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Author's Response: New Lines of Sight

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The four contributors direct attention to terrain just beyond the book's margins —those given by its temporality (the movements and conditions of the past, as distinct from but linked to those of the present); its spaces of activism (the street, the court, the prison; the United States and the decolonizing world); and its animating (or disavowed) concepts (law, democracy, decolonizing praxis). In what follows, I attempt to use the questions raised by Delmas, Livingston, Balfour, and Grattan as a starting point for exploring new lines of thought (or, perhaps better, sight) that go beyond *Seeing Like an Activist*'s practices of vision.

Civil disobedience is a necessarily policed activity. As Hugo Bedau observed in 1961, civil disobedience "is not just done; it is committed. It is always the sort of thing that can send one to jail."[1] It invites a confrontation with police, and can end in arrest, legal charges, and potentially incarceration. Though presuming such encounters with law and law enforcement and typically requiring submission to arrest, accounts of civil disobedience rarely follow disobedient protesters as they not only move through policed streets, courts, and jails, but also creatively and strategically repurpose those spaces as sites of rebellion. This, I take it, is Delmas's central point: if seeing like a white state disguises the racialized violence of law and order as the workings of a legitimate democracy, then seeing like an activist requires learning to perceive and represent the carceral spaces of encounter through and against which protest moves.

Seeing law, police, courts, and jails as part of a broad architecture of racial violence rather than the neutral institutions of democratic justice was central to civil rights activists' critical praxis, and remains an urgent task. Public investment in policing and incarceration in the United States has grown substantially over the decades separating the present from the civil rights movement, outpacing overall budgetary growth and functionally redistributing funds from social services to a sprawling security apparatus.[2] The latter's

[1]Hugo A. Bedau, "On Civil Disobedience," *Journal of Philosophy* 58, no. 21 (October 1961): 654.

[2]Center for Popular Democracy, Law for Black Lives, and Black Youth Project 100, *Freedom to Thrive: Reimagining Safety and Security in our Community* (July 4, 2017), 3–4.

construction was part of a sustained backlash against midcentury radical Black movements, as federal, state, and local authorities "launched an unprecedented campaign of prison construction and expanded police powers" as a means of stunting the movement's "ability to reach a national audience, earn public sympathy, and press for policy changes." As Dan Berger adds, this expanded carceral power has proved "far more enduring than a civil rights movement whose object was freedom."[3] As both Livingston's and Grattan's essays make clear, today's movements occur along the planes of this accreted state repression, as we witness a "profound democratic crisis of the criminalization of dissent" (Livingston 386), nested within a broader crisis of carceral democracy that connects contemporary "Black radicals and abolitionists" to "antideportation and antidetention activists" and an array of decolonial activists within and beyond the United States (Grattan 396).

Carefully attending to activists' use of arrest, court proceedings, and incarceration as sites of protest is a crucial task for past and present, but one left only partially done in my book. Delmas's examples of Black Power's engagements with courts and prisons speak to their cultivation of what Joyce M. Bell terms a practice of "righteous contempt," a way of engaging with the carceral spaces of white democracy to disrupt and signal disrespect for the racial hierarchy and decorum of the courtroom; to stage an "alternative legal analysis and offer a counter hegemonic view of the law and of history"; and to maintain and foster connections to movements outside the courthouse walls.[4] Rather than representing a clear break from an earlier moment of "jail, no bail" organizing that tracks the distinction between civil and uncivil protest, these tactics evince a shared history of problematizing white supremacy's violent practices of confinement, extraction, and criminalization—and their "improvisation-through-repetition" (Balfour 393). They also reflect the changing geography and class base of revolt, along with an evolving praxis responsive to shifts in the carceral landscape. As Berger reminds us, Kwame Ture's (then, Stokely Carmichael's) famous 1966 "Black Power" speech in Greenwood, Mississippi, featured his insistence that he was done going to jail for protest: in the context of a burgeoning state strategy premised on mass arrests, increasingly draconian charges, and the tools of domestic counterinsurgency, incarceration no longer looked like liberation.[5] Amid these changes, Black Power activists' courtroom and prison praxis was based on a rejection of US legal procedure as a process "designed for their own destruction."[6]

[3]Dan Berger, *Captive Nation: Black Prison Organizing in the Civil Rights Era* (Chapel Hill: University of North Carolina Press, 2014), 46.

[4]Joyce M. Bell, "Kangaroo Court: The Black Power Movement and the Courtroom as a Space of Resistance," *American Behavioral Scientist* 66, no. 11 (2022): 1551.

[5]Berger, *Captive Nation*, 46–47. Carmichael's speech is often, though erroneously, referenced as the origin of Black Power as both slogan and movement.

[6]Haywood Burns, "Can a Black Man Get a Fair Trial in this Country?," *New York Times Magazine*, July 12, 1970, 46. Burns was founder and first executive director for

When we follow activists in their embodied engagements with police, courts, and prisons, we see not only the costs of activism, but also—to Livingston's point—the question of how movements orient themselves not just toward "law enforcement" but toward law: as a source of violence, as an object or tool of dissent, and as a horizon of possibility. My focus was primarily on law's violence— how a regime of "law and order" operated as a medium of racial terror, rather than a system of legitimate, democratic norms. I place the emphasis here because attention to law's violence is not only missing from mainstream liberal-democratic theories of civil disobedience (and much democratic theory more broadly), but constitutively absent: it is only because Rawls (for example) imagines the midcentury United States as an order in which state violence is constrained, mediated, and legitimated through laws worthy of respect that he can require dissenters to express "fidelity" to them through their disobedience.[7] What Black radicals confronted was a system of violent, discretionary racial power that connected the lynch mob to the police patrol, the courthouse to the Klan rally, the prison to the ghetto—an order that, nevertheless, went under the name of democracy.

It was also an order that connected Jim Crow to colonial rule. What I hoped to capture through my analysis of civil disobedience as a decolonizing praxis was not only, as Balfour suggests, the way that imaginative transit joined civil rights activists "to critics of colonial rule elsewhere" (392), but also the shared terms through which they constructed their subjection to diverse empires of fear and violence. What civil rights activists theorized along with their anticolonial counterparts was not just a promising means of collective, liberatory struggle but the parallel conditions of repression and domination that marked racial-colonial rule in its varied instantiations. The imaginative transit of activist praxis situated the United States within a global geography of coloniality rather than as a democratic space apart from it.

Balfour is right that there is much more to say here, both about the structures of racial-colonial rule tying Jim Crow to the colonized world, and the nature of those ties themselves. In terms of the former, more fully theorizing the rule of law as a medium of racial repression, for example, would require following the lead of postcolonial and Indigenous theorists in carefully reconstructing its coloniality—American law's making through chattel slavery, Indigenous genocide, and their afterlives—rather than treating those institutions as exceptional deviations from law's (legitimate) normativity.[8] In terms of the latter, I

the National Conference of Black Lawyers, which was meant to serve as "the legal arm of the movement for Black liberation." See https://www.ncbl.org.

[7]John Rawls, *A Theory of Justice*, rev. ed. (Cambridge, MA: Belknap Press of Harvard University Press, 1999), 322.

[8]See, e.g., Nasser Hussein, *The Jurisprudence of Emergency: Colonialism and the Rule of Law* (Ann Arbor: University of Michigan Press, 2003); Aziz Rana, *The Two Faces of American Freedom* (Cambridge, MA: Harvard University Press, 2014).

have come to think that my book's treatment of the relationship between the Jim Crow "internal colony" and the colonial elsewhere—a relationship largely conceptualized as producing parallel forms of oppression—is insufficient, though true in some ways to the activist theorizing I trace. Taking up Ann Laura Stoler's notion of "recursion," as Balfour suggests, is illuminating: the police forces that Black activists faced in the 1960s were, as historian Stuart Schrader contends, both "the *progeny*" of "colonial counterinsurgency on the Tropic of Cancer at the turn of the century, if not the so-called Indian Wars and the counterguerrilla campaigns of the Civil War," and the *forebear* of a new reign of counterinsurgency, as US police forces and technologies remade global policing orders.[9] The "discretionary empire the United States built after World War II" has been both the effect and the "precondition of the empire of discretion that police enforce daily on U.S. streets."[10] The internal colony is not mere analogy, but recursive analytic that enables us to see the circuitous, ambulatory transit of colonial technologies of rule across time and space, running roughshod over the borders between the "democratic" and the "imperial."[11]

There is, however, another side here: activists do not just encounter law as domination, but also use it creatively as a site of protest. Through those practices, moreover, they provide new visions for what else law might be. Though I dispute Livingston's portrayal of my argument as "antilegal" (388)—I do not think my book rules out the kind of analysis he proposes—I concede that it nevertheless fails to see law adequately on these grounds. What I appreciate about his analysis of the necessity defense is that it offers an alternative reading of activists' uses of law (typically understood in the cramped terms of higher law—whether natural or constitutional—or of legal and legislative reform) that centers how activists contest the problem of the criminalization and brutal policing of dissent. Because the latter has developed through recursive circuits of colonial violence and in reaction to what Paul Passavant calls the haunting "figure of Black insurrection," challenging the state's power to say what constitutes a crime cuts to the heart of policing's discretionary racial-colonial power.[12] It also might open the way to an alternative, radical imagination of "the state and the law that serves it," governed not by the imperatives of making what reformist "improvements we can make to the current system, but instead geared toward building a state governed by different logics" entirely.[13]

[9]Stuart Schrader, *Badges without Borders: How Global Counterinsurgency Transformed American Policing* (Oakland: University of California Press, 2019), 19–20 (emphasis added).

[10]Ibid., 24.

[11]Erin R. Pineda, "The Mississippi Runs into the Mekong: The Internal Colony's Recursions and Collisions" (unpublished manuscript).

[12]Paul A. Passavant, *Policing Protest: The Post-democratic State and the Figure of Black Insurrection* (Durham, NC: Duke University Press, 2021).

[13]Amna Akbar, "Toward a Radical Imagination of Law," *New York University Law Review* 93 (June 2018): 479.

Constructing such visions is urgent and timely work, and a task to which I think political theorists can contribute, if we can work in critical solidarity with radical and abolitionist social movements. Grattan raises important, difficult questions about how we might pursue this work given the realities and limitations of scholarly training, and the "resistance and inertia of academic disciplines, and their tendency to reinforce racial and other forms of state power" (397). Such an endeavor undoubtedly requires both organizing and movement building within the academy, and the construction of spaces within which scholars cultivate "a countercultural posture" with respect to the lines of traditional scholarship.[14] Still, I would not want to overstate either the challenges or their novelty: working in the traditions of Black, decolonial, Indigenous, queer, and feminist political thought means walking in a lineage of thinkers and within fields of knowledge that have long functioned contrapuntally, blending activist and scholarly praxis. In that sense, the call to see like an activist is an old invitation—one that I did not invent, but instead named in honor of all those who have taught us to look for and envision new lines of flight (and sight) out of a violent and policed world toward something better.

[14]Amna A. Akbar, Sameer M. Ashar & Jocelyn Simonson, "Movement Law," *Stanford Law Review* 73 (April 2021): 844. I see Akbar et al.'s call for the development of "movement law" as akin to what it might mean to "see like an activist" within political theory.