or access to a decent education. In these examples, arguably, what is at stake are *basic* rights, but not the right to subsistence or survival.

²³ The same holds for other contemporary scenarios where necessity may be invoked. Pickpocketing and shoplifting for basic goods in poor countries, for example, may barely serve to attenuate the symptoms of deep structural injustices in those societies. One could think that if done overtly and repeatedly, however, the political and social effects of these acts could go well beyond the satisfaction of the agent's immediate need.

²⁴ In fact, it was as a result of one of the deadliest clashes between policemen and *campesinos* (which ended with 16 dead and many wounded) that Lugo was impeached by the Parliament in June 2012.

²⁵ Cf. for example: 'A war may be just and yet morally impermissible, if the country that war is waged against is liable to attack, but the consequences of attacking it are very bad' (Lippert-Rasmussen, forthcoming: 9).

²⁶ I thank Ryan Bellevue and two anonymous reviewers for helpful criticism and feedback on previous versions of this article. I am also indebted to the audience at the workshop *Who Owns It – Land Claims in Latin America, Their Moral Legitimacy and Implications*, held at the Centre for the Study of Mind in Nature (CSMN), University of Oslo, August 2012.