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Abstract

The World Wide Web is often understood as increasing our opportunities and expanding our area of freedom. On the same time it opens up possibilities to curb ones area of freedom. Under the guise of security reasons governments and Big Data companies have transformed the free area of the World Wide Web to an area of constant surveillance. The increase in cyber-protest, whistleblowing and hacktivism is a reaction to a serious abuse of privacy rights and data misuse in the digital network. In order to understand and define recent cyber-attacks, in an ethical and legal framework, the paper develops a theory about which acts of digital protest can be understood as legitimate protest forms in our democratic society. Hereby, the paper takes the framework of acts of civil disobedience, which are traditional understood as legitimate but illegal forms of protest in a democratic society in order to bring about a change in law or policy, to come up with a definition of digital acts of civil disobedience, which are outlined as acts of electronic civil disobedience. By analysing the recent cases of Edward Snowden and Anonymous the paper elaborates a framework, which defines and categorize a legitimate digital protest form in the fight for digital civil and human rights. Acts of electronic civil disobedience are defined as legitimate protest forms to establish digital civil rights for the new, digital citizen. The digital tools in use must be non-violent, aim to stipulate public discourse and the protestor/s must be aware of their responsibility to ones fellow citizens and must show respect to the existing legal system.

Key Words: Freedom, privacy rights, digital civil rights, mass surveillance, cyber-protest, electronic civil disobedience, civil movements.

Electronic civil disobedience: Current digital protests in defence of privacy right

Habermas describes the constitutional state as a “susceptible, precarious undertaking, which is constructed for the purpose of establishing or maintaining, renewing or breaching a legitimate legal order under constantly changing circumstances” (Habermas, 1985). The Internet and digital network technologies are circumstances, which fundamentally change our concept of nation, community, publicity, privacy, freedom and identity. The digital network is transforming our understanding of individual and civil rights. Digital human rights are in the process of definition. The term civil disobedience, which is defined as an illegal but legitimate act of democratic participation, is also affected by the digital development. New technologies offer new possibilities of political participation. The reach is expanding from local to global, the speed is increasing from months or years of laborious information gathering and distribution to hours or minutes until one reaches publicity. Public protest becomes easier to communicate and organize. Additionally, the purpose of political protest is changing. Digital protest can be used to express concern about external injustice or to claim about injustice within the digital sphere. The latter will be the concern of the discussion. James Tully describes civil disobedience as belonging to types of struggles for new kinds of citizenship; it is a “means for the development of modern citizenship” (Tully, 2008). This paper argues that we can understand Electronic Civil Disobedience as an illegal, justice-based act that the digital community uses to define its digital civil and human rights.

In order to develop a clear definition of electronic civil disobedience the paper starts with defining the contested term civil disobedience. Next, the paper discusses how our understanding of civil disobedience is changing in the digital age. Hereby, we start with analysing civil injustice in the digital age in order to expose legitimate reasons for acts of civil disobedience. Then, we are looking at current cases of electronic disobedience and digital protest in order to get an understanding of the new motivations and means in use. Finally, the characteristics of electronic civil disobedience and a definition of electronic civil disobedience are given. The paper will end with concluding remarks.

What is Civil Disobedience?

The most famous liberal definition of civil disobedience, developed by John Rawls in his well-known work “A Theory of Justice”, describes civil disobedience as “a public, nonviolent, conscientiously determined, but illegal act, which is usually meant to cause a change in the laws or the policy of the government by which one addresses the sense of justice of the majority” (Rawls, 1975). The possibilities of effective legal means must be exhausted and the act must be done “within the limits of fidelity to the law” (Rawls, 1975), this implies accepting the legal order and respecting the existing system as such. For Rawls, civil disobedience is only a legitimate means in a

nearly just society. Habermas shares Rawls understanding that civil disobedience is a morally justified protest, which cannot be based on private convictions only. He emphasizes that analogue to the law it must be public and announced in advance, “it includes the premeditated transgression of individual legal norms without calling into question obedience to the rule of law as a whole” (Habermas, 1985). Fidelity to the law, according to Habermas understanding, derives out of a voluntary recognition of the modern state, which is grounded on moral justified values. Law achieves positive validity by the democratic process. Obedience of its citizens can only be expected when the law rest on justified moral principles, which are open to discussion and change. Habermas understands constitutional law in demand of a “paradoxical task”: Law is on the one hand a dynamic, ever changing concept, which has to react to transforming needs of society, but one the same time asks for reliability and stability. Thereby, civil disobedience becomes a necessity of a functioning democracy. He describes that the constitutional state must protect and sustain “non-institutionalized distrust towards itself” (Habermas, 1985) – legal offenses against legitimacy. In his definition, civil disobedience necessarily refers to moral insights: “The realization of exacting constitutional principles with universalistic content is a long-term process which historically has been by no means linear and is instead characterized by errors, resistances, and defeats”. Habermas has a deliberative idea of democracy in mind. He shares with Rawls that the moral insights in civil disobedience must be justice-based but additional he understands the creation of ethics by participation in relationship of mutual recognition and discourse. Further, Habermas shares with many activists and liberal thinkers, from Socrates, King and Gandhi to Rawls, that civil disobedience includes the ‘willingness to accept the penalty’. William Scheuerman discusses this aspect in length and understands it directly connected to the question of accepting the existing legal system. For him ‘within the limits of fidelity to the law’ means that civil disobedience is an act of political responsibility, a means to improve the legal system in order to develop it to a more just system. He has a natural law account in mind, one that does not refer to a divine higher law, but to a law, which is grounded on basic human rights. Following this way of argumentation, not only the illegal character of civil disobedience is necessary but also accepting the penalty is an expression of respect to the law as such. Celikates, with his broad, radical democratic understanding of civil disobedience does not understand the acceptance of the penalty a necessary condition. He criticizes Rawls normative definition of civil disobedience. He understands civil disobedience as “an intentionally unlawful and principled collective act of protest that has the political aim of changing specific laws, policies or institutions” (Celikates, 2014). Taking up Rawls order that civil disobedience is a public act, a non-violent act, a conscience act, an act appealing to the majority’s sense of justice and within the limits of fidelity to the law, Celikates denies the first three concepts by arguments of a too vague definition of these concepts. Celikates asks what does non-violent includes? What does public mean, and what is a conscience act? Because of the difficulty to define these concepts precisely, he quickly eliminates their inclusion in the definition of civil disobedience. Instead of rethinking how these important characteristics should be understood in a consistent definition of civil disobedience he argues that these characteristics are too restrictive. For example *reasons of conscience*, he argues do not cover reasons of self-respect or reasons of political responsibility, which can give important motivation for civil disobedience. But this

argument comprehends Rawls characteristics too narrow. Are not, according to Kant's moral philosophy and his idea of 'duty towards oneself', reasons of self-respect included in reasons of conscience? The same we can argue for political responsibility, which is often motivated by one's conscience. Further, he rejects the idea of the *appeal to the majority's sense of justice*. I totally agree that civil disobedience does not or rarely appeal to the majority's sense of justice, but in contrast tries to attach this sense of justice. And I agree with Celikates' critic "it is often failures of this sense of justice that make civil disobedience necessary in the first place" (Celikates, 2014). However, this does not automatically imply that civil disobedience does not appeal to justice as such what Celikates proclaims. Although civil disobedience should definitely not be understood as an appeal to majority's sense of justice, it appeals to justice-based moralities. However, the definition of justice should not ground on Rawls' strict definition in this concept. Celikates' last criticism is Rawls' idea that civil disobedience takes place within the limits of fidelity to law. Celikates delivers real life examples of the Civil Rights Movement to analyse this idea. He quotes King who stated, "The thing to do is to get rid of the system" (Celikates, 2014), in order to show that civil disobedience cannot be understood within limits of fidelity to the law. He criticises that this definition would be too restrictive. But one has to understand this quote in context, and this implies that one should not forget that King was fighting against the system, against the legal order but not against the state as such. He was fighting for an improvement in society, for being understood as a social human being, who wants to be recognized as such by the state (the system) and the law by providing him with civil rights. He was fighting to be part of the state, to have legal and political power to develop and change *the system*. Additionally, by accepting the penalty he was showing respect for the law, by the civil right act he was showing the very highest respect for the law, because he was fighting for his inclusion and participation in the political and legal system. Within the limits of fidelity to the law is a necessary characteristic of civil disobedience. It implies that one is willing to accept the penalty and thereby showing respect for the idea of a state as such. Civil disobedience should in no case be mixed up with archaic movements. It should be understood as a civil act. Civil disobedience is an act which aims to improve the way citizens are coordinated to life together in community. Fidelity to the law implies that we show the very highest respect to the law in the sense that we aim to improve the law and the way we can live decently with it. However, Celikates enriched the understanding of civil disobedience by a very important aspect. He described the act as a struggle for democratic freedom, an "expression of a democratic practice of collective self-determination" (Celikates, 2014). He demonstrates democratic deficits, procedural or institutional in character, can be justified reasons for civil disobedience. Civil disobedience appeals to civil rights. It is *CIVIL* disobedience, and this means the civic has to define what he understands as necessary condition to live a decent life in a system where space of one's negative freedom is taken in order to provide positive freedom for each. How the space is divided between freedom and privacy and security, however, is a changing concept, which is never absolute. The critical aspect, and here civil disobedience comes into play, is that in order to guarantee some form of positive freedom, security and a legal order which is stable and reliable is necessary, therefore civil disobedience needs to be illegal.

In order to not misuse the term civil disobedience, we need a clear definition, which is defined by exact characteristics. Celikates democratic understanding of “collective self-government” and “struggles of and for democratic freedom” can be an important legitimate reason for civil disobedience, it is a demand for functioning political rights and political rights are human rights, which are needed to be part of the social community, to be able to live a decent live in the system, and that is the ultimate aim of civil disobedience. Civil disobedience is not denial of society, but attempt to make ones live in society possible.

Civil disobedience appeals to justice-based moralities, is an illegal, public but non-violent act, which tries to improve the legal system so that citizens are able to voluntary, accept it. Along with the recognition of the value of the state and ones fellow citizens a willingness to accept the penalty is an important characteristic.

James Tully demands in his essay “On Global Citizenships” a critical analysis of current political problems and injustices in order to understand civil disobedience accurately. Tully rightly states that civil disobedience belongs to types of struggles “for new kinds of citizenship” and it is an important means for the development of modern citizenship (Tully, 2014). Civil disobedience is an expression of the problem we are facing between a dynamic, changing, pluralistic democracy and the need of a stable, reliable constitution.

Following Tully’s advice, we are going to look at current acts of disobedience and protests. Hereby, we are focusing on the digital space and its changing policies. The paper starts with discussing the recent increase in governmental and company abuse of privacy rights in order to outline current injustices. Furthermore, the paper looks at recent digital protests against government spying and mass surveillance to get an understanding of changing protest forms, means and intentions. By this analysis the paper attempts to define the term *electronic civil disobedience*, which should be understood as a specific form of civil disobedience.

Civil Disobedience in the Digital Age

In 1995 less than 1%, today almost 50% of the world population is online. New technologies, processes, tools and networks are constantly developing. Along with the change of space, communication and infrastructure the way of political engagement is changing. New digital network technologies allow connecting, organizing and mobilising communities easily and fast. Thereby, opportunities for effective political organization, engagement and expression are growing exponentially.

The Critical Art Ensemble, which first introduced the term *electronic civil disobedience* in their 1996 published book “Electronic Civil Disobedience and other unpopular ideas”, explains that the protest movements from the streets to the digital space is a necessary answer to a shift in power. In order to send a message effectively, power, which is information, has to be disrupted. A blocking of entrance of government halls or a public sit-in does not disturb the information flow anymore. Information is digital, therefore a political action must disturb digital information flows in order to be effective. Which form of digital protest is an electronic form of civil disobedience? Wray distinguishes, in his essay “Electronic Civil Disobedience and the World Wide Web of Hacktivism”, between five forms of ‘net politics’. He differentiates between computerized activism, grassroots

inforwar, electronic civil disobedience, political hacking, and resistance to future war. These five digital actions are described in increasing order from using the Internet mainly as communication and coordination tool to direct actions and serious transgressions. Wray is placing electronic civil disobedience between grassroots inforwar and political hacking, as a “hybrid position” (Wray, 1995), which uses the Internet infrastructure as means for communication and as site for direct action. Along with the traditional understanding of civil disobedience he characterizes electronic civil disobedience as non-violent direct action. He outlines DDoS attacks as virtual sit-ins and virtual blockades and thereafter defines them as typical examples of acts of electronic civil disobedience (ecd). He distinguishes ecd from political hacking, as action performed only “at the web site entranceway” (Wray, 1995). He states: “Because of the more secret, private, low key, and anonymous nature of the politicized hacks, this type of activity expresses a different kind of politics. It is not the politics of mobilization, nor the politics that requires mass participation” (Wray, 1995). Wray understands ecd as a political action, which encourages political discourse. It is a symbolic gesture that demands mass participation and is non-violent.

But in order to define civil disobedience in the digital age it is insufficient to solely analyse digital political actions by distinguishing between different technological tools in use. DDoS attacks¹, for example, cannot be classified per se as acts of electronic civil disobedience. Some forms of DDoS attacks might be so aggressive that they constitute a serious violation of censorship and harm external parties. On the other hand, there might be acts of political hacking, which can count as a legitimate form of civil disobedience.

How can we define civil disobedience in the digital age? Instead of trying to apply the characteristics of civil disobedience one to one to electronic civil disobedience we have to start with analysing the way the digital space is transforming our community life and understanding of public, privacy and freedom.

The *CIVIL* aim of political actions is the characteristic both concepts of civil disobedience share. Civil aim means that the attempt is not archaic in its idea but is focusing on developing community life. The paramount aim of the action is to fight for being able to voluntarily accept the way the community is coordinated and that one is conscious able to define oneself as part of it. This might be a fight for the recognition of basic human rights or an attempt to improve the democratic political process.

The development of the World Wide Web did not only open up to new technical tools and ways of interactions it also creates a new form of community. The digital community as well as the digital human being² is currently defining itself, its duties, its values and its rights. The interest is to analyse if there is a legitimate injustice for what the digital community is fighting for which is comparable with legitimate acts of civil disobedience like the Civil Rights Movements in the 60s. I distinguish between digital actions which are used to combat against injustice in society like the digital actions which were used during the Arab Spring and digital actions which are used in order to fight against injustice within the digital space and community. The latter, will be the focus of my discussion: Is there a *civil* injustice against which it is legitimate to protest electronically? I argue that within the digital

¹ A distributed denial-of-service (DDoS) attack is one in which a multitude of compromised systems attack a single target, thereby causing
² Which stands in mutual dependency to the offline community.

community there are injustices and fights for civil rights which can be compared to civil rights acts and therefore can be defined as electronic civil disobedience³.

In order to describe the injustices of the digital age the next paragraph is analysing the digital space and abuse of privacy rights in the digital network.

Where is the injustice today?

The World Wide Web: Free access to information, communication, education, art, music, games and many more possibilities. Intelligent projects like the open knowledge foundation, which provides free access to information, data and software, support the idea of equal access to information. The Internet has the potential to improve global justice by, among other things, helping to provide access to equal opportunities. The new development of networking brings a new network community about. New community always means new distribution of power. In a world where information is everything Big Data Internet firms are holding the most of it. Governments react to the new power division by extending their digital expertise and investing in digital data gathering and analysis programs.

Having access to free information, free search tools and free exchange always means providing something in return: Information of your digital being. New technologies are radically advancing our freedom but they also enabling unparalleled invasions of privacy. If justified for a faster, easier, more convenient consumer life or for protection of the civil population, the digital human being is under possible or actually constant surveillance. When data gathering is done and used without permission, independent if done by private companies or the state, violations of privacy rights is at stake. The World Wide Web has become the best tool for government and company surveillance and the danger of data misuse and violation of privacy has reached a new dimension.

How far is the government legitimized to be invasive in order to secure safety? When are companies legitimized to gather, use or give private data to the government? A just balance between security and privacy is a public debate, which gets new perspectives by the development of the digital network.

The main reason we have to redefine the concept of civil disobedience in the digital space is that we are talking about a new partially independent community. It is not only that instead of being political active in a national community, we became active in an international community; we are talking about a new community. The sphere and the tools have changed, the actors as well. This has effects on our understanding of security, privacy and our concept of justice. The digital community is in the process of defining their digital civil rights.

Definitely not all digital actions in the name of 'privacy rights' are legitimate to be called acts of electronic civil disobedience. The growing digital protest in the aim for Internet freedom and privacy, however, shows, that the increasing surveillance of governments and company's does seriously threaten the rights of the digital and non-digital human being. The aim of defining one's digital right for privacy can be a legitimate aim for acts of electronic civil disobedience.

³ If other forms of protest which fight for 'external' injustice are also legitimate to be defined as forms of ecd is not discussed here.

Electronic Civil Disobedience

Recent Cases of Digital Protests: Whistleblowing and Hacking

One of the main triggers, which brought the discussion about Internet freedom and digital privacy rights into public discourse, was the whistleblowing case by Edward Snowden. In 2013, Edward Snowden, a former technical assistant for the CIA, copied classified information from the United States National Security Agency (NSA) and the United Kingdom Government Communications Headquarters (GCHQ) for public disclosure without prior authorization. The information revealed numerous global surveillance programs run by the NSA and Five Eyes with the cooperation of telecommunication companies and European governments. The program PRISM for example allowed for court-approved direct access to Americans Google and Yahoo account. Secret court orders hand the NSA millions of Americans phone records daily and the NSA was shown to be secretly tapping into Yahoo and Google data centres to collect information from hundreds of millions of account holders worldwide by tapping undersea cables (Gellman & Soltani, 2013). The program, Black Pearl, which targeted private networks, additionally revealed that the NSA surveillance actions extended beyond their primary mission of national security and constituted a serious violation of privacy rights. Snowden's statement: "I, sitting at my desk (could) wiretap anyone, from you to your accountant, to a federal judge or even the president, if I had a personal email" (Gellman & Soltani, 2013) further reveals the immense abuse of power and violation of basic rights by the NSA. Snowden's motivation in engaging in illegal action was following a legitimate aim of acts of civil disobedience. As John Rawls demand, the NSA surveillance program constituted "blatant violations of basic human rights" (Rawls, 1971). The aim was in a legitimate sphere of acts of civil disobedience, but was the way he acted also legitimate to describe his act as act of civil disobedience? By which restrictions are citizens of a liberal democratic state legitimate to violate the law? What are precondition of legitimate acts of civil disobedience in the digital age?

For some theorists the whistle-blower case of Edward Snowden constitutes a prime example of electronic civil disobedience. Edward Snowden expressed in public declarations and statements that he has carefully planned and conducted the publication of NSA information. At the Moscow airport on July 2013 he announced: "I don't want to live in a world where everything I do and say is recorded. (...) My sole motive is to inform the public as to that which is done in their name and that which is done against them" (Greenwald, 2013). Further one he stated: "I did not seek to enrich myself. I did not seek to sell US secrets. (...) Instead, I took what I knew to the public, so what affects all of us can be discussed by all of us in the light of day" (Wikileaks, 2013). He expressed that his decision to engage in political motivated law-breaking was due to moral reason when he quoted the principle of the Nurnberg trials, where it is said: "Individual citizens have the duty to violate domestic laws to prevent crimes against peace and humanity from occurring" (Snowden, 2013). Furthermore, he defends, along with the republican view, that the secrecy of the NSA mass surveillance programs and secret laws are a violation of the democratic process. He describes them "as existential threat to democracy" (Greenwald, MacAskill & Poitras, 2013). Snowden understands his act of disobedience as a moral obligation. In order to avoid harming people he has carefully evaluated every single document he disclosed to ensure that each was in the public interest (Greenwald, MacAskill

& Poitras, 2013). Additional, he only used the illegal means of disobedience after he did not see an effective legal alternative. He claims, that after talking to his bosses he realized: "I had been looking for leaders, but I realized that leadership is about being the first to act" (Greenwald, MacAskill & Poitras, 2013) In an Interview with Gleen Greenland he says: "I have no intention of hiding who I am because I know I have done nothing wrong" (Greenwald, MacAskill & Poitras, 2013). Many reasons are in favor of interpreting the whistleblowing act of Edward Snowden as an act of civil disobedience: He acted out of moral conscience, in public, in order to stipulate public debate, to combat serious infringements of basic rights, where all legal means seems exhausted. But Edward Snowden does not fulfill the requirement of *willingly accepting ones penalty*, which constitute an important characteristic of civil disobedience. The US Department of Justice charged him of violating the Espionage Act and theft of US Government and foreign government property. In summer 2013, however without accepting a due process, Snowden fled to Russia.

Whistleblowing is one popular act of political protest, which is used as a means for bringing awareness about Internet freedom and digital privacy rights. Hacking is a second popular protest form.

The digital community have increasingly focused attention on the growing presence of video surveillance technologies in private and public space. Even before Edwards Snowdens disclosure scandal civil acts of protest and defence of mass surveillance were present. For example the Institute for Applied Autonomy developed 'Inverse Surveillance' programs, which intervene in the process of surveillance and "attempts to undermine or reverse the authoritative power associated with the technology" (appliedautonomy, 2015). The program 'iSEE', for example, charts the locations of closed-circuit television surveillance cameras in urban environment. With iSEE users can find routes that avoid these cameras, and thereby allowing them to walk around the city without fear of being taped by security monitors. Other 'liberation technologies', like Telegram, which is a message app with end-to-end encryption, are constantly developing. These advices and program are helpful tools to temporarily and selectively circumvent mass surveillance and protect privacy but they do not have the power to affect the legal and political system. These are only temporarily solution, tools to adapt as good as possible to the serious infringement of basic rights in the digital space.

We need people like Edward Snowden in order to create disturbance, stipulate public debate and show that national and international laws have to catch up with the evolving need for privacy that comes with new technology. Constantly surveillance is a serious infringement of our basic rights. Securing of privacy rights have to extend to the digital world. But nevertheless, Snowden's whistleblowing act cannot be understood with certainty as act of electronic civil disobedience.

The requirements for civil disobedience do change in the digital space. With electronic civil disobedience, we talk about injustice, which happen within the digital community. The community and the kind of injustice are different. The requirements for electronic civil disobedience are different as well. The only characteristic, which I have tried to show so far, is that electronic civil disobedience has (as cd) to appeal to justice-based moralities. The aim is still

CIVIL, although referring to the digital community it is meant to cause a change in the laws. If it has to be public, illegal, non-violent, within the limits of the fidelity to the law is not clear yet.

The two characteristics, non-violent and illegal, do with certainty have to be requirements of acts of ecd. Both are necessary characteristics in order to be placed in the area between legitimacy and legality. Non-violent in the sense that the political protest do not violate the civil liberties of others and do not harm external parties. Acts of ecd should be conducted carefully by considering possible consequences of all parties concerned. Acts of ecd often might disturb, harm or violate others but these disturbances should be temporarily. The least violent means, which still have enough effect to stipulate political discourse, should always be chosen. Additionally, acts of ECD are illegal acts. DDoS attacks, for example, are punished by imprisonment with up to ten years in Germany.

One important characteristic of acts of cd and ecd is their communicative reach. Both actions do not only attempt to express their disapproval of a certain law and policy, but aim to effectively create public attention and dispute in order to bring about a change in law or policy. This also includes that these acts are done public. Rawls argues that acts of civil disobedience are never covert or secretive. They are committed in public, openly and with fair notice to legal authorities. I argue within the concept of electronic civil disobedience, the acts might even be legitimate when covert or secretive. The digital protest movement for privacy rights and Internet freedom is a different kind of act of civil disobedience and does not demand the same requirements than the protest acts of the civil right movements. Anonym protests and hidden attacks can be legitimate means when conducted as a symbolic answer to the immense abuse of privacy rights in the web. What is a better protest form than total immunity and unrecognizability in a network where spying and mass surveillance is becoming the status quo?

Habermas argued, “Analogue to the law civil disobedience must be public and announced in advanced” (Habermas, 1985). But what does analogous to the law mean when the state is using secret laws in order to keep its citizens under constant surveillance? In the specific case of ecd, as a form of ‘freedom of the Internet’⁴ the protesters can be covert or secretive when covering is used as a symbolic expression. However, the digital act has to be public in order to create effective public attention and political discourse.

Would that imply that the most popular hacking group *Anonymous* can be understood as legitimate form of electronic civil disobedience?

Anonymous is an international, decentralized network of activists and hacktivists, which established 2003. The groups famous trademark are the Guy Fawkes masks by which they go public and inform about their operations and aims⁵. Although Brian Kelly describes that Anonymous follows “an unrelenting moral stance on issues and rights” (Kelly, 2012), the acts are diverging in their topics and used technology. Some acts are in form of legal protests but most are illegal DDoS-attacks and hacks. It is not possible to classify the group under a specific form of protest. One problem is that everybody who wants can call himself member of Anonymous. Some actions, however, can be

⁴ Morozov differentiates in his article ‘Whiter Internet Control?’ between digital protest forms as freedom of the Internet (ensuring that governments and corporations avoid increasing censorship and surveillance) and ‘freedom via the Internet (using the Internet and new media to facilitate and mobilize anti-authoritarian movements such as Iran Green Wave). I define in this article digital protest forms of ‘freedom of the Internet’ as legitimate forms of ecd when fulfilling specific characteristics

⁵ Via their You-Tube Channel <https://www.youtube.com/user/AnonymousWorldvoce>

ethical legitimate and might fall under the defined form of acts of ecd. In summer 2015, for example, Anonymous started the Operation CyberPrivacy. The group publicly claimed responsibility for a DDoS-attack against the website of the Canadian government, after it has passed an anti-terror legislation that grants additional powers to Canadian intelligence agencies. The group announced and stated responsibility for the act. The DDoS-attack was a temporarily down turn of the website of the federal agencies and it attempt not to harm external parties. This DDoS-attack can be understood as a legitimate form of violence along with the requirements of civil acts of disobedience.

One of Anonymous most recognized action was OperationPayback and the follow up action OperationAvengeAssange. In defence of the legal threats of WikiLeaks by the US government, where PayPal, MasterCard and Visa cut off its service to the organization, Anonymous attacks these money transfer firms by bringing the websites down for an hour. PayPal estimated the damage to have cost the company US\$5.5 million. It later provided the IPaddresses of 1000 of its attackers to the FBI, 13 where pled guilty. In this case it is debatable if one can accept these attacks as acts of ecd. First of all, the purpose to support WikiLeaks and defending their operations is not the same as openly expressing a serious injustice in the policy or the law. WikiLeaks is an international, non-profit organization, which publishes secret information leaks and classified media from anonymous sources. According to their homepage it has the goal “to bring important news and information to the public” (Anonymous, 2015). The organisation shares with Anonymous an equal goal of defending free speech. On the other hand, WikiLeaks cannot (directly) be classified as act of civil disobedience because of its hard and aggressive style to publish secret information. The OperationPayback and OperationAvengeAssange might also not fulfil the nonviolent requirement of acts of civil disobedience. Shutting down major money transfer companies might have far reaching consequences, which could have harmed external parties in a serious way.

Above all, all three cases of digital protest I described are missing one important requirement of civil disobedience: *The willingness to accept the penalty*. Edward Snowden fled to Russia, Anonymous is trying to hide their personality and Wikileaks proclaims that it has the goal to ensure that journalists and whistle-blowers are not jailed for emailing sensitive or classified documents (Electronic Privacy Information Center, 2014).

If electronic acts of civil disobedience are legitimate to conduct without revealing ones identity the question emerges is or can the willingness to accept the penalty still be a requirement? Edward Snwoden revealed his identity but was not willing to make a due process. Julian Assange has been granted asylum in the embassy of Ecuador. Anonymous is hiding their personality as good as possible in order to not get caught. Are these the new legitimate forms of civil protest?

The British philosopher Baggini stated: “Cyber-protest is cheap, digital disobedience easy. Democracy and the rule of law, however, are difficult and hard-won” (Baggini, 2015).

The covering of ones identity can only be used as a symbolic response to constantly surveillance and restriction of privacy. Symbolic covering is legitimate as expression of the only possibility to gain some privacy in a network where secret spying and abuse of civil rights is common.

Snowden's enclosure case has enormously contributed to the international discussion about Internet freedom and digital rights. In some aspect he has successfully helped to improve the legal restrictions of privacy rights. Just recently, at the 2th of February 2016, the EU Commission and the United States agreed on a new framework for transatlantic data flows, where the fundamental rights of Europeans will be protected when their data are transferred to the United States (Europa.EU, 2010).

Anonymous can be in many aspects carved out as a movement against the violation of individual rights and for Internet freedom. However, some acts and comments have to be interpreted as archaic motivated.

Civil and electronic civil disobedience are acts which intent to improve the state, to make community life more just in order to live in a community where the people can voluntary accept the legal order. The willingness to accept the penalty is a necessary characteristic of acts of ecd. It is an expression of accepting the state and the legal system as such. It shows that one is taking the cost of ones illegal actions into account in order to improve the political and legal system. The state and the idea of justice, democracy and a reliable legal system are not denied, in contrast to archaic motivated actions. It is a civil movement, which conscious approves the society and the underlying idea of a democratic system.

In order to define the whistleblowing act of Edward Snowden and some acts of Anonymous and WikiLeaks as acts of ecd a willingness to accept the penalty must be shown. Scheuerman argues that giving up a comfortable life in Hawaii in order to live with complete restrictions in Russia is already enough punishment in order to describe Snowden's act as civil disobedient. Morozov outlines that it is actually very easy to trace the Anonymous hacker, unless they take additional steps of covering their tracks (Morozov, 2010). I think that this argumentation is missing the point. The expression of the willingness to accept the penalty is not only an expression of suffering for ones violation of the law, but also an expression of ones attitude towards the state, the community and the law as such. Being willing to accept the penalty is expressing respect to ones fellow citizens. And showing awareness that one is disturbing the system and brining its fellow citizens into danger. When conducting an act of electronic as well as civil disobedience one is taking responsibility for the system, the community and the law by questioning its way of ruling or content of rules. One also risks of not having the right understanding or sense of justice which the community will agree up on. Additional, when conducting acts of cd one questions specific laws or ways of policy making but does value the idea of the law as a reliable, stable refuge. In order to uphold the *paradoxical task* of the constitutional law, acts of electronic civil disobedience require showing respect to the law, which implies that the willingness to accept the penalty must be a necessary condition.

At the same time the state has to start recognizing the status of acts of electronic civil disobedience and has to impose penalties in an adequate manner. Technologies are constantly improving, cyber-protest is occurring in new not clearly defined forms; from virtual sit-ins to cyber-war everything is happening. Attacks and hackings are so diffuse and diverge in power and intent that it is very difficult to differentiate. Additionally, the state feels its sovereignty threaten. But in order to create a climate of effective conduction of ecd, which is a necessary tool for democratic policy-making, the state has to rethink their hash punishments. Aaron Swartz, an American computer

programmer, political organizer and Internet hacktivist, committed suicide after he was charged of wire fraud and computer fraud by a maximum penalty of \$1 million in fine, 35 years in prison. Edward Snowden is scared to risk the death penalty if he is returning to the United States.

Accepting Snowden and other acts of *freedom of the Internet* as acts of electronic civil disobedience demands imposing adequate punishments in order to make *the willingness to accept the penalty* feasible.

Conclusion

This paper shows that we can describe specific cases of digital protests for privacy rights as acts of electronic civil disobedience, which is a new, digital form of civil disobedience.

Electronic civil disobedience is described as a legitimate tool to define the digital basic rights in the new, digital community. Along with the tradition of civil disobedience, we understand electronic civil disobedience as an act, which refers to morally justified injustices in society, in this case in the digital society. The protest has the legitimate aim of ensuring that governments and corporations respect the digital privacy rights of its users. The digital tool in use must be non-violent, in the sense that the harm is only temporary and not far-reaching. The act must be conscious planned and the protester/s must be aware of their responsibility to their fellow citizens. This includes that the acts must be effectively planned to stipulate the public discourse and bring about a specific change in the law or political system as well as not harming external parties. The electronic civil disobedient recognizes the moral value of the state and the genuine goods the state provides and therefore must be willing to accept the penalty.

I focus in my analysis explicitly on violation of privacy rights but there are other injustices within the digital network which can give legitimate ground for acts of electronic civil disobedience. Furthermore, I want to mention that our understanding of publicity and privacy is extremely changing by the development of the digital society and the *digital being*. It might be possible that our understanding and our right of privacy will have changed so dramatically in some years that the fight for privacy will not be understandable anymore. But until now the increase of digital protest and electronic attacks for more Internet freedom shows that privacy and the protection of it is a sacred value in our society. The digital society and the values, which will define them, are in development. The described actions of Snowden, Anonymous and WikiLeaks are contributing to the discussion in how far the value of privacy should be upheld within the digital community. These acts of disobedience are important contributions to the development of the modern citizenship.

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