

Environmental activism and the fairness of costs argument for uncivil disobedience

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Abstract

Social movements often impose nontrivial costs on others against their wills. Civil disobedience is no exception. How can social movements in general, and civil disobedience in particular, be justifiable despite this apparent wrong-making feature? We examine an intuitively plausible account – it is fair that everyone should bear the burdens of tackling injustice. We extend this fairness-based argument for civil disobedience to defend some acts of uncivil disobedience. Focusing on uncivil environmental activism – such as ecotage (sabotage with the aim of protecting the environment) – we argue that some acts of uncivil disobedience can be morally superior to their civil counterparts, when and because such acts target people who are responsible for environmental threats. Indeed, insofar as some acts of uncivil disobedience can more accurately target responsible people, they can better satisfy the demands of fairness compared to their civil counterparts. In some circumstances, our argument may require activists to engage in uncivil disobedience *even when* civil disobedience is available.

Keywords: civil disobedience, uncivil disobedience, ecotage, environmental activism, fairness, violence

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In 2019, Extinction Rebellion (XR) Australia occupied major transportation hubs in Melbourne, Adelaide, and Canberra, to raise awareness about the climate crisis and to press the government to adopt environmentally responsible policies. They recognized that their actions imposed nontrivial inconvenience on people's everyday lives, and stated that "[the occupation] might be disruptive for some people and we apologise for that, but if the climate runs out of control this kind of disruption will be nothing [sic] to what will come" (Lam 2019). Compare this to the actions of two other groups of environmental activists.

First, the Frontline Action on Coal (FLAC) has launched several protests against the government-approved Carmichael coalmine in the Galilee Basin in Queensland, Australia. FLAC activists deploy diverse strategies to directly frustrate Adani's mining operations, including locking themselves to drill rigs, suspending themselves from poles to stop land-clearing works, and blocking freight trains. These actions have resulted in substantial costs to Adani and its business partners. For example, Aurizon, a contractor of Adani, sued five FLAC activists and sought "[AU]\$375,000 in compensation for a series of recent protests that stopped coal trains" in 2019 (Smee 2019). FLAC activists, in contrast to those from XR Australia, were publicly unapologetic for their actions.

Second, and in 2017, the New York Times reported that two Catholic Workers, Jessica Reznicek and Ruby Montoya, attempted "to delay the installation of the Dakota Access Pipeline by setting fire to heavy machinery and using oxyacetylene torches to pierce steel valves." The activists claimed to "fight a private corporation that has run rampantly across [their] country seizing land and polluting [their] nation's water supply" (Fortin 2019). Their action took place shortly after the recently-inaugurated US President, Donald Trump, "ordered an expedient review of the pipelines," which led to a quick initiation of the pipeline constructions (Fortin 2019). The activists successfully delayed the construction by several weeks, and were subsequently charged with conspiring and agreeing to "knowingly and willfully damage and attempt to damage the property of an energy facility [...] in an amount exceeding or which would have exceeded \$100,000,' with the aim of causing 'significant interruption and impairment' of a function of that facility" (Anon 2019). The alleged costs of their acts amounted to more than \$3 million (Department of Justice 2021; Spoerre 2019).

While one may agree that all three activist groups strive to realize worthy goals – the prevention of environmental hazards – one may nonetheless wonder whether their acts are justifiable. After all, even if these actions bring about the best possible consequences, those with more a deontological tendency may insist that there are other *normative factors*, as Shelley Kagan (2018) calls them, that must be considered.

One tempting response to the question of justifiability, is to appeal to the “classical” account of civil disobedience defended by John Rawls (1999). On Rawls’s account, an act of activism is an instance of justifiable civil disobedience when it is (among other things) a deliberately illegal and predominantly nonviolent public protest deployed as a last resort, and aimed at promoting political change primarily through communicating to the government and general public that an injustice exists.¹

The actions of XR Australia appear to satisfy these conditions. Among other things, these deliberately illegal and nonviolent protests – including publicly pre-announced sit-ins and trespasses – were deployed as a last resort to send the message about the urgent need for sensible policies on climate change. On the other hand, FLAC’s activism fails to fully meet these conditions, since they are not primarily communicative. The Dakota Access Pipeline sabotage is an act of *ecotage* (also known as “ecosabotage” and “monkeywrenching”) – the sabotage of the property of environmentally hazardous industries in order to stop ongoing environmental destruction, or affect the balance sheets of companies within those industries so as to make their projects uninsurable or too costly to carry out (Love & Obst 1972; Vanderheiden 2005: 439; Pickering 2007: 54). Both the actions of FLAC and Dakota Pipeline activists fail to meet most of the conditions, and thus are unjustifiable as a form of civil disobedience.

This diagnosis is unsatisfactory. There is now a growing literature on the justifiability of uncivil disobedience, understood as illegal political action that falls short of the standards of civil disobedience (Adams 2018; Delmas 2018; Flanigan 2021; Ip 2022; Koltonski 2021; Lai 2019; Lim 2021). Here, we provide a further argument that bolsters the support for certain acts of uncivil disobedience, by focusing on an undertheorized aspect of disobedience: How the costs imposed by disobedients are justifiable *to those who bear them*. We argue that some acts of uncivil disobedience are morally *superior* to general and diffuse acts of civil disobedience, *on the basis of fairness*. This constitutes a *pro tanto* justification of such acts of uncivil disobedience. Additionally, when both civil and uncivil disobedience are available, activists may better satisfy the demands of fairness by engaging in the latter.

We proceed as follows. Section 1 examines the “classical” account of civil disobedience, and considers the extent to which civil disobedience is justifiable to those who unwillingly bear the costs imposed on them. Section 2 argues that social movements that impose costs only on people responsible for injustice are morally superior, *in terms of fairness*, to those which impose costs on people who are not

¹ For other representative texts, see Peter Singer (2002), Daniel Markovits (2005), Kimberley Brownlee (2012), William Smith (2013), Benny Tai (2017), Andreas Marcou (2021), Piero Moraro (2007), and David Miguel Grey and Benjamin Lennertz (2020), among others. The literature on the issue of categorisation is extensive, and we will not discuss it here. For a broad overview of the extant positions, see (Delmas & Brownlee 2021).

responsible for injustice. *A fortiori*, some acts of uncivil disobedience are morally superior to their civil counterparts in this respect. Section 3 responds to two objections. First, that the conception of civil disobedience we target is too narrow; second, that the cases of environmental activism we discuss are too uncivil to be justifiable.

1. The classical account

People whose lives are affected by social movements are often resentful. Why should *they* bear the costs, including inconveniences, disruptions, and even harm? Even if social movements can bring about much needed social change, they may nonetheless be morally problematic because they significantly infringe upon the interests of others. But what exactly are the constraints that social movements need to observe? When, if ever, is it appropriate to engage in political resistance that imposes costs on others against their will? We have two aims in this section. First, we show that the costs imposed by civil disobedience are not trivial. Second, we explain how a fairness-based account can justify imposing such costs.

1.1 The costs

The classical account of civil disobedience – by requiring acts of disobedience to be predominantly nonviolent and primarily communicative – already sets some constraints on the costs that activists may impose.² Nevertheless, people's rights and interests may be nontrivially affected by civil disobedience. These people may rightly wonder about the justifiability of the disruption to their lives, and of being used by activists to gain publicity for any given cause.³

One may be tempted to dismiss these complaints and their associated costs as trivial. Consider the case of a climate protest at Stansted Airport in London, in 2008, where activists occupied runways and led to the cancellation of 56 flights. Piero Moraro (2014) theorizes that while the travelers endured inconveniences, and that these inconveniences may even have amounted to restrictions on their freedom of movement, the protest did not negatively affect the overall autonomy of those who were affected. The use of “physical force” – as Moraro calls it – to prevent the passengers from continuing their travels, did not force the passengers or other audiences of the movement to adopt the activists' position on climate change. Instead, activists merely forced others to pay attention to their messages about environmental risks. These

² We sidestep whether accepting punishment is necessary for civil disobedience. See Pineda (2015), Delmas (2018), Moraro (2018), and Weltman (2020).

³ In this paper, we focus on the paradigm case of civil disobedience – communicative and peaceful protest. Such acts are by nature “diffuse” or untargeted, affecting many people – including those who are not responsible for injustice. We do not consider “focused” or targeted civil disobedience, which narrowly affects responsible persons. There are concerns that targeted civil disobedience collapses into uncivil disobedience, in virtue of failing one or more conditions of the classical account. We do not discuss them here.

messages may even have enabled people to make better “essential” choices – those that say “something about the kind of persons we are, what values we subscribe to, what conception of society we endorse” (Moraro 2014: 68). Choosing to support or reject existing climate policies are such choices, while boarding planes are not. If so, activists may have frustrated non-essential choices (or less essential choices) to deepen essential ones. That is, they may have *enhanced* rather than violated the overall autonomy of those affected.

However, even if one’s overall autonomy regarding essential choices is not compromised (and may even be enhanced) by such acts of civil disobedience, there still seems to be something amiss. Choices like traveling and boarding planes may indeed not always say much about what kind of persons most of us are, but they can nevertheless be very important to us. Telling those who are affected by civilly disobedient acts that they are simply being informed about politics and climate change, does not amount to a satisfactory justification for why they have to suffer the inconvenience *there and then*. Neither does telling them that the action was the last resort, that activists were nonviolent, that they were engaging in acts of communication, and so on.

1.2 Sharing the costs of tackling injustice

We believe that the costs of activism and social movements are best justified by appealing to a fairness-based account. There are two reasons for this starting point. The first concerns the versatility of fairness-based accounts, given the centrality of ideas of fairness to many dimensions of our social lives. For instance, fairness constitutes the basis of justifications for why we ought to obey just laws (Dagger 1997; Klosko 2004), why disobeying the law is sometimes morally obligatory (Delmas 2014), or when we should punish disobedients (Lai 2021; Moraro 2019). Second, and as we shall see in the next section, a fairness-based account can be easily extended to explain and justify some acts of uncivil disobedience.

Rawls (1999) holds that when laws are just, all citizens share the burdens of maintaining a just society. However, how can there be a duty to obey less than perfectly just laws? Rawls’s answer starts from the observation that even if all of us have a clear understanding of, and accept, the principles of justice, procedures through which we produce the constitution, devise legislation, and issue administrative orders are imperfect. We cannot guarantee that the procedures that we design to realize uncontroversial just ends will always *secure* those ends (Rawls 1999: 173). It is inevitable that some laws or policies will be less than perfectly just. Nonetheless, we have a duty to obey them, for the sake of maintaining mutual trust and confidence in the system as a whole (Rawls 1999: 312). This is subject to two important caveats. First, the burdens created by such laws must not exceed a certain limit. Importantly, they must not violate citizen’s basic liberties. Second, the burdens must be more or less evenly (or at least randomly) distributed among

citizens. There cannot be persistent minorities that are singled out to bear these burdens. We may refer to the burdens that satisfy these conditions as *burdens of injustice*.

This argument may be applied to the issue of the costs imposed by civil disobedience. Arguably, if it is fair for citizens to shoulder the burdens of injustice, it is also fair for them to share the burdens of tackling unjust laws through civil disobedience. Here are the two main considerations.

First, the burdens of injustice are sometimes unfairly distributed. Often, members of minority groups may bear these burdens disproportionately, in terms of both magnitude and frequency. In such conditions, they are “persistent minorities.” Due to their minority status, their rights and interests may be ignored or overlooked by the majority. Civil disobedience has the potential to draw the attention of the majority to these issues, thus starting the process of social change (Brownlee, 2012; Markovits, 2005; Rawls, 1999; Smith, 2013). Indeed, civil disobedience has an illustrious history when it comes to mitigating injustice. It is the prime mover in tackling historical and ongoing racial segregation, disenfranchisement, social and economic inequalities, and racial violence, among others.

Second, while there are various legal channels in well-functioning societies to address these problems, they do not always work (or they may not work in time). Civil disobedience plays an important auxiliary role – it constitutes an additional avenue for citizens to address these problems. In many cases, civil disobedience may succeed in bringing about political changes much more quickly than legal processes.

While civil disobedience often imposes costs on citizens, these costs are typically far less severe in magnitude or frequency than what unjust laws already demand of us. If we have a fairness-based duty to obey unjust laws, then there is no legitimate complaint against bearing these costs. This is subject, of course, to the caveats that the burdens fall within a certain range and that civil disobedience succeeds in tackling unjust laws.⁴

2. Tracing unfairness

The qualification “within a certain range” is crucial, because there are circumstances in which those who are affected do have a legitimate complaint. Consider the following case:

In the morning rush hours of 17 October 2019, a group of XR activists entered the London underground and light rail system to stop the traffic. Two of them brought a ladder into the Canning Town Tube station in the eastern part of the city, placed it against a train, climbed onto the roof and unfolded a banner reading “Business As Usual = DEATH.” Commuters on the platform were first baffled and then furious (Malm 2021: 124).

⁴ We should not require disobedience to *eliminate* an injustice before judging it as successful. Instead, we should regard disobedience as successful when it leads to *ameliorative* policy changes, or even when it raises the awareness of an injustice, and sympathy for its victims, so as to lay the foundations for political change.

The rage of the commuters sharpens the problem of the justifiability of the costs imposed by civil disobedience. XR activists presumably targeted commuters to maximize the media coverage of their actions and the message they wished to convey. But this explanation does not amount to a *justification* of the costs imposed. At first sight, the problem with the actions of the XR activists is their choice of target. Those who take public transportation to work are often among the least responsible for the climate crisis, and targeting them seems highly unfair. Indeed, the possibility arises that fairness may demand something other than the requirement that the imposed must be evenly (or at least randomly) distributed among citizens. Specifically, it may demand that those responsible for unfair social schemes bear the burden, or at least the brunt of it. We detail this possibility in what follows.

2.1 Responsibilities for unfairness

There are different ways in which one can bear responsibility for injustice. Most obviously, one is responsible for an injustice if one creates it. More broadly, one can also bear responsibility for unfair social schemes when one freerides. Freeriding involves an “objectionably preferential treatment” (Cullity 1995: 22) to oneself, or an “unfair self-selection” (Simmons 2001: 30), especially when one intentionally rigs the system, implements, or even exploits unfair social schemes to one’s own advantage. That is, they engage in “a form of wrongful discrimination: it consists in the imposition of an arbitrary and illegitimate advantage at the expense of others” (Delmas 2014: 471).

One need not *intentionally* seek to benefit, to bear responsibility for an unfair social scheme. Even benefitting innocently from injustice and unfair social schemes can sometimes create certain responsibilities and duties – for instance, when doing so sustains the wrongful harms (Malmqvist 2013; Barry & Wiens 2016) or enables further injustice to take place (Anwander 2005; Haydar & Øverland 2014). By continuing to benefit, one may also signal that one does not believe that the social schemes are unfair. This signal, if it is commonly observed, may create a general social climate where everyone seeks to leverage on the unfair social schemes for their personal benefit – thus entrenching injustice. Most importantly, when one benefits yet does nothing to address the unfair social schemes, one sustains a situation where some receive unfair gains at the expense of others. In short, we may bear some responsibilities for unfair social schemes by benefiting – intentionally or otherwise – from them.

It may seem natural to suppose that such a responsibility creates a duty to *compensate*. However, due to the nature of social schemes, mere compensation is often insufficient to rectify the unfairness. This is because social schemes, especially those defined and enforced by the law, are ongoing. Unfair social schemes *continuously* produce (and reproduce) unfair advantages and disadvantages. Candice Delmas

observes that even if those who have gained unfair advantages successfully compensate those who have suffered unfair disadvantages, the former will still play active roles in supporting the unfair system and producing more unfairness in the future, in virtue of their continued participation in those unfair social schemes. Mere compensation is inadequate (Delmas 2014: 478).

The inadequacy of compensation prompts us to consider other methods to avoid the wrongs of participating in unfair social schemes. In principle, it is possible to refuse participation by exiting. However, the only feasible way of exiting is emigration, which is generally prohibitively costly. Moreover, while it allows someone to avoid being held responsible for unfair social schemes, exiting leaves those schemes intact – and continue to create more unfair disadvantages (Delmas 2014: 477). Insofar as that is true, exiting an unfair social scheme is, like compensation, unsatisfactory.

Delmas argues that promoting radical reform is the only viable option (Delmas 2014: 479). Through promoting radical reform, those who have participated in, supported, and benefited from unfair social schemes can work their way towards ceasing their participation, support, and unfair benefits. Since different forms of resistance – ranging from legal protests, civil disobedience, to even violent protests – may turn out to be most appropriate in promoting radical reform, Delmas concludes that we may sometimes have a duty to engage in these activities. That is, we sometimes have a duty to resist. Whether we do *in fact* have this duty depends in part on what would work, and on how costly resistance is, among others. These duties can be fairly demanding. Insofar as fairness can require citizens to bear onerous costs in obeying the law – ranging from “relinquishing the discretion to act as one wishes, paying taxes to the state, and, in case of military draft, fighting in war” – so it also may require bearing such costs in resisting injustice (Delmas 2014: 486). We may add that the demandingness of the duty to resist will depend at least on the extent to which one is responsible for creating and participating in unfair social schemes, along with how much unfair advantage one has gained. The moral requirement to compensate, or disgorge unjust benefits, will at least demand one to sacrifice as much as one has unfairly benefited. The moral requirement to mitigate the injustice one has contributed to, may demand even more – requiring one to do one’s fair share in mitigating or even fully remedying the injustice.

We have earlier argued that it is fair for everyone to shoulder the burdens of injustice. Such burdens, recall, are the inevitable result of attempting to realize just aims in an imperfect world. In these circumstances, no specific person bears responsibilities for the injustices created.⁵ Many unfair social

⁵ It is possible to find such cases, but our focus is on cases that do not fall within this category.

schemes are unlike this. Often, they are intentionally designed to further the interests of some groups of people, at the expense of others. They are also sustained by the people who continue to benefit from them, and who refuse to disgorge those benefits. These people are responsible for injustice. When social movements impose costs on those who are responsible in these ways, the latter has no legitimate fairness-based complaint against bearing those costs – this is simply what fairness demands of them. In contrast, those who are not responsible in these ways have a legitimate complaint against the costs imposed on them by social movements: they are asked to bear the costs of what fairness demands of *others*. There are two problems here. First, the imposition of such costs upon non-responsible persons is unfair and may not be justifiable. Second, requiring non-responsible persons – who may already be disadvantaged within those social schemes – to bear these costs may result in them being doubly disadvantaged.

2.2 Targeting the responsible

Bearing these problems in mind, let us revisit the three examples introduced at the beginning of this paper: the civil disobedience of Extinction Rebellion (XR) Australia, the direct action of the Frontline Action on Coal (FLAC), and the Dakota Access Pipeline sabotage.

Both XR Australia and FLAC seek to address the climate crisis through putting pressure on Australia's coal industry, as it is the primary source of greenhouse gasses produced by Australia. XR's act of mass civil disobedience in 2019 was conducted in the hope that the mass disruption imposed on the public would raise sufficient awareness of the issue, which would later translate into sufficient political leverage that could pressure the government to take action on Australia's coal industry. In contrast, FLAC's approach was more direct: disrupt the coal industry to make their business less profitable.

The assessments of the justifiability of these actions differ. In these cases, two different groups of people bear the costs of the activists' actions. XR Australia's actions have a wide scope of impact – they affected the public (specifically, those who happened to be present at the locations of their protests). In contrast, FLAC's actions narrowly affected Adani and its business partners, who were singled out because of their involvement in environmental exploitation. Which action is morally superior should hopefully be obvious; however, some clarifying details are important. Coal is the single largest source of greenhouse gasses emissions (Collier & Venables 2014; Green & Denniss 2018). At least in Australia, the coal industry also plays a significant role in shaping environmental policies, for example, through political donations (Murphy 2019). Therefore, Australia's coal industry creates, sustains, and profits from a system that contributes to the climate crisis: Current projections predict disastrous outcomes in mere decades (Ripple et al. 2019). Recent research has also documented the ongoing significant threats to public health posed by

the climate crisis (Borchers Arriagada et al. 2020; Vardoulakis et al. 2020; Yu et al. 2020). Thus, when it comes to the climate crisis, it appears that in Australia there are clear bodies that bear undeniable responsibility.⁶ If so, the targets of FLAC's activism – Adani and its business partners – appear to have no legitimate complaint against bearing the costs of environmental activism.

It may be thought that Adani and similar environmentally exploitative industries enjoy unfair benefits because the democratic state allows them to do so, and thus it is the citizens of such a state who are ultimately responsible. However, recall that Australia's coal industry enjoys significant political influence over political candidates, and thus has a relatively outsized influence over policies compared to ordinary citizens. It is also dubious that the state is a collective agent of the kind such that its responsibility can be distributed to ordinary citizens (Lawford-Smith 2019). More importantly, even if some citizens clearly bear some responsibility for the climate crisis, the random "person on the street" may not. Yet civil disobedience is a blunt tool. Civil disobedients do not go on the street with responsibility-tracking devices, nor are they themselves always reliable responsibility-detectors.⁷ Non-responsible people will inevitably be affected by mass protests of the sort that are typical of civil disobedience. The general and indiscriminate nature of many mass protests requires for its justification an appeal to the lesser evil of imposing costs on non-responsible people, relative to the goods that may be secured. The presence of clearly identifiable responsible targets, and the option of targeting them, however, make it dubious that affecting non-responsible people is the best option available to us, on the basis of lesser evil considerations.

The difficulties of securing a lesser-evil justification for civil disobedience are highlighted when we look at the actions of XR Australia in 2019, and others similar to it. While some of the people affected by the protests may have benefitted from the coal industry (by having lower energy bills, for instance), XR Australia's actions are nonetheless "diffuse." They *also* affect people who are not responsible for the climate situation in Australia in any salient way. For instance, they may include school-going youth, recently arrived migrants, people who use solar power, and those who take public transportation rather than drive. Furthermore – and even if these people do benefit – we need to recognize that largest shares of the benefits go to those who work for or invest in the coal industry. Indeed, "most environmental conflict pits a minority of short-term 'extractors' against a majority of 'sustainers,' or people with medium-term interests in the sustainable provision of things like clean air and water" (Ellis 2016:514). The general public often falls into

⁶ Companies are entities that can have duties and responsibilities. See, for example, Pettit (2007), Werhane (2016), Pasternak (2017), Collins (2019), and Umbers and Moss (2020).

⁷ For an example of a similar type of imaginary technology – guilt-seeking missiles – and its dismissal, see Lazar (2009).

the latter category. In addition to being comparatively much less responsible for the climate crisis, they are also much more likely to bear the worst outcomes of the crisis.

Therefore, and focusing on the issue of the fairness of costs imposition, the activism of FLAC has a clear advantage over the civil disobedience of XR Australia. The former targets people who are responsible, while the latter fails to discriminate between the responsible and the non-responsible.

A similar analysis can be given of the Dakota Access Pipeline sabotage. There is a clear entity responsible for the potential environmental destruction, which could be targeted by uncivil disobedience (such as the ecotage that Jessical Reznicek and Ruby Montoya engaged in). Insofar as such responsibility may be attributed to the entity in concern, it has no legitimate fairness-based complaint against the costs they incurred because of the ecotage. And in this case, again, the contrast with civil disobedience highlights the importance of considerations of fairness. Imagine if the activists were to engage in civil disobedience – taking their protests to the streets and causing mass disruptions, in order to raise awareness about the environmental problems and to apply pressure on corporations and the state to change. Even if such civil disobedience had good prospects of succeeding, we would need to assess whether members of its audience have legitimate fairness-based complaints against bearing those costs. And insofar as many people are neither clearly nor saliently responsible for the environmental impact posed by the project, they do have such legitimate complaints. Juxtaposed with each other, the merits of civil and uncivil disobedience – *in terms of fairness* – are obvious.

To recap, acts of civil disobedience may not be justifiable to those who bear its costs. There sometimes exist alternatives which do not impose costs on persons who are not responsible for unfair systems. Some acts that fall short of the standards of civil disobedience – such as the direct actions of FLAC and the Pipeline ecotage – present themselves as live possibilities. Of course, the fairness-based demand to bear costs becomes more complicated once we attempt to accommodate differences in how agents stand in different relationships of responsibility, for benefiting from, contributing to, and maintaining unfair systems. Despite these complications, however, the general point is clear: in terms of the fairness of cost imposition, uncivil disobedience can sometimes be superior to civil disobedience.⁸

⁸ Our argument centres, narrowly, on considerations of fairness. However, it is possible that there are consequentialist reasons for supporting ecotage and other forms of uncivil disobedience in some cases. We will consider this elsewhere.

3. Objections

We now have an argument for some acts of uncivil disobedience. In some cases, acts of civil disobedience which would otherwise be justifiable, may be rendered comparatively morally worse options than acts of uncivil disobedience *on the basis of considerations of fairness*. And as we have seen in the cases above, the options to pursue uncivil disobedience are often genuinely available. In such cases, and others like it, activists conform better to the demands of fairness by opting for uncivil disobedience, rather than civil disobedience. This is a radical revision of how civil and uncivil disobedience are ranked relative to each other within public opinion and the philosophical literature on disobedience.

We briefly discuss two worries in this section. The first is that a suitably broadened conception of civil disobedience delivers a similar conclusion – namely, that some acts of disobedience, such as ecotage, are justified. The extra steps we have taken – to describe them as uncivil disobedience, and then to justify them separately from civil disobedience – may be unnecessary. Second, we may have underplayed the importance of civility, and the justification that we have provided for the cases of uncivil disobedience are unsuccessful.

3.1 Expanding civil disobedience

Recall our claim that some acts of uncivil disobedience – such as those of FLAC and Pipeline activists – can be morally justified, even though they fall short of the standards of civil disobedience. Here, the worry arises that the conclusion is reached on the basis of an implausibly narrow conception of civil disobedience. A suitably broadened conception of civil disobedience may deliver the same conclusion directly, without the additional steps we have taken. As William Scheuerman (2020) observes, the concept of civil disobedience appears to be a necessarily contested concept. It is important, then, that our arguments about uncivil disobedience avoid ‘rigging the game by a sort of conceptual fiat’ (Scheuerman 2019: 19).

As a first-pass response, consider the conception of civil disobedience that we employ – it is a deliberately illegal and nonviolent public protest that aims to promote political change primarily through communicating to the government and/or the public that something is seriously amiss. This conception is broadly similar to many of the *already expanded* conceptions of civil disobedience on offer within the literature (Markovits 2005; Lefkowitz 2007; Smith 2011; Brownlee 2012; Smith 2013; Celikates 2016a; Celikates 2016b; Marcou 2021; Gray & Lennertz 2020). These conceptions reject, in various ways, the overly narrow description of (and requirements imposed on) civil disobedience within Rawls’ account. On such broadened conceptions, the paradigm features of civil disobedience consist in their being communicative

and predominantly nonviolent. While other features are important, they need not be present – at least not typically – for an act to count as *civil* disobedience.

Consider, first, the claim that civil disobedience is paradigmatically communicative. Through their acts of disobedience, activists enter a plea to the majority to reconsider their decisions (Singer 2002), or attempt to direct people’s attention on specific issues (Smith 2011), among others. Such acts serve the broader goal of promoting or facilitating the changes that are needed to rectify the problems that activists have identified. While some coercion or even violence may be involved, they are never used to force the activists’ conclusions upon their audience (Moraro 2014). The actions of FLAC and the Pipeline activists, however, do not satisfy even this broad conception of communicativeness. In these cases, the activists attempt to directly bring about a state-of-affairs that they think is morally justified. That is, they try to prevent environmentally hazardous industries from operating, or by causing sufficient property damage so as to make those businesses unprofitable. These activists do not achieve these goals *through* first convincing their audience of the justifiability or necessity of their actions. Of course, their actions may also succeed in convincing (at least some) members of their audience. However, this success is incidental to, rather than a central feature of, their disobedience.

Consider, next, the claim that civil disobedience is predominantly nonviolent. On a broadened conception of civil disobedience, some minor forms of violence can indeed be accommodated. For instance, throwing non-lethal projectiles (Brownlee 2012), or damaging property to generate sufficient tension (e.g., breaking doors or windows to enable an occupation to take place) (Celikates 2016a), have been described as acts of civil disobedience. However, the actions of FLAC and ecotage pipeline activists fail to be nonviolent in ways that can be accommodated by such conceptions. Illegal trespassing and deliberate sabotage – such as damaging mining equipment and burning down machinery, resulting in millions of dollars of damage – do not seem to qualify as minor forms of violence.⁹ Indeed, they appear to be closer to militant strategies than they are to *civil* ones.

These brief observations give us *prima facie* reasons to think that the actions of FLAC and the Pipeline activists do not qualify as acts of civil disobedience, even on the basis of a broadened conception of the latter. However, the initial objection may be reiterated – perhaps what we need is an *even broader* conception of civil disobedience that can accommodate these acts.

⁹ In thinking about what counts as violence, we must be mindful of how state power may be marshalled to shift people’s perceptions of – or outrightly define – what counts as violent. In some cases, even blockades could be regarded as “violent” (see Celikates (2016b), Lim (2021, p. 135)).

Consider two recent attempts – by Jennifer Welchman (2001) and more recently Tony Milligan (2013) – to broaden the conception of civil disobedience, so as to include ecotage (and other destructions of property). Both Welchman and Milligan rely on an expanded conception of civility to drive their claim that certain acts of disobedience (which we would otherwise regard as radical and uncivil) may nonetheless be plausibly classified as acts of civil disobedience. For instance, Welchman argues – on the basis of a broad conception of civility as minimal sociability – that ‘violence, threats of violence, covert acts of sabotage, blackmail, and even assault’ may be compatible with maintaining sociability (Welchman 2001, p. 105). Similarly, Milligan relies on a minimal conception of civility, which includes norms such as avoiding cruel and hateful acts, avoiding recklessly endangering others, and having the commitment to *try* to avoid violence and threats of violence (Milligan 2013: 36; see also Milligan 2017). Insofar as some acts of uncivil disobedience – including ecotage involving the destruction of millions of dollars of property – are compatible with these, they can be classified as civil disobedience.

There are certainly merits to reconceptualizing civil disobedience broadly. However, we outline several reasons to avoid doing so. First, such reconceptualization stretches the concept of civil disobedience beyond recognition. Part of the reason for civil disobedience’s elevated moral status lies in its constituting what people regard as a *reasonable way of conducting ourselves* in the face of, and in our attempts to, address injustice. When we fold radical acts into the category in an attempt to bootstrap their justifiability, we distort what it is that we care about, when we care about civil disobedience. Moreover, and as Delmas argues, overly broad concepts of civil disobedience are unlikely to convince the general public, because of the fact that they include actions that many regard as too radical (Delmas 2018: 37).

Second, expanding the concept of civil disobedience in this way risks rendering it useless. While we can define or redefine concepts in whichever ways we please, not all definitions are useful. If we reconceptualize civil disobedience to incorporate whatever actions we originally deemed uncivil, simply *because* those acts are potentially morally justifiable, we rob the concept of civil disobedience of its usefulness in demarcating a class of actions that are morally justifiable because they satisfy certain requirements (such as those about communicativeness or nonviolence). The more we expand the concept of civil disobedience, the less it becomes distinguishable from moral justifiability (Lai 2019).

Third, and as Daniel Weltman argues, one of the central motivations for reconceptualizing civil disobedience depends on a false dichotomy.¹⁰ Consider, for instance, Welchman’s claim that acts of

¹⁰ Weltman (2021) provides several more reasons for rejecting Welchman’s and Milligan’s arguments in detail. We do not discuss them here.

disobedience that are regarded as uncivil “would have to be classified as harassment, vandalism, or even terrorism” (Welchman 2001: 98). Such a move appears unwarranted. There are a range of less loaded terms (or even terms with positive connotations) that can be employed – such as ‘rescue’, ‘liberation’, or imposing ‘pressure’ – instead of such negative labels (Weltman 2021: 335-336). Moreover, this motivation for reconceptualization is rendered unnecessary in light of recent work that seeks to justify *uncivil*/disobedience without expanding the conception of civil disobedience (Delmas 2018; Lai 2019; Lim 2021). For instance, philosophers have defended the justifiability of radical and uncivil acts such as doxing (also known as doxxing) (Barry 2021; Barry 2022), vandalism (Lai 2020; Lim 2020a; Lim 2020b), rioting (Pasternak 2019), attacking public officials (Brennan 2018), and even revolution (Kapelner 2019).

Finally, the theoretical costs of reconceptualization may be too high. Many philosophers hold that there is a moral right to civil disobedience (Brownlee 2012; Dworkin 1978; Lefkowitz 2007; Smith 2013). This right gives civil disobedience special immunity against punishment, even if the act of disobedience in question pursues *unworthy* goals, or is all-things-considered morally unjustified. Such a right is important in a pluralistic liberal democracy that is home to citizens with different faiths and moral convictions. There must be a certain range of resistance that serious and sincere citizens can engage in – even if those acts are illegal – without being subject to punishment *as criminals*. We are prepared to grant this right, often *regardless of* the content of disobedients’ views (Lim 2021). This is because the central features of civil disobedience – especially its requirement that acts be communicative and predominantly nonviolent – (purportedly) sets constraints on the costs that civil disobedients can impose on others. When we fold non-communicative or violent acts into the category of civil disobedience, we lose the constraints that the concept sets on activists’ actions. Activists would now have rights to non-communicative and violent actions. This grants too much. We would, for instance, be unwilling to accept that activists who mistakenly believe that solar panels are environmental hazards have a right to destroy solar farms. We do not incur these costs if we clearly distinguish the justifiability and the civil quality of acts of disobedience.

3.2 But it ain’t civil

Some may insist that even though some acts of uncivil disobedience are morally superior in terms of the fairness of cost imposition, the involvement of coercion and/or violence renders them all-things-considered morally prohibited. In contrast, while civil disobedience fares less well in this respect, it is nevertheless justifiable because the fairer (albeit uncivil) alternatives are morally prohibited.

The first thing to note is that our argument in this paper has centered on the *pro tanto* justifiability of some cases of uncivil disobedience, based on considerations of fairness. This constrained argument does

not (yet) deliver the claim that such cases are all-things-considered justifiable. We are, at least here, not committed to any specific position on the issue of all-things-considered justifiability. However, something must be said by way of assuring the reader that the project will not be dead in the water. Two responses are available. First, fairness is a generally weighty moral consideration. The possibility is open that some cases of uncivil disobedience *could* be all-things-considered justifiable on this basis, even when accounting for the coercion and violence involved. Second, and in the following, we will go a step further, and argue that even when we focus narrowly on coercion and violence, civil disobedience is not always morally superior to relevant cases of uncivil disobedience.

Coercion. Recall that civil disobedience is primarily communicative, and respects the autonomy of its audience. Members of the audience are free to make up their own minds about the issues that civil disobedients draw their attention to, rather than be coerced into any specific view. As we have argued earlier, however, this does not give civil disobedience a free pass – the lives of the audience of civil disobedience may still be affected in potentially drastic ways. More can be said by way of defending some acts of uncivil disobedience. It is often argued that the coercive aspect of uncivil disobedience is incompatible with genuine communicativeness, which is an important prerequisite for the moral dialogues we need in order to reach democratic solutions to problems of injustice. However, this argument fails to engage with the details of the circumstances involving some acts of uncivil disobedience, such as the ecotage cases we have discussed earlier. Many mining industries (and other environmentally hazardous industries) know – and have long known – about the disastrous environmental impact of their work. In this respect, these corporations may plausibly be described as lacking empathy and feeling no remorse when they breach moral norms (Bakan 2012; Brueckner 2013). The political change that civil disobedients seek, in light of this observation, is for the state to coerce such corporations into reforming their practices. In doing so, however, their actions end up having potentially adverse impact on non-responsible persons. Compare this to the actions of FLAC or the Pipeline activists, who attempt to directly coerce the corporations into changing their behavior without implicating people who are not responsible. In this respect, there is coercion in both civil and uncivil disobedience. What differs is simply that the latter involves less “collateral damage” in the form of affecting non-responsible people.

Violence. Violence is often regarded as a weighty wrong-making feature. The violence involved in social movements, the objection goes, is often (i) unnecessary, and (ii) tends to drive away potential sympathizers. We consider the two objections in turn.

The first worry about violent acts of disobedience is that they are often unnecessary. This worry relies on the “principle of necessity” that regulates harm imposition. According to this principle, the imposition of harms (or costs, more generally) to persons should not exceed that which is necessary to eliminate or mitigate a given injustice (Lazar 2012, among others). Insofar as injustices can be addressed (even if only partially) without violent acts, those acts violate the principle of necessity and are unnecessary.

The principle of necessity does not support the stated worry. It actually *permits* violence against *both* persons and property, if doing so would eliminate or mitigate an injustice. Appealing to the principle thus *licenses*, rather than prohibits, violent acts of disobedience, subject to the condition that they eliminate or mitigate injustice. Many acts of violent disobedience – especially acts of ecotage – appear to satisfy this condition. Indeed, many ostensibly violent groups have actually exhibited laudable restraint *from the perspective of the principle of necessity*. Consider, for instance, the infamous Earth Liberation Front (ELF), which made the top of FBI’s domestic terrorism threat list despite not having killed or injured a single person (Brown 2019). The ELF, “specifically require[s] members to take all necessary precautions to ensure no one is physically injured” (Pickering 2007: 61). We see that the actions of the ELF are well within the limits imposed by the principle of necessity. Indeed, if the principle were to be the relevant guiding principle, the ELF (and groups like it) can permissibly go much further in executing violent actions.

One may worry, further, that the aggregate damage caused by ecotage is much higher than that of civil disobedience. The first response is to note that this statement is not always true. As Joseph Raz observes, the civilly disobedient act of engaging in a strike can sometimes lead to disastrous consequences – for instance, if the people on strike are ambulance drivers (Raz 1979: 267). Moreover, when we evaluate the magnitude of harms or costs imposed on others, we should not rely on simple aggregation. Instead, it is plausible to think that the costs in question should be subject to some form of “discount,” according to each person’s responsibility for the injustice in concern (McMahan 2009). The more responsible a person is for an injustice, the more their interests are discounted when we assess the wrongness of the costs imposed on them. This is the idea of “morally weighted costs” (Lazar 2012). When we are faced with options that impose harms or costs on others, we ought to choose the option that imposes the least amount of *morally weighted* costs, rather than the option that imposes the least amount of costs, *simpliciter*. Insofar as ecotage can be highly specific – targeting only responsible persons – they can impose lower morally weighted costs than

many acts of civil disobedience.¹¹ If the idea of discounting harms or costs is plausible, we should not worry that the total undiscounted damage of ecotage is higher than that of civil disobedience.

Indeed, and combining the idea of morally weighed costs with the principle of necessity, activists may even be required to engage in uncivil disobedience or ecotage *in the first instance*. This is because these actions would impose the least amount of morally weighted costs upon those who are responsible for justice. Only when ecotage has proven to be futile or too costly, should activists consider civil disobedience – which involves imposing costs on non-responsible people. This runs counter to the intuitively plausible claim that uncivil disobedience can only be justified *after* civil disobedience has been tested and proven futile. For instance, when arguing for the viability of ecotage, Steven Vanderheiden explicitly states that “[e]cotage should never be used before both legal and nonviolent extralegal tactics have been exhausted” (Vanderheiden 2005: 440). This prioritization of civil disobedience may be unjustifiable in light of the details of many cases. Sometimes it may be necessary to choose *uncivil* disobedience as a first instance.

Consider, next, the worry that violence drives away potential sympathizers. When ELF set the Vail Ski Resort on fire in 1988, other environmental groups quickly distanced themselves from ELF and condemned their actions (Dejevsky 1998). This is connected to the general reluctance to engage in violence (Chenoweth & Stephan 2011). This leads potential sympathizers to be unwilling to identify with the violent activism, to see the activism as less reasonable, and to withdraw their support for the activists’ causes (Simpson et al. 2018). Thus, even if the targets have no legitimate complaint against bearing the costs imposed by ecotage and other forms of uncivil disobedience, the latter remains counterproductive due to its how people regard its violent characteristics.

The charge of counterproductivity is not misplaced. However, we need to ask whether civil disobedience fares better. Imposing costs in a diffuse and non-directed manner also often invites the ire of those affected. This is exacerbated by the fact that many of those affected bear little if any responsibility for the climate crisis in general and for the fossil fuel industry in particular. That is to say, those who are affected by civil disobedience have a legitimate fairness-based complaint. Furthermore, while people may care about the climate, they are extremely reluctant to bear any costs in order to bring about change. This is most obvious in the literature on demand-side vs. supply-side climate policies (e.g., carbon taxes vs. closing coal mines) (Collier & Venables 2014; Green & Denniss 2018; Asheim et al. 2019). If so, policies that impose costs on industries are more likely to garner public support in comparison to those that impose costs on

¹¹ Here is an instance where consequentialists could enter in support of our arguments. Indeed, in some cases, ecotage and other forms of uncivil disobedience may result in better consequences *in addition to* being fairer.

consumers (Cai et al. 2010; Harrison 2012; Chubb 2014; Green & Denniss 2018). At least part of the reason is the perceived fairness of making consumers bear the costs when better options (i.e., responsible companies or persons) are available. A similar reasoning is likely to hold for the costs imposed by uncivil environmental activism. The advantage of highly directed uncivil disobedience over indiscriminate civil disobedience is that the former avoids the unfairness of imposing costs on non-responsible people, and instead directs the costs on to responsible industries.

Conclusion

The costs imposed on the audience of social movements – especially those who are not responsible for injustice – require justification. If we take the consideration of fairness seriously, we will see that acts of civil disobedience that impose costs indiscriminately are morally inferior to their uncivil counterparts, which direct the costs on responsible people. While certain acts of environmental activism are uncivil, they can satisfy a requirement of fairness better than their civil counterparts. If so, at least some acts of uncivil disobedience – including what is regarded as radical ecotage – are sometimes justifiable. Moreover, when both civil disobedience and ecotage are available, other things being equal, it may be better that environmental activists engage in ecotage, and at the first instance. This *pro tanto* conclusion may very well be defeated, when all the facts are in. Even so, however, our arguments would have helped to shift the focus – for activists and theorists alike – from whether any given action is classifiable as civil or uncivil disobedience, to the more important issue of whether the costs that it imposes are fair or justifiable.

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