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## **Incivility as Dissent**

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Forthcoming in Political Studies

### **Abstract**

State attempts to legislate for civility, such as the UK's Injunctions to Prevent Nuisance and Annoyance, are usually challenged on libertarian grounds. This article develops a novel democratic challenge to such legislation, arguing that un-civil behaviours sometimes constitute masked expressions of dissent. It first elaborates a conceptual analysis, linking the forms of annoying behaviour targeted by legislation with the practice of incivility. It then articulates a structural association between incivility and dissent and develops on that basis a substantive normative case for the democratic value of incivility. In this way, the article highlights the role of bad behaviour in sustaining liberal democratic institutions and the ways in which the tradition of political thought about civil disobedience can obscure the possibilities of democratic dissent. It thereby informs public debates about the 'crisis of civility' in modern society and offers a new perspective on scholarly debates about the ethics of resistance.

In 2014, the British government tried to ban being annoying. The Anti-Social Behaviour Crime and Policing Bill 2013-14 proposed the introduction of new Injunctions to Prevent Nuisance and Annoyance (IPNAs) to replace the notorious Anti-Social Behaviour Orders (ASBOs). In the original draft of the Bill, IPNAs broadened the range of prohibited behaviour to include 'conduct capable of causing nuisance and annoyance to any person' (Anti-Social Behaviour, Crime and Policing Bill HC Bill, 2013-14), where ASBOs had prohibited only that behaviour 'that caused or was likely to cause harassment, alarm or distress' (Anti-Social Behaviour Act, 2003). Moreover, IPNAs lowered the evidential threshold, requiring

only a civil standard of proof that on ‘the balance of probabilities’ a person had practiced or threatened to practice conduct capable of causing nuisance and annoyance, whereas ASBOs demanded a criminal standard of proof - ‘beyond reasonable doubt’.

The Bill provoked widespread opposition and the plans were roundly defeated in the House of Lords.<sup>1</sup> Opposition turned primarily on concerns that the Bill unacceptably curtailed individual liberty. As Lord MacDonald QC put it, ‘the pressing question is whether state interference in the context of behaviour that is merely potentially annoying could ever be justifiable or amount to a proportionate interference in those critical rights to freedom of speech, assembly and religion, or indeed to private life’ (MacDonald, 2013: 8). Call this the libertarian argument: in a free society, there will always be behaviour that annoys us, but as long as it does not actually harm anyone, then we must tolerate it – such is the price of freedom.

The libertarian argument is probably all that is needed to lay IPNAs to rest, but it is incomplete. The argument points to the unwelcome consequences of prohibiting annoying behaviour but admits its undesirability. In this article, I argue that there are also positive democratic reasons to resist IPNAs that buttress the libertarian argument. While banning annoying behaviour is clearly an infringement of liberty, it is also an infringement of access to procedural justice. This is because the characterisation of behaviour as ‘annoying’ or ‘rude’ can often work to mask and marginalise democratically significant attempts to communicate a sense of injustice. And so, by banning ‘nuisance and annoyance’, we risk stifling the democratic voice of citizens. More affirmatively, I suggest that ‘annoying’ behaviour of the kind targeted by the IPNAs could potentially constitute an important and neglected mode of democratic activism.

The article is divided into four sections. First, I clarify some of the central concepts in the debate. Specifically, I link the forms of annoying behaviour targeted by IPNAs with the practice of incivility. The idea of civility is regularly invoked in contemporary public discussion, but it typically functions as a rather hazy civic ideal and aspiration. Meanwhile, the oft-lamented ‘crisis of civility’ in modern life is

understood as a falling away from that hazy ideal. I argue that we need to think much more carefully about the different forms that un-civil behaviour can take. In this connection, I elaborate a novel distinction between two styles of un-civility: incivility and anti-sociality. In the second section, I develop my central thesis by identifying a structural association between incivility and dissent. I further defend that association in the third section by explaining in more substantive terms why incivility is an intelligible mode of democratic dissent. And then, in conclusion, I briefly consider the wider legitimacy of incivility-as-dissent by setting the argument within the larger context of the tradition of political thought about civil disobedience.

### **Annoyance, Incivility and Anti-Sociality**

IPNAs sit among a class of government initiatives intended to use legislation to promote civility in everyday life.<sup>2</sup> In this sense their emphasis on ‘annoyance’ is misleading. IPNAs were never really intended to target annoying behaviour just as such. As George Monbiot wrote for *The Guardian*:

The new injunctions ... create a system in which the authorities can prevent anyone from doing more or less anything. But they won't be deployed against anyone. Advertisers, who cause plenty of nuisance and annoyance, have nothing to fear; nor do opera lovers hogging the pavements of Covent Garden. Annoyance and nuisance are what young people cause; they are inflicted by oddballs, the underclass, those who dispute the claims of power (Monbiot, 2014).

Monbiot's interpretation is supported by the Government's own presentation of its intentions. In a review of ASBOs that heralded the introduction of the new IPNAs, then Home Secretary Theresa May wrote that her primary aim was not to target annoying behaviour as such, but a particular class of un-civil ‘yobbish’ behaviours (Home Office, 2012, 3).

We face a direct problem in the characterisation of civility, because the term itself is ‘a member of two kindred conceptual families’ (Meyer, 2000, 71).<sup>3</sup> Specifically, we can distinguish between civility as an ethical concept and civility as a political concept (Johnson, 2007. See also Boyd, 2006; Calhoun, 2000). As an ethical concept, civility is bound up with the idea of what it means to be civilised, well-mannered or polite; it focuses on standards of decency in everyday life. As a political concept, civility is bound up with the idea of an association of citizens; it concerns one’s status and obligations as a member of a political community, as a citizen with certain rights and responsibilities. Clearly, the two meanings are not the same, and this is crucial to my larger argument: being polite is not the same as being a good citizen.

Viewed as a clumsy attempt to foster everyday politeness, it makes sense to associate IPNAs with ethical civility and not political civility. But this does not mean that the forms of conduct that IPNAs are meant to regulate are apolitical. On the contrary, we do better to think of ethical civility as part of what Nancy Rosenblum terms ‘the democracy of everyday life’ - ‘after we take account of organised political life, work, membership groups, social circles, friends, and family, there is this “remainder”’ (2016, 171) - a domain not entirely discontinuous with the political, but which has ‘independent meaning and value’ (2016, 74. See also Shklar, 1984). As Richard Boyd suggests, a flourishing culture of everyday manners and courtesy may be a necessary condition for the development of robust practices of good citizenship (Boyd, 2006, 864-5). Ethical civility is not the same as good citizenship, but it often impinges directly on the quality of civic life.

We can think of ethical civility as denoting a set of social norms. Elizabeth Anderson defines a social norm as ‘a standard of behavior shared by a social group, commonly understood by its members as authoritative or obligatory for them’ (2000, 170). In the case of civility norms, the relevant social group is that constituted by the joint commitment of its members to their society as a shared problem. I follow Margaret Gilbert (2006) in putting the notion of joint commitment at the heart of the idea of a social group and holding that those who are parties to the commitment enjoy a special standing in relation to the

activity of (in this case) their sociation that is not enjoyed by those who are not parties to the commitment. To be clear, the joint commitment to society I have in mind is intended to be distinct from joint commitment to any particular civic order. And the sense of ‘society’ is intended to be thin. It is not meant to imply that parties to the joint commitment have any sense of ‘community’ with one another, or of ‘belonging together’ in any substantial sense. It is meant only to imply recognition of sociation as a problem shared. Parties to the joint commitment recognise one another as people among whom they must live (at least for now), and that the predicament so created is a shared predicament. It is not for me to ‘solve’ the problem of our sociation unilaterally. As I have said, that implies recognition of members of the group as enjoying a certain standing in relation to the problem of sociation – they are stakeholders, social ‘somebodies’ whose wishes and concerns for the life of the group must be reckoned with and cannot simply be bypassed. But this only goes so far: my recognition of you as a social somebody need not imply, for instance, that I think you entitled to an equal say.

This is an abstract formulation of the commitment that underpins civility, but it is reflected in the wider literature which associates civility closely with the acknowledgement of society. Ortega y Gasset puts the idea quite strongly when he suggests that ‘civilisation is, before all, the will to live in common’, and that civility reflects ‘an attempt to make possible the city, the community, common life’ (Ortega y Gasset, 1957, 76). In a similar vein, Edward Shils writes that ‘civility ... means regarding other persons, including one’s adversaries, as members of the same inclusive collectivity, ... as members of the same society, even though they belong to different parties, or to different religious communities, or to different ethnic groups’ (1991, 13).

Accordingly, we may think of a civility code as the set of social norms upheld by those who consider their society a shared problem. Civility norms so conceived sometimes serve an instrumental purpose, as a way of solving various kinds of coordination and collective action problems to ‘make the city possible’ (or, less dramatically, to make it bearable – see Bejan, 2017). Or, alternatively, they may play a more

expressive or ritualistic role, serving to perform and communicate the joint acknowledgement of society. By upholding civility norms, I signal my awareness that I am with other people, and that that presents us with a shared predicament.

This is an intentionally broad and formal characterisation. I have not specified particular civility norms, and I have not restricted the scope of civility to considerations of speech. Some authors define the practice of civility narrowly, as a set of speech constraints - the idea of keeping a civil tongue (e.g. Kingwell, 1995). Others, by contrast, interpret it broadly, in a manner that encompasses not only speech, but also how we conduct ourselves more generally in public (e.g. Pettit, 1997). Evidently, the scope of IPNAs go beyond matters of speech alone, and so, for the purposes of this discussion, I prefer the broader interpretation.

If civility is a matter of upholding social norms governing personal interactions in everyday life, we might think of 'un-civility' simply as the violation of those norms. By pushing brusquely past you in my haste to catch the bus without a word of apology, I behave in an un-civil (not to mention annoying) manner. I violate a social norm of everyday politeness, I disrupt the 'intricate ballet' of the sidewalk (Jacobs, 1992, 50).

Note here an important set of cases which are often mistaken for un-civility. Sometimes there will be circumstances in which it is profoundly unclear what kind of conduct the civility code demands, because the code is in flux or otherwise contested. Familiar cases include those in which the claims of a more traditional code come up against those of a more modern code. Take, for instance, the wildly varying interpretations of the etiquette of mobile phone use in public settings. In such cases, those adhering to variant interpretations of the prevailing code are liable to experience each other's conduct as un-civil. But insofar as the demands of the prevailing code really are unclear, then we cannot reasonably speak of the violation of the prevailing code and we should not interpret such cases as instances of un-civility. This is

why, as Keith Bybee remarks, the sense of a ‘crisis’ of un-civility in modern life is in fact largely generated not by the absence of civility, but by its ‘excess’: ‘It is the profusion of different beliefs about correct behavior that creates an environment in which common courtesies do not seem very common’ (Bybee, 2016: 15). Such cases are interesting and important (see Levy, 2010 for discussion), but they are not my focus here. We certainly could object to IPNAs on the basis that they get the prevailing civility code wrong, and that might be a valid objection. But, for the sake of argument, I focus on cases in which the demands of the civility code are tolerably clear, and so the idea that a violation (an ‘un-civility’) has indeed occurred is uncontroversial (to the extent that even the perpetrator would not deny having violated the prevailing civility code). The question, then, is whether such uncontested un-civilities should attract legal sanctions.

To address this question, we should first note two different ways in which a person can violate civility norms, two styles of un-civility. The first I shall call incivility. Incivility is the deliberately-crafted subversion of the prevailing civility code the authority of which the perpetrator acknowledges. That is to say, perpetrators of incivility recognise themselves as members of the social group characterised by the joint commitment to society as a shared problem, but choose to violate those norms regulating the common life of the group. The second style of un-civility I shall call anti-sociality. Anti-sociality is a kind of obliviousness to civility norms stemming from ignorance, sociopathy, or by the sense of not being bound by the civility code. The perpetrator of anti-sociality fails to acknowledge, or actively rejects, her membership of the social group characterised by the joint commitment to society as a shared problem and the authority of the social norms regulating the life of that group.

The supposition here is that there is a moral difference between my ignorant scramble for the bus, a form of anti-sociality, and, for example, the kind of incivility practiced by Mancunian Ryan Florence. In 2007, Florence, wearing a ‘hoodie’, and with one hand down the front of his trousers, found his way into the background of a David Cameron photo opportunity on the Benchill estate in Manchester where he



proceeded to make ‘gun signs’ for the camera. The image found its way on to all the newspaper front pages, and Florence proved highly amenable to giving media interviews to discuss his experience. He objected to politicians visiting his neighbourhood for publicity reasons when in reality they did ‘nothing’ for those who lived there (BBC, 2007). Florence’s incivility was neither ignorant nor sociopathic. It was the deliberate transgression of the prevailing civility code intended to convey an image of disrespect.

Another case of incivility is that of Juli Briskman. In 2017, Briskman was fired from her job at a marketing company after images of her raising her middle finger while cycling alongside President Trump’s motorcade went viral on social media. As she later explained to the Huffington Post, ‘He was passing by and my blood just started to boil ... I’m thinking, DACA recipients are getting kicked out. He pulled ads for open enrolment in Obamacare. Only one-third of Puerto Rico has power. I’m thinking, he’s at the damn golf course again. ... I flipped off the motorcade a number of times’ (quoted in Bendery, 2017).

Incivility of this kind presupposes recognition of the prevailing civility code and of its authority (in a way that anti-sociality does not). In order for their programmes of ‘hell raising’ to be effective (for them to be recognisable as ‘hell raising’), the likes of Florence and Briskman must necessarily be mindful of the authority of society in determining what will count as civil and what as un-civil behaviour. In a manner that will become important later in the discussion, we may say that incivility (unlike anti-sociality) relies non-instrumentally on a shared, social language of disrespect. There are, to be sure, forms of anti-sociality that cynically exploit social languages of disrespect, perhaps to secure publicity or to upset. But, insofar as they are cases of anti-sociality and not incivility, the perpetrators themselves will not recognise the authority of the norms involved – they rely on a social language to achieve their aim, but only strategically.

### **Incivility as Dissent**

To see the relationship between incivility and dissent, consider first Norbert Elias's seminal work on civility, *The Civilizing Process*. Elias challenges the belief, commonplace in the nineteenth century, that European 'civilization' was the product of the natural superiority of Europeans over others. Elias sought to demonstrate that European civility was in fact the contingent product of a complex historical process, traceable to the fifteenth century, of the gradual pacification of society through the repression of individual tendencies to violence. But he observed that this background was swiftly forgotten, and 'of the whole preceding process of civilization nothing remains in their consciousness except a vague residue. Its impact is understood simply as an expression of their own higher gifts' (Elias, 2000, 43).

So, the civilizing process is a process of establishing a system of informal norms (of civility) that function to stem tendencies to violence in part by reinforcing existing socio-political hierarchies. And it achieves this by marking disruptive practices, including practices of dissent (which I understand simply as expressions of opinion at odds with the existing socio-political hierarchy), as un-civil, unrefined, not to be taken seriously. But a kind of collective amnesia about the contingency of the civility norms leads people to see them as natural and inevitable.

The idea that appeals to civility have functioned historically to stifle dissent is made forcefully by Linda Zerilli:

Throughout American history, disenfranchised minorities, such as women and African-Americans, have been regularly accused of incivility just by virtue of daring to show up in public and press their rights claims ... the charge of incivility was a way of masking and managing disruptive demands to inclusion in the public realm (Zerilli, 2014, 108).

The process here is familiar enough: the powerless are ignored and this compels them to shout. When they shout, they are charged with incivility: 'Calm down. If you want to be taken seriously, then don't be

so rude'. Stifling dissent by appeal to civility will often therefore create a democratic deficit. As Judith Shklar writes, procedural fairness in a democracy demands that everyone enjoy 'the possibility of expressing a sense of injustice to some effect, at least occasionally' (1990, 124). If the norms of democratic debate and conduct persistently discredit certain (nominally 'included') voices and claims of injustice, then that constitutes a form of 'internal exclusion' that democrats need to take seriously (Young, 2000, 53-8).

But we must take care here to avoid the impression of a 'civility conspiracy', whereby the elites deliberately formulate and deploy civility codes in such a way as to marginalise their foes. Bybee's discussion of civility gives this impression when he writes that 'the powerful frequently wish to use their preferred version of civility to subdue and control everyone else' (2016, 28), characterising civility as 'a strong-arm tactic used by repressive elites' (2016, 30). Whilst the powerful doubtless do sometimes use civility in this strategic manner, it is a misleading analysis for two reasons. First, it ignores Elias's observation about how deep-rooted civility codes can be, and about the 'forgetfulness' that attends their deployment. Civility codes usually do favour the elite, but that does not mean that elites always or even often wield civility norms like weapons: rude and annoying people are often told to stop being rude and annoying because they really are felt to be rude and annoying, not because it seems strategically useful to present them as such. And, secondly, the notion of a civility conspiracy obscures the agency of those who find themselves on the wrong end of repressive civility norms. We see this clearly in an example that Bybee introduces to illustrate the repressive use of civility. He writes of the way in which hip-hop artists in the 1980s and 1990s 'found themselves' in a bind 'when critics vilified their music as vulgar, violent, and unacceptable in polite society' as a way of marginalising them (2016, 29). But this cannot be quite right. When N.W.A. recorded 'Fuck Tha Police', they were not just casually going about their lives, upholding their own code of appropriate behaviour only to be side-lined as the elite rounded on them with their carefully crafted repressive civility code demanding respectfulness towards the police. N.W.A. were

deliberately violating widely recognised civility norms, and they were doing so as a way of expressing dissent.

Bybee allows for this sort of possibility in his notion of ‘strategic incivility’, which ‘performs a kind jujitsu, seizing the indignation generated to protect civility and redirecting it to serve personal purposes’ (2016, 19). The emphasis on ‘personal’ purposes here is unhelpful – the likes of N.W.A. clearly have political purposes, too. Moreover, there is a danger here of moving too far in the opposite direction: just as we should be wary of the idea of a civility conspiracy, so too we should be wary of an ‘incivility conspiracy’. The practice of incivility invariably has an instrumental dimension, but the language of ‘strategy’ and ‘tactics’ misrepresents the way in which civility codes typically function in society. So, when a group of hoodie-wearing, so-called ‘chavs’ congregate outside a corner shop late into the night, we might ask with Bybee whether or not their incivility is strategic. But I am not sure there is a sensible answer to that question. From one angle, they are just enjoying an evening with friends, whilst from another they are repudiating the social order that demonises them.<sup>4</sup> In contrast to the case of N.W.A., these people are just going about their lives. It is a misrepresentation to characterise their conduct as ‘tactical’, but I think we should be willing to read it as dissent.<sup>5</sup> For the powerless and dispossessed, to contemplate a programme of political dissent just is to contemplate a programme of incivility. The practice of incivility is one way, and sometimes the only way, of challenging the claims of power. And just as the appeal to civility has done work historically in stifling dissent, so the practice of incivility has done work in ‘enlarging the democratic public sphere’ (Zerilli, 2014, 131).

So, instances of incivility are more often instances of dissent than we, and even those who perpetrate them, might realise; this is because accusations of incivility obscure dissent. But not all instances of uncivil behaviour should be interpreted as democratically-significant dissent, and it may help to illuminate the association I have been describing to think about such a case. Consider the Bullingdon Club initiate who burns a £50 note in front of a homeless person.<sup>6</sup> It seems reasonable to suppose that this conduct

violates the prevailing civility code – we are likely to think it an annoying and socially unacceptable thing to do. And yet it is hard to see how it could constitute an act of dissent, given that the perpetrator is a beneficiary of the status quo the civility code supports. There are at least three interpretations of what is going on here.

First, it seems likely that this is not in fact incivility at all, but rather anti-sociality. On this view, the example is not that of an actor wilfully subverting a civility code the authority of which he acknowledges; it is an instance of an actor believing that he stands outside of or above practices of civility, and that he is not bound by civility's claims. One suspects that many of the un-civilities perpetrated by the privileged will, on closer scrutiny, fall into the category of anti-sociality in this way. And anti-sociality lacks the association with dissent. Its disdain for and obliviousness to the claims of society undermine the idea that it might serve any social aim in the world (beyond, perhaps, a purely destructive, nihilistic aim). A second interpretation might maintain that, while it does indeed constitute an instance of incivility in the sense that the perpetrator is engaged in the wilful subversion of a civility code the authority of which he acknowledges, the actor is motivated purely by the transgressive thrill of violating social norms: for the sheer joy of being naughty. In that case, the un-civility would constitute a case of incivility, but would not reveal the structural association with dissent that I have identified. Finally, it is not impossible that the kind of Bullingdon Club incivility I have described could in fact be an expression of dissent. Perhaps regretting the license our society affords to the homeless, the actor could be seen to be deliberately subverting the social norms that reflect and support that license as a kind of inarticulate protest. To be sure, this sort of dissent is not especially congenial to liberals, and, given the privileged position of the perpetrator, there is no significant democratic deficit created by stifling it, but dissent it is all the same.

Whichever of these interpretations applies, the example does not undermine my larger argument. To recall, my aim is to show that, in addition to the negative libertarian argument, there are also affirmative democratic reasons to resist the prohibition of incivility. But that is certainly not to say that those

democratic reasons will pertain to every instance of incivility. My aim is not to vindicate every incivility from a democratic perspective, but simply to show that there are important democratic considerations bearing on the case against prohibition. When it comes to the obnoxious, thrill-seeking Bullingdon Clubber and other forms of democratically-insignificant incivility, I think the best we can say is that, as long as such conduct does not shade into harassment (as it easily might), then it would be an unacceptable curtailment of liberty to ban it. We must tolerate it for reasons furnished by the libertarian argument, and that is all.<sup>7</sup>

### **The Value of Incivility**

There could be further doubts about the democratic case for incivility on grounds of effectiveness. We might feel that, by behaving in an un-civil manner, dissenters play unhelpfully into the oppressor's hands. It is too easy to dismiss the claims of those like Florence and Briskman as plain rudeness, and so the democratic value of such conduct seems questionable. Canny dissenters, it might be said, will seek creative new ways of challenging the claims of power whilst avoiding the charge of incivility.

Indeed, incivility-as-dissent may even prove counterproductive to democratic purposes. There is evidence that the sorts of personality traits most conducive to the successful practice of incivility will have other less welcome side-effects for democratic participation, undermining social trust and organisational involvement (Dinesen et al, 2014). In her study of un-civil political exchanges on television, Diana Mutz (2015) likewise finds that such exchanges are damaging to political trust. And when dissenting opinions are expressed close-up, in an impolite and un-civil fashion, our sense of the legitimacy of those opinions is diminished (Mutz, 2015). Moreover, the practice of incivility can often exhibit a troublingly self-perpetuating character in what Matthew Flinders calls the 'vortex':

Being rude to an individual, organisation, or community generally provokes similarly bad-mannered responses that set in motion a sequence of increasingly unfriendly and discourteous

interactions. Can you think of an occasion when being rude actually served a positive end?  
(Flinders, 2017).

Take the case of Colin Kaepernick. As quarterback for the San Francisco 49ers, Kaepernick refused to stand for the American national anthem as civility norms dictate, instead dropping to one knee. This was a clear instance of incivility-as-dissent: Kaepernick's stated intention was to protest police brutality against black men.<sup>8</sup> But his actions provoked an angry response from the President, Donald Trump: 'Wouldn't you love to see one of these NFL owners, when somebody disrespects our flag, to say, "Get that son of a bitch off the field right now, out. He's fired. He's fired!"' (quoted in Graham, 2017). Trump's intervention provoked further angry responses in turn, and so the vortex intensified.

Incivility poses a genuine threat to the civic culture of democracies and I shall return to consider it at the end of this section, but to dismiss incivility altogether on this basis is too quick. As I have suggested, a programme of incivility is sometimes the only option for the dispossessed – whatever they do, it will be found un-civil. Should we then have them do nothing? Even if there are alternatives, they are not without problems of their own. There is something at least a little morally uneasy about the idea that one should 'work from within' a set of civility norms to challenge the oppressive hierarchies it sustains (would it have been right for Kaepernick to stand for the national anthem, given his feelings?). In any case, Flinders is wrong to think that incivility never works.

#### Instrumental Value

Incivility can sometimes force political change. An important source of support for this contention comes from the work of James C. Scott. In his research on modes of peasant resistance in Southeast Asia, Scott emphasises the role of what he terms 'infrapolitics', which involve a range of small scale, everyday forms of resistance - 'quiet, unassuming, quotidian insubordination' - many of which would constitute

incivilities on my interpretation (Scott, 2012, 12). And Scott argues that, despite their hidden character, these ‘weapons of the weak’ can achieve significant political change:

Their individual acts of footdragging and evasion, reinforced often by a venerable popular culture of resistance, and multiplied many-thousand fold may, in the end, make an utter shambles of the policies dreamed up by their would-be superiors in the capital. The state may respond in a variety of ways. Policies may be recast in line with more realistic expectations. They may be retained but reinforced with positive incentives aimed at encouraging voluntary compliance. And, of course, the state may simply choose to employ more coercion. Whatever the response, we must not miss the fact that the action of the peasantry has thus changed or narrowed the policy options available (Scott, 1985, xvii).

So, the consequences of such resistance are unpredictable, and it may indeed provoke a ‘vortex’ of increasing coercion. But crucially it prevents the possibility of leaving everything just as it was before. Such conduct thus empowers the weak to reject the status quo, and sometimes the changes they provoke thereby will be changes for the better.

We see something of this in the Kaepernick case. In an article for *The Guardian*, Les Carpenter observes the way in which Kaepernick’s incivility and, more especially, Trump’s un-civil response to it provoked a valuable national conversation about race:

the president bonded black and white football players with wealthy white owners in a way nobody could have imagined. By saying any player who didn’t stand for the anthem was a “son of a bitch” and should be fired by his team’s owner, Trump crossed a line from which no one could look away. Come Sunday afternoon, players who wanted nothing of a racial dialogue stood before giant flags, linking arms in protest. Owners who once wished their kneeling players would



just stop offending fans fired off statements in their support. Networks who have avoided showing the raised fists of dissent had no choice but show the rows of players standing strong against Trump's rage. Whether anyone wanted it or not, Trump has forced the US to have the conversation Kaepernick has been requesting (Carpenter, 2017).

While I have noted the unwelcome consequences of incivility that Diana Mutz reports, she also finds that opinions impolitely expressed are more engaging and emotionally arousing – we are more likely to pay attention, to remember and to 're-transmit' views expressed in this way (Mutz, 2015). These tendencies seem particularly important when we interpret incivility as a democratic 'weapon of the weak'. For those whose dissenting views have been marginalised or altogether silenced in formal institutional settings, the practice of incivility presents a potentially promising way of forcing the issue and thereby securing procedural justice otherwise denied.

A further case in point is provided by Rolf Gerritsen's study of aboriginal incivility in Australia (see Rothwell, 2015). Gerritsen highlights the way in which un-civil practices of non-compliance among Aborigines - refusing to work, truancy, gambling, littering and alcoholism – have served as a form of resistance to the state's aboriginal policies and initiatives. Their incivility is a form of 'rejection of the conqueror and all he stands for' (quoted in Rothwell, 2015). And, as Scott recognises, this sort of thing can translate into real political power. It effectively gives the aborigines a veto over policy, enabling them to force the government's plans for them to fail - 'governments think they have power over Aboriginal welfare recipients, but Aboriginal people, in their failure, in their covert resistance, can place pressure on government' (Gerritsen quoted in Rothwell, 2015).

And it is not only laws and policies that dissenters can disrupt by their incivility; they can also disrupt the civility code itself. Persistent incivility can lead to the normalisation of the deviant practices of the dispossessed. For example, by the repeated violation of civility norms in Britain and elsewhere stating

that polite women are quiet and subservient, the practice of women defending their rights and pressing political claims has to some extent been normalised.<sup>9</sup> While, as Elias demonstrates, civility codes develop in such a way as to reinforce established hierarchies, the elite do not in fact have complete control over the civility code. As Bybee writes, ‘civility ... is made by many hands, without the control of official institutions or authorized leaders. As society grows more heterogeneous and complex, conceptions of civility shift, come into conflict, and resolve into new forms’ (2016, 38). Of course, there is no assurance that codes of civility will ‘inevitably progress in the direction of egalitarianism’ (Bybee, 2016, 39), but they may do so in the face of the sustained incivility of egalitarian dissenters.

These are reasons, then, to suppose that incivility does have instrumental value as a mode of dissent; pace Flinders, incivility can serve positive ends. But we should not overstate this. In order for Scott’s everyday resistance to have any meaningful effect, it must be either high-profile, of the Florence, Briskman or Kaepernick varieties, or otherwise extremely widespread, ‘multiplied many thousand fold’, as in the case of the Australian aborigines. In most cases, the instrumental value of incivility-as-dissent will be limited.

#### Expressive Value

But, in addition to its instrumental value, incivility may also have an expressive or symbolic value. Cheshire Calhoun characterises civility as ‘an essentially communicative form of moral conduct’ (2000, 260). She suggests that the distinctive function of civility is to display and thereby communicate moral attitudes, of respect, toleration and considerateness. And, likewise, ‘incivilities draw on a common verbal and behavioral language for displaying disrespect, intolerance, or inconsiderateness’ (Calhoun, 2000, 260). In other words, incivility sends a message. So, even where incivility achieves no social or political goal, it still says something about those who practice it. Specifically, incivility sends a message of disrespect for and disloyalty to the political hierarchy supported and sustained by the prevailing civility code. That seems explicitly so in the cases of Florence, Briskman and Kaepernick – they relied on a shared language of disrespect in order to express a sense of injustice.

And note that incivility is quite unique in its capacity to make a specific kind of statement. For reasons I have already elaborated, incivility does not reflect the rejection of society as such (in the manner of anti-sociality). On the contrary, it relies non-instrumentally on socially-established civility norms and in that way embodies a kind of backhanded acknowledgement of society. It simultaneously communicates both disrespect for the social and political order and the civility code that sustains it, and yet also an appreciation of society and of the value of civility as such in structuring our interactions. At its core, incivility expresses a kind of demand, a demand for recognition of one's stake in the joint commitment to society. In this sense incivility functions expressively in a manner analogous to anger. As Marilyn Frye writes, 'anger implies a claim to domain – a claim that one is a being whose purposes and activities require and create a web of objects, spaces, attitudes and interests that is worthy of respect, and that the topic of anger is a matter rightly within that web' (1983, 87). So, when I get angry with you for walking off with my paintbrush I implicitly claim 'that my project is worthy, that I am within my rights to be doing it' (Frye, 1983, 87). Likewise, the practice of incivility implies a claim to domain – here the claim is that one is part of society, has a stake in society, and has a certain standing in defining the terms on which we live together.

But who is the audience for the message that incivility sends? We might naturally suppose that the audience is the oppressor – so, not expecting the image to go viral, it seems that Briskman's intended audience was Donald Trump himself. The trouble here is that, as Flinders notes, such messages tend to be badly received by the oppressor and typically fail to provoke any kind of change. While that seems plausible as a concern about the instrumental significance of incivility, it need not detract from its expressive significance. Even when the message seems not to 'get through', when it meets with an irritated or intransigent response, that may still constitute a kind of uptake – it still reflects recognition of the perpetrator of incivility as a participant in the joint commitment. To see this, contrast it with the case in which incivility achieves no uptake. Suppose that people responded to Kaepernick's kneeling for the

anthem with a baffled shrug. To do so would be to treat him as a being outside of society, as an alien whose deviance is not to be taken for incivility, but rather as the foreign conduct of one with no stake.

Thus, the practice of incivility may be seen not merely as a demand for recognition, but as an attempt to compel recognition. Writing of the deviant conduct of slaves, Orlando Patterson argues that it may be interpreted precisely as an attempt to provoke a telling response:

When the outraged master screams ‘you are a thief,’ he has given away everything, for implied in his accusation is a critical judgement: you are a moral being who is responsible for your act.

Anger and its sequel of brutality and punishment expose the moral worth of the slave, even as they destroy his flesh. (Patterson, 1972, 44)

Something similar may be said of incivility: by provoking the ire of others, it compels recognition of perpetrators as parties to a joint commitment subject to a shared set of conventions (when the outraged Donald Trump screams ‘get that son of a bitch off the field’, he has given away everything...). And in this way, the practice of incivility functions as what Frye terms ‘an instrument of cartography’: other’s concepts of us are revealed by the limits of the intelligibility of our incivility (1983, 93-4). Where my incivility achieves no uptake, but just a baffled shrug, I may infer that I am seen as an exile from society, banished and shunned.

But in such cases, where incivility achieves no uptake at all from the oppressor, can there be any sense in which it retains expressive significance? It seems that there can, for it might still speak to a different audience: instead of communicating to the oppressor, it might communicate something to the oppressed or to would-be allies. In a closely related discussion of hip-hop music as a form of ‘impure’ symbolic dissent, Tommie Shelby argues that such dissent might function as a pledge of loyalty to the oppressed:

This expression of solidarity ... is a positive expression of association with those most burdened by the injustices one condemns. Such dissent is a way of pledging allegiance to the downtrodden (or perhaps the affirmation of a vow already made), a way of signaling that one is prepared to come to their defense and can be trusted as an ally. (Shelby, 2016, 268)

Briskman's middle finger, Florence's gun signs, Kaepernick's knee, the 'chav's' hoodie and Burberry scarf: all of these gestures send a signal to the oppressed – 'I am with you in solidarity'.

But here, too, the message can easily fail to get through. Sometimes, pledges of allegiance can seem out of place, inappropriate or unwelcome, especially when they come from those who are not themselves oppressed. Shelby writes that 'often the oppressed are eager to have their grievances acknowledged, to know that others recognize and empathize with their undeserved plight' (2016, 268), but that is not always so, and, even where they might be welcomed, attempts to express loyalty are easily bungled, coming off as condescension, 'mansplaining' or 'whitesplaining'. Equally, one might simply find oneself in a minority of one, with no other members of the oppressed to communicate to.

But even when no one else is listening, incivility still has the capacity to communicate something to those who practice it themselves. Returning to the case of slavery, and as Bernard Boxill (1976) suggests, the resistance of slaves to the master's rules constitutes an important source of self-respect. This is due to the way in which it provides evidence to the slave that they are not truly servile. While the conformist 'Sambo' personality evident among some slaves has often been interpreted as a kind of ruse, a technique of survival (Patterson, 1972), Boxill argues that it would be very difficult consistently to maintain such a pretense of servility whilst preserving the secure belief that one is not truly servile. 'Unless it is executed by a master, the evidence of servility will seem overwhelming and the evidence of self-respect too ambiguous' (Boxill, 1976, 67-8). Thus, by refusing to conform to a social order that treats me as less than fully human, and even where my deviance achieves no uptake, I still prove to myself that I have not lost

my self-respect. Again, something analogous may be said of incivility. Even where no one else gets the message of dissent that my deviance communicates, I get the message that I still believe in my stake in society (and in the stake of oppressed others), and that I have not yet been defeated by the structures of oppression ranged against me.

The case here can never be entirely straightforward because the motives of those who practice incivility are usually opaque and the message their incivility sends is often mixed. And even where the message is clear, there remain, as I noted at the beginning of this section, significant deliberative and democratic costs attached to the practice of incivility-as-dissent. The argument I have presented is not meant to show that there are no reasons for democrats to be concerned by the practice of incivility. Rather, it is meant to show that blanket prohibition may be just as damaging to democracy as indiscriminate permissiveness. Instead of appealing vaguely to the ideal of civility and its current ‘crisis’, we need to think much more carefully about what we might call the ‘ethics of incivility’. In this article, I have tried to elaborate some conceptual and normative resources to facilitate that enterprise. Responsible incivility should acknowledge its ambivalent relationship to democracy. It must be conscious of the message it sends, of its several audiences and of the fine line between incivility and anti-sociality.

### **Conclusion: Everyday Injustice and Sustainable Resistance**

That it seems strange to think of incivility as a mode of democratic activism is partly due to the ways in which the paradigm cases of ‘pure’ democratic dissent pervade our cultural consciousness. Set against the protest march, the boycott, and classic forms of non-violent civil disobedience, incivility tends not to look as we expect dissent to look. But it is also due to the political theories that frame our understanding of responsible dissent. The venerable tradition of thought about civil disobedience specifies a range of conditions of legitimate democratic dissent. The point of civil disobedience is to address specific institutional failures, to frustrate or protest ‘some law, policy or decision (or the absence thereof) of the government (or of some of its officers)’ (Bedau, 1991, 51). And it is vital that any disobedience

constitutes an exceptional act, occurring against a background of general law-abidingness and conformity. I lose my moral standing as a protester if my dissent forms part of a more general pattern of disobedience.<sup>10</sup>

Viewed from this theoretical perspective, most forms of incivility-as-dissent look extremely hard to justify. Instead of functioning as a one-off challenge to a particular institutional failure, incivility-as-dissent more often consists in recurring practices of small-scale rebellion inspired often by a nebulous sense of injustice. This seems to impugn the moral standing of the perpetrators of incivility: they appear to us not as ‘dissenters’, but as ‘troublemakers’.

But it may be that the traditional framework of civil disobedience unhelpfully limits our political imagination of the possibilities of dissent.<sup>11</sup> The framework presupposes injustice of a very particular kind – transient institutional failures including bad laws, bad policies and bad decisions. But not all injustices have this form. Judith Shklar argues that the prevailing tendencies of political thought invariably fail to give injustice its due: ‘none of the usual models of justice offer an adequate account of injustice’ (Shklar, 1990, 8-9). This is because there is an asymmetry between ‘normal justice’ on the one hand and the ‘full, complex, and enduring character of injustice as a social phenomenon’ on the other (Shklar, 1990, 9). On this view, the realisation of normal, institutional justice is liable to leave in place, obscure, and even exacerbate a wide range of what we might call ‘everyday injustices’.

The injustices I have in mind here are everyday in two senses: first, they occur outside of formal institutional frameworks and settings, in the domain of ‘everyday life’ among ordinary citizens; and, secondly, they tend to recur, day after day. One example of such everyday injustice is that of microaggressions. Emily McTernan defines microaggressions as ‘everyday, minor and apparently innocuous ‘degradations, and put downs’ experienced by members of oppressed, systematically disadvantaged or marginalised groups’ (2018, 261). For example, someone telling a woman in the street

to ‘cheer up, love’ could constitute a microaggression (McTernan, 2017, 263). McTernan suggests that political philosophers have often overlooked the injustice of microaggressions due to their preoccupation with institutions and the ‘basic structure’ of society as opposed to the ‘fine-grained details of individual interactions’ (McTernan, 2017, 275).<sup>12</sup> But injustices they are, McTernan argues, because of the way in which they structure and perpetuate objectionable status hierarchies that contribute to oppression and marginalisation. (Note that, on my account, the practice of civility can also structure and perpetuate objectionable status hierarchies. This is simply to say that the practice of civility can itself constitute a form of microaggression.)

By restricting its scope to failures of normal, institutional justice, the theory of civil disobedience struggles to capture the domain of everyday injustice. It is unclear, for example, how the theory could usefully guide those wishing to challenge the injustice of microaggressions. If anything, it delegitimises such challenges. In its insistence that respectable forms of dissent must target specific laws or policies, and must be isolated incidents, the framework makes it harder to see the legitimacy of confronting injustices that arise outside of formal institutions and that endure in ways that make them less responsive to one-off, exceptional styles of resistance. In order adequately to address these forms of everyday injustice, it is necessary to broaden our sense of the permissible forms of democratic dissent.<sup>13</sup>

I do not pretend that this is easy to achieve. It is not for nothing that the civil disobedience literature insists on a background of general conformity. It is vital that the disobedient acknowledges the claims of political obligation by finding ways of challenging specific institutional injustices without exhibiting contempt for the institutional order as such. I have suggested that responsible perpetrators of incivility-as-dissent must likewise acknowledge the joint commitment to society and find ways of violating the prevailing civility code without displaying contempt for that underlying commitment. Incivility as democratic activism can quickly become self-defeating where it undermines the civic culture it is meant to enhance.



I have suggested that there is a democratic case to be made against attempts to ban incivility like the IPNAs. In so doing I have argued that bad behaviour is not incompatible with good citizenship. But there is a stronger case I have not made, though for which I have some sympathy, that incivility could sometimes constitute an expression of good citizenship, that a capacity for incivility is something that citizens ought to cultivate. If it could be freed from the limiting conditions of the traditional framework of civil disobedience, incivility, as a relatively low-level, sustained and sustainable activity, might make a distinctively valuable contribution to the repertoire of democratic resistance.

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<sup>1</sup> The Bill was eventually passed in diluted form restoring the original definition of anti-social behaviour from the 2003 Act, though maintaining the new requirement of a civil standard of proof (*Anti-Social Behaviour, Crime and Policing Act, 2014*).

<sup>2</sup> Another example is the Australian 'Prohibited Behaviour Orders Act' (2010). These initiatives can be presented in more or less moralised terms. While IPNAs were framed in terms of protecting victims from distress (Home Office, 2012: 3-4), the introduction of ASBOs, under the Labour government of Tony Blair, was justified in morally thicker terms of the need to cultivate a 'respectful' society (see: <http://www.respect.gov.uk/>).

<sup>3</sup> For a more general treatment of the concept of civility, see Edyvane (2017). See also Bejan (2017) for an historically informed intervention in contemporary debates.

<sup>4</sup> For discussion of the social and political context of the 'chav' label, see Jones, 2016.

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<sup>5</sup> As Richard Powers writes of his African-American character, Delia Daley, in his novel, *The Time of Our Singing*: ‘she had never been a champion of the cause, except through the life she daily lives’ (Powers, 2003, 44).

<sup>6</sup> I am grateful to the participants in a research seminar at Birkbeck for suggesting this case and discussing it with me.

<sup>7</sup> The line between ‘democratically-significant’ and ‘democratically-insignificant’ incivility is obviously contentious. As I have indicated, there are good reasons for thinking the incivility of the disenfranchised ‘significant’ and good reasons to doubt the significance of the incivility of the privileged – the latter enjoy other channels by which to express a sense of injustice that the former lack. But, away from the extremes, there are hard cases and it is unclear who would adjudicate them. I do not think this undermines the case against prohibition, for even if it were practically possible to prohibit only those democratically-insignificant incivilities, there would remain libertarian reasons not to do so.

<sup>8</sup> It might seem that Kaepernick’s action is better interpreted as a political incivility rather than an ethical incivility – his conduct was unpatriotic, but it was not impolite. But I am not convinced. Many Americans, especially the families of service men and women, surely did find Kaepernick’s action to be rude and disrespectful. By contrast, the question of whether it was unpatriotic is more deeply contested – Beto O’Rourke strikingly declared that he could think of ‘nothing more American’ (2018).

<sup>9</sup> But only to some extent. One might think of the notorious occasion when, in Prime Minister’s Questions, David Cameron suggested that Angela Eagle ‘calm down dear’ (see BBC, 2011).

<sup>10</sup> This is a partial list of the conditions usually specified. See Brownlee (2017) for a fuller discussion.

<sup>11</sup> Technically speaking, the civil disobedience framework is concerned only with the legitimacy of certain forms of law-breaking and not with the ‘possibilities of dissent’ more generally. But my supposition here is that the pervasiveness of the tradition of thought about civil disobedience may colour our perceptions of dissent more generally.

<sup>12</sup> It may be that McTernan draws this distinction too starkly. Rawls explicitly emphasises norms of civility in developing his account of the public reasoning that is to take place in public institutions (1996,

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217). So, thinking about the institutions that comprise the basic structure may well involve thinking about the details of the interactions of individuals occupying those institutions. Nevertheless, it is surely true that political philosophers in the Rawlsian tradition have tended to neglect those details, especially where they do not directly impinge on institutions.

<sup>13</sup> This is not to say that civil disobedience cannot address matters of everyday injustice – it clearly can. My concern here is not to do with the limits of civil disobedience as a political practice; it is rather to do with the limits of the political theory of civil disobedience as a justificatory framework.