

REVIEW ARTICLE

Civil Disobedience in the Face of the Climate Crisis: Analysing the Role, Legitimacy, and Media Representation of the Last Generation's Protests in Germany

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Abstract

The paper “Civil Disobedience in the Face of the Climate Crisis” analyzes the legitimacy, role, and media portrayal of the Last Generation’s protests in Germany. Despite the longstanding warnings from scientists, effective political action against the climate crisis has been inadequate. While the Fridays for Future movement has meanwhile been co-opted by political actors, the Last Generation deliberately resists such influences. Their protests, beginning in early 2022, use symbolic acts of law-breaking to highlight the urgency of the climate crisis, sparking a polarized response from both the media and the legal system. The authors discuss whether these actions meet the criteria of civil disobedience as defined by theorists like Rawls and Habermas, emphasizing that they are nonviolent, symbolic and serve a public purpose. The paper criticizes the predominantly negative media coverage, which undermines the legitimacy of the protests and may influence public perception and judicial outcomes. The authors argue that a more nuanced media representation is essential to foster a constructive public discourse and to adequately address the climate emergency.

1. Introduction

For decades, climate scientists have emphasised the urgency of taking effective measures against human-induced global warming, a message that has entered public awareness at least since the publication of “The Limits to Growth“ (Meadows et al., 1972). In recent years, the first impacts of the climate crisis have also become visible and palpable to laypeople: extreme weather events such as record heatwaves, unusually prolonged droughts, and water shortages, followed by sudden heavy rainfall and flooding disasters. In response, in Germany as in many other countries, groups have emerged from civil society that highlight the severity of the situation and the need for decisive political action through demonstrations, petitions, and protests. The responses of political leaders range from ignoring to demonising these movements, a dynamic, which can be aptly summarised by a quote from Michel Foucault (1984/2005): “Good governments love the pious indignation of the governed, as long as it remains lyrical“. (p. 875)

While the *Fridays for Future* (FFF) movement was rapidly instrumentalized by politics, as can be seen in symbolic coffee-and-cake meetings with politicians or when former activists – as for instance the EU parliament candidate and former FFF activist Lena Schilling – are invited to run for political top positions as newcomers from outside, the *Last Generation* consciously resists such instrumentalization and co-option. Their protest actions which started at the beginning of 2022 deliberately abandon any lyrical expression and articulate their dissent in a prosaic and sober manner through a symbolic breaking of the law by the obstruction of car and air traffic. This is achieved by sitting on the road and sticking their hands to the ground. This poses a challenge to any state governed by the rule of law, which, due to its claim to a monopoly on violence, cannot tolerate its violation. Simultaneously, the activists point to the historical significance of extra-legal protests and justify their actions by the undeniable fact that the political and societal response to the climate crisis is inadequate.

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But what role should civil disobedience play in democratic societies? Can climate activists of the *Last Generation* rightfully claim this term for their actions? Are there valid reasons that legitimise their protest? How should a mature democracy respond to such symbolic breaches of the law? And additionally, how appropriate or inappropriate is the media representation of the group and their chosen forms of protest? To answer these questions, we will first outline the concept of civil disobedience according to Rawls and Habermas, then discuss the legal situation in Germany, and finally examine how the media report on the protests of the *Last Generation*.

2. Defining Civil Disobedience

The relationship between law and morality is by no means trivial, but rather the subject of equally contentious and complex debates in legal philosophy. Despite the variety of differing positions, there is at least a consensus that the relationship between law and morality is not one of simple identity. Ideally, the law provides the framework within which individuals can define for themselves what moral excellence means to them and how they wish to achieve it. However, there may also be instances where existing laws are or must be (slightly) exceeded to comply with a moral imperative. Such actions would then be illegal but not illegitimate. This is precisely what the activists of the *Last Generation* claim for their forms of protest. This claim is not unproblematic because one of the central functions of positive law is that of preventing arbitrary subjective decisions. Besides, labelling actions as “illegal but not illegitimate” carries significant stakes, namely the moral legitimacy of the protest and thus of the group itself. The concept at the crux of this issue is known as “civil disobedience”.

Its definition is challenging not only because it involves a complex set of various conditions that must be evaluated both individually and in their interplay, but also because, as previously mentioned, much is at stake. Whenever defining a term holds significant potential for gain or loss, not only abstract (philosophical) interests, such as understanding a phenomenon, and describing it accurately, come into play, but also concrete (political) interests, such as justifying the actions of one's own group or a group with which one sympathises. Aware of this temptation, we will deliberately adopt a rather narrow definition of civil disobedience as a basis, namely that of Jürgen Habermas, which essentially aligns with that of John Rawls. According to Habermas

(1985), civil disobedience is understood as a “morally justified protest” that “must not be based solely on private beliefs or self-interest”. For it is “a public act that [...] can be calculated in its execution; it includes the deliberate violation of specific legal norms without affecting overall obedience to the legal order; it requires a willingness to accept the legal consequences of the norm violation; the rule violation expressed in civil disobedience is purely symbolic – this already limits it to nonviolent means of protest”¹. (p. 83)

Civil disobedience, therefore, takes place against the background of a moral obligation to adhere to existing laws and must not be misconstrued as an arbitrary excuse to violate these laws. Instead, specific conditions must be met. Activists engaging in civil disobedience are obliged to continuously align their choice of means and their proportionality with the relevance of their cause. Those who engage in civil disobedience over trivial matters or anti-universalist particular interests cannot claim legitimacy for their protest. John Rawls (1971/1999) argues similarly, stating that civil disobedience can only be justified when it addresses “instances of substantial and clear injustice” (p. 326). By this, he primarily refers to violations of the principles of justice concerning equal liberty and fair equality of opportunity. This criterion of societal interest, incidentally, can be considered a minimal consensus among the various definitions, as it is a condition deemed necessary even by thinkers who advocate for a broad understanding of civil disobedience. The American historian and activist Howard Zinn (1968), for example, goes no further than defining civil disobedience as a “deliberate violation of law for a vital social purpose” (p. 39).

Beyond this criterion, however, both Rawls and Habermas assert that civil disobedience must always be the *ultima ratio*, a last resort. The possibilities of legal protests and other forms of institutionalised influence must be exhausted and have failed. Here one might argue against civil disobedience by claiming that in a democracy, this precondition is never met. The opportunities for free speech, free elections, or the formation of associations or political parties are always available, and so one could argue that these avenues simply have not been pursued persistently enough. However, this is not what Rawls (1971/1999) means to say. Rather, he explicitly emphasises:

But if past actions have shown the majority immovable or apathetic, further attempts may reasonably be considered futile, and a second

¹All Habermas quotes translated by Kosak/Paganini/Schäfer.

condition for justified civil disobedience is met. (p. 328)

And there is another issue: According to Rawls and Habermas, the actors of civil disobedience must limit their degree of nonconformity to the extent that it does not jeopardise or fundamentally challenge the functioning of the social and legal order. At the same time, activists must conduct their protest “openly with fair notice” and not in a “covert or secretive” manner (Rawls, 1971/1999, p. 321), which means that their actions aim at and create public visibility. In this public sphere, the protest is supposed to fulfil a communicative function, that is, to encourage people to reflect on and critically question a practice that is considered unproblematic but is, in fact, highly problematic. This is what Habermas refers to with his emphasis on the symbolic nature of civil disobedience, with reference to which the demand for nonviolence is usually argued – a topic we will address in a separate chapter. Before doing so, however, it is necessary to briefly assess whether climate activist groups such as the *Last Generation* can claim the term “civil disobedience” for their protests in light of the aforementioned conditions.

The affirmation of the first criterion, that the concerns of climate activists are issues of fundamental justice, is beyond question for a variety of reasons. From a national perspective, the exacerbation of the climate crisis significantly restricts the chances of a comparable standard of living and the general scope of action for young and yet unborn generations. This conclusion was also reached by the Federal Constitutional Court of Germany in 2019 when it classified the then-current climate protection law – which only set specific reduction targets until 2030 – as partially unconstitutional, as it did not sufficiently account for the fundamental rights of future generations. The law did not mandate concrete reductions for the years after 2030, which – as a consequence – would severely restrict the freedom of future generations when trying to achieve climate neutrality by 2050 as stipulated in the law. The Federal Constitutional Court highlighted this imbalance in its ruling on the then climate protection law with reference to the “proportionate distribution of opportunities for freedom across generations”² (BVerfGE, 157, 30/177, 131) and the necessary protective mandate derived from Article Art. 20a GG to “leave the environment to future generations in such a state that they can maintain it other than by radical self-denial” (BVerfGE, 157,

30/177, 136). The court thus urged the legislature to strengthen the law, which subsequently occurred.

The (violated) principles of justice that activists invoke and which have also been recognized by the Federal Constitutional Court are taken into account from a legal perspective by the new climate protection law. However, this should not lead to the conclusion that disobedient protests against German climate policy cannot or should not claim legitimacy by referring to violated principles of justice. While the legal assessment is completed with a formal comparison of legislatively enacted laws with the constitution, activists are intervening in the public discourse and address the question of concrete political implementation. Here, the primary concern is not dissatisfaction with individual politically decided measures to achieve the goals, but rather the fundamental question of the necessary will and effort to reach these goals at all. The line of contention, therefore, runs along the “whether” and not the “how”.

The assertion that the German government’s current efforts to comply with the climate protection law are not sufficient is supported by the *Expertenrat für Klimafragen* (Council of Experts on Climate Issues), an independent body that assesses the government’s climate protection efforts and compares them with the objectives of the climate protection law. In repeated reports, this council of experts has concluded that the government’s efforts do not meet the obligations of the climate protection law. In its latest report from September 15, 2023 on the Climate Protection Program 2023, the council states that

the submitted Climate Protection Program 2023 does not meet the requirements for a climate protection program according to §9 Abs. 1 Satz 3 KSG. Furthermore, the Council of Experts notes that the scientific assessments of possible economic, social, and other ecological consequences as required by §9 Abs. 2 Sätze 3 and 4 KSG are absent from the Climate Protection Program 2023. (Expertenrat für Klimafragen, 2023, p. 39)

This scientifically and institutionally confirmed gap between the claims of the law and the reality of political action allows activists to continue legitimising their protests by referring to violated principles of justice, even if the latter no longer formally exist due to the amendments of the Climate Protection Act. This is all the more true when considering Judith Butler’s

²All legal texts translated by Kosak/Paganini/Schäfer.

understanding of precarity and vulnerability in defining urgent societal goals. Butler argues that a distributive justice focusing on rights and goods as well as the understanding of defensive rights as developed by Rawls are insufficient insofar as both presuppose a sovereign individual capable of articulating their claims (Butler, 2009, pp. 2–6).

The awareness that all living beings are vulnerable and that this vulnerability is unequally and unjustly distributed should much rather foster a strong determination to actively care for others. Accordingly, it is not sufficient for Western governments to make decisions that merely fulfil their self-imposed commitments, such as the Paris Climate Agreement. In addition, there is a strong moral obligation to use all available means to combat the global unequal distribution of risks to people – if not to all living beings – as posed by the climate crisis. If this effort, however, is not recognizable, activists have a “vital” (Zinn, 1968, p. 39) interest in highlighting the issue, thus justifying their engagement in civil disobedience.

The second criterion mentioned by Rawls, the *ultima ratio*, is also relevant in the current situation. The problems of climate change as well as its causes and solutions have been well-described for decades and have repeatedly found their way into public political debates. Since the Paris Agreement on Climate Change in 2015 at the latest, this issue has been recognized by all 197 signatory countries and binding targets have been formulated. Since 2018, the climate protection movement *Fridays for Future* has been using legal mass protests to advocate for more decisive climate policies. This widely supported social movement has made climate protection an issue that can no longer be ignored, even by liberal or conservative parties.

Once again, however, it is the gap between aspiration and reality that allows the conclusion that the widespread protest of *Fridays for Future* and the resulting increase of awareness of the issue may have achieved significant success on a semantic level but have not sufficiently translated into concrete political action. This discrepancy between mere semantics and actual action is clearly illustrated by a study by *Konzeptwerk Neue Ökonomie*. This study examined the climate policies of all democratic parties represented in the Bundestag ahead of the 2021 federal election. While all parties explicitly committed to the 1.5-degree goal, the study revealed that none of the party programs met this target. The verdict is: “All parties fall short of Germany’s remaining CO2

budget for globally just paths to 1.5°C by a multiple”. (Kuhnhehn et al., 2021, p. 61)

Given this background, previous attempts to influence concrete political action through legal protests must be considered a failure, and activists can justifiably claim the criterion of *ultima ratio* for the legitimacy of their civil disobedience. The scientifically well-documented issue of climate tipping points intensifies the urgency of political action. This further strengthens the legitimacy of disobedient protests and weakens the argument that assessing the success or failure of legal mass protests like those of *Fridays for Future* is not yet possible after four years, and that the conclusion that further attempts of this nature are reasonably considered futile is premature.

However, John Rawls also obliges the actors of civil disobedience to limit their protest actions to a level that does not endanger the functioning of the societal and legal order. If this criterion is applied to the protests of the various groups within the German climate protection movement, it becomes clear that the state has never reached its capacity limits in dealing with their protests. Furthermore, the much-feared emergence of a climate-based RAF (Red Army Faction), which would work violently to undermine the federal republican order, has proven unfounded. And apart from this very clear finding in favour of the *Last Generation*, one could, in line with Hannah Arendt, critically question whether an unquestioned belief in the efficacy of the law is appropriate. Although Arendt acknowledges that laws stabilise and legalise changes once they have been enacted, she also reminds us that such societal changes are usually the result of actions outside the law. In other words, without the transformative power of emancipatory movements that have transgressed the law in the past, we would be living in a different – and worse – world (Arendt, 1986, p. 141).

Either way, the *Last Generation* can rightly declare their public and symbolic protest actions as “civil disobedience” and thus claim legitimacy insofar as all criteria of the term’s narrow definition are fulfilled. However, due to modern democracy’s commitment to solving conflicts through discourse, a further criterion, which has only been touched on so far, appears to be crucial, namely nonviolence. Only the assessment of whether the *Last Generation*’s road blockades constitute a purely nonviolent form of protest will help us clarify whether the activists are acting in accordance with the concept of civil disobedience.

3. The Problem of Violence

Due to its semantic imprecision, the concept of violence is controversially discussed and interpreted differently in legal and philosophical debates. While activists refer to their purely passive and, in their view, completely nonviolent behaviour, actions like road blockades are seen as violent in heated and mostly undifferentiated public debates and even in seemingly objective legal assessments. If the latter is true, this would mean that activists could not claim the concept of “civil disobedience” for their actions, as they would then fail to meet a crucial prerequisite, the limitation to nonviolent means of protest.

The discussion of whether passive resistance constitutes an act of violence, however, is not new. In Germany, especially in legal debates, the Laepple ruling (Bundesgerichtshof [BGHSt], 23, 46/60) of 1969 led to criticism of the dilution and lack of conceptual clarity of different phenomena of violence under the heading of the “spiritualization of the concept of violence”. In this ruling, the Federal Court of Justice classified the symbolic blocking of a tram in protest against planned fare increases as a violent act in the sense of coercion under §240 StGB, arguing that the defendants “initiated a psychologically determined process with minimal physical force” (BGHSt, 23, 54). The Federal Court of Justice thus raised psychological coercion to the same level as the previously common interpretation of physical coercion under the coercion paragraph, defined as “setting in motion physical, external force against persons” (RGSt 45, 153/157, 156). At the same time, the Federal Court of Justice upheld the then interpretation of §240 StGB, which meanwhile had become highly questionable due to the expansion of the concept of violence and affirmed that “the use of violence is practically indicative of the reprehensibility of coercion” (BGHSt, 23, 46/60, 55). This shifted any consideration of long-term goals and protest purposes from the reprehensibility assessment to the sentencing.

In addition to the obvious problem of differentiation, such a vague concept of violence is highly problematic with regard to protests in general and strikes and acts of civil disobedience in particular. Ultimately, it undermines the conditions for the possibility of nonviolent protest as a whole. It could be used to label any assembly, no matter how small the disturbance, as violent. This could even lead to the government pre-emptively denying unwelcome forms of protest the scope of protection addressed in Art. 8 Abs. 1 of

the Basic Law, which allows everyone to assemble peacefully and unarmed without prior registration or permission. However, case law has not remained static since then. In 1995, the Federal Constitutional Court attempted to limit the concept of violence again and pointed out that “cases are certainly conceivable in which sitting on the street does not have to be considered as violence within the meaning of §240 StGB” (BVerfGE, 92, 1/25, 7).

The Federal Court of Justice, however, did not leave it at that. It accepted the Federal Constitutional Court's now narrower concept of violence and conceded that, for blocked motorists in the front row of a blockade, there was no violence within the meaning of §240 StGB, as the human barrier represented only a psychological, not a physical obstacle. For all following vehicles, however, the barrier was of a physical nature, as the surrounding vehicles constituted an insurmountable obstacle that was accepted as such by the blockaders, thus physically – and not merely psychologically – hindering the drivers from proceeding (BGHSt, 41, 182/187). This so-called “second-row jurisprudence” corresponds to current legal practice. Thus, the problem of legally assessing road blockades as acts of violence persists.

Furthermore, the Federal Constitutional Court pointed out that the constitutional term “non-peaceful” must not be equated with the broad concept of violence applied in criminal law (BVerfGE, 73, 206/261, 248). Therefore, the legal assessment of a road blockade as “violence” does not allow the conclusion that it should also be declared “non-peaceful” and thus excluded from the scope of protection of Art. 8 Abs. 1 GG. Additionally, the Federal Constitutional Court made it clear that the affirmation of violence under §240 Abs. 1 StGB is not sufficient to indicate reprehensibility in accordance with §240 Abs. 2 StGB (BVerfGE, 73, 206/261, 247).

Despite these efforts by the Federal Constitutional Court, fundamental problems that can be observed in the current case law on road blockades – as mentioned above – persist. Passive resistance is regarded as violence, and the undeniable threat of climate change, along with the scientifically confirmed fact of insufficient climate policy are regularly dismissed in court as irrelevant to the assessment of the reprehensibility of a blockade.

The decision regarding the reprehensibility of a blockade under §240 Abs. 2 StGB is made by balancing the means of impairment (immediate goal)

against the purpose of communication (intermediate goal). According to the Federal Constitutional Court, the collision of the right to assemble with the legal interests of affected drivers requires a balancing based on criteria such as the intensity and duration of the impairment of third parties or the factual relevance of the action to the object of the protest (BVerfGE, 104, 92/126, 112).

Even in cases of brief traffic disruptions, which are by no means unusual in large cities, courts regularly affirm the reprehensibility of the action and even negate the factual connection between road blockades and the demand for adequate climate protection policies. The prejudicial classification of road blockades as violence, along with the lack of a detailed and appropriate balancing of individual legal interests in the assessment of reprehensibility under §240 Abs. 2 StGB, prevents a nuanced examination appropriate to the issue.

In light of a scientifically confirmed, rapidly closing window of opportunity for effective climate protection and the blatant failure of the federal government to meet its own emission reduction targets, such a broadly undifferentiated and indifferent legal practice with regard to the protest goals is simply not appropriate. Conversely, of course, this does not mean a *carte blanche* for committing criminal offences, which can also occur in individual cases during road blockades. Rather, it is a reminder that courts should not base the reprehensibility of a blockade solely on a certain number of affected drivers but should instead consider additional information such as the reasons for travel, the possibility of using public transportation on these routes, or whether the blockade actions were announced in the city area, as a few judges already do (Amtsgericht München, 2023).

Furthermore, a legal practice that categorically interprets road blockades as coercion through violence and conveys to the (media) public that the actions of the *Last Generation* cannot be considered civil disobedience, which is limited to nonviolent means, is problematic. The clear distinction that civil disobedience makes from anarchic combat actions is evident in the case of road blockades, which must only be understood as symbolic protests.

Nevertheless, the criticism of the broad “spiritualized” concept of violence and the current legal practice, as well as the arguments regarding the legitimacy of civil disobedience, should not be used to entirely declare such forms of protest as unproblematic. The actions

of the *Last Generation* deliberately override certain legal norms, thereby stepping outside the bounds of legality. And even if, according to the principles of civil disobedience, the disregard of specific legal norms represents a symbolic act to denounce glaring injustices, police action and judicial measures against any unlawful behaviour are required by the logic of the rule of law. Nonetheless, in our view, differentiated liberal-democratic societies should address civil disobedience differently from the way they address criminal offences for personal gain.

But how can the escalating dynamics of reactions from the police, the judiciary, and the government against climate activists of the *Last Generation* be explained? Deliberate pain grips, raids, preventive detention lasting several weeks, or long prison sentences against activists, whose offences, even if convicted, fall merely within the realm of minor crimes, are highly disproportionate (Die Tageszeitung, 19.09.2023).

Walter Benjamin's essay “Toward the Critique of Violence” provides a starting point for analysing this phenomenon. He observes that every legal regime “violently” establishes a normative framework through its initial act of law-making, from which it derives and maintains its own legitimacy by distinguishing itself from what lies outside the law. In the act of preserving the law, it perpetuates the violence of its inception incessantly, as it can only constitute itself in constant opposition to the extra-legal. Benjamin concludes from this that

law's interest in monopolising violence vis-à-vis the individual is explained by the intention not of preserving legal ends, but rather of preserving law itself. [This is the possibility] that violence, when it does not lie in the hands of law, poses a danger to law, not by virtue of the ends that it may pursue but by virtue of its mere existence outside of law. (Benjamin, 1921/2021, p. 42)

Due to their extra-legal form, a rigid legal regime must – despite shared purposes – declare acts of civil disobedience to be violent threats, even if they employ entirely nonviolent means. Benjamin's text was written between two world wars, in a young democracy undermined from the start, before the declaration of human rights and the establishment of well-differentiated institutions. It can therefore rightly be criticised that an analysis of current legal practice is made here from a historically conditioned perspective. However, Benjamin's text describes

fundamental dynamics in an accurate way and can thus serve as a starting point for a more detailed critique.

The German philosopher Christoph Menke, a prominent representative of the 'third generation' of the Frankfurt School, undertakes such a critique. In his reception of modern civil rights, he takes up Benjamin's fundamental analysis and develops it further. Modern law, operating in a mode of self-reflection, limits its own violence by "legalising" the "non-legal (or natural)"³ (Menke, 2018, p. 405). Consequently, it is ultimately condemned to focus on securing the private sphere against the violence of arbitrariness or participation. Menke (2018) identifies the legislative empowerment of "private claims assumed as given" (p. 405) – the positive legal codification of pre-legal and thus natural relations – as the "unjust" or – in Benjamin's terms – "violent" initial power setting of civil law. Hence, it pays the price of being unable to distinguish between the violence of violation and the violence of change. Menke concludes:

Therefore – because it excludes the change of what it legalises – the legal securing of the private is indistinguishable from the preservation of the existing order. This reveals the civil core program of security as the quintessential anti-political program. The legal securing of the private removes it from the possibility of change. (p. 406)

This is the disempowerment of politics, as it legalises the natural through the declaration of civil rights and, by the indefinite legal securing, withdraws its own political permeation. Menke's formal analysis of civil rights ultimately leads to an elusive concept of counter-rights, a topic not of interest here. In contrast, Étienne Balibar and Jacques Rancière, with their interpretation of human rights, offer a way to diverge from Menke's path. They see in the declaration of human rights the creation of a "new kind of legal order: an order in which 'insurrection' against the order is inscribed in the form of a (human) right" (Menke, 2018, p. 392).

Nonetheless, Menke's and Benjamin's analyses are helpful in understanding the vehemence with which large parts of our society resist the necessity of change and indiscriminately categorise its demand as violence. However, it is precisely this need for change that has long been dictated to us by the physical

³All Menke quotes translated by Kosak/Paganini/Schäfer.

reality of the climate crisis and is persistently and unignorably demanded by disruptive activists in the face of a perpetually denying collective. Acts of civil disobedience symbolically oppose individual actions that, while legally permitted, are collectively unacceptable due to their devastating impact. These acts express a radical demand for the repoliticization of the legalised natural, decisively challenging the form of subjective rights that justify egoism.

Even without fully adhering to Menke's strong position, his analysis is extremely accurate in demonstrating why societies are so strongly opposed to change, no matter how necessary, and why those who demand these changes loudly must overcome high systemic barriers, incurring accusations of violence even when using exclusively peaceful means. This makes it all the more essential to ask what role civil disobedience plays in a differentiated democratic society and how such a society should respond to it. Acts of civil disobedience challenge the rule of law by leaving the framework of legality. There is no right to civil disobedience in the German constitution. It is decidedly different from the right to resistance as outlined in Art. 20 Abs. 4 GG, and thus cannot generally derive its legitimacy directly from the constitution.

The extra-legal nature of civil disobedience becomes evident already in its very definition. Attempts to legalise civil disobedience would undermine its moral appeal, which lies in the willingness to face (significant) legal consequences for one's protest, and would become entangled in legal-theoretical contradictions. A legal system that in cases of serious injustice allows morally justified protests in the form of law-breaking would admit its own failure in ensuring democratic and institutional avenues for revision, ultimately putting its own binding character of order at risk.

Despite its undoubtedly extra-legal character, however, civil disobedience has by no means renounced the law. It cannot claim exemption from the law by referring to its morally justified motivation but sees itself – in a paradoxical way – as ultimately bound to and integrated into it in a mature political society. Habermas captures this intermediary character by stating that civil disobedience consists of "acts that are illegal in form, although they are carried out with reference to the commonly recognized legitimising foundations of our democratic constitutional order"

(Habermas, 1985, p. 82). This reference to the commonly recognized legitimising foundations is central and should be emphasised one more time to highlight that civil disobedience is committed to universal human rights and democratic principles, rather than deriving from whatever individual moral beliefs.

The development of universal constitutional principles or fundamental rights reveals a discontinuous process marked by setbacks, often requiring significant struggle against resistance. Today, these principles are considered self-evident, yet this learning process is far from being complete. A mature political and societal culture should remain aware of this fact and take critically progressive voices seriously rather than indiscriminately discredit them. Obviously, hereby the media and in particular the way in which protest movements are represented in the media play a crucial role. This raises the question of whether German journalists are fulfilling their task of providing nuanced and balanced reporting, thereby enabling readers to form well-informed opinions and subsequently exercise their democratic rights appropriately. But the question could also be posed from a different perspective: After arguing that the current judicial approach to climate activists' protests shows little understanding of the nature of civil disobedience, we will therefore examine whether the current media representation in Germany does so or assists the public in developing it. To do this, we will first examine the current media coverage in Germany and then relate these findings to the ongoing debates and insights in media impact research.

4. The Last Generation in the Spotlight of the Media

In media effects research, media scholars have made various suggestions to systematise how political protest is or can be depicted in the media. Based on empirical studies, for example, Dieter Rucht distinguishes between the extremes of ignoring activists and proactively engaging with them and outlines several possibilities in between of positive or negative, appreciative or downplaying references (Rucht, 2004, p. 29). Media scholar Sarah Ertl provides an even more detailed analysis and, in her doctoral dissertation, develops a comprehensive classification of media coverage of protests, which will serve as the starting point for analysing the media coverage of two specific protests by the *Last Generation* in Germany.

Most protests are not considered (politically) relevant by journalists and therefore do not make it into the

news (Smith et al., 2001, p. 1419). On this basis, Ertl (2014, p. 177) identifies ignorance as the first form of protest coverage. Protests that are ignored by the media have no impact on the political deliberation process because they do not affect the target groups that are crucial for the success of the protest, namely like-minded individuals who express solidarity, the disseminating media, the public at which the protests are directed, and policymakers. According to Ertl, the lack of impact does not result from the fact that the target groups would not be aware of the protests if the media did not cover them. The crucial point is that the coverage by the traditional mass media makes protests relevant and thus puts pressure on politicians and the public to respond. The political scientist Joachim Raschke (1985) takes an even more pointed position by asserting: "A movement that does not make it to the media is non-existent". (p. 343) Interestingly, there is no direct correlation between the size of a movement and the likelihood of being ignored. Even minor groups can generate media attention by invoking a David vs. Goliath effect (Rucht, 2004, p. 36), as the reason why something is reported on probably has less to do with the specific nature of the protest than with the dynamics of mass media as such, which strive to appear interesting, innovative, fast, and – to some extent – fair and balanced (Tuchman, 1972).

However, media coverage does not seem to be a sufficient criterion for protests to enter the political discourse. The Iraq War protests of 2003 and the Occupy Wall Street protests of 2007 are examples of large protest movements that received a lot of media attention but had little political impact (Tharoor, 2013). Research suggests that when journalists see protest movements as dangerous to the status quo, extreme or radical, coverage tends to be negative or marginalising. This seems to be particularly the case with anti-war protests, which are often seen as anti-establishment, radical in their aims and extreme in their tactics (Boyle et al., 2004, pp. 43–60). Based on these findings, Ertl (2014, pp. 179–182) introduces a second form of protest media coverage, which is the so-called "paradigm shift of protest", that is attempts to distract from the declared focus of protest movements by imposing different framings on them from the outside. In this respect, she distinguishes two subcategories. The first is marginalisation and discreditation. In these cases, protests are characterised as "(1) being ineffective, (2) unpatriotic, or (3) bothersome" (Di Cicco, 2010, as cited in Ertl, 2014, p. 180) and their (alleged) negative

influence on everyday life is emphasised. The second way of how the media can change the paradigm of protests is negative “spectacularization”. In these cases, the contents, demands, and reasons for protest are neglected, while tactics, spectacle, and dramatic actions are emphasised. This poses a dilemma for protest movements: while more extreme protest actions mean that the protest will be less ignored, they also lead to media coverage focusing on the spectacle rather than the content, with coverage tending to be more negative. While Ertl's descriptions appear as broadly accurate, the term “protest paradigm” seems misleading, which is why we – following Kahneman (2011, pp. 363–376) – refer to this category as “negative framing”.

The third form of media coverage is recuperation (Ertl, 2014, pp. 182–183), which denotes the adoption of radical, alternative ideas by the mainstream in such a way that they are integrated into the normal course of events. Business and politics adopt the vocabulary and symbols of the protest movement, making them mass-friendly and compatible with profit-making, thereby downplaying, reinterpreting and neutralising them. In this case, the mass media disseminate the mainstream remnants of the original ideas. As an example, Ertl cites the reduction of punk, hippie, and Marxist culture to commodifiable products such as music and clothing styles. However, Ertl's understanding of appropriation as a form of media coverage is not entirely clear. It seems doubtful whether appropriation is really a form of media coverage of protest. As Ertl herself suggests, the appropriation of ideas is more of a cultural development, with the media taking on this altered meaning. Therefore, it seems more accurate to say that the media may uncritically reflect appropriation in their coverage of protest movements.

Furthermore, Ertl (2014, pp. 183–185) identifies differentiated reporting as a fourth way in which the media can deal with protests. Differentiated reporting differs from neutral reporting, which can never be achieved due to framing, prioritisation, limited time and space, the complexity of motives, and frame of analysis. The characteristics of a differentiated form of reporting would then include the following options: 1) all those affected by the conflict are presented; 2) the protest collective is described as an acting, non-institutionalized agent; 3) activists and their positions are presented in their own words. The motives of the protest collective are considered on the basis of their own formulations and representations; 4) the demands and goals of the protest collective are presented, as far as possible, without judgement; and 5) the arguments

of the protest collective are critically discussed in relation to other arguments. Ertl suggests that a report is differentiated if at least four of these conditions are met.

But there are also cases where journalists go beyond a factually detached representation. A study of the Indignados protests in Greece (Veneti et al., 2011), for example, reports that the media took “a rather supportive stance towards the indignados”, i.e. “the protests [were] characterised as legal“ or activists were described as “independent, non-partisan, kind-hearted“ (p. 8). Similarly, an analysis of media coverage in Germany and Austria of the *Water is a Human Right* campaign shows a prevalence of quotes from politicians and other voices in support of the protest (Ertl, 2014, pp. 168–170). On this basis, Ertl identifies affirmative response as the fifth form of protest coverage, which she characterises according to three criteria: 1) The content of the protest is strongly emphasised in order to attract public attention. The content may also be presented in a spectacular way to raise concern, mobilise for the protest, and increase support. 2) The activists may be heroised, the actions may be presented as an inevitable, necessary resistance to injustice, oppressive regimes or the demands may be described as a fight for the good or the right. 3) The affirmative stance may be based on ideological thinking, elite consensus or other interests of the medium. Looking at these criteria, we can say that in the case of affirmative reporting, the media adopt the activists' position or narrative, be this out of conviction or for instrumental reasons.

In the following, we use this theoretical framework to classify the media coverage of specific *Last Generation* protests such as the first wave of widespread street blockades in Berlin and the protest at the “Basic Law 49” monument, which the activists had doused with oil-like paint to symbolize the government's breaking of the constitution. We consider these two protests among many others of the *Last Generation* for several reasons. First, they have been widely discussed in the media, and second, they are representative of the group's ambitions. The protest at the Constitution Monument is an example of the type of protest that utilises the symbolic content of monuments, artefacts, or places. The first wave of protests in Berlin on the contrary exemplifies the kind of protest that seeks to disrupt the daily routines the activists have identified as important drivers of climate change.

In terms of media coverage, we look at the response of the German mass media. The total number of print

media reports is taken from the *Last Generation* website⁴, which lists all reports about the group in the print media on a daily basis. From this list, we select the relevant articles from German print media that refer to the specific protest action within a week of the day of the protest. The time frame of one week seems appropriate because it covers early articles, which may be emotionally charged, as well as later articles, which may be more nuanced. The analysis also shows that after five days from the start of the protest action, media coverage drops significantly, so

that the one-week period should include most of the coverage. The analysis, though exemplary, draws on a substantial collection of articles, and therefore should give a representative impression of media coverage surrounding these protest events. This study is intended to serve as a foundation for further research into how the media portrays the *Last Generation* movement. Future studies could also include comparisons with media coverage of similar protest movements to identify broader trends and differences.

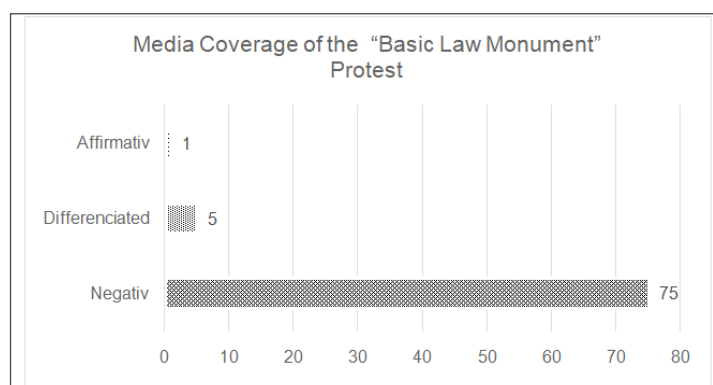


Figure 1. Media Coverage "Basic Law Monument" Protest in total numbers

All in all, we consider a total of 81 reports in the German print media within one week (4th March to 10th March 2023) about the protest at the "Basic Law 49" monument.⁵ 75 of these reports (93 percent) are classified as negative framing according to the criteria discussed above. Five of the reports (6 percent) can be classified as differentiated reporting. One report (1 percent) meets the criteria for affirmative response.⁶ It is characteristic of the reports labelled as negative framing that they use the German expression „beschmieren“ (smear) to describe the protest action, which has a negative connotation, referring to vandalism and disrespect. In contrast, there are more neutral expressions such as „begießen“ (douse) or „schütten“ (pour), which could have been used. It must therefore be assumed that the negative expression „beschmieren“ was deliberately chosen in these reports in order to discredit the protest action by associating it from the outset with something sleazy, with sabotage, demolition, and destruction.

A second characteristic of the reports classified as negative is that they quote the protest group's statement together with statements by the police which refer to prosecution, and negative statements by politicians, who interpret the protest as an affront to the constitution. While not a misrepresentation of events

or statements, this selection and order of statements leaves a negative impression to the detriment of the protest group. The one-sidedness of the selection in these cases becomes even clearer when compared to the cases of differentiated reports, where negative statements by politicians are contrasted with positive statements by other officials, presenting a more nuanced picture of the protest action and its reception. Characteristic of the one article in the *Tagesspiegel* labelled as affirmative is that the author, in addition to providing a historically informed classification of the protest action, also adopts the position of the protest group by expressing at least some support for the form of protest and the overall aim of the protest collective.

Next, regarding the first wave of widespread street blockades in Berlin, we consider a total of 275 reports in the German print media within one week (19th April to 25th April 2023). 168 of these reports (61 percent) are to be classified as negative framing, 101 of the reports (37 percent) as differentiated reporting. 6 reports (2 percent) meet the criteria for affirmative response. As in the case of the negative coverage of the 'Basic Law 49' monument protest, there are derogatory comments by politicians on the protests that are quoted favourably by the media. A second somewhat similar characteristic is that some

⁴ <https://letztegeneration.org/presse/berichterstattung-1/>

⁵ The evaluation takes into account all articles available in the online archives of the respective media at the time of the analysis.

⁶ Ignorance as a category is not relevant in this case. Also, there are no reports that fulfil the criteria for appropriation.

of the negative reports cite comments by social media users that mock the activists, thereby marginalising the protest and the protest collective. An example of this tendency is the following passage from the *Frankfurter Allgemeine Zeitung*: “At half past seven, someone mocked on Twitter that the young people from the *Last Generation* apparently were lazybones; asking whether they might not slowly start with the

loudly announced blockades.”⁷ A third characteristic of several of the negative reports is that they focus on the protest’s negative consequences on everyday life, such as traffic jams and blockades of emergency vehicles, or on negative consequences for democracy in general, without taking into account evidence to the contrary.

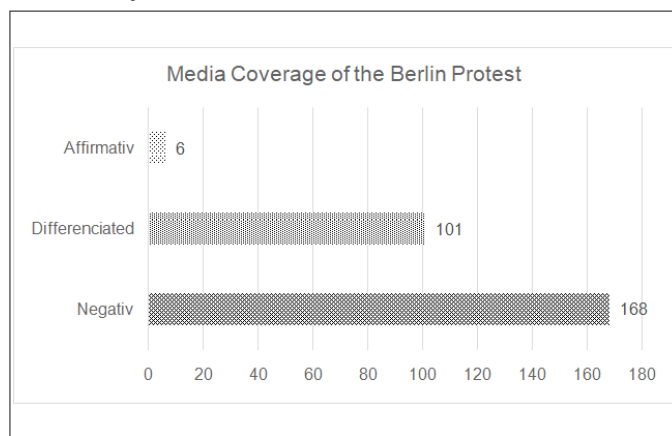


Figure 2. Media Coverage of Berlin Protest in total numbers

Nonetheless, in contrast to the protest action discussed above, the percentage of differentiated or affirmative reports is moderately higher in this case. Common features of the differentiated reports are that they aim for a neutral portrayal of the protest actions (“Initially, around 30 activists had walked slowly along Bismarckstraße as part of a protest march, thus bringing traffic to a standstill.”⁸), that they discuss the motives and intentions of the protest collective (“Civil disobedience is meant to draw attention to an issue. And indeed, a lot of attention has been generated.”⁹), and that they quote statements expressing solidarity with the protest collective (“It is about the preservation of creation, which is why we made the church available, as this is also our concern.”¹⁰) or defending the protest against defamatory comments. A characteristic feature of the reports classified as affirmative is that they side with arguments against the criminalisation of the protest collective or condemn violence perpetrated against activists by pedestrians or the police.

Based on these findings, we will ultimately attempt to answer the question of whether the media representation of the *Last Generation* protests in

Germany is appropriate. Since the question of what constitutes appropriate reporting cannot be easily answered, we will limit ourselves to some specific, but essential aspects related to media effects. This means we are not asking whether people engaged in political protest fundamentally have the right to have their concerns presented in a balanced manner. Instead, we will discuss the implications of a certain type of reporting for democracy: Does the way these protests are currently covered contribute to reducing the emotional intensity of the discourse and facilitating a respectful discussion process? Does the kind of media representation we currently experience in Germany help citizens to better fulfil their democratic duty of forming an informed opinion?

Although there is extensive research in media effects studies, there are few studies that specifically address the impact of the representation of protest movements. In the following, we will therefore attempt to apply the fundamental theses of media effects research and the specific findings from studies on the representation of violence, crime, and suicide to our particular context. First, it is worth noting that

⁷Translated by Kosak/Paganini/Schäfer. In the original German wording, it states: „Um halb acht hatte einer bei Twitter gespottet, dass die jungen Menschen von der ‚Letzten Generation‘ anscheinend rechte Schlafmützen seien; und ob sie jetzt vielleicht langsam mal anfangen könnten mit den lauthals angekündigten Blockaden“ (Seidl, 19.04.2023).

⁸Translated by Kosak/Paganini/Schäfer. In German, it states: „Dort waren zunächst rund 30 Aktivisten im Rahmen eines Protestmarsches langsam die Bismarckstraße entlangelaufen und hatten so den Verkehr lahmgelegt“ (Zobel, 20.04.2023).

⁹Translated by Kosak/Paganini/Schäfer. In German, it states: „Ziviler Ungehorsam soll Aufmerksamkeit auf ein Thema lenken. Und es ist viel Aufmerksamkeit erregt worden“ (Tagesschau, 19.04.2023).

¹⁰Translated by Kosak/Paganini/Schäfer. In German, it states: „Es geht um die Bewahrung der Schöpfung, deswegen haben wir die Kirche zur Verfügung gestellt, weil das auch unser Anliegen ist“ (Loevenich, 19.04.2023).

the effects of media reporting cannot be conceived as a simple monocausal stimulus-response model (Neuberger & Kapern, 2013, p. 76) and that effects are never general but always context-dependent (Robertz & Kahr, 2016, p. 20). The main reason for this is that recipients play an active role; they select which content they consume, usually choosing what reinforces their views to avoid cognitive dissonance, and satisfy their needs. Subsequently, they process media messages individually according to their prior knowledge and attitudes and may also react with rejection (reactance), i.e., they can immunise themselves against the message.

Nevertheless, the media serve as an important intermediary between the world and the individual. They not only have an informational function but also play a crucial role in articulation, known as agenda-setting (Neuberger & Kapern, 2013, p. 77). This means they influence the discussion by commenting on, evaluating, highlighting, or neglecting certain topics (Geise, 2017, p. 24). Thus, the first conclusion is that even predominantly negative reporting, as observed in our examination of the *Last Generation* protests, has the positive aspect of ensuring that the climate crisis is perceived as an important issue. This positive effect is amplified by the fact that knowledge typically leads to activation. In other words, people who become aware of the climate crisis through protest reporting are subsequently more likely to consume media content or pay closer attention to information related to this topic, which they might have otherwise ignored or shown less interest in, such as e-mobility for instance (Steinigeweg, 2023, p. 219).

The negative tenor, from this perspective, does not yet pose a problem here. However, it becomes problematic as it triggers the so-called spiral of silence, described by Elisabeth Noelle-Neumann. This phenomenon occurs when people who realise they are in the minority refrain from expressing their opinions out of fear of isolation and devaluation, and instead remain silent (Neuberger & Kapern, 2013, p. 78). Applied to the current situation in Germany, this would mean that the consistently defamatory remarks about the activists lead recipients who actually find the protest important and beneficial refrain from voicing their opinions. As the metaphor of the spiral suggests, this is a self-reinforcing process: since mass media and interpersonal communication influence each other (Geise, 2017, p. 28), the increasingly subdued voices in favour of the *Last Generation* lead to even more negative media coverage. This dynamic is further

intensified by the excessive hate speech directed at various climate justice groups on social media, an aspect that will not be discussed in detail here due to the deliberate focus on professional journalism.

Another issue arises from the manner in which journalists express themselves. Empirical evidence demonstrates that the use of judgmental and figurative language (such as “climate gluers,” “smear an artwork,” “climate RAF,” etc.), whether consciously or unconsciously employed, contributes to the emotionalisation and polarisation of the debate (Bosco, 2016, p. 130). Here, it is not so much the terminology of a specific medium that causes the effect, but rather the overall tenor (Robertz & Kahr, 2016, p. 21), which in this particular case shows exactly such problematic language. This emotionalisation is dangerous not only because it increases the propensity for violence against activists, a point we will discuss below, but also because it hinders a rational engagement with the issues of civil disobedience and the climate crisis and exacerbates societal conflicts instead of contributing to a more objective discussion. Furthermore, the literature describes the effect that stigmatised groups tend to isolate themselves and radicalise (Robertz & Kahr, 2016, p. 196).

In addition to these effects on society as a whole, specific impacts on certain individuals or groups are to be expected. Thus, the predominantly negative and defamatory reporting on the *Last Generation* leads to a secondary victimisation of its members, who regularly become victims of violence during their protests on the streets. When journalists fail to engage respectfully with activists on a personal level or disregard their privacy in their reporting, the pillory effect is further intensified. In either case, victims of secondary victimisation feel powerless and misunderstood, since the impression is created that they have significantly contributed to being insulted, beaten, kicked, or choked by drivers through their own behaviour or inadequacies (Kunczik, 2016, p. 155). Depending on the intensity of media consumption, this effect can even lead to retraumatisation, with corresponding psychological and psychosomatic consequences for the activists.

The second group directly impacted by media reporting consists of drivers and bystanders, for whom a contagion effect is to be expected. This does not mean that peaceful individuals will become violent offenders solely due to the character of media representation. However, certain types of reporting can influence individuals who already struggle

with impulse control or have violent tendencies, potentially leading them to commit acts of violence against activists in the specific situation (Robertz & Kahr, 2016, p. 20). The contagion effect involves not only the *modus operandi* – seeing a violent driver and subsequently committing similar acts of violence – but also the adoption of motives. At this juncture, derogatory remarks from politicians or other public figures have particularly devastating effects (Robertz & Kahr, 2016, p. 196). Most people tend to adopt the norms of relevant figures, close associates, and especially authorities (Steinigeweg, 2016, p. 224). For instance, when CSU politicians Alexander Dobrindt and Mario Czaja are quoted referring to activists as “climate RAF” and “extremists”¹¹, they verbally condemn and dehumanise them, which can lead violence-prone drivers to feel justified in using violence.

This imitation effect – whether of motives (in the case of politicians) or of specific actions (in the case of aggressive drivers) – underlies not only negative, but also neutral and even positive reporting. It occurs whenever derogatory comments from authorities are quoted or when incidents of street violence are depicted insensitively. In particular, showing aggression, such as the angry remarks of bystanders and drivers, promotes identification with violent behaviour (Robertz & Kahr, 2016, p. 52), as does reporting on concrete actions of aggression (Ruddigkeit, 2016, p. 148). Both of these elements are prevalent in the majority of reports about the street protests during the Berlin period. What could counteract the contagion effect, but is virtually absent in German reporting, would be the showcasing of positive solutions, such as the reporting on drivers who have managed their (understandable) anger constructively by talking to the activists, etc. (Robertz & Kahr, 2016, p. 200).

Finally, several empirical studies demonstrate the impact of media reporting on legal proceedings, showing that not only lay judges but also professional judges and prosecutors are influenced by the media, particularly in terms of verdict formulation and sentencing (Kepplinger & Zerback, 2012, p. 153). Judges and prosecutors, being both objects – inasmuch as they are reported on – and subjects of the proceedings, experience reciprocal processes of anticipated and actual evaluation through the media (Kepplinger & Zerback, 2012, p. 156). Due to their involvement, judges who are to pass judgement on the activists of the *Last Generation* follow media

¹¹<https://www.tagesschau.de/inland/innenpolitik/letzte-generation-protest-berlin-101.html>

coverage more attentively than other individuals and are therefore exposed to higher “doses” of media influence. As they perceive strong effects on themselves from this exposure to the specific media contents, they attribute particularly significant effects to the respective reports on others (Kepplinger & Zerback, 2012, pp. 157–158). This leads them to behave in accordance with the perceived expectations of the public, described by Noelle-Neumann’s spiral of silence. Consequently, when they perceive a negative stance in the media, they are less likely to engage with the defense’s arguments but tend to issue harsher judgements. This, in a sense, brings us back to the considerations of the philosophy of law discussed at the beginning of this paper.

5. Closing Remarks

From the fundamental principles of a liberal democracy arises the duty to handle forms of legitimate civil disobedience with nuance. The democratic constitutional state is characterised by the fact that it is not entirely encompassed by its legal order. Nor can it ultimately demand absolute, but only qualified obedience. This reflects the risk a liberal, secularised state must take and accept as its own condition of existence, yet without being able to guarantee this very condition, as this would otherwise negate it.

Such appropriate reflective capacity, however, is currently not evident in Germany. The prevalent “law-is-law” mentality that can be widely observed in the media, in politics, and in the judiciary, along with calls for harsher penalties, deserves at least reflection. This dynamic indeed reveals a regression into authoritarian legalism, ultimately undermining the very conditions for a liberal society. State attempts at intimidation such as house searches and the excessive use of multi-week preventive detention are illiberal, authoritarian, and inappropriate for a mature democracy. With this clearly politically motivated line of action, the state governed by the rule of law does not protect its liberal character in a sovereign way but undermines its very foundation, aligning with a questionable historically oblivious tradition of rigid adherence to apparent certainties, as noted by Habermas.

Parallel to this dynamics, media coverage can be observed that, for reasons not explored here, reacts with misunderstanding, helplessness, and resentment to the specific protests of the *Last Generation* and their concept of civil disobedience. While the

media attention itself at least keeps climate change in the public consciousness, the predominantly negative reporting in the media will produce mainly problematic effects. A solution might only emerge if the public debate shifted from discussing the activists' responsibility to finally addressing the responsibility of the constitutional state and its media apparatus.

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