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Deliberation Down and Dirty

Must Political Expression Be Civil?

DAVID M. ESTLUND
Philosophy, Brown University

CARVING OUT A QUESTION

The idea of civility can suggest perniciously narrow norms of public behavior.[1] In the context of political expression in particular, calls for civility run the risk of morally tolerating far too little. My hypothesis in this essay is that there are moral standards of civility in political expression but that they can accommodate much vigorous, disruptive, disturbing, embarrassing, and even illegal expressive activity. This approach may seem to defend civility by using the name to refer to something else, something more defensible. Rather, the dispute is framed here as about what the idea of civility really does require. One proposal applies the idea of politeness to the public sphere. I sketch a different view, in which civility's point is different from that of politeness and in which its content is different as a result. Politeness cannot make room for sharp and disruptive behavior, but civility can.[2] Calling this type of behavior "uncivil" would suggest a strong presumption against it. On the view I will defend here, wider boundaries of civility are triggered specifically as remedial responses to certain violations of the conditions needed to foster good democratic deliberation—in particular, power's interference with reason. There is no strong presumption against sharp and disruptive political expression, because there is no general reason for presuming that the conditions in which narrow civility has its place normally obtain.

Many today accept that sharp and disruptive tactics are within the legitimate repertoire of responsible citizens. At the same time, many doubt that sharp political expression of various kinds can be properly accommodated within the increasingly popular idea of "deliberative democracy."[3] One goal in this discussion is to

find a basis for the permissibility of sharp political expression in a deliberative conception of political legitimacy. Attention to the ways in which democratic deliberation can improve democratic decisions (its "epistemic value") lends support to the idea that while narrow civility has its place in political expression, in real and imperfect political life wider and more permissive standards are often appropriate. It is not just that narrow standards are unrealistic and often violated in the real world. An emphasis on the value of democratic deliberation gives an important place to political expression that transgresses the narrow standards of civility, but it also supports new standards—more permissive but still not unconstrained—in many cases. Throughout, the question is not the epistemic value of a particular expressive intervention but the epistemic value of publicly recognizing certain wider or narrower standards of civil public expression.

There is some impulse to reject the very idea of "duties of civility" in political expression, on the grounds that they give some classes illegitimate control over others, dampen dissent, and stifle change, even where change is urgently needed. Politics is, among other things, an engagement between the weak and the powerful, between abusers and victims, between the complacent and the desperate, the self-righteous and the disparaged. Calm talk must certainly have its place, but only among a much wider range of less civil modes of expression. Even if the members of a society agreed to be relatively just, political choices would often involve the high stakes of potential injustice, and the interventions of, or on behalf of, potential victims could not be limited to the pages of etiquette manuals or anything like them. The idea of civility is dangerous in this way.[4]

It would be wrong, however, to suppose that the critics of the calm-talk model reject any doctrine of civility. They are not committed to condoning every brutal or dangerous ploy that might be offered up in politics, such as the Willie Horton ads run by the George Bush campaign or radical calls to turn the guns on the ruling class. A wide range of visions of politics can agree on the general idea that there are duties of civility in political expression. The remaining dispute, then, is what shape this duty of civility should have.

The defenses and criticisms I will consider will not endorse or reject the speakers' messages. I do not mean, however, to suggest that the content of the message never has any bearing on whether it is appropriate to express that message; of course, it does. This is, however, a different issue from the one I wish to consider, which is what basis there might be, on a viewpoint-neutral basis, for standards of permissible political expression that are, on the one hand, bounded and, on the other hand, capacious enough to permit sharp political expression under some circumstances.

CIVILITY AND PUBLIC REASON

John Rawls speaks of a "duty of civility," by which he means a duty to conform one's publicly offered justifications for exercises of political power to the political conception of justice one finds most reasonable, and that is believed to be acceptable to all reasonable citizens, including those with divergent and mistaken worldviews. So, for example, a judge may not offer as a political justification for a law the purported fact that it is God's will, since that is not a premise that will be acceptable to all reasonable citizens, such as reasonable atheists. A similarity between civility in this Rawlsian sense and civility as I understand it here is that, as Rawls says, "This duty, like other political rights and duties, is an intrinsically moral duty. . . . [I]t is not a legal duty, for in that case it would be incompatible with freedom of speech."[5]

But even speech that meets this duty sometimes raises clear questions of civility in a more familiar sense. Consider, for example, my exposing, on good evidence, a candidate for office as being a secret homosexual. This is a straightforward factual claim (at least in some cases), and so it does not appeal to any premises or values that are not acceptable to all reasonable citizens. Yet it raises a question of civility. It may in the end be either permissible or not, but that is a question of civility in political expression. It is not a question that is taken up by Rawls's account of the duty of civility, which might better be called a "duty of public reason" and treated as only one part of civility.

TWO TOWN MEETINGS

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.[6] 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 views on the matters at hand, whatever their views might be. There would remain, in short, freedom of speech.

Meiklejohn's point was that some coercively enforced restrictions can be justified without destroying the essence of freedom of speech. Our topic is parallel in certain ways but also importantly different. The question of appropriate standards of civility, as conceived here, involves no question of interference with speech, either legally, by a meeting's sergeant at arms, by social pressure, or any other way. The standards

of civility I want to consider are not modes of interference, nor am I assuming that they justify any kind of interference with transgressions. The question is not what laws or positive rules there are or ought to be. Neither is it what a society's morals *are,* because that would still leave open the question of whether the citizen ought to abide by her society's morals. Rather, the standards of civility that are my topic are, in effect, answers to a question that any citizen faces: "What kinds of restraint ought I to exercise in my political expression, and under what conditions might the appropriate standards be more or less permissive?" This is a certain kind of moral question, applying to a person in his or her role or status as a citizen.[7]

There is a danger in emphasizing the town-meeting context. The town meeting is not an accurate microcosm of the broad and diverse universe of public political expression, despite its value for illustrating certain points. It is important to emphasize, then, that by beginning with the town-meeting context I do not mean to suggest that the broader realm of public political expression is usefully conceived as a town meeting writ large. The hope is that lessons about the structure of the duty of civility will be a useful start in understanding the diverse standards of civility that are appropriate in various contexts of political expression. I consider only one extension here, one that begs to be analyzed on the model of a town meeting.

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. Different kinds of meetings suggest different specific behavioral standards, and there are many other contexts of political expression that suggest other standards yet. In the context of a town meeting, not only are the normal standards of civil behavior clear, but they coexist with other sets of behavioral rules that are quasi-legal—such publicly known and enforced rules of procedure and order as Robert's Rules of Order. These official rules of a town meeting are distinct from the standards of civility or good meeting behavior. For example, the official rules may 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. So the standards of civility are not simply the same as the official rules of the meeting, and this distinction in a meeting context mimics the structure of a broader political context, where there are laws permitting and regulating expression but also separate standards of civility with no force except that of a citizen's duty.

It will be useful to begin with a contrast between certain narrow standards of civility and a set of behaviors that violate those narrow standards but nevertheless seem to me to be justified. Then the question becomes whether an account can be devised to support this intuitive response.

Imagine a New England town meeting. Suppose that attendance is limited by space and that passes are distributed on a first-come-first-served basis. Opportunities to

speak are ample and fairly administered, and the public officials are respectful and responsive to the public. Suppose further that the matter under discussion is whether to pay for high school athletic uniforms with public money. I will call this hypothetical example the "Local Town Meeting." Under these conditions let us suppose that some or all of the following expressive tactics are condemnable by appropriate standards of civility, standards that I will call "narrow."

- Obtaining entrance with counterfeit passes in order to participate uninvited
- Ignoring moderator's rules
- Stepping to the microphone to speak out of turn
- Shouting questions from the floor out of turn
- Disrupting the meeting with chants.

Contrast this with a different meeting, an internationally televised public forum held at a government's request at a location chosen by that government, broadcast exclusively by one global network handpicked by the government, with attendance screened, and with the right to speak granted only to participants screened by the government's handpicked network.[8] Suppose also that the issue to be discussed is not athletic uniforms but whether the United States should drop bombs on Iraq. Suppose further, hypothetically, that this event is held at a state university in Ohio. Our case is not actually hypothetical, of course; it describes the ironically titled "International Town Meeting" held at Ohio State University in February 1998.[9]

The disruptive behaviors listed above were all apparently engaged in by protestors at the International Town Meeting, and the setting puts them in a different light from that of the Local Town Meeting.[10] I find myself agreeing with a protestor at Ohio State who said, "If we had just been sitting there quietly listening, people watching on television would have thought we were supporters of the war, which we certainly were not. Sometimes you've just got to say what you think and make sure that your voice is heard. And, if they won't listen in a polite manner, then you've just got to be rude."[11] The two town meetings, between them, capture the distinction for which I would like to find some plausible normative basis: narrow standards of civility that apply in some conditions, alongside wider, more permissive standards that apply in others.

TOWARD A THEORY: POWER'S INTERFERENCE WITH REASON

The case of the two town meetings could be explained by a view according to which narrow standards of civility are appropriate so long as certain background conditions are met; when these conditions are violated, the narrow standards give way to

wider, more permissive standards. On a view of this kind, the permissibility of the Ohio protesters' tactics is not a function merely of the political content or significance of their message (since such tactics would then be appropriate also in the Local Town Meeting, which we are assuming they are not). They are made permissible instead by the fact that the meeting is so set up, or occurs in a context such that the background conditions necessary for the appropriate application of the narrow standards are violated. For example, the fact that the International Town Meeting was so pervasively controlled by one side in the debate while presented as an open forum could be taken to weaken greatly the legitimacy of narrow standards of civility. This approach relies on what we might call "circumstances of civility." As circumstances of narrow civility are less fully met, wider and more permissive standards of civility come into effect, at least for certain participants. But again, these wider standards still depend on meeting certain circumstances, in order to forestall wider standards yet.

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 ~~of~~ theory of this kind.[12] We may usefully sketch an interpretation of Marcuse's reasoning, even though his question is not quite the same as 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 John Stuart Mill in order to offer a different answer. But since that question is about permissible interference with expression, it is narrower than the general question of civility, which asks what kinds of nonviolent public political expression are morally permissible, consistent with one's responsibilities as a citizen.[13] Still, Marcusean interference with expression is certainly one kind of behavior that would be condemned by narrow standards of civility, as conceived here. Marcuse, in effect, defends a wider conception of civility according to which such interference is indeed permitted.[14]

Marcuse agrees with Mill on a great deal.[15] He agrees with Mill that there are objectively correct answers to many normative political questions.[16] He also evidently agrees with Mill that under favorable conditions the truth will tend to prevail in the course of full and open public deliberation.[17] 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 simply one of 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."[18]

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 in, or breakdown of, the conditions in which tolerance serves its purpose. The circumstances of (narrow) civility could presumably break down in nonpolitical as well as political contexts, possibly warranting wider standards. The importance or urgency of the matters at hand plays a role here, and sometimes political matters have a great urgency. But urgency is by no means limited to politics. Consider a nonpolitical context, a meeting of doctors in which a patient's life is at stake. Decorum and civility have their places, so long as they are parts of an arrangement in which the patient's interests will be best served. But suppose that the meeting is chaired by an appointee of an HMO who shamelessly uses his position to do whatever will minimize company costs even at dire risk to the well-being of patients. Narrow civility no longer has its point in that case. The triggers for wide civility, then, are not uniquely associated with politics. This allows a breakdown account to hold the Local Town Meeting to narrow standards but the International Town Meeting only to wider ones.

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, Meiklejohn's, and Marcuse's approaches to tolerance of expression, we will answer that an important part of narrow civility's point is as part of an arrangement in which the exchange of ideas tends 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.

Consider the International Town Meeting, with these questions in mind. Here is the U.S. government, hoping to mobilize public opinion behind bombing a faraway country. We do not need to decide whether that bombing would be wrong in order to notice important distortions in the Millean truth-seeking function of free public discussion. For one thing, officials in the Clinton administration handed the cable television network CNN exclusive rights to broadcast the event. CNN was free to share the event with competing outlets but refused to do so, presumably in order to reap the ratings and consequent profits for itself.[19] This produced an obvious incentive for CNN to produce the kind of event the administration wanted, in order to attract other exclusive offers in the future. If the event had been a simple broadcast of a

presidential speech, this cozy relationship might not have had any important effect on the quality of public discourse. But this was an event that could have gone very well or very badly for the government, depending on how it was structured and handled.

As it happened, David Marcus reports, "The scene became so unruly that at one point audience members could hear a CNN producer frantically telling moderator Bernard Shaw that assistants to Secretary of State Madeleine Albright, Defense Secretary William S. Cohen, and White House National Security Adviser Samuel "Sandy" Berger wanted phone calls from viewers who supported the administration. Shaw angrily shushed the producer during a commercial."[20] CNN clearly had strong incentives to structure the event so as to favor the administration's aims, which included not only mobilizing support for bombing but also displaying public support to the leaders and citizens of other countries, including Iraq.[21]

It would be absurd to suggest that the narrow rules of civility lapse whenever some powerful speaker presents only one side of an argument. It would be silly to think that the International Town Meeting opened the door to the disruptive tactics of the protesters simply by being biased in favor of the probombing point of view. There is a more significant kind of breakdown here stemming from the presentation of the event under the name and in the format of a town meeting. This suggested to viewers worldwide, and gave a legitimate expectation to attendees, that there would be no exercise of control over the viewpoints expressed by those who spoke from the (metaphorical) floor. When this expectation of freedom is violated, obedience to the narrow standards of civility appropriate to a town meeting no longer serve their purpose of providing an orderly method for a variety of points of view to be publicly offered and discussed. Assuming with Marcuse, Mill, and Meiklejohn that the value of that kind of orderly deliberation is that it enhances the truth, or wisdom, or quality of the resulting social decisions, narrow civility no longer promotes truth once the other components of an orderly but free deliberation are missing, and if standards allowing deviations from narrow civility could 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 (he wrote in the late sixties, but his argument probably applies to ours now) 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

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 restore partially the truth-promoting value of public discussion.

Marcuse calls for "selective intolerance," acts by private citizens that suppress messages that are so advantaged by power. My topic in this essay is somewhat different, as I have said, placing no special emphasis on behaviors that suppress the expression of others. Plainly, one of the effects of the disruptive tactics at the International Town Meeting was to limit the ability of the administration officials to present their own message. Another important effect, though, and one that is separable from any suppressive effects, was the presentation of a strongly dissenting point of view.

From an epistemic viewpoint, the relevant breakdown consists of *power's interference with reason.*[22] The justification for wider standards of civility in these conditions is that they partially remedy the power imbalance. Marcuse's strategy of selective intolerance through private acts of suppression operates by reducing the power of dominant viewpoints. The wider standard of civil expression operates by increasing the power of nondominant points of view.

The circumstances of narrow civility in political expression, then, include the condition of power's noninterference 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. Jürgen Habermas, Marcuse's leading successor in what is known as the "Frankfurt school" of critical social theory, adopts the idea of power's noninterference with truth as the core of his moral and political theory, without supposing that it is a condition that could ever really be met. Roughly, Habermas holds that a legitimate political arrangement is whatever would, hypothetically, be unanimously accepted in a practical discourse involving all affected people and in which power did not interfere with reason. It might seem that since power always *is* actually interfering with reason, this account leaves 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.[23] 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 the proper conclusions of that discussion.[24] However, Marcuse's view is most charitably read as advocating remedial interventions in the discursive

system so as to restore some normative significance to its conclusions. One strategy that is suggested by this approach is not to try to generate conclusions by a solitary application of reason but, as far as possible, to approximate real social conditions in which power does not interfere with reason—or, failing that, in which a remedial feature exists that supports our ability to infer from the imperfect, real discourse some conclusions about what would have been accepted had the discourse been ideal. Such a view admits from the beginning that real discourses are not ideal, but it still gives the idea of ideal discourse—the idea of power not interfering with reason—a central critical role.

The importance of these points for our purposes arises from 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 any longer serve 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 arguably be led to a new, more permissive set of standards in which advocates of nondominant views may permissibly press their own viewpoints with an added degree of power. The more permissive standard is defended on the grounds that this might countervail the antirational effect of the initial pollution of the discourse by systemic power that irrationally favors one side.

It may seem that this approach supports an egalitarian distribution of power over political discourse. In that case, the circumstances of narrow civility could be shown to be violated simply by demonstrating that power over public political thinking is unequally distributed. But whether narrow civility is then truly violated would depend on whether every unequal distribution of such power in fact amounts to power's interference with reason. That does not seem to be true as a general matter. The reason is that it is not guaranteed that reason will be more free under every equal distribution of power than it would under any unequal distribution. First, simply as a logical matter, it could be that under the only available equal distribution of power, reason would have hardly any scope at all. Power is not necessarily interfering with reason here.

But power is not the only threat to the exercise of reason; equally distributed poverty might place the public exercise of reason far down the list of individuals' practical priorities. If the only way to remove such poverty and so bring reason more fully into play depended on distributing power less equally, it would be wrong to say that, on balance, this new inequality in power is an instance of power interfering with reason. My point is not to draw any direct political conclusions, since actual power inequalities seem clearly to interfere with the public exercise of reason far more than they enable it. The point here is simply to avoid mistaking the ideal of power's noninterference with reason with an egalitarian principle for dis-

tributing power. Its distributive implications are not essentially egalitarian, even though they lead in an egalitarian direction under certain contingent circumstances.[25] The mere fact of unequal distribution of power over public political expression and thought is not enough to establish that the circumstances of narrow civility are not met; to establish that they are not met requires showing that reason is being interfered with, rather than enabled, by the inequality.

On the other hand, when power distributions trigger wider standards of civility, this dispensation is not given to all speakers, whatever their messages. It is only remedial if wider standards are given selectively, and only to those whose viewpoints are being denied their due hearing by an imbalance of power. Still, the view that the wider standards are triggered for the benefit of the disadvantaged view is some distance from an egalitarian principle of distributing 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 so extreme suppression of a message that it disappeared from public awareness altogether. The power-imbalance argument provides only a basis for leveling the playing field, in order to recover partly the epistemic virtues of freedom of expression that Mill emphasized.

WIDE CIVILITY IN THE INTERNATIONAL TOWN MEETING

How did the breakdown of orderly discussion at the International Town Meeting harm the epistemic function of public discussion? How did the transgressions of narrow civility provide some remedy? I believe many citizens were struck by the official speakers' inability to answer credibly two challenges raised at the forum. First, was U.S. policy consistent in its use of military might against countries whose governments severely violated human rights? Second, was the enormous peril to innocent Iraqis commensurate with the action's likely benefits? That is, was "sending a message" rather than toppling Saddam Hussein a good enough reason to kill civilians and destroy their infrastructure? An administration that realizes that it cannot be convincing on such matters has reason to doubt its ability to keep public opinion on its side. In this case, press reports repeated and amplified these challenges and emphasized the resulting instability of public opinion. In the end, plans to bomb were aborted, though air strikes had seemed inevitable to many just days before.[26] My point is not to make a causal claim (much less a partisan one) about this particular case but only to illustrate mechanisms by which it would be possible for such transgressive expression to have epistemic value in public deliberation.

Another important question, which I can take up only indirectly, is: What are the new limits at Ohio State? If movement toward wider civility is both remedial

and constrained, what new limits does this suggest for the protesters at the International Town Meeting? We should expect it to be difficult to state the specific standards involved in cases like this. In any given contest there is a continuous gradation of wider standards, not a quantum jump from one set to another. Also, contexts of political expression are diverse, and the appropriate standards of civility vary greatly from one to another.

As a start, though, we can list several limits within which the protesters did in fact remain—though we must defer the question of whether they were obligated to do so. The protests were not violent; no one was physically assaulted, and no property was attacked or damaged. There were apparently no violations of the law, or at least only minor ones—for example, perhaps the protesters got in by using counterfeit tickets, which may have been illegal.

Further, the protesters refrained from obscene language. I note this because it seems to have been a conscious decision.[27] One chant, for example, was "One, two, three, four, we do not want your racist war!"—a rewriting of a traditional chant so as to avoid its obscene language. This is noteworthy as a significant concession to narrow standards of civility. It may be a surprising one as well, at least to those of us who are not easily offended by so-called bad language; yet it would be easy to underestimate the significance of this boundary. The use of bad language in this kind of setting tends to signal a broad contempt: for the official speakers being opposed; for the many members of the audience who would be offended by its use in such a setting; even, perhaps, for the general structure of social authority.[28] Obscenity may also be an issue if potential speakers are deterred from participation by fear of attracting such an aggressive response.[29] Still, it would be a worthwhile, if difficult, task to discern whether a morally significant boundary separates the term "fucking war" from the equally inflammatory "racist war."

Fourth, in another concession to narrow civility, one protester, when finally allowed to approach the microphone, began by saying, "I want to apologize for disrupting earlier. The reason I did was I was told by this person I would not be allowed to speak."[30] This reasoning neatly matches the breakdown account, wherein wider standards are warranted when the circumstances of narrow civility are violated. The apology apparently reflected an acknowledgment of the legitimacy of the narrow standards under the proper conditions and signaled a conditional commitment not to interfere further so long as those conditions were respected.

Finally, though the protesters' actions were partly suppressive, they were primarily expressive. While the chanting palpably delayed the speakers' ability to continue their speeches, in no case did it prevent a speaker from finishing. Still, the chanting contained an element of suppression, or at least interference, that went beyond mere refusal to wait until one's turn came, according to the rules, before expressing one's own view. There is no question that such interference transgresses

the narrow bounds of civility that would be appropriate in the Local Town Meeting, and no doubt that it requires the special justification of prior violation of the circumstances of narrow civility. But, as suppression or interference go, the chanting, and so on, at the International Town Meeting was not extreme; it remained within limits that could have been transgressed if the protesters had chosen to do so. Without pretending to know the protesters' motives or what else would have been possible for them, we can note the important difference between interfering with the proceedings by intermittent chants and heckling, on one hand, and seeking, on the other hand, a general disruption in which speakers would be unable to continue at all. These observations do not suffice for an account of what the new wider standards should be, but they show how citizens might try to answer that question within a framework of "constrained transgression" structured as a remedy to violations of the circumstances of narrow civility.

BEYOND CIVILITY?

Let us briefly consider the application of this general approach to increasing degrees of disruptive political behavior—political behavior that is essentially expressive but has the remedial aim of adopting wider standards of civility in order to restore to public political expression some missing epistemic dimension. This remedial aim, as I have argued, gives rise to a constrained transgression, but this does not imply that the model could never condone illegal or violent activity. I take for granted that both illegal political action and violence can be justified under the appropriate circumstances. Perhaps surprisingly, the model of constrained and remedial expressive transgression can embrace many such cases. It is not my aim here to provide a complete account of the justifiability and limits of illegal or violent political activity, but only to show how the kind of reasoning we have employed might be relevant to one.

To begin with a few widely agreed cases, few these days deny that civil disobedience is a category of illegal political activity that is justified under the right circumstances. Perhaps the most widely embraced examples are the sit-ins and other nonviolent but illegal demonstrations that aimed at dramatizing the growing demand for civil rights by African Americans in the 1950s and 1960s. The epistemic approach to civility in political expression might seem too narrow to cover these cases, either because such acts as sit-ins and traffic blocking are not in the realm of political expression but are political actions of a different kind, or because illegality, whether justified or not, must be counted as outside the bounds of even widened standards of civility.

However, as a number of theorists of civil disobedience emphasize, while expressive aims may not be necessary for the justification of civil disobedience, they are often

its central characteristics and important parts of its justifiability. Civil disobedience is often theorized as a form of expression, and a civil one at that. Rawls, for example, treats it as a last-resort appeal urging the society to remedy deep and persistent injustice within the framework of a legitimate political system. Given its remedial function, it is a form of constrained transgression—transgressing the boundaries of both narrow civility and the law, but accepting further limits imposed by the intent to signal acceptance of the rule of law generally, rather than wholesale rejection of it or a call for rebellion.[31] Without placing too much importance on the terminological question, there is some reason to treat at least some civil disobedience as political expression, within the wider standards of civility triggered by certain violations of the circumstances of narrow civility. Civility, then, does not stop at the boundaries of legality.[32]

This would be harder to maintain in the case of political violence, which any sensible use of language forces us to call uncivil—reflecting the broadly held presumption against the permissibility of political violence. Still, Americans widely accept the permissibility of the Boston Tea Party, even though it was an act of political violence, in its destruction of property (the tea). Clearly, the Boston Tea Party was primarily an act of expression, being insufficient, except through publicity, to make any dent in either the tea trade or in British policy in the colonies. Even if this offense against property cannot be called civil behavior, there is little doubt about its justifiability, or about the justifiability of similar expressive acts constrained by their remedial aims and by the limited degrees of breakdown involved. The expressive nature of an act is important in identifying the relevant form of breakdown.

In particular, resorting to property violence as a form of public political expression would seem to depend partly on failures in the system of political expression, not merely at objectionable policies. As it happens, the Boston Tea Party criticized primarily "taxation without representation," the ability of the British Parliament to levy taxes on the colonies when none of its members had been elected by the colonists themselves. The targeted failure was in the system of expression, broadly conceived: the absence of democratic involvement in the formulation of the laws. Lacking an official voice in the political process, dissidents found an unofficial voice in the publicity that could be gained for their cause by imaginative acts of violence against property. There was evidently no thought of expressing acceptance of the legitimacy of the underlying system as civil disobedience normally does, since Parliament's denial of representation to the colonists placed the political system's very legitimacy in question. Yet this is not an act of unlimited rebellion but a call for the fundamental reform of establishing political representation for the colonies.

Violence against persons is a further escalation of the level of transgression, generally depending for its permissibility on more extreme moral failures in the underlying systems of authority. Still, many would accept that political violence against

people is justifiable under certain conditions. Much of this sort of violence (including also lesser transgressions against civility) is simply instrumental without being essentially expressive. For example, many would condone Nat Turner's famous slave rebellion in 1831, but it is not clear that any expressive purpose was important to the actors or to the justifications that people would now be inclined to offer. Certainly, more severe violence requires graver circumstances for its justification, and the account given here of political expression has little to add in a case like that one. Still, much political violence against persons is essentially expressive, with targets chosen less for their intrinsic strategic value than for their ability to dramatize the dissenters' complaints. As Robert Post writes of conduct that communicates a message even though it does not bring the First Amendment into play, "Such conduct ranges from terrorist bombings to written warnings on consumer products."[33]

Since even bombings can have central expressive purposes, the question of their justification must consider what kinds of (presumably catastrophic) breakdown in the underlying expressive system could, along with a very urgent cause, ever justify them. I am not prepared to say when bombing buildings and so risking lives would be justified. It should not be assumed, though, that once bombing is allowed no moral constraints would any longer be in place. Just as there are moral constraints in warfare, there would be moral constraints here. Karl Armstrong's bombing of the Army Math Research Center at the University of Wisconsin in 1970, with its attendant threat to safety (one person was killed), presumably would require a serious breakdown in the expressive system in addition to the urgency of the case against the war. It could be justified more readily, however, than could a campaign of revolution, targeting large numbers of people and aiming to bring down the government.[34] That too, of course, might be justified in the right circumstances, as citizens of democratic societies that themselves originated in violent revolutions will often concede. My only point here is that even political violence can exhibit certain features of civil behavior—for example, as transgressive expression, with a remedial purpose and a constrained compass. Such purpose and constraint would not be enough to count the violence as civil or justified, but they add something to the complex of issues that bear on its justifiability. In particular, its expressive dimension cannot be ignored by a deliberative or epistemic account of political legitimacy.[35]

CONCLUSION

Among the state officials being heckled at Ohio State was Secretary of Defense William Cohen, whose closing comment was this: "If I could just indicate to the audience, this really is a tremendous example of what democracy is all about." This is a familiar response in America to sharp political expression, an affirmation that

it too is part of the proud American tradition of freedom of expression. As Cohen made clear, however, what he was proud of was the government, not the demonstrators: he continued, "The people who are here expressing opposition and criticism would not be allowed to do that in a number of countries, including Iraq."[36] The proud American tradition he refers to is the practice, recent and uneven, of permitting nonviolent expressions of political dissent without state interference. It is important to see that praising America's strong legal protection of sharp political expression is not the same as praising exercise of that freedom even when it is disruptive and transgressive of normal standards of civility.

Disruptive political expression cannot be denied an important and noble place in the democratic repertoire. But many noble ideas find their homes only in unfortunate or even desperate conditions. We erect a strong presumption against genuine incivility, and yet we all know that political arrangements are ordinarily far from the ideal conditions in which narrow, polite standards of civility would make the most sense: conditions in which things are already more or less right, or at least in which procedures for change are fair and open to good ideas, whatever their source. There should be no strong presumption, then, against disruptive and impolite political expression, especially when it is legal, nonviolent, and does not suppress the speech of others, and so we ought not to call all such action uncivil. When conditions diverge even more widely from appropriate background conditions of democratic deliberation, illegality and private suppression might also be called for, and these too can be seen as exhibiting the distinctive features of civil behavior, in that they seek to remedy underlying failures without calling the whole system into question. Even violence may ultimately be justified, and here civility runs out. In our politics, deeply flawed but still tenable, the presumption is against violence, even though it too can exhibit something of the structure of broadly civil transgressive political expression, to the extent that it is remedial and constrained.

This moderate view of disruptive expression may be a corrective to certain approaches, but it is hardly unique in rejecting both exaggerated politeness and a facile anarchism. It may give a better idea than some models, though, of how an account of democratic legitimacy that places great weight on properly conducted public political deliberation might avoid charges that it is excessively timid, complacent, or rationalistic. Disruptive political expression has often proven its epistemic value. It is not merely another kind of social power, one that, say, raises the costs of continued oppression—though it can also be that. It has often injected ideas, complaints, and perspectives into public discourse in ways that enable the kind of reasoning to which democratic deliberation aspires. Deliberative democracy certainly has its own unrealistic ideals, as do most normative approaches to politics, but it has much to say in the breach as well.

1. I am grateful for useful comments on an earlier draft from Alon Harel, Tim Sommers, Patrick Durning, and John Tomasi, and for valuable research assistance from Anne Fujimoto.

2. Civility is explicitly presented as politeness in Mark Kingwell, *A Civil Tongue: Justice, Dialogue, and the Politics of Pluralism* (University Park: Pennsylvania State Univ. Press, 1995), and Stephen L. Carter, *Civility: Manners, Morals, and the Etiquette of Democracy* (New York: Basic Books, 1998).

3. See Lynn Sanders, "Against Deliberation," *Political Theory* 25 (June 1997): 247; Iris Young, "Activist Challenges to Deliberative Democracy" (paper presented at a conference on "Deliberating about Deliberative Democracy," University of Texas, Austin, February 3–4, 2000).

4. Benjamin DeMott, "Seduced by Civility," *Nation*, December 9, 1996; Randall Kennedy, "State of the Debate: The Case against Civility?" (review of Carter, *Civility*), *American Prospect* 41 (Nov.–Dec. 1998): 84.

5. John Rawls, "Idea of Public Reason Revisited," *The Law of Peoples* (Cambridge, Mass: Harvard Univ. Press, 1999), 136.

6. Alexander Meiklejohn, *Political Freedom* (New York: Harper, 1960).

7. One's duties as a citizen might, for all I say here, often be outweighed or overruled by other moral considerations, but I will be supposing that citizens, as such, are subject to certain moral constraints, among them civility properly understood. My question is how properly to understand civility.

8. See David Evans, "Heckled in Columbus," *Columbus Free Press*, Feb. 25, 1998.

9. The CNN broadcast was titled, "Showdown with Iraq: An International Town Meeting." Video of complete proceedings can be viewed on the World Wide Web at http://www.cnn.com/WORLD/9802/18/town.meeting.folo/index.html. A complete transcript is available on Nexis, transcript 98021801V54.

What follows is a brief press account of the event, from the *Atlanta Journal and Constitution* of February 19, 1998:

> SHOWDOWN OVER IRAQ; Policy pitch meets flak; Civics lesson turns uncivil as protesters at town hall meeting voice their doubts—loudly. Bob Deans; Columbus, Ohio: President Clinton's national security team tried Wednesday to use live, talk show television to tell the American heartland why UNITED STATES warplanes are poised to bomb Iraq, but the message repeatedly was drowned out by boisterous opponents and the forum listed toward disarray. U.S. Secretary of State Madeleine Albright scarcely had opened the program—a 90-minute "town meeting" aired live internationally by CNN—before her voice was overwhelmed by dozens of protesters. "One, two, three, four, we don't want your racist war," they shouted, in a chant that was picked up by scores of sympathizers seated around St. John Arena at Ohio State University. "No blood for oil," one protester shouted as Albright, silenced by catcalls for several minutes, made a tense appeal for quiet. "We came to listen, and we will," she said as university security guards and State Department aides tried to restore order. "But I would appreciate the opportunity of making my statement." Secretary of Defense William Cohen and National Security Adviser Sandy Berger, both of whom followed Albright with attempts to explain the threat Iraq's chemical and biological weapons pose to global security, also were forced to ask for the floor. "Walt Whitman said he heard America singing," Cohen said. "I hope we can hear America singing, and not shouting." But his appeal was met with another chant: "Iraqi children are under attack; what are we doing acting like that?" The most vocal criticism was leveled at Albright, and at one point she responded with a challenge of her own. "I am willing to make a bet with anyone here," she said, "that we care more about the Iraqi people than Saddam Hussein does." Doubters, however, were manifest.

10. David Evan, "Heckled."

11. Trish (no last name given) quoted by David Evans, "Heckled."

12. Herbert Marcuse, "Repressive Tolerance," in *A Critique of Pure Tolerance*, ed. Robert Paul Wolff, Barrington Moore, Jr., and Herbert Marcuse (Boston: Beacon Press, 1969).

13. I limit the definition of civility to nonviolent behavior only because it would be absurd to call violence "civil behavior." Yet uncivil behavior might be justified in some cases, and I discuss this question below.

14. I believe Carter *(Civility)* misses the relevance of Marcuse to the topic of civility, dismissing his critique of pure tolerance with a one-liner: "Its popularity is easy to understand because it allows us to win without actually bothering to argue against those who disagree with us" (214). By failing to engage any of Marcuse's arguments (which Carter does briefly repeat) for private acts of suppression under certain social conditions, Carter unfortunately neglects the power these arguments might have for supporting nonsuppressive political activity of questionable civility. Carter laments (with Marcuse) the dominance of market reasoning, but he never considers the question whether a narrow civility might cement this unfortunate status quo. Carter asserts that Marcuse "simply failed to hit upon religious revival as the solution" (214).

15. John Stuart Mill, *On Liberty* (any edition).

16. Marcuse, "Repressive Tolerance," 89.

17. Marcuse speaks of "freedom of thought and expression as preconditions of finding the way to freedom" (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, in any case, the conditions under which pure tolerance might be thought to support truth do not obtain.

18. Marcuse, "Repressive Tolerance," 90.

19. "CNN Reliable Sources," Feb. 21, 1998, broadcast Saturday at 6:30 P.M. Eastern Standard Time, transcript 98022100V50 (available on Nexis).

20. "Many Doubts That Polls Don't Show," *Boston Globe*, Feb. 22, 1998.

21. For an attribution of these motives, see Ann Hodges, "White House Sends Message to Iraq in CNN-Staged Town Meeting," *Houston Chronicle*, Feb. 20, 1998. Indeed, there are signs of a disturbing working relationship between the U.S. government and CNN, including the employment of officers from army psychological operations units at CNN headquarters during the Kosovo war in 1999. See Alexander Cockburn, "CNN and PSYOPS," *Counterpunch*, March 26, 2000.

22. Of course, reason could itself be called a kind of power. A deeper objection would be to claim that reason, as power, is not normatively less objectionable than any other. That sort of critique cannot be considered here.

23. Jürgen Habermas, *Moral Consciousness and Communicative Action* (Cambridge, Mass.: MIT Press, 1990), 67.

24. See Carter (note 14, above) for a clear example of this.

25. I discuss the application of these points to the question of the distribution of political influence in "Political Quality," *Social Philosophy and Policy* 17 (Winter 2000): 127–60.

26. Jon Carroll wrote in the *San Francisco Chronicle* of February 6, 1998, "At the moment, almost every talking head not actually employed by the government of Iraq agrees that the bombing of Iraq is inevitable, that diplomatic solutions are sure to fail, that Saddam Hussein and his 'weapons of mass destruction' must be stopped." (For his own part, Carroll argued against this consensus.) David Cortright holds that protests and other peace activism, especially the Ohio State action, significantly contributed to averting war; see "A Victory for Peace," March 1, 1998, available on the World Wide Web at http://www.webcom.com/peaceact/VictoryForPeace.htm.

27. David Evans, "Heckled."

28. See David Paletz and William Harris, "Four Letter Challenges to Authority," *Journal of Politics* 37 (Nov. 1975): 955–79.

29. Robert Post discusses civility's value for making public discourse possible in ways like this. See his *Constitutional Domains* (Cambridge, Mass.: Harvard Univ. Press, 1995), especially chapter 4. Since disruptive or aggressive actions have such costs, it would be natural to permit wider standards of civility only when they have some reasonable chance of success in remedying the breakdown to some extent. This point cannot be pursued here.

30. "Showdown with Iraq."

31. For discussion of views of civil disobedience as speech, see Clyde Frazier, "Between Obedience and Revolution," *Philosophy and Public Affairs* 1 (Spring 1972): 315–34. For an influential and elaborated example, see John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard Belknap Press, 1971), chap. 6.

32. It has sometimes been argued that civil disobedience is protected expression under the First Amendment even though it involves intentional violation of the law. For discussion of one such case see Carl Cohen, "Law, Speech, and Disobedience," in *Nation*, March 28, 1966, 357–62 (reprinted in *Civil Disobedience*, ed. H. Bedau [New York: Pegasus, 1969]). Few who have said that civil disobedience is a form of address or expression have claimed that it is therefore constitutionally protected on freedom-of-expression grounds, and none of my points here depend on this legal issue.

33. Robert Post, "Reconciling Theory and Doctrine in First Amendment Jurisprudence," forthcoming in *California Law Review* 89 (January 2001).

34. Armstrong said later that the motive was to trigger a political trial in which the government could be called to account for its conduct of the war in Vietnam. See this interview with him in Glen Silber and Alexander Brown, *Vietnam: The War at Home*, 1979 (distributed by MPI Home Video beginning in 1986).

35. Ted Honderich argues that political violence can sometimes be a form of address and so "shares an attribute with activity that its integral to the democratic practice." See his "Democratic Violence," *Philosophy and Public Affairs* 2 (Winter 1973): 190–214, esp. 211.

36. CNN, "Showdown with Iraq."

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