

What Demonstrations Mean

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1. SOME QUESTIONS

The killing of George Floyd by police officers in Minneapolis on May 25, 2020 sparked a huge wave of protests, under the auspices of the “Black Lives Matter” movement. The protests have continued for weeks (months actually) in cities all around the US. Signs are carried, reading: “No justice, no peace,” “Black lives matter,” “Defund the police,” “Hands up. Don’t shoot,” “Justice for George Floyd,” and Floyd’s own last words, “I can’t breathe.” And it isn’t just about that one killing: protests against other police killings of black men and women have been incorporated into the chain of demonstrations too—for example, Breonna Taylor and Rayshard Brookes, not to mention the shooting of Jacob Blake in Kenosha.

There is so much to say about the power and significance of these protests: the numbers of protestors, the endurance and spread of the demonstrations, the diversity of the crowds, the resolute insistence that this time it will be different. Nothing but a division of labor among writers can do justice to these events: by which I mean not everyone addressing the one most important thing, but some addressing one aspect, some addressing another. There are many things about the Black Lives Matter demonstrations I will not discuss: I hope other papers in this series will.

For my part, I want to ask questions about demonstrations and demonstrating as such. Black Lives Matter protests have something in common with demonstrations generally. And the questions they prompt me to address are abstract questions I have been considering for a long time.² What is the point of a demonstration? What is the relation between demonstrating and political speech? Why do rulers fear demonstrations or, at any rate, why are they annoyed by

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² I have included a long list of questions as an Appendix on p. 39.

them? What kind of threat (if any) does a demonstration pose? Is it possible to conceptualize demonstrating as a Weberian *type* of political activity,³ and to say anything useful about what distinguishes this type from other modes of political engagement? Can that typology then be applied to the very wide diversity of demonstrations that one sees on the streets and in the news?

It is hard to extrapolate anything from just one case. So here's another set of demonstrations to think about, from quite a different context: demonstrations following recent elections in Belarus.⁴ After the announcement on August 9, 2020 of what appear to have been blatantly false election results giving a landslide (>80%) to strongman Alexander Lukashenko, tens of thousands of Belarusian citizens have come out bravely onto the streets, in Minsk and other major cities, day after day, demanding that Lukashenko resign. They have been met with heavy-handed, indeed extremely violent responses by police and security forces; thousands of people have been detained; and many hundreds of those detained have been beaten and tortured.

The Belarusian demonstrations have continued week after week, with huge numbers involved. At the time of writing (September 9), no one knows how this will end. The demonstrators seem to be under the impression that if only they keep up the pressure, Lukashenko will have no choice but to resign, ceding the election to exiled opposition leader Sviatlana Tsikhanoŭskaya. But how is that supposed to work? What's the mechanism? Why should we expect Lukashenko to resign just because tens of thousands of people are on the streets? Why doesn't he just ignore them? Is it the effect on traffic that he is worried about? Lukashenko has used various forms of violent repression and there is word that one of his overseas sponsors, Russian leader Vladimir Putin, will send a special task force to help crush the demonstrations. But why do they need to be crushed? Why is a series of demonstrations perceived as a threat? Is it because it is a living refutation of Lukashenko's claims about his electoral popularity? Is that the issue? Do demonstrations undermine the legitimacy of the

³ See Max Weber, "'Objectivity' in Social Science and Social Policy," in E.A. Shils and H.A. Finch (eds.) *Max Weber: The Methodology of the Social Sciences* (Routledge, 1949), 90-100.

⁴ This paper was originally written to address questions arising out of Black Lives Matter protests in the United States. But beginning in August, the events in Belarus raised many of the issues I wanted to deal with, in a direct and acute form. So I have added this as a further illustration. This is still a work in progress, so the seams may be a bit more visible than they ought to be. No matter.

regime, and if so, how? What is it that the demonstrators think they are doing to bring about the government's downfall? And what does the government fear?

Those are my questions. Here's how I will proceed. In the remainder of this section 1 and also in section 2, I shall further elaborate the questions I want to ask, and distinguish this discussion of demonstrations from important discussions that have gone on in political philosophy for decades about civil disobedience and the choice between violence and non-violence. In section 3, I shall consider the limits of an account that associates demonstrations with free speech and understands the point of demonstrating as conveying a message. I don't want to deny the importance of messaging, but there is a lot else going on as well. In section 4, I shall consider where etymology and ordinary language analysis might take us with the word "demonstrate." Sections 5 and 6 will focus on the element of presence—the sheer numbers of people showing themselves at a demonstration, in a public place, for all to see. But demonstrators don't just materialize: they make a fuss and I will discuss this aspect in section 7. Section 8 asks why governments seem to fear demonstrations so much; politically, what is so fearful about them? I try to bring that question to focus on the particular issue of legitimacy in section 9. Finally in sections 10 and 11, the essay concludes with some ruminations on method.

Now, a few preliminary points. First: I am not for a moment in this paper questioning the legitimacy or wisdom or civic, political, or moral appropriateness of demonstrations, whether in Minsk or in Portland. It is not that sort of "What is the point?" inquiry. I just want to take a deeper look at what demonstrating involves. I am assuming that demonstrations do have a point—one or more very important points—and that it might be a good idea to figure out in relatively abstract terms what the point is. Demonstrating is a familiar practice, an established ritual, part of the political repertoire in modern societies. How in general should we characterize this form, this practice, this liturgy? What can be offered here by way of abstract dramaturgy?

Second: I have indicated that my questions can be put from two directions: What are demonstrators doing when they assemble and march in their thousands? And why is whatever they are trying to do so unwelcome to the authorities? Why do governments always attempt to show them in a bad light, if they can—even when the demonstrations do not involve any significant law-breaking or violence? If they don't want to respond positively to their message,

can't they just ignore them? (Sometimes they do.)⁵ Why do protestors and governments play a sort of numbers game, with the government downplaying the number of protestors participating in a demonstration? Why do numbers matter? What's the importance of the size of the crowd?

Crudely and more generally: what is it about a demonstration *as such* that pisses the authorities off? And in turn, what more does that tell us about what the point of a demonstration might be? Suppose the demonstrators' purpose is public display of some set of opinions critical of the policies of the government. But those views could be written up in an article or conveyed by Twitter. What is it about thousands of demonstrators *assembling in person in public to manifest their discontent* that seems, from the one side, such a good idea? And what is it about that *public in-person manifestation* that seems, from the other side, so upsetting?

Either question might be considered an empirical question of political psychology.⁶ There is no guarantee that there is any general answer accessible to philosophical intuition. Maybe each demonstration has its own logic as it has its own justification. Maybe each plays into the circumstances of its own political moment. Certainly there are massive differences between the Belarusian protests and Black Lives Matter. Is "demonstration" a useful category to cover both sets of phenomena? Perhaps the political world should be divided up and described in other ways. What we call demonstrations are familiar to us, perhaps over-familiar. Will analysis at this level of abstraction will reveal anything but banalities? I don't know. Most of us use the category and we know a demonstration when we see or hear one, even when we don't know what the issues are. So what is it that we know?

From the window of my office at NYU Law School (back in the day when we used to work in our offices), I would sometimes hear chanting varying in volume as though coming from a moving body of people. I knew it was not a religious procession. I could tell there was a political demonstration beginning or ending in Washington Square even though I had no idea

⁵ In a section of *How We Win: A Guide to Non-Violent Direct Action Campaigning* (Melville House, 2018), entitled "A Direct Action is not a Protest," George Lakey writes: "In February 2003 I joined millions of others around the world on the eve of George W. Bush's invasion of Iraq. The protest did get a huge front-page headline in *The New York Times*, but Bush needed only to wait until we went home. ... A one-off protest is for venting, not for exerting power. ... Bush had a plan to persist. We did not."

⁶ For insistence on an empirical approach, see Russell Dalton, Alix Van Sickle and Steven Weldon, "The Individual-Institutional Nexus of Protest Behaviour," *British Journal of Political Science*, 40 (2010), 51.

what it was about. Still, I knew enough about demonstrations in general to be excited by what I heard. What was it that excited me? When I was a student, the respectable father of a school-friend of mine was invited by my friend to come with us on a protest march in our home town in New Zealand to confront the visiting Prime Minister on a pressing environmental issue.⁷ My friend's respectable father was known to share our view on the issue, but he adamantly refused to come with us. We pressed him. "But, but—that would be...a *demonstration!*" he sputtered. What did the word signify to him?

My questions about the point of demonstrating are analogous to questions sometimes asked about voting. What is the meaning of an individual vote? Does it convey an opinion? A personal preference? Descriptively, can we say what people are doing when they vote? Normatively, what are they supposed to be doing? There is a whole literature on this in political science and another, barely overlapping with it, in democratic theory. So, analogously, what are people doing when they demonstrate? With one's vote, one is at the very least inputting something into an institutionalized decision-function: my vote will be formally counted (I hope). There is nothing remotely equivalent for demonstrating. Numbers matter in a formal way for voting, and not for demonstrations. Still, as I said a moment ago, numbers do seem to matter. So what exactly does the appearance of a large number of demonstrators amount to?

Here's yet another way of putting the question. Because demonstrating seems to be a form of speech (among other things), we can ask: what is the illocutionary force of the speech acts that a demonstration constitutes, comprises, or coordinates?⁸ Is it a way of addressing the government? A way of addressing one's fellow citizens? Both? And what mode of address is involved? What does a demonstration say (and how is that connected with what the demonstrators say)? These are like the questions sometimes asked about civil disobedience. John Rawls's discussion is the best known. Rawls says that civil disobedience is "a mode of address" to the political community:

⁷ The city was Invercargill in 1970. The issue was "Save Manapouri!"—protesting the permanent raising of the water level of a lake in Fiordland to generate hydro-electric power for an aluminum smelter. See also <https://www.noted.co.nz/planet/planet-planet/manapouri-the-campaign-that-changed-a-nation>

⁸ For "illocutionary force," see J.L. Austin, *How to do Things with Words* (Blackwell, 1962).

By acting in this way one addresses the sense of justice of the majority of the community and declares that in one's considered opinion the principles of social cooperation among free and equal men are not being respected. ... By engaging in civil disobedience one intends ... to address the sense of justice of the majority and serve fair notice that in one's sincere and considered opinion the conditions of free cooperation are being violated. We are appealing to others to reconsider ... and to recognize that they cannot expect us to acquiesce indefinitely in the terms they impose upon us."⁹

Rawls says of civil disobedience that "while it may warn and admonish, it is not itself a threat."¹⁰ Warn, admonish, threaten—these are different kinds of speech act, each worth considering in itself. Are there other speech acts we should ponder, when we consider demonstrations in which civil disobedience is not involved?

For let me be clear: this reference to Rawls's discussion is an analogy only. I am not concerned in this paper with the practice of civil disobedience as such. Rawls seems to think that demonstrations occur at a prior stage of regular political action. He talks of "a decent period of time to allow for reasonable political appeals in the normal way."¹¹ He says that before civil disobedience can be justified, "normal appeals to the political majority have already been made in good faith and ... they have failed." These include "legal protests and demonstrations," he says.¹² The implication is that a protest or demonstration is well within the limits of respectable politics, unlike civil disobedience, which, said Rawls in 1969,

is a rather desperate act *just* within those limits ... undertaken as a last resort when standard democratic processes have failed. In this sense it is not a normal political action. When it is justified there has been a serious breakdown.¹³

Is that a sensible contrast? Is Rawls right that *like* civil disobedience (only in a less extreme way) a demonstration is best understood as an appeal to the political majority? Unfortunately Rawls

⁹ John Rawls, *A Theory of Justice*, Revised edition (Harvard University Press, 1988) 320 and 355-6.

¹⁰ *Ibid.*, 322.

¹¹ *Ibid.*, 337.

¹² *Ibid.*, 327.

¹³ John Rawls, "The Justification of Civil Disobedience," (1969), Samuel Freeman (ed.) *John Rawls, Collected Papers* (Harvard University Press, 1999), 176 at 183 (my emphasis).

does not consider the possibility that there is a hierarchy of legitimate action within normal politics. But we can: perhaps lobbying, advocacy, and voting have priority, demonstrating is justified next when those tactics have failed, and then as a really, really last resort, there is civil disobedience. If that's right, then what is it about demonstrating that indicates it should not be the first thing we resort to in politics? Should we view demonstrating as problematic from the perspective of ordinary politics? (For example, does it exemplify any of the problems of destabilization sometimes thought to be associated with mass participation as such?)¹⁴

2. LAW-BREAKING, VIOLENCE, STRIKES, INSURRECTION

For a long time—certainly in the U.S. since the 1960s—discussions of protest have been dominated by the issue of civil disobedience. I do not doubt the importance of that discussion.¹⁵ But it is not the only interesting question to pose. I would like to push back against the tendency to have the civil disobedience literature swamp the demonstration literature (such as it is).

There are different kinds of disobedience and maybe there's always an element of it in any demonstration. Sometimes law-breaking is the point. Gandhi's Salt Satyagraha at Dandi in 1930 was an instance of carefully calculated and deliberately provocative law-breaking. Lunch counter protests in the American South provide another example of direct civil disobedience, where members of an organized group bravely and deliberately broke a law they were protesting in order to make a statement about the injustice of that law.

Rawls also identifies a category of *indirect* civil disobedience. He observes that sometimes it is unreasonable to have to break the very law one is protesting: “[T]here are

¹⁴ Get cite for this view of participatory politics.

¹⁵ For some very recent discussion, see Melissa Schwartzberg (ed.), *Protest and Dissent: Nomos LXII* (NYU Press, 2020). The usual questions are the ones that Schwartzberg points to in her editor's introduction: “the ethics of civil and uncivil disobedience, asking whether distinguishing between civil and uncivil forms of disobedience is tenable....” These are not the questions I'll be asking—not because they are unimportant, but because a tremendous amount of work has been devoted to them (and, as Schwartzberg's volume indicates, is being devoted to them) already. But Schwartzberg also asks “whether we should distinguish liberal and radical forms and justifications of protest; whether the means of protest can or should be distinguished from its ends; and when we can expect protests to elicit increased engagement in democracy and when it might undermine, or substitute for, other forms of participation.” Those are more like the questions I want to address.

sometimes strong reasons for not infringing on the law or policy held to be unjust. Instead one may disobey traffic ordinances or laws of trespass as a way of presenting one's case."¹⁶

Indirect disobedience is I think different from *incidental* disobedience, though they fade into each other. Almost any demonstration is likely to be disruptive—we will consider shortly whether that is the point—which means that traffic ordinances or laws regulating what happens in public places are likely to be infringed. People who are supposed to be on sidewalks may overflow onto the street. Sometimes those infringements will loom large on the day, like the violation of the injunction at issue in *Walker v. City of Birmingham* (an injunction that was arguably unconstitutional).¹⁷ Other times the legal infringements are not really key to what is happening, even if the disruption is. In the *City of Birmingham* case, we should at least consider the issues of law in this way: the city administration opposed the prospect of a civil rights demonstration; that's why they were determined to refuse a permit and secure an injunction. But why? What was it about a *demonstration*—one that would be more or less lawful if a permit were granted—that so angered Bull Connor and the others? Again, that's a version of the question I am asking. Similarly many of the demonstrations in Belarus are taken place in defiance of edicts specifically forbidding them. But breaking the law is not the point. Anyway, though there may not be any bright line between demonstrating and at least incidental law-breaking, we can still ask about the point of demonstrating when disobedience to law as such is not explicitly part of that point.

Judith Butler says that “[c]ontemporary protests renew debates about whether or not violence is justified, raising questions about what even counts as violence.”¹⁸ Again, her questions are worth considering though they mostly don't overlap with mine. Violence is a

¹⁶ Rawls, *Theory of Justice*, 320. See also Hannah Arendt, “Civil Disobedience,” in her collection *Crises of the Republic* (Harcourt Brace Jovanovich, 1972), 56: indirect civil disobedience she says is “where laws (for instance, traffic regulations) are violated that the disobedient regards as nonobjectionable in themselves in order to protest unjust ordinances or governmental policies and executive orders.”

¹⁷ *Walker v. City of Birmingham* 388 U.S. 307 (1967). What was planned was a demonstration in the classic sense. But the refusal of city authorities to consider giving a permit, the unconstitutionality of the injunction that the authorities secured, plus the very violent reaction of the police to the demonstration's taking place anyway—all this meant that the issue of law-breaking loomed very large indeed.

¹⁸ Judith Butler, “Protest, Violent and Nonviolent,” in Eric Klineberg, Caitlin Zaloom, and Sharon Marcus (eds.) *Antidemocracy in America: Truth, Power, and the Republic at Risk* (Columbia University Press, 2019), 232.

capacious term including not just fighting and the use of deadly force, but also property damage,¹⁹ and even very low level pushing-and-shoving when police are attempting to determine where a moving demonstration has to go. Demonstrations can sometimes turn violent or, more commonly, individuals bent on violence—on fighting the police, setting fire to property, looting, etc.—might associate themselves with demonstrations or take advantage of the opportunities of disorder that a demonstration provides. This seems to have happened with some of the Black Lives Matter demonstrations. It is evident that most of the demonstrators were and are resolutely non-violent and a lot of the fighting that has occurred has been initiated by infiltrators, provocateurs, counter-demonstrators, and the police themselves.²⁰ Once violence does break out, the reaction of the authorities acquires a new focus and justification. The demonstrators can be denounced now as an unruly mob, as terrorists, anarchists, or as the naïve and pitiable dupes of outside elements. (Again: why are governments so eager to say *that*?) I don't want to make the issue of violence central. But my discussion will inevitably overlap with discussions of violence—at least in the sense of low-level disorder, pushing and shoving, etc.

When demonstrations mobilize large numbers of people day after day, economic activity may be disrupted, if only through the absence of the demonstrators from their place of work. So a demonstration may amount to a sort of industrial action. Or it may be supplemented by deliberately organized strikes at key industries.²¹ This has happened in Minsk and elsewhere in Belarus with strikes at tractor factories, mines, and other state-owned enterprises. These actions are obviously a serious problem for the authorities. But are demonstrations not also a problem for the authorities even when they do not hook up with strikes in this way?

¹⁹ For example, Mark Engler and Paul Engler, *This is an Uprising: How Nonviolent Revolt is Shaping the Twenty-First Century* (Bold Type Books, 2017) point out that “advocates of sabotage and property destruction commonly argue these tactics should not be considered ‘violent,’ because they target inanimate objects and are not designed to cause physical harm to people.”

²⁰ Tabatha Abu El-Haj, “Defining Nonviolence as a Matter of Law and Politics,” in Schwartzberg (ed.) *Protest and Dissent*, 152: “In this regard, the experiences of BLM [Black Lives Matter] are typical: It is well documented that assemblies most frequently descend into mayhem in response to efforts to police them.” See also Jerome Skolnick, *The Politics of Protest: Task Force on Violent Aspects of Protest and Confrontation of the National Commission on the Causes and Prevention of Violence*, New edition (NYU Press, 2010).

²¹ See Engler and Engler, *This is an Uprising*, 145-6.

In recent years, discussion of protest has been taken over by what one might call the “uprising” literature.²² In its most extreme form, there is the question of insurrection. Is a demonstration the first intimation of an uprising, putting numbers on display on the streets as a sort of warning? That seems to be the significance of large demonstrations under authoritarian regimes—in the early phases of the Arab Spring, for example, in Eastern and Central Europe in 1989, and most recently in Belarus. (Notice, by the way, that a demonstration may be, in John Berger’s words, a “rehearsal” for revolution directed not just at the minds of the authorities, but also at the consciousness of the demonstrators.)²³

What about in a genuine democracy? Are demonstrations in a democracy also intimations of an uprising? Should that worry us? Do democratic demonstrators have a responsibility to avoid any impression of this kind? Some say that nonviolent protest always carries an implicit threat: “Deal with us now while peace-loving leaders are in charge—for if peaceful activism does not work, hotter heads may prevail next time.”²⁴ Can this impression be avoided? In some countries, the right to assemble in public is associated with a requirement that the gathering be non-threatening, e.g., that weapons not be carried.²⁵ Article 17 of the Bill of Rights in the South African Constitution South African Bill of Rights provides: “Everyone has the right, *peacefully and unarmed*, to assemble, to demonstrate, to picket and to present petitions” (my emphasis). Is this a way of avoiding any intimation of an uprising?

On the other hand, “uprising” and “revolution,” like “violence” and “disobedience,” can be used in broader or narrower senses. Large assemblies and marches may well presage a revolution, in the extended sense that the participants are looking for wholesale change across a whole area of social or political life, of which the immediate focus of the demonstration is just a

²² *Ibid.*, 236.

²³ John Berger, “The Nature of Mass Demonstrations,” *International Socialism*, 34 (Autumn 1968): “The truth is that mass demonstrations are rehearsals for revolution: not strategic or even tactical ones, but rehearsals of revolutionary awareness.”

²⁴ Richard Ford, “Protest Fatigue,” in Schwartzberg ed., *Protest and Dissent*.

²⁵ Cf. the position in the US as discussed in Note, “Prohibiting Guns at Public Demonstrations: Debunking First and Second Amendment Myths after Charlottesville,” *UCLA Law Review Discourse*, 65 (2018), 172 and Eric Tirschwell, Alla Lefkowitz, and Luke Morgan, “Leave your Guns at Home: The Constitutionality of a Prohibition on Carrying Firearms at Political Demonstrations,” *Duke Law Journal* 68 (2018), 175.

beginning. “Black lives matter” opens up a whole range of issues. Mark Engler points out that “[m]ass mobilizations take place within a wider ecosystem of social-movement activity.”²⁶ Sometimes the sense conveyed by the most dramatic and successful demonstrations is that things will never be the same again. The late John Lewis in a speech at the March on Washington in 1963 told his audience:

My friends, let us not forget that we are involved in a serious social revolution. ... To those who have said, “Be patient and wait,” we have long said that we cannot be patient. We do not want our freedom gradually, but we want to be free now! ... I appeal to all of you to get into this great revolution that is sweeping this nation. Get in and stay in the streets of every city, every village and hamlet of this nation until true freedom comes, until the revolution of 1776 is complete. We must get in this revolution and complete the revolution.²⁷

Or, a demonstration may be oriented to some relatively modest set of demands. Whether a given demand seems insurrectionary may depend on what the political system is used to. Demanding that a corrupt candidate resign and that false election results be rescinded may seem like an uprising in Belarus. But what the demonstrators are demanding is fidelity to electoral law. (The U.S. may face something like this in November 2020.) Anyway, even if the demands are moderate, I don’t think we should want to lose sight of the fact that something about a demonstration—*any* demonstration—seems to convey at least to its targets and opponents that things *might* get out of hand if its demands are not listened to. Patience is evaporating, it seems to say, politics is being upended and stark choices may have to be faced; don’t expect things to stay the same. If it is part of our aim to understand demonstrations from the point of view of

²⁶ Mark Engler, “How Mass Protests End,” *The Atlantic*, July 2020. “Other pieces of movements include building long-term organizations—such as unions and community groups—and taking on ‘inside game’ work, such as electoral campaigns and legislative lobbying. Still other segments of a movement might devote themselves to political education, cultivating personal transformation at the individual level (through spiritual and cultural programs), or to building alternative institutions (such as community spaces, bookstores, food co-ops, and independent media). All of these types of organizing contribute to the movement’s long-term impact....”

²⁷ John Lewis, “Speech at the March on Washington” (August 28, 1963) available at <https://voicesofdemocracy.umd.edu/lewis-speech-at-the-march-on-washington-speech-text/>

those who are made uncomfortable by them, then it may not be possible entirely to eliminate the intimation of uprising from our analysis.

Law-breaking, violence, industrial action, political uprising—demonstrations can be distinguished in principle from each of these. But the lines in question are shaky and unstable. It may be part of the idea of demonstrating that it overlaps edgily into these other forms or that it summons up thoughts of these other practices. That doesn't make demonstrating irresponsible. It just means we should be aware that demonstrations point beyond themselves (sometimes politely, sometimes not) to these other phenomena.

3. SENDING A MESSAGE

So, in the meantime let's try to focus on demonstrations as such, even while acknowledging that protest activity might open up into these other phenomena.

What do demonstrations do? Is a demonstration just a medium of expression? Do any or all of the various issues associated with demonstrations boil down to issues of free speech? It is plain enough that a demonstration usually conveys a message of some sort: a grievance; an opinion; an account of what happened; some demands. For whom is this message intended? Rawls talks about addressing one's fellow citizens and he says care must be taken that the message is understood by the intended audience.²⁸ But the provision in our Constitution concerning freedom of assembly imagines a peaceable gathering "to petition *the Government* for a redress of grievances."²⁹ We are told that "[p]olitical protests are often designed to force people in positions of authority to face up to some inconvenient truth."³⁰ So which is it, who is the addressee—the government or our fellow citizens? It could be both: we want our fellow citizens to hear us petitioning the government and we want the government to be aware of our addressing our fellow citizens.

²⁸ Rawls, *Theory of Justice*, 330.

²⁹ My emphasis. In the United States, the First Amendment provides that no law shall be made "abridging ... the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

³⁰ Ford, "Protest Fatigue," 131.

Can the assembly element be separated from the element of petition? Hannah Arendt quotes Corwin as saying that “[h]istorically, the right of petition is a primary right, the right peaceably to assemble a subordinate and instrumental right.”³¹ Assembly is not necessarily synonymous with demonstration. In the early days of the republic, “assembly” was understood as a meeting to formulate a petition, not the actual bringing of a crowd to Washington.³² But Corwin continued: “Today, however, the right of peaceable assembly is cognate to those of free speech and free press and is equally fundamental.”³³ Most demonstrations these days do not present their message in the form of a petition. But they do seek to convey a message on their banners, in their chanted slogans, and perhaps through speeches at rallies or at the beginning or end of a march. And again there’s the issue of numbers: a demonstration has in common with a petition that it associates the message with numbers—thousands of signatures on a page, thousands of banner-carrying marchers on the street.

Messages (or, for that matter, petitions) can be conveyed in all sorts of ways: in a letter, a blog, an op-ed, a podcast, or in an interview on the news. It can be done by lobbying. (Is demonstrating “a new type of lobbying”?)³⁴ Obviously demonstrating is a very particular way of delivering a message. It is not just the raising of a few points at the negotiating table. It is, in a very apt phrase in Schwartzberg’s volume, “the politics of the people outdoors.”³⁵ It is more like a broadcast than a written statement:

a demonstration has significant publicity advantages over more conventional media of expression, since it can attract extensive news coverage and widespread public interest; and for persons unpopular with or unknown to the general public, or without financial

³¹ Edward S. Corwin, *The Constitution and What It Means Today* (1958), 203-204, quoted by Arendt, “Civil Disobedience,” 83. Arendt follows this up by saying (ibid., 101): “The next step would be to admit publicly that the First Amendment neither in language nor in spirit covers the right of association as it is actually practiced in this country.... If there is anything that urgently requires a new constitutional amendment and is worth all the trouble that goes with it, it is certainly this.”

³² Lucy Barber, *Marching on Washington: The Forging of an American Political Tradition* (University of California Press, 2002), 5.

³³ Corwin, *The Constitution and What It Means Today*, 83.

³⁴ Barber, *Marching on Washington*, 75ff. and 219. The phrase is from Walter Waters, leader of the “Bonus Army” marching on Washington in 1932.

³⁵ Tabatha Abu El-Haj, “Defining Nonviolence as a Matter of Law and Politics,” in Schwartzberg ed., *Protest and Dissent*.

resources, a demonstration may be the only effective means to publicize a message or reach a desired audience.³⁶

In a demonstration, one attempts to rivet the audience’s attention in real time on the propositions being put forward. The rally or the march “conveys its message succinctly, through a symbolic message, and repeatedly, as the message is replicated by the dozens, hundreds, or thousands.”³⁷ “Black lives matter,” say the signs and cry the protesters at myriad rallies, everywhere you look, for weeks on end. Demonstrations are insistent, that’s for sure.

So, again: should we put demonstrating into the category of speech—understanding it as protected, for example in the United States, by the free speech provision of the First Amendment? Here there seems to be a divergence. Some commentators say that a protest aimed at government officials and government policy is “high value” speech, that is, political speech of the purest form.³⁸ Noisier and more disruptive perhaps, but a central case of speech nonetheless. As the Supreme Court said famously in *Terminiello v. Chicago* (1949), free speech “may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. ... There is no room under our Constitution for a more restrictive view.”³⁹ But the First Amendment position is hardly settled so far as demonstrations are concerned. Justice Goldberg writing for the Court in *Cox v. Louisiana* (1965), said

We emphatically reject the notion ... that the First and Fourteenth Amendments afford the same kind of freedom to those who would communicate ideas by conduct such as patrolling, marching, and picketing on streets and highways, as these amendments afford to those who communicate ideas by pure speech.⁴⁰

³⁶ Note, “Regulation of Demonstrations,” *Harvard L. Rev.*, 80 (1967), 1773.

³⁷ Nick Suplina, “Crowd Control: The Troubling Mix of First Amendment Law, Political Demonstrations, and Terrorism,” *Geo. Wash. L. Rev.*, 73 (2005) 395, 406–07

³⁸ Mary Cheh, “Demonstrations, Security Zones, and First Amendment Protection of Special Places,” *U. D.C. L. Rev.* 8 (2004), 53, at 62.

³⁹ *Terminiello v. Chicago*, 337 U.S. 1, 4 (1949).

⁴⁰ *Cox v. Louisiana* 379 U.S. 536, 555 (1965).

The two cases can be reconciled by focusing the comments in *Cox* on time and place restrictions and focusing the comments in *Terminiello* on the issue of a possible breach of the peace. But if we do that, then the *Cox* opinion cries out for some analysis of the importance of the “outdoors” aspect of political participation—the marching as such, the rallying as such, the being-seen in public and the literal space that that occupies: why time and place may matter to the demonstrators—to balance the Court’s long disquisition on the importance of a municipality being able to control its streets and sidewalks.

So: is delivering a message the whole point of a demonstration? Not quite. Often the so-called message is common knowledge already. It is common knowledge that a certain grievance exists and that certain demands are made; the demonstration doesn’t need to convey that communicatively. Sometimes it is more a question of *changing the discourse*—again, think of “Black Lives Matter” (and the task of having to explain its historic logic to those who are only willing to say “All lives matter”). The demonstrations in Belarus perform the important function not only of communicating citizens’ well-known denunciation of the announced results of the election, but of making it common knowledge for anyone with their eyes open that the regime’s message about election results is not accepted and that people will not put up with it.

Also, we know from other contexts that a constative utterance can work sometimes also as a different sort of speech act, in which case it may matter less that the message be heard and understood by its ostensive recipients. Maybe it is better understood as expressive, not just communicative. Or as self-affirming. Nick Suplina puts it this way: “[D]emonstrations are often as much about increasing the individual’s sense of power and self-actualization as they are about the actual content of the words spoken at such events.”⁴¹ And, as Amna Akba indicates,

Protest is an expression of feeling, a tool of constituting a political community alternative to the mainstream and communicating to other similarly situated people. It cannot simply be evaluated for what it communicates to those outside of the protest community in itself and other similarly situated people.⁴²

⁴¹ Suplina, “Crowd Control,” 409.

⁴² Amna Akbar, “The Radical Possibilities of Protest,” in Schwartzberg (ed.) *Protest and Dissent* 57.

Perhaps “public protest ... serves as a safety valve.”⁴³ Or there may be an important recognitional or dignitarian element. Mari Matsuda said this about civil rights era protests: “In focusing only on the material changes attained and, particularly obvious today, the material changes not attained, we fail to acknowledge the ways in which the civil rights movement dignified its participants.”⁴⁴ This is particularly the case when the demonstrators are those who have previously been unheard, who have had no presence in contemporary politics. What is conveyed may be something like: “Be advised that it is *we*, now—*we*, who have not always been heard—who take it upon ourselves publicly to deliver this rebuke.” In the recent *Protest and Dissent* volume, Susan Brison rejects Richard Ford’s derision of “mass demonstrations ... organized for the benefit of the participants rather than the cause,” as though the only benefit to participants were therapeutic.⁴⁵ Even if it is not just about practical deliberation and outcomes, the implications for the protestors’ dignity and recognition can matter much more than that.

Moreover it is not always possible to separate the communicative and dignitarian aspects. They are tangled together. Respecting dignity means, among other things, taking notice of what is said. In her 1848 novel *Mary Barton*, Mrs. Gaskell tells of a time when desperate and impoverished mill-workers all over England resolved to take their case to Parliament.⁴⁶

[T]he starving multitudes had heard that the very existence of their distress had been denied in Parliament; and though they felt this strange and inexplicable, yet the idea that their misery had still to be revealed in all its depths, and that then some remedy would be found, soothed their aching hearts, and kept down their rising fury. So a petition was framed, and signed by thousands in the bright spring days of 1839, imploring Parliament to hear witnesses who could testify to the unparalleled destitution of the manufacturing districts. Nottingham, Sheffield, Glasgow, Manchester, and many other towns, were busy

⁴³ Cheh, “Demonstrations, Security Zones, and First Amendment Protection of Special Places,” 62.

⁴⁴ Mari Matsuda, *Where Is Your Body? And Other Essays on Race, Gender, and the Law* (Penguin Random House, 1996), 75, quoted in Susan Brison, “‘No Ways Tired’—An Antidote for Protest Fatigue in the Trump Era,” in Schwartzberg ed., *Protest and Dissent*, 141.

⁴⁵ Brison, “‘No Ways Tired,’” 140, quoting Ford, “Protest Fatigue,” 123. Ford’s position in this disagreement is a version of the denunciation of expressive theories of political participation in Jon Elster, *Sour Grapes: Studies in the Subversion of Rationality* (Cambridge University Press, 1085), 91-101.

⁴⁶ The following paragraphs are taken from a discussion of dignity in politics in the title track of my collection, *Political Political Theory* (Harvard University Press, 2016), 10-12.

appointing delegates to convey this petition, who might speak, not merely of what they had seen, and had heard, but from what they had borne and suffered. Life-worn, gaunt, anxious, hunger-stamped men, were those delegates.⁴⁷

She writes of the initial pride of Mary Barton's father, John, at being selected as one of those delegates—"the ... gladness of heart arising from the idea that he was one of those chosen to be instruments in making known the distresses of the people."⁴⁸ But, then, as Mrs. Gaskell says, though the delegation went down to London, "Parliament ... refused to listen to the working-men, when they petitioned, with all the force of their rough, untutored words, to be heard concerning the distress which was riding, like the Conqueror on his Pale Horse, among the people."⁴⁹ John Barton returned to Manchester in silent despair. "Tell us what happened when you got to th' Parliament House," said a friend of the family. After a pause, John answered, "If you please, neighbour, I'd rather say nought about that. It's not to be forgotten, or forgiven either ... As long as I live, our rejection that day will bide in my heart; and as long as I live I shall curse them as so cruelly refused to hear us; but I'll not speak of it no more."⁵⁰ Except to say to his daughter when they were alone: "Mary, we mun speak to our God to hear us, for man will not hearken; no, not now, when we weep tears o' blood."⁵¹

4. QUOD ERAT DEMONSTRATION

One doesn't have to have hung out with J.L. Austin in Oxford in the 1950s to understand the value of dictionaries in ordinary language analysis.⁵² The *Oxford English Dictionary* defines "demonstration" in the political sense as "A public march or rally expressing an opinion about a

⁴⁷ Elizabeth Gaskell, *Mary Barton* (Oxford University Press, 2006), pp. 83-4 (ch. viii).

⁴⁸ *Ibid.*, 84. There's a resonance here with the hopes of the 1894 March on Washington: "To a crowd of spectators along the way to Washington, Jacob Coxey asserted that if 'the people ... come in a body like this, peaceably to discuss their grievances and demanding immediate relief, Congress ... will heed them and do it quickly'" (Barber, *Marching on Washington*, 25).

⁴⁹ Gaskell, *Mary Barton*, 95-6.

⁵⁰ *Ibid.*, 98.

⁵¹ *Ibid.*, 96.

⁵² See J.L. Austin, "A Plea for Excuses," *Proceedings of the Aristotelian Society*, New Series, 57 (1956 - 1957), 1, at 12-13.

political or other issue; esp. one in protest against or support of something.” But this is low down on the list of possible senses for the word. Six other meanings precede it in the dictionary. They include a military sense (“a show of military force or of offensive movement, esp. (in the course of active hostilities) to engage the enemy’s attention while other operations are going on elsewhere, or (in time of peace) to indicate readiness for active hostilities”), an emotional sense (“outward exhibition of feeling; demonstrative behaviour”), a pedagogical sense (“a practical exhibition and explanation of how something works or is done, esp. as a method of teaching or instruction”), and of course the logical sense (“the action or process of showing the existence or truth of something by giving proof or evidence”).

One doesn’t have to be an etymologist to recognize the common root here, which is “*monstro, monstrare*,” a Latin verb meaning “to show, point out, indicate.” It is the same root for “monstrance”⁵³ and maybe even “monster,” whose original meaning lay somewhere between “exhibit,” “prodigy,” and “warning.”⁵⁴

Showing seems to be key. One doesn’t have to be a follower of Wittgenstein to understand the difference between saying and showing.⁵⁵ Even if something does not fall into the category of things that cannot be said, still sometimes showing that thing is more powerful, more effective than saying it. Making something manifest—think of the French term for “demonstration”⁵⁶—makes it undeniable. To demonstrate is to put something on show—in logic, for example, by setting out laboriously the steps of a piece of deductive reasoning rather than leaving them implicit.⁵⁷ In case of a logical demonstration, one doesn’t just announce a proposition one thinks

⁵³ Monstrance: “An open or transparent receptacle, now usually consisting of a holder or lunette set behind a circular pane of glass in a cross of gold or silver, in which the consecrated host is exposed for veneration.” (Cf. Article XXV of the *Thirty-Nine Articles of Religion* of the Church of England (1562): “The Sacraments were not ordained of Christ to be gazed upon, or to be carried about, but that we should duly use them.”)

⁵⁴ “Monster” could also be used in a political sense. In the 19th century, people talked of “monster meetings”—“the assemblage of immense masses of people”—organized by Daniel O’Connell in Ireland (1843) and by gold-diggers in Victoria, Australia (1851).

⁵⁵ Ludwig Wittgenstein, *Tractatus Logico-Philosophicus* (Kegan Paul, 1921), 4.1212: “What can be shown cannot be said.”

⁵⁶ French term “*manifestation*” – “*rassemblement dans la rue de personnes qui protestant*”

⁵⁷ In the OED, the first meaning given for “demonstration” is: “The action, process, or fact of establishing the truth of a proposition or theory by reasoning or deduction or (in later use) by providing practical

is correct, one figures out its correctness and puts that figuring on display. The political and logical senses of “demonstration” have something in common. In the political case, what is being displayed? Numbers of people taking time out of their day—and seeking to take time out of yours—to manifest their position. “You no longer need to guess what we think,” they say, “we will show it.”

It is not just matter of brandishing slogans, so that dissent is public and undeniable. The sheer presence of the protestors may be a demonstration or refutation of something. “*Wir sind das Volk!*” said East German protestors in 1989 when they were confronted with claims made on behalf of *the people’s* government. Similarly, hundreds of thousands of protestors on the streets of cities all over Belarus day after day for weeks *demonstrate* by their presence that Alexander Lukashenko’s claim of an 80% victory is simply not credible.

5. HERE. WE. ARE.

What is manifested in a political demonstration, then—what is shown or put on display—is not just a set of propositions. It is an array of interests, concerns, and principles *embodied in people*—real men and women bearing witness in their presence to the importance of what is said (or carried or chanted). What one sees is, as Jacob Coxey and Carl Browne said of the first great March on Washington in 1894, “a petition in boots.”⁵⁸ The political theorist Anne Phillips has a book titled *The Politics of Presence*. It is actually not about demonstrations, but about the importance of descriptive representation—of there being representatives like us in all our diversity present in a legislature or other decisional setting, in the room where it happens.⁵⁹ But Phillips’s title is a good one for the point I now want to make. What a demonstration manifests is the public presence of a group or class of citizens for all to see—associating a set of political demands with their being there, standing there, walking there. Perhaps Phillips overdraws the distinction between a politics of presence and a politics of ideas; but she certainly shows that without a consideration of presence, debating ideas is an inadequate characterization of politics.

evidence in support of it; an instance of this; (Logic) an argument or sequence of propositions showing that a conclusion, theorem, etc., is a necessary consequence of axioms or previously accepted statements.”

⁵⁸ Barber, *Marching on Washington*, 17-19. Sometimes the phrase was “petition of boots” (ibid., 18).

⁵⁹ Anne Phillips, *The Politics of Presence* (1995).

And so it is with demonstrations. Of course there's a message that is important; but it is the participants' mode of presence that is the distinctive thing about a demonstration.

Sometimes it is simple presence, the literal fact of self-assertion. I think of the photographs of marchers in Memphis, each with a sign "I AM A MAN"—the slogan of the sanitation workers' strike that Martin Luther King, Jr was supposed to lead the week he was



assassinated.⁶⁰ Or we can think of the suffragist march on Washington in 1913, presenting itself as “a public display of how [the] suffragists imagined a nation that included women.”⁶¹ Of course the politics of sheer presence can also induce political conflict as to who is to be included

⁶⁰ William Ferris, *I AM A MAN: Photographs of the Civil Rights Movement, 1960-1970* (forthcoming 2021). See the preview at <https://www.upress.state.ms.us/Books/I-I-AM-A-MAN>. For the full context, see Michael Honey, *Going Down Jericho Road: The Memphis Strike, Martin Luther King's Last Campaign* (2007). Honey offers this reflection on the meaning of the “I AM A Man” slogan:

The slogan resonated beyond the working class and across black Memphis—among the middle class, men and women, young and old. Practically every male spokesman for the black freedom struggle, and many women, had equated “manhood” with standing up for your rights, come what may, either through self-defense or nonviolent methods. For emphasis, workers underscored the verb: “I AM A Man.” Everyone got the message. Put in more prosaic terms by striker [James] Robinson, “I AM A Man” simply meant, “We ain’t gonna take that shit no more.”

⁶¹ Barber, *Marching on Washington*, 45.

and who is to be represented: as Lucy Barber explains, the 1913 suffragist march was divided over the issue of the presence and representation of black women.⁶²

Sometimes the presence of the protestors is itself the message, or it conveys a powerful message implicitly. Hear the words of Thomas Carlyle concerning demonstrations of starving workers in Manchester in the 1830s:

A million hungry operative men started up, in utmost paroxysm of desperate protest against their lot ... A million of hungry operative men ... rose all up, came all out into the streets, and—stood there. What other could they do? Their wrongs and griefs were bitter, insupportable, their rage against the same was just: but who are they that cause these wrongs, who that will honestly make effort to redress them?⁶³

They said in effect, wrote Carlyle:

“Behold us here, so many thousands, millions, and increasing at the rate of fifty every hour. We are right willing and able to work; and on the Planet Earth is plenty of work and wages for a million times as many. We ask, If you mean to lead us towards work; to try to lead us,—by ways new, never yet heard of till this new unheard-of Time? Or if you declare that you cannot lead us? And expect that we are to remain quietly unled, and in a composed manner perish of starvation? What is it you expect of us? What is it you mean to do with us?”⁶⁴

Some radicals criticized the demonstrators for the passivity of their protest. What could that achieve? But, Carlyle continued,

this was what these poor Manchester operatives, with all the darkness that was in them and round them, did manage to perform. They put their huge inarticulate question ... in a manner audible to every reflective soul in this kingdom; exciting deep pity in all good men, deep anxiety in all men whatever; and no conflagration or outburst of madness

⁶² See *ibid.*, 62-5.

⁶³ Thomas Carlyle, *Past and Present* (E.P. Dutton, 1910, originally 1843), 14-15.

⁶⁴ *Ibid.*, 17.

came to cloud that feeling anywhere.... All England heard the question: ... England will answer it; or, on the whole, England will perish.⁶⁵

6. IN A PUBLIC PLACE

John Rawls says that political protest is “a mode of address taking place in the public forum.”⁶⁶ But it is not just in a forum that’s public in a notional sense like Rawls’s “public reason,” or like a list of names in a published news-magazine. Demonstrators present themselves in person in their thousands *outdoors* in a *public place*—a street, park, or plaza—for all to see. Quite apart from anything else, the protestors having stepped out of doors now become visible to each other: in de Tocqueville’s words, “Men have the opportunity of seeing each other”⁶⁷ and of taking courage from each other’s presence, no longer isolated self-consciously in their individual dissident opinions.⁶⁸ John Berger perhaps exaggerates when he says that demonstrators “present themselves as a target to the forces of repression serving the State authority against whose policies they are protesting,” though events in Belarus and maybe even some of the Black Lives Matter protests bear out his claim that “[i]t is in the nature of a demonstration to provoke violence upon itself.”⁶⁹ The important thing is that a form of courage becomes shared and publicly so. And that wider visibility is important too: a demonstration makes a grievance or a demand visible through defiant human presence in a place where the public have access. Nick Suplina says that “visual and aural proximity to the target or symbol of the protest—for example, Congress, the president, a clinic, or a company—increases exponentially the persuasive value of

⁶⁵ Ibid. (The whole of Book I, Chapter III of *Past and Present*, *ibid.*, 14-22, is worth reading in this vein, as is Ch. II on justice)

⁶⁶ Rawls, *Theory of Justice*, 330.

⁶⁷ Alexis de Tocqueville, *Democracy in America*, ed. Joseph Epstein (Bantam Books, 2000), 221 (Bk. I, Ch. 12).

⁶⁸ Collective courage and defiance in a demonstration communicates something to a regime or to the public about the power of a regime? Kennedy may be right to talk of “the alchemy of dissent that enables long-oppressed people to throw off their habits of subordination”? See Randall Kennedy, “*Walker v City of Birmingham* Revisited,” *Supreme Court Review* [2017].

⁶⁹ Berger, “The Nature of Mass Demonstrations,” ___.

the speech and the personal value of feeling one has registered his or her dissent and been heard.”⁷⁰

Over time, certain places establish themselves as regular demonstrating grounds—like the great “national public spaces” in Washington DC centered on the Mall in Lucy Barber’s account,⁷¹ or like Trafalgar Square in London. The demonstration takes place on a national stage, “in the center of the stage,” coopting its monumental grandeur.⁷² Maybe these great public spaces were intended to be used for military parades and official ceremonials, scenes of civic dignity designed to impress the citizenry and foreign observers. But now, in a demonstration, we have thousands of ordinary citizens reclaiming these public spaces on their own initiative as the property of the people, demanding that they too must be able to put themselves on display and their demands.⁷³ Whether it’s a rally or a march, for the time being the protestors occupy the public space, changing its use, displacing other more official or compliant activities that might take place there. A demonstration disrupts ordinary, quotidian uses of the public space—for promenading, sightseeing, picnicking, moving from one place to another.⁷⁴ And it has the potential to spoil the official choreography of the space in question, perhaps embarrassing the government by presenting itself as opposition in the very place where the authorities are pleased to proudly mount their own displays. “Choice . . . of location” is an important part of a demonstration, inasmuch as the presence of large numbers of citizens near centers of power “can be interpreted as the symbolic capturing of a city or capital.”⁷⁵

We see the importance of all this reflected, negatively, in the use by the authorities of “free speech zones,” which are set up both to reclaim traditional demonstrating grounds for the

⁷⁰ Nick Suplina, “Crowd Control,” 406.

⁷¹ Barber, *Marching on Washington*, 3.

⁷² This is Alice Paul’s phrase regarding the 1913 Suffrage Procession, quoted, *ibid.*, 50.

⁷³ There is a fine discussion of these competing visions of the great public spaces of Washington DC in Barber, *Marching on Washington*, 5-9.

⁷⁴ Berger, “The Nature of Mass Demonstrations,” “The demonstrators interrupt the regular life of the streets they march through or of the open spaces they fill.”

⁷⁵ *Ibid.*

government and to distance the protestors from any impact they might have on national leaders or dignitary visitors.⁷⁶ As Suplina described it in the Bush era,

When President Bush visits a city or town, local law enforcement, often under the direction of the Secret Service, sets up “free speech zones”—areas at a distance from the President's destination where demonstrators are permitted to protest. The areas, documented in twelve cities, are out of sight of the President and the media covering his arrival, as they are often placed within or behind fences, barricades, or “Greyhound-sized buses.” The distances between the “zones” and the sites vary from a city block to a four-lane highway to a quarter mile.⁷⁷

The ostensible justification is security, but protecting official choreography from disruption and embarrassment seems equally important.⁷⁸

Anyway, wherever it assembles or is permitted to assemble, a demonstration puts numbers on display: *here we are* in our thousands or hundreds of thousands. The protestors may be a minority, but they are a new and suddenly visible minority, claiming in their importunate presence to be “too important ... to be safely disregarded.”⁷⁹ Arendt described protestors as “organized minorities, bound together by common opinion ... and the decision to take a stand against the government's policies even if they have reason to assume that these policies are backed by a majority.”⁸⁰ She quotes de Tocqueville's words, “The citizens who form the

⁷⁶ Cheh, “Demonstrations, Security Zones, and First Amendment Protection of Special Places,” 57: “One of the most common tactics authorities employ to tame dissent is placing demonstrators a significant distance from the event they are protesting, or from those individuals with whom they wish to communicate.”

⁷⁷ Suplina, “Crowd Control,” 395–96.

⁷⁸ For the merging of concerns about security and political choreography in the context of limits on free speech, see Jeremy Waldron, “Heckle: To Disconcert with Questions, Challenges, or Gibes,” *Supreme Court Review* [2017].

⁷⁹ Arendt, “Civil Disobedience,” 76. Arendt adds (*ibid.*, 101), “These minorities of opinion would thus be able to establish themselves as a power that is not only ‘seen from afar’ during demonstrations and other dramatizations of their view point, but is always present and to be reckoned with in the daily business of government.”

⁸⁰ *Ibid.*, 56.

minority associate in order ... to show their numerical strength and so to diminish the moral power of the majority.”⁸¹

The targets of the demonstration may push back with competing (lower) estimates of crowds and claims about how unrepresentative the demonstrators really are. This is not just a matter of demographics. Politicians might insist that there is already an established system of representation designed to ensure that the people’s voice is heard. Another mode of representation, they will say, is not needed.⁸² But of course for many demonstrations that is exactly the point. The demonstration signals the emergence of “an alternative political community, where people come together to break the rules of engagement and forge different possibilities of democratic engagement.”⁸³ The demonstration upends the official politics of presence with the eruption of new voices demanding to be heard in a new way. Or, as in Belarus, the demonstrations, by erupting from outside the normal electoral process, represent not a challenge to the electoral process but an attempt to stick up for it against its corruption and to demonstrate that that sticking-up is necessary.

7. MAKING A FUSS

On the streets, the politics of presence sometimes has a silent dignity. (Think of the impromptu candlelight march for Harvey Milk in San Francisco in 1978.) But often demonstrations are unruly, noisy, and cacophonous. (They are noisy so they can be heard in palaces.) Boisterous, certainly, as marchers bring to life the aesthetics of protest and the exhilaration that comes from participating together.⁸⁴ Waving signs, carrying banners, chanting.⁸⁵ But also fury—

⁸¹ Tocqueville, *Democracy in America*, Bk. I, Ch. 12.

⁸² See Barber, *Marching on Washington*, 29.

⁸³ Akbar, “The Radical Possibilities of Protest,” 58.

⁸⁴ Cf. Eric Hobsbawm, *Interesting Times: A Twentieth-Century Life* (Pantheon, 2003), 73. “Next to sex, the activity combining bodily experience and intense emotion to the highest degree is the participation in a mass demonstration at a time of great public exaltation. Unlike sex, which is essentially individual, it is by its nature collective ... like sex it implies some physical action—marching, chanting slogans, singing—through which the merger of the individual in the mass, which is the essence of the collective experience, finds expression.”

⁸⁵ Timothy Garton Ash, “A Century of Civil Resistance: Some Lessons and Questions,” in Adam Roberts and Timothy Garton Ash, *Civil Resistance and Power Politics: The Experience of Non-violent Action from Gandhi to the Present* (Oxford University Press, 2009), 380: “Who is it that comes up with the

exasperation, indignation, anger—shared and given voice, hundreds or thousands of voices. In *Cox v. Louisiana* Justice Douglas quoted reports of the noise of a demonstration: ““a jumbled roar like people cheering at a football game,’ ‘loud cheering and spontaneous clapping and screaming and a great hullabaloo,’ ‘a great outburst,’ a cheer of ‘conquest ... much wilder than a football game,’ ‘a loud reaction, not disorderly, loud,’ ‘a shout, a roar,’ and ‘an emotional response in jubilation and exhortation.’”⁸⁶

Anger, as an emotion, has received some philosophical attention recently. Martha Nussbaum defends the view that anger is an essentially punitive emotion. Following Aristotle, she argues that “anger includes, conceptually, not only the idea of a serious wrong done to someone ... but also the idea that it would be a good thing if the wrongdoer suffered some bad consequences somehow.”⁸⁷ I think Nussbaum is wrong. Anger certainly includes the idea of a serious wrong done to someone and it *may* include a desire to harm them punitively, but it need not. The most important thing about anger (say, at the individual level) is that anger involves *making a fuss*—a voice raised, somatic signs of distress (like trembling, face turning red, tearing up, voice unsteady), repetition of and implacable focus upon the grievance whatever it is, a seizing of the stage, a crowding out of room for any calming response and certainly of any attempt to change the subject. Anger is an implacable insistence that “*attention must be paid*.”⁸⁸ There is no doubt that anger makes people uncomfortable and is intended to make them

chants that erupt, apparently spontaneously, as the crowd speaks back to the speaker as if it were itself one person? Who, as we stood on Wenceslas Square in Prague in 1989, had the idea of taking his (or was it her?) key ring out of his (or her) pocket, holding it up and rattling the keys like a Chinese bell? (Within minutes, some 300,000 people were doing the same, producing a sound that I shall never forget.) Sometimes we do know the answer: in Ukraine and Georgia, student and opposition groups sat around beforehand, devising such japes, occasionally advised by activists from an earlier revolution. More often we don't. Perhaps even the person who really started it does not know.”

⁸⁶ *Cox v. Louisiana* 379 U.S. 536, 546 (1965). The noise was in response to singing emanating from a jail where some protestors were being held. The police evidently regarded this making of noise as converting a lawful assembly into a riot. But that was not accepted by the Court.

⁸⁷ Martha Nussbaum, *Anger and Forgiveness: Resentment, Generosity, Justice* (Oxford University Press, 2016), 5. The reference to Aristotle is to the *Rhetoric*, 1378a31-33; see Nussbaum, *Anger and Forgiveness*, 17-21.

⁸⁸ That line of course is Linda Loman's in Arthur Miller, *Death of a Salesman: Certain Private Conversations in Two Acts and a Requiem* (1949) 56: “I don't say he's a great man. ... He's not the finest character that ever lived. But he's a human being, and a terrible thing is happening to him. So attention must be paid. He's not to be allowed to fall into his grave like an old dog. Attention, attention must be finally paid to such a person.”

uncomfortable. But that should not be mistaken, as Nussbaum and Aristotle mistake it, as in essence a punitive desire to harm others.

In outpourings of mass anger too, the point is not to hurt or punish; it is to rivet attention on the grievance expressed. The spectacle and noise of a protest is a grab for attention, not in an infantile sense but in the spirit of Linda Loman's saying: "Attention, attention must be finally paid." A demonstration is an endeavor to force a focus upon the topic or incident it is highlighting.⁸⁹ "I can't breathe" chanted Black Lives Matter demonstrators in hundreds of American cities in May and June 2020, echoing the dying words of George Floyd. Attention must be paid.

As I said earlier, a demonstration seeks to upend the terms of public debate.⁹⁰ That's why demonstrations have to be understood as troublesome, as disruptive of ordinary routines like traffic on the streets or peace in the park. This means that disorder and disruption are not pathological versions of demonstrating, as though a civically virtuous protest would be self-effacing. Richard Ford intends to disparage demonstrations when he calls them "noisy, annoying, costly and disruptive."⁹¹ But disrupting ordinary routines is what demonstrating is about. "The whole purpose of protest is to interrupt your daily life, to interrupt the previously scheduled programming so you pay attention to something new."⁹² And, as Mary Cheh points out, "people do take notice. Demonstrations, particularly troublesome demonstrations, are one of the few remaining ways for dissenting views to be aired and to be made known to the larger public."⁹³

8. ARE DEMONSTRATIONS TO BE FEARED?

Among the questions with which we began were these: Why do governments fear demonstrations? Why are they so annoyed by them? Why do they seek to minimize them when

⁸⁹ Tufekci, "Do Protests Even Work?"

⁹⁰ Engler and Engler, *This Is an Uprising*, xix.

⁹¹ Ford, "Protest Fatigue," 119.

⁹² Deva Woodley (a professor of politics at New School) is quoted to this effect in Maggie Astor, "Why Protest Movements Are 'Civil' Only in Retrospect," *New York Times*, June 17, 2020.

⁹³ Cheh, "Demonstrations, Security Zones, and First Amendment Protection of Special Places," 61.

they can? The authorities are quick to say that demonstrations are organized or infiltrated by anarchists, terrorists, etc. Why is it important for rulers to discredit them?

The answer is: because a demonstration interrupts the government's narrative. It is the opposite of public acclamation; it's a display of the government's unpopularity (on some issue), an undeniable manifestation of dissent. It shows that some brave portion of the public is fed up. "Protests are signals: 'We are unhappy, and we won't put up with things the way they are.'"⁹⁴ A demonstration can herald a tipping point in public opinion—that certainly seems to have been the case with the Black Lives Matter protests. What's more the message it sends cannot be controlled. It creates an impression that the regime would rather not have created.

All this sounds like the politics of resistance to authoritarianism—it certainly applies in Belarus—but it can affect any government concerned with appearances. Even democratic governments fear being shamed or publicly embarrassed in the eyes of the world. Lucy Barber tells of President Roosevelt and his cabinet quailing before the prospect of a large-scale Negro March on Washington in 1941 because (in the words of the Associated Negro Press) "this particular spectacle ... will show to the world ... that all is not so well in the great United States."⁹⁵ Joseph Rauh, a lawyer in the administration "remembered being told that the president did not want the march because 'it'll hurt our image; it'll help Germany.'"⁹⁶ A lot of this had to do with what the demonstration was about—American racism and discrimination particularly in the defense industries. Some of the reaction was about the need to create a strong impression abroad of unity and resolve among the American people.

Both at home and abroad, a demonstration shows and is intended to show that we are not a well-ordered society. I mean in the sense that Rawls stipulates, that in a well-ordered society it is patent that "everyone accepts, and knows that everyone else accepts, the very same principles of justice."⁹⁷ True, Rawls imagines that protests appeal implicitly to principles that everyone is

⁹⁴ Tufekci, "Do Protests Even Work?"

⁹⁵ Barber, *Marching on Washington*, 127.

⁹⁶ *Ibid.*, 132-3. See also *ibid.*, 135: "In 1942 ... *Fortune* magazine ... astutely noted that Roosevelt's anti-discriminatory executive order had been issued when the president had 'only a few days left for preventing an international embarrassment.'"

⁹⁷ John Rawls, *Political Liberalism* (Columbia University Press, 1991), 35. See also the discussion in Jeremy Waldron, *The Harm in Hate Speech* 65-9 and 77-83 (Harvard University Press, 2012). Rawls did

supposed to share;⁹⁸ but at the very least a protest evinces a view that all is not well in this regard.

Rulers fear and denounce demonstrations too because of an implicit worry about being coerced. Not that they think themselves victims necessarily, but there is an unwelcome sense that they are being “threatened” by people who evidently think they can get away with it and achieve something by it. The presence of so many people on the streets seems to show that some of the citizens believe they can exert pressure this way on the government. So for example in the 1890s, Senator Joseph Hawley of Connecticut expressed an apprehension that a march on Washington might “endeavor to dominate Congress by the physical presence of the people.”⁹⁹ And fifty years later, Franklin Roosevelt worried that the Negro March planned for 1941 “would give the impression to the American people that Negroes are seeking to exercise force to compel the government to do certain things.”¹⁰⁰ If Hobbes is right that reputation of power is power, then even the shared impression that this pressure is possible and the intention to try to exert it are enough by themselves to constitute an unwanted diminution of the government’s political resources.¹⁰¹

It is sometimes said that voting is a sort of proxy for combat in the political arena. “Voting constitutes ‘flexing muscles’: a reading of chances in the eventual war. If all men are equally strong (or armed) then the distribution of vote is a proxy for the outcome of war.”¹⁰² The party that wins an election is in a position to “inform the losers—‘Here is the distribution of force: if you disobey the instructions conveyed by the results of the election, I will be more likely to beat you than you will be able to beat me in a violent confrontation.’”¹⁰³ Now this is a pretty crude and unconvincing understanding of electoral democracy, but there might be a hint of it in the value placed on numbers—over-estimates by the organizers, under-estimates by the

not think of the United States as a well-ordered society: see “Kantian Constructivism in Moral Theory,” in Rawls, *Collected Papers*, 355.

⁹⁸ See note 9 above and accompanying text.

⁹⁹ Quoted in Barber, *Marching on Washington*, 2 and 43.

¹⁰⁰ *Ibid.*, 130.

¹⁰¹ Thomas Hobbes, *Leviathan*, Richard Tuck ed. (Cambridge University Press, 1996), 62 (Ch. 10).

¹⁰² Adam Przeworski, “Minimalist Conception of Democracy: A Defense,” in Robert Dahl et al. (eds.) *The Democracy Sourcebook* (MIT Press, 2003), 12, at 15.

¹⁰³ *Ibid.*

government—in regard to demonstrations. Here we are, say the protestors, we are too many to be safely ignored. It may be symbolic, but the symbolism is important: a protest rally “demonstrates a force that is scarcely used.”¹⁰⁴ As Berger puts it,

The larger the demonstration, the more powerful and immediate (visible, audible, tangible) a metaphor it becomes for their total collective strength. ... I say metaphor because the strength thus grasped transcends the potential strength of those present, and certainly their actual strength as deployed in a demonstration. The more people there are there, the more forcibly they represent to each other and to themselves those who are absent.¹⁰⁵

Timothy Garton Ash tells a story about rallies in Kiev during the “Orange Revolution” of 2004. Organizers lost count at 500,000. “‘If I see 200,000 people, I will resign,’ President Leonid Kuchma had said, faced with an earlier, much smaller demo. Well....”¹⁰⁶

It is not only rulers who are concerned about this. Some democratic theorists are too. For it raises questions about participant responsibility. Is demonstration a responsible form of politics? Are protestors are trying inappropriately to pressure the government? Do we resort to it too quickly? Does it imperil regular politics (campaigning for the popular vote, lobbying the legislature, etc.) and the institutions that this requires in favor of the churning and heaving of the politics of the street? Is it a destabilizing form of participation? Susan Stokes observes that some democrats

see in protests threats to liberal institutions. Far from deliberative, protests are expressions of raw numeric power. On this view, protesters do not attempt to persuade but instead chant slogans in unison with like-minded individuals. Protest movements sometimes allow minorities to override the will of majorities, blocking legislation enacted by the people’s representatives. They can even topple elected governments.¹⁰⁷

¹⁰⁴ Berger, “The Nature of Mass Demonstrations,” [redacted].

¹⁰⁵ Ibid.

¹⁰⁶ Garton Ash, “A Century of Civil Resistance,” [redacted].

¹⁰⁷ Susan Stokes, “Are Protests Good or Bad for Democracy?” in Schwartzberg (ed.) *Protest and Dissent*, 191.

Current concerns about populism are related to this, inasmuch as a penchant for demonstrations seems to share with populism an impatience with—and perhaps an indifference to the well-being of—established political pathways and institutions. There is much to debate here, for there are other aspects of populism that characterize only some demonstrations, not others: an emphasis on national homogeneity, for example. And it is possible to respond to the traditionalist democratic critique. Street protests and “normal” modes of political participation are not either/or; as Stokes puts it: “The electoral turnout rates of demonstrators tend to be higher than that of those who stay off the streets.”¹⁰⁸ And—as I have already said about the demonstrations against Lukashenko—it is not inappropriate for citizens from time to time to put extra-institutional pressure on their electoral or representative arrangements. That’s how institutions are protected and that’s how democratic renewal happens. Not all such pressure should be regarded as “counter-democracy.”¹⁰⁹

9. A LOSS OF LEGITIMACY?

A recent article observed that in the long term, “protests work because they can undermine the most important pillar of power: legitimacy.”¹¹⁰

A society without legitimate governance will not function well; people can be coerced to comply, but it’s harder to coerce enthusiasm, competence, and creativity out of a discouraged, beaten-down people. Losing legitimacy is the most important threat to authorities, especially in democracies, because authorities can do only so much for so long to hold on to power under such conditions. Maybe they can stay in power longer in part through obstacles such as voter repression, gerrymandering, and increasing the power of unelected institutions, but the society they oversee will inevitably decline, and so will their grasp on power.¹¹¹

¹⁰⁸ Ibid., 192.

¹⁰⁹ Pierre Rosanvallon, *Counter-Democracy: Politics in an Age of Distrust* (Cambridge University Press, 2008).

¹¹⁰ Tufekci, “Do Protests Even Work?”

¹¹¹ Ibid.

Is this true? If it is sometimes true, is it a standing danger (if that's the right word) of demonstrations as such, or only of particular kinds of demonstrations?

Claims about loss of political legitimacy are often hyperbolic,¹¹² and it would be interesting to know how the legitimacy equation is supposed to work. There the protestors are—in their thousands, chanting, marching, waving signs. How exactly does this undermine political legitimacy? This is not a rhetorical question; I don't doubt that that in some cases protests do have such an effect. But “legitimacy” is not a well-defined term in political theory,¹¹³ and, on any definition, it is a matter of degree.¹¹⁴ Moreover, legitimacy can be attributed to different entities in a political system: to governments; to constitutions, or more generally to ways of running a polity; to laws; and to particular views as they emerge and are challenged. So we proceed step by step.

Let's begin with leadership. If loss of legitimacy for leaders just means a decline in popularity, that is one thing, and a large demonstration may show that or, by galvanizing the public, bring it about. If legitimacy means the leader's right to rule, then maybe that is diminished by evidence that a given regime cannot maintain basic order. The unruliness of a large demonstration, or an unending series of demonstrations here, there, and everywhere, for days or weeks on end may create this impression if it is portrayed in a sensational fashion. But as long as life goes on in an more-or-less ordered fashion in the times and places where demonstrations are not taking place—ordered, that is, by the government whose right to rule is supposed to be draining away—then it is probably a mistake to see the demonstrations as a diminution of the government's legitimacy.

What else might the claim about legitimacy mean? We have already discussed the point that some demonstrations, or demonstrations in some political systems, may intimate insurrection.¹¹⁵ A huge demonstration, especially in a system where such gatherings are routinely

¹¹² In Ch. 7 of *The Harm in Hate Speech* (181-92), I had to deal with the hyperbolic character of Ronald Dworkin's complaint that hate speech restrictions deprive anti-discrimination laws of their legitimacy.

¹¹³ I mean there is no real consensus definition of it, or any generally respected article offering an authoritative analysis.

¹¹⁴ See Ronald Dworkin, *Is Democracy Possible Here?* (Princeton, 2008), 97.

¹¹⁵ See section 2 above, text accompanying notes 18-20.

prohibited or suppressed, may convey the message that the patience of the political community is at an end, that people are becoming braver, that they believe the police and security forces are hesitating, and that citizens in general are only a few steps away from what John Locke would call “an appeal to heaven.”¹¹⁶ I think that is what we see happening in Belarus. But is this always the case with demonstrations? Surely routine toleration of protests, their frequent occurrence, and their following established conventions for such occasions can draw the legitimacy-sting from any particular demonstration. I’m sure that is true, and I shall say more about the routinization point at the end of the paper. Nevertheless, even in a rights-respecting democracy one sometimes has the impression that ruling politicians are haunted by ancestral memories of demonstrations’ auguring uprisings and they see something like a threat to their own legitimacy even when none exists. So even in the face of a non-threatening march or rally, provocateurs are enlisted, water-cannons are brought up, tear gas is fired, and the police are sent forward in military order.

Another use of the idea of legitimacy invites us to consider that a demonstration may mark a decline in respect within the political community for the regular rhythms of politics. In ordinary politics—certainly in a democracy—disagreement is endemic and resolved by voting. It is well known that people disagree—certainly on policy, often on matters of principle—and that in the wake of any electoral settlement, a third to a half of the people must expect to find themselves living under policies or principles that they seriously oppose. That is business as usual in a democracy.¹¹⁷ And people put up with it for the time being, trusting to the regular rhythms of politics, which may see the policies and principles that *they* favor in the ascendant in the future and their opponents having to endure the burden of living under policies or principles *they* oppose.¹¹⁸

¹¹⁶ John Locke, *Two Treatises of Government* (ed. Peter Laslett (Cambridge University Press, 1967), II, §§ 241-2. There is a new book discussing this prospect in authoritarian regimes: Jonathan Pinckney, *From Dissent to Democracy: The Promise and Perils of Civil Resistance Transitions* (Oxford University Press, 2020).

¹¹⁷ See Jeremy Waldron, *Law and Disagreement* (Oxford University Press, 1999), 1-4,

¹¹⁸ In de Tocqueville’s optimistic view of this (*Democracy in America*, Book 1, Ch. 14), “everyone is personally interested in enforcing the obedience of the whole community to the law; for as the minority may shortly rally the majority to its principles, it is interested in professing that respect for the decrees of the legislator which it may soon have occasion to claim for its own.”

Now, perhaps a large demonstration or sustained series of demonstrations may manifest the refusal of a portion of the community to accept these rhythms, this ordering. Maybe a demonstration just aims to show the passion behind a particular oppositional view; nothing more. But it is possible that the demonstrators are displaying their willingness to break the routine of turn-taking compliance in a spirit of “We ain’t gonna take it anymore,” at worst to by-pass, at best to complement the ordinary structures of representation, voting, public deliberation, lobbying, and so on. If Rawls is right, civil disobedience does this explicitly: deliberate law-breaking is intended to show that the limits of ordinary politics are being reached.¹¹⁹ But demonstrating, just because it bypasses ordinary politicking, may also intimate a sort of unravelling of the social contract: “Here we are, on the streets because there’s no place else to go.” I don’t want to sound too dramatic; a given demonstration may taste of this drama to a greater or lesser extent. It may be just a faint impression to convey. And conveying it, toying with it, may be more or less responsible in the context of particular political differences.

Legitimacy can be attributed to or withheld from particular views, principles and policies. A message may be conveyed in ordinary politics, for example, by a Democrat to a Republican: “We disagree with policy P—we think P is wrong—but we accept the legitimacy of your pursuing P, since you have the electoral authority to do so.” Such a statement attributes legitimacy to P even while it withholds any acknowledgement that P is justified. But not all Ps may be given this credit. In a constitutional democracy, it is said that certain positions may not be credited with electoral legitimacy and the courts have the authority to strike them down even when they enjoy majority support. Or such a view may be held widely albeit informally in the political community, and a demonstration may bear witness to that view. The demonstrators don’t just say, “Vote against P.” They say: “P is not a legitimate position (anymore) to pursue in our politics, and here we are on the streets to let that be known.” I think something like that is going on with the Black Lives Matter demonstrations, consummating a sense that has been brewing for a while that various forms of official and institutional racism—in particular, *homicidal* official and institutional racism—need to be put beyond the pale. In the case of other demonstrations, for other causes, such a message may be less credible. But it may still be the case that choosing to *demonstrate* for (say) gun control or universal health care seeks to co-opt a

¹¹⁹ See above, section 1, text accompanying notes 9-14.

bit of the flavor—and to evince some of the apprehensions—associated with cases in which a demonstration signals more plausibly that legitimacy (in one of these senses) is dwindling.

10. AN IDEAL TYPE

I want to end with some reflections on method. What have we got here? A definition of “demonstration,” a theory of it, a thick description of protesting, a pastiche of impressions? There are definitely more questions than answers? And that’s not a bad thing.

I said at the beginning that I thought Max Weber’s notion of an ideal type might be useful.¹²⁰ An ideal type is an abstract characterization of something. It can be used alongside other ideal types in the construction of models or theories or just as a tentative way of organizing the sense we make of appearances. Think of the connections and contrasts drawn in this paper between *demonstrating* on the one hand and, on the other hand, concepts like *petition*, *ordinary politics*, *presence*, *speech*, *public space*, *civil disobedience*, *dignity*, *anger*, *coercion*, and various types of *legitimacy*. An ideal type never stands on its own; its explication offers points of contrast, connection, and correlation with other ideal types in a web of relations that—we hope—helps us see the overall significance of certain social and cultural phenomena.

The term “ideal” can be misleading. Weber says we must distinguish “ideal type” in methodological sense (which is what I’m using here) from any ethical conception of an ideal. “There are,” he wrote, “ideal types of brothels as well as of religions.”¹²¹ The idea of “an ethical imperative, of a ‘model’ of what ‘ought’ to exist is to be carefully distinguished from the analytical construct, which is ‘ideal’ in the strictly logical sense of the term.”¹²² So in this work on demonstrating, we are not assuming that demonstrators’ cause is just. As Susan Stokes put it, “there is nothing inherent in protests that guarantees their use as a means toward enlightened policy.”¹²³ I have chosen cases—Black Lives Matter and the protests in Belarus—that elicit our

¹²⁰ See note 3 above, and accompanying text.

¹²¹ Weber, “Objectivity’ in Social Science and Social Policy,” 99.

¹²² *Ibid.*, 91-2.

¹²³ Stokes, “Are Protests Good or Bad for Democracy?” 193. See also Ford, “Protest Fatigue,” 120.

sympathy, but I think that much of what is said here could be applied to demonstrations that do not.

However, two other points need to be taken into account, which affect this idea of neutrality. First, there is always an internal point of view that we are trying to capture in our construction of an ideal type. When we consider any social practice, we have to describe it from one or more points of view.¹²⁴ So here too we attempt to deploy participants' understandings of what they are doing when they demonstrate, understandings of what a demonstration is/is like/is for as though from a participant's point of view. I have tried to describe demonstrations from the point of view of good faith participants, acting together, whose passion or anger over some political issue has brought them out onto the streets. That point of view will look favorably on this particular enterprise of demonstrating and of course on its particular aims. But the point of view of organizers and participants will also involve some thought about the point of view of those who watch the demonstrations, either as rulers (their targets) or as fellow citizens (to whom a Rawlsian appeal is being made). And of course the latter points of view have their own integrity as well.¹²⁵

Secondly, although an ideal type is not an ethical ideal, we form such types of phenomena we judge important. Though demonstrations come in all shapes and sizes and are oriented towards the most disparate aims, and most are failures though some have a measure of success, *still* demonstrating is a form of political action that seems worth dwelling on whenever it occurs. Dwelling on it can be done piecemeal: we dwell on *this* demonstration (its aims, phenomenology, characteristics, success or failure) and then we dwell on *that* one. Or we may complement that particularized focus with a more abstract view: demonstrations *as such*. Weber

¹²⁴ Think of the points of view that we use in general jurisprudence: Holmes's "bad man's theory" of the law in Oliver Wendell Holmes, "The Path of the Law," *Harvard Law Review* 10 (1897), 457, 459; the response to that in H.L.A. Hart, *The Concept of Law*, Revised edition (Oxford University Press, 1994) 40, and his own account of the internal aspect of legal practices, *ibid.*, 89-91; and the insistence in John Finnis, *Natural Law and Natural Rights* (Oxford University Press, 1980), 11-18, that we should understand law from the point of view of one who seeks to do justice.

¹²⁵ In "'Objectivity' in Social Science and Social Policy," 90, Weber said that "an ideal type is formed by the one-sided accentuation of one or more points of view" according to which "concrete individual phenomena ... are arranged into a unified analytical construct."

believed that the abstract dimension was indispensable for scrupulous scholars, even if their studies start out piecemeal.

[T]he historian as soon as he attempts to go beyond the bare establishment of concrete relationships and to determine the *cultural* significance of even the simplest individual event in order to “characterize” it, *must* use concepts which are precisely and unambiguously definable only in the form of ideal types.¹²⁶

Arriving at such abstract concepts is not easy, especially in this area of political life. This is because demonstrating is a very intense activity, sometimes exhilarating, occasionally dangerous. It is inevitably difficult to abstract away from the *cause* for which one is demonstrating and the experience itself, on both of which one is going to be intensely fixated, in order to reflect on the idea of demonstrating as such. Such a shift of perspective may seem distracting or worse still a betrayal. But both political sociology and the theory of politics demand it. Someone’s got to do it.

What, finally, are the criteria of success for an enterprise like this: I mean success in setting up an ideal type of demonstration for the purposes of political science, political theory, and political sociology. I don’t think there are right answers in this domain. According to Weber, “there is only one criterion, namely, that of success in revealing concrete cultural phenomena in their interdependence, their causal conditions and their *significance*.” He added: “The construction of abstract ideal-types recommends itself not as an end but as a *means*.”¹²⁷ In other words, all one can do is posit the account and ask whether it strikes the reader as credible, helpful, illuminating. What is proposed here is not a thesis—a new principle or proposition to be defended against all objections come what may—but new questions worth asking and a net of interconnected answers, hesitant and tentative, with all the “distortions, pushings, shovings, maulings, gougings, stretchings, and chippings that I committed during the trip; not to mention the things thrown away and ignored, and all those avertings of gaze” that abstract characterizations usually involve.¹²⁸

¹²⁶ Ibid., 92.

¹²⁷ Weber, “*Objectivity*” in *Social Science and Social Policy*, ___.

¹²⁸ See the fine account of philosophical methodology in Robert Nozick, *Anarchy, State, and Utopia* (Basic Books, 1974), xiii (Preface).

11. THE USE OF AN IDEAL TYPE

Ideal types are not just for scholars. Political actors make use of them too, to characterize to one another and to the world the forms and meanings of their practices. They use them to reveal the aspirational character of some of the activities they engage in when that engagement shares something in common with demonstrating in its purest form

I have argued that demonstrations have the following aspects: (a) they convey a political message; (b) they do so specifically through the physical presence and public manifestation of large numbers of people; (c) they take place in politically or civically prominent locations like squares, boulevards, or plazas; (d) they have an inherently disruptive aspect, which conveys an insistence that attention is to be paid to their message and the way it is conveyed; (e) they defy the authorities and are not surprised when force is used against them; (f) they convey a sort of warning to the authorities in the intimative gestures they make in the direction of popular uprising; (g) because of this, they are characteristically seen as attempts to diminish the legitimacy of the authorities and their laws and policies; and (h) the authorities therefore are inclined to respond to them with hostility in the light of that characterization.

But lest this get everyone too excited, let me say that these characteristics may “apply” only in the vaguest and most notional sense to actually-existing demonstrations. I have been on protests large and small—some of them ratty and inconsiderable, a few dozen students annoying the local police by marching through the streets in the rain. I’m not sure that these should be credited with aspects (f) through (h) that I have just mentioned. No uprising is intimated, no one’s legitimacy is threatened, and the police respond to these hackneyed exercises with a jaundiced eye and routine traffic control. Nevertheless it is part of the intent of even these little gatherings—it is part of their point as demonstrations—to summon up in the minds of the marchers and perhaps in the reactions of the authorities some half-heard distant resonance of the spirit of those great demonstrations that historically have threatened a whole order. Like a prayer that one knows too well or a ritual that has become thoroughly routine, assembling people into a demonstration and marching them out onto the streets is an exercise with barely discernible layers of meaning. Each demonstration has the force of its own politics. But as a demonstration it also points beyond itself, and these additional layers of resonance are worth contemplating, worth factoring in to our understanding of all the things that are going on when people take to the streets.

Appendix: some questions about the practice of demonstrating.

- i. When we consider demonstrations, how should we assess the importance of the size of the crowd? How should we think about numbers?
- ii. How is the importance of numbers in a demonstration related to the importance of numbers in an election?
- iii. How should we think about the “*Wir sind das Volk!*” (We are the people!) aspect of (some) demonstrations? What is the relation between a demonstration and popular sovereignty.
- iv. Should large demonstrations be seen as attempts to embarrass a government? Should they be seen as challenging or undermining political legitimacy? If so how do they do that?
- v. Is a demonstration just a medium of speech, and do the various issues associated with demonstrations boil down to issues of free speech?
- vi. How should we think about the importance of elements like assembly, presence, and public visibility of crowds in relation to the free speech aspect of demonstrations?
- vii. How should we think about the emotional aspect of demonstrations? Should demonstrations be seen as mass public manifestations of anger and impatience?
- viii. What is the significance of *courage* and *defiance* in a demonstration? What, if anything, does that communicate to a regime about its power or to the public about the power of a regime? Is Randall Kennedy right to talk of “the alchemy of dissent that enables long-oppressed people to throw off their habits of subordination”?
- ix. In what sense (if any) are demonstrations threatening? In what sense are they coercive?
- x. Why, in some circumstances, do the authorities quail before demonstrations?
- xi. What is the relation of demonstrating to ordinary politics, i.e. to the politics of party organization, lobbying, deliberation, etc.? Is it just one form of political participation along with others? Or should a demonstration be viewed as problematic from the perspective of ordinary politics? Does it exemplify any of the problems thought to be associated with participatory democracy?
- xii. Should a demonstration be seen as a way of forcing an issue onto the political agenda, disrupting ordinary methods of agenda-setting?
- xiii. To be effective, does a demonstration have to be understood as an extraordinary event? Does the practice of demonstrating face a problem of routinization (especially in a democracy)?
- xiv. Is there any value to attempting to answer these questions at an abstract level?