

# Participation and Protest Across Civic Space: An Environmental Law Story

Maria Lee<sup>1</sup> and Chiara Armeni<sup>2</sup>

<sup>1</sup> Faculty of Laws, University College London, London (United Kingdom).

<sup>2</sup> Faculty of Law and Criminology, Université Libre de Bruxelles, Brussels (Belgium).

**Corresponding author:** Maria Lee, Email: [maria.lee@ucl.ac.uk](mailto:maria.lee@ucl.ac.uk)

**Abstract:** This article explores a continuum of environmental participation, from formalized participation in decision-making processes, protected by law, at one end, to protest on the streets, criminalized by law, at the other. Participation across this continuum is partially constituted by, but also constrained by, law. We share and extend Brian Wynne's evocative language of 'uninvited' participation to describe the contributions that fall outside institutionalized participation, so that our continuum is composed of 'invited participation', 'uninvited participation' and 'forbidden participation'. Focusing especially on those states where liberal democracy is thought to be most secure, this article looks across the interconnections between different categories of environmental participation, highlighting the breadth and intensity of the shrinking of civic space in Europe, and law's role in that.

**Keywords:** Public participation; Environmental assessment; Aarhus Convention; European Convention on Human Rights; Protest.

## 1. Introduction

The shrinking of civic space, the physical and virtual space for people and groups both to participate in and to contest the exercise of power,<sup>1</sup> is an important phenomenon for environmental lawyers. Whilst both legal rights to participate and legal rights to protest are commonly conceptualized as forms of political or democratic participation, scholars of environmental law (including ourselves<sup>2</sup>) have tended to discuss them separately, as if they were disconnected practices. Environmental lawyers have, on the whole, focused on participatory laws derived from provisions such as the Aarhus Convention rights,<sup>3</sup> leaving the right to protest primarily, although not entirely, to human rights and political science scholars.<sup>4</sup> Although legally institutionalized participation and protest can be in tension, particularly when protests ‘confront’ rather than ‘engage in discussion’,<sup>5</sup> this disconnect leaves us with a partial view of participation. Those of us who are interested in the contribution of publics to environmental decision-making are in danger of missing the role of protest as an important part of the story. Engaging with a fuller story requires consideration of the multifaceted nature of contestation and consent, which can be pursued in legal rights to participate, in street-level direct action, and in every space in between. Indeed, this article starts from the position that there is a continuum of participation, with institutionalized legal rights to participate (including as ordinary public consultation) at one end, and unlawful protest and practices of civil

---

<sup>1</sup> A. Buyse, ‘The Closing and Resilience of Civic Space from a Human Rights Perspective: Scope, Causes, Responses’, in B.A. Andreassen (ed.), *The Edward Elgar Research Handbook on the Politics of Human Rights Law* (Edward Elgar, 2023), pp. 29-46; A. Buyse, ‘Why Attacks on Civic Space Matter to Strasbourg’ (2019) 4 *Duesto Journal of Human Rights*, pp. 13-37.

<sup>2</sup> E.g. C. Armeni & M. Lee, ‘Participation in a Time of Climate Crisis’ (2021) 48(4) *Journal of Law and Society*, pp. 549-72.

<sup>3</sup> United Nations Economic Commission for Europe (UNECE) 1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Aarhus (Denmark), 25 June 1998, in force 30 Oct. 2001, available at: <http://www.unece.org/env/pp>.

<sup>4</sup> But see B. Richardson & S. Castles-Lynch, ‘Trying to Express Climate Concerns through Environmental Law? The Changing Lawscape of Public Participation’ (2023) 13(1) *Climate Law*, pp. 1-35; O. Hensergarth & Y. Lu, ‘Emerging Environmental Multi-Level Governance in China? Environmental Protests, Public Participation and Local Institution-Building’ (2019) 34(2) *Public Policy and Administration*, pp. 121-43.

<sup>5</sup> See I.M. Young, ‘Activist Challenges to Deliberative Democracy’ (2001) 29(5) *Political Theory*, pp. 670-90, but on deliberation rather than participation.

disobedience at the other. This continuum of potentially mutually reinforcing forms of participation is both part of and constitutive of civic space.

In this article, we explore this continuum and the role of law in shaping it. Even if law alone cannot simply create civic space, which depends on an intricate landscape of institutions and norms, discourse and practice, law invites, permits, or resists participation. On the one hand, law encourages and defends participation, potentially contributing to environmental democracy as well as to better environmental outcomes.<sup>6</sup> Environmental law creates protected spaces for public engagement in projects, activities, policies and legislation related to the environment, and public and human rights law protects freedom of expression and association that enable protest. On the other hand, law can restrain participation: environmental law might create only very narrow spaces for such engagement, while public law might prevent or criminalize certain forms of protest. That the desire to participate escapes and exceeds legally protected institutions is increasingly evident in climate protests across Europe and elsewhere. Contestation is articulated through a rich, creative and diverse arsenal of practices, changing to maintain attention and to respond to the approach of the authorities. Activists use marches, demonstrations, sit-ins, lock-ons and boycotts. They interrupt essential services and energy installations as well as art galleries, cultural spaces and sporting events.

Looking across different forms of participation and protest in this article allows us to describe and analyse an increasingly restrictive legal approach across the continuum of environmental participation. This restrictive approach is clearly a transnational phenomenon, with similar practices and challenges arising globally, albeit in their jurisdictional contexts. Our focus is on Europe, including and beyond the European Union (EU), and particularly those parts of Europe

---

<sup>6</sup> Armeni & Lee, n. 2 above.

that are conventionally seen as secure liberal democracies. Although an erosion of rights associated with practices of environmental democracy is widely recognized,<sup>7</sup> we aim here to provide a sharper focus on the continuity and permeability between the different ways in which law contributes to the support or erosion of civic space.

There is a vast and crowded scholarship in this area, and there is a lot that we cannot do here. We do not assess the relationships between law and the strategies chosen by social movements (although we touch on this literature in Section 3 below), and nor do we assess the success or impact of social movements.<sup>8</sup> We are also very conscious that civic space is much richer and more various than we can capture here. Whilst, by focusing on the two ends of our continuum in much of this article, we try to explore the most revealing issues, there are many participatory practices that we do not discuss, including voting at elections, citizen or consumer action in the market and the use and restrictions of virtual space for participation.<sup>9</sup> Further, whilst as environmental lawyers, we begin with the environment, environmental participation is not uniquely restricted.<sup>10</sup> The environmental dimension of participation in civic space rests in its potential at all points on our broad continuum to create opportunities for environmental voices, and especially for perspectives that are distinct from dominant (especially economic) views.<sup>11</sup> We do not however, argue that participation in any of its manifestations is necessarily pro-

---

<sup>7</sup> Ibid.

<sup>8</sup> See review of literature in O. Berglund, 'Disruptive Protest, Civil Disobedience and Direct Action' (2023) 45(2) *Politics*, pp.239-57; on different possible measures of 'success' see J. Ozden & S. Glover, *Protest Movements: How Effective Are They?* (Social Change Lab, 2022).

<sup>9</sup> See, e.g., J. Penca, 'Transnational Localism: Empowerment through Standard Setting in Small-Scale Fisheries' (2019) 8(1) *Transnational Environmental Law*, pp. 143-65; M. Jacqmarcq, 'Environmental Activism in the Digital Age' (2021) 11(1) *FLUX International Relations Review*, pp. 41-51.

<sup>10</sup> See, e.g., J. Werner-Muller, 'Protest Problems', 8 Feb. 2024, *London Review of Books*, online, no page number, addressing Black Lives Matter, COVID-19 restrictions and the Israel-Hamas war, as well as climate protests.

<sup>11</sup> See the discussion in M. Lee, 'Environmental Democracy and Law on Public Participation', in G. Patmore (ed.), *The Edward Elgar Research Handbook on Law and Democracy* (Edward Elgar, forthcoming 2025), available at: <<https://ssrn.com/abstract=4487188>>.

environment, or indeed supportive of a richer or more open civic space; it is perfectly plausible that anti-environmental,<sup>12</sup> and illiberal voices will benefit from civic space.<sup>13</sup>

We understand civic space as composed of big moments and small, the drama of activism and the mundanity of consultation on local decisions about relatively small developments.<sup>14</sup> Our key aim here is to bring our conceptual understanding of protest closer to the banal world of environmental consultations, as well as to bring ordinary moments of participation closer to the rich and vibrant world of environmental activism. The law across each part of the continuum is mutually significant. In Section 2, after this introduction, we identify and explain three steps on the continuum of participation, all of which are part of and contribute to constituting civic space: ‘invited’ participation within the institutions, ‘uninvited’ participation that remains within the law and ‘forbidden’ participation. The definitional and normative questions are daunting, and we will not rehearse the jurisprudential and political science debates in detail.<sup>15</sup> The discussion in Section 2 also illustrates the enabling and emancipatory potential of inclusive law, which has the potential to protect diverse spaces for participation.<sup>16</sup> After locating our conceptual framework in this way, in Section 3 we emphasize the importance of thinking holistically about the connections across civic space. While institutionalized participation and unlawful protest sit at two ends of a continuum, that continuum is not uni-

---

<sup>12</sup> Some movements classified as anti-environmental can raise broader questions about, e.g., regressive taxes on consumption. See generally, e.g., J. Harding, ‘Among the Gilets Jaunes’, 21 Mar. 2019, *London Review of Books*, online no page number; B. Doherty et al., ‘The Fuel Protests of 2000: Implications for the Environmental Movement in Britain’ (2002) 11(2) *Environmental Politics*, pp. 165-73.

<sup>13</sup> The point at which enemies of democracy should be excluded from democracy is a huge and complex question. See the prescient discussion in S. Chambers & J. Kopstein, ‘Bad Civil Society’ (2001) 29(6) *Political Theory*, pp. 837-65 and Simone Chambers & Jeffrey S. Kopstein, ‘Revisiting ‘Bad Civil Society’, 4 May 2021 *HistPhil* available at: <<https://histphil.org/2021/05/04/revisiting-bad-civil-society>>; of a large literature, e.g., I.M. Pousadela & D.R. Perera, ‘The Enemy Within? Anti-Rights Groups and Restrictions on Civil Society’ (2021) 12(S5) *Global Politics*, pp. 34-44.

<sup>14</sup> On the small moments, see, e.g., C. Hendriks, S. Ercan & J. Boswell, *Mending Democracy: Democratic Repair in Disconnected Times* (Oxford University Press, 2020).

<sup>15</sup> See further the literature cited in Section 2.

<sup>16</sup> See especially C. Volk, ‘On a Radical Democratic Theory of Political Protest: Potentials and Shortcomings’ (2021) 24(4) *Critical Review of International Social & Political Philosophy*, pp. 437-459; Lee, n. 11 above.

directional or wholly linear. On the contrary, not only are the steps on the continuum permeable, but the extremes are also potentially mutually reinforcing, and from the perspective of those participating, not mutually exclusive. We then turn to restrictions on invited participation and on protest, in Section 4.

Our methodology for this article has been simple. We were initially guided by a (at the time) relatively small number of European and international sources documenting the shrinking of civic space for environmental and climate civil society organizations (CSOs) in Europe.<sup>17</sup> Building on this broad-brush and transnational mapping, we took time to explore the legal detail in selected jurisdictions. We selected jurisdictions that are conventionally considered to be secure liberal democracies, and with which we were legally, linguistically or institutionally closer. Finally, we took a step back and located the resulting picture within the conceptual framework that we had developed around invited, uninvited and forbidden participation. We attempted to connect this engagement with environmental protest and activism with our many years of work on legal rights to participate in environmental decision-making, identifying links in what appeared to be a fluid continuum of participation across civic space. Overall, we dealt with a large volume of complex and detailed provisions in different jurisdictions. To ensure a coherent narrative, much of the material we collected along this journey has been relegated to a tiny space in a footnote, but each of these seemingly marginal legal provisions and practices substantially contributes to the shape of environmental civic space in Europe.

---

<sup>17</sup> Amnesty International, *Under Protected and Over Restricted: The State of the Right to Protest in 21 European Countries* (2024), available at: <<https://www.amnesty.org/en/documents/eur01/8199/2024/en/>>; Civicus, *2024 State of Civil Society Report* (2024); Civicus, *Rights Reversed: A Downward Shift in Civic Space* (2024); Civicus, *Fighting for Democratic Empowerment and Resilience* (2023); D. Mijatović (Council of Europe Commissioner for Human Rights), ‘Crackdowns on Peaceful Environmental Protests Should Stop and Give Way to More Social Dialogue’, Strasbourg 2 June 2023; M. Forst (UN Special Rapporteur on Environmental Defenders Under the Aarhus Convention), ‘State Repression of Environmental Protest and Civil Disobedience: A Major Threat to Human Rights and Democracy’, Position Paper - 4 Feb. 2024.

We are not alone in arguing that civic space is being restricted at both ends of the continuum of participation.<sup>18</sup> A snapshot of the *simultaneous* legal pressures exerted on very different approaches to political participation, across jurisdictions, however, emphasizes the severity of the shrinking of civic space. Whilst the legal detail varies by jurisdiction, the trends are clear, rendering participation across civic space increasingly practically and emotionally difficult.<sup>19</sup>

## 2. Understanding ‘Invited’, ‘Uninvited’ and ‘Forbidden’ Participation

Neither ‘protest’ nor ‘participation’ can be defined in the abstract, their meaning being somewhat contingently shaped by their legal and political framing. In this Section, we explore the continuum of participation in three stages: formal, institutionalized, and legally protected participation in environmental decision-making; lawful participation outside of those institutionalized moments; and criminal acts of protest. We share and extend Wynne’s evocative language of ‘uninvited’ participation to describe the contributions that fall outside institutionalized participation, denoting these three practices respectively ‘invited participation’, ‘uninvited participation’ and ‘forbidden participation’.<sup>20</sup>

The boundaries between our categories are often blurred and certainly dynamic, subject to change by the powerful or by majorities; we return to this in Sections 3 and 4 below. With Buyse, we define civic space as ‘the layer between state, business and family in which citizens organize, debate and act’, including ‘the practical room for action and manoeuvre for citizens

---

<sup>18</sup> Ibid.

<sup>19</sup> See J. Medina, *The Epistemology of Protest - Silencing, Epistemic Activism, and the Communicative Life of Resistance* (Oxford University Press, 2023).

<sup>20</sup> B. Wynne, ‘Public Participation in Science and Technology: Performing and Obscuring a Political-Conceptual Category Mistake’ (2007) 1 *East Asian Science, Technology and Society*, pp. 99-110. See J. Gaventa, ‘Linking the Propositions: Using Power Analysis to Inform Strategies for Social Action’ (2021) 14(1) *Journal of Political Power*, pp. 109-30, although not using Wynne’s ‘invitation’.

and CSOs’.<sup>21</sup> These layers, in which citizens and organizations ‘organize, debate and act’ are filled with citizens participating, whether, to return to our categories, that participation is invited, uninvited or forbidden.

The relationships between these different forms of participation partially defines the nature of civic space. Although it is also used as a metaphor for the degree to which rights of peaceful assembly, expression and association are respected or guaranteed,<sup>22</sup> most of the literature bounds civic space with lawfulness, a space ‘without fear of official disapproval or harassment, and without breaking the law’.<sup>23</sup> This space without fear is crucial, but we include unlawful as well as lawful protest in this article, in part because the line between them is not static, and is vulnerable to being politically instrumentalized. Further, legality does not provide us with a clear boundary between invited, uninvited and forbidden participation, given that the strict letter of the law is subject to and/or intensified by the approach of public authorities and private actors on the ground. Adding forbidden as well as uninvited participation to the formal institutions of participation allows a broader view of participation as a political exercise. This broader view allows a different perspective on the multifaceted forms of public engagement with the socio-economic, ecological and democratic challenges stemming from environmental and climate crises.

### ***2.1. Invited Participation***

For environmental law scholars, invited participation often revolves around legal rights to be formally informed and consulted about environmental decisions. These rights are legally

---

<sup>21</sup> A. Buyse, ‘Squeezing Civic Space: Restrictions on Civil Society Organizations and the Linkages with Human Rights’ (2018) 22(8) *The International Journal of Human Rights*, pp. 966–88, at 967.

<sup>22</sup> Buyse, n. 1 above, p. 21.

<sup>23</sup> R. McGee, ‘The Governance Shock Doctrine: Civic Space in the Pandemic’ (2023) 41(S1) *Development Policy Review*, e12678.



institutionalized, most obviously in Europe through the United Nations Economic Commission for Europe (UNECE) 1998 Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)<sup>24</sup> and environmental assessment legislation in its various guises in EU and many non-EU laws.<sup>25</sup> Invited participation can take a variety of forms, from simple online consultation to public meetings, from legalistic public inquiries to more fluid ‘conversations’; it operates at every scale, and sits within or alongside conventional democratic institutions at different levels.<sup>26</sup> While serving different specific purposes, the three pillars of the Aarhus Convention (access to information, public participation and access to justice) are mutually reinforcing, contributing to a vision of environmental democracy through legally protected rights. The right to participation under the middle pillar requires, broadly speaking, opportunities to participate in decision-making on activities that may have a significant effect on the environment,<sup>27</sup> as well as more generally on plans, programmes, policies and executive regulations, which in principle provides a space for recurring and broader discussion.<sup>28</sup> These provisions are meaningful, but often satisfied with minimal approaches to consulting outsiders and responding to external input.<sup>29</sup> We would argue that they are far more radical and ambitious than they appear in their currently neglected condition, and that they were originally designed to open routes of communication between the public and those who hold power.<sup>30</sup>

---

<sup>24</sup> Aarhus Convention, above n. 3. See Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean, Escazú (Costa Rica), 4 March 2018, in force 22 Apr. 2021, available at <<https://observatoriop10.cepal.org/en/treaty/regional-agreement-access-information-public-participation-and-justice-environmental-matters>>. U. Etimire, ‘Public Voices and Environmental Decisions: The Escazú Agreement in Comparative Perspective’ (2023) 12(1) *Transnational Environmental Law* pp. 175-99.

<sup>25</sup> N. Affolder, ‘Contagious Environmental Law Making’ (2019) 31 (2) *Journal of Environmental Law*, pp. 187–212.

<sup>26</sup> We do not focus here on selective engagement with privileged insiders.

<sup>27</sup> Art. 6.

<sup>28</sup> Aarhus Convention, n. 3 above, Arts 7 and 8, with progressively softer obligations on plans and programmes, policies and regulations and legally binding norms.

<sup>29</sup> M. Lee, ‘The Aarhus Convention 1998 and the Environment Act 2021: Eroding Public Participation’ (2023) 86 (3) *Modern Law Review*, pp. 756-84.

<sup>30</sup> E. Barritt, *Foundations of the Aarhus Convention: Environmental Rights, Democracy and Stewardship* (Bloomsbury, 2019); Lee, *ibid.* and n. 11 above.

Across the EU and beyond, the practice of conducting environmental impact assessments (EIAs) requires both technical assessments of the likely environmental impact of certain projects, and ‘early and effective opportunities’ to be provided for members of the public ‘to participate in the environmental decision-making procedures’.<sup>31</sup> The results of these consultations have to be taken into consideration, and reasons have to be given for the decision, ‘including information about the public participation process’.<sup>32</sup> Strategic environmental assessments (SEAs) apply at an earlier stage than EIA, to plans or programmes, and require the public to ‘be given an early and effective opportunity within appropriate time frames to express their opinion on the draft plan or programme and the accompanying environmental report’.<sup>33</sup>

These protected spaces for citizens and groups to participate in decision-making and contest the intentions of government and economic actors are crucial. Without them, inclusion during decision-making would largely occur at the sole discretion of those with power. Importantly, we are not suggesting that the ‘public’ has a veto over decision making, or that any case in which the final decision is one with which (a majority of) participants disagree is a case of failed participation. Rather, we are concerned with the right to an opportunity to be heard; being heard implies that the powerful attend to and stay open to different ways of understanding the world, and different insights into our situation.<sup>34</sup>

---

<sup>31</sup> Directive 2011/92/EU on the assessment of the effects of certain public and private projects on the environment (codification) [2012] OJ L26/1, art. 6.

<sup>32</sup> *Ibid*, arts 8 and 9.

<sup>33</sup> Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment [2001] OJ L197/30. Strategic environmental assessments (SEAs) are connected to and complement environmental impact assessments (EIAs). By shifting the evaluation of the effects on the environment to a higher level and an earlier stage of the decision-making, SEAs shape the broader conditions under which individual projects subject to an EIA are assessed.

<sup>34</sup> Armeni & Lee, n. 2 above.

## 2.2. *Uninvited Participation*

Decision-making can deliberately curtail or side-step procedures for public participation, and even the best-intentioned participation exercises, protected by law, can be unsatisfactory in predictable ways.<sup>35</sup> Dissatisfaction with public participation is by no means a *simple* explanation for protest (if by that we imply a move to activism ‘on the streets’), but it certainly is part of the construction of ‘uninvited’ publics. By ‘uninvited participation’, we mean participation beyond the terms of the ‘invitation’. Within this category, we focus on lawful (street) protest, as for the purposes of this article, it is the most revealing of a closing down of civic space.<sup>36</sup> The breadth of this category, however, and the many, sometimes imperceptible, steps of ‘uninvited participation’ between Aarhus and criminal protest, remind us of the complexity of democratic life. Uninvited participation need not be disruptive, and can occur during official public consultation, or for example by writing to members of parliament, communicating through mainstream or social media, or making legal claims. Civic space is ever evolving, and whilst, for example, consumer boycotts date back at least to campaigns against the slave trade,<sup>37</sup> fossil fuel divestment campaigns<sup>38</sup> and shareholder climate activism<sup>39</sup> demonstrate how uninvited participation can take new forms. Uninvited participation is also a result of direct and indirect restrictions on the scope of the invitation, in particular what can be discussed and by whom (to which we return in Section 3.1 below). It can spill over onto the

---

<sup>35</sup> *ibid.*

<sup>36</sup> And because it is public. Discussing e.g., letter writing would require an entirely different methodology. Note however the Anti-Social Behaviour Injunction (ASBI) imposed on the then-chair of the Farnborough Noise Group, apparently for making multiple complaints about and requests for information from Farnborough Airport, D. Gayle, ‘Farnborough Airport’s Biggest Critic Silenced as Expansion Plans Continue’ 3 Jan. 2024, *The Guardian*, available at: <<https://www.theguardian.com/uk-news/2024/jan/03/farnborough-airports-biggest-critic-silenced-as-expansion-plans-continue>>.

<sup>37</sup> E.g., M. Micheletti, A. Follesdal & D. Stolle (eds.), *Politics, Products and Markets: Exploring Political Consumerism Past and Present* (Transaction, 2004).

<sup>38</sup> E.g., J. Ayling & N. Gunningham, ‘Non-state Governance and Climate Policy: The Fossil Fuel Divestment Movement’ (2015) *Climate Policy*, pp. 131-49.

<sup>39</sup> E.g., *ClientEarth v Shell* [2023] EWHC 1897 (Ch.).

street, into marches, demonstrations, spectacles, and other embodied performances, which may be perfectly lawful, indeed legally protected by freedoms of association, expression, and assembly, rather than forbidden.<sup>40</sup>

Protest on the street is an important form of participation. The right to protest is ill-defined as a right, and messy as a normative construct.<sup>41</sup> It is beyond the scope of this article to delve into the case law of the European Court of Human Rights (ECtHR), but just as we find some (not the only) legal frameworks for invited participation in the Aarhus Convention, we find legal protection of uninvited participation in the right to peaceful assembly. Article 11 of the European Convention on Human Rights<sup>42</sup> protects this ‘fundamental right in a democratic society’,<sup>43</sup> which is linked with rights of expression (Article 10) and association (Article 11).<sup>44</sup> The right to freedom of peaceful assembly covers gatherings of people in private and public places, and therefore includes protests on the street, and in multiple forms: press conferences, street processions, or sit-ins,<sup>45</sup> ‘flash-mobs’<sup>46</sup> and non-violent courthouse protest.<sup>47</sup> The cases across Europe of law protecting protest, including by condemning police violence against

---

<sup>40</sup> On performative climate activism, including dark play, see N. Rogers, *Law, Fiction and Activism in a Time of Climate Change* (Routledge, 2020), pp.156-68.

<sup>41</sup> I. rua Wall, ‘The Right to Protest’ (2023) 28(8–9) *The International Journal of Human Rights*, pp. 1378–93.

<sup>42</sup> European Convention of Human Rights, 4. Nov. 1950, Rome (Italy), in force 3 Sept. 1953, available at: <<https://www.echr.coe.int/european-convention-on-human-rights>>. See also Charter of Fundamental Rights of the European Union, Art. 12; International Covenant of Civil and Political Rights (1967), Art. 21; Universal Declaration of Human Rights (1948), Art. 20.

<sup>43</sup> ECtHR, 20 Feb. 2003, *Djavit An v. Turkey*, appl. no. 20652/92 [2003], para. 56; 15 May 2014, *Taranenko v. Russia*, appl. no. 19554/05 [2014], para. 65; 15 Oct. 2015 *Kudrevičius and Others v. Lithuania*, appl. no. 37553/05 [2015], para. 91. See also UN Human Rights Committee, General Comment No. 37 (2020) on the Right of Peaceful Assembly (Article 21).

<sup>44</sup> See ECtHR, 21 April 1991, *Ezelin v. France*, appl. no. 11800/85 [1991], para. 37; ECtHR, 8 Dec 1999, *Freedom and Democracy Party (ÖZDEP) v. Turkey*, appl. no. 23885/94 [1999], para. 37; ECtHR, 7 Oct. 2008, *Eva Molnár v. Hungary*, appl. no. 10346/05 [2008], para. 42. See also UN Human Rights Committee, *ibid*.

<sup>45</sup> ECtHR, 26 Aug. 2020, *Hakim Aydın v. Turkey*, 2020, appl. no. 4048/09 [2020] para. 50. On processions, see also ECtHR, 12 May 2015, *Identoba and Others v. Georgia*, appl. no. 73235/12 [2015]; ECtHR, 11 Jan. 2007 *Mkrtychyan v. Armenia*, appl. no. 6562/03 [2007].

<sup>46</sup> ECtHR, 19 Nov. 2019, *Obote v. Russia*, appl. no. 58954/09 [2019].

<sup>47</sup> ECtHR, 8 March 2022, *Ekrem Can and Others v. Turkey*, appl. no. 10613/10 [2022].

peaceful (environmental) protesters,<sup>48</sup> remind us both that civic space can be unlawfully closed, and that law can sometimes play an important role in constituting civic space.

### ***2.3 Forbidden Participation***

Protest always has the potential to cross the line into a criminal act, and as discussed below, increasing restrictions are being placed on protest across Europe by criminal law. We conceptualize unlawful or criminal practices of contestation as ‘forbidden participation’. In this context, we argue that certain forms of law-breaking sit on the continuum of political participation, along with invited consultation under the Aarhus Convention.

While protest and civil disobedience are not the same, once participation is *forbidden* it can be placed within the wider conceptual framework of civil disobedience. In general terms, civil disobedience refers to an act of politically justified law-breaking. For our purposes, the disobedience might include breaking public order laws, or traffic laws by blocking roads, or criminal damage laws by damaging or destroying property; and the justification might be found in using the criminal act to make political demands around environment and climate. Simplifying, a liberal political theory on ‘civil disobedience’, epitomized by Rawls,<sup>49</sup> locates the boundaries of justified law-breaking against a more general duty to comply with the law. Rawls’s definition of civil disobedience is most often cited, ‘a public, non-violent, conscientious yet political act contrary to law usually done with the aim of bringing about a change in the law or policies of the government’.<sup>50</sup> The disobedience is in accordance with the

---

<sup>48</sup> Brussels Court of First Instance, Civil Division (4th Chamber), 6 July 2021; Brussels Court of Appeal, 13 March 2023 required the police to pay damages to 22 XR protestors for illegal arrest and excessive use of force at an environmental protest in 2019; in Finland, a police commander was fined for ordering the use of pepper spray on climate activists, see EU Fundamental Rights Agency, *Fundamental Rights Report – 2024* (2024).

<sup>49</sup> J. Rawls, *A Theory of Justice – Revised Edition* (Harvard University Press, 1971).

<sup>50</sup> *Ibid.*, p. 320.

‘sense of justice of the majority of the community’ and is ‘within the limits of fidelity to law’<sup>51</sup> (which can mean accepting the possibility of penalty), and has a symbolic character. It should be considered ‘a last resort’ after all good faith options have failed.<sup>52</sup>

A critical literature interprets the liberal vision narrowly,<sup>53</sup> and takes issue with its limitations.<sup>54</sup> Whether fully reflective of the nuance of the liberal approach or not, this critical interpretation of the liberal approach would exclude much contemporary protest, and there is a large literature expanding the boundaries of justification.<sup>55</sup> Celikates for example provides a more minimalist approach that attempts to separate definition from justification: ‘an intentionally unlawful and principled collective act of protest (in contrast to both legal protest and “ordinary” criminal offenses or “unmotivated” rioting), with which citizens [...] pursue the political aim of changing specific laws, policies or institutions.’<sup>56</sup> He develops a democratic reading of civil disobedience ‘as an integral part of any complex democratic society, made necessary by the latter’s constitutive institutional defects.’<sup>57</sup> From this perspective, protest and participation are located on a procedural continuum, as ‘form of political participation’ in a democratic society.

Without engaging at length or cleaving to one side of this debate, we err towards a more expansionist approach to justified law-breaking. The line between justified and unjustified law-

---

<sup>51</sup> Ibid., p. 322.

<sup>52</sup> Ibid., p. 327.

<sup>53</sup> Scheuerman challenges the centrality of Rawls to the critical rejection of liberal approaches (W.E. Scheuerman, ‘Why Not Uncivil Disobedience?’ (2019) 25(7) *Critical Review of International Social and Political Philosophy* (2019), pp. 980-99 and a lack of nuance in the understanding of Rawls (W.E. Scheuerman, ‘Good-Bye to Nonviolence?’ (2022) 75(7) *Political Research Quarterly*, pp. 1284-99).

<sup>54</sup> Scheuerman (2019) and (2022) *ibid.* He also notes that traditional conceptions of non-violent civil disobedience are called on by climate activists, W.E. Scheuerman, ‘Political Disobedience and the Climate Emergency’ (2022) 48(6) *Philosophy and Social Criticism*, pp. 791-812.

<sup>55</sup> E.g. R. Celikates, ‘Rethinking Civil Disobedience as a Practice of Contestation – Beyond the Liberal Paradigm’ (2016) 23(1) *Constellations*, pp. 37-45.

<sup>56</sup> Ibid., p. 39

<sup>57</sup> R. Celikates, ‘Democratizing Civil Disobedience’ (2016) 42(10) *Philosophy and Social Criticism*, pp. 982-94, p. 986.

breaking is, however, ‘porous’.<sup>58</sup> It depends enormously (as both the liberal and critical limbs of the literature accept in principle) on context and intent.

The question of non-violence in the liberal approach to civil disobedience, is particularly relevant for our purposes.<sup>59</sup> Understandings of the extent to which the liberal tradition, and Rawls’s conception of civil disobedience in particular, allows for violence, differ.<sup>60</sup> Given our emphasis here on the continuum of *participation*, like the liberal tradition, we ask whether the violent act limits communication.<sup>61</sup> Interpersonal violence is relatively easy to condemn in environmental or climate protests, and very few would suggest otherwise.<sup>62</sup> Protest by or including interpersonal violence exceeds the bounds of political participation, and therefore it is not contained in our continuum. Property damage, a different form of violence, is more likely to be justifiable (even if still criminal).<sup>63</sup> Some level of property damage is central to the impact and symbolism of a certain modality of climate protests: graffiti (using more or less temporary or harmful materials) or defacing (the protective cover of) artwork are familiar parts of the repertoire. The same applies to the deliberately disruptive nature of some protest, the physical disruption to ‘people, institutions and/or processes of capital accumulation’,<sup>64</sup> which at least looks like ‘coercion’, and is interpreted by some as violence.<sup>65</sup> We are aware that we leave

---

<sup>58</sup> Scheuerman (2019), n. 53 above, p. 990, rejecting a binary approach. See also Medina, n. 19 above, on the contextual questions around civil and uncivil protest, violent and non-violent, protest.

<sup>59</sup> The question of violence is where the line between civil and uncivil disobedience frequently rests, but C. Delmas, *A Duty To Resist: When Disobedience Should Be Uncivil* (Oxford University Press, 2018), for example assumes that the liberal view of civility goes much further, including anger and a lack of courtesy.

<sup>60</sup> Scheuerman (2022), n. 53 above, argues that Rawls did not take the absolute approach to non-violence often assumed in the critical literature.

<sup>61</sup> Which is not to say that we think protest should always be limited to communication, rather than having material effects, e.g., slowing down or preventing a development, Wall, n. 41 above.

<sup>62</sup> E.g., Scheuerman’s discussion of violent climate protestors, n. 54 above.

<sup>63</sup> In *Attorney General’s Reference on A Point of Law No. 1 of 2022* [2022] EWCA Crim 1259, the English Court of Appeal understood the ‘violence’ inherent in damage to property broadly and found that such violence removes the protection of the ECHR; not all criminal damage will have that effect, see *R v. Hallam and Others* [2025] EWCA Crim 199.

<sup>64</sup> Berglund, n. 8 above, p. 2.

<sup>65</sup> See the German case law discussed by Celikates, n. 55 above and Tribunal of Bologna, Judgment no 191/2024 of 18 January 2024, both on blocking traffic.

difficult questions for another day, but the justifiability of property damage and significant disruption, whether or not we call them violent, will depend on context, degree and intention.<sup>66</sup> These elements will also determine whether such protest is included in our continuum of participation.

In addition to the question regarding non-violence, the critical literature contests the meaning and appropriateness of every element of the liberal definition of civil disobedience,<sup>67</sup> which requires that law-breaking be ‘public’, ‘conscientious’, usually aiming to change law or policy (rather than materially to affect the object of the protest), and guided by a ‘commonly shared conception of justice’.<sup>68</sup> A ‘broader fidelity to law’ (including a willingness to accept sanctions) is a part of the liberal approach that is increasingly tested by harsher policing and sentencing of what was formerly tolerated, as discussed below. Whilst disobedience is almost by definition unlawful, the need for a tolerant approach to sanctioning is shared by many writers in the field.<sup>69</sup>

Consistently with much of the literature cited in this Section, we argue in this article that protest, including unlawful protest, can be a form of political participation. We are not arguing that unlawful or illegal acts must necessarily be ‘civil’ to constitute political participation. The boundaries of justifiable law-breaking are difficult to identify, and we do not seek to resolve that complexity here – other than to place interpersonal violence out of bounds. Where we place those boundaries of justifiable law-breaking, however, will define the outer edge of our continuum of political participation.

---

<sup>66</sup> On being comfortable with ambiguity, see J. Habermas, ‘Civil Disobedience: Litmus Test for the Democratic Constitutional State’ (1985) 30 *Berkeley Journal of Sociology* (1985), pp. 95-116.

<sup>67</sup> E.g., Celikates, n. 55 above.

<sup>68</sup> Rawls, n. 49 above, at 363-4.

<sup>69</sup> E.g., Habermas, n. 66 above.



### **3. Relations between Invited, Uninvited and Forbidden Participation**

In this Section, we explore relationships between invited, uninvited and forbidden participation. We outline two key interactions across civic space. Firstly, we consider the permeability of our different categories of participation, including the potential for mutual influence between the two ends of our continuum. Secondly, and relatedly, we emphasize that CSOs do not necessarily see these categories as mutually exclusive, but may work simultaneously within and outside participatory institutions, as well as strategically complying with or breaching both the definition of the invitation, and legal limits on protest. Although we place them on a continuum in this article, oppositional activism can be in tension with invited participation. This tension is in part related to the concern with coercion in the liberal literature if, for example, a hard-won, inclusive decision is put under pressure through protest. We do not explore that further here, but note that protest can be more or less deliberative or ‘exclamatory’,<sup>70</sup> allowing more or less room for debate within and with the protest group. As Young puts it, ‘[t]he best democratic theory and practice will affirm them both [deliberation and activism] while recognizing the tension between them’.<sup>71</sup>

As we explore the permeability and simultaneity of our continuum of participation, we consider how law is or might be implicated in those relationships. Law cannot provide for thriving civic space on its own, but depends on a culture of cooperation and participation, as well as respect by those with power. Law, however, in both its repressive and its protective or constitutive

---

<sup>70</sup> Volk, n. 16 above.

<sup>71</sup> Young, n. 5 above; Volk, *ibid.*

manifestations, contributes to the shaping of civic space, and to the continuum of invited, uninvited, and forbidden participation.

### ***3.1 The Permeability of Invited, Uninvited and Forbidden Participation***

Beginning with permeability, invited, uninvited and forbidden participation are not static or wholly independent categories, but are closely connected, as is perhaps inherent in the idea of a continuum. Specifically, the way in which law protects or restricts one of them, contributes to the shape of the others.

Perhaps most evident for lawyers is the link drawn between invited participation and protest by the Aarhus Convention itself, the archetypal supporter of invited participation. Article 3(8) requires the Parties to ‘ensure that persons exercising their rights in conformity with the provisions of this Convention shall not be penalized, persecuted or harassed in any way for their involvement’. The Aarhus Convention Compliance Committee (ACCC) interprets this provision broadly, to apply not only to the exercise of the rights provided by the Convention, but ‘to all situations in which members of the public seek access to information, public participation or access to justice in order to protect their right to live in an environment adequate to their health or well-being’.<sup>72</sup> This includes activities such as delivering a petition and organising or participating in ‘an authorized street action’.<sup>73</sup> While the Aarhus Convention does not refer explicitly to environmental defenders,<sup>74</sup> the development of a ‘Rapid Response

---

<sup>72</sup> Findings and recommendations with regard to communication concerning compliance by Belarus (ACCC/C/2014/102) para. 66.

<sup>73</sup> Ibid., paras. 80 and 96. See T. Weber, ‘Are Climate Activists Protected by the Aarhus Convention? A Note on Art. 3(8) Aarhus Convention and the New Rapid Response Mechanism for Environmental Defenders’ (2023) 32(1) *Review of European Comparative and International Environmental Law*, pp. 67-76. We are not aware of the ACCC directly addressing the appropriateness of state criminalization of particular forms or occasions of protest, see Digest of Selected Findings and Advice of the Aarhus Convention Compliance Committee (2025), available at [https://unece.org/sites/default/files/2025-03/ACCC\\_Digest\\_11.03.2025.pdf](https://unece.org/sites/default/files/2025-03/ACCC_Digest_11.03.2025.pdf).

<sup>74</sup> Unlike its Caribbean and Latin American equivalent n. 24 above.

Mechanism to deal with Cases related to Article 3(8)' includes provision for a Special Rapporteur on Environmental Defenders.<sup>75</sup> The Special Rapporteur understands his brief as encompassing a broad range of activism, explicitly including various disruption techniques. Without condoning serious damage to property and violence, the Special Rapporteur envisages the protection of the Convention as extending to disruptive protests that have been criminalized and subjected to imprisonment by the state.<sup>76</sup>

Uninvited participation is also, and directly, constructed by intentional or inadvertent restrictions on the scope of invited participation.<sup>77</sup> For example, the information provided to participants, even without any deliberate effort to influence outcomes, might limit what is practically open for debate, or even thinkable. Direct constraints on debate also include the frequent limitation of participation on technologically complex issues to human or environmental safety, normally by excluding broader social questions (such as who bears the costs of mistakes, who benefits from the change), which might be of greater public concern.<sup>78</sup> Underpinning these challenges is the way in which the parameters of the discussion are restricted by taken for granted assumptions, such as the need for economic growth, or by the presumed absence of plausible alternatives. In short, the definition of what Latour calls the 'matters of concern' constrains the scope of the participation.<sup>79</sup> The closure (ideally

---

<sup>75</sup> Meeting of the Parties, Decision VII/9 on a Rapid Response Mechanism to deal with cases related to Art.3(8) of the Convention on Access to information, Public Participation in Decision-making and Access to Justice in Environmental Matters, Seventh Session, 18-10 Oct.2021.

<sup>76</sup> M. Forst (UN Special Rapporteur on Environmental Defenders Under the Aarhus Convention), *Statement regarding the criminal prosecution of Mr. Daniel Shaw for his involvement in peaceful environmental protest in the United Kingdom of Great Britain and Northern Ireland Ref: ACSR/C/2024/26*. The English Court of Appeal would not extend Art. 3(8) to these cases, *Hallam*, n. 63 above. Individual cases brought to the Special Rapporteur are available at [https://unece.org/environmental-policy/public-participation/correspondence-regarding-complaints-special-rapporteur#accordion\\_32\\_0\\_3\\_6\\_9\\_12\\_15\\_18\\_21\\_26\\_29\\_33](https://unece.org/environmental-policy/public-participation/correspondence-regarding-complaints-special-rapporteur#accordion_32_0_3_6_9_12_15_18_21_26_29_33).

<sup>77</sup> See also the discussion of protest in Richardson & Castle-Lynch, n. 4 above.

<sup>78</sup> E.g., on fracking, see L. J. Williams, A. Martin & A. Stirling, 'Going through the Dance Steps': Instrumentality, Frustration and Performativity in Processes of Formal Public Participation in Decision-Making on Shale Development in the United Kingdom' (2022) 92 *Energy Research and Social Science*, p. 102796.

<sup>79</sup> B. Latour, 'Why Has Critique Run Out of Steam? From Matters of Fact to Matters of Concern' (2004) 30 *Critical Inquiry*, pp. 225-48; B. Wynne, 'Risk and Environment as Legitimatory Discourses of Technology: Reflexivity Inside Out?' (2002) 550(3) *Current Sociology*, pp. 459-77.

provisional) of certain prior questions, from target dates for net zero climate emissions, to equality legislation, to biodiversity protection, is sometimes unavoidable.<sup>80</sup> Nevertheless, whenever citizens resist or ignore the explicit or implicit limits on participation, their contributions can be described as ‘uninvited’. This uninvited participation may then stay within the institution of participation (for example the consultation process or the public inquiry), in the form of persistence with a perspective that exceeds the institution’s ability to engage; or it may go beyond that institution, in the ways raised in Section 2 above.

In addition to the limits on *what* is in the ‘invitation’, numerous practical limitations on participation can limit *who* is invited. An expectation of a ‘reasonable’ way of communicating, including an absence of emotion<sup>81</sup> or a prioritization of technical approaches, can for example lead to the dismissal of ill-fitting contributions as irrational or irrelevant. Participatory exercises tend to privilege those with the time to take part and the skills to understand the issues and effectively communicate their views.<sup>82</sup> Again, those who are excluded from invited participation, including by its practical and epistemic demands, are all ‘uninvited’. They may continue to participate, but in some way that is beyond the terms of the invitation.

Political opportunity theories support the broader intuition that more inclusive rights to participate in decision-making make it more likely that dissent will take place *within* the institutions, rather than on the street. Existing theories explore social movement choices between strategies of protest, outside of orthodox political spaces, and conventional political

---

<sup>80</sup> There are no easy answers to the dilemma of how legitimately to close down options in order to make progress. A. Stirling, ‘“Opening Up” and “Closing Down”: Power, Participation and Pluralism in the Social Appraisal of Technology’ (2008) 33(2) *Science, Technology and Human Values*, pp. 262-94.

<sup>81</sup> E.g., I. M. Young, *Inclusion and Democracy* (Oxford University Press, 2002), especially chapter 2.

<sup>82</sup> E.g. L. Natarajan et al., ‘Participatory Planning and Major Infrastructure: Experiences in REI NSIP Regulation’ (2019) 90(2) *Town Planning Review*, pp.117-38.

activity within institutions.<sup>83</sup> More open and inclusive spaces, coupled with a decision-maker who is receptive to the arguments being made, enhances political opportunity *within* the institutions. Legal mechanisms like the Aarhus Convention and environmental assessments provide a relatively open space for participation; receptiveness can also be shaped (not dictated) by law, for example through obligations to take account of input and give reasons for decisions.<sup>84</sup> The relationship between participatory institutions and protest on the street is not however simply linear, so participatory opportunities do not avoid protest, any more than the absence or failure of the normal practices of participation automatically sends protestors onto the street.<sup>85</sup> Although political opportunity theories do not purport to be complete explanations of civil society choices,<sup>86</sup> and the lines are not simple, they suggest nevertheless that open and receptive political environments are *less* likely to lead to protest.<sup>87</sup>

Working in the opposite direction on our continuum, radical methods of participation can support the institutional and legally defined structures of invited participation.<sup>88</sup> Uninvited or forbidden participation has the potential to shape the future nature and scope of the ‘routine invitation’. For example, Owens and Cowell illustrate how in some cases resistance to the narrow scope of invited participation around a project planning, can contribute to changing the higher level policy commitments.<sup>89</sup> We might also see this more modestly in claims for better,

---

<sup>83</sup> E.g. D. S. Meyer & D. C. Minkoff, ‘Conceptualizing Political Opportunity’ (2004) 82(4) *Social Forces*, pp. 1457–92.

<sup>84</sup> Lee, n. 11 above.

<sup>85</sup> C. Hilson, ‘New Social Movements: The Role of Legal Opportunity’ (2002) 9(2) *Journal of European Public Policy*, pp. 238–55.

<sup>86</sup> E.g., factors internal to the organization, such as resources, identity, ideas and values also affect civil society strategies, e.g. C. Abbot & M. Lee, *Environmental Groups and Legal Expertise: Shaping the Brexit Process* (UCL Press, 2021).

<sup>87</sup> See e.g. the review in Hilson, n. 85

<sup>88</sup> E. Hammond, ‘Toward a Role for Protest in Environmental Law’ (2020) 70(4) *Case Western Reserve Law Review*, pp. 1039–62, bringing out the way that ‘resistance’ activities can ‘influence the very system being protested’ including the development of the law.

<sup>89</sup> S. Owens & R. Cowell, *Land and Limits: Interpreting Sustainability in the Planning Process* (2nd ed. – Routledge, 2011), addressing e.g. the relationship between protest around the construction of individual roads, and transport policy.

more responsive consultation processes in specific cases, as for example in protest against inadequate community engagement.<sup>90</sup> As well as potentially influencing formal civic space, protest movements might also embed a more radical democratic vision of society in their way of acting, ‘pre-figuring’ the future of society in the life of the protest.<sup>91</sup> However ephemerally, protest can help imagine a ‘parallel world’, so that, through protest, we can see new visions of routine participation.<sup>92</sup>

The reality of inclusion is never straightforward in a society subject to structural inequalities.<sup>93</sup> However, taking a slightly different perspective on permeability, uninvited or forbidden participation may respond to some of the shortcomings of formal institutions of participation, especially by being more (or at least differently)<sup>94</sup> inclusive of people and perspectives, available to those who lack privileged access to influence.<sup>95</sup> Protest movements can also highlight the concerns and demands of the marginalized communities often excluded from decision making,<sup>96</sup> as the bottom-up definition of subjects of concern, independent of the state or economic actors, creates a space of ‘independent collective meaning, knowledge, judgement and action’.<sup>97</sup> In a similar way, reading the recent critical literature on civil disobedience

---

<sup>90</sup> Hammond, n. 88 above; Hensgarth & Lu, n. 4 above.

<sup>91</sup> D. Gobbi et al., ‘Protest and the Democratic Order’ (2022) 9(2) *Democratic Theory*, pp. 1-10; Berglund, n. 8 above; Delmas, n. 59 above, p. 60.

<sup>92</sup> C. Volk, ‘Enacting a Parallel World: Political Protest Against the Transnational Constellation’ (2019) 15(1) *Journal of International Political Theory*, pp. 100-18, 112.

<sup>93</sup> Young n. 5 above; Medina, n. 19 above, especially p. 1 and 2.

<sup>94</sup> For a discussion of criticisms in this respect, see e.g. K. Bell & G. Bevan, ‘Beyond Inclusion? Perceptions of the Extent to Which Extinction Rebellion Speaks to, and for, Black, Asian and Minority Ethnic (BAME) and Working-Class Communities’ (2021) 26(10) *Local Environment*, pp. 1205-20, G. Keppens, ‘Socio-Demographic Profiles and Academic Outcomes for Participants of the ‘School Strikers For Climate’ in Belgium’ (2023) 30(11) *Environmental Education Research*, pp. 1970-89.

<sup>95</sup> Habermas, n. 69 above. E.g., Code Rouge makes inclusivity a key point of its ‘binding framework’ for those joining its actions, and notes the vulnerable position of certain groups during the policing of protest, available at: <https://code-rouge.be/en/action-consensus-code-rouge-rood-2/> and <https://code-rouge.be/wp-content/uploads/Legal-information-for-participants-to-Code-Rood-action.pdf>.

<sup>96</sup> E.g. L. Temper, ‘Movements Shaping Climate Futures: A Systematic Mapping of Protests Against Fossil Fuel and Low-Carbon Projects’ (2020) 15 *Environmental Research Letters*, p. 123004.

<sup>97</sup> Wynne, n. 20 above. On alternative ‘imaginaries’ of the world, see A. Arnall & C. Hilson, ‘Climate Change Imaginaries: Representing and Contesting Sea Level Rise in Fairbourne, North Wales’ (2023) 102 *Political Geography*, p. 102839.

discussed above, gave us the sense that transnational, recurrent climate protests could be reshaping our sense of the “normal” repertoire of protest, influencing our understanding of justified law-breaking.

### 3.2 *Acting across the Continuum*

Related to this permeability of the participation continuum, organizations can occupy multiple spaces at once as they engage simultaneously with invited, uninvited and forbidden forms of participation. Protest on the street does not necessarily imply a rejection of more formal institutional processes, or vice versa. Extinction Rebellion (XR), for example, in its most disruptive London 2019 protests, called on the *state* to create a *statutory* net zero target.<sup>98</sup> Further, following days of protest, XR participants met the United Kingdom (UK) Secretary of State for the Environment, as well as the shadow chancellor and the Mayor of London.<sup>99</sup> Some protestors may have been more anxious than others to bypass the ‘corridors of power’, but XR did not reject the possibility of talking to those within the institutions.<sup>100</sup> On the contrary, their call on law and government ‘recognizes both the hierarchical logic of the system and its decision-making authority’.<sup>101</sup> XR’s prioritization, as one of its three demands, of a citizens’ climate assembly makes, however, a more ambiguous call on existing institutions.<sup>102</sup>

---

<sup>98</sup> B. Doherty, J. de Moor & G. Hayes, ‘The ‘New’ Climate Politics of Extinction Rebellion?’ July 2020, CUSP Working Paper No 25 (Centre for the Understanding of Sustainable Prosperity), available at: [www.cusp.ac.uk/publications](http://www.cusp.ac.uk/publications). See now UK Climate Change Act 2008, s. 1 as amended in 2019.

<sup>99</sup> F. Harvey, ‘Extinction Rebellion: Michael Gove Admits Need for Urgent Action’, 30 Apr. 2019, *The Guardian* available at: <<https://www.theguardian.com/environment/2019/apr/30/extinction-rebellion-tells-politicians-to-declare-emergency>>. For the different approach among the Gilets Jaunes, see C. Dobler, ‘The 2019 Grand Débat National in France: A Participatory Experiment with Limited Legitimacy’, 18 March 2020, *Democracy International*, available at <<https://www.democracy-international.org/2019-grand-debat-national-france-participatory-experiment-limited-legitimacy>>.

<sup>100</sup> Cf the ‘ideal’ activist discussed by Young, n. 5 above.

<sup>101</sup> Volk, n. 16 above.

<sup>102</sup> Ambiguous because this is a new institution, which would need established institutions to make an impact. Parliament supported the demand for a UK Climate Assembly, on which see <https://www.climateassembly.uk/>; <https://extinctionrebellion.uk/decide-together/citizens-assembly/>.

More generally, the literature on ‘insider’ and ‘outsider’ strategies,<sup>103</sup> as long as we recall that this is not a simple binary,<sup>104</sup> usefully brings out the ways in which groups can move across civic space. According to this analysis, ‘insider’ groups enjoy privileged status and access to decision-makers. They may not always need (or think they need) the protection of a legal entitlement to participate,<sup>105</sup> but both established environmental groups and issue-specific grassroots organizations participate in processes governed by these rights. Protest is generally considered an outsider strategy or tactic, pursued by outsider groups. But whilst we would be surprised to see protest movements like Just Stop Oil routinely responding to government consultation, selective participation is not implausible. And just as XR, a classic outsider group emphasising the failures of law and established institutions, called on and engaged with those institutions, so the RSPB, a classic insider group, can take a position of protest.<sup>106</sup> Most groups display elements that could characterize them as insiders or outsiders,<sup>107</sup> as they move across civic space in multiple parts of the participatory continuum.

Finally, whilst we focus here on the edges of our continuum (invited and forbidden participation), environmental and other groups will generally, and often strategically, occupy uninvited territory as they engage in both invited and forbidden participation. For example, sophisticated participants in a consultation will choose how much to push against the defined

---

<sup>103</sup> See especially W. Grant, ‘Pressure Politics: The Changing World of Pressure Groups’ (2004) 57(2) *Parliamentary Affairs*, pp. 408-19.

<sup>104</sup> B. Doherty, ‘Protest’, in M. Flinders et al. (eds.), *The Oxford Handbook of British Politics* (Oxford University Press, 2009), pp. 719–734 suggesting the distinction was easier in the 1950s.

<sup>105</sup> See C. Abbot & M. Lee, ‘NGOs Shaping Public Participation Through Law: The Aarhus Convention and Legal Mobilisation’ (2024) 36(1) *Journal of Environmental Law*, pp. 85-106.

<sup>106</sup> See e.g. the RSPB’s ‘attack on nature’ campaign against government plans in 2022, RSPB Annual Report 2022-23 (Charity Commission Register, 2023), p. 20.

<sup>107</sup> Grant, n. 103 above.



edges of the invitation; and on the street, they will make choices about when and how to press the bounds of the law.<sup>108</sup>

#### **4. Shrinking of Civic Space through Law**

In Section 3, we discussed important relations across invited, uninvited and forbidden participation, indicating the necessity of thinking about them more holistically, and suggesting the incomplete but still significant role of law in constructing civic space. Here, we develop these relations by exploring, necessarily in the briefest way, legal pressure on participation across the continuum.

It is not novel or controversial to observe either that both Aarhus-type participation and protest are forms of political participation, or that they are under pressure. Observing the *simultaneous* legal pressure being placed on different practices of participation, however, demonstrates the extent of law's contribution to the closure of civic space. In his observations on uninvited participation, Wynne highlighted the paradox that exclusion sits alongside the apparent commitment to participation embedded in instruments like the Aarhus Convention.<sup>109</sup> Both formal institutions for participation *and* external protest are now being actively restricted through law, and of course legal change does not reflect the full picture. The vilification and stigmatization of protest by the media or mainstream politicians, for example, can distract civil society, chill protest and normalize repression,<sup>110</sup> just as the deployment of dismissive language

---

<sup>108</sup> See Rogers, n. 51 above, chapter 6.

<sup>109</sup> Wynne, n. 20 above. Richardson & Castle-Lynch, n. 4 above, far from seeing this as a paradox, see participation provisions as an effort to 'neutralize and contain', p. 5.

<sup>110</sup> Note e.g., United Nations, *Exercise of the Rights to Freedom of Peaceful Assembly and of Association as Essential to Advancing Climate Justice* (Note by the Secretary General A/76/222 23 July 2021, [24]); Amnesty International, n. 17 above, chapter 1.

(such as ‘blockers’ and ‘NIMBYs’) against those exercising more conventional rights to participate may be similarly problematic.<sup>111</sup>

Beginning with invited participation, we might first note that the opportunity to embed legally protected entitlements to public participation in new environmental legislation is not being taken. The EU, for example, although it continues to champion national participatory processes in some cases, in other new legislation quite notably fails to impose participatory obligations on Member States,<sup>112</sup> or uses inclusion instrumentally, explicitly as a way to ‘promote *public acceptance*’ of predetermined outcomes.<sup>113</sup> More generally, the EU Fundamental Rights Agency has observed that Member States ‘do not always have adequate rules for public participation’; reflecting the common limitations of participation, when they do have such rules, ‘they are sometimes applied in a non-transparent manner, limited in scope or shortened excessively to speed up law- or policymaking processes’.<sup>114</sup> Beyond the EU, flagship UK environmental legislation passed in the wake of Brexit suffered from a general lack of commitment to public participation, in its development, its language and its implementation.<sup>115</sup> In addition, frustration with environmental assessments, which is perhaps the key legal instrument for implementing the Aarhus Convention, is apparent in both the EU and the UK.

---

<sup>111</sup> See e.g. PM speech on Plan for Change, 5 Dec. 2024, available at <<https://www.gov.uk/government/speeches/pm-speech-on-plan-for-change-5-december-2024>>.

<sup>112</sup> C. Armeni, ‘What Justice? The Scope for Public Participation in the European Union Just Transition’ (2023), 60(4) *Common Market Law Review*, pp. 1027-54. There may be signs that this disregard is being reflected in national practice on EIA, see e.g. ACCC First Progress Review of The Implementation of Decision Vii/8f on Compliance by the European Union with its Obligations under the Convention on National Energy and Climate Plans (2024).

<sup>113</sup> Directive 2023/2413 amending Directive (EU) 2018/2001, Regulation (EU) 2018/1999 and Directive 98/70/EC as regards the promotion of energy from renewable sources, and repealing Council Directive (EU) 2015/652, [2023] OJ L, 31.10.2023, Art. 15d(2); on public ‘acceptance’ versus ‘participation’, see C. Armeni, ‘Participation in Environmental Decision-making: Reflecting on Planning and Community Benefits for Major Wind Farms’ (2016) 28(3) *Journal of Environmental Law*, pp. 415–41.

<sup>114</sup> EU Fundamental Rights Agency, n. 48 above, at 7. See EU Fundamental Rights Agency, *Protecting Civil Society – Update 2023* (2023), available at: < <https://fra.europa.eu/en/publication/2023/civic-space-2023-update>>. See also Aarhus Convention, Note by the Chair of the Task Force on Public Participation in Decision-making on possible future directions for the work, AC/WGP\$.28/Inf.2 (2024), listing systematic shortcomings in participation.

<sup>115</sup> Lee, above n. 29.

We see both case-by-case<sup>116</sup> and wholesale<sup>117</sup> reform of environmental assessments in these jurisdictions. Whilst reform need not necessarily weaken invited participation in environmental decision-making, the rhetoric around the changes gives every indication that it will.

The motives for these sorts of changes are inevitably difficult to pin down. The rhetoric of the urgent need to ‘speed up’, ‘streamline’ and ‘simplify’ decision-making is currently prevalent and shared across political persuasions and across jurisdictions.<sup>118</sup> The ‘speeding up’ agenda is often linked to economic growth, or other more specific issues such as the provision of housing or, especially relevant for our purposes, renewable energy infrastructure. In this context, participation can become a simple bureaucratic inconvenience, bypassed in the interests of speed. One of the important attributes of environmental impact assessment legislation and the Aarhus Convention is their efforts to guarantee *universal* standards of public participation in environmental decision-making; sidestepping public participation when it is perceived to be inconvenient highlights the contingency and vulnerability of invited participation. The relatively muted challenge from environmental civil society to the weakening of participation, or specifically of environmental assessment,<sup>119</sup> is striking. It may be partly attributable to the piecemeal and undramatic approach to the weakening of rights in this area. The growing awareness of the limitations of participation, including the frequent exclusion of particular groups and perspectives, as discussed above, may also undermine the support for public participation that we used to take for granted.<sup>120</sup> This is necessarily somewhat speculative, and there are lots of perfectly good reasons for civil society choices,<sup>121</sup> but rather than fighting for

---

<sup>116</sup> E.g. Directive 2023/2413, n. 113 above.

<sup>117</sup> See especially the UK Levelling Up and Regeneration Act 2023.

<sup>118</sup> See e.g. T. Marshall & R. Cowell, ‘Infrastructure, Planning and the Command of Time’ (2016) 34(8) *Environment and Planning C: Government and Policy*, pp. 1843-66; Directive 2023/2413 n. 113 above, Art.16a(3).

<sup>119</sup> Abbot & Lee n. 105 above.

<sup>120</sup> Armeni & Lee n. 6 above

<sup>121</sup> Abbot & Lee n. 105 above.

better, more inclusive participation, we may be seeing disillusionment with the very idea of public participation. This sits alongside a technocratic and an urgent mood, including around the climate crisis in the environmental community, which makes the ‘speeding up’ rhetoric difficult to challenge, and downplays the social and political aspects of environmental problems, emphasising instead the expert and the technical.<sup>122</sup> This technocratic approach may, paradoxically, share a mistrust of process and an emphasis on outcomes, with a more populist approach to government.<sup>123</sup>

A restriction on invited participation increases the importance of uninvited participation. That can take many forms, as discussed above. Here, we are most interested in thinking about how uninvited participation is being converted into forbidden participation, in particular how formerly lawful protest is being criminalized.<sup>124</sup> The Council of Europe’s Commissioner on Human Rights has referred to ‘a repressive tide’ rising over protest,<sup>125</sup> which is also well-documented in official sources.<sup>126</sup> A number of Human Rights CSOs have also done important work identifying, cataloguing, analysing and publicising the phenomenon, with Amnesty International describing protest across Europe as ‘under protected and over restricted’.<sup>127</sup> The growing restrictions on peaceful environmental and climate protest in Europe witnessed in these fora turn uninvited participation into forbidden participation. The law has contributed to the repressive tide across many dimensions, including for example the direct regulation of CSOs’ permitted activities and fund-raising,<sup>128</sup> and the use of private law, including

---

<sup>122</sup> Armeni & Lee, n. 6 above.

<sup>123</sup> Armeni & Lee, *ibid.*

<sup>124</sup> But note also the Anti-Social Behaviour Injunction discussed at n. 36 above.

<sup>125</sup> D. Mijatović (Council of Europe Commissioner for Human Rights), ‘Crackdowns on Peaceful Environmental Protests Should Stop and Give Way to More Social Dialogue’, Strasbourg 2 June 2023.

<sup>126</sup> Forst, n. 17 above, p. 5. Mijatović, *ibid.* European Parliament Resolution of 8 March 2022 on the shrinking space for civil society in Europe (2021/2103(INI)); EU Fundamental Rights Agency, *Protecting Civil Society – Update 2023* (2023), Section 2.1.3.

<sup>127</sup> Amnesty International, n. 110 above. See also e.g. Civicus (2023) and (2024), n. 17 above.

<sup>128</sup> See e.g. Buyse, n. 21 above. EU Fundamental Rights Agency, n. 126 above.

injunctions, to restrict protests.<sup>129</sup> Here we simply outline three particularly striking ways in which law confines the repertoire of environmental activism.

Firstly, many European countries have introduced legislation expressly and specifically exposing the tactics used by environmental protesters to criminal penalties. The UK Public Order Act 2023,<sup>130</sup> for example, creates new criminal offences to address the practices of locking on, tunnelling, interference with the use or operation of key national infrastructure and the obstruction of major transport works. We see similar moves elsewhere in Europe, for example the unprecedented ban in Germany of assemblies on federal highways,<sup>131</sup> and the creation of a new offence in France of trespassing on airport runways, as a direct response to protests against the extension of the Roissy Airport.<sup>132</sup> In Italy, a similar approach has taken a cultural turn, with the adoption in 2024 of the so-called ‘Eco-vandalists law’,<sup>133</sup> a highly contested<sup>134</sup> new law, which imposes heavy administrative penalties on any person who damages or causes the temporary defacement of cultural or landscape heritage, doubling the penalties if the defacement takes place during a public protest.<sup>135</sup>

Secondly, the powers of public authorities to impose restrictive conditions on individual protests have been extended. A failure to comply with conditions imposed on a particular protest is conventionally an offence, but extending the powers of the authorities to impose those

---

<sup>129</sup> The extent of injunctions against ‘persons unknown’ in the UK can be seen in this BBC investigation, available at <<https://www.bbc.co.uk/news/articles/cjeegzv0913o>>.

<sup>130</sup> Public Order Act 2023, c.15, ss. 1-7.

<sup>131</sup> s. 13(1) sentence 3 Assembly Act of the State of North Rhine-Westphalia (Assembly Act NRW - VersG NRW) of 17 Dec. 2021; see Society for Civil Rights e.V. (Gesellschaft für Freiheitsrechte e.V. or GFF), ‘NRW Assembly Act: Threat to freedom of assembly and civil-society’ available at <<https://freiheitsrechte.org/en/themen/demokratie/vb-versammlungsrecht-nrw>>.

<sup>132</sup> Art. L. 6372-11 of the Transport Code (added by Art. 10 of the Law n. 1308 of 8 October 2021).

<sup>133</sup> Law no 6, 22 January 2024.

<sup>134</sup> Italian Parliament, Record of the Debate, Session n. 229, 18<sup>th</sup> January 2024. See also Parliamentary Report, Annex B – Session 13 March 2024, at 7514.

<sup>135</sup> Arts. 639.2 and 639.4, Italian Criminal Code.

conditions is also restrictive, in not entirely predictable ways, of protest itself.<sup>136</sup> The potential for selective application, so that some protests are permitted and others not, is also clear. The UK Police, Crime, Sentencing and Courts Act 2022 expands the police's powers to restrict protests by relaxing the situations in which conditions can be imposed, and including the noise generated by a protest as a reason for imposing conditions.<sup>137</sup> Conditions may be imposed on a protest when the noise generated by a protest 'may result in serious disruption to the activities of an organization which are carried on in the vicinity',<sup>138</sup> or 'may result in the intimidation or harassment of persons of reasonable firmness with the characteristics of persons likely to be in the vicinity' or may cause such a person to suffer 'alarm or distress'.<sup>139</sup> Part of the conditionality of protest involves spatial restrictions, including the protection of transport networks raised above, as well as placing the locations of power, exactly the places where protestors can have the greatest impact, off limits. In Brussels (Belgium), for example, a 'neutral zone' prohibits protest around the European Institutions and the Royal Palace.<sup>140</sup>

Thirdly, we note changes to law and practice that allow for more intrusive policing of protest. The 2021 Assembly Act in North Rhine-Westphalia (Germany) allows the competent authority to make video and sound recordings of participants, based on suspicion of 'a significant threat for public safety', when measures are necessary to avert this danger.<sup>141</sup> Especially when combined with a ban on face covering, this could produce a chilling effect on protest. France

---

<sup>136</sup> For interesting Government estimates of the relationship between enhanced police powers, the number of conditions and the number of prosecutions, see *R (on the application of National Council for Civil Liberties) v. Secretary of State for the Home Department* [2024] EWHC 1181 (Admin).

<sup>137</sup> By amending the Public Order Act 1986, Part 2.

<sup>138</sup> New s. 14(1)(aa) to the Public Order Act 1986. In the case of *Liberty v Secretary of State for the Home Department* [2025] EWCA Civ 571, the Court of Appeal found the attempt to define 'serious disruption to the life of the community' as a hindrance that is 'more than minor' in The Public Order Act 1986 (Serious Disruption to the Life of the Community) Regulations 2023 SI No. 655 to be unlawful. 'Serious' cannot reasonably cover anything that is more than minor.

<sup>139</sup> New s. 12(2D) to the Public Order Act 1986.

<sup>140</sup> Loi du 2 Mars 1954.

<sup>141</sup> Art. 16 Assembly Act.

adopted the controversial so-called ‘Anti-Rioters Act’ in response to the yellow vest protests in 2018 and 2019,<sup>142</sup> which criminalizes ‘deliberately covering all or part of one’s face without a legitimate reason’, in certain circumstances.<sup>143</sup> Like the UK’s Public Order Act 2023,<sup>144</sup> the French law also grants the police new and expanded ‘stop and search’ authority.<sup>145</sup>

Perhaps in some respects inspired by these legislative changes, a more emphatic policing and sentencing of protest is noticeable across Europe. Human rights institutions, most notably the Aarhus Special Rapporteur on Environmental Defenders, have raised concerns on this matter. The Special Rapporteur has, for example, described elements of the law enforcement response to an environmental protest in France as ‘disproportionate and indiscriminate’.<sup>146</sup> He criticized the four-year prison sentence handed down by a UK court to an organizer of an environmental protest in the strongest terms: ‘[h]ow a sentence of this magnitude can be either reasonable, proportional or serve a legitimate public purpose is beyond comprehension’.<sup>147</sup> This is one of a series of heavy prison sentences for climate protestors in the UK courts;<sup>148</sup> nor is the UK alone.<sup>149</sup> Changes to policing, charging and sentencing (as much a matter of policy, politics or practice as law) make forbidden participation much more challenging. As Volk observes, dissent should not require too much courage: ‘one crucial aspect of the democratic experience

---

<sup>142</sup> Law no 2019-290 of 10 April 2019. See also Defender of Rights, Opinion 19-02 regarding Legislative Proposal no 1352, 18 January 2019.

<sup>143</sup> Art. 6, Law no 2019-290.

<sup>144</sup> Ss. 10-14.

<sup>145</sup> Art. 78-2-5 into the French Code of Criminal Procedure.

<sup>146</sup> M. Forst (UN Special Rapporteur on Environmental Defenders Under the Aarhus Convention) Visit to Tarn, France, 22 – 23 February (2024), p. 3.

<sup>147</sup> Forst, n. 76 above, p. 1.

<sup>148</sup> This can be seen most easily in *Hallam*, n. 63 above. Sixteen jailed environmental protestors appealed their sentences. The Court of Appeal reduced some of the sentences, although lengthy prison sentences were maintained. By way of example, Roger Hallam’s and Daniel Shaw’s (ibid) sentences for planning a protest on the M25 (conspiracy to cause a public nuisance) were reduced to four years and three years respectively. Phoebe Plummer’s and Anna Holland’s sentences of 24 months and 20 months respectively for throwing soup on van Gogh’s *Sunflowers* in the National Gallery (criminal damage) were upheld. The conscientious motivation of the defendant and the protection of the ECHR are both relevant in sentencing.

<sup>149</sup> E.g. Climate Rights International, *On Thin Ice: Disproportionate Responses to Climate Change Protesters in Democratic Countries* (2024), chapter 2, available at <<https://cri.org/reports/on-thin-ice>>.

is the knowledge that protest in democracies does not require a heroic deed and is rarely a matter of life and death'.<sup>150</sup>

As with restrictions on invited participation, the motives for this transnational crackdown on protest cannot be asserted with any certainty. There may be some continuity between the 'speeding up' agenda with respect to invited participation, and the ability for protest and activism to delay development and (supposedly) damage economic growth.<sup>151</sup> Whilst analysis of the motives of government is beyond the reach of this article, we also have some sympathy with the political science literature that attributes restrictions on climate protest to a philosophy of securitization.<sup>152</sup> Protest becomes the new target of the long-standing efforts of the state to use repression and emphatic policing to seek to secure itself and society from perceived threats,<sup>153</sup> a securitization that is most obviously found as a response to terrorism and migration.<sup>154</sup> It implies the creation of a supposedly more secure environment, by restricting access to institutions and public space. For climate specifically, the perception that protest, rather than the impacts of climate change, is the threat to order, society and economic growth, diverts this philosophy more expressly towards environmental and other activists. We see this

---

<sup>150</sup> Volk, n. 16 above, at 70.

<sup>151</sup> This is apparent in parts of the UK government justification of measures, see e.g. Home Office, *Policy Paper: Protest powers: Police, Crime, Sentencing and Courts Act 2022 factsheet* (2022) <https://www.gov.uk/government/publications/police-crime-sentencing-and-courts-bill-2021-factsheets/police-crime-sentencing-and-courts-bill-2021-protest-powers-factsheet>.

<sup>152</sup> E.g. D. McLaren and O. Corry, "Our Way of Life is not up for Negotiation!": Climate Interventions in the Shadow of 'Societal Security' (2023) 3 *Global Studies Quarterly*, pp. 1-14.

<sup>153</sup> E.g. C. Davenport, 'Multi-Dimensional Threat Perception and State Repression: An Inquiry into Why States Apply Negative Sanctions' (1995) 39 (3) *American Journal of Political Science*, pp. 683-713; C. Davenport, 'State Repression and the Political Order' (2007) 10 *Annu. Rev. Polit. Sci.*, pp. 1-23. On governments' responses to youth activism, M. Grasso, J. Bessant (eds.) *Governing Youth Politics in the Age of Surveillance* (2018).

<sup>154</sup> Of a wide literature, see e.g. J. Huysman, *The Politics of Insecurity – Fear, Migration and Asylum in the EU* (2006).



in the application of security laws, especially anti-terror laws, against protest,<sup>155</sup> but also in the generally harsher approaches to public order.<sup>156</sup>

## **5. Conclusions: The Role of Law in Civic Space**

After many years of work on public participation in environmental decision-making, on the role of environmental groups and on just transitions, we find ourselves increasingly being asked about protest. In our work, we witnessed the erosion of what we are now calling invited participation; as citizens, we observed the repression of environmental and other protest. Exploring the very rich literature on protest in this article brought out the connections across civic space and demanded a broader analysis from us.

It is not novel or controversial to argue that both Aarhus-type public participation and street protests can constitute political participation. Nor is it novel or controversial to argue that civic space is shrinking across Europe. However, in this article we have brought invited, uninvited and forbidden participation together in a continuum of participation for several reasons. Firstly, bringing these elements together informs our conviction that civic space is found in the mundane, day-to-day routine of speaking to power, as well as in set-piece moments like general elections, and that it is found in the drama of practices of protest, even if criminalized, as well as in the sober institutions of democratic deliberation. Secondly, we have attempted to draw attention to the very rich tapestry of participation between these two ends of the continuum; this tapestry of participation is sometimes hard to see, but emphasizes the relation between the

---

<sup>155</sup> E.g. Letter of the Council of Europe's Commissioner for Human Rights, Micheal O'Flaherty to the President of the Italian Senate in relation to Bill n. 1236 on Public Security, 16 December 2024 (available at <<https://rm.coe.int/letter-to-president-of-the-senate-italy-by-michael-o-flaherty-council-/1680b2e8d7>>). Also in Italy, environmental protestors have been subjected to city bans, which are normally anti-mafia or anti-terror measures, Art. 2 of Legislative Decree No 159 of 2011; see G. Menegus, 'Climate Protests and City Bans: On Italy's Use of Preventive Measures to Crack Down on Climate Protests', *VerfBlog*, 6 March 2024.

<sup>156</sup> J. de Maillard, Verfaillie and Rowe (eds.), *The Politicization of Police Stops in Europe - Public Issues and Police Reform* (2024).

ends of the continuum. And thirdly, the transnational trend for simultaneous legal limits on very different approaches to political participation emphasizes the profundity and extent of law's contribution to the shrinking of civic space in the environmental sphere.

As guarantees of invited participation are eroded, we might conventionally expect to see more uninvited participation, including on the street. Simultaneously however, the uninvited are increasingly perceived to be a threat to order, leading to a redrawing of the line between uninvited and forbidden participation and a requirement for increasingly courageous sacrifice by protestors. The conditions for justifiable civil disobedience are placed under yet further strain. What will happen to the contributions and contestation that would otherwise have found a home in these different practices of participation is worrying in the context of the inequalities and extreme politics of which the restrictions we discuss may be part.

.

**Acknowledgements.** We are grateful to the reviewers for *TEL* for their assistance in completing this article, to Carolyn Abbot and Chris Hilson for their feedback on an earlier draft, and to participants at a Université Libre de Bruxelles, Centre for European Law seminar and the SLSA annual conference. We are grateful to Marie Jadot for assistance with accessing the Belgian case law, and to Elia de Caro for assistance with accessing the Italian case law.

**Funding statement.** We are grateful to the UCL Global Engagement Fund for supporting this project.

**Competing interests.** The authors declare none.