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Democratic Norms and the Ethics of Resistance

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Keywords

activism, resistance, disobedience, dissent, democratic norms, democratic systems

Abstract

Most democratic theories recognize that democracy requires widespread adherence to both formal and informal norms that constrain the use of power and structure relationships among citizens. Most also recognize that a healthy democracy requires some forms of activism or resistance that transgress those norms to disrupt hierarchies, challenge injustices, and drive discursive innovation. Recent systemic theories of democracy show that democratic theory can incorporate these two realities without contradiction, but it is not clear whether an ethic of citizenship can do the same. This article reviews recent literature on the purposes and ethics of transgressive politics while also drawing attention to neglected questions about the functions of democratic norms and how they are maintained amid transgressions. These are questions that must be addressed by an ethic of citizenship that can navigate the tension between the authority of democratic norms and the constructive potential of transgressive politics.

INTRODUCTION

Recently, there has been a surge of interest among political theorists and philosophers in transgressive politics. This includes new theories not only of civil disobedience (Brownlee 2012, Celikates 2016) but also of uncivil disobedience (Aitchison 2018, Delmas 2021) and uncivil obedience (Bulman-Pozen & Pozen 2015), as well as disruption (Hayward 2020), resistance (Delmas 2020), refusal (Betasamosake Simpson 2017, Honig 2021), impure dissent (Shelby 2016), direct action (Smith 2018), and rioting (Pasternak 2018). These labels, of course, capture a range of activities with differing purposes, but all of them involve transgressing formal or informal norms. In fact, transgression is the point of many of these activities.

This article reviews political theory and philosophy on what I call constructive transgressions in modern democracies. I use "transgressions" here to mean activities that violate an identifiable norm or that subvert the authority of a normative order, such as the rule of law or a code of etiquette. In constructive transgressions, the transgression itself serves a valuable purpose,[1] often related to the function of the target norms. This review focuses on activities that transgress democratic norms for broadly democratic purposes. By this definition, transgressive activities do not have to be all-things-considered justified to count as constructive, but they must serve purposes that could plausibly form the basis of a justification.

A baseline assumption of my remarks (not shared by all the scholars discussed here) is that existing norms ordinarily carry weight in an ethic of democratic citizenship. These include formal legal and procedural norms as well as informal social norms governing how citizens interact with one another and with the community's symbols and institutions. Such norms translate abstract and contested democratic values—like equality and reciprocity—into useable ethical guidance (Chapman 2020). They also enable citizens to coordinate in sanctioning antidemocratic behavior. Because of the role of norms in coordinating behavior amid uncertainty and disagreement, we have reasons for complying with a democratic norm even when we believe it ought not exist. Transgressing democratic norms, therefore, typically requires justification and often raises difficult ethical questions.

Attention to the role of norms in maintaining democracy has been heightened in recent years in response to democratic backsliding around the world (e.g., Clayton et al. 2021, Levitsky & Ziblatt 2018). At the same time, though, waves of protests arising from social movements such as Black Lives Matter and alterglobalization have drawn scholars' attention to the role of transgressive politics in modern democracies, resulting in a vibrant literature on the purposes of resistance and social movement activism.

Democratic theories that characterize democracy as a system composed of many disparate practices have shown that the needs for both norm adherence and transgressive politics can be reconciled within a coherent democratic theory (e.g., Warren 2017). However, as I argue below, much work remains to develop a psychologically plausible ethic of citizenship that can navigate the tensions between the authority of democratic norms and the constructive potential of transgressive politics.

This review analyzes the literature on constructive transgression with an eye toward developing such an ethic. A few themes emerge. First, many accounts of the permissibility of transgressing democratic norms turn on judgments about the relative power or status of the individuals or groups involved. Such judgments, though, are predictably biased and almost always controversial.

[1] This is in contrast to activities that serve a valuable purpose while incidentally violating a norm, e.g., exceeding the speed limit while rushing to the hospital.

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Accounts that call for these judgments about relative power or status must therefore also give more attention to the process of judgment formation.

Second, theorizing the ethics of transgressive politics requires considering not only the content of specific norms, but also the general functions of settled norms in a democracy: de-escalating conflict and coordinating action despite disagreement about justice. Ultimately, as I argue in the conclusion, this means returning to considerations of legitimacy and stability that have largely dropped out of recent work on transgressive politics.

Some of the work that I discuss is explicitly anarchist or revolutionary. As noted above, some of the authors I cite here reject the authority of existing democratic norms, and some may deny the dilemmas that I suggest their theories present, especially regarding risks to democratic stability. I have included their work, though, because I believe it contains insights into the purposes and ethics of transgressive politics that remain relevant for normative theories that are more reformist than revolutionary.

In addition to these general considerations, I contend that any account of the ethics of transgression must pay attention to the specific structure and function of different types of democratic norms. This article is organized to highlight what can be gained by separately examining constructive transgressions of different types of democratic norms.

I begin in the next section with a brief discussion of the most extensively theorized variety of constructive transgression: civil disobedience. Many excellent discussions of the civil disobedience literature already exist (e.g., Aitchison 2018, Çidam et al. 2020, Delmas & Brownlee 2021, Moraro 2019, Scheuerman 2021b). The aim of this section, therefore, is not to exhaustively review that literature, but rather to highlight the possibilities and limitations of extending arguments about disobeying the law to other types of transgressions.

The third section provides an overview of general theories of constructive transgression. Then the following three sections examine in greater depth three categories of informal democratic norms: deliberative norms, civility norms, and solidarity norms. Each of these types of norms has distinctive functions that inform theories about when and how they can be transgressed. These categories of democratic norms are neither exhaustive nor mutually exclusive, but discussing each separately and in turn illustrates how the distinct structure and function of each type of norm may give rise to different considerations in an ethic of transgression.

LESSONS FROM THE CIVIL DISOBEDIENCE DEBATES

The most widely recognized form of democratic constructive transgression is civil disobedience. Civil disobedience is transgressive (it involves violating a legal norm), but the purpose of the transgression is constructive; it aims to strengthen the same democratic values that the rule of law is supposed to serve.

A common theme within recent work on transgressive politics, though, is that the prominence of civil disobedience—or at least the "mainstream paradigm" of civil disobedience—in both popular and academic discourse has limited our understanding of the purposes of transgression, its relationship to democracy, and the ethical questions it raises (e.g., Celikates 2016, Delmas 2020, Pineda 2021b).

The mainstream paradigm of civil disobedience is an amalgam of academic theory and tropes of public discourse, so it cannot be attributed to a single theorist, though it is most often linked to Rawls's (1999, pp. 319–43) account in *A Theory of Justice*. This paradigm is typically described as having three components: the purpose of disobedience, the form it takes, and its place within the practice of citizenship. On the mainstream view, the purpose of the disobedience is to persuade fellow citizens to change some unjust law or laws; the form of the disobedience is constrained

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in ways that demonstrate respect for the rule of law and the prevailing normative order; and the disobedience represents a last-resort response to rare instances of severe injustice in an otherwise legitimate regime.

Critics have challenged all three components of the mainstream paradigm of civil disobedience. For some, though, the underlying problem with this civil disobedience paradigm is that it is based on a political theory that takes for granted the overall legitimacy of the political regime and the value of political stability. It also overestimates the threat that transgressive politics poses to political stability. Critics of the mainstream paradigm argue that this political theory has traction because it is entangled with a popular—but distorted—narrative of the American Civil Rights Movement, which understates how radical the movement's challenge to the prevailing order was and how disruptive its protests were (Pineda 2021a). Because the mainstream paradigm of civil disobedience has been so dominant in American political culture since the second half of the twentieth century, its critics argue that it functions as a "counter-resistance ideology" (Delmas 2020, p. 29; see also Pineda 2021a, pp. 17–18).

Recent theories of transgressive politics have de-emphasized concerns about political legitimacy and stability as a corrective to the dominant civil disobedience paradigm. Instead, they have focused on highlighting the constructive purposes of disruptive transgressions. This shift has yielded important insights, which I discuss in the next section, but there is a risk of overcorrection. Here I want to highlight two problems that were of central concern in early debates over civil disobedience, which merit renewed attention within theories of constructive transgressions, especially those that extend to transgressions of informal democratic norms, such as norms of civility.

The first is the problem of disagreement. Most liberal democratic theories maintain that citizens have reasons to comply with some laws that we think are unnecessary or unjust. This is because legal norms are justified in part by their ability to coordinate behavior and expectations even in contexts of disagreement. Theorizing the role of constructive transgression in an ethic of citizenship requires considering the conditions under which norms we disagree with may still have legitimate authority over us. This is especially true when it comes to transgressions of informal democratic norms. Just like laws, informal democratic norms often function as coordinating conventions that enable communication and collective action despite disagreement. Yet, while much has been said about the conditions under which legal norms acquire legitimate authority, the same is not true for informal norms. Theories of constructive transgression that extend beyond disobedience need to return to the question of when existing norms have legitimate authority owing to their ability to enable communal life amid disagreement.

The second problem is about how democratic norms are maintained. Early theorists of civil disobedience characterized it as a highly constrained activity and as a last resort because they were concerned that disobedience deployed too loosely might result in a breakdown of law and order. They were concerned not only about the lawlessness of the disobedients themselves, but also about a potential contagion effect—that the practice of civil disobedience might weaken respect for legal norms more generally. Critics of the mainstream paradigm have challenged this reasoning, arguing that it overstates the fragility of the rule of law and misidentifies the most serious threats to it (Delmas 2020, pp. 53–56; Medina 2020).

But the concern that frequent transgressions—however constructive their aim—can cause a general erosion of democratic norms may be more apt when it comes to informal democratic norms. The law's formality, I suspect, makes it more robust than other normative structures. Because legal norms are formally promulgated, adjudicated, and enforced, observing violations of legal norms does not usually affect our knowledge of what the law is. Our knowledge of informal social norms, by contrast, depends on observing others' behavior. Observing frequent violations

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of informal civility norms may decrease my confidence that the norms remain in force, making me less willing to adhere to and enforce them. If this is correct, then theorizing the ethics of constructive transgression requires more attention to the effect of such transgressions on the stability of norms than is apparent when we focus on legal norms alone.

GENERAL THEORIES OF CONSTRUCTIVE TRANSGRESSION

In the second half of this article, I examine three categories of informal norms to show how attention to the structure and function of different types of norms informs the ethics of transgressing those norms. First, though, in this section, I discuss theories of constructive transgression in broader terms. Here I introduce arguments and ideas that will appear in subsequent sections. This section also discusses general theories of activities that may transgress many types of norms (e.g., theories of resistance, disruption, or protest). I first review the variety of potentially constructive purposes that scholars have argued transgressions can serve in a democracy. I then turn to accounts of the principles, virtues, or practices that guide activists in determining when and how to deploy transgressive politics. Finally, I discuss the idea of prefiguration, which blurs the distinction between the why and the how of constructive transgressions.

Constructive Purposes of Transgression

As I noted in the previous section, the mainstream paradigm of civil disobedience emphasizes persuasive purposes of transgression. Transgressions can facilitate persuasion by gaining public exposure for "challenger issues" (Woodly 2015, pp. 76–77; 153) or dramatizing a problem (McAdam 1996; Medina 2020, pp. 142–43). Transgressive protests can also hold officials accountable to popular opinion (Stokes 2020).

But transgressions also serve purposes that are not best seen as persuasive. Instead, they aim to use the costs imposed by disruptive transgressions to influence others' actions. One purpose of imposing such costs is to directly coerce private actors to change their behavior. Environmental activists, for example, may engage in eco-sabotage like "tree-spiking" to deter environmentally destructive activities by making them more costly (Lai & Lim 2023). Coercive cost-levying activities are usually seen as anathema to democracy—a form of "vigilantism" (Hussain 2012). But some theorists have argued they may have a role to play in democratic systems when they block "serious and urgent harm" or address procedural failures (Smith 2018, p. 24).

Activists also use the costs of disruptive transgressions to alter political relationships and create a more favorable balance of power. Activists can use the costs of disruption to pressure reluctant political actors to intervene (Medearis 2004), force issues onto the political agenda (Hayward 2020), and move conflicts to more favorable political arenas (Medearis 2004; see also Woodly 2015, pp. 144–51). They can also create forms of collective power for oppressed groups by demonstrating their ability to withdraw cooperation from schemes that benefit elites (Piven 2006, Zheng 2023).

A fourth purpose of transgression is to create mental crisis or tension. Young (2001, p. 687) contrasts this purpose with that of persuasion: The goal is "to make us wonder about what we are doing, to rupture a stream of thought, rather than to weave an argument." Theorists sometimes talk about this in terms of cost-levying: disruption can be a way of imposing costs on certain habits of thought such as motivated ignorance (Hayward 2020; Medina 2020, p. 143) or habituation to "sticky" frames (Humphrey & Stears 2006, p. 415). Transgressions that force audiences to reexamine their world serve democracy by countering elite power over political agendas (Hayward 2020) and by decreasing the advantage that familiar ideas have over new ones (Humphrey & Stears 2006).

Constructive transgressions can serve other valuable purposes even if they fail to directly change external laws or normative structures. These might be divided into "expressive" and

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"constitutive" purposes (Akbar 2020). Disobedience can be a way for protestors—especially members of oppressed groups—to express self-respect (Boxill 1976), anger (Hooker 2020), opposition (Delmas 2020, p. 50) or even disloyalty (Shelby 2016, p. 268) to the regime, and to challenge disempowering narratives (Moody-Adams 2022, pp. 202–10). Disobedient protests can also have valuable constitutive effects insofar as they (*a*) give participants skills, attitudes, and energy that contribute to effective political agency (Brison 2020) and (*b*) build collective power that might have intrinsic value for participants and also increase the chances of "lasting change over the long haul" (Akbar 2020, p. 69; see also Zheng 2023).

Ethical Guidance for Transgressive Politics

Many scholars who argue that transgressive politics can serve a range of constructive purposes in a democracy also explore the ethical frameworks that guide activists in determining when and how to transgress existing democratic norms. One approach identifies constraints that are drawn from extrapolitical standards of morality, such as principles of defensive harming (Pasternak 2018; Lai & Lim 2023, pp. 503–4). But many theorists emphasize distinctly political values in articulating an ethic of transgression.

Perhaps the most salient concern among democratic theorists is limiting undemocratic exercises of power. Most theorists of constructive transgression view it as a way of countervailing or correcting unjust imbalances of power, especially ones that have become encoded in normative structures. However, they also recognize that democratic norms play a role in constraining powerful actors and that transgressive politics can be a way of evading such constraints. Attentiveness to power dynamics is thus central to many theories of the ethics of transgression.

Some theorists assert that persons in positions of relative power or privilege ought to observe stricter constraints on their transgressive activities (Delmas 2020, p. 68; Hooker 2020, p. 61). On the other hand, the relatively powerful may have special duties to undertake transgressive protest (Ogunye 2015). Self-assessments of one's power and privilege are complicated at best and always subject to fallible judgment, though, and more work is needed to understand how would-be activists can form reliable judgments of this sort. Moreover, as Sabl (2021, p. 162) notes, if the point of transgressive politics is to *create* power among the oppressed, an ethic of transgression must recognize that this power, too, can be abused.

Many accounts stress procedural values and practices meant to check or discipline power. Scholars have held up, for example, the commitment to "horizontalism" within many contemporary movements, which requires "creating practices that continuously challenge inequalities—both structural and interpersonal" (Maeckelbergh 2011, p. 10; see also Sitrin 2006). Smith (2018, p. 25) argues that participants in coercive direct action must be constrained by "an ethic of responsibility to their community of opinion," which demands caution in deploying controversial tactics. Salkin (2022) argues that informal political representatives—which activists often are—have special duties by virtue of that role, which include, among other things, consulting widely and welcoming criticism. Other approaches emphasize the guidance of certain general virtues, such as political humility (Cabrera 2021, p. 317), or role-specific considerations (Gilson 2023, Sabl 2002).

Prefiguration

One important idea in theories of transgressive politics that merits separate treatment is prefiguration. As Maeckelbergh (2011, p. 4) defines it, prefigurative politics rejects the temporal distinction between activism in the present and the future goal it is oriented toward. Loosely put, prefiguration occurs when the aims of a movement are reflected in its means. Boggs (1977) is credited with coining the term, but the concept is often attributed to earlier movements and thinkers, especially Mohandas Gandhi (Törnberg 2021, p. 85).

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The idea of prefiguration informs thinking about both the purposes and limiting principles of transgressive politics. Prefiguration is sometimes characterized as antistrategic (Franks 2003) and primarily a constraint on activists' means (Delmas 2020, p. 61). But many theorists of prefigurative politics view it as strategic, ends-oriented activity that involves experimentally building alternative political practices and organizations, while also contesting dominant political arrangements (Coulthard 2014, Yates 2015). Stears (2010, p. 185) has called it "a politics of democratic transformation by example." The consensus decision-making processes of the OCCUPY movement and arrangements for sharing goods and services in protest camps are often cited as examples of prefigurative politics. Coulthard (2014) also applies the concept to the politics of Indigenous "resurgence."

Prefiguration may generate limits on the transgressive politics of social movements that are derived from the movement's own principles. At the same time, prefiguration is itself a kind of transgression (Törnberg 2021, p. 84). It involves adhering to a novel set of norms constructed as a contrast and competitor to the prevailing normative order. The transgression of prefigurative politics can serve many purposes, but two are invoked most frequently. First, prefiguration creates mental tension, unsettling participants' and observers' assumptions about what is possible (Raekstad 2017, pp. 366–67). Second, prefiguration serves constitutive purposes. Through prefigurative transgressions, movements of oppressed groups become self-determining as they adhere to self-chosen norms (Coulthard 2014; Mantena 2012, pp. 460–61; Taiwo 2020).

This section has introduced several accounts of the potential value of transgressive politics in a democracy and the ethical principles or frameworks that might guide those who engage in constructive transgressions. Incorporating transgressive politics within an ethic of citizenship, though, also requires attention to the structure and function of the norms being transgressed. The following three sections illustrate this point by discussing constructive transgressions of (respectively) deliberative norms, civility norms, and solidarity norms.

DELIBERATIVE NORMS

Deliberative norms are probably the most widely recognized and discussed type of informal democratic norms—at least among political theorists. Constructive transgressions of deliberative norms have likewise received a comparatively large amount of theoretical attention.

Deliberative norms govern the content, form, and reception of political speech. Examples of content norms include the public reason requirement, which holds that proposed laws or policies ought to be justified by reasons acceptable to all (reasonable) citizens (Quong 2022), and (less controversially) the prohibition on lying. Deliberative norms governing the form of political speech include, for example, norms specifying what tone of voice speakers should use and how long they should speak in a particular setting. Reception norms include those that encourage citizens and political actors to allow, listen to, or even invite opposing views. They also include norms that encourage deference to certain types of speakers.

Deliberative norms organize political discourse to make collective action possible. Democratic theorists have also argued that they contribute to normative and empirical legitimacy by ensuring that exercises of public power are appropriately justified (Medearis 2004), improving the epistemic quality of political decisions, and promoting "an inclusive political process on terms of equality" (Mansbridge et al. 2012, p. 11).

Of course, just as legal norms can fail to serve the values that purportedly justify the rule of law, deliberative norms can undermine the democratic values that deliberation is ideally supposed to serve. Young (2001) argues that deliberative norms are often formally and informally exclusive and hierarchical (see also Sanders 1997). Furthermore, adhering to deliberative norms makes it harder

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to contest the influence of agenda constraints and hegemonic discourses that ought not be taken for granted (Young 2001, pp. 682–88). Given these challenges, Young (2001, pp. 675–76) defends activism that transgresses all three types of deliberative norms. Activists may transgress content norms by relying on "emotional appeal" or "slogans, humor, and irony" instead of discursive argument. They may transgress norms governing the form of political speech by using disruptive and annoying tactics (p. 673). And they may transgress norms governing the reception of speech by declining to engage with those who disagree with them (p. 675).

Young is not alone in defending such deliberative transgressions. Moody-Adams (2022, pp. 68–69) argues that transgressing public reason norms may be necessary to imaginatively transform them. Several scholars—including Moody-Adams and Young—have defended the practice of giving testimony, which appears to violate norms that contributions to deliberation must be "moderate" or "illuminate what is common" (Sanders 1997, p. 370; see also Young 2002, p. 71; Moody-Adams 2022, pp. 58–62). Political theorists have also defended transgressions that aim at disruption and even coercion on the grounds that certain groups or ideas do not have adequate access to deliberative spaces (Pasternak 2018, p. 393) or are systematically disempowered (Humphrey & Stears 2006).

Young (2001) frames her arguments for transgressive activism as "challenges" to deliberative democracy. However, many theorists of deliberative democracy have resisted this framing. They argue that the performance of the democratic functions associated with deliberative norms is, in fact, the result of interactions among many different practices and institutions "each with its different deliberative strengths and weaknesses" (Mansbridge et al. 2012, p. 3). Thus, a political activity, such as disruptive activism, that does not conform to deliberative norms may "nevertheless make an important contribution to the overall deliberative system" (Mansbridge et al. 2012, p. 3; see also Dryzek 2012, pp. 11–13).

Democratic theorists have suggested several ways that activist transgressions of deliberative norms might improve deliberative systems. Many correct for instances where deliberative norms are not observed or where recognized deliberative norms do not serve democratic values. These remedial transgressions might, for example, redress unequal access to deliberative spaces (Cross 2021, p. 870) by interrupting, heckling, or ignoring those seen to have excessive influence (see also Fung 2005). But democratic theorists have also defended nonremedial transgressions (Cross 2021). Humphrey & Stears (2006) argue, for example, that even ideal deliberative contexts need disruptive activities to counteract the inevitable tendency for deliberation to disadvantage minority perspectives and novel ideas.

These systemic theories have shown that transgressive activism need not be viewed as antithetical to deliberative values. However, much work remains to develop these insights into an action-guiding ethic of citizenship. Such work must address three remaining problems.

The first problem concerns the status of coercive activism. Several scholars have argued that a healthy democratic system requires transgression that aims to coerce. Activists use disruption, crisis, and threats to political, social, and economic interests to "undermine the advantages that accrue to habitual patterns of thought and behavior" (Humphrey & Stears 2006, p. 407), to pressure reluctant actors into intervening, or to shift the political debate to a more favorable arena (Medearis 2004). But these tactics run counter to one of the core functions of deliberative norms: justifying exercises of power (Medearis 2004, p. 70). It is not clear whether or how democratic systems can reliably justify activist exercises of coercive power. Democratic theorists who discuss the place of coercive activist tactics within a deliberative ethic defend such tactics only when they are narrowly targeted and serve remedial purposes (Fung 2005, p. 408; Smith 2018, pp. 24–25). These accounts do not extend to tactics (e.g., many blockades, pickets, and occupations) that aim to coerce behavior changes or political action by imposing the costs of disruption on a broad public.

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The second problem concerns the psychological plausibility of an activist ethic that might be derived from systemic theories of deliberative democracy. One aspect of this problem concerns the cultivation of deliberative virtues or dispositions. Talisse (2005, p. 430) argues that defenses of activist transgression have neglected the core deliberative virtue of "epistemic modesty"—that is, the willingness to subject one's beliefs to scrutiny and potentially revise them. Deliberative norms that require listening to and engaging with opponents reflect and reinforce this virtue. Talisse argues that activist transgressions of these norms, such as shouting down or heckling one's opponents, are incompatible with the virtue of epistemic modesty (pp. 427–38). Talisse also worries that transgressive activist tactics invite participants to adopt an adversarial view of politics, which has typically been regarded as antithetical to a deliberative disposition (pp. 429, 437). An ethic that incorporates the insights of deliberative systems theory must consider how participating in transgressive activities affects ethical dispositions over time.

On the other hand, Cross (2021, pp. 876–78) has argued that considering their effect on the deliberative system at every turn may make it hard for activists to cultivate the attitudes and emotions needed to motivate difficult and costly political action. Counterintuitively, Cross argues, if we think that transgressive activism is essential to deliberative systems, then it may turn out that deliberative functions are better served if activists generally ignore deliberative norms.

One way that systemic theories might address these two problems is by appealing to the idea that different practices, contexts, or roles are governed by different norms and political logics (Sabl 2002, Walzer 1999, Warren 2017). If this is so, then an ethic for democratic systems may be more compartmentalized—deliberation and transgressive activism might simply be viewed as separate practices with separate ethics. This solution can only go so far, though. Transgressive activist tactics tend to simultaneously reflect multiple political logics, and to simultaneously serve discursive and coercive purposes that cannot be easily disentangled (Medearis 2004, p. 65; Pineda 2021a, pp. 129–57).

The third problem for developing an ethic of citizenship from deliberative systems theory concerns the coordinating function of deliberative norms. Debates over activist transgression of deliberative norms tend to focus on whether norms that would characterize an ideal deliberative environment—such as the norm of hearing out the opposing side—must still be followed in contexts of injustice. But many existing deliberative norms are either mere conventions or flawed in some way; they might not exist in an ideal deliberative environment. Yet they still contribute to one or more of deliberation's functions in existing communities because of how they coordinate behavior and expectations to facilitate meaningful communication.

For example, one function of deliberative norms is to facilitate public justifications that confer both normative and empirical legitimacy on governments and their policies. For deliberative justification to confer empirical legitimacy, justifications must be recognizable to audiences as justifications, and the audiences must be disposed to receive them as such. The absence of generally recognized norms governing the content and form of justifications, or the failure of speakers to conform to them, can undermine efforts to confer empirical legitimacy on a policy. The example of COVID-19 policy justifications in the United States is instructive here. One reason (among many) that COVID-19 guidelines and policy responses failed to achieve widespread empirical legitimacy is that the justifications for these policies did not conform to public expectations about what science-based justifications look like. Much commentary on this episode has centered on how these public expectations were misguided and on questions about what sorts of norms should govern appeals to science in policy justifications. But the question of what those norms should be is separate from the question of what the norms are. The success of attempts to confer empirical legitimacy on a policy hangs more on the latter.

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Deliberation's epistemic function also requires that political speech be intelligible to its audience and organized to allow audiences to hear and process a variety of views. Where the deliberative community is very large, this kind of intelligibility and organization is unlikely to occur without coordination on some norms governing the form and content of political speech as well as complementary norms governing its reception.

The authority of arbitrary, flawed, or unjust norms has, of course, received ample attention in the literature on disobedience, but, as noted above, the law's formality limits the portability of theories developed with an eye to legal norms. As I show in the next section, though, similar questions also arise in relation to informal civility norms. Because theorists of civility have given so much attention to conventions and their ability to facilitate communication, that literature is likely to contain important resources for understanding the authority of deliberative norms that serve coordination functions.

CIVILITY NORMS

Civility norms govern conduct that communicates respect. The language of civility is sometimes used to refer generally to political activity that demonstrates respect for the political system (hence "civil disobedience"). However, scholars have identified a special category of civility norms—sometimes called "etiquette" (Sadovsky 2023) or "decorum" (Delmas 2020, p. 43)—with a characteristic structure and function that merit separate discussion.

Civility norms are conventions of appearance, speech, and behavior associated with socially desired attitudes. The main function of civility norms is to communicate respect. This can include respect toward oneself (Zerilli 2014, p. 114), toward other persons (Calhoun 2000, p. 255; Olberding 2019; Taiwo 2020), or toward groups (Sadovsky 2023). Communicating respect is, of course, not a uniquely democratic function, but respect is widely regarded as a key attitude defining relationships among citizens in healthy democracies (Gutmann & Thompson 1996, p. 79; Sadovsky 2023). Consequently, civility norms that enable citizens to communicate respect for one another are recognized as democratic norms.

Conventionality is the most distinctive feature of civility norms. Many civility norms, like those that govern what to wear to a funeral or when to make eye contact, dictate conduct that has no inherent connection to respect, and in fact, vary from one society to the next. Adhering to such norms conveys respect just because people think it does. Because the meaning they convey is a matter of convention, civility norms are often analogized to language (Calhoun 2000, p. 260; Sadovsky 2023, p. 930; Taiwo 2020, p. 1078). Scholars have argued that we have reason to conform to civility norms even when they seem silly, arbitrary, or misguided because we have reason to communicate respect for ourselves and others in a way that can be understood (Calhoun 2000, p. 255; Sadovsky 2023; Taiwo 2020).

Of course, like other types of norms, civility norms can go wrong. They may fail to serve the interests of the persons to whom they are meant to show respect, or they may impose more burdens than necessary (Sadovsky 2023, p. 936). More seriously, civility norms may encode status hierarchies by requiring displays of respect only for some people (Taiwo 2020) or by conveying the wrong kind of respect—as with gendered chivalry norms (Calhoun 2000, pp. 262–63).

Because of the evident arbitrariness of civility conventions and the way civility is often invoked by opponents to discredit activism, it is common for activists and sympathetic scholars to reject the authority of civility norms altogether (e.g., Harcourt 2012, Zerilli 2014). Others defend the category of civility norms while theorizing constructive transgressions.

Theorists of civility norms have identified two factors that determine when it may be appropriate to transgress them. The first is the weightiness of the reasons we have for communicating respect for the person or group targeted by the norm. Some civility norms demand displays of

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respect for "unrightful" status claims (Sadovsky 2023, p. 936) or displays of disrespect for those of lower status (Taiwo 2020, p. 1081). These can be safely ignored. At the other extreme, we may have especially weighty reasons to adhere to civility norms—like avoiding racial slurs—that communicate respect for marginalized groups. Conforming to these norms can be a way of countering hierarchy and providing "assurance" to groups whose claims to equal status are insecure (Sadovsky 2023, p. 931).

The second factor determining the appropriateness of transgressing civility norms is the fit between behavior dictated by a norm and the message we have reason to communicate. Even when we have reasons to communicate respect for the person(s) that a norm targets, we may also have weighty countervailing reasons to transgress the norm if it is overly burdensome or does not serve the interests of the target individual or group (Calhoun 2000, Sadovsky 2023).

Transgressions of hierarchical or otherwise flawed civility norms can be a kind of prefigurative politics. Pineda (2021b, p. 70), for example, describes Martin Luther King Jr.'s emphasis on dignified comportment in civil rights protests as a "disobedient civility" that subverted conventions of subordination to which southerners had become habituated. Taiwo (2020, p. 1074) describes prefigurative transgressions of hierarchical civility norms as an empowering form of "self-determination." Sadovsky (2023, p. 937) argues that one might engage in "proleptic enforcement" of better civility norms in the hope that they will gain traction.

Constructive transgressions of civility norms need not be prefigurative, though. Protests that deploy obscene or profane imagery (Delmas 2020, p. 64) or that take political messaging to spaces that civility deems out of bounds (Hayward 2020; Medina 2020, p. 128) can be used to create mental tension or levy costs on complacency. Shocking transgressions of civility norms can also work by drawing attention to systematic violations of civility. Delmas (2020, pp. 184–85) offers the example of the "dirty protest" in which imprisoned members of the Irish Republican Army violated standards of cleanliness and sanitation that normally convey self-respect to dramatize the indignity of their treatment at the hands of the British government.

Among defenders of civility norms, there seems to be surprising consensus about the structure and functions of these norms and considerations relevant to constructive transgressions of them. But a few questions remain underexplored.

The first question concerns the reasons for communicating respect—especially in political relationships with strangers. Sadovsky (2023) and Taiwo (2020) plausibly argue that we have the weightiest reasons to communicate respect where rightful claims to equal status are insecure. But what makes such claims insecure? Both Sadovsky and Taiwo focus on threats to equal status imposed by hierarchy and marginalization. But people may also (reasonably) feel insecure in their status claims just because political status competition is intense and seen as zero sum—as in situations of high affective polarization. In these situations, our reasons for communicating respect are more about de-escalating hostilities and maintaining political stability than about countering hierarchy. How weighty are such reasons and how should they inform the ethics of transgressing civility norms in a democracy?

The second question that requires further exploration concerns the role of context. It seems likely that the weightiness of our reasons for communicating respect for a particular person or group varies depending on context, because their claims to equal status are more secure in some contexts than in others. Boys and young men, for example, plausibly face threats to their equal status claims in American high schools, where they are more likely than girls to be punished, less likely to see themselves represented in positions of authority, and generally experience worse educational outcomes. Their relative status is, of course, reversed in many high-status professions and in government. Determining the appropriateness of transgressing civility norms, then, seems to require context-specific judgments.

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The possibility of what media studies scholars call "context collapse"—when a communicative act reaches an audience for which it was not intended—further complicates these judgments. In the age of social media, context collapse is a significant risk because reports or videos of transgressive activities are easily spread to multiple audiences at once. Moreover, novelty bias likely means that transgressions of civility norms are more likely to be remarked on than norm-conforming behavior. Consequently, they will have an outsized influence on perceptions of typical behavior among people we lack direct contact with. Because philosophical explorations of civility norms have tended to focus on face-to-face interactions, the significance of how technologies mediate communication has not received much attention in this literature. Theorizing civility transgressions as an activist tactic, though, requires greater attention to the mode of communication and its effect on various audiences across different political contexts.

SOLIDARITY NORMS

Solidarity is a contested concept within moral and political philosophy. However, numerous scholars have connected political solidarity with a group's capacity for collective action (Hooker 2009, Kolers 2012, Scholz 2008, Zheng 2023). Civic solidarity—solidarity among citizens of a democratic state—is a kind of political solidarity heavily mediated by institutions as well as social norms (Hooker 2009, p. 23; see also Scholz 2008, pp. 27–33). Civic solidarity may also be distinguished from other instances of political solidarity by its association with the state apparatus, the goal of its collective action (self-government), and the nature of its membership. Civic solidarity norms specify who is included in the political community and on what terms. Solidarity norms also govern behavior and practices that motivate members to sacrifice on behalf of the community, such as conventions for displaying respect toward community symbols.

Solidarity norms are always contested. For some, this contestation is the very essence of politics (DuFord 2022). It is certainly at the heart of social movement politics. It therefore might seem odd to discuss this kind of politics in terms of transgression. Even so, it is useful to do so. Many violations and contestations of solidarity norms are understood as transgressive by activists who undertake them (see, e.g., Dhillon 2019, p. 349), and their transgressive nature is often vital to their purposes. This section discusses two kinds of solidarity transgressions: vandalism or destruction of public monuments and the assertion of alternative solidarities.

Vandalizing Public Monuments

Moody-Adams (2022) has argued, following Anderson (2006), that public monuments play an important role in creating a community's shared sense of self and especially in motivating sacrifice on behalf of the community. Monuments, such as war memorials and statues of prominent citizens, communicate the kinds of actions that are honored in the community, and promise members that they, too, will be honored for like actions (Moody-Adams 2022, pp. 119–22). Of course, monuments can also degrade and alienate (Lai 2020, Schulz 2019), offend (Demetriou & Wingo 2018), and threaten (Lim 2020) community members by honoring actions that presume the inferiority of certain groups (Lai 2020, p. 604) or that disregard their interests (Lim 2020). Norms that dictate respectful treatment of public monuments, then, serve the functions of solidarity norms: They help to define membership in the community and attach meaning to it, and they motivate (certain kinds of) action on behalf of the community. But they do not always help to constitute and maintain a *democratic* community.

For these reasons, scholars have argued communities ought to contextualize or remove (Schulz 2019) many objectionable monuments. But when the public or authorities fail to properly address tainted commemorations, citizens may be permitted—or even obligated—to vandalize them.

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Lai (2020, pp. 607–8) argues that such transgressions challenge the authority of exclusive solidarity norms while prefiguring better ones. Lim (2020) argues further that defacing monuments should not be seen only as a last resort. Lim articulates reasons to remove tainted monuments and other reasons to maintain them in places that prompt regular reflections on the history that produced them. According to Lim, defacing monuments while leaving them in place offers the best response to both sets of reasons. Lim (2020, p. 208) argues further that the transgressive nature of vandalism itself serves a purpose, for "in expressing their views in a way that violates laws or norms, activists can also convey their rejection of the authorities and processes leading up to the establishment of the tainted commemoration."

Of course, political theorists and philosophers debate the best approach to dealing with tainted commemorations. Many of these debates center on questions of how to best prompt the necessary "moral work" required to build a more democratic solidarity (Moody-Adams 2022, pp. 146–52). But Demetriou & Wingo (2018, p. 341) have argued that considerations of "civic sustainability" should be given more weight in these debates. Civic cohesion requires allowing various groups within society not just to remember, but also to honor, their ancestors and "culture heroes" even if the community cannot endorse what they stood for (Demetriou & Wingo 2018, p. 351). Demetriou and Wingo notice (though they do not express it this way) that norms regarding the treatment of monuments also function as civility norms. By convention, maintaining a monument may be a way to convey respect for the groups associated with it. Even if we think this convention is regrettable, we still have at least some reason for conforming to it, so long as we have reason for conveying respect for the group(s) in question. Those reasons may be especially strong if we are worried about "steadying an increasingly fragile democracy" (Demetriou & Wingo 2018, p. 351).

Asserting Alternative Solidarities

Social movements create new forms of solidarity. These assertions of alternative solidarities can be transgressive in a few ways. The assertion of alternative solidarities can be accompanied by a rejection of civic solidarity or denial of the authority of civic solidarity norms. Even when alternative solidarities are viewed as compatible with civic solidarity, though, the practices and obligations of movement solidarities will at times conflict with those of civic solidarity. Finally, the point of many movement solidarities is to transform civic solidarity, especially regarding who is included and on what terms. Movement solidarities that cross state borders, for example, often prefigure an alternative vision of civic solidarity.

In response to criticism that confrontational or transgressive politics erodes the bonds of civic friendship, defenders of transgressive politics often argue that protests, riots, and incivility instead reveal that such bonds do not really exist (Delmas 2020, p. 67; Medina 2020, pp. 130–32). Transgressive politics can be a way of turning away from the illusory ties of civic solidarity—a form of "symbolic exit" (Shelby 2016, p. 269)—and at the same time, a turning toward alternative solidaristic groups (Delmas 2020, p. 67; see also Stanley 2014). The assertion of an alternative solidarity, thus, sometimes underlines a radical denial of the civic solidarity associated with the state.

Often, though, scholars have argued that social movement solidarities should be understood as compatible with, or even part of civic solidarity. Theorists of solidarity have asserted that individuals "experience multiple and overlapping solidarities" (Hooker 2009, p. 31). The practice of being in solidarity requires navigating potential conflicts among the obligations generated by various solidarities, but some theorists argue this should not be seen as a threat to civic solidarity. To the contrary, conflicts within and among different political solidarity groups are vital to any form of democratic politics (DuFord 2022). Moreover, transgressing some solidarity norms and

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building alternative social movement solidarities are often necessary to align civic solidarity with democratic principles (Medina 2020, p. 129; Stanley 2014).

Even so, an ethic of democratic citizenship requires attention to the tension between civic solidarity and alternative political solidarities that arise in adversarial politics, and to some features that distinguish social movements from other conflictual solidarities (such as those of political parties).

On some accounts, political solidarity is oppositional by definition; members of a solidarity group stand together against or apart from some other (DuFord 2022, p. 2; Kolers 2012, p. 367; Scholz 2008, pp. 73, 101). Even those who reject this definition recognize that an ethic of solidarity must address its oppositional appearance (see especially Dean 1996). Theorists have argued that adversarial solidarities can be compatible with democracy so long as they are treated as contingent, nonexclusive, and open to criticism or challenge (Dean 1996, DuFord 2022, Scholz 2008). However, some scholars have noted that the oppositional character of political solidarity can be expected to generate practices and attitudes such as "distrust or suspicion" that can potentially weaken other solidarities, including civic solidarity (Kolers 2012, pp. 378–81; Scholz 2008, p. 101). Consequently, concerns about relationships with those outside the solidarity group must be central to an ethic of solidarity (Scholz 2008, pp. 74, 102).

These challenges are not unique to social movement solidarities. Indeed, the tensions between adversarial political solidarities and civic solidarity have, in recent years, given rise to a robust literature on the ethics of partisanship (Muirhead & Rosenblum 2020). However, approaches to reconciling adversarial partisanship and civic solidarity typically emphasize characteristics of political parties—such as their orientation toward electoral competition, or the comprehensiveness of their political projects—that do not apply to social movement solidarities. The extra-institutional character of social movements and the varied types of political projects that social movements pursue suggest that it will be harder to reconcile these alternative solidarities with civic solidarities within political ethics.

CONCLUSION

The four categories of democratic norms that this review has focused on—legal, deliberative, civility, and solidarity norms—do not exhaust the categories of democratic norms that constructive transgressions might target. Scholars have also theorized constructive transgressions of secrecy norms (Bok 1982, Boot 2019, Delmas 2015, Scheuerman 2021c), procedural norms (Smith 2018), and economic norms (Gourevitch 2018, Hussain 2012), for example. But the work reviewed here illustrates the range of constructive purposes that principled transgressions of democratic norms may serve. The discussion has also revealed some of the challenges facing efforts to theorize an ethic of democracy that takes seriously the value of both democratic norms and constructive transgressions of those norms.

Rather than listing these challenges again, in the remainder of this conclusion, I want to return to the argument for reinserting considerations of legitimacy and stability into theories of transgressive politics. In classic twentieth-century accounts of civil disobedience, these two concerns were paramount; the mainstream paradigm of civil disobedience represented an attempt to reconcile constructive transgressions with the stability of an imperfect, but still broadly legitimate, political regime. Many of the scholars I have discussed in this article abjure that project and explicitly reject or sidestep questions about a regime's legitimacy (e.g., Delmas 2020, pp. 9–10) and concerns about potential destabilizing effects of transgressive politics (e.g., Medina 2020). We should not take the legitimacy of existing regimes for granted nor presume that political stability is always desirable.

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Nevertheless, questions about legitimacy and stability are essential to theorizing the ethics of transgressive politics. Democratic norms—both formal and informal—perform the necessary function of coordinating action and facilitating communication in contexts of uncertainty and disagreement. Consequently, the weight we assign to these norms in deciding how to act, and even the way we might transgress them, depends in part on whether we take them to have arisen through legitimate processes and on whether we believe the democratic project they enable is also legitimate.

Concerns about stability, likewise, must factor into decisions about when to transgress democratic norms. Some degree of instability is certainly necessary for positive change, but some degree of stability is also necessary for consolidating and protecting that change. Political stability is, of course, also a precondition for many basic human goods. Incorporating concerns about stability does not imply a reactionary bias toward the status quo. Stears (2010, p. 215) argues that concerns about preserving the social fabric and the foundation for a future order have long been a part of the radical tradition in America. Any ethic for transgressive politics must include a clear-eyed account of which normative structures are worth preserving and how transgressions can be contained to avoid destabilizing them.

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