## Updating civil disobedience

*Whistleblowing, anonymous hacktivism, and academic piracy*

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**Publication date**
2019

**Document Version**
Final published version

**License**
Other

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Ph.D. Dissertation, Amsterdam School for Cultural Analysis
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ACADEMISCH PROEFSCHRIFT

ter verkrijging van de graad van doctor
aan de Universiteit van Amsterdam
op gezag van de Rector Magnificus
prof. dr. ir. K.I.J. Maex
ten overstaan van een door het College voor Promoties ingestelde commissie,
in het openbaar te verdedigen in de Agnietenkapel
op dinsdag 17 september 2019, te 14:00 uur

door Carlos Bernardo Caycedo Casallas
geboren te Bogotá

Promotiecommissie

Promotor: dr. R. Celikates, Universiteit van Amsterdam
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Faculteit der Geesteswetenschappen

This work is part of the research program 'Transformations of Civil Disobedience: Democratization, Globalization, Digitalization' with project number 276.20.022, which is financed by the Dutch Research Council (NWO).

This is for everyone.

–Tim Berners-Lee (@timberners_lee) July 27, 2012

Exactly what this politics of protest will involve is not easy to say, because it tends to develop out of a particular situation to fit that situation. But here are examples drawn out of actual incidents.

–Howard Zinn, *Disobedience and Democracy: Nice Fallacies on Law and Order*, 1968

# Acknowledgements

First, I express my sincere gratitude to my supervisor Robin Celikates for his invaluable advice and constant support, and to my co-supervisor Beate Roessler for her intellectual generosity and insightful questions.

I am also thankful to my project partner and friend Natasha Basu, and the other members of the Philosophy and Public Affairs group at the Department of Philosophy at the University of Amsterdam.

I presented parts of this thesis at seminars and conferences in which I received helpful feedback. I would like to acknowledge in particular the contributions of Balázs Bodó, Stefania Milan, Datactive, Esther Peeren, Bert van Roermund, Eraldo Souza dos Santos, Tamara van den Berg, Theresa Züger, Juan Camilo Betancur, Sebastián Dueñas, Carlos Arturo López, and Luis Fernando Sierra. I benefited greatly from the participation of Hisham Almiraat, Eric Boot, Marcel Oomens, Niels ten Oever, and Titus Stahl in the expert meeting I hosted on whistleblowing in 2017.

I would like to thank the Amsterdam Center for Globalisation Studies (ACGS), the Alexander von Humboldt Institute for Internet and Society (HIIG), the Dutch Research School of Philosophy (OZSW), the international network #BigDataSur, and the Centro de Internet y Sociedad de la Universidad del Rosario (ISUR) for offering me stimulating environments for research. None of this would have been possible without the support of the Amsterdam School for Cultural Analysis (ASCA) and funding from the Netherlands Organisation for Scientific Research (NWO).

For those of us who migrate, friendship abroad is deeply significant; special thanks to Małgosia and the Briefjes, Uzma Abid Ansari, Peyman Amiri, Noortje de Leij, Daniël de Zeeuw, Vanessa Gómez, Alejandra Espinosa, Claudia Quelle, Eva Sancho, Gerrit Schaafsma, Edo Schets, Matthé Scholten, and Gijs van Donselaar. Thanks also to Peter Cousins, Eloe Kingma, and Loes ten Velden for their indispensable help during the process of writing and editing this thesis.

I cannot name here all the friends who encouraged me during these years, just as I cannot express in words – let alone in English – my gratitude to my brother Juan Diego Caycedo. Most special thanks to the person who lovingly sustained me every time I felt overwhelmed by this project, Isabella Flisi.

This thesis is dedicated to my mother; her example of gentle strength and resistance is a constant source of motivation.

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# Introduction

### *Digitalized De-democratization*

Under the current system of ubiquitous digital surveillance, it is ever more difficult to see the Internet as a means for democratization or as a forum for democratic debate. When I first started working on the digitalization of civil disobedience back in 2015, there was already growing concern about the potential harm done by digital surveillance to democracy, especially among activists and academics who were trying to understand the implications of Edward Snowden's disclosures. However, it was with the 2018 Cambridge Analytica scandal that it became clear how corporate-owned, big data analysis, in conjunction with opaque attempts by states to exert political influence, can be used to exploit voters' vulnerabilities. It is uncertain how ongoing developments in digital technologies will transform democratic processes and societies at large in the coming decades; moreover, it is dubious – to say the least – that existing conceptions of democracy would continue to be relevant if political campaigns keep moving from publicly advocating their agendas to surreptitiously influencing potential voters with highly-effective, individualized messages, for which they are not held accountable. This thesis investigates how some illegal yet political uses of digital technologies nevertheless have the potential to contribute to democratizing processes, and how these new practices urge us to reconsider what we call civil disobedience.

Today we know about the highly controlled context in which digital acts of dissent take place, due largely to two digital acts of whistleblowing. For many internet users, the experience of surfing the web drastically changed in 2013 when Edward Snowden, a US private contractor working for the National Security Agency (NSA), blew the whistle on secret programs for the bulk collection and analysis of internet users' data on an international scale. What had up until then seemed a relatively free domain to accessing information and knowledge and communicating with others, was revealed as a threatening system of ubiquitous surveillance. With the 2018 disclosures made by Chris Wylie, former Cambridge Analytica employee, it became clear how the massive collection and analysis of digital traces are used to undermine core procedures of democracy such as elections (cf. Shaw, 2018a; 2018b).

Snowden and Wylie made documents public demonstrating that, besides the multiple national security agencies that profile people using their digital traces, countless private parties collect, analyze and trade personal data. Additionally, they showed that these are not two unrelated systems, but one system of total collection, a system of indiscriminate mass

surveillance, that Shoshana Zuboff (2019) calls "surveillance capitalism." Snowden provided evidence that the United States, with the cooperation of almost all private corporations related to the Internet, systematically violates the right to privacy, mainly but not exclusively of citizens of other countries. Wylie showed that private businesses can exploit voters' profiles, specifically their psychological vulnerabilities in favor of a candidate, a political party, or a campaign, as in the Brexit referendum. Although it is impossible to know for sure the extent to which Cambridge Analytica determined the outcome of the US 2016 presidential election and the Brexit referendum, it is known that in both cases the winning side hired the company to utilize the intersection of big data, psychography, and targeted advertisement in their benefit. Even if it is still unclear how effective businesses have been in guiding democratic processes, their investments in developing more effective ways to target voters constitute a great threat to democracy (Stallman, 2013; Susser et al., 2018; Zuboff, 2019).

***Narrowing Down Digital Disobedience – The Structure of the Thesis***

The societal and political transformations generated by digital technologies have opened up a new field for struggle and new practices of dissent. From cyber-warfare between rival states and corporate hacking to hacktivism and online self-defense strategies against surveillance, cyberspace has progressively become a domain for power, violence, and resistance. There are innumerous ways in which digital technologies, in particular those connected to the Internet, can be used in acts of resistance: from legally coordinating demonstrations on social media to more intrusive acts such as defacing or shutting down state or corporate websites. The variety of past acts of digital resistance is just a small sample of the possibilities that creative dissenters can enact in this domain (Karatzogianni, 2015; Tascón & Quintana, 2012; Schock, 2015).

In that vast universe of potential digital acts of resistance there is a class of actions whose agents or supporters claim is compatible with the tradition of civil disobedience. These actions not only are labeled 'civil disobedience' but they respond to moral and political rationales. This thesis investigates three kinds of digital acts that belong to this class, and discusses the questions and challenges that considering them as new forms of civil disobedience would pose to the most influential theories of civil disobedience. Each of these three potential new forms of civil disobedience is examined separately in a chapter as follows.

Chapter 1 studies Edward Snowden's whistleblowing as a potential act of civil disobedience through digital technologies. Although this case study opens up several questions such as the implications of not accepting the legal consequences for breaking the law, as well as more specific questions regarding whether whistleblowing in general, and in the security

sector in particular, can be considered as civil disobedience, the focus of the chapter is on whether civil disobedience can be directed not only at states but also at corporations and public-private partnerships. The question of 'corporate civil disobedience' is crucial regarding digital forms of disobedience, especially those related to an increasingly privatized Internet (Smyrnaios, 2018).[1]

Chapter 2 discusses the conceptual and normative questions raised by the decentralized, supposedly leaderless, globally spread 'Anonymous' collective and the digital methods it uses in its digital disobedience. Although the issue of disobedience against corporations is present, the chapter concentrates on whether the use of anonymity as a means to avoid the legal consequences for one's unlawful acts is necessarily incompatible with civil disobedience. Going back to the Civil Rights Movement and to Gandhi's and Thoreau's texts, this chapter reviews the role of going to prison in these paradigmatic cases of civil disobedience. Through the study of the collective Anonymous, the chapter addresses a series of further pressing questions such as whether civil disobedience can be performed individually, if mixed motives are acceptable, if not only recognized citizens but also non-citizens can use civil disobedience, if episodic or purely reactive unlawful acts can count as civil disobedience or if a long-term, subjectively transformative campaign needs to frame civil disobedience.

Chapter 3 examines the disobedience involved in the online database projects Sci-Hub and Library Genesis (LibGen); these two interrelated platforms enable internet users to illegally download documents, mainly academic publications, protected by copyright. The chapter explores possible justifications for opening up access to the knowledge and information contained in these publications through illegal or radical means; it also considers the extent to which keeping these websites running after US courts have ruled against them, can in itself be seen as a digital act of civil disobedience and of deliberative participation. The central questions of the previous chapters are in the background of this third chapter because, on the one hand, Sci-Hub and LibGen involve disobedience against private academic publishers, and on the other, the anonymous people behind LibGen as well as the developer and administrator of Sci-Hub do not accept the legal sanctions and restrictions imposed on their websites by US courts of law.

[1] Although the question of corporate civil disobedience is addressed in this thesis only insofar as it is related to digital forms of disobedience, this question is decidedly relevant in a time when ecological and climate change-related social protest are the order of the day. Moreover, due to the role that private businesses have in all economic sectors and the urgency of a drastic change in the way we globally produce and consume, it is reasonable to expect an increase in legal and illegal civil demands on private organizations, in particular on corporations, in the coming years.

Chapter 4 brings together these three case studies by reconstructing the accusations that have been made against them. These accusations, primarily current legal accusations laid out in courts of law, are then interpreted as accusations of incivility that would, if convincing, make these cases incompatible with civil disobedience. Focusing on different ways of interpreting the civility of civil disobedience, this chapter offers an account of civility related to the idea of performative citizenship; it is claimed that such a notion complements the radical democratic minimal definition of civil disobedience. As the following argument will spell out in some detail, it is through a radical democratic approach that acts of digital disobedience such as those studied here can be conceptualized as new forms of civil disobedience.

***Why These and not Other Cases?***

The selection of the case studies this thesis discusses is based on methodological considerations. First, to study potential transformations in the practices of civil disobedience emerging from the ongoing process of increasing digitalization, it is necessary to limit these digital practices – and thus the universe of possible cases of digital civil disobedience. Since there is agreement in the literature that civil disobedience refers to illegal acts of dissent, all cases of legal digital resistance were excluded from consideration. To be sure, there are countless examples in which the use of digital technologies made acts of dissent possible, and moreover, examples in which without the use of the Internet collective acts of protest would not have been possible, for instance mobilizations coordinated on social media. These are valuable uses of digital technologies as instruments for social protest, but they are not illegal and thus do not fall under the rubric of civil disobedience; additionally, these actions have received a fair amount of academic attention (Castells, 2015; Gerbaudo, 2012; Herrera, 2014; Tufekci, 2017).

In addition to necessarily involving law-breaking, the case studies of potential transformations of digitalized civil disobedience should indeed involve the use of digital technologies. While whistleblowing does not necessarily require the use of digital technologies, today's whistleblowing increasingly involves the use of digital means. Whistleblowing without providing evidence of wrongdoing is not whistleblowing; but nowadays such evidence is more often than not digital, which means that the whistleblower needs digital devices to share that information with their superiors within the organization, the authorities, the public, or the press. Digital environments have transformed whistleblowing in several ways, for instance by allowing somebody to collect and share large amounts of documents supporting the allegations. Snowden's case illustrates how digital technologies

allow for revealing evidence on a new scale; additionally, it goes without saying that Snowden's disclosures are paradigmatic because of the consequences of his disclosures for the way citizens, states, and companies relate to each other on the Internet, and for the technological and legal developments that followed.

Being illegal and involving the use of digital technologies are crucial conditions, but they are insufficient; many cases that fulfill them might have nothing to do with civil disobedience. The candidate cases for new forms of civil disobedience must have a moral or political rationale somewhat compatible with existing accounts of what civil disobedience is. A concrete way to verify this third condition is ensuring that their agents understand these acts of protest as civil disobedience. To be clear, self-understanding and self-identification are by no means sufficient conditions for an act to be considered as a new form of civil disobedience; however, cases in which participants think of their actions as civil disobedience are worth examining, even if some of them have to be excluded from that category at a later stage. As is argued in the corresponding chapters, all three case studies in this thesis fulfill these three conditions.

A fourth consideration played a role in the selection of the case studies for the thesis. Unlike the previous reasons, this one is not related to the acts of disobedience but to their scholarly reception. In the last decade, there has been a renewal of academic interest in civil disobedience. Recent works by political theorists such as Kimberly Brownlee, Robin Celikates, Candice Delmas, William Scheuerman, and William Smith, among others, have brought to the fore of political theory a concept that was intensely discussed in the late 1960s and early 1970s, and gradually moved into the background until the 1990s – when the Critical Art Ensemble (CAE) coined the term 'electronic civil disobedience.' Currently there is not only a renewed academic interest in civil disobedience – largely due to historically significant collective acts of resistance such as unauthorized migrant activism, #Occupy, ecological activism (e.g., Extinction Rebellion and anti-fracking protests), and the Arab Spring – but also a renewed academic interest in 'electronic' or 'digital' civil disobedience (Calabrese, 2004; Domínguez, 2008; Sauter, 2014).

As becomes clear in the chapters, the three case studies are already subject to an ongoing academic debate about their relation to civil disobedience, admittedly less so in the case of Sci-Hub and LibGen. Nevertheless, a comprehensive assessment of the questions that digital forms of disobedience pose to available accounts of civil disobedience, from the most mainstream liberal to the most radical, is still missing. The first aim of this thesis is to contribute to filling this gap by identifying these questions by thoroughly examining the cases as well as

the ongoing academic discussions about them. A second aim is to offer a preliminary answer to these questions from the perspective of a theory of civil disobedience that is grounded in a notion of civility understood as performative citizenship.

To summarize, Snowden, Anonymous, and Sci-Hub and LibGen were chosen as case studies for this thesis on the basis of three requirements: they all involved illegal acts, they resorted to digital technologies related to the Internet, and their participants – and their supporters – think of these actions as compatible with civil disobedience because of the moral or political rationale behind them. Additionally, these cases were selected because there are ongoing academic debates about them in a growing body of literature on which this thesis builds and to which it contributes.

***Two Objections***

There are two likely objections to the project of rethinking and updating the concept of civil disobedience on the basis of concrete cases. The first is that such a project takes as its starting point the unjustified assumption that the selected cases are indeed instances of civil disobedience. The second consists in objecting to the more general attempt to stretch the limits of the concept of civil disobedience that we already have and to extend it beyond recognition.

The first objection suggests that rethinking the concept of civil disobedience through concrete cases indicates that the question 'are these cases of civil disobedience?' has been affirmatively answered even before being asked. In other words, the project begs the question: how does the author know that the case studies are suitable to build upon in reinterpreting the limits of the definition of civil disobedience?

Indeed, the project of updating civil disobedience for the digital age presupposes an understanding of civil disobedience at work from the beginning. Such an understanding operates not only in academic discussions, but also in public debates and the media; demonstrations, traffic blockages, cyber-protests, strikes, boycotts, among other forms of protest, tend to trigger discussions about civility, justifications, and historical antecedents – recent examples are the debates about Black Lives Matter, the 'Boycott, Divestment, Sanctions' (BDS) movement against Israel, and the protests against the Keystone XL pipeline.

Research always works on the basis of some pre-understanding of its object. A starting point for this thesis is provided by two existing competing conceptions of civil disobedience: the mainstream liberal account, mainly represented by the influential work of John Rawls, and the more recent radical democratic account that Robin Celikates is developing. The reader will find extensive characterizations of these two alternative accounts throughout the thesis. Suffice

it to say here that the case studies also work as litmus tests for the explicative potential of these theories vis-à-vis new forms of contestation taking place through digital means, mainly on the Internet.

A second objection to the project of relating the concept of civil disobedience to digital acts of resistance argues that, by doing so, civil disobedience loses its analytic and normative specificity; consequently, 'updating' civil disobedience amounts to sowing confusion. William Scheuerman argues that "[t]here are real perils in stretching the concept of civil disobedience to capture phenomena probably better analyzed by alternative means. By overextending it, we rob the concept of the requisite analytic and normative contours, denying ourselves tools we need to respond to political challenges in a responsible, well-informed manner" (Scheuerman, 2018, p. 11). This objection seems to apply to this thesis: 'updating' civil disobedience in relation to the digitalization of dissent can be seen as stretching the concept beyond its due limits.

Scheuerman articulates a theoretically and practically noteworthy warning: it is of no use to lose the specificity of the concept of civil disobedience by applying it to too many and too diverse political actions that could be better named in a different way. Yet, caution cannot condemn civil disobedience, or any other concept, to its past practices nor to its earliest theoretical interpretations. To be useful, political theories must leave their concepts open to possible reformulations that respond to changes in the practices they supposedly represent. Keeping this in mind, each chapter reviews some of the features that, according to the most influential authors in the field, characterize civil disobedience, and examines the extent to which considering the specific case in question as civil disobedience would stretch the concept. As a whole, the thesis tries to assess the key features of the concept of civil disobedience through a case study approach.

The second possible objection, interpreted here as a methodological warning, implies an additional question. Why is it worth updating civil disobedience? Why not simply use new labels for new actions? One option would be to leave it at 'whistleblowing,' 'anonymous hacktivism,' and 'academic piracy,' without emphasizing their illegality by calling them acts of disobedience – one could even argue that this would benefit the participants facing prosecution. Another option would be to use alternative labels such as 'democratic disobedience' (Markovits, 2004), 'political disobedience' (Harcourt, 2012), or 'uncivil disobedience' (Delmas, 2018).

The first option is, in a way, always available: calling whistleblowing, hacktivism, and academic piracy 'civil disobedience' does not mean the participants should lose legal

entitlements, rather it means that the moral and political rationales of their actions should be recognized. For instance, in the case of whistleblowers, arguing that their actions amount to civil disobedience does not mean that they stop being whistleblowers and consequently they should lose the legal protection they supposedly have in some countries, like the United States.

The second option, using alternative labels, seems promising for it would leave the category of 'civil disobedience' unchanged. However, it might be a source of greater confusion to have as many labels as theories. Certainly, theorists can indeed create and use new concepts at will, but not without disregarding the importance that 'civil disobedience' has for those acting with bits of information and on the streets. As stated earlier, participants' self-understanding and self-labeling is relevant when trying to make sense of conscientious acts of morally and politically motivated law-breaking. Using alternative labels runs the risk of ignoring a crucial element of the communicative side of acts of civil disobedience; those using civil disobedience not only communicate to their audience their disavowal of certain laws, policies, and institutions, but they also communicate their conscientious commitment to higher principles and their relative adherence to a tradition of political action. They do this, among other things, by labeling their action 'civil disobedience.' Even theorists who opt for using alternative labels still need to deal with the issue of whether their concepts can be updated once the practices they name change and what the limits for setting those new conceptual boundaries would be.

***Globalization and Democratization***

Information and Communication Technologies (ICTs) have had a crucial role in the process of globalization. All sectors of society, from markets to spirituality, have been transformed by technologies that enable and monitor transnational flows of capital, information, and people. The history of digital activism, also called 'hacktivism,' and what was called 'electronic civil disobedience' illustrates the emergence and constitution of international networks of solidarity and struggle.

As mentioned in Chapter 2, the first politically motivated Distributed Denial of Service (DDoS) actions came from an extended international network of solidarity. People from different countries directed transnational flows of pieces of information in a coordinated fashion to the same servers, to overwhelm them as a show of support for the struggle of the indigenous people of the south of Mexico and against the use of Lufthansa's airplanes for the deportation of unauthorized migrants. The ripple effect of online actions, of which political and illegal acts of protest are only a tiny part, has consequences from local, to national, to

international level, and even to the global domain. People who have the courage to leak or blow the whistle about domestic evils can impact people on the other side of the globe. From a hotel room in Hong Kong, Snowden handed evidence of massive US surveillance programs to journalists who first published it in *The Guardian* in the United Kingdom, thus triggering global outrage. From that hotel room the world learned that the NSA spied on Brazil's president and Germany's chancellor. Snowden sparked worldwide debates over online privacy, encryption, and internet policy that are still continuing.

The fundamentally transnational character of online actions mean that their participants and audiences can find themselves in different contexts and under deeply dissimilar legal regimes. While a dissenter who uses digital technologies connected to the Internet to act under a constitutional democratic liberal state can face fines and imprisonment for their disobedience, a dissenter acting under an authoritarian repressive state or under illegitimate powers, such as drug cartels or paramilitary groups, could be risking torture, forced disappearance, and death for their disobedience. The diversity of possible contexts in which agents engaged in digital disobedience act entails a high level of uncertainty with normative consequences: it is not the same to demand that disobedients identify themselves, act publicly, and accept the consequences for their actions when they act in one context or another. One could be tempted to solve this problem by pointing out that civil disobedience is an American phenomenon (Arendt), or that it has its place in 'nearly just' societies (Rawls) or stable and mature democracies (Habermas). However, such views not only exclude almost all digital and transnational forms of resistance from civil disobedience, but also paradigm cases such as Gandhi's and King's.

Even when disobedience relates to a relatively unified legal framework such as copyright, there are significant differences in the way nation-states relate to it. Copyright regulations are nationally instituted through different law-making processes, and result in different laws that are enforced to widely varying degrees. Attempts to consolidate and enforce a unified copyright law on the Internet – e.g., the Stop Online Piracy Act (SOPA) and the Preventing Real Online Threats to Economic Creativity and Theft of Intellectual Property Act (PIPA) – continue to be objects of world-wide discussion and political struggle (Doctorow, 2018a; 2018b). Similarly, exceptions to and regulations of copyright differ from one country to another. Copyright is an example of the lack of a unified legal framework for the Internet; accordingly, there is no constitution of the Internet to which disobedients can appeal in order to justify their acts. In the face of this lack of an agreed, clear and stable regulation, human rights tend to be the higher normative principles to which disobedients and activists appeal

when claiming rights and freedoms on the Internet. As we shall see later, the disobedient agents of our case studies ultimately refer to democracy and human rights as their normative horizon.

Finally, not only have ICTs enabled people around the globe to access information that traditional, corporate-owned media have no interest in publishing, but they have also enabled them to act 'there' while being 'here' (cf. Butler, 2015, p.94). Through proxy servers, Virtual Private Networks (VPNs), and other digital technologies like onion services (e.g., Tor), people can mask their location and identities, circumvent access restrictions, and not only receive information but also actively participate in 'glocal' debates. As a consequence of these new possibilities, people can disobey corporate and state power as if they were citizens of this or that state even if they are not. Because of all this, digital acts of political participation beseech political theorists to re-examine conceptions as fundamental as citizenship and civil disobedience.

***On Thinking with a Colombian Background***

Resistance and violence open up questions that hit close to home. One of my earliest memories is the front page of a newspaper announcing the murder of the candidate for the presidency of Colombia and former M19 guerilla commander, Carlos Pizarro Leongómez in April 1990. I remember my family grieving his assassination; after all, Pizarro was a comrade and close friend of my uncle Alberto, who had fought in the guerrilla and had been in the negotiation team that led the M19 to lay down its arms in March 1990 to become a political party. Pizarro's assassination was the response of the Colombian state – and of paramilitaries – to the M19's decision to try to transform a profoundly unjust and undemocratic society through democratic means. Between August 1989 and April 1990, three progressive presidential candidates were killed: Luis Carlos Galán, Bernardo Jaramillo Ossa, and Carlos Pizarro.

The M19 guerilla was an illegally armed group founded after the allegedly fraudulent presidential elections of April 19, 1970. In their revolutionary struggle, the guerrilla employed various kinds of actions, from symbolic ones, such as stealing the Liberator Simón Bolívar's sword from a museum, to violent ones, for example the kidnapping of a political leader and the siege of the Dominican Republic's Embassy in Bogotá. Undoubtedly, the most tragic of the guerilla's action was the Palace of Justice siege in 1985. Violence escalated quickly, and on the second day of the siege, the National Army retook the building with armored cars and rockets. More than a hundred people died; among them, twelve magistrates. People in Colombia still want to know the truth about what happened to those who left the Palace of

Justice alive in the custody of the Army and appeared dead and burned among the ashes of the building days later.

Was it right for my uncle, his comrades and members of other guerrillas to violently fight against a somewhat illiberal, undemocratic, corrupt and unjust state? Is it possible to make sense of the ever-present political violence in my home country with the help of political philosophy? Can political theory truly account for the complexity and the overwhelming contradictions engendered by far-from-ideal, illiberal conditions marked by high social inequality, systemic corruption, colonially inherited democratic deficits, violence, and impunity? Are there kinds of violence that are acceptable in some circumstances or are they always wrong? In other words, should violence always be avoided and condemned? These and similar questions are in the background of my study of political philosophy, and although I do not explicitly discuss these questions in the thesis, I take this study of civil disobedience and new practices of online resistance as yet another step in the process of elaborating them.

Influenced perhaps by my Colombian background, I started my doctoral studies with the clear idea that civil disobedience is nonviolent action and that political struggle should always avoid the use of violence because of its tendency to escalate. My moral intuition about the dangers of violence soon became a burden. Without calling into question my categorical rejection of the use of violence, I could not examine to the fullest extent the case studies and the radical conceptions of civil disobedience I discuss in this thesis. As the reader will notice, I decided to suspend my judgment about the use of violence while examining the case studies and postpone its discussion to the last chapter. I certainly do not intend there to offer an ultimate answer to whether some kinds of violence are compatible with civil disobedience, but I do examine some alternative ways of addressing the question in the hope of shedding some light, at least, on the case studies and the challenges they present.

# Chapter 1. Disclosing Corporate Disobedience[2]

Every day, people around the globe engage in individual and collective initiatives aimed at countering economic and political injustices, and democratic deficits; the majority of these actors are and will remain anonymous. The locations, the strategies, and the tactics of resistance undergo a constant process of reconfiguration. As a response to the transformations in the ways power and control are exercised (Korten, 2015), resistance and disobedience are evolving in unprecedented ways and have become unforeseeable (Douzinas, 2013; Schock, 2015), maybe even uncontrollable.

These new kinds of political action may require new theoretical approaches. Perhaps the categories, principles, and methods used in the past to describe and make sense of political events are insufficient today to account for actions taking place in an increasingly global and digital political context. This context consists of a highly complex web of relations between economic and political power holders, so that it is urgent to rethink basic political categories such as 'the public,' 'legitimacy,' 'resistance,' 'civility,' and 'violence.' Political actions such as the sit-ins on Wall Street, the occupation of Zuccotti Park (Juris, 2012), the unauthorized publication of thousands of documents classified as top-secret, as well as forms of culture jamming such as web defacement (Dominguez, 2008) and electronic graffiti (Calabrese, 2004), urge us to rethink our traditional frameworks of political thinking in general and our conceptions of protest and disobedience in particular.

Unaccountable exercises of power such as secret commercial agreements, e.g., the Trans-Pacific Partnership (TPP),[3] breed new ways of acting in concert. Cases like Wikileaks's crowd-funding campaign to pay for the leaks of some chapters of the TPP agreement (Pestano, 2015) offer an opportunity to theorize not only about unaccountable public-private partnerships that play a decisive role in today's world but also about the attempts to disrupt them. Sometimes whistleblowing is one of these attempts. By revealing evidence of illegal, unjust, immoral, dangerous, undemocratic or even authoritarian practices in public and private organizations,

[2] Some sections of this chapter draw on a co-authored book chapter: Basu & Caycedo, 2018. This previously published chapter has three sections. The first, titled 'Radicalizing Civil Disobedience,' was specifically co-written for the contribution to the edited volume and has not been used in this dissertation. The second section, '"Illegal" Migration as Civil Disobedience?' is partly based on Natasha Basu's doctoral research and is not used in this dissertation. The third section, authored primarily by me, 'Disrupting Undemocratic Private-Public Partnerships,' briefly presents the argument I develop in this chapter of the thesis.

[3] One particularly controversial section of the provisions was aimed at making revealing corporate wrongdoing "through a computer system" a crime (Griffin, 2015b).

whistleblowers challenge specific power holders as well as some common prejudices about political action.

This chapter takes as its primary object of research external corporate whistleblowing to investigate the question of whether acts of disobedience against corporate powers can count as civil disobedience. The study is divided into three sections. In the first section, I turn to academic literature on whistleblowing, mainly from the field of business ethics, to construe a working definition of this practice, and then I test the definition against paradigmatic cases of corporate whistleblowing. Paying attention to the moral and political features of corporate whistleblowing, I investigate whether it is something analogous to, or a form of, civil disobedience. In the second section, I present two accounts of civil disobedience: the liberal definition put forth by John Rawls and the democratic approach as presented by Michael Walzer. Thereafter, I propose a concept of 'corporate civil disobedience' that assumes the challenge of accepting anonymous leaking as a form of whistleblowing. At the end of the section, I turn to the study of the most famous case of whistleblowing today: that of Edward Snowden. Against the backdrop of the conceptualization of 'corporate civil disobedience,' I stress the fact that Snowden was both a civil servant and a private employee when he blew the whistle. Finally, I present and discuss three alternative stances on whether Snowden's is a new form of civil disobedience or not.

I contend that the concept of 'corporate civil disobedience' is a tool that can illuminate new forms of political contestation, especially those mediated by digital technologies like the Internet. Before investigating new forms of morally and politically motivated, digital actions (e.g., anonymous DDoS and academic piracy), I find it necessary to examine the possibility of engaging in civil disobedience against corporate bodies and public-private partnerships, because almost all of today's acts of digital disobedience relate, in one way or another, to corporations.

### 1.1. On Corporate Whistleblowing

In this first section, I start by studying the concept of whistleblowing used in the field of business ethics. I make explicit who the agents are, what the content consists of, and who the potential receivers of the disclosures are. Then I present two cases of well-known accounting scandals in some of the largest US corporations and formulate two questions about whistleblowing: whether internal reporting is a kind of whistleblowing, especially when reporting potential mistakes and malpractices is among the employee's tasks, and whether

anonymous leaking can be considered as whistleblowing. I conclude the section by highlighting the moral and political character of the act of blowing the whistle.

### *A Working Definition of Whistleblowing*

In the literature on business ethics, there is a commonly used definition of whistleblowing; it describes whistleblowing as

> the disclosure by organization members (former or current) of illegal, immoral or illegitimate practices under the control of their employers, to persons or organizations that may be able to effect action (Near & Miceli, 1985, p. 4).

We can heuristically take this definition as a starting point. It implies that the act or process of whistleblowing requires at least three elements: first, there needs to be an agent of the disclosure, namely the whistleblower; second, the content of the disclosure must be of a specific kind; and third, there needs to be a receiving party for the disclosure.

On the basis of this definition, it is possible to specify the conditions that the *agent* of whistleblowing needs to fulfill. First, the agent must be part or have in the past been part of the organization in which potential wrongdoing has taken or is taking place; this is required because it guarantees privileged access to information and because it forecloses possible concerns about the motives that the agent could have in revealing the information. Second, the whistleblower lacks the authority to change the organization's activities (cf. Elliston, 1982a, p. 170). If the agent has the authority to change what they consider to be wrong, then they must change it and not just report it to someone else. A third condition that has been stated in the literature is the identification of the whistleblower. It could be argued that without the agent's identification, it would be impossible for the receiver to know if the whistleblower meets the first two conditions. However, it has also been argued that whistleblowing can be carried out anonymously (Elliston, 1982a). We will examine the problem of anonymity later in this chapter and more exhaustively in Chapter 2. It has been acknowledged that the whistleblower may occupy a role in the organization for which reporting potential wrongdoing is mandatory (Near & Miceli, 1985, p. 2), but this is certainly not a requirement.

Regarding the *content* of the disclosure, it must be about non-trivial activities (Hersh, 2002, p. 243), or, as Near and Miceli put it, about "illegal, immoral or illegitimate practices" (Near & Miceli, 1985, p. 4). Since it is not entirely clear what 'illegitimate practices' means beyond illegal or immoral, it seems more accurate to say that the disclosure concerns "activities which are believed to be dangerous, illegal, unethical, discriminatory or otherwise involve wrongdoing" (Hersh, 2002, p. 253). On the one hand, the content of the revelation needs to be

subjectively assessed as wrong; on the other hand, it must be objectively presented based on evidence (Bowie, 1982). Whistleblowers often make the mistake of going public without having gathered enough evidence to support their claims (Martin, 1999, p. 4). The amount of evidence needed for successful whistleblowing, however, cannot be established *a priori*: it depends on the nature of the wrongdoing that is revealed, and on whom the whistleblower is addressing.

The content of the disclosure is crucial to determining the nature of the whistleblowing, but it is not the only aspect to consider. For this chapter, it is worth mentioning that the kind of whistleblowing depends both on the content of the revelation and on the kind of organization at which the whistleblower works or used to work. The broadest distinction is between private and public whistleblowing; following the terminology of the literature on whistleblowing, I distinguish between corporate whistleblowing and government whistleblowing.

Different parties can be the *receiver* of the disclosures. Whistleblowers usually look for someone with the authority to change the situation that is denounced. This authority can be internal or external to the organization. 'Internal whistleblowing' means that the receiver is one of the chief executives or the board of the organization (Dasgupta & Kesharwani, 2010, p. 2). In 'external whistleblowing' the receiver can be a governmental institution with authority to investigate, the media or the public at large, which can be addressed, for instance, by directly publishing the documents on the Internet.

The receiver's response depends on the evidence presented by the whistleblower, on the nature of the wrongdoing, on their capacity to investigate and to find out who is responsible, and on the kind of relationship that the receiver has with the wrongdoing. Internal reporting tends to be tackled with internal fixes to avoid affecting how the organization is publicly perceived. Sometimes the receiver punishes the whistleblower: there is evidence that the percentage of whistleblowers who suffer retaliation is about 65% (Alford, 1999, p. 267). Often, they are punished with the loss of their jobs and careers. Studies demonstrate that whistleblowers face more severe retaliation from their employers for reporting offenses that endanger the lives of citizens than for reporting malpractices that might only affect the organization (cf. Brewer, 1996 as cited in Brewer, 1998; Near & Miceli, 1986).

To sum up, the act of whistleblowing takes place when the whistleblower deliberately presents evidence of what they consider as a wrongdoing to an internal or external authority able to correct what is wrong and punish those who are responsible. In the literature on whistleblowing, it is pointed out that this specific act leads to several others; in this sense, some scholars argue that whistleblowing is a process rather than an act or an event (Elliston, 1982a;

Near & Miceli, 1985). Following Sissela Bok, one could add to Near and Miceli's definition of whistleblowing that it is an act that tries "to call attention to negligence, abuses, or dangers that threaten the public interest" (Bok, 1983, p. 211 as cited in Kumar, 2013, p. 128). Putting all these elements together, I construe whistleblowing as the deliberate act of disclosing evidence to an internal or external authority, or directly to the public, about practices within a public or private organization that a current or former member of the organization deems immoral, illegal, dangerous or harmful to the public interest.

***Internal and Anonymous Whistleblowing?***

At the end of 2002, *Time Magazine* published a special double issue on the person of the year. The cover consisted of a picture of three women: Cynthia Cooper, Coleen Rowley, and Sherron Watkins. The title of the issue was *The Whistleblowers*. The magazine wanted to publicly recognize the courage that brought these three women to expose wrongdoings in some of the largest organizations in the United States: WorldCom, the FBI, and Enron, respectively. However, the different ways in which their revelations took place open up questions about whether they all qualify as 'whistleblowers,' a "not-so-flattering name" as Cooper pointed out in an interview a couple of years later (Jeter, 2005). Since our current purpose is to investigate corporate whistleblowing and its relationship with civil disobedience, we will now focus on the cases of WorldCom and Enron.

**A. WorldCom**

In the Annual Report for the fiscal year that ended on December 31, 2002, WorldCom, Inc. described itself as "one of the world's leading global communication companies, providing a broad range of communication services in over 200 countries on six continents" (WorldCom, Inc., 2003). After years of successful performance during the 1990s, WorldCom was at the time the second largest long-distance communication company in the United States, topped only by AT&T. After recovering from bankruptcy (declared in July 2002), in February 2005 WorldCom was acquired by Verizon Communications Inc. for $6.75 billion (Noguchi, 2005).

In May 2002, Cynthia Cooper, an internal auditor at WorldCom, started to investigate some accounting irregularities in the company's books reported by one of her team workers (Cooper, 2008). She informed the company's controller and the Chief Financial Officer (CFO), Scott Sullivan, about these inconsistencies; in response, she was asked to stop the audit for some months. Instead of stopping her investigation, Cooper reported her concerns to her boss and the chairman of the board's audit committee (Colvin, 2002). Once the external accounting

auditor – KPMG – was informed of Cooper's concerns, WorldCom announced it would restate earnings by $3.9 billion. In other words, this means that the second largest telecommunication company in the United States was "cooking" its books; the company was lying to its shareholders and the public.

Cooper took a brave decision when she decided to investigate financial accounting inconsistencies beyond her duties. She also acted courageously when she reported accounting malpractices and lack of support for huge investments to the company's board. Nonetheless, it is worth highlighting that as an internal auditor, it was expected of her to check and report on the company's accounting. In a way, she just did her job. Because of all this, WorldCom's case raises interesting questions about whistleblowing: Does it include internal reporting such as that expected of accountants, and especially from internal auditors? Is public exposure of the wrongdoing a necessary condition for whistleblowing?

WorldCom's case has led us to the question of whether an accountant who reports wrongdoings is a whistleblower. Attending to the working definition of whistleblowing we established in the previous section, it seems clear that the voluntary nature of the act of blowing the whistle is not affected if the employee has among their functions reporting potential misconduct. This case meets all the conditions listed in the working definition of whistleblowing. If Cooper had reported her findings only to her direct superior, then she would just have been doing her job, but she decided to go all the way to the board. Just like her, any employee (accountants included) who takes their concerns directly to the top of the organization or an external entity, regardless of whether their job requires that reporting, is engaging in whistleblowing.

Cooper became a whistleblower precisely because she decided to talk to the board, skipping her direct superior and not respecting the chain of command. Although Cooper did not present her concerns to the larger public, she bravely challenged the authority of her boss based on a non-personal interest. Thus, Cooper's blow of the whistle allows us to understand that reporting possible wrongdoings to the public at large is only one among many forms of whistleblowing, and is not a necessary condition for it. Moreover, according to Gorta and Forell, "supervisors [those whose job includes internal checking and reporting] were more likely to say they would take action than non-supervisors. These findings suggest that there is value in clearly communicating to staff that they have a responsibility to take action about corruption they witness at work" (Gorta & Forell, 1995, p. 339).

**B. Enron**

Enron Corporation was one of the largest energy companies in the United States. With approximately 22,000 employees and reporting revenues of nearly $101 billion in 2000, it went from being "America's Most Innovative Company" ("Enron," 2017) to being responsible for "[t]he world's most infamous accounting scandal" (Farrell, 2015).

Sherron Watkins's role in the Enron scandal is entirely different from Cooper's in the WorldCom case. First, it was not part of her job to control or report possible irregularities. Having worked as one of Enron's executives for almost a decade, in 2002 Watkins decided to anonymously send a letter to the then-CEO Ken Lay (her boss' boss' boss) (Colvin, 2002). In the letter, Watkins warned Lay that "Enron has been very aggressive in its accounting," and added that "the business world will consider the past successes as nothing but an elaborate accounting hoax" (NYTimes, 2002).

In the anonymous letter, Watkins explained the function of certain financial entities created by former CFO Andrew Fastow. One of these entities was a fake company called 'Raptor.' She writes:

> We have recognized over $550 million of fair value gains on stocks via our swaps with Raptor. Much of that stock has declined significantly – Avici by 98 percent from $178 million, to $5 million; the New Power Company by 80 percent from $40 a share, to $6 a share. The value in the swaps won't be there for Raptor, so once again Enron will issue stock to offset these losses. Raptor is an LJM entity. It sure looks to the layman on the street that we are hiding losses in a related company and will compensate that company with Enron stock in the future (NYTimes, 2002).

'LJM entities' were precisely Fastow's elaborated creation to hide Enron's liabilities (McCullough, 2002). Although on the surface Enron's profits were always on a solid rise, the truth was that Enron's executives were hiding debts. As is clear from the quote above, the financial bubble created by Enron's executives, specifically by its CFO and its CEO Jeffrey Skilling, had already burst when Watkins addressed the anonymous note to Lay.

Whether Lay was aware of all this information before Watkins decided to anonymously inform him is not entirely clear. What is clear is that after Watkins identified herself as the source of this information and met with Lay, he did not change Enron's auditors, Arthur Andersen and Vinson & Elkins, as, according to her, he promised to do (Ackman, 2002).

Watkins's critics claim that she did not blow the whistle, as she told Lay something he probably already knew. From this point of view, "[f]ar from whistle-blowing, Watkins' actions actually provide cover for Lay and the Enron board. First, the fact that Watkins 'warned' Lay presumes he knew nothing and needed to be warned" (Ackman, 2002). Nevertheless, years

later, on January 31, 2006, Lay was found guilty of 10 counts against him. A slightly different critique is "that what she did doesn't even qualify as true whistleblowing, she never took her concerns outside the company, to the financial regulator or a third party" (Curwen, 2003).

Watkins's response to this criticism deserves to be mentioned: "When a company cooks the books, it rarely has a chance of surviving, but to do that it has to come clean itself, to admit its problems and re-state its financials. I felt here was Enron's chance to come clean" (Curwen, 2003). This answer shows that Watkins opted to keep her warning within the corporation to give it the chance of correcting the wrongdoing. Regardless of the moral status of the reasons behind Watkins's decision to report internally, her action counts as 'internal whistleblowing.' Miceli and Near (2010) argue that it is a myth to claim that only external whistleblowing, i.e., whistleblowing addressed to external authorities or the public, is the only true form of whistleblowing. Reporting potential wrongdoings internally to the organization is also a form of whistleblowing.

**C. Anonymous Leaking**

Enron's case opens up new questions for us about the nature and the requirements for whistleblowing. The most pressing of these questions is: Does anonymous reporting, internal or external to the organization, count as whistleblowing? This question can easily lead to normative, more specifically moral, considerations about whistleblowing. As Frederick A. Elliston puts it, one can ask if the receiver has a right to know the whistleblower's identity or if they have the right to withhold it (Elliston, 1982a). Because the purpose of the chapter is not to develop a normative theory of whistleblowing but to come to a conceptual understanding of it, in order to examine whether it can be related to civil disobedience, our interest is not in knowing whether the whistleblower has a moral right to withhold their identity[4] but whether anonymous reporting is a form of whistleblowing.

As mentioned above, evidence of potential wrongdoing can be delivered to internal or external authorities, or the public. In all its forms, with or without the identification of the source of the evidence, whistleblowing can achieve its goal of sounding an alarm. This means that for both government and corporate whistleblowing there can be internal and external forms

[4] Other relevant moral questions are not considered here. For instance, is it right to allow employees to accuse other members of the organization without any consequences if those accusations prove to be false? On this point, Robert Coulson objects to Elliston's defense of anonymous whistleblowing: "On the contrary, when a whistleblower is primarily bent upon destroying someone's reputation, due process considerations may weigh against anonymity. In some situations, the designated victim should have a right to confront an anonymous accuser" (Elliston & Coulson, 1982, p. 60).

of reporting, and that each of these four options can be carried out anonymously, or with the whistleblower's identity openly acknowledged.

If an employee blows the whistle internally, it means that they are drawing the attention of somebody in a higher position than them to something they think is wrong. In doing so, they are neither challenging the legitimacy of the hierarchy nor the authority of those to whom they are reporting. If they skip their direct manager or some superior colleague though, they would *de facto* challenge the authority of those they skip. The employee might be justified in doing so if they have good reasons to think that reporting to their direct boss would not be effective, for example if they think the superior is involved in the wrongdoing, or if they identify risks for the evidence or for the process of remedying the malpractices they are pointing out. If this employee or former employee decides to draw attention anonymously, that does not change the kind of action they are undertaking; the aim of sounding the alarm is achieved anyway.

It is worth mentioning that many of the most famous whistleblowers have started by leaking information to an external authority or the media. I wish to mention just two examples of recognized cases of whistleblowing. Although they are cases of government whistleblowing, both show that, even if the disclosures begin without revealing the name of the source, they are whistleblowing.

On June 13, 1971, the *New York Times* published the first of the seven sets of documents that would later be known as the 'Pentagon Papers.' Daniel Ellsberg, a US military analyst, had leaked these documents to the *Times*. As the Nixon administration prevented the *New York Times* from publishing the documents by a court order, Ellsberg leaked them to *The Washington Post* and other seventeen newspapers. On June 28, 1971, Ellsberg publicly surrendered to arrest (Linder, n.d.).

Another famous example is that of Thomas Drake, the former NSA senior official who, "disclosed massive corruption, gross waste and mismanagement to the tune of billions of taxpayer dollars, and, worse, widespread illegal domestic surveillance at the NSA" (Radack, 2011). Drake used legal channels to disseminate his concerns about NSA's illegal actions: without leaking classified documents, Drake took his concerns to a reporter from *Baltimore Sun* through anonymous tips he sent from a secure Hushmail e-mail account (Mayer, 2011).

Although their cases are wholly unalike and they were employed in different sectors, Daniel Ellsberg, William Drake, and Sherron Watkins share the title of whistleblowers, even though they started by leaking anonymously. These examples show that the identification of the source of the evidence of wrongdoing is not a necessary condition for considering disclosures as whistleblowing. Anonymous reporting is one of the concrete forms in which

whistleblowing takes place in practice, both in the public and in the private sector. These findings on anonymous whistleblowing will be helpful further on in the chapter when examining the relationship between whistleblowing and civil disobedience.

***Corporate Whistleblowing as a Moral and Political Phenomenon***

One could object that corporate whistleblowing is an issue for corporations in the economic realm with little political relevance and with no apparent connection to civil disobedience. One could argue that the economic realm is independent and fundamentally different from other realms such as the political. Consequently, state, civil society, and the economy would be sharply differentiated domains and corporate whistleblowing might be relevant to applied forms of philosophical reflection such as business ethics, but not to political theory. In response to this possible objection, in what follows, I argue that corporate whistleblowing is an essentially moral and political phenomenon.

Whistleblowing is not an exclusively economic matter, not even when it is corporate. Generally, what motivates people to blow the whistle is a concern for public safety, or for what they consider to be a public value or good. Motivations can be both selfish and unselfish (Dozier and Miceli, 1985, p. 823, as cited in Brennan and Kelly, 2007, p. 63). Whistleblowing also involves emotions such as fear, anger, and outrage (Henik, 2015). In whistleblowing, even selfish motives do not take the form of simple economic calculations; economically speaking, it is entirely absurd to blow the whistle. Whistleblowers do not get economic benefits from their actions, rather the opposite. They usually lose their houses, cannot find jobs in the same field, many lose their families, and they might even have to spend their savings on lawyers (Alford, 1999, pp. 267-268). It is implausible, too, that the exposure of wrongdoings will favor the economic viability of a corporate body or contribute to improving its economic performance.

Whistleblowing is usually a morally grounded action. That selfish interests can motivate some cases of whistleblowing makes it harder but not impossible to state that it is an essentially moral phenomenon. It still the case that whistleblowing, both government and corporate, is commonly inspired by unselfish motives. Moreover, it fulfills some basic conditions for moral actions: “Whistleblowing is a form of action a rational autonomous person undertakes, by going through a process of self-deliberation and reasoning – where such reasoning is often the consequence of a moral commitment” (Kumar, 2013, p. 130). Such a moral commitment can be understood as concern for the public good; the act of blowing the whistle has a moral background also because the agent has already morally evaluated the content of the disclosure

and assessed it as unethical, illegal, or somehow not in the public interest. Even when the wrongdoing is something illegal, it is moral reasoning that motivates the agent to reveal it. The moral assessment could lead the former or current employee to face a moral dilemma in which competing loyalties are in conflict: they owe allegiance to their colleagues and obedience to their superiors, but as a citizen they owe allegiance and have duties toward people outside the organization (e.g., their family), and a commitment to the public good (Elliston, 1982a, p. 169; Brennan & Kelly, 2007, p. 64).

Whistleblowing is also a political phenomenon. Both public and private whistleblowing have political motivations and consequences. The whistleblower is typically moved by an understanding of 'the public good' and by the intention to hold the organization accountable. Even if this is also true for internal reporting, the effort to increase accountability is apparent in cases of public, external whistleblowing. The disclosure of evidence of misconduct obliges the organization to be accountable to an external authority and society at large. It also forces the organization to justify its actions and sometimes even its organizational structure.

The political nature of whistleblowing is acutely clear in cases of external, government whistleblowing;[5] in these cases, the attempt to hold a public organization accountable for its actions can be seen as an attempt to democratize the institution. This kind of whistleblowing in particular challenges hierarchical structures of authority; such defiance of authority has a political nature. According to some scholars, that is why whistleblowing is distinctive form of civil dissent (Santoro & Kumar, 2018), of organizational dissidence (Near & Miceli, 1985) somewhat analogous to civil disobedience (Elliston, 1982b). According to Elliston, if one agrees with those for whom the rule of law is not an absolute and for whom an unjust law is no law because "one cannot be bound under it to commit injustices," then "this logic provides one argument to justify acts of disobedience against governments or corporations" (Elliston, 1982b, pp. 25-26). But is it accurate to consider whistleblowing in general, and corporate whistleblowing in particular, 'analogous' to civil disobedience? Is it possible that corporate whistleblowing is not only analogous to civil disobedience but that it is in itself a form of civil disobedience?

[5] We think of cases such those of Brandon Bryant, Thomas Drake, John Kiriakou, Chelsea Manning, and Coleen Rowley.

## 1.2. Toward a Concept of 'Corporate Civil Disobedience'

The moral and political nature of corporate whistleblowing urges us to examine if it amounts to something analogous to civil disobedience or to an instance of it. To address this question, we first need to establish whether it is possible to engage in civil disobedience against corporations. In this section, we will start by studying the most influential liberal account of civil disobedience and its limitations in applying it to corporate whistleblowing. We will then turn to a pluralist, democratic account, which explicitly assesses the possibility of civil disobedience taking place in and against corporations. To conclude, we will see why a democratic approach seems more productive than its liberal counterpart when considering corporate whistleblowing.

### *The Rawlsian Definition of Civil Disobedience*

The most influential liberal definition of civil disobedience *seems* to foreclose the possibility of civil disobedience in or against corporations. In *A Theory of Justice*, John Rawls provides us with a definition of civil disobedience for a more or less democratic state – or, as he also calls it, a "nearly just regime" (Rawls, 1999, p. 299), and "nearly just society" (1999, p. 319). Civil disobedience is there defined as "a public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government" (1999, p. 320).

Since Rawls's project consists in developing a constitutional theory of civil disobedience, he describes his task as defining "this kind of dissent and separates it from other forms of opposition to democratic authority" (Rawls, 1999, p. 319). It is crucial to grasp that the Rawlsian definition of civil disobedience relates to a specific kind of state: the constitutional, democratic, liberal state. Also, that Rawls's theorization of civil disobedience was an attempt to make sense of some of the political events of the 1960s.[6] It is worth noting that the definition states that this kind of action is *usually* done to change a specific law or government policy. For Rawls, by engaging in civil disobedience, citizens address the sense of justice of the community; it is an "invocation of the recognized principles of cooperation among equals" (Rawls, 1999, p. 337) against something that contradicts those principles.

[6] This means that Rawls's definition was historically conditioned; just as Hannah Arendt's and Michael Walzer's, Rawls's theoretical understanding of civil disobedience is anchored in concrete events. Even if Rawls's project was aimed at developing an ideal theory of justice, it was also an attempt to make sense of non-ideal, concrete, political events. This is attempted in this thesis as well: I start by studying concrete cases in order to develop a conceptual framework able to shed light on those events and similar ones.

Although Rawls never explicitly examined the possibility of civil disobedience either within or against private organizations, nothing in his definition excludes that possibility. One could argue that if the private organization operates under a constitutional, democratic, liberal state, then its employees should be able to engage in civil disobedience *qua* citizens. Such action would mean that those engaged in civil disobedience would address the community's sense of justice by disobeying a law, norm, or policy that a non-democratically legitimized entity orders them to follow. It is possible to imagine cases of public, nonviolent, conscientious yet political acts performed contrary to law to bring about a change in the practices or structures of a private organization in the general context of a nearly just society. I contend that *external corporate whistleblowing* is an example of that kind of action.

According to the definition of corporate whistleblowing examined in the first section, it is possible to argue that the disclosure of evidence of malpractice can be considered a morally grounded breach of the agreements between the employee or former employee and the organization. Here, 'morally grounded' means that the agent decides to blow the whistle relying on their judgment about what they consider to be right and wrong.

Cases of external, identified, corporate whistleblowing seem to meet all the requirements of the Rawlsian definition of civil disobedience. Although 'external' does not necessarily mean that society at large is informed of the malpractice, since it can be external in the sense of reporting to authorities that are not part of the organization, one could argue that the act of disclosing evidence itself is not covert and consequently somewhat public. Cases of anonymous whistleblowing, though, seem much harder to relate to the Rawlsian account of civil disobedience as they can be interpreted as evasive and because the conscientiousness of the whistleblower is dubious. In Chapter 2, we will discuss in detail the issues that arise from the use of anonymity in acts of disobedience.

Whistleblowing that is not external, identified, and corporate, does not satisfy all the conditions of the liberal definition of civil disobedience. According to Rawls, civil disobedience is also nonviolent because it does not conflict with, but rather expresses fidelity to, the law. The participant in civil disobedience proves that they respect the rule of law by their willingness to accept the legal consequences of their actions; this also shows that the act is politically conscientious and sincere. From this perspective, accepting the legal consequences of breaching the law proves moral and political seriousness.[7]

[7] I agree with Hannah Arendt's argument about this: the legalist emphasis on the willingness to be punished makes it impossible to have a public discussion on civil disobedience. When the protesters' concern for the world is put in terms of their moral seriousness, the political nature of the action turns pale (cf. Arendt, 1972, p. 67).

Transposed to the corporate realm, this would mean that the whistleblower proves that their concerns are politically and morally grounded, and that they are not looking for any personal benefit, by accepting whatever consequences their actions may entail, both within the organization and, if it were necessary, also external legal consequences. However, it is difficult to grasp what exactly the requirement of accepting the consequences for blowing the whistle would entail for the whistleblower. As all whistleblower protection acts acknowledge, whistleblowers need protection from retaliation. As empirical studies show, the internal consequences for blowing the whistle are enormous (Higginbottom, 2017). Indeed, the requirement to accept punishment cannot be interpreted as accepting actions of retaliation; it does not make sense to ask an agent to be willing to accept illegal and immoral reactions to their actions.

Up to this point, it has been shown that some cases of corporate whistleblowing, those made externally and openly, fulfill the conditions established by the liberal definition of civil disobedience put forth by Rawls. Consequently, all the cases in which an identified source openly presents evidence of wrongdoing directly to the public can be considered as instances of civil disobedience taking place in the private sector. I use the label of 'corporate civil disobedience' for cases such as those that can be considered instances of civil disobedience in or against private organizations, especially corporations.[8]

Taking the Rawlsian definition of civil disobedience as a starting point implies that cases of internal whistleblowing and anonymous corporate whistleblowing cannot be accepted as forms of civil disobedience. On the one hand, internal whistleblowing can hardly be considered 'public' – especially if it takes place in private organizations; on the other hand, anonymity seems to point to an unwillingness to face the consequences for one's disobedience, and lack of political and moral seriousness.

At this point, new questions arise: Is the Rawlsian, liberal definition of civil disobedience too restricted to account for forms of dissent in the corporate realm that could be compatible with civil disobedience? Would an alternative, broader conception of civil disobedience be better-equipped to examine the extent to which corporate whistleblowing – even when carried out internally and anonymously – can be understood as a form of civil disobedience? In what follows, I will address these questions while arguing that there is no contradiction in talking

[8] The expression 'corporate civil disobedience' has an ambiguity that could be explored in future research; it could also refer to cases in which corporations disobey a law, policy, or public institution, in ways compatible with a conception of civility. The investigation of the conceptual and normative conditions that such corporate disobedience would have to meet to be considered civil, as well as how civility should be understood in that context, go far beyond the limits of this thesis.

about civil disobedience in and against corporations. To do so, I will present and draw upon Michael Walzer's pluralist and democratic understanding of corporate disobedience.

***Walzer on Corporate Disobedience***

The democratic tradition of political thinking offers us alternative accounts of civil disobedience to those framed in the liberal tradition. In the late 1960s, Michael Walzer examined the possibility of civil disobedience in private organizations. In 1969, he published "Corporate Authority and Civil Disobedience" in *Dissent*, and a year later republished the text in his book *Obligations. Essays on Disobedience, War and Citizenship*. Walzer opens by highlighting that, according to some writers, civil disobedience involves a number of conditions such as nonviolence and civility, which are generally presented as the adoption of methods that do not directly coerce or oppress other members of the society. Walzer points out that, according to these authors, those engaging in civil disobedience must not resist state officials. Many of these requirements were mentioned in the previous section when presenting Rawls's definition of civil disobedience.

Unlike Rawls and others, Walzer thinks it is possible to think of civil disobedience separately from these tight requirements, or as he puts it, these 'disciplines.' Walzer writes: "I want to argue that there is a kind of disobedience that does not meet either of these requirements, and yet sometimes falls within the range of civility" (Walzer, 1970, p. 24). Walzer then takes the Flint sit-down or General Motors strike of 1936-1937 as his primary example of this kind of disobedience – although he strangely admits that perhaps it should not be called civil disobedience at all.

What Walzer finds politically significant in the General Motors strike and similar cases is that they demonstrate that coercion of bystanders and resistance to police authority can be compatible with "a kind of civility" (Walzer, 1970, p. 25). Walzer takes that strike as an instance of cases in which the use of some force by the protesters may be justified. The general principle on which such cases may be justified is expressed in the following way:

> They *may* be justified when the initial disobedience is directed against corporate bodies other than the state; when the encounter with these corporations, though not with the state that protects them, is revolutionary or quasi-revolutionary in character, and when the revolution is a democratic revolution, made in good faith (Walzer, 1970, p. 25).

The meaning of 'democratic revolution' here is that corporate workers engage in acts of rebellion as an attempt to democratize the corporation. They challenge non-democratic corporate authorities only to the extent to which they judge it necessary to take forward their

project of being included in decision-making processes. Walzer emphasizes that rebellion and contesting authority must be limited to the corporation, and in no case can they be oriented against the state. For the General Motors strike, this means that the 'corporate rebels' were justified in using limited coercive means against bystanders in order to achieve their goal of democratizing the enterprise; moreover, they would even have been justified in using limited coercive means against state officials protecting corporate property. In this sense, Walzer states:

> Within the corporation, revolutionary initiatives may well be appropriate; within the larger democratic community, they are inappropriate, and the corporate rebels demonstrate their civility only insofar as they make clear, as the autoworkers did, that they intend no such initiatives (Walzer, 1970, p. 40).

The quote seems to evince a problem in Walzer's argument: although he was supposedly reflecting upon a kind of corporate disobedience, he seems to be offering a theory of corporate rebellion or revolution. As a consequence of such confusion, Walzer is considering cases in which minorities are coerced. Walzer adds: "This is not a usual feature of civil disobedience against the state, but it has to be remembered that what is going on in the corporation is not civil disobedience at all but revolution" (Walzer, 1970, p. 38). Although this quote seems to suggest that with the General Motors strike and other cases of corporate contestation, Walzer is indeed talking about revolutionary acts against the corporations and not of civil disobedience, this does not seem to be the right interpretation of his argument.

Ultimately, Walzer is indicating the possibility of a third kind of disobedience, different from direct and indirect disobedience. He writes:

> I have tried to describe a third type, more indirect than the second, in which the state is not challenged at all, but only those corporate authorities that the state (sometimes) protects. Here the disobedience takes place simultaneously in two different social arenas, the corporation and the state, and in judging that disobedience different criteria must be applied to the two (Walzer, 1970, p. 43).

Employees who challenge corporate authorities, even by coercive means, can be seen from two perspectives: on the one hand, they are revolutionaries against the arbitrariness of corporate authorities who are trying to radically change organizational practices and structure; on the other hand, through their actions, they are violating certain laws – usually property laws – by trespassing, but they are not challenging the authority of the state. They are not militant against the state but something like civilly disobedient citizens; this may be the meaning of the phrase: "revolution in the corporate world, civil disobedience in the state" (Walzer, 1970, p. 43). According to Candice Delmas, "[t]his nuanced framework seems especially appropriate when

applied to contemporary activist groups, such as Occupy, Anonymous, and fundamentalist religious groups, whose activities fall somewhere in between civil disobedience and revolution" (Delmas, 2015, p. 1147).

Thus, Walzer ends up calling into question the Rawlsian, clear-cut distinction between civil disobedience and militant resistance or revolutionary action. While for Rawls one cannot engage in civil disobedience and have revolutionary goals at the same time, for Walzer there might be cases in which protesters adopt revolutionary goals and nonetheless disobey civilly, for instance when disobedience challenges corporate but not state authorities. But, how exactly is this simultaneity or dualism possible? As Walzer himself acknowledges, "the argument depends upon the specific character of the overlapping social circles" (Walzer, 1970, p. 42).

From 1970 to the present, the number of contracts that ordinary people sign with private organizations, specifically with corporations, have significantly increased. In almost every economic activity, people become parties to private contracts: from water supply and health insurance to the use of communication infrastructure and software, our everyday lives depend on agreements with private organizations. Many of these private entities have replaced states in some of their core functions, leaving no alternative than contracting them. It is ever more accurate that "[c]ommercial, industrial, professional and educational organizations, and, to a lesser degree, religious organizations and trade unions all play government roles – yet very few of these reproduce the democratic politics of the state" (Walzer, 1970, p. 26). There exists a sort of 'revolving door' between public and private sectors, one in which democratic and non-democratic practices and structures continuously pass the baton back and forth; as a consequence, people constantly shift roles from citizen to client and vice versa.

It could be argued that this public-private 'revolving door' is not a serious problem because citizens are always free to accept or reject private contracts. Furthermore, employees tacitly if not explicitly agree to obey the rules and regulations of the organization in which they work. After all, "they join the firm, go to work in the factory, enter the university, knowing in advance the nondemocratic character of all these organizations, knowing also who runs them and for what purposes" (Walzer, 1970, p. 28). From this view, citizens must obey the regulations or else leave the organization.

Nevertheless, even if the choice of entering a private organization and signing certain contracts can be taken as a voluntary act, which is often questionable to say the least, by joining a corporate body, employees do not give up any of the legal rights and duties they have as citizens: "Membership in corporations in no sense replaces citizenship in the state" (Walzer,

1970, p. 29). This principle will be decisive later on to conceptualize corporate whistleblowing in the light of Walzer's arguments.

The private sphere in which employees agree to follow orders and instructions does not replace the sphere of legitimate public democratic authority. In their relation to corporate authorities, employees can rebel, but this does not imply that they are contesting the state's authority that guarantees their rights as citizens. Considered as members of the broader political community, they are engaging in a form of civil disobedience when, motivated by the desire for more democratic institutions, they deliberately break the law to challenge arbitrary corporate entities. Still, considered as employees, their transgressions can be seen as radical, militant, and revolutionary: they aim to replace non-democratic practices and structures with democratic ones. Attending to the overlapping of public and private spheres, Walzer recommends considering corporate disobedience from two perspectives at the same time. In the next section, I will use this twofold approach to make more explicit the concept of 'corporate civil disobedience' and its relationship with corporate whistleblowing.

***Corporate Civil Disobedience and the Question of Anonymity***

Having studied these two considerably different accounts of civil disobedience, we can now return to the questions we posed when examining the moral and political nature of whistleblowing, namely those regarding its relationship to civil disobedience. The question is, then, whether corporate whistleblowing is better described, following Walzer, as an example of a third kind of civil disobedience; or following Elliston, as something analogous to civil disobedience; or if these two concepts should better be kept apart.

On the one hand, according to Rawls civil disobedience is a public act of breaching the law, characterized by being nonviolent, conscientious and *usually* done with the aim of bringing about a change in a specific law or policy of the government. On the other hand, Walzer's democratic account of civil disobedience includes certain unlawful acts of contestation in corporate bodies, in which internal authorities are challenged, with the aim of democratizing the organization. For Walzer, although these illegal acts are revolutionary in relation to the corporation, they remain civil vis-à-vis the state, whose authority is respected by the protesters. Rather than attempting to reconcile these two approaches, in what follows, I will argue that the democratic approach is preferable in this context, due to its potential to account for the moral and political nature of corporate whistleblowing.

So far I have limited my argument in this chapter to external corporate whistleblowing. In other words, I am investigating cases in which a current or former member of a private

organization deliberately discloses information about what they consider to be wrongdoing to external authorities, the media, or directly to the public, *with or without* identifying themselves as the source of the revelations. The fact that corporate whistleblowers, as well as government whistleblowing, often start by leaking anonymously is crucial here.

As argued above, although it seems that the Rawlsian account of civil disobedience does not necessarily exclude cases of disobedience in and against private bodies, it definitely requires the identification of the lawbreaker. Identification is mandatory because in its absence the action is not properly public, the conscientiousness of the disobedient cannot be established, and, most importantly, the consequences of the breach of law are not willingly accepted. By concealing their identities, anonymous disobedients do not convey their fidelity to the law; they can then be categorized as revolutionaries.

At this point, one could be tempted to conclude that whistleblowing, in particular anonymous, corporate whistleblowing, is not civil disobedience. However, anonymity is not only a possible feature of corporate disobedience, digitally mediated disobedience, and whistleblowing, but also an aspect of many traditional forms of civil disobedience. To varying degrees, every kind of collective action involves anonymity. From sit-ins to DDoS actions, and from demonstrations to occupations, individuals acting in concert become a different political agent: a group, a collective, a movement. Theories of civil disobedience should not consider only the identified leaders of the movements, but they should also theoretically acknowledge the role that many anonymous individuals who act in concert with the leaders play in their civil disobedience.[9]

Walzer's account of civil disobedience seems far less restricted than Rawls's: first of all, it explicitly includes actions directed against corporations. Secondly, it does not emphasize a set of requirements, in particular around the prosecution or otherwise of the disobedients. Thirdly, the democratic spirit of this account matches the main goal of the whistleblowers who try to democratize the information they consider to be of public interest. Lastly, since this

[9] I am aware of the difference between remaining anonymous in practice because of the contingencies of concrete actions of disobedience, and actively concealing one's identity. Rawls's condition of publicity, and public identification is not against 'contingent anonymity' but against 'sought anonymity' or evasiveness. This distinction and its consequences need to be studied in some detail, as we will do in Chapter 2. What is more relevant for the argument of this chapter is that the main reason against 'sought anonymity' seems to work on the assumption that those who choose to hide their identity are criminals who have uncivil goals. This assumption might be justified in a 'nearly just society,' but in contexts in which identification can lead to disproportionate legal and illegal consequences this is a questionable assumption. As Yaman Akdeniz points out, "[a]nonymity and the use of strong encryption tools can help to preserve political discourse and dissemination of information related to human rights abuses in the Information Age" (Akdeniz, 2002, p. 226).

account does not emphasize the need for identification, it can more easily include groups, collectives and movements as subjects of civil disobedience.

In conclusion, external corporate whistleblowing can be considered as a form of civil disobedience from the perspective of a democratic account such as the one set out by Walzer. Even external anonymous leaking can count as corporate civil disobedience from this perspective. This is particularly important since many exemplary cases of whistleblowing went through a phase of anonymous leaking. Cases of external, identified whistleblowing may fulfill all the demanding requirements of the Rawlsian account.

The broad democratic account of civil disobedience put forth to reflect on corporate whistleblowing may be equally useful for cases of government whistleblowing. As pointed out before, many of the most famous cases of government whistleblowing started as anonymous leaking. In the next section, we will focus on Edward Snowden's case from the democratic perspective we have acquired by studying Walzer's 'corporate disobedience.'

### 1.3. The Perplexities of Government Whistleblowing

In this section, we will start by reconstructing the facts of Edward Snowden's process of blowing the whistle on the NSA's legally troublesome surveillance programs. Then we will discuss the significance of the fact that Snowden was caught in a bind between the public and the private. Finally, we will return to Walzer's twofold approach and examine three alternative philosophical stances as to whether Snowden's whistleblowing counts as civil disobedience or not. The chapter concludes by subscribing to one of these three positions.

#### *Snowden as a Civil Servant and a Private Employee*

The most well-known whistleblower today is Snowden, the former NSA private contractor who disclosed documents classified as top-secret with information about multiple US programs for global communication surveillance. Snowden's highly mediatized disclosures of US national security documents reignited the discussion about the moral and political value and limits of whistleblowing.

In May 2013, Snowden sent the first documents to journalists Laura Poitras, Barton Gellman, and Glenn Greenwald. One month later, on June 5, 2013, the first revelations of NSA's illegal programs evidenced by those documents were published. It is unknown how many documents Snowden took with him to Hong Kong, where he met the journalists that would later reveal the NSA scandal. In November of the same year, then NSA Chief Keith Alexander claimed Snowden took at least 200,000 documents (Kelley, 2013b); in December,

however, he rectified this information and claimed they were 1.7 million classified documents (Kelley, 2013a). According to Greenwald and Poitras, they received from Snowden between 9,000 and 10,000 confidential documents (Spiegel Online International, 2013). Even considered independently of their content, the sheer number of documents is revealing of the enormous potential political impact of Snowden's acts.

Years before his revelations, between late 2009 and March 2012, Edward Snowden worked as an NSA contractor at Dell Inc. At the time, he was one of the 265,000 NSA contractors with access to top-secret documents (Priest & Arkin, 2010). It is remarkable that, even if he had access to some of the most critical documents for US national security and all his tasks were related to analyzing data for that goal, Snowden was not employed directly at the NSA but at a private company. However, this was not unusual: in 2012, around 2,000 companies supplied contractors to the intelligence agencies.[10]

In March 2013 Snowden decided to change his employer. He left Dell Inc. and started working at Booz Allen Hamilton, another private enterprise. While in the eye of the storm because of his disclosures, Snowden said in an interview that he decided to take up the position at Booz Allen Hamilton to get access to even more documents (Lam, 2013). At the time he started working for this new private firm, he had already anonymously contacted the journalists, meaning that he had already made up his mind about blowing the whistle on the NSA.

From June 5 to 8, 2013, Glenn Greenwald and Ewen MacAskill published a series of articles in *The Guardian* on the excesses of the NSA evidenced by the documents leaked by an unknown source.[11] On June 9, the journalists revealed the name of their source in the piece "Edward Snowden: The Whistleblower Behind the NSA Surveillance Revelations" (Greenwald et al., 2013). In the article, Snowden is quoted on his decision to go public and renounce the protection of anonymity: "I have no intention of hiding who I am because I know I have done nothing wrong." Snowden explained that one of the reasons why he remained unidentified during the first round of revelations was his intention not to shift the attention from the government's policies to himself. This article, published together with a twelve-

[10] The exact number of people with access to secret and top-secret documents is unknown: "Some 5 million people hold a government security clearance, according to a 2012 report by the Director of National Intelligence. About 1.4 million people have top-secret clearance, and half of those are the employees of private businesses" (Goldman, 2013).

[11] The titles of the articles are: "NSA Collecting Phone Records of Millions of Verizon Customers Daily," "NSA Prism Program Taps into User Data of Apple, Google and Others," "Obama's Move to Establish a Potentially Aggressive Cyber Warfare Doctrine Will Heighten Fears Over the Increasing Militarization of the Internet," and "Boundless Informant: the NSA's Secret Tool to Track Global Surveillance Data."

minute video shot by Laura Poitras, allowed Snowden to explain his motives in disclosing, among other things, the NSA's surveillance programs: "My sole motive is to inform the public as to that which is done in their name and that which is done against them."

It is hard to deny that Snowden is a whistleblower.[12] He disclosed private information to the public because he thought US citizens have the *right to know* what their government does, especially if this exceeds its constitutional powers. Snowden spoke out as an attempt to generate what he thought was an urgently needed public debate about US capacity and legitimacy to collect and analyze big data on a global scale. At the same time, by revealing evidence of these programs, Snowden was claiming his fellow citizens' right to know about these government programs, as well as their right to privacy. Snowden explained his decision to unveil the documents by saying: "The more time I spent at the NSA in Japan, the more I knew that I couldn't keep it all to myself. I felt it would be wrong to, in effect, help conceal all of this from the public" (Greenwald, 2014, p. 43). This quote shows that Snowden's justification of his act is, at least in his public statements, partly based on moral grounds. He also justifies his act politically when he says: "I don't intend to destroy these systems," "but to allow the public to decide whether they should go on" (Greenwald, 2014, p. 47).

In the first section of this chapter, we carefully studied various definitions of whistleblowing to come to a unified working definition. There we identified three elements that are required for an act of whistleblowing to occur: an agent, non-trivial content, and a receiver of the disclosures. We saw that the content is a key element for establishing the nature of the whistleblowing. Since Snowden's revelations concern the NSA's legally troublesome surveillance programs, it is clear that his act counts as government whistleblowing; however, it seems relevant to highlight that many of these programs are set up as public-private partnerships.

Among Snowden's revelations, the Prism program is central; because of this, Greenwald, MacAskill, Poitras, and Snowden agreed to publish it right after the article about the relationship between the NSA and Verizon. The hidden cooperation of many communication and online service providers with the US government is essential to both the Prism and the Verizon scandals: some of the largest and most prominent Internet corporations and

[12] However, the Obama administration found a way to deny the title of whistleblower to Snowden. As Bob Turner and Glenn Greenwald pointed out, the main reason for this was that, "[t]he Espionage Act contains no explicit whistleblowing protection." Consequently, whistleblowers charged with felonies under the Espionage Act for disclosing national security documents cannot be considered under the Whistleblower Protection Act (Greenberg, 2014). Additionally, former US Secretary of State, Hillary Clinton, publicly stated that Snowden is not a whistleblower (McLaughlin, 2015).

telecommunication companies handle the bulk data of the world's communications for the NSA every day (Greenwald, 2014, pp. 101-102). For Greenwald, "[t]he close collaboration between the NSA and private corporations is perhaps best seen in the documents relating to Microsoft, which reveal the company's vigorous effort to give the NSA access to several of its most used online services, including SkyDrive, Skype, and Outlook.com" (Greenwald, 2014, pp. 112-113).

Snowden not only revealed legally problematic government surveillance practices and programs, but he also showed the world how clients' trust in the largest private internet companies had been betrayed. In this sense, Snowden also indirectly blew the whistle on corporate malpractices. Here, the paradoxical nature of Snowden's case comes to the fore: being a private employee, Snowden had access to government top-secret documents that evidenced the hidden betrayal of the clients' trust by almost all of the largest private companies that offer Internet services.

It is quite astounding that only one of the thousands of NSA contractors with clearance to this information decided to come forward and initiate a public debate about the legitimate limits of surveillance and the legitimacy of public-private partnerships for national security. Thanks to Snowden's blow of the whistle, US and international audiences came to know how problematic it is that, even though "the NSA is officially a public agency, it has countless overlapping partnerships with private sector corporations, and many of its core functions have been outsourced" (Greenwald, 2014, p. 101).

We have just found that the distinction between corporate and government whistleblowing does not readily apply to Snowden's disclosures because of their content. Besides, this distinction seems problematic in this case because of the nature of Snowden's post when he decided to collect and leak NSA's secret documents. The fact that Snowden was both a civil servant and a private employee is a meaningful nuance: it shows that public-private partnerships work on different levels at the NSA. First, the public institution outsources some of its core functions to private contractors; it is estimated that close to 70 percent of the national intelligence budget goes to private organizations, such as Booz Allen Hamilton (Shorrock, 2015). Second, the NSA partners with private Internet and telecoms companies in many countries to directly obtain bulk data for its outsourced analysts. Remarkably, Snowden's access to the evidence of these covert public-private partnerships was allowed precisely by these same public-private partnerships. To be sure, this is not to say that Snowden is a corporate whistleblower; but rather, that in his case, there is no sharp distinction between corporate and

government whistleblowing. In the next section, we will explore some of the political consequences of this fact for the concept of civil disobedience.

### *Three Standpoints on Snowden's Disobedience*

In the second section, we examined Michael Walzer's argument about corporate disobedience. According to Walzer, there seems to be a third kind of civil disobedience, other than direct and indirect, that is characterized by its challenge of corporate authorities. This kind of disobedience is compatible with pursuing revolutionary changes and using limited forms of coercion of bystanders to successfully contest undemocratic practices within corporate bodies. Even employing relatively coercive means, this form of disobedience remains civil in relation to public officials because it does not contest state authority. In this way, Walzer's argument embraces the overlapping relationships between private and public spheres that we experience today. It is this overlapping of public and private that we have pointed out in Snowden's whistleblowing.

Against the backdrop of Walzer's conception of corporate disobedience, I wish to propose an interpretation of Snowden's whistleblowing. As discussed in the previous section, Snowden not only exposed NSA's wrongdoings, but he also showed how some of the largest private internet companies betrayed their users' trust. Snowden simultaneously broke the confidentiality agreement he had with the NSA as a public servant, and the code of ethics and internal policies of his employer, Booz Allen Hamilton.[13] Because of all this, it is difficult to identify in what capacity Snowden blew the whistle. Drawing on Walzer, I argue that Snowden did so simultaneously both as a civil servant and as a private employee.

It must be acknowledged that Walzer's argument is not about different kinds of whistleblowing that can happen at once; it relates to a potential third kind of civil disobedience that I call 'corporate civil disobedience.' The question of whether Snowden's whistleblowing can be considered as civil disobedience has been discussed in different contexts in recent years. On the one hand, some voices claim that Snowden's actions are coherent with the tradition of civil disobedience (Lewis, 2013; Snowden et al., 2015). On the other hand, there is an ongoing academic discussion about this question. In what follows, we will assess some of the arguments for and against considering Snowden a civilly disobedient citizen.

[13] Booz Allen Hamilton fired Edward Snowden on June 11, 2013; in a public statement the firm cited "violations of the firm's code of ethics and firm policy" (Sink, 2013).

There are at least three clearly differentiated positions with regard to the question of whether Snowden engaged in a form of civil disobedience when he blew the whistle on the NSA's surveillance programs. It has been argued that a) the concept of civil disobedience does not apply to this case; b) the concept does in fact apply, but the definition needs to be interpreted in a specific way; and c) the definition of civil disobedience needs to be changed – specifically, broadened – to apply it to new practices of political contestation. I contend that the third train of thought is theoretically more accurate and productive than its competitors.

Concerning the first interpretation, according to the White House, Edward Snowden's acts do not conform to the tradition of civil disobedience. The main reason for holding this view is that he has not appeared before a court of law in the United States. The official response from the President's office to the citizen's petition for pardon to Snowden states:

> If he felt his actions were consistent with civil disobedience, then he should do what those who have taken issue with their own government do: Challenge it, speak out, engage in a constructive act of protest, and -- importantly -- accept the consequences of his actions. He should come home to the United States, and be judged by a jury of his peers -- not hide behind the cover of an authoritarian regime. Right now, he's running away from the consequences of his actions (as cited in Poplin, 2015).

Snowden's refusal to go on trial in the United States is taken as a significant inconsistency with the tradition of civil disobedience. The US government appears to subscribe to a traditional, liberal understanding of civil disobedience in which willingness to accept the punishment for disobeying the law is obligatory. This position is consistent with the Rawlsian definition presented in the second section of the chapter.

Today, scholars from differing political stances hold the view that accepting punishment for one's law-breaking is part of civil disobedience. According to Geoffrey de Lagasnerie, Edward Snowden's, Julian Assange's and Chelsea Manning's acts of disobedience are not compatible with the tradition of civil disobedience (De Lagasnerie, 2014, p. 90). De Lagasnerie argues that while the performer of civil disobedience is a subject of the state who acts on behalf of the law and recognizes their place in the legal system (2014, pp. 98-99), these three characters enact new political subjectivities. Manning's anonymous leaking to WikiLeaks allows us to identify the emergence of a new kind of political subject, the anonymous subject that emerges without properly appearing; they invisibly organize their political action and dissolve themselves as a public subject (2014, p. 131). Assange and Snowden appear publicly, but the uniqueness of their political subjectivity consists in their practice of fleeing and seeking refuge or asylum (2014, p. 169). In contrast to the performers of civil disobedience who

reinforce the values of the state and hold themselves as a "punishable subject" (2014, p. 100), these new subjectivities transcend and challenge state logic with their anonymity and with their active refusal to accept punishment (2014, pp. 106-107).

Surprisingly, from opposite political standpoints, De Lagasnerie and the White House end up in agreement on the idea that Snowden was not acting along the lines of the tradition of civil disobedience. The reason for this unexpected agreement lies in their common starting point: the liberal definition of civil disobedience.

The second option consists in claiming that Snowden's case can be considered civil disobedience even though it does not satisfy every single requirement of the traditional definition of civil disobedience. This assessment is illustrated by the work of William Scheuerman (2014). According to him, Snowden's example "can perhaps help us *advance* liberal and democratic ideas about civil disobedience" (2014, p. 611). Although this approach has the advantage of considering both the liberal and the democratic approaches to civil disobedience, it constructs from them a sort of checklist of the requirements an action needs to satisfy in order to be considered civil disobedience. Even if this checklist procedure sheds light on the specific case, it seems to work on the premise of a static, given definition.

Scheuerman's argument about Snowden's whistleblowing begins by pointing out that the former NSA analyst broke the standard government non-disclosure agreement not as a protest against it, which would have been direct civil disobedience, but "to bring the injustices of US surveillance policies to public attention" (Scheuerman, 2014, p. 612); as a result, he engaged in indirect civil disobedience (Bedau, 2002). Then, Scheuerman checks other requirements such as acting openly and publicly; appealing to a higher law – to the constitution and to international human rights law; acting in a morally and politically serious way, meaning that the action is conscientious; avoiding harming people, i.e. acting nonviolently; breaking the law only as a last resort; and doing so motivated by the desire of contesting 'serious infringements' and 'blatant violations' of basic rights – as the liberal account demands – or as a response to fundamental threats to the political process – as the democratic account envisages. According to Scheuerman, all of these conditions are met by Snowden's disclosures.

As De Lagasnerie, the Obama administration, and several other sectors of public opinion have pointed out, the condition that has not yet been met is the one of willingly accepting the legal consequences for the unlawful act. It is precisely because of this issue that Scheuerman's argument shifts from listing and checking conditions to reinterpreting them. According to him,

> When criminal proceedings rest on vague and poorly defined legal norms, suffer from excessive politicization so as to impair the possibility of a fair trial, and

> regularly mete out draconian sentences, then a conscientious disobedient's decision to escape them is potentially supportive and not destructive of the rule of law (Scheuerman, 2014, p. 619).

Since the requirement of accepting punishment is based on the premise that the civilly disobedient citizen publicly shows their overall respect for the rule of law, Scheuerman argues that this can be demonstrated by other means than accepting whatever criminal penalty the state imposes on them. Under the circumstances described in the quote, the respect for the rule of law is affirmed not by submitting to an unfair trial, but the opposite. Since Snowden has been charged under the Espionage Act, that according to political commentators includes a myriad of legal failings (Greene, 2017; Scheuerman, 2016[14]), he is justified in not appearing in a courtroom to respond to those charges. Scheuerman argues that applying the Espionage Act to Snowden as if he were an 'ordinary' spy, "constitutes a glaring example of spurious legal generality incongruent with basic legal and constitutional ideals" (Scheuerman, 2014, p. 620). From this view, Snowden can be considered a civilly disobedient citizen even though he is not willingly going on trial under the conditions established by the United States. Rather, Snowden exemplarily shows his respect for the rule of law by refusing such a trial.

The third stance emphasizes the need to rethink the definition of civil disobedience. Scheuerman characterizes this approach as part of an anti-legal turn in the conceptualization of civil disobedience (Scheuerman, 2015, p. 15), and has labeled it a 'radical democratic vision of civil disobedience.' This third way of theorizing civil disobedience starts with the mainstream liberal definition, not as a check-list of requirements for specific cases, but as a guide for examining which of the features and requirements listed in that definition do indeed belong to the definition of this kind of political action, and which are better removed from the definition and discussed as normative, specific considerations on the justification for civil disobedience. According to Robin Celikates, who has developed this 'radical democratic' approach to account for new forms of civil disobedience such as Snowden's, it is necessary to elaborate "a more practice-based, democratic and pluralistic perspective" on civil disobedience (Celikates, 2016b, p. 39).

Similarly, Kimberly Brownlee rejects the Rawlsian notion in favor of a broader understanding of civil disobedience, which she construes "as a constrained, conscientious and communicative breach of law that demonstrates one's opposition to a law or policy and one's desire for lasting change" (Brownlee, 2016, p. 4). On that basis, Brownlee argues that

[14] Scheuerman has describes the Espionage Act as, "an infamous piece of legislation that makes mincemeat of basic legal virtues and provides a dubious legal cover for executive prerogative" (Scheuerman, 2016, p. 6).

Snowden's whistleblowing not only counts as civil disobedience but as morally justified illegality. However, she emphatically rejects Scheuerman's claim that Snowden's disobedience can be seen as civil from the Rawlsian perspective of civil disobedience because of its emphasis on respecting the rule of law.

Contrary to Scheuerman, Brownlee states that Snowden fails to meet two core conditions for civil disobedience specified by Rawls, namely the publicity- and the fidelity-to-law conditions. First, only if Snowden had announced in advance that he was planning to disclose secret NSA documents, which would have made it impossible for him to reveal them, would he have met the publicity condition. Second, whether Snowden's whistleblowing meets the fidelity-to-law condition is a more contested issue because, from a Rawlsian perspective, it relates to the requirement of being willing to accept the legal consequences for one's illegal acts, which Snowden does not seem to meet.

What interests us here are not the nuances of the debate between Brownlee and Scheuerman, but the central role that acting publicly and being willing to accept the legal consequences seem to have in determining whether one's principled illegal acts are civil disobedience. These two issues, revealed as crucial by this debate on Snowden's disobedience, become more pressing for other potential forms of digitally mediated civil disobedience, such as anonymous hacktivism. As we shall see in the next chapter, the use of anonymity in principled acts of protest makes it urgent to reexamine normative requirements for civil disobedience, such as accepting punishment. The following chapters further develop the argument that broader conceptions of civil disobedience, as Brownlee's and Celikates's, are better equipped than narrow, traditional accounts to assess potential new forms of civil disobedience.

**Conclusion**

By reviewing the most influential definitions of whistleblowing, its different kinds, and its moral and political nature, we have been able to examine one particular case study and identify some of the central questions that new forms of digitally mediated, principled law-breaking pose to theories of civil disobedience. By investigating Edward Snowden's whistleblowing – his dual role as public servant and private employee, as well as the content of his disclosures concerning unaccountable, legally troublesome, public-private partnerships – in this chapter, we have begun to approach the questions of whether civil disobedience can take place in and against private organizations, such as corporations, and if it necessarily excludes anonymous actions.

Against the background of the limitations of the Rawlsian definition of civil disobedience vis-à-vis whistleblowing, Michael Walzer's conceptualization of corporate disobedience has offered a democratic, conceptual setting to suggest the possibility of what I call 'corporate civil disobedience.' The attempt to conceptualize the moral and political nature of corporate whistleblowing has shown the need for a definition of civil disobedience broad enough to include practices of resistance to corporate authorities and unaccountable or undemocratic public-private partnerships.

This chapter has presented three standpoints on the question of whether Snowden's whistleblowing counts as civil disobedience; additionally, it has shown that these standpoints relate to how theories of civil disobedience interpret the requirements of publicity, willingness to accept the legal consequences for disobeying, and fidelity to the law. The next chapter will assess these normative requirements through a different case study, the collective Anonymous, for which the standpoints mentioned above are also relevant.

# Chapter 2. Anonymous Civil Disobedience

Although nowadays the collective Anonymous is generally associated with political activism, particularly with online, transnational, symbolic actions of protest against corporations and states, its name has been used in the past for outrageous actions. Anonymous's trolling origins led the collective to self-appropriate the label of 'Internet Hate Machine,' a term coined in 2007 by Los Angeles Fox ("Internet Hate Machine," n.d.). Until that time, Anonymous's trolling activities were mostly confined to 4chan.com, an imageboard website created in 2003, where non-registered users can publish anonymously. Born from 4chan's default username 'anonymous,' the label of 'Anonymous' has been used by many for decades to publish "politically incorrect" content, mainly on an uncategorized or random imageboard called /b/. It was, and still is, on /b/ where whoever wants to publish as Anonymous can go to drop whatever images, chiefly those offensive and distressing, for fun –for the 'lulz.'[15]

In this chapter, I discuss the use of anonymity in civil disobedience. To do so, I focus on the elusive Anonymous collective. I contend that this case study reveals and radicalizes the challenges that anonymity poses to the way we generally construe civil disobedience. The chapter has three sections. In the first section, I describe Anonymous; I try to accurately present its complexity, including its internal contradictions, as well as some of its tactics – some of them blatantly incompatible with civil disobedience. In the second section, I discuss extensively how the use of anonymity challenges the liberal idea that those participating in civil disobedience must accept the legal consequences for their breach of the law. In the third section, I examine six additional challenges that anonymity poses to theories of civil disobedience; these issues relate to who and how many agents act, on what motives, in what capacity, with what aims, and against whom.

### 2.1. Anonymous Fighting for Freedom! – and for the Lulz

People come to know about the Anonymous collective through three main sources: the media, scholars, and directly on the Internet. To grasp the difficulties involved in conceptualizing this collective, it is useful to start examining how Anonymous presents itself on the Internet – in other words, its self-understanding.

[15] "Since at least 2006, '*Anonymous'* has conducted many such trolling campaigns. The motivating force and emotional consequence for the instigators of many acts of trolling, including those on 4chan, are cited as the '*lulz*,' a pluralization and bastardization of laugh out loud (lol). Lulz denotes the pleasures of trolling, but the lulz is not exclusive to trolling" (Coleman, 2011).

The collective publicly appears on the Internet on image boards, social networks and YouTube channels. In what seems to be a 'legitimate' Anonymous video, it states: "Anonymous is simply ideas without order, may be a phrase, a fad, a proverb. The concept of anonymous has always existed […] With anonymous there is no authorship (…) There is no control, no leadership, only influence. The influence of thoughts" (*AnonymousThought*, 2008, video as cited in Bazzichelli, 2013, p. 145). By identifying itself as 'a fad' and 'only influence' Anonymous seems to foreclose the possibility of a clear understanding of *what* it is. Anonymous emphasizes a never-ending process of becoming, a pure 'flux' of thought without consistency. If it is 'ideas without order' then it should not be easily considered as a group. In this sense, in *Encyclopedia Dramatica*,[16] the collective stipulates: "First and foremost, Anonymous is NOT a group, or an organization, or coherent collective of any sort. Anonymous is more like... an idea, a concept. Technically everyone and anyone is Anonymous" ("Anonymous," 2011). Still, everyone knows that ideas and concepts do not organize themselves on Internet Relay Chat (IRC) channels nor act in revenge against those who attack them. A first obstacle for the conceptualization of Anonymous is now apparent: its members explicitly reject the most basic categories we use to think about political actors: 'individual' and 'group.' Paradoxically enough, Anonymous's self-understanding, which is of a profound philosophical nature, is what seems to hinder further understanding. Thus, the collective appears on the Internet as a paradoxical entity born from the heart of the web.[17]

One way to overcome this first obstacle consists in disregarding Anonymous's self-understanding by showing that, regardless of what it says, it is indeed a group with some shared values. Many of Anonymous's politically motivated cyber-operations seem to defend liberal values such as freedom of speech and association; more specifically, Internet freedom seems to be a principle of relative unity. For instance, the well-known Project Chanology against the Church of Scientology started as a response to the church's attempt to eliminate from the Internet the video of an interview with Tom Cruise. For Anonymous that was an attempt to censor the Internet, hence 'the swarm' made sure it was impossible to ever get rid of the video on the Internet by republishing it on multiple sites. As we shall see later, other paradigmatic

[16] *Encyclopaedia Dramatica* is defined by their creators as: "a central catalog for organized reference pages about drama, memes, e-pals and other interesting happenings on the Internets (sic), and is your tour guide for your journey across the Internets. ED is also the final arbiter of truth and human destiny, and can be used to settle any dispute, anywhere, evar (sic) and a wiki-encyclopedia that enjoys deep web benefits." In other words, it is a parody-themed website that uses MediaWiki software and that works as a repository for anonymous (sometimes Anonymous's) internet content, especially that related to a celebrated internet 'trolling culture' often characterized by being racist, homophobic and misogynistic ("Encyclopedia Dramatica," 2012).

[17] In a video, Anonymous says: "When the government no longer fights for justice the internet will. We are justice. We are Legion. We do not forgive. We do not Forget. We are Anonymous" (News2share, 2016).

operations such as OpPayback and OpTunisia support the idea that defending basic freedoms on the Internet plays a crucial role in Anonymous.

However, although freedom of speech on the Internet is a principle supported by many of the members of the political wings of Anonymous, it is not a motivation for all members of the collective in their political actions. For many members of Anonymous, or 'anons,' the reason behind their cyber-actions is not primarily to defend civil freedoms, but 'for the lulz.' We encounter here another difficulty in conceptualizing Anonymous: not all of its members share a single set of values or goals; they seem to have at the very least mixed motivations, often including just having fun. In this sense, Anonymous says about itself that "[i]ts ranks, goals, intentions and ideals are completely fluid, changing as easily as the wind" ("Anonymous," 2011). In other words, as its strapline goes: "Anonymous is not unanimous" (as cited in Coleman, 2013b, p. 6).

Some of the scholars who study Anonymous have attempted to account for the multiplicity and variability of goals in their theories. Molly Sauter, for example, construes Anonymous as "a loose group of Internet denizens," "a highly fluid collective of Internet users" (Sauter, 2013, p. 984). Gabriella Coleman also highlights the contingency and variability that marks this decidedly dynamic collective. According to her, "Anonymous has over the last three years moved from disaggregated practices rooted in the culture of trolling to also become a rhizomatic and collective form of action catalyzed and moved forward by a series of world events and political interventions" (Coleman, 2011). In this way, Coleman tries to conceptualize the internal dynamics and essential contingency of a group that is not a group, of a multitude without a number that sometimes defends certain values, but some other times abandons them and responds to what is happening in the world from a different set of principles, or even from a contradictory one.

Coleman's solution to the problem of the lack of coherency among Anonymous's different kinds actions is to talk about its 'political wings.' Coleman's reconstruction of the history of Anonymous shows that in 2010 it began to engage more clearly in politically motivated actions; some members of Anonymous moved out from troll culture – mainly confined to 4chan.com – to more coherent and ethically-motivated occasional branches. Such relative consistency, its history, and its ethical substance make it possible to detect political wings within Anonymous, and suggest it would be a mistake to reduce Anonymous to 'cyber-lynching.' Certainly, this does not mean that the characterization as political, or activist, applies to the whole collective (Coleman, 2011), but it does imply that it is more accurate to think of Anonymous as a collective that brings together highly diverse actors than as a unified group.

Anonymous appears on the Internet not only on its websites, social media and its YouTube channels, but also on the sites of traditional media. News agencies and newspapers often refer to Anonymous as 'a hacker group,' the 'infamous hacker group,' '«hacktivist» collective,' 'activist collective,'[18] etc. Attending to these labels, one could say that the political wings of Anonymous have successfully accomplished two things: appear on the news and be recognized by the media as a somewhat politically motivated collective. Although often called 'group' and 'collective,' it seems even traditional media partially recognizes the specificity of Anonymous. In a short article on the OpPayback, Pascal-Emmanuel Gobry (2010) explains: "Anonymous are so elusive because they're so decentralized. It's people from everywhere in the world who get together in chatrooms and decide who to hit and how. There's no official membership of the group –people come and go as they want– and not even official leadership."

So far, we have studied Anonymous's public face considering three sources: its self-presentation, the most influential academic interpretations of the collective, and how the media portray it. A descriptive reconstruction of Anonymous should examine and pay attention to the means by which the collective acts, and what are its tools or weapons. The kind of cyber-action Anonymous has more consistently used in its political operations is Distributed Denial of Service (DDoS). In the following sub-section, we will study what these actions or attacks are, their different kinds, and two paradigmatic examples of Anonymous's DDoS.

***Distributed Denial of Service (DDoS)***

I begin with a definition of what a Distributed Denial of Service action is – often called an attack: "A DDoS action is, simply, when a large number of computers attempt to access one website over and over again in a short amount of time, in the hopes of overwhelming the server, rendering it incapable of responding to legitimate requests" (Sauter, 2014, p. 2). DDoS are not necessarily political actions; they are regularly used to test servers' response capacity. There is nothing intrinsically illegal or criminal in using them. However, DDoS can indeed be used for criminal purposes: for instance, governments or other parties can direct overwhelming traffic to servers hosting opposition websites or dissenters' blogs; they can also be used to slow down or to make unavailable a company's website to favor its competitors. Yet, DDoS can be used to draw public attention to, or protest against, public or private institutions. When DDoS are undertaken to contest laws, policies, and institutions deemed unjust or undemocratic, they are considered a form of 'hacktivism.' As Stefania Milan points out,

[18] Gohring, 2012; Disalvo, 2012; Segall, 2012; Griffin, 2015a, respectively.

> Hacktivism is a highly contested concept, used to label diverse tactics and ethical codes not always compatible with each other. For instance, while Anonymous may not hesitate to deface websites or launch DDoS, other groups may consider these tactics a form of censorship and a breach of freedom of speech, as such counter to the very aims of hacktivism (Milan, 2015, p. 551).

The political ambivalence of DDoS does not come as a surprise; after all, political action, and what counts as civil disobedience or as nonviolent action, are always a matter open to debate. While some consider occupations, sit-ins, and traffic blockages to be uncivil and coercive actions, others deem them not only compatible but exemplary civic actions. In Chapter 4 we will reconstruct the debate as to whether DDoS are against freedom of expression and if they are compatible with civil disobedience or not; but for now, it is better if we focus on understanding Anonymous's means of disobedience.

There are three phases in the history of DDoS and they correspond to three kinds of DDoS. According to Marco Deseriis, there was an early conceptual phase "in which hacktivists manually reloaded a target website," then "a second phase characterized by the development of *ad hoc* software designed to automate the webpage reload," and a third phase "defined by the growing use of botnets – networks of infected computers that are remotely controlled to execute a DDoS" (Deseriis, 2016, p. 2). The differences between these three kinds of DDoS are key to evaluating whether they can be considered as civil disobedience and to making clear some of the central features of today's online political activism. In what follows, I will briefly explain and exemplify each of the three kinds of DDoS.

One paradigm case of a large number of people *manually reloading* a website as a protest is the 2001 Deportation Class Action. Responding to a call to action published by Andreas-Thomas Vogel on libertad.de, around 13,000 people digitally came together in a DDoS against Lufthansa Airlines. This online action was part of a larger campaign against forced deportation of unauthorized migrants; protesters found the German government's use of the airline's flights to deport asylum seekers outrageous (Smith et al., 2015, p. 261).

Vogel's case became a reference in the discussion of DDoS and electronic civil disobedience because in 2005 he was found guilty of using force against Lufthansa; a lower court in Frankfurt sentenced Vogel to pay a fine or serve 90 days in jail (Sauter, 2014, p. 140). However, in 2006 a higher court overturned the initial verdict because it recognized the political – as opposed to economic – motivation of the action. The court interpreted the DDoS against Lufthansa as an act intended to influence public opinion, as a communicative act. This communicative character will later on prove vital for us to relate DDoS and civil disobedience.

The case exemplifies what the Electronic Disturbance Theater (EDT) termed a 'virtual-sit-in' in the mid-1990s.

Some years later, the EDT created a new kind of DDoS when it developed and released the Zapatista FloodNet, a script to *automate website reloading*. "This enabled a Web browser to re-load a targeted Web site automatically several times per minute, effectively denying access to Mexican President Zedillo's Web site on April 10, 1998" (Calabrese, 2004, p. 331). "The software was used in September 1998 in a disturbance against websites of the Mexican presidency, the Frankfurt Stock Exchange and the Pentagon to demonstrate international support for the Zapatistas, and against the Mexican government, the US military and international capital" (Wray, 1999, p. 110).

It is important to note that this second historical phase and type of DDoS still involves a relatively large number of people accessing the website of the FloodNet and running the software to automatically reload the target website. In just two days – September 9 and 10, 1998 – the website received 20,000 visits (Wray, 1999, p. 110). Although a machine does a significant part of the work, in this kind of automated DDoS there still is a large number of people voluntarily launching the application.

*Botnets* are an even higher degree of automation first used in February 2000 against Yahoo, CNN, Amazon, eBay, and other internet companies. Unlike the previous cases, behind this series of DDoS there was no collective or group acting together; but rather a 'Mafiaboy,' a 15-year-old boy, whose hacks changed the nature of DDoS. After Mafiaboy, DDoS continue to be distributed, in the sense that the internet traffic had several different and geographically distant sources, but now they could be performed by a single individual.

Marco Deseriis insightfully explains that "the normativity intrinsic to the botnet – in short, what a botnet can do – forces a change in the values of early hacktivism. Whereas early distributed-denial-of-service attacks extended to cyberspace tactics of civil disobedience such as the strike and the sit-in, the use of botnets marks an ontological shift in the status of hacktivism" (Deseriis, 2016, p. 3). As we will see next, this change in the technical nature of DDoS, together with the use of anonymizing technologies, gave rise to one of the most fascinating chapters in the history of online civil disobedience, that of Anonymous's DDoS.

### *Two Exemplary DDoS Performed by Anonymous*

In this sub-section, I present two emblematic, politically motivated operations by Anonymous. My primary intention with this and the next sub-section is to illustrate the complexity of Anonymous while characterizing the political side of the collective as well as its questionable

faces. This complexity makes inviable a theorization of Anonymous, *in general*, as an agent of civil disobedience; instead, it makes it crucial to reflect on the more specific questions raised by Anonymous's modus operandi, as I do later in the chapter.

OpPayback illustrates Anonymous's actions against corporations, while OpTunisia exemplifies actions against states. In the final sub-section, I point to a series of morally and politically upsetting attacks. This set prevents the reader from making a falsely-consistent image of the collective. I theoretically embrace the rhizomatic character of Anonymous by presenting instances in which Anonymous acted for the lulz, even when that was against political principles like freedom of speech and basic, civil morals, such as not harming epileptic people.

In September 2010, the political branches of the collective Anonymous started a retaliation campaign called 'Operation Payback' or OpPayback. The aim was to respond to a series of DDoS orchestrated by piracy opponents against file-sharing sites. In support of sites like The Pirate Bay, Anonymous directed DDoS attacks against Aiplex, the Motion Picture Association of America (MPAA) and the Recording Industry Association of America (Norton, 2012). In the video 'Anonymous - Operation Payback,' Anonymous claims: "we are united in the preservation of intellectual freedom and fair copyright laws" (Anonymous4Sweden, 2012). The collective explained it was not against all copyright law, but against the kind that enriches corporations and hinders the spread of creativity amongst the general public.

In December of the same year, after WikiLeaks released hundreds of thousands of US diplomatic cables, Mastercard, Visa, and PayPal stopped facilitating donations to the whistleblowing site. In response, "OpPayback sparked to life again, this time as Operation Avenge Assange. Anonymous powered up the LOIC [Low Orbit Ion Cannon], and with IRC channels brimming with more participants than ever OpPayback had seen, they took down the websites of MasterCard and Visa (...) and briefly slowed PayPal to a crawl" (Norton, 2012). According to digital ethnographer Gabriella Coleman, at the peak of this collective action there were around 7,000 participants in the Internet Relay Chat where the operation was being coordinated. Each of the participants was using the LOIC "to multiply their one click into a stream of data and, in addition, some attacks were conducted by botnets through which one or a few people could direct cracked computers from thousands of locations to simultaneously and suddenly fire data at a targeted site" (Jordan, 2015, p. 188).

With OpPayback we see how different kinds of DDoS overlap within one collective action. Some of the members of Anonymous were using the LOIC to automatically request service from the target websites while others were using botnets to increase the data stream. In

this and similar operations, a loose collective of unidentified people were engaging in online collective political action.

On January 2, 2011, Anonymous officially launched Operation Tunisia or OpTunisia in support of the protests sparked by the self-immolation of Mohamed Bouazizi, a 26-year-old graduate who made a living selling fruit and vegetables in Sidi Bouzid, on December 17, 2010. Bouazizi's desperate act came as a response to the humiliation he felt "after the authorities confiscated his wares, beat him and refused to return his property" (Hassan, 2014). The protests in solidarity with Bouazizi took place amid general outrage against the Tunisian government because of food price inflation, high unemployment, increasing privatization, business monopolies, and corruption (Sadiki, 2010).

The December 2010 - January 2011 protests in Tunisia were also motivated by rumors about corruption in President Ben Ali's family. These rumors were backed up in November 2010 by WikiLeak's disclosures of official US cables from the Embassy in Tunis, dated June 2008. One of these cables says, "[c]orruption is the elephant in the room; it is the problem everyone knows about, but no one can publicly acknowledge" (WikiLeaks, 2008). The leaked documents explain the economic power of Ben Ali's in-laws, the Trabelsis, and, among other things, claim they were perceived as a 'quasi-mafia' by the Tunisian people. For our current purposes, more significant than the information contained in the diplomatic cables themselves is the fact that the Tunisian government decided to block access to WikiLeaks and other websites referring to the leaks (such as Nawaat, an independent collective Tunisian blog) (Black, 2010).

The Tunisian government attack on freedom of expression went even further. Several Tunisian activists reported that their social network accounts were hacked and prominent opposition blogs were hijacked (Ryan, 2011). In order to get access to the activists' accounts, the authorities used a digital trick called 'phishing,' which consists in coming across as a trustworthy website or email to acquire the victim's private information, such as username, password, or credit card information. The censorship of WikiLeaks and the use of phishing moved Anonymous to work together with Tunisian hackers against Ben Ali's authoritarian regime.

On the one hand, Anonymous launched a digital direct-action campaign based on DDoS and web-defacement against government websites stating: "This is a warning to the Tunisian Government: violation of the freedom of speech and information of its citizens will not be tolerated. Attacks will continue until the Tunisian Government respects all Tunisian citizens right to Free Speech and Information and ceases the censoring of the Internet" (Brown, 2011).

At the same time, 'Tflow,' a member of Anonymous, wrote and shared an anti-phishing web script that allowed Tunisians to avoid government intrusive hacking. In a matter of days there were more than three thousand downloads of the script (Olson, 2012).

Having considered these two collective cyber-actions, we now have a concrete basis to further study an atypical political agent that may be employing a new form of civil disobedience. According to Marco Deseriis, what makes OpPayback – and I would add OpTunisia as well – so interesting is that, by utilizing automated reloading and botnets, human and non-human parties interact in one single collective action. Deseriis says, "[w]hat makes this hacktivist DDoS particularly significant (…) is that in this circumstance a conscious action of civil disobedience overlapped, if only for a few hours, with an automated DDoS executed by botnets" (Deseriis, 2016, p. 13). This overlapping of people and machines in acts of contestation makes Anonymous a political phenomenon that deserves to be studied in detail for a political theory of contemporary civil disobedience, because it calls into question the oft-taken-for-granted, collective nature of political action, in particular of civil disobedience. This is discussed in the final section of the chapter.

***Some of Anonymous's Questionable Faces***

As I pointed out earlier, "Anonymous is not unanimous." This is so because of the fundamentally open nature of the collective, the fact that anyone can use the "improper name" (Deseriis, 2015) of 'Anonymous,' as well as its history and its trolling background. This sub-section aims to avoid the risk of simplifying the narrative about a highly complex phenomenon. Although Anonymous has focused on its political activism since 2010 and, to some extent, has left behind its trolling roots, it is worth keeping these roots in mind even when assessing its mostly political actions. Any conceptualization of Anonymous should consider what Emer O'Toole summarized in the following way: "Anonymous: a baffling mixture of vital, considered political protest and incomprehensible pubescent wankery" (O'Toole, 2013).

In "The Anonymous Problem with Feminism" (2013), published in *The Guardian*, O'Toole criticizes those who celebrate *some* of Anonymous actions, especially those against pedophiles and rapists, but do not condemn it when Anonymous intimidates "those working tirelessly, daily against the sexist behaviours and beliefs that are the root of rape culture." O'Toole refers to Anonymous's menacing statements against four women whom it publicly accused of "having 'pull' in getting Twitter accounts suspended; two feminist activist groups are also criticised, despite having no such power." Some days before the publication of this piece, *The Guardian* reported that "[m]ore than 30 Anonymous-related Twitter accounts,

including @Anon_Central, one of the largest with over 150,000 followers, have been suspended by Twitter following a campaign of misogynist abuse aimed at feminist campaigners on the social network" (Hern, 2013).

Anonymous's misogyny can be traced back to the time when it was synonymous with 4chan. Although the majority of 4chan users go to the website to share images, videos, and to chat about "Japanese culture, video games, comics and technology" (Dewey, 2014), the architecture of the site leaves plenty of room for racist, homophobic, and sexist content. Gang-rape footages, leaked celebrity nudes (mainly of female celebrities), and revenge porn – usually featuring women – are not unusual on 4chan. Users of the site are diverse and contradictory:

> They profess to masturbate to child pornography but use social engineering to entrap potential pedophiles. They participate in offline activist movements such as Project Chanology and Occupy Wall Street and support WikiLeaks. These inconsistent and contradictory activities sustain the experience of contingency within the community and also provide ample opportunity for 4channers to learn to discern between 'shit threads' and 'epic posts' (Manivannan, 2012, p. 9).

The anonymizing architecture of 4chan might encourage users to engage in contradictory practices, many of which can be considered disrespectful. Likewise, the 'architecture' of Anonymous allows for similar contradictions; it has enabled misogynistic, racist, homophobic, and anti-Semitic acts in the past, just as it has made it possible for thousands to express their dissent. There would appear to be no reason to think that since 2010 Anonymous has closed and sealed itself off to the extent of excluding the possibility of being used in the future for offensive, or even criminal, acts: "To be sure, no single group or individual can monopolize the name and iconography, much less claim legal ownership over them, and its next steps are difficult to predict" (Coleman, 2013a, p. 214).

Anonymous's complexity makes it arduous to examine whether some of its actions constitute a new form of civil disobedience. As I will argue in the second section of the chapter, the multiplicity and contradictory character of Anonymous and what it fights for leave open questions relevant to assessing their political actions.

A possible objection to the previous characterization of Anonymous's misogyny is that Anonymous is not 4chan. Indeed, Anonymous has a history independent from its birthplace, especially after project Chanology. However, I would like to argue that what is known as the political Anonymous might still have some personality features that resemble its early years. The following example from that time will suffice: "in 2007, Anonymous used message boards and wikis to plan an attack on a nineteen-year old woman who maintained a video blog on Japanese language and video games" (Citron, 2010, p. 35). In this case, "Anonymous" (if the

quotation marks make any difference) not only hacked into the victim's email and published their personal information on multiple sites, but "posted a doctored photograph of the woman atop naked bodies. Underneath the photograph appeared the warning: 'We will rape her at full force in her vagina, mouth, and ass.' Another picture depicted the woman with men brutally raping her" (Citron, 2010, p. 35). Furthermore, Anonymous encouraged its members to rape her.

In 2007 Anonymous also attacked Cheryl Lyndsey Seelhoff, known in feminist circles as Heart. At the time, Seelhoff had a feminist blog, a website, and hosted online discussion boards. These boards were hacked in July 2007 and "were full of pornography videos and clips, including explicit, racist pornography as well as a slew of other graphic and horrifying images" (Mantilla, 2015, p. 64). On various image boards and her blog, she received "hundreds and hundreds and hundreds" of graphic rape threats. Real images of her and her children were posted online with her real name. Her site was also attacked with DDoS. "Seelhoff reports that 'the people who took responsibility for the attacks were from 4chan, Anonymous, and a group that was then called Legion. They were all hackers. They publicly took responsibility for this. They said so in my blog and comments. They said so in emails, they posted it on *Encyclopedia Dramatica*. They posted it all over the place'" (as cited in Mantilla, 2015, p. 65).

To this day, the attacks on Seelhoff are celebrated on *Encyclopedia Dramatica*. The reasons for the attacks are offered there:

> In July 2007, a female moderator on Seelhoff's WomensSpace forums known as BitingBeaver started a thread about how she wishes she had aborted her teenage child because he was looking at pornography. When this insane thread was discovered by a female member of the SA [Something Awful] forums, it sparked a lengthy discussion over there as well, and several trolls from SA visited WomensSpace to reply to BitingBeaver. This thread was eventually deleted by Seelhoff ("Cheryl Lindsey Seelhoff," 2016).

Immediately thereafter, Anonymous's response is described in this way: "Outraged, Anonymous launched a fullscale raid on her website, forums, her personal website, and the website of her presidential campaign ticket. Within days, excessive bandwidth across the board for completely unrelated reasons caused them all to be taken down" ("Cheryl Lindsey Seelhoff," 2016).

The use of the 'Anonymous' label for attacks against women did not stop in 2010. Between 2010 and 2012, Louise Mensch, a Conservative member of the British Parliament, received threatening emails. The following quote (apologies for the insulting language) from one of those emails contains an explicit threat against her children:

> We are Anonymous and we do not like rude cunts like you and your nouveau rich husband Peter Mensch… . So get off Twitter, cuntface. We see you are still on Twitter. We have sent a camera crew to photograph you and your kids and we will post it over the net including Twitter, cuntface. You now have Sophie's Choice: which kid is to go. One will. Count on it cunt. Have a nice day (as cited in Mantilla, 2015, p. 54).

Later, the intimidating email was traced back to one individual: Frank Zimmerman. It is worth noting here that the fact that anyone, regardless of whether they are a consolidated group, an occasional collective, or an individual, can use the label of Anonymous makes it challenging to offer a general account of the political aspects of Anonymous.

To conclude with this characterization of some of the questionable faces of Anonymous, I would like to present one more example of coordinated action explicitly linked to it: the Epilepsy Foundation forum invasion (2008). On March 22, 2008, "trolls engaged in one of the most morally reprehensible and notorious attacks to date, invading an epilepsy forum and posting bright flashing images which induced seizures among some of the forum's members" (Coleman, 2014, p. 69). It seems that the attack was coordinated either on the IRC channel #internethatemachine created "for those sick of the moralfags and the lovefags" (as cited in Coleman, 2014, p. 68), meaning against those politically engaged members of Anonymous. According to *Encyclopedia Dramatica* the attack started as a thread on 420chan, a website similar to 4chan. Regardless of where it started, what is clear is that the invasion of the Epilepsy Foundation forum had no political rationale whatsoever behind it – it was done for the lulz ("Epilepsy Foundation," 2018).

The non-unanimity among Anonymous's members indicates multiple ideologies and practices that often compete with each other, although sometimes they seem coherent. The aforementioned non-political attacks help us attain a more complex and accurate portrait of Anonymous. Even if it were true that since 2010 Anonymous has mainly engaged in hacktivism, which contributed to the split of LulzSec in 2011, the openness of the collective makes it decidedly unpredictable; furthermore, its trollistic, misogynistic, homophobic, and racist past tendencies remain latent. The fluid nature of Anonymous makes it harder to conceptualize its actions as civil disobedience. In the next section, we will examine what seems to be the main problem of anonymity in civil disobedience: it appears to be a means for evasion, a way to escape the legal consequences for breaking the law. We will see that the argument that anonymity is problematic because civil disobedience requires willingness to accept the punishment for disobeying, is problematic both for historical and conceptual reasons. Later on, in the third and final section, titled "Growing Uncertainties," we shall pinpoint six additional

issues that theories of civil disobedience should consider before admitting anonymous disobedience as a form of civil disobedience.

### 2.2. Reviewing the Requirement of Accepting the Legal Consequences

In the first part of the chapter, we studied the loose collective Anonymous. Following a general characterization of how the collective appears on the Internet, we focused on two exemplary operations of Anonymous's disobedience. Finally, to avoid reducing the complexity of the collective to the single narrative of a politically motivated hacktivist group, we briefly examined several attacks that do not fit with such a narrative. Before directly reflecting on the relationship between Anonymous and civil disobedience, we need to consider the central problem that anonymity in general implies, namely, the evasion of the legal consequences for breaking the law. This second section of the chapter is dedicated to the question of whether law-breakers have to accept punishment for their disobedience to be considered civil. The section is divided into three sub-sections: a revision of three historical cases of civil disobedience that show that accepting punishment is not only a principled but also a strategic decision; the study of a normative account of civil disobedience in which accepting punishment is not necessary, but taking the risk of being punished is a requirement; and the assessment of whether the Anonymous collective would fulfill the condition of risking punishment.

#### *Strategically Going to Prison*

In this first sub-section, I focus on the most pressing issue that anonymity entails for the concept of civil disobedience: not accepting punishment. I begin by presenting the view according to which willingness to face the legal consequences for one's law-breaking is a requirement. Then, I demonstrate that this interpretation overlooks the tactical uses that going to jail had in paradigmatic cases of civil disobedience, especially in the Civil Rights Movement. Through the study of texts by Martin Luther King, Jr., Mohandas Gandhi, and Henry David Thoreau, I expose how alongside principled considerations for accepting prosecution, the three of them had tactical, contextual reasons to face these legal consequences. Under certain circumstances, going to jail can help dramatize an injustice but sometimes it might be tactically counterproductive; consequently, those undertaking civil disobedience need to be sensitive to the context in which their action occurs. Additionally, the study of these authors reveals that the relationship to the ruling government, and to the

rule of law, is more complicated than overall respect for them, as theorists such as Rawls have suggested.

### A. Slowly but Steadily Filling up the Jails

Martin Luther King, Jr. and John Rawls are often used as references for the idea that people who practice civil disobedience should face the legal consequences for their actions. Frequently, King's *Letter from Birmingham Jail* is quoted:

> In no sense do I advocate evading or defying the law, as would the rabid segregationist. That would lead to anarchy. One who breaks an unjust law must do so openly, lovingly, and with a willingness to accept the penalty. I submit that an individual who breaks a law that conscience tells him is unjust, and who willingly accepts the penalty of imprisonment in order to arouse the conscience of the community over its injustice, is in reality expressing the highest respect for law (King, 1986, p. 55).

The letter, written from jail, seems categorical about the need to be willing to accept the penalty for breaking the law. But one can ask what kind of requirement this is; does this demand arise from the principles that motivate the action or from tactical considerations? While the first part of the quote points in the direction of principled willingness to accept the penalty, the second points in a different direction. When King says, "who willingly accepts the penalty of imprisonment in order to arose the conscience of the community" and "expressing the highest respect for law," he seems to suggest that the acceptance of punishment is subordinated to the end of awaken the conscience of the society, as well as being a means to express the highest respect for the rule of law.

The idea that civilly disobedient citizens must accept legal consequences for their breach of the law is central to Rawls's account of civil disobedience. As we know already, for Rawls, civil disobedience is a public act, which means "it is engaged in openly with fair notice; it is not covert or secretive" (Rawls, 1999, p. 321). For Rawls, publicity is not only a normative requirement related to the justification of civil disobedience, but it is also an essential element of its definition and, as such, it is coherent with the other essential elements, such as nonviolence and conscientiousness. Rawls writes: "To be completely open and nonviolent is to give bond of one's sincerity, for it is not easy to convince another that one's acts are conscientious, or even to be sure of this before oneself" (Rawls, 1999, p. 322). In this way, Rawls ties up several features of civil disobedience at once: the act is done publicly so the community that is addressed can know that, even though the law is broken, "the act is indeed politically conscientious and sincere" (1999, p. 322). Rawls insists: "The law is

broken, but fidelity to law is expressed by the public and nonviolent nature of the act, by the willingness to accept the legal consequences of one's conduct" (1999, p. 322). Here the 'civil' in civil disobedience is interpreted as public, nonviolent and within the limits of fidelity to law; one's acceptance of the legal consequences of their law-breaking relates to all these features of their disobedience. Thus, accepting punishment is subordinated to respect for the law, moral seriousness, and ultimately to the communicative nature of the act, because both fidelity to law and political conscientiousness are displayed by overtly surrendering to arrest.

By qualifying the acts as 'sincere' and 'faithful to the law,' Rawls's account of civil disobedience stresses the principled character of accepting legal consequences. Thus, Rawls's definition of civil disobedience seems to accurately represent the kind of practice Martin Luther King, Jr. describes in *Letter from Birmingham Jail*. However, one can ask whether accepting punishment has a tactical role that is not sufficiently accounted for in Rawls's version of civil disobedience. There might be cases in which besides communicating seriousness, conscientiousness, sincerity, and respect for the rule of law, accepting punishment is a function of other goals such as dramatizing the coercive force of the state, bringing to the surface a specific conflict, publicizing the disobedience campaign, calling for new supporters, undermining the moral legitimacy of government officials, etc. Following his project of developing an ideal theory of justice, Rawls might have overemphasized the normative or principled side over the more concrete tactical considerations at stake in civil disobedience; this might be so because he thought of accepting punishment as subordinated to elements of the definition such as conscientiousness, publicity, and nonviolence, and to the moral goal of showing respect for the rule of law.

There are alternative assessments of the role of accepting punishment in civil disobedience. Erin Pineda, for instance, questions the common appeal to King's *Letter from Birmingham Jail*. According to Pineda, "a historical inquiry into one paradigmatic case of civil disobedience – the civil rights movement of the early 1960s, from the student-led sit-ins through the Freedom Rides – reveals the meanings of serving jail time to be multiple, mutable, contested, and as shaped by strategic concerns as by moral imperatives" (Pineda, 2015, p. 3). Pineda's contribution consists not only in debunking the idea of purely principled acceptance of punishment by civil rights campaigners in the United States, but also in describing how, for members of the Student Nonviolent Coordinating Committee (SNCC) and the Congress of Racial Equality (CORE), going to jail was itself a form of protest able to multiply and extend political agency to new arenas, and to withhold cooperation from illegitimate power.

Pineda's historical research offers evidence that the Rawlsian emphasis on the normative significance of accepting punishment does not fully correspond with how it was conceived by Martin Luther King, Jr. and other members of the Civil Rights Movement. It is difficult to maintain that they were committed to accepting punishment because of their fidelity to the rule of law. Without necessarily contradicting the *Letter*, King stated in an interview in 1960: "We will encourage more students to go to jail, to build a spirit, a cause among Negroes. If we fill up his jails, the white man will have no place to put us" (as cited in Pineda, 2015, p. 10). This quote, together with the "Jail, No Bail" initiative, shows that accepting punishment to morally communicate with the community was one among several other reasons for civil rights campaigners to serve time in prison. It is hard to believe, though, that King would be encouraging more students to go to jail to prove their fidelity to a system of law that not only did not grant them all their rights, but that would respond to their claims for rights with incarceration.

As I mentioned earlier, according to Rawls, multiple characteristics of civil disobedience reinforce each other: publicity, nonviolence, respect for the rule of law and limited goals come together. However, as we shall see later, it seems that what in theory appears necessary and clear was much more complicated in paradigmatic cases such as those of King, Gandhi, and Thoreau. Drawing on Pineda's work, I have started by problematizing the frequent reference to King's *Letter*. It is clear now to us that accepting punishment in the Civil Rights Movement was not simply a matter of principle, but was also part of the campaign tactics. In what follows I will examine the link between civil disobedience and the general approval of the system of law, which supposedly implies that the participants in disobedience have limited and not revolutionary aims. I argue this is a problematic interpretation not only for King's case but also for Gandhi's and Thoreau's.

Martin Luther King, Jr. did not regard the political system as 'nearly just,' and he was not disobeying with the aim of showing his highest respect for the system of law. Proof of this is the fact that he called the system not only 'unjust' but also 'evil' (cf. Lyons, 1998, p. 44). In King's context, accepting punishment was also a strategic move to reveal that evil: "so the world will know I am right and you are wrong" (King, as cited in Lyons, 1998, p. 43). According to David Lyons (1998) not only King, but also Gandhi and Thoreau believed that the systems of law they lived under required deep change, and they did not regard themselves as bound to obey the unjust laws that sustained such systems (cf. 1998, p. 40).

**B. Soul-Force Goes to Jail**

That practitioners of civil disobedience do not relate to imprisonment merely in normative terms, as a requirement of their commitment to law, but in a more complex manner that includes situated tactical reasoning, is supported by Gandhi's disobedience. Karuna Mantena (2012) brings to the surface the fundamental realist basis of Gandhi's understanding of politics, thus rendering his political thinking much more complex than is usually recognized.

According to Mantena, Gandhi's idea of *satyagraha* is better understood as a response to the challenge to "create, define, and delineate the conditions through which nonviolent action, especially in its collective form, could mitigate" the negative tendencies towards escalation and latent violence inherent in all political action (Mantena, 2012, pp. 461-462). Viewed in this way, *satyagraha* comes to mean not a set course of action or a fixed practice but rather, "a strategic interplay of nonviolent techniques, methods, and stances that in themselves have to be as various and dynamic as the nature of political conflict itself" (2012, p. 462). Taken as an essentially strategic and self-limiting multiplicity of practices, *satyagraha* is necessarily context-dependent (cf. 2012, p. 464).

I contend that the context sensitivity of Gandhi's *satyagraha* should make us cautious about potentially idealized versions of nonviolent resistance, including civil disobedience, in which all contextual differences are canceled out.[19] In trying to make all the features perfectly fit together, one could arrive at a coherent theory while losing sight of the complexities – and even the contradictions – of real practices of opposition. The risk here is that of creating mythical heroic dissenters while missing the intricacies of principled *yet* strategic breaches of the law.

One among the many complexities in Gandhi's practice and theory of civil disobedience is the relationship with the state. I showed above that King deemed as evil the political system he was trying to change. A similar assessment can be found in Gandhi. In 1930, he wrote:

> This system of government is confessedly based upon a merciless exploitation of unnumbered millions of the inhabitants of India. (....) It is then the duty of those who have realized the awful evil of the system of Indian Government to be disloyal to it and actively and openly to preach disloyalty. Indeed, loyalty to a State so corrupt is a sin, disloyalty a virtue (Gandhi, 1987, p. 110).

[19] In his study of Gandhi's celebration of Socrates and Thoreau as inspiring examples of *satyagraha*, and how Gandhi's thinking was later on codified into Western liberalism, Alexander Livingston (2017) writes: "One insight we can glean concerns the uses of mythologization in the history of political thought. Later scholars who codified the liberal theory of civil disobedience were not simply getting their history wrong. They, like Gandhi, were conscripting past thinkers into a canon in order to create a useable past for contemporary struggles against imperialism and racism" (2017, p. 20).

Contrary to the presumed overall respect for the law with which Rawls defines civil disobedience and distinguishes it from revolutionary action, Gandhi viewed the political system in India under British rule as evil, and his practice and call for non-cooperation was based upon the idea that "[a]n evil administration never deserves such allegiance. Allegiance to it means partaking of the evil" (Gandhi, 1987, p. 111). Gandhi's campaign was not to show loyalty to the law, but to actively and openly show disloyalty to the colonial system of law.

That Gandhi's civil disobedience was both principled and context-sensitive is apparent in when and how Gandhi called for nonviolent non-cooperation. On April 21, 1919, Gandhi published the "Press Statement on Suspension of Civil Disobedience" in *The Hindu*. There, Gandhi writes: "Our *satyagraha* must therefore now consist in ceaselessly helping the authorities in all the ways available to us as *satyagrahis* to restore order and to curb lawlessness" (Gandhi, 1987, p. 92). This call to cooperate with the authorities does not mean that back in 1919 Gandhi considered the system of government to be just, but that the principles of *satyagraha*, its commitment to nonviolence, sometimes call for help in restoring order as at some other times it calls for alternative ways of non-cooperation. There is no given model for civilly disobeying, and this goes for the relationship with the authorities as well as for facing punishment.

Two decades after the suspension of civil disobedience cited above, in 1940, Gandhi explained why he himself was not participating in civil resistance:

> A question has been asked why, if I attach so much importance to quality, I do not offer civil resistance myself. (...) I do not wish to do so for the very good reason that my imprisonment is likely to cause greater embarrassment to the authorities than anything else the Congress can do. I want also to remain outside to cope with any contingency that may arise. My going to jail may be interpreted as a general invitation to all Congressmen to follow suit. They will not easily distinguish between my act and speech (Gandhi, 1987, p. 123).

Although Gandhi was an active leader of the Indian National Congress and was directly involved in ongoing campaigns of disobedience, in this quote he argues that his act of going to jail would serve much less purpose than his leadership from outside. Moreover, just as in 1919, Gandhi's use of civil disobedience was attentive to the risks of violent backlashes and bloodshed. Hence, for Gandhi, it is irresponsible to call for mass civil disobedience when there are indiscipline and violence within the movement (cf. 1987, p. 115).

For Gandhi, going to jail is not required for all those who practice civil disobedience; moreover, he even considered it dangerous to think that. In June 1920 Gandhi complained, "many Congressmen are playing at nonviolence. They think in terms of civil disobedience

anyhow meaning the filling of jails. This is a childish interpretation of the great force that civil disobedience is" (Gandhi, 1987, p. 118). *Satyagraha*, for Gandhi, is at its core Truth[20]-Force, Soul-Force or Love-Force, a power that individuals should learn; a power that allows them to "conquer hate by love, untruth by truth, violence by self-suffering" (1987, p. 23). Going to jail is not in itself virtuous, "prison-going without the backing of honest constructive effort and goodwill in the heart for the wrong doer is violence and therefore forbidden in *satyagraha*" (1987, p. 118). In brief, going to jail is a virtue only when it comes from "obedience of the higher law of our being – the voice of conscience" (1987, p. 91). As Alexander Livingston explains,

> Fearless *ahimsa* can be learned behind prison walls. Gandhi frequently circulated detailed instructions to *satyagrahis* concerning how they ought to behave in jail: they must be clean, civil, polite, etc. While these instructions resemble some of the virtues of the civil disobedient entailed by fidelity to law, they bear a stronger similarity to the codes of spiritual discipline Gandhi demanded in his ashrams (Livingston, 2018, p.18).

It is now clear that, for Gandhi, accepting punishment is not intended to convey respect for the rule of law; nor can it be interpreted as not wanting to change the whole system but merely a specific law or policy, as Rawls claims. For Gandhi civil disobedience is one among many branches of *satyagraha*, and as such, it is born of *satya* (truth) and *ahimsa* (nonviolence). For him, the 'civil' in civil disobedience means nonviolence (Gandhi, 1987, p. 112), which does not imply respect for the rule of law or necessarily going to prison. Gandhi could not have put it more clearly: "Complete civil disobedience is a state of peaceful rebellion – a refusal to obey every single State-made law" (1987, p. 95). "Complete civil disobedience is rebellion without the element of violence in it. An out and out civil resister simply ignores the authority of the state" (1987, p. 96). This textual evidence contradicts not only Rawls's highly influential account of civil disobedience but also more recent interpretations such as William Scheuerman's. According to him, "activists and intellectuals from Gandhi to Habermas have typically offered some rendition of the idea that civil disobedience means not only morally or politically motivated lawbreaking, but also lawbreaking demonstrating fidelity to – or respect for – law" (Scheuerman, 2018, p. 17). Our study of the Civil Rights Movement and Gandhi's texts supports the opposite interpretation: these paradigmatic cases of civil disobedience, rather

[20] It is worth remembering Akeel Bilgrami's explanation of what truth means for Gandhi: "...truth for Gandhi is not a cognitive notion at all. It is an experiential notion. It is not propositions purporting to describe the world of which truth is predicated, it is only our own moral experience which is capable of being true. This was of the utmost importance for him" (Bilgrami, 2002, p. 89). This means that, "truth being *only* a moral notion, there is no *other* value to truth than the value of such things as *telling* the truth, no more *abstract* value that it has" (2002, p. 91).

than being aimed at demonstrating fidelity to law, sought to demonstrate a deeply-rooted refusal to obey the law and to recognize the authority of the state that enacts the law.

**C. Allegiance to One's Own Thinking**

The condition that practitioners of civil disobedience must accept the legal consequences for their breach of law as a way to show their respect for the rule of law and their non-revolutionary aims is problematic also in relation to the paradigm case of Henry David Thoreau. In his famous essay *Civil Disobedience* – initially published in 1849 under the title "Resistance to Civil Government" in the anthology *Æsthetic Papers* – Thoreau makes clear that his disobedience was not about any specific law or policy of the state, but was more encompassing. Thoreau says, "[i]t is for no particular item in the tax-bill that I refuse to pay it. I simply wish to refuse allegiance to the State, to withdraw and stand aloof from it effectually" (Thoreau, 2016, p. 277). According to Thoreau, everyone recognizes "the right to refuse allegiance to and to resist the government, when its tyranny or its inefficiency are great and unendurable" (2016, p. 264). Thoreau calls this 'right of revolution.'

The right to withdraw allegiance from the state amounts to saying that an individual is primarily a man – a person, I would say – and not a citizen. Thus, "[t]here will never be a really free and enlightened State, until the State comes to recognise the individual as a higher and independent power, from which all its power and authority are derived, and treats him accordingly" (Thoreau, 2016, p. 282). Only in such an imagined state would the legislator and the individual conscience never collide. Under any state, especially the one Thoreau resisted by not paying taxes, "we should be men first, and subjects afterwards. It is not desirable to cultivate respect for the law, so much as for the right. The only obligation which I have a right to assume, is to do at any time what I think right" (2016, p. 262).

Thus, "Thoreau provides a counter-example to the notion that civil disobedients have a favorable judgment of the prevailing system and accordingly acknowledge a moral presumption favoring obedience to law" (Lyons, 1998, p. 42). Thoreau's is indeed a counter-example to the mainstream liberal account of civil disobedience, but as we have seen, not the only one. It is harder now for us to accept that King, Gandhi, and Thoreau considered the political system they resisted as a 'nearly just' democratic government in which serious injustices nevertheless exist (cf. Rawls, 1999, p. 335).

Rawls rightly suggests that the way in which those who are disobedient relate to the legal consequences of their law-breaking reflects how they assess the political system they challenge. He was wrong, though, to suggest that civil disobedience requires taking society as

nearly just, necessarily acting out of respect for the law, and consequently not having revolutionary aims and being willing to accept the punishment. On this last point, Thoreau's view is as complex as Gandhi's and King's. Certainly, one can try to make the case that the acceptance of the legal punishment is purely principled by referring to the often-quoted sentence, "[u]nder a government which imprisons any unjustly, the true place for a just man is also a prison" (Thoreau, 2016, p. 271);[21] however, one can also embrace the complexity of what is both principled *and* strategic. Thoreau says:

> If the alternative is to keep all just men in prison, or give up war and slavery, the State will not hesitate which to choose. If a thousand men were not to pay their tax-bills this year, that would not be a violent and bloody measure, as it would be to pay them, and enable the State to commit violence and shed innocent blood. This is, in fact, the definition of a peaceful revolution, if any such is possible (Thoreau, 2016, p. 271).

It seems accurate to say that for Thoreau going to prison is not only a demand from conscience but also a tactical move to push the state to reconsider its policies. In this sense, Thoreau's strategic use of submission to prosecution is similar to King's idea that nonviolent direct action aims at dramatizing an existing conflict; in other words, "non-violent direct action seeks to create such a crisis and foster such a tension that a community which has constantly refuse to negotiate is forced to confront the issue" (King, 1986, p. 54). I do not mean to say that going to prison is not principled for Thoreau and King, but that it is not *purely* principled; instead, that it is *also* strategic, and as a consequence, it needs to be context-sensitive, as Gandhi rightly understood. In some circumstances going to prison is not only the right thing to do but it is useful too, in other cases it might be so counterproductive that it can hardly be considered right. This suggests that the acceptance of punishment should not be conceptualized as a necessary condition, let alone as a sufficient condition, for civil disobedience.

Revisiting the texts of the three most renowned practitioners and theorists of civil disobedience allows us to conclude, with David Lyons, "that none of these three regarded the prevailing system [chattel slavery, British colonial rule, Jim Crow] as 'reasonably just' or accepted a moral presumption favoring obedience to law, and that their views were sound" (Lyons, 1998, p. 33).

[21] This interpretation can be found in Hourya Bentouhami (2007): "In fact, civil disobedience according to Thoreau is composed of two detachments: the first one consists in withdrawing his support of the legal system and the government, and consequently accepting the sanctions punishing this act. Hence, to demonstrate the sincerity of his intentions, Thoreau refused to appeal to the prison punishment because, declaring that 'under a government which imprisons unjustly, the true place for a just man is also prison'" (2007, p. 1).

***The Requirement of Risking Punishment***

In the previous sub-section, I criticized Rawls's conception of civil disobedience; more specifically, the way in which he links allegedly definitional features to each other. I showed that for King, Gandhi, and Thoreau, the system of law they were contesting was not nearly just but deeply unjust, and that for them going to prison was not meant to communicate respect for the law, but was both a principled action of dissent to the law and a strategic act in their respective long-term projects. In this sub-section, I will present an alternative conception of civil disobedience, according to which not all of the features Rawls considers indispensable are necessary.

In *Conscience and Conviction. The Case for Civil Disobedience* (2012), Kimberly Brownlee develops a conception of civil disobedience significantly different from the one Rawls offers in *A Theory of Justice*. Instead of understanding the civility of civil disobedience as nonviolence, publicity, and willingness to accept the punishment, Brownlee argues that civility lies in the conscientious, communicative motivations of its practitioners (2012, p. 23). Brownlee does not intend to provide a new definition of civil disobedience; she does not specify all the necessary and sufficient conditions for civil disobedience, rather her project consists in highlighting several necessary features thereof (2012, p. 18). This methodological shift can be traced back to Brownlee's article "Features of a Paradigm Case of Civil Disobedience" (2004). There she claims that her approach has some advantages over a definitional approach; for instance, the fact that "it is not possible to draw sharp lines between civil disobedience and other types of dissent such as conscientious objection, terrorism and revolutionary action" (Brownlee, 2004, p. 339), does not represent a problem for her view as it does for definitional enterprises. Additionally, her approach escapes the dialectic of generalization and counterexamples of the definition – the dialectic on which the previous sub-section is based.

For Brownlee, civil disobedience is one kind of communicative disobedience; a kind defined by "not just a communicative breach, but a *conscientious* communicative breach of law motivated by steadfast, sincere, and serious, though possibly mistaken, moral commitment" (2012, pp. 23-24). So construed, civil disobedience is not about certain substantive moral values, but about sincere moral conviction that presupposes: 1) the consistency between one's judgments, motivations, and conduct; 2) the application of the same criteria for judging one's own actions and the judgment of others; 3) that one bears the risks of honoring their conviction by not seeking to evade the consequences for reasons of

self-protection, in some cases even taking positive action when appropriate to support such conviction; and 4) that they are willing to communicate to others their conviction and to deliberate. For our current purpose, we will focus on the third condition of the communicative principle of conscientiousness, namely non-evasiveness.

According to Brownlee, the non-evasion condition is a practical test for conscientiousness (cf. Brownlee, 2012, p. 37). For their actions to be considered civil disobedience, law-breakers need to pass the test of conscientiousness, which means of deep and serious conviction. "To satisfy the non-evasion condition, it is enough that they act communicatively and thereby take the risk of being arrested and punished or socially censured. They need not act to *ensure* that they are punished" (2012, p. 38). Contrary to Rawls's and other liberal views of civil disobedience, Brownlee argues that non-evasion should be understood as *taking the risk* of being arrested and punished, and not as accepting punishment or seeking to go to prison. Besides, she argues that it is enough for practitioners to act communicatively 'and thereby' take those risks. Although Brownlee seems to postulate two different tests for conscientiousness, namely taking the risks (cf. 2012, p. 38) and the dialogic condition (cf. 2012, p. 42), in practice they might to come to be one and the same. Law-breakers must want to communicate their conviction, 'and thereby' they would be taking the risks of being arrested and punished. This does not require that one succeeds in defending or even communicating their conviction to others (2012, p. 43); nor does it require they effectively be prosecuted or go to prison.

Brownlee's communicative principle of conscientiousness seems suitable to accommodate the complexities of the relationship between those who would turn to civil disobedience and how they would be punished by the legal system examined in the previous sub-section. "The communicative principle of conscientiousness is a *ceteris paribus* principle, and hence can be sensitive to the burdens of vulnerability, disadvantage, unpopularity, relative power, and relative cost of communication" (2012, p. 44). Thus understood, Brownlee's conception of civil disobedience as fundamentally conscientious, communicative breaches of the law can accommodate a principled and, at the same time, strategic (communication-oriented) relation to the legal consequences of law breaking, and opens up a space for civil disobedience without punishment.

To understand why Brownlee claims that accepting punishment is not a necessary feature of civil disobedience, it is useful to briefly reconstruct her idea of a moral right to civil disobedience. Contrary to Joseph Raz (2009) and David Lefkowitz (2007), Brownlee does not ground her idea of a moral right to civil disobedience on the right to participate in the political

decision-making process; nor does she restrict it to a specific system of government, such as liberal regimes (cf. Brownlee, 2012, pp. 141-147). For her, "the most compelling grounds for a right to civil disobedience lie, first, in a principle of humanistic respect for deep moral conviction, and second, in an acknowledgment of the overly burdensome pressure that society and the law place on us when they coerce us always to privilege the law before our deeply held moral convictions" (2012, p. 144). The moral basis for a right to civil disobedience is for Brownlee "a principle of humanism," which means "society's duty to honour human dignity however popular or unpopular our moral convictions may be" (2012, p. 145). Although it is worth studying the discussion between Brownlee (2018) and Lefkowitz (2018) about the moral grounds for a right to civil disobedience and what a right actually is, here we need to focus on the consequences of Brownlee's argument.

The moral right to civil disobedience based on the principle of humanistic respect for human deep moral conviction and dignity does not generate grounds for a legal right to civil disobedience. Accordingly, Brownlee's derived moral right against lawful punishment does not generate grounds for a legal right against punishment either (cf. Brownlee, 2012, p. 147). In other words, due to the moral value of people's convictions, people have a moral right – but not a legal right[22] – to civilly disobey the law; the fact that they have such a moral right does not imply they cannot be punished. Brownlee claims this implies that law-breakers must accept the *risk* of being punished, which flows from their conscientious communicative efforts, but they need not turn themselves in so they can be punished (cf. 2012, pp. 146-148). At this stage, we need to interrogate the meaning of 'accepting the risk of being punished' and how that is different from accepting punishment.

According to Brownlee, "[t]o *be* civilly disobedient, we must accept only the *risk* of being punished. The willingness to accept that risk flows from the non-evasive and communicative qualities of our conscientious conviction" (Brownlee, 2012, p. 8). The centrality that non-evasiveness has for Brownlee suggests that the use of anonymizing techniques and technologies is incompatible with her account of civil disobedience. After all, she states that "[t]he non-evasive disobedient does not strategize about how to keep her disobedience secret, and so, to that extent, she is willing to be seen to disobey" (2012, p. 149). Thus, secret disobedience cannot be civil because there is no communicative intention and its practitioners are not taking any risks.

[22] William Scheuerman (2015) interprets Brownlee's focus on a moral right to civil disobedience as part of a contemporary anti-legal turn in theories of civil disobedience.

Although secret disobedience and anonymous disobedience are different (in the former, acts are not meant to be seen while in the latter they are aimed to be seen, albeit the identity of those who perform them remains unknown), Brownlee's categorical rejection of evasiveness seems to suggest that, in her view, anonymous disobedience would not be civil. More generally, Brownlee's emphasis on the moral value of and the necessary respect for conscientious convictions urges us to conclude that anonymous actors do not seem to be interested in communicating and standing up for their convictions. However, Brownlee concedes that, "[s]urely, the humanistic principle must be sensitive to the onerousness not only of rule-adherence, but also of the risks of self-exposure" (2012, p. 149). A context-specific, risk-sensitive interpretation of the humanistic principle might help concretely assess the degree of self-exposure that is required when undertaking civil disobedience.

Self-exposure is always somewhat potentially harmful. By acting and speaking openly one might jeopardize their interests; more specifically, by publicly breaking the law one might, depending on the context, risk arrest, legal and illegal punishment, social censure, and even death. If, following Brownlee, one endorses a moral right to civilly disobey independent from the political system that is contested, then the non-evasiveness requirement should apply not only to liberal democratic constitutional states, but also to illiberal undemocratic states, and to mixed regimes, which is particularly important for us given the diversity of regimes that use and regulate the Internet. In not-significantly liberal and not-sufficiently democratic states, the risks for disobeying the law, or the ruling powers, are greater than in liberal and democratic societies. Whether one grounds a moral right to civil disobedience in the right to participation (as Raz and Lefkowitz do), or in a principle of human dignity (as Brownlee does), the moral demands on those who exercise such a right need to be context-sensitive. One could say that since the risks of self-exposure change so greatly from one state to another, self-exposure and non-evasiveness should be regarded as desirable features but not as necessary conditions for civil disobedience. As a consequence, evasive practices, such as anonymization, should not be ruled out *a priori* from the realm of civil disobedience. The use of anonymity in some acts of disobedience could still be compatible with an idea of civility.

***Does Anonymous Risk Punishment?***

The previous discussion allows us to examine Anonymous's dissenting actions in the light of an account of civil disobedience, according to which those who practice civil disobedience do not necessarily have to go to prison or face legal consequences for their illegal acts. According to this view, they must assume the risk of being taken to jail and punished, which

is not equivalent to accepting these penalties. To be considered civil though, practitioners also need to meet other requirements such as consistency, universality, non-evasiveness, and communicativeness, as explained earlier.

From this perspective, Anonymous's actions are hardly civil disobedience. First of all, the lack of unanimity in Anonymous is troubling. Even if one makes the case that every agent is up to a point inconsistent and that all subjects have shady sides, it is still true that Anonymous is highly self-contradictory. Even accepting the relative consistency of the political branches of Anonymous, especially after Project Chanology and the split of LulzSec, it is true that due to the open use of the label 'Anonymous' and of anonymity itself, morally and politically inconsistent actions remain always possible.

To illustrate how far Anonymous will go to protect its members' identities, it is worth revisiting February 5-6, 2011 when Aaron Barr, then CEO of the security firm HBGary Federal, announced that he had the names and addresses of the top Anonymous leaders – for Barr, Anonymous was not leaderless as was, and still is, believed. Anonymous did not wait until Barr had revealed the information he had, but responded with a harsh series of attacks on the security organization and against Barr himself. Anonymous hacked the HBGary Federal website and replaced it with a statement; they also took control of the company's email accounts, made public thousands of internal emails, erased files, and took down the company's phone system. Anonymous also took charge of Barr's personal Twitter account, posted Barr's supposed home address and social security number. Anonymous's response was seriously harmful to a company focused on technology security and for Barr's career. It is difficult to interpret these actions other than as evasive practices. Anonymous's response to Barr's threat of disclosing members' names and addresses included making public Barr's private information; clearly it was so wrong for Anonymous that someone threatened to reveal (to dox) the identity of its members, that it did the same to that person.

While in several liberal theories, non-evasiveness, understood as a willingness to go to jail, is crucial in civil disobedience because it conveys respect for the law (e.g., Rawls, Scheuerman), in Brownlee's theory the self-exposure of the law-breaker, leaving them vulnerable not only to prosecution but also to social censure and other risks, mainly conveys conscientiousness, moral seriousness. The communication of those engaged in civil disobedience is centered not on their fidelity to the law, but on their commitment to honoring their conviction. Thus, they send a message to those expecting them to comply with the law: we are confident there is an ongoing injustice, and we are committed to tacking this injustice

to the point of exposing ourselves to prosecution, the society's disapproval, or worse. Does Anonymous communicate this kind of moral or political commitment in its actions?

In general terms, anonymous participants engaged in civil disobedience are not as exposed as self-identified activists who publicly break the law. Specifically, Anonymous does not seem have been effective in communicating moral or political seriousness, as discussed above. This is not to say that none of the members of Anonymous are deeply involved in the attempt to remedy an injustice or bring about a more just political system, but that by acting *as* Anonymous, they are somewhat evasive – and sometimes playful and revengeful to the point of undermining the moral and political significance of their actions.

Anonymous's disobedience is somewhat evasive; those acting behind the mask do not want to be identified and prosecuted, which rules out possible strategic uses of going to trial and jail. However, after the identification and prosecution of some members of Anonymous, and all the more after the FBI's infiltration of the collective through Sabu,[23] it is apparent that the 'unlinkability' of their actions and their identities is most likely only temporary. Besides, arguments regarding Anonymous's moral and political seriousness and its degree of self-exposure cannot ignore Edward Snowden's disclosures. In the post-Snowden era, it is known, especially among hacktivists, that acting on the Internet is risky; the digital traces that all digital acts leave can be used later to de-anonymize a user (Narayanan and Shmatikov, 2009; Ohm, 2009). For those using the Internet for political action, especially those who try to protect themselves by using anonymizing technologies and encryption, the risk does not disappear – actually, in a way, the danger increases because states consider the use of these technologies as suspicious (Schneier, 2013). In a time when states and corporations collaborate to collect and analyze *all* online activities (Greenwald, 2014), even anonymous online disobedience implies risky exposure, and identification as a member of Anonymous even higher risks.[24]

A historical and context-sensitive approach to the use of anonymity in online moral- and politically motivated disobedience could transform the way we think about conscientiousness. Self-exposure is always to some degree risky, but activists using

[23] Hector Xavier Monsegur, known as 'Sabu,' is a former prominent Anonymous and LulzSec member who after being singled out by the FBI became an informant. Sabu infiltrated Anonymous by continuing with his participation on IRC chats and by encouraging others to hack while the FBI was monitoring through him all of Anonymous's moves. According to Jeremy Hammond, an Anonymous hacktivist sentenced to ten years in prison for hacking the private intelligence firm Stratfor and releasing data to the whistleblowing website WikiLeaks, he hacked Stratfor thanks to the information about system vulnerabilities Sabu gave him. All this suggests that Sabu's collaboration with the FBI included putting traps to other members of Anonymous.

[24] On November 13, 2013, Hammond was sentenced to ten years in prison plus three years supervised release for making public internal emails from Stratfor. For him, such a severe sentence was a, "'vengeful, spiteful act' designed to put a chill on politically-motivated hacking" (Pilkington, 2013).

anonymizing technologies in undemocratic and illiberal contexts, which can be the case for any action attacking a state or company, because of the global nature of the Internet, are exposed to far more severe dangers than those who can expect due process and a fair trial. Theorists concerned with moral and political seriousness need to consider the seriousness of the dangers anonymous hacktivists do face.

Note that even in supposedly liberal democratic states, deanonymized hacktivists face life-long consequences, such as unpayable fines, e.g., had Aaron Swartz been convicted, he would have faced up to 35 years in prison and a $1 million fine. In the face of consequences radically affecting one's capacity to lead a life, such as those that might follow a conviction under The Computer Fraud and Abuse Act in the United States,[25] it seems reasonable to reconsider the normative requirement of accepting punishment for civil disobedience, and even that of self-exposure against the risk of being punished.

Not only do anonymous hacktivists face high risks for their online disobedience, but other political agents such as whistleblowers do as well. Snowden's life after his disclosures exemplifies how digital contestation can have immense adverse consequences other than prosecution: not being able to return to his home country or travel around the globe; living with the uncertainty of whether his asylum will be renewed or not, or even arbitrarily canceled, in the way that Ecuador canceled Julian Assange's in April 2019 – these are some of the consequences that employing civil disobedience might lead to other than a prison sentence. As shown in Chapter 1, more often than not, whistleblowers suffer harsh consequences in their personal and professional lives after denouncing wrongdoings (Alford, 1999).

Two additional cases of whistleblowing related to the digital world come to mind when discussing life-changing consequences for speaking out; in both of these cases, agents anonymized themselves initially. The first one is Chelsea Manning's, whose imprisonment shows how cruel the penitentiary system can be; among other cruel treatments such as prohibiting her to grow her hair, Manning has been exposed to needless long periods in solitary confinement and the arbitrary confiscation of reading materials.[26] All of this is true for both

[25] As the Electronic Frontier Foundation (EFF) explains: The Computer Fraud and Abuse Act (CFAA) "is the federal anti-hacking law. Among other things, this law makes it illegal to intentionally access a computer without authorization or in excess of authorization; however, the law does not explain what "without authorization" actually means. (…) Creative prosecutors have taken advantage of this confusion to bring criminal charges that aren't really about hacking a computer, but instead target other behavior prosecutors dislike" (EFF, 2018).

[26] In the list of confiscated books some stand out, such as *Law's Empire*, *Justice for Hedgehogs*, and *Taking Rights Seriously* by Ronald Dworkin, and Gabriella Coleman's book *Hacker, Hoaxer, Whistleblower, Spy: The Many Faces of Anonymous*, which has been crucial for this chapter. For the full list of confiscated materials, see Remy (2017).

the seven years she served for her disclosures of thousands of US military and diplomatic documents in 2010 and for her more recent imprisonment for refusing to testify before a Virginia grand jury investigating WikiLeaks.

The second case is Thomas Drake's; it shows that one can suffer life-changing consequences other than imprisonment. After being a senior executive at the NSA for seven years, he blew the whistle on NSA's waste of billions of dollars, and the illegal collection and use of digital data on US citizens. During a long process in which Drake was charged under ten separate counts, five of these under the Espionage Act of 1917, he could not find any job in the security sector: this is why he ended up working at an Apple store answering customers' questions about iPods and iPads (Nakashima, 2010).

These examples are well-documented on the Internet and are a reference for other would-be practitioners of digital disobedience. For instance, Snowden studied Drake's process very carefully before his disclosures; that led Snowden to the conclusion that internal reporting was pointless. These examples demonstrate the high risks that people who engage in digital disobedience face even when they try to conceal their identities. Should future law-breakers ignore the evidence of the legal and non-legal harsh consequences they would suffer and heroically accept legal punishment for their unlawful acts? Can theorists of civil disobedience ignore the extraordinary risk that those courageously acting today do face, even when they wear a mask?

### 2.3. Growing Uncertainties

In the second section of the chapter we examined the frequent claim that those practicing civil disobedience must accept the legal consequences of their actions. Such an extended discussion on whether not accepting legal punishment is compatible with civil disobedience was necessary because anonymity is often deemed incompatible with civil disobedience, as it is interpreted as a means to avoid prosecution. We saw that it is difficult to reconcile civil disobedience with anonymity even within a theory that postulates the need to accept the risk of being punished, rather than effective legal punishment being a key feature of civil disobedience.

We concluded the previous section by showing that the risks anonymous digital agents face today are greater than mere prosecution; we claimed that the condition of risking punishment is met by those acting through anonymizing technologies because, even when they act covertly, they risk their personal and professional lives. Moreover, we argued that it is asking too much of people not to protect their identities under illiberal and undemocratic regimes. If the condition of accepting or risking punishment is thought to be subordinated to a

communicative intention, then anonymous – and Anonymous's – digital disobedience fulfils it, for it effectively communicates dissent. However, if civil disobedience must communicate respect for or fidelity to the law, then not only do anonymous practitioners who use digital technologies not meet that requirement, but neither did paradigmatic practitioners of civil disobedience, such as Thoreau, King, and Gandhi, in their time. Additionally, the study of these paradigmatic figures in the history of civil disobedience showed that they did not go to jail or a court of law out of purely principled respect for the law, less still respect for the government, but owing to a mix of principle-based reasons and strategic assessments of the circumstances.

Undoubtedly, the question of punishment is central to evaluating whether Anonymous's politically motivated cyber-actions are a new form of civil disobedience or not. Depending on the role that facing legal consequences has in a theory of civil disobedience, anonymous actions may or may not be included under this concept. However, the use of anonymity in digital acts of disobedience, including various kinds of whistleblowing and hacktivist tactics, poses several other equally challenging questions to theories of civil disobedience. These questions can be seen as potential objections to thinking of anonymous digital acts, including but not limited to Anonymous's, as new forms of civil disobedience. In what follows I will articulate six of these possible concerns. From the perspective of the mainstream liberal accounts of civil disobedience these concerns would be enough to categorically reject anonymous actions as civil disobedience; however, a radical democratic account of civil disobedience could rebut these challenges and accommodate online anonymous disobedience under the category of civil disobedience – but not without difficulties.

***Individual Civil Disobedience?***

According to democratic theorists, civil disobedience is a collective act of dissent (Arendt, 1972; Celikates, 2016b; Cohen & Arato, 1999). For Hannah Arendt, the difference between conscientious objection and civil disobedience lies precisely in the collective nature of the latter compared to the individual, and non-political, character of the former. A person engaged in civil disobedience, according to her, "never exists as a single individual; he can function and survive only as a member of a group" (Arendt, 1972, p. 55). Conscientious objectors disobey following their individual conscience and conception of moral obligation; conversely, civilly disobedient actors are "organized minorities, bound together by common opinion, rather than by common interest" (1972, p. 56). Since conscience cannot be generalized, it cannot bind people together; what one conscience finds unacceptable another might find unproblematic, even right. Arendt recognizes that it can be the case that "a number of consciences happen to

coincide, and the conscientious objectors decide to enter the market place and make their voices heard in public, but then we are no longer dealing with individuals" (Arendt, 1972, pp. 67-68).

In line with Arendt's view, Robin Celikates has defined civil disobedience as "an intentionally unlawful and principled collective act of protest" (Celikates, 2016b, p. 985); behind this conception, there seems to be a more general, Arendtian, understanding of political action as acting in concert. According to this view, a collective unlawful act necessarily arises from an agreement among the participants; such an agreement is not only about the goals they want to achieve but also about the means they will use to get them, and the rules of the process to reach those agreements. For Celikates, participants in disobedience agree on not using military strategies such as eliminating the opponents or triggering a civil war; in other words, they agree on restraining themselves to means that can be seen as civil – we will extensively discuss this idea of civility in Chapter 4. For Jean Cohen and Andrew Arato, the subject of civil disobedience is social movements that seek to democratize societies and the expansion of rights through illegal or extralegal actions. It is social movements that initiate "a learning process that expands the range and forms of participation open to private citizens within a mature political culture" (Cohen & Arato, 1999, p. 567). As they explain, "the peculiarity of collective action involving civil disobedience is that it moves between the boundaries of insurrection and institutionalized political activity, between civil war and civil society" (1999, p. 566).

Not knowing how many agents are behind an act of disobedience is particularly problematic in online acts of law-breaking. To elaborate on the problem of the number of agents, we need to recover the history of DDoS. While early DDoS actions were undertaken by thousands of people acting in concert, the emergence of botnets allows individuals to operate as if they were many. The fact that a DDoS can be performed by infecting multiple computers with malware and then using them to overload a server with 'illegitimate' requests of service means that a single individual can act as if they were numerous agents. The use of botnets in online political activism, with the necessary use of zombie computers, obfuscates not only internet traffic but also our attempts to think of Anonymous's DDoS as civil disobedience (cf. Celikates & de Zeeuw, 2016).

### *Mixed Motives in Civil Disobedience?*

While anonymous actions can be driven by a sense of justice or an experience of injustice shared by many who agree on using anonymous law-breaking as a political means, they can be motivated by a personal sense of obligation – as in conscientious objection, by a short-term desire to laugh out loud, or by almost any other conceivable motivation. In the case of

Anonymous, we know that some of those who joined the DDoS studied above, had political motivations; we know this because they openly justified their actions in online manifestos and videos. However, we also know that some of the participants were not morally or politically engaged with the operations and joined them just because they seemed fun and funny. This is certainly an obstacle for considering Anonymous's actions as civil disobedience, but not an insurmountable obstacle.

As we saw earlier when examining King's, Gandhi's, and Thoreau's writings, the strategies people use in civil disobedience are not entirely based on moral grounds. Normally, participants have multiple motivations to act politically. Furthermore, it is worth acknowledging an epistemological limit here: no one can be utterly certain of another person's motives, and perhaps not even sure of their own. What seems more relevant then is not that some participants might be somewhat self-interested, such as those acting 'for the lulz,' but whether it is possible to pinpoint a political motivation. If there were no political motive, including moral motivations here too, behind the act, then it could not be considered as civil disobedience since it would not be principled at all. Anonymous's actions that are accompanied by online public explanations in the form of political statements and manifestos, e.g., OpPayback and OpTunisia, are incontestably politically motivated. Up until now, Anonymous's actions, especially when they include DDoS, have come with public statements justifying them and communicating a relatively-established political agenda.

### *Civil Disobedience by Non-Citizens*?

Besides the uncertainty about the number of participants and their motives, online anonymous contestation implies uncertainty about the capacity in which disobedience occurs. More specifically, concealing the agent's identity entails that the audience ignores whether those acting are fellow citizens and if they belong to a specific group or section of the society.

The question of whether non-citizens can civilly disobey is not new; in fact, it has accompanied civil disobedience all along. If we look into historical cases such as the nonviolent campaign for the independence of India and the Civil Rights Movement in the United States, we realize that those who engaged in civil disobedience in their struggle for political autonomy and equal rights were precisely those not fully recognized as citizens (Lyons, 1998). Attending to these examples, as well as to today's migrant activism, one could conclude that non-citizens do employ civil disobedience (Basu & Caycedo, 2018; Celikates, 2016b; Cabrera 2011). However, this claim is incompatible with some of the most influential accounts of civil disobedience.

Civil disobedience has traditionally been conceived as a kind of illegal yet political action that citizens use in liberal democratic constitutional states to draw public attention to an ongoing injustice. For Rawls, "[t]he problem of civil disobedience (…) arises only within a more or less just democratic state for those citizens who recognize and accept the legitimacy of the constitution" (Rawls, 1999, p. 319). Similarly, Jürgen Habermas argues that civil disobedience can *only* occur under a constitutional state that remains wholly intact. "The disobedient then may assume the plebiscitary role of the citizen in his directly sovereign capacity only within the bounds of an appeal to the existing majority" (Habermas, 1985, p. 103). Seen from these two perspectives, online anonymous disobedience such as Anonymous's would not be civil disobedience because it is limited to citizens acting within a state they recognize as legitimate, and aimed at communicating with the society to which they belong.

Anonymous's operations, e.g., OpPayback and OpTunisia, are transnational; the agents behind the DDoS are potentially located all around the globe. In OpPayback, the activists were challenging multiple international corporations from multiple locations; in OpTunisia non-nationals were supporting Tunisian citizens in their struggle against an illegitimate government.

The point here is not to solve these difficulties once and for all, but to highlight how the use of online anonymity brings them to the fore. Suffice it to say for the time being that anonymous online acts of disobedience in general make it urgent to rethink the limits of who can use civil disobedience and in what context – in Chapter 4 we will come back to the central issue of whether non-citizens can assume a constituent power role in contexts in which they are not even recognized as part of the polity.

***Reactive and Episodic Civil Disobedience?***

In the first section of the chapter, we saw how Anonymous has moved over time from disaggregated practices rooted in the trolling culture to what Gabriella Coleman calls, "a rhizomatic and collective form of action catalyzed and moved forward by a series of world events and political actions" (Coleman, 2011). At the end of the first section we reviewed some attacks carried out by Anonymous that barely fit with the image of a hacktivist collective; some of these events took place prior to project Chanology, which according to Coleman and others marks a decisive moment in Anonymous's politicization, but others took place afterwards. The aim of studying those questionable events was to avoid reducing the complexity of Anonymous by creating a coherent image, a single narrative, in which the collective at some point left behind once and for all its trolling past and moved on to "serious" political activism. Because

of the open nature of Anonymous, its trolling, misogynistic, homophobic, anti-Semite, and racist facets are still present after 2010 and they will forever remain at least as potential uses of the Anonymous's label and mask.

Characterizing Anonymous's disobedience as rhizomatic and reactive to world events amounts to saying that their disobedience is occasional, sporadic, episodic. This understanding seems to perfectly fit with Celikates's view on civil disobedience. According to Coleman, Anonymous illustrates Celikates's model of civil disobedience as episodic, extra- or anti-institutional political action that allows citizens (broadly conceived as including more than officially recognized citizens) to protest and participate when official institutional channels are closed to them (cf. Celikates, 2014). Referring to Celikates, Coleman writes in an Epilogue added in 2015 to her 2014 book *Hacker, Hoaxer, Whistleblower, Spy. The Many Faces of Anonymous*: "Anonymous is a perfect example of this logic at work. Participants who dox, hack, or DDoS are in the minority. But in so doing they help to activate spectators and other participants – even those who disagree with their tactics or their outcomes" (Coleman, 2015, p. 425).[27]

Stating that civil disobedience is reactive to world events and episodic, is not in itself asserting a difference with the liberal mainstream understanding of civil disobedience; yet, applied to Anonymous, this might suggest a difference. On the one hand, movements have used civil disobedience in their struggle as one among other tactics, and their use of it has been relative to world events; as we saw in the second section, calls to civil disobedience, as those to go to jail, were sensitive to the circumstances. This suggests that although concrete acts of civil disobedience might appear to the public as episodic, they were rooted in long-term campaigns – that is to say, there were neither merely reactive to world events nor just episodic. On the other hand, with Anonymous it is different: it is not a consolidated group whose members cooperate over time to advance an agreed unified political agenda; it is a fluid

[27] It seems risky to say that members of Anonymous who dox, hack, or DDoS, are in the minority. Certainly, we can accept that they are in a numerical minority when they act against a state or a corporation; however, numeric minority does not imply that institutional channels are closed for those using civil disobedience. Coleman does not seem to refer to numeric minority though, rather she points to "those not served or offered a voice by conventional liberal politics, or minorities drowned out by unreflexive normative convention" (Coleman, 2015, p. 424). Thus, what Coleman means is that those who dox, hack, or DDoS, as members of Anonymous, have few chances to publicly express their opinion and draw attention to the positions they hold. Since it is not obvious that this is always the case in Anonymous's disobedience, it would be useful if Coleman would explain if the subjective perception of not having institutional channels for political participation is sufficient to be in such a minority, or if legal means need to be intended before doxing, hacking and DDoSing; in other words, if this account of Anonymous's disobedience constrains the civility of illegal digital actions to their use as a last resort or not. On a corporate-governed Internet it might be the case that hacktivist actions are the only means to draw public attention, for there are no established legitimate authorities to appeal to in the face of corporate wrongdoing, and there are no public spaces, like streets and squares, to go to peacefully demonstrate.

collective in which "members" can sporadically participate in reaction to specific world events, act in concert and then never join again.

Accepting Anonymous's actions as civil disobedience means identifying a transformation in civil disobedience. The paradigm examples of civil disobedience we studied earlier, as well as more recent actions such as occupations and sit-ins in university buildings, ecological and climate change disobedience (e.g., Animal Liberation Front's and Extinction Rebellion's), are fundamentally long-term political campaigns with concrete agreed demands and goals. On the contrary, Anonymous's disobedience – because of the anonymity of its "members" – is far more sporadic, episodic, and reactive. As we will see next, this raises further concerns.

### *Civil Disobedience Without Self-Purification?*

Although one can point to specific civil disobedience actions led by Gandhi, such as the Bardoli Satyagraha of 1928 or the Salt March of 1930, these were by no means episodic, rather they were part of a long-term nonviolent campaign for India's self-rule (*swaraj*). Moreover, these specific actions were connected to a deep commitment to nonviolent resistance or *satyagraha* – "literally, 'truth-force,' or more liberally, a tenacity in the pursuit of truth" (Bilgrami, 2002, p. 81). Thus, these events of civil disobedience relate to a subjectivity that is committed to nonviolence, which endows them with a relatively stable basis.

For Gandhi, civil disobedience was one among other forms of *satyagraha* such as striking, fasting, picketing, and boycotting. According to him, although these are different forms of non-cooperation, they share their participants' (*satyagrahis*') profound personal vow to nonviolence (*ahimsa*). Gandhi states, "civil disobedience relies for its success solely on the strength of the individual" (Gandhi, 1987, p. 101), because civil disobedience also indicates "an attitude of the mind" (1987, p. 112). For Gandhi, "[t]he word 'civil' suggests nothing but non-violence" (1987, p. 112); *ahimsa* was not only a means but also the end of the struggle for *swaraj*. The transformative power of nonviolence derives from the convertibility between means and ends (Mantena, 2012). The premise of the convertibility of means and ends, is the key to understanding Gandhi's views on civil disobedience:

> The conviction has deepened in me that civil disobedience alone can stop the bursting of that fury. The nation wants to feel its power more even than to have independence. Possession of such power *is* independence. That civil disobedience may resolve itself into violent disobedience is, I am sorry to have to confess, not an unlikely event. But I know that it will not be the cause of it. Violence is there already corroding the whole body politic. Civil disobedience will be but a purifying

> process and may bring to the surface what is burrowing under and into the whole body (Gandhi, 1987, p. 107).

The purifying process of nonviolence, for Gandhi, depends entirely on the self-purification of the *satyagrahis*, who learn their lessons of *satyagraha* through suffering and self-sacrifice.

This non-exhaustive reconstruction of the conceptual links between *satyagraha*, *ahimsa*, *swaraj*, and the role of suffering and self-sacrifice make explicit the relationship between civil disobedience and the subjectivity that commits itself to nonviolence. According to Gandhi, the commitment to nonviolence has a transformative, ethical, and political role on the *satyagrahi* as well as on their opponent. A similar idea can be found in King.

Besides the dramatization of injustice, going to jail had a psychological function for the Civil Rights Movement: "So it was that, to the Negro, going to jail was no longer a disgrace but a badge of honor" (King, 2011, p. 49). King elaborates on this idea:

> Nonviolent action, the Negro saw, was the way to supplement – not replace – the process of change through legal recourse. It was the way to divest himself of passivity without arraying himself in vindictive force. Acting in concert with fellow Negroes to assert himself as a citizen, he would embark on a militant program to demand the rights which were his: in the streets, on the buses, in the stores, the parks and other facilities (King, 2011, pp. 62-63).

The quote indicates that civil disobedience was not an end in itself, but part of a larger project which included legal action. Also, nonviolent direct action was for the participants different from legal recourse because of the active role they assumed in acting with others and asserting themselves as citizens. But such an assertion would not occur in an isolated episode or in taking blows from police officers, but in all the locations where their citizenship was not recognized. It is in this sense that, "nonviolence had tremendous psychological importance to the Negro. He had to win and to vindicate his dignity" (King, 2011, p. 70).

Nonviolent campaigners did not aim at breaking the law as if such an act in itself would demonstrate their active citizenship; on the contrary, because they had already taken the initiative to assert their citizenship, they were breaking the law. By demanding their rights in acting as if they were legally entitled to them, they were conquering their dignity: not here and there, but wherever they could. They knew change would not happen overnight (King, 2011, p. 71), and it would not come from civil disobedience alone. As a movement, their acts of infringement were not occasional events, but the pieces of a coordinated long-term campaign in which they would learn from their mistakes, make more mistakes and learn anew (2011, p. 76).

***Anonymous Corporate Civil Disobedience?***

Another reasonable concern arising from relating Anonymous to civil disobedience is that, as we saw in the first section of this chapter, Anonymous targets both states and international corporations. OpPayback, in which Anonymous directed DDoS at PayPal, Visa, and MasterCard, illustrates their disobedience against corporations. This operation does not stand alone in the history of Anonymous; other private organizations that have been attacked are HBGary Federal (February, 2011); Koch Industries (February, 2011); Facebook (June, 2011); Stratfor (December, 2011); 9Gag (2012); Monsanto's Hungarian website (March, 2012); Formula One (April, 2012); Massachusetts Institute of Technology (MIT) *in memoriam* of Aaron Swartz (January, 2013). Anonymous disobedience against corporate interests is problematic for at least three reasons.

First, the use of anonymity cast a shadow on the motives of the agents who act against a private body. It may be the case that what motivates the action is simply the actors' personal or private interests and not a moral or political concern. Self-interested actions include a competitor's attempt to damage the public image of a company to favor their own business, other forms of unfair competition, as well as personal motivations such as revenge by a former employee. In the absence of identification, no one can know in what capacity is the actor disobeying. The conditions of the relationship between a private institution and its employees are different from those it maintains with its competitors, its clients or users, and other stakeholders. Different roles or capacities allow for people to claim different rights and make different moral demands to others and to institutions.

Secondly, nonviolent direct action against corporate powers runs the risk of inflicting economic damage without advancing a political agenda. This becomes a more pressing issue when the action is anonymous; in the absence of the agent's identification, it is difficult to know whether the actor has a legitimate say regarding corporate behavior. Furthermore, it would still be a matter of debate whether any legitimate role would justify generating economic damage to the organization. Anonymous actions against corporations are hard to assess: both the corporate managers and the broader audience of the action might have fair doubts about whether such economic damage is politically motivated, merely criminal, a way of showing force for future negotiations, or blackmail.

Lastly, even if civil disobedience is not necessarily a last resort, it is desirable that agents try legal means before resorting to illegal actions, especially if there are reasons to expect that these means can lead to change. Even if it is true that, under certain circumstances, anonymous corporate disobedience might be the last and only resort, it is often impossible for

the audience to know if that is the case. It might be the case that an employee who unsuccessfully tried to draw the corporate authorities' attention to some potential risk or wrongdoing by institutional legal means is the anonymous agent who discloses embarrassing information to the public; conversely, the anonymous actor might be partaking in a smear campaign, corporate sabotage, or corporate spying.

The primary objective of this thesis is to identify how digital technologies might have transformed the practices of civil disobedience and what questions arise from such transformations. In this chapter we have seen that Anonymous has contested – some would say 'attacked' – the digital presence of both states and corporations. Why are Anonymous's actions against private corporations relevant for rethinking civil disobedience in the digital age? On the one hand, their actions against corporations are recurrent and provide the collective with a relatively stable political identity. On the other hand, these actions allow us to see how Anonymous's hacktivism relates to other activist initiatives. A case in point is its support of Occupy, a social movement that emerged in September 2011.

After the relative success of Project Chanology in mobilizing people on the Internet, Anonymous invited its supports to take to the streets to protest against non-transparent, greedy corporations; according to Paolo Gerbaudo, "Occupy Wall Street has been to date the most important campaign Anonymous has put its weight behind" (Gerbaudo, 2012, p. 108) Quinn Norton articulates a view of the importance of the link between Anonymous and Occupy in this way:

> Just as with OpTunisia, Occupy changed Anonymous irrevocably. Its transformation into a political movement, begun four years earlier with Project Chanology, was now complete. Not all anons supported Occupy, but it's startling how many of them, when asked about the connection between Anonymous and OWS [Occupy Wall Street], bluntly reply: 'Same thing' (Norton, 2012).

Norton clarifies that "Occupy was not an Anonymous plan, and anons were far from a majority of the movement" (2012). Even if Anonymous had got to the point of identifying itself with Occupy, the truth is that Occupy was an independent and much larger movement. The role Anonymous played in Occupy was that of publicizing it and inviting supporters to join the activists in the streets. According to the members of the General Assembly of Occupy Wall Street, they did not coordinate their actions with Anonymous (Captain, 2011).

Anonymous's support of Occupy is telling about its political stance, at least in a particular point in time. It is worth keeping in mind that Occupy was part of an international wave of mobilization that were triggered in Europe with anti-austerity protests, spreading to North America, the Middle East, and multiple countries in the north of Africa. The social and

economic effects of the 2008 financial crisis, and the subsequent austerity measures, triggered an international sense of indignation and mobilized people around the globe. “From the end of 2010, images of Arabs gathering to demand the chance to participate in their societies fully and with dignity spread globally, sparking protests as far afield as China, and mixing with European examples to influence the beginning of OWS [Occupy Wall Street]” (Calhoun, 2013, p. 3).

Occupy Wall Street was not merely an episodic event of dissent, but a moment in a sustained, joint attempt to bring together multiple mobilizations against corporate-dominated forms of globalization. Similarly, the international #Occupy did not come out of nowhere; it bloomed from other struggles as a “loose-knit coalition among activists with a variety of different primary concerns” including labor conditions, the environmental damage of fracking and energy policies, unfair financial regulation, and high inequality (cf. Calhoun, 2013, p. 1). Even if some of the demonstrators of Occupy Wall Street were protesting domestic issues such as specific fracking projects, the rise of inequality in the United States, the hijacking of the state by corporations, or the increased policing and surveillance of nationals, people in other countries and continents could easily relate to the spirit of the moment. Proof thereof are the 951 cities in 82 countries in which gatherings using the label of ‘Occupy’ took place.

Anonymous’s support of Occupy reinforces aspects already visible in other operations: the political branches of the collective contest both public and private institutions in multiple locations around the globe and promote opposition to illiberal and anti-democratic practices. This gives the collective a relatively defined political stance: OpTunisia sought to defend freedom of expression and communication from state repression; OpPayback was a reaction to corporations practically disabling freedom of association and hindering informed decision-making. Occupy was thus contesting, among other things, the capture of the state apparatus and resources by corporate interests. These actions show a collective using technology (and sometimes humor) to defend liberal values and deepen democracy. But this is just one of the multiple actual and potential uses of the Guy Fawkes mask.

**Conclusion**

Attempting to assess political actions carried out by Anonymous through the lens of the concept of civil disobedience, we have raised multiple questions relating both to the definition of, and the justification for, civil disobedience. A question that stands out is whether not accepting punishment for one's law-breaking is compatible with civil disobedience. This issue concerns the use of anonymity in general, but it is undoubtedly relevant for digital, anonymous, illegal acts.

The chapter has shown that the requirement of facing the legal consequences of breaking the law is problematic both historically and conceptually. The second section of the chapter revisited the paradigmatic cases of King, Gandhi, and Thoreau, noting that going to jail was not merely a principled act, normatively necessary according to their conception of civil disobedience, but it was also a strategic, context-sensitive action. There we examined Kimberly Brownlee's claim that civilly disobedient citizens need to accept the *risk* of being punished but not actual legal punishment. Going to jail itself is neither proof of moral seriousness nor of not having revolutionary aims.

The use of anonymity in political action urges us to consider additional issues relating to civil disobedience; for instance, that anonymity makes it more difficult to know who and how many participants are acting, and in what capacity. Anonymous law-breakers can be an individual or a collective; they may or may not be citizens of the state whose authority is being contested or in which corporate power is being challenged; they may or may not be engaged in a long-term, political campaign or in a personal project based on private beliefs – religious or otherwise. To be sure, these are not uncertainties present only in anonymous disobedience; they are implicit in almost all political actions to some degree, but they are exacerbated when anonymously, civilly breaking the law.

A careful examination of Anonymous's political actions should consider the conceptual questions that employing anonymity in civil disobedience raise in general, along with other, more specific questions that are unique to the kind of actor that Anonymous is, its methods, and the types of actions they use. The illustrative cases of OpPayback, OpTunisia, and Anonymous's involvement in Occupy Wall Street and the subsequent global Occupy movement, show the importance of discussing whether civil disobedience can be directed at corporate bodies, as well as to what extent economic disturbance, and even economic damage, are acceptable in civil disobedience. We will come back to these questions in Chapter 4, where the three case studies in the thesis will be brought together, while addressing the more general questions that arise from them.

By now it is clear that the use of DDoS is not itself civil or uncivil. Using DDoS against PayPal's, Visa's, or MasterCard's servers seems to be normatively different from directing internet traffic to a server hosting a feminist blog to shut it down, *a fortiori* if the blogger has no alternative means to express their ideas. This chapter has attempted to theoretically embrace this complexity, even at the price of clear-cut conclusions; however, this seems far more productive for philosophical, critical reflection than attempting to come to a judgment on whether Anonymous is a new agent of civil disobedience. The chapter has also shown that the question of whether Anonymous is a new actor of civil disobedience does not make sense. Since 'Anonymous is not unanimous,' its actions are diverse to the point of being contradictory; the same holds for Anonymous's tactics.

# Chapter 3. Opening up Access through Civil Disobedience

Close to half of newly published academic articles are behind paywalls (Himmelstein et al., 2018); that means that they are accessible only to those who belong to research institutions able to pay expensive subscriptions to academic databases,[28] and to those able to pay an average of US $30 per article. Among the multiple players intervening in the complex field of academic publishing, there is one that stands out: Sci-Hub. Currently, "Sci-Hub can instantly provide access to more than two-thirds of all scholarly articles" (McKenzie, 2017). This relatively new player stands out not only because of its technical capabilities in providing access, but also because of its morally and politically motivated illegality. In this chapter, I explore to what extent Sci-Hub and its partner website Library Genesis (LibGen) are compatible with philosophical accounts of civil disobedience.

The chapter is divided into three sections. The first section explains what Sci-Hub is, how it relates to LibGen, and why the relationship between these websites and civil disobedience is not an arbitrary one. In addition, it shows some of the limitations of the Rawlsian conception of civil disobedience vis-à-vis this form of principled disobedience, and why a minimal definition of civil disobedience is better able to relate to this and similar new forms of political contestation. The second section addresses the normative question of the justification of Sci-Hub and LibGen. It discusses a variety of argumentative strategies aimed at justifying its law-breaking in appealing to individual human rights, to researchers' needs, and to the 'communist' nature of scientific knowledge production. In addition, an illustrative case of the global inequalities in access to scholarly resources is examined. The chapter ends with an exposition of deliberative democratic arguments justifying Sci-Hub and LibGen as a form of communicative civil disobedience.

### 3.1. Illegal Open Access

Sci-Hub (sci-hub.io; sci-hub.cc; sci-hub.tw) is a website that provides free and open access to research papers. Its collection has up to 74,000,000 articles, and it is growing every day. Created in September 2011, Sci-Hub has effectively opened up access to scientific knowledge for millions of users. The project is grounded on three ideas: knowledge for all, no copyright, and open access. With this service, the developers of the website "fight inequality in knowledge

[28] Harvard University is encouraging its faculty members to publish in open access journals. In an internal memo, the University states that "major publishers had created an 'untenable situation' at the university by making scholarly interaction 'fiscally unsustainable' and 'academically restrictive'" (as cited in Sample, 2012).

access across the world," looking for "the widest possible distribution of knowledge in human society!" They stand against the "unfair gain that publishers collect by creating limits to knowledge distribution" as well as "intellectual property, or copyright[29] laws, for scientific and educational resources." [30]

Sci-Hub is a controversial website. At the end of 2015, in response to an official complaint filed by academic publisher Elsevier, a New York district court ordered the site's operators (and those of some similar sites) to stop offering access to copyright-infringing content ("Ernesto," 2015). However, Alexandra Elbakyan, Sci-Hub's founder and spokesperson, has declared that "she feels a moral responsibility to keep her website afloat because of the users who need it to continue their work" (van Noorden, 2016). In June 2017, the New York district court awarded Elsevier US $15 million in damages for copyright infringement by Sci-Hub (Schiermeier, 2017). By keeping the website running, Elbakyan is not only infringing copyright law but also openly disobeying court rulings based on what she considers to be a higher moral responsibility. Before examining the moral and political rationale behind Sci-Hub in greater detail, it is worth explaining how it works.

Sci-Hub provides access to paywalled academic articles based on users' requests. Once a user submits a request for an article by introducing its Digital Object Identifier (DOI), its PubMed Unique Identifier (PMID), or its URL, Sci-Hub checks if it is available in a Russia-based digital repository called Library Genesis (or 'LibGen'; gen.lib.rus.ec).[31] If the article is not available there, then Sci-Hub accesses legal, corporate databases and downloads the paper, adds a copy of it into LibGen, and sends the article to the user. To log into a corporate database, Sci-Hub uses login usernames and passwords owned by academics that enjoy paid access. According to Elbakyan, dissatisfied scholars who support the project have donated some of the accounts used by Sci-Hub; however, she has never stated that all accounts used have been obtained in a fair way. Elbakyan has said that "[i]t may be well possible that phished passwords ended up being used at Sci-Hub," adding, "I did not send any phishing emails to anyone myself. The exact source of the passwords was never personally important to me" (Rosenwald, 2016). As we shall see in Chapter 4, Elbakyan's answer poses further questions and makes it more

[29] In this chapter, I follow The Public Domain Manifesto's use of the term 'copyright': "copyright law is to be understood in its broadest sense to include economic and moral rights under copyright and related rights (inclusive of neighboring rights and database rights). In the remainder of this document copyright is therefore used as a catch-all term for these rights" (The Public Domain Manifesto, n.d.).
[30] All these quotes come from Sci-Hub's homepage.
[31] Although there has been an ongoing collaboration between Sci-Hub and LibGen since 2013, they are different projects. They differ in at least one significant way: LibGen provides access not only to academic and scientific papers, but also to other kinds of documents such as fiction books and comics (Cabanac, 2016, p. 4).

problematic to think of Sci-Hub as a digital form of civil disobedience.

There is little doubt about the political and moral rationale behind Sci-Hub. The website presents itself as a project against the unjust and unequal distribution of access to knowledge. Moreover, Sci-Hub has a political agenda against copyright in research and education, and it struggles against those academic publishers that obtain 'unfair gain' from the scholarly production of knowledge. The objection could be made that this is not exactly the same for LibGen, which does not present itself explicitly as a politically or morally grounded project. Still, it is significant that LibGen published on its website an online letter – "In solidarity with Library Genesis and Sci-Hub" – signed by scholars from different research fields.[32] After a long quote from the *Guerilla Open Access Manifesto* by Aaron Swartz,[33] the letter states: "We find ourselves at a decisive moment. This is the time to recognize that the very existence of our massive knowledge commons is an act of collective civil disobedience. It is the time to emerge from hiding and put our names behind this act of resistance" (Barok et al., 2015).

The explicit reference to civil disobedience is also present in Swartz's text: "There is no justice in following unjust laws. It's time to come into the light and, in the grand tradition of civil disobedience, declare our opposition to this private theft of public culture" (Swartz, 2008). Likewise, Alexandra Elbakyan's response to the New York district court ruling against Sci-Hub shows that she interprets her actions as compatible with the idea and tradition of civil disobedience. All this compels us to examine to what extent Sci-Hub and LibGen can be understood as instances of civil disobedience. Are Swartz, Elbakyan, and the signatories to the letter of solidarity right in considering the act of illegally opening up access to academic knowledge an example of civil disobedience?

### *Some Limitations of the Liberal Definition of Civil Disobedience*

The liberal understanding of civil disobedience, as presented by John Rawls in *A Theory of Justice*, has been the most influential one in the philosophical discussion about this kind of political action. As we have seen in the previous chapters, Rawls offers a definition of civil disobedience for the context of a 'more or less democratic state' or, as he also calls it, a 'nearly just regime' or 'nearly just society' (Rawls, 1999, p. 319). Civil disobedience is defined there

[32] These are the signatories to the letter: "Dušan Barok, Josephine Berry, Bodó Balázs, Sean Dockray, Kenneth Goldsmith, Anthony Iles, Lawrence Liang, Sebastian Lütgert, Pauline van Mourik Broekman, Marcell Mars, spideralex, Tomislav Medak, Dubravka Sekulić, Femke Snelting..." (Barok et al., 2015) It is worth noting that they tried to influence access policies to scholarly articles by legal means for years before signing this letter.

[33] Many people have drawn comparisons between Elbakyan and Swartz, and have even suggested that the latter would have inspired the former. In a video posted on August 13, 2017, Elbakyan explains that she only learned about Swartz in 2013, two years after she started Sci-Hub.

as "a public, nonviolent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government" (1999, p. 320).

Since Rawls's aim is to develop a constitutional theory[34] of civil disobedience, he tries to define this kind of dissent and to separate it from other ways of opposing democratic authority. As pointed out before, the Rawlsian definition of civil disobedience is contextualized in a particular kind of state, namely a constitutional, democratic, and liberal one. According to Rawls, by engaging in civil disobedience, citizens address the sense of justice of the community; it is an "invocation of the recognized principles of cooperation among equals" (1999, p. 337) against something that contradicts those principles.

Rawls's definition of civil disobedience has been highly influential within political science, philosophy, and law, among other reasons, because it seems to offer clear-cut distinctions between this sort of political action and other types, such as conscientious objection and revolution. On the one hand, unlike conscientious objection, civil disobedience is based on shared moral and political principles, and not on personal beliefs. On the other hand, although those using civil disobedience seek a change in the law or policies of the government, they do not intend to overthrow that government or the whole state. Thus, Rawls seems to advance a well-defined concept, clearly distinguished from conscientious objection and revolutionary action. Following David Lyons (1998), we argued in Chapter 2 that Rawls's distinction between civil disobedience and revolutionary action is problematic regarding paradigmatic cases of civil disobedience such as Thoreau's, Gandhi's and King's. Additionally, as we shall see in Chapter 4, the inclusion of nonviolence in the definition of civil disobedience is a contested issue.

What seems more problematic in Rawls's interpretation of civil disobedience vis-à-vis concrete practices of disobedience is the supposedly limited nature of the goals that civilly disobedient citizens have, and the specific context in which civil disobedience can take place. As mentioned above, according to Rawls, civil disobedience is a political phenomenon that takes place within liberal democratic states that have institutionalized basic principles of justice in the constitution. We take issue with this crucial idea in Rawls's theory because whether a society is well-ordered or nearly just, or not, is not a straightforward issue and will in many cases be contested, depending on who judges it. It is hard to imagine someone who suffers serious violations of justice and who breaks the law to draw attention to them, agreeing with

[34] According to Rawls, a constitutional theory of civil disobedience, "rests solely upon a conception of justice" (Rawls, 1999, 337). This theory interprets civil disobedience as a political action motivated by the principles of justice without referring to religious or pacifist conceptions.

Rawls that regardless of those violations of basic liberties, their society is still 'nearly just.'[35]

By pointing out these two problematic assumptions in Rawls's theory of civil disobedience – that civil disobedience is clearly distinguishable from revolutionary action and that it takes place in well-ordered liberal societies – I wish to make two claims that are relevant for considering Sci-Hub's and LibGen's disobedience. First, that it is not necessary to assume that civil disobedience *only* takes place in liberal democratic societies, and second, that it is problematic to exclude *a priori* from the category of civil disobedience actions aimed at radically changing institutionalized forms of injustice. These two claims are critical for the purposes of this chapter because the two initiatives that we are examining, that I label as practices of 'academic piracy,' do not take place in a well-defined liberal national context, and Sci-Hub, at least, can be seen as having revolutionary goals.

Another necessary remark about the Rawls-inspired accounts of civil disobedience is that the civility of this kind of action consists not only in its nonviolence, but also in limiting the actors who can engage in civil disobedience: those who use civil disobedience are citizens acting as citizens (cf. Rawls, 1999, p. 319). Only citizens of the state may challenge it through civil disobedience, and only as a means to test how mature, stable and democratic that state is (Habermas, 1985, p. 101), or to publicly assess to what extent a doubtful law or policy is consistent with the principles of the constitution (Dworkin, 1978). Although the idea that only those recognized as citizens can engage in civil disobedience was discussed in Chapter 2, in Chapter 4 we will revisit that debate, as the liberal view may be considered too narrow and unsuitable to make sense of acts of civil disobedience performed by actors who are not recognized as citizens, such as unauthorized migrants, asylum seekers, and people from around the globe using the Internet as a means for political action.

To avoid excluding *a priori* contemporary forms of political engagement from the category of civil disobedience, this thesis, unlike Rawls's theory, does not take as one of its premises that a nearly just society is the only context for civil disobedience. For similar reasons, this thesis does not take as a starting point a clear-cut distinction between civil disobedience and actions motivated by revolutionary goals, or aimed at radically changing the political and legal system.

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[35] For a more detailed discussion of Rawls's concept of 'nearly just,' see Sabl (2001). Sabl acknowledges that Rawls's account of what he means by 'nearly just' is 'notoriously sketchy,' and that sometimes this expression means that these societies, "are moderate in most of their practices, just in all but details, or devoted to fair treatment of almost everyone" (2001, p. 311). Sabl offers an alternative interpretation of this condition for civil disobedience; he claims the society needs to be "piecewise just," "one in which justice is prevalent (...) in relation within a powerful 'in' group, but is practiced to a very small degree, if at all, in dealings with an excluded or oppressed group" (2001, pp. 311-312).

### *An Alternative Conception of Civil Disobedience*

Rawls's primary questions about civil disobedience were, to what extent should we obey unjust laws, and under which conditions our *prima facie* duty to obey the law would be suspended. Rawls studied civil disobedience in the non-ideal section of his ideal theory of justice. Our strategy here is different: instead of deriving conceptual and normative requirements from an ideal theory based on abstract principles of justice, this thesis is an attempt to move from concrete, contemporary practices of disobedience to conceptual and normative questions about civil disobedience and its transformations. In this spirit, I begin by recognizing the moral and political rationale behind concrete cases of disobedience, which involves paying close attention to the participants' self-understanding and self-identification as civilly disobedient actors. Then I formulate conceptual and normative questions about that rationale and try to suggest partial and provisional answers to those questions. Because of this methodological standpoint, I consider a rather minimally loaded definition of civil disobedience to be a better starting point than a more normatively-charged definition.

Following the radical democratic approach to civil disobedience put forth by Robin Celikates (2014; 2016a; 2016b), civil disobedience can be understood as an expression of democratic self-rule that responds to structural democratic deficits by extending the scope of political decision-making processes. In contrast to the liberal version, this is not a justice-based conception in which substantive ideas – those embodied in the constitution – play the role of definitional and justificatory criteria, but one in which the pivotal point is a proceduralist emphasis on democratic self-rule. From this perspective, civil disobedience is not a mainly symbolic appeal to the sense of justice of the majority, as it is for Rawls, but a transformative and creative moment in which those excluded from decision-making take the initiative to participate as if there were no institutionalized mechanisms for their exclusion; when these mechanisms are laws or policies, attempts to democratize decision-making may require illegal actions.

In brief, the radical democratic conception of civil disobedience consists in a minimal definition that leaves out most of the normative and substantial elements of the liberal definition. This alternative definition of civil disobedience construes it "as an intentionally unlawful and principled collective act of protest (...) that (...) has the political aim of changing (a set of) laws, policies, or institutions" (Celikates, 2014, p. 218). In an attempt to remove from the definition of civil disobedience as many normative elements as possible, the radical democratic approach deliberately leaves open – perhaps postpones – relevant normative questions such as those about publicity, nonviolence, conscientiousness, non-revolutionary

aims, and whether principled, unlawful acts should be employed only as a last resort. The intention behind this shift is to broaden the concept and make it better-able to account for new phenomena such as those relating to the contemporary processes of globalization and digitalization.

The concept of civil disobedience advanced by Celikates is still in need of a thorough critical assessment and further elaboration. In particular, it could still be clearer why nonviolence is not included in the minimal definition while civility is.[36] Nonviolence is both an essential aspect of the history and practices of civil disobedience; additionally, it seems to be a requirement compatible with a proceduralist perspective. Even if one wants to be cautious, to avoid including in the definition a contested feature that can be easily manipulated by those whose authority is challenged through civil disobedience, nonviolence seems not only to be fully compatible with, but even necessary for, free decision-making. Furthermore, if civil disobedience is understood as a means to which political agents can resort to establish the possibility of decision-making among free and equal peers, then the radical democratic approach needs to elaborate on the role of civil disobedience in undemocratic contexts, and explain why in such contexts political agents should limit their means to those compatible with civility. In the next chapter, we will not only re-formulate these questions, but suggest a way of addressing them by complementing the minimal, radical democratic approach with the notion of civility as performative citizenship.

What is worth noting here is that, due to these and similar issues with how minimal the definition of civil disobedience can be, I take Celikates's definition in a heuristic way. I accept and use the minimal definition provisionally because it allows us to consider Sci-Hub and LibGen, as well as Snowden's and Anonymous's disobedience, as initiatives of civil disobedience, even though it tells us little about their justifiability. In the second section of this chapter, we shall examine some of the possible justifications for Sci-Hub's and LibGen's law-braking; we shall also study how the radical democratic version of civil disobedience can be complemented with a communicative conception of democracy.

[36] This is a difference between how the definition was presented in 2016 compared to previous versions. In a recent publication, the definition includes an idea of civility: "an intentionally unlawful and principled collective act of protest (in contrast to both legal protest and 'ordinary' criminal offenses or 'unmotivated' rioting), with which citizens – in the broad sense that goes beyond those recognized as citizens by a particular state – pursue the political aim of changing specific laws, policies, or institutions (in contrast to conscientious objection, which is protected in some states as a fundamental right and does not seek such change) *in ways that can be seen as civil* [emphasis added] (as opposed to military)" (Celikates, 2016a, p. 985). Chapter 4 will assess in detail the multiple meanings that civility has according to the radical democratic approach, the relationship between these meanings and the notions of violence and nonviolence, and a potentially complementary notion of civility.

In the light of the radical democratic, minimal conception of civil disobedience, Sci-Hub and LibGen seem suitable candidates to be considered digital forms of civil disobedience. The act of providing digital infrastructure for illegally accessing copyrighted materials is *deliberately unlawful*. As we saw earlier, it is also *principled*, at least if we give credit to the claims the service-providers, some of the users, and some supporters have publicly made. Additionally, it is worth noting that although Alexandra Elbakyan has a prominent role in Sci-Hub, there are at least three reasons why this is a *collective* project. First, she is not the only person involved in Sci-Hub, even though it is unclear who and how many are involved. Second, as mentioned above, since February 2013, Sci-Hub has worked in tandem with LibGen, a project developed by a different group of people. Finally, one could consider the academics who have donated their login information to Sci-Hub as part of the collective that conscientiously enacts these politically motivated actions, which is true also for some of the users.

The act of re-launching Sci-Hub using other domains after the New York district court's ruling of 2015 is a definite confirmation of the conscientiousness and politically principled character of Sci-Hub. Furthermore, as explained in the beginning of the chapter, Sci-Hub, at least, has a public discourse about their aim of reshaping the existing academic publishing sector, that is constituted by a set of laws, policies, and institutions. One could say the same about LibGen, since they are *de facto* challenging that same set of laws, policies, and institutions by storing and providing access to millions of academic, and some non-academic, documents. All this suggests that both websites fit the minimal definition of civil disobedience.

### 3.2. Some Arguments for Academic Piracy

This second section of the chapter is divided into four sub-sections, each of which advances a possible way of justifying Sci-Hub's and LibGen's unlawful means of opening up access to scholarly publications. The final sub-section, titled "Tackling Global Inequalities – An Illustrative Case" has an additional function; it not only suggests another possible way of justifying academic piracy, but it reminds us of the concrete, even life-changing, effects that access to information and copyright infringement have on researchers' lives.

### *Appealing to Individual Human Rights*

Those who undertake principled law-breaking appeal to a higher law, value, or principle. Some appeal to a higher, positive law or to the constitution, while others appeal to human rights or the principle of democratic participation. Both in practice and in theory, these claims overlap. Those denouncing exclusion from democratic processes can articulate their public discourse in terms of violation of fundamental rights or human rights by a particular action, law, policy, or institution. Consequently, I take the oft-used distinction between justice-based and democracy-based arguments as a matter of emphasis rather than as two incompatible kinds of claims (cf. Cohen & Arato, 1999).

Liberal conceptions of civil disobedience tend to stress that citizens break the law to protest severe violations of individual freedoms or rights. According to Rawls, for instance, civil disobedience is used as a means to counter injustices consisting in restrictions to basic liberties. In this sense Rawls says, "there is a presumption in favor of restricting civil disobedience to serious infringements of the first principle of justice, the principle of equal liberty, and to blatant violations of the second part of the second principle, the principle of fair equality of opportunity" (Rawls, 1999, p. 326). Contraventions of the principle of equal liberty are clearer than those of equal opportunity, because the later usually involves economic and social institutions and policies, and it is harder to check self-interest and prejudice regarding economic and social issues. Rawls concludes that "[t]he violation of the principle of equal liberty is, then, the more appropriate object of civil disobedience" (1999, p. 327). In other words, the justification of civil disobedience greatly depends on whether or not basic liberties are at stake.

Sci-Hub and LibGen's case does not seem to fall into the category of actions aimed at publicly communicating a concern about the violation of a fundamental liberty. It could be argued that restrictions on access to research articles do not constitute a violation of equal citizenship in a constitutional regime. Just as there are many other services that one cannot obtain without payment, access to specialized research documents is a service that people need to pay to acquire; consequently, excluding those who do not pay from accessing that service does not imply a violation of the principle of equal liberty. Moreover, it could also be argued that the economic side of these projects is not entirely transparent, and it cannot be determined if those behind these two platforms are acting out of self-interest. Although both Sci-Hub and LibGen offer access for free, and claim to depend solely on their supporters' donations, that does not rule out some other possible economic benefit.

In response, however, one could justify Sci-Hub and LibGen's disobedience by appealing to the Universal Declaration of Human Rights (UDHR), as Alexandra Elbakyan did in an interview:

> The UN article says that a person cannot be excluded from participating in culture and scientific progress. I think that paywalls are doing just that, effectively excluding many people. Subscription prices are very high; an individual person cannot pay them. To obtain legal access, he or she needs to join one of the few available research institutions. But how easy is that for a disabled person, for example? (Belluz, 2016).

Elbakyan's answer is coherent with what Sci-Hub does: it circumvents paywalls to deliver academic articles to anyone who requests them. That Sci-Hub is open to anyone, regardless of location, citizenship, gender, class, etc., without registration, indicates that it does not reproduce the mechanisms of exclusion that Elbakyan criticizes in the interview quoted above. Interestingly, Sci-Hub and LibGen allow people using anonymizing technologies to get free access to knowledge, without keeping a record of what specific users download, as corporate databases do.

Nevertheless, arguments appealing to rights included in the constitution and to human rights seem problematic for this specific case. Even if a national constitution or the UDHR contains a right to access to cultural productions and knowledge,[37] that does not mean that all other legislative acts must take it as the only criterion. As in many other cases, different rights can conflict or compete. While considerations on how rights should be weighed for the case of Sci-Hub and LibGen are important for examining this case, overemphasizing the legal dimension could cast a shadow over the moral and political significance of these initiatives, which is more relevant for their links to civil disobedience.[38]

[37] The existing tension between the right to access cultural productions, and copyright law is somewhat present in the UDHR. Article 27 says: "1. Everyone has the right freely to participate in the cultural life of the community, to enjoy the arts and to share in scientific advancement and its benefits. 2. Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author" (UN General Assembly, 1948).

[38] Besides the UDHR, constitutions and other national legislation, there are also exceptions and limitations to copyright law. The World Intellectual Property Organization (WIPO) indicates that, "[i]n order to maintain an appropriate balance between the interests of rightholders and users of protected works, copyright laws allow certain limitations on economic rights, that is, cases in which protected works may be used without the authorization of the rightholder and with or without payment of compensation" (WIPO, n.d). However, these limitations are usually narrow, complex, and different from one country to another. An ongoing civil society campaign trying to reach better copyright laws for education in Europe reveals this complexity. According to 'COMMUNIA,' "All the European countries have implemented the current EU laws on copyright in a different way, which makes it very difficult for teachers to know what they can and cannot share internationally" (Blijden, 2017).

***Appealing to the Need for Open Access***

A different way of arguing that Sci-Hub and LibGen are justified in providing illegal access to research publications consists in appealing to the need researchers have for such an access. The rationale behind multiple open-access initiatives can be employed here to explain the importance of free and unrestricted access to up-to-date research documents. One of the key reasons in favor of open access is that it allows researchers to read and build on the findings of others without restriction (cf. PLOS, n.d.), which is a necessary condition for research to lead to breakthroughs in human knowledge able to improve people's lives. Open access is also a means to reach the widest possible audience, including non-institutionally affiliated researchers. Additionally, public information about new research methods and tools can enrich different fields and build up interdisciplinary bridges (cf. SPARC, n.d.). Nowadays, researchers only obtain partial benefits of global knowledge production, namely, only those that the existing academic publishing sector allows them to. Viewed in this way, Sci-Hub and LibGen are increasing researchers' potential to contribute to human knowledge and human well-being.

However, there are critical voices against Sci-Hub and LibGen among supporters of open access enterprises. These voices come from a growing movement that brings together various initiatives, and that has slowly but steadily persuaded and created institutions using entirely legal means, on the basis of the benefits of full open access to research. Compared to this gradual change, Sci-Hub and LibGen might seem effective and radical, but unsuccessful in tackling the structural causes of the problem of limited access to research. As Ernesto Priego points out, "Sci-Hub […] reroutes paywalled content and makes it available at no cost. The publishers remain the same. The journal brands remain the same. Their H-Indexing and Impact Factor continues strong. Scholarly Publishing remains the same" (Priego, 2016, p. 2). Priego's concern seems justified, since academics continue to sign contracts transferring all rights to publishers. According to him, celebrating and embracing means that break the law to achieve an immediate goal distracts from the real purpose, which is to create sustainable solutions. Illegal, cost-free access is not the same as open access, which means "allowing the user to do work, dissemination, augmentation, analysis with the content, legally" (2016, p. 3).

This is a practically and normatively relevant objection to Sci-Hub and LibGen. From a practical point of view, it seems true that using these illegal platforms allows researchers to disregard legal initiatives aimed at securing open access, such as the Right to Research Coalition, the Open Access Button, or the Open Library of Humanities (listed by Priego). This objection is worth considering also from a normative perspective, for at least two reasons. First, if there are legal alternatives to obtaining access, and lawful ways to try to change and

communicate the researchers' reproval of the publishers' 'unfair gain,' then such alternatives should be tried before engaging in unlawful acts.[39] Second, Sci-Hub's and LibGen's users can be seen as acting out of self-interest. Scholars could use these illegal platforms only because it is easier, faster, and cheaper than legal ways for accessing the information they need for their own publications. Apparently, many of Sci-Hub's users have legal access to the articles as "some of the most intense use of Sci-Hub appears to be happening on the campuses of US and European universities" (Bohannon, 2016, p. 510). Both of these arguments are dubious. First, the vast growth of Sci-Hub shows that its legal counterparts have not been able to provide a suitable solution to an urgent problem. Second, we can never be sure of the motivations of political agents. Although it is true that civil disobedience usually requires strong commitment,[40] as we saw at the end of Chapter 2, this does not mean that people using civil disobedience necessarily have one sole motive. Furthermore, in large and complex collectives, such as Anonymous, not only individual members may have mixed motivations, but different branches or segments within the collective may have them too.

***Appealing to the Nature of Scientific Knowledge***

Another set of reasons to claim that unrestricted access to scientific knowledge should be granted to researchers stems from an understanding of the nature of scientific knowledge. This is not the place to try to list essential characteristics of the process of knowledge production, usually construed according to the model of the natural sciences. Here, I wish to highlight one such feature. In his description of the ethos of science, Robert Merton calls 'communism' the fact that "[t]he substantive findings of science are a product of social collaboration and are assigned to the community" (Merton, 1973, p. 273). Scientific discoveries belong to the common heritage of humanity, even though scientists win individual, and sometimes also collective, recognition for their discoveries. Merton argues that "[t]he institutional conception of science as part of the public domain is linked with the imperative for communication of findings" (1973, p. 274). This is so because knowledge is validated as science, among other things, by peer review. Furthermore, no scientific discovery can claim total originality, as if shared, prior knowledge were not presupposed or played no part in producing it. The arXiv, an

[39] Here the question of whether civil disobedience needs to be used only as a last resort reappears. Although this is not a requirement for an action to be considered civil disobedience from the radical democratic approach, it is still relevant for the moral evaluation of the act. In the sub-section titled "Toward a Communicative Justification of Civil Disobedience," it is argued that there is a communicative side in cases of civil disobedience that contributes to the justification of their law-breaking, independently of whether it is used as a last resort.

[40] As Kimberly Brownlee (2012) has pointed out, civil disobedience requires conscientious moral conviction.

online repository of scientific papers in various disciplines, including astronomy, computer science, quantitative biology, and statistics, shows that various scientific fields operate on the basis of knowledge sharing and open communication of potential discoveries. For mathematics and physics, preprint versions of almost all papers are self-archived at arXiv.

Against the backdrop of the 'communist' nature of science, it is possible to argue that Sci-Hub and LibGen are setting up a super-comprehensive archive of the common heritage that, were not for the limitations imposed by the economic interests of academic publishers, it would be free and available, just as the arXiv. This argument, once again, can be challenged, since the arXiv is not a peer-reviewed repository, while academic publications are peer-reviewed and edited, which, according to academic publishers, generates operational costs that they cover.[41]

To summarize, we have explored three ways to justify Sci-Hub and LibGen, related to appeals to individual rights, to human rights, to the practical needs of researchers, and to the nature of scientific knowledge production. Each of these arguments sheds light on different aspects of the normative complexity of the case we are examining, but does not fully answer the question of whether online academic piracy is justified. This should by no means come as a surprise, as civil disobedience is always a contested matter, drawing public attention to moral and political concerns that societies have not yet considered or have chosen to ignore.

***Tackling Global Inequalities – An Illustrative Case***

In this sub-section, I wish to exemplify another possible way of justifying the illegal acts carried out by Sci-Hub and LibGen. This justificatory argument touches on the idea of global justice. This is a complex subject that we cannot address or develop here; nevertheless, in what follows we will explore some of the social and legal conditions that make urgent to tackle the 'research divide.'

According to Elbakyan, the deficit in access to scholarly knowledge is greater than she initially thought: "When I created Sci-Hub, I expected the tool to be used mainly by the general public. But it turned out researchers themselves do not have access!" (Belluz, 2016). As the following case shows, this is particularly true for researchers located in countries where not

[41] Usually academics peer-review articles for free. Still, publishers have operational costs such as the salaries of employees in charge of contacting peer-reviewers, checking their CVs, editing, proofreading, and indexing articles and new journal issues in academic databases. It is debatable whether these expenses are proportional to the fees they charge libraries and individual users for accessing the publications written and reviewed for free by scholars.

only they do not have access, but they also face outrageous legal consequences for sharing research documents, even if they do it for purely altruistic reasons.

Back in 2009, Diego Gómez was an undergraduate student in biology at the Universidad del Quindío, Colombia. Motivated by an interest in conservation, he was researching amphibians. Located about 300 kilometers away from Bogotá, Gómez did not have physical access to an updated taxonomy of Colombian amphibians. Due to this lack of access, he downloaded a master's thesis on the subject from a Facebook group and republished it on scribd.com. Gómez shared the exact file he downloaded with the aim of making it available to other researchers like him, who could not go to the library of the National University of Colombia in Bogotá where the document was available.

Gómez explains his action in the following way: "I did it taking for granted that I was sharing knowledge as a *bona fide* act, out of gratitude for all the support that I had received from other researchers, from Colombia and other countries. I did it willingly, with an academic purpose and not for profit. I never thought this action could be considered as a felony."[42]

On May 24, 2017, after more than five years with an eight-year prison sentence hanging over him, Gómez was declared innocent of copyright infringement by a Colombian court of law. Unfortunately, this was not the end of Gómez's legal prosecution, since both the complainant and the Deputy Prosecutor said they will appeal the verdict. Gómez was declared innocent because the investigation found that a) Gómez shared a document that was already public in a Facebook group, of which the complainant was also a member (!); b) sharing this kind of academic document is common practice among scholars; c) Gomez's actions *might have*[43] been covered by the limitations and exceptions to copyright.

Diego Gómez's case illustrates the immense challenges that researchers face when they are not part of a research institution able to pay subscription fees to academic journals and databases. The case helps to reflect upon the relationship between academic piracy and civil disobedience. In contrast to Sci-Hub and LibGen, Gómez's actions were not politically

[42] "*Asumiendo que compartía conocimiento como un acto de buena fe, de gratitud por todo el apoyo que había recibido de otros investigadores en Colombia y otros países, y haciéndolo de manera voluntaria, con fines académicos y sin ánimo de lucro, nunca imaginé que esta actividad pudiera considerarse como un delito*" (Digital Rights LaC, 2014).

[43] Although this is crucial for the case, it is not clear if this is so because this line of argument was not pursuit by any of the parties. The verdict says: "… It should be verified whether or not the accused is protected under some of the **limitations and exceptions provided for** in the Law and the rules that comprise our constitutional law (…) This Office finds it concerning that neither the Deputy of the National Prosecutor's Office nor the defense attorney (…) has considered this element." *"...conviene verificar si el acusado está o no amparado bajo alguna de **las excepciones y limitaciones previstas** en la Ley y normas que conforman el bloque de constitucionalidad (...) Inquieta a este despacho el hecho de que ni la delegada de la Fiscalía General de la Nación ni el abogado defensor (...) haya argumentado este elemento*" ("Sentencia Diego Gómez," p. 13).

motivated, and they were neither aimed at changing, nor at challenging, a set of laws, policies, and institutions.

The objection could be made that even if Gómez's case illustrates an existing deficit in access to research resources, a 'research divide,' this is not necessarily a political matter. The fact that some institutions are better equipped to conduct scientific research than others does not justify breaking access rules: it is not acceptable that poorly equipped researchers break into well-equipped laboratories just because that would make it easier for them to produce knowledge. The final part of this potential objection is evidently irrelevant: as other analogies between academic piracy and theft fail to recognize, the distribution of scholarly articles, and in many cases also books, does not impoverish the rights-holders, whether authors or publishers. Digital sharing consists in creating copies and not in stealing a good that can no longer be used as a result. In the imaginary case of the laboratory, if a group of 'radical access activists' break into the well-equipped lab and occupy it with the aim of producing knowledge, that would certainly make it impossible for authorized or legitimate researchers to do their work; however, in the case of broadening access to other means of knowledge production, such as articles and books, the situation is different since it does not diminish or hinder other researchers' ability to use those means in their research.

### 3.3. Communicative Civil Disobedience as Deliberative Participation

Having shown that Sci-Hub and LibGen can be considered as civil disobedience on the basis of a radical democratic understanding of civil disobedience, and having examined various ways of arguing that these two initiatives, although illegal, may be justified, we now turn to considering their potential contribution to the process of democratization. This section addresses the question of justification of these two digital platforms through the lens of their contribution to democratic processes of opinion- and will-formation. First, on the basis of William Smith's deliberative theory of civil disobedience, we will argue that civil disobedience can be justified not only when it contests entrenched injustices but also when it tackles 'deliberative inertia.' Second, following Iris Marion Young, we will study four potential limitations of a deliberative view of civil disobedience. Finally, we will see that these two approaches are mutually compatible and clarify the potential deliberative contribution of Sci-Hub and LibGen, thus shedding light on the question of their justification.

***A Deliberative Theory of Civil Disobedience***

A deliberative approach to civil disobedience should address, among other questions, the extent to which deliberative self-rule among free and equal people is compatible with civil disobedience. In other words, it has to spell out how a deliberative theory of democracy can respond to the challenges posed by illegal, principled activism. Such a theory should investigate not only the use of civil disobedience *as an attempt* to create the conditions for authentic deliberations, but also the justification for using civil disobedience *as part of* the process of deliberation. William Smith has made a noteworthy contribution to a deliberative theory of civil disobedience and has addressed these two aspects of the question. Although Smith's arguments are not easily compatible with, and go significantly beyond, the minimal definition of civil disobedience, they advance a link between politically motivated, unlawful acts, and processes of public deliberation that can be used to bring closer the radical democratic approach and a deliberative model of democracy, broadly understood as 'communicative.'

For his deliberative theory, William Smith takes the Rawlsian definition of civil disobedience as a starting point. In an earlier version of his deliberative approach, Smith uses an outline of deliberative democracy that puts the principles of democratic inclusion, reason-giving and informed public debate at the center. Smith formulates these principles in the following way: "*public deliberation should include all members of the relevant political community*" (Smith, 2004, p. 356), "*citizens must publicly deliberate with one another on the basis of their sincere and reasonable beliefs to decide law and policy*" (2004, p. 358), and "*participants should seek to incorporate and assess as much relevant information and data as possible within ongoing processes of public deliberation*"[44] (2004, p. 360). If respected, these principles would translate into fair public discussions among equals, in which all of them would argue and evaluate ideas according to the best available information in an uncoerced way.

Smith argues that there are exceptional circumstances in which, because of the violation of the aforementioned principles, civil disobedience can be a justified course of action to secure participation in the deliberative process. This deliberative justification of civil disobedience does not conflict with, but rather complements the Rawlsian discourse on the justification and the role of civil disobedience in a democracy. As explained before, for Rawls, civil disobedience is primarily justified when severe violations of basic liberties are systematically taking place, as well as when there is inequality of opportunities – though this is more difficult

[44] For these three quotes, emphasis in the original.

to assess. Smith argues that civil disobedience might be justified not only against serious injustices, but also in other cases, such as:

> (1) when a person governed by deliberative institutions is excluded from deliberation, or when the interests of seriously affected persons have been neglected by actual deliberation; (2) when a powerful interest has been able to distort or bias the direction and outcome of existing deliberation; and (3) when actual deliberation has proceeded with insufficient or no information over a particular issue (Smith, 2004, pp. 363-364).

For Smith, there are some necessary conditions for a well-functioning public sphere, understood as "the network of forums within which citizens debate and discuss issues of common concern" (Smith, 2013, p. 60). As stated earlier, according to Smith, civil disobedience can be justified when basic conditions for fair deliberation are systematically violated. Hence, civil disobedience comes to play the role of guardian of the public sphere (cf. Smith, 2011, p. 147). Thus, civil disobedience is justified as a means to tackle the adverse effects of 'deliberative inertia.'

An undesirable effect of deliberative inertia is that it leaves the public sphere unable to perform its cognitive function; opinion-forming processes are inhibited due to the existence of hegemonic discourses that influence democratic debate and decisions, to the extent that alternative discourses and options are not entertained – a point made by Iris Marion Young as well. Another undemocratic effect of deliberative inertia relates to will-formation; it occurs when decision-making processes are not fruitful in delivering necessary innovations and solutions to collective problems.[45]

So far, we have seen that in his deliberative account of civil disobedience, Smith offers a justification for politically motivated, unlawful actions aimed at securing the cognitive function of the public sphere. A democratic public sphere does not work correctly when some people who should be included are formally or *de facto* excluded; put differently, there is no legitimate democratic process if certain claims cannot make it to the "center" of the public sphere, or if they cannot acquire traction and generate innovative solutions to collective problems. Likewise, democracy does not work if people cannot access the information they need to participate in public deliberation and make informed decisions. We can think of these as forms of cognitive or informational injustice.

[45] An example of deliberative inertia inhibiting opinion-formation is explanatory nationalism: "The deep entrenchment of explanatory nationalism in opinion-formation has the consequence of distorting our understanding of global poverty, by blinding us to the extent to which it emerges through a complex interaction of local and global factors" (Smith, 2011, p. 155). An example of deliberative inertia hindering will-formation is the limited traction of environmental discourses on policy change: "The widespread commitment to green politics, however, has seldom been translated into effective action at national or global levels" (2011, p. 155).

The inhibiting effects of 'deliberative inertia' for the cognitive function of the public sphere are – as usual, unequally – distributed throughout the polity. Those affected by the outcomes of deliberation are usually exposed in different ways to hegemonic discourses and have varying capacities to articulate alternatives. James Bohman captured this in the concept of 'political poverty': "*Political poverty* consists of the inability of groups of citizens to participate effectively in the democratic process and their consequent vulnerability to the intended and unintended consequences of decisions" (Bohman, 1996, p. 125). Information is one among the many resources people need to successfully participate, and to be effectively (and not only formally) included in democratic processes.[46] Equal access to information is crucial for democracy because "[w]hen citizens are unequal with respect to capacities to acquire and use information, exclusion is a by-product of the resultant inadequacies of public functioning" (1996, p. 130). Democracy does not work when some people are drastically more vulnerable than others to the effects of collective decisions due to their limited access to information.

If equal access to information is understood as a necessary condition for the public sphere to perform its cognitive function, then, following Smith's justification of civil disobedience against 'deliberative inertia,' we can conclude that civil disobedience might be justified when it aims at opening up access to information as a means for democratic opinion- and will-formation. To be sure, this is not to say that all cases of making information publicly available are justified, but that they are justifiable; as government whistleblowing shows, there may be additional normative requirements that must be met when dealing with sensitive information, for instance minimizing potential risks of harm (cf. Sagar, 2013; 2015).

### *Toward a Communicative Justification of Civil Disobedience*

Among the many ways in which people can participate in democratic processes, we can think of some paradigmatic forms such as voting, standing for election, publicly discussing proposed laws, and drawing public attention to overlooked social issues that needs to be talked through. In complex, pluralist societies, different forms of democratic participation can seem to conflict with one another. For example, some citizens might regard activist ways of participating as

[46] Habermas straightforwardly describes the unequal distribution of knowledge, information, and expertise in the following way: "Furthermore, the unavoidable division of labor in the production and diffusion of knowledge results in an unequal distribution of information and expertise. In addition, the communications media intervene with a selectivity of their own in this social distribution of knowledge. The structures of the public sphere reflect unavoidable asymmetries in the availability of information, that is, unequal chances to have access to the generation, validation, shaping, and presentation of messages. Besides these systemic constrains, there are the accidental inequalities in the distribution of individual abilities" (Habermas, 1996, p. 325).

incompatible with their own participation, or with what they consider to be acceptable ways of participating.

In the article "Activist Challenges to Deliberative Democracy," Iris Marion Young presents the aforementioned tension through a fictional dialogue between two characters: the deliberative democrat and the activist. Young's aim is to shed light on the limitations of some understandings of the principles of deliberative democracy, "especially if they are understood as guiding practices in existing democracies where structural inequalities underlie significant injustices or social harms" (Young, 2001, p. 670). Additionally, Young wants to bring to the fore the virtues of political practices of democratic criticism that do not conform to the deliberative ideals of reasonableness and civility.

Following Young's argument in *Inclusion and Democracy* (2002), the deliberative model of democracy can be characterized as taking the democratic process to be "primarily a discussion of problems, conflicts, and claims of need or interest," in which "[t]hrough dialogue others test and challenge these proposals and arguments" (2002, p. 22). Rather than making decisions by numerical support to individual preferences, in a deliberative democracy, decisions are made according to the proposals that the collective agrees are grounded on the best reasons (2002, p. 23). This model is explicit about the normative ideals of inclusion, equality, reasonableness, and publicity. Hence, in Habermasian terms, all subjects of the laws should be able to see themselves as their authors; all participants' reasons should be equally heard, and all participants should consider the reasons offered publicly by others to explain why their ideas are incorrect or inappropriate.

Young advances a 'communicative' understanding of democracy that, based on the deliberative model, seeks to respond to the activists' challenges, as well as to address structural social inequalities. Young's communicative model of democracy addresses four flaws of narrow interpretations of what 'deliberation' means. The first limitation consists in *privileging argument* over other forms or articulations of needs and stakes. Although it is true that dialogue necessarily presupposes some basic shared premises, it is important not to exclude positions "which do not find expression within those shared understandings" (Young, 2002, p. 37). In particular, there is the risk of excluding those who participate in ways that are regarded as insufficiently articulated or too passionate. Since, for many theorists, 'deliberation' suggests primacy of arguments, dispassionateness, and order in communication, Young uses the expression 'communicative democracy,' "to denote a more open context of political communication" (2002, p. 40).

The second limitation of a narrow understanding of deliberative democracy is a strong idea of *common good*, taken either as a necessary prior condition for deliberation or as its goal. Privileging a single idea of common good as a pre-condition for deliberative democracy (e.g., in the positions of Michael Walzer, David Miller and Jane Mansbridge), runs the risk of overlooking or denying plurality in society. By taking a notion of common good as the aim of discussion, a strong idea of commonality leads to regarding "differences of identity, culture, interests, social position, or privilege as something to be bracketed" (Young, 2002, p. 42).

The assumption that deliberation takes place in one single forum where people have discussions *face-to-face* is, according to Young, the third limitation of how deliberative democracy is narrowly understood. Often, deliberative theorists think that democracy takes place in a centralized manner, in one institutional sphere where the voice of the people speaks. This conception fails to recognize that democratic communication takes place across multiple social sectors, various institutions, and in different times and locations. For instance, the discussion on whether fracking should be allowed or not in a particular area takes place across multiple fora, institutions, and social interactions over time. Some people may discuss the convenience of fracking for national growth at a closed-door shareholders' meeting; activist groups may try to draw attention to potential environmental detriment through memes on social networks; while public intellectuals, academics, and politicians may publicly discuss their views on this subject on a TV show.

Finally, the fourth limitation of some deliberative understandings of democracy relates to how they interpret civil disobedience and other forms of activist political action. Young calls this limitation '*assuming a norm of order*': "Ideas of deliberation, reasonableness, or civility are often used to locate some people as temperate and to label as 'extreme' others who use more demonstrative and disruptive means" (2002, p. 47), such as demonstrations, sarcastic banners or chant slogans against powerful actors. One could add new, digital disruptive actions to this repertoire, such as web-defacement and DDoS actions.

For Young, multiple actions that might be considered 'uncivil,' 'unreasonable,' and even 'violent,' are communicative, and thus not only compatible with, but even essential to, democracy: "Without creative protest action and mass mobilization, a democracy is insipid and weak" (2002, p. 48). Without creative political actions, some of which would be deemed as 'radical,' democracy would become a fictional reign of homogeneity where participation is granted only to those lucky enough to be able to 'play by the rules,' to articulate their demands in the 'right way,' and be reasonable as instructed.

***Sci-Hub and LibGen as Communicative Disobedience***

In the final step of the argument advanced in this chapter, I wish to bring together the deliberative theory of civil disobedience put forth by William Smith and Iris Marion Young's communicative model of democratic inclusion. By doing this, I wish to propose a broad normative framework in which to locate the minimal definition of civil disobedience.

In *Civil Disobedience and Deliberative Democracy* (2013), William Smith further develops the understanding of the deliberative role of civil disobedience that we discussed earlier. For an act to be considered as a means for deliberative participation, it must fulfill three requirements: it must communicate an argument that can be described as reasonable, it should not involve coercion and convince others on the basis of the better argument alone, neither manipulating nor putting pressure on citizens to accept an argument, and participants should exhibit a "willingness to engage with and respond to criticism" (2013, p. 80). In other words, Smith characterizes deliberative participation with three paradigmatic features: reason-giving, non-coercion, and dialogic relations (2013, p. 80).

In his study of the relationship between civil disobedience and deliberative democracy, Smith examines the objection that, "despite its civility, this type of disobedience is nonetheless a challenge to the kinds of forums and spaces for discussion that are generally taken as necessary for the practice of deliberative democracy" (Smith, 2013, p. 79). There are, according to Smith, two ways of "ameliorating the apparent tension between civil disobedience and deliberative participation" (2013, p. 79). The first option consists in arguing that justified civil disobedience, although it is fundamentally a non-deliberative way to participate, contributes to deliberative democracy. That contribution can be "aimed at *restoring, cultivating, fortifying, and enriching the deliberative process itself*"[47] (Talisse, 2005 p. 439). The second option is considering justified civil disobedience "*as* a deliberative form of participation itself" (2013, p. 80).

These two possible ways of thinking of the deliberative role of civil disobedience help us address the question of whether Sci-Hub's and LibGen's disobedience can be justified as contributing to a democratization process. First, by opening up access to scholarly publications containing up-to-date knowledge, these two initiatives of academic piracy make it possible for the public sphere to play its cognitive function, and thus protect a crucial condition for authentic deliberation, namely, access to relevant information. These websites provide access to information that we collectively consider valuable: research papers and books that contain not

[47] Emphasis in the original.

only science but also knowledge derived from other fields such as the humanities, the social sciences, and the arts. These websites break the law, in particular copyright law, to make information that can enrich public deliberation publicly available. Access to this information is by no means sufficient for an inclusive and active public deliberation, but it contributes to it.

In addition to access to information, democratic societies need educational systems oriented toward developing the abilities that citizens need to make sense of that information, as well as other capabilities associated with the humanities and the arts: "the ability to think critically; the ability to transcend local loyalties and to approach world problems as a 'citizen of the world'; and, finally, the ability to imagine sympathetically the predicament of another person" (Nussbaum, 2010, p. 7). With this comment, I wish to anticipate my response to a potential objection to one of the central arguments of this chapter. The objection could be made that a significant portion of the documents accessible through Sci-Hub and LibGen contain information that is not pertinent for democratic deliberation. For instance, one might mention highly specialized articles in fields such as astrophysics and molecular chemistry, or an article on new interpretations on the Individuation of Finite Modes in Spinoza. Nussbaum's *Not for Profit. Why Democracy Needs the Humanities* inspires my response to this potential objection. The democratic value of education, study, and research can neither be judged on the profit it generates nor exclusively on its content. We should also recognize the democratic significance of the abilities that citizens can develop through study, research, and the cultivation of the arts. Access to information is certainly not enough, but it is necessary for the invention and development of diverse forms of responsibly perform citizenship.

Second, as Smith acknowledges, "[a] more interesting suggestion […] is that civil disobedience is not merely a means to promote a deliberative environment, but can be a form of deliberative engagement in itself" (Smith, 2011, p. 166). The mere existence of these two websites, and the fact that when their domains are seized they create and move to new ones, as well as the existence of mirror websites hosted in servers around the globe that provide access to the illegal repository, can themselves be seen not only as practices of civil disobedience, but as having a deliberative role with real effects within the public sphere.

To further develop this line of argument, we can now revisit Young's communicative conception of democracy. We can think of forms of communication that, although often labeled 'uncivil' and 'violent,' constitute alternative modes of participating in democratic processes other than making "polite, orderly, dispassionate, gentlemanly" arguments (cf. Young, 2002, p. 49). These communicative actions, neither argumentative nor merely symbolic, can initiate public deliberation about issues that have been depoliticized, such as how publicly funded

research should be made available or what the role of the humanities and the arts in democratic societies should be. Such communicative engagements of citizens themselves count as political action insofar as "[p]olitical activity is any activity whose aim is to *politicize* social or economic life, to raise questions about how society should be organized, and what actions should be taken to address problems or do justice" (Young, 2002, p. 163)

With Young, we can think of Sci-Hub and LibGen in themselves as meaningful political actions and acts of speech. However, the communicative potential of these economically disruptive actions can only be grasped if, like her we call into question the privilege of articulated arguments in deliberation, if we recognize the intrinsic pluralism of a global society, and stop thinking of deliberation as a centralized, face-to-face process. Only against this communicative backdrop is it possible to recognize the true extent of the democratizing potential of these intentionally unlawful and principled collective acts of protest, whose political aim is to change the academic publishing sector and copyright law for education and research.

Thus, Sci-Hub's and LibGen's political struggle[48] does not only consists in disrupting "the ebb and flow of democratic politics in order to establish a deliberative environment" because they also "contribute to that environment by introducing reasonable arguments as inputs to opinion- and will-formation" (Smith, 2013, pp. 80-91). For Smith, as for Young, "[t]his is true even of acts that entail a degree of confrontation or disruption, as the communication of reasonable arguments is not, in itself, incompatible with this mode of expression" (Smith, 2013, pp. 80-81). It is certainly difficult to assess, both theoretically and in practice, the degree of confrontation and disruption that citizens can employ in their communicative engagements with one another without being uncivil. Since the ideas of deliberation, reasonableness, and civility are often used by powerholders to "locate some people as temperate and to label as 'extreme' others who use more demonstrative and disruptive means" (Young, 2002, p. 47), our study of digitally mediated forms of civil disobedience must be cautious with these concepts and closely examine how they relate to each other. Keeping this in mind, Chapter 4 examines the relationships between the concepts of civility, violence, and citizenship.

[48] I follow Young here on the use of the expression 'political struggle.' She says: "I prefer to call to the normal condition of democratic debate a process of *struggle*. In a society where there are social group differences and significant injustice, democratic politics ought to be a process of struggle. Far from a face-off in enemy opposition, struggle is a process of communicative *engagement* of citizens with one another [emphasis in the original]" (Young, 2002, p. 50).

**Conclusion**

The first section of this chapter concluded that, on the basis of a minimal definition of civil disobedience, Sci-Hub and LibGen can be considered a new form of civil disobedience. Having discussed the reasons why a minimal definition is preferable to the mainstream, liberal conception of civil disobedience vis-à-vis new forms of principled disobedience, we moved to the normative question about the justification of copyright infringement of scholarly documents. In the second section, we examined multiple possible ways to justify Sci-Hub's and LibGen's illegal form of opening up access. Some of these justificatory views rely on liberal arguments, according to which individuals' human rights entitle them to unrestricted access to information, culture, and knowledge. Other arguments appeal to how academic knowledge production works, especially in scientific fields, and to the concrete, unequal need for open access that researchers have around the world; taken together they provide a strong case for regarding Sci-Hub and LibGen as at least potentially justified principled illegal acts.

The final section has explored an alternative line of argument concerning the justification of Sci-Hub's and LibGen's unlawful acts. By bringing together two understandings of democratic participation, one that emphasizes deliberation and the other communication, the chapter has offered an interpretation of the deliberative contribution of these two initiatives of academic piracy. While these illegal platforms contribute to the creation of the conditions for an authentic deliberative process by opening up access to relevant information to everyone, they can themselves be thought of as deliberative participation. These two websites not only make it possible for everyone to access up-to-date information crucial for forming their opinions, but their existence has effectively politicized and included in the deliberative agenda economic and social issues regarding the production and distribution of scholarly information and knowledge.

# Chapter 4. Incivility as Communication by Other Means

Each of the previous chapters offers some elements to concretely address the question of whether certain acts of online contestation amount to new forms of civil disobedience. Each case study has posed specific questions that compel us to rethink some of the conceptual and normative requirements that, according to mainstream theories of civil disobedience, acts of resistance need to meet in order to be considered as civil disobedience. Broadly speaking, behind the specific questions addressed in each of the previous chapters, there is an attempt to reconsider the limits of what counts as civil when actors use digital technologies. In this final chapter, I will address the issue of the 'civil' in civil disobedience, and the extent to which the previously studied cases reinvigorate or challenge that meaning.

The chapter has three sections. In the first section, I bring together the accusations against Snowden, Anonymous, and Sci-Hub and LibGen of being uncivil because of their somewhat covert, evasive, and violent disobedience. In the second section, I present various understandings of civility and reflect upon the way in which accusations of incivility are politically used. After problematizing the conventional interpretation of civility as nonviolence, at the end of the section I begin to develop a radical democratic concept of citizenship. In the third and final section, I propose an account of civility as performative citizenship. Through a theoretical '*assemblage*,' I develop my proposal of civility as performative citizenship by relating the ideas of claiming rights, potential acts of constituent power and the Arendtian notion of new beginnings. With this chapter, I seek to contribute to the radical democratic account of civil disobedience with a fitting notion of citizenship that complements the minimal definition, and adds to the normative requirements of not aiming to destroy the opponent and massive self-restraint.

## 4.1. Accusations of Incivility

### *Accusations against Snowden*

On December 22, 2016 the top-secret document, *Review of the Unauthorized Disclosures of Former National Security Agency Contractor Edward Snowden* was declassified by The House Permanent Select Committee on Intelligence. The *Review* assesses the impact of Snowden's disclosures on national security, according to the US intelligence community. The document states that "[f]irst, Snowden caused tremendous damage to national security, and the vast majority of the documents he stole have nothing to do with programs impacting individual

privacy interests" (United States Congress, 2016, p. i). It also claims that "[s]econd, Snowden was not a whistleblower. Under the law, publicly revealing classified information does not qualify someone as a whistleblower" (2016, p. ii). Both of these official statements are crucial for our examination of Snowden's case for they help us understand the degree of harm produced by Snowden's disclosures, and the reasons why the intelligence community thinks Snowden was not justified in taking and disclosing the documents to journalists.

Whether Snowden is a whistleblower is a matter we examined in Chapter 1. There we saw that even if Snowden fulfills all the conditions to be considered a whistleblower, according to the Obama administration he was not. The recently declassified document states that:

> A review of the materials Snowden compromised makes clear that he handed over secrets that protect American troops overseas and secrets that provide vital defenses against terrorists and nation-states. (…) Additionally, although Snowden's professed objective may have been to inform the general public, the information released is also available to Russian, Chinese, Iranian, and North Korean government intelligence services, any terrorist with Internet access; and many others who wish to do harm to the United States (2016, pp. i-ii).

Finally, the document claims that "[t]he full scope of the damage inflicted by Snowden remains unknown" (2016, p. ii).

Although the *Review* was declassified, it still contains several extended redacted pieces, especially in the section assessing the damage done to the NSA by Snowden's removal of documents. The *Review* details 13 high-risk issues that would put American troops at greater risk in any future conflict should Russian or Chinese governments have access to such information. All 13 issues are redacted. Nonetheless, the conditional on which this assessment is based is telling: American troops would be at greater risk *if* the Russian or Chinese governments had access. This suggests that the US intelligence community does not know yet whether these governments have access to the highly sensitive information or not. Additionally, the *Review* says this risk would be greater "in any future conflict," which suggests American troops have not been, and are not, under greater risk due to the disclosures, but might be in the future if there were a conflict.

In conclusion, for the intelligence community it is clear that a first group of documents, namely those that Snowden disclosed in the media (called 'Tier One' in the *Review*), "caused massive damage to national security." It is still unknown, and as of late May 2016 the intelligence community had no plans to assess the damage of the other two sets of documents: 'Tier Two' documents Snowden would have collected in the course of getting Tier One but has

not yet disclosed to the public; and 'Tier Three,' the remaining documents that Snowden accessed.

Reading the *Review* provides a superficial insight into the way the US intelligence community assessed the damage of Snowden's disclosures. If Snowden's revelations effectively put American troops at greater risk, one could regard Snowden's disobedience as a harmful or violent act – even if one acknowledges the valuable debate it triggered. Snowden and others have vehemently rejected the report's conclusions (McLaughlin, 2016); in particular, Snowden claims it falsely accuses him of having met with Russian intelligence agents.

The accusation of incivility against Snowden is based on the supposedly obvious connection between civility and nonviolence. If a given act – in this case, the act revealing confidential documents – produces damaging effects or puts US troops in danger, then it may correctly be categorized as violent, and violent acts are not compatible with civility. However, as we will see in the second and third sections of the chapter, it is possible to conceive of civility in a way that is not necessarily linked to nonviolence.

### *Accusations against Anonymous*

Anonymous has not only been accused of using morally problematic means such as DDoS and doxing, but also of being a year or two away from being capable of launching attacks on computers connected to global electricity networks. This last accusation was made by General Keith Alexander, then NSA director, to the White House, as reported by the *Wall Street Journal* in February 2012 (Prince, 2012). Although Anonymous immediately denied having such capacities and any such plan,[49] Alexander's warning generated headlines around the globe.

Certainly, an attack on the US national power infrastructure would be considered a terrorist attack: "Under U.S. law, terrorism is defined as an act of violence for the purpose of intimidating or coercing a government or civilian population" (Manion & Goodrum, 2000, p. 16). General Alexander's announcement was an official and public warning about Anonymous's potential for terrorism aimed at changing the dominant narrative about Anonymous from hacktivist collective to terrorist organization. Needless to say, such an attack has not taken place.

[49] "To hammer my point home, I offered a bit of humor, paraphrasing one Anon who had cracked the following joke soon after the NSA claimed that Anonymous was indeed capable of targeting the grid: 'That's right, we're definitely taking down the power grid. We'll know we've succeeded when all the equipment we use to mount our campaign is rendered completely useless'" (Coleman, 2014, p. 14).

In her talk "How Anonymous (Narrowly) Evaded the Cyberterrorism Rhetorical Machine" at the *re:publica* 2015 conference, Gabriella Coleman explained the reasons why she thinks the US government failed in the attempt to frame Anonymous as a cyberterrorist group. In general, the reasons are related to the timing of Alexander's accusation: the alert came after OpPayback, with which Anonymous created a positive frame for their action, and in the midst of an ongoing, positive process of resignification of the figure of Guy Fawkes. Additionally, Anonymous's reputation was protected by its flexible and incoherent nature, as well as by the fact that, by the time General Alexander delivered his briefing to the White House, Anonymous had already become a symbol of the fight against surveillance, and was famous for its support of the protest against the Anti-Counterfeiting Trade Agreement (ACTA). Anonymous's public image at that time was so positive among progressives around the globes that in a paradigmatic collective action, Polish members of parliament from the Palikot's Movement donned the Guy Fawkes mask amid the discussion of ACTA.

General Alexander's attempt and failure to present Anonymous as a cyberterrorist group illustrates the spirit of many of the accusations against the collective. A different set of accusations relate to the use Anonymous has made of coercive and somewhat violent methods, with similar intimidating effects to those of terrorist actions. Two of the most widely discussed Anonymous's tactics are DDoS attacks and doxing.

In Chapter 2 I extensively discussed what DDoS are, and illustrated their evolution and different types with exemplary cases, some of which were actions by Anonymous. Against this backdrop, I will now examine the arguments of supporters and detractors of the use of DDoS as a political tool to try to determine the extent to which DDoS can be considered civil.

The Electrohippies Collective (Ehippies) has publicly discussed the political value of denial-of-service (DoS) actions as a method to communicate dissent. In 1999, the Ehippies joined the protests against the World Trade Organization (WTO) in Seattle by conducting a massive denial-of-service action against the computer network serving the WTO. To understand the Ehippies's stance on the political use of DoS actions, it is necessary to remember the distinction between two kinds of actions that we studied in Chapter 2. On the one hand, there are DoS actions in which a large number of internet users coordinatedly request service from a server in the hope of slowing down or breaking down its capacity to response. A way to refer to this kind of action is 'client-side distributed DoS action.' On the other hand, there is another kind of denial-of-service in which zombie computers infected with malware are used to multiply the requests to a server. These are called 'server-side distributed DoS action.' For the Ehippies, this distinction is paramount, for they think the number of

participants is what brings legitimacy to the action. For them, "[t]he difference between the two actions is one of popular legitimacy versus individual will" (Ehippies, 2000).

For the Ehippies, in client-side DDoS, efficacy and legitimacy coincide. Without the coordinated action of tens of thousands (if not hundreds of thousands) of people who request service in a short period of time, there is no denial-of service at all, for the server will keep working. Thus, the efficacy of a DDoS without zombie computers, without botnets, depends on the number. The Ehippies think a DDoS amounts to "a democratic mandate" from a large number of people: "One or two people do not make a valid demonstration [;] 100,000 people do" (Ehippies, 2000). Although the number of people acting together is a central criterion of legitimacy, it is not the only one that the Ehippies consider. They believe legitimacy also comes from giving advance notice of the action, "at least two days before the action starts," and from having an approach of "openness and accountability" – necessary to defeat the prejudice that they are "terrorists."

Soon after the Ehippies made public their ideas about DDoS in their "Occasional Paper no.1 Client-Side Distributed Denial-of-Service: Valid Campaign Tactic or Terrorist Act?" in February 2000, another hacker collective, The Cult of Dead Cow (cDc) published a response.[50] One of the points of disagreement is precisely around the role that numbers of people play in online protest. According to the cDc, the Ehippies misunderstand the Internet, especially "by assuming that the same rules hold in the digital realm as they do down on the street" with the consequence of assuming that numbers of people are the key element that endows legitimacy to online protesting. The cDc's view of the use of DDoS clearly contrasts with the Ehippies':

> Denial of Service attacks are a violation of the First Amendment, and of the freedoms of expression and assembly. No rationale, even in the service of the highest ideals, makes them anything other than what they are – illegal, unethical, and uncivil. One does not make a better point in a public forum by shouting down one's opponent (Ruffin, 2000).

It is now clear that for the cDc, DDoS, regardless of their kind, are uncivil and incompatible with their idea of hacktivism, which they understand as "using more eloquent arguments – whether of code or words – to construct a more perfect system" (Ruffin, 2000). While for the cDc, respect for freedom of speech is essential for hacktivism, for the Ehippies, the direct contradiction between DDoS and freedom of speech does not necessarily imply that DDoS are

[50] Following Jordan & Taylor (2004) and Vlavo (2017), I reference Oxblood Ruffin (2000), lead member of cDc. The response was available at http://www.cultdeadcow.com/cDc_files/ HacktivismoFAQ.html! but it was later removed by the cDc.

incompatible with hacktivism, since they think that openly and straightforwardly justified DDoS are actually paradigm hacktivist actions.

These two views of DDoS continue to inform the debate about their political use. More recently, Ethan Zuckerman and Molly Sauter have revived the discussion. In *The Coming Swarm. DDoS Actions, Hacktivism and Civil Disobedience on the Internet*, Sauter (2014) advances compelling arguments in favor of considering DDoS as a new form of civil disobedience. One among the many insights she presents in the book is that, according to those who refuse to consider DDoS as a form of civil disobedience (e.g., Malcolm Gladwell, Evgeny Morozov, and Oxblood Ruffin), "[i]f the activist is not placing herself in physical danger to express her views, then it is not valid activism" (2014, p. 6). To some extent, this is the same problem we discussed in Chapter 2 when we examined the liberal requirement of the willingness to accept the punishment for breaking the law. What interests me here is that Sauter claims that such an assumption comes from construing civil disobedience on the basis of the historically specific examples of the Civil Rights Movement and the anti-Vietnam War protests. Such a way of thinking, used by many authors, runs the risk of ending up dismissing new forms of protest, in particular online protest, for not being performed on the streets. However, as Sauter sharply points out, "[t]here is no 'streets' on the Internet" (2014, p. 4).

Sauter touches here on a deep methodological issue that merits a short excursus. On the one hand, it is true that if we reflect upon DDoS and other potential new forms of civil disobedience following an idealized model of political dissent rooted in other historical experiences, we could overlook key features of online political action such as "the overwhelmingly privatized nature of the internet" and the "intertwined nature of property and speech in the online space" (Sauter, 2014, p. 4). On the other hand, if we simply avoid the reference to paradigmatic historical cases and theories of civil disobedience, and focus only on the features of online disobedience, we could lose sight of key elements of how civil disobedience has been performed. Only a thorough study of the tensions that arise between these two approaches vis-à-vis specific cases and tactics of disobedience can protect us from the risks that each of them implies.

In his Foreword to Sauter's book, Ethan Zuckerman refers to the report he co-wrote with colleagues at the Berkman Center in 2010 titled "Distributed Denial of Service Attacks Against Independent Media and Human Rights Sites" (Zuckerman et al., 2010). In 2014, Zuckerman insists on his conclusion that DDoS are a bad thing (Sauter, 2014, p. xii). In a blog post from 2010, Zuckerman says, "[o]ur research shows that DDoS attacks on independent media and human rights sites can knock targets offline for weeks or longer." Zuckerman sees

DDoS as a means to silence speech. Additionally, Zuckerman disagrees with Sauter on the idea that DDoS do not entail lasting damages, "as there are effects in terms of increased provisioning of infrastructure and increased cost" (Zuckerman, 2010).

Zuckerman's rejection of DDoS, considering them incompatible with the principle of respect for free speech, is shared by Oxblood Ruffin, a founding member of the cDc. In a 2018 blog post, Ruffin restates the cDc's position nearly twenty years after their aforementioned response to the Ehippies. He writes, "[s]o tactics like Distributed Denial of Service (DDoS) attacks were off limits. If freedom of speech and access to information are basic human rights, then curtailing them are human rights violations" (Ruffin, 2018). An additional reason why Ruffin is not convinced by the arguments of DDoS supporters is that their position seems hypocritical: "It's alright for *us* to attack *them* but it's not alright for *them* to attack *us*" (Ruffin, 2018), where 'us' stands for activists and hacktivists while 'them' for states and corporations.

We have referred to two sets of accusations of incivility against Anonymous. First, there is the direct accusation of having the capacity (and the plan) to attack critical electrical infrastructure, equivalent to accusing them of being in the process of developing capabilities for cyberterrorism, which is necessarily incompatible with civility. Second, there are what I call 'indirect' accusations against Anonymous because of the politically and morally problematic tactics they use, such as DDoS. I speak of 'indirect' accusations because, although many of the arguments against DDoS explicitly refer to Anonymous's DDoS, those arguments are of a more abstract and conceptual nature. The second set of accusations is mainly about the conflict between tactics and specific values such as freedom of speech. Both sets of accusations suggest that Anonymous's hacktivism goes beyond the limits of civility: on the one hand, because their capabilities and intentions would supposedly be closer to terrorism than to civil disobedience; and on the other, because some of their methods violate basic principles of how civility is understood today – for instance, they violate the freedom of expression of those whom they target with DDoS, and they fail to show respect for those whom they dox.

Additionally, as we discussed in detail in Chapter 2, the mere fact that the members of the collective act anonymously can be interpreted as evasiveness and covertness, which are incompatible with civility according to mainstream liberal accounts of civil disobedience.

### *Accusations against Sci-Hub and LibGen*

The accusations against Sci-Hub and LibGen can be interpreted as objections to considering them as instances of digital civil disobedience. My intention here is to look more closely at these accusations. Principally it is argued that these websites steal from publishers and authors.

Another accusation, in particular against Sci-Hub, is that to get the credentials that allow access to academic content behind paywalls, Alexandra Elbakyan uses illegal digital techniques such as phishing, spamming, hacking, password-cracking, etc., which are certainly evasive, convert means. In what follows, I will present these allegations, discuss their implications for our argument about civil disobedience, and examine Elbakyan's responses to them.

As the prosecution against Sci-Hub in a US court made clear, Elsevier and other academic publishers think their property has been stolen by the pirate website. The court ruling confirmed Elsevier's claim that Sci-Hub has damaged them by awarding $15 million for piracy damage to the publisher. Apart from publishers, one should also count among the victims of academic piracy the authors of the books shared through LibGen; one could hypothesize that if there were no illegal access to their books, they would sell more copies. However, since these books are mainly academic publications, it is unlikely that the authors themselves would economically benefit from sales.[51]

As Ted Lockhart points out, not only academic publishers but "[m]any professional scientific and engineering societies also strongly oppose Sci-Hub. These organizations rely on proceeds from their proprietary journals to help finance their activities" (Lockhart, 2017). Although Lockhart does not provide any examples, it appears he is right: in 2017, the American Chemical Society (ACS) won a lawsuit against Sci-Hub for illegally distributing trademarked and copyrighted content on a massive scale (Wildener, 2017).

Sci-Hub's and LibGen's way of offering free access to scholarship has both short-term and long-term effects. In the short term, these websites allow users to access up-to-date scientific information relevant to make decisions. For instance, George Monbiot writes in *The Guardian* that after being diagnosed with cancer and being offered a choice regarding his treatment, he went to Sci-Hub to inform himself. Monbiot admits that "[h]ad I not used the stolen material provided by Sci-Hub, it would have cost me thousands. Because, like most people, I don't have this kind of money, I would have given up before I was properly informed. I have never met Elbakyan (….) But it is possible that she has saved my life" (Monbiot, 2018). Monbiot's story illustrates the life-changing effect that free access to academic publications can have in people's lives – an unquestionably positive, short-term effect of Sci-Hub.

In the long-term, however, the effects of Sci-Hub and LibGen are harder to assess. On the one hand, as Monbiot reports, in early September 2018, "a consortium of European funders

[51] Academic books are typically sold to university libraries. Often, these books are too expensive for people to buy directly. It is estimated that a standard academic book – i.e., not a best-seller – will sell only between 200 and 300 copies, which do not represent significant royalties for the author (cf. Anonymous Academic, 2015).

(…) published their 'Plan S'. It insists that, from 2020, research we have already paid for through our taxes will no longer be locked up" (Monbiot, 2018). This might be partly due to the awareness raised by the pirate websites about the injustice of putting publicly financed research documents behind private paywalls. This change in the system of academic publishing is positive because tax-payers will be able to access the research they finance without paying twice for it. On the other hand, according to other voices, in the long run academic piracy will have a destructive effect on the academic publishing sector. Renny Guida, director of product management at the Institute of Electrical and Electronics Engineers (IEEE), claims that "nothing comes for free. Maintaining a quality publishing program and hosting that content on a robust and reliable platform is only sustainable when libraries, organizations, and individual researchers pay to subscribe to it" (Pretz, 2016). Guida argues that academic piracy makes the academic publishing business unsustainable in the long run.

To conclude, I would like to summarize the accusation that academic piracy is stealing by quoting a blogpost by Derek Lowe on Sci-Hub and copyright law: "The law is stupid and annoying and counterproductive, but it's the law, and if I'm fine with wholesale violation of it then I have no real defense if Alexandra Elbakyan next decides that she wants my car (I trust she doesn't)" (Lowe, 2016). The quote not only stands out for arguing in favor of respecting a law that is considered "stupid, annoying and counterproductive" *just because* it is the law, but it also exemplifies the misleading premises on which this accusation against Sci-Hub and LibGen is based, namely that the logic behind radical actions to open up access to academic publications is akin to car theft.

A second accusation against Sci-Hub is that it uses illegal digital means to get access to the documents it later shares through its website. For Andrew Pitts, co-founder and CEO of PSI Ltd., a private business that develops digital tools for the publishing sector, "Sci-Hub is not just stealing PDFs. They're phishing, they're spamming, they're hacking, they're password-cracking, and basically doing anything to find personal credentials to get into academic institutions" (Pitts, 2018). He claims that illegal access is only the tip of the iceberg of what Sci-Hub does and that the real aim is, "to steal streams of personal and research data from the world's academic institutions" (Pitts, 2018). Additionally, he claims to have evidence that academic credentials used by Sci-Hub are subsequently shared on multiple websites.

This allegation is not about copyright infringements but about how Sci-Hub collects and uses login credentials from academics with institutionally paid-for access to scholarly resources. Firstly, Sci-Hub supposedly uses fraudulent emails and websites to deceive users and get their login information. Additionally, they would use 'dictionary attacks' to decrypt

the keys or passwords of students and staff members of academic institutions. Secondly, Pitts claims to have evidence that suggests the ultimate goal is to hack into the universities' systems and steal databases and other research resources to sell them online. All these data would be for later sale online, according to him. Pitts's so-call evidence is inconclusive. His claims are based on *potential* criminal uses of the information supposedly collected illegally by Sci-Hub and not by their actual use. As some of the comments on his blog post point out, Pitts's piece does not offer conclusive evidence to support his claims; nevertheless, since these allegations against Sci-Hub are commonplace, it is still important to take them into account.

I now briefly present Alexandra Elbakyan's comments on the second allegation, according to which Sci-Hub uses malware and phishing to get login credentials. In response to Andrew Pitts's piece, Sci-Hub tweeted:

> TWEET BY @Sci_Hub (20 Sept. 2018)
> "comment on Scholarly Kitchen post
> (a) Sci-Hub website doesn't have any malware or etc.
> (b) there is nobody behind Sci-Hub except its founder Alexandra
> (c) the exact source of the library accounts that Sci-Hub uses is a secret."

In other instances, Elbakyan has denied that Sci-Hub uses phished passwords: "That is untrue that we obtain any passwords by phishing though (sic) the Sci-Hub website"; she has also said that "Sci-Hub acquires passwords from many different sources" (Taylor, 2016). Evidently, Elbakyan's answers are ambiguous. Sci-Hub could use malware, which is certainly covert and evasive, but not on its website, which is what Elbakyan clarifies. Also, she argues that although she prefers not to disclose for now how she gets the passwords, she might be able to reveal that in the future, without explaining why that would be the case or when.

With regard to the first allegation, namely that academic copyright infringements amount to stealing, I would like to consider the questions in Chapter 3 in a different light. Here I would like to problematize the assertion that digital copyright infringement on the Internet is like stealing an object. If opening up access to academic publications illegally is analogous to stealing, one could argue that Sci-Hub's and LibGen's acts are uncivil, and should not be considered as a new form of civil disobedience.

To think about online piracy as stealing easily misses the specificities of the digital realm. As Lawrence Lessig explains in his book *Code* (2006), "[d]igital technology, at its core, makes copies. (…) There is no way to use any content in a digital context without producing a copy. (…) When you do anything with digital content, you technically produce a copy" (Lessig, 2006, pp. 192-193). While for physical objects, stealing means taking something away from its legitimate owner, which involves them losing their capacity to use it and decide on what to

do with it, for digital objects, digital piracy means making a new good, an identical copy of the original one, without removing it from its owner. Since "[c]opyright at its core regulates 'copies,'" in the digital world, "every single act triggers the law of copyright" (Lessig, 2006, p. 192). At this point, we can ask to what extent online copyright infringements, such as those of academic piracy, should be considered as violent acts? Do Sci-Hub and LibGen harm copyright holders? If there is such a harm, is it justified by these websites' aims?

Following the logic of the accusations we have just studied, one could say that because of their harmful effects, our three case studies should be regarded, if not as bluntly criminal, then at least as uncivil disobedience. Moreover, if one has a broad enough concept of violence that includes not only physical harm but also other forms such as psychological or structural violence, one could say that these supposed practitioners of civil disobedience used violence in their disobedience. Such use of violence together with evasiveness would, according to the mainstream liberal conception of civil disobedience, exclude them from the category of civil disobedience. These are serious objections to considering Snowden's, Anonymous's, and Sci-Hub's and LibGen's disobedience as civil, and they deserve closer examination. In the next section, I examine different accounts of civility and problematize the oft-taken-for-granted connection to nonviolence.

### 4.2. On (In)Civility

According to some political theorists, civil disobedience is not the right concept to think about the kind of actions we have been discussing in this thesis because they involve the use of confrontational means that can be considered as violent. According to these scholars, other categories such as 'political disobedience' (Harcourt, 2012) or 'uncivil disobedience' (Delmas, 2018) are better suited to label actions such as whistleblowing or anonymous disobedience. The reasons why these theorists avoid the label of civil disobedience can be interpreted as objections to keeping that label and reinterpreting its meaning or enlarging its limits, as Celikates does (cf. Scheuerman, 2018). What these objections and alternative approaches have in common is that they prompt us to reexamine what we mean by the 'civil' in civil disobedience.

The second section of this chapter has three sub-sections. First, I begin by considering civility from the outside, or in a 'negative' way by attending to accusations of incivility; I then list a variety of senses in which 'civil' is usually understood in civil disobedience. Second, I present and discuss competing accounts of the relationship between violence, nonviolence and civil disobedience. Third, I explore the extent to which the 'civil' in civil disobedience can

refer to a radical democratic conception of citizenship; this prepares the ground for the final section of the chapter, in which I offer an interpretation of civil disobedience as acts of performative citizenship.

***Communication and Violence***

I begin by investigating civility from its reverse or 'negative' side. Drawing upon Linda Zerilli's general arguments about how the notion of civility has been used in the past against disenfranchised minorities such as women and African Americans when they dare to publicly claim their rights, I would like to reflect upon the accusation of incivility and why it is so hard to argue against civility; this will shed light upon the accusations we considered in the first section of the chapter.

Zerilli (2014) shows how the idea of civility is always linked to specific normative views that relate to changing social conventions, which means that "whether we call something uncivil will depend on how we evaluate behavior as part of a larger set of social or political goals" (2014, 109). Rather than interpreting disruptive political tactics as uncivil behaviors – a "'merely subjective' outburst of one sort or another" (2014, p.116) – Zerilli suggests taking them as a symptom of a general loss: "Uncivil public behavior is symptomatic of a more general democratic deficit of public space in which grievances can legitimately be raised and meaningfully addressed by fellow citizens and their elected representatives" (2014, p. 112).

Thus, Zerilli offers a lens to see the accusations of incivility as signaling the deafness of those in power. Although Zerilli's argument is focused on how the accusation of incivility has been used throughout US history against the claims for rights by disenfranchised minorities such as women and African Americans, her points remain valid for multiple contexts, including that of contemporary online rights claims. Firstly, where there are potentially uncivil political actions, there may be a lack of inclusion in the political arena; secondly, by accusing dissenters of incivility, governments often justify coercive and even violent state responses, which do not tackle the contested deafness of those in power but deepens it.

Some recent examples of the use of the accusation of incivility to delegitimatize protests and seek more coercive means for their control, are the official responses to Black Lives Matter (Hooker, 2016) and Occupy Wall Street (Bloomberg, 2011 as cited in Braunstein, 2018, p. 617). An even more recent example of what Ruth Braunstein (2018) calls the 'civility contest' is the public debate triggered by several professional football players from the NFL kneeling during the US national anthem as an act of protest against racial injustice. According to President Donald Trump, the protest was 'not acceptable' and 'disrespectful,' and he

suggested that those who participated in it should not be in the country. According to Braunstein, "[t]he fact that large numbers of Americans interpreted this peaceful protest by a number of black men as shocking, threatening, and beyond the pale reveals clearly how attributions of incivility are informed by entrenched social biases, especially when these biases are stoked by those in power" (Braunstein, 2018, p. 623).

The power that the accusation of incivility has over public opinion is such because civility is commonly understood as a mandatory requirement to enter the political realm. Those who supposedly behave uncivilly seem to be against the social and political goals of the community, often ideally conceived as a homogenous community. Thus, Zerilli claims, "[t]he idea of civility has always relied on a highly homogenous conception of the public, a conception in which mostly white, mostly male citizens found themselves in an unsurprising agreement about the fundamental moral and political values of American liberal democracy" (Zerilli, 2014, p. 116).

Among the various, supposedly shared values of civility, 'reasonableness' and 'good manners' usually have a prominent role. Even if the concrete meaning of these values changes from one context to another, these abstract notions are often used to publicly condemn citizens' rights claims for being rude, out of order, or for being politically insignificant. To illustrate this point, I would like to refer to a frequent dynamic between protesters and the Colombian state. At some point, protesters would block the traffic on a major street or avenue to demand negotiation with the government, then, speaking in the name of the "Colombian state" or the "people of Colombia," the government would publicly declare that it will not negotiate until the protesters cease to employ coercive means (*vías de hecho*) (Acosta, 2019). The blockade would stay put for some days, the police would try to open the road and thus engage in a confrontation. After the confrontations, in which some police officers are always injured, the government announces that the protesters are infiltrated by illegal armed groups or guerrillas (Noticiascaracol.com/AFP, 2019). Both official statements, that negotiation is possible only if protesters do not block roads or coerce others and that the protests are infiltrated by illegal[52] armed groups, obfuscate the demonstrators' demands to the point that media and public opinion do not talk about the demands, but about the violence of the farmers (*campesinos*) (Montero, 2013), the students (Cruz, 2013), or the indigenous people. In this way, the result of public accusations of incivility is that "focused on civility, the question of power tends to disappear"

[52] In many cases, it has been documented how police officers dressed as protesters are those who use violence against the police to legitimize their colleagues in using force and violence against those claiming rights.

(Zerilli, 2014, p. 115); in other words, accusations of incivility can be used by the authorities to covertly exercise power and to obfuscate the message of those who dare to defy them.

The study of civility from its reverse side – through the accusations of incivility – has allowed us to see how 'civil' is generally understood in relation to public political action. With the help of Zerilli and the aforementioned examples, we understand that accusations of incivility against protesters and rights claimers frame their actions within a specific normative context in which they are evaluated, and that such a framing can obscure the protesters' demands by shifting the focus from their grievances to their methods, which seems to legitimate the deafness of those whose authority is being contested. This is not to say that all accusations of incivility are necessarily conventional and aimed at protecting the status quo, but that one should never rule out the possibility that a given accusation of incivility is nothing but an instrument to protect the authorities that are being challenged. Keeping this in mind, we can now move to a "positive" characterization – to the front side – of what 'civil' means in relation to principled illegal action.

To begin this 'positive' characterization, we can follow Christian Bay in differentiating five senses in which 'civil' is often used in civil disobedience (Bay, 1971, p. 77): first, referring to civility as recognition of general obligations and duties of citizenship; second, as the opposite of 'military,' and as a rejection of physical violence; third, as civilized behavior, in harmony with the ideals that inspire a given campaign of civil disobedience; forth, as public, as drawing public attention, rather than regarding 'private' matters; and fifth, as an attempt to change objective conditions in a political system, not only for a sub-group's liberties and rights, but aimed at bringing about a change for all the citizens.

With these various meanings of 'civil' in mind, we can now turn back to our case studies. In Chapter 1, the question of whether civil disobedience can take place within and against private organizations such as corporations was implicitly problematizing a conception of civility, according to which 'private matters,' as opposed to public ones, are beyond the reach of civil disobedience. Civil, in that sense, amounts to public, and is opposed to private. However, as corporate whistleblowing shows, corporate wrongdoing cannot remain out of sight merely because it is supposedly 'private.' The discussions about privacy triggered by Snowden's disclosures urge us to recognize that the way private internet companies relate to citizens' rights, specifically to their privacy, is by no means just a 'private matter.' In this sense, disobedient acts taking place within and against private organizations can still be considered civil, if the implicit notion of 'public' is extended to include citizens' relationships to private organizations and within them.

In Chapter 2, the discussion of anonymous political action indirectly called into question the understanding of civility as the general recognition of obligations and duties of citizenship. Anonymous online action can be undertaken by non-citizens who might not recognize any duty toward the law or 'fellow' citizens; certainly, it can also be employed by protesters who use self-restricted methods to communicate their dissent from behind a mask.

In Chapter 3, the study of digital initiatives aimed at disrupting academic publishers' business and aiming to transform copyright law for research and education, was also a discussion regarding who effectively regulates their civil liberty of accessing the information they need to make informed decisions, and who does not. The radicality of Sci-Hub's and LibGen's project consists in opening up access to academic knowledge, not for scholars or for people in the global south but for everybody. Thus, these initiatives do not seek a benefit for a group, but that which equal access to scientific knowledge would imply for humanity.

Up until now, I have purposefully postponed one of the key issues of how 'civil' is commonly understood in discussions about civil disobedience, that of its relationship with nonviolence. While the question of violence is present in each of the case studies, I consciously avoided discussing it in detail in the previous chapters for a methodological reason: each chapter focuses on one element that digital forms of dissent urge theories of civil disobedience to reconsider. The questions of contestation in and against private institutions and public-private partnerships, that of the use of anonymity and the consequent non-acceptance of punishment, and that of the democratic power to radically open up access to copyrighted documents behind paywalls, are complex enough in themselves as to be treated independently and separately from the question of the extent to which they might be violent. Since the issue of the relationship between 'civil' and nonviolence is at the core of the disagreement between what I have referred to as the mainstream liberal and the radical democratic accounts of civil disobedience, I now turn to that discrepancy.

### *On Violence and Nonviolence*

In this section I reflect upon two opposite ways of viewing the relationship between nonviolence and civility. I aim to show that theories of civil disobedience usually presuppose an implicit understanding of the distinction between violence and nonviolence and that, depending on how narrow or broad their notion of violence is, they tend to think of civility as nonviolence or accept the possibility of considering somewhat violent acts of contestation as civil.

One of the key disagreements among theories of civil disobedience consists in the role they give to nonviolence in defining what acts count as civil disobedience and what does not, which has consequences for how they relate to the question of justifying those acts. While some theories take nonviolence to be a necessary requirement, and consequently as part of the definition of civil disobedience (e.g., Gandhi, Habermas, Rawls), others regard nonviolence not as part of the definition but as a matter related to the justification of disobedience (e.g., Brownlee, Celikates, Zinn). According to this last set of theories, since nonviolence is not part of the definition of civil disobedience, there are politically motivated, illegal actions that count as civil disobedience even though they are somewhat violent. While such actions involve coercive means, they are still considered civil to the extent they remain communicative (Brownlee), or do not follow a military logic – in other words, they do not intend to annihilate the counterpart and do not take opponents as enemies (Celikates).

The distinction between questions of definition and those regarding the justification of civil disobedience goes back to Rawls's *A Theory of Justice*. There he distinguishes three parts of a constitutional theory of civil disobedience: "A theory specifies the place of civil disobedience in this spectrum of possibilities. Next, it sets the grounds of civil disobedience and the conditions under which such action is justified in a (more or less) just democratic regime. And finally, a theory should explain the role of civil disobedience within a constitutional system and account for the appropriateness of this mode of protest within a free society" (Rawls, 1999, p. 319). In the first part, civil disobedience is defined vis-à-vis other forms of non-compliance such as conscientious objection and revolutionary actions; in the second, the conditions under which such kind of law-breaking is justified are specified; and in the third, one finds a reflection upon the role or function of civil disobedience in a democratic liberal state. It is worth noting that the distinction works for Rawls's project of a constitutional theory of civil disobedience, which means a theory for what he calls 'nearly just' societies. Although the distinction is often used among theorists of civil disobedience, we should not take it for granted.

The Rawlsian distinction between the definition, justification, and role of civil disobedience in a democracy has been heuristically useful so far. The thesis has addressed mainly definitional issues regarding the case studies that presuppose this distinction. However, it is necessary to take a closer look at how questions of definition are separate from questions of justification. The definition and the justification of civil disobedience overlap on many points; this could be due to the normative elements of the Rawlsian definition of civil disobedience. The inclusion of nonviolence in the definition plays a significant normative role,

due to which one could be tempted to think that because of its nonviolence civil disobedience is always civil. One could go even further and argue that if principled law-breaking is civil – due to being conscientious, public, communicative, and nonviolent – then although illegal, the action would be justified. If this were so, all actions of civil disobedience would be justified, and there would be no need for the distinction between the definition and the justification of civil disobedience.

Although nonviolence is crucial to the way Rawls conceives of civility, it is clear that there are additional conditions such as publicity, non-evasiveness, and conscientiousness. Similarly, for an illegal act to be justified according to Rawls, nonviolence and civility are not enough; additional conditions such as being aimed at tackling severe violations of the principle of equal liberty, and being used as the last resort, need to be met as well. Although Rawls accepts that there might be cases in which blatant violations of the second part of the second principle, the principle of equality of opportunity, could justify civil disobedience, he claims that those are difficult cases to assess and are not the proper object of civil disobedience (Rawls, 1999, p. 326). Thus, for Rawls, disobedience is correctly justified when aimed at changing a law or policy that violates the principle of equal liberty. It follows that there can be cases in which someone would civilly disobey, would fulfill all the requirements of the definition, and their disobedience could still be unjustified because of the kind of change it aims at bringing about.

A possible example of unjustified civil disobedience would be a case where someone engages in public, nonviolent, conscientious yet political acts to remedy a violation of equal liberty but breaks the law without having tried available legal means first. Another possible scenario could be someone who uses civil disobedience to try to address primarily economic or social inequality; under some circumstances, squatting could illustrate this. What interests us here are not these possible cases in themselves, but that Rawls's definition, with its normative particularities, allows for unjustified civil disobedience and compels us to examine more closely the differences and connections between nonviolence, civility, and justification. In what follows, I will show that regardless of whether it has a liberal or a radical democratic background, theories of civil disobedience presuppose a conception of violence (and of nonviolence), and that such a presupposition contributes to the normative content of 'civil.'

To show how theories of civil disobedience presuppose a conception of violence, and consequently a distinction between violence and nonviolence, I will start by describing two possible general ways of understanding violence. One way is to conceive of violence by reducing it to direct abuse of people or personal harm. Drawing on Vittorio Bufacchi's *Violence*

*and Social Justice* (2007), I will refer to this kind of narrow conception as the 'Minimal Conception of Violence' (MCV). The narrowest MCV would reduce violence to physical harm; slightly less restrictive, but still narrow, conceptions would include psychological forms of violence and verbal abuse, which could include threats of physical violence. Another way to define violence consists in broadening the concept from specific acts against persons to social practices and institutions that are regarded as harmful. Following Bufacchi's terminology, I will refer to such broader understanding of violence as the 'Comprehensive Conception of Violence' (CCV). "The minimalist approach (MCV) sees violence as an act of intentional, excessive force, while the comprehensive approach (CCV) sees violence as violation of rights" (Bufacchi, 2007, p. 26).[53] From a CCV, violence can be institutionalized, as well as consisting in long-term processes; which would not be true seen from a MCV.

From the perspective of those who support a MCV, a CCV seems to fail to maintain the specificity of violence and confuse it with equally relevant but different political phenomena like injustice, oppression, and exploitation. Conversely, seen from a CCV, a MCV looks ill-equipped to make sense of the harms and suffering that institutionalized and naturalized social practices effect upon vulnerable people. Moreover, defenders of a CCV might even regard a MCV in itself as violent due to its disempowering effects upon people who use the label of 'violence' to publicly denounce what they regard as social ills and to mobilize support for their causes.

Although Bufacchi's definition of violence as violation of integrity would deserve an extensive discussion on its own, as it is not my intention here to examine in detail different definitions of violence, I will limit myself to making use of his characterization of MCV and CCV. We are trying to shed light on what 'civil' means in civil disobedience; this has led us to examine how civil disobedience is defined in different theories of civil disobedience. Presently, we are studying how the breadth that different theories of civil disobedience give to the concept of 'civility' greatly depends on the way they think of violence and nonviolence. Rephrased in Buffachi's terms, our question now is: How does presupposing a MCV or a CCV affect the understanding of civil disobedience, and especially of the 'civil'?

I wish now to examine some of the implications of a MCV for a theory of civil disobedience. If violence is equated with intentional physical harm, then it is hard to claim that

[53] Johan Galtung has defined violence broadly, not in terms of rights but of the actual realization of human potentiality. He writes, "*Violence is here defined as the cause of the difference between the potential and the actual.* Violence is that which increases the distance between the potential and the actual, and that which impedes the decrease of this distance" (Galtung, 1969, p. 168 - emphasis in the original).

the use of violence is compatible with civil disobedience. Generally, the presupposition of a narrow concept of violence leads one to think that civil disobedience is necessarily nonviolent and, as a consequence, that nonviolence is part of the definition of civil disobedience. Rawls offers an example of this reasoning. According to him,

> [C]ivil disobedience is non-violent. It tries to avoid the use of violence, especially against persons, not from the abhorrence of the use of force in principle, but because it is a final expression of one's case. To engage in violent acts likely to injure or hurt is incompatible with civil disobedience as a mode of address. Indeed, any interference with the civil liberties of others tends to obscure the civilly disobedient quality of one's act. Sometimes if the appeal fails in its purpose, forceful resistance may later be entertained. Yet civil disobedience is giving voice to conscientious and deeply held convictions; while it may warn and admonish, it is not itself a threat (Rawls, 1999, pp. 321-322).

As I have pointed out already, in Rawls's view, nonviolence is essential for civil disobedience, and that is why it is included in its definition. The above-quoted fragment not only clearly shows this, but also allows us to go a step further in understanding Rawls's conception of violence. For him, using violence to injure or hurt is completely out of the question because it gives "a final expression to one's case" and because it is contrary to the idea of fidelity to the rule of law. The communicative nature of civil disobedience implies for Rawls that one's case cannot assume such final expressions and that "any interference with the civil liberties of others" obscures one's public appeal. Thus, for Rawls, if an action is violent, understood as likely to injure or hurt someone, it cannot be considered as civil disobedience.

Contrary to the understanding of civil disobedience as necessarily nonviolent, there are alternative accounts of civil disobedience that allow for the limited or restricted use of violence. An example of such an account comes from Celikates, for whom actions can be considered civil disobedience insofar as they "can be seen as civil – as opposed to organized and conducted in a militarized way and aiming at the destruction of the 'enemy'" (Celikates, 2018, p. 4). As explained earlier, with his minimal definition of civil disobedience, Celikates tries to remove from the definition of civil disobedience what he considers to be issues regarding the justification, which according to him make the liberal definition normatively overburdened. More specifically, Celikates does not include nonviolence in the definition of civil disobedience, as he considers it a matter related to the justification of civil disobedience. In this way, Celikates employs Rawls's differentiation of the three parts of a theory of civil disobedience, removing the question of whether acts of civil disobedience have to be nonviolent from the definition, and postponing it for a subsequent exploration of its justification.

Celikates intends to unburden the definition of civil disobedience of as many normative requirements as possible, stretching it beyond the normative limits that the liberal account imposes as entry conditions. However, Celikates's notion of civility, that appears at the very end of his minimal definition, seems to be doing part of the work that nonviolence does in the liberal account of civil disobedience. It is as if he had taken out the normative requirement of nonviolence from the definition, but part of its normative weight had nonetheless found its way into the minimal definition via an 'exceptionally minimal' conception of violence expressed by the condition that actions "can be seen as civil."

I now wish to explain what I mean by an 'exceptionally minimal' conception of violence, by referring to the terminology of violence we considered before. While a Minimal Conception of Violence takes actions aimed at injuring or hurting someone as violent, an 'exceptionally minimal' conception narrows it down even more to fatal injuries. By characterizing incivility with the idea of aiming at destroying the enemy, Celikates includes in civil disobedience – or at least, he does not exclude from the start – forms of contestation that use some degree of what he calls 'real confrontation.' In doing so, he puts off discussing whether violent actions, of what kind and to what degree, are compatible or not with civil disobedience, returning to them at a later stage.

We can summarize the main difference between Rawls and Celikates concerning nonviolence by saying that while Rawls supports the idea that civil disobedience requires a positive commitment to nonviolence (to communication and respect for the rule of law), Celikates asserts only the negative part of *non*violence, by limiting civility to not aiming to destroy the opponent, understood as an 'enemy.' Consequently, Celikates's approach opens up the realm of civil disobedience to further acts of dissent; while some consider this to be the main shortcoming of his proposal, others, including me, see it as a major virtue.

To grasp the virtue of this radical democratic, minimalist concept of civility it is crucial to think of civility and nonviolence as truly different concepts. In this sense, "instead of simply identifying the civil and civic character of collective action with 'nonviolence' we should therefore insist that civility is quite compatible with a variety of actions often classified as violent by the media and the state" (Celikates, 2015, p. 67). This shift allows us to consider violence against oneself, violence in self-defense, and the destruction of private or public property, among other kinds of actions usually considered uncivil, as compatible with civil disobedience.

According to this view, although civility is exceptionally minimally defined in the sense of not seeking to destroy the enemy, it can be fleshed out through notions such as self-limitation

and the more demanding idea of 'prefiguration.' If civility is seen not an all-or-nothing affair but a spectrum, then one could say that civility minimally understood as self-limitation and "massive self-restraint" in the face of aggression and repression by the security forces would be on one end.[54] Such displays of civility "should be understood as an expression of political commitment rather than of loyalty to the state or the existing other" (Celikates, 2015, p. 66). On the other end, one could think of the far more normatively demanding conception of civility as prefigurative politics; this would mean that civilly disobedient movements experimentally anticipate the transformations they seek to initiate in the way they organize their struggle in the present. For Celikates, a prefigurative notion of civility would be construed on the principle of organizing the political struggle in horizontal, participatory, and inclusive ways (2015, p. 68).

Another argument in favor of a conception of civil disobedience compatible with some forms of violence can be found in N.P. Adams (2018). According to him, "*violent civil disobedience*, or *uncivil disobedience*, is a coherent concept"[55] (2018, p. 3). Adams calls the idea of the shared project of living together 'commitment to the political,' which he considers essential to civil disobedience. For him, "[t]he core of civil disobedience is that it necessarily communicates two things, simultaneously but strainedly: on one hand, it communicates a condemnation of a political practice, while on the other hand it communicates a commitment to the political" (2018, p. 4). From this he derives that "violence directed at other people is inconsistent with treating them as members [of the 'on-going communal project of living together'], and so is inconsistent with a commitment to the political, and so renders any violence directed at others necessarily not an act of civil disobedience" (2018, p. 11). This exclusion of violence against other people (thought of as members of the communal project of living together), is similar to Celikates's rejection of military actions aimed at the annihilation of the opponent. For both theorists, "property violence is highly symbolic" and "accounts of civil disobedience should make room for this sort of violence" (2018, p. 14).

Adams argues that violence against property does not imply excluding its owner from the political community, in the way that physical violence against the owner does. However, the harm from property damage done to the owner can vary greatly: affecting the utilities of a big corporation by briefly disrupting its activities is simply not comparable to destroying someone's shelter or necessary means for survival. This is a limit that Adams fixes for violence

[54] "At the minimal end of the spectrum of civility lies the distinction between civil and military forms of interaction; at its maximal end, the idea of prefiguration, that is, the claim that the end has to be present in, or prefigured by, the means" (Celikates, 2018, p. 6).
[55] Emphasis in the original.

compatible with civil disobedience that would need further development;[56] without a clearer political justification for this limit one could be tempted to support this idea based on moral and not on political reasons. This is precisely what Adams criticizes in Todd May's approach.

In *Nonviolent Resistance. A Philosophical Introduction* (2015), May investigates the violence that nonviolence abjures. He argues in favor of political actions that treat the other with respect, which means "treat[ing] that other as having a life to lead." As he acknowledges, the idea of 'having a life to lead' is vague; but still, he thinks that,

> we have a sense of what it is in general to lead a human life: to engage in projects and relationships that unfold over time; to be aware of one's death in a way that affects how one sees the arc of one's life; to have biological needs like food, shelter, and sleep; to have basic psychological needs like care and a sense of attachment to one's surroundings (May, 2015, p. 51).

Adams disagrees with May's way of addressing the question of the limit of acceptable actions because Adams considers that "it would be better if we can make our theory rely on the notion of the political apart from any particular comprehensive doctrine" (Adams, 2018, p. 13). Seen from that standpoint, "May goes even further, arguing that nonviolence expresses respect for the dignity and equal status of all. This veer into ethical theory is unmotivated and unnecessary to make sense of the concept of civil disobedience" (2018, p. 13). Although I agree with Adams on the preferability of a political theory of civil disobedience, I think his insufficient political justification of the line he draws to differentiate acceptable violence against property from unacceptable violence might implicitly presuppose a normative view similar to May's idea of treating the other with respect. If this is so, the rhetorically strong criticism Adams makes of May, might also apply to his own view of what kind of violence against property is acceptable, and what is not.

In this section I have shown how different theories of civil disobedience presuppose normative notions of violence and nonviolence. By examining the diverse roles that the ideas of nonviolence and civility have in competing conceptions of civil disobedience, I have arrived at the question of whether the use of violence is compatible with the idea of civility. I have also offered an encompassing interpretation of Celikates's notion of civility that brings together civility as nonmilitary – a notion I claim amounts to inserting an 'exceptionally minimal' conception of violence into the minimal definition of civil disobedience – and civility as massive self-restraint and the more demanding idea of political prefiguration. In the next sub-

[56] I do not think it is enough to say, as Adams does, that a general theory of violence is unnecessary for thinking about the limits of the use of violence in civil disobedience (Adams, 2018, p. 9). Actually, it is necessary, even though it usually remains implicit.

section, I will prepare the ground for the third and final section of the chapter, in which I will propose a complement to the radical democratic, minimal definition of civil disobedience, namely, the idea of civility as performative citizenship. Before that, however, I will relate the 'civil' in civil disobedience to the general idea of citizenship.

***Radical Democratic CiviC Disobedience***

As part of our attempt to reflect on politically and morally motivated, digital acts of contestation, we are investigating the various possible meanings of the 'civil' that civil disobedience includes in its name. We are now moving from traditional understandings of civility as nonviolence, reasonableness and good manners towards a less morally specific and more political notion of civility as citizenship. In this transit we have seen that Adams's attempt to develop a mainly political theory of civil disobedience puts his work close to Celikates's project of developing a radical democratic critical theory of civil disobedience. In contrast with Rawlsian theories of civil disobedience, with Adams and Celikates, I am claiming that the notion of civility does not need to be conceived of as nonviolence, but can be construed in relation to citizenship.

There are good reasons to be skeptical of the project of a "purely" political theory of civil disobedience, because acts of civil disobedience are always both morally and politically motivated and significant; additionally, they are always framed within a specific legal framework. As a consequence, general theories of civil disobedience should consider the often unconfessed moral, legal, social, and economic normative positions of practitioners and theorists. As I have argued in the previous chapters, a normatively minimally loaded notion of civil disobedience is better equipped to make sense of the transformations of practices of dissent and contestation than a highly normatively-loaded conception – independently of whether its normative weight is moral, legal, or otherwise. In this spirit, in what follows, I would like to suggest a radical democratic concept of civility that highlights the act of claiming rights, or, following Engin Isin, what I will refer to as 'acts of citizenship.'

As we saw above, some versions of civility take it to mean decency or good manners. These notions run the risk of promoting social and political complacency. From this point of view, social protest and disruptive actions are always in need of justification. Any kind of political and social turmoil is suspicious, and in order to be acceptable it needs to prove its normative credentials by following strict rules, such as the many Rawls lists for disobedience to be deemed as civil. Contrary to these notions, radical democratic theories of civility take it as compatible with political conflict, even with 'real confrontation.' Radical democratic

theories see conflicts in pluralist societies not only as acceptable, but even as desirable moments in processes of democratization. I will offer a radical democratic concept of citizenship aimed to complement the radical democratic, minimal definition of civil disobedience put forward by Celikates by drawing on radical democratic theories, mainly on Étienne Balibar's conception of 'civil' as related to citizenship.

In the French-speaking context, civil disobedience has also been discussed as 'civic disobedience' (*désobéissance civique*). Balibar (2002b) argues he uses the French expression '*désobéissance civique*' rather than the translation of the English expression 'civil disobedience,' to highlight that he thinks of it not as individuals who conscientiously object to authority, but as citizens who, in serious circumstances, recreate their citizenship through a public initiative of disobedience to the state.[57] I interpret this move from an understanding rooted in individual conscience to one based on the re-enactment of citizenship, to be fundamental for a radical democratic political thinking. In a radical democratic account of civil disobedience, citizenship should be understood in terms of a broad conception of what it means to be a citizen. However, as I will show later, the conception of citizenship at play in such an account of civil disobedience has little to do with membership (either of a nation or a state) and everything to do with taking the initiative to perform rights claims, to perform acts of citizenship.[58]

I recognize the potential of 'civic disobedience' to evoke the idea of citizenship that is diffused in some understandings of *civil* disobedience – especially in those that emphasize the need for good manners in political action. However, as I have briefly shown above, bringing the idea of 'civic' disobedience *à la* Moulin-Doos into the debate reintroduces a limiting conception of citizenship that risks disempowering all those who are not officially recognized as part of the polity. Balibar's understanding of citizenship not in terms of membership, official recognition, duties, and responsibilities, but as taking the initiative to act, is better equipped to make sense of globalized, digitalized, and politically motivated acts of law-breaking.

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[57] "*Désobéissance civique, et non pas civile – comme pourrait le faire croire une transcription hâtive de l'expression anglaise correspondante:* civil disobedience*. Il ne s'agit pas seulement d'individus qui, en conscience, objecteraient à l'autorité. Mais de citoyens qui, dans une circonstance grave, recréent leur citoyenneté par une initiative publique de «désobéissance» à l'État*" (Balibar, 2002b, p. 17).

[58] The French idea of *désobéissance civique* influenced Claire Moulin-Doos's (2015) *CiviC Disobedience: Taking Politics Seriously: A Democratic Theory of Political Disobedience*. Moulin-Doos explains that "the adjective 'civique' refers to a responsibility, a duty of the citizens. *Civic* disobedience requests the intervention of the polity" (2015, p. 100). In this way, Moulin-Doos links the idea of 'civic' to belonging to a polity as a citizen, having duties and acting to ask or demand that the polity intervene. She writes: "In both French and English, 'civil' invokes the relation between individuals within civil society by opposition to the government. But the French '*civique*' refers to citizens within the political sphere, who do not stand in opposition to the State but belong to the polity. This is the decisive difference between civil and civic" (2015, p. 100).

A radical democratic understanding of citizenship, such as the one theorized by Balibar, takes issue with notions of citizenship working on the basis of a principle of exclusion from the "community of citizens" (cf. Balibar, 2004, p. 67). Such a principle operates in the modern democratic nation "by *denaturing* those reputed to be incapable of autonomous judgment, that is, by inventing *anthropological alterity*, whose major variables are sex, race, morality, health, and physical and mental age" (2004, p. 68). Balibar attempts to think citizenship beyond its modern instantiation, beyond the way in which nation-states use it to produce its other and to include by excluding. The modern idea of citizenship allows the risk of processes of 'disaffiliation,' or denaturalization, as Hannah Arendt shows in *The Origins of Totalitarianism* (1951).

Fully aware of the dangers of the modern idealized notions of citizenship – that proudly produced declarations of rights – Balibar hypothetically talks about 'citizenship without community' "to underline that in some circumstances the *traditions*, the more or less fictive 'memories,' in short, all the admitted representations of a common – historical and, even more so, natural – identity must be put in question" (Balibar, 2004, p. 76). The potential of this conception of citizenship is that it opens up the status of citizenship to those who engage in practical confrontation with the exclusionary logic implicit in the idea of citizenship as membership and belonging to a supposedly given political community. Balibar reminds us that 'citizenship' can mean the various forms of and moments of struggle against social and political exclusions; he reminds us that such processes of de-constituent power are what constitutes the founding moment of citizenship. This dialectic of 'constituent' and 'constituted' citizenship, that Balibar also calls 'insurrection' and 'constitution,' is a contradictory process that remains in motion because of people who recreate citizenship as "an active and collective *process*, rather than a simple legal status" (2004, p. 132).

Balibar's concept of citizenship can be related to the digital world via Darin Barney's account of the relationship between technology, specifically the Internet, and citizenship. Barney (2007) states that "to be *as* a citizen is to engage in judgment about common things in relation to and with others" (2007, p. 40). His interpretation of how technology relates to citizenship is based on this idea of political judgment, which "concerns both (good) ends and (just) means" (2007, p. 44). According to Barney, there are multiples ways to enact political judgment, including non-deliberative forms. Some of the examples Barney offers of non-deliberative acts of political judgment are the incessantly silent marches of the Madres de la Plaza de Mayo in Argentina, and the hacktivists running the OpenNet Initiative to promote technologies to circumvent censorship and surveillance. Barney explains: "Writing code that

makes it possible for a Chinese dissident to access unfiltered Google results surreptitiously might not be reasoned speech, but it surely is the act of a person making a political judgement, a person practicing citizenship" (2007, p. 43).

In contrast to what he refers to as "a logocentric definition of citizenship," Barney's conception of citizenship tries to avoid the risk, repeated once and again in history, of resorting to a narrow conception of citizenship, which excludes all seemingly violent acts from what citizens can do *qua* citizens, to marginalize from public life "entire classes of people deemed insufficiently rational, typically women, aliens or strangers, and the mass public" (2007, p. 42). Instead, Barney argues for a more sympathetic and flexible interpretation of speech, dialogue, deliberation, and language, to think of the ways in which marginalized and disenfranchised people enact political judgment by new means, some of which are technological. Those technological means, e.g., the Internet, also *constitute*, for Barney, ends in themselves; they become objects of political judgment too, because by their enabling/disabling roles they become issues of justice.

Barney's radical democratic citizenship suggests that the Internet is not only a means enabling political judgment but also an object for it. Political judgments about the Internet not only take place through the formal institutions that create and enforce regulatory frameworks, but also 'haphazardly,' Barney says, in the process of social construction and radical restructuring of the way in which science, capital, and states distribute and re-distribute social, economic, and political power. The ongoing processes of re-negotiation of what we can do with the Internet and what it does with us,

> provide opportunities for the exertion of judgment, including political judgment, at several points and in a variety of modes. It is under this rubric that we might consider illicit distribution of encryption and anonymizing technology, use of peer-to-peer file sharing networks, and circulation of free and open source software as acts of political judgment (Barney, 2007, p. 49).

In addition to these modes of non-deliberative enactment of citizenship as political judgment, I would include some cases of whistleblowing, anonymous DDoS actions, and academic piracy as performances of a radical democratic citizenship compatible with the idea of civil disobedience. In the next section, I will present the political significance of the 'performative power' of these acts of citizenship, and address the question of why the label of 'civil disobedience' should be kept to name actions that could be simply called 'acts of citizenship.'

### 4.3. Constituent Communicative Civil Power

In this final section of the chapter, I continue developing a radical democratic understanding of citizenship capable of complementing the radical democratic minimal definition of civil disobedience. First, I highlight how, in the examined case studies, actors have claimed rights in different ways; I draw on Engin Isin and Evelyn Ruppert's work to interpret such rights claiming as acts of performative citizenship. Second, I build upon Étienne Balibar's concept of citizenship to investigate a possible relationship between constituent power and performative citizenship; there I also reconstruct a recent debate on whether civil disobedience can articulate constituent power or not. Third, invoking an interpretation of Hannah Arendt's reflections on civil disobedience, I support Celikates's idea of recognizing the potential for acts of civil disobedience to develop or transform into constitutional moments, even though they usually do not realize such potential and become, at best, relative new beginnings. Against the background of this theoretical '*assamblage*,' I conclude by offering a general response to the accusations of incivility against Snowden, Anonymous, and Sci-Hub and LibGen examined at the outset of the chapter.

#### *Performing Citizenship by Claiming Rights*

Among the many features shared by the three cases we have been examining (whistleblowing, Anonymous's hacktivism, and academic piracy), there is one that I wish to stress here, namely that by acting, the actors are *also* claiming rights. Snowden justified his decision to disclose top-secret national security programs by appealing to the right of citizens to know what their government does in their name. In the 'Statement by Edward Snowden to Human Rights Groups at Moscow's Sheremetyevo Airport' [Friday July 12, 2013, 15:00 UTC], Snowden explicitly justifies his actions in terms of violations to the right to privacy (Article 12 in the UDHR) made by US secret surveillance programs.

As we saw in Chapter 2, hacktivists using DDoS actions often make rights claims as well. In the DDoS action against Lufthansa, by stating that '*kein Mensch ist illegal*' ('no person is illegal') protesters were opposing deportation; they were asserting everyone's right to stay in or continue their migration through Germany. The use of the Zapatista FloodNet in DDoS actions in solidarity with the Zapatistas in Chiapas, Mexico, was also a rights claim; one can interpret the use of this software as a means to publicly claim that the indigenous people

from Chiapas have the right to demand their rights to "shelter, land, work, bread, health, education, independence, democracy, freedom,"[59] as Subcomandante Marcos says.

Similarly, one can interpret operations such as OpPayback conducted by the Anonymous collective as claiming the right to act anonymously, as well as other rights such as freedom of association. As we saw in Chapter 2, this specific operation was a response to the economic blocking of WikiLeaks by large corporations such as Visa and MasterCard. By not processing donations to WikiLeaks, these corporations were limiting their legitimate users' freedom to associate and to use their private property. In other operations such as Chanology and OpTunisia, the hacktivist collective used digital technologies to claim the right to free speech. Both of these operations were attempts to fight back against censorship. As part of OpTunisia, Tflow, a member of Anonymous, wrote and shared a script that helped Tunisians to avoid government hacking. By providing this piece of software, a member of Anonymous was effectively providing a way to keep data secure from intruders. In my view this is an example of claiming a right to privacy *in* creating and providing a digital technology – a piece of informational infrastructure – that protects that right.

Likewise, the initiatives to effectively grant free and open access for everyone to scholarly publications can be interpreted as an attempt to claim a right by unusual means. As we saw in Chapter 3, both Sci-Hub and LibGen declare the right to equal access to knowledge. Both participants and supporters have explicitly insisted that part of the rationale for their actions is the belief that unequal access to knowledge is a form of injustice.

It is my contention that all of these are examples of how individuals and collectives, acting through digital technologies, claim rights: in some cases, they claim their own rights by engaging in practices of contestation while in some other cases the participants claim the rights of others by stating that 'they (Americans, internet users, Tunisians, scholars, migrants, etc.) have a right to.' Following Engin Isin and Evelyn Ruppert (2015), I use the formulae 'making rights claims' and 'I, we or they have a right to' to refer to multiple acts by which politically engaged agents make rights claims.

In *Being Digital Citizens* (2015), Isin and Ruppert address the question of how digital subjects come into being, as political subjects who can be obedient, submissive or subversive. They work out this question by investigating what they call 'digital acts,' namely acts taking place in cyberspace,[60] which they materialistically construe as "*a space of relations between*

[59] "*Techo, tierra, trabajo, pan, salud, educación, independencia, democracia, libertad*" (Marcos & EZLN, 1996).
[60] "The Internet and cyberspace are not equivalent things. The Internet is a layered and complex phenomenon. It is certainly an interconnected network of computers (and devices) using standard and negotiated protocols to

*and among bodies acting through the Internet*"[61] (Isin and Ruppert, 2015, p. 28). Although I recognize the importance of Isin and Ruppert's question about how digital citizens come into being, my intention here is to deepen their analysis of how rights claims are made in cyberspace. More specifically, I want to investigate the way in which concrete actors have made rights claims online by acting in ways compatible with a radically democratic conception of civil disobedience.

The study of how agents claim rights in their online, politically and morally motivated law-breaking, helps us better understand the *communicative* character of civil disobedience; additionally, it has the potential to illuminate why dissenters such as Snowden, Anonymous, and Alexandra Elbakyan find their actions somewhat related to the tradition of civil disobedience. An explanation of the performative force of acts of disobedience made by broadly conceived citizens contributes to thinking of civility and communication without reducing them to their purely symbolic features. Claiming rights is one of the ways in which the communicate character of civil disobedience exceeds its symbolic role; the dramatization of a conflict is more than the public re-presentation of social tensions and injustices; it is an appeal to society as well as a demand for rights.

The reference to Isin's and Ruppert's idea of 'performative citizenship' or 'acts of citizenship' does not seek to add substantive conceptual content to the minimal, radical democratic account; moreover, it offers little additional normative content. Using this reference makes more explicit the idea that by using digital technologies to break the law, participants in civil disobedience not only communicate but they *do* something beyond appealing to the moral sense of the community. Civilly disobedient acts transcend their communicative aspects not only because of their symbolic function and by dramatizing injustice, but also because of the enactment of a citizenship that goes beyond official recognition, and that potentially transforms its audience.

The main connection that stands out between Isin's[62] performative citizenship and the radical democratic account of civil disobedience is how the demarcation of the limits of citizenship is problematized. It is precisely that demarcation that is contested by those engaging in civil disobedience through their performative acts of citizenship. Gandhi's *satyagrahis* as

transmit information converted into binary numeric form known as digital objects. These can be sounds, images (moving or still), words, and numbers" (Isin & Ruppert, 2015, p. 28).

[61] Emphasis in the original.

[62] Although the co-authored book *Being Digital Citizens* by Isin and Ruppert is central for this thesis, the idea of 'performative citizenship' has been developed by Isin in several other publications, e.g., Isin, 2017; Isin & Nielsen, 2008; Isin & Saward, 2013.

well as King's fellow protesters called into question the respective colonially-inherited demarcations through which they were treated as second-class citizens. Such demarcations are contested not only from the inside, but also from the outside: networks of solidarity across borders, international boycotts, and other forms of transnational contestation are enactments of citizenship that claim the rights of those who are not officially recognized as subjects of rights, those who at some point have no right to claim rights. Although claiming rights has a central role both in Isin's theory of citizenship and in the practices of civil disobedience, such a communicative act is not all that is at stake. Performing citizenship, as well as engaging in civil disobedience, bring into being the rights that are claimed. Isin says:

> Both universal and particular rights that I have mentioned above come into being and become effective through acts (e.g., declarations, proclamations, protests, demonstrations, occupations, resistance, strikes, withdrawals) and conventions (e.g., rituals, customs, practices, traditions, laws, institutions, technologies, and protocols). Often, performing rights of citizenship invokes or breaks conventions (Isin, 2017, p. 506-507).

This is not to say that by enacting citizenship one becomes a recognized citizen, nor that by claiming a right one immediately obtains its guarantee, as using civil disobedience does not imply that the injustice or democratic deficit that is publicly denounced comes to an end. Rather, to enact or perform citizenship beyond its legal recognition means that the persistent injustices and structural democratic deficits that are contested through these acts exist on the basis of social conventions and practices crystalized in the form of institutions, laws, and policies. Such structures of power are reinforced when they are not contested, but they are transformed through new declarations, proclamations, and innovative exercises of constituent power. Isin and Nielsen explain 'acts of citizenship' in the following way: "They [acts of citizenship] disrupt habitus, create new possibilities, claim rights and impose obligations in emotionally charged tones; pose their claims in enduring and creative expressions; and, most of all, are the actual moments that shift established practices, status and order" (Isin & Nielsen, 2008, p. 10).

Now that we have identified common ground between the radical democratic approach of civil disobedience and the idea of performative citizenship, we can see more clearly the potential of this conception of citizenship to complement the radical democratic minimal conception of civil disobedience. The need for such a complement comes from the broadness of the notion of civility included in the minimal definition of civil disobedience. In what follows, my intention is to make more explicit the conceptual links between the concepts of civil disobedience, performative citizenship, and constituent power. In doing so, I will try to

contribute to the theoretical development of the radical democratic account of civil disobedience.

As the above-quoted fragment shows, for Isin, rights – both universal and particular – come into being through acts and conventions. While conventions, such as laws, institutions, and technologies, are somewhat stable, acts like demonstrations, occupations, resistance, and strikes have a more episodic nature; however, without acts, conventions would not exist. In this sense, conventions crystallize acts of citizenship. I claim that while conventions can be interpreted as constituted power, acts of citizenship can be thought of as instances of constituent power. In this sense, performances of citizenship are always in relationship with pre-existing conventions that they reproduce, invoke, affirm, or break, contest, challenge, and transform.

By relating acts of citizenship to the concepts of constituent power and constituted power, I think of these acts beyond merely claiming rights. To be sure, claiming rights is an essential feature of acts of citizenship but it is just one – the most liberal – among others of equal importance. If it is true that civil disobedience is one among many ways of performing citizenship, then studying practices of civil disobedience might reveal features shared by some other acts of citizenship. I am not saying that all acts of citizenship work as civil disobedience does. What I am suggesting is that all acts of civil disobedience, understood from a radical democratic standpoint, can be thought as enactments of citizenship that challenge existing conventions; and that considering civil disobedience from the perspective of performative citizenship helps us to understand the radical democratic notion of civility, as well as the constituent power and revolutionary spirit of civil disobedience.

At this point, the objection could be made that by bringing together the radical democratic view of civil disobedience and the notion of performative citizenship, I have blurred the conceptual boundaries between citizenship and civil disobedience; also, that introducing the concept of constituent power obscures the discussion, rather than shedding light on the three case studies and the concept of civil disobedience. In the next section I will respond to this possible objection by explaining why this is not an arbitrary, sudden conceptual move, but a fruitful approach to thinking about civil disobedience and interpreting our case studies.

### *Civil Disobedience as Constituent Power?*

Although there is great variety among radical democratic theories, they all agree on the premise that conflict and power asymmetries are essential to plural and democratic societies (Arendt, Balibar, Celikates, Mouffe, Young). In Balibar's words, this starting point consists in the

recognition that "there is no society (no viable or livable society) without institutions and counter-institutions (with the oppressions they legitimate and the revolts they induce)" (Balibar, 2002a, p. 29). From this point of view, the creation of institutions as well as actions of defiance against their authority are not exceptional, but part of an ongoing process of re-creation and transformation.

In the second section of this chapter I briefly referred to Étienne Balibar´s idea of citizenship. There I mentioned that, in the same vein as other radical democratic thinkers, Balibar offers a notion of citizenship beyond the modern paradigm of recognition by a national state. A radical democratic conception of citizenship, I claimed, is not about membership but about taking the initiative to act in concert with others, which instantiates a never-ending dialectic of insurrection and constitution. Here, I would like to continue examining that dialectic and see how it relates to civil disobedience.

If one conceives of 'constituent power' as an extraordinary, exceptional, abstract creative force that brings into being laws and institutions, the interpretation of civil disobedience as a way of enacting constituent power necessarily seems inadequate. However, if one keeps in mind the premise of the conflictual nature of plural societies when thinking of 'constituent power,' then it is possible to interpret the process of the creation and – occasionally radical – transformation of conventions, such as laws and institutions, as ordinary and civil disobedience as one among other forms in which such a process occurs. I wish to suggest that the notion of performative citizenship, as presented in the previous section, might help us build a bridge between the radical democratic, minimal definition of civil disobedience and the notion of constituent power.

To argue that civil disobedience articulates constituent power does not suffice to show that acts of civil disobedience transform conventions, for these transformations can be merely reformatory, as they usually are. To be 'constituent,' acts of civil disobedience need to translate conflict into institutional settings. According to Celikates, some acts of civil disobedience fulfill that condition:

> In some cases, what starts as a simple act of disobedience – say the occupation of a university building or a public square – can develop, or be transformed, into a 'constitutional moment' in which the constituent power of the general assembly is invoked, committees are formed, a constituency is established, a new constitutional process initiated, and so on. This is not to say that all acts of civil disobedience should be understood in the register of constituent power (Celikates, 2018, p. 6).

When actors mobilized by civil disobedience perform their citizenship beyond institutional recognition, usually in an anti-institutional way, they can translate the conventions that emerge

from entrenched injustices and deeply institutionalized democratic deficits into new constitutional processes. This does not mean that by performing citizenship, actors always successfully articulate constituent power; as speech, acts of citizenship and civil disobedience remain fundamentally fallible. However, even when acts of civil disobedience fail to create new, durable institutions, they reintroduce dynamism in democratic institutions and reinvigorate the conflictual tension necessary for a living democracy.

The pluralism that is at the basis of radical democratic theories involves accepting this unavoidable conflictual dimension of democratic societies. Civil disobedience, even when it is unjustified, reinforces the dynamism of democratic power by contesting the limits of citizenship and keeping legislative processes open by challenging existing conventions. Independent of the normative criteria one establishes to determine whether acts of civil disobedience are justified or not, which I think are contextual, historically determined, and subject to constant struggle, what seems clear is that principled, unlawful acts, in which actors tackle systematic injustices and entrenched democratic deficits through means that do not follow a military logic, are self-restrained and can be seen as acts of citizenship, reinforcing the fundamentally conflictual nature of democracy: "By inscribing the conflictual and unresolvable dialectic between constituent and constituted power into the existing order itself, it [civil disobedience] turns constituent power into a moment of that order that nevertheless transcends its logic" (Celikates, 2018, p. 7).

The radical democratic interpretation of civil disobedience as potentially articulating constituent power can easily become the target of objections. According to Scheuerman (2019), "[c]onstituent power, when viewed as a supreme, autonomous, legally unlimited source of law and constitutional legitimacy, disfigures core features of civil disobedience" (2019, p. 5). Although Scheuerman recognizes that concepts of both civil disobedience and constituent power come in multiple shapes and sizes, he states that there are commonalities, shared components, and aspirations that should not be overlooked. He suggests that these commonalities include the fact that, "civil disobedience has regularly been viewed as lawbreaking for the sake of law, illegality in the name of legality," as well as the concession "that lawbreaking's legitimacy depends on civility, nonviolence, and publicity" (2019, 5). If one takes these elements as those that theories of civil disobedience share, and consequently as what defines civil disobedience, alongside the notion of constituent power as supreme and legally unlimited, then there is no other reasonable conclusion than keeping civil disobedience and constituent power as sharply distinct concepts.

Having examined three case studies in the previous chapters, I have ended up calling into question precisely what Scheuerman interprets as the main commonalities among the various accounts of civil disobedience: civility, nonviolence, and publicity. I have shown that each of these concepts takes on different meanings, limits, and roles among competing theories of civil disobedience. However, I find Scheuerman's main objection against thinking of civil disobedience in relation to constituent power to be useful, for it pushes the radical democratic approach to further develop the normative question of the sources of legitimacy of civil disobedience, especially for all the cases in which these illegal acts do not develop or transform into an articulation of constituent power.

In the next section I address the normative questions of the justification and the legitimacy of civil disobedience. My intention is to focus on these questions using the concepts of performative citizenship and constituent power, and with the resulting conceptual network shed some light on the normative sides of the three case studies of digital disobedience we have examined. I use Hannah Arendt's work to frame and phrase these questions, for it offers a political vocabulary that helps articulate the view I have sketched above. I present two interpretations of Arendt's thought – put forth by Kalyvas and Smith – because they allow me relate the concepts of civil disobedience, performative power, and constituent power.

### *The Revolutionary Spirit of Ordinary New Beginnings*

Hannah Arendt's work can act as the basis for interpreting the relationship between civil disobedience and constituent power. As is well-known, Arendt assigns great importance to extraordinary moments of liberation, as well as to moments when durable institutions are founded; this is clear in the way she thinks of political revolutions, in particular about the American Revolution (Arendt, 1963). For Arendt, the clear-cut liberal distinction between civil disobedience and revolution fails to recognize that "the civil disobedient shares with the revolutionary the wish 'to change the world,' and the changes he wishes to accomplish can be drastic indeed" (Arendt, 1972, p. 77).

However, if Scheuerman is right in thinking that civil disobedience is correctly described as "illegality in the name of legality" (Scheuerman, 2018, p. 5) – or as "disobedience to law within the limits of fidelity to law" (Rawls, 1999, p. 322) – then the participant in civil disobedience cannot in any case aim to change the world beyond the limits of fidelity to law. Consequently, the spirit of civil disobedience greatly differs from that of the revolution because while the spirit of the former ultimately consists in supporting the existing legal order by improving it, the spirit of the latter consists in a desire to replace it. In other words, because of

the limited political aims that Scheuerman, following in the liberal tradition on this point, recognizes for civil disobedience, it can never articulate constituent power. On the contrary, seen from an Arendtian perspective, civil disobedience could be an ordinary way for people to keep alive or reclaim the revolutionary spirit (Kalyvas, 2008; Smith, 2010), and as such, potentially articulate constituent power in non-exceptional political actions.

Arendt sees in civilly disobedient actors "nothing but the latest form of voluntary association"; therefore, she thinks that civil disobedience, at least in the United States, is "quite in tune with the oldest traditions of the country" (Arendt, 1972, p. 96). Arendt's proposal of establishing civil disobedience among the political institutions of the United States – finding "a constitutional niche" for it – amounts to saying that the founding moment that occurred nearly two hundred years earlier could be kept alive in the legal and political system that the American Revolution brought in its wake. Beyond the specificities of her proposal (it is irrelevant for us in this context whether civil disobedience should be able to influence the political process in the way that lobbyists do), Arendt's understanding of civil disobedience as an articulation of the spirit of the founding revolution and as the materialization of voluntary association supports the idea of interpreting civil disobedience as a vehicle for a non-mystical notion of constituent power. In Smith's words, "[c]ivil disobedience is described by Arendt as a means by which citizens assert their public freedom – their right to participate in public affairs – in the face of failings in established political institutions. Civil disobedience affords citizens the opportunity to add something new to the world" (Smith, 2010, p. 155). I interpret "asserting public freedom" and "asserting a right to participate in public affairs" to be the essence of the idea of performative citizenship as explained in previous sections, especially vis-à-vis injustice and failing institutions.

Although we can see how Arendt's idea of civil disobedience could support Celikates's proposal of thinking of it in relation to constituent power, there seems to be a significant difference between the two. While Celikates is cautious to say that *some* cases of civil disobedience can develop or transform into constitutional moments, Arendt seems to say that *all* cases of civil disobedience are in tune with the spirit of the founding moment because they ultimately are voluntary associations. If this were so, while for Celikates there can be unjustified civil disobedience, for Arendt all instances of civil disobedience, as voluntary associations, would be immediately justified. To consider this apparent disagreement, we need to begin by clarifying the normative concepts of justification and legitimacy, and how they are related to each other.

The Arendtian distinction between the political concepts of justification and legitimacy is made explicit in *On Violence* (1970). In the context of explaining the difference between power and violence, Arendt claims that, "[v]iolence can be justifiable, but it never will be legitimate," and that "[p]ower needs no justification, being inherent in the very existence of political communities" (1970, p. 52). According to Arendt, "[p]ower springs up whenever people get together and act in concert, but it derives its legitimacy from the initial getting together rather than from any action that then may follow" (1970, p. 52). While power takes its legitimacy from a reference to a moment in the past, a foundational moment, violence takes its potential justification from the future, from the end one wants to achieve by using it. This means that for Arendt violence is instrumental, it responds to a means-ends logic. Regardless of the number of participants, they can resort to violence as a means to obtain their goals. Thus, the justification of an action depends on the aims it serves to achieve, while its legitimacy comes from the act of getting together and acting in concert.

Since civil disobedience is a kind of political action in which the law is broken, it raises the question of whether it is justified or not to engage in it. The question of the justification can be asked by the actors themselves, by the representatives of the state or the institutions that are being contested, and by fellow citizens who have the reasonable expectation that laws will be respected. If those seeking justification of the illegal acts do not get satisfactory answers, they will hardly recognize the moral or political character of the actions and most likely will consider them as ordinary criminal offenses.

Following Arendt, the question of the justification of civil disobedience can be framed as an inquiry about the relationship between the actors' pursued ends and their chosen means. According to the radical democratic definition, civil disobedience is aimed at changing a law, policy or institution. As we said above, the civilly disobedient actors' intention to change the world can be interpreted as an attempt to reclaim or keep alive what Arendt called the revolutionary spirit. Admittedly, those engaged in civil disobedience do not wish to bring about unspecified changes; they aim, at least, to correct what they regard as wrong, unjust, or undemocratic, or to bring about a fairer and more democratic state of affairs.

In keeping with an Arendtian conception of justification, I claim that the extent to which an act of disobedience is justified cannot be determined *a priori*. Even if the aims of civil disobedience were established to the point of being comprehensively listed, the extent to which specific acts of dissent are coherent with such ends would remain open to debate. In modern, pluralist societies there are diverse, occasionally competing and even contradictory, conceptions of the good, justice, and democracy that do not only inform views of the ends

pursued but also of the means employed. As a consequence, the answers to the question of whether a concrete act of disobedience is justified or not, if the means are appropriate for the pursued ends, will always be contestable.

Now we can go back to Arendt's idea of legitimacy. As indicated above, legitimacy is something power can have, but violence cannot. Arendt says, "[l]egitimacy, when challenged, bases itself on an appeal to the past" (Arendt, 1970, p. 52). One possible way to understand this idea of legitimacy is interpreting such an appeal to the past as a reference to the initial getting together Arendt seems to equate to a founding moment. Although a reference to the past can be found in Arendt's idea of civil disobedience as a kind of political action in tune with the founding principle of voluntary association, that reference to the past risks being misinterpreted as a positivist claim, according to which legitimacy would come only from the letter of the constitution and not from its political spirit. There is, however, at least one other possible interpretation of Arendt's concept of legitimacy, one in which legitimacy comes from the principles performed at the founding moment and not from the letter of the constitution.

As Andreas Kalyvas (2009) points out, legitimacy is one of the most difficult concepts in Arendt's political thinking because, "although she sporadically wrested with the problem of legitimacy, she was reluctant to confront it directly, given its association with the nation-state, domination, violence, and the unbridgeable gap it presumes between rules and ruled" (Kalyvas, 2009, p. 196). Although Kalyvas recognizes Arendt's reluctance to directly address the problem of legitimacy, he claims that she "sought to explore and resolve one of the most difficult problems of constitutional theory: the unauthorized, arbitrary dimension of extralegal constitutional making" (Kalyvas, 2009, p. 197), which becomes the fundamental law, "from which all laws ultimately derive their authority" (Arendt, 1990, p. 184). For Kalyvas, "Arendt's seminal contribution is to locate freedom at the center of her appropriation and reinterpretation of the concept of constituent power" (Kalyvas, 2009, p. 203).

The centrality of the concept of natality in Arendt's works is well-known (Arendt, 1958). At the heart of her conception of politics there is the human capacity for new beginnings (Arendt, 2005). The particularity of the act of foundation is the conscious beginning of something new (cf. Kalyvas, 2009, p. 203). Only when a new beginning is guided by general, clear and stable principles, can it become a moment of foundation; in the absence of those principles, the spontaneous freedom that emerges risks becoming arbitrary, violent, and ultimately unstable (cf. 2009, p. 242). Certainly, these principles cannot be external norms that condition the founding action because it would no longer be spontaneous and free; therefore "[t]hey must be extracted and reconstructed from within the instituting action itself at the very

moment of its performance" (2009, p. 242). In Arendt's words, "[w]hat saves the act of beginning from its own arbitrariness is that it carries its own principle within itself" (Arendt, 1990, p. 212).

Although Arendt mysteriously mentions "honor, glory, distinction, excellence, the love of equality, and even justice" as the immanent principles that actions entail, it is not clear why these and no other principles are the guide to founding new beginnings; neither it is clear if these are all of the principles or some of them (cf. Kalyvas, 2009, p. 247). What interests us here is not whether the list is exhaustive or not, nor if these principles are the most plausible ones, but the idea that action – acting in concert with others – *performs* immanent principles at the founding moment. From honor to justice, one can think of the principles listed above as intrinsic to political action taken as the coming together of plural and diverse agents acting in concert. In other words, these principles "are embedded in the performance of the founding action itself" (2009, p. 252).

Certainly not all actions are guided by these principles, neither by all of them nor by any one of them. But all comings together to act in concert have the potential to 'bring with themselves' these principles and become a founding moment. In this sense, one could interpret all actions as potentially constituent, even if in general they inaugurate relative and not absolute new beginnings (cf. Kalyvas, 2009, p. 192).

I propose using the distinction between absolute and relative new beginnings to think about the question of whether civil disobedience can articulate constituent power. Thus, we can now go back to the tension between Arendt and Celikates. It is possible to say that all actions of civil disobedience are potentially constitutional moments, but since they remain fundamentally fallible, they can leave the legal system intact. Because civil disobedience springs from voluntary associations to act in concert, they are always potentially constituent, although seldom develop or transform into constitutional moments. In other words, only a few actions effectively realize immanent principles while founding durable institutions that stabilize freedom and protect it from its essential instability.

Although Kalyvas argues that civil disobedience is not constituent power because "civil disobedience is more common than extraordinary politics but less frequent than normal politics" (Kalyvas, 2009, p. 290), and that implies that "it does not always approximate or coincide with a radical new beginning" (2009, p. 290),[63] he concludes that "[c]ivil disobedience

[63] Additionally, he says, "[c]ivil disobedience is not a revolutionary constituent act and does not aspire to play this role. I see at least two additional reasons why such a purely extraordinary character is impossible. First, civil disobedience does not always succeed in mobilizing broader segments of the population, and thus it cannot claim

is a way to reassert the links between the constituent and the constituted power and to mediate between the first and second moment, the extraordinary and the ordinary" (2009, p. 291). This seems compatible with the interpretation of the relationship between civil disobedience and constituent power offered by the radical democratic approach to civil disobedience. Because civil disobedience "moves between insurrection and assimilation," as Kalyvas says, rather than locating it before or within the constitutional order, one can locate it "next to the constitution." In this way, civil disobedience can be thought of as a kind of political action with the potential to trigger or develop into constitutional moments, but even when it does not, it introduces from the margins of the legal system a dynamism that counters rigidifying tendencies, thus keeping the law open to political and moral questioning. Thus, civil disobedience keeps the revolutionary spirit alive in relatively stable institutional settings by performing anew principles such as equality and justice.

***Please Keep Your Concepts Open for Updates!***

I started this final chapter by presenting the concrete accusations of incivility that the participants of our case studies have faced for their disobedience. I then interrogated different ways of understanding the 'civil' in civil disobedience, and suggested emphasizing its connection with the concept of citizenship. Through a theoretical '*assemblage*' of multiple contributions to democratic theory, I put forward the idea of performative citizenship as a complement to the radical democratic, minimal definition of civil disobedience. Thus, together with civility understood as non-militaristic attempts to destroy the opponent and as self-restraint, the notion of acts of citizenship seeks to build a conceptual bridge between concrete political actions and their potential constituent power. To illuminate this connection, I referred to Hannah Arendt's work, specifically how she relates political legitimacy to a constitutional moment in which action performs immanent principles that guide the action in becoming a foundational moment.

It is based on this theoretical '*assemblage*' that I can propose a general response to the accusations of incivility considered at the beginning of the chapter. Snowden's, Anonymous's, and Sci-Hub's and LibGen's acts of dissent certainly violated contracts, policies, and laws, but they were – and still are – not mere criminal acts; they were – and still are – communicative acts that continue to illustrate how agents can claim rights, perform a broadly construed

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the inclusiveness of the constituent power. Arendt most often associates it with minorities and excluded voices (Kalyvas, 2009, p. 290).

citizenship, challenge constituted power, invigorate deliberation, and thus foster democratic decision-making on the user's freedoms on the Internet. This is not to say that the specific acts carried out by Snowden, the Anonymous collective, and Sci-Hub and LibGen were harmless, but that their harm is compatible with an idea of civility as performative citizenship, as an articulation of potentially constituent power, and as self-restrained, non-military action. These acts of digital civil disobedience, that use the Internet for their political struggle, transform not only the technologies they use, and sometimes create, but also multiple societies across the globe.

Finally, the three case studies urge political theorists to ask themselves about the extent to which their accounts of civil disobedience leave enough space for new acts to call into question the limits of the concept. In other words, these, and other digital and global acts of disobedience, challenge theorists as to whether concepts will stand the test of time, and if they can account for present and future creative ways of disobeying.

# Conclusions

This thesis has sought to examine key questions that digital acts of politically and morally motivated law-breaking pose to the most influential theories of civil disobedience. Following the methodological decision to theorize from the bottom-up, these questions have been identified by studying potential paradigm cases of digital disobedience. From three case studies that all involve illegal acts, the use of digital technologies, and a self-understanding of their agents as being engaged in civil disobedience, this research has ascended toward conceptual questions about the definition of civil disobedience and the normative questions about the legitimacy and justification derived from such a definition. In doing so, the thesis has shown that ongoing academic discussions about these specific cases and their relation to civil disobedience still have blinds spots, and that a radical democratic minimal definition of civil disobedience, complemented by a notion of civility as performative citizenship, is well-equipped to shed light on these case studies as well as on their consequences.

The study of well-documented examples of illegal acts of whistleblowing, anonymous hacktivism, and academic piracy has allowed us to pinpoint, formulate, and discuss four questions. First, can civil disobedience be used not only to protest laws, policies, and institutions of the state but also to contest private organizations, specifically internet companies? Second, is the use of anonymity in acts of protest necessarily incompatible with civil disobedience, in particular because of their agents' unwillingness to face the legal consequences of their unlawful acts? Third, are digital platforms that radically open up access to academic documents protected by copyright mere criminal acts or are they politically grounded, illegal acts that contribute to a more democratic society? Finally, can an understanding of the civility of civil disobedience as performative citizenship complement a radical democratic approach to civil disobedience and shed new light upon the case studies?

Examining these questions through the lenses of real examples of principled law-breaking has brought to light some of the limitations of the mainstream liberal account of civil disobedience, not only concerning new practices of digital dissent but also in relation to paradigm cases from the past usually recognized as civil disobedience. For liberal approaches inspired by the Rawlsian premise that civilly disobedient citizens break the law within the limits of showing their respect for the law, stretching the concept of civil disobedience to digitalized and transnational forms of principled law-breaking risks transforming the concept of civil disobedience beyond recognition. As a consequence, the minimal definition of civil

disobedience offered by the radical democratic approach would miss what is essential in this kind of principled act of dissent, and risk including under the label of civil disobedience modes of protest and resistance that are too confrontational and potentially uncivil.

Although the radical democratic minimal definition does not include nonviolence as a necessary feature or requirement, it does include a minimalist idea of civility. Civility is mainly understood in a non-moralistic way as not following a military logic of eliminating the opponent, and as massive self-restraint in the face of police and state repression; even if minimal, this idea of civility constitutes a normative stance. According to this normative standpoint, although the definition of civil disobedience does not include nonviolence, it does exclude some forms of violence, namely all those oriented at annihilating the opponent-enemy. Since it follows that some kinds or degrees of violence are compatible with civil disobedience, the radical democratic approach leaves the question of violence out of the definition and considers it a matter of justification. Thus, this approach accepts the possibility of violent acts of justified civil disobedience, as well as unjustified nonviolent acts of civil disobedience.

On the basis of three case studies, the radical democratic approach has demonstrated that the simplicity of its minimal definition and the broadness of its normative view creates a conceptual space for the study of new forms of civil disobedience. While the openness of the radical democratic approach has the virtue of allowing for pluralism regarding the normative principles that motivate participants in disobedience, the notion of civility it includes in the definition of civil disobedience needs further explanation. A more precise radical democratic notion of civility could avoid the risk of inadvertently reintroducing (a minimal notion of) nonviolence into the definition of civil disobedience; to avoid such risk, the thesis proposes the idea of performative citizenship as a way to relate civility not to a substantive normative concept but to the political notion of constituent power.

The idea of civility as performative citizenship takes the 'civil' in civil disobedience not as decorum, reasonability, respectfulness, or fidelity to the law, but as an enactment of the capacity to act in concert with others. Thus, citizenship is partially de-linked from recognition as a member of the community, polity, or nation-state, and extended to non-citizens and to unidentified agents who take the risk of acting. Realizing the capacity to act in concert with others includes illegal acts in which agents claim rights, contest injustices, and foster or defend democratic practices and institutions. Rather than being a substantive normative complement to the radical democratic approach to civil disobedience, the perspective of civility as performative citizenship is a fundamentally pluralistic framework for understanding illegal yet political acts of dissent.

Only a pluralist approach to civil disobedience can deal with the complexity of today's digital and transnational practices of contestation. Behind Snowden's blow of the whistle, in some of Anonymous's cyber-actions, and Sci-Hub's and LibGen's radical open access, one can find liberal reasons to disobey such as the defense of the right to privacy, the promotion of equal access to information, and the defense of freedom of expression and association. But one can also find in these cases democratic reasons for their disobedience such as promoting knowledge and discussion about what the government does in their name, participation in free, fair and credible elections (e.g., OpTunisia), and access to up-to-date, truthful information with which people can inform public deliberation and decision-making processes.

Close examination of the discourse behind some of the digital acts of disobedience studied shows that they relate to libertarian views about the Internet as a domain for unbounded free speech and exchange, enabled in part by the possibility of anonymity. Regulations of data exchanges (including but not limited to books and academic articles) by states and corporate powers are sometimes perceived as violations of the nature of the Internet. Because of this multiplicity, it is fair to say that digital civil disobedience comprehends the normative plurality that characterizes most of today's societies.

The normative pluralism at work in the radical democratic view of civil disobedience as practices of performative citizenship does not solve conflicts between normative views; instead it embraces such conflicts and recognizes their vital role in democratic societies. This view accepts its theoretical limitations while acknowledging the constitutive conflicts that emerge whenever agents perform acts of citizenship by claiming rights, tackling democratic deficits and struggling for more just laws and institutions. Additionally, the radical democratic approach to civil disobedience knows and assumes its role in democratic contestation about the limits between public and private, civil and uncivil, violence and nonviolence.

Rather than offering a conclusive theory or seeking to judge whether the agents of the cases studied in the thesis were (and are) justified in their disobedience or not, this thesis offers a sort of map of conceptual challenges and questions that scholars examining new practices of civil disobedience, especially those involving the use of digital technologies, should at some point consider. The questions formulated at the end of Chapter 2 regarding whether civil disobedience can be enacted by individuals, involve mixed motives, and carried out by non-citizens in merely episodic actions without a process of subjective 'self-purification,' remain open to discussion. Although provisional answers to the central questions of the thesis have been proposed, based on the idea of performative citizenship, these questions need further examination. In the face of the challenges that massive migration and global climate change

pose to this and future generations, civil disobedience against some international corporations might not only be a possible form of principled resistance but a duty. The disastrous consequences for individual autonomy and collective self-determination of 'surveillance capitalism,' with its ever more subtle means for behavior modification (Zuboff, 2019) – as well as of the rise of populism, racism, and xenophobia – in supposedly liberal and democratic societies, urge political theorists to re-examine and in some central cases update their concepts.

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# Summary

UPDATING CIVIL DISOBEDIENCE

Whistleblowing, Anonymous Hacktivism, and Academic Piracy

This thesis examines the extent to which new practices of principled illegal resistance that involve the use of digital technologies can fruitfully be interpreted as new forms of civil disobedience. The study focuses on three kinds of digital acts: whistleblowing, anonymous hacktivism, and radical initiatives to open access to academic publications. By reconstructing in details Edward Snowden's whistleblowing, some of Anonymous's Distributed Denial of Service (DDoS) actions, and Sci-Hub's and Library Genesis's (LibGen's) academic piracy, the thesis interrogates a wide variety of positions from traditional liberal theories to more recent radical democratic accounts of civil disobedience. The research concludes that if these kinds of digital disobedience are considered from a radical democratic approach, they can indeed be considered as new forms of civil disobedience and that the idea of acts of citizenship sheds light on their disputed civility.

Chapter 1 focuses on the role of civil disobedience in the corporate realm, namely within and against private organizations, specifically corporations; it also investigates disobedience motivated by wrongdoings in public-private partnerships (PPPs). Although whistleblowing is not in itself illegal and an increasing number of organizations supposedly encourage it, external whistleblowing breaks contracts of confidentiality. Moreover, in the national security sector, revealing information classified as top-secret is harshly penalized. The study of Edward Snowden's whistleblowing, both because of his dual role as a public servant and as a private employee, and because of the content of his disclosures, reveals that in today's highly privatized world it is increasingly difficult to sharply differentiate between acts of contestation against public authorities from those aimed at challenging and holding accountable private powers.

Whether Snowden's disobedience can be qualified as civil is still a matter of political debate. On the one hand, the fact that he decided to go into exile in Hong Kong and then ask for asylum in Russia rather than facing trial in the United States because of his fears of an unfair process, have made him a polarizing figure in the US context. On the other hand, according to the US intelligence sector, Snowden's disclosures have been harmful to national security and international relations, endangered troops and helped terrorist organizations. These official accusations, that can be interpreted as allegations of incivility, contrast with the

global debates triggered by the disclosures, especially about privacy and the risk of increasingly unaccountable government programs. Snowden's blow of the whistle is a paradigmatic case of an act of disobedience that successfully puts claims to the right to privacy at the center of global public debate. This act of digitally mediated disobedience amounts to an act of citizenship and contributes to democratizing the debate on legitimate limits on the collection and analysis of internet data by states and corporations.

Chapter 2 studies one of the most problematic potential agents of civil disobedience: the collective Anonymous. Anonymous's open, decentralized, leaderless, global, and often contradictory practices make the collective an unlikely candidate to be considered as a new actor in civil disobedience. The issue of the compatibility of civil disobedience and the evasion of punishment is crucial for the thesis as the latter is the most significant normative consequence of digital anonymization. Additionally, the chapter discusses at length additional challenges that the uncertainty of the identities of those 'behind the mask' poses to considering some of Anonymous's politically motivated cyber-actions as new, digitally mediated forms of civil disobedience. The different kinds and history of DDoS, a kind of cyber-action or cyber-attack that Anonymous has used several times against servers hosting state and corporate websites, are carefully examined as well.

Through the study of Anonymous the chapter raises a series of challenging questions, such as whether civil disobedience can be performed individually, if mixed motives are acceptable, if recognized citizens as well as non-citizens can engage in civil disobedience, if episodic or purely reactive, unlawful acts can count as civil disobedience, or if a long-term, subjectively transformative campaign is needed as a frame for civil disobedience. It is argued that accepting legal punishment is not a necessary requirement for civil disobedience and that even the more moderate condition of accepting the risk to be punished is too demanding for agents who might be under illiberal, undemocratic regimes in which disobedience might imply harsher risks than going to prison.

Chapter 3 investigates two digital initiatives aimed at illegally opening up access to academic publications, Sci-Hub and LibGen; it starts by describing these two academic piracy platforms and reconstructing the moral and political rationales behind them. After making explicit some of the limitations of the Rawlsian concept of civil disobedience and the virtues of using a radical democratic, minimal definition to address these cases, the focus moves to a discussion of the normative question of the potential reasons justifying the illegal acts of Sci-Hub and LibGen. Different possible justificatory arguments such as those appealing to individual human rights, to researchers' needs, and to the 'communist' nature of scientific

knowledge production are examined. In addition, the chapter offers an illustrative case of how the global inequalities in access to scholarly resources can ground legitimate claims to open access. The chapter ends proposing a deliberative argument in favor of a pluralist, democratic justification of Sci-Hub and LibGen as a form of communicative civil disobedience. According to this view, academic piracy not only calls into question copyright law for education and research but also contributes to democratic deliberation by offering effective means for informed decision-making.

Chapter 4 explicitly addresses a notion that played a fundamental, yet rather an implicit role in the preceding chapters: the concept of civility and its relation to civil disobedience. The first section reviews accusations of incivility against Snowden, Anonymous, and Sci-Hub and LibGen based in their allegedly covert, evasive, violent and hence uncivil disobedience. The second section examines various understandings of 'civility' together with the political utility that accusations of incivility usually have. By problematizing the conventional interpretation of civility as nonviolence, decorum, and fidelity to the law, the chapter begins to develop a radical democratic concept of citizenship. The third and final section proposes an account of civility in terms of performative citizenship. By linking the notion of civility as performative citizenship to the practice of claiming rights, potential acts of constituent power and the Arendtian notion of new beginnings, the chapter contributes to the radical democratic approach of civil disobedience by offering a fitting notion of citizenship that complements the minimal definition.

The overall argument of the thesis proceeds along three axes: providing elements for an answer to the questions of whether civil disobedience can take place within and against private organizations such as corporations, if it necessarily excludes anonymous actions, and if property damage and other forms of somewhat-violent actions are necessarily incompatible with civility. Against the backdrop of these issues, the thesis offers an interpretation of the 'civil' in civil disobedience not as decorum, reasonableness, or respect for the law, but as the enactment of a broadly construed citizenship that is not limited to those officially recognized as citizens of a state. The notion of performative citizenship is proposed as a non-substantive and essentially pluralist notion of civility that, together with the conditions of non-militarism and self-restraint, makes the radical democratic, minimal definition of civil disobedience better-suited to account for ongoing transformations of the practices of contestation in terms of their increasing globalization and digitalization.

# Samenvatting


BURGERLIJKE ONGEHOORZAAMHEID BIJGEWERKT:
Klokkenluiden, anoniem hacktivisme en academische piraterij

Dit proefschrift onderzoekt de mate waarin nieuwe digitale praktijken van illegaal, maar uit principe voortkomend verzet kunnen worden geïnterpreteerd als nieuwe vormen van burgerlijke ongehoorzaamheid. De studie richt zich meer specifiek op drie soorten digitale handelingen ('*digital acts*'): klokkenluiden, anoniem hacktivisme en radicale initiatieven om vrije toegang tot wetenschappelijke publicaties te bieden. Dit proefschrift ondervraagt een breed scala aan posities betreffende burgerlijke ongehoorzaamheid, van traditionele liberale theorieën tot meer recente radicaal-democratische benaderingen, door drie voorbeelden van zulke digitale handelingen tot in detail te reconstrueren: het klokkenluiden van Edward Snowden, enkele van Anonymous's Distributed Denial of Service (DDoS) acties, en de academische piraterij van Sci-Hub en Library Genesis (LibGen). Het proefschrift concludeert dat deze digitale handelingen inderdaad kunnen worden beschouwd als nieuwe vormen van burgerlijke ongehoorzaamheid als we hen beschouwen vanuit een radicaal-democratische benadering. Als ze gezien worden als daden van kritisch burgerschap komt de veelgehoorde twijfel aan de burgerzin van de daders in een ander licht te staan.

Hoofdstuk 1 richt zich op de rol van burgerlijke ongehoorzaamheid in het bedrijfsleven, namelijk binnen en tegen private organisaties en dan met name bedrijven. Het onderzoekt ook vormen van ongehoorzaamheid die worden ingegeven door wandaden in publiek-private samenwerkingsverbanden. Hoewel klokkenluiden op zichzelf niet illegaal is en een toenemend aantal organisaties het naar eigen zeggen aanmoedigt, zal het doen van een externe melding (bijvoorbeeld bij een externe organisatie of middels publicatie richting een algemeen publiek) over het algemeen een schending van een geheimhoudingsovereenkomst met zich mee brengen. Bovendien wordt in de nationale veiligheidssector de onthulling van informatie die als zeer geheim is geclassificeerd, zwaar bestraft. De casus van klokkenluider Edward Snowden toont aan dat het in de zeer geprivatiseerde wereld van vandaag steeds moeilijker wordt om kritiek op overheidsinstanties te onderscheiden van het ter verantwoording roepen van private organisaties. Van belang daarbij zijn de dubbele rol van Snowden als ambtenaar en als privéwerknemer, als ook de inhoud van zijn onthullingen.

De vraag of Snowden's ongehoorzaamheid als *burgerlijke* ongehoorzaamheid kan worden gekwalificeerd, is nog steeds onderwerp van politieke discussie. Hij is een

polariserende figuur geworden in het Amerikaanse debat door zijn besluit om liever in ballingschap te gaan in Hongkong en vandaaruit vervolgens asiel in Rusland te vragen, dan zich te onderwerpen aan een strafrechtelijk vonnis uit angst voor een oneerlijk proces in de V.S. Tegelijkertijd is de Amerikaanse inlichtingensector van mening dat de onthullingen van Snowden schadelijk zijn geweest voor de nationale veiligheid en de internationale betrekkingen, dat ze militaire eenheden in gevaar hebben gebracht en dat ze terroristische organisaties hebben geholpen. Deze officiële beschuldigingen kunnen worden geïnterpreteerd als verwijten van gebrek aan burgerzin. Ze staan daarbij in schril contrast tot de debatten over privacy en de *accountability* van overheidsprogramma's die over de hele wereld zijn aangezwengeld door Snowden's onthullingen. Snowden's actie is erin geslaagd wereldwijd bij te dragen aan het publieke debat over de legitieme begrenzing van de verzameling en analyse van internetgegevens door staten en bedrijven, waarin claims op het recht op privacy een centrale rol spelen. Het is hiermee een modelvoorbeeld van een daad van ongehoorzaamheid, welke ook gekwalificeerd moet worden als een daad van burgerschap, daar zij heeft bijgedragen aan de democratisering van het debat over online surveillance.

Hoofdstuk 2 bestudeert het collectief Anonymous. De open, gedecentraliseerde, leiderloze, wereldwijde en vaak tegenstrijdige praktijken van Anonymous leiden tot de vraag of dit collectief wel kan worden gezien als een nieuwe speler op het terrein van burgerlijke ongehoorzaamheid. Het belangrijkste normatieve gevolg van digitale anonymisering is dat de actor straffen kan ontduiken, hetgeen tot de vraag leidt of deze praktijken wel als burgerlijke ongehoorzaamheid kunnen worden gekwalificeerd. De verborgen identiteit van de actor 'achter het masker' leidt ook tot een aantal andere problemen met betrekking tot de vraag of Anonymous' politiek gemotiveerde cyberacties als nieuwe, digitale vormen van burgerlijke ongehoorzaamheid dienen te worden beschouwd, welke uitgebreid worden besproken in Hoofdstuk 2. Dit hoofdstuk gaat ook in op de verschillende soorten van DDOS en de geschiedenis hiervan, aangezien dit een soort cyberactie of cyberaanval is die Anonymous meerdere keren heeft ingezet tegen servers waarop websites van staten en bedrijven draaien.

De acties van Anonymous roepen een aantal uitdagende vragen op voor de theorie van burgerlijke ongehoorzaamheid. Kan burgerlijke ongehoorzaamheid individueel worden uitgevoerd? Kunnen gemengde motieven aanvaardbaar zijn? Kunnen zowel erkende burgers als niet-burgers daden van burgerlijke ongehoorzaamheid plegen? Kunnen sporadische of louter reactieve daden worden gekwalificeerd als burgerlijke ongehoorzaamheid, of moet er sprake zijn van een langere campagne voor zaken waarvoor men zelf op de bres wil staan? Hoofdstuk 2 zal onder andere beargumenteren dat het accepteren van strafrechtelijke sancties

geen noodzakelijke voorwaarde is om van burgerlijke ongehoorzaamheid te spreken. Het is zelfs niet noodzakelijk dat de actor het risico om gestraft te worden accepteert, aangezien deze voorwaarde te streng is in geval van niet-liberale, ondemocratische regimes waarin gevangenisstraf als gevolg van ongehoorzaamheid bij lange na niet de grootste dreiging is.

Hoofdstuk 3 onderzoekt twee digitale initiatieven gericht op het illegaal toegang verschaffen tot wetenschappelijke publicaties: Sci-Hub en LibGen. Het hoofdstuk beschrijft eerst de twee platforms en de academische piraterij die zij mogelijk maken, waarna het ingaat op de morele en politieke overtuigingen waarop ze zijn gestoeld. Eerst richt het zich op de beperkingen van het Rawlsiaanse concept van burgerlijke ongehoorzaamheid en de meerwaarde van een ruimere, radicaal-democratische definitie. Vervolgens verschuift de bespreking naar de normatieve vraag naar mogelijke soorten rechtvaardigingsgronden van de illegale handelingen van Sci-Hub en LibGen: gronden die een beroep doen op individuele mensenrechten, op de behoeften van onderzoekers, en op de 'communistische' aard van wetenschappelijke kennisproductie worden onderzocht. Bovendien illustreert biedt het hoofdstuk hoe wereldwijde ongelijkheden in toegang tot wetenschappelijke bronnen kan leiden tot legitieme aanspraken op de vrije toegankelijkheid van wetenschappelijke publicaties. Ten slotte wordt een voorstel gedaan om Sci-Hub en LibGen als een vorm van communicatieve burgerlijke ongehoorzaamheid te beschouwen op basis van een deliberatieve en pluralistische opvatting van democratie. Volgens deze opvatting stelt academische piraterij vraagtekens bij de toepassing van het auteursrecht op onderwijs en onderzoek, maar draagt het ook bij tot geïnformeerd democratisch overleg door de toegang tot informatie op effectieve wijze te vergroten.

Hoofdstuk 4 gaat expliciet in op een begrip dat in de voorgaande hoofdstukken een impliciete, doch fundamentele rol speelt: het concept van burgerzin ('*civility*') en zijn relatie tot burgerlijke ongehoorzaamheid. In het eerste gedeelte worden beschuldigingen van gebrek aan burgerzin tegen Snowden, Anonymous, en Sci-Hub en LibGen besproken op basis van het vermeende heimelijke, ontwijkende, gewelddadige en dus onburgerlijke karakter van hun ongehoorzaamheid. Het tweede deel onderzoekt verschillende opvattingen over burgerzin in samenhang met de politieke functie die beschuldigingen van gebrek aan burgerzin gewoonlijk vervullen. Dit hoofdstuk ontwikkelt een radicaal-democratisch begrip van burgerschap door de conventionele interpretatie van burgerzin als geweldloosheid, decorum en respect voor de wet te problematiseren. Het derde en laatste deel stelt vervolgens voor om burgerzin te begrijpen in termen van performatief burgerschap. Dit hoofdstuk koppelt het begrip van burgerzin in termen van performatief burgerschap aan de praktijk van het aanspraak maken op rechten, het

uitoefenen van potentieel constituerende macht, en het Arendtiaanse begrip nataliteit of het nieuwe begin. Het hoofdstuk biedt een begrip van burgerschap dat goed aansluit bij, en een wezenlijke bijdrage levert aan, het ruimere, radicaal-democratische begrip van burgerlijke ongehoorzaamheid.

De drie soorten digitale handelingen lenen zich goed voor een bespreking van drie verschillende thema's die van wezenlijk belang zijn voor een goed begrip van burgerlijke ongehoorzaamheid: de vraag of burgerlijke ongehoorzaamheid kan plaatsvinden binnen en tegen particuliere organisaties zoals bedrijven, de vraag of men van burgerlijke ongehoorzaamheid kan spreken met betrekking tot anonieme acties, en de vraag of burgerzin acties uitsluit die leiden tot eigendomsschade of die op andere wijze als licht gewelddadig kunnen worden aangemerkt. Het is in het licht van deze vraagstukken dat dit proefschrift een interpretatie van burgerzin als burgerschap biedt die afwijkt van de traditionele definitie. Burgerzin dient niet begrepen worden in termen van decorum, redelijkheid of respect voor de wet, maar juist in het licht van de totstandbrenging van een breed geconstrueerd burgerschap dat niet beperkt is tot hen die officieel erkend zijn als burgers van een staat. Performatief burgerschap biedt een niet-vóórgegeven en wezenlijk pluralistisch begrip van burgerzin die gepaard gaat met burgerlijke ongehoorzaamheid. Het is echter wel noodzakelijk om enkele voorwaarden te formuleren waar ongehoorzaamheid aan dient te voldoen, wil ze de kwalificatie "burgerlijke ongehoorzaamheid" genieten, maar deze zijn van een meer minimale aard: niet-militarisme en zelfbeheersing. Met behulp van dit nieuwe begrip burgerzin kan een radicaal-democratisch en ruime definitie van burgerlijke ongehoorzaamheid beter greep krijgen op immer veranderende, mondiale en digitale vormen van politiek protest.