

Deliberation and Wide Civility

Response to the Discussants

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The shootings at Kent State have little to do with the First Amendment, but they have everything to do with freedom of expression more broadly conceived.¹ Political repression often begins in disapproval. Dissent always risks disapproval and opposition on substantive grounds, but disruptive and disturbing tactics of dissent only magnify this risk. If sharp and disruptive tactics of political expression are widely thought to be irresponsible and despicable, repression—through social pressure or law or violence—is likely to follow. In “Deliberation Down and Dirty” (in this volume) my topic is not the standard free speech question of when interference with speech is permissible but when sharp and disruptive speech itself is permissible. My hypothesis 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. I develop this idea partly by reflecting not on the events at Kent State in 1970 but on another event at an Ohio campus just a few years ago, the inaptly titled “International Town Meeting.” I do not address the protests and shootings at Kent State directly, but my aim is partly to see whether a better theory of civility might help prevent the impulse toward repression from finding a foothold in moral disapproval.

Before replying to several of the points raised by the commentators, it is useful to divide my claims into three stages. At the most general level, I propose what I call a “breakdown account” of civility. On a view of this form, more permissive standards of civility would be triggered by the breakdown or failure of certain background conditions, the conditions in which the narrower standards of civility would indeed apply. I call these the “circumstance of (narrow) civility.” A breakdown account guards against the temptation to think that the conditions in which narrow civility would be required are typically met under real conditions.

A second stage in my account, then, is to suggest that the conditions in which narrow civility applies (I call these the “circumstances of civility”) might be drawn from an account of what the point of narrow civility is. I suggest that at least one of its central points is, broadly speaking, epistemic. Narrow civility makes sense because (and when) it promotes the goal of public political deliberation with some capacity for wisely determining what ought to be done. But this epistemic goal will

not be achieved by the practice of narrow civility unless other conditions are met as well. A focus on the epistemic aim directs our attention to the background conditions that would be required in order for narrow civility actually to promote wise decisions, and without which narrow civility loses its point.

In a third stage, I suggest that among the circumstances of narrow civility is a background in which power is not interfering with reason. If power is interfering with reason in certain ways, narrow civility merely cements the epistemic damage this involves, whereas certain wider, more permissive standards of behavior might allow the power imbalance to be partially remediated. Under defective distributions of power, narrow civility loses its point, but civility of a wider kind, with limits of its own, seems the natural replacement.

I divide the account into these stages partly in order to show that the earlier stages do not depend on the later ones. Even if the power/reason account of the circumstances of narrow civility, or the epistemic account of the point of civility, is ultimately inadequate, the general form of a breakdown account might yet be the right direction for an account of civility to take.

Professors Byron and McWhorter both wonder whether a remedial view of disruptive or disturbing expressive tactics places implausible restrictions on political agents. Does a protester's aim have to be the establishment of the circumstances of narrow civility, rather than, say, the promotion of social justice, or even the simple expression of moral outrage? My suggestion is that the wider standards of civility would be supported by the remedial effects of generally accepted wider standards under certain defective conditions. The resulting standards apply to actions, not motives. If narrow civility has an epistemic point, then wide civility gains a natural basis under conditions in which narrow civility harms, or at least no longer serves, that purpose. The wider standards of permissible action, then, have a remedial basis, but the actions they permit need not be remedially motivated.²

When Kent State students gathered at noon on May 4, 1970, most of them were behaving civilly in the narrow sense, but after they were ordered to disperse by the National Guard their presence was certainly defiant and possibly illegal.³ On my view, wide standards of civility might have applied in these circumstances (for example, governmental efforts to repress dissent about the Vietnam War). If so, the students' defiant refusal to disperse (which I regard as primarily expressive) was permitted even by the duty of civility. None of this depends on whether the participants aimed to remedy the imbalance of power with respect to the public debate about the war. The motives of the students seem to have been diverse and partly mysterious: to protest the invasion of Cambodia, to protest the presence of the National Guard on campus, to express contempt for existing authority structures generally, to show solidarity with fellow students who had more primary motives, et cetera.⁴ Even though some motives for disruptive expression would be morally

wrong,⁵ the standards of civility I propose apply to actions rather than motives. Moreover, there would be a variety of permissible motives for engaging in the kinds of behavior that would be permitted under the applicable wide standards of civility, though I make no specific proposal about the limits of permissible motives.

In sum, the view that wide civility is based on its ability to remedy a certain kind of breakdown does not place implausibly restrictive moral constraints on the motives of political actors.

In the short space remaining I can address only briefly some points the commentators have made about my normative approach to democracy. Professor McWhorter questions whether it is useful to think of democratic participation in terms of the use of theoretical or "speculative" reason rather than as a use of power, in accord with practical reason. I agree with her that public reasoning is a species of social power, but that would not yet show that an adequate account of democratic legitimacy could proceed wholly in terms of power. As Professor McWhorter would grant, might does not make right. She proposes that we conceive proper democratic participation as the exertion of power in the interest of justice, something I accept as far as it goes. What this would not yet give us is any account of why the results of such a procedure are normally authoritative over all citizens, even those who doubt the justice of the results. One might try saying that this authority derives from the fairness of a procedure in which each has an equal chance to exert power. But a coin flip is also entirely fair to participants, in giving them all equal shares of power, and yet it is absurd to think a coin flip gives all citizens any significant reason to submit to the law. I doubt, then, that an adequate account of legitimacy will be possible without incorporating some tendency of democratic processes to arrive at good decisions, and I do not see how to do this without bringing in epistemic properties of public reasoning.⁶

Professor Byron doubts the epistemic approach to democracy, on the grounds that democratic choices can be disastrously wrong. He also detects a kind of liberalism in my view that I gather he opposes and thinks to be inconsistent with my epistemic approach to democracy. I will not take up his challenge to a certain kind of political liberalism here, partly because there is already a vast literature on the points he raises, and partly because the main points in my account of civility seem to be separable from such a view.⁷ As for the fact that democratic decisions can be seriously wrong and even sharply antiliberal, surely no one denies it. Epistemic approaches to democracy vary as to their response.⁸ Some, such as Rousseau, would apparently say that democratic results have no legitimate authority when they are mistaken. Other views, such as the one I have defended elsewhere, and which I call "epistemic proceduralism," hope to ground democratic authority not on the actual correctness of each authoritative decision but on a certain, admittedly very imperfect, epistemic value of the deliberative democratic procedure. On this view, decisions can be legitimate even when

mistaken, though some mistakes would be so profound as to lack legitimacy on such special, narrow grounds as violations of certain basic rights. Also, nothing in such a view entails that all or any existing democratic procedures meet the requirements for producing legitimate law. That would be a separate question, and one that is likely to yield sharp criticism of many existing arrangements.

I hope the epistemic approach to sharp and disruptive political expression that I have suggested can be integrated with this broader theory of democratic legitimacy. But I also hope that it has some value, at least at one or another of its three stages, even apart from these broader theoretical commitments.

NOTES

1. I am very grateful to Ladelle McWhorter and Michael Byron for their thoughtful comments, and I regret that I cannot address all of their points in this short space.

2. Rawls argues that civil disobedience ought to be carried out only when there is a reasonable chance of actually fixing the injustice that is the target. This conclusion should depend on whether a reasonable person could accept the permissibility of the practice only under that condition, something I am inclined to doubt. It seems likely to vary from one kind of protest to another. This also seems the way to handle a similar condition on other political expression that goes beyond narrow civility. Often there is no need to ensure that it will make a significant difference, though in some cases and contexts such a requirement may well be appropriate.

3. Peter Davies argues that the gathering was lawful and peaceful until the National Guard intervened and that the guard had no legal authority to order the protesters to disperse. Peter Davies, *The Truth about Kent State* (New York: Farrar Straus Giroux, 1973), 31–32.

4. These leave aside the many students who were apparently simply moving between classes or had been drawn by the spectacle, because students in these latter categories would not be engaging in expression. Perhaps a more important application of the concept of wide civility to the Kent State case would concentrate on events of the previous few days, events that might have fostered an environment of strong disapproval of the student protesters. But these earlier events involved burning the ROTC building and smashing windows of downtown stores, actions that could not be called civil even in a wide sense, though this would not settle whether they were justifiable. The backlash effects of disruptive or illegal expression must always be reckoned in determining their permissibility, and the chance of an unjust repressive state response is often among the possible consequences to consider. I thank Kathy Jenni for raising this point.

5. Suppose some students had sought to provoke the National Guard into shooting so as to help turn public opinion against the state. I have no reason to believe this was the motive of anyone present that day.

6. I discuss these matters at length in "Beyond Fairness and Deliberation: The Epistemic Dimension of Democratic Authority," in *Deliberative Democracy*, ed. James Bohman and William Rehg (Cambridge, Mass.: MIT Press, 1997).

7. For example, Mill does not adhere to the brand of political liberalism I would defend, which derives mainly from Rawls (see, e.g., his *Political Liberalism* [New York: Columbia Univ. Press, 1993]). Yet I do not see how this would block a Millian from accepting anything in my account of civility.

8. I discuss the points in this paragraph at greater length in Estlund, "Beyond Fairness."