

Rethinking Civil Disobedience as a Practice of Contestation—Beyond the Liberal Paradigm

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Across the political spectrum, many people—journalists, politicians, but also activists and theorists—seem to think there is something fundamentally wrong with civil disobedience. Some consider it too radical, as an attempt to procure political power under the mantle of moral principles, as a one-sided renunciation of the duty to obey the law and to uphold order that is not to be tolerated.¹ Citizens in more or less functioning democracies, they say, must limit themselves to the legally sanctioned possibilities available to them for expressing dissenting views and influencing the political process. As Anne Applebaum put it, in characteristically simple terms, referring to the disobedience practiced by Occupy Wall Street: “Unlike the Egyptians in Tahrir Square, to whom both the London and New York protesters openly (and ridiculously) compare themselves, we have democratic institutions in the Western world.”² From this point of view, civil disobedience is little more than political blackmail. On the other extreme we find those who consider it nothing more than the impotent expression of a reformist yearning for cosmetic changes within a given system, as a socially permissible and harmless protest of well-intentioned citizens, which remains purely symbolic and only contributes to the stabilization of the status quo.³

In this article I argue that both of these widespread views miss the specific characteristics of civil disobedience as a genuinely political and democratic practice of contestation. In order to present these specifics in detail, it is first necessary to examine how civil disobedience is understood—in what will turn out to be a very one-sided and sanitized way—in the mainstream liberal paradigm, not least because the definition elaborated in liberal political philosophy⁴ is either so successful that it has shaped public understandings of civil disobedience, or so uncritical that it more or less systematizes and reproduces these understandings. This first step of my argument will be developed in three short subsections on the definition, justification, and role of civil disobedience. In a second step I address the crucial and complex question of the relation between civil disobedience, a practice often regarded as essentially non-violent, and violence. In the last part I briefly sketch why understanding civil disobedience as a specifically democratic political practice—one we might also call democratic or political disobedience in order to mark the difference with classical ways of understanding and

of practicing civil disobedience—makes it necessary to conceive of the relation between its symbolic and its confrontational (maybe even violent) aspect in a different, more complicated way. This rethinking of civil disobedience seems especially called for today in a situation that poses a series of challenges to traditional understandings of political contestation. Amongst these challenges, the crises-ridden globalization of neoliberal political and economic power structures, the rise of the Internet both as a tool of political action and as a politically contested space, and the troubled resurgence of radical opposition to the status quo, for example, in the form of the Occupy movement,⁵ can be seen as the most pressing. They urge us to be aware of both the potential and the limits of a conception of civil disobedience that goes beyond its narrowly liberal understanding.⁶

1. Civil Disobedience—The Liberal Paradigm and What Is Wrong With It

1.1. *The Definition of Civil Disobedience*

Let me begin with the highly influential definition provided by John Rawls in his classic *A Theory of Justice*. According to Rawls, civil disobedience is, in distinction to other forms of resistance, “a public, non-violent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government” by appealing to the “sense of justice of the majority,” all “within the limits of fidelity to law,” which, among other things, is expressed by accepting the possibility of a penalty.⁷ To show that Rawls is by no means alone in understanding civil disobedience in this way, let me also quote the definition provided by Jürgen Habermas, which closely follows Rawls’s lead:

Civil disobedience is a morally justified protest which may not be founded only on private convictions or individual self-interests; it is a public act which, as a rule, is announced in advance and which the police can control as it occurs; it includes the premeditated transgression of legal norms without calling into question obedience to the rule of law as a whole; it demands the readiness to accept the legal consequences of the transgression of those norms; the infraction by which civil disobedience is expressed has an exclusively symbolic character—hence is derived the restriction to nonviolent means of protest.⁸

Although at first sight these definitions seem relatively unproblematic and commonsensical, in the debate about civil disobedience virtually all their elements have proven controversial. Let us briefly look at each of them in turn.

The *first* element is that civil disobedience according to Rawls is a *public* act. As is well-known, Henry David Thoreau—who is usually credited with inventing the very term—protested against slavery and the Mexican War by withholding his taxes, a decision he made public only several years later. To this example Rawls could respond—in my view correctly—that it is closer to conscientious refusal than to civil disobedience proper, although the line between these two might be more difficult to draw than Rawls suggests. It is, in any case, a further question how the emphasis on publicity would accommodate more recent forms of digital disobedience, as practiced, for example, by Anonymous, and more generally what “public” is supposed to mean here.⁹ A second look shows that for Rawls civil disobedience is public insofar as “[i]t is engaged in openly with fair notice; it is not covert or secretive.”¹⁰ Habermas places even more emphasis on this point in claiming that “public” means that “as a rule” civil disobedience “is announced in advance” and controllable by the police. However, the exercise of many well-established forms of civil disobedience—think of blocking a busy intersection, occupying a port or obstructing the deportation of so-called illegal immigrants, to give just a few examples—depends on *not* giving the authorities fair notice in advance. It would be strange—and indeed it can be taken to be a sign of the ideological potential of philosophical debates—to exclude these forms of protest by definition from the very category of civil disobedience, whatever else one may think of them and their justifiability in concrete circumstances.

According to the *second* element of the definition, civil disobedience is *non-violent*. Since this part of the definition is both generally accepted as well as particularly problematic I devote the next section of this article to it.

According to the *third* element of the liberal definition, civil disobedience is a *conscientious* act. But why should only disobedience out of reasons of conscience count as civil disobedience? Putting the need to draw some distinction between civil disobedience and conscientious objection to one side,¹¹ we may wonder whether one could not disobey for all sorts of at least *prima facie* legitimate reasons, for example reasons of self-respect or political responsibility, that are not conscientious, at least in a narrow sense. There is, I would argue, also something like advocacy civil disobedience (for example, in the animal rights movement), which is not necessarily conscience-based and could indeed be undertaken with a more or less strategic attitude: such as

out of a conviction that certain radical positions (that one does not necessarily personally subscribe to) should be represented in the public debate.¹² Rawls seems to focus on conscientious civil disobedience in order to cope with what in the discussion about the allocation of social bads has come to be called the “NIMBY” problem: the empirically widespread “not in my backyard” variety of civil disobedience where people protest, for example, against a new highway or toxic waste dump being built in their quiet and peaceful neighborhood.¹³ Again, however, Rawls’s focus turns out to be too narrow in excluding these forms of civil disobedience—however difficult their justification might turn out to be—from the very definition.

The remaining two elements of the liberal definition, as developed by Rawls, suffer from underdetermination. First, consider the *appeal to the majority’s sense of justice*. In many cases, civil disobedience seems at odds with and indeed directed against the majority’s moral sentiments; it is often failures of this sense of justice that make civil disobedience necessary in the first place. In fact, it is difficult to see why one should appeal to it at all when the majority’s sense of justice is taken to be systematically distorted or biased and has shown itself to be largely immune to critical challenges. Of course, one could further qualify the sense of justice in a way that removes it from what members of the majority in a society take to be just and unjust as a matter of contingent fact.¹⁴ But turning it into a non-empirical court of appeal in this way raises the problem of relating the actual, radically deficient sense of justice to its idealized counterpart, which the practitioners of civil disobedience are supposed to ascribe to their fellow citizens in spite of their actual convictions and behavior. Even on this understanding, it is unclear to whose sense of justice Martin Luther King, Jr., for example, was appealing—in cases such as this one, the determination of the addressee, the relevant majority, will not be an obvious matter.¹⁵ Furthermore, there are cases of civil disobedience that cannot be construed as appealing to anyone’s sense of justice because they aim not at persuasion but at increasing the political and economic costs for a certain political option or way of action. Animal rights activists may again serve as an example: since they have often lost any hope that the majority can really be brought to care about the fate of animals, they resort to a politics of cost-levying designed to alter the incentive structure of those (private individuals, corporations or politicians) who will otherwise remain indifferent.¹⁶

The final element of the liberal definition—that civil disobedience takes place within the limits of *fidelity to law*—is supposed to distinguish it from more radical and revolutionary forms of protest and resistance that put into question the political system itself. The line between these different forms of illegal protest,

however, apart from being politically contested in practice, is more difficult to draw in theory than the liberal definition suggests. Consider again the case of Martin Luther King, Jr. and other participants in the US Civil Rights Movement. It is not clear that they were aiming only at more or less local corrections within the existing system or that their disobedience was an expression of their recognition of the system's general legitimacy. Again, this seems to depend on how "the system" is defined here. Rawls's restriction stands in some tension with a much more radical attitude that is characteristically expressed in King's statement that "The thing to do is get rid of the system."¹⁷ Similarly, Gandhi seemed to pursue a pretty radical goal. He had understood the lesson La Boétie demonstrated in his *Discourse on Voluntary Servitude* from the 1550s that the power of the ruling elite is based entirely on the cooperation of its subjects—non-cooperation and disobedience are thus potentially revolutionary as they can—and are often intended to—put the whole system into crisis. From the fact that many disobedients—King, Edward Snowden and other prominent figures among them—are committed to the principle of the rule of law it does not follow that they express fidelity to the law *as it exists* or recognize its *de facto* claims on our obedience here and now.¹⁸

Although the distinction between civil disobedience and more radical forms of dissent is far from being obsolete, the way Rawls builds it into his definition obscures its gradual and politically contested character. As David Lyons points out with reference to Thoreau, Gandhi, and King, "none of these three regarded the prevailing system as 'reasonably just' or accepted a moral presumption favoring obedience to law."¹⁹ Under these conditions, the requirement that civil disobedience has to stay "within the limits of fidelity to law," in order to count as civil disobedience at all, ceases to be plausible (and this does not even touch on the problematic assumption, shared by Rawls and Habermas, that the acceptance of punishment for the breach of law that necessarily goes along with civil disobedience is an implication of this fidelity).

In the face of these problems, it seems appropriate to define civil disobedience in a way that is less normatively loaded and therefore less restrictive, as an intentionally unlawful and principled collective act of protest (in contrast to both legal protest and "ordinary" criminal offenses or "unmotivated" rioting²⁰), with which citizens—in the broad sense that goes beyond those recognized as citizens by a particular state—pursue the political aim of changing specific laws, policies or institutions (in contrast to conscientious objection, which is protected in some states as a fundamental right and does not seek such change). This somewhat minimalist definition deliberately leaves open whether civil disobe-

dience is public, nonviolent, conscientious, appealing to the majority's sense of justice, and restricted to transforming the system within its existing limits. Whether an act of disobedience should exhibit these further features involves substantial normative issues that cannot be resolved on the level of definition.²¹ Although civil disobedience has to be distinguished from both legal opposition on the one side and full-scale revolutionary revolt on the other, the boundaries between these varieties of political action are politically contested in practice and cannot be drawn as easily as liberal theory suggests.²² Not least for this reason, the question of definition should not be mixed up with the question of justification (and perhaps that of strategy as well).

1.2. The Justification of Civil Disobedience

The limitations of the liberal perspective on civil disobedience and the need for a more practice-based, democratic and pluralist perspective are even more evident when we turn to the second part of Rawls's discussion of civil disobedience, which focuses on its justification. In a nutshell, my argument in this section is that the liberal conception, as elaborated by Rawls, imposes too many constraints on the justifiability of this kind of political practice, again foreclosing meaningful practical deliberation by the agents themselves.

According to Rawls, an act of civil disobedience is justified when it opposes

serious infringements of the first principle of justice, the principle of equal liberty, and . . . blatant violations of [the second part of the second principle,] the principle of fair equality of opportunity,

when it is used as a "last resort," and when it is coordinated with other protesting groups in order to avoid "serious disorder."²³ We can first note the striking fact that violations of the so-called difference principle, which is supposed to regulate socioeconomic inequalities, are explicitly excluded from the potential grounds of justification of civil disobedience. The reason for this is that, according to Rawls, civil disobedience should be restricted to easily detectable violations of clear and basic demands of justice that can also be formulated in terms of individual basic rights. Dworkin seems to have a similar point in mind in distinguishing between "matters of principle" and "matters of policy," and arguing that civil disobedience should be restricted to the former. According to this distinction, protesting against the infringement of civil liberties will count as justified civil disobedience (think of the Civil Rights Movement in the USA) while protesting against nuclear weapons or against the decision of one's government to go to war will not.²⁴ Obviously, however, this distinction is itself politically contested in a way that Dworkin's ideal theory is insufficiently attentive to. Surely those who

disobeyed in protest of the stationing of US nuclear missiles in Europe in the 1980s or of the US-led wars in Iraq had good reason to think they were confronted by “matters of principle” and not simply of “policy.”²⁵

So Rawls’s discussion of the justification of civil disobedience also runs into several problems. I can quickly touch on only two of them. First, Rawls’s requirements of justification are *too narrow*. Some of the violations of the difference principle will be no less clear than violations of the other two principles, the principle of equal liberty and the principle of fair equality of opportunity. Furthermore, violations of the difference principle will, if they exceed a certain measure, affect the fair value of the basic liberties (especially of political freedom) emphasized by Rawls himself, who acknowledges “the duty to comply is problematic for permanent minorities that have suffered from injustice for many years.”²⁶ On this basis, Tommie Shelby has convincingly argued that the lack of justice in a basic structure and the legitimate need to uphold one’s self-respect can alter the set of obligations we may legitimately ascribe to those who are systematically disadvantaged and thus the potential grounds for resistance the latter can make reference to.²⁷ There are reasons for doubting that these grounds for resistance can all be reduced to “serious infringements of . . . the principle of equal liberty, and . . . the principle of fair equality of opportunity.”²⁸

Perhaps more importantly, an alternative justification of civil disobedience that has arguably become more and more important since the time of Rawls’s writing and turns out to be a focus of more recent concerns in democratic theory is also excluded by the narrowness of the liberal analysis. Protesters often claim that their civil disobedience is justified on account of procedural and institutional democratic deficits that may leave the principle of equal liberty intact while restricting the effective participation of citizens in democratic self-government.²⁹ The development of semi-oligarchic party structures, the problem of agenda-setting and the popular rejection of certain foreign policy decisions may come to mind here. In this context protest often aims at initiating and reopening democratic deliberation, especially when citizens are faced with “failures of government to debate or enact important policy options, where the discussion or enactment of those options is obstructed by the phenomenon of deliberative inertia.”³⁰ Similarly, the justifications provided by animal rights activists for their acts of civil disobedience are often not justice-based in Rawls’s sense. As Peter Singer notes:

It is, he [Rawls] says, wrong to be cruel to animals, although we do not owe them justice. If we combine this view with the idea that the justification of civil disobedience must be in terms of justice, we can see

that Rawls is committed to holding that no amount of cruelty to animals can justify disobedience.³¹

I see no reason why these justifications should be dismissed out of hand—indeed, it seems to be a serious deficit (with politically problematic effects) if a theory of civil disobedience does not account for them because it has *ex ante* limited the range of permissible justifications on the basis of ideal theory without any concern for the social and political reality of protest and its normative grammar.

The focus on fundamental rights that is characteristic of the discussion of civil disobedience within the liberal tradition thus tends to exclude from view certain forms of socioeconomic inequality and of suffering as well as procedural and institutional democratic deficits that systematically prevent citizens from effectively engaging in collective self-determination and that will in many cases also qualify as potential grounds of justification. As we will now see, this goes hand in hand with underestimating the transformative potential of civil disobedience. A more pluralist and at the same time radical understanding of civil disobedience is therefore called for.

1.3. *The Role of Civil Disobedience*

The third part of Rawls’s discussion concerns the political and social role of civil disobedience. Here I limit myself to pointing out a very general problem, namely, the conservative tendency or status quo bias that seems inherent in the way that Rawls (and to a certain extent also Habermas) understands civil disobedience. Both see it as a warning signal to existing institutions that points to potential trouble and allows political leaders to react in ways that increase the stability of the existing order.³² According to Rawls, a “general disposition to engage in justified civil disobedience introduces stability into a well-ordered society, or one that is nearly just.”³³ This, however, seems to underestimate the transformative effects that civil disobedience can have as a specifically extra-institutional form of political practice, the democratic and democratizing potential of which has been stressed by theorists from Hannah Arendt to Etienne Balibar. From such a more radically democratic perspective we can also describe the role of civil disobedience in more general terms as the

dramatizing of the tension between the poles of positive law and existing democratic processes and institutions on the one hand, and the idea of democracy as self-government on the other, which is not exhausted by established law and the institutional status quo,³⁴

or, in Balibar’s words, of an

indefinite oscillation . . . between two obviously antinomical forms of “politics:” an insurrectional politics

and a constitutional politics . . . , a politics of permanent, uninterrupted revolution, and a politics of the state as institutional order.³⁵

While from a liberal perspective civil disobedience mainly appears as a form of protest of individual rights bearers against governments and political majorities that transgress the limits established by constitutionally guaranteed moral principles and values, a radical democratic perspective does not view civil disobedience primarily in terms of limitations on popular sovereignty. It views it rather as the expression of a democratic practice of collective self-determination, as a dynamizing counterweight to the rigidifying tendencies of state institutions that attempt to absorb the constituent power of their subjects.³⁶ From this viewpoint, this episodic, informal, and extra-institutional or anti-institutional form of political action also allows citizens (and even those who are excluded from this status) to protest and participate, when—as is often the case in representative democracies—the official and regular institutional channels of action and communication are closed to them or are ineffective in getting their objections across. In addition, these institutions and channels are often not only limited but prove to be so in ways that make it impossible or at least difficult for citizens to address these limits. In these cases these institutions and channels themselves become obstacles to democratic action.³⁷

Rather than as a defensive act of individual rights bearers, civil disobedience thus emerges as an essentially collective and political practice of contestation—as a form of struggle in which the vertical form of state authority is confronted with the horizontal power of the association of citizens or the governed, the “low-intensity representative democratic institutions and modern constitutional formations” with the “participatory or high-intensity democratic forms of democracy and self-determination.”³⁸

2. The Question of Violence

As we saw, two of the most prominent theories of civil disobedience, those of Rawls and Habermas, highlight its primarily or even exclusively symbolic character and infer from this characterization that civil disobedience is essentially non-violent. Indeed, non-violence may very well be the notion most often associated with civil disobedience both in the public imaginary and in theoretical discussions. This identification, however, threatens to reduce civil disobedience to a purely moral appeal, which sets all hopes on a responsive political system or public sphere. In turn, this raises the question of whether civil disobedience does not require a moment of real confrontation for it to be politically effective.

Before developing this idea a bit further, let us turn to the requirement of non-violence (or peacefulness, as it is also sometimes put). The plausibility of this requirement obviously depends on how broad or narrow the concept of violence is taken to be. Does violence include only serious violations of the physical integrity of others? What about violence against property (think of the French farmer and political activist José Bové and the dismantling of the McDonald's in Millau, or the destruction of genetically modified plants), violence against oneself, or minimal violence in self-defense? And what about restricting the freedom of movement of uninvolved third parties or exerting psychological pressure on others? According to some influential views some or all of these are incompatible with the civility of civil disobedience. In an influential article, Hugo Bedau argues that

[a]nytime the dissenter resists government by deliberately destroying property, endangering life and limb, inciting to riot (for example, sabotage, assassination, street fighting), he has not committed *civil* disobedience. The pun on “civil” is essential; only *nonviolent* acts thus can qualify.³⁹

This assumption seems in accordance with widespread reactions to forms of protest that are seen as violent. Think of the expressions of public outrage caused by the London riots in 2011, which often equated the destruction of private property with the attack on human lives and then portrayed the riots as sheer apolitical criminality that calls for a military rather than a political response. These stigmatizing reactions neutralize the normative and political logic also present in urban riots and should remind us that an all too easy juxtaposition of violence and non-violence makes it possible to combine the celebration of protest that is “good” in terms of who protests how and with what aim with the criminalization of more radical forms of protest.⁴⁰

Legal discourse and practice concerning the (non-)violence of civil disobedience can also serve to illustrate the problem with this aspect of the liberal paradigm. In a notorious series of cases, German courts have in the past ruled that to exert psychological pressure on others, for example, by sit-down blockades on the road that force drivers to stop their cars, constitutes an act of violent coercion (*Nötigung*) under §240 StGB (the German Penal Code) and is incompatible with peaceful and non-violent protest. The legal history is as complicated as it is amusing but can only be summarized here in its crudest outline.⁴¹ The Bundesgerichtshof (BGH, Federal Court of Justice) in its famous Laepple decision of 1969 ruled that it is an act of violent coercion to sit down in the street and to psychologically pressure the driver of a car to stop. For the Bundesverfassungsgericht (BVerfG, Federal

Constitutional Court) this went too far and it determined that there has to be an element of physical coercion in order to speak of violence. To this the BGH responded in an ingenious way; namely by arguing that the appeal holds only for the first car. If more than one car is blocked the second driver will be physically coerced in a way that constitutes a criminal offence committed by the protester because the latter turns the first car into a physical barrier. This so-called “second-row” jurisprudence (*Zweite-Reihe-Rechtsprechung*) has then also been taken up by the Federal Constitutional Court. Accordingly, in 2001, the court ruled that it is an act of violent coercion to chain oneself to railway tracks or to an entrance gate, thereby erecting a physical barrier, and in 2011 it explicitly stated that sitting down in the street can be a violent act.⁴² Without being able to go into all the details of these curious semantic contortions, this example shows that the widespread assumption that civil disobedience is, by definition, non-violent is not particularly helpful, and that everything depends on how violence is socially, politically, and legally (re-)defined.

In addition, there is a further problem. Does the construction of the history of civil disobedience as essentially and exclusively non-violent not involve “falsified histories of struggle” and a certain amount of “historical whitewashing”?⁴³ Besides, or rather behind Martin Luther King, Jr. there was Malcolm X; besides or rather behind Gandhi a variety of decidedly more radical political actors. In some of the most prominent instances, the success of civil disobedience seems to depend at least in part on the deliberate threat, provocation, or use of violence by one group or other. Even if we leave this background threat of violence aside for the moment, it is not difficult to appreciate that the success of, for example, the US Civil Rights Movement depended, again at least in part, on the violence its “non-violent” protests have (intentionally and for strategic reasons) provoked on the part of the state’s security apparatus.⁴⁴ Against this background, the strategy of claiming non-violence can be seen as aiming at the symbolic construction of an opposition between the non-violent militants and the violent police (thus revealing the structural violence of the status quo) from which no inference should be made about the essential non-violence of this form of protest.⁴⁵

Whatever one thinks of these concrete historical cases, Rawls and other liberals do not take up these important questions about violence and non-violence. Rather, they are routinely sidestepped by the common stipulation that civil disobedience is and has to be non-violent. In the absence of further elaboration, however, making non-violence part of the definition of civil disobedience raises both theoretical and political worries. We should also be aware, however, that there might be theoretical and political tradeoffs here. If we broaden the

concept of violence in order to describe the conditions against which people legitimately protest by means of civil disobedience as violent (for example, in the sense of structural violence), this broadened notion of violence might make it more difficult to defend certain forms of civil disobedience as non-violent. If, in contrast, we stick to a narrow understanding of violence, and on that basis reject the critique of civil disobedience as violent, we might lose a powerful tool for the critique of the status quo in terms of the suffering it produces.

In addition to these more general questions we can ask whether defining civil disobedience as non-violent does not foreclose important normative and strategic questions about weighing the costs of different forms of disobedience, especially in the face of severe injustice. Consider the two following quotes by two philosophers who are usually not regarded as political radicals. The first is by Joseph Raz:

The evil the disobedience is designed to rectify may be so great [...] that it may be right to use violence to bring it to an end. . . . [furthermore] certain non-violent acts, indeed some lawful acts, may well have much more severe consequences than many an act of violence: consider the possible effects of a strike by ambulance drivers.⁴⁶

The second is by John Simmons:

Violence against persons will obviously always be harder to morally justify. But it again seems far from obvious that some such violence—say, kidnapping a public official who is instrumental in administering an unjust policy—could never be both effective and morally justifiable.⁴⁷

Of course, such skepticism about the usefulness of flatly asserting the nonviolence of civil disobedience is not new but has been voiced, by Howard Zinn, among others, since the 1960s.⁴⁸ Following Rawls, most liberal approaches have failed even to discuss the questions it gives rise to, let alone to provide a satisfying answer to them.

3. Between Symbolic Politics and Real Confrontation

Far from being clear-cut, the relation between civil disobedience and violence is ambivalent and open to both interpretation and contestation. Even if one agrees, and there are good reasons to do so, that civil disobedience is in fact irreducibly symbolic, one should insist that, pace Rawls and Habermas, it cannot simply be reduced to this dimension. Without moments of real confrontation (that will in many instances be seen and categorized as violent) it would also lose its symbolic power and

actually turn into a mere appeal to the conscience of the powers that be and their respective majorities, probably losing any prospect of having practical effects. The necessity to go beyond the purely symbolic is therefore grounded in the symbolic function of civil disobedience itself; it is a condition of the latter's effectiveness.

Civil disobedience is a form of political practice that essentially—and more so than other forms of political practice—relies on stagings and (re-)presentations. This is the case in at least two respects, both of which are tied up with moments of confrontation. First, as Martin Luther King, Jr. has observed, civil disobedience functions primarily as dramatization:

[Nonviolent] direct action seeks to create such a crisis and foster such a tension that a community which has constantly refused to negotiate is forced to confront the issue. It seeks so to dramatize the issue that it can no longer be ignored.⁴⁹

This symbolic effect of civil disobedience, however, obviously depends on the efficacy of its confrontational strategy. Secondly, the practice of civil disobedience is always associated with symbolic struggles, first and foremost about the label “civil disobedience” itself. These struggles are symbolic, but they are not merely symbolic, since as we have already seen, they have tangible political and legal consequences. Furthermore, they involve struggles about how practices of real confrontation are framed by the public at large and more specifically by the state. To name just a few recent examples, in Austria the SoKo Pelztier was created to take action against the more or less civil disobedience of radical animal rights activists, who were then charged with forming a criminal organization. In the UK, in the context of the Blair government's anti-terror legislation, animal rights activists were in a similar way explicitly categorized as terrorists and as a threat to national security. Similarly, in the Netherlands the Cyber Crimes Unit of the Dutch Police targets groups engaged in digital disobedience, presumably because they pose a terrorist threat.⁵⁰ A critical theory of civil disobedience cannot stand apart from the struggles about terminology and framing that are so clearly part of any political struggle.

In any case, what is crucial is that neither the aspect of dramatization nor the centrality of symbolic struggles and their entanglement with practices of real confrontation can be adequately understood if civil disobedience is reduced to a purely symbolic protest and framed as essentially non-violent. It can only function as symbolic protest if it involves moments of real confrontation, practices such as blockades and occupation, which will sometimes contain elements of violence (especially if the destruction of private property and the blocking of roads and buildings—forms of action which clearly

belong to the repertoire of civil disobedience—is regarded as violent). And at the same time, it can only function as a real confrontation if those who practice it are aware of its irreducible symbolic dimension. This dimension seems to be forgotten by those on the militant left unhappy with the all too tame practice of civil disobedience, who are guided by the phantasmic idea that “the state” is a cold monster in front of us that we have to, and can, fight directly on the streets.⁵¹

What the false dichotomy between true militancy and pure symbolism misses is precisely the complexity of civil disobedience as a genuinely political and democratic practice of contestation. Ultimately, what the “civil” in civil disobedience refers to is thus not its “tame” or non-confrontational character but that it follows a political and not a military logic. Those who engage in civil disobedience are acting as citizens, in many cases (most evidently, in the case of undocumented migrants and refugees) without being recognized as citizens by the state. In these ways they are reclaiming the political capacities of citizens that the state (or some other actor that acts in a state-like fashion) denies them or grants them only partially and that liberal political theory can be seen as attempting to channel into existing institutions and the limited forms of extra-institutional political action it opens up to citizens. Situated between the poles of symbolic politics and real confrontation, civil disobedience exposes the tension between institutionalized, constituted, and constituting power, between “constitutional politics” and “insurrectional politics.” This tension, however, is at the basis of democracy—and it keeps open the dialectic between these two poles against the claim that it has been successfully resolved and that no further struggles are necessary.⁵²

NOTES

Earlier versions of this article have been presented at workshops and colloquia in Hannover, Giessen, Amsterdam, Nice, and Berlin. I would like to thank all participants for their comments.

1. See, e.g., Abe Fortas, *Concerning Dissent and Civil Disobedience* (New York: New American Library, 1968).

2. Anne Applebaum, “What the Occupy Protests Tell Us About the Limits of Democracy,” October 18, 2011, accessed May 27, 2013, http://www.washingtonpost.com/opinions/what-the-occupy-protests-tell-us-about-the-limits-of-democracy/2011/10/17/gIQAay5YsL_story.html.

3. See, e.g., Peter Gelderloos, *How Nonviolence Protects the State* (Boston: South End Press, 2007).

4. For current purposes I take this to be the discussion about civil disobedience, as it was initiated primarily by John Rawls and Ronald Dworkin.

5. Whether Occupy should be understood in terms of civil disobedience is an interesting question that I will not be able to discuss in this article. As will become clear, however, I tend to disagree with the view put forth by Bernard Harcourt in “Political Disobedience,” *Critical Inquiry* 39 (2012): 33–55, which emphasizes the discontinuities but seems to

presuppose a narrow liberal understanding of civil disobedience; see 33, 55: "Civil disobedience accepted the legitimacy of political institutions, but resisted the moral authority of resulting laws. Political disobedience, by contrast, resists the very way in which we are governed: it resists the structure of partisan politics, the demand for policy reforms, the call for party identification, and the very ideologies that dominated the post-War period. . . . Ultimately, what matters to the politically disobedient is the kind of society we live in, not a handful of policy demands." Arguably, this is also the case for those who subscribe to a more radical understanding of civil disobedience.

6. Earlier versions of this article have appeared in French in *Rue Descartes* 77 (2013): 35–51, and in German in *Gewaltbefragungen: Beiträge zur Theorie von Politik und Gewalt*, eds. Franziska Martinsen and Oliver Flügel-Martinsen (Bielefeld: transcript, 2013), 215–29. Some related ideas are also developed in my contributions to *On Global Citizenship: James Tully in Dialogue*, ed. David Owen (London: Bloomsbury, 2014), and *Global aCtIVISm: Art and Conflict in the 21st Century*, ed. Peter Weibel (Cambridge, MA: MIT Press, 2015).

7. John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), 364–6.

8. Jürgen Habermas, "Civil Disobedience. Litmus Test for the Democratic Constitutional State," *Berkeley Journal of Sociology* 30 (1985): 96–116, 100.

9. See Gabriella Coleman, *Hacker, Hoaxer, Whistleblower, Spy: The Many Faces of Anonymous* (London: Verso, 2015), Epilogue to the new paperback edition.

10. Rawls, *A Theory of Justice*, 366.

11. As I said, this line is not as easy to draw as Rawls seems to suggest. For Rawls, as for many other theorists, the distinction between civil disobedience and conscientious objection is of great importance, not least because the first involves illegal actions and those who engage in it thus, in his view, justly face punishment whereas the second is, in liberal democracies, generally protected by law (in Germany even by the Constitution) on the grounds of freedom of thought, conscience, or religion. Rawls therefore tries to provide clear criteria for separating the two: whereas the conscientious objector acts for deeply personal moral or religious reasons and does not seek to alter the government's policies or the law, civil disobedience must be justified by public reasons and seeks to effect such a change. Governments, understandably, wish to distinguish not only between legally protected conscientious objection and civil disobedience which is not so protected, but furthermore between the standard nonselective form of conscientious objection and what is called selective conscientious objection, that is, the refusal to participate in a particular war or military action. The latter is usually understood to be justified by explicitly political reasons and thus to resemble civil disobedience. It is therefore generally concluded that it does not fall under the legal protection enjoyed by conscientious objection proper. Consequently, governments claim the right to punish those members of the military who engage in the more limited form of refusal (just as they claim the right to punish those who engage in the illegal acts involved in civil disobedience). The case of the Israeli reserve officers and soldiers who refuse to serve in the occupied territories and who are sometimes referred to as Refuseniks shows that these distinctions are extremely problematic from both a theoretical and political point of view; see the discussion in *Israel Law Review* 36 (2002), 3, Special Issue: *Refusals to Serve—Political Dissent in the Israel Defense Force*; and Rupert Read, "Refusing to Hear the 'Refuseniks': A Cautionary Tale For Our Times, From Israel/Palestine," *Practical Philosophy* 10 (2009): 56–63.

12. Gandhi speaks of "vicarious" civil disobedience (which is, in his view, of course still conscientious in the broad sense); see Mahatma Gandhi, *Non-Violent Resistance and Social Transformation. Moral and Political Writings*, vol. 3 (Oxford: Clarendon Press, 1987), 93.

13. See Andrew Sabl, "Looking Forward to Justice, Rawlsian Civil Disobedience and its Non-Rawlsian Lessons," *Journal of Political Philosophy* 9 (2001): 307–30, 328.

14. *Ibid.*, 315–17.

15. Rawls discusses King in *Political Liberalism* (New York: Columbia University Press, 1996), 250–1, in a somewhat laboured way, trying to make room for King's civil disobedience within his theory despite the fact that King justified his actions not exclusively by reasons that are, according to Rawls's standards, "public," but also by reference to comprehensive moral and religious doctrines.

16. For a discussion, see Mathew Humphrey and Marc Stears, "Animal Rights Protest and the Challenge to Deliberative Democracy," *Economy and Society* 35 (2006): 400–22.

17. Martin Luther King, Jr., "Love, Law, and Civil Disobedience," in *A Testament of Hope: The Essential Writings and Speeches* (New York: Harper Collins, 1991), 43–53, 47.

18. For a critique of this view see William E. Scheuerman, "Recent Theories of Civil Disobedience: An Anti-Legal Turn?," *Journal of Political Philosophy* 23 (2015): 427–49; I provide a partial response to Scheuerman's criticism in an article forthcoming in a special issue of *Philosophy & Social Criticism*.

19. David Lyons, "Moral Judgment, Historical Reality, and Civil Disobedience," *Philosophy and Public Affairs* 27 (1998): 31–49, 33. See also Erin Pineda, "Civil Disobedience and Punishment: (Mis)reading Justification and Strategy from SNCC to Snowden," *History of the Present* 5 (2015): 1–30.

20. Obviously, while not falling under the category of civil disobedience, riots can also be a politically motivated and even politically legitimate means of protest; see, e.g. Ferdinand Sutterlüty, "The Hidden Morale of the 2005 French and 2011 English Riots," *Thesis Eleven* 121 (2014): 38–56; and Etienne Balibar, "Uprisings in the Banlieues," *Constellations* 14 (2007): 47–71.

21. See also Kimberley Brownlee: *Conscience and Conviction. The Case for Civil Disobedience* (Oxford: Oxford University Press, 2012), chap. 1.1, and Kimberley Brownlee "Race, Rioting and Civil Disobedience," March 17, 2015, accessed April 1, 2015, <http://www.thecritique.com/articles/race-rioting-and-civil-disobedience/>.

22. See, from a more historical perspective, Raffaele Laudani, *Disobedience in Western Political Thought: A Genealogy* (Cambridge: Cambridge University Press, 2013), chap. 4.

23. Rawls, *A Theory of Justice*, 372–4.

24. See Ronald Dworkin, *A Matter of Principle* (Cambridge, MA: Harvard University Press, 1985), ch. 4: "Civil Disobedience and Nuclear Protest." For a critical discussion, see Robert E. Goodin, "Civil Disobedience and Nuclear Protest," *Political Studies* 35 (1987): 461–6, and Richard Norman, "Civil Disobedience and Nuclear Protest," *Radical Philosophy* 44 (1986): 24–7.

25. On the first case, see Peter E. Quint, *Civil Disobedience and the German Courts: The Pershing Missile Protests in Comparative Perspective* (London: Routledge, 2008).

26. Rawls, *A Theory of Justice*, 355.

27. See Tommie Shelby, "Justice, Deviance, and the Dark Ghetto," *Philosophy and Public Affairs* 35 (2007): 126–60, esp. 160: "It is crucial, given the duty of justice and on grounds of self-respect, that the ghetto poor make manifest their principled dissatisfaction with the existing social order,

either through politically motivated modes of deviance or in some other recognizable way.”

28. Rawls, *A Theory of Justice*, 372.

29. See Daniel Markovits, “Democratic Disobedience,” *Yale Law Journal* 114 (2005): 1897–952, and for a more global perspective, James Tully, “On Global Citizenship,” in *On Global Citizenship*, ed. Owen, 3–100.

30. William Smith, *Civil Disobedience and Deliberative Democracy* (London: Routledge, 2013), 9.

31. Peter Singer, *Democracy and Disobedience* (Oxford: Clarendon Press, 1973), 90.

32. Interestingly, this comes close to the epistemic role Niklas Luhmann attributes to protest: compensating the reflexivity deficits inherent in functionally differentiated modern societies; see his *Risk: A Sociological Theory* (Berlin: de Gruyter, 1993), chap. 7, esp. 142–3.

33. Rawls, *A Theory of Justice*, 383.

34. Ulrich Rödel, Günter Frankenberg and Helmut Dubiel, *Die demokratische Frage* (Frankfurt am Main: Suhrkamp, 1989), 46.

35. Etienne Balibar, “‘Rights of Man’ and ‘Rights of the Citizen’: The Modern Dialectic of Equality and Freedom,” in *Masses, Classes, Ideas: Studies on Politics and Philosophy before and after Marx* (London: Routledge, 1994), 39–60, 51.

36. See Hannah Arendt, “Civil Disobedience,” in Hannah Arendt, *Crisis of the Republic* (New York: HBC, 1972), 49–102; Etienne Balibar, “Sur la désobéissance civique,” in *Droit de cité* (Paris: PUF, 2002), 17–22; and for a more detailed discussion: Robin Celikates, “Ziviler Ungehorsam und radikale Demokratie—konstituierende vs. konstituierte Macht?,” in *Die Politik und das Politische*, eds. Thomas Bedorf and Kurt Röttgers (Frankfurt am Main: Suhrkamp, 2010), 274–300. On Arendt’s notion of civil disobedience see Andreas Kalyvas, *Democracy and the Politics of the Extraordinary: Max Weber, Carl Schmitt, and Hannah Arendt* (Cambridge: Cambridge University Press 2008), chap. 9. See also Claire Moulin-Doo, *Civici Disobedience: Taking Politics Seriously* (Baden-Baden: Nomos, 2015).

37. See, e.g., Iris Marion Young, “Activist Challenges to Deliberative Democracy,” *Political Theory* 29 (2001): 670–90; and Smith, *Civil Disobedience and Deliberative Democracy*.

38. James Tully, *Public Philosophy in a New Key*, vol. II: *Imperialism and Civic Freedom* (Cambridge: Cambridge University Press 2009), 206, 158.

39. Hugo A. Bedau, “On Civil Disobedience,” *Journal of Philosophy* 58 (1961): 653–65, 656.

40. On the normative logic behind urban riots see Shelby, “Justice, Deviance, and the Dark Ghetto,” 156, and Sutterlüty, “The Hidden Morale”; combining the celebration with the criminalization of protest, follows the logic of repressive tolerance analyzed by Herbert Marcuse in his “Repressive Tolerance,” in Robert Paul Wolff, Barrington Moore, Jr. and Herbert Marcuse, *A Critique of Pure Tolerance* (Boston, MA: Beacon Press, 1965), 81–117.

41. For an extensive account, see Quint, *Civil Disobedience*.

42. See Andreas Fischer-Lescano, “Sitzen ist Gewalt,” *Der Freitag*, March 31, 2011. To be fair, Habermas has been a trenchant critic of this legal expansion of the notion of violence.

43. Gelderloos, *How Nonviolence Protects the State*, 2, 7.

44. It is also worth remembering that the movement has been, perversely, criticized as violent by its opponents for this reason; see James A. Colaiaco, “Martin Luther King, Jr. and the Paradox of Nonviolent Direct Action,” *Phylon* 47 (1986): 16–28.

45. See Graeme Hayes and Sylvie Ollitrault, *La désobéissance civile* (Paris: Presses de Sciences Po, 2012), chap. 4.

46. See Joseph Raz, “Civil Disobedience,” in *The Authority of Law* (Oxford: Clarendon Press, 1979), 262–75, 267.

47. A. John Simmons, “Disobedience and Its Objects,” *Boston University Law Review* 90 (2010), 1805–32, 1808.

48. Howard Zinn, *Disobedience and Democracy: Nine Fallacies on Law and Order* (Boston: South End Press, 2002) [originally published in 1968]. It is remarkable that Zinn even cites this work in *A Theory of Justice*, 364, n. 19, referring to Zinn as someone who “defined civil disobedience more broadly,” without addressing the problems this raises for his own approach.

49. Martin Luther King, Jr., “Letter from Birmingham City Jail,” in *A Testament of Hope*, 289–302, 291.

50. On the possibilities and challenges opened up by digital disobedience, see Graham Meikle, “Electronic Civil Disobedience and Symbolic Power,” *Cyber-conflict and Global Politics*, ed. Athina Karatzogianni (London: Routledge, 2008), 177–87; Molly Sauter, *The Coming Swarm: DDOS Actions, Hacktivism, and Civil Disobedience on the Internet* (London: Bloomsburg, 2014); Robin Celikates, “Digital Publics, Digital Contestation A New Structural Transformation of the Public Sphere?,” in *Transformations of Democracy*, eds. Robin Celikates, Regina Kreide, and Tilo Wesche (London: Rowman & Littlefield, 2015), 159–74.

51. For an example, see Gelderloos, *How Nonviolence Protects the State*, 121: “A further delusion (expressed by pacifists who want to appear militant and powerful) is that pacifists do fight back, only non-violently. This is rubbish. Sitting down and locking arms is not fighting, it is a recalcitrant capitulation. In a situation involving a bully or a centralized power apparatus, physically fighting back discourages future attacks because it raises the costs of oppression incurred by the oppressor. The meek resistance of nonviolence only makes it easier for the attacks to continue. Nonviolent practice is ineffective and self-serving. We are in the midst of a war, and neutrality is not possible.” This seems to be precisely the kind of mistake Wendy Brown diagnoses with regard to a problematic tendency in the Occupy movement: “The police, the state, the one-on-one collisions with what was taken to be the face of power, became distracting to the point of absorption, which I want to call a certain Oedipalization, and a personification of power in the father, the state, the cops, or the chancellor of a university. Once you do that, you’ve lost the big picture and lost the big agenda.” (Robin Celikates and Yolande Jansen, “Reclaiming Democracy. An Interview with Wendy Brown on Occupy, Sovereignty, and Secularism,” *Krisis* 31 (2012): 68–76, 73).

52. See Balibar, “Sur la désobéissance civique”; Balibar, “‘Rights of Man’ and ‘Rights of the Citizen.’”

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