**Title**: Rethinking Climate Democracy through Climate Disobedience

**Abstract**: Political scientists have evaluated the relationship between democracy and climate change by asking whether democratic states are capable of responding to climate change. In doing so, they have neglected the question of how democratic citizens often understand themselves as leading the response to climate change. This article clarifies this disciplinary state of affairs by suggesting that existing studies focus primarily on constituted power when posing the question of democracy and climate change. Turning to theories of constituent power, it then reads the emerging practice of climate disobedience – the use of civil disobedience as a means to respond to climate change – as one illustrative way that democratic citizens see themselves as responding to climate change. Finally, it responds to critics who suggest that climate disobedience is inherently anti-democratic, and concludes that political scientists ought to devote more attention to constituent power in general and climate disobedience specifically if we wish to understand the relationship between democracy and climate change.

Rethinking Climate Democracy through Climate Disobedience

INTRODUCTION

In recent years scholars have interrogated the relationship between democracy and climate change, asking whether or not democracy can adequately respond to the problem of climate change. At the same time, political activists in the United States and elsewhere have increasingly turned to the practice of climate disobedience. Such activists engage in acts of civil disobedience for a host of interrelated reasons: in order to pressure governments and other powerful institutions; in order to educate juries who oversee their trials; in order to stop specific fossil fuel related development projects; etc. In doing so, they intentionally and nonviolently break the law by, e.g., disrupting auctions of federal land leases, blocking oil trains, manually shutting down pipelines, and so on. By proceeding to agitate in the courtroom and in the court of public opinion, and by channeling interest and attention that their cases generate into the creation of new climate-focused associations, such activists have sought to enact what they see as the last best chance for democratic citizens to build the kind of power needed to nudge institutions, practices, and ideas devised in the fossil fuel era to change course.

At the same time, scholars of democracy and climate change have paid relatively little attention to the practice of climate disobedience. Instead, they have attempted, in various ways, to answer a question that is increasingly on the minds of theorists and citizens alike and is nicely captured by the title of Daniel J. Fiorino’s book, *Can Democracy Handle Climate Change?* As I demonstrate below, however, answers to that question remain limited insofar as they tend to focus primarily on what democratic theorists call “constituted” power rather than “constituent” power (Wenman 2013). In short, constituted power refers to those forms of power that are already institutionalized, whereas constituent power refers to the originary and ongoing potential power of ordinary people to found, re-found, shape, dismantle, and build the political, including new forms of constituted power. By thinking with climate disobedients, we can understand more clearly the ways in which the literature has a one-sided focus on constituted power, even as we can begin to understand the role constituent power might play in climate change politics.

As such this article suggests that scholars who are interested in a thorough understanding of the relationship between democracy and climate change ought to turn their attention to the practice of climate disobedience, and argues that practitioners of climate disobedience offer a unique answer to the question of how democracy can respond to climate change. An examination of climate disobedience, and specifically those who participate in climate disobedience with the intent to rely on and organize around the use of the necessity defense, I will argue, can expand our understanding of the relationship between democracy and climate change. Such practices imply that we ought to move beyond thinking about constituted power alone. In turn, they suggest we ought to turn our attention toward constituent power. My approach here will be to theorize climate democracy from the perspective of climate disobedients who break the law and seek the necessity defense as a way of building constituent power. As such I will turn to the cases of Tim DeChristopher and Ken Ward, two especially prominent and influential climate disobedients, and to the actions and statements they made before, during and after their acts of civil disobedience. Doing so will elucidate how climate disobedients more generally understand themselves as “democratic agents of justice” (Dryzek 2015) who practice climate disobedience in order to build constituent democratic power.

The argument unfolds as follows. First, I discuss constituted power, and demonstrate the ways in which scholars who address the relationship between democracy and climate change have focused primarily if often implicitly on constituted power. Second, I describe the practice of climate disobedience, and draw attention to the ways that climate disobedients and their allies aim to build constituent power by bringing about what Lida Maxwell calls “public trials” (2015), trials which concern the broader public more generally. Third, I address a counterargument which holds that at least some forms of climate disobedience are anti- or at least non-democratic, thereby shoring up and adding specificity to my own argument that climate disobedients ought to be understood as democratic agents who seek to address climate change through constituent rather than constituted power.

CONSTITUTED DEMOCRATIC POWER AND CLIMATE CHANGE

As noted above, constituted power refers to already-shaped and institutionalized forms of power. When political scientists and theorists have investigated the relationship between democracy and climate change, we have overwhelmingly if often implicitly limited our analyses to constituted forms of democratic power.

Per Mark Wenman, constituted power can be understood as the juridico-political institutions that govern a polity: constituted power “resides in an independent judiciary whose function is to prevent any excessive exercise of power by upholding and amending the constitution and guaranteeing the negative freedom of citizens understood as a sphere of individual private right” (Wenman 2013, p. 78). To Wenman, constituted power refers to the presence of an independent judiciary which underwrites and perpetuates a more or less Madisonian republic, or what we would now call a modern liberal democracy (Dahl 1956, 4-33). Martin Loughlin summarizes constituted power more simply, dating it further back to the thinking of Thomas Hobbes and later the Abbé Seyes, writing that government itself, “holding an authority delegated by the people … is a form of constituted power” (Loughlin 2004, 61). Or, as he puts it elsewhere, constituted power “is situated within the established framework of constitutional authority, falls within the sphere of juristic competence,” and “is contained within a hierarchy of norms” (Laughlin 2003, p. 99). In short, constituted power is power as it already exists in a polity’s contemporary institutions and norms. Analyses can be said to focus primarily on constituted power to the extent that they focus primarily on already-existing governmental structures rather than peoples’ popular visions of what government and society might be, do, or become, and on constitutional order over collective agency.

Previously, political scientists have asked important questions about the relationship between democracy and climate change. Yet they have overwhelmingly conceptualized democracy in one of two ways, each of which is essentially concerned with constituted power: 1) as a particular form of the modern nation-state; or 2) as one of several ideal-types, or “models.”

The democratic state approach focuses largely on the question of whether democratic states are capable of responding to climate change (Fiorino 2018; Hanusch 2018) or, on the other hand, whether democracy is less effective than more authoritarian forms of government at addressing environmental concerns more generally (Ophuls 1977; Friedman 2008; Beeson 2010). In contrast, rather than starting with existing states and their governmental forms, the model of democracy approach starts with democratic theory itself and asks, following David Held (2006) in spirit if not in terminology, which “model of democracy” is the most useful given the problem of a changing climate. To this end, scholars have presented normative and pragmatic cases for turning to myriad models of democracy: deliberative (Smith 2003; Dryzek & Niemeyer 2019); participatory (Fischer 2013); agonist (Machin 2013); etc.

The democratic state approach figures most prominently in the literature, and is also more clearly concerned with constituted power. Fiorino (2018) exemplifies the way in which the democratic state approach is concerned primarily with constituted power. In *Can Democracy Handle Climate Change?* Fiorino conceives of democracy “as a form of governance,” stating that it “is usually distinguished from other forms by a set of core characteristics: free and fair elections, majority rule by representative institutions, limits on governmental power, and protection of individual rights” (Fiorino 2018, 16).[[1]](#footnote-1) Frederic Hanusch is equally explicit, limiting his investigation to “existing democracies,” by which he means existing institutions that can be coded as democratic, and demonstrating empirically that “increased democratic quality generally positively influences climate performance in established democracies” (Hanusch 2018, 2). Likewise, older arguments put forward by thinkers like William Ophuls (1977), Thomas Friedman (2009), and Mark Beeson (2010) equate democracy with constituted power insofar as each of their approaches is framed around the question of whether ‘democratic states’ ­­– often the United States – can grapple with environmental problems, suggesting in turn that ‘authoritarian governments’ – often China – would be more effective.

While the connection is less immediately obvious, scholars who have contributed to the model of democracy approach also display a primary focus on constituted power. I borrow the term “model of democracy” from Held, whose influential work on what he also calls the “variants of democracy” analytically parses various historical understandings of democracy in order to “set out some of the political options we face today” (Held 2006, p. 4). Though not all of the scholars discussed below cite Held explicitly, his conceptual framework provides a useful summary of the stakes and nature of the work discussed below, all of which sets out one or another political option we have when it comes to democracy, advocating and denouncing various models in turn. Many scholars who take the models of democracy approach to environmental issues in general and climate change specifically end up addressing constituted power primarily insofar as they seek to suggest that their model offers the best normative foundation for democratic states to incorporate into their *modus operandi*.

To this end, Graham Smith put forward an early argument in favor of deliberative democracy, suggesting that infusing democratic institutions with more spaces of deliberation might lead to better environmental outcomes insofar as they would allow a “variety of environmental values [to] be voiced and considered in decision-making processes,” processes which had already been established (Smith 2003, p. 129). John Dryzek and Simon Niemeyer present a similar argument in the context of global democracy, arguing that global forms of constituted power, however weak, could be made more effective on climate by turning to deliberative democracy and inserting “transnational deliberative minipublics into the system … and developing deliberative accountability mechanisms” in order to incorporate influence from global civil society into various scales of constituted power (Dryzek & Niemeyer 2019, p. 412). Frank Fischer, long an adherent of the participatory model of democracy, argued instead that a greater focus on expanding local opportunities for participation might help address the climate crisis and preserve democratic power as it had been constituted in an age before modern environmentalism and climate concerns threatened to submerge it (Fischer 2013, p. 276-8). Amanda Machin, writing in favor of agonist (or sometimes radical) democracy, suggests that liberal democratic states should incorporate disagreement into their operations rather than aiming at false consensus, and that doing so might allow them to tackle climate change in all of its complexity rather than treating it as a topic around which consensus *could* be built (as, say, deliberative democrats might support) (Machin 2013, 128). The point here is that whatever model of democracy such scholars have embraced, they have tended to put the argument forward that their model of democracy would be capable of improving the constituted power of democratic states rather than, say, offering an alternative or expanded understanding of democratic power itself.

This brief discussion of the democratic state and models of democracy approach to the question of democracy and climate change is not meant to be exhaustive. Rather, it is intended to characterize the ways in which political scientists have approached the relationship between democracy and climate change, and suggests that democracy is commonly approached primarily from the perspective of constituted power.

Yet in various terms, political theorists have long maintained that constituted power implies another, constitutive form of power less concerned with enforcing established rules and laws and more concerned with enacting ordinary peoples’ visions (Wolin 2016, 100-13; Mouffe 2005, 115-6; Wenman 2013). Per Wenman again, constituent power is an essentially democratic form of power that exists prior to constituted power in importance if not always temporally. Constituent power involves “the human capacity for creation, to institute new forms of life, to bring new ways of being into the world, or perhaps even to create new worlds” (Wenman 2013, p. 7). Per Laughlin, “constituent power is the generative principle of modern constitutional arrangements” that “gives juristic expression to those forces that constantly irritate the formal constitution, thereby ensuring it is able to perform its political function” (Loughlin 2003, p. 100). Constituent power is power as it exists among and between the people, who are in turn the source of constituted power. And, as recent work on civil disobedience has demonstrated, civil disobedience can be a useful avenue for forging and deploying constituent power. As Robin Celikates suggests, civil disobedience can be understood “as an essentially collective and political practice of contestation, in which the vertical form of state authority – constituted power – is confronted with the horizontal constituting power of the association of citizens or of those who are governed” (Celikates 2016a, 989).

By focusing on the question of *whether* already-constituted democratic states or models are capable of responding adequately to climate change, existing studies including but not limited to the ones discussed above have neglected an important question surrounding democracy and climate change: how citizens already see themselves as building horizontal forms of democratic, constituent power and leveraging it against the various constituted powers that have long enabled climate change. Attending to climate disobedience as it has begun to unfold, I argue, helps supplement preexisting understandings of the relationship between democracy and climate change insofar as it presents an example of constituent power in action.

CLIMATE DISOBEDIENCE

The practice of climate disobedience is an illustrative example of how democratic citizens see themselves as what Dryzek calls “democratic agents of justice,” (2015) who leverage constituent power against the forces of climate change. To demonstrate as much, and to theorize democratic climate politics through lens of climate disobedience below, a deeper description and contextualization of the practice of climate disobedience is warranted.

The use of civil disobedience as a means of responding to perceived environmental threats has a long history (see, e.g., Martin 1990; Carter 1998; Hernandez 2007; Vanderheiden 2008) that connects otherwise disparate legacies, including that of environmental justice advocates, anti-deforestation activists, anti-nuclear activists, proponents of animal liberation, and Indigenous water protectors and their allies, to name a few. From one angle, then, climate disobedience fits into longer 19th and 20th century American political traditions. Yet, like each of these legacies, climate disobedience as a coordinated practice has its own unique histories, theories, and practices, which began to take shape in the late 2000s, primarily in the United States.[[2]](#footnote-2)

The structure of the climate disobedience strategy is multifaceted. Initially, climate disobedients nonviolently stop a material practice that contributes to climate change, breaking at least one law in the process. Per the plan, they then get arrested without resisting, in the hopes of going to trial. At trial, climate disobedients enter a not-guilty plea, and attempt to convince a judge to allow a necessity defense, which “asserts that breaking the law was justified in order to avert a greater harm that would occur as a result of the government policy the offender was protesting” (Cohan 2007, 111).[[3]](#footnote-3) In recent years, legal scholars have offered useful discussions and critical analyses of the use of the necessity defense in climate related cases (see, e.g., Cohan 2007, 123-6; McCloskey 2015, 2; Burkett 2016; Fallon 2018, 378; Nosek 2019; Long and Hamilton 2019, 69-74; Rausch 2019, 560-2; and DiSalvo 2020, on which the rest of this paragraph draws). If and when a necessity defense is allowed by a judge, climate disobedients and their legal teams seek to insert expert testimony in order to convince a jury (or the judge, depending on the location of the case) of the necessity of the underlying action, in the hopes that the jury or judge opts to acquit – to find the defendant not guilty by virtue of necessity.[[4]](#footnote-4) Such a finding establishes precedent, encouraging future activists to participate in the strategy and making it more likely that the necessity defense will succeed. Ultimately, the point for climate disobedients is to foster political communities of people who are willing and able to participate in climate disobedience along these lines in order to apply enough pressure to state and corporate forces that enable climate change to get them to pivot away from the production of fossil fuels, the building of fossil fuel infrastructure, and the making of laws and regulations which enable all of the above. Along the way, by organizing public protests, giving interviews, building publicity through coverage of the underling acts of disobedience, and forming organizations that can facilitate and support such actions, climate disobedients seek to engage the general public and convince fellow citizens of the necessity of attending to climate change.

As such, climate disobedients have come to share a common understanding of democracy that at least implicitly relies on the theory of constituent power, a common vision of justice, and a common set of tactics through which to pursue justice, which sets them apart from earlier waves of environmental civil disobedience and from established understandings of climate democracy discussed above. In sum, climate disobedients have attempted to turn their cases into what Maxwell calls “public trials,” trials which are in part “driven by public opinion and action” and embrace the “idea of the public, as well as law, being on trial” (Maxwell 2015, p. 16). They hope to provoke such public trials as a means of garnering and directing public concern, with the ultimate goal of reconstituting and bringing to an end the practices of the fossil fuel era.

To demonstrate as much, it is necessary to consider the broad contours of the practice of climate disobedience and the kinds of public trials they provoke. I will then turn to the cases of Tim DeChristopher and Ken ward, two particularly notable climate disobedients, whose examples make clear the stakes and strategy of the practice, and demonstrate the degree to which the practice is a democratic response to climate change in the minds of the practitioners. The Climate Defense Project is currently tracking 37 ongoing or completed cases of climate disobedience: 31 in the United States and 6 abroad (Climate Disobedience Center 2021a). The underlying actions that lead to arrest have always been nonviolent, aimed at fossil fuel infrastructure or the financial institutions that enable such infrastructure, and include disobedients locking themselves down to pipeline construction sites, building gardens over railroad lines, using small watercraft to block larger ships, blocking traffic, trespassing, and shutting off pipelines by turning off safety valves (after warning companies that they would do so). The charges that disobedients face for such actions are often misdemeanors, but are sometimes felonies or minor infractions.[[5]](#footnote-5)

The cases surrounding Tim DeChristopher and Ken Ward stand out for the insight they provide into the strategy behind the use of the necessity defense and the ways in which climate disobedients understand and defend their practice in democratic terms that align it with theories of constituent power. DeChristopher has participated in two cases of climate disobedience resulting in two trials: the first as a solo agent and the second as part of a concerted group. The underlying actions that lead to the first case, *United States v. DeChristopher*, took place in December 2008, and would go on to popularize if not institute the practice of climate disobedience. With George W. Bush’s tenure as president nearing an end, DeChristopher, then a 27-year-old student of economics at the University of Utah, attended a federal auction of oil and gas leases of publicly held land. Under the aegis of Bidder 70, DeChristopher entered winning bids on 14 lease parcels totaling $1.8 million (Loomis 2011). However, DeChristopher did so without the ability or intent to pay (Doremus 2009). As such, he was later arrested and “charged with two felony counts of interfering with an auction and making false statements on bidding forms” (Johnson 2009). DeChristopher attempted to present a necessity defense which was denied and he was found guilty, eventually serving 21 months of a 24-month sentence (Climate Defense Project 2021a, 23). Importantly, however, “most of the BLM [Bureau of Land Management] leases targeted by the defendant were soon canceled as a direct result of the protest action and the attention it drew to the federal government’s violation of environmental assessment requirements” (Climate Defense Project 2021a, 23).

The underlying actions leading to DeChristopher’s second court case – *Massachusetts v. Gore* – took place on June 29 2016 when a group of thirteen activists including DeChristopher and Karenna Gore (daughter of former U.S. Vice President Al Gore) laid down in a trench slated to house the West Roxbury Lateral Pipeline in Boston to “represent deaths from climate change” (Climate Defense Project 2021, 14). The defendants were eventually charged with trespass and disorderly conduct. In a partial victory for the necessity defense, they were acquitted by reason of necessity in a bench hearing (Climate Defense Project 2021a, 14).

Ken Ward has found himself on trial for acts of climate disobedience in three cases: *Massachusetts v. O’Hara*, *Washington v. Ward*, and *Oregon v. Butler*. The actions underlying the first case occurred in May 2013, when Ken Ward and Jay O’Hara, working alongside the climate advocacy group 350 “blockaded a coal tanker with a 32-foot lobster boat [named the Henry David T] at Brayton Point in Massachusetts,” temporarily blocking 40,000 tons of coal (Stephenson 2017). Facing charges of disturbing the peace, conspiracy, failure to act to avoid a collision and negligent operation of a motor vehicle, the defendants were precluded from mounting a necessity defense (which would have enabled expert testimony from Dr. James Hansen, Bill McKibben, and others, thus bringing public attention to the case and educating the jurors) because the district attorney dropped charges on the day of the trial. Indeed, the district attorney went so far as to give a “speech to supporters outside the courthouse supporting increased action on climate change” (Climate Defense Project 2021a, 20) after dropping charges.

The actions underlying Ward’s most famous case, *Washington v. Ward* took place in October 11 2016. That day, activists acting in concert and referring to themselves as the “Valve Turners” shut off pipelines in North Dakota, Washington, Montana, and Minnesota, which collectively transport “nearly 70 percent of the crude oil imported to the United States from Canada” (Nijhuis 2018). For his part, Ward was charged with second degree burglary and criminal sabotage. Initially denied a necessity defense, Ward appealed to the Washington Court of Appeals which found that the defense was valid, and that “his Sixth Amendment right to present a defense had been violated” (Climate Defense Project 2021a, 4). After two mistrials (resulting from hung juries), in the course of which the necessity defense was established as a matter of law in Washington, the state announced it would try Ward for a third time. At that point, Ward accepted a plea bargain to avoid a possible sentence of twenty years in prison (Climate Defense Project 2021a, 5). *Washington v. Ward* offers the clearest example of climate disobedience altering constituted power, as it established the climate necessity defense for the first time in the United States, a goal which climate disobedients had been working toward since *United States v. DeChristopher*.

Finally, the actions underlying *Oregon v. Butler* took place in April 2019. In conjunction with four other activists associated with Extinction Rebellion, Ward built a garden over railroad tracks to “prevent the transport of tar sands oil” destined for Portland, Oregon (Climate Defense Project 2021a, 7). Each defendant faced a single charge for this action: trespass. The defense was allowed to present Oregon’s version of the necessity defense which allowed expert testimony from environmental scientists. Five of six jurors voted to acquit, leading to a mistrial after which the state dismissed charges (Climate Defense Project 2021a, 8).

These trials do not capture every tactic, legal strategy, or political vision embraced by climate disobedients. Nor do they exhibit every sense in which climate disobedience can fail or succeed. They also do not represent the diversity, in terms of ascriptive identity, of those whose work contributes to the theory and practice of climate disobedience. But it is important to reflect on these trials because the actions underlying them were explicitly intended as a way to marshal constituent power against the constituted power of the state, and because of the press coverage and public discourse they have generated. They are useful cases to examine here insofar as they provide a clear outline of the practice of climate disobedience, according to which a law is intentionally broken, a public trial ensues, the lines between success and failure are not always immediately clear, and the ultimate goal is to draw on, continue to build, and eventually leverage democratic constituent power against public and private forms of constituted power that have, in the minds of activists, proven unresponsive to democratic publics.

The most likely legal failure disobedients face is being disallowed from presenting the necessity defense and convicted, as occurred in DeChristopher’s first case. The clearest legal success to date is the legal establishment of the necessity defense as occurred in *Washington v. Ward*, and the fact that, in cases like *Oregon v. Butler* in which five jurors voted to acquit, defendants were one juror away from being acquitted based on necessity. Between failure and success, a number of partial political victories are evident: the protection of public land from oil and gas leases (*United States v. DeChristopher*), activists being acquitted by judges in cases that are not presented to a full jury (*Massachsetts v. Gore*), the conversion of adversarial figures like district attorneys into allies (*Massachsetts v. O’Hara*), the public awareness and political organizing that these trials enabled, including the establishment of organizations that will be discussed below, etc. To climate disobedients these latter *political* and *democratic* achievements are of greater importance than technical, legal, and individual successes or failures arising from any one case. The Climate Disobedience Center confirms as much, suggesting that disobedients explicitly attempt to utilize the necessity defense in order to impact the broader public by bringing about public trials. To this end, the Center writes that in the face of “a fossil fuel powered national government” climate disobedients are “wondering if the necessity defense can be applied to their case to bring climate reality into the courtroom and back into the public eye” (Climate Disobedience Center, “Necessity Strategy”). “Although the necessity defense employs the legal system of courts and judges,” the Climate Disobedience Center continues:

It is not primarily a means of seeking an acquittal or a lighter sentence … it is a strategy for building movement power and putting climate change front and center in the public narrative with the potential to spark the moral imagination of new people and to establish the necessity of ongoing infrastructure fights and direct action resistance work in a political reality of rubber-stamp regulators and non-existant [sic] governmental leadership on climate (Climate Disobedience Center, “Necessity Strategy”).

CLIMATE DISOBEDIENCE AS CONSTITUENT DEMOCRATIC POWER

Taken together, the practice of climate disobedience offers an example of constituent power in action, which in turn allows for a fuller understanding of the relationship between democracy and climate change. As demonstrated above, democratic theorists have long argued that constituent power is the foundational and continual source of constituted power. Some go so far as to claim that “to speak of constituent power is to speak of democracy” (Negri 1999, p. 1).

So, how can climate disobedience be understood as an enactment of constituent power? This question deserves special attention, insofar as climate disobedience, as with any form of civil disobedience more broadly, could also be described as merely an individual act of resistance, or expression of conscience rather than as part of an inherently collective and thus democratic practice. From one perspective, climate disobedience could appear to be a highly individual pursuit whereby lone dissenters express their moral discomfort, clear their conscience, and accept the consequences without any attempt to connect their actions to broader democratic concerns.

Indeed in some cases it is. Anticipating legitimate warnings about the “harsh reality of prison” (Hunter 2019), and uncomfortable with activists who fetishize arrest as *the* goal of climate disobedience, DeChristopher warned in 2014 about what he calls “photo opportunity” civil disobedience which is neither connected to nor supported by longer-term organizing strategies. The danger, he wrote, is that “activists are facing felony trials without the support of the movement,” cautioning that in his own case “all of the potential for movement-building and public education happened well after the point of arrest” and that such goals necessitated the support of a movement (Goodman 2014). Indeed, political theorists have long cautioned about the individualizing and depoliticizing effects that accompany the conflation of law and conscience with politics. For Wilson Carey McWilliams, “law contains a bias toward individualism, a hostility to communities” (McWilliams 1973, 109). For Hannah Arendt, who wrote of a close association between law and conscience and insisted that “conscience is unpolitical,” a focus on law often came at the expense of political action (Arendt 1972, 60; Petherbridge 2016, 976-9). For Wendy Brown, rights discourses and the liberal legal structures that underpin them “tend to depoliticize the conditions they articulate” (Brown 2002, 431; Maxwell 2015, 19). From this perspective, because the practice of climate disobedience entails deliberately entangling oneself with the law, it would appear an odd choice to analyze with the goal of rethinking democratic engagement.

Yet as Maxwell’s concept of “public trials” suggests, and climate disobedients maintain, law can also be an arena of democratic contestation and an object around which to organize constituent power. When climate disobedience and the necessity defense are used to foster public trials, Maxwell’s work would suggest, two possible courses of action emerge: “law may exert normalizing and de-politicizing force on democratic actors, but … may also provide an important, meaningful, and even radical site for democratic action and solicitations of publics on behalf of justice” (Maxwell 2015, 27). DeChristopher, Ward, and the many other activists who participate in climate disobedience and help found organizations that support such work demonstrate a clear and persistent effort to chart the second course. For DeChristopher, climate disobedients “bring a vision of justice that shames the mere legalism of the state” (DeChristopher 2016). Attention to DeChristopher and Ward’s motivations, acts of disobedience, and the broader impact of such acts is representative of the ways that climate disobedients more broadly understand themselves as democratic agents of justice, variously encouraging and relying on broader organizing strategies and structures to build constituent power.

*Democratic Motivations and Constituent Power*

DeChristopher is consistent about the centrality of democracy to his actions, and to his overarching goal of building democratic power. Reflecting on his initial arrest in 2008 for his action as Bidder 70, he has claimed that “on December 19th 2008 I took what I considered to be an ethical, necessary, and direct action to protect our planet, our democracy, and my fellow human beings” (Gage and Gage 2012, :36-:47). He has also been consistent in articulating his conviction that he was starting from a democratic *deficit* in need of redress. Reflecting on his ongoing trial, DeChristopher noted that “we’ve always been told that things are just beyond our control and that corporations have all the power … and we don’t often get to be reminded that we’re citizens of what was once the greatest democracy on the planet, and that we’re human beings with the power to inspire others with our actions” (Gage and Gage 2012, 2:01-2:16). Later, in his concluding remarks to the judge in the case of *United States v. DeChristopher*, he issued a warning that, “given the destruction of our democratic institutions that once gave citizens access to power, my future will likely involve civil disobedience” (Hanson 2011). On his own terms, DeChristopher often expresses conviction about the need to bolster what he sees as a weakened democracy by attending to the power and responsibility that theorists of constituent power claim are inherent to democratic citizenship, including the power to invite others into political organizing.

Indeed, where climate disobedience and the highly technical nature of the law in general and the necessity defense specifically could individualize and depoliticize activists in ways that accord with the fears of McWilliams, Arendt, and Brown, DeChristopher interprets his public trials and the necessity defense itself as a democratic and political tool rather than a strictly legal one (or, worse, simply a way to avoid punishment for one’s crime). For DeChristopher, “the necessity defense is an opportunity to elaborate that implicit critique [of the political failings of government] into a fully developed legal argument for the responsibility of citizen action in the face of government failure” (DeChristopher 2016). In the lead up to his first trial, DeChristopher was explicit about his proximate and ultimate goals: “obviously my dream outcome is to get acquitted, because I think that would be a pretty clear statement that bold actions are justified in the face of our government’s failure to do anything about climate change” (Gage and Gage: 45:40-45:52). Importantly, while acquittal by way of the necessity defense is a “dream outcome,” the ultimate point of that outcome is to legitimate future waves of “bold action” in the form of climate disobedience. While *legal* victory is important, it is only important insofar as it is a necessary condition for a future increase of *political* action.

Broadening the scope of attention to DeChristopher’s actions during and after *United States v. DeChristopher* reveals ways in which what initially seem to be purely individual acts of conscience require and in turn enable the engagement of an array of actors: his lawyers, larger groups of activists, journalists who cover his trials, academics who analyze them, etc. Close consideration of his example shows that what often gets perceived as purely individual actions on first glance are essentially collaborative efforts.

The collective nature of DeChristopher’s effort and its efficiency are corroborated by many journalists who have profiled him. Reflecting on DeChristopher after his release, and after he helped to form Peaceful Uprising, a climate disobedience advocacy group, Melanie Jae Martin wrote the following:

By showing that people who don’t hold positions of authority can successfully confront injustice, his example helped to build the climate-justice group Peaceful Uprising, changed the tactics of the nation’s most established environmental organizations,[[6]](#footnote-6) and helped shape the mass climate movement, which turned out nearly 50,000 people on the National Mall in Washington D.C. in February (Martin 2013).

Indeed, Martin’s profile suggests that DeChristopher’s approach had effects that were both broad and deep – broad insofar as they reached many people and deep insofar as they persuaded unlikely participants to become activists. She cites organizer Matt Leonard, for example, who attributes the large turnout to the Tar Sands Action he helped organize against the Keystone Pipeline in 2014 to DeChristopher’s popularization of climate disobedience. To Leonard, DeChristopher “is a big part of how we mobilized the 1,253 people that were arrested in the Tar Sands Action. And a part of the near-daily actions that have happened on the Keystone pipeline this year” (Martin 2013). Martin continues:

Little by little, DeChristopher’s message was catching on, resulting in a series of actions–each one larger than the last–that used civil disobedience. In April 2011, more than 350 climate justice supporters staged a sit-in at the Department of the Interior, and 21 were arrested. Among the participants was a 58-year-old University of Utah librarian Joan Gregory, a founding member of Peaceful Uprising who remains active to this day. It was her first arrest (Martin 2013).

Where DeChristopher’s actions and rhetoric are aimed explicitly at what he sees as a democratic deficit, and are in turn presented as democratic actions, Ken Ward frequently presents his actions as stemming from a deep sense of responsibility to protect the conditions that allow life to flourish, and that therefore form the material conditions necessary for democracy to exist in the first place. As his defense in *Oregon v. Butler* suggested of his actions, “Ken Ward determined that civil disobedience was necessary to try to get changes made before it was too late. This is a matter of preserving living as we know it on this earth. Not just for himself, not just for his son, but for everyone – for all of us, for all of our kids, for all of our grandkids” (Grayzel 2018, 2:41-3:15).

Yet where Ward’s rhetoric is often intensely personal (Ward often speaks of his *personal* or *moral* obligation to break the law, for example) and a documentary made about him notes that he is only a *reluctant* radical – his actions show a propensity for planning and engaging in actions with others in concert. Prior to engaging in acts of climate disobedience, Ward had a long history of working in, with, and through environmental organizations. Early in his career, Ward helped build and popularize the Public Interest Research Groups (PIRGs) and helped push them in an environmental direction, before going on to cofound Green Corps, an organization that trains environmental activists (Stephenson 2015, 117). Later, Ward cofounded the Environmental Law Center and eventually became deputy director of Greenpeace USA (Stephenson 2015, 117). Despite his personal and reflective rhetorical style, Ward worked closely with others in each of his enactments of climate disobedience, drawing on and deploying constituent power that relies on action-in-concert to a degree that surpasses his rhetorical focus on his own individual duties and responsibilities. Further, Ward is clear that the purpose of climate disobedience is to build democratic forms of power capable of disrupting constituted power at multiple levels including government but also long-established, mainstream environmental organizations like peace themselves. To Ward, mainstream environmental organizations must be disrupted “because the scope of the problem, and the scale of the solution, can’t be fit into the politics-as-usual framework within which our *organizations* prosper and careers are built. We forgot what we built the institutions for” (Stephenson 2015, 120). Building new, nimbler, and more confrontational environmental organizations that are willing and able to contest power is the broader goal of Ward’s climate disobedience, as it is for De Christopher’s. Noting his belief that inaction on climate, or the failure of democracy to handle climate change, will lead to “highly technocratic, highly dangerous” responses like geoengineering, or “something more militaristic,” Ward summarizes his goal as such:

Those will be our fundamental choices within [his son] Eli’s lifetime. There will be a series of radical responses on the table–and we need to win that fight. So far as I’m concerned, everything we’re doing should be building to that point, trying to create what we do not have, which is power, discipline, an idea, something to win that” (Stephenson 2015, 123).

Where constituent power is the power that ordinary people can build and wield in the shadow of constituted order, a basic requirement for its enactment is the presence of widespread attention and participation, which DeChristopher and Ward have done much to foster through their acts of climate disobedience surrounded on either side by ordinary, everyday, and continual political organizing. Yet as important as it is to DeChristopher and Ward’s project to have encouraged large numbers of individuals to embrace what they see as their democratic responsibility to build and participate in constituent power, the ways that they and their allies use public trials to build the kinds of *organizations* through which constituent power can be sustained is worthy of attention, and perhaps even more important to the understanding of the relationship between climate change and democracy developed here.[[7]](#footnote-7)

*Building Spaces of Democratic Justice*

Here, DeChristopher has taken a central role. The organizations that DeChristopher and others started after *United States v. DeChristopher* include Peaceful Uprising and the Climate Disobedience Center. Lawyers and other activists inspired by the necessity defense strategy and DeChristopher, in turn, started the Climate Defense Project and directed the attention of the Civil Liberties Defense Center to the necessity defense. In turn, these organizations have gone on to do public-facing organizing and educational work, and to provide legal support to high profile climate disobedients who see themselves as agents of democratic justice.

In the midst of his first trial, DeChristopher and others in the Salt Lake City, Utah area formed Peaceful Uprising. Peaceful Uprising, which remains active and sees itself as “the front line for the climate movement in Utah,” had within a year grown into a “diverse group of about 40 people with a broad coalition of support that includes social justice organizations, gay rights advocates, artists, state and local leaders, students, environmentalists and many more” (Peaceful Uprising 2010a). Since that first year, the group has grown and has engaged in attempts to run and elect climate-friendly representatives (Peaceful Uprising 2010b), build coalitions with and lend support to Indigenous land and water protectors, especially surrounding efforts to resist various attempts to extract oil from tar sands (Peaceful Uprising 2015). The group was also a constant presence outside of the Salt Lake City courtroom in which DeChristopher. At one protest that occurred after DeChristopher received a two-year sentence and was immediately taken into custody Peaceful Uprising sang songs and blocked traffic, at which point 26 members were themselves arrested, and the group announced its plans to pivot attention toward tar sand protests and “to use the sentence to build momentum for protests in Washington … against a proposed pipeline from the Alberta tar sands to Texas” (Goldenberg 2011).

DeChristopher and Ward helped found the Climate Disobedience Center in 2015 along with social justice organizer and United Methodist pastor Marla Marcum, and climate activists Jay O’Hara (of *Massachusetts v. O’Hara*). The Center “brings together an experienced team of climate dissidents to provide logistical, legal and spiritual resources, on the ground assistance, and advice to climate activists organizing civil disobedience campaigns across the country” and is especially notable for the role it plays as a facilitator of future actions (Bowden 2015). On this last note, the Center wrote at its founding that its “goal is to encourage experimentation that expands the boundaries of climate movement organizing” (Bowden 2015). Since its inception, the Climate Disobedience Center has played a crucial role in popularizing the necessity defense strategy, conducting legal trainings, and providing legal support to high profile cases of climate disobedience including but not limited to defendants in the Valve Turners, West Roxbury, Delta 5, and the *Massachusetts v. O’Hara* cases (Climate Disobedience Center, “Past Support”). Likewise, the Center’s vision accords with the one articulated by DeChristopher himself, including but ultimately moving beyond the necessity defense: “getting a necessity defense, even getting a necessity acquittal, is not winning. Making a legal argument in a courtroom is not stopping the fossil fuel industry. But we hope that [by] using a necessity defense in a long term campaign strategy it can be an effective tactic to build the power necessary to win” (Climate Disobedience Center, “Necessity Strategy”).

Separately, but in light of the organizing undertaken by DeChristopher et al., attorneys Ted Hamilton, Alex Marquardt, and Kelsey Skaggs founded the Climate Defense Project in 2016. Where the Climate Disobedience Center operates as a center for political organizing broadly conceived, the Climate Defense Project is more narrowly focused on recruiting and training lawyers with the goal of “supporting front-line activists, advancing innovative arguments, and connecting attorneys, experts, and community members” (Climate Defense Project, “About”). Yet in focusing more narrowly on legal advice, the Climate Defense Project also produces materials that are useful in terms of enabling and encouraging a broader climate disobedience movement including a climate necessity defense case guide (Climate Defense Project 2021a), a guide to the concept of climate resistance (Climate Defense Project 2021b), a guide to the standing of the necessity defense in each of the United States’ jurisdictions (Climate Defense Project 2021c), an overview of the connections between climate change and law in the United States (Climate Defense Project & Rees 2017), and amicus briefs in support of two high profile attempts to utilize the necessity defense in the Delta 5 and Valve Turner cases.

Finally, democratic citizen activists’ turn to climate disobedience has garnered attention and procured support from preexisting organizations, like the Civil Liberties Defense Center which was founded in 2003 by Lauren Regan, lead attorney in the Valve Turner cases. Since turning attention to climate disobedience, the Civil Liberties Defense Center has done both political and legal work, providing various trainings and activist webinars (Civil Liberties Defense Center, “Resources”) and legal representation.

Taken together, this narrative demonstrates the ways in which climate disobedience, which can appear as an individual act, is in fact a collective endeavor – relying on and constituting broader activist organizations in turn. It also demonstrates ways in which individuals and the groups they have constituted have understood climate disobedience to be an essentially democratic practice. Finally, this narrative demonstrates that climate disobedients’ attempts to enact constituent power can indeed have concrete impacts. These range from relatively circumscribed direct impacts – such as DeChristopher’s disobedience leading to the cancellation of land leases or the Valve Turners’ actions temporarily stopping 15% of all oil in the US from being transported by its pipelines – to broader legal impacts – such as the establishment of the necessity defense as a valid defense in various jurisdictions and legal notice of the fact of climate change in others.

Stephenson’s summation of DeChristopher’s work places it squarely in line with how political theorists have long thought about constituent power. As noted above, Wenman describes constituent power as the attempt to create new worlds. In turn, Stephenson concludes that DeChristopher and others are attempting to build a movement that can “create the conditions in which we can build … a stable and ultimately better world,” a process that will “require something of us beyond the ordinary conduct of politics” (Stephenson 2015, 36).

IS CLIMATE DISOBEDIENCE ACTUALLY DEMOCRATIC?

Many legal and political theorists have long agreed that “injustice met with protest and civil disobedience is a celebrated element of … a healthy democracy” (Burkett 2016, 9). Still, my claim that scholars ought to understand climate disobedience as a democratic practice runs counter to some arguments that weave through the history of political thinking about civil disobedience. Such thinking holds that the practice is inherently undemocratic, or that it at least has a strong tendency to be so. More to the point, my argument also runs counter to a more recent analysis which, building on those earlier arguments, suggests that climate protests in general ought to be seen as nondemocratic in many cases. In this section I will raise and respond to such arguments, thus refining my own argument about why and how we ought to accept climate disobedience specifically as a democratic practice.

The debate surrounding civil disobedience and democracy has a long history. For some, the debate brings us as far back as to the figure of Socrates, for whom a focus on conscience rendered the question of civil disobedience apolitical and thus separate from questions of democracy (Arendt 1972, 58-60). The question of civil disobedience was debated throughout the 20th century such that, by 1970, political scientists could already point to five waves of interest in the topic, surrounding 1) the Nuremberg trials; 2) the “loyalty controversies” in the 1950s; 3) nuclear power; 4) the civil rights movement; and 5) the Vietnam War) (Power 1972, 35). The last wave especially saw the question of the role of civil disobedience in a liberal democratic society debated by political philosophers like Rawls (1972), Arendt (1972), and Shklar (2019).

In the beginning of the 21st century, and in light of actions undertaken by figures like Julian Assange, Chelsea Manning, and Edward Snowden, the debate has once again made an appearance, with many arguing that civil disobedience can indeed be seen as compatible with and in some cases integral to democracy (Markovits 2005; Brownlee 2012; Smith 2013; Celikates 2016a; Celikates 2016b; Pineda 2021), with some going so far as to argue that uncivil disobedience and other forms of outright resistance are compatible with democratic commitments (Delmas 2018; Brennan 2018). Out of such debates, a “standard liberal view” has emerged, according to which coercive forms of civil disobedience and protest ought to be limited to authoritarian regimes, whereas civil disobedience in a democratic, egalitarian society ought to limit itself to actions which persuade others through rational appeals to justice (Aitchison 2018, 666-7).

In this standard liberal understanding, persuasive acts are those which “through dramatic acts of principled law-breaking, activists call attention to a particular law or policy and demonstrate that in their considered opinion it is unjust and ought to be reversed” (Aitchison 2018, 666). Coercion is defined as actions that involve “imposing costs on some political course of action or making it impossible to pursue by force” (Aitchison 2018, 667). According to this line of analysis, climate disobedience is often persuasive *and* coercive – the actions of climate disobedients are often meant to persuade the public that constituted power has failed to respond adequately to climate change, even as they are meant to coerce in various ways: to force companies to stop building fossil fuel infrastructure, to force law to change such that it recognizes the necessity defense, to block and disrupt traffic and business as usual on Wall Street, etc.

In this context, Francisco Garcia-Gibson suggests that the “dominant view” is that “coercive climate protests are democratic” (2021, 1), citing arguments made by Aitchison (2018), Celikates (2016a), Humphrey (2007), Delmas (2018), and others. Against this “dominant” view, Garcia-Gibson suggests that coercive climate protests are not compatible with democracy. Sharpening the concern, William E. Scheuerman has suggested that well-intended turns to climate disobedience, if and when they rely on the idea of a climate emergency to justify otherwise unjustifiable actions such as sabotage rather than an engagement with public opinion, may well result in authoritarian forms of politics that undermine existing liberal-democratic institutions (2021). According to Scheuerman, for increasing numbers of activists, the “preferred mode of political illegality is sabotage” which “writes off the prospect of meaningful political reform while conditioning uncivil lawbreaking, that is, political illegality that is covert, legally evasive, and potentially violent” (2021, 3). While the practice of climate disobedience as I have described it here avoids Scheuerman’s concern insofar as it remains focused on public opinion and eschews practices of sabotage, the more basic question of whether forms of power built around focused instances of lawbreaking can be understood as democratic is worthy of consideration.

While it is not clear that enough has been written on climate protests and democracy for a “dominant view” to have solidified, as Garcia-Gibson suggests, it is worth engaging with the argument in the interest of providing greater clarity into two ways of understanding climate disobedience as a democratic practice: one which accords with Garcia-Gibson’s analysis and one which relies on a more expansive understanding of democracy.

In keeping with the debates about civil disobedience mentioned above, for Garcia-Gibson there are two types of climate protests: persuasive and coercive. Also in keeping with convention, he concludes that persuasive climate protests *are* democratic, because “they engage in public deliberation and do not exert control over official emissions decisions” (2021, 14). Citing actions by Ende Gelände and Extinction Rebellion, which have “blocked power plants and coal mines several times” and “are thought by many of its activists as a means to coerce governments” (2021, 6), Garcia-Gibson concludes that such “coercive” protests are undemocratic. This is because they cannot be described as “constituting or improving deliberative decision-making” and/or because they “exert control over official decisions in a way that is not available to all affected” (Garcia-Gibson 2021, 14-5).

To arrive at this conclusion, Garcia-Gibson critiques two sets of arguments in favor of understanding climate protest as a democratic phenomenon: arguments which understand democracy as deliberation and arguments which understand democracy as freedom. He concludes that coercive climate protests often fail to advance democratic deliberation insofar as they do not primarily utilize “reasoned dialog,” instead “imposing a decision by means of coercion, force, or status” (Garcia-Gibson 2021, 3). For example, Garcia-Gibson might suggest that blocking an oil train imposes the decision *not* to complete an oil delivery through force rather than debate and deliberation. Similarly, he concludes that coercive climate protests often fail to advance democratic freedom, insofar as they fail to include “all those affected by the decision” in the moment in which decisionmakers “have control over it” (2021, 3). Because all who are impacted by something like a blocked oil train are not consulted, the argument goes, those who were not consulted are rendered unfree by the act of climate protest. It is worth noting that *some* cases of climate disobedience might well count as acts of persuasion, and might thus count as democratic. He concludes as much, writing that “*persuasive* protests often do not constitute undemocratic decision-making” (5).

Yet deliberation and freedom are only two of the “main definitions of democracy that are adopted in existing attempts to show that coercive protests can be democratic” (Garcia-Gibson, 2). Another justification is implicit in the practice of climate disobedience as I have described it here: participation. For climate disobedients, actions are democratically legitimate if and when they invite broader participation in the creation and leveraging of constituent power and, importantly, if they result in broader participation in decision making that has historically been captured by agents and beneficiaries of the fossil fuel era. If we begin from the democratic claims that democratic citizens make in order to justify their actions – rather than analytic claims that political theorists make about those actions – we are more likely to conclude with climate disobedients that disciplined, principled, and strategic acts of climate disobedience represent an ethically, politically, and indeed democratically defensible practice.

Put differently, climate disobedience, even if coercive, can be seen as democratic from the perspective of participatory democracy. Indeed, when climate disobedients maintain that their actions are democratic, the descriptions they give often implicitly rely on such an understanding of democracy. While deliberation and freedom are two prominent rubrics by which democratic theorists understand and measure democracy, neither deliberation nor freedom are *the* rubric by which climate disobedients do so. Viewed through the lens of constituent power, and from the perspective of climate disobedients, *participation* is a far more central democratic concern: an act is democratic (or not) to the extent to which participation is broadly available (Colón-Rios 2012, 7; Pasquino 2021, n.p.). As discussed above, climate disobedients understand themselves as acting amidst a democratic deficit and in a context in which unelected and unaccountable corporate and regulatory actors have long made decisions that impact democratic citizens who have not had the chance to meaningfully participate in shaping the fossil fuel era. While the risks associated with engaging in climate disobedience are serious, the act of participating in climate disobedience is technically available to most if not all people in a democratic society. Climate disobedients understand their practice as democratic insofar as anyone can take part in it.

Of course, any number of practices which would subvert democracy are widely available, from insurrection to terrorism. Likewise, the strongest conceptualizations of constituent power are often subjected to critique by democratic theorists and others, including on democratic grounds (Arato 2017, 31-5; Rubinelli 2020, 5). Anticipating such concerns, theorists of constituent power have relied on a distinction between “augmentative” and “revolutionary” forms of constituent power which is useful given the task of parsing out ways in which climate disobedience can be understood as democratic. To this end, Wenman associates revolutionary constituent power with “absolute beginnings” and “radical rupture” from existing forms of constituted power (Wenman 2013, 9). Augmentative constituent power, on the other hand, is “a (re)foundation that simultaneously expands and preserves an existing system of authority” (9). Commenting on this distinction in Wenman, Machin embraces his distinction, demonstrating ways in which an augmentative use of constituent power is compatible with other theorists of agonism like Mouffe and with ecological activism, broadly construed:

I suggest that an ‘ecological agonism’ could take place at the level of the state. As Wenman observes, agonism is generally concerned with the *reformation* – or what he calls the ‘augmentation’ – of the existing institutions of liberal democracy rather than the creation of new ones. Agonists thus propose not a jettisoning of the state but ‘a (re)foundation that simultaneously expands and preserves an existing system of authority’ (2013, p. 9). Mouffe, for example, explains that her approach is to engage, rather than withdraw, from existing institutions including the state: ‘if we do not engage with and challenge the existing order, if we instead choose to simply escape the state completely, we leave the door open for others to take control of systems of authority and regulation’ (2009, p. 235). An *engagement* with the state, in contrast, through institutions such as parliament, is precisely what allows agonistic contestation of the prevailing order (Mouffe 2005, p. 23) (Machin 2020, 167).

As is clear in light of the above discussions, climate disobedients seek to re-found existing authority, to strengthen law and constituted power by turning it away from what they see as its unsustainable and unjust foundations in fossil fuels and the infrastructures that make them possible. Far from seeking a revolutionary break after which a new post-fossil-fuel constitution is written, climate disobedients seek to augment the existing system, to enlarge it by moving it away from forces that, they think, will undermine it. Suspending the question of whether persuasive or coercive protest (Garcia-Gibson), non-violent civil disobedience or sabotage (Scheuerman), or augmentative or revolutionary constituent power (Wenman and Machin) are desirable and/or defensible in and of themselves (important questions, to be sure), it is possible to conclude that climate disobedience as an organized strategy avoids the most pressing warnings stemming from these analyses and, shifting our evaluative criteria from deliberation and freedom to participation, provides a criteria by which to understand their actions as democratic, and indeed to re-think *how* we as political scientists conceptualize democracy when we ask the question of whether democracy can handle climate change.

As such, climate disobedience as conceptualized by DeChristopher, Ward, and others can be seen as democratic from the perspective of participation, insofar as their actions both require their own participation and invite the participation of others in domains of politics that are not commonly regarded as participatory or even necessarily political. Climate disobedience is democratic if and when it aims at augmentation, since the fundamentals of the existing democratic order (which according to climate disobedients has fallen into deficit) are thus made to be more democratic, more responsive, and more conducive to life, which is itself a necessary condition for democracy.

CONCLUSION

Climate disobedients suggest that democracy can respond to climate change insofar as democratic citizens are already responding to climate change, implicitly critiquing the literature on democracy and climate change for not attending carefully enough to the work of democratic citizens. To better understand the relationship between democracy and climate change, the practice of climate disobedience suggests it is necessary to embrace a vision of democracy in which actions count as democratic if and when they support the presence of democracy as a participatory form of politics. Similarly, they reject widespread understandings which suggest an action is democratic if it corresponds with roles and responsibilities that are predefined by constituted power, if it meshes well with existing law, etc. Like civil disobedients before them, climate disobedients thus suggest that ordinary citizens share responsibility for building and enacting democratic justice, even as they insist that civil disobedience is a valid avenue to democratic justice in the case of climate precisely insofar as existing institutions have refused to act with sufficient urgency, seriousness, and concern for justice itself. In the face of a changing climate which might well threaten democracy itself, climate disobedience seeks to keep open the possibility of democracy by marshaling and directing constituent power that is in turn able to influence, reshape, and ultimately re-found constituted power.

By contrast, many existing studies of democracy and climate change have asked questions about constituted forms of democratic power only. If we wish to know whether democracy can handle climate change, we would do well to attend to the actions and arguments of democratic citizens who are already attempting to do so like Tim DeChrisopher and Ken Ward, but also many others who see themselves as expanding democratic possibilities before it is too late, against the backdrop of institutions that they see as incapable or uninterested in doing so. Such citizens include other activists who have taken up the necessity defense strategy, but stretches out to include many others as well including Indigenous water and land protectors, anti-pipeline activists, and beyond. Moving from the question of whether democracy *can* handle climate change to how democratic citizens *are* addressing climate change will require a broader look at confrontational climate politics in which many differently-situated democratic citizens are engaged in the process of building constituent power and leveraging such power against what they deem to be entrenched and disinterested forms of constituted power.

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1. In political science more generally, this concentration on constituted power and sovereign states – or sovereign states cooperating, or institutions legitimated and materially supported by sovereign states – predominates. See, e.g., Keohane 2015, Keohane and Victor, 2011. [↑](#footnote-ref-1)
2. My focus is on the United States for a number of reasons. First, 31 of the 37 cases that the Climate Defense Project is tracking have taken place in the United States. Second, the development of the strategy and practice of climate disobedience has developed in and through the legal infrastructure of the United States. Finally, there is a good case to be made for the idea that climate disobedience could be most effective if deployed in high emissions countries like the United States. On this latter point, see Garcia-Gibson, who notes that domestic protests can have global implications if and when the domestic institutions targeted belong to a high-emissions country, since a reduction of that country’s emissions could “meaningfully limit – or at least substantially postpone – global temperature rise, possibly preventing the climate from reaching one of the several ‘climate tipping points’” and that domestic protest in such countries might push those high-emissions countries toward “engaging in negotiation and cooperation with other governments” (2021, p. 2). [↑](#footnote-ref-2)
3. The necessity defense is a common law tradition that legal scholars trace back as far as 1550, when “an English court acquitted a merchant for dumping cargo to prevent his ship from capsizing in a storm” (Long and Hamilton 2018, 69). The court found that the captain’s actions were necessary in order to avoid a greater evil which would entail an even greater loss of property, life, the ship itself, etc. Other scholars see a younger necessity defense, dating to the 1880s (Fallon 2018, 378-9). In the United States the defense has been invoked in cases in which civil disobedience was aimed at shuttering nuclear facilities (Wong 2016); blocking services from being provided at abortion clinics (Cohan 2007, 146-57); protesting the Vietnam War (Cohan 2007, 157-61), protecting animal welfare (Cohan 2007, 161-6), and beyond. [↑](#footnote-ref-3)
4. Long and Hamilton thus describe the necessity defense as a “safety valve” which “permits a jury of citizen-peers to decide whether, in certain cases, breaking the law reaches a better societal result than technical adherence to the letter of the law” (Long and Hamilton 2018, 71). For an argument outlining the moral and political arguments in favor of “jury nullification” in domains other than climate change, see Chakravarti 2017; 2019. [↑](#footnote-ref-4)
5. Though, as the Brennan Center for Justice reports, many states are increasing penalties for civil disobedience that targets “critical infrastructure” (Mueller-Hsia 2021). As Bosworth and Chua (2021) show, these increased penalties often impact Indigenous activists first and foremost (as demonstrated in Standing Rock) and should therefore be seen not only as a threat to civil liberties and democratic civil disobedience, but to Indigenous sovereignty as well. [↑](#footnote-ref-5)
6. For example, Martin notes, DeChristopher helped spur the Sierra Club to temporarily reverse a 121-year ban on civil disobedience (Martin 2013). While the Sierra Club maintains the ban, it has since continued to allow occasional exceptions of the rule (Blackford 2018). [↑](#footnote-ref-6)
7. The question of how to sustain constituent power, which critics and proponents alike argue can be momentary and fleeting, is a complicated one beyond the scope of this article. My argument here is that the organizations that DeChristopher and others founded after his first trial offer one model. For another model and a fuller articulation of the basic concern, see Popp-Madsen 2021. [↑](#footnote-ref-7)