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## Chapter Six

### Punishment and Protest

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#### I. The Comedian

On Tuesday, 4 December 2018, the comedian, Kevin Hart, announced that he had accepted an invitation from the Academy of Motion Picture Arts and Sciences to host the televised broadcast of the 2019 Oscar Awards ceremony. While many applauded the Academy's choice, not everyone was happy. The writer, Benjamin Lee, responded to the announcement by tweeting 'And the Oscar for most homophobic host ever goes to ...' followed by a quote from a stand-up routine Hart had performed a number of times – including in his film *Seriously Funny* (2010) – in which he says, 'One of my biggest fears is my son growing up and being gay.'<sup>2</sup> In a follow-up tweet, Lee posted screen shots from Hart's Twitter account that featured gay slurs, along with the caption, 'I wonder when Kevin Hart is gonna start deleting all his old tweets.'<sup>3</sup> And on Wednesday Lee published an op-ed in *The Guardian* documenting Hart's use of homophobic language, his role in homophobic movies like 'Get Hard' and 'The Wedding Ringer', and his refusal to apologise for homophobic jokes over the years.<sup>4</sup>

Lee was not alone in objecting to Hart's behaviour. Awards Watch founder, Erik Anderson, tweeted, 'Considering how many of the Oscars' biggest fans are women and gay men it's quite something for the Academy to hire a guy who beat one wife, cheated on another when she was eight months pregnant and said one of his biggest fears is his son growing up and being gay.'<sup>5</sup> Comedian Billy Eichner tweeted, 'Many of us have jokes/tweets we regret. I'm ok with tasteless jokes, depending on context. What bothers me about these is you can tell it's not just a joke-there's real truth, anger & fear behind these.'<sup>6</sup> Zack Sharf and Michael Blackmon published articles on IndieWire and BuzzFeed expressing similar concerns.<sup>7</sup> And hundreds of people reposted Lee's, Anderson's, Eichner's, Sharf's, and Blackmon's remarks on various social media sites, adding their own comments to the groundswell of criticism. For example, Lee's original tweet was shared more than 400 times and liked by over 1,000 readers.

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<sup>1</sup> Forthcoming in Linda Radzik et al., *The Ethics of Social Punishment*, Cambridge University Press.

<sup>2</sup> Benjamin Lee@benfraserlee, *Twitter*, 4 December 2018,

<https://twitter.com/benfraserlee/status/1070134637605867520?lang=en>. The relevant portion of *Seriously Funny* can be seen here: <https://www.youtube.com/watch?v=dd2M6WYQ9Bk> (accessed 20 February 2019).

<sup>3</sup> Benjamin Lee@benfraserlee, *Twitter*, 5 December 2018,

<https://twitter.com/benfraserlee/status/1070413541012893696?lang=en> (accessed 20 February 2019).

<sup>4</sup> Benjamin Lee, 'Oscar Host Kevin Hart's Homophobia Is No Laughing Matter,' *The Guardian*, 5 December 2018. <https://www.theguardian.com/film/2018/dec/05/oscars-host-kevin-hart-homophobia-is-no-laughing-matter> (accessed 20 February 2019).

<sup>5</sup> Erik Anderson@awards\_watch, *Twitter*, 5 December 2018,

[https://twitter.com/awards\\_watch/status/1070144276447653888](https://twitter.com/awards_watch/status/1070144276447653888) (accessed 28 February 2019).

<sup>6</sup> Billie Eichner@billyeichner, *Twitter*, 6 December 2018,

<https://twitter.com/billyeickner/status/1070750816649207809> (accessed 28 February 2019).

<sup>7</sup> Zack Sharf, 'Kevin Hart Called out for Homophobic Jokes after Being Named 2019 Oscars Host,' *Indie Wire*, 5 December 2018, <https://www.indiewire.com/2018/12/kevin-hart-homophobic-abusive-past-oscars-host-1202025494/>; Michael Blackmon, 'Kevin Hart Is Deleting Old Anti-Gay Tweets after Being Announced as Oscars Host,' *BuzzFeed*, 6 December 2018, [https://www.buzzfeednews.com/article/michaelblackmon/kevin-hart-homophobic-tweets-gay-oscars?bftwnews&utm\\_term=4ldqpgc#4ldqpgc](https://www.buzzfeednews.com/article/michaelblackmon/kevin-hart-homophobic-tweets-gay-oscars?bftwnews&utm_term=4ldqpgc#4ldqpgc) (accessed 28 February 2019).

And the post that included images of Hart's old tweets was re-tweeted more than 900 times and liked by more than 2,000 people.

The Academy tried to defuse the situation by approaching Hart and telling him that if he wished to host the Oscars, he would need to apologise for his past remarks. In response, Hart posted a video on Instagram in which he offered excuses – those remarks are old, I'm not the same man I was when I made them, and I have already apologised for them – and refused to apologise. Rather than acknowledging the hurt he might have caused others, he dismissed those who objected to his behaviour as 'internet trolls' and 'haters' who were out to destroy him.<sup>8</sup> And he found himself out of a job.

The Kevin Hart case is an example of what has become a remarkably familiar type. An individual behaves badly. Someone else – the recipient of the treatment, a friend, or a bystander – calls them out in a newspaper article, a blogpost, a tweet, a Facebook status, or a YouTube video. A number of those who read the post or watch the video repost it with additional criticism. And both the original post and subsequent repostings attract comments from a still wider audience that is eager to add its voice to the chorus of those condemning the misdeed and its perpetrator.

Linda Radzik's insightful discussion of informal social punishment offers us a way to interpret occurrences of this type. She sees them as cases of punishment, albeit a punishment administered by one's peers using informal means. I will offer an alternative way to read them, namely as protest. Since the norms for protest differ from those for punishment, the fact that many situations can be read as both protest and punishment poses a challenge for Radzik's attempt to use the category of informal social punishment to determine whether a particular course of action is permissible. In section II I provide a brief summary of Radzik's account of social punishment and show how it helps us make sense of the Kevin Hart case. Section III describes a case that in many ways resembles Hart's, namely that of William Sitwell. But whereas the actions in the Hart case appear to be an example of justified informal social punishment, section IV argues that those in the Sitwell case do not. Section V introduces an alternative concept, namely PROTEST, and suggests that protesting is governed by different norms than punishing. The final section shows that the Hart and Sitwell cases can also be read as instances of justified protest. This raises questions both about how we should choose between competing readings of a case and about the link between justified protest/punishment and justified action.

## II. *Justified Social Punishment*

In line with standard views, Radzik takes punishment to have five distinguishing features.<sup>9</sup> First, it *harms* the one on whom it is inflicted. The harm need not be an all-things-considered harm. For example, someone may ultimately benefit from being punished because it teaches him a lesson. Nevertheless, at the time it is administered punishment must be something its recipient would prefer to forego. Second, for the harm to be punishment it must be *intentionally* inflicted. Injuries that are caused inadvertently can be every bit as painful, but if they are not inflicted knowingly and with the purpose of punishing, they are not punitive. Third, the harm must also be *reactive*. That is to say, it must be a response to the other party's failure to fulfil an obligation. Fourth, punitive actions are *reprobative*. Part of their aim is to 'express disapproval of the one being punished.'<sup>10</sup> Fifth, the person administering the harm must be *authorised* to do so. If they are not, their action is at best a form of vigilantism. Finally,

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<sup>8</sup> kevinhart4real, Instagram, 7 December 2018, [https://www.instagram.com/p/BrEjHFCFe83/?utm\\_source=ig\\_embed&utm\\_medium=loading](https://www.instagram.com/p/BrEjHFCFe83/?utm_source=ig_embed&utm_medium=loading) (accessed 28 February 2019).

<sup>9</sup> Linda Radzik, 'Defining Social Punishment,' 10-12.

<sup>10</sup> Radzik, 'Defining,' 11.

what sets informal social punishment apart from punishment of other kinds is that it takes place between ‘social equals’ rather than between a superior and a subordinate.<sup>11</sup>

Returning to the Kevin Hart example, it looks like a clear instance of what Radzik is discussing. Kevin Hart was harmed by the criticism levelled against him. He suffered the pain of widespread, public shaming. He also lost his place on the biggest stage in the business and the prestige, publicity, and income that went with it. The harm was caused intentionally by (at least some of) those who criticised his behaviours. Admittedly the overarching aim of the members of the Academy who decided Hart needed to apologise or forego hosting the event was probably not to punish him. It was to avoid backlash from participants and prospective viewers who object to discrimination aimed at members of the LGBTQ+ community and from organisations like GLAAD (the Gay & Lesbian Alliance Against Defamation) who campaign on their behalf. However, the intentionally chosen means to that end was to subject Hart to treatment he would rather have avoided. So it, too, would seem to fall under the heading of ‘intentionally harming’ broadly construed. The harmful actions were intended to express disapproval of Hart and his failure to respect those whose sexual orientation differs from his own. Moreover, insofar as all members of the moral community have the standing to criticise actions that harm or disrespect innocent others and the Academy has the right to decide whom it will employ, the public and the Academy were authorised to act as they did. Finally, the harm Hart suffered on Instagram, Twitter, Facebook, and the like was caused by social equals. It looks like a textbook case of informal social punishment.

Meeting the abovementioned conditions does not yet guarantee the punishment one is dishing out is appropriate. For informal social punishment to be justified, Radzik argues, four additional conditions must be met. First, the punisher must have an *accurate* take on the nature of the wrong for which the other party is being punished. If one does not know the facts of the case – moral and material – one has no business administering punishment, even if the punishment would otherwise be deserved. Second, the harm the wrongdoer suffers must be *proportional* to the severity of the wrong she committed. The punishment should also be *instrumental* in bringing about a better state of affairs. There are several worthwhile ends it could serve, such as deterring future wrongdoing, maintaining important norms, vindicating victims, maintaining self-respect, and avoiding complicity.<sup>12</sup> But the end it should serve, Radzik contends, is to move the wrongdoer to make amends for her transgression.<sup>13</sup> Even if the punishment would bring about some of these other ends, if it does not increase the chances that the wrongdoer will see the error of her ways, acknowledge her failings to the victim, and take steps to repair the harm she has caused, Radzik argues, it is unjustified. Conditions two and three both recommend a fourth condition for justified social punishment, which is a preference that it be done in *private*. Ordinarily, being called out in front of a large audience provokes more shame than a comparable confrontation conducted in private. If the punitive response takes place before an audience, others are more likely to join in the criticism, which limits the punishers’ control over the degree of harm their collective actions might cause. Furthermore, when challenged in public a wrongdoer is more likely to adopt a defensive posture and less likely to acknowledge she was wrong or take other steps to make amends than she would have been in a private confrontation. Observations like these lead Radzik to suggest, ‘Perhaps a good provisional rule is that informal social punishments should be delivered privately unless there is a good reason to punish publicly.’<sup>14</sup>

How does the Hart case look when evaluated against these standards? The criticisms that had the greatest impact on discussions of Hart’s behaviour were well-documented. They

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<sup>11</sup> Radzik, ‘Defining,’ 13-14.

<sup>12</sup> Radzik, ‘Justifying Social Punishment,’ 24-25.

<sup>13</sup> Radzik, ‘Justifying,’ 26-27.

<sup>14</sup> Radzik, ‘Practicing Social Punishment,’ 17.

included links to YouTube videos of Hart's stand-up routine and screen-shots of his Twitter posts. His remarks were not misleadingly edited or presented out of context. Furthermore, it was clearly acknowledged that the most troublesome behaviour was several years old: the offensive tweets and stand-up routine were from 2009, 10, and 11. So it would have required a special kind of inattention for those who criticized Hart or pressured the Academy to have done so based on an inaccurate sense of the wrongdoing in question. Nevertheless, Hart contested the accuracy of the criticism directed at him on the grounds that he had already apologised for the relevant comments and that even at the time he made them they did not reflect homophobic attitudes but merely insensitivity on his part. However, the earlier apologies came only after interviewers pressured him to address his comments. And they were more excuse than apology: times were different then, people are more sensitive now.<sup>15</sup> The original actions coupled with more recent role choices and the defensive posture he adopted in response to his critics all reveal a more serious moral failing than simple insensitivity. It seems Hart's critics have a more accurate sense of the relevant actions and attitudes than he does.

Assessing the proportionality of the response to Hart is more complicated. What is a proportional response to actions like Hart's? Questions like this have long posed a challenge for retributivists. We might try to answer it in terms of actions of the same moral type – in this case insults that feed cultural hostility toward people like Hart (celebrities? comedians? cisgender straight men? African Americans?) – but that would be unpalatable. Surely the right response to bigotry is not more bigotry, albeit of a different flavour. We might try to answer it in terms of the harm victims suffered, but this doesn't look any better. According to this standard, a minor misdeed (say negligence) that affects a million people might warrant imposing a more severe punishment than a serious and malicious wrong (such as murder) that only affects one. A third option would be to try to define proportionality in terms of fitting attitudes and the actions that express them. However, if the fitting attitude is an indignation that would be optimally expressed by slapping the wrongdoer, and if the wrongful act was directed at (or visible to) a large population, then the cumulative effect of all their slaps could be excessive when compared to the severity of the transgression.

Let us assume that such worries can be addressed and that we can identify a workable account of proportionality. Given the astonishing violence that is still directed at members of the LGBTQ+ community, even in Western countries like the United States, acting in ways that foster or normalise homophobic attitudes is a serious offence. Doing so before a large audience – on stage, in film, and on a Twitter account that has 35 million followers – makes the action worse. So having a handful of critical articles appear in the press and a few thousand people tweet their disapproval does not seem a disproportional response. Nor does the Academy's demand that Hart offer a public apology. In other words, the critical response directed at Hart does not appear to be out of proportion – however that gets defined – to the seriousness of the wrong he committed.

The Hart case meets Radzik's third condition for appropriate punishment, as well. The critical response increased the likelihood that Hart would make amends. Although his initial response was defensive and he rejected the Academy's call for an apology, eventually Hart did apologise.<sup>16</sup> In a tweet announcing he would not be hosting the Oscars ceremony he wrote, 'I sincerely apologize to the LGBTQ community for my insensitive words from my past ... I'm sorry that I hurt people. I am evolving and want to continue to do so. My goal is to bring people

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<sup>15</sup> Jonah Weiner, 'Kevin Hart's Funny Business,' *Rolling Stone*, 29 July 2015, <https://www.rollingstone.com/movies/movie-news/kevin-harts-funny-business-67836/>.

<sup>16</sup> Stephen Daw, 'A Complete Timeline of Kevin Hart's Oscar-Hosting Controversy, From Tweets to Apologies,' *Billboard*, 10 January 2019, <https://www.billboard.com/articles/events/oscars/8492982/kevin-hart-oscar-hosting-controversy-timeline> (accessed 28 February 2019).

together not tear us apart.’<sup>17</sup> And he repeated the apology in an interview on Sirius XM radio a month later.<sup>18</sup>

Regarding the privacy condition, some of those who confronted Hart about his homophobic jokes and tweets did so in private. However, most of those who objected to Hart’s actions could not have voiced their concerns to him privately. They don’t have a personal relationship with him that would afford them an opportunity to speak to him alone. So even if they shared Radzik’s preference for private punishment, in this context that preference could not be satisfied. Does that make the public response to Hart inappropriate? No. Privacy is not required in all cases of informal social punishment for them to be justified. It is simply preferable if the punishment can be administered out of the public eye. But on some occasions, a public response is acceptable. And since the misdeeds were very public and the only way for most people to address them was via social media, the Kevin Hart case would seem to be one such occasion.

The upshot of the discussion thus far is that Radzik has provided us with a useful way to interpret events like the response to Kevin Hart’s derogatory references to being gay in his stand-up routines, tweets, and movies. However, I want to ask whether this is the best way to read cases like Hart’s. I shall suggest that a more appropriate interpretation would see what people were doing as protest rather than punishment. To motivate this claim, it will be helpful to look at another recent case that shares a number of features with what Radzik calls social punishment, but that is better read as a case of protest. I shall then highlight similarities between this case and the response to Kevin Hart that suggest we should read his case differently than Radzik’s analysis might recommend.

### *III. The Editor and the Journalist*

At Waitrose, the UK-based grocery chain, 2018 could be dubbed the year of the vegan. Early in the year they launched their own line of vegan cuisine and introduced a section dedicated to vegan foods in their stores. Customer reception was so positive that in October they announced the release of another 40 vegan products.<sup>19</sup>

Responding to this vegan-friendly turn, Selene Nelson, a freelance journalist, decided to pitch an idea for a series of articles on ‘plant-based’ meals to the editor of *Waitrose Food* magazine, William Sitwell.

Hi William,

I hope you’re well. I’m a freelance food and travel writer for *Town & Country*, *Huff Post*, *Food Republic*, *SUITCASE Magazine* etc., and I wanted to pitch an idea for a regular feature in *Waitrose Food*.

Recently there’s been a huge rise in veganism, with people increasingly interested in its health and environmental benefits, as well as issues surrounding animal welfare. The popularity of the movement is likely to continue to skyrocket, and I think there’s a great opportunity for *Waitrose Food* to introduce a series on vegan cooking, perhaps in

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<sup>17</sup> Kevin Hart@KevinHart4real, *Twitter*, 6 December 2018, <https://twitter.com/KevinHart4real/status/1070906075812118529> and <https://twitter.com/KevinHart4real/status/1070906121551007745>.

<sup>18</sup> Trilby Beresford, ‘Kevin Hart Apologizes Again, Defends Past Jokes on SiriusXM Show,’ *Billboard*, 7 January 2019, <https://www.billboard.com/articles/news/8492649/kevin-hart-apologizes-siriusxm-show>.

<sup>19</sup> <https://www.veganfoodandliving.com/waitrose-launches-massive-new-range-of-40-vegan-and-vegetarian-products/> (accessed 14 February 2019).

a similar style to the *Guardian Weekend*'s series 'The New Vegan.' In January the 'Veganuary' incentive is expected to be more popular than ever, and people will be keen to discover plant-based meal ideas. 'Even for people not looking to change their diet, I think having some more healthy, eco-friendly meals won't go amiss, particularly in the New Year! I envisage the feature including recipes as well as commentary, news, maybe with some collaborations with top vegan chefs too (I've already chatted to some who are interested).

I have lots of ideas for this but don't want to bombard you! Please let me know your thoughts – I strongly believe this would be a welcome, and timely, new addition to Waitrose Food. You can take a look at my portfolio here; let me know if you have any questions or want to see any further writing samples. Many thanks and I look forward to hearing from you!

Kind regards,  
Selene Nelson<sup>20</sup>

It would be an understatement to say Sitwell was not a fan of the idea. But rather than just saying, 'Thanks for the proposal, but we won't be pursuing the idea at this time,' he replied,

Hi Selene

Thanks for this. How about a series on killing vegans, one by one. Ways to trap them? How to interrogate them properly? Expose their hypocrisy? Force-feed them meat? Make them eat steak and drink red wine?

WILLIAM SITWELL<sup>21</sup>

Needless to say, this was not the response Nelson was expecting. But she wasn't ready to give up on her proposal just yet. So she wrote back to Sitwell inviting further dialogue.

Hi William,

Thanks for your interesting response. I drank some delicious (vegan) red wine last night so I'm sure a feature on that would appeal ... I'm not quite sure what you mean by 'exposing their hypocrisy', but I'm certainly interested in exploring why just the mention of veganism seems to make some people so hostile. It sounds like you have some opinions on this? I'd love to know more!

Thanks,  
Selene<sup>22</sup>

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<sup>20</sup> Posted on Twitter by Selene Nelson on 29 October 2018 ([https://twitter.com/selene\\_nelson?lang=en](https://twitter.com/selene_nelson?lang=en), accessed 10 December 2018).

<sup>21</sup> Mark Di Stefano, 'This Vegan Journalist Pitched To Waitrose Food Magazine, And The Editor Replied Proposing A Series About Killing Vegans,' *Buzzfeed*, 29 October 2018, <https://www.buzzfeed.com/markdistefano/waitrose-food-killing-vegans-freelance-journalist> (accessed 8 December 2018).

<sup>22</sup> Posted on Twitter by Selene Nelson on 29 October 2018 ([https://twitter.com/selene\\_nelson?lang=en](https://twitter.com/selene_nelson?lang=en), accessed 10 December 2018).

It was a nice try; however, this was not a dialogue Sitwell was prepared to have. His flippant reply to Nelson's second e-mail was, 'I like the idea of a column called The Honest Vegan; a millennial's diary of earnest endeavour and bacon sandwiches ...'.<sup>23</sup>

By now it was clear Sitwell would not be offering Nelson a job anytime soon. It was also clear that Sitwell had a prejudice against vegans. Nelson could have stewed silently about the rude treatment she had received. Instead she decided to contact a journalist at *Buzzfeed* and pass along the correspondence. Before the week was out, *Buzzfeed* published an article with the headline, 'This Vegan Journalist Pitched To Waitrose Food Magazine, And The Editor Replied Proposing A Series About Killing Vegans,' which included excerpts from Nelson's and Sitwell's e-mail exchange.<sup>24</sup> The story was then picked up by the *Times*, the *Independent*, the *Evening Standard*, the *Telegraph*, the BBC, *Metro*, and even the *Daily Mail*. The discussion the story sparked – on blogs and comment threads, on talk radio, and around the water cooler – was highly critical of Sitwell and Waitrose was concerned they needed to do something to protect their brand. So, less than 48 hours after *Buzzfeed* broke the story, Sitwell tendered his resignation.<sup>25</sup>

#### IV. Unjustified Social Punishment

As with the Hart case, Radzik's account of informal social punishment provides a way for us to read the Sitwell case. In forwarding their correspondence to *Buzzfeed*, Nelson was taking steps aimed at *intentionally* imposing *harm* on Sitwell by drawing unwanted, critical attention to his anti-vegan remarks. These steps were a *reaction* to Sitwell's disrespectful and dismissive e-mails and were meant to *express disapproval*. Furthermore, as the recipient of this disrespectful treatment, Nelson was authorised to take such steps. So Nelson's actions fit Radzik's definition of informal social punishment. If we assume that bystanders are also authorised to criticise those who are guilty of disrespectful and prejudicial behaviour, then those who weighed in on the issue in various online fora were also authorised to express disapproval in reaction to Sitwell's anti-vegan bias. Consequently, their actions would also count as informal social punishment. And since Waitrose was authorised to scold or even dismiss one of its employees for workplace behaviours they deemed unprofessional and harmful to their brand, their actions would count as formal social punishment in Radzik's taxonomy.

However, if we turn our attention to whether such social punishment was justified, the Sitwell case fares less well. The problem is not with the accuracy of people's judgments about what Sitwell did. As with the Hart case, the details of what took place were widely and accurately reported. Certainly, Nelson and Waitrose had a reliable grasp of the facts of the situation. And while some readers may have skimmed the news rather hastily and missed some of the relevant details, most of those who added their voice to the online discussion of Sitwell's actions would have had a reasonably accurate sense of what he had done.

One might wonder how instrumental Nelson et al.'s actions were likely to be in bringing Sitwell to apologise and take steps to correct his attitude toward vegans or, at least, his treatment of them. First, the tone adopted in his exchange with Nelson was not out of character. For example, reviewing the year's new cookbooks for the *Times* in January 2018, Sitwell wrote, 'Then, like an avalanche of Tory ministerial resignations, came the vegan snowball. It had slow beginnings among shampoo-averse hippies in the 1970s, but now vegans are parking their tanks on all of our lawns. And their instruction manuals are coming like propaganda pamphlets

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<sup>23</sup> Di Stefano (2018)

<sup>24</sup> 29 October 2018, <https://www.buzzfeed.com/markdistefano/waitrose-food-killing-vegans-freelance-journalist> (accessed 14 February 2019).

<sup>25</sup> 'Waitrose Food: Editor William Sitwell resigns over 'killing vegans' row,' BBC News, 31 October 2018, <https://www.bbc.co.uk/news/uk-46042314>.



dropping from the sky. The publisher Quadrille is pumping out Gaz Oakley's *Vegan 100* and Katy Beskow's *15-Minute Vegan Comfort Food* (presumably you gnaw on celery for 15 minutes, then have a dinner of roast chicken and apple crumble).' He continues his anti-vegan rant throughout the piece, adding memorable lines like, 'There's nowt so toothless as a booze-free, this-century vegan.'<sup>26</sup> Second, this was not the first time he had been called out regarding his jaundiced portrayal of veganism. After his piece in the *Times*, a number of contributors to the online discussion thread pushed back against his caricature of vegans and vegan cuisine. For example, 'endless sea' wrote, 'bit old hat laughing at vegans eating celery etc. If you want to be very healthy and lean you can do worse than be vegan. It is also good for animal welfare and the environment. (I am not a vegan.)' Shamala Govindasamy made a similar point: 'Very disappointed to read the prejudiced comments about vegans only eating celery and the cookbooks labelled as propaganda. It's tiresome, unfair and outdated.' A number of other comments expressed similar sentiments.<sup>27</sup> Third, as noted above, when called out in public, people often become more defensive and are therefore less likely to apologise or seek to make amends.

However, as it turned out, Nelson's decision to make their correspondence public did prove instrumental to Sitwell apologising. When he announced his resignation on Instagram, he offered an apology, 'to any food- and life-loving vegan who was genuinely offended by remarks written by me as an ill-judged joke.'<sup>28</sup> He wrote Nelson a six-page letter in which he apologised to her. And when he and Nelson met with BBC reporter, Justin Rowlatt, a few weeks later, he reiterated that he was sorry for how he had responded to her e-mails.<sup>29</sup> It is unclear how much Sitwell's attitude has shifted: in the segments of his meeting with Nelson that the BBC posted online, the criticisms of veganism he voiced were still built on caricatures of the position. But in light of the public outcry at his remarks, it is probable that at least his future behaviour will change. He is unlikely to speak of vegans in the same prejudicial way in future articles or e-mails. So Nelson's and the wider public's response may pass the instrumental test, as well.

When we turn our attention to proportionality, however, the case looks more problematic and this is in large part because the punishment was not administered privately. There were individuals whose actions clearly were disproportionate to the wrong in question. After Buzzfeed published the story, Sitwell received a number of hostile messages from readers, including one that recommended fattening up his 2 month-old child and roasting him.<sup>30</sup> But even those whose reactions were more tempered might worry that the cumulative effect of the critical public scrutiny exceeded what Sitwell deserved.

Veganism has not been treated as a flawed, perverted, or wicked way of life. Religious traditions have not vilified vegans. Indeed, important strands within many religious traditions have taken veganism to be admirable or even obligatory. Vegans have not faced widespread bullying, nor have they been killed for their veganism. There have been no laws prohibiting the practice of veganism or barring vegans from marrying whom they want or occupying desirable social roles. And referring to others as vegans has not been a commonly used form of insult. So Sitwell's remarks, although in some sense more outrageous than Hart's, were read

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<sup>26</sup> William Sitwell, 'Dumplings and vegan double acts: the foodie trends of 2018' *The Times*, 4 January 2018, <https://www.thetimes.co.uk/article/dumplings-and-vegan-double-acts-the-foodie-trends-of-2018-d6bdmrxgj> (accessed 8 December 2018).

<sup>27</sup> Sitwell 2018.

<sup>28</sup> <https://www.telegraph.co.uk/food-and-drink/features/william-sitwell-meets-woman-called-vegan-killing-comments-time/>.

<sup>29</sup> <https://www.bbc.co.uk/news/av/uk-46353245/waitrose-s-ex-killing-vegans-editor-meets-vegan>.

<sup>30</sup> Sabrina Barr, 'Vegans Threatened to "Roast My Baby," Former Waitrose Magazine Editor Claims,' *The Independent*, 26 November 2018, <https://www.independent.co.uk/life-style/vegans-waitrose-food-magazine-editor-william-sitwell-threat-baby-a8651821.html>

against different background assumptions. Both were jokes in poor taste, but there was no worry that Sitwell or anyone else might actually consider cooking vegans, whereas the same could not be said for Hart's jokes about breaking a doll house over a son's head to curb his gayness. Sitwell's jokes were dismissive, rather than denigrating. And neither giving someone the brush-off nor portraying a group of people as self-righteous or hypocritical is the kind of offence that warrants public criticism from thousands of people and the termination of one's employment.

It is not surprising, then, that Sitwell's resignation was met with an outpouring of sympathy. A number of people argued he was a nice guy who had an off day, whose punishment was completely out of proportion to his actions, and who was now the victim of political correctness run amok.<sup>31</sup> Mark Paul, for example, wrote that Sitwell was 'harshly driven from his job ... by a salivating online mob.... Veganism's online hounds from hell went in search of a human sacrifice.'<sup>32</sup> Even Nelson – who received an abundance of equally nasty correspondence and public criticism after Sitwell resigned – indicated she was sorry he lost his job, suggesting that she too thought it was a worse outcome than his actions warranted. Thus, if we read the Nelson-Sitwell case as an instance of informal social punishment, then the actions of Nelson and those who joined her in criticising Sitwell would appear to be unjustified and they ought to have refrained from acting as they did.

#### V. Protest

The preceding sections show that the responses to Kevin Hart and William Sitwell can be read as instances of what Linda Radzik calls informal social punishment. And in each case, that informal social punishment led to formal social punishment in the form of a loss of employment for the punished party. However, in one case, Hart's punishment was on the whole justified; whereas in the other, Sitwell's punishment appears on the whole unjustified. I say, 'on the whole,' to allow room for the odd individual whose response was inappropriate. And I say, 'appears,' because I do not pretend to have considered all the factors that have an evaluative bearing on these cases. What matters for my purposes is that the sketch I have offered provides a reasonable idea of how the concept and associated standards of informal social punishment can be used to interpret familiar events like the reactions on social media to Hart's and Sitwell's words.

However, I want to propose an alternative reading of each case that highlights similar features but yields different normative conclusions. Instead of interpreting them as instances of punishment, I recommend reading them as examples of protest. And protests, I contend, are governed by different norms.

The defining feature of a protest is that it *rejects its object*. That object can take more forms than punishment's object. Whereas punishment is directed at an agent for a moral failing for which they are responsible, protest can be directed at a claim (expressed or implied), a behaviour, an attitude, an assumption, a rule, a system, or a way of life. Whatever its object, a protest insists that its object is not okay as it stands. Furthermore, protest *expresses* this rejection. Merely thinking 'Not X' in response to X is not yet to protest against X. That thought must also be expressed in action.

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<sup>31</sup> See Jacob Jarvis, 'Former Waitrose Food Magazine Editor William Sitwell "Makes Up" with Vegan Freelancer Who Cost Him His Job,' *The Standard*, 27 November 2018,

<https://www.standard.co.uk/news/uk/former-waitrose-food-magazine-editor-william-sitwell-makes-up-with-vegan-freelancer-who-cost-him-his-a4001011.html> (accessed 8 December 2018).

<sup>32</sup> Mark Paul, 'Why do companies debase staff by throwing them to the wolves?' *The Irish Times*, 1 November 2018, <https://www.irishtimes.com/business/media-and-marketing/why-do-companies-debase-staff-by-throwing-them-to-the-wolves-1.3683053> (accessed 10 December 2018).

When we reflect on examples of protest, we tend to imagine large, public marches in which chants, placards, and speeches clearly articulate what is being rejected. However, a protest need not express its rejection so overtly.<sup>33</sup> There are silent as well as vocal forms of protest.<sup>34</sup> For instance, upon learning that a company damages its natural environment or exploits its employees, a consumer's protest may take the form of refusing to purchase its products until it changes its business practices.<sup>35</sup>

The sort of rejection a protest expresses is more than simple disagreement or factual correction. Bernard Boxill suggests that what distinguishes protest from these other actions is that protest expresses resentment.<sup>36</sup> While I am happy to agree that this is often the case, building resentment into the definition of protest as a necessary feature would rule out actions that we would ordinarily want to call instances of protest. Take, for example, the Put It to the People rally held in London on 23 March 2019 to protest the May government's refusal to allow its citizens to vote on the deal she negotiated for the UK's withdrawal from the European Union. Someone who made a sign that read 'Forget the Ides of March – Beware the Brexit of May!' which they carried over their head as they marched through London chanting 'Let us vote' would be engaged in protesting. And this would be true even if they were a Buddhist or a Stoic who had spent years taming their emotions so that they never expressed resentment or any other form of anger. A better way to capture the feature that distinguishes mere disagreement from protest is that the latter involves *disapproval* of the object, assumption, claim, action, or system being rejected and of the person(s) responsible for it. If this is right then, like punishment, protest reproves those who exemplify what it rejects.

Another way in which protesting is like punishing is that it is *intentionally* done. One cannot inadvertently protest: the pedestrian whose destination happens to lie in the same direction that a protest march is travelling and whose speed matches theirs is not engaged in protest if his only intention in walking with them is to reach that destination. The difference between punishing and protesting concerns what they intentionally do. Whereas punishing, on Radzik's view, involves intentionally harming its object, protesting involves intentionally rejecting its object.

Protest, like punishment, involves exerting *power* against its object. In this respect it, too, fits Mill's description of our response to wrongdoing: 'When we think that a person is bound in justice to do a thing ... we should be gratified to see the obligation enforced by anybody who had the power.'<sup>37</sup> Ideally, but not necessarily, the power that protest brings to bear on a situation will be sufficient to end the objectionable system or behaviour. In an even more ideal world, it will be sufficient to change the attitude or assumption that was exemplified in the objectionable behaviour or system. But neither protest nor punishment, in themselves, are concerned with whether the alteration in the behaviour or system is brought about by an internal change in motivation or an external change in incentives.

To this point I have emphasised some of the similarities between protest and punishment. But there are also a number of respects in which they are markedly different. Perhaps the most striking difference between protest and punishment concerns the power relations that exist between the parties. Punishment is meted out by someone who holds at least as much power as the one punished, usually more. The social relations between a protestor

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<sup>33</sup> 'Protest' can refer to an action type, an instance of that type, or an event in which actions of that type predominate. For stylistic reasons I use the term in each of these ways, since it makes no difference to the substance of the argument. Which use I am making of 'protest' at which time should be clear from the context.

<sup>34</sup> Thomas Hill, 'Symbolic Protest and Calculated Silence,' *Autonomy and Self-Respect* (Cambridge 1991) 52-66.

<sup>35</sup> See Radzik, *Informal Social Punishment*, chapter 2.

<sup>36</sup> Bernard Boxill, 'Self-Respect and Protest,' *Philosophy and Public Affairs* 6.1 (1976) 61.

<sup>37</sup> Mill, *Utilitarianism* V.13.

and the one at whom the protest is directed, by contrast, are typically the reverse. That is why the disapproval takes the form of a protest, rather than a rebuke. Consequently, for a protest to achieve its aim of altering the behaviour, attitude, or system in question, it must tap into some other power source. That source of power can be internal to an agent whose behaviours or attitudes the protestor would like to change, connecting with their emotions or providing them with reasons they find persuasive. But often the power source is external. To overcome the disparity in power, the protestor needs to recruit a more powerful ally or harness the collective power of a likeminded group.

As noted above, protest can be directed not only at individual actions but also at commonplace and systemic problems. However, when protesting systemic problems, it is often necessary to shine a spotlight on a particular instance of the larger problem as a way of giving the systemic quality a face. There are three reasons for this. The first is evidential: The best way to provide evidence of a systemic problem is to offer examples of individual cases that exemplify the broader pattern. The second is pedagogical: In order to understand the nature of a systemic problem, one must look at particular instances. The third is rhetorical: People are more easily persuaded to stand against a problem with a name and a face than they are to resist a problem that is more abstractly defined.

Because protest can take a systemic problem as its object, *protest need not be 'reactive' to the transgression of someone who is responsible for what is being rejected.*<sup>38</sup> In the case of systemic problems, like racism, it may not matter how 'guilty' the party is whose actions are taken to exemplify the problem. Whether they endorse the system or they merely illustrate its influence may not be significant. For example, someone might post a photo of the teaching staff of a philosophy department along with the caption, 'Look. A collection of white men. It must be a philosophy department.' Such an action would highlight a systemic problem that needs to be addressed by the discipline as a whole. And this would be true – and the protest warranted – even if each of the people included in the photo had just been hired and none had done anything remotely objectionable in their pursuit of employment.<sup>39</sup>

Relatedly, *protest need not be proportional* to the wrong instantiated in the individual action that is its focal point. There are various ways in which one might attempt to reintroduce proportionality. For example, one might think protest should be proportional to the good that would be achieved were the protest successful. However, such a standard seems to set the bar too low. In protesting racial injustice in the pre-civil rights era in Alabama, Martin Luther King Jr and those who marched with him clearly dreamed big. They hoped that one day their children would 'live in a nation where they will not be judged by the color of their skin but by the content of their character.'<sup>40</sup> At the same time, they recognised that their protest would not accomplish that aim. Theirs was but a step in a much longer journey – one whose conclusion we still await. Yet when it comes to determining whether their protest would be justified, it surely makes sense to appeal to the good of full racial equality – even if it is only a dream that is still several decades off and depends on thousands of other actions – rather than limiting our attention to the good they could reasonably expect a particular protest to achieve. This suggests a more capacious standard for justified protest: it should not exceed the magnitude of the evil being opposed or the good being defended.

While we have been considering one respect in which the norms governing the harms that result from protest are more permissive than those governing punishment, it should be noted that protest need not be harmful at all to those at whom it is directed. The members of

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<sup>38</sup> This is true even if we use the broad sense of responsibility for which Cheshire Calhoun argues in 'Responsibility and Reproach,' *Ethics* 99.2 (1989): 389-406.

<sup>39</sup> Thanks to Paul Christopher Morrow for suggesting this example.

<sup>40</sup> Martin Luther King, Jr, 'I Have a Dream' (1963), <https://www.archives.gov/files/press/exhibits/dream-speech.pdf>.

the abovementioned philosophy department might fully embrace the concern on which the protest is based. And they might join their voices to those already raised in protest. Indeed, protest need not even be *intended* to harm.

*Neither need protest be instrumentally effective.* Some arguments are worth having even if we cannot hope to persuade our opponent, and some powers worth resisting regardless of whether there is a chance of success against them. In such circumstances, W.E.B. DuBois advised, ‘even when bending to the inevitable,’ one should ‘bend with unabated protest.’<sup>41</sup> Why? Because the point of protest is not just to change that at which (or at whom) the protest is directed. It can also be to express self-respect,<sup>42</sup> to maintain one’s honour or integrity,<sup>43</sup> to declare one’s allegiance to the good, or to speak truth to power, calling injustice or wickedness by its proper name.

Since the instrumentality and proportionality constraints that govern punishment do not apply in the case of protest, the reasons Radzik offers for preferring that social punishment be administered in private do not apply, either, because the latter is derived from the former. But insofar as one of protest’s aims is to end the problematic attitudes and behaviours to which it objects, a similar argument can be constructed in favour of private protest, at least in some cases. However, some of protest’s other aims – like expressing self-respect, preserving one’s honour, supporting the downtrodden, and declaring one’s allegiance to the good – would be thwarted by privacy. Moreover, protesting systemic evils generally requires publicity. Why? Typically, systemic evils are public.<sup>44</sup> The systems in question may be constructed out of and maintained by the actions of private individuals acting in private. The actors in question need not even understand the system in which they participate (although they often only pretend not to understand it). Even so, the harms they cause are public, social harms. They distribute public burdens and benefits unfairly, they destroy lives, they undermine public trust. A second reason protesting systemic evils requires publicity is that correcting those evils requires large-scale changes by those with a vested interest in keeping things the way they are. Initiating such a change requires considerable power, and characteristically the victims of systemic evil are in a less powerful social position than those who maintain the current system. As noted above, countering that power differential requires either enlisting more powerful allies or generating collective power by banding together with other victims of the system, usually both. Doing either of those things usually involves visible, public action. Consequently, the preference for privacy will apply to a much narrower range of protests than punishments.

Finally, the authorisation conditions for protest differ from those that apply to punishment. There are interesting questions about whether violent protest is ever justified, but I shall assume that even if it is, those who are engaged in violent protest are not authorised to do so. In most political contexts, the only party authorised to use violence is the state, so that will not be where the authorisation conditions of social punishment and protest come apart. Rather, the place they diverge has to do with who has the authority to participate in the activity of punishing or protesting per se. Radzik argues quite plausibly that someone who is constantly guilty of a particular kind of transgression lacks the authority to punish someone else for a similar infraction. The same does not appear true of protest. Someone who is guilty of prejudicial actions against group A still retains the authority to protest similar prejudicial actions against group B. The fact that he is biased against Mexican-Americans or Vietnamese-

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<sup>41</sup> W.E.B. DuBois, ‘The Parting of the Ways,’ in *W.E.B. DuBois*, William Tuttle, Jr, ed. (Prentice Hall 1973) 43, quoted in Boxill, 62.

<sup>42</sup> Boxill, 61; and Matthew Talbert, ‘Moral Competence, Moral Blame, and Protest,’ *Journal of Ethics* 16 (2012) 105-107.

<sup>43</sup> Jean Harvey, ‘Oppression, Moral Abandonment, and the Role of Protest,’ *Journal of Social Philosophy* 27.1 (1996) 160.

<sup>44</sup> I am grateful to an anonymous referee for encouraging me to expand upon this point.

Americans does not mean a black man lacks the authority to protest the bias against African-Americans that is all too common in American society. Indeed, he could even show prejudice against African-Americans himself – perhaps by unconsciously preferring to hire white applicants to fill jobs in his company – without losing the authority to protest such prejudice when he sees it in others. Doing so may make him a hypocrite. It may also undermine the persuasive force of his protest if it is known. But it does not disqualify him from protesting the wrongs he sees, even if there are many similar wrongs to which he is blind.

## *VI. The Editor and the Comedian*

Now that we have an account of protest to work with, let us return to the cases we discussed in sections I and III. When Nelson forwarded her correspondence with Sitwell to the journalist at BuzzFeed, she was intentionally expressing her disapproval of the way in which he had treated both her, in particular, and vegans more generally. Furthermore, the power in the relationship all rested with Sitwell – she was the prospective employee, he the employer; she was a member of the cultural minority, he of the majority; she was a lower-paid woman, he a better-paid man; she was relatively unknown, he a well-known member of a popular television programme – so for her protest to be effective she needed to recruit more powerful allies, which in this case was served by appealing to the public. And insofar as Sitwell's remarks were illustrative of a hostility toward vegans that is surprisingly common in the UK, the prejudice she was rejecting was not merely an individual problem. So calling out this instance of bad behaviour would also serve the purpose of highlighting a problem that has received insufficient attention. Nelson's actions, then, look like a textbook case of protest. And read as an act of protest, both she and those who added their voices to hers on social media sites were justified. Even if the dietary, ethical, and environmental reasons in support of veganism were not persuasive, the hostility that gets directed at vegans is uncalled for. Vegans are already at a disadvantage relative to the rest of UK society. Most restaurants do not have a vegan option on the menu. Those that do, typically only have one and it is seldom the dish that exemplifies the chef's creative talents. Vegans also have a very limited range of packaged foods from which to choose at the supermarket and even fewer beers and wines that are suitable for their consumption. The point of these observations is not to argue that vegans are treated unjustly by restaurants, grocery stores, or food manufacturers. It is simply to note that for reasons of conscience they are willing to give up a range of conveniences and pleasures their peers enjoy. Other things being equal, we should not make it harder for people to act in accordance with conscience, nor should we tell derogatory jokes about them because we are offended by their conscientiousness.<sup>45</sup> If, on the other hand, ethical or environmental reasons support veganism – whether across the entire population or within a growing segment of it – then hostility toward them is especially egregious and ought to be rejected quite vocally. Either way, the good being defended would justify the kinds of actions taken by Nelson and most of those who took up her cause.

If we turn our attention to the Hart case, we see that it, too, can be read as protest. When Lee first tweeted about Hart, he was intentionally expressing his disapproval of the homophobia that is still present in the US and of the Academy's decision to make someone whose actions contribute to that culture the face of its biggest event. Those who joined the online criticism of Hart's homophobic remarks or of the Academy for choosing him to host the Oscars ceremony were likewise protesting a widespread problem in the US and urging the Academy to underscore the fact that homophobia is not okay. And given how serious

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<sup>45</sup> Of course, if someone's 'conscientious' action causes another undeserved harm, then 'other things' are not equal. But that concern does not apply to the case in question.

homophobia continues to be in most countries around the world, including the US, outspoken criticism in newspapers and online is more than justified.

Each of these cases, then, can be read both as protest and as punishment. If read as protest, each appears to be warranted. If read as punishment, only one of them is justified. How do we decide which way to read these events? One approach would be to appeal to ordinary language, but since 'informal social punishment' is a term of art that Radzik is just introducing that would give protest an unearned advantage. An alternative would be to leave it to the object of the reprobative action to decide. However, this would be an odd standard, insofar as it would leave it to the wrongdoer to decide a) whether she was in the wrong and b) how her wrongdoing should be treated. The practical upshot would be that most instances of protest would collapse into punishment. Kevin Hart, William Sitwell, Vladimir Putin, Donald Trump, Theresa May, and the majority of others whose actions or attitudes have been cause for protest will feel as though they are being subjected to undeserved harm. And the more systemic the evil, the more likely the perpetrators are to think their actions innocent. A third approach would appeal to the attitudes of those engaged in the activity of protesting-or-punishing. Since punishment involves intentional harming and protest intentional rejecting, we might try to identify the action by way of the intention. The problem with this proposal is that intentional rejecting and intentional harming are not mutually exclusive categories. In many cases, an agent will intend to do both by way of the same action. And even if, counterfactually, every individual involved acted with just one of these intentions, it would nevertheless be the case that in actions like those we have been considering, which include thousands of individuals, the same problem would recur at a collective level. Finally, if all punishment expresses a rejection of the kind of behaviour being punished and a disapproval of the person responsible, as Radzik suggests, then every instance of punishment will also be a case of protest.

Thus, we have a distinction between two overlapping concepts. But at the point of overlap we lack a principled way of deciding whether we should read a situation through the lens of the first concept or the second. Since this distinction makes a moral difference, it would be good to have a principled way of deciding which to employ. Consequently, more work needs to be done, either a) to refine (or replace) the concepts to reduce the overlap, b) to identify reasons for giving one concept priority over the other, or c) to explain how one fills the gap between justified protest/punishment and justified action.