

# Democracy and Deference: Or, Why Democracy Needs People Who Know How to Shut Up and Listen

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## I. INTRODUCTION

The charge for this conference asked us to consider the future of liberal democracy given the challenges it presently faces. Two challenges in particular give me pause:

First, the issues that are most in need of governance are now happening at the transnational level. We face the possibility of an altered climate due

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to increased carbon emissions;<sup>1</sup> increased political turbulence due to increased migration flows, including a resurgence of refugees<sup>2</sup> and, of course, increased resistance to refugee admissions;<sup>3</sup> and increasingly complex international processes for both the production of goods and the movement of capital.<sup>4</sup> None of these issues can be solved at a local level; all require the will to engage in politics across differences in global institutions and forums.

Second, the default tool for political governance—liberal democracy, or some version of it—is increasingly under assault.<sup>5</sup> Even in stable democracies such as the United States, trust in government is near historic lows.<sup>6</sup> Fewer people are willing to engage in politics across differences in favor of some version of authoritarian populism.<sup>7</sup> Even when authoritarianism has not taken hold, there is a rise in secessionism, whether literal or the more nuanced sort of separatism that insists that one’s political adversaries are traitors or fools.

This is, of course, a troubling combination. We are losing faith in our tools—and trust in our fellow citizens—precisely at the time that we ought to be building those tools, and that trust, outwards.

One response to this, given eloquent defense by Jason Brennan, is to raise the heretical suggestion that the liberal democratic tradition might not be the only legitimate game in town.<sup>8</sup> Brennan defends epistocracy—rule by the wise, rather than by the many.<sup>9</sup> On Brennan’s analysis, the vast majority of people are irremediably bad at politics—he describes them as

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1. See generally B. Ekwurzel et al., *The Rise in Global Atmospheric CO<sub>2</sub>, Surface Temperature, and Sea Level from Emissions Traced to Major Carbon Producers*, 144 CLIMATIC CHANGE 579 (2017).

2. See generally Press Release, Gen. Assembly, Refugees, Migrants Branded ‘Threats,’ Dehumanized in Campaigns Seeking Political Gain, High Commissioner Tells Third Committee, Appealing for Return to Dignity, U.N. Press Release GA/SHC/4247 (Oct. 31, 2018).

3. See generally Deborah Amos, *2018 Was a Year of Drastic Cuts to U.S. Refugee Admissions*, NPR (Dec. 27, 2018, 1:18 PM), <https://www.npr.org/2018/12/27/680308538/2018-was-a-year-of-drastic-cuts-to-u-s-refugee-admissions> [<https://perma.cc/8N99-HKXE>].

4. NAT’L RESEARCH COUNCIL DIV. ON LIFE & EARTH SCIS., UNDERSTANDING THE CHANGING PLANET: STRATEGIC DIRECTIONS FOR THE GEOGRAPHICAL SCIENCES 75 (2010).

5. See, e.g., Sheri Berman & Maria Snegovaya, *Populism and the Decline of Social Democracy*, 30 J. DEMOCRACY 5, 5–6 (2019).

6. *Public Trust in Government: 1958–2019*, PEW RES. CTR. (Apr. 11, 2019), <https://www.people-press.org/2019/04/11/public-trust-in-government-1958-2019/> [<https://perma.cc/65B9-923M>].

7. See, e.g., Pippa Norris, *It’s Not Just Trump. Authoritarian Populism Is Rising Across the West. Here’s Why.*, WASH. POST (Mar. 11, 2016), <https://www.washingtonpost.com/news/monkey-cage/wp/2016/03/11/its-not-just-trump-authoritarian-populism-is-rising-across-the-west-heres-why/?noredirect=on> [<https://perma.cc/A8SR-8KAS>].

8. JASON BRENNAN, *AGAINST DEMOCRACY* 16 (2016).

9. See *id.*

hooligans and hobbits<sup>10</sup>—and the best response might be to abandon democracy.<sup>11</sup> Ilya Somin offers a similar, if less radical, vision: voter ignorance, he argues, is an overlooked problem for political democracy and that ignorance can ground an argument in favor of smaller, and smarter, democratic government.<sup>12</sup> In this Article, I do not want to dispute these ideas directly. I do have misgivings about them; in particular, I am not sure that any state that is now a democracy could become an epistocracy without being hijacked by smooth talking idiots along the way. A state capable of building itself into an epistocracy, that is, might already have to display those virtues whose absence made epistocracy desirable.

What I want to do in the present Article is to suggest a different explanation about why it is that we face the troubling combination described above. It is not that people are ignorant or stupid, I think, that has brought us to this pass. Such cognitive failings are perhaps more compatible with liberal democracy than we think. In this, I follow Herbert Spencer, who simultaneously bemoaned the stupidity of the human race, while noting that they did not have to be that smart in order to engage in politics well:

[The people are not] incompetent to enact and enforce those simple principles of equity which underlie the right conduct of citizens to each other. These are such that the commonest minds in a civilized community can understand their chief applications. Stupid as may be the average elector, he can see the propriety of such regulations as shall prevent men from murdering and robbing each other; he can understand the fitness of laws which enforce the payment of debts; he can perceive the need of measures to prevent the strong from tyrannizing over the weak; and he can feel the rectitude of a judicial system that is the same for rich and poor.<sup>13</sup>

What Spencer argued, in short, was that people could be stupid and still engage in politics together, so long as they were willing to do the moral work of recognizing that pain was a bad thing, whether it happened to themselves or to others, and to authorize representatives who were willing to work sincerely and cleverly on behalf of all parties concerned.<sup>14</sup> It is here, I think, that we might start to find a diagnosis for the combination of circumstances described above. Spencer could be right only if people are

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10. *Id.* at x.

11. More specifically, Brennan argues that we might have to consider the rule of the wise, were we able thereby to gain better political results. *See id.* at 14–16.

12. *See* ILYA SOMIN, *DEMOCRACY AND POLITICAL IGNORANCE: WHY SMALLER GOVERNMENT IS SMARTER* 4, 8 (2013).

13. Herbert Spencer, *Art. VII.—Representative Government—What Is It Good For?*, 68 *WESTMINSTER REV.* 250, 266 (1857).

14. *See id.*

capable of being motivated by wrongs occurring to others as well as to themselves, and if they are capable of regarding pain occurring to other people as morally equivalent to the pain they experience themselves. This, however, depends upon the will to *trust* other people when they describe and explain their pain—as well as how it might be alleviated by means of politics. It depends, in short, upon something like deference to the authority of other people, in particular areas of public and political life. The problem, to put it bluntly, is not that we are stupid; it is that we are not willing to admit that *other people know more than we do*. We face something like a moralized analogue to the Dunning-Kruger effect.<sup>15</sup> This effect famously notes that the most incompetent are often the most impressed with their own competence;<sup>16</sup> they lack both the skill to do the job and the metacognitive ability to evaluate how the job ought to be done.<sup>17</sup> Here, I think the problem is not with politics itself—if Spencer is right, we only need to be motivated by the thought that tyranny and murder are bad to do politics well. The problem, instead, is that we are unduly impressed with our own ability to describe what *counts* as tyranny and murder—and therefore are inclined to ignore or discount the wisdom of others when they describe the pain they want the government to address.

Why, though, would this matter? Is this not simply a roundabout way of ending up, like Brennan or Somin, with the condemnation of liberal democracy? I think there is a potential difference, if only because the will to accept that other people know more looks less like a natural endowment and more like a virtue that might be cultivated. My intelligence often seems like a brute fact: I have the cognitive limits that I do, and while I might make myself slightly smarter by doing crosswords or studying philosophy, there is a point at which I am unable to change the attributes given to me. The willingness to accept the greater knowledge of others, though, seems more metacognitive than cognitive and seems more like an attitude towards my own brain than a description of that brain. It seems, in other words, something like a habit, and habits can be *built*. In this, I follow Susan Moller Okin, for whom the practice of empathy was a tender plant that needed to be nourished; we need, she argued, regular practice at the art of caring about other people, in order to engage in politics

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15. See generally David Dunning, *The Dunning-Kruger Effect: On Being Ignorant of One's Own Ignorance*, in 44 *ADVANCES IN EXPERIMENTAL SOCIAL PSYCHOLOGY* 247 (James M. Olson & Mark P. Zanna eds., 2011).

16. See *id.* at 248.

17. See Justin Kruger & David Dunning, *Unskilled and Unaware of It: How Difficulties in Recognizing One's Own Incompetence Lead to Inflated Self-Assessments*, 77 *J. PERSONALITY & SOC. PSYCHOL.* 1121, 1121 (1999) (defining the effect canonically).

with them.<sup>18</sup> What I am describing here is not empathy, but something like a precursor to empathy, which is the habit of deferring to others in particular areas of political life. I have to develop the habit of recognizing my own ignorance, stupidity, and bias. This might sound self-abasing, but part of being a mature adult means recognizing that I can never be good at everything; I am limited, both by my own specificity and by the simple fact that a human life is not long enough to contain all potential goods. The world is simply too *big* for us to know everything about everything, and how we react to those people who know more than us might be rather important for the survival of liberal democracy.

Ideas such as these have become generally understood through the framework of epistemic injustice—injustice, that is, in the attribution of knowledge.<sup>19</sup> In particular, the concept of “testimonial injustice,” as described by Miranda Fricker, might help describe what I am asserting here.<sup>20</sup> Fricker notes that a site of injustice can be those who are given the luxury of having their claims taken seriously—one who is understood as a *knower*.<sup>21</sup> If, for instance, the members of a particular marginalized group are largely ignored when they describe their pain, then those members might be thought to face a sort of testimonial injustice.<sup>22</sup> Fricker focuses on the testimonial injustice as an injustice in itself;<sup>23</sup> but it might also be thought that this sort of refusal to listen openly to the pain of another is relevant to the practice of liberal democracy. The will to do this sort of listening, I believe, can be understood as a habit, and it is a habit that liberal democracy might require for its long-term stability.

If this is a habit, though, then we might seek to develop some spaces to cultivate that habit through politics. In this Article, I will discuss three possible spaces: education, especially higher education; political activism and the modes in which it might be done; and journalism. I must say, though, that I am not confident that any of these sites will actually be able to do the job. It is not clear that the problems of liberal democracy are soluble, whether through these means or any others. Nevertheless, I would like for

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18. This is a theme in much of Okin’s work, but it is presented most powerfully in Susan Moller Okin, *Reason and Feeling in Thinking About Justice*, 99 *ETHICS* 229, 245 (1989).

19. See generally MIRANDA FRICKER, *EPISTEMIC INJUSTICE: POWER AND THE ETHICS OF KNOWING* (2007).

20. See generally *id.*

21. See *id.* at 145.

22. See *id.*

23. *Id.*

us to try. If we are to abandon liberal democracy, it should only be after we have tried our best to be the sort of people for whom liberal democracy was possible. Epistocracy if necessary; but, emphatically, not necessarily epistocracy.

In the next section of the Article, I will describe three forms of deference that seem necessary for the just and efficient administration of liberal democracy. In the following section, I will describe the three sites at which we might try to build these habits of deference. I will conclude with some brief thoughts about whether or not such efforts are likely to succeed.

## II. DEMOCRACY AND DEFERENCE

The above has only asserted that politics depends upon the will to acknowledge the greater knowledge of others and that the failure of this will to acknowledge might be at least a partial explanation for the problems we now face. In this Part, I want to identify three distinct ways in which we are increasingly unwilling to defer to others. These involve, in order, the phenomenology of pain and suffering; the explanation of that suffering, together with the political relevance of that suffering; and the likely effects of the political response to that suffering.

### *A. The Phenomenology of Suffering*

Some forms of pain are comprehensible by all human beings, regardless of their particular identities. The pain of bodily injury, for instance, is recognizable as pain by all species typical persons, and I do not have to share your gender or race for me to recognize your pain as a bad thing. I can empathize with you and understand to a significant degree what it is like to *be* you when you stub your toe. The particularity of your identity might make a difference in whether or not I *will* feel empathy with you, if certain rather depressing fMRI studies are correct,<sup>24</sup> but it does not affect whether or not I can accurately understand the phenomenology of what it is like to feel the pain for which empathy should be forthcoming.<sup>25</sup> Indeed, this sort of identification might even extend beyond humans; we are rightly motivated by the suffering of animals,<sup>26</sup> and can assert with some

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24. See generally Jaclyn Ronquillo et al., *The Effects of Skin Tone on Race-Related Amygdala Activity: An fMRI Investigation*, 2 SOC. COGNITIVE & AFFECTIVE NEUROSCIENCE 39, 39 (2007) (discussing the skin tone bias within differential race-related amygdala activity).

25. See *id.*

26. See *Animal Legal Def. Fund v. Glickman*, 154 F.3d 426, 429 (D.C. Cir. 1998).

confidence that the pain of a chimpanzee is markedly similar to the pain we ourselves experience.<sup>27</sup>

Not every form of pain, however, has these characteristics. Other forms of pain depend upon particularities of our bodily or social positioning that are *not* universal. These forms of pain, then, cannot be easily imagined by outsiders—at least, imagined with any degree of accuracy. The temptation, then, is for those outsiders to dismiss that pain, because they themselves cannot easily inhabit it. This dismissal, though, asserts something that is a problem for democratic self-governance; it asserts that what I cannot directly experience cannot be rightly understood as suffering. This is, perhaps, the most obvious case of what Fricker describes as testimonial injustice; the reports of pain that we cannot share are easily dismissed as faulty reports, unworthy of democratic response.

Two examples might be helpful here. The first is sexual harassment.<sup>28</sup> The majority of people who report being sexually harassed are women; many of them describe workplaces that are hostile in virtue of sexualized comments and unwelcome advances made by superiors and by coworkers.<sup>29</sup> The majority of men, in contrast, have not experienced unwelcome sexual advances,<sup>30</sup> and, more importantly, they have not experienced unwelcome sexual advances *from the standpoint of a woman*. This means, however, that the very particular form of pain experienced by a woman who has encountered a sexualized workplace is difficult, if not impossible, for a man to understand. Speaking personally, I can understand very well the experience of being mocked, being told I am inadequate, or being excluded; I have experienced all of these and can recall, with rather too much precision, what it felt like. But when a woman describes unwelcome sexual attention, and the distinct sorts of unpleasant ways in which it erodes both confidence

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27. See Brandon Keim, *Chimps: Not Human, But Are They People?*, WIRED (Oct. 14, 2008, 3:00 AM), <https://www.wired.com/2008/10/chimpanzees-not> [<https://perma.cc/R5KU-4ALA>].

28. Fricker uses sexual harassment as an example of “hermeneutical injustice,” as well as testimonial injustice; prior to the 1970s, victims of sexual harassment lacked access to the conceptual tools necessary to describe particular behavior as harassment. *See id.* at 6.

29. See Rhitu Chatterjee, *A New Survey Finds 81 Percent of Women Have Experienced Sexual Harassment*, NPR (Feb. 21, 2018, 7:43 PM), <https://www.npr.org/sections/thetwo-way/2018/02/21/587671849/a-new-survey-finds-eighty-percent-of-women-have-experienced-sexual-harassment> [<https://perma.cc/5MPQ-R6U8>]. In one recent study, 81% of women, versus 43% of men, had received some form of sexual harassment during their lifetimes. *Id.*

30. *See id.*

and ambition, I cannot imagine my way into her shoes. I can and should try, but I should not pretend, to myself or to her, that I can get all the way there. I think the rightful response is to accept that I cannot understand her pain, at least not fully, and assume an attitude towards her that begins with trusting her description of that pain. The response seems something like deference; democratic deliberation only proceeds well when I defer to a woman's particular description of her rather particular pain.

This does not mean I should emphasize, that I have to defer to her chosen policy measures. A woman and I can still disagree about what ought to be done about sexual harassment. Democracy only works, I think, when I am willing to defer to her about the suffering that gives rise to that policy dispute.

Something true might hold in our second example, this time focused on the divide between the rural and urban parts of the United States. There are specific and genuine problems that hold in rural America, especially after the Great Recession.<sup>31</sup> The opioid epidemic,<sup>32</sup> a lack of stable employment exacerbated by the comparative failure of the manufacturing sector,<sup>33</sup> and an increasingly unstable network of civic institutions as the young increasingly flee to urban settings<sup>34</sup>—all these are real and very painful.<sup>35</sup> What I want to focus on here is the sense that the public political discourse in the United States is increasingly determined by the values and ideas that emerge from the complex multicultural politics of American cities, and that the values and ideas that animate its rural communities are perceived as retrograde or laughable. Donald Trump's presidency was made possible, on one analysis, because of anxiety and resentment of lower-income whites who blamed their economic marginalization on affirmative action and immigration.<sup>36</sup> The problems these citizens faced were largely

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31. See Luke Runyon, *Harvest Pub. Med., While Cities Recover, The Rural Economy Still Struggles to Shake Off Great Recession*, KUNC (Nov. 15, 2016), <https://www.kunc.org/post/while-cities-recover-rural-economy-still-struggles-shake-great-recession> [<https://perma.cc/K8HH-N9L3>].

32. See *More Opioids Being Prescribed in Rural America*, AAFP (Jan. 28, 2019, 11:58 AM), <https://www.aafp.org/news/health-of-the-public/20190128ruralopioids.html> [<https://perma.cc/HP5F-ZUSA>].

33. See generally David Swenson, *Most of America's Rural Areas Are Doomed to Decline*, CITYLAB (May 7, 2019), <https://www.citylab.com/perspective/2019/05/most-of-americas-rural-areas-are-doomed-to-decline/588883> [<https://perma.cc/D68U-6U6N>] (explaining middle skill jobs are declining due to automation and technological advances).

34. See *id.*

35. See generally JUSTIN GEST, *THE NEW MINORITY: WHITE WORKING CLASS POLITICS IN AN AGE OF IMMIGRATION AND INEQUALITY* 10 (2016) (using the city of Youngstown, Ohio, as an example to highlight problems faced by rural communities).

36. This is the thesis of a recent study by John Sides, Michael Tesler, and Lynn Vavrek. See JOHN SIDES, MICHAEL TESLER & LYNN VAVRECK, *IDENTITY CRISIS: THE 2016 PRESIDENTIAL CAMPAIGN AND THE BATTLE FOR THE MEANING OF AMERICA* 87–95 (2018).

ignored by both political parties until Donald Trump's populism announced that they were right to resent and hate the coastal elites whose discourse had set the national agenda.<sup>37</sup> When Hillary Clinton used the regrettable phrase "basket of deplorables" to refer to those attracted to Trump's message, she made a tactical mistake, but I think she made a moral one as well since she ought to have at least begun by acknowledging the pain of being so marginalized by the national discourse.<sup>38</sup> *Mother Jones* magazine gave a powerful postmortem of the Democratic Party's failure here:

[By the end of the 1970s], liberals had little political reason to care about the working class and the working class still hated the hippies. Without the political imperative to stay in touch, liberals increasingly viewed middle America as a foreign culture: hostile, insular, vaguely racist/sexist/homophobic, and in thrall to charlatans.

By the early 90s this transformation was complete. On the liberal side, elites rarely interacted with working-class folks at all and had no political motivation to respect them. Republicans swooped in and paid at least lip service to working-class concerns, and that was enough.<sup>39</sup>

All this is not intended to say that the feeling of humiliation on the part of rural and working-class Americans was justified, nor that the particular political programs dangled by the Trump Administration towards these Americans were morally defensible. For the record, the former is potentially right; the latter, largely not. That is a conversation about policy, and that is not my present concern. I am, here, only intending to say this much: educated Americans who live in cities, and know next to nothing about life in smaller communities or life without the privileges afforded by higher education, should begin with the presumption that the feelings of humiliation and abandonment described by those other Americans are real. They describe pain, and pain ought to be taken seriously. It is only

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37. See Danielle Kurtzleben, *Rural Voters Played a Big Part in Helping Trump Defeat Clinton*, NPR (Nov. 14, 2016, 10:32 AM), <https://www.npr.org/2016/11/14/501737150/rural-voters-played-a-big-part-in-helping-trump-defeat-clinton> [<https://perma.cc/KA9B-U9QX>].

38. Clinton made her remarks on September 23, 2016. Seema Mehta, *Campaign 2016 Updates: Republicans Pounce Upon Clinton 'Deplorables' Remark. She Apologizes. Sort Of*, L.A. TIMES (Sept. 10, 2016, 3:00 AM), <https://www.latimes.com/nation/politics/trailguide/la-na-trailguide-updates-09102016-htmlstory.html#transcript-clintons-full-remarks-as-she-called-half-of-trump-supporters-deplorables> [<https://perma.cc/QYH7-D9E5>] (supporting general inference that Clinton may have made "a tactical mistake").

39. Kevin Drum, *Less Liberal Contempt, Please*, MOTHER JONES (May 31, 2017), <https://www.motherjones.com/kevin-drum/2017/05/contempt> [<https://perma.cc/B6TT-DWBG>].

by means of this will to acknowledge that democratic deliberation can proceed and, increasingly, both the right and the left in the United States are losing touch with the will to defer to others when they describe their suffering.

### B. *The Explanation of Suffering*

The above deals with how we might approach the pain of someone else when we cannot, or cannot adequately, understand what it is like to experience that pain. We also ought to think about how we might begin to *explain* that pain—to talk about why it is happening and why politicians ought to care. How a given experience of suffering is to be explained, after all, deeply affects whether or not politicians ought to get involved. We accept, I think, that pain is always a *pro tanto* bad thing, but not all pain is the right sort of thing for government intervention. Some pain seems simply inevitable given the facts of being the sorts of creatures we are. Humans who love are vulnerable to the experience of heartbreak, but a federal program designed to eliminate heartbreak would seem, at the very best, futile. Other pains are simply outweighed by the importance of other sorts of goods. After the election of Donald Trump to the presidency, Louis Tafuto sued the President, alleging that the President’s election has caused Tafuto “great emotional pain, fear[,] and anxiety.”<sup>40</sup> The case was, to put it mildly, unlikely to succeed.<sup>41</sup> Even if Tafuto was accurately describing an intense pain, it was the sort of pain that necessarily accompanies that democratic political system we inhabit. Finally, and most importantly, some pains are explained away as the fault of the individuals who experience that pain. If you continually and voluntarily hit your head with a hammer, it seems wrong for you to demand that others pay for your inevitable medical bills.

It is this last issue that leads to a problem with deference. What you think is the result of voluntary choice and systemic or social factors often depends upon the particular circumstances in which you are situated. When someone inhabits a different social world, we often ignore relevant information about that world and assume we know all relevant information. The results can lead to poor outcomes, simply because we assume that everyone approaches the decision with the same set of circumstances as

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40. Gabriel Samuels, *Voter Sues Donald Trump for \$1 Billion Due to ‘Severe Emotional Distress’ Caused by Presidential Campaign*, INDEPENDENT (Nov. 11, 2016, 12:30 PM), <https://www.independent.co.uk/news/world/americas/us-elections/voter-sues-trump-for-1-billion-due-to-severe-emotional-distress-a7411051.html> [<https://perma.cc/GA8P-RPTZ>].

41. See *Tafuto v. Trump for President*, No. 16 CV 8648-LTS-DCF, 2018 WL 3979593, at \*2–3 (S.D.N.Y. Aug. 20, 2018), *appeal filed*, No. 19-2211 (2d Cir. July 19, 2019).

ourselves. To take a nonpolitical example: when the Xbox One was announced, the team building it insisted it would only work when connected at all times to the internet.<sup>42</sup> They were unprepared for the outcry from rural and lower-income gamers and for a while dismissed their concerns as mere grouching about price.<sup>43</sup> The problem, of course, was that the designers of the Xbox One lived in communities in which wifi was cheap, reliable, and ubiquitous.<sup>44</sup> People who lived in communities with intermittent or pricy access to high-speed internet simply were not a part of Microsoft's game plan; it appears that the designers had forgotten they existed and assumed that anyone who did not want permanent connection to the internet was merely a cheapskate.

These issues get more serious when we move from gaming to politics. One particularly egregious example comes from the AIDS crisis and the Reagan Administration's response to that crisis.<sup>45</sup> By 1984, thousands of people had been infected with AIDS, and President Reagan had refrained from even mentioning the disease by name.<sup>46</sup> When one reporter asked White House spokesman Larry Speakes about the disease, Speakes simply made gay jokes, asking whether or not the reporter had been checked for AIDS himself.<sup>47</sup> The justification for this emerged when, in 1987, Reagan finally discussed AIDS and said simply that medicine and morality said the same thing about AIDS.<sup>48</sup> Speaking about "ethical behavior" and abstinence, Reagan said, "After all, when it comes to preventing AIDS,

42. Nicholas Werner, *Everything Microsoft Did Wrong with the Xbox One*, SVG, <https://www.svg.com/101430/everything-microsoft-wrong-xbox-one/> [<https://perma.cc/XTT7-E64Q>].

43. For a good overview of the disastrous rollout of the Xbox One, see *id.*

44. Microsoft Creative Designer Adam Orth lost his job for tweeting out #dealwithit in response to the complaints. See Lee Hutchinson, *Adam "Always Online" Orth No Longer Employed at Microsoft*, ARS TECHNICA (Apr. 11, 2013, 7:09 AM), <https://arstechnica.com/gaming/2013/04/adam-always-online-orth-no-longer-employed-at-microsoft/> [<https://perma.cc/S4BS-S6HH>].

45. See Caitlin Gibson, *A Disturbing New Glimpse at the Reagan Administration's Indifference to AIDS*, WASH. POST (Dec. 1, 2015), <https://www.washingtonpost.com/news/arts-and-entertainment/wp/2015/12/01/a-disturbing-new-glimpse-at-the-reagan-administrations-indifference-to-aids/?noredirect=on> [<https://perma.cc/BFH2-GSLJ>].

46. See Donald P. Francis, *Deadly AIDS Policy Failure by the Highest Levels of the US Government: A Personal Look Back 30 Years Later for Lessons to Respond Better to Future Epidemics*, 33 J. PUB. HEALTH POL'Y 290, 291–92 (2012).

47. See Gibson, *supra* note 45.

48. See George E. Curry, *Reagan Says AIDS Solution Rests with Morals*, CHI. TRIB. (Apr. 2, 1987), <https://www.chicagotribune.com/news/ct-xpm-1987-04-02-8701250240-story.html> [<https://perma.cc/8QFK-CRQH>].

don't medicine and morality teach the same lessons?"<sup>49</sup> Conservative intellectual William Buckley was more explicit about the link between AIDS and choice, describing it as "the special curse of the homosexual"; he proposed the mandatory tattooing of HIV-positive posteriors, as a justified political response to the emergence of AIDS.<sup>50</sup>

What is at the heart of this refusal to engage with a widespread health crisis—and, when Reagan mentioned AIDS in 1987, more than 20,000 men had died of AIDS—was the thought that the pain here was the result of a free and voluntary choice to experience that pain.<sup>51</sup> Reagan, Speakes, and Buckley could not imagine themselves getting AIDS; they did not make the sexual choices that, in their minds, led to AIDS. The problem, of course, is that for gay men and women it feels, to put it mildly, not like a choice—not, at any rate, like a choice one ought to have to make on pain of death. Celibacy or death is hardly a dilemma the twice-married Reagan would have likely regarded as fair if applied to himself, yet because he could not imagine himself as a gay man, we can assume that he thought it a fair deal when applied to them. The point, though, is that Reagan should not have had to imagine what it was like to be gay, to *listen* to the demands made by gay men and women for, among other things, increased research into antiretroviral medications. He might, or might not, have ended up accepting their demands. But the conversation was prevented before it began when he refused to accept their contention that their suffering was a valid subject of government concern.

Liberals, of course, are equally liable to this sort of refusal of deference. As noted above, there are many distinct areas of rural life that ought to be the subject of state intervention. The opioid epidemic, for one, has hit rural districts especially hard; in many counties, there are simply too few coroners to carry out the legally mandated autopsies given the rate at which young people are dying from overdoses.<sup>52</sup> One particularly sharp split between rural and urban Americans, though, comes over gun rights. Rural Americans tend to own guns at a much higher rate than urban Americans; more than two-thirds of people who live outside cities own at least one firearm.<sup>53</sup>

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49. See *id.*; Gibson, *supra* note 45.

50. William F. Buckley Jr., Opinion-Editorial, *Crucial Steps in Combating the Aids Epidemic; Identify All the Carriers*, N.Y. TIMES (Mar. 18, 1986), <http://movies2.nytimes.com/books/00/07/16/specials/buckley-aids.html> [<https://perma.cc/GV4H-NG5R>].

51. *A Brief Timeline of AIDS*, FACTLV.ORG, <http://www.factlv.org/timeline.htm> [<https://perma.cc/E3MP-UWQ6>].

52. Kimiko de Freytas-Tamura, *Amid Opioid Overdoses, Ohio Coroner's Office Runs Out of Room for Bodies*, N.Y. TIMES (Feb. 2, 2017, 12:00 AM), <https://www.nytimes.com/2017/02/02/us/ohio-overdose-deaths-coroners-office.html> [<https://perma.cc/V6G6-7FJM>].

53. See generally Ruth Igielnik, *Rural and Urban Gun Owners Have Different Experiences, Views on Gun Policy*, PEW RES. CTR. (July 10, 2017), <https://www.pewresearch.org>.

When asked to explain why they purchase and maintain weapons, rural inhabitants often cite two reasons—one philosophical, one practical. The philosophical reason is that firearms are a bulwark against state tyranny.<sup>54</sup> The practical reason, which is largely overlooked in the public debate, is the importance of firearms for self-protection in a rural community.<sup>55</sup> Liberals overwhelmingly live in dense communities, in which police protection is—in theory, and sometimes in fact—easily available by calling 911.<sup>56</sup> In contrast, inhabitants of rural communities live in places so sparsely populated that a small handful of police officers are responsible for huge tracts of land; the result, of course, is that it is simply impossible for a police officer to arrive quickly in the event of an emergency.<sup>57</sup> These facts tend to get overlooked in the national debate, which tends to focus instead on the use of firearms in mass shootings and in crime.<sup>58</sup>

I should again note that nothing I say here should be read as an argument in favor of gun rights. We might indeed decide that the right response, given all the facts, is that firearms ought to be restricted or banned. The problem, though, is that a political scene dominated by urban concerns tends to avoid even engaging with these facts. When the liberal website *Slate* published an article asking why conservatives were so fond of firearms, they did not ask any conservatives; they instead offered a causal explanation

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org/fact-tank/2017/07/10/rural-and-urban-gun-owners-have-different-experiences-views-on-gun-policy [https://perma.cc/D2HW-A64D] (showing statistical research on gun ownership).

54. See, e.g., Paul Hager, *Why I Carry: The Politics of Self-Defense*, PAUL HAGER (Oct. 22, 2000), <http://www.paulhager.org/why001.htm> [https://perma.cc/3QBN-5J8L].

55. See, e.g., Jim Wilson, *Country Living: Security & Self-Defense in Rural Areas*, SHOOTING ILLUSTRATED (Nov. 12, 2018), <https://www.shootingillustrated.com/articles/2018/11/12/country-living-security-self-defense-in-rural-areas> [https://perma.cc/D4X5-ER8R].

56. Bill Fay, *Economic Demographics of Democrats*, DEBT.ORG, <https://www.debt.org/faqs/americans-in-debt/economic-demographics-democrats> [https://perma.cc/WQ8A-LL5G]; Robert Merrick, *Savage Cuts Blamed for Increase in Police Response Times*, N. ECHO (Sept. 25, 2013), <https://www.thenorthernecho.co.uk/news/10695210.savage-cuts-blamed-for-increase-in-police-response-times/> [https://perma.cc/E4SV-TT2S].

57. As a rural resident put it: “I live 15 miles from the nearest town or police station. . . . A home invasion—what good does it do me to call 911 and wait for someone to come and help me?” Chuck Raasch, *In Gun Debate, It’s Urban vs. Rural*, USA TODAY, <https://www.usatoday.com/story/news/nation/2013/02/27/guns-ingrained-in-rural-existence/1949479/> [https://perma.cc/55RM-QGW2] (last updated Feb. 27, 2013, 12:26 PM). In the gun debate, it is urban versus rural. *Id.*

58. Cydney Hargis, *We Talked to Experts About How Debate Moderators Can Stop Asking Lousy Gun Violence Questions*, MEDIA MATTERS FOR AM. (July 30, 2019, 10:21 AM), <https://www.mediamatters.org/national-rifle-association/we-talked-experts-about-how-debate-moderators-can-stop-asking-lousy-gun> [https://perma.cc/M9JH-ZN32].

for a fondness of guns, in which conservatives were possessed of a deep terror of modernity and a fear of their own repressed sexuality.<sup>59</sup> To engage in politics with someone we must begin by refraining from explaining their beliefs away as the result of a pathology or delusion. If liberals are to deal with gun control in a respectful manner, they are obligated to begin with at least the sort of deference that acknowledges the reasons given by others, without converting those reasons into symptoms.

### C. *The Acknowledgment of Expertise*

The above two forms of deference dealt with two areas in which liberal democracy requires deference to the experience of others. We ought to defer to the descriptions of pain given by others; we ought, as well, to defer to their explanations of why a policy is needed to address that pain. The final form of deference, though, deals not with the first person authority of the experience of pain, but the third person authority of those who know what a given policy is likely to do. Here, too, recent years have seen a withering away of the deference that might be usefully given to those who know more than we do ourselves. We have never been good at hearing the unwelcome news of experts. Now, however, we have increasingly given ourselves the ability to ignore those experts entirely, to explain them away as corrupted and corruptible, and to live in a world in which our empirical beliefs are immune from challenge.

One example of this is familiar from recent political controversy. The fact that human activity is changing the climate is—in the eyes of professional climate scientists—beyond dispute.<sup>60</sup> This is, after all, not complex physics; there is a reason why Venus is hotter than the Earth. When more carbon dioxide is pushed into the atmosphere, the planet warms up.<sup>61</sup> The Republican Party, however, contains a significant number of people who claim that climate change is not happening—indeed, that it is a hoax, likely perpetrated by the Chinese, who are using professional scientists as stooges to cripple American capitalism.<sup>62</sup> The President himself believes in this conspiracy,

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59. John Ehrenreich, *Why Are Conservatives so Obsessed with Gun Rights Anyway?*, SLATE (Feb. 26, 2018, 10:23 AM), <https://slate.com/technology/2018/02/why-conservatives-are-so-obsessed-with-guns.html> [<https://perma.cc/DW9T-6XD2>].

60. *Scientific Consensus: Earth's Climate Is Warming*, NASA, <https://climate.nasa.gov/scientific-consensus> [<https://perma.cc/JZ45-MJ52>] (describing the extent of the scientific consensus on climate change).

61. See Stephanie Pappas, *Carbon Dioxide Is Warming the Planet (Here's How)*, LIVE SCI. (Mar. 10, 2017), <https://www.livescience.com/58203-how-carbon-dioxide-is-warming-earth.html> [<https://perma.cc/3Z8D-LV76>].

62. See Justin Worland, *Donald Trump Called Climate Change A Hoax. Now He's Awkwardly Boasting About Fighting It*, TIME (July 9, 2019), <https://time.com/5622374/donald-trump-climate-change-hoax-event> [<https://perma.cc/VP73-ERP6>].

tweeting that “[t]he concept of global warming was created by and for the Chinese” to undermine America.<sup>63</sup> He later claimed to have been joking, but more recently tweeted out that climate change was both “Fake News” and “Fake Science.”<sup>64</sup>

The temptation to explain away climate change is obvious: if there is going to be a useful response to climate change, it will have to involve some degree of governance, which will necessarily involve international cooperation—and the President, to put it mildly, is not a fan of international oversight over the industrial operation of the United States.<sup>65</sup> But the world has been defined as that which refuses to go away when you do not believe in it, and a useful democratic debate would have to begin by acknowledging that world.

Liberals, I should emphasize, are not immune from the desire to refrain from being disciplined by expertise. To take one recent example: the city of Seattle recently passed a minimum wage law mandating a \$15 per hour minimum wage.<sup>66</sup> Several economists from University of Washington published a study showing that this law had a rather small negative effect upon number of job openings.<sup>67</sup> This effect should not be a surprise to anyone—and, indeed, most of us might be willing to accept this effect as part of the cost of building a slightly more just economy. Many liberals, however, responded with fury and sought to discredit the economists

63. Donald J. Trump (@realDonaldTrump), TWITTER (Nov. 6, 2012, 11:15 AM), <https://twitter.com/realdonaldtrump/status/265895292191248385> [<https://perma.cc/CPW4-GWXQ>].

64. Donald J. Trump (@realDonaldTrump), TWITTER (Mar. 12, 2019, 5:29 AM), <https://twitter.com/realdonaldtrump/status/1105445788585467904> [<https://perma.cc/AS5D-QD6R>]; see Associated Press, *Trump Says Climate Change Not a Hoax, But Not Sure of Its Source*, PBS NEWS HOUR (Oct. 15, 2018, 10:28 AM), <https://www.pbs.org/newshour/politics/trump-says-climate-change-not-a-hoax-but-not-sure-of-its-source> [<https://perma.cc/Q9GX-6CSZ>].

65. See, e.g., Emily Stewart, *The US Got Its Own Section in the G20 Statement on Climate Change*, VOX (Dec. 3, 2018, 10:30 AM), <https://www.vox.com/policy-and-politics/2018/12/3/18123684/trump-g20-climate-change-paris-agreement> [<https://perma.cc/3485-ZDQ9>].

66. See SEATTLE MUN. CODE § 14.19.030 (2015); Matthew Zeitlin, *Laboratories of Democracy: What Seattle Learned from Having the Highest Minimum Wage in the Nation*, VOX, <https://www.vox.com/the-highlight/2019/7/13/20690266/seattle-minimum-wage-15-dollars> [<https://perma.cc/QD5K-M9HM>] (last updated July 22, 2019, 9:07 AM).

67. See generally Ekaterina Jardim et al., *Minimum Wage Increases, Wages, and Low-Wage Employment: Evidence from Seattle* (Nat’l Bureau of Econ. Research, Working Paper No. 23532, 2018), <https://evans.uw.edu/sites/default/files/NBER%20Working%20Paper.pdf> [<https://perma.cc/KH8F-8EZB>].

themselves.<sup>68</sup> The Seattle magazine *The Stranger*, for instance, urged its readers to ignore the study, calling the University of Washington an institution with “no real economists” but merely folks teaching the “usual neo-classical nonsense” that right-thinking people have rejected.<sup>69</sup> This response is interesting, not because *The Stranger* is an important institution, it is not, but because of how nicely it encapsulates the response to deal with an unwelcome result by condemning the one who produced that result. Liberals and conservatives alike are prey to the temptation to think that an expert who undermines our chosen policy must not be an expert after all, but an idiot or a stooge.

There are, I think, two reasons to think that this tendency is especially bad in a democratic society. The first is that the refusal to defer here tends to produce a desire to undermine the expert. If they have a reason for their assertion, and that reason is not their disciplinary competence, then it must be pernicious. The economists of the University of Washington are not experts, but tools of free market capitalism;<sup>70</sup> the scientists describing climate change are not experts, but paid lackeys for Chinese imperial ambition.<sup>71</sup> This means, in the end, that those who disagree with us about facts start to look less like experts and more like traitors. They are making empirical and moral errors at the same time, and their empirical assertions are explained by their moral infirmity. This may help explain one part of the dilemma with which we began: The retreat into the local. We are increasingly able to surround ourselves with those who agree with us, both about political morality and about facts.

This leads to the second difficulty here: the world itself cannot discipline our political disputes. Traditionally, most disputes had elements of both morality and empirical belief. You think the minimum wage is morally right and will not decrease employment; I believe, perhaps, it is an unjustified interference with contract and will lower rates of employment. Part of our dispute cannot be solved by facts—but part of it, ideally, might. If you and I agree about the facts, then at least we can narrow our dispute to the smallest kernel of moral disagreement it might be. If it is not, then our dispute becomes moral all the way down and the world itself cannot falsify any of our beliefs. Politics begins to look like, in Laurence Tribe’s evocative

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68. See Zeitlin, *supra* note 66; see also Charles Mudede, *The Morning News: Ignore the Report About How \$15 an Hour Is Hurting Seattle’s Poor, Weekend Heat Breaks Records*, STRANGER (June 26, 2017, 8:59 AM), <https://www.thestranger.com/slog/2017/06/26/25238844/the-morning-news-ignore-the-report-about-how-15-an-hour-is-hurting-seattles-poor-weekend-heat-breaks-records> [<https://perma.cc/RKH3-KNUE>].

69. Mudede, *supra* note 68.

70. See Mudede, *supra* note 68.

71. See Trump, *supra* note 63.

phrase, the clash of absolutes, and our opponents look less like fellow citizens and more like demons in human form.<sup>72</sup>

### III. RESPONDING TO THE FAILURE OF DEFERENCE

All of the above should be a bit depressing; those of us who are partisans of democracy should feel a bit uneasy. Democratic deliberation is not easy under the best of circumstances, and it seems as if we might have arrived at a set of circumstances that are very far from the best. Too many of us are willing and able to say that their political adversaries are something close to demonic: they are lying about their pain, lying about what politics might do about that pain, and lying about what the effects might be of that political intervention. If democratic deliberation is going to work, though, it needs people who are willing to shut up, listen, and be open to the possibility that others know more than they do themselves. A distinction from communication theory might be helpful here. We might distinguish “cataphatic listening”—listening to undermine or dispute the other side, from “apophatic listening”—listening to understand and provisionally inhabit the other side.<sup>73</sup> The lawyer reading an opponent’s brief—or, for that matter, a Democratic reading President Trump’s twitter feed—is looking for weaknesses, for places to destroy. Cataphatic listening is not always morally wrong. But democratic deliberation cannot be done solely with this sort of listening. In addition, we need to listen with a commitment to recognize the greater knowledge of others, including the greater knowledge of others about their own suffering and how it might be alleviated.

What could help us foster this form of listening? It is a mistake to look to a philosopher for fine grained policy advice. I am not sure, moreover, that there exists any sort of policy alteration that guarantees good results here. But if the trends described above depend upon a failure of deference—

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72. Tribe used the phrase to describe the politics of abortion; increasingly, it might be taken to describe much modern political discourse. See LAURENCE H. TRIBE, ABORTION: THE CLASH OF ABSOLUTES 3, 8–9 (1990).

73. See *An Episcopal Dictionary of the Church*, EPISCOPAL CHURCH, <https://www.episcopalchurch.org/library/glossary/apophatic> [<https://perma.cc/5V88-WSUS>] (discussing that the distinction has a long history in theology); see also Leonard J. Waks, *Listening and Questioning: The Apophatic/Cataphatic Distinction Revisited*, 1 LEARNING INQUIRY 153, 154, 158–59 (2007) <http://content.ebscohost.com/ContentServer.asp?EbscoContent=dGJyMMTo50Sep7Q4v%2Bv1OLCmr1Gep7ZSsqi4S7aWxWXS&ContentCustomer=dGJyMPPk547x2rmF39%2FsU%2FXp34jn&T=P&P=AN&S=R&D=eue&K=507993301> [<https://perma.cc/H7WW-8LTS>] (describing the modern use in communications theory).

a failure of modesty in regard to our own knowledge—then we might resist these trends by being given regular encounters with our own fallibility. To repeat Susan Moller Okin’s point: empathy is not an innate talent, but a skill, and skills need practicing.<sup>74</sup> So, too, is the deference that helps ground that empathy. We might seek places in which we have to practice listening to others—not to destroy them, but to understand the ways in which they know things we do not.

There are three sites here that might constitute potential sites for this sort of practice.

### A. Higher Education

I want to emphasize that the content of education does not necessarily increase the will to defer. One does not become virtuous by reading a great deal of Kant. But *who* you read your Kant with might make a difference. The people who are around you—whose perspectives and ideas inform your education—might make a difference in how willing you are to acknowledge what you do not know. This is, I think, why the resegregation of American public schools is so dangerous<sup>75</sup> and why Lori Loughlin’s bribing her daughter’s way into University of Southern California is so aggravating.<sup>76</sup> We are more willing to accept that the views of other people contain truth—or, more modestly, that they describe a world that is true *for that other person*. The contact hypothesis would lead us to expect this result; being exposed to a particular sort of human makes it harder to assume that this sort of person is inherently demonic. The prediction here is not perfect; most men have, at the very least, met a woman, and this has not been an effective block against sexual harassment. But the complete absence of diversity in education could be expected to make the temptation to demonize the other even more attractive.

Higher education, however, is not simply about learning; it is also about entering into a particular sort of class. Elite universities, in particular, create a set of people whose ideas we can expect to be more influential simply because they went to that university. Both in virtue of who they know, and

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74. SUSAN MOLLER OKIN, *JUSTICE, GENDER, AND THE FAMILY* 185 (1989).

75. See Emmanuel Felton, *The Department of Justice Is Overseeing the Resegregation of American Schools*, *NATION* (Sept. 6, 2017), <https://www.thenation.com/article/the-department-of-justice-is-overseeing-the-resegregation-of-american-schools> [<https://perma.cc/L2F5-RGQM>].

76. Lori Loughlin is one of the parents who are accused of having used bribes to obtain places at elite universities for their otherwise unqualified children, by, in part, falsely portraying those children as athletes. See Susan Svrluga, *Actress Lori Loughlin and Husband Plead Not Guilty to New Charges in College Admissions Case*, *WASH. POST* (Nov. 1, 2019, 12:23 PM), <https://www.washingtonpost.com/education/2019/11/01/actress-lori-loughlin-husband-plead-not-guilty-new-charges-college-admissions-case> [<https://perma.cc/7UNY-LWQ5>].

in virtue of their knowledge of the informal norms of the economically and culturally powerful, students from elite universities are better able to get their ideas heard. J.D. Vance's *Hillbilly Elegy*, for instance, describes the life of rural Americans in eloquent detail; it would be unlikely to have been published, though, had Vance not attended Yale Law School.<sup>77</sup> If higher education creates privilege, and we might admit that it does,<sup>78</sup> then we have reason to care about the set of people who are capable of using that privilege to create democratic deliberation.

Higher education, finally, can actually fail at the task of education when it is done in an absence of knowledge of difference. A more personal example: a former economics graduate student at Berkeley recalled being in a classroom where her classmates were discussing the prevalence of payday loans in impoverished communities. Why would anyone use these services when banks were cheaper? The students decided that the poor must be either irrational or ignorant. The truth, of course, was that banks never put their branches anywhere near low-income communities, which is precisely why payday loan outfits set up shop there.<sup>79</sup> The classmates were corrected, but they were also reminded, once again, about how easy it is to assume you know all the relevant facts—and how rarely that is the case.

### *B. Modeling and Activism*

The United States is more polarized than at any previous point in its history.<sup>80</sup> The concept of the loyal opposition—a principled opponent for whose presence we ought to be grateful—has been replaced by the thought

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77. See Caroline Kitchener, *How the 'Tiger Mom' Convinced the Author of Hillbilly Elegy to Write His Story*, ATLANTIC (June 7, 2017), <https://www.theatlantic.com/business/archive/2017/06/hillbilly-elegy-mentor/529443> [https://perma.cc/LUT4-2ZZ3]. He credits contract law professor Amy Chua with the book's publication. See *id.*

78. See ANTHONY P. CARNEVALE & JEFF STROHL, GEORGETOWN PUB. POLICY INST., SEPARATE AND UNEQUAL: HOW HIGHER EDUCATION REINFORCES THE INTERGENERATIONAL REPRODUCTION OF WHITE RACIAL PRIVILEGE 7 (2013), [http://www.coenet.org/files/publications-Separate\\_&\\_Unequal\\_July\\_2013.pdf](http://www.coenet.org/files/publications-Separate_&_Unequal_July_2013.pdf) [https://perma.cc/57X4-RHKQ].

79. See Alice Galmeyer & Wade T. Roberts, *Payday Lenders and Economically Distressed Communities: A Spatial Analysis of Financial Predation*, 46 SOC. SCI. J. 521, 533–34 (2009).

80. See PEW RESEARCH CTR., THE PARTISAN DIVIDE ON POLITICAL VALUES GROWS EVEN WIDER 7 (2017), <https://www.people-press.org/wp-content/uploads/sites/4/2017/10/10-05-2017-Political-landscape-release-updt.pdf> [https://perma.cc/7WGY-SM7K].

that our opponents are both wrong and treasonous.<sup>81</sup> Notably, the President has been willing to use rhetorical tools previously thought immoral in condemning his adversaries.<sup>82</sup> He describes the press as the enemy of the people, the Democratic Party as criminals and liars, and so on.<sup>83</sup> All this is to be justified, if at all, with reference to the importance of what he proposes to do. The model of politics here is one in which the stakes are so high as to make the usual rules of civility somewhat irrelevant. Opposing this model is an older one in which civility towards one's opponents is a hallmark of democratic deliberation.<sup>84</sup> We may disagree with one another on policy, but we share the commitment to the state in which we reside and regard each other as sharing that commitment.

If our opponents have made the choice to use the tools of rudeness and cruelty, though, does that give us moral permission to do likewise? In recent months, many Democrats have begun openly acknowledging the will to use usually forbidden means—including making Republican politicians uncomfortable by chasing them from restaurants and public spaces.<sup>85</sup> Are these methods justifiable given that one side has already made the choice to abandon the concept of civility towards the opposition?

One response is to insist upon civility and giving one's opponents a good hearing. There are good reasons for this strategy: if nothing else, it provides us with a space in which we must practice treating our opponents fairly and acknowledging that there may be some wisdom in even our opponent's heads. It provides, more to the point, a powerful example to others—to children, to the noncommitted observer, to the more reasonable

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81. See James D. Cook, *We're Losing Concept of 'Loyal Opposition,'* DAILY HERALD, <https://www.dailyherald.com/discuss/20180709/were-losing-concept-of-loyal-opposition> [<https://perma.cc/BN6J-KDET>] (last updated July 20, 2018, 12:33 PM).

82. Amanda Erickson, *Trump Called the News Media an 'Enemy of the American People.' Here's A History of the Term.,* WASH. POST (Feb. 18, 2017, 12:44 PM), <https://www.washingtonpost.com/news/worldviews/wp/2017/02/18/trump-called-the-news-media-an-enemy-of-the-american-people-heres-a-history-of-the-term> [<https://perma.cc/WVZ8-F6PK>].

83. See *id.*; Jane C. Timm, *Trump Says Democrats Are 'The Party of Crime.' We Fact Checked His Campaign-Trail Claims.,* NBC NEWS (Nov. 2, 2018, 1:56 PM), <https://www.nbcnews.com/politics/donald-trump/trump-says-democrats-are-party-crime-we-fact-checked-his-n920451> [<https://perma.cc/2GE5-32MH>].

84. Ann E. Cudd & Sally J. Scholz, *Philosophical Perspectives on Democracy in the Twenty-First Century: Introduction, in* PHILOSOPHICAL PERSPECTIVES ON DEMOCRACY IN THE 21ST CENTURY 1, 2 (Ann E. Cudd & Sally J. Scholz eds., 2014).

85. To take one recent example: Senator Ted Cruz was chased from a Washington D.C. restaurant, Fiola, during the controversy over the nomination of Brett Kavanaugh to the Supreme Court. See Devan Cole, *Ted Cruz Forced from Restaurant Amid Kavanaugh Drama,* CNN, <https://www.cnn.com/2018/09/25/politics/ted-cruz-heckled-restaurant-brett-kavanaugh/index.html> [<https://perma.cc/V356-PRQL>] (last updated Sept. 25, 2018, 7:33 PM).

members of the opposition party—that politics can be done without rancor or cruelty.

There are reasons to abandon civility, too. The first is that civility might be inappropriate under condition of oppression and radical evil; we should not worry about being rude, to put it simply, to fascists. The second is that civility places burdens on one side, while the other is allowed to go about its business unimpeded by the demands of moral decency.

I would argue that neither of these reasons is sufficient to motivate the abandonment of civility. To the first, we might note that if President Trump is indeed ushering in an era of radical evil, and I do not think he is, then the best response to that is not to be simply *rude*. If one were to encounter Heinrich Himmler<sup>86</sup> in a restaurant, the rightful response, whatever it might be, would not be to make his dinner mildly unpleasant. The second response is more difficult. It is hard to tell one side to be gentle and respectful when the other side is not, but there are good reasons to do just that. One of these is pragmatic, rather than principled; being *effectively* nasty is difficult and most people cannot pull it off.<sup>87</sup> The moral reason, though, is that there are some things we should not do, even if they are effective and even if our adversaries do them. We cannot, we think, torture the terrorists, even when they would torture us. The moral reasons we have to refrain from this are good ones, pressing on both us and on them, and they continue to tell us to do right, even when the terrorists continue to do wrong. The same is true for listening well—for listening to understand—in politics. Unless this practice is kept alive by the decent, it will not be kept alive at all.

### C. Journalism

The structures of news production and consumption have changed. On the production side, Fox News is now the most popular network in the United States;<sup>88</sup> its relationship with the Republican Party is central to its

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86. See *Heinrich Himmler and the Police Force Under the NSDAP*, DEP'T FIN. SERVICES, <https://www.dfs.ny.gov/consumer/holocaust/sicherheitsdienst.htm> [<https://perma.cc/38AB-S8H6>].

87. When Marco Rubio tried to mock Donald Trump, he came across as petulant and whiny. See, e.g., Daniel Kreps, *Watch Marco Rubio Try, Fail to Mock Donald Trump's Spelling*, ROLLING STONE (Feb. 26, 2016, 10:18 PM), <https://www.rollingstone.com/politics/politics-news/watch-marco-rubio-try-fail-to-mock-donald-trumps-spelling-94223> [<https://perma.cc/7WPN-DQ3H>].

88. Brian Flood, *Fox News Finishes 2018 As Most-Watched Cable Network, 'Hannity' Tops Cable News*, FOX NEWS (Dec. 12, 2018), <https://www.foxnews.com/entertainment/>

identity,<sup>89</sup> and the President himself is both an avid viewer and a frequent guest.<sup>90</sup> We are familiar with this fact and many of us decry the influence of Fox on federal policy.<sup>91</sup> What fewer people acknowledge is that *all* news producers are increasingly dependent upon a smaller and smaller set of people—namely, those willing to pay, whether through cable bills or through subscription.<sup>92</sup> Rodney Benson has detailed the ways in which even such august publications as *The New York Times* are vulnerable to the attitudes of a small number of people willing to buy online subscriptions to the newspaper; they have incentives to avoid irritating these people or contradicting the assumptions with which they make sense of the world.<sup>93</sup> News is increasingly segmented, and what is reported on depends upon who is willing to pay for that reporting.<sup>94</sup> All this is exacerbated by the widespread use of social media as a means for the consumption of news, in which we are increasingly prone to inhabit ideological communities in which nothing will be brought to our attention that troubles us or makes us question the rightness of our beliefs.<sup>95</sup> Fox News will continue to report upon the outrageous excesses of college liberals;<sup>96</sup> CNN will continue to report on the outrageous verbal gaffes emerging from Donald Trump and his advisors.<sup>97</sup>

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fox-news-finishes-2018-as-most-watched-cable-network-hannity-tops-cable-news [<https://perma.cc/XR4B-QA9V>].

89. See *Inside the Unprecedented Partnership Between Fox News and the Trump White House*, PBS (Mar. 5, 2019, 6:40 PM), <https://www.pbs.org/newshour/show/inside-the-unprecedented-partnership-between-fox-news-and-the-trump-white-house> [<https://perma.cc/ZCB2-WWVG>].

90. *Trump's 55th Interview with Fox Since Inauguration Day: What It's Like to Cover President Trump Every Day*, CNN (June 9, 2019, 11:00 AM), <https://www.cnn.com/2018/12/31/media/donald-trump-fox-news/index.html> [<https://perma.cc/3VRD-RYXE>].

91. *Inside the Unprecedented Partnership Between Fox News and the Trump White House*, *supra* note 89.

92. See generally RODNEY BENSON, *SHAPING IMMIGRATION NEWS: A FRENCH-AMERICAN COMPARISON* 20 (2013) (analyzing the impact money has on what material is reported in the media in America and France).

93. See generally *id.*

94. See generally *id.*

95. See Nicole Martin, *How Social Media Has Changed How We Consume News*, FORBES (Nov. 30, 2018, 4:26 PM), <https://www.forbes.com/sites/nicolemartin1/2018/11/30/how-social-media-has-changed-how-we-consume-news> [<https://perma.cc/Q8LA-2ZFQ>].

96. See, e.g., *Ingraham to Hannity: Let's Tour Liberal College Campuses; Is Left Running out of Comparisons for Trump?*, FOX NEWS, <https://www.foxnews.com/transcript/ingraham-to-hannity-lets-tour-liberal-college-campuses-is-left-running-out-of-comparisons-for-trump> [<https://perma.cc/BK8Y-LU4B>] (last updated Apr. 28, 2017).

97. See, e.g., Chris Cillizza, *The 32 Most Shocking Lines from Donald Trump's Cincinnati Campaign Rally*, CNN, <https://www.cnn.com/2019/08/02/politics/donald-trump-cincinnati-speech-rally/index.html> [<https://perma.cc/52QV-RWYG>] (last updated Aug. 2, 2019, 1:08 PM).

This is a problem, if what I have said is right, because neither side will often encounter the sorts of pain that animate the decisions and choices of their opponents. We will instead be regularly reminded that those who disagree with us are either fools or traitors. When this sort of incentive structure is mixed with the amplificative effect of social media, the result is inevitably the sorts of polarization and refusal to defer that I think have made recent politics so dangerous.

#### IV. CONCLUSION

This is the point at which I might want to stop and offer a proposal by which we might build news spaces that refuse to demonize or belittle the views and opinions of anyone. That is what I want to do, but I must admit that I cannot see a great deal of hope here. There is, I think, no magic bullet by which we might build media that are less prone to polarization of this sort. Indeed, I am increasingly worried that there is no ordinary ammunition here at all. If there is any hope to be had, it will have to come in small spaces, in more small scale acts of resistance to the march of this sort of media—and to the sorts of refusal to listen that make this version of media possible.

I will conclude this Article by mentioning a few of these small bits of hope. Carl Bergstrom, at University of Washington, has built a class on recognizing—and speaking back to—bullshit, whether on the left or on the right.<sup>98</sup> The class is overwhelmingly popular and has now been viewed online by more than a quarter of a million students.<sup>99</sup> This indicates, if nothing else, a desire to learn how to not fall prey to the temptations I have discussed: to think you know more than you do, whether about other people's pain or the world you share. We can avoid feeding the beast; we can refuse to amplify those who demean others, even when they are on our side; and we can avoid the thought that those who disagree with us are broken, in virtue of that disagreement. Kshama Sawant, a socialist member of the Seattle City Council, responded to a comment about "our Republican friends" by

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98. CALLING BULLSHIT, <https://callingbullshit.org> [<https://perma.cc/R9MR-QTEM>].

99. Quinn Russell Brown, *Busting BS: Training Students to Catch—and Call Out—Fake News and Falsehoods*, COLUMNS MAG., <https://magazine.washington.edu/feature/how-to-spot-bs-ischool> [<https://perma.cc/6GY6-XUAT>].

noting that she *had* no friends who were Republicans.<sup>100</sup> The comment was cheered, but it is heartening to note that others—including some who share Sawant’s politics—thought that there was something morally bad about not being friends with people who disagree with us.<sup>101</sup> We might take these small bits of good news and see if we can build something with them—to resist the trends discussed at the beginning and see if democracy can resist the decay we seem to be experiencing.

Will it work? I think, at the very least, there is a good chance it will not. I cannot say democracy will necessarily fail; if we are able to retrain ourselves and rebuild these virtues I have described, then we might think that the sun has not yet set on liberal democracy, but I am not optimistic. Authoritarianism is on the rise; that rise will continue. If democracy becomes impossible, then we might at least want to say that we went down fighting—that our values guided us, even as they failed. That is a cold comfort. In times like these, though, that might be the only sort of comfort we can expect.

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100. Danny Westneat, *In Seattle, Is It Now Taboo To Be Friends with a Republican?*, SEATTLE TIMES (June 2, 2017, 8:30 PM), <https://www.seattletimes.com/seattle-news/politics/in-seattle-is-it-now-taboo-to-be-friends-with-a-republican> [<https://perma.cc/U99M-MLW5>].

101. Nikkita Oliver, during her run for Mayor of Seattle, offered at least a partial rebuttal to Sawant. See Mónica Guzmán, *Nikkita Oliver: 'I Have to Have Friends Who Disagree with Me,'* EVERGREY (June 9, 2017, 11:53 AM), <https://theevergrey.com/nikkita-oliver-kshama-sawant-republicans-seattle-friends-disagree> [<https://perma.cc/42C8-7PKN>].