

ISSA Proceedings 2002 - Legitimizing Public Discourse: Civility As Gatekeeper



[I]f there are times when dissent is appropriate and justified, [then] public deliberation cannot proceed strictly under the banner of mutual understanding. When the public's form is fixed by a presupposition of consensus, the creative and generative elements of opposition are squandered before they ever appear. The citizen wakes up in a public, but has nothing to say (Erik W. Doxtader).

1. Introduction

The contestation of voices in contemporary public discourse has reached an impasse of a special type. While discourses themselves continue to foment, fragment, and reconstitute at a deceptively healthy pace, the conceptual grounds upon which they do so, the discursive sites of their activity, have stagnated. In so doing, these sites have inadvertently come to undermine the political efficacy of

1. the discourses they serve; and
2. speakers' efforts to enact those discourses in local, productive spheres of influence. Uprooted from formerly fertile, now dessicated, soil, public discourse writ large has lost much of its rhetorical purchase and an equal measure of its practical strength. With both the sites of speech and speech itself compromised in this way, what remain to us are fractious, diluted schemas of "the public sphere(s)" or "civil society," any or all of which are poor conceptual substitutes for vigorous and inclusive public deliberation among active citizens speaking in spheres of fruitful civic association.

So goes the line of argument we seek to explore in this essay, an essay which responds to widespread reports of theoretical dead-ends reached by theorists and critics who were once hopeful of framing spheres of public discourse in ways that might encourage inclusive forms of deliberation among engaged private citizens. Though we do not presume ourselves able to gerrymander the conceptual terrain of public speech in a way that would afford ideal breathing room for all, we *do* think it crucial to ask why it is that the most obvious and, in recent years, most

lauded corrective to disintegrative public discourse, civility, has failed to make the difference that so many parties from so many quarters have expected it to make. In the interests of rhetorical pragmatism, we question civility at the scene of the proverbial crime: at sites of its application as the argumentative crown jewel of contemporary rhetorical theorizing's pet project, civil society.

Contending as we do that efforts to promote civility as an ameliorative agent in civil sphere deliberation have failed in some crucial respects, we offer an alternative perspective on the problem, in hopes of establishing two claims. First, we seek to show how civility is intentionally or unintentionally wielded so as to silence oppositional or counterpublical voices in public contexts, thereby removing the very possibility of real "argument" from the equation. We find that this is most often accomplished by default, as efforts to apply "civility" directly in the service of real citizens' real speech frequently fail. Second, and relatedly, we argue that civility's *sub rosa* gatekeeping of what counts or does not count as "legitimate" speech in the civil sphere is both dangerous and deeply misguided. As we hope to make evident, our second claim is the unintended outcome of the failure of the efforts described in our first claim. That is, failing to apply itself to the meat of the deliberative problem in question, "civility" instead tends broadly to bracket one set of argumentative possibilities in favor of a simple but weak reinscription of another.

Emerging from these claims is a third and larger one: that civility's true task must be the guarding, not gatekeeping, of fair, inclusive, public/argumentative *infrastructures*, not *content*. As we see it, the latter must be altogether freed from well-intentioned but ultimately disingenuous attempts to keep public conversations "on the right track" and/or "on the right topic," while the former must be secured and stabilized only insofar as is necessary to permit full discussion of matters at hand. In the final analysis, we claim that public discourse is successful only and precisely to the extent that its calls for civility protect those speaking voices that are *prima facie incivil* or disruptive of a civil sphere's normative discourses, because only protection this assiduous promises to secure full deliberative inclusion of all comers. Oppositional or counterpublical speakers must not merely be *permitted* to upset the apple cart; the cart must productively and acceptably remain in disarray for as long as is necessary for all parties to give full voice to their positions, even to the extent that suasive forms of disruption may result in a permanent skewing of what was previously held to be normative, acceptable, stable. Only in this way may conceptual frameworks of the public

sphere and civil society achieve the fructifying deliberative outcomes that their framers so often champion but so seldom deliver.

2. *The Overlooked Middle*

Erik W. Doxtader (2001) praises various conceptual efforts made by theorists hoping to inscribe participatory public spaces, but worries that the discursive tensions between societal norms and subaltern or counterpublical forces may give rise to mere violence. Broadly conceived, he notes, contemporary democratic cultures favor civil (i.e., polite) utterance of public viewpoints; but at what cost, if and when that articulation necessitates, or, begins to mirror, a radical severance from the norm? “Is there a point,” Doxtader inquires, “at which opposition bursts the normative bonds of discourse, leaving public deliberation to do the bidding of violence?” (337). If so, what is that point, and how might we avoid getting ourselves on the road and moving in that direction?

These queries stands in the service of a much bigger problem, one treated only partially but insightfully in Doxtader’s essay; and, one reflecting what we suspect is the belief that the numberless conceptualizations of the public sphere and the sphere of civil society may in the end do nothing to safeguard a balance between securing, on the one hand, the rights of all citizens to speak freely, and, on the other, the broader structures of a workable democratic society. In the midst of this unstated tension, what is ignored is the substance in the middle of the argumentative spectrum: the real speech and real deliberation of speaking persons, along with a critical capacity for what one scholar, writing of latter-day rhetorical tensions, has described as “the potential... to persuade people to make contingent choices in specific situations” (Murphy 2001: 260). The making of those choices, short of violence but without suppression of vigorous public contestation among all interested parties, *must*, we think, be the goal of argumentative and rhetorical theorizing. In this formulation but without that caveat in mind, most contemporary theorizing, Doxtader implies, falls apart at the very place where we need it most: where it could work to fashion sites for public deliberation that people might truly use and learn from. Absent a center connecting the two nugatory ends of a typical public disagreement, he warns, “civil society becomes vulnerable to extremism and insensitive to the nuances of public interaction,” and “[m]odels of deliberation become more important than examples” (338). Theory gives way to either abstraction or crude force.

One of us has previously addressed this problem in the context of discursive

inclusiveness. Raymie McKerrow (2001) begins by bluntly posing a question not often asked: "Are there limits on what civility brings to the solution of human problems?" (1). There are no ready answers, but McKerrow perceives that the near-invisibility of the question itself has limited our opportunities to trace its potential resolution. In turn, and more importantly, McKerrow implies that the cloaking of the question is symptomatic of the larger suppression of oppositional (read: "incivil") discourses themselves. In a kind of metonymic relationship, 'incivility' stands in as coded language for 'oppositional or counterpublical discourses that may threaten the power and primacy of normative or mainstream discourses.' Such a code thus established, it becomes all too easy to silence the procedurally or substantively non-normative Other (in Levinas's sense) through procedural mechanisms that channel speech through a central grid of administrative control. The result is often a statist and fundamentally oligarchical construction that silences oppositional discourses on the grounds that they are impolitic, rude, or abrasive. Justified publicly as a defense of etiquette or social normality, the trick pony is easily discerned: "Civility" becomes the shibboleth of favored discourses, while "incivility" is the unanswerable trump card served against any who challenge the regnant powers. The irony here, McKerrow observes, is palpable: "A civility that masks or covers over the presence of deep disagreement retards social progress rather than, as it would otherwise seem, advancing it" (4). These calls for "civility" in fact secure stasis and nothing more. In developing this position, and in response to his own corollary questioning - "Is there ever a reason for the expression of an uncivil rhetoric?" - McKerrow stresses that the functional prerequisite to unmasking the problems inherent in "civility" is to

"recognize that privileging civil discourse as a solution to human problems carries with it the promise of what might be called the tyranny of incivility. Civil behavior may be more than politeness, but in its execution it may also serve to mask very real differences in power relations. In a word, civility may perpetuate servitude" (3).

Recasting, then, the non-problem of "civility" (in its masked forms) as a highly problematic "civility" (now exposed as hierarchizing and quite usefully oppressive), McKerrow seeks to lift the veil and lay bare the anti-democratic and *anti-discursive* machinations of this kind of proceduralism. Syllogistically unworkable though it may be, the formula wields considerable rhetorical power:

1. All, McKerrow suggests, are welcome to the table, though especially those already at or near it.

2. All are welcome to speak, though only if what they have to say is “civil” in tone and content.

3. The power to define “civil” is held exclusively by those who are already at the table. The remainder of this banal enthymeme, as cultural critics from Isocrates to George Orwell have observed time and again, may be readily deduced. Civility keeps some in and some out in a manner, and with a forcefulness, ideally suited to the dictates of those already controlling ballot, gun, or gavel.

Building on this argument and its premises, we turn next to a consideration of the site upon which wars of conceptualization have been fought across (in particular) the past 10-15 years: the sphere of “civil society.” We demonstrate through two examples that argumentative strategies based on dialogic or aesthetic civility in the civil sphere have failed to address the problem of excluded discourses in any significant way, and that the putative aid “civility” offers to public culture is one-dimensional and uni-directional at best.

3. Civil Society and Civility

Civil society has proven to be an enormously popular theoretical construct in contemporary scholarly literatures. From communicative, political, sociological, rhetorical, philosophical, and historical perspectives, countless versions of “civil society” have been articulated (Chandhoke 1995; Verrall 2000; Tester 1992; Ehrenberg 1992; Cohen & Arato 1991; Elshtain 1999; Hauser 1998; Jacobs 1996; Lee & Wander 1998; Klumpp 1997; Rossi 1996; Zarefsky 1993). Among these many theoretical contributions, perhaps the most prominent and influential “working definition” of civil society is offered by Jean Cohen and Andrew Arato (1992). They write:

We understand “civil society” as a sphere of social action [located and operating] between economy and state, composed above all of the intimate sphere (especially the family), the sphere of associations (especially voluntary associations), social movements, and forms of public communication. Modern civil society is created through forms of self-constitution and self-mobilization. It is institutionalized and generalized through laws, and especially [through] subjective rights, that stabilize social differentiation. While the self-creative and institutionalized dimensions can exist separately, in the long term both independent action and institutionalization are necessary for the reproduction of civil society (1992: xi).

We would stress that we detect in that definition both the great promise of civil

society and its central defect. Speaking broadly for a moment, we think most of us would greet the happy marriage of the types of self-mobilized discourses and (productively) institutionalized democratic safeguards for those discourses described above with open arms. We can think of no reasons why anyone would not. But the coordination and enactment of that marriage, as Cohen and Arato would have it, contains the seeds of its own disaster, for we would argue that there can be no balance more precarious than one which must continuously weigh the interests of already institutionalized discourses against those of new, oppositional discourses, those not already empowered, not already ratified as being of good standing in the mainstream of public affairs. The scales are not balanced at the outset, for the administrative and cultural embeddedness of that which is “the norm” skews relations of power in favor of those who occupy the extant discursive ground (The scales are not balanced in the middle of the process, either, or at the end; lest we forget, the process has no end, and consequently, never attains a stable middle).

The role of civility might be a saving one, were it not for the knowledge that earlier critical voices have argued persuasively that civility *functionally* appears mainly on one side of the scales: the institutional side. The argument here is that we (as a silently libertarian public culture) are all too eager to claim civility as a pleasant nexus for the narrowly prescribed delineation of our merest civic duties, e.g., paying taxes, not harming others, and then to jettison it when claims are made upon our time and energies in the name of faith, service, or sodality (Elshtain 1999). Notwithstanding special political efforts toward communitarian thinking, the promise of “civility” in general releases us from the responsibility to think at all. As Randall Kennedy (1998) has argued, “The civility movement is deeply at odds with what an invigorated [civic] liberalism requires,” in that it dismisses “[I]ntellectual clarity; an insistence upon grappling with the substance of controversies; and a willingness to fight loudly, openly, militantly, even rudely for politics and [beliefs] that will increase freedom, equality, and happiness” (85). Note the language here. There is no guarantee of tidiness, and certainly no promise that one’s ideas will emerge from the fray unscathed. This is deliberation at, potentially, its roughest, with all the stops pulled out and little left unsaid. Precisely Kennedy’s point; and ours as well.

This mention of discursive substance brings us to a related subject, the structural constitution of the sphere of civil society, which, though not the focus of our

inquiry, merits attention. Clearly, civil society has been treated in many different ways. John Ehrenberg (1992) sedulously traces the positive fruits of civil society in the formation of American democracy, but worries that both the sphere of civil society and the civil/civic speech it engenders may soon be crushed by unchecked economic forces (244). Writing of cybersalons, Jodi Dean (2001) distances herself (somewhat blithely) from what she takes to be Habermas's insufficiently "situated" and too "abstract" public sphere, and instead embraces civil society as a sphere conducive to a plurality of discourses and outcomes (245; 254). Other critics have seen in civil society hope for responsible public action (Klumpp 1997); strategies for the resolving of controversial public problems (Rossi 1996); and a useful vantage from which to launch a critical investigation of the failure of race relations in the urban public sphere (Jacobs 1996).

In each case, despite differences in approach and outcomes, the critics' understanding of the general structure of the civil sphere and its location between state and economy have been mainly consistent with one another. What is in question when we explore civility in the context of the civil sphere is, in most cases, not the former's influence upon the shape or location of the latter; that much is understood. Rather, we tend to ask: How is civility *deployed* within the civil sphere as an agent of determination for what is and is not allowed to be said in that sphere? What are the outcomes of that agency, and what should our response to those outcomes be? Part of the point we make here is that mere technical fascination with structural problems is deadly to real speech, and must never be the focus of discursive inquiry. As G. Thomas Goodnight has keenly observed, "[D]ifferences among discursive groundings turn upon why discourses are comported to fit with or overturn normative assumptions which prescribe what counts as fitting, true, or proper communicative reasoning *in the social world where interlocutors argue and audiences assemble*" (1989: 62, emphasis added). The purpose of establishing a civil sphere must not be lost amid the details of its construction. The purpose is to emancipate and hear speaking persons who would give uncensored voice to their concerns in an open public forum, with the promise of response and the expectation of action. We wish to learn what role "civility" properly or improperly plays thereto.

4. Civil Sphere Civility: Two Forms of Argumentation

One strategy for ensuring or preserving civility valorizes its sheer on-goingness. Ronald C. Arnett (2001) posits "dialogic civility" as an engaged discursive praxis

that serves mainly to keep dialogic partners talking. Offering “no system or technique,” Arnett’s unique version of civility “rather reminds communicative partners to keep the conversation going in the public domain” (320). The problems with this approach are several; we address two in detail.

The most crippling weakness of Arnett’s civility, as we see it, is its inescapably *ex post facto*, and therefore almost wholly politically inconsequential, approach to (not) solving real problems in real time. Arnett declares that “only in retrospect” can a person “understand whether the horizon of the historical moment” has been “met appropriately” (324). The problem with this approach, though it is one favored by cultural historians and especially by dialogue theorists, is that persons do not engage in public talk in hopes of only later, and even then only obliquely, coming to some kind of understanding about *how* to solve the problems that led them to deliberate publicly in the first place. Quite the opposite: they turn to public argument because they seek to fix what ails them, and what ails them is the unavailability of clean drinking water; the need for affordable housing; or the withholding of their basic civil liberties. What ails them is surely not “the horizon of a historical moment” or any other abstraction. We do not deny that the notion of “horizons” may itself be useful in conceptualizing dialogic civility, but that effort cannot be the end of the conversation, for at that point the real conversation has not even begun.

A related problem of Arnett’s framework is its lack of ambition. By “lack of ambition,” we mean specifically that Arnett operates from a minimalist dialogic ethos incompatible with what we would term the discursive physicality necessary to permit full, vigorous expression of oppositional or counterpublical views in a healthy public context. An oppositional discourse that shoots (as so many do) for the moon, e.g., an environmental standpoint politics, or an unapologetically biblical neoconservatism, simply cannot afford to be hamstrung by a dialogic framework which privileges timidity and (at best) incremental change to the degree that Arnett’s does. The overriding determinant of a civil sphere’s discursive merit must *not* be the kowtowing etiquette of the speakers involved. When *what* is said is significantly less important than *how* it is said, deliberation is already dead in the water.

Another concern: Following Freire, Arnett proposes a “face saving” model of dialogue that “supports the communicative background of the metaphor of dialogic civility” in a manner that protects “oppressed people” who, lacking face

saving devices, “might reject learning and be unable to impact the public arena” (326). The range of possible objections to this formulation is vast, but we begin, in the form of a question, with its major shortcoming. How will “support[ing]” a “metaphor” help an unwed working mother in pursuit of health benefits for her ill child? How will acknowledging “the communicative background” of that “metaphor” serve the concrete interests of Christian or Catholic parents who seek transferable school vouchers for their children’s parochial education? Arnett’s model never touches down in the world of real speech. In emphasizing dialogism over dialogue, Arnett’s “dialogic civility” works best among persons who have nothing to lose or nothing to gain, i.e., theoretical persons, not real ones. If it is true, and we believe it is, that a model for deliberation that lacks “sufficient power to disrupt [normative] socialization” (Goodnight 1989: 66) will inevitably also lack the power to represent the discursive interests of any person not already ‘properly’ socialized, then Arnett’s model cannot practically help anyone. It secures civil speech in an empty room.

A different model of public civility is offered by Rochelle Gurstein (1996) in *The Repeal of Reticence*. Gurstein’s thesis, influenced by the respective work of Christopher Lasch and Richard Sennett, advances an appeal for civic reticence in a public world that has lost whatever communal agreement on matters of taste it once had. Hopeful of rescuing privacy as a viable aesthetic category from the invasive leer of the mediated mass public, Gurstein justifies public reticence by arguing that public “intimacy. . . has been stripped of the privacy it needs in order to flourish” (7). Reticence, in Gurstein’s view, protects what is private, and the flourishing of the private self in turn ensures the requisite psychic energies to maintain a civil public demeanor in our aesthetically disintegrating public realm.

Gurstein’s argument is compelling, and there is much to be learned from her work. Her book is one of the few to take seriously (and in some respects, to advance) Sennett’s underappreciated argument about the civic usefulness of certain kinds of impersonality among public actors in the public sphere. However, we worry about the specific repercussions for public deliberation in Gurstein’s model. Her relative silence on that subject, in light of the inherently public nature of her concerns about reticence in the public world, is disturbing. She addresses, in turn, the historical origins of “privacy” and its long 20th century decline; the legal debate over the “right” to privacy; obscenity; mass culture; and lastly, what she terms “the stalled debate” about the modern public sphere. Revealingly,

however, the chapter on the public sphere is the least convincing and least developed in the book. Gurstein undertakes a long summary of critics of (and in) the public sphere from the 1940s to the 1960s (Edward Shils, Leslie Fieldler, Ernest van den Haag), and follows with a series of arguments about the aestheticization of kitsch and pornography's status as the "last vanguard" of the elimination of bodily privacy. The reader is nicely primed for a conceptual and practical move that will resolve the tensions among public, private, and social components of the self as articulated in these discussions.

Unfortunately, the book abruptly ends after a brief, recapitulative conclusion. To our knowledge, at no point are Gurstein's broader claims about the *public* efficacy of civic reticence in fact tested against real public discourse. She is careful in writing about obscenity, pornography, and privacy to avoid exploring any of them in the context of actual public speech. Though motivated by a felt need to restore a sustainable personal privacy to the sphere of civil society, so as to allow for vigorous deliberation among private citizens speaking publicly, Gurstein's treatment of civil society itself in the context of civility is limited to a one-line quotation of the political philosopher Harry M. Clor, who observed that "Civil society has an interest in the maintenance of, at least, that level of moral sensibility that is implied in the term 'decency'" (302). Well, fine. And?

The problem here is multi-faceted, but may fairly be expressed as follows: Gurstein's argument for civil reticence or public civility is premised on the ostensible death of a widespread recognition and (cultural) enforcement of aesthetic norms. But her secondary argument for civility's usefulness as a privacy safeguard in public deliberation is rooted in the unstated belief that "civility" will be recognized by a community's many participants as a cultural/aesthetic good. Herein lies a paradox that Gurstein's thesis cannot and does not overcome. Limitations of time and space prevent us from disabusing our reader of the popular but groundless myth, deeply cherished by rhetorical and argumentation theorists, that "civility" is universally embraced as a discursive treasure. Suffice it to say that a wealth of finely researched and highly localized rhetorical/textual studies have generated enormous evidence to the contrary. Counterpublical discourses in particular have been shown to thrive on the generation of forms of dissent that directly *violate* norms of civil speech (McDorman 2001). Gurstein would have us impute from her (partial) argumentation that civility is good because it is good, and that it works because it is civility, and is therefore good. We would ask for more than this from an otherwise rigorously argued monograph.

“Civility” may prove useful for the recuperation of a civil public sphere, but Gurstein has not shown us how that will come to pass.

5. *Civility as Gatekeeper?*

In an important thesis that conceives communication as, more often than not, an exercise in failure, John Durham Peters (1999) wryly notes that “[The idea of] communication as a bridge always means an abyss is somewhere near” (16). Peters’s remark presages a broader set of claims about the reluctance of communication theorists and speakers in general to acknowledge the role of failure in public deliberation. Peters argues that spoken discourse, electronic dissemination, and even powerfully symbolic religious discourses allow, at heart, ample room for rejection, confusion, or a simple lack of connection. To expect that communication will be total, much less totally successful, is grossly unrealistic, and is belied by several millenia of recorded misunderstandings.

At the beginning of this essay, we took pains to limn the argument that concern for speech itself is, and must be, imperative in public deliberation contexts. Doxtader (2001) and McKerrow (2001) separately but similarly call for unrelenting attentiveness to what happens to the real speech of real speakers, irrespective of whether the various frameworks offered up by theorists can find ways of tidily accounting for who says what and to what effect. To fulfill this call is to orient oneself toward a conceptualization of mainstream *and* oppositional/counterpublical discourses that allows for a reading of the discourses themselves on the grounds of their individual articulation, and with an eye, or an ear, for their *substance* first and foremost. Sometimes this orientation may lead us to see that the failure of a discursive category, such as civility, in fact represents, momentarily and strategically, a *success* of the very best kind: and norms be damned. As McKerrow contends,

[w]hat is present in this description is a recognition of the centrality of discourse in constructing the symbolic codes. What is equally absent is any recognition of who is defining what it means to be either calm or excitable, active or passive, rational or irrational. Such a sense of civil society is meaningless in that it merely serves to perpetuate the dominance of those already in positions of power. It is one thing to play nice with the cultural other; it is quite another to accept that person as an equal—an inescapable condition of being civil in the first place (3).

Playing nice with the “cultural other” must involve more than a procedural and patronizing willingness to “hear the other side out.” If we have shown in principle

that civility is not the theoretical grail it has been made out to be, we hope also to have shown that neither is it a particularly successful gatekeeper. Gatekeeping requires at a minimum a binary reflexivity that “civility,” as understood in a number of the contemporary theoretical contexts we have discussed herein, just does not possess. “Civility” in at least one critical respect is not a filtering device; it is a blocking device, a static wall designed and deployed in the service of keeping out that which those who control local or global access to discourse(s) do not wish to have uttered. In this way, “civility,” as widely conceived in contemporary argumentative and rhetorical conceptualizations, is not an agent for fruitful civic discourse, and should be eliminated from those frameworks seeking to advance it as precisely that.

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