

## Chapter 4

# Democracy and the Real Speech Situation

David Estlund

### 1 The Ideal Deliberative Situation

Jürgen Habermas spawned a new way of thinking about the moral dimensions of democracy with the innovative concept of an “ideal speech situation.” That, at any rate, is the famous phrase, deriving from Habermas’s general account of descriptive truth as whatever could survive a certain idealized structure of interpersonal communication. Actually, the idea of Habermas’s that is more relevant to politics is his conception of an ideal practical deliberation, and the two are not just the same.<sup>1</sup> Nevertheless, the “ideal speech situation” is an evocative phrase that has caught on, and we can safely treat it as the overarching idea that unifies Habermas’s approaches to descriptive and normative validity. The Habermasian idea is that democratic legitimacy and authority might be explained if actual democratic practice could be shown to produce laws and policies that would have met with unanimous agreement in a certain ideal deliberative situation. One natural basis for thinking some actual democratic practice had this feature would be if it resembled ideal deliberative practice very closely. Some have been led to call for a democratic politics that seeks to resemble ideal deliberations,<sup>2</sup> though I will give reason to doubt that this is Habermas’s view. More importantly, I will argue that it is an implausible view. The Habermasian approach is central to my topic, but my aim is not at all exegetical. Rather, I want to describe and defend a model of civility in political participation that gives a principled place for sharp, disruptive, and even suppressive participation under the right circumstances, without jettisoning the whole idea of an ideal deliberative situation. I will suggest that this view, which I call *wide civility*, should be more congenial to Habermasians than they might think, but that is secondary.

Some, including Habermas himself, hope that the ideal speech situation could supply a philosophical explication of truth itself, or at least of objective validity of

---

<sup>1</sup> For a good discussion and guide to the texts, see Thomas McCarthy’s classic discussion (1979).

<sup>2</sup> A clear and influential example is Joshua Cohen, who writes: “The ideal deliberative procedure provides a model for institutions, a model that they should mirror, so far as possible” (Cohen, 1989, p. 26).

normative statements, without appealing to anything outside of our own rational and communicative capacities exercised in real life. The merits of that ambition are outside of my concern here. My own interest in the ideal deliberation is as a plausible epistemic device – a way of collectively coming to correct answers and decisions – whether the standards or facts of the matter are somehow independent of us or not. Nothing here depends on whether we think of the truth as discovered or made by ideal collective deliberation.

In the ideal deliberative situation, all affected people (or proxies for them) are given an equal say, untainted by prejudice or by differences in wealth, power, or dishonesty. This puts it roughly, of course, but it is enough for my purposes. This sort of ideal deliberative situation has important epistemic virtues in contexts of collective political decision-making. It brings together diverse perspectives, places a wide variety of reasons and arguments before the public, and prevents inequalities of power or status from skewing the results, which will then tend to reflect the weight of the reasons that apply. In short, such a deliberation is likely to produce good decisions.

Should norms of citizen participation aim at making real deliberative institutions and practices as much like the ideal deliberation situation as possible? Should actual institutions be designed to mirror the ideal deliberative situation so far as possible? In this paper, I argue that it would not be desirable for public political deliberations to resemble the ideal deliberative situation even if it were possible. Moreover, even if it were desirable, there would be the question of what to do about deviations when they arise. I will argue that citizens should not generally act to promote the resemblance between actual deliberation and ideal deliberation, since this would often mean letting deviations by others skew the results of the process. The conclusions here are significant both for theory and for practice. ● On the theory side, I hope to account for the important role played in democratic politics by sharp and disruptive political activity, including activity that interferes with communication. Theories that locate the core of democratic legitimacy or authority in public processes of deliberation about political issues can seem to treat sharp or disruptive political activity as marginal, as unfortunate last resorts. This is unsatisfying, since much of democracy's promise stems from our historical experience with brilliant and original forms of direct action. This idea that the paradigm of responsible democratic activity is the calm giving and receiving of reasons stems from failing to put the ideal deliberative situation in its proper theoretical place. It is not something to be emulated in practice, but a tool of thought and analysis by which appropriate sites for political engagement can be identified. Political behavior does not and should not take place in anything resembling the ideal deliberative situation, and so the deliberative mode of behavior is not privileged in practice.

## 2 Making it Real: The Town Meeting

Alexander Meiklejohn famously discussed the traditional New England town meeting in order to illustrate how certain restrictions on expression are compatible with – indeed necessary for – a meaningful freedom of speech (Meiklejohn, 1960). He argued that without rules forbidding such things as talking out of turn, disobeying the moderator, speaking far off the appointed topic, etc., the quality of the deliberation at the meeting on the topics at hand would be harmed. He pointed out that even under such restrictions on speech, participants would be free to express their view of the matters at stake, whatever their view might be. There remains, in short, freedom of speech. Even though we know it is bound to fall short, the town meeting is a real deliberative forum in which the ideal deliberative situation is realized about as well we could expect to find anywhere. As in the ideal deliberation, there are severe restrictions, and yet there is also freedom of expression. These are, respectively, the *restrictive* and the *liberating* aspects of the ideal deliberative situation, and, to a lesser extent, of deliberative contexts that approximate it. The restrictions might be justified on grounds of fairness or individual rights. They also might be justified by the aim of insulating the exchange of reasons from the distorting influence of power of various kinds. This is an epistemic advantage of the restrictive rules. I want to start here, in the town meeting, and then ask whether it is a reasonable aspiration to extend even this imperfect version of ideal deliberation to communication in society at large. I will argue that it is not. It is not only the pure ideal but also more realistic approximations such as this one that I argue are inappropriate models for political deliberation generally.

The town meeting is a useful starting point for several reasons. In a town meeting the rules tend to be exceptionally clear. I do not mean only the rules of Procedure, or the rules that will be enforced, but also the rules of good behavior. The official rules of a town meeting are distinct from the standards of civility or good meeting behavior. For example, the official rules may, by their silence on the matter, permit a recognized speaker to ridicule opponents in a way calculated to disturb the meeting, but that would not settle whether this was within the speaker's duties of civility. This distinction in a meeting context mimics the structure in a broader political context, where there are laws permitting and regulating expression, but also a separate set of standards of civility with no force except that of a citizen's duty. The structure of a deliberative forum is made up of both parts, which I will refer to as institutional and moral norms respectively. They are restrictions in two different senses, but for my purposes it will not be necessary always to note that difference.

Given the epistemic advantages of these restrictions on communication in the town meeting (as well as whatever non-epistemic moral value they might have), should communication in society generally be similarly structured, so that political decisions can arise from a process with the same moral and epistemic virtues? I will answer "no."

### 3 How Society is Unlike a Meeting

Public communication is a vast category of human behavior. If there is any temptation to extend the norms and restrictions of ideal deliberation to public communication generally, it is because there is no sharp line defining which public communication is politically relevant. American jurisprudence around the first amendment's guarantee of freedom of expression is often troubled by this point. Even if it is desirable to have very robust protection for political expression, it is difficult to say for sure which categories of expression could not be political and therefore fall outside the strongest protection. Our question is not the first amendment question about when speech may be interfered with by legal regulation. We are considering institutional rules and moral norms for the conduct of expression. Still, if the aim is to shape institutions of political deliberation the same difficulty arises. It is difficult to say what is political expression and what is not. That difficulty could be avoided if the whole domain of public communication were put under the discipline of institutions and norms that are meant to resemble ideal political deliberation. Call this proposal the *wide mirroring doctrine*. It says that public communication, conceived as one large forum, ought to mirror the ideal deliberative forum so far as possible.

To see why the wide mirroring doctrine is unattractive, it is useful to focus on the restrictive aspect of the ideal deliberation. Recall, all have equal access to the forum, and all address the question of justice or the common good (even if people have differing conceptions of it). Even apart from any sanctions or enforcement mechanisms, these are restrictive. This is not yet to say that the restrictions are not worth it, but first we should appreciate that they are indeed restrictive. Consider a few examples of possible public communication that would seem to be precluded by the norms and rules of the ideal deliberation:

- Kurt has the money and experience to purchase and run a small publishing house. He publishes books of poetry by himself and his friends. Most poets do not have this sort of access to publication, and so the access enjoyed by Kurt and his friends is unequal, violating the equal access feature of ideal deliberation.
- Emma, after much study, has come to believe that political states are illegitimate. She makes a point of avoiding the statist assumptions of the political discourse of her time. Emma never addresses political issues in terms of what is just or best for the people of her own nation, preferring to imagine alternative modes of social organization. She and her fellow citizens only rarely find themselves addressing a common question about justice or the common good. This violates the common question feature of ideal deliberation.
- Francis is a film maker, whose work subtly but definitely influences the perspectives and views of millions of people. This is not owing to any rational arguments, which are entirely absent from his films. It is owing to his skill in leading his audience to certain conclusions by working on their emotions

and impulses, violating the restriction that limits communication to explicit reason-giving.

These are just a few examples. What I hope they show, in case it needed showing, is that many valuable kinds of public communication would be incompatible with the restrictions in the ideal deliberative situation. This does not settle whether there should be such restrictions, since there are also disadvantages to contexts of communication in which these various restrictions are not adhered to. Each of the restrictions is meant to guard against something that is, other things equal, worth guarding against. Even outside the more directly political forms of expression, it is not desirable to have an idea's influence increase because of the power or rhetorical skill of the idea's proponent, much less because it plays to prejudices on the basis of race, gender, or class. Since external sanctions are not at issue, it might seem as though it would be preferable if these norms were in place throughout society, in that people enforced them on themselves. The examples of Kurt, Emma, and Francis strongly suggest, I believe, that even the self-imposed norms of ideal deliberation would, on balance, not be a good thing in society generally. There are too many valuable products of the human mind that would be suppressed if the egalitarian and public-spirited norms of the ideal deliberation were to characterize all areas of public communication.

#### 4 Ordinary Politics

We have looked at the narrow formal political context of a New England town meeting, and at the very broad domain of public communication generally. We turn now to what I will call the *informal political public sphere*, a forum with a scope that is intermediate between the other two. This is the domain of political speeches, candidate or citizen debates, opinion journalism, letters to the editor, political advertising, political demonstrations, political art and expression, and so on. Roughly, it is the political activity of non-officials, or officials outside their formal institutions such as the legislature. Even though the boundaries are not definite or clear between political and non-political areas of the informal, non-official public sphere, there is a rough distinction that is hard to deny. The norms that should govern the political part are, I will argue, different and more restrictive than those that should govern the non-political part, and yet not as restrictive as the norms appropriate to the most formal parts of the political public sphere such as official decision-making meetings of legislators. This intermediate domain is the world of ordinary politics, and so the norms that apply here are absolutely central to the conception of a citizen's role and duties in the political process. Since this domain is informal, there are no rules of the kind that characterize official meetings, except, that is, for any laws that might regulate informal political expression. If we ask what form we want communication in this sphere to take, and we assume broad legal protection of freedom of expression, the emphasis

falls on moral norms. I will speak mainly, then, of the shape of citizens' duties of civility (leaving it as an open question how far civility requires politeness).

The informal political sphere is intermediate between formal politics, and non- (or hardly-) politics, and the norms appropriate to it reflect its intermediate position. On the one hand, the informal political sphere exists alongside the relatively non-political areas of public communication, and so it is relieved of the burden of ensuring, within its own scope, outlets for brilliance, passion, creativity, provocation, and so on. These are provided for to some extent by the light restrictions in the non-political public sphere. On the other hand, the absence of the deliberative norms has its costs. It would be epistemically costly to let power, position, and passion determine the course of political decision-making. This might seem to suggest that the informal political sphere should be governed by the deliberative norms. Two questions arise: would this be desirable if it were possible? Even if it were desirable, how should deviations be dealt with?

First, would it be desirable, if it were possible, for non-official public conduct of political deliberations to hew to the norms of the ideal deliberative situation? With one important caveat, I believe the answer is yes. The caveat is that since the boundaries between the political and the non-political areas of public communication are so unclear, imposing the deliberative norms on the political sphere would be bound to impose them to some extent on the gray areas between political and non-political communication, risking a chilling effect on expression that really ought to be free of these restrictions. Nevertheless, this does not mean that the restrictions are not desirable in the definite cases of political expression. They are desirable here for the same reasons they are desirable in the New England town meeting.

Still, there are differences between the formal contexts of the town meeting and the informal political sphere that suggest they must be treated differently. Even if it were desirable for the deliberative norms to be respected by all in the informal political sphere, nothing even approximating this is likely. This presents a profound version of the problem of second-best. The problem of second-best, in general terms, is the fact (when it is one) that when one of a number of desiderata is not satisfied, the other desiderata are no longer appropriate. That is, a situation that departs even further from the original list of desiderata may be better than one that more closely conforms to them.<sup>3</sup> In the informal political sphere, since serious deviations are sure to occur, it is important to see that the best response might be certain further deviations. This is the crux of my rejection of the mirroring doctrine, the suggestion that real deliberations should mirror, so far as possible, ideal ones.

The mirroring doctrine suggests shaping the duty of civility by positing a duty to behave in the ways that participants would behave in the ideal deliberation, at least as far as each person can. The wide version would apply this to all public

---

<sup>3</sup> The idea was initially formulated in an economic context. See Lipsey and Lancaster (1956).

communication. Narrower versions would apply it to all political communication, or even only to formal political deliberation (I will support that narrowest version). On the mirroring view, the ideal sets each person's duties irrespective of how other participants are actually, in the real deliberative situation, behaving. Some of our duties are fixed irrespective of the behavior of others, such as the duty not to torture innocent people for the thrill of it. Other duties set one standard of behavior when others are complying with a similar standard, and a different standard otherwise. Consider the duty to drive on the right hand side of the road in the US, as the law requires. This is certainly a duty so long as most others are complying with the law, but the duty lapses if most people are driving on the left. Or consider the duty not to interrupt in discussion. It is a duty that probably only applies to the case in which most people are refraining from interrupting. If interruption is already rampant then non-interruption may no longer be required.

Let us call duties of this kind, ones that apply only so long as other people are, for the most part, also complying, "collective action duties." They raise a number of interesting questions, but my interest is in exploring what comes of the duty when the collective action breaks down. The original duty lapses, but what, if anything arises in its place? The duties of civility are best seen as collective action duties, ones that have one content when people are generally complying with the highest standard, but then a new substitute content when that is not so – when general compliance breaks down. Notice that I do not say that anything goes when compliance breaks down. Rather, one's duties change, adjusting to that circumstance. So the question becomes, what is the new content of the duty of civility when there is no general compliance with the initial high standards? What we need is what we might refer to as a *breakdown theory*, a principled account of this new substitute duty of civility. It will vary, no doubt, according to the sort of breakdown that is in question.

We might respond to a breakdown of high standards of civility by supposing that civility no longer has a place at all. No holds barred, we may now do as we please. But that would seem to depend on showing that no new standard of civility can serve, even partly, the same purposes and values as the one that has broken down. If a new standard can serve these purposes, this is a reason for thinking of them as coming into force. The account offered here is based on the idea that when the features of ideal democratic deliberation are not generally met, there are often new standards that will serve, although not necessarily as effectively, the same purposes and values that gave the initial high standards their point.

We can apply this point, in a quick preliminary way, to the mirroring doctrine. It says that actual political behavior should resemble, so far as possible, behavior in the ideal deliberative situation. Suppose this is plausible so long as compliance is widespread. There is still the question of what to do when compliance is not widespread. It is not obvious that the duty to comply with power-free deliberative norms remains intact. In particular, when power enters the fray on one side in a dispute, the norm that tells us to refrain from using power in that way neither

remains intact, nor means no holds are barred. This rejection of the wide mirroring doctrine, as I will go on to argue, is the best way to account for the role of political action that is disruptive of reasoning and communication, including many familiar sharp political tactics.

## 5 Marcuse as a Precursor

Herbert Marcuse offers perhaps the best known defense of sharp and disruptive interventions in political expression, and I believe his theory is usefully interpreted as a “breakdown theory” of this kind (Marcuse, 1969). It will help to sketch an interpretation of Marcuse’s reasoning even though his question is not quite ours. His reasoning, or at least a line of reasoning suggested by his essay, fits naturally with an emphasis on the epistemic value of public political deliberation and so it gives an idea of how such an emphasis might treat behavior on the boundaries of civility. Marcuse wonders when private citizens might permissibly interfere with public political expression, a question he takes up from Mill in order to offer a different answer. But since that question is one about permissible interference with expression, it is narrower than the general question of civility, which asks what kinds of public political expression are morally permissible and consistent with one’s responsibilities as a citizen. Still, Marcusean interference with expression – say, by picketing or heckling – is certainly one kind of behavior that would be condemned by narrow standards of civility if they are given by the aim of approximating the ideal deliberative situation. Marcuse, in effect, defends a wider, more permissive conception of civility according to which such interference is indeed permitted.

Marcuse agrees with Mill on a great deal (Mill, 1989). He agrees with Mill that there are objectively correct answers to many normative political questions (Marcuse, 1969, p. 89). He also evidently agrees with Mill that under favorable conditions the truth will tend to prevail in the course of full open public deliberation.<sup>4</sup> He agrees with Mill that among the set of conditions that are most favorable to the social discovery of truth is a widespread tolerance. By “tolerance” Marcuse means restraining oneself from interfering with the expression by others of views with which one strongly disagrees. Tolerance is not only one among the social conditions favorable to the social discovery of truth; that epistemic function is what gives tolerance its point. As Marcuse succinctly says, “the telos of tolerance is truth” (Marcuse, 1969, p. 90).

---

<sup>4</sup> Marcuse speaks of “freedom of thought and expression as preconditions of finding the way to freedom” (Marcuse, 1969, p. 88). While he never clearly says that tolerance would promote truth under proper conditions, the structure of his argument seems to assume this, at least for the sake of argument. He argues that the conditions under which pure tolerance might be thought to support truth do not, anyway, obtain.



Tolerance does not, by itself, promote truth, however. It promotes truth only in conjunction with certain other conditions. This gives rise to questions that Mill said little about: what are the other conditions that join with tolerance to promote truth? What is the effect of tolerance when those other conditions are violated in various ways? What implications does this have for the practical question facing a citizen: “ought I to be tolerant of this highly disagreeable view?”. Marcuse offers a rough account of the circumstances of tolerance and an argument that they are pervasively violated at least in modern America.

On Marcuse’s view, wider standards of civility come into their own when there is a failure or breakdown in the conditions in which tolerance serves its purpose. Applied to the matter of civility in political expression, the breakdown approach asks what is the point of narrow civility? If we follow Mill’s and Marcuse’s approaches to tolerance of expression, we will answer that an important part of narrow civility’s point is part of an arrangement in which the exchange of ideas will tend to promote true or at least objectively better views and social decisions. The *telos* of civility is, in part, truth. Plainly this is not its only point, but it is worth seeing what follows from its having this point.

Assuming, with Marcuse and Mill, that the value of orderly deliberation is that it promotes the truth, or wisdom, or quality of the resulting social decisions, narrow civility no longer promotes the truth once the other components of an orderly but free deliberation are missing and if standards allowing deviations from narrow civility could serve to remedy the epistemic situation. In general, the defective background conditions permit transgression of narrow civility for remedial purposes, but only within the constraints of a wider civility. For convenience I will refer to this normative structure as one of “constrained transgression.”

How do wider standards of civility serve the epistemic goal in these defective conditions? Marcuse’s own argument does not discuss the context of a town meeting, but its structure is similar and instructive. He argued that in this era there is a systematic cluster of interests (especially those associated with owners of productive capital) that have disproportionate control over the course of public, especially political, discussion. As a result, certain favored points of view can be made to attract more support on grounds other than their merits – the actual reasons that exist in their favor. Behavior outside of the narrow bounds that would make sense under more ideal conditions is permitted in order to partially restore the truth-promoting value of public discussion.

From an epistemic viewpoint, the relevant breakdown might be said to consist of *power’s interference with reason*<sup>5</sup> (the crucial idea here is countervailing distortion, so its application is not limited to views of the ideal deliberation in

---

<sup>5</sup> Of course, reason could itself be called a kind of power. A deeper objection would be to claim that this kind of power is not normatively less objectionable than any other. That sort of critique cannot be considered here. See Estlund (2001b) (a reply to comments on Estlund, 2001a).

which the only thing counted as a distortion is power). The justification for wider standards of civility in these conditions is that they partially remedy the power imbalance. More precisely, they use countervailing power to remedy epistemic distortion wrought by the initial insertion of power. Marcuse's strategy of selective intolerance through private acts of suppression does so by reducing the power of dominant viewpoints. The wider standard of civil expression does so by increasing the power of non-dominant points of view. Marcuse's approach is subtractive, while my idea of wide civility is additive, but both have as their rationale the remediation of certain deviations from an epistemically valuable ideal deliberative arrangement.

The circumstances of narrow civility in political expression, then, include the condition of power's non-interference with reason. It would be absurd to think that this condition could be fully met in any real context of public political expression, but that does not deprive the idea of normative significance. Habermas, Marcuse's leading successor in what is known as the Frankfurt School of critical social theory, adopts the idea of power's non-interference with truth as the core of his moral and political theory without supposing that it is a condition that could ever really be met. Habermas holds that a legitimate political arrangement is whatever would, hypothetically, be unanimously accepted in a practical discourse situation involving all affected in which, roughly, power does not interfere with reason.<sup>6</sup> It might seem that since power always is actually interfering with reason, this account will leave it entirely to the philosopher, rather than to any public process, to ascertain the conditions of justice or legitimate government. Habermas, however, insists that the philosopher cannot credibly claim to know what such an ideal discourse would produce absent actual discourse (Habermas, 1990, p. 67). But actual discourse always falls short of the ideal discourse, and normative conclusions must be drawn by concentrating on these discrepancies. The greater the shortfall, the less the moral legitimacy of the normative conclusion since this enlarges the biasing role of the philosopher's own particular perspective. Marcuse's view is often criticized as arrogantly bypassing public discussion and presuming to know its proper conclusions. On the contrary, Marcuse's view is most charitably read as advocating remedial interventions in the discursive system so as to restore some presumptive normative significance to its conclusions. One strategy that is suggested by this approach is not to try to generate the conclusions by a solitary application of reason, but, as far as possible, to approximate real social conditions in which either power does not interfere with reason *or, failing that, find some remedial feature that would support our ability to infer from the imperfect real discourse conclusions about what would have been accepted if it had been ideal*. Such a view admits from the beginning that real discourses are not ideal, but still gives the idea of ideal discourse – the idea of power not interfering with reason – a central critical role.

---

<sup>6</sup> See Habermas (1979, p. 186; 1999, pp. 31, 34, 259, and 1996, pp. 103–104).

The importance of these points for our purposes is the sobering fact that the conditions in which narrow civility has its distinctive epistemic point are always violated to a greater or lesser extent. Power is always interfering with reason. When the shortfall is great the question is whether narrow standards of civility are any longer the ones called for by the guiding idea of a public discourse in which conclusions are driven as much as possible by reason rather than power. If we stick to the epistemic point of standards of civil political expression, we will be led to a new more permissive set of standards in which advocates of the view that is disadvantaged by the appearance of power may permissibly press their own viewpoint with an added degree of power. The more permissive standard is defended on the grounds that this might countervail the anti-rational effect of the initial pollution of the discourse by systemic power that irrationally favors one side.

When power distributions trigger wider standards of civility this dispensation is not given to all speakers whatever their message. It is only remedial if wider standards are given selectively to those whose viewpoints are being denied their due hearing by an imbalance of power.

The constraints of a wider idea of civility are naturally suggested on this account. Even on a Marcusean analysis there would be no apparent justification for such extreme suppression of a message that it disappears from public awareness altogether. The power imbalance argument provides only a basis for leveling the playing field in order to partly recover the epistemic virtues of freedom of expression that Mill emphasized.

## 6 The Ideal Speech Situation in its Place

Habermas's concept of an "ideal speech situation," an ideal situation of deliberation in which only reason makes a difference has inspired many theorists of "deliberative democracy." The idea is sometimes used to suggest that laws and policies derive legitimacy from having been produced by a process that approximates the ideal deliberative situation. Habermas himself states the criterion of legitimacy differently: laws are legitimate that *could have* been unanimously agreed in an ideal deliberation. This hypothetical standard might seem to conflict with Habermas's overall insistence that actual deliberations are necessary in order to avoid the philosopher's armchair speculation about what would happen in the hypothetical case. One natural way of reconciling the two would be to suppose that actual deliberations should be as close to the ideal as possible so that the product of actual deliberations will give us good evidence about what could have been agreed in the ideal deliberative situation. This results in a narrow conception of civility – of the duties of citizens in their participation in political deliberation – that consists primarily if not entirely of the giving and receiving of reasons.

There is an alternative way of reconciling the role of the ideal deliberation with the emphasis on actual deliberation, and it seems closer to what Habermas

himself had in mind. Contrary to a common interpretation of his work, Habermas does not believe that actual institutions should resemble an ideal deliberative situation as much as possible. It is not just that this is unrealistic or utopian; he argues that it is not even desirable. It is preferable to have a "wild," "anarchic," and "unrestricted" public sphere on which formal political institutions can draw, even though this does open the informal public sphere to morally undesirable biases and inequalities. Habermas is not explicit about the value of a less disciplined informal public sphere. Also, it is not quite clear what the importance is of the idea of an ideal deliberative situation if it is not to be emulated in society at large. There are a few possible answers suggested by Habermas's discussion.<sup>7</sup>

First, why is it desirable to have an unruly informal political sphere, one in which equal access, time, and power are not guaranteed? One obvious reason is that the informal public sphere will be the source of ideas whose value lies outside the political, and so whose origins in egalitarian conditions will tend to matter less. Secondly, even politics benefits from a rich and productive background culture. Even if not every product of public deliberation has the potential to enrich political thinking, an environment that includes boldness, surprise, and offense is one that will have a wider variety of original ideas, gestures, and confrontations from which to draw in political thinking. Much of this raw material would never exist in a setting structured so as to prevent any influence other than the forceless force of the better argument.

If the ideal deliberation is not to be emulated in society at large, what is the importance or value of the ideal? One part of an answer is that the ideal deliberation is apparently to be emulated in more formal political institutions, a point to which I will return. A second part of the answer is that the ideal deliberative situation, even existing only in thought, serves as a template against which to judge reality in order to identify and deal with deviations. This naturally raises the question of what is to be done when such deviations are identified, since we know that approximating the ideal is not the goal. That is the question to which my suggestions about breakdown theory in general, and more specifically countervailing deviations, are meant to provide part of an answer.

The goal of making deliberative heaven on earth, of seeking to make real political institutions resemble as closely as possible the structure of the ideal deliberative situation, leads to an implausibly narrow conception of the public sphere and of the duties of civility. An alternative way of using both the idea of an ideal deliberative situation and actual deliberative processes is a breakdown theory of the kind sketched in this paper. The ideal serves as a template for identifying breakdowns, which are common and inevitable. Actual practice can be adjusted in light of those deviations, not to re-establish resemblance to the ideal, but to bring forces to bear, rational or not, that countervail the effect of the

---

<sup>7</sup> My interpretation puts a lot of weight on Habermas's discussion in Habermas (1996, chs 7 and 8). For one important passage about the advantages of "unrestricted communication," see Habermas (1996, pp. 307–308).

initial deviations so far as possible. The result is not any static structure at all, but a dynamic process of deviation and response, aimed at grounding the supposition that the results could have been agreed in an ideal deliberative situation. This approach, for which there is support in Habermas's own writing, seems to be the best way of avoiding the narrow overly polite conception of duties of civility that might seem to be implied by the central role given to the ideal deliberative situation, while still giving that idea a central theoretical role.

The interest of this approach is not mainly in its endorsement of protest, emotional political appeals, and judicious use of power politics. That is a fairly conventional and time-honored view. It is, perhaps, more interesting to locate this view in a conception of political deliberation that gives a central theoretical role to the ideal in which only the forceless force of the better argument prevails. A second feature of this approach that goes beyond the endorsement of sharp politics is its ability to scale the wider conception of civility in a graduated way, without letting the duty of civility collapse just whenever its higher standards are not being generally met.

It is important to ask, as many asked of Marcuse's view, whether a policy of countervailing deviation from narrow norms of civility risks escalating the conflict in dangerous ways. The fact that there is often some risk of this kind is certainly not a fatal problem for the view. Civil disobedience is also a way of escalating a dispute, and often risks further retaliation and escalation, but this is not decisive against it in general terms. The risks of escalation would be weighed and judgment exercised in the use of countervailing power as they must be in the choice whether to resort to civil disobedience.

If one instance of power is countervailed by another it might seem as though it has been neutralized and the power-free ideal has been reinstated. Sometimes, of course, power can actually be neutralized, as when a weapon is brandished but then destroyed or removed from the scene. But countervailing uses of power as I have used that idea here will not normally neutralize the original insertion of power. If you put a gun to my head, and I put my gun to your head in reply, your use of power has been (at least to some extent) countervailed, in the sense that its ability to skew the deliberations has been scaled back by my response. Still, the power-free ideal of the ideal speech situation or the ideal epistemic deliberation has not been restored. Mutual assured destruction might be the best way to countervail the first destructive threat, but it is not the ideal speech situation restored. It is a profound deviation from that situation in an effort to achieve something else: a tendency to get the same results as the (very different) ideal speech situation would have gotten. Such deviations would not need to be based on the hope of restoring something closely resembling the ideal. The deviations would be justified by their countervailing epistemic effects even if there is no prospect of a rosier future.

## 7 **Should Formal Politics Be Narrowly Civil? (Why not Fight Fire with Fire There Too?)**

As we saw, the narrow norms of ideal deliberation would be epistemically too restrictive and costly if they were to characterize public communication generally. Even the informal political sphere should not be overly disciplined by those narrow norms, but there the strict deliberative ideal should be used as a yardstick to measure deviations. The deviations need to be addressed creatively, however, and not always by simply holding one's own behavior to the standards that others have breached. This leaves the formal political sphere, deliberative settings in which selected participants have formalized roles and responsibilities, and in which legally binding decisions are made. Should these formal political settings operate by the more restrictive approach, trying to resemble the structure of the ideal deliberative situation as closely as possible?

If the informal public sphere is sufficiently unrestricted, then perhaps there is a place for the more restricted discursive forms of interaction specifically in legal fora such as courts and legislatures.<sup>8</sup> But what is to be gained? The reasons given for a wider more permissive regime in the informal sphere might seem to apply to the formal sphere too. The breakdown model developed here would seem to imply that even in the legislature there will be deviations from ideal discursive interaction, and that countervailing responses, pulling the structure only further from the ideal, will often be the best way of grounding the presumption that the outcome could have been agreed in an ideal deliberation. Why posit the narrow rules of civility that would be appropriate in the counterfactual situation of an ideal deliberative situation even here, in formal politics? Why not fight fire, if it should break out, with fire even in the formal political domain?

The answer, I think, is that formal politics can come closer to the ideal than other settings. This, combined with the availability of the other more permissive contexts for communication, means that there are likely to be more epistemic benefits than costs from applying the narrower norms of civility in formal political settings. We should accept a narrow mirroring doctrine at least with respect to standards of civility: standards of civility in formal political deliberation ought to resemble as far as possible the standards of behavior assumed in ideal practical deliberation.

Even discussion on the floor of the representative assembly (the context in which the term "deliberative democracy" was first devised; Bessette, 1980) will never mirror ideal deliberation very closely. Representatives are unlikely always to speak sincerely, to refrain from using power or position in lieu of argument, to put forward only their views on the common good, and so on. In spite of all this,

---

<sup>8</sup> This is how I interpret Habermas's discussion in Habermas (1996, ch. 7). For example: "The normative self-understanding of deliberative politics certainly requires a discursive mode of sociation for the legal community, but this mode does not extend to the whole of society in which the constitutionally organized political system is embedded" (Habermas, 1996, pp. 301–302).

we structure deliberation in those formal settings by elaborate rules of order and norms of civility. The restrictions that are typical in those fora are far more severe than we could hope to justify in informal political settings, much less for public communication generally. If they do not really approximate the ideal deliberative situation, is there any real justification for those narrow norms? Perhaps they are nothing but a charade, a bit of theater to encourage the public to feel that this is a genuinely deliberative forum, even though it is no more deliberative than social life generally (which is to say, not very).

We need to look for some difference, some reason why formal politics should be governed by narrow civility while the rest of public communication is not. One of the differences between the formal and the informal political spheres is that the formal political sphere exists in a system of public communication that includes wider more permissive standards everywhere outside of formal politics. The deliberative norms in one context are not as restrictive overall if one is free to take his or her ideas to a different context that is more permissive. If informal politics employs wider standards than formal politics, then the epistemic cost of imposing the narrow standards in the formal realm is reduced. For example, consider a debate in the assembly about farm subsidies, and suppose that farm interest groups are richer than the opponents of subsidies. This leads to a larger number of representatives lining up to support subsidies in order to attract the campaign funding from the farm lobby. This rationally distorting role of money (if necessary, the reader should fix up the example to make it so) violates ideal deliberative norms. Under narrow standards of civility within the assembly, it would be impermissible to respond by, say, playing recorded sounds of ringing cash registers and mooing cattle every time a representative spoke in favor of subsidies. This has an epistemic cost, insofar as it might let the initial deviation skew the results without any effective response. But the creative use of loudspeakers, or other non-discursive direct actions, is available (not just legally, but according to the wider norms of civility I have advocated) outside the assembly in the domain of informal ordinary politics. That reduces the epistemic cost of the stricter standards in the formal realm. That is a consideration that is not available to justify strict standards of civility in the informal sphere, since there is nowhere else to go other than reverting to relatively non-political expression in order to fall under more permissive standards, thereby diluting and weakening the intended message.

This suggests that there is some reason for a division of labor between the informal and formal political spheres. The formal sphere aims for some of the reason-tracking virtues of the ideal deliberation, by imposing restrictive norms governing the proceedings. The informal political sphere operates without those confining norms in order to allow the inevitable deviations to be balanced out by carefully devised counter-deviations. So far, though, this is just an argument for a division of labor between the formal and informal political spheres. We do not yet have any clear reason to assign the more restrictive norms to the formal political sphere rather than to the informal political sphere. I want to conclude by very briefly pointing to some reasons for thinking the formal sphere is especially

well-suited to the more restrictive deliberative norms, at least so long as the informal sphere and the general public sphere are less rigid.

The formal political sphere is different in some important ways. First, it is relatively clear what counts as internal to the context of the assembly and what does not. For this reason, it is relatively clear when rules would apply and when not. The boundaries between the informal political sphere and the non-political public sphere are less clear. Second, the formal political sphere consumes only a small fraction of life. Restrictions in this forum are not, in a certain sense, as restrictive, since much of life takes place in the less restrictive informal political sphere or in the general public sphere. This is not just the point that there is a division of labor between the formal and informal spheres. The formal sphere is a smaller part of life, by any measure, than the informal. Third, the behavior of participants in the formal political sphere is more easily monitored. The number of people involved is small and they are publicly visible. This works together with the final point, namely, that reputation pays. In the formal political sphere participants are punished by the public for untoward behavior as the public sees it.

What these features suggest is that restrictive norms meant to encourage discursive reasoning on equal terms might be less vulnerable to non-compliance, and so more effective, in formal political contexts than in the informal political sphere or in society generally. Moreover, the epistemic costs of these restrictions would be smaller there, partly because the other more permissive settings exist, and partly because the formal settings are a relatively small part of communicative life. Narrow civility might, after all, have a place in real institutions, namely in the conduct of formal political deliberations, at least when things have not gone too badly wrong.

## **Conclusion**

My aim has been to argue that the idea of an ideal situation of political deliberation is indeed a potent tool in normative democratic theory, but that its role is not as something to be emulated or mirrored in public discourse or even in political discourse. Its role is mainly as a template to lay over actual deliberations in order to identify (not always to mourn) deviations. Once they are identified, the question is what should be done about them. The mirroring doctrine argues that resemblance to the ideal should be maximized. The view I have described, wide civility, rejects the mirroring view, since promoting that kind of resemblance to the ideal would often require acquiescence in the face of serious distortions of the process of deliberation, skewing not only the process but also the decisions that are likely to result. Wide civility calls for countervailing deviations where a countervailing measure can be devised. It is still an account of civility since even these measures are morally constrained not to merely pursue selfish or sectarian interests as far as one can. Fire may be fought with fire, but a spark may not be fought with a flame thrower. Wide civility folds a lot of sharp, disruptive, and



even informally suppressive political activity into a broadly deliberative approach to democratic politics, recovering a crucial part of democracy's moral promise as we know it from historical experience. The specific content and limits of wide civility under various conditions is a further question;<sup>9</sup> the important thing to keep in mind is that it does have limits, and that this can be accounted for by the remedial role that it plays in the account I have described.

Having said all that, however, there is, after all, some reason for formal political deliberation – a narrow context surrounded by other outlets for discourse – to be governed by a narrow conception of civility. Political discourse generally is not like a New England town meeting. On the other hand, New England town meetings and to a lesser extent other formal political deliberative settings are.

## References

- Bessette, J.M. (1980), 'Deliberative Democracy: The Majority Principle in Republican Government', in I.R.A. Goldwin and W.A. Schambra (eds), *How Democratic is the Constitution?* (Washington: American Enterprise Institute), pp. 102–16.
- Cohen, J. (1989), 'Deliberation and Democratic Legitimacy', in A. Hamlin and P. Pettit (eds), *The Good Polity* (New York: Blackwell), pp. 17–34.
- Estlund, D. (2001a), 'Liberation Down and Dirty: Must Political Expression Be Civil?', in T.R. Hensley (ed.), *The Boundaries of Freedom of Expression and Order in American Democracy* (Kent, OH: Kent State University Press), pp. 49–67.
- Estlund, D. (2001b), 'Deliberation and Wide Civility: Response to the Discussants', in T.R. Hensley (ed.), *The Boundaries of Freedom of Expression and Order in American Democracy* (Kent, OH: Kent State University Press), pp. 76–79.
- Habermas, J. [1976] (1979), *Communication and the Evolution of Society* (Boston: Beacon Press).
- Habermas, J. [1983] (1990), 'Discourse Ethics: Notes on a Program of Political Justification', in J. Habermas, *Moral Consciousness and Communicative Action* (Cambridge, MA: MIT Press), pp. 43–115.
- Habermas, J. [1992] (1996), *Between Facts and Norms*, trans. W. Rehg (Cambridge, MA: MIT Press).
- Habermas, J. [1996] (1999), *The Inclusion of the Other*, trans. C. Cronin and P. De Greiff, (Cambridge, MA: MIT Press).
- Lipsey, R.G. and Lancaster, K.J. (1956), 'The General Theory of Second Best', *Review of Economic Studies*, 24(1), pp. 11–32.
- Marcuse, H. (1969), 'Repressive Tolerance', in P. Wolff, B. Moore. and H. Marcuse (eds), *A Critique of Pure Tolerance* (Boston: Beacon Press), pp. 81–117.
- McCarthy, T. (1979), *The Critical Theory of Jürgen Habermas* (Cambridge, MA: MIT Press).
- Meiklejohn, A. (1960), *Political Freedom* (New York: Harper).
- Mill, J.S. [1859] (1989), *On Liberty* (Cambridge: Cambridge University Press).

<sup>9</sup> I reflect on one concrete example of actual political protest in this context in Estlund (2001a).