

“We Want to Live!” Climate Change and the Limits of Civil Disobedience

FRÉDÉRIC MÉGRET* & AMAR KHODAY†

ABSTRACT

This article examines the practice, nature and prospects of civil disobedience as a mode of resistance to climate change. Dominant understandings of civil disobedience are still highly indebted to earlier models that emphasized its primarily domestic locus, its broad adherence to the law and its targeted nature. But the sheer scale and amorphousness of the climate change challenge, its complex private-public nature and its systemic character profoundly challenge techniques honed during the civil rights or decolonization movements. We argue that there is a need to understand “climate disobedience” as based on a sui generis legal strategy, one that is more global, transnational, pluralistic, and decentralized than earlier instantiations of disobedience. Climate disobedience problematizes not just particular laws or policies, but the very notion of adherence to concepts of law that are entangled with planetary destruction. Based on a study of the legacy of past civil disobedience episodes and actual practices of climate disobedience, the article highlights some of the vulnerabilities evident in current efforts and points to some ways to avoid the resulting traps.

TABLE OF CONTENTS

Introduction	156
I. The Genesis of Climate Disobedience.	161
A. From Civil Disobedience to Climate Change Disobedience?	161
1. Evaluating the Legacy of Civil Disobedience	161
2. Disobedience to Protect the Environment: A Typology	166
3. The Radicalization of Climate Disobedience.	170
B. The Changing Nature of Disobedience.	173
1. The Scale of Disobedience.	174
2. The Nature of Disobedience.	175
3. The Targets of Disobedience	178
II. The Conflicting Challenges of Climate Disobedience	179

* Full Professor, Co-director, Centre for Human Rights and Legal Pluralism, William Dawson Scholar, Faculty of Law, McGill University. © 2023, Frédéric Mégret & Amar Khoday.

† Associate Professor, Faculty of Law, University of Manitoba.

A.	Politicizing Climate Disobedience	180
1.	Climate Disobedience and the Politics of Survival.	180
2.	Climate Disobedience and Climate Justice	181
3.	Prospects for a Truly Inclusive Climate Disobedience	183
B.	Democratizing Climate Disobedience.	184
1.	Climate Disobedience and the Crisis of Democratic Governance	185
2.	The Intractability of Climate Policy	186
3.	Reinventing a Democratic Climate Disobedience?	188
C.	Justifying Climate Disobedience	191
1.	Objectivizing Disobedience	191
2.	The Temptation of “Higher Law”	192
3.	The Law’s Complicity in Climate Harm	194
D.	Defending Climate Disobedience.	197
1.	Lawful Excuse and Necessity.	197
2.	Judicial Wariness Regarding Climate Disobedience Defenses	200
3.	Hints of a New-Found Judicial Openness to Disobedience?	201
	Conclusion: Beyond Disobedience?	206

INTRODUCTION

“The time for polite petitioning has passed. We have a collective responsibility to address the climate crisis and the right to resist the activities of governments and fossil fuel corporations that perpetuate it. In the courts of law, in the audience of public opinion, and in the tribunal of history, we will stand justified in our resistance to the fossil fuel system.”

—Climate Defense Project, Statement of Climate Civil Resistance

As the COP 26¹ conference on climate change wound down, some states and observers have deplored its meager promises. Island states in the Pacific that have been significantly affected by climate change and rising sea waters, in particular, have decried the failure to achieve an agreement to ensure that global temperatures do not exceed 1.5 Celsius, as a “declaration of war on our communities and on our peoples. It is that simple –period.” George Monbiot, a leading British environmental activist and thinker argued: “Now it’s a straight fight for survival. The Glasgow Climate Pact, for all its restrained and diplomatic language, looks like a suicide pact. After so many squandered years of denial, distraction and delay, it’s too late for incremental change.”² Specifically, Monbiot argued that a minority of

1. COP 26 refers to the 26th annual session of the Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC) which took place in Glasgow, Scotland in October 2021. Article 7 of the UNFCCC establishes the COP and that it shall hold an annual session. The COP is the supreme body of the UNFCCC, and shall keep under regular review the implementation of the Convention and any related legal instruments that the COP may adopt, and shall make, within its mandate, the decisions necessary to promote the effective implementation of the Convention.

2. George Monbiot, *After the failure of Cop26, there’s only one last hope for our survival*, THE GUARDIAN (Nov. 14, 2021), <https://perma.cc/CWP7-28C7>.

25% of the population committed to change could “raise the scale of civil disobedience” and “build the greatest mass movement in history,” using “domino dynamics” to overturn the global system’s inertia.³ Others have suggested that as little as 3.5% of dedicated individuals would be enough to effect radical change.⁴

Indeed, in a context of increasingly dire climatic forecasts and a perceived global crisis of governance in dealing with it, disobedience has been regularly invoked as a way to resist a massive threat of global warming and ecological collapse.⁵ On the 14th October 2022, two protesters with the group Just Stop Oil threw two cans of soup at Vincent van Gogh’s “Sunflowers” in the National Gallery in London. They then fastened themselves to the wall with glue.⁶ Although the most notable of such incidents, it was in truth one of many that had seen similar stunts in relation to John Constable’s “The Hay Wain” in the UK,⁷ Peter Paul Rubens’s “Massacre of the Innocents” in Munich,⁸ Gustav Klimt’s “Death and Life” at the Leopold Museum in Vienna,⁹ Claude Monet’s “Les Meules” at the Barberini Museum,¹⁰ and works in the Uffizi in Florence and in Vatican museums.¹¹ They coincide with a noticeable upsurge in high visibility actions of a similar nature such as activists chaining themselves to the door of a Chase Bank in Los Angeles to protest its funding of fossil fuel projects;¹² gluing themselves to the Shell building reception desk in London;¹³ efforts to stop private jets from flying¹⁴ as well as commercial planes;¹⁵ the throwing of red paint on Spain’s parliament building to symbolize the blood of those lost to the climate

3. *Id.*

4. Yasmeen Serhan, *Can 3.5 Percent Save the Planet?*, THE ATLANTIC (Nov. 26, 2021), <https://perma.cc/MJ7J-L83S>.

5. See, e.g. Farhana Yamin, “*This Is the Only Way to Tackle the Climate Emergency*,” TIME (June 14, 2019), <https://perma.cc/6LC4-PCP2>.

6. Damien Gayle, *Just Stop Oil Activists Throw Soup at Van Gogh’s Sunflowers*, GUARDIAN (Oct. 14, 2022, 10:07 AM), <https://perma.cc/3VDB-HL5W>.

7. Neil Murphy, *Climate Protesters Found Guilty of Causing Criminal Damage to Constable’s Hay Wain*, NATIONAL (Dec. 6, 2022), <https://perma.cc/X767-EYHJ>.

8. Stuart Braun, *Attack on Monet Artwork: German Museums React*, DEUTSCHE WELLE (Oct. 25, 2022), <https://perma.cc/CVT4-Y56J>.

9. Alex Marshall, *How Do you Tell a Vandal from a Visitor? Art Museums are Struggling*, N. Y. TIMES (Nov. 24, 2022), <https://perma.cc/5EDU-QJPA>.

10. Emma Newburger, *Police arrest German climate protesters who threw mashed potatoes at Monet painting*, CNBC (Oct. 24, 2022), <https://perma.cc/8UP6-FUET>.

11. Gareth Harris, *No oil, no gas—no stopping: Climate activists in Italy glue themselves to ancient Vatican Museums sculpture*, THE ART NEWSPAPER (Aug. 19, 2022), <https://perma.cc/ER2T-BKLT>.

12. Lennox Yearwood Jr & Bill McKibben, *Opinion: Want to Do Something About Climate Change? Follow the Money*, THE NEW YORK TIMES (Jan. 11, 2020), <https://perma.cc/K6CK-XAS4>.

13. Extinction Rebellion, *BREAKING: Extinction Rebellion infiltrates London HQ of oil giant Shell, glues on to reception desk*, EXTINCTION REBELLION UK (2022), <https://perma.cc/NAU6-N5MW>.

14. *Climate activists block private jets at Amsterdam’s Schiphol Airport*, REUTERS (Nov. 5, 2022), <https://perma.cc/64EZ-WDNM>.

15. *Munich airport runway closes amid climate protest*, DEUTSCHE WELLE (Dec. 5, 2022), <https://perma.cc/MR36-553P>; *Berlin airport briefly shut down by climate protesters*, DEUTSCHE WELLE (Nov. 24, 2022), <https://perma.cc/5RYU-YH7C>.

crisis;¹⁶ and scientists chaining themselves to the White House fence.¹⁷ These incidents, which are very symptomatic of a particular mood of despair and radicalization, have been met by both support¹⁸ and condemnation,¹⁹ including by persons who clearly support heightening the fight against global warming.

Where some might be tempted to make disobedience appear exceptional and even outlandish, activists may be tempted to present it as “the only rational response to climate change.”²⁰ And whilst climate disobedience is in some ways a manifestation of extreme individual and collective agency in the face of structures identified as complicit in a global climate catastrophe, it is also often framed as resulting from a situation that leaves no choice.²¹ Indeed, there is a growing sentiment that lawful methods fall significantly short of what is required to make necessary changes to address the climate emergency.²² Efforts such as divestment from fossil fuel and other polluting industries may be viewed as insufficient to confront the current crisis. While there has been a recent surge in lawsuits against governments and companies for their inadequate policies to address climate change, with some degree of success, such court-based actions have limitations.²³ As is well known, litigation takes time and significant financial resources.²⁴ In addition, courts may only be willing to grant limited remedies.²⁵

What should one make of such evolutions from a political and legal perspective, and what kind of junction in the long arc of the history of civil disobedience do they represent? Calls to engage in disobedience reflect the level of alarm of many globally and a sense of the urgent need to “do something,” only magnified by governmental and international failures to confront the danger of rapidly rising

16. Hannah Brown, *Watch Protesters Throw Blood Red Paint at Spain's Parliament*, EURONEWS (2022), <https://perma.cc/P8MC-DBZR>.

17. Chelsea Harvey, *Scientists Risk Arrest to Demand Climate Action*, SCIENTIFIC AMERICAN (Apr. 11, 2022), <https://perma.cc/UB36-XQZY>.

18. Aileen Getty, *I Fund Climate Activism—and I Applaud the Van Gogh Protest*, THE GUARDIAN (Oct. 22, 2022), <https://perma.cc/CC3M-DZ3E>.

19. Marsha Lederman, *Climate activists have landed themselves in the soup*, THE GLOBE AND MAIL (Oct. 17, 2022), <https://perma.cc/TA9T-DW8V>; Michael Mann, *Why The Van Gogh Climate Protest Wasn't Smart*, TIME (Nov. 15, 2022, 12:29 PM), <https://perma.cc/J42T-DGKK>.

20. Fernanda Dahlstrom, *Civil Disobedience is the Only Rational Response to the Climate Emergency*, KILL YOUR DARLINGS (2020).

21. Kamyar Razavi, *Damaging a masterpiece: Has climate action gone too far?*, GLOBAL NEWS, (Oct. 15, 2022, 6:00 AM), <https://perma.cc/JU8L-MATT>.

22. Cara Buckley, *These Groups Want Disruptive Climate Protests. Oil Heirs Are Funding Them*, NEW YORK TIMES, (Aug. 10, 2022), <https://perma.cc/7BFD-XMU4>; Elizabeth Cripps, *Is civil disobedience OK if it's the only way to prevent climate catastrophe?*, THE GUARDIAN, April 12, 2022, <https://perma.cc/PJV3-PNAZ>; Sigal Samuel, *If Our Governments Won't Stop Climate Change, Should We Revolt? Extinction Rebellion Says Yes.*, VOX (Jan. 14, 2020), <https://perma.cc/3KNX-LYP9>.

23. Jessica Bateman, *Why Climate Lawsuits Are Surging*, BBC NEWS (Dec. 7, 2021), <https://perma.cc/8EA7-MNMP>.

24. *Id.* As one lawyer articulates, litigation is “just one of the levers that can be pulled to trigger necessary change[.] . . . The other levers are activism, policy and, of course, science. But [litigation] is an incredibly powerful tool, and I think this year we’ve seen that.” *Id.*

25. Kent Roach, *Judicial Remedies for Climate Change*, 17 J. OF L. AND EQUAL. 105 (2021).

global warming. It is also, specifically, a reaction to social inertia and based on an intuition that only disruptive action aimed at the system itself can modify the structures that are responsible for profound environmental degradation. Disobedience against climate change has alternated between more conventional calls for civil disobedience to more confrontational and less civil tactics.²⁶

Note that there is a certain liberty with which civil disobedience is often invoked as a way of conjuring images of heroic and seemingly successful past struggles. This is reflected in the ambiguity of some calls for disobedience (are they really calls to disobedience or merely calls to protest?), and the fact that, arguably, they are not calls to civil disobedience at all.²⁷ As Maxine Burkett has argued in one of the first comprehensive treatments of “climate disobedience,” invocations of the tradition, particularly in the United States, can lead to historical approximations.²⁸ Indeed, for all its illustrious forerunners, civil disobedience’s successes remain more limited than is typically understood, either because they can be attributed to other, broader structural factors or because they, in fact, never ended in profound change. Civil disobedience is also part of a peculiar liberal political register that carries a certain baggage,²⁹ and whose specificities, as we will see, may be in tension with the goal of dealing with climate emergency.³⁰

Is civil disobedience the right tool to combat climate change? Is it necessary but also potentially counterproductive? What kind of disobedience does the global climate crisis lead to and with what impact on the law? How might the particular challenges of resisting climate change affect our ongoing understanding of what civil disobedience entails and, by ricochet, the nature of the law in times of global environmental crisis? In this article, we argue that climate disobedience calls into question our broadly accepted frameworks to assess the legitimacy and effectivity of disobedience. In effect, it is already destabilizing and perhaps fundamentally renewing the political repertoire of disobedience by challenging some of civil disobedience’s liberal, national and legalistic foundations. This requires a renewed push to theorize civil disobedience that is particularly attuned to the exigencies of the moment and the possibility that climate change may fundamentally

26. Rob Jubb & Alex McLaughlin, *Climate Activism Has So Far Been Fairly Peaceful: Here’s Why That Might Change*, THE CONVERSATION, (July 7, 2022), <https://perma.cc/B6JM-ES94>.

27. For example, quite tellingly, Christiana Figueres who served as executive secretary of the United Nations Framework Convention on Climate Change (UNFCCC) from 2010-16 is presented as having called for “civil disobedience” (Jeff McMahon, *Former UN Climate Chief Calls For Civil Disobedience*, FORBES, <https://perma.cc/B7JF-VQCV>) in her new book CHRISTIANA FIGUERES & TOM RIVETT-CARNAC, *THE FUTURE WE CHOOSE: SURVIVING THE CLIMATE CRISIS* (2020). In reality, though, the term “civil disobedience” is not used once in its 240 pages.

28. Maxine Burkett, *Climate Disobedience*, 27 DUKE ENV’T L. & POL’Y F. 1 (2016). Also Cesar Cuauhtemoc Garcia Hernandez, *Radical Environmentalism: The New Civil Disobedience*, 6 SEATTLE J. SOC. JUST. 289 (2007).

29. Marshall Cohen, *Liberalism and Disobedience*, 1 PHIL. & PUB. AFFAIRS 283 (1972).

30. On the limitations of conceiving of disobedience merely in a liberal framework, see Robin Celikates, *Rethinking Civil Disobedience as a Practice of Contestation—Beyond the Liberal Paradigm*, 23 CONSTELLATIONS 37 (2016).

challenge global conditions of law making.³¹ In order to make that case, the article will examine some of the challenges of mounting a civil disobedience campaign “against” the current climate crisis, based on the past and present of disobedience as a practice that simultaneously invokes and challenges the law. It will draw on the vast literature on civil disobedience as well as the burgeoning scholarship at the intersection of civil disobedience and climate change³² to suggest that “climate disobedience” may ultimately not be adequately framed as a form of civil disobedience.

Specifically, this article seeks to add three dimensions to this existing literature. First, a contextualization among historical precedents of civil disobedience: contra an emphasis on the continuity of “civil disobedience” across time, it argues that “climate disobedience” has features that necessarily set it apart from earlier campaigns by pointing to both the potential for renewal and limits of the notion. Second, we seek to emphasize recent work in civil disobedience scholarship that highlights the move away from the “civil” and for which climate disobedience provides a particularly interesting test case. And third, this paper seeks to add a more global dimension than some of the related climate scholarship to date, which has been quite focused on the US. Updating and globalizing our understanding of climate disobedience is particularly necessary given the character of current campaigns against climate change and the global nature of the challenge.

In order to make the overall argument that climate change is leading to a fundamental but also problematic reimagining of civil disobedience, the article proceeds in three parts. Part I seeks to situate climate disobedience within the broader tradition of civil disobedience, highlighting some of the continuities and ruptures that have characterized it and broadly assessing what has made civil disobedience part of the conventional register of liberal theory despite its emphasis on the rule of law. It inquires about the distinctiveness of climate disobedience

31. See e.g., Glen Wright, *Climate Regulations as If the Planet Mattered: The Earth Jurisprudence Approach to Climate Change*, 3 ENV'T & EARTH L.J. 33 (2013).

32. Charles R. DiSalvo, *Climate Change Disobedience*, 30 U. FLA. JL & PUB. POL'Y 279 (2019); Maxine Burkett, *supra* note 28; Dahlstrom, *supra* note 6; William E. Scheuerman, *Political disobedience and the climate emergency*, PHILOSOPHY & SOCIAL CRITICISM 791 (2021); Alex Rex Iversen, *Framing Civil Disobedience as an Accessible and Necessary Solution to the Climate Change Conflict*, (2018) (student Masters-level thesis, Malmö University) (DiVA); Konrad Ott, *Is Civil Disobedience Appropriate in the Case of Climate Policies?*, 11 ETHICS SCI. ENV'T POL. 23 (2011); Simo Kyllönen, *Civil Disobedience, Climate Protests and a Rawlsian Argument For' Atmospheric' Fairness*, 23 ENV'L VALUES 593 (2014); Amarbayasgalan Dorjderem, *Global Climate Change: Interests of Foreigners in Civil Disobedience*, 11 ETHICS SCI. ENV'T POL. 31 (2011); Matthew Rimmer, *Coal in Court: Whitehaven, Climate Change and Civil Disobedience*, THE CONVERSATION (July 19, 2013) <https://perma.cc/S4DL-ULXS>; John Lemons & Donald A. Brown, *Global Climate Change and Non-Violent Civil Disobedience*, 11 ETHICS IN SCIENCE AND ENVIRONMENTAL POLITICS 3 (2011); Terran Giacomini & Terisa Turner, *The 2014 People's Climate March and Flood Wall Street Civil Disobedience: Making the Transition To a Post-Fossil Capitalist, Communing Civilization*, 26 CAPITALISM NATURE SOCIALISM 27 (2015); Hayley Bennett et al., *Should Health Professionals Participate in Civil Disobedience in Response to the Climate Change Health Emergency?*, 395 THE LANCET 304 (2020).

and suggests that climate change has already led to significant adaptation of the old register of civil disobedience. Part II asks some of the hard conceptual questions about “climate disobedience,” arguing that it radicalizes tensions inherent in the notion of civil disobedience by highlighting a number of persistent challenges that climate disobeyers need to address. The conclusion reflects on whether climate disobedience might ultimately deliver on the promise of helping slow global planetary degradation.

I. THE GENESIS OF CLIMATE DISOBEDIENCE

What is the fundamental nature of climate disobedience? How did it come about? To what extent is it similar to known practices of civil disobedience? This section will highlight the transition between classic civil disobedience to what we describe as climate change disobedience as the central development that this article seeks to address. It begins by showing how climate change disobedience emerged from a repertory inherited from classic earlier 20th Century instances of civil disobedience, but is also a significant departure from the limitations associated with it. The section then highlights some characteristics of the emerging efforts to harness disobedience to protect the environment and the ways it might be argued to have changed not just the modalities but the very nature of disobedience.

A. FROM CIVIL DISOBEDIENCE TO CLIMATE CHANGE DISOBEDIENCE?

By examining historically significant moments where civil disobedience has been deployed, we assess whether the successes of any past movements may be limited to the particular political contexts in which they arose. Given the unique nature of the climate emergency, we chart ways in which disobedience to protect the environment has required the invention of new methods and has also been increasingly tempted by radicalization.

1. Evaluating the Legacy of Civil Disobedience

Although celebrated, the history of civil disobedience attaches to a relatively small set of particularly prominent historical and iconic episodes which must be understood in their own terms. The recounting of these episodes often obscures a great deal of complexity and tensions within movements, as well as limitations on their accomplishments. There is a gap, in particular, between the theory of civil disobedience, and the actual politics—often fraught and contradictory—of civil disobedience movements, as well as their relationship to the law.

Civil disobedience is both a practice and a concept. It has been engaged in and has been theorized, in no necessary order. The origins of the practice are multiple but civil disobedience in its modern form is sometimes dated to the ideas of Henry David Thoreau, who is interestingly also one of the early theorists of

ecology.³³ Thoreau had been imprisoned for tax evasion as a means to protest slavery and the Mexican-American war. However, Thoreau's work remains tied to an appeal to individual conscience and the unwillingness to be associated with certain unjust policies, rather than conceiving civil disobedience as a collective and even social movement. His individual tax resistance had more to do with a certain tradition of conscientious objection than it was the seed of a broader politics of resistance.³⁴ It might be analogized today with the stance of those engaged in an "ethics of sustainability" and the critique of a mere politics of virtue³⁵ that is not deeply engaged in an effort to seek justice in and against institutions.³⁶ Tax resistance against, among others, environmental harm remains an ambiguous strategy in that context.³⁷

It is, instead, Mohandas K. Gandhi's fight against the English colonizer and the civil rights movement in the United States which, in specific eras and in specific circumstances, have given civil disobedience much of its aura. Civil disobedience is perhaps most notably associated with what it is deployed against, as much as its specific tactics. Gandhi, who drew on Thoreau, developed the idea of *satyagraha* to remarkable effect based on his experiences in South Africa for use in India to resist British colonization. *Satyagraha*, which means "holding firmly to the truth," is an explicitly non-violent form of defiance in all circumstances by contrast with passive resistance. Gandhi viewed passive resistance as "a weapon of the weak" that often avoided the use of violence, but did not exclude the use of force if the passive resister thought the occasion demanded it.³⁸ In Gandhi's perspective, while Thoreau limited his concept of disobedience to breaches of revenue laws, *satyagraha* extended more broadly to violations of "any statutory and unmoral law."³⁹ Gandhi emphasized the absence of anger among civil resisters and their willingness to countenance the punishment of their oppressors.⁴⁰

Though Gandhi's formal and informal leadership within the Indian National Congress lasted several decades and the deployment of civil disobedience occurred at various stages, there are certain iconic moments that stand out. One such moment was the famous "salt march" in 1930.⁴¹ On the final day of the

33. Henry David Thoreau, *Civil Disobedience*, in WALDEN AND OTHER WRITINGS 667 (2000).

34. William A. Herr, *Thoreau: A Civil Disobedient?*, 85 ETHICS 87 (1974).

35. Milan Ilnyckj, "Resistance" Versus "Abstinence" in *Responding to Climate Change*, A SIBILANT INTAKE OF BREATH (2009), <https://perma.cc/GQD9-EL8Q>.

36. See Ryan Darr, *Climate Change, Individual Obligations and the Virtue of Justice*, 32 STUDIES IN CHRISTIAN ETHICS 326 (2019).

37. See Joanna Walters, *We Will Not Pay: The Americans Withholding their Taxes to Fight Trump*, THE GUARDIAN (Feb. 15, 2017), <https://perma.cc/X5E3-SFP5>.

38. MOHANDAS K GANDHI, NON-VIOLENT RESISTANCE 3 (6th ed. 1972).

39. *Id.* at 3–4.

40. *Id.* at 79.

41. Signifying its continued resonance, the salt march has been depicted and memorialized through statues, Indian currency, and in popular culture through films. See e.g. "National Salt Satyagraha Memorial Inauguration on January 30," NDTV (Jan. 28, 2010), <https://perma.cc/Y3UC-4EDG>.

march, Gandhi collected salt left on the beach, which was later sold.⁴² His goal was to oppose the *Salt Act* which gave the British Government of India a monopoly over the production and sale of salt. Gandhi’s simple act of defiance, reported in Indian newspapers, prompted thousands within India to follow his example.⁴³ As American journalist William Shirer observed, the salt march “caught the imagination of millions of Indians and aroused them to revolt.”⁴⁴ In the weeks that followed, thousands took to the beaches throughout India to produce salt which was then sold in substantial amounts at mass demonstrations. Although Gandhi was eventually arrested, activists continued to defy the *Salt Act*, held non-violent demonstrations, attempted a raid on a government salt processing plant, and boycotted British-made products. As in other campaigns that Gandhi led, participants were beaten, arrested, and accepted their punishment. While hardly the sole cause of decolonization in the subcontinent, civil disobedience certainly played a significant role in the Indian independence movement and the eventual attainment of independence.

During the mid-20th century, the civil rights movement, in turn, challenged racially discriminatory laws and practices directed at Black Americans in the United States. While organizations such as the National Association for the Advancement of Colored People waged legal campaigns and court actions to combat racism,⁴⁵ a broader activist movement led by Dr. Martin Luther King Jr. targeted systems of discrimination through civil disobedience and economic boycotts. Gandhi’s use of *satyagraha* influenced King and other activists as they mounted their civil rights campaign in the southern United States where *de jure* segregation was firmly established.⁴⁶ King and his peers engaged in various forms of disobedience—sit-ins,⁴⁷ freedom rides, and marches—to protest their exclusion from or relegation to second class status in various spaces.⁴⁸ In addition, the civil rights movement sought the ability for African American citizens to exercise their right to vote and participate in the political process. As King explained in his “Letter from a Birmingham Jail” in April 1963, acts of civil disobedience were forms of non-violent direct action: “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

42. See WILLIAM L SHIRER, *GANDHI: A MEMOIR* 77–80 (1993).

43. See Suchitra, *What Moves Masses: Dandi March as Communication Strategy*, 30 *ECONOMIC AND POLITICAL WEEKLY* 743 (1995).

44. See Shirer, *supra* note 42, at 96.

45. See *e.g.*, *Brown v. Board of Education of Topeka*, 347 U.S. 483 (1954).

46. See LEWIS PERRY, *CIVIL DISOBEDIENCE: AN AMERICAN TRADITION* 212–246 (2013).

47. Amanda D. Clarke & Patrick G. Coy, *Civil Rights and Domestic Policy*, in *UNDERSTANDING NONVIOLENCE: CONTOURS AND CONTEXTS* 123 (Maia Carter Hallward & Julie M. Norman eds., 2015).

48. See PERRY, *supra* note 46 at 212–246.

49. Martin Luther King Jr., *Letter from Birmingham Jail*, (1963).

Like the Indian independence movement, certain moments stand out through time as iconographic of civil disobedience, particularly those where the violent reactions of state law enforcement officers were in marked contrast to the non-violent conduct of civil rights activists. One such example was the use of attack dogs, police officers striking with their night sticks, and the deployment of high-velocity fire hoses all trained against those marching for basic civil rights in Birmingham, as ordered by the pro-segregationist police commissioner, T.E. “Bull” Connor.⁵⁰ Newspaper coverage of this unrestrained violence, in tandem with other attacks provoked criticism nationally and internationally, contributed to President John F. Kennedy addressing the nation and advocating the passage of federal civil rights legislation.⁵¹ Another famous episode of the civil rights era was the March 1965 (attempted) march from Selma to Montgomery (both in Alabama) in support of voting rights. As many protestors crossed the Edmund Pettus Bridge in Selma, police officers violently assaulted them rendering scores bloodied and in some cases unconscious in an incident that became known as “Bloody Sunday”. Although protesters would cross the bridge several days later, with King himself leading the march, the visual images arising from Bloody Sunday received considerable national attention and provoked consternation. President Lyndon Johnson, like Kennedy before him, used the moment to advance federal voting rights legislation.

The use of civil disobedience has not been restricted to the struggle for independence in British India or civil rights in the United States. Activists have since invoked and employed means of civil disobedience for a variety of causes – including, opposition to the United States war in Vietnam,⁵² opposition to the use of nuclear energy,⁵³ as well as in furtherance of nuclear disarmament.⁵⁴ With respect to resistance to the existence and proliferation of nuclear weapons specifically, activists have adopted civil disobedience techniques including trespassing and sit-ins at nuclear power plants as well as blocking the entrance to such facilities.⁵⁵ In a

50. See IBRAM X KENDI, *STAMPED FROM THE BEGINNING: THE DEFINITIVE HISTORY OF RACIST IDEAS IN AMERICA* 374–375 (2016).

51. See *Id.* at 375.

52. See Gidon Gottlieb, *Jurisprudence: Vietnam and Civil Disobedience*, ANN. SURV. AM. L. 699 (1967).

53. See Michael L. Hughes, *Civil Disobedience in Transnational Perspective: American and West German Anti-nuclear-power Protesters, 1975-1982*, HIST. SOC. RSCH./HISTORISCHE SOZIALFORSCHUNG 236 (2014); Robert E. Goodin, *Civil Disobedience and Nuclear Protest*, 35 POL. STUD. 461 (1987); Steven E. Barkan, *Strategic, Tactical and Organizational Dilemmas of the Protest Movement against Nuclear Power*, 27 SOC. PROBS. 19 (1979).

54. Jodi Burkett, *Direct action and the Campaign for Nuclear Disarmament, 1958–62*, in NGOs IN CONTEMPORARY BRITAIN 21 (2009); Frank E. Myers, *Civil Disobedience and Organizational Change: The British Committee of 100*, 86 POL. SCI. Q. 92 (1971).

55. Civil disobedience against the existence of nuclear weapons continues today. See e.g., Carole Sargent, *Nuns Against Nuclear Weapons – Plowshares Protesters have Fought for Disarmament for Over 40 Years, Going to Prison for Peace*, THE CONVERSATION, (Dec. 8, 2021), <https://perma.cc/L7BM-MAF5>; Emma Peaslee, *Longtime Anti-Nuke Activists Face Prison, Again, After Breaking Into Naval Base*, NPR (Dec. 28, 2020), <https://perma.cc/9E9Q-YEL8>.

particularly notorious case in Pennsylvania, activists entered a General Electric plant pouring blood on the premises, beating in missile components with hammers and overall damaging about \$28,000 worth of property. In these and other actions, activists were arrested and charged with numerous offences.⁵⁶

The invocation of civil disobedience has continued to spread although sometimes at the cost of a certain unity of the concept. For example, the anti-poll tax campaign involved as many as 10 million UK citizens refusing to pay a tax which they felt was unjust.⁵⁷ Civil disobedience has been invoked loosely as part of democratic protests, where disobedience consisted in the act of participating in prohibited demonstrations.⁵⁸ Civil disobedience has been mentioned in the context of the 2011 Arab uprisings,⁵⁹ political upheaval in Hong Kong⁶⁰ or resistance in Myanmar.⁶¹

Civil disobedience as a series of political practices thus has a number of common characteristics, even as disobeyers can and have tended to differ on the particulars. First, it is based on a recognition of the overall legitimacy of the law, even as it seeks to challenge specific laws and practices. It is therefore a priori quite distinct from revolutionary action although the change it fights for may be momentous. Indeed, traditional civil disobeyers aim to set a moral example by submitting to punishment in the name of higher principles, in ways that they hope will provoke the government into effecting meaningful change.⁶² Sometimes, civil disobedience is deployed against a law that is inherently unjust or immoral (e.g., segregation laws discriminating on the basis of race) while in other cases the law being challenged may be morally neutral (e.g., the *Salt Act*) but resisted as a symbol of broader policies of the state.⁶³ The point, though, seems to be that the law has an outsized presence in framing the nature of disobedience as specifically targeted against the state’s norms and coercion through enforcement mechanisms. Second, civil disobedience is quite focused on non-violence and avoiding at least physical harms against persons. At the same time, those engaged in civil

56. See William P. Quigley, *The Necessity Defence in Civil Disobedience Cases: Bring Back the Jury*, 38 NEW ENG. L. REV. 3, 27 (2003).

57. See Paul Hoggett & Danny Burns, *The Revenge of the Poor: The Anti-Poll Tax Campaign in Britain*, 11 CRITICAL SOC. POL’Y 95, 109 (1991).

58. See Maciej Bartkowski and Maria J. Stephan, *How Ukraine Ousted an Autocrat: The Logic of Civil Resistance*, ATLANTIC COUNCIL (2014), <https://perma.cc/YPN5-VDHE>.

59. See CIVIL RESISTANCE IN THE ARAB SPRING: TRIUMPHS AND DISASTERS (Adam Roberts et al. eds., 2016), <https://perma.cc/YPN5-VDHE>.

60. See Try Ananto Wicaksono, *Asia’s Demand for Justice: Civil Disobedience in Hong Kong, Indonesia, Taiwan, and Thailand*, COLUM. PUB. POL’Y REV. (Oct. 2020), <https://perma.cc/3CK3-AD76>.

61. Tommy Walker, *How Myanmar’s Civil Disobedience Movement Is Pushing Back Against the Coup*, VOA, <https://perma.cc/8WPY-9YJT>.

62. During the anti-Vietnam War movement, and protests against nuclear proliferation, many sought to defend their actions, rather than plead guilty and submit to their punishment. See Quigley, *supra* note 56.

63. See GENE SHARP, SHARP’S DICTIONARY OF POWER AND STRUGGLE: LANGUAGE OF CIVIL RESISTANCE IN CONFLICTS 81 (Oxford University Press) (2012).

disobedience may have fewer qualms about the economic harms inflicted as a result of boycotts⁶⁴ or interference with the property rights of others arising from trespass or flagrant property damage. Third, since disobedience is typically a tool of the disenfranchised and the persistently excluded against the powerful, it typically avoids normal political means and institutions. This was certainly true of both East Indians under colonization and African Americans subjected to Jim Crow laws.

As can be seen from the examples in this sub-section, civil disobedience, whilst having a significant role in political imaginations given its ability to dramatize the stakes of political association through spectacular law-breaking, has been used in quite *specific* contexts. In those contexts where it has been employed, it has been particularly efficient in demonstrating to a government or majority the continuing demands of those disenfranchised or adversely impacted by such dominant forces, especially when questions of equal liberal standing and rights were concerned. But it also witnessed some stark limitations, most notably in the context of the civil rights movement and the difficulty of pushing beyond desegregation in the South to tackle structural racism throughout the country.⁶⁵ At the same time, the scope of disobedience has tended to be broadened through the diffusion of civil disobedience techniques. Disobedience has demonstrated a certain capacity to mutate and to be used in contexts other than what it was first conceived for, although arguably nothing as broad and dramatic as the civilizational, planet-wide challenge of climate change.

2. Disobedience to Protect the Environment: A Typology

There is no reason to think that all disobedience to protect the environment is cut from the same cloth. In fact, climate disobedience exacts a particular pull on the typical registry of disobedience. In this sub-section, we briefly track the evolution of action against climate change (and more broadly to protect the environment) from action that is broadly content with working within the confines of

64. Notably, some of those affected by a boycott may nevertheless be sympathetic to those mounting it and the grievances that serve as its basis. For example, when Gandhi visited areas of England that were economically affected by the boycott of British manufactured cloth, he nevertheless received positive responses and understanding. See SHIRER, *supra* note 42; Nandini Rathi, *Gandhi Jayanti 2018 Special: When Mahatma Gandhi Was Welcomed By Textile Mill Workers of Lancashire*, THE INDIAN EXPRESS, (Oct. 2, 2018), <https://perma.cc/NSY3-PRRF>.

65. See William M. Wiecek & Judy L Hamilton, *Beyond the Civil Rights Act of 1964: Confronting Structural Racism in the Workplace* *Racism in the Workplace*, 74 LA. L. REV. 1095 (2014); Joe R. Feagin & Bernice McNair Barnett, *Success and Failure: How Systemic Racism Trumped the Brown v. Board of Education Decision*, 2004 U. ILL. L. REV. 1099 (2004); Julian M. Rucker & Jennifer Richeson, *Toward an Understanding of Structural Racism: Implications for Criminal Justice*, 374 SCIENCE 286, 288 (2021); Richard Delgado & Jean Stefancic, *Critical Perspectives on Police, Policing, and Mass Incarceration*, 104 GEO. L. J. 1531,1549 (2016); Brittney Butler et al., *Generational Impacts of 1930s Housing Discrimination and the Imperative Need for the Healthy Start Initiative to Address Structural Racism*, 13 J. OF HEALTH DISPARITIES RESEARCH AND PRACTICE 61,72 (2020).

state and international law and politics to action that is increasingly confrontational and, indeed, transgressive. This is in line with the work of political scientists who have examined the trajectory of grass root groups in that direction as a result of the loss of faith in elite and institutional approaches to intractable environmental problems.⁶⁶ The arc of the evolution of environmental activism has followed a familiar path from the most reformist to the most radical, with disobedience, first civil but increasingly “un-civil,” assuming an important dimension in activist strategies. To be clear, though, civil disobedience in the context of climate change remains a marginal phenomenon, albeit of high symbolic relevance.

Disobedience is not an inevitable way of dealing with environmental threats and arrived relatively late in the panoply of means resorted to by climate activists. At the most basic level, the reaction to such threats may include personal and collective efforts to change consumption habits. These endeavours encompass a range of conduct including the reduction of plastic use (e.g. straws) or insulating one’s house to reduce energy consumption, to campaigns to divest in fossil fuel companies.⁶⁷ Such efforts may certainly be directed against those considered responsible for climate change, but they nearly always occur wholly within the framework of the law. This can include a range of forms of political action that exhibit highly conventional democratic forms of participation, starting with campaigning and voting. Many political initiatives against climate change are part of the ordinary range of democratic tactics. Even divestment campaigns away from fossil fuels involve, at heart, the liberty of investors to redirect their investment as they see fit, including for ethical reasons. In the US context, the ethos of “economic resistance” has for example been presented as being “as American as apple pie.”⁶⁸

By the same token, it is also true that many groups, invoking the urgency of the climate crisis and the need for radical change, have straddled the line between conventional political registers and registers that begin to take them on a path of disobedience. These can include unauthorized demonstrations and sits ins. Fossil Fuel Divest Harvard and Fossil Free Yale, for example, interrupted an annual football game between the two Universities by rushing onto the field to protest their schools’ investments in fossil fuel companies. Although both universities may have found the incident unfortunate, its relative lack of gravity and their broadly accommodating stance meant that no legal consequences ensued.⁶⁹ Some

66. Alison E. Adams & Thomas E. Shriver, *Tactics and Targets: Explaining Shifts in Grassroots Environmental Resistance*, 4 SOCIAL CURRENTS 265 (2017).

67. Eve Bratman et al., *Justice is the Goal: Divestment as Climate Change Resistance*, 6 J. OF ENV’L STUDS. & SCI. 677 (2016).

68. Heather Smith, “Economic resistance” — a.k.a. divestment — is as American as apple pie, *Grist* (Nov. 5, 2013), <https://perma.cc/6T4B-F7K9>.

69. *Harvard-Yale Game Interrupted By Activists Protesting Fossil Fuel Investments* <https://perma.cc/L5R3-AA7B>.

environmental organizations have, however, gradually opened up to more transgressive forms of disobedience. Emblematic in this respect is the trajectory of an organization like the Sierra Club which had from its inception specifically prohibited resorting to civil disobedience. That principled commitment was overturned in 2017 by its Board of Directors, albeit only on an exceptional basis and as a last resort.⁷⁰ This shift in the mindset of an organization that was long content with forceful but legal protests against climate change is an interesting barometer for the turn to disobedience within the broader community of climate activists.

At the same time, activists who would have been happy to merely protest, may be recast as criminals/disobeyers by the authorities themselves through laws henceforth restricting their right to protest. In such cases, the Rubicon of law violation is crossed largely as a result of repressive laws designed to stifle freedom of expression that leave activists little choice. A number of laws passed in US states making protests on pipeline sites a criminal offence have had exactly this effect. Starting with Oklahoma in 2017, pipeline protection legislation against trespass and damage has mushroomed into “Critical Infrastructure Protection” legislation promoted by the American Legislative Exchange Council. Although it is claimed that these laws do not infringe basic political liberties, one particular Texas statute makes “impairing or interrupting” pipeline construction with the “intent to damage or destroy” a felony punishable by up to 10 years in prison and a \$500,000 fine.⁷¹ Such laws make it more likely that behavior which would previously merely have been a form of protest is recast as criminal.

An assumption that civil disobedience will be a starting point, or possibly even a central feature, of fighting climate change has, in fact, become pivotal to the identity of at least some recent activist initiatives. Perhaps none has been more emblematic than Extinction Rebellion (hereafter, “XR”), which has its roots in England,⁷² but has quickly inspired groups to form in many other countries.⁷³ XR has engaged in a variety of unlawful operations with a view to blocking certain activities. These have included, most notoriously, actions to block roads in major cities such as London, Washington D.C., Los Angeles, Chicago, New York,

70. Loren Blackford, *Civilly Disobedient; Morally Imperative*, SIERRA CLUB (Sep. 17, 2018), <https://perma.cc/SS3E-G9N2>.

71. Susie Cagle, *‘Protesters as terrorists’: growing number of states turn anti-pipeline activism into a crime*, THE GUARDIAN (July 8, 2019), <https://perma.cc/SS3E-G9N2>.

72. According to XR’s website, the development of XR sprung forth out of a series of protests in London in October–November of 2018. According to XR, “On 31st October 2018, British activists assembled on Parliament Square in London to announce a Declaration of Rebellion against the UK Government. The next few weeks were a whirlwind. Six thousand rebels converged on London to peacefully block five major bridges across the Thames. Trees were planted in the middle of Parliament Square, and hole was dug there to bury a coffin representing our future. Rebels super-glued themselves to the gates of Buckingham Palace as they read a letter to the Queen.” See Extinction Rebellion, <https://perma.cc/ZJ4L-TJVU> (last visited Nov. 23, 2022).

73. However, other groups such as Ende Gelände in Germany and Earth First in the United States have also advanced vigorous campaigns and radical agendas in support of environmental protection.

Montreal, etc, leading to the arrest of several members.⁷⁴ XR’s work is based on a very clear assessment of the limitations of conventional means of political activism. As one member put it:

We have to be clear. Conventional campaigning does not work. Sending emails, giving money to NGOs, going on A-to-B marches. Many wonderful people have dedicated years of their lives to all this, but it’s time to be honest. Conventional campaigning has failed to bring about the necessary change.⁷⁵

Instead, XR emphasizes “disruption” with an emphasis on “economic costs” as one of the fundamental facets of its activity.⁷⁶ This suggests some correlation with economic boycotts which similarly seek to provoke change through economic pain. However, the means employed to inflict substantial economic consequences involve direct action rather than a decision to avoid patronizing a particular goods or service provider. For instance, in September 2019, the Heathrow Pause movement launched drones within Heathrow Airport’s restricted zone, in an effort to interrupt flights. Activists sent the drones far enough away from planes’ flight path that they would not endanger security while knowing that any intrusion in the restricted zone would bring about an automatic shutting of the airport – although no actual harm to anyone. Up to 19 activists were arrested. Roger Hallam, one of the group’s founders (who is also connected to XR), has claimed that the decades of campaigning against climate change have not worked and the only thing that will help to address the issue is massive economic disruption.⁷⁷ He stresses that being thrown in prison for engaging in direct economic destruction is nothing in comparison to the brutality that people in the Global South must endure at the hands of their own governments for comparable behavior.⁷⁸

Climate disobedience has thus emerged as a distinctive strand within broader patterns of environmental and climate activism and within traditions of civil disobedience. It has led to an updating and a diversification of civil disobedience practices. One would struggle at this stage, however, to highlight a single iconic

74. *Extinction Rebellion: Seventy Arrested at Climate Change Protests*, BBC NEWS, (April 17, 2022), <https://perma.cc/4VVB-FMD6>; *About 30 Climate Protesters Arrested in Downtown Montreal*, THE CANADIAN PRESS, (October 8, 2019), <https://perma.cc/XN4X-X5LQ>; Sonia Dasgupta, *4 arrested after climate activists block DC traffic with pink boat*, 7NEWS, (Nov. 19, 2021), <https://perma.cc/JB7A-TAA8>; Kyle Swenson, *More than a thousand arrested in ‘Extinction Rebellion’ protests against climate change*, THE WASHINGTON POST, (Apr. 23, 2019), <https://perma.cc/TP2M-ES98>; *Climate Protesters With Message for Biden Arrested After Blocking NYC Roads*, NBC NEWS, (Oct. 25, 2021), <https://perma.cc/E6CD-Y4BK>; Mirna Alsharif & Andone Dakin, *Climate change protesters with a boat blocked traffic today in New York’s Times Square*, CNN (Oct. 10, 2019), <https://perma.cc/7KVX-GSFY>.

75. Roger Halam, *The Civil Resistance Model*, in THIS IS NOT A DRILL: AN EXTINCTION REBELLION HANDBOOK (Extinction Rebellion ed., 2019).

76. *Id.*

77. Heathrow Pause, *Message from Roger Hallam to fellow rebels – 12/09/2019*, YOUTUBE (Sep. 20, 2019), <https://perma.cc/J6G9-H5WY>.

78. *Id.*

episode in that movement given its ubiquitous nature. The diversity of climate disobedience initiatives and the moderation of many of them suggests that climate disobedience may be better understood as occurring along a spectrum from nominally illegal but benign action to more robust challenges to the law.

3. The Radicalization of Climate Disobedience

Given the dire consequences associated with the climate emergency, there may be a greater willingness for many climate disobeyers to adopt more radical approaches to force broader systemic changes. This may signal a willingness to break with earlier forms of civil disobedience. Traditional models of civil disobedience emphasized a certain paradoxical embrace of the rule of law (what Rawls described as civil disobeyers' "fidelity to the law").⁷⁹ Laws were to be violated with a view to exposing their inequities, but disobeyers readied themselves and, in a sense, accepted their punishment. A large part of the tradition of civil disobedience tradition is thus construed as appealing to the legal system's "better self," to reintroduce conditions of liberal normalcy where such conditions are understood to have been disrupted by illiberal forces. It claims to expose the hypocrisy of the legal system, sometimes by giving activists their prominent "day in court." The idea is that, if nothing else, by forcing the state to punish disobeyers, the latter will succeed in revealing the former's true colors.

There is evidence that some disobedience against climate change is "civil" in this traditional way. Indeed, the claim of a continuity between climate disobedience and some of its predecessors is often made.⁸⁰ For example, Heathrow Pause activists, in addition to ensuring they did not endanger flight safety, warned the police of their intended actions (which had the effect that many were in fact arrested for conspiracy before they could even put their plan into action) and were clearly ready to be arrested. As one drone pilot put it, "the general negligence of the aviation industry to face up to its contribution to the climate emergency, has forced me into considering arrest and, if necessary, imprisonment, to wake people up to the dire situation we are in."⁸¹ Climate resisters in this traditional mold proceed from their conscience, defer to the presumptive legitimacy of democratic institutions, conceive of law-violation as a last resort, do so transparently and are willing to justify themselves as well as to suffer punishment.

But some activists have gone further than what would normally be considered as falling within the register of civil disobedience. In some cases, they have engaged in violence against property, and emphasized clandestine action. Climate disobedience, it has been said, has taken a distinct turn towards the

79. JOHN RAWLS, *A THEORY OF JUSTICE* 337 (2009).

80. For a critical discussion, see Garcia Hernandez, *supra* note 13.

81. Matthew Taylor, *Twelve protesters arrested over Heathrow drone threat*, THE GUARDIAN (Sept. 13, 2019), <https://perma.cc/DLG4-7GL8>.

“uncivil.”⁸² This is true of its tactics, which occasionally seem less inclined to appeal to the state’s (or corporations’) “better self” and more designed to express disgust and condemnation and trigger radical change. To quote one commentator, “[a]ctivists who barge into a boardroom and dump trash on the table act uncivilly, while those who don a coat and tie and join the blockade act civilly.”⁸³ Even when not physically destroying property, actions of trespass or occupation clearly intend to manifest the importance of goals superior to respect for property. Some activists have also adopted unorthodox approaches that target the financial and reputational interests of business owners and organizations. Such methods include tactics such as “identity correction” that may cause genuine economic harm. The latter involves, “impersonating representatives of companies, governments, and international institutions to criticize the absurdity of their discourse.”⁸⁴

As one article put it, “‘nice’ isn’t going to save the planet” and “in a rapidly heating world, we don’t have time for etiquette.”⁸⁵ It is unclear, in particular, that a new generation of climate disobeyers have patience for the legal “niceties” traditionally associated with civil disobedience and are volunteering to take responsibility for violating the law or, indeed, to give the law a broad pass when it comes to a commitment to correct itself. There is, thus, a certain rejection of the respectability of law that may have been attached to earlier forms of civil disobedience. Notably, violations of the law are not always dramatized in the way they used to be in classic civil disobedience cases. Although having one’s day in court is something that activists may welcome, it is presented as something of secondary importance. The discourse of XR, for example, does not foreground law violation per se, except as something that is likely to indirectly and strategically raise awareness of climate issues because of the extra publicity, testing activists’ mettle and demonstrating to the public just how far they are willing to go in resisting climate change. This is likely a by-product of the fact that disobedience in such cases is indirect and therefore does not aim to bring attention to the laws being violated as such. Rather, as one commentator put it: “Peaceful lawbreaking and acts of rebellion shift the narrative to one of emergency, which changes what people are willing to risk to change a system which is risking all life.”⁸⁶

Sea Shepherd has pioneered a form of transgressive environmental activism that goes as far as ramming whaling ships to prevent them from engaging in their

82. CANDICE DELMAS, *A DUTY TO RESIST: WHEN DISOBEDIENCE SHOULD BE UNCIVIL* (2018).

83. Ned Hettinger, *Environmental Disobedience in, A COMPANION TO ENVIRONMENTAL PHILOSOPHY* 501 (Dale Jamieson, ed., 2001).

84. Matthew Rimmer, *Coal in Court: Whitehaven, Climate Change and Civil Disobedience*, *THE CONVERSATION*, (July 19, 2013), <https://perma.cc/T2HP-YMJM>.

85. Mary Annaise Heglar & Amy Westervelt, “‘Nice’ Isn’t Going to Save the Planet: In a rapidly Heating World, We Don’t Have Time For Etiquette,” *THE NATION* (2021).

86. Tanya Jacout, Robin Boardman & Liam Baulch, *Building an Action*, in *THIS IS NOT A DRILL: AN EXTINCTION REBELLION HANDBOOK* 114 (Extinction Rebellion ed., 2019).

activities.⁸⁷ Its actions can be framed as loosely inspired by the fight against climate change, particularly as it affects biodiversity and certain species. Other environmental activist groups, such as the Earth Liberation Front (inspired by the earlier Animal Liberation Front), have even more explicitly connected forceful action and resistance against global warming, describing itself as engaged in “economic sabotage and guerrilla warfare to stop the exploitation and destruction of the environment.”⁸⁸ “Ecosabotage” and “monkeywrenching,” such as the torching of SUVs or planting of nails in trees to prevent logging, have emerged as a distinct set of activities typically directed at private property and the corporate sector.⁸⁹ Blockades, “occupation,” and the destruction of property have also been a hallmark of some struggles against the building of pipelines.⁹⁰ Other disruptive, though non-violent tactics such as “culture jamming,” (for example, issuing a hoax press release to harm the share price of a company) have also been experimented with.⁹¹

These actions largely circumvent the traditional register of civil disobedience (notably in that they do not accept the law’s punishment or construe their activism as a type of appeal to the state). However, they can be seen as part of a broader genre of “conscientious wrongdoing.”⁹² The turn to more aggressive, clandestine, and criminal tactics reflects a frustration with the slowness of change that even civil disobedience might aspire to provoke against the background of a global emergency. At the same time, the danger that even such relatively mild law-contravening activity will be portrayed by the state in dramatic terms exists. For example, direct action has been particularly targeted in countries such as the US as a form of “eco-terrorism,” bearing the full brunt of law enforcement and the carceral state.⁹³

87. Frédéric Mégret, *Activists on the High Seas: Reinventing International Law from the Mare Liberum?*, 1 INTER’L COMM. L. REV. 1 (2021).

88. Stephen Holden, *Crimes Against Property, as Protests*, THE NEW YORK TIMES, (June 21, 2011), <https://perma.cc/KEN6-CF82>.

89. These and other tactics have led to heightened concerns and responses by state actors. See e.g., Ed Pilkington, *Role of FBI Informant in Eco-Terrorism Case Probed After Documents Hint at Entrapment*, THE GUARDIAN, (Jan. 13, 2015), <https://perma.cc/MG38-4LKF>; Adam Federman, *Revealed: US Listed Climate Activist Group As ‘Extremists’ Alongside Mass Killers*, THE GUARDIAN, (Jan. 13, 2020), <https://perma.cc/M8XU-H4XA>.

90. Julia Shipley, *‘You Strike a Match’ Why Two Women Sacrificed Everything to Stop the Dakota Access Pipeline*, GRIST (May 26, 2021), <https://perma.cc/MF9K-J3AG>.

91. Matthew Rimmer, *Stand with Jono: Culture-Jamming, Civil Disobedience, and Corporate Regulation in an Age of Climate Change*, in LAW AS IF EARTH REALLY MATTERED: THE WILD LAW JUDGMENT PROJECT 293 (Nicole Rogers & Michelle Maloney eds., 2017).

92. Michael Martin, *Ecosabotage and Civil Disobedience*, 12 ENV’T ETHICS 291 (1990); Jennifer Welchman, *Is Ecosabotage Civil Disobedience?*, 4 PHIL. & GEOGRAPHY 97 (2001).

93. Michael Loadenthal, *‘The Green Scare’ & ‘Eco-Terrorism’: The Development of US Counter-Terrorism Strategy Targeting Direct Action Activists*, in THE TERRORIZATION OF DISSENT: CORPORATE REPRESSION, LEGAL CORRUPTION AND THE ANIMAL ENTERPRISE TERRORISM ACT (Jason Del Gandio & Anthony J. Nocella II eds., 2013).

At any rate, the radicalization of climate disobedience may merely be a symptom of both the limits of traditional models of disobedience and the specificity of challenges raised by climate change. It is revealing of deeper mutations within the traditional frameworks of disobedience.

B. THE CHANGING NATURE OF DISOBEDIENCE

As seen in the previous section, climate disobedience has thus emerged as a distinct set of practices that take their cue, yet differ in significant ways, from the classical register of civil disobedience practiced by the likes of Gandhi or Dr. King. On one level, climate disobedience might be criticized quite rightly for simply “parroting” well-worn tropes from a different era and appropriating a legacy that is ultimately ill-fitting and that it can hardly lay claim to.⁹⁴ On another level, as with other new digital manifestations of the phenomenon,⁹⁵ upgrading our concept of civil disobedience is necessary to understand it in its own terms not only as a response to given and immovable legal conditions, but as a thorough attempt to reshape the law through its performative violation.

The place of the law in this context is not always clear. For some, the importance of the law and violating it, may be marginal, especially when it is routinely violated or profoundly unequal (thus cheapening the demonstrative value of violating it). For others, violation is merely a leverage to gain attention, highlighting just how far one is willing to go by putting one’s liberty on the line to fight climate change but in ways that do not involve any pointed critique of the law. Finally, for others, the law is more explicitly construed as either part of a system of repression that maintains the status quo or as a crucial cog in the carbon-spewing machinery of modernity.⁹⁶

This sub-section, then, draws on the idea that it is the real-world practice of disobedience that should guide its theory, and not some preconceived notion of what is the ‘appropriate’ form of disobedience that should inform its practice. We hypothesize that the magnitude of the challenge of climate change is forcing a fundamental evolution and reconsideration regarding the nature of disobedience. Climate change creates a fundamental modification of the spatial and temporal coordinates of the law and therefore of civil disobedience itself. This in turn creates an increasing disconnect with the ordinary frameworks of liberal society. We suggest that climate change is thus simultaneously changing the scale, nature and targets of disobedience.

94. See in particular Burkett, *supra* note 28.

95. William E. Scheuerman, *Digital Disobedience and the Law*, 38 NEW POL. SCI. 299 (2016).

96. Lee Godden, *Death, Desire, Modernity and Redemption: Climate Change and Public International Environmental Law*, 10 MELB. J. OF INT’L L. 543 (2009).

1. The Scale of Disobedience

What should be the proper scale of climate disobedience? Much of the collective understanding of civil disobedience is embedded in a liberal theory of justice and of the state, and its particular demands.⁹⁷ Many of the campaigns reviewed in the previous section were campaigns launched within the framework of specific national and democratic struggles aimed at addressing systemic oppression, discrimination, colonialism and authoritarianism. Liberalism provides a notable moral, political and legal framework within which to conceptualize the modalities, goals and value of disobedience. In Rawls' widely cited understanding, for example, civil disobedience is directed at bringing to the majority's attention the fact that fundamental tenets of justice are not being respected – specifically that the principles of justice governing cooperation amongst free and equal persons have not been respected by policymakers.⁹⁸

The domestic and intra-societal focus of traditional civil disobedience, however, creates a specific problem for climate disobeyers. The injustices of climate change are arguably far more global and complex than colonialism in India or *de jure* segregation in the US South. They involve a great many societies, in ways that fundamentally transcend the society-specific moorings of much traditional civil disobedience. As Maxine Burkett points out, “the specifics of intentional racism contrast with the amorphous nature of climate change's disparate impacts.”⁹⁹ This creates a potential problem of misalignment of protests with what they target. It may be hard to compensate for the outsize local impact of law violation by emphasizing the magnitude of the ultimate threat, a threat that some locally will perceive as distant and abstract. In addition, the temporal coordinates of disobedience are deeply modified. Whereas traditionally civil disobedience dealt with injustices appearing “here and now,” the challenges of climate change in the present may be urgent but they are also, paradoxically, slow-moving, and likely to unfold for decades.

The sheer scale and widespread nature of the climate crisis, then, creates pressures to organize forms of disobedience that better connect the local and the global. The fight against a global phenomenon, goes the reasoning, cannot allow itself to be provincial. Yet one of the difficulties may be that the contribution of any particular target to climate change may seem infinitesimal if taken in isolation, making resulting actions seem disproportionate to that contribution. A truly global action against climate change by activists, by contrast, remains a supremely complicated task, not least because it is difficult for groups to simultaneously challenge laws in several jurisdictions or international law itself. Accordingly, many counter-climate change efforts are connected to a range of social struggles that are more domestic in

97. Marshall Cohen, *Liberalism and Disobedience*, 1 PHIL. & PUB. AFF. 283 (1972).

98. RAWLS, *supra* note 79.

99. Burkett, *supra* note 28, at 26.

flavor (even if they may have transnational implications). Climate change disobedience thus ends up straddling the domestic, the international and the transnational in novel and dynamic ways.

Some civil disobedience might be called a localized global (or “glocal”)¹⁰⁰ struggle. In other words, local/national activists tackle what they can—what is within their reach, at least – but build on a foundation of global goals and values. They aim for the local pipeline, plant or airport but not, as they might have done in the past, merely because of these facilities’ local impact as much as stand-ins for climate change.¹⁰¹ In Germany for example, Ende Gelände has targeted the Garzweiler, South Welzow, Jänschwalde and United Schleenhain open pit mines and the Neurath power station specifically joining site-protection and global climate protection.¹⁰² In doing so, they have resisted provincialization by construing localized civil disobedience as part of a global yet highly decentralized campaign in which every skirmish, however symbolic, matters.

It is also worth noting that climate activists have been particularly adept at creating transnational coalitions and replicating strategies developed in some contexts in others. As we showed in the previous section, civil disobedience’s history has always been transnational and it is destined to become more so in the context of climate change. In fact, climate disobedience has often been closely tied to and synchronous with the work of international institutions or mechanisms such as the IPCC and the United Nations.¹⁰³ It has implicitly challenged the “national” and “statist” assumptions of classical disobedience. This has, in turn, reconfigured disobedience as a form of “transnational disruption” that “appeals to the sense of justice or reason of a national, international or global public that publicizes failures to observe moral, political or legal values that are an appropriate source of normative authority in global contexts.”¹⁰⁴

2. The Nature of Disobedience

A second evolution is that climate change is, in the vast majority of cases, difficult to trace to specific laws. Rather, it is arguably the result of very many laws put together but also the product of the absence of certain laws (that would limit the harm that certain actors can engage in). At a certain level, one might see

100. Ilda Lindell, “Glocal” Movements: Place Struggles and Transnational Organizing by Informal Workers, 91 *GEOGRAFISKA ANNALER. SERIES B, HUM. GEOGRAPHY* 123 (2009).

101. The case of the Kingsnorth Six offers such an example. In that case, six Greenpeace activists scaled a chimney of a coal-fired power station in England and spray-painted it. The actions halted the plant’s operations for four days. John Vidal, *Not guilty: the Greenpeace activists who used climate change as a legal defence*, *THE GUARDIAN*, (Sep. 11, 2008), <https://perma.cc/EX6F-AX8M>.

102. Aufruf, Unterstützerinnen und Soli-Erklärung 2019, ENDE GELÄNDE, <https://perma.cc/C6HD-6EHB>.

103. Farhana Yamin, *Why I Broke the Law for Climate Change*, 573 *NATURE* 337 (2019).

104. William Smith, *Civil Disobedience as Transnational Disruption*, 6 *GLOBAL CONSTITUTIONALISM* 477 (2017).

climate change as a result less of laws than legal systems, and less of legal systems than the broader economic and political structures within which they are embedded. This has been described as an “inherent disadvantage” of climate disobedience,¹⁰⁵ given the diffuse and nebulous character of climate change.

In this context, direct civil disobedience seems difficult to envisage. Colonization, segregation and apartheid at least involved laws that clearly prohibited Black people from doing certain things (e.g., being a part of certain professions, using certain facilities, etc.). To violate these laws, then, made sense as a way of protesting the discrimination behind them. One can disobey a law that prohibits one from sitting in a section of a bus or bar reserved for whites. Climate change, however, is not as obviously the by-product of certain laws of a particular state and its ideology. It is not, on its face at least, a legal injunction. The laws – or the regulatory environment – which cumulatively lead to climate change are often permissive in nature. They are fundamentally an instantiation of human freedoms allowed to run their course. It is much harder to protest and, notably, to violate permissive laws because not availing oneself of a freedom is unlikely to garner much attention and lacks the drama of contravening a prohibition. To simply “not do” what one is otherwise permitted to do lacks any potential for transgression and, if nothing else, risks going largely unnoticed.

If anything, climate disobedience is a form of *indirect* civil disobedience, the violation of laws that are not themselves, at least very meaningfully, the cause of the injustice that one protests. Even if one claims that climate change is ultimately embedded in laws (those which, cumulatively, enable the Anthropocene and its devastating consequences), it is simply caused by and embedded in too many of them for any one law to be targeted specifically. This can create a further hiatus between the cause pursued and the laws being violated. In other words, when a group occupies the premises of a polluting company, they are not (typically) protesting the right to private property as much as they are protecting the fundamental inequity of the pollution produced by targeting a particular institution chosen for largely symbolic reasons.

Indirect disobedience is not necessarily problematic, but it does raise some questions in the context of climate disobedience. The first is the seeming randomness of violating any particular law. To take the example just mentioned, why target a specific company and its property and why occupy its space? The lack of clarity surrounding such choices may lead to considerable skepticism surrounding the legitimacy of the disobedience. The indirectness of civil disobedience makes it more likely that critical external observers will fault the disobeyers for violating laws that, in isolation are not unjust.¹⁰⁶ It may even cause observers to sympathize with those targeted. This means that activists will need to do more

105. DiSalvo, *supra* note 32.

106. Deutsche Welle, *Do Disruptive Protests Jeopardise the Climate Change Movement?*, FRONTLINE (Apr. 7, 2022), <https://perma.cc/5WSR-VPKE>.

work to show how the violation of a law that is not in itself unjust is required to deal with broad unjust practices. They will have to do so against the background of assumptions about the importance and even sanctity of the rule of law.

The complexity of the problem increases the odds that one’s actions will be miscommunicated or misunderstood, at the risk of backfiring and creating popular backlash against climate disobedience. At any rate, aside from issues of perception, climate disobedience raises daunting questions of political and legal strategy that go to the heart of what is being resisted. As a result, it exposes the distributive entanglements of all resistive action (why select this target and not that target?), in ways that can quickly create frustration among those who happen to suffer the consequences of particular actions (e.g.: “innocent” commuters delayed by XR’s actions). Activists are evidently aware of these challenges and the need to circumscribe their actions for maximum political effect, not to mention legitimacy.

This does not, however, obviate lingering questions about the justice of their struggles in a context where the risk of arbitrary collateral prejudice is real. The problem may be with the relative luxury of having a wealth of targets for law violation – which can quickly degenerate into an embarrassment of riches. This was quite evident for example when XR Quebec occupied a bridge in Montreal to “protest climate change” (the bridge was symbolically associated with the excesses of commuting)¹⁰⁷ prompting a deluge of irate responses¹⁰⁸ from drivers blocked for hours: why this bridge? why commuters rather than the automobile industry? What about patients who urgently needed to take the bridge? Similarly, Insulate Britain is an English group whose aim is to pressure the government to promise public funding for the insulation of social housing and the retro-fitting of houses as part of a strategy to bring down heating costs and to tackle climate change.¹⁰⁹ It has, however, engaged in protests by blocking streets and causing significant traffic jams.¹¹⁰ The alignment between Insulate Britain’s specific goals regarding insulation and their method of protesting seems even more incongruous than XR’s occupation of bridges.

The risk is, as climate activists have learned at their expense, that any loose support they may have from the broader population for symbolic law violations is likely to quickly melt away when their fight is concretized into interventions that, inevitably, will affect some more than others, impugning disobeyers’ commitment to liberal equality. For certain sections of society, even those a priori sympathetic to the goal of fighting climate change, there is significant resentment to

107. Katherine Wilton, *Thousands of Cars were Idled as Climate Activists Scaled Bridge During Rush Hour*, MONTREAL GAZETTE, (Oct. 9, 2019), <https://perma.cc/YE4L-UJHA>.

108. See e.g., Lise Ravary, *Still Fuming about Extinction Rebellion’s Bridge Stunt*, MONTREAL GAZETTE, (Oct. 13, 2019), <https://perma.cc/V3CH-WSWA>.

109. Insulate Britain, INSULATE BRITAIN, <https://perma.cc/ENQ2-8TDP> (last visited Jan 25, 2023).

110. The Guardian view on climate activism: between obedience and resistance, THE GUARDIAN (Dec. 29, 2021), <https://perma.cc/HL8C-SVQG>.

being inconvenienced.¹¹¹ Manifestations of such resentment may not only be limited to verbal aggression but can escalate to physical encounters.¹¹² This is only likely to be amplified as a result of populist politics that foment discontent against climate change action portrayed as elite-driven and anti-working class.¹¹³

3. The Targets of Disobedience

A further specificity of climate disobedience is how it addresses and identifies the causes of climate change. Practices that contribute significantly to climate change may seem to be rooted less in public action than in private and corporate activities. For example, the “fossil fuel” or the “air transportation” industries may be identified as the culprits and have indeed often been among the primary targets of disobedience. Much of the tradition of civil disobedience, by contrast, was as we saw concerned specifically with state action occurring in the public realm. Some have even argued that action that is directed at private actors cannot be subsumed within the label of civil disobedience, which must per necessity be directed at “public laws and policies.”¹¹⁴ This is presumably because one cannot “disobey” private actors to whom one does not owe a duty of obedience in the first place and who do not adopt laws; but also more deeply because dominant liberal theories of civil disobedience emphasize that questions of social and economic policy should be dealt by legislatures in “well-functioning” democracies.¹¹⁵

This “cannot-disobey” dilemma again suggests that climate disobedience is less oriented at conventional politics and its pathologies than with a more radical contestation of the underlying private ordering of the world. As such, climate disobedience exposes what has, in a sense, long been a vulnerability of traditional civil disobedience models. That vulnerability is the tendency of civil disobedience to “reproduce commonplace postwar statist and Westphalian ideas, including the optimistic view that the liberal democratic nation state should prove up to the task of successfully regulating and perhaps civilizing capitalism.”¹¹⁶ This is, of course, not an insurmountable hurdle if one can contextualize private action

111. WHY DO SO MANY PEOPLE HATE INSULATE BRITAIN? INSIDE THE CONTROVERSIAL PROTEST MOVEMENT (Nov. 17, 2021), <https://perma.cc/HD57-6X5W>.

112. *Id.*

113. Maris Pedaja, A Para (t) oxic Relationship Between Conservatives and Climate. Analyzing Climate Denial in the Frames of the Estonian Conservative People’s Party EKRE and their Embeddedness in Toxic Masculinity, MASTER THESIS SERIES IN ENVIRONMENTAL STUDIES AND SUSTAINABILITY SCIENCE (May 11, 2021); Robert Neubauer, *Manufacturing Junk: Think Tanks, Climate Denial, and Neoliberal Hegemony*, 38 AUSTL. J. OF COMMUNICATION 65 (2011); Christine Agius, Annika Bergman Rosamond & Catarina Kinnvall, *Populism, Ontological Insecurity and Gendered Nationalism: Masculinity, Climate Denial and Covid-19*, 21 POL., RELIGION & IDEOLOGY 432 (2020); Daniel Driscoll, *Populism and Carbon Tax Justice: The Yellow Vest Movement in France*, SOC. PROBS (2021).

114. JOSEPH RAZ, *THE AUTHORITY OF LAW: ESSAYS ON LAW AND MORALITY* 263–264 (2009).

115. RAWLS, *supra* note 79, at 372.

116. William E Scheuerman, *Civil Disobedience in the Shadows of Postnationalization and Privatization*, 12 J. INT’L POL. THEORY 237, 237 (2016).

within broader enabling public structures: for example, many corporate actors can arguably only engage in certain acts of appropriation, commodification and exploitation through the permission of the state and as a result of the support of property, privacy and security laws that objectively favor planetary degradation. As if to prove that point, the state has often led the charge by directing its most repressive and authoritarian apparatus against climate disobeyers’ targeting of corporations (for example, companies building pipelines) in defense of resource extraction and capitalist enterprise.¹¹⁷

Bringing attention to this nexus and not allowing the state to portray itself as standing apart from these processes of environmental degradation, then, may count as one of the most significant contributions of climate disobedience. What seems like a fight with specific corporate actors can be recast as a dispute with a type of capitalistic activity and the state that protects and sustains it. This reinforces the sense that climate disobedience is in essence engaged with public power as earlier movements of civil disobedience were. In that respect, it may even shed light retrospectively on how earlier movements of civil disobedience were themselves, in fact, more engaged with resistance to the private sector than is typically understood.¹¹⁸

Nonetheless, it is not obvious that climate disobeyers always take the state that seriously, in a context where “poorly regulated private corporations affect life prospects in a manner at least as consequential as government” and therefore “become fair game for political lawbreaking.”¹¹⁹ Climate disobedience is increasingly tempted to tackle private actors directly, bypassing the sovereign “middleman.” This does renew the register of civil disobedience in potentially powerful ways; but it also threatens to create a mismatch between the (private) actors one is protesting and the (public) actors whose laws one violates.

II. THE CONFLICTING CHALLENGES OF CLIMATE DISOBEDIENCE

In the previous section we examined the degree to which the nature of civil disobedience is changing as a result of the fight against climate change, adapting and reinventing a range of practices for the ages. Although a practice of contestation, civil disobedience is itself contestable and contested. This is all the more so in the case of climate disobedience where it raises fundamental issues of legibility and legitimacy beyond the traditional frameworks of disobedience. This in turn arguably intensifies numerous challenges that have always plagued civil disobedience but that are arguably made even more dire in the current predicament. In

117. Kaylana Mueller-Hsia, *Anti-Protest Laws Threaten Indigenous and Climate Movements*, BRENNAN CENTER FOR JUSTICE (2021), <https://perma.cc/YK4-PATR>.

118. Sit-ins during the civil rights movements were key examples of targeting privately owned businesses for engaging in segregation against African-Americans. See Christopher W Schmidt, *Why the 1960 Lunch Counter Sit-Ins Worked: A Case Study of Law and Social Movement Mobilization*, 5 *IND. J. L. & SOC. EQUAL.* 281 (2017).

119. Scheurman, *supra* note 116, at 247.

this section, we highlight four principal challenges that beset climate disobedience, namely the need to simultaneously *politicize, democratize, justify and defend* climate disobedience. Crucially, these challenges, each problematic on its own terms, pull in different directions, simultaneously exercising a centrifugal pull (in that they require disobedience to be both more politicized and democratic) and centripetal draw (in that they require disobeyers to both justify and defend themselves).

A. POLITICIZING CLIMATE DISOBEDIENCE

Early civil disobedience was largely geared towards effecting social, political and legal change, with a strong emphasis on redressing the wrongs suffered by certain groups or colonized people. It was therefore deeply committed to forcing the at least aspiringly liberal state to make good on its promise by abolishing flagrant cases of discrimination or denial of self-determination. It operated within and appealed to a shared sense of justice. For reasons already canvassed, climate change disobedience has a more ambivalent relationship to liberal justice and so cannot simply present itself as corrective or ameliorative of existing frameworks. This creates a particular bind for climate disobeyers since they cannot, unlike earlier instances of civil disobedience, relate their struggle to some immediately compelling legal political framework. Instead, climate disobeyers have had to develop and even pioneer new forms of politics sometimes dramatically emphasizing the urgency of the climate crisis whilst catering to the demands of climate justice and building movements that are truly inclusive.

1. Climate Disobedience and the Politics of Survival

Some advocates of climate disobedience, in this context, have been tempted to subsume the struggle against climate change into something more primal, dramatic and compelling, namely a fight for survival and the very conditions of (sustainable) life on earth (the “we want to live!” in the title of this article). It is conceivable that they would disagree quite strongly on much else even as they agree across the board to foreground a distinctive struggle for conditions of basic human survival under which, perhaps, ideas of justice can even be entertained. This is particularly clear in a movement such as Extinction Rebellion, whose “all lives matter” dramatization of the climate crisis (“one people, one planet, one future”) is focused on averting a planetary disaster and almost wholly absorbed by that possibility in ways that can be seen as fundamentally depoliticizing. This tendency is also clear in the temptation of some groups to retreat behind a “listen to the science” messaging, that shuns any explicit politicization, seemingly reducing the fight against climate change to the application of a scientific formula.¹²⁰

120. Joost de Moor et al., *New Kids on the Block: Taking Stock of the Recent Cycle of Climate Activism*, 20 SOC. MOVEMENT STUD. 619 (2021).

This is not in and of itself incompatible with civil disobedience, but it does point to a quality of struggle that is a priori different from its notable forebearers. In foregrounding societal justice issues, classical civil disobedience emphasized societal arrangements that failed a basic justice test, for example discrimination based on race or ethnicity. Rawls highlights these as typical of civil disobedience scenarios where a majority oppresses a minority.¹²¹ By contrast, climate disobedience can have an almost post-justice and even post-political intonation: saving the whole of humanity from itself. Such a “survivalist” emphasis certainly dramatizes the stakes but can lead to a relative neglect of traditional justice concerns: climate change may be a catastrophe, but in what way is it, specifically, *an injustice*? Climate disobedience might still end up being about injustice, yet an injustice so fundamental and so broad as to potentially affect humanity at large and therefore no group in particular.

For Ulrich Beck, this is precisely the point and the “good” of climate change is that it might bring about a cosmopolitan resolution through a kind of “emancipatory catastrophism.”¹²² Yet like all broad and abstract defenses of humanity, this embrace incurs the suspicion that its politics insufficiently disaggregate both the responsibilities for harms and those who are relatively more vulnerable to them. The breadth of its wholesome reach might be demobilizing and its consensualism sound distinctly fictitious.¹²³ Thus climate disobedience might draw on and feed into what has sometimes been criticized as an “anti-politics” of climate change¹²⁴ or environmentalism generally, one that is strong on apocalyptic indignation but relatively clueless about what it is up against, lacking a comprehensive and articulated theory of who or what exactly is behind environmental degradation and legitimizing a one-size-fits all global approach to harm reduction. Paradoxically, it might prolong imperial strategies whilst masking their continued impact on societies.¹²⁵

2. Climate Disobedience and Climate Justice

Climate disobedience happens at a time when the relevance of more traditional social concerns, even and perhaps particularly to fighting climate change has been increasingly underlined by theorists and activists of environmental and

121. JOHN RAWLS, *A THEORY OF JUSTICE* 321 (2009).

122. Ulrich Beck, *How Climate Change Might Save the World*, 43 *DEV. AND SOC'Y* 169 (2014). Rather than focus on what climate change is bad for, Beck flips the question to consider what it is good for. Emancipatory catastrophism provides an opportunity to imagine how the world might be changed for the better. See also Ulrich Beck, *Emancipatory Catastrophism: What Does It Mean to Climate Change and Risk Society?*, 63 *CURRENT SOCIO.* 75 (2015).

123. Anneleen Kenis & Matthias Lievens, *Searching For 'The Political' in Environmental Politics*, 23 *ENV'L POL.* 531 (2014).

124. Kasia Paprocki, *Anti-Politics of Climate Change*, 28 *HIMAL SOUTHASIAN* 54 (2015).

125. *Id.*; Kate Symons, *Anti-Politics, Apocalypse and Adaptation in Kenya's National Climate Change Response Strategy*, 130 *SCOTTISH GEOGRAPHICAL J.* 266, 271 (2014); Sarah Bracking, *The Anti-Politics of Climate Finance: The Creation and Performativity of the Green Climate Fund*, 47 *ANTIPODE* 281, 297-98 (2015).

climate justice, who emphasize the very distributive impact of climate change.¹²⁶ Clearly not all individuals or nations are equally responsible for precipitating environmental degradation and, in fact, climate change can be understood as a by-product of deeper structural inequities.¹²⁷ In that context, blanket disobedience bereft of a pointed critique of domestic and global social arrangements that contribute to climate change may well appear tone deaf. Indeed, the flight towards a very “thin” concept of justice as survival occurs against a background in which the historical associations with racism of leading environmental organizations have been gradually uncovered¹²⁸ and further problematize environmental radicalism. It also occurs against the background of heightened awareness of how attitudes to climate change are shaped by class and, in particular, the tension between reformist technological “fixes” versus revolutionary, degrowth oriented approaches.¹²⁹

Questions are bound to arise, for example, about what “saving the planet” might mean for different groups and communities, and whether that goal can be understood irrespective of underlying justice claims made by various groups. Even the borrowing of the language of civil disobedience from the Indian independence movement and the civil rights struggle may seem needlessly appropriative, especially without recognition that would-be climate disobeyers are operating from a position of relative privilege in relation to the police and the court system.¹³⁰ This is not to mention the fact that certain actions of civil disobeyers may appear insufficiently sensitive to the extent to which they disproportionately penalize (as was claimed to be the case when XR activists stopped a light rail train in London during rush hour) the working-class and people of color.¹³¹ This against a context where prominent legal scholars have also made the point that that “epistemic silences in predominant climate change discourses (...) erase and

126. See ANDE A. NESMITH ET AL., *THE INTERSECTION OF ENVIRONMENTAL JUSTICE, CLIMATE CHANGE, COMMUNITY, AND THE ECOLOGY OF LIFE* (2020).

127. Leon Sealey-Huggins, ‘1.5 °C to Stay alive’: *Climate Change, Imperialism and Justice for the Caribbean*, 38 *THIRD WORLD QUARTERLY* 2444, 2445, 2449 (2017); Rachel Hartnett, *Climate Imperialism: Ecocriticism, Postcolonialism, and Global Climate Change*, 20 *E/TROPIC: ELECTRONIC JOURNAL OF STUDIES IN THE TROPICS* 138, 141-42 (2021); Leon Sealey-Huggins, ‘*The Climate Crisis is a Racist Crisis: Racism, Inequality and Climate Change*’, *THE FIRE NOW: ANTI-RACIST SCHOLARSHIP IN TIMES OF EXPLICIT RACIAL VIOLENCE* 10 (2018); Nkwazi Nkuzi Mhango, *Global Warming and Climate Colonialism/Imperialism: Appraising Decolonisation*, in *NECROCLIMATISM IN A SPECTRAL WORLD (DIS) ORDER?: RAIN PETITIONING, CLIMATE AND WEATHER ENGINEERING IN 21ST CENTURY AFRICA* 351, 356-57, 360 (Artwell Nhemachena & Munyaradzi Mawere eds., 2019).

128. See Lucy Tompkins, *Sierra Club Says It Must Confront the Racism of John Muir*, *N.Y. TIMES* (July 22, 2020), <https://perma.cc/UHA4-YA5Z>.

129. Terran Giacomini & Terisa Turner, *The 2014 People’s Climate March and Flood Wall Street Civil Disobedience: Making the Transition to a Post-fossil Capitalist, Commoning Civilization*, 26 *CAPITALISM NATURE SOCIALISM* 27, 29-30, 42 (2015).

130. *Statement on Extinction Rebellion’s Relationship With the Police*, *EXTINCTION REBELLION UK* (July 1, 2020), <https://perma.cc/D9KK-9VKG>.

131. Hettie O’Brien, *X is for Extinction Rebellion: The Insurgent Climate Movement That Went Mainstream*, *NEW STATESMAN* (June 5, 2021), <https://perma.cc/NDP3-MM7L>.

ignore the agency, knowledge and experiences of non-Western, non-White peoples and Indigenous communities.”¹³²

This latent aloofness to traditional social struggles is sometimes magnified by the tendency for some within the struggle against climate change to adopt an ontologically decentered perspective that seeks to ground political rationality beyond human subjectivity and rights. Indeed, by contrast with more traditional civil disobedience, climate disobedience occasionally transcends the societal and even anthropocentric focus of classical political struggles to include claims in favor of nature, mother earth or other animal species.¹³³ As such, it may at times appear to be less about inclusion of humans within the promise of a political order (liberal or otherwise), than about transcending that order altogether through a decentering of its subject of choice. XR, in particular, has been described as “not just another, albeit radical, contentious actor” but one that “also opens a space to question deep-rooted beliefs that have structured centuries of Western thought and imagination.”¹³⁴ This puts climate disobedience arguably at odds with the traditional register of civil disobedience. That in itself may not be a problem, except insofar as a post-human disobedience inevitably invites questions about the authority of some humans so speak for nature and other species, for the purpose of justifying the violation of human laws.

3. Prospects for a Truly Inclusive Climate Disobedience

But can climate disobedience be conceptualized as radically inclusive? How much of a problem the relative social abstraction of climate disobedience is today may depend on who one understands to be its flag bearer. Although groups such as XR have monopolized headlines as a result of highly visible and mediatized stunts, Indigenous groups for example have also long showcased forms of disobedience that operate at the intersection of their traditional claims for self-determination and a sort of localized custodianship of the global environment. More than 100 activists were arrested in Indigenous Peoples’ Week Climate Action in front of the White House and Interior Department.¹³⁵ Anti-racist activists have pointed out the obvious affinity of the Black Lives Matter slogan (“I can’t breathe”) with the broader environmental struggle (“they/we can’t breathe”), and have

132. James T. Gathii, *Without Centering Race, Identity, and Indigeneity, Climate Responses Miss the Mark*, WILSON CENTER (Sep. 30, 2020), <https://perma.cc/3Q74-AGKL>.

133. See CLIMATE CHANGE ETHICS AND THE NON-HUMAN WORLD (Brian G. Henning & Zack Walsh eds., 2020).

134. Louise Knops, *On the Love and Rage of Extinction Rebellion*, GREEN EUROPEAN JOURNAL (Mar. 18, 2020), <https://perma.cc/2PDM-DB75>.

135. *Indigenous people lead White House protest with more than 130 arrests to demand President Biden declare a climate emergency and stop approving fossil fuel projects*, INDIAN COUNTRY TODAY (Oct. 12, 2021), <https://perma.cc/G9WG-D5FG>; Aman Azhar, *Indigenous Climate Activists Arrested After ‘Occupying’ US Department of Interior*, INSIDE CLIMATE NEWS (Oct. 15, 2021), <https://perma.cc/A5CE-MSSJ>; Phil McKenna, *Indigenous Climate Activists Arrested After “Occupying” US Department of Interior*, INSIDE CLIMATE NEWS (Oct. 15, 2021), <https://perma.cc/BSZ3-69X5>.

increasingly sought to highlight the contributions of minorities to the fight against climate change.¹³⁶ Even groups such as XR that have come under a barrage of criticism for their ‘whiteness’¹³⁷ have arguably done a better job of connecting with anti-racist struggles¹³⁸ now increasingly seen as tied to the effort to reckon with climate change.¹³⁹

Rather than being post-human, elitist or even misanthropic (as, arguably, some strands of deep ecology), climate disobedience could, in fact, be reconceptualized as the intersectional site where a range of social struggles (including those inherited from earlier anti-colonial, anti-racist, and anti-war civil disobedience movements) are reactivated, re-energized and prolonged. Instead of merely a product of a wayward humanity’s disconnection from its environment, global environmental degradation could be understood as the ultimate form of systemic discrimination, brought about and maintained by centuries of distributed environmental consequences.

More than being merely “for” survival (who could possibly be against “survival”?), climate disobedience could more specifically be imagined as against the inequities that bring about conditions on earth where survival is no longer possible. The specific injustice of climate change (as opposed to merely its humanity, life and ecosystem threatening dimension), then, could be more fundamentally portrayed as its tendency to prosper on fundamental social injustices which it continues to massively prolong. Note, however, that, on some level, if climate change is understood as a symptom of *all* the ills that afflict human society (which it may well be), then the movement to fight climate change becomes virtually indistinguishable from the totality of politics: an endless quest to ameliorate the world to which the focus on climate change adds little clarity in itself.

B. DEMOCRATIZING CLIMATE DISOBEDIENCE

In short, climate disobedience is vulnerable to the critique that it began its course by claiming the legacy of earlier episodes of civil disobedience reduced to a particular technique of protest whilst effacing their rootedness in actual societal struggles. Of late, however, climate disobedience has been forced to re-examine its claims to distinctiveness and reframe itself as participating in and continuing some of these earlier struggles or expose itself to charges of elitism or worse. In particular, the suspicion is that climate disobedience, like civil disobedience generally, bypasses democratic arrangements too readily (at least when those are

136. *Climate Frame: Amplifying BAME Voices in the UK Environmental Movement*, DOC SOCIETY: CLIMATE REFRAME, <https://perma.cc/Z7KX-7MD3> (last visited Jan 25, 2023).

137. Emily Atkin, *The Climate Movement’s Silence*, HEATED (June 1, 2020), <https://perma.cc/F6L5-PJUF>.

138. Ian Haney López, Nuala Gathercole Lam, and Roger Hallam, *Anti-racism and Extinction Rebellion*, ECOLOGIST (June 22, 2020), <https://perma.cc/6JQM-RZTK>.

139. Natasha Hakimi Zapata, *Extinction Rebellion’s Long Overdue Reckoning With Race*, THE NATION (Oct. 5, 2020), <https://perma.cc/XT6E-M4LG>.

available) in its emphasis on law breaking. In turn, this puts pressure on climate disobeyers to explain how their particular brand of politics is commensurate with existing democratic arrangements. Indeed, many lawyers may be too focused—for their own evident professional reasons—on disobedience as something that violates the law, as opposed to disobedience as a practice that, just as problematically, bypasses democratic politics. In this sub-section, we argue that whilst climate disobedience has its roots in a crisis of democratic governance, it must still confront itself with the sheer intractability of climate policy and has no choice but to find ways to reground itself into democratic practices.

1. Climate Disobedience and the Crisis of Democratic Governance

In the best of scenarios, conventional understandings of civil disobedience emphasize that relatively onerous constraints apply to whoever invokes a license to violate the law. For example, in what Rawls has influentially described as “reasonably just” societies, the requirement is that one minimally defer to democratic procedures.¹⁴⁰ It is only on the basis of strong grounds that normal institutions and rules can be bypassed (by contrast, civil disobedience is a priori not a problem in unjust systems where it would be legitimate and even violent overthrow may be contemplated). In just or nearly just societies, disobedience must always be a last resort because it can disrupt democratic and institutional mechanisms by which a particular society or the world at large determine their fate, including in seeking to adapt to climate change. Although many have noted liberalism’s responsibility when it comes to environmental degradation, many also refuse to give up on liberalism, arguing that it is sufficiently flexible as an ideology to incorporate fundamental change.¹⁴¹

Climate disobeyers may argue that, just because a society is democratic or is not specifically persecuting a minority and is therefore “just” in that limited political sense, is irrelevant. This is particularly the case where such society is otherwise adopting laws and policies that may well bring about its own demise. But to the extent that climate disobeyers want to take existing laws even half seriously, their disobedience will still need to be based on a credible diagnosis of a fundamental crisis of human governance, especially in otherwise just and democratic states.

There is certainly deep and pervasive skepticism in activist communities about what countries are doing domestically and internationally to avert climate catastrophe. This is in part based on an understanding that the issue is so global as to clearly exceed the capacity of any one state, democratic or not. It is reinforced by

140. See John Rawls, *The Justification of Civil Disobedience*, in ARGUING ABOUT LAW 233 (Aileen Kavanagh & John Oberdiek eds., 2013).

141. Marius de Geus, *Sustainability, Liberal Democracy, Liberalism*, in SUSTAINING LIBERAL DEMOCRACY: ECOLOGICAL CHALLENGES AND OPPORTUNITIES 19, 35 (John Barry & Marcel Wissenburg eds., 2001).

a sense that, in turn, although global efforts need national relays, these relays are often deeply dysfunctional, even (and perhaps even more) when they are democratic. The Anthropocene puts untold pressure on some of the very foundations of democratic societies.¹⁴² Finally, climate change famously exposes the limits of global governance in the context of a tragedy of the commons that tends to simply reproduce the status quo.¹⁴³

In that respect, it is worth noting that movements like XR did not manifest themselves out of nowhere but after many years of civil society investment in—and disappointment with—the institutional machinery set up to supposedly mitigate the effects and even slow down or reverse climate change. The move to “extra-institutional” strategies by social movements is one that is well documented and that has gone on for some time¹⁴⁴ although it is one that often operates seamlessly, with some success, with more institutional strategies.¹⁴⁵ Nonetheless, the tone is often one of deep disillusion with processes such as the Intergovernmental Panel on Climate Change and the potential of incrementalism. This then drives a move for global and decentralized acts of disobedience in a context where “[g]overnments, corporations, and other dominant institutions are not evolved to provide for either the long-term interests or the common interests of the world’s people.”¹⁴⁶ The result, as spelled out quite dramatically in a letter signed in the UK by numerous environmental luminaries, is that:

When a government willfully abrogates its responsibility to protect its citizens from harm and to secure the future for generations to come, it has failed in its most essential duty of stewardship. The “social contract” has been broken, and it is therefore not only our right, but our moral duty to bypass the government’s inaction and flagrant dereliction of duty, and to rebel to defend life itself.¹⁴⁷

Such a discourse, especially in a context where climate change is increasingly associated with social and racial injustices, is fully consonant with a critique of the disenfranchisement of minorities.

2. The Intractability of Climate Policy

Circumventing democratic arrangements simply because they are not perfect may nonetheless be a hard sell in a context where democracies are still seen by

142. Marcello Di Paola & Dale Jamieson, *Climate Change and the Challenges to Democracy*, 72 U. MIA. L. REV. 369, 401–403 (2017).

143. Jeremy Brecher, *Protecting the Future: A Strategic Proposal to Stop Climate Change*, 24 NEW LABOR FORUM 19, 21–22 (2015).

144. David J. Hess, *Cooler Coalitions For a Warmer Planet: A Review of Political Strategies For Accelerating Energy Transitions*, 57 ENERGY RESEARCH & SOCIAL SCIENCE 101246 1, 7–8 (2019).

145. Ion Bogdan Vasi, *Social Movements and Energy*, in THE OXFORD HANDBOOK OF ENERGY AND SOCIETY 405 (Debra J. Davidson & Dr Matthias Gross eds., 2018).

146. Brecher, *supra* note 143 at 20.

147. *Facts About Our Ecological Crisis are Incontrovertible. We Must Take Action*, THE GUARDIAN (Oct. 26, 2018), <https://perma.cc/2DKT-HJ9G>.

many as providing a platform to resolve political differences and to avoid either tyranny or chaos. Even if a case that democratic arrangements are dysfunctional can be made, there will be concerns that whilst the aspiration for planetary survival is widely shared, the point is that how to ensure it is fiendishly complicated leaving activists vulnerable to questions about the exact nature of their politics. Climate disobedience’s constant re-enactment of the urgency of change can be accused of mistaking the problem as primarily one of lack of will, where it is arguably as much a problem of intractability of choice. The lengthy processes of dismantling segregation in the American South or the apartheid regime were arduous and traumatic, but in some respects, comparatively less difficult. At least civil disobeyers knew exactly what they were dealing with, namely the existence of quite explicit laws creating systems of segregation (although, as we return to in the conclusion, they may have underestimated the extent to which the problem was entrenched even beyond legal reform). By contrast, dealing with climate change involves developing a vast array of policies across multiple constituencies with often radically competing interests, in ways that augur badly of the ability of an activist minority to substitute for democratic arrangements.¹⁴⁸

There are, for example, legitimate differences of view about the degree of urgency of climate change even among non-skeptics (How much should it be prioritized against a variety of other important goals?), its compatibility with other priorities (Does fighting climate change require overturning capitalism or reforming it?), or indeed the measures that should be implemented to reduce it. Even if there was massive agreement that the most urgent and radical measures had to be adopted here and now, there would still be considerable disagreement about what these should be: Massive subsidies to alternative energies? A universal carbon tax scheme? The banning of all use of fossil fuels? A return to pre-industrial society? Drastic limitations on reproductive rights and personal autonomy (e.g.: forced sterilization)? Dismantling of all structures of patriarchy, ableism, classism, or racial domination? The scale and key sites of the struggle against climate change are also significantly contested and oppose, even within Green theorizing, those who see the problem as one that needs to be addressed primarily on a global level¹⁴⁹ and those who believe that the state will continue to have a preeminent role.¹⁵⁰ There is much evidence that the radical ecological movement is in fact healthily divided on these issues and in particular between those still relatively invested in the ability of science-based reform to avoid the worst and a more

148. This is especially so when the demands made by activists are on the radical end of the spectrum of climate change combating measures. Roger Harrabin, *Climate Change Protests Leads To “22 Arrests” Over Blockade*, BBC NEWS, (Nov. 12, 2018), <https://perma.cc/3L8M-8D8R>.

149. See ANDREW DOBSON, *CITIZENSHIP AND THE ENVIRONMENT* (Oxford Univ. Press Inc. ed., 2004).

150. See JOHN BARRY & ROBYN ECKERSLEY, *THE STATE AND THE GLOBAL ECOLOGICAL CRISIS* (2005).

doom-oriented sensitivity that capitalizes on latent anxiety about the impossibility of adaptation.¹⁵¹

The danger is that civil disobedience which emphasizes the urgency of climate action will play out as a political tantrum without the patience of engaging in the painstaking details of policy development and political agonism inherent to democratic processes. It may also neglect the fundamental “fallibility” of political agents¹⁵² and the possibility that civil disobeyers for climate change are wrong about either their science or, more likely, their political calculi. Worse, the risk is that the civil disobedience stance will expose an authoritarian streak,¹⁵³ one more interested in grandstanding than engaging in the difficult work of democratic coalition building over time. In that situation, climate disobeyers might even be tempted by some form of emergency rule by a self-appointed technocratic avant-garde using violence to implement their vision perhaps in order to avoid an impending “tragedy of the commons.”¹⁵⁴ Against the recurring broader temptation of “eco-authoritarianism,”¹⁵⁵ and prospects of a planetary “climate Leviathan” that would ultimately commandeer the global order,¹⁵⁶ the need to present and argue the case for climate disobedience through appeals to public reason and to reconcile democracy and climate disobedience becomes all the more obvious.

3. Reinventing a Democratic Climate Disobedience?

While an anti-democratic disposition in civil disobedience has always existed, it may have been less of a problem as a temporary expedient where the goal was to merely extend the benefits of democracy (to the colonized or the segregated, for example). By contrast, climate disobedience may exhibit more viscerally anti-democratic tendencies. It is sometimes painfully clear to observers in the context of climate change that democratic regimes are impossibly committed to the short term of the election cycle and incapable of bold long-term action.¹⁵⁷ The difficulty long encountered by the Biden administration to adopt ambitious climate legislation, for example, because of what was at one point the swing votes of one Democratic senator, suggests significant democratic obstacles to what ecologists

151. Thomas Nicholas, Galen Hall & Colleen Schmidt, *The Faulty Science, Doomism, and Flawed Conclusions of Deep Adaptation*, OPENDEMOCRACY (July 14, 2020), <https://perma.cc/47AQ-XTQZ>.

152. Smith, *supra* note 104.

153. Rebecca Willis, *The Big Idea: Is Democracy Up To the Task of Climate Change?*, THE GUARDIAN (Nov. 1, 2021), <https://perma.cc/2XYC-C54H>.

154. John Feffer, *The Case for a Coercive Green New Deal*, THE NATION (July 1, 2019), <https://perma.cc/39Z4-N35P>.

155. Cosima Klante & Dominik Rehbaum, *Playing with Fire? Green Dreams of Eco-Authoritarianism*, THE GOVERNANCE POST (Oct. 6, 2020), <https://perma.cc/DF23-TJ2B>.

156. JOEL WAINWRIGHT & GEOFF MANN, CLIMATE LEVIATHAN: A POLITICAL THEORY OF OUR PLANETARY FUTURE (2020).

157. On the problem of democratic “short-termism”, see FREDERIC HANUSCH, DEMOCRACY AND CLIMATE CHANGE (2017).

see as absolutely indispensable change.¹⁵⁸ To be sure, it is not as if authoritarian populists or dictators have exactly had reliably climate friendly policies either.¹⁵⁹ But democracies do sometimes seem to be not so much dysfunctional as operating the way they were supposed to, in effect allowing societies to careen carelessly towards their eventual demise.¹⁶⁰ This is part of a well-worn critique of the limitations of (merely) representative and deliberate democracy,¹⁶¹ but actualized and intensified by attention to how democracies may shut out entire populations from global decision-making and foreground business and corporate priorities as opposed to the general interest when it comes to the environment.

Such concerns are then dramatized by the international system’s own well-known democratic deficits. The predicament that “Democracy works by compromise, but climate change is precisely the type of problem that seems not to allow for it,” may be even more obvious internationally where endemic collective action problems create considerable barriers to effective global governance.¹⁶² These result in weak international agreements with little supervisory capacity and a perpetual deferral of the kind of decisive global action that would be needed.

One route, in light of such challenges, may in fact be for climate disobedience to reclaim the popular democratic mantle. The traditional argument that civil disobedience needs to rely on the residual authority of some higher law (see *infra*) may concede too much to critiques of civil disobedience as anti-democratic. In fact, the anti-democratic character of climate disobedience can and has been exaggerated¹⁶³ and should be read in light of efforts at articulating a democratic case for civil disobedience generally.¹⁶⁴ As Robin Celikates has argued, for example, civil disobedience is a democratic practice of contestation not reducible to individual conscience which offers an unusual and very political mediation between the opposing poles of “symbolic politics and real confrontation.”¹⁶⁵ The

158. Peter F. Cannavò, *Getting Around Anti-Democratic Obstacles to Addressing Climate Change*, THE HILL, (Dec. 7, 2020), <https://perma.cc/F9XX-FTNS>.

159. DANIEL J. FIORINO, CAN DEMOCRACY HANDLE CLIMATE CHANGE? (1st ed. 2018).

160. Willis, *supra* note 138.

161. Patrick Scherhauser, Philipp Klittich & Aron Buzogány, *Between Illegal Protests and Legitimate Resistance. Civil Disobedience Against Energy Infrastructures*, 72 UTILS. POL’Y Oct 2021 at 2.

162. Cameron Abadi, *What if Democracy and Climate Mitigation Are Incompatible?*, FOREIGN POL’Y, (Jan 7, 2022), <https://perma.cc/7LP2-8PDW>.

163. Richard Walton, the former head of London’s Metropolitan Police Counter Terrorism Command, claimed that XR sought “the breakdown of democracy and the state.” Walton further observed, “It’s very clear that they’re a hard core anarchist group that want to basically break up our democracy[.]” He concluded that XR represents “anarchism with a smile.” XR responded that it was “mass movement of ordinary people . . . coming together to stand up because we’re facing an existential threat.” It was about creating a “real democracy.” Isabella Borshoff, *Former UK Intelligence Chief: Extinction Rebellion Wants to ‘Break Up the State,’* POLITICO (July 17, 2019), <https://perma.cc/2UBS-V9KD>.

164. WILLIAM SMITH, CIVIL DISOBEDIENCE AND DELIBERATIVE DEMOCRACY (2013); KIMBERLEY BROWNLEE, CONSCIENCE AND CONVICTION: THE CASE FOR CIVIL DISOBEDIENCE (Timothy Endicott et al. eds. 2012).

165. Robin Celikates, *Democratizing Civil Disobedience*, 42 PHIL. & SOC. CRITICISM 982 (2016).

ethos of civil disobedience is on some level the exact opposite of authoritarianism given its largely symbolic and sacrificial nature,¹⁶⁶ especially in the face of governmental and corporate practices that are themselves immersed in authoritarian violence. Civil disobeyers, some would argue, address flaws inherent in democratic procedures that are particularly glaring when it comes to climate change.¹⁶⁷ It has been argued that climate change and global environmental challenges more generally are prone to change the nature of citizenship, simultaneously relativizing obligations owed to the law and to national democratic procedures.¹⁶⁸ In that respect, environmental disobedience might appear as a way of reinventing a kind of spontaneous politics of resistance, although the extent to which it does so will depend on its inclusiveness and deliberative character.

Nonetheless, it will remain difficult to disentangle means from ends, given that even the most consensual end (e.g.: planetary survival) cannot justify any means (e.g.: genocide), least of all of course means that might turn out to be counterproductive to that end (e.g.: disobedience might cause such chaos and backlash as to actually delay the implementation of measures to fight climate change). Paradoxically, climate disobeyers, in undermining a sense of the importance of respecting the law, might neuter the state on which “green statism”¹⁶⁹ will eventually need to rely to enforce its prescriptions. The efficacy of climate disobedience may in the end be its greatest justification given that it is often explained as the last and only solution to imminent if not already ongoing disaster. That efficacy, however, is certainly subject to debate. Despite some studies being cautiously encouraging,¹⁷⁰ disobeyers should not be held up to such a grandiose standard, as opposed to, more reasonably, assessing whether they have shifted the terms of the public debate concerning the climate emergency.¹⁷¹

Still, the fewer the actual gains the more precarious the position and credibility of climate disobeyers may be. Like many forms of resistance, the problem is compounded by the fact that success may only be ultimately evaluated in retrospect, in a context where the temptation is to discount the gravity of present-time violations of the law on the basis of future harm averted. Climate disobeyers, it is true, cannot be held to higher standards than those that apply to all political decision-making in a context of imperfect information. Indeed, ultimately, “Those engaging in acts of civil disobedience do not know with any certainty if these tactics can or will work, but they do know that ordinary, legal forms of protest

166. Hans Dembowski, *Why Civil Disobedience is Inherently Non-Authoritarian*, D&C - DEV. AND COOP. (Oct. 10, 2019), <https://perma.cc/9NXY-8WVJ>.

167. BROWNLEE, *supra* note 164.

168. Andrew Dobson, *Citizenship*, in *POLITICAL THEORY AND THE ECOLOGICAL CHALLENGE* 216, 222–24 (Andrew Dobson & Robyn Eckersley eds., 2006).

169. BARRY AND ECKERSLEY, *supra* note 135.

170. Dylan Bugden, *Does Climate Protest Work? Partisanship, Protest, and Sentiment Pools*, 6 *SOCIUS* (2020).

171. For a detailed examination see DiSalvo, *supra* note 32 at 36.

cannot now be effective enough quickly enough.”¹⁷² Climate disobedience cannot be evaluated merely on an efficacy matrix and must also be understood, as it has always been, as a repository of certain values. Climate disobeyers remain accountable, for that reason, for the totality and consequences of their choices, including how their actions might displace and make more difficult other interventions, unevenly distribute responsibility and provoke backlash, or short-circuit the hard work of democratic compromise—and not just the bare legitimacy of their cause.

C. JUSTIFYING CLIMATE DISOBEDIENCE

One paradox is that politicizing and democratizing civil disobedience, whilst substantively necessary, may then make it exponentially harder for climate disobedience to justify itself. It will appear at the same time more political (and therefore ideologically idiosyncratic) and less indispensable (given the availability of democratic pathways). Where does this leave the climate disobedience movement in terms of its ability to justify violating the law, in a context where the law itself and many liberal political intuitions evidently err strongly on the side of law compliance? As we articulate below, the movement will need to find ways to objectively legitimize disobedience to the broader society whose support is sorely needed to effect change. Finding very limited solace from the law itself to justify disobedience, the temptation may be to invoke some “higher law”, including international law. As we suggest below, international legal norms have themselves contributed to the very conditions that have brought about the climate emergency.

1. Objectivizing Disobedience

One of the conditions for civil disobedience to be considered legitimate (if never fully legal) is that it should not be grounded in one’s idiosyncratic beliefs (e.g.: a religious belief that abortion is wrong) but in an appeal to society’s best values.¹⁷³ Allowing for the fact that what that “society” is in the case of climate disobedience may be complex, the survival of the planet and of the humans that populate it is indeed a priori a goal to which all can subscribe. It is also, however, one whose politics constantly need to be unparsed in order to understand the kind of costs that might be exacted and from whom (for example, ad absurdum, the planet might be saved by requiring the Global South to make huge concessions to accommodate the endless fossil-fuel appetite of the North; alternatively, it might also be saved by the North rolling back much of industrial society).

172. Desmonda Lawrence, *Climate Emergency and the Case for Civil Disobedience*, THE PRINDLE POST (Oct. 8, 2019), <https://perma.cc/VE2C-RZCR>.

173. RAWLS, *supra* note 121, at 321.

Yet to the extent that climate disobeyers propound not only a vision of bare survival but a thicker project of, say, social justice and political ecology (as was suggested in the previous section), they will find it increasingly difficult to claim that they are merely and unproblematically standing in for some bland general interest, differing only in their appreciation of the urgency and the means with which it must be defended. This will make their claims to violate the law “in the name of the law” appear relatively weak. The vulnerability of climate disobeyers may of course be further magnified if certain groups can be suspected of speaking from a privileged position.¹⁷⁴

But even an appropriately chastised, worldly and inclusive climate disobedience movement may still find law violation particularly difficult to justify, precisely as a result of the fact that it cannot easily appeal to society’s “better self” without indirectly condoning some of the very practices that have entrenched both discrimination and environmental degradation in the first place.

2. The Temptation of “Higher Law”

Historically, civil disobeyers have been prone to vindicate their characterization as an often-marginal vanguard by invoking a “higher law.” This has increasingly included international law as providing a sort of yardstick by which to judge the legality of domestic actions.¹⁷⁵ Heathrow Pause for example brings up the legitimacy of actual governmental and inter-governmental pronouncements as part of their authority to act. This includes not only emphasizing the dire warnings of the United Nations’ Intergovernmental Panel on Climate Change (IPCC)¹⁷⁶ but also the British Parliament’s decision to specifically endorse the notion of a climate emergency.¹⁷⁷ The COP’s results and goals are frequently invoked as a basis for civil disobedience in ways that clearly seek to simultaneously scientifically objectivize and juridify what might otherwise seem like idiosyncratic preferences.¹⁷⁸ In other words, civil disobeyers take their own government “at its word” when it claims to be highly committed to reducing global warming and its impact.

There is certainly a theoretical case to be made that international values may support departures from domestic law in defense of action against climate

174. Aimee Lewis, *Too white, Too Middle Class and Lacking in Empathy. Extinction Rebellion has a Race Problem, Critics Say CNN*, (Nov. 24, 2019), <https://perma.cc/G988-PDMQ>.

175. Frédéric Mégret, *Civil Disobedience and International Law: Sketch for a Theoretical Argument*, CAN. Y.B. INT’L L. 143,159 (2010).

176. Fiona Harvey, *IPCC Steps Up Warning On Climate Tipping Points in Leaked Draft Report*, THE GUARDIAN (June 23, 2021), <https://perma.cc/Q4TT-A5YP>.

177. Peter Walker, *MPs Endorse Corbyn’s Call to Declare Climate Emergency*, THE GUARDIAN, (May 1, 2019), <https://perma.cc/4XB2-RP68>.

178. Tosin Thompson, *Scientist Rebellion: Researchers Join Protesters at COP26*, 599 NATURE 357, 357 (2021).

change.¹⁷⁹ The state’s authority is increasingly conceived as partly dependent on its ability to protect populations from grave environmental harms. When states seem “unable or unwilling” to tackle climate change—to use an expression that has become increasingly popular in the international legal vernacular—then voices are bound to arise that seek to bypass them altogether.¹⁸⁰ Even when proceeding from conventional Rawlsian postulates, Simo Kyllönen has argued that “a stable climate as a global public good is indispensable to acceptable standards of living everywhere”¹⁸¹ so that conditions of “atmospheric fairness” might actually justify significant violations of domestic law. The fate of future generations who will be impacted by climate change has added a new, heretofore largely unforeseen dimension to the register of civil disobedience that may well tip the balance in favor of more radical action.¹⁸²

Yet, these theoretical arguments do not necessarily translate well into legal categories; invoking a higher law such as international law is not necessarily a panacea. It is true that international law has primacy over domestic law and is thus often seen as a tool that can be leveraged against domestic law. A wave of recent climate litigation shows that international law can certainly be invoked domestically, sometimes to considerable effect.¹⁸³ International human rights law does increasingly anticipate capacious obligations for the state to protect persons within its jurisdiction from third-party, including environmental harm.¹⁸⁴ Having said that, international law is a law of states that clearly does not ordinarily

179. There have been other instances where such international values support departures from domestic law or its application outside of the climate change context. For example, in solidarity with the anti-apartheid movement, the United Nations advocated, among other efforts, that states grant refugee status for white South African males who refused conscription into the South African Defence Force. More generally, the United Nations High Commissioner for Refugees has endorsed the position that granting refugee status to military deserters or draft evaders to avoid prosecution further to state law is warranted where such resistance is based on opposition to types of military action that are “condemned by the international community as contrary to basic rules of human conduct.” In such contexts, “punishment for desertion or draft evasion could, in the light of all other requirements of the [refugee] definition, in itself be regarded as persecution.” Such basic rules of human conduct are found within international law. See Amar Khoday, *Protecting Those Who Go Beyond the Law: Contemplating Refugee Status for Individuals Who Challenge Oppression Through Resistance*, 25 GEO. IMMIGR. L.J. 571, 614 (2011).

180. Saskia Stucki, *In Defence of Green Civil Disobedience*, VERFASSUNGSBLOG (Oct. 30, 2020), <https://perma.cc/B5X8-JQJK>.

181. Simo Kyllönen, *Civil Disobedience, Climate Protests and a Rawlsian Argument for “Atmospheric” Fairness*, 23 ENV’T VALUES 593, 595 (2014).

182. Alan Carter, *In Defence of Radical Disobedience*, 15 J. OF APPLIED PHIL. 29, 44 (1998).

183. Przemyslaw Siwior, *The Potential of Application of the ECHR in Climate Change Related Cases*, 23 INT’L CMTY. L. REV. 197, 204-05 (2021); Jasper Krommendijk, *Beyond Urgenda: The Role of the ECHR and Judgments of the ECtHR in Dutch Environmental and Climate Litigation*, REV. EUR. COMPAR. & INT’L ENV’T L. 60, 61(2021); Jacques Hartmann & Marc Willers QC, *Protecting Rights in Climate Change Litigation before European Courts*, 13 J. Hum. Rts. Env’t 90, 110 (2022); Paul Clark, Gerry Liston & Ioannis Kalpouzos, *Climate change and the European Court of Human Rights: The Portuguese Youth Case*, EJIL TALK! (Oct. 6, 2020) <https://perma.cc/7884-PT4K>.

184. John H. Knox (Special Rapporteur) *Report of the Special Rapporteur*, Report, U.N. Doc. A/HRC/31/52 (Feb. 1, 2016).

anticipate that citizens should be able to take the law in their own hands domestically. Although some have done so, they typically operate in a grey zone on the periphery of international law, at best exploiting ambiguities and operating on the basis of ‘folk’ understandings of international law that are in sharp contrast to dominant mainstream understandings.¹⁸⁵

3. The Law’s Complicity in Climate Harm

Perhaps more damning for disobeyers, the legal system may itself be part of the problem, rather than some subset of unjust laws. For classical disobeyers, as we saw, bad laws were severable from the legal system’s “better self”; it therefore made sense to adopt an attitude that married violation of specific laws with overarching, if grudging, respect for the law. Would-be climate change disobeyers, however, are often keenly convinced that the law’s “better self”—its full, uninterrupted liberal realization—is at the root of the current climate crisis. As a result, they may well insist that “a willingness to submit to the law” is not required and that “to the contrary, that familiar paragraph in the civil disobedience protocol is becoming more obsolete by the day, as a ruling order that destroys the foundations of life deserves no loyalty from its subjects.”¹⁸⁶

Climate change, in that view, is not an illiberal departure from what would otherwise be a perfectly realized and ecologically responsible modern attitude to the world. Rather, it is the very result of the untrammelled development associated with liberalism as an ideology of human freedom.¹⁸⁷ At the very least, climate change fundamentally disrupts central categories of liberal political and legal thought that are then shown as problematic because they are incapable of change.¹⁸⁸ Indeed, we have no reason to think that the law is itself innocent of the harms inflicted on the ecosphere. This fundamentally challenges notions of fidelity to the law for would-be disobeyers as part of the relatively quaint package of 1960s protests confronted with much less all-pervading threats. This is part of what has been described as an anti-legal turn in civil disobedience,¹⁸⁹ one that is much less committed to justifying law violations from within a horizon of deference to the law.

185. Mégret, *supra* note 87. Folk understandings of international law refer to perceptions held among certain activist groups, who view international law in somewhat rosy colors, which are at times detached from a range of assumptions that professionally trained international lawyers would consider necessary to articulate it. Such understandings might have activists seek legitimacy for certain actions by turning to an international declaration or a resolution passed by an international body as a legal basis for their conduct despite that the declaration or resolution has no binding value in international law.

186. ANDREAS MALM, *HOW TO BLOW UP A PIPELINE* 123 (2021).

187. Felix Creutzig, *Limits to Liberalism: Considerations for the Anthropocene*, 177 *ECOLOGICAL ECON.* 106763 6-7 (2020).

188. GIDEON CALDER & CATRIONA MCKINNON, *CLIMATE CHANGE AND LIBERAL PRIORITIES* (Gideon Calder & Catriona McKinnon eds. 2013).

189. William E. Scheuerman, *Recent Theories of Civil Disobedience: An Anti-Legal Turn?*, 23 *J. POL. PHIL.* 427 (2015).

The turn to international law, in that context, is not necessarily a panacea. International law may end up—and not only on account of its notorious vagueness or lack of bite when it comes to the environment (“long on hope and short on specifics”)¹⁹⁰—being problematic on its own terms on closer inspection when it comes to climate change. What if it turns out that the domestic practices one opposes are, in fact, embedded in and even mandated by international standards? What if, furthermore, the international standards are themselves, at least in a roundabout way, what makes profoundly destructive ecological acts possible? We have little reason to naively think that international law somehow stands for a better, more progressive or environmentally responsible approach to the planet than domestic laws. Whether it be international trade law and its emphasis on the commodification of the living,¹⁹¹ international investment law and its rigid protection of investor interests as opposed to states’ ability to protect against environmental harms,¹⁹² or indeed much of international environmental law itself and its problematic mode of neo-colonial governance¹⁹³ as well as its emphasis on sustainable anthropocentric development,¹⁹⁴ the connections between international law and ecological devastation have become increasingly clear.¹⁹⁵ In fact, sovereignty—the conceptual core of international law—can be seen as justifying the continuous exploitation of the world’s resources with little attention to how this might impact others.¹⁹⁶

Even reaching the lofty aspirations of international human rights law yields ambiguous outcomes,¹⁹⁷ especially given the potentially highly complex exercise of connecting climate change to specific human rights violations.¹⁹⁸ A recent decision of the UN Human Rights Committee highlights this need for caution.¹⁹⁹ In *Teitiota v New Zealand*, the New Zealand Immigration and Asylum Tribunal

190. LYNNE M. JURGIELEWICZ, *GLOBAL ENVIRONMENTAL CHANGE AND INTERNATIONAL LAW: PROSPECTS FOR PROGRESS IN THE LEGAL ORDER* 69 (1996).

191. Richard G. Tarasofsky, *Heating Up International Trade Law: Challenges and Opportunities Posed by Efforts to Combat Climate Change*, 2 *CARBON & CLIMATE L. REV.* 7 (2008); RAFAEL LEAL-ARCAS, *CLIMATE CHANGE AND INTERNATIONAL TRADE* (2013).

192. Ole Kristian Fauchald, *International Investment Law and Environmental Protection*, 17 *YB INT’L ENV’L L.* 3 17-18 (2006).

193. Godden, *supra* note 94.

194. Louis J. Kotzé & Duncan French, *The Anthropocentric Ontology of International Environmental Law and the Sustainable Development Goals: Towards an Ecocentric Rule of Law in the Anthropocene*, 7 *GLOBAL J. OF COMPAR. L.* 5 5-6 (2018).

195. See generally USHA NATARAJAN, FRÉDÉRIC MÉGRET & VINCENT CHAPAUX, *THE ROUTLEDGE HANDBOOK OF INTERNATIONAL LAW AND ANTHROPOCENTRISM* (2022).

196. Maxine Burkett, *Root and Branch: Climate Catastrophe, Racial Crises, and the History and Future of Climate Justice*, 134 *HARV. L. REV.* 126, 334-36 (2021).

197. Benoit Mayer, *Climate Change Mitigation as an Obligation Under Human Rights Treaties?*, 115 *AM. J. OF INT’L L.* 409 (2021).

198. Fanny Thornton, *The Absurdity of Relying on Human Rights Law to Go After Emitters*, in *DEBATING CLIMATE LAW* 159 (Benoit Mayer & Alexander Zahar eds., 2021).

199. Human Rights Committee, *Views Adopted by the Committee under Article 5(4) of the Optional Protocol, Concerning Communication No. 2728/2016*.

(IAT) had declined an asylum applicant's petition for refugee status. Teitiota was from Kiribati and argued that the effects of climate change and sea level rise forced him to migrate to New Zealand. In considering his application, the Committee acknowledged the perils of climate change on the right to life found within the *International Covenant on Civil and Political Rights*, stating that "without robust national and international efforts, the effects of climate change in receiving States may expose individuals to a violation of their rights under articles 6 or 7 of the Covenant, thereby triggering the non-refoulement obligations of sending States."²⁰⁰ The Committee added, "given that the risk of an entire country becoming submerged under water is such an extreme risk, the conditions of life in such a country may become incompatible with the right to life with dignity before the risk is realized."²⁰¹

Notwithstanding these acknowledgments, the Committee affirmed the New Zealand courts' decisions to dismiss the appeal, noting that the time frame of 10 to 15 years for when Kiribati may become uninhabitable, allows Kiribati to intervene with the assistance of the international community "to take affirmative measures to protect and, where necessary, relocate its population."²⁰² Yet the descent into inhabitality appears to have already commenced. As the dissenting member of the Committee highlighted, Teitiota and his family, following their removal back to Kiribati, have been unable to grow crops, been prone to their land being submerged, and suffered significant health issues.²⁰³ Accordingly, this "wait and see" approach advanced by the Committee, an international body charged with the oversight of an international human rights instrument, signals to would-be applicants seeking international protection to wait until their sinking ship is closer to being fully submerged before seeking the assistance of a life raft.

At the least, then, the automatic association between internationalism and the responsible custodianship of the planet is one that we have reason to relativize. This is in part on account of a long history of international law being associated with market forces and environmental depredation.²⁰⁴ It is also, in part, a result of international law's own tepid, reformist, and institutional approach to the challenge of climate change. As well as its fixation with issues of state sovereignty and human rights which cannot be assumed to represent the most ecologically promising or responsible way forward.²⁰⁵

200. *Id.* at ¶ 9.11.

201. *Id.*

202. *Id.* at ¶ 9.12.

203. *Id.* at ¶ 2 annex I.

204. Ileana Porras, *Appropriating Nature: Commerce, Property, and the Commodification of Nature in the Law of Nations*, 27 LEIDEN J. OF INT'L L. 641 (2014).

205. On the limitations of conventional international environmental law, particularly the precautionary principle see Alexander Zahar, *Mediated versus Cumulative Environmental Damage and the International Law Association's Legal Principles on Climate Change*, 4 CLIM. L. 217, 218, 223 (2014). Also, Paul Anderson, Review Essay, *International Environmental Law: Status, Problems, and Reform Prospects*, 3 CLIM. L. 71 (2012).

In short, climate disobedience may not be able to seek a convenient refuge in international law and may well, instead, need to be based on a critique of the international legal order itself. This would then call for largely extra-legal or perhaps supra-legal forms of justification of disobedience that cannot easily rely on either the rough and tumble of democratic self-determination or the clarity of legal first principles because they are based on a critique of both (at least as they stand). Climate disobedience’s claim to authority may end up resting on thin ground, or at least reinvigorating international law through appeals to global justice which are themselves made more vulnerable in the Anthropocene.²⁰⁶

D. DEFENDING CLIMATE DISOBEDIENCE

The invocation of authority becomes particularly urgent when what is at stake is not just establishing one’s general legitimacy but defending against criminal accusations before a court of law. Climate disobedience is likely to run afoul of various laws – including prohibitions against trespass and property damage. Consequently, many climate disobeyers have been subjected to criminal prosecution. This forces them to further translate their claims within the language of the courts, in the process raising questions about whether it is appropriate for them to do so, whether the law can countenance their claims, and whether it is politically astute to conventionally defend oneself. It is unclear whether climate disobeyers will always seek to seriously defend themselves against charges, given what we have seen is their widely shared belief that it is the legal system, in general, that is problematic. In addition, some climate disobeyers may have broad misgivings about courts as tending to err on the side of the rule of law and governments and to consider issues of climate change as non-justiciable.²⁰⁷ To the extent that disobeyers do defend themselves, it may be to use the courts as a public forum to highlight their motives and to illustrate the damaging impacts of climate change. Indeed, if successful, an acquittal by a jury or judge presiding in a bench trial may offer an important public vindication of their disobedience. In practice, whilst disobeyers have sometimes invoked defenses such as lawful excuse and necessity, they have encountered strong resistance from the courts. However, recent developments suggest that some jurisdictions may occasionally be willing to take seriously the kinds of grounds adduced to justify law-breaking.

1. Lawful Excuse and Necessity

The lawful excuse defense has been deployed in British climate disobedience cases. Lawful excuse defenses are located in particular statutes creating criminal or regulatory offences. They include statutes such as the *Criminal Damage Act*

206. See Gianfranco Pellegrino & Marcello Di Paola, *The Climatic Challenge to Global Justice*, 5 GLOB. POL’Y 93 (2014).

207. Arno Kopecky, *Fairy Creek, The Climate Crisis and the Lawyer Battling to Redefine Public Interest*, THE NARWHAL, (Oct. 8, 2021), <https://perma.cc/G3EP-LDUK>.

1971²⁰⁸ and the *Highways Act 1980*,²⁰⁹ under which climate disobeyers have been charged. The *Criminal Damage Act* permits a lawful excuse, where in damaging property or threatening to do so, the accused acted to protect their own property or the property of another. The conditions are that “at the time of the act or acts alleged to constitute the offence [they] believed— (i) that the property, right or interest was in immediate need of protection; and (ii) that the means of protection adopted or proposed to be adopted were or would be reasonable having regard to all the circumstances.”²¹⁰ In other words, the lawful excuse defense is what is known in some legal systems as a justification, leading to the conclusion that behavior is actually in the social interest.

The language of considering “all the circumstances” in the *Criminal Damage Act* permits a broad consideration of factors in weighing someone’s culpability. However, inquiries into the broader circumstances relating to an individual’s conduct may also occur even where the statute does not incorporate such language or only implicitly. For instance, section 137 of the *Highways Act 1980* provides that, “If a person, without lawful authority or excuse, in any way wilfully obstructs the free passage along a highway he is guilty of an offence and liable to a fine not exceeding £50.”²¹¹ Here, the lawful excuse defense is a fact-based inquiry that assesses the proportionality of a protestor’s intentional conduct against the impact of the obstruction on users of a roadway.²¹² The Court has recognized numerous factors for assessing proportionality including a consideration of “whether the views giving rise to the protest relate to “very important issues” and whether they are “views which many would see as being of considerable breadth, depth and relevance”.”²¹³ Inevitably, in cases involving climate disobeyers, such factors invite a consideration of the climate emergency and its impacts. In addition, the lawful excuse defense, where it is included in a statute, appears to be offence-specific rather than a free-standing general defense.

In addition to the lawful excuse defense, the necessity defense is typically considered an excuse rather than a justification in that it allows for the fact that in exceptional circumstances, persons may have no choice but to do something, despite that something being fundamentally undesirable.²¹⁴ In most legal systems, this is a free-standing defense that is not tethered to a particular statute or offence.

208. Criminal Damage Act 1971, c. 48, § 5. (U.K.)

209. Highways Act 1980 (UK), c. 66, § 137.

210. Criminal Damage Act 1971, *supra* note 209 at §5.

211. Highways Act 1980 (UK), *supra* note 210 at §137.

212. *Dir. of Pub. Prosecutions v Ziegler & Others*, [2021] UKSC 23 (UK) .

213. *Id.* at 72. Other factors included “the extent to which the continuation of the protest would breach domestic law, the importance of the precise location to the protesters, the duration of the protest, the degree to which the protesters occupy the land, and the extent of the actual interference the protest causes to the rights of others, including the property rights of the owners of the land, and the rights of any members of the public”. *Id.*

214. Donald L. Horowitz, *Justification and Excuse in the Program of the Criminal Law*, 49 LAW & CONTEMP. PROBS. 109, 122-24(1986).

Most visibly, the necessity defense has been invoked in civil disobedience trials, especially in the United States, to varying results,²¹⁵ as a way of highlighting the dire urgency of action against climate change. Typically, this defense recognizes that a defendant’s otherwise wrongful conduct may be excused if committed to avoid a harm of greater or equal degree, thus proportionate, and the harm sought to be avoided was imminent. In addition, there is a requirement that the defendant have no legal alternative other than violating the law. In some jurisdictions, the defense is framed as a “choice of evils” defense.

The necessity defense has had both rhetorical and occasionally judicial prominence in the framing of acts of climate disobeyers. For example, according to Heathrow Pause, in language clearly influenced by the necessity doctrine:

It is a citizen’s right and duty to bypass a law if not doing so will result in greater harm to life and property. If your neighbour’s house is on fire, you can knock down her door to rescue her. We act out of necessity to protect our children, our fellows, and all the other lives that travel with us on this Earth.²¹⁶

There is a certain plausibility to the defense of necessity as a result of the dire time frame within which to address the consequences of climate change. This is quite apparent in at least the political framing of climate disobedience. According to a member of Earth Rights International:

[A]fter 25 years of using the legal system, obeying all of the rules, and indeed, often winning, I have come to realize that the power of law alone is not enough. . . . [W]e don’t have the luxury of the time it takes for the legal system to resolve a crisis of this magnitude, nor is it designed to do so. Due process is lengthy and time-consuming—we’ve sadly pushed the planet to its scientific limits and are in a situation where the earth can’t wait.²¹⁷

That argument is reinforced by the scientific community’s support of the idea that there is indeed an emergency²¹⁸ (understood scientifically at least rather than in specifically legal terms), and by the fact that a number of public authorities have proclaimed one,²¹⁹ most notably the IPCC. It is the extreme narrowing of the window of opportunity for change that requires dramatic action that may be defended as a form of necessity. Dangers associated with climate change are already there and tend to grow exponentially and in often irreversible ways. This heightens the plausibility of arguments that there is a temporal crunch involved

215. Quigley, *supra* note 56.

216. Michael Holder, *Heathrow Pause: Climate Activists plot Airport Disruption With Toy Drones*, BUSINESS GREEN, (Aug. 29, 2019), <https://perma.cc/6L8H-PRC5>.

217. Katie Redford, *Civil Disobedience in a Time of Climate Crisis*, EARTHRIGHTS INTERNATIONAL (Nov. 8, 2019), <https://perma.cc/86VK-5YYA>.

218. William J. Ripple et al., *World Scientists’ Warning of a Climate Emergency*, 70 *BIOSCIENCE* 8 (2020).

219. *Climate Emergency Declarations in 2,059 Jurisdictions and Local Governments Cover 1 Billion Citizens*, CLIMATE EMERGENCY DECLARATION (2022), <https://perma.cc/ME8Q-Z32G>.

although not quite in the same way as in the case of the risk of all-out nuclear warfare based on a single, defining incident.

Note that there is a difference here between fighting against climate change and fighting against the risk of nuclear Armageddon, the context wherein the necessity defense was conspicuously invoked previously.²²⁰ Whereas the danger of a nuclear all-out war is more highly relevant at some times than others, one might argue that it remains a danger that has been more or less constant since the advent of nuclear weapons and which could materialize at any moment with instantly devastating consequences. By contrast, the risks associated with climate change are considerable and already omnipresent but slower-moving in some places, thus making it potentially more difficult to argue that there is an emergency here and now. How can something which may well happen in 25 years constitute a danger sufficiently imminent as to justify violating the law? As we discuss below, defenses to climate disobedience have been met with judicial circumspection.

2. Judicial Wariness Regarding Climate Disobedience Defenses

Despite the immediacy of the climate emergency, climate disobeyers have had mixed results in invoking the necessity defense. While some climate disobeyers in France and Switzerland have successfully invoked the defense at trial and been acquitted, appellate courts have sternly reversed such outcomes. For example, the Swiss Federal Tribunal (Switzerland's highest appellate court) rejected a trial court's acquittal of twelve activists where the accused trespassed into a Credit Suisse branch and staged a tennis match in protest of the bank's fossil fuel investments and sponsorship of Swiss tennis player Roger Federer.²²¹ The Swiss Federal Tribunal rejected the necessity defense on the basis that the danger was not imminent.²²² In another case from Lyon, France, protestors removed an image of French President Emmanuel Macron hanging in a government building to protest the French government's inadequate responses to climate change. While the trial court in Lyon acquitted the accused, the court of appeal overturned the acquittal and fined the defendants.²²³ Other similar cases where disobeyers met with initial success at trial are pending appeals.

There are, in fact, considerable challenges in defending against criminal charges for climate disobedience. Most defendants, particularly in the United States, who have sought to invoke the necessity defense in the context of climate

220. Amar Khoday, "We Have To Give Up Business As Usual": Anti-Nuclear Protests and the Construction of a Defence of 'Legitimate Civil Resistance'", *NUCLEAR NON-PROLIFERATION IN INTERNATIONAL LAW*, vol IV (Jonathan Black-Branch & Dieter Fleck eds., TMC Asser Press 2019).

221. Michael Shields, *Swiss Court Rejects Appeal By Climate Activists Who Occupied Bank*, REUTERS, (June 11, 2021), <https://perma.cc/3J89-67YK>.

222. 6B_1295/2020, at section 2.5 (Swiss Federal Tribunal).

223. François Hamelin, *Lyon: les "décrocheurs de portrait" de Macron condamnés à 250 euros d'amendes en appel*, ACTU, (Jan.14, 2020) <https://perma.cc/UFL3-4K4A>.

disobedience have been unsuccessful, often failing to persuade courts to even allow the defense to be considered by juries, thus resulting in guilty verdicts.²²⁴ In addition, prosecutors have filed motions requesting that courts limit the evidence that climate disobeyers want to offer in order to advance the defense. These prosecutorial maneuvers have been successful in many cases.²²⁵ Even if a judge hears evidence pertaining to the radical environmental issues at stake, they are unlikely to agree to simply rewrite the law. As one relatively sympathetic Canadian judge put it in a case involving the Rainforest Flying Squad, a group using blockades in British Columbia to stop (legal) old-growth logging, although “the protesters are moral and ethical citizens endeavouring to ward off impending destruction of a rare and irreplaceable ecosystem in the context of an existential environmental and climatological crisis,” it is ultimately “legislatures and governments to legislate and govern, not the courts.”²²⁶

Courts’ ambivalence about giving climate disobeyers the opportunity to present evidence in support of a necessity defense may very well stem from a limited interpretation of the necessity defense and its applicability to climate disobedience. It can also, however, be seen as based on doubts about what actually constitutes an emergency. There is a sense that climate change is simply too slow-moving a train and involves too many moving parts to be easily amenable to the narrow defensive posture implicit in necessity prompted by absolute urgency. Perhaps more so, it may signal a deep reluctance by judges to legitimize what they view as the actions of political vigilantes usurping the functions of the executive and legislative branches of government – even if those branches are not doing enough to address the climate crisis. At any rate, doubts remain about the broader symbolic ramifications of allowing necessity defenses in a context where “Even if accepted by more courts, the climate emergency defense does not in itself resolve how to undertake urgent international and national action on global warming.”²²⁷

3. Hints of a New-Found Judicial Openness to Disobedience?

Despite the judicial wariness discussed in the previous section, there have been noteworthy exceptions where climate disobeyers have achieved some success before the courts²²⁸ with respect to both the necessity and the lawful excuse defenses. As mentioned, one of the biggest challenges is persuading a court to

224. Lance N. Long & Ted Hamilton, *The Climate Necessity Defense: Proof and Judicial Error in Climate Protest Cases*, 38 STANFORD ENV'T L.J. 57–115, 61 (2018). Within this context, see *Trans Mountain Pipeline ULC v. Mivasair*, 2020 BCCA 255 (Can.).

225. Long & Hamilton, *supra* note 225 at 61.

226. Kopecky, *supra* note 208.

227. Benjamin Richardson, *Climate Protests and the Necessity Defence: International Developments*, ILA-CANADA (Oct. 16, 2021), <https://perma.cc/7J3U-L7FQ>.

228. Carolyn Kormann, *Sometimes Fighting Climate Change Means Breaking the Law*, THE NEW YORKER (Apr. 3, 2018), <https://perma.cc/HJU8-XDZ9>.

allow the necessity defense to be considered. In this regard, several developments in the last few years suggest an occasional moderate openness to the invocation of climate change arguments. In 2016, for example, a Massachusetts district court judge acquitted 13 defendants who protested against a pipeline on the basis of the necessity defense.²²⁹

At the appellate court level in the United States, two significant developments in the past few years were judgments from Washington state. The first judgment was decided by the first division of the Washington State Court of Appeals in *Washington v. Ward*.²³⁰ Kenneth Ward is an activist who engages in numerous acts of protests and civil disobedience with respect to climate change. In one instance, he broke into a Kinder Morgan pipeline facility and turned off a valve which prevented the flow of tar sands oil from reaching two refineries. He attempted to defeat a burglary charge by invoking the necessity defense and sought to present sufficient evidence to support this. The prosecution submitted a motion to strike all testimony and evidence in support of mounting a necessity defense and the trial court granted this request. Ward was convicted and appealed to the Washington Court of Appeals.

In its decision, the Court of Appeals concluded that denying Ward the ability to present such evidence was a violation of his constitutional rights (under the federal and state constitutions) to advance his only available defense. When defendants seek to have a defense considered by a trier of fact, they must demonstrate to the court that there is an evidentiary basis for such defense. The Court of Appeals concluded that Ward's offer of proof respecting the evidence he would have presented to the jury would have been sufficient to satisfy this evidentiary burden with respect to each element of the necessity defense. The court's decision was appealed to the Washington Supreme Court which denied the prosecution's petition for further appellate review.²³¹

Although declining to hear the case in *Ward*, the Washington Supreme Court considered a different appeal related to the necessity defense in another climate disobedience case arising from the third division of the Washington State Court of Appeals.²³² The focus of the appeal centered on whether there were no reasonable legal alternatives to breaking the law, even one that is not unconstitutional. Reverend George Taylor is a long-time climate activist who has sought various legal means to address climate change generally, and specifically safety concerns

229. *Massachusetts Judge Dismisses Charges Against Climate Activists and Recognizes Necessity of Protest*, CLIMATE DEFENSE PROJECT (Mar. 18, 2018), <https://perma.cc/4MQM-ENJW>.

230. *Washington v. Ward*, 438 P.3d 588, 596-97 (Wash. Ct. App. 2019).

231. *Washington v. Ward*, 447 P.3d 161 (Wash. 2019). While Ward's re-trial was originally set to take place in February 2020, it was postponed to early May and then subsequently to June. Ultimately, Ward elected to plead guilty to a lesser charge. Kera Wanielista, *Man pleads guilty to reduced charge in 2016 pipeline break-in*, SKAGIT VALLEY HERALD (Dec. 10, 2020), <https://perma.cc/UCR9-4KTE>.

232. *Washington ex rel Haskell v. Spokane County District Court*, 465 P.3d 343, 345, 350 (Wash. Ct. App. 2020).

relating to coal and oil trains passing through Spokane, Washington. After repeated lawful efforts to address these matters, without effect, Taylor organized a peaceful protest which involved trespass onto the railway tracks owned by a railway company. As a result of his protest, he was subsequently arrested and charged with criminal trespass and obstruction of a train. The third division Court of Appeals stated, “A person who engages in civil disobedience is not the typical defendant who historically has been entitled to assert a necessity defense. A person who engages in civil disobedience is not faced with an emergency and required to quickly choose between a bad illegal choice and a worse legal choice.” The third division concluded, “To the extent *Ward* authorizes people to intentionally violate constitutional laws when protests and petitions are unsuccessful, we disagree with it.”²³³

In reversing the third division and referencing the first division’s decision in *Ward*, the Washington Supreme Court observed that it cannot be that there “are always reasonable legal alternatives to disobeying constitutional laws.”²³⁴ Analogizing the facts and conduct of the accused in *Ward* with the defendant before it, the Court observed that Taylor spent many years attempting to use lawful methods to achieve his goals without effect. “Reasonable,” the Supreme Court found, means that a legal alternative must be adequate or effective. It posited that, “[i]f the legal alternative is only illusory, or unavailable at the moment it is needed, it is not a reasonable alternative.”²³⁵ The Court further added that the issue of whether there was a reasonable legal alternative was a factual issue which Taylor was entitled to have assessed by the jury.²³⁶ Lastly, it concluded that “[s] imply because a law [such as criminal trespass] is constitutional, does not mean that there are always reasonable legal alternatives.”²³⁷ Both the Washington Supreme Court’s decision in relation to Taylor and the first division Court of Appeals’ judgment in *Ward* establish important precedents for climate disobeyers to contest criminal charges within the state and particularly the ability to have juries consider their cases.

In a different climate disobedience and “valve-turner” case from Minnesota, four defendants sought the trial court’s permission to use the necessity defense. The judge granted the defendants’ pre-trial motion, and the prosecution appealed. The Minnesota Court of Appeals²³⁸ and subsequently the state Supreme Court affirmed the trial court’s decision to allow the necessity defense.²³⁹ In an

233. *Id.* at 351.

234. *Washington ex rel Haskell v. Spokane County District Court*, 491 P.3d 119, 125 (Wash. 2021).

235. *Id.* at 126.

236. *Id.*

237. *Id.* at 127.

238. *State v. Klapstein*, No. 15–CR–16–413, 2018 WL 1902473, 1-2 (Minn. Ct. App 2018).

239. John Shearer, *Was it necessary?: Parties Weigh In On the Criminal Case Involving Pipeline “Valve Turners” in Clearwater County*, THE BEMIDJI PIONEER (Oct. 21, 2018), <https://perma.cc/65AP-DWD6>.

interesting twist, when the trial finally took place, and following the conclusion of the prosecution's case, the defense filed a motion seeking the court's dismissal of all charges. In granting the defense's request, the court eliminated the need to hear the defense's evidence regarding the necessity defense.

The ability to present evidence about climate change and the consideration of the necessity defense may then lead to all or some jurors voting to acquit. The lack of unanimity among jurors may lead to a hung jury and the declaration of a mistrial. This occurred in another noteworthy case decided in February 2020 and involved XR activists (including Ward) who blocked a train transporting oil by building a garden on train tracks. A trial court in Oregon allowed the jury to consider the necessity defense and the evidence submitted in support.²⁴⁰ While five jurors voted to acquit, a sixth voted to convict. Consequently, the judge declared a mistrial. The ability of the jurors to consider the necessity defense more than likely fostered that result. Lauren Regan, who defended the accused, asserted: "The jury's inability to convict the activists reflects the prevailing community consciousness which is unlikely to punish climate defenders for acts of nonviolent resistance."²⁴¹ While the accused were not acquitted and were eligible to be retried, the district attorney dropped the charges and opted not to pursue a prosecution.²⁴²

Climate activists in England have also managed to find some success defending their actions in court under the lawful excuse defense. A particularly noteworthy invocation of this defense with respect to climate disobeyers was in connection with the so-called Kingsnorth Six case.²⁴³ In 2007, six Greenpeace activists scaled the chimney of a coal-fired plant in Kingsnorth and then painted the word "Gordon" (for then Prime Minister Gordon Brown) down the side of the chimney.²⁴⁴ Their actions temporarily shut down the plant and caused £30,000 worth of damage.²⁴⁵ They were charged under the *Criminal Damage Act 1971*. In addition to attempting to shut down the plant, their actions were intended to protest the government's plan to build more coal-fired plants which would have had devastating impacts for the environment.²⁴⁶ In asserting the lawful excuse defense, the accused argued that the damage to the plant's property was committed

240. Jayati Ramakrishnan, *Case Against 5 Who Built Garden on Train Tracks to Block Oil Train Ends in Mistrial*, THE OREGONIAN (Feb. 29, 2020) <https://perma.cc/6B3Y-F2T6>.

241. Jake Johnson, *Landmark Win in "Fight for Habitable Future" as Jury Refuses to Convict Climate Activists Who Presented Necessity Defense*, COMMON DREAMS (Feb. 28, 2020), <https://perma.cc/6GGC-MXHV>.

242. Jayati Ramakrishnan, *Multnomah County DA Drops Case Against Climate Activists Who Blocked Oil Train*, THE OREGONIAN (Mar. 12, 2020), <https://perma.cc/B75L-SR7DI>.

243. Vidal, *supra* note 86.

244. *Id.*

245. *Greenpeace Protestors Cleared Over Coal Protest*, REUTERS, (Sep. 10, 2008), <https://perma.cc/SE7K-PXWL>.

246. Vidal, *supra* note 86.

to protect the property of others in other countries and in England.²⁴⁷ They introduced expert testimony attesting to the fact that 20,000 tons of carbon dioxide were emitted daily by the Kingsnorth plant and could be responsible for extinction of up to 400 species.²⁴⁸ The jury acquitted them of all the charges.²⁴⁹

In addition to causing property damage, climate disobeyers have also employed tactics that have caused obstructions in breach of the *Highways Act 1980*. In these cases they have sought the protections of the lawful excuse defense. In April 2019, six XR activists employed protest tactics that halted the operation of the Docklands Light Railway (DLR).²⁵⁰ The DLR transports commuters around London’s financial district. The protesters sought to bring attention to the financial industry’s contribution to the climate emergency. Five of the activists had climbed on top of a train holding banners that read “Business As Usual=Death” and “Don’t Jail the Canaries” (a reference to other protestors facing prosecution at the time).²⁵¹ A sixth activist glued herself to a train window.²⁵² The activists were charged with obstructing the railways and carriages on the DLR. In December 2021, a jury unanimously acquitted the protestors. Following the acquittal, the activists’ defense counsel observed, “The jury all agreed the climate crisis requires radical action. This reinforces the importance of both civil disobedience and juries in a healthy democracy.”²⁵³ In addition, the protestors posited that the jury’s decision was an application of the principles articulated by the Supreme Court in *Ziegler*.²⁵⁴ As the UK Supreme Court held in 2021 in the context of the *Highways Act 1980*, a protestor’s rights to freedom of expression and peaceful assembly under the *European Convention on Human Rights* must be considered in the proportionality analysis. Recognizing that protests may be disruptive, the Court asserted, “there should be a certain degree of tolerance to disruption to ordinary life, including disruption of traffic, caused by the exercise of the right to freedom of expression or freedom of peaceful assembly.”²⁵⁵

Finally, from the perspective of climate disobeyers, there are certain advantages to having one’s case decided by a jury. Jurors do not have to justify their decisions and may be more amenable to considering evidence concerning climate change and the accused’s culpability in light of such evidence. Notably, there may be instances where a court allows evidence of climate change which is heard

247. Michael Wolkind, *How We Won Acquittal of Kingsnorth Six*, THE GUARDIAN, (May 31, 2009), <https://perma.cc/B2F6-7ZCJ>.

248. *Id.*; Vidal, *supra* note 86.

249. Vidal, *supra* note 86.

250. Kevin Rawlinson, *Jury Clears Extinction Rebellion Activists Who Targeted Commuters*, THE GUARDIAN, (Dec. 10, 2021), <https://perma.cc/FNC9-8ASH>.

251. *Id.*

252. *Id.*

253. *Id.*

254. *Id.*

255. *Director of Public Prosecutions v Ziegler & Others*, [2021] UKSC 23 [4, 68] (appeal taken from High Ct.) (Admin. Ct.).

by a jury, but ultimately instructs that, on the facts, an accused does not have any legal defense available. Where the jury acquits notwithstanding such instructions, this suggests a scenario of jury nullification in which “a jury knowingly chooses not to apply the law and acquits a defendant regardless of the strength of the evidence against [them].”²⁵⁶ For instance, in an April 2021 decision, a jury acquitted six XR activists for causing property damage to Shell Oil’s London headquarters by spray painting the building and smashing windows.²⁵⁷ Representing themselves, the activists argued that they targeted Shell’s property due to the company’s contribution to climate change in tandem with the deaths and injuries that have ensued.²⁵⁸ Furthermore, the accused posited to the jury that their actions were necessary and proportionate responses to the harms arising from climate change.²⁵⁹ Despite the judge’s instructions that the accused “don’t have any defense in law for the charges they face,” the jury nevertheless acquitted the activists.²⁶⁰

In short, the occasional startling success of climate disobeyers in invoking the necessity or lawful excuse defenses suggests that the legal edifice may be beginning to show some cracks under the pressure of repeated, scientifically grounded, and dedicated activism. Furthermore, as the previous example illustrates, even where juries are instructed that no defense is permitted, once they have heard evidence of the protestors’ motives in tandem with the evidence of the impacts of climate change, jurors may nevertheless be willing to acquit despite evidence of guilt respecting the offences charged.

CONCLUSION: BEYOND DISOBEDIENCE?

On the 31st of December 2022, Extinction Rebellion, the group that has most been associated in the last few years with mass disruptive action announced in a startling communiqué: “We quit.”²⁶¹ Specifically, XR emphasized that despite the “seismic shift” that their actions had brought to the climate movement, “very little has changed. Emissions continue to rise and our planet is dying at an accelerated rate.” At fault were a “financial system prioritising profits over life, a media failing to inform the public and hold power to account, and a reckless government entrenched in corruption and suppressing the right to protest injustice.” Instead of breaking the law, XR proposed, somewhat cryptically, that a true “radical act” would be to “build(. . .) collective power, strengthen(. . .) in number and thrive through bridge-building.” The declaration hinted that “seizing the moment” could not be the responsibility of “just one group” and was the

256. *R v Latimer*, [2001] S.C.R. 3 at para. 57 (Can.).

257. Extinction Rebellion: Jury Acquits Protesters Despite Judge’s Direction, BBC NEWS (Apr. 23, 2021), <https://perma.cc/4LYW-2JSV>.

258. *Id.*

259. *Id.*

260. *Id.*

261. *WE QUIT*, EXTINCTION REBELLION UK (Dec. 31, 2022), <https://perma.cc/9YGT-DUTS>.

“responsibility of all of us.”²⁶² Only a couple of weeks after that declaration, one of the longest instances of continued climate disobedience came to a dramatic end in the village of Lützerath, Germany as more than 1,000 police officers cleared hundreds of climate activists who had occupied the village in an effort to stop it being destroyed to make way for coal production.²⁶³ Has the moment of climate disobedience perhaps already passed, even as it is simultaneously being radicalized by new groups such as Insulate Britain or Just Stop Oil?

This article suggests a nuanced answer to that question. Civil disobedience is a potential tool in the struggle against climate change but we have highlighted some of its limitations and warned against thinking that some past successes can be easily replicated. In particular, we have cautioned against the temptation of mechanically invoking the pedigree of civil disobedience in the context of climate change without thinking through the sort of disobedience that is made possible (and impossible) by present conditions of slow-burning planetary catastrophe. It has been our contention that civil disobedience is often deeply embedded in a liberal mystique that leads disobeyers to appeal to liberal society’s better self, urging it to eliminate its blind spots, make good on its promise of equality and uphold what are imagined as its true values. Civil disobedience is typically contrarian and oppositional but also, paradoxically, a non-negligible vote of confidence in the system within which it operates. But what happens to disobedience when the system at large is seen as part of the problem, as many concerned with climate change seem to believe? Can capitalist over-consumption, drastic economic inequality, and the anthropocentric commodification of the living be dissociated from liberalism itself?

One dimension does appear clearly: the scale of the challenge of climate change also requires a change of the scale of civil disobedience. In that respect, climate disobedience may herald new forms of politics, express radical transnational solidarities and, even as it violates some laws, participate in the formation of new modalities of global law-making. But changing the scale of civil disobedience is more easily said than done and is not merely a geographic issue. Civil disobedience in conditions of planetary catastrophe cannot be a way to reinstate an imagined normalcy through a fundamental fidelity to national law or even to realize an unfulfilled liberal promise the way the desegregation or the anti-colonial projects arguably were. It is not even clear, however, what fidelity to supranational forms of law might mean in this context.

Rather, we suggest that climate disobedience is at a junction: tempted to invoke the register of civil disobedience but perhaps ultimately better understood as “uncivil” and even quasi-revolutionary in its ambition to not only change certain laws but to challenge entire legal systems and the particular relation they

262. *Id.*

263. Christopher F. Schuetze, *German Village at Center of a Fight Over Coal and Climate Is Cleared Out*, N.Y. TIMES (Jan. 15, 2023), <https://perma.cc/ZS9P-SFT6>.

express to the planet. Indeed, there has long been a suspicion that certain deep conceptions of environmentalism as conditioning the “good society” take us away from a mere liberal emphasis on maximizing human freedom and on what is merely “right.”²⁶⁴ In that respect, climate disobedience may not even be “disobedience” in the sense of symbolically transgressive behavior fundamentally recognizing the presumptive legitimacy of a certain form of rule. Climate disobedience, then, problematizes adherence to the law as a very condition of its success and, perhaps, its internal consistency.

This raises, as we have suggested, daunting challenges for any movement of civil disobedience against climate change, a movement that is called upon to invent new modes of contestation that remain largely untested. As we have argued, climate disobedience requires disobeyers to square the circle of simultaneously politicizing and democratizing on the one hand, and seeking to justify and defend itself on the other. In effect, it may be that many civil disobedience movements already occupy that uncertain space, a space as much of occasional adherence to certain liberal standards as of calculated departure from and attempt at reinventing them. Groups like XR are prone to non-violent action and do not particularly seek to evade their arrest or punishment; but they do not exhibit much of the reverence for the idea of law that previous generations of disobeyers (such as Gandhi and King) seemed to profess. That said, many are also not averse to challenging prosecutions using legal defenses to seek an acquittal or at the very least to use trials as public forums to present evidence of climate change and their motives.

The question is nonetheless how this sort of political register can ultimately be justified in a context where climate change and mitigation affect different constituencies very differently and a suspicion of elitism occasionally hangs above disobeyers. The authority of small minorities to dictate societies’ course is bound to be challenged. The temptation of uncivil disobedience – as in Andreas Malm’s “How to Blow Up a Pipeline”²⁶⁵ – will inevitably invite criticism that it “will make it easier for opponents to stigmatize, redline and criminalize climate activists. It will most likely alienate many potential and actual supporters.”²⁶⁶ Perhaps the very abrasiveness and attention-seeking of disobedience can turn broader social constituencies against it and, more importantly, distract them from the agenda of engaging the powers that be with demands for fundamental change. XR’s recent turn away from disobedience may express the cost of engaging in *avant garde* disruption of “older, middle-class, mostly white activists” without

264. Augustin Fragnière, *Ecological Limits and the Meaning of Freedom: A Defense of Liberty as Non-Domination*, 3 DE ETHICA No. 3, 2016 33, 35,37.

265. MALM, *supra* note 187.

266. *Resistance against climate injustice beyond civil disobedience?*, JUSTICE EVERYWHERE (Oct. 5, 2020), <https://perma.cc/K5JE-BBXV>.

the support of a mass movement.²⁶⁷ It is true, however, that even direct action is not without its own democratic pedigree and can be imagined, when used as part of an “ethics of responsibility” moderating its violent and coercive potential, as exerting its own legitimacy.²⁶⁸ And, at any rate, the goal of highly visible and provocative action was never on its own going to solve the problem of global warming, as much as electrify public opinion about a set of issues.²⁶⁹

Finally, it is worth noting that the legacies of earlier instances of civil disobedience, have often been reassessed bluntly, even in their own times, in ways that suggest some of their inherent limitations. It may be interesting to rethink the current effort at climate disobedience in light of the controversy between Dr. Martin Luther King Jr. and Malcolm X. Dr. King’s followers described Malcolm X as a “black Ku Klux Klan of racial extremists” whilst Malcolm X followers described Dr. King as a “twentieth century religious Uncle Tom pacifist.”²⁷⁰ Beyond the invective, the civil rights movement and in particular its resort to non-violent civil disobedience is largely associated with some successes (desegregation and voting rights) but also some limitations (persistent structural racism). The debate has long been open about whether civil disobedience inherently expresses a commitment to certain liberal legal values or should be read as a mere tactic to fundamentally unsettle the system.²⁷¹ Somewhere between “ballots and bullets,” it occupies an ambiguous reformist space whose incrementalism may seem unsuited to the magnitude of the stakes in times of massive species extinction.

Yet Dr. King’s own legacy is much more complex than this opposition would suggest and can help us think through some of the challenges of global warming. Dr. King moved towards the end of his life to a reappraisal of civil disobedience, the compromises it was forced to make with the dominant order and the conditions under which more radical change might be affected. Faced with the persistence of entrenched racism and its ubiquity, King realized that the deeper problem of racism within the United States could not be addressed only by resorting to the tactics that proved effective in fighting Jim Crow legislation in the South. In particular, systemic racism deprived the civil rights movement of the sort of opportunity for straightforward legal confrontation that made the civil disobedience movement possible. In a posthumously published essay, he suggested that the “[B]lack revolution” was “forcing America to face all of its interrelated flaws—racism, poverty, militarism and materialism. It is exposing the evils that are

267. Archie Bland, *Tuesday briefing: Why Extinction Rebellion is giving up on disruption*, THE GUARDIAN (Jan. 3, 2023), <https://perma.cc/YD6Q-3HJ7>.

268. William Smith, *Disruptive Democracy: The Ethics of Direct Action*, 69 RAISONS POLITIQUES 13, 14 (2018).

269. See Rupert Read, *Will disruptive action help save the planet?*, THE OBSERVER (Oct. 30, 2022), <https://perma.cc/Y3TV-53M3>.

270. James H. Cone, *Martin and Malcolm on Nonviolence and Violence*, 49 PHYLON 173, 173 (2001).

271. Herbert J. Storing, *THE CASE AGAINST CIVIL DISOBEDIENCE*, in CIVIL DISOBEDIENCE IN FOCUS 85, 91 (Hugo Adam Bedau, ed., Routledge, 1st ed. 1991).

rooted deeply in the whole structure of our society. It reveals systemic rather than superficial flaws and suggests that radical reconstruction of society itself is the real issue to be faced.”²⁷² Whether the Black revolution achieved those aims in Dr. King’s lifetime is dubious but although that promise has been much delayed, it is arguably continuously coming to realization through repeated actualization, most notably recently the Black Lives Matters movement.

What this points to is that “civil” disobedience may only be a prelude to or will at least be incomplete unless it is accompanied by a thorough decolonization of the legal institutions one invokes in the process of contesting them. A close reading of Hannah Arendt also suggests that civil disobedience has always had a more or less unarticulated revolutionary dimension.²⁷³ In that respect, Dr. King’s vision provides a sort of blueprint for forms of climate disobedience that seek not only to draw on the law to ameliorate our chances of species survival or to urge the law to improve itself, but that are devoted to exposing the law’s deep complicity in planetary destruction.

272. Cited in Keeanga-Yamahtta Taylor, *The Pivot to Class, in FIFTY YEARS SINCE MLK*, 36, 36 (Brandon Terry et al. eds., Boston Review Forum 5 (43.1), 2018).

273. Caroline Ashcroft, *From Resistance To Revolution: The Limits Of Nonviolence in Arendt’s ‘Civil Disobedience,’* 44 HISTORY OF EUROPEAN IDEAS 461, 62 (2018).