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Title	Violence, Communication, and Civil Disobedience
Type	Article
URL	<a href="https://clock.uclan.ac.uk/37577/">https://clock.uclan.ac.uk/37577/</a>
DOI	<a href="https://doi.org/10.1080/20403313.2021.1921494">https://doi.org/10.1080/20403313.2021.1921494</a>
Date	2021
Citation	Marcou, Andreas (2021) Violence, Communication, and Civil Disobedience. <i>Jurisprudence</i> , 12 (4). pp. 491-511. ISSN 2040-3313
Creators	Marcou, Andreas

It is advisable to refer to the publisher's version if you intend to cite from the work.  
<https://doi.org/10.1080/20403313.2021.1921494>

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# Jurisprudence

An International Journal of Legal and Political Thought

ISSN: (Print) (Online) Journal homepage: <https://www.tandfonline.com/loi/rjpn20>

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To cite this article: Andreas Marcou (2021): Violence, communication, and civil disobedience, Jurisprudence, DOI: [10.1080/20403313.2021.1921494](https://doi.org/10.1080/20403313.2021.1921494)

To link to this article: <https://doi.org/10.1080/20403313.2021.1921494>



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Published online: 07 Jun 2021.



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# Violence, communication, and civil disobedience

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## ABSTRACT


The proliferation of civil disobedience in recent times has prompted questions about violence and justified resistance. Non-violence has traditionally been associated with civil disobedience. If civil disobedience is a political exercise, there are good normative and pragmatic reasons for adhering to non-violence. But some violent actions may be compatible with civil disobedience. This paper defines violence as the application of force intending to cause or reckless about causing harm, and seeks to distinguish violent actions compatible with civil disobedience from conduct too violent to qualify. Whereas civil disobedience is irreconcilable with attacks against other human beings, some violence against property, targeted and symbolic, coheres with the communicative ends of civil disobedience. More intriguing questions arise when disobedience entails extensive attacks against property, such as activities of environmental groups against environmentally harmful practices (ecotage). Despite the extent of violence against property, such activities might still qualify as civil disobedience.

## KEYWORDS

Civil disobedience;  
non-violence;  
communicativeness;  
property damage; ecotage

## 1. Introduction

In November 2018, hundreds of thousands of French people took to the streets to protest President Emmanuel Macron's planned tax hike for diesel and gas. Although the measure was introduced as essential for France's transition to green energy and a vital way to combat climate change, it was met with outrage. What began as a protest for fuel tax spiralled into a resounding rebuke of Macron's presidency and a demand for social and economic justice.<sup>1</sup> The 'gilets jaunes' movement, named after the fluorescent vests sported by its participants, engaged in several peaceful protests, including road blocking and demonstrating. Yet it was the movement's violent actions that attracted most attention. Within weeks of the initial protest, domestic and international news outlets were brimming with pictures of burning cars, police in anti-riot gear clashing with protesters

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<sup>1</sup>Paris Police Fire Tear Gas as Gilets Jaunes Protests Turn Violent' *The Guardian* (London, 30 December 2018) <<https://www.theguardian.com/world/2018/dec/30/paris-police-fire-tear-gas-yellow-vest-gilet-jaunes-protesters>> accessed 27 February 2021.

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throwing projectiles, the Arc de Triomphe vandalised, and high street shops ransacked.<sup>2</sup> With thousands of protesters and police officers injured, thousands arrested and convicted, and several dead because of the protests, the ‘gilets jaunes’ movement carries connotations of violence and havoc.<sup>3</sup>

Even more recently, the United States has witnessed a massive wave of protests against racial inequality and police brutality. Prompted by the death of George Floyd, a black person, at the hands of white police officers, impressive numbers of protesters have taken to the streets.<sup>4</sup> Although the protests were largely non-violent, there have been instances of clashes with police and counter-protesters, as well as looting and other damage to property. The French protest and the resurgent Black Lives Matter movement have once again brought forward debates about violence and disobedience. Some of the movements’ non-violent actions might easily qualify as civil disobedience. Demonstrating without a permit, or road-blocking are paradigmatic civil disobedient acts with numerous examples throughout the last century or so. But what about more violent behaviour? This paper does not evaluate the ‘gilets jaunes’ disobedience, nor does it investigate the systemic problem of racism in the US, but simply examines the compatibility of violent conduct with civil disobedience. I am interested in identifying actions, or classes of action that can qualify as civil disobedience even when deemed somewhat violent. I shall argue that although civil disobedience must be broadly non-violent, some violent actions remain civil disobedience. One of this paper’s chief aims is to separate actions encompassing violence that remain civil disobedience from those too violent to qualify.

This paper does not seek to ground moral justifications for violence in general. Some forms of violent political resistance can be morally justified, perhaps even warranting legal protections. Especially within fundamentally illegitimate regimes, violent acts may be warranted. Killing a genocidal dictator when that saves thousands of innocent lives is arguably morally defensible. For Hannah Arendt, violence is sometimes the only way to ‘set the scales of justice right again’.<sup>5</sup> Some circumstances might require action more radical and violent than civil disobedience.<sup>6</sup> Within sufficiently legitimate regimes, however, the use of violence is harder to justify. In this paper, I only address violence committed in civil disobedience. My analysis does not purport to propose circumstances under which violence in civil disobedience can be morally justified. I am instead only concerned with the narrower question of whether (or to what extent) violence can be compatible with civil disobedience. Simply put, what kind of violent act (if any) can still be recognised as civil disobedience. Whether violence in general is morally justified or whether civil disobedience in general is morally justified are beyond the scope of this paper.

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<sup>2</sup>The Aftermath of the Gilets Jaunes Riots in Paris – in Pictures’ *The Guardian* (London, 2 December 2018) <<https://www.theguardian.com/world/gallery/2018/dec/02/the-aftermath-of-the-gilets-jaunes-riots-in-paris-in-pictures>> accessed 27 February 2021.

<sup>3</sup>Lost Eyes ... Hands Blown Off’ *The Local Fr* (29 January 2019) <<https://www.thelocal.fr/20190129/france-in-numbers-police-violence-during-yellow-vest-protests>> accessed 27 February 2021.

<sup>4</sup>For a timeline of the events related to the murder of George Floyd, Breonna Taylor and others see ‘George Floyd: Why are There Huge Protests in the US and Around the World?’ *BBC* (11 June 2020) <<https://www.bbc.co.uk/newsround/52813673>> accessed 27 February 2021.

<sup>5</sup>Hannah Arendt, *On Violence* (Harcourt Publishing 1970) 64.

<sup>6</sup>E.g., Joseph Raz, *The Authority of Law* (OUP 1979) 267.

Civil disobedience always entails a deliberate breach of law that is committed with the intention of communicating to a broad audience, including state authorities and the general public, the need for some legal or political change. This definition is deliberately broad, designed to cover a wide range of cases. It excludes various elements that are usually associated with civil disobedience such as conscientiousness, a willingness to be punished, and the requirement for showing fidelity to law.<sup>7</sup> Each of these elements raises unique concerns that I leave aside for present purposes. I shall focus exclusively on non-violence, which has conventionally been deemed necessary for civil disobedience.

For the purposes of this paper, I assume that civil disobedients enjoy general moral recognition for their actions. First, the public typically sees civil disobedience as a morally legitimate form of dissent and civic resistance. Invoking images of Martin Luther King Jr., Rosa Parks, or Mohandas Gandhi, civil disobedience has a long tradition and tends to trigger sympathetic responses in neutral audiences. Second, there is some evidence that state authorities, including courts, treat civil disobedience with sympathy.<sup>8</sup> How state authorities treat, or ought to treat, civil disobedience has sparked a debate about the most appropriate state responses. Authors such as Ronald Dworkin and Kimberley Brownlee maintain that civil disobedience should generally attract no punishment (albeit for different reasons).<sup>9</sup> Others, such as Matthew Hall, argue that civil disobedience should amount to a legal defence, available in court.<sup>10</sup> David Lefkowitz proposes a third possibility, with which I am broadly aligned, which suggests that civil disobedience should only attract lenient or symbolic sanctions instead of harsh punishment.<sup>11</sup> Even though I do not engage this debate here, it seems to me that the sheer existence of questions about the appropriate treatment of civil disobedience makes my enquiry into the type of actions that can or cannot be considered as civil disobedience because of their violence worthwhile. Recognising some violent acts as civil disobedience is not a question of sheer theoretical value but carries significant political and legal implications for relevant actors, such as courts, lawbreakers, and the public.

This paper is divided in three parts. Section 2 sketches the conventional view that sees violence as incompatible with civil disobedience – and some problems arising from that position. Although dissidents have good reasons to avoid violence, some violence might in fact buttress the protest, making it more effective and more likely to attract popular support. To determine the scope of permissible violent action, I suggest we define violence, a task I undertake in Section 3. The definition I propose is normative, drawing heavily from English criminal law and from actual cases of civil disobedience. This

<sup>7</sup>For conventional accounts of civil disobedience see John Rawls, *A Theory of Justice* (2nd edn, Harvard University Press 1999) 319–23; Hugo Adam Bedau (ed), *Civil Disobedience in Focus* (Routledge 1991). For criticism of these models see Kimberley Brownlee, *Conscience and Conviction* (OUP 2012); Robin Celikates, 'Rethinking Civil Disobedience as a Practice of Contestation – Beyond the Liberal Paradigm' (2016) 23 *Constellations* 37.

<sup>8</sup>See for example Paul Lewis and Nidhi Prakash, 'Ratcliffe Coal Protesters Spared Jail Sentences' *The Guardian* (5 January 2011) <<https://www.theguardian.com/environment/2011/jan/05/ratcliffe-coal-protesters-sentence>>, accessed 27 February 2021; Josh Gabbatiss, 'Anti-Fracking Activists Jailed for Climbing onto Cuadrilla Lorries at Lancashire Drilling Site Freed on Appeal' *Independent* (17 October 2018) <<https://www.independent.co.uk/climate-change/news/fracking-protesters-appeal-cuadrilla-lancashire-court-jail-a8588241.html#Echobox=1539777340>>, accessed 27 February 2021.

<sup>9</sup>See Ronald Dworkin, *A Matter of Principle* (Oxford Clarendon Press 1986) 114; Ronald Dworkin, *Taking Rights Seriously* (Bloomsbury 2013) 262; Brownlee (n 7) 248.

<sup>10</sup>Matthew Hall, 'Guilty but Civilly Disobedient: Reconciling Civil Disobedience and the Rule of Law' (2007) 28 *Cardozo Law Review* 2083.

<sup>11</sup>David Lefkowitz, 'On a Moral Right to Civil Disobedience' (2007) 117 *Ethics* 202.

definition will, I believe, help root out instances of violent lawbreaking that fail as civil disobedience. Last, Section 4 turns to lawbreaking encompassing violence against property as it raises some intriguing questions.

## 2. Non-violence in civil disobedience

Civil disobedience, Jarret Lovell maintains, is rooted in the tradition of non-violence.<sup>12</sup> But the role of violence within civil disobedience is by no means settled. Part of the aim of this paper is to examine the kind of (violent) actions that qualify as civil disobedience. But before investigating that enquiry, I shall first attempt to outline some of the most common arguments put forward by advocates of non-violence in civil disobedience. We can largely distinguish between two types of arguments made in favour of non-violence in civil disobedience, namely empirical and normative. I first lay out some empirical reasons why civil disobedients ought to refrain from violent action and I then examine the normative arguments usually proposed against violence in civil disobedience. Empirical arguments are contingent and do not in principle and in all cases exclude violence from civil disobedience. They are therefore of lesser importance when examining whether violent actions can qualify as civil disobedience. They remain relevant, however, because they illuminate the socio-historical background against which current debates on violence in civil disobedience are set. Empirical reasons tell us that civil disobedients are unwise to use violence in civil disobedience; normative reasons tell us that using violence means that one cannot engage in civil disobedience.

As explained earlier, civil disobedience is at heart a communicative enterprise. And dissidents are generally more likely to achieve their communicative aims through non-violence.<sup>13</sup> For King, violence obfuscates the civil disobedients' communicative efforts, diverting attention from the protest's real aims and thus inhibiting effective public debate.<sup>14</sup> Suffragist leader Millicent Fawcett mirrors this sentiment when she denounces the violent actions of militant Suffragettes for alienating sympathetic Parliament members.<sup>15</sup>

In 2015, student demonstrators campaigned in London and other parts of the UK against the government's plans to cut student grants. Violent clashes between police and members of the controversial anarchist group Black Bloc, however, marred the demonstrations. Student protesters were subsequently outraged with the Black Bloc activists. 'They're just here to fuck shit up', a peaceful protester bemoaned.<sup>16</sup> Their violence made

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<sup>12</sup>Jarret Lovell, *Crimes of Dissent* (New York University Press 2009) 6.

<sup>13</sup>This is not to argue that violent action cannot attract support or contribute to a social movement's aims. Violent groups often arose alongside non-violent movements. For example, Malcolm X's 'by any means necessary' campaign against segregationist America was arguably instrumental for the success not only of the civil rights movement as a whole, but of King's non-violent protest as well.

<sup>14</sup>See e.g., Martin Luther King Jr, *A Testament of Hope: The Essential Writings of Martin Luther King Jr* (James Washington, Ed.) (Harper & Row Publishers 1986) 5–72. See also David Lyons, 'Moral Judgment, Historical Reality, and Civil Disobedience' (1988) 27(1) *Philosophy and Public Affairs* 31, 43. For sociological evidence supporting this position see Nina Eggert and Marco Giugni, 'The Global Justice Movement in Switzerland' in Donatella Della Porta (ed), *The Global Justice Movement: Cross-National and Transnational Perspectives* (Paradigm Publishers 2007) 188.

<sup>15</sup>Sophie van Wingerden, *The Women's Suffrage Movement in Britain, 1866–1928* (Macmillan 1999) 100.

<sup>16</sup>Ryan Ramgobin, 'Student Protest: Demonstrators Dispute the Actions of Black Bloc Anarchists After Violence Erupts' *Independent* (5 November 2015) <<https://www.independent.co.uk/news/uk/politics/student-protest-demonstrators-dispute-the-actions-of-black-bloc-anarchists-after-violence-erupts-a6722036.html>> accessed 27 February 2021. But see David Mitchell, 'Nick Clegg Getting a Good Kicking? Could Anything be More Joyous?' *The Guardian* (28 November

headlines, overshadowing the message peaceful protesters advocated. The ‘gilets jaunes’ protest arguably follows a similar trajectory. Despite efforts for peaceful demonstrations, some radically inclined, ‘ultra-violent’ participants tarnish the movement’s image.<sup>17</sup> Occasional or isolated incidents of violence have sometimes been used to discredit entire movements. In 1970, four protesters against the Vietnam War set off a bomb at university grounds after hours, accidentally killing one graduate student working late.<sup>18</sup> Detractors and some media outlets used the tragedy to disparage and dismiss the anti-war movement.

For Edward Glaeser and Cass Sunstein, maintaining non-violence in civil disobedience carries critical tactical advantages. Protesters who adhere to non-violence invite the state authorities’ response, which may be violent and disproportionate.<sup>19</sup> Although one might initially associate such responses exclusively with illegitimate and corrupt regimes (see e.g., the Chinese response to the recent Hong Kong protest<sup>20</sup>), the tendency to use excessive force to countenance protest bedevils even generally legitimate systems. Harsh treatment of dissidents dramatises the confrontation between political power and violence, and reinforces, at least in the eyes of a neutral audience, the distinction between those who use violence as a means of maintaining an unjust structure and those who resent violence and are eager to improve a flawed system.<sup>21</sup> Butler observes that at times, the state’s ‘non-reciprocated violent act’ exposes its ‘unilateral brutality’, reinforcing the image of non-violent protesters as the subject of unfair treatment.<sup>22</sup> Whereas peaceful protesters often claim moral superiority by contrasting their non-violence with the regime’s violence, violent protesters forego that powerful claim.<sup>23</sup>

The strategic reasons explain why actors considering civil disobedience may wish to refrain from violent activity. But they cannot explain why violence is incompatible with civil disobedience. For Hannah Arendt, violence is principally antithetical to politics.<sup>24</sup> Civil disobedience, as political action, must therefore adhere to non-violence.<sup>25</sup> The perceived incompatibility of violence and politics depends on an idealised vision

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2010) <<https://www.theguardian.com/commentisfree/2010/nov/28/student-protests-tuition-fees-clegg>> accessed 27 February 2021 (on violence during the 2010 student protests enhancing the protest’s visibility).

<sup>17</sup>Editorial, ‘“Gilets jaunes”: la violence ou le débat’ *Le Monde* (7 January 2019) <[https://www.lemonde.fr/idees/article/2019/01/07/gilets-jaunes-la-violence-ou-le-debat\\_5405930\\_3232.html](https://www.lemonde.fr/idees/article/2019/01/07/gilets-jaunes-la-violence-ou-le-debat_5405930_3232.html)> accessed 27 February 2021. The piece calls on the movement to act against the ‘small ultra-violent groups’ operating within it.

<sup>18</sup>Susan Rosenfeld, ‘The Fatal Bombing That Historians Ignore’ (17 August 2001) *The Chronicle of Higher Education* <<https://www.chronicle.com/article/The-Fatal-Bombing-That/17279>> accessed 27 February 2021.

<sup>19</sup>Edward Glaeser and Cass Sunstein, ‘A Theory of Civil Disobedience’ (2015) *The National Bureau of Economic Research*. See also Arendt (n 5) 54.

<sup>20</sup>James Palmer, ‘Hong Kong’s Violence Will Get Worse’ (November 2019) *Foreign Policy* <<https://foreignpolicy.com/2019/11/11/police-killing-protests-beijing-lam-xi-hong-kong-violence-will-get-worse/>> accessed 27 February 2021.

<sup>21</sup>See e.g., Arendt (n 5) 52–53.

<sup>22</sup>Judith Butler, *Frames of War: When Is Life Grievable?* (Verso 2010) 178. See also Arendt (n 5) 52–53. For similar ideas inspiring non-violent resistance by some American Suffragettes see Linda Ford, ‘Alice Paul and the Politics of Nonviolent Protest’ in Jean Baker (ed), *Votes for Women: The Struggle for Suffrage Revisited* (OUP 2002).

<sup>23</sup>For sociological evidence supporting the effectiveness of non-violent protest see Erica Chenoweth and Maria Stephan, ‘Why Civil Resistance Works: The Strategic Logic of Nonviolent Conflict’ (2008) 33(1) *International Security* 7, 30–35.

<sup>24</sup>Arendt (n 5) 46–52. Also Annabel Herzog, ‘The Concept of Violence in the Work of Hannah Arendt’ (2017) 50 *Continental Philosophy Review* 165. Cf. John Simmons, ‘Disobedience and Its Objects’ (2010) *Boston University Law Review* 1805, 1808. For Arendt, violence is always a means, never an end in itself. But see Judith Butler, ‘The Big Picture: Protest, Violent and Non-violent’ *Public Books* (13 October 2017) <<https://www.publicbooks.org/the-big-picture-protest-violent-and-nonviolent/>> accessed 27 February 2021, on violence as *praxis*: by acting violently, one brings about a more violent world – violence is an end in itself.

<sup>25</sup>Also Todd May, *Contemporary Political Movements and the Thought of Jacques Rancière: Equality in Action* (Edinburgh University Press 2010) 22–23.

of politics as the realm of intelligent interaction where human action (praxis, for Arendt) is possible. Yet others see politics in more realistic terms as embodying violence. For Max Weber, political action is always an exercise in coercion and violence, inextricably linked with the use of power.<sup>26</sup>

A stronger normative reason against the use of violence in civil disobedience draws on the communicative character of the protest. Civil disobedience is a communicative effort targeting political persuasion. Persuasion fits uneasily with the incidence of violence; the latter is ordinarily 'incompatible with civil disobedience as a means of address'.<sup>27</sup> For Steve Buckler, violence is always speechless, negating that element which makes political interaction and persuasion possible.<sup>28</sup> Although one cannot discount the communicative component violent actions entail, it remains the case that civil disobedience cannot be an act of political persuasion if it involves any violence against other people. Echoing this conclusion, some scholars see non-violence as a precondition for political interaction. When dissidents direct violence at others, N.P. Adams argues, they fail to treat them as self-governing members of a political community.<sup>29</sup> Instead, as Holloway Sparks put it, they 'collapse the space for collective debate'.<sup>30</sup> Moreover, civil disobedience as a political activity must always anticipate future cooperation; no action must undermine that prospect.<sup>31</sup> Violence, straining the relationship between disobedients on one hand and state authorities and civil society on the other, jeopardises future harmonious collaboration.

These normative reasons excluding violent conduct from the range of civilly disobedient acts are forcible. And they largely corroborate the historical position that sees violence as incompatible with civil disobedience. But on closer inspection, these arguments do not settle the question on the specific actions that are available to civil disobedients. Violent actions can be distinguished between those directed against human beings and those directed at property (even if, as I argue later, that distinction comes with its own limitations). The normative reasons against the use of violence in civil disobedience are in fact reasons against the use of violence *against other persons* in civil disobedience. Violence against human beings is always and in principle incompatible with persuasive action and as such can never qualify as civil disobedience. By attacking others, one is shutting them out of political deliberation and discussion. As such, no attacks on human beings can qualify as civil disobedience. Some attacks against property, however, appear to remain compatible with the communicative ends of civil disobedience.

Against a principled exclusion of violent action from civil disobedience, Kimberley Brownlee suggests that even violent actions can in fact sometimes qualify as civil disobedience. More specifically, some violence is compatible with civil disobedience because it

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<sup>26</sup>Max Weber, *Political Writings* (Peter Lassman and Ronald Speirs, Ronald eds) (CUP 1994), 309–69, esp.310–11.

<sup>27</sup>Rawls (n 7) 321. See also Peter Singer, *Democracy and Disobedience* (Clarendon Press 1973) 86.

<sup>28</sup>Steve Buckler, *Hannah Arendt and Political Theory* (Edinburgh University Press 2011) 108. Also Margaret Canovan, *Hannah Arendt: A Reinterpretation of her Political Thought* (CUP 1994) 209.

<sup>29</sup>NP Adams, 'Uncivil Disobedience: Political Commitment and Violence' (2017) *Res Publica* 1, 11; Tony Milligan, *Civil Disobedience: Protest, Justification, and the Law* (Bloomsbury Publishing 2013) 123.

<sup>30</sup>Holloway Sparks, 'Dissident Citizenship: Democratic Theory, Political Courage, and Activist Women' (1997) 12(4) *Hypatia* 74, 84.

<sup>31</sup>Andrew Sabl, 'Looking Forward to Justice: Rawlsian Civil Disobedience and Its Non-Rawlsian Lessons' (2001) 9(3) *Journal of Political Philosophy* 307, 309–14.



can be used to enhance the protest's communicativeness.<sup>32</sup> Dissidents resorting to violence may amplify their intended message and successfully grab the attention of a large audience, by either stressing the urgency of the protested situation or testifying to the protesters' sincerity.<sup>33</sup> Some violent conduct may carry strong symbolic messages that embody civil disobedience. Brownlee's refusal of a blanket rejection of all violence is persuasive, as such rejection unduly excludes conduct that bolsters the protest's political ends.<sup>34</sup> Rejecting the idea that violence is incompatible with political persuasion, Brownlee maintains that there are no good normative reasons to rule out violent conduct as civil disobedience.

At the root of the disagreement between those holding non-violence as a necessary condition for civil disobedience and those rejecting that requirement lies, I argue, a failure to speak on the same terms. Brownlee is surely right that some violence (namely against property) is compatible with political persuasion. Similarly, it is by no means clear that targeted attacks on property undermine collective debate or definitively lack a persuasive character. And even if we can plausibly distinguish between violence against human beings, which can never amount to civil disobedience, and violence against property, which may be compatible with civil disobedience, there are deeper questions remaining. When is an act directed at another human being violent? And when is it a matter of mere inconvenience, falling short of violence, and thus capable of being civil disobedience? To resolve this conundrum, I argue that we must identify what violence entails. A concrete definition of violence becomes vital for potential dissidents, officials of the legal system, and audiences at large. Surprisingly, theorists of civil disobedience have largely neglected clarifying the adopted definition of violence. Some theorists correctly diagnose the lack of definition as the core obstacle in accepting or rejecting non-violence in civil disobedience, but have not proposed a definition to resolve the tension.<sup>35</sup> Determining a definition of violence becomes vital to distinguish between violent and non-violent acts, which is, in turn, an important step towards identifying actions that are compatible with civil disobedience.

### 3. Defining violence

Academic disciplines from sociology to psychology adopt competing definitions of violence, conceptualising violence either broadly or narrowly.<sup>36</sup> Broad conceptions of violence identify as violent conduct that violates rights to bodily and psychic integrity and autonomy. For Vittorio Bufacchi, broad conceptions stress the close link between violence and the violation of individual rights.<sup>37</sup> The obvious defect of this approach is that depending on what one considers a right one would detect violence in a large class of cases. Strictly speaking, on an entirely open-ended notion of rights, almost all

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<sup>32</sup>Brownlee (n 7) 23.

<sup>33</sup>See e.g., Milligan (n 29) 153.

<sup>34</sup>Brownlee (n 7) 44, 221. See also Celikates (n 7) 41–42.

<sup>35</sup>Celikates (n 7) 41.

<sup>36</sup>Willem de Haan, 'Violence as an Essentially Contested Concept' in Sophie Body-Gentrot and Pieter Spierenburg (eds), *Violence in Europe: Historical and Contemporary Perspectives* (Springer 2008); Zygmund Bauman, 'Violence, Postmodern' in Zygmund Bauman (ed) *Life in Fragments: Essays in Postmodern Morality* (Blackwell 1995) 139.

<sup>37</sup>Vittorio Bufacchi, 'Two Concepts of Violence' (2005) 3 *Political Studies* 193, 196–97. See also Stuart Henry, 'What is School Violence? An Integrated Definition' (2000) *Annals of the American Academy of Political and Social Science* 2–3.

conduct, in one way or another, can be construed as violating another's rights making violence inevitable and ubiquitous, and therefore meaningless.<sup>38</sup> Distress and anxiety become relevant markers to identify intrusions. Were broad definitions to be adopted anything one might deem disagreeable, and thus a source of distress or anxiety, would become violent.<sup>39</sup>

Robin Celikates, lampooning the German court's decision in the so called *Laeppele* case<sup>40</sup> to recognise violence against the driver of a vehicle forced to stop when encountering a sit-down road blocking, ultimately rejects broad conceptions of violence as ill-suited for civil disobedience.<sup>41</sup> *Laeppele* surely raises unique difficulties because the German word '*Gewalt*' translates to violence, force, or power.<sup>42</sup> But the court's decision epitomises what Habermas fears are attempts to 'extend the juridical concept of violence ... to include unconventional means of influencing the formation of political will'.<sup>43</sup> Once emblematic of civil disobedience, peaceful sit-ins become violent on a broad conception insofar as they obstruct other agents' right to free movement. Such outcomes regrettably distort public perceptions of what actions actually amount to civil disobedience.

Narrow conceptions, by contrast, understand violence in terms of the use of physical force to cause harm. Such conceptions are more suitable for discussions about civil disobedience. Political history indicates that questions of violence in protest are overwhelmingly questions of human beings exercising force over others or against property. The definition developed in this paper is not meant to universally apply to all discussions on violence.<sup>44</sup> There will always be disagreement about the concept's scope, components, and use.<sup>45</sup> The proposed definition resembles an attempt to resolve the question of violence in civil disobedience.

Because civil disobedience always involves lawbreaking, questions of violence in protest emerge intertwined with questions of legality and criminalisation. To define violence, I therefore begin from examining how law, and in particular English criminal law, understands violence. To clarify, turning to criminal law (and English criminal law in particular) is merely one way to explore the concept of violence. One could choose to define violence in different ways, as indeed several theorists have done.<sup>46</sup> My turn to criminal law is motivated by the fact that criminal law is closely associated with the idea of violence. In addition, as I shall show, criminal law points us, to some extent, to a normatively critical distinction between violence directed against human beings and violence directed against property. This distinction becomes salient to determine the type of violence that is compatible with civil disobedience.

<sup>38</sup>Bufacchi (n 37) 197. See also Joseph Betz, 'Violence: Garver's Definition and a Deweyan Correction' (1977) 87(4) *Ethics* 339, 341.

<sup>39</sup>PAJ Waddington, Dough Badger, and Ray Bull, 'Appraising the Inclusive Definition of Workplace "Violence"' (2005) 45 *British Journal of Criminology* 141, 158.

<sup>40</sup>(1969) 23 *BGHSt* 46. See also Peter Quint, *Civil Disobedience and the German Courts: The Pershing Missile Protests in Comparative Perspective* (Routledge 2008).

<sup>41</sup>Celikates (n 7) 41. See also John Morreal, 'The Justifiability of Violent Civil Disobedience' in HA Bedau (ed), *Civil Disobedience in Focus* (Routledge 1991).

<sup>42</sup>The court found that blocking the road was sufficient force for the purposes of Article 240 of the Penal Code.

<sup>43</sup>Jürgen Habermas, 'Civil Disobedience: Litmus Test for the Democratic Constitutional State' (1985) 30 *Berkeley Journal of Sociology* 95, 96.

<sup>44</sup>de Haan (n 36) 30.

<sup>45</sup>*ibid.*

<sup>46</sup>See e.g., (n 36).

A chief, or for some the sole, aim of criminal law is harm-prevention.<sup>47</sup> Harm may result from acts deemed violent broadly or narrowly defined; both conceptions become relevant. Laws therefore forbid actions ranging from violations of rights to attacks on other human beings. What specific actions law ought to criminalise is a perennial question in legal theory. I however focus my analysis on specific legal instruments that explicitly discuss violent crime. These legal sources prove particularly helpful in delineating what violence entails.

One might object that law is an inappropriate starting point for this investigation. Criminal law considers various arguments in proscribing conduct, including considerations of fundamental rights, issues of public health and safety, scarcity of resources and appropriate criminal policy, and so forth. Whether an act is violent is merely one such consideration. This objection rightly suggests that choices to criminalise are irreducible to evaluations about violence. But law's treatment of violence remains instructive. A violent act is a *malum in se*: its violence is in itself a reason for its prohibition.<sup>48</sup> If we seek to determine what makes an act violent, beginning from conduct criminalised *because* of its violence is an ideal starting point. Moreover, in some respects, and given how law in a democracy shapes and is shaped by public attitudes, perceptions, and societal ideals, what the law identifies as violent will largely coincide with what a society as a whole would recognise as violent. There is great interconnectedness between criminal law and a society's dominant beliefs and convictions.<sup>49</sup> Asserting an intrinsic connection between criminal law and violence, Alice Ristroph remarks that 'fear of crime, to a substantial degree, is fear of violence'.<sup>50</sup>

Before investigating law's treatment of violent crime, let me first distinguish between violence and harm. The two terms are often closely associated. But harm might also originate from non-violent acts. Joseph Raz's discussion against non-violence as a necessary element of civil disobedience provides a pertinent example: a strike by ambulance drivers is by no means violent, but may produce serious harm.<sup>51</sup> Conversely, violent acts may result in no actual harm; throwing a punch against an unsuspecting person but missing remains violent. Determining the violence of an act requires, as Lord Justice Buxton in *ex parte August* put it, that we 'look at the nature, and not at the results, of the unlawful conduct'.<sup>52</sup> When laws prohibit violent acts, they do so because they recognise the wrongness of violence. Even if no harm actually materialises, violent actions are a wrong appropriately targeted by criminal law.

To delimit appropriate conduct in civil disobedience, Raz prefers harm as a more apt benchmark. Brownlee also explicitly stresses the 'more salient issue of harm'.<sup>53</sup> Yet that choice hardly dispels the problems. To substitute violence with harm is to replace one

<sup>47</sup>John Stuart Mill's harm principle forms the backbone of English criminal law: JS Mill, *On Liberty and Other Essays* (John Gray ed) (OUP 2008) 14–15. See HLA Hart, *Law, Liberty, and Morality* (OUP 1963) 4–6; Jeremy Horder, *Ashworth's Principles of Criminal Law* (OUP 2016), 59–99; Viktor Tadros, *Wrongs and Crimes* (OUP 2016) 11, 159–63.

<sup>48</sup>See generally Antony Duff, 'Principle and Contradiction in the Criminal Law: Motives and Criminal Liability' in Antony Duff (ed), *Philosophy and the Criminal Law: Principles and Critique* (CUP 1998) 183.

<sup>49</sup>See e.g., Roger Cotterrell, *Emile Durkheim: Law in a Moral Domain* (Stanford University Press 1999) Ch.7 (on French sociologist Emile Durkheim's views on that close relationship).

<sup>50</sup>Alice Ristroph, 'Law in the Shadow of Violence' (2011) *Alabama Law Review* 62(3), 572.

<sup>51</sup>Raz (n 6) 267. See also Guy Aitchison, 'Coercion, Resistance and the Radical Side of Non-violent Action' (2018) 69(1) *Raisons Politiques* 48.

<sup>52</sup>*R v Criminal Injuries Compensation Appeals Panel (ex parte August)*, [2000] EWCA Civ 331, 24.

<sup>53</sup>Brownlee (n 7) 23.

contested term with another, equally ambiguous.<sup>54</sup> It remains unclear what constitutes harm; much like violence, harm can be construed broadly or narrowly.<sup>55</sup> Moreover, Raz's and Brownlee's preference for harm leads to undesirable conclusions. To exclude actions occasioning harm from civil disobedience is unrepresentative of conduct conventionally identified with civil disobedience. Sit-ins and road-blocking are emblematic of civil disobedience even if they result in some harm (whether they occasion harm ultimately depends, of course, on how broadly one understands harm).

### 3.1. English law and violent crime

Violence, I argue, can be located in the use of force that intends to cause, or is reckless about causing harm. Although no actual harm needs to occur, violence is closely linked with risks of harm. This conception of violence coheres with the way English criminal law treats violence. And it also supports an analysis of civil disobedience that faithfully describes historical practice.

The Offences Against the Person Act, 1861 (OAPA) identifies several offences we would readily associate with violence. But it does not discuss general conceptions of violence, nor does it explicitly refer to violent crime. On the other hand, the Crown Prosecution Service (CPS) provides a list of violent crimes. It includes offences such as murder, assault, robbery, acid attacks, and knife and gun attacks.<sup>56</sup> The list is indicative rather than exhaustive given that it excludes offences typically involving injury to others, such as sexual assault, which is listed under sexual offences.<sup>57</sup> Although the CPS guidelines are not legally binding, they remain important insofar as they identify conduct broadly matching public perceptions of violence.<sup>58</sup>

Listing violent offences seems inadequate to put the question of non-violence in civil disobedience to rest. Consider assault, one of the catalogued violent offences. It is easy to detect violence in knife attacks or murder but assault, the less severe of the offences generally associated with conduct against persons, represents a greyer area. Common assault comprises both behaviour that intentionally or recklessly causes a victim to apprehend the immediate and unlawful use of force, and battery, which involves the intentional or reckless application of unlawful force.<sup>59</sup> Contrary to the CPS classification, I maintain that battery may in fact be non-violent. If violence is not always present in cases of battery, then actions adequate to ground battery in law might be non-violent and therefore permissible for civil disobedience.

Any unwanted touching or unlawful application of force suffices to establish the conduct element of battery.<sup>60</sup> Any unconsented to contact, even entailing innocuous

<sup>54</sup>E.g., William Scheuerman, 'Recent Theories of Civil Disobedience: An Anti-Legal Turn' (2015) 23(4) *Journal of Political Philosophy* 427, 440

<sup>55</sup>E.g., Eric Heinze, 'Victimless Crimes' (1998) 4 *Encyclopedia of Applied Ethics*.

<sup>56</sup>Crown Prosecution Service, 'Violent Crime' (2018) <<https://www.cps.gov.uk/violent-crime>> accessed 27 February 2021.

<sup>57</sup>On rape and violence see Ristorph (n 50) 593–98. Cf. John Gardner, 'Rationality and the Rule of Law in Offences Against the Person' (1994) 53(3) *The Cambridge Law Journal* 502, 511.

<sup>58</sup>A similar list appears in the Crime Survey of England and Wales (CSEW), Section 6 <<https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/bulletins/crimeinenglandandwales/yearendingjune2018>> accessed 27 February 2021.

<sup>59</sup>E.g., *R v Venna* [1975] 3 All ER 788. Courts find intention when an outcome is a virtual certainty of one's actions (e.g., *R v Woollin* [1999] AC 82 HL). Recklessness has a more complicated judicial history, yet it is taken to entail the conscious taking of an unjustified risk (or 'advertent recklessness' in Horder (n 47) 196. See *R v Cunningham* [1957] 2 QB 396).

force, ordinarily suffices for battery.<sup>61</sup> Identifying violence with the application of unwanted force captures cases of battery plainly violent, such as hitting someone without a lawful excuse. But the offence might also occur by removing another person's shoes,<sup>62</sup> or touching their clothes.<sup>63</sup> The force exerted here is trivial and risks no injury. What these cases indicate is that battery is deemed inappropriate and criminalised chiefly as a violation of one's integrity and autonomy.<sup>64</sup> What is significant for battery is the violation resulting from one's actions even if no injury is occasioned, intended, foreseen, or even possible at all.

The English courts' approach to consent in cases of battery and in offences causing actual or grievous bodily injury embodies the theoretical dissonance between battery and other violent offences. Absence of consent is an ingredient for battery; only unconsented to touching qualifies for the offence. By contrast, and following *R v. Brown*, consent is not a defence for offences occasioning actual or grievous bodily harm.<sup>65</sup> There is some correlation between the court's reluctance to allow consent as a defence where injury is the intended outcome of one's conduct and the permissibility of the defence in cases of battery. Consent makes sense as a defence for offences that criminalise violations of integrity and autonomy because consenting is itself an exercise in autonomy. But the law hesitates to allow consent to the incidence of violence because violence is a *malum in se*, something inherently harmful to the society. Absent a public interest reason, violence cannot be tolerated.<sup>66</sup>

Another source of law is also illuminating. The Criminal Injuries Compensation Scheme 2012 (the Scheme) was established under s.11 (1) of the Criminal Injuries Compensation Act 1995. The Scheme's aim is to provide compensation for victims of violent crimes. It reveals unique public feelings of sympathy for victims of violence.<sup>67</sup> Violence is central for the purposes of the Scheme.<sup>68</sup> Insofar as the Scheme embodies public perceptions of condemnation of violent conduct, it offers significant insight into civil disobedience. We should bear in mind that since the Scheme is publicly funded there are significant cost calculations weighing on its operation. It is unsurprising that the Scheme adopts a strict approach to what qualifies as violent crime.<sup>69</sup>

The Consultation paper published by the Ministry of Justice attempts to clarify how violent crimes distinguish from non-violent crimes. The Scheme recognises as violent those crimes that contain 'a physical attack' or any other 'act or omission of a violent nature which causes physical injury to a person'.<sup>70</sup> The sheer use of force is however inadequate to establish violence – the Scheme requires a further mental element. Acts or omissions must occur either intentionally or recklessly for the conduct to qualify as

<sup>60</sup>See e.g., *Collins v Willcock* [1984] 3 All ER 374.

<sup>61</sup>Some interactions, such as patting someone's back to attract their attention, are generally acceptable parts of ordinary life and therefore insufficient to establish the offence. See *Collins v Willcock* [1984]; *Coward v Baddeley* 4 H&N 478 (1859).

<sup>62</sup>*R. v George*, Crim. L.R. 52 [1956].

<sup>63</sup>*R v Thomas*, 81 Cr App R 331 (1985).

<sup>64</sup>William Wilson, *Criminal Law* (5th edn, Pearson 2014) 304. See also *Collins v Willcock* [1984] at 1177.

<sup>65</sup>*R v Brown* [1994] 1 AC 212.

<sup>66</sup>See e.g., sporting events such as boxing. *Attorney-General's Reference (No.6 of 1980)* [1981] QB 715, 719.

<sup>67</sup>Ministry of Justice, *The Criminal Injuries Compensation Scheme 2012* (London 2012) para 1. See also Ristroph (n 50) 612–13 (on violence as the cause of public outrage).

<sup>68</sup>Ministry of Justice (n 67) para 60. David Miers, 'Compensating Deserving Victims of Violent Crime: The Criminal Injuries Compensation Scheme 2012' (2014) 34(2) *Legal Studies* 249–53.

<sup>69</sup>Miers (n 68) 245–48. See also Ristroph (n 50) 603.

<sup>70</sup>Ministry of Justice (n 67), Annex B 2(1).

violent.<sup>71</sup> Violence, it becomes clear, always involves the intention to endanger life or recklessness as to whether life would be endangered. The state of mind of the actor is important to determine an act's violence. Investigating the correct approach to identifying violent crimes for the purposes of the Scheme, courts have determined that violent crime is not a 'term of art' with a ready definition but remains, in the end, a 'jury question'.<sup>72</sup> Predetermined lists enumerating offences do not pre-empt the need for *ad hoc* investigation.

Absent the appropriate mental element, application of force cannot qualify as violent. Hurling stuffed animals to police officers in protest, a tactic that attracted considerable media attention during the April 2001 anti-globalisation demonstrations in Quebec,<sup>73</sup> might constitute the application of unwanted force, and thus battery, but lacks the intention to cause injury. It is a symbolic act emphatically dramatising a particular political message. The choice of stuffed animals perfectly encapsulates the dissidents' desire to exert only trivial and harmless force incapable of causing physical injury. Similarly, in 2015, Chilean students and professors demonstrated without permission against the government's education policies.<sup>74</sup> Having written policy proposals on footballs, they proceeded to lob them towards police forces who tried to repel their march, without risking any harm.

There is salient difference between throwing rocks at police and hurling stuffed animals or lobbing footballs at them.<sup>75</sup> Both actions qualify as battery yet only the former involves real endangerment of life and limb. Throwing stuffed animals or game balls remains non-violent and thus falls squarely within the civil disobedience repertoire. Brownlee, working from a broad and vague definition of violence that includes any intended or unintended, major or minor action causing injury to others, and any action risking injury to others,<sup>76</sup> is forced to classify throwing stuffed animal at police officers as violent.<sup>77</sup> It is partly for this that she goes on to reject non-violence as a necessary requirement for civil disobedience.

To be sure, ordinarily non-violent acts such as road-blocking may become violent and thus fail as civil disobedience if they encompass the relevant mental condition. Blocking the road in front of a hospital's emergency wing, or deliberately obstructing the path of ambulances, would, in all likelihood, and assuming the absence of mitigating conditions (e.g., the emergency department is not in operation at the moment, or the blockage only lasts a few moments), create serious risks of injury to human beings. When those actions intend to cause or are reckless about causing injury to others, they cannot be civil disobedience. Maintaining the proviso of non-violence is to expect civil disobedients

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<sup>71</sup>*ibid* Annex B 2(2).

<sup>72</sup>*R v CICB (ex parte Webb)* [1987] 1 QB 74, 77G (Lawton LJ); ATH Smith, 'The Public Order Act 1986, Part 1: The New offences' (1987) *Criminal Law Review* 156, 159.

<sup>73</sup>See e.g., Benjamin Shepard, *Play, Creativity, and Social Movements: If I Can't Dance, It's Not My Revolution* (Routledge 2011) 242.

<sup>74</sup>El Heraldo, 'Estudiantes y profesores en Chile lanzan pelotas como forma de protesta a pocas horas de la Copa América' (15 June 2015) <<https://www.elheraldo.co/deportes/estudiantes-y-profesores-en-chile-lanzan-pelotas-como-forma-de-protesta-pocas-horas-de-la>> Accessed 27 February 2021.

<sup>75</sup>Rock throwing resulting in injury could also be prosecuted under s.47 OAPA (assault occasioning actual bodily harm). See Gardner (n 7) 505.

<sup>76</sup>Brownlee (n 7) 21.

<sup>77</sup>*ibid* 21–22.

to refrain from conduct intending to cause or reckless about causing harm to other human beings.

Violence, I have suggested, occurs when acts intentionally or recklessly risk harm, even if no harm actually results. This excludes negligence as a sufficient mental element. Agents behave negligently when they act in ways that fall below an objective standard of conduct that an ordinary person would maintain.<sup>78</sup> Negligence therefore lacks the maliciousness associated with the intended or reckless infliction of harm and as such must not be associated with violence.<sup>79</sup>

What kind of harm must an act target for it to be considered violent? Physical injuries surely qualify although, as the court held in *R v Donovan* in determining what counts as actual bodily harm, the injury must at least not be ‘merely transient or trifling’.<sup>80</sup> Psychological harm, however, raises different concerns. Sometimes psychological injury is more damaging than physical.<sup>81</sup> True as this may be, it is difficult to recognise *de minimis* psychological harm, such as sheer distress or temporary anxiety, as sufficient.<sup>82</sup> In *Chan Fook*, distress and panic were deemed ‘mere emotions’.<sup>83</sup> The law generally maintains that sufficient psychological harm must amount to a recognised psychiatric injury.<sup>84</sup> For Jeremy Horder, reluctance to allow for minor mental injuries such as distress is understandable. Had *de minimis* psychological injury qualified, criminal law would be used to criminalise immorality per se.<sup>85</sup> The same applies to lawbreaking in civil disobedience. Sheer distress, anxiety, or inconvenience, cannot qualify as sufficient harm to dub an action violent, and thus disqualify it from civil disobedience. Actions of civil disobedience remain non-violent even when they intend to shock or cause distress.

Nor does the use of violence in self-defence frustrate civil disobedience.<sup>86</sup> In response to the authorities’ unnecessary use of tear-gas to dismantle a sit-in, for example, knocking the hosepipe from the police officer’s hands would be morally and legally justified. Self-defence is an appropriate legal defence. Acts of self-defence must, however, be restrained; they cannot threaten or be perceived as threatening more extensive physical injury. When dissidents counter violence with violence beyond the narrow limits of self-defence they jeopardise their status as civil disobedients.

In this section, I have developed a narrow definition of violence appropriate for civil disobedience. Agents act violently when they apply force that intentionally or recklessly risks harm. Violence encompasses a conduct and a mental element. There must be some force applied, directly or indirectly. In cases of civil disobedience, this requirement will be easily determined. But violence also requires that the use of force is intended to cause, or is reckless about causing, actual and not merely trivial physical harm or serious

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<sup>78</sup>See e.g., William Wilson, *Criminal Law* (6th edn, Pearson 2017) 151–52.

<sup>79</sup>*ibid* 140–41.

<sup>80</sup>[1934] 2 K.B. 498, 509.

<sup>81</sup>Morreal (n 41) 37; Piero Moraro, ‘Violent Civil Disobedience and Willingness to Accept Punishment’ (2007) 8(2) *Essays in Philosophy*.

<sup>82</sup>*Taylorson v Shieldness Produce Ltd* [1994] PIQR P329; *McLoughlin v O’Brian* [1983] 1 AC 410; *Page v Smith* [1996] AC 155; Ministry of Justice (n 67) Annex E, part A.

<sup>83</sup>[1994] 1 WLR 689.

<sup>84</sup>*Ireland and Burstow* [1998] AC 147, 230–33 (on the need of expert evidence).

<sup>85</sup>Jeremy Horder, ‘Rethinking Non-Fatal Offences Against the Person’ (1994) 14(3) *Oxford Journal of Legal Studies* 335, 350. Also Ristroph (n 50) 573–76.

<sup>86</sup>See e.g., Milligan (n 29) 14.

psychiatric injury. Civil disobedients defending their actions' non-violence ought to show that their behaviour did not create obvious and foreseeable risks of injury. Narrow as the definition might seem, it is broad enough to allow for force directed against property to qualify as violence. And it is to attacks against property that I now turn, for they raise intriguing questions about civil disobedience.

#### 4. Violence against property

Expecting civil disobedients to refrain from violence against human beings is largely uncontroversial. But the definition of violence I have proposed leaves open the possibility that the application of force harms property, as well as human beings. And even though the legal approaches to violence discussed so far are agent-centric, other parts of law adopt definitions of violence incorporating attacks against property. For example, the Public Order Act 1986, which introduces offences encompassing a violent component, recognises as violent 'conduct towards property as well as ... towards persons'.<sup>87</sup> If violence also entails property damage, then offences under the Criminal Damage Act 1971, which captures activities damaging property, become inappropriate for civil disobedience.

Theorists of civil disobedience have conventionally held the proviso of non-violence to extend to property.<sup>88</sup> In support of this thesis, one might highlight the hazy distinction between damage to property and personal injury. First, some damage to property is inseparable from serious physical or psychological harm. Destroying one's shelter plausibly results in great physical injury. In addition, human beings are often attached to their property.<sup>89</sup> For example, damaging one's family heirlooms may result in serious psychological harm. Second, given how Western societies in particular value private property, its protection is a chief aim of legal systems. Private property is often deemed an extension of one's self, with attacks against it carrying significant weight. This also assumes a core distinction between private and public property to which I return later. Whereas attacks on private property are particularly objectionable, those against public property are more defensible.

To clarify, whether an attack on property amounts to violence for the purposes of civil disobedience is a question separate from the issue of the moral justifiability of the (violent) act. I do not address that second question. And indeed, whether we consider an attack on property morally justified will ultimately depend on the moral or political philosophy one would use to analyse the incident. This section investigates attacks on property that are in fact compatible with civil disobedience. Agents undertaking those acts remain within the ambit of civil disobedience and will ultimately be able to enjoy whatever protections, legal or political, a community might afford them.<sup>90</sup>

I resist a principled exclusion of all attacks on property. To begin, law constructs criminal damage of property broadly. Courts have held that even temporary impairment or damage that can easily be repaired might satisfy the requirements for criminal damage.<sup>91</sup> In *Hardman*, protesters affiliated with the group 'Campaign for Nuclear

<sup>87</sup>S.8, Public Order Act 1986. See also *Antonelli v Secretary of State for Trade and Industry* [1998] Q.B. 948, 961.

<sup>88</sup>HA Bedau, On Civil Disobedience (1961) 58 *Journal of Philosophy* 653, 656.

<sup>89</sup>Mary Jackman, Violence in Social Life (2002) *Annual Review of Sociology* 387, 395.

<sup>90</sup>See (n 9–11).



Disarmament' used soluble paint to draw figures on the pavement representing the victims of the Hiroshima bombings.<sup>92</sup> The paint would wash away naturally within days. The court nevertheless maintained that such graffiti still constituted criminal damage because the authorities incurred the cost of cleaning it. Requiring civil disobedients to maintain non-violence by refraining entirely from property damage is therefore too demanding because it disqualifies actions that are particularly effective in representing political messages and bolstering the protest's communicativeness.

For Habermas, some targeted destruction of property might serve the symbolic character of civil disobedience.<sup>93</sup> It would be inappropriate to exclude from civil disobedience actions clearly embodying the communicative component of the protest, such as tagging walls with political messages. In Illinois in 1981, a group of women formed the Grassroots Group of Second Class Citizens to support the Equal Rights Amendment (ERA) to the US constitution that would provide protections for all citizens regardless of sex.<sup>94</sup> Members of the movement performed a series of civil disobedient acts, including chaining themselves to the Illinois Governor's office door, occupying legislative areas, and disrupting discussions in the local legislature.<sup>95</sup> No action attracted more attention, however, than the decision to write in pig's blood the names of the Governor and anti-ERA legislators on the marble floor outside the legislative chamber on the day the local Senate voted down the amendment. Blood, Mary Lee Sargent explains, 'was [used] to symbolise the death of the ERA and the blood of women who suffer without legal equality'.<sup>96</sup> Distasteful or offensive as that defacing might have appeared to some, it served the symbolic aims of the protest. The provocative aspect of such property damage ensured that the dissidents' message was widely spread. It would be a mistake to exclude that action from civil disobedience.

Some thinkers insist that property damage raises no concerns for civil disobedience. Consider Black Bloc activists, who support an anarchist, anti-capitalist agenda and typically attack private or public property they associate with global injustices (e.g., banks or large corporations).<sup>97</sup> As Richard Glover explains, these activists regard their actions as non-violent by reconceptualising violence to exclude property damage.<sup>98</sup> Since property is inanimate, they argue, it feels no pain and cannot be injured.

Behind the Black Bloc's claim to non-violence lies a fundamental belief in the essential moral difference between committing violence against property and against people.<sup>99</sup> For Adams, again, violence against persons is invariably incompatible with the political ends

<sup>91</sup>See e.g., *Roe v Kingerlee* [1986] Crim LR 735.

<sup>92</sup>*Hardman v Chief Constable of Avon and Somerset* [1986] Crim LR 330. See also Michael Watson, 'Graffiti: Popular Art, Anti-social Behaviour or Criminal Damage?' (2004) 35 Criminal Law and Justice Weekly 1.

<sup>93</sup>Habermas (n 43) 99.

<sup>94</sup>See e.g., Brigance, 'Equal Rights Amendment' in I Ness (ed), *Encyclopedia of American Social Movements: Volume One-Four* (Routledge 2015) 373–77.

<sup>95</sup>See e.g., Mary Lee Sargent, 'Women Rising in Resistance: A Direct Action Network' (1989) *Women's Studies International Forum* 12(1).

<sup>96</sup>*ibid* 114.

<sup>97</sup>For Francis Dupuis-Déri, the Black Blocs are 'ad hoc assemblages of individuals or affinity groups that last for the duration of a march or rally ... more often than not they are content to march peacefully' (*Who's Afraid of the Black Blocs: Anarchy in Action Around the World* (PM Press 2014) 2). See also *ibid* 83–95 (on targeting private property).

<sup>98</sup>Richard Glover, "'When We Smash Window ...'" Black Blocs and Breaches of the Peace' [2018] *Criminal Law Review* 830, 842. See, in general, Jose Pedro Zúquete, 'World War A: Contemporary Anarchists and Extreme Left Perpetrators' in Michael Fredholm (ed), *Understanding Lone Actor Terrorism: Past Experience, Future Outlook, and Response Strategies* (Routledge 2016) 49–52.

<sup>99</sup>See e.g., Milligan (n 29) 15; Howard Zinn, *Disobedience and Democracy: Nine Fallacies on Law and Order* (Random House 1968) 110. The distinction is latent in Habermas (n 43) 100.

of civil disobedience because it removes the objects of violence ‘from the class of people that we are committed to living together with’.<sup>100</sup> But because property is not ‘a potential member of the political project’ nothing restricts civil disobedients from targeting it.<sup>101</sup> Similarly, for Morreall, objectionable acts of violent civil disobedience are only those that somehow ‘get at’ some human beings.<sup>102</sup> Breach of the peace jurisprudence reflects the greater moral weight of attacks on property when linked with possibility of injury to human beings.<sup>103</sup> Violence against property only qualifies as breach of the peace if the property’s owner is present.<sup>104</sup>

Both Adams and Morreall correctly observe that when property damage gets at some human beings, endangering their physical integrity, it becomes objectionable. It is one thing to sabotage a factory in the middle of the night when no workers are on site and another to cause similar damage while jeopardising lives. Dissidents who, as in the first scenario, take steps to ensure that their actions do not endanger others (or their livelihoods) have a stronger claim to civil disobedience, even if their actions are violence against property. But both theorists are mistaken to contend that *only* property damage getting at others fails as civil disobedience. The presumption of compatibility rebutted when property damage harms others is incorrect for it permits extensive and indiscriminate violence against property to qualify as civil disobedience. But extensive violence often frustrates the communicative ends of civil disobedience. Instead of a presumption of compatibility of property damage to civil disobedience, I suggest that the inverse obtains. Violence against property (beyond the purely symbolic, trivial damage of property) is *prima facie* incompatible with civil disobedience, unless certain conditions obtain. Property damage will cohere with civil disobedience when attacks on property (a) safeguard the bodily and psychic integrity of other agents, avoiding acting in ways that intend to cause or are reckless about causing injury to other people and (b) embody political communication. Call these the safeguarding and the communication tests. Unless both conditions are satisfied, property damage cannot be civil disobedience. When property damage fails either of these two conditions, it moves beyond the limits of civil disobedience. Again, failure to fulfil these tests does not necessarily mean that the act is not morally justified. But it does mean that the act is not morally justified *as civil disobedience*.

The safeguarding test sets a strict condition on the kind of conduct compatible with civil disobedience. Whenever attacks against property intentionally or recklessly create risks of harm to other human beings, they fail as civil disobedience. The communication test needs further clarification. Property damage must communicate the desire to change some law or policy. The presumption against property damage also means that when the *same* political message with a similar anticipated effect can be delivered without property damage, that option ought to be preferred. As Raz remarks, non-violent disobedience is

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<sup>100</sup>Adams (n 29) 12. See also Moraro (n 81) (on a defence of violence against property and rejection of violence against others based on Kant’s Formula of Humanity).

<sup>101</sup>Adams (n 29) 13–14. Exceptions arise when property damage imperils one’s political membership, e.g., targeting their shelter.

<sup>102</sup>Morreall (n 41) 38.

<sup>103</sup>S.40 (4) of the Public Order Act, 1986 is not a criminal, but a common law offence in the UK (with the exception of Scotland). See also *R v Criminal Injuries Compensation Board (ex parte Clawes)* [1977] 1 WLR 1353 (violence against property cannot qualify for compensation under the Scheme).

<sup>104</sup>See Glover (n 98) 831. Also *Howell* [1982] 1 QB 416.

preferable to violent civil disobedience when it achieves the same outcome: no direct harm flowing from violence occurs, no further violence is incited, and the threat of violence antagonising potential allies and entrenching opponents' hostility is avoided.<sup>105</sup> This preference to non-violent action is irreducible to a requirement incumbent on law-breakers to show that their actions are a matter of last resort. Protesters are not expected to demonstrate that all other non-violent options are unavailable or have been exhausted. Indeed, even if other options remain open, violent action might be preferred as an exceptional way to, say, portray the exigency of one's dissent.

The line between symbolic and acceptable violence to property on the one hand and destruction for the sake of destruction on the other is admittedly blurry. In practice, the more extensive the property destruction the more unlikely it be perceived as civil disobedience. Other factors contribute to this assessment. The publicness of the dissenters' conduct (their willingness to reveal their identities and explain clearly their reasons for action, perhaps assuming responsibility), also influences public perceptions. Moreover, the dissenters' other actions, such as their interaction with authorities become salient. Protesters damaging property who then proceed to clash with the police likely forego their claims to civil disobedience. With these limits in mind, I proceed to analyse ecotage, a controversial form of protest involving significant property damage that has nevertheless attained increased popularity over the last few decades.

#### 4.1. Ecotage

Ecotage illustrates the complex issues associated with the commission of extensive, in terms of cost, damage to property in the course of civil disobedience. Ecoteurs illegally sabotage property or machinery used in activities that further environmental catastrophe, typically aiming to balloon the financial cost associated with ecologically destructive conduct.<sup>106</sup> Ecotage's purpose, Tony Milligan explains, 'is not supplication, public petitioning or oneness with the earth, but the immediate prevention of harm . . . a way to get [the enemy] to cease and desist'.<sup>107</sup> For present purposes, I distinguish ecotage from other forms of environmental activism such as Greenpeace-organised non-violent protest. That might involve road-blocking in protest of inadequate environmental policies or symbolic property damage such as spray painting messages on coal factories.<sup>108</sup> These easily qualify as civil disobedience. I also ignore legal ecotage, which entails gaining injunctions to postpone, obstruct, or entirely shut down some action, usually by making it more expensive.<sup>109</sup> To be sure, these distinctions are rarely clear-cut, particularly given activists' tendency to employ mixed tactics. I focus solely on whether substantially and unlawfully damaging property with the primary aim of harm prevention qualifies as civil disobedience.<sup>110</sup> Scholars have traditionally labelled disobedience primarily aiming at harm prevention direct

<sup>105</sup>Raz (n 6) 267.

<sup>106</sup>I use a very narrow definition of ecotage that excludes activities involving activists physically blocking some conduct without property damage or violence, e.g., chaining themselves to trees to prevent logging. I also exclude legal ecotage, which entails using legal mechanisms such as gaining injunctions to postpone, obstruct, or entirely shut down some action, to make it more expensive. For a broader account, see Michael Martin, 'Ecosabotage and Civil Disobedience' (1990) 14(2) *Environmental Ethics* 291, 292.

<sup>107</sup>Milligan (n 29) 26.

<sup>108</sup>Steve Vanderheiden, 'Eco-Terrorism or Justified Resistance? Radical Environmentalism and the "War on Terror"' (2005) 33(3) *Politics & Society* 425, 433.

<sup>109</sup>See Martin (n 106) 292.

action, to be distinguished from civil disobedience by the former's lack of a communicative component.<sup>111</sup> But instances of direct action can qualify as civil disobedience even if not primarily targeting communication when the action entails a communicative component.

Damaging equipment harmful to the environment often leads to the damage of private property. For Raz, this alone disqualifies lawbreaking as civil disobedience. The protest, he explains, can never be directed at other agents; it is only available as a challenge to governmental activity.<sup>112</sup> This qualification proves, however, unduly restrictive. Brownlee recalls that even non-governmental private actors act within a legal framework.<sup>113</sup> Large corporations engaging in environmentally harmful activity usually do so pursuant to law, while enjoying the panoply of legal protections.<sup>114</sup> Obstructing an action directly targets the private company but also challenges the government's decision to authorise it; disobedience expresses a demand upon government to rectify the mistake and a rebuke of a legal framework that authorises and enables these actions.<sup>115</sup> Moreover, private actors sometimes behave in ways that have extensive, even global implications. The behaviour of multinational corporations might induce immense environmental harm. Targeting property associated with such behaviour embodies the repudiation of the company's failure to take into account environmental concerns at the expense of the global good. Expediency might justify damaging public property that is not clearly linked to the protested conduct but destroying private property with no obvious links to the environmentally harmful activity is considerably difficult to justify. In general, damage to private property must be clearly associated with the political communication dissidents seek to propagate.

How does ecotage fare when tested against the safeguarding and the communicative conditions? Dave Foreman and Bill Haywood, environmental activists and authors of a practical guide on ecodefence, are adamant that ecotage is never directed at living things.<sup>116</sup> It only targets machines, tools, or other property used to destroy or pollute the environment. Tactics that negligently caused injury to persons, such as spiking trees by driving metal spikes into their trunks, a practice that destroys the sawmill blades and chainsaws used to cut down trees, were promptly disavowed and altered or abandoned.<sup>117</sup> Ecoteurs typically refrain from any risks of injury to human beings. As such, ecotage generally satisfies the safeguarding rest.

Whether ecotage fulfils the communicative test is more contentious. Some scholars maintain that the extensive destruction of property is irreconcilable with the communicative character of civil disobedience.<sup>118</sup> Far from persuasion, raising the cost of an action amounts to 'civil blackmail': it is a way for a recalcitrant minority to strong-arm the majority into accepting its own views.<sup>119</sup> Dworkin considers such actions coercive and

<sup>110</sup>Similar issues arise in other areas such as animal welfare activism (see Matthew Humphrey and Marc Stears, 'Animal Rights Protest and the Challenge to Deliberative Democracy' (2006) 35(3) *Economy and Society* 400).

<sup>111</sup>William Smith, 'Disruptive Democracy: The Ethics of Direct Action' (2018) 69(1) *Raisons Politiques*.

<sup>112</sup>Raz (n 6) 264.

<sup>113</sup>Brownlee (n 7) 19.

<sup>114</sup>See e.g., 'Poland Ejects Protesters from Ancient Forest Despite EU Calls to Halt Logging Operation' *Reuters* (21 July 2017), <<https://www.reuters.com/article/us-poland-eu-logging-idUSKBN1A61XY>> accessed 27 February 2021.

<sup>115</sup>See e.g., Glover (n 98) 834–35.

<sup>116</sup>Bill Haywood and Dave Foreman, *Ecodefense: A Field Guide to Monkeywrenching* (3rd edn, Abzug Press 1993).

<sup>117</sup>See e.g., Martin (n 106) 301.

<sup>118</sup>See e.g., Vanderheiden (n 108).

<sup>119</sup>Dworkin (n 9) 112. Cf. Rodney Barker, 'Civil Disobedience as Persuasion: Dworkin and the Greenham Common' (1992) 40 *Political Studies* 290. See also Brownlee (n 7) 221; Habermas (n 43) 96; Lefkowitz (n 11) 216.

thus non-persuasive. Yet he misleadingly lumps together under this category any disruptive or coercive method, ranging from conduct causing inconvenience or delays, such as blocking a road in front of a coal factory, to destruction of property that directly aims at raising financial costs.<sup>120</sup> It is untenable to maintain that all coercive activities, including those causing inconvenience, are by definition non-persuasive. In fact, even lawbreaking directly aiming at raising the costs of an operation may retain its communicativeness and thus still operate as a persuasive tool. Piero Moraro casts further doubt on the stark distinction between persuasion and coercion. Actions deemed exemplary cases of persuasive lawbreaking, such as the occupation of public spaces, remain coercive to some extent. For Moraro, ‘pure appeals to persuasion ... are rare: some form of pressure is usually present’.<sup>121</sup> Indeed, King views the tools of persuasion and coercion – which he associates with road-blocking and other similar activities undertaken by the US civil rights movement – as complementary, not conflicting.<sup>122</sup>

For Aitchison, causing inconvenience to others, say by blocking a road, is not coercive.<sup>123</sup> He reaches that conclusion because ‘[t]o qualify as coercion, the threatened action must affect the interests of the target in a way that is significant’.<sup>124</sup> The reference to the extent to which other agents’ interests are affected seems incorrect. Is the road-block coercive for an agent prevented from going to hospital, but not for an agent taking a walk? The first agent has a more significant interest in moving unobstructed. But it is odd to conclude that coercion only manifests in the first case. It is also unclear how the requirement for a certain degree of obstruction fits with Aitchison’s general definition of coercion as aiming ‘to influence the behaviour of others through non-voluntary means’.<sup>125</sup> On my proposed model, road-blocking is coercive but non-violent (assuming it does not risk harm to others) and therefore compatible with civil disobedience.<sup>126</sup> Contrary to Dworkin’s classification, it can still amount to a persuasive activity.

That ecotage focuses on harm prevention, halting for example the operation of coal-fired plants in an effort to reduce carbon emissions, is not reason to conclude that it fails to communicate a political message. Destruction of property harming the environment is intertwined with, and constitutive of, the political message dissidents attempt to express. It thus retains a symbolic function.<sup>127</sup> The targeted property damage communicates to civil society and government the injustice of environmentally damaging actions while also impliedly challenging the state’s complacency when it comes to enacting and enforcing appropriate, environmentally friendly legislation. As long as the political message is communicated, ensuring that everyone recognises the environmental motivation behind lawbreaking, ecotage can qualify as civil disobedience.

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<sup>120</sup>Dworkin (n 9) 109–10.

<sup>121</sup>Moraro (n 81).

<sup>122</sup>Quoted in Taylor Branch, *Parting the Waters: America in the King Years 1954–63* (Simon and Schuster Paperbacks 1988) 140.

<sup>123</sup>Aitchison (n 51) 45.

<sup>124</sup>*ibid.*

<sup>125</sup>*ibid.*

<sup>126</sup>Delmas associates extensive disruption with incivility. As such, road-blocking might be uncivil but not civil disobedience (Candice Delmas, ‘Disobedience, Civil and Otherwise’ (2017) *Criminal Law and Philosophy* 11(1), 43). On my proposal, disruption is compatible with civil disobedience, as long as it does not become violent.

<sup>127</sup>See e.g., Milligan (n 29) 105.

## 5. Conclusion

In this paper, I have sought to sketch out the relationship between civil disobedience and non-violence. Non-violence is traditionally associated with civil disobedience, with thinkers and commentators typically perceiving it as the quintessential characteristic of justified lawbreaking. As I have argued, there are good reasons to expect dissident groups to avoid violence. But at the same time, some violent actions can be highly communicative and can therefore promote civil disobedient ends. Even though any violent act can be morally justified independently, my investigation evaluates which acts we can understand as violence can actually be undertaken in civil disobedience.

To distinguish between actions too violent to qualify as civil disobedience and conduct reconciled with the protest, I have proposed a definition of violence to be used in cases of politically-motivated lawbreaking. Drawing from criminal law, I suggest that we understand violence as the direct or indirect application of force that intends to or is reckless about causing harm to people or to property. That harm cannot be trivial, and it cannot be accidental. This definition means that not every instance of battery will be irreconcilable with civil disobedience. And it means that some accidental harm will not disqualify actions from civil disobedience.

Targeted property damage ordinarily conveys a political communication. Spray painting the walls of a police-station to protest police brutality, for example, clearly embodies the dissidents' political communication. By contrast, when violence against property is not targeted, it is likely that the lawbreakers' political message becomes indiscernible from sheer vandalism. When property damage is extensive and emerges as the only message out of the protest, lawbreaking reduces, in the public eye, to senseless destruction.

Social movements like the *gilets jaunes* maintain a complicated attitude towards violence. Such groups are diffuse, with some members manifesting greater willingness to use violence. Some of the group's symbolic attacks against property are violent but can still qualify as civil disobedience. Mass clashes with police, however, or the indiscriminate attacks on property and shops are probably irreconcilable with civil disobedience. The communicative component of those actions is diminished – neutral observers can only see violence, not a political activity.

Similar concerns occur when examining attacks against property. Some violence against property is highly communicative. As such, there are good reasons to see it as civil disobedience. Other property damage, however, is so extensive that probably falls beyond the scope of civil disobedience. The crucial test I have proposed is that all attacks against property must be clearly communicating the political position civil disobedients seek to promote. In recent times, Extinction Rebellion has caused property damage while also laying a claim to civil disobedience. Most such actions are extremely communicative and enhance the dramaturgy of the protest, managing extensive access to the media cycle.<sup>128</sup> Yet other actions from the group have been derided as vandalism.<sup>129</sup>

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<sup>128</sup>Extinction Rebellion "Not Sorry" after Wiltshire Chalk Horse Defaced' *BBC News* (8 October 2019) <<https://www.bbc.co.uk/news/uk-england-wiltshire-49972467>> accessed 27 February 2021. 'Extinction Rebellion Turns up the Heat on Shell' *Extinction Rebellion* (15 April 2019) <<https://rebellion.earth/2019/04/15/extinction-rebellion-turns-up-the-heat-on-shell/>> accessed 27 February 2021. For ecotage capturing attention without damaging property see 'Extinction Rebellion Activists Dress up as Canaries to Block Mine in Protest' *Independent* (26 February 2020) <<https://www.independent>

The critical question here is whether lawbreaking represents the dissidents' message. It is a question of clearly communicating a position. Actions that are perceived as sheer vandalism will have a weaker claim to civil disobedience.

## Acknowledgements

Work for this paper was completed during my time at Queen Mary, University of London. Versions of this paper have been presented at the Juris North discussion group and the Portsmouth Law School Seminar Series. I would like to thank all participants for their comments. Further thanks are owed to Eric Heinze, Stergios Aidinlis, Jorge Emilio Nunez, and John Adenitire, as well as two anonymous reviewers for their valuable comments.

## Disclosure statement

No potential conflict of interest was reported by the author(s).

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<sup>129</sup>Cambridge's Trinity College Lawn Dug up by Extinction Rebellion' *BBC News* (17 February 2020) <<https://www.bbc.co.uk/news/uk-england-cambridgeshire-51534446>> accessed 27 February 2021.