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Prevent Violence, Strengthen Democracy: Electoral Codes of Conduct for the United States

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Abstract

As the events of 2020 and January 2021 demonstrated, the United States is not immune from election-related violence, yet efforts to reduce such violence are typically only used in the international development context rather than domestically. One strategy the U.S. advocates for in fledgling democracies is electoral codes of conduct – agreements in which politicians and parties agree to refrain from certain types of harmful speech and behavior, such as targeted harassment of marginalized groups, disinformation, and incitement to violence. In this paper, the authors analyze electoral codes of conduct around the world that restrict political speech in various contexts, offer policy recommendations for how local governments and communities in the United States might experiment with voluntary codes to reduce the risk of election-related violence, and identify opportunities for future research.

Keywords: *elections, codes of conduct, united states, donald trump, political violence, election violence*

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Prevent Violence, Strengthen Democracy: Electoral Codes of Conduct for the United States

Cathy Buerger and Tonei Glavinic

At the beginning of 2020, experts on political violence were already alarmed by increasing mass shootings, hate crimes, police killings, and political polarization in the United States (Armed Conflict Location & Event Data Project [ACLED], 2020). They did not imagine how much worse it would get: Between the COVID-19 pandemic, deadly street protests, government disinformation campaigns (Benkler et al., 2020), and incitement to violence by the President (Cassidy, 2020; Cineas, 2020; Baragona & Woodall, 2020), we arrived at an Election Day where, as political scientist Brian Klaas put it, “All the red flags that you see in other countries that have political violence are being raised in the United States” (E. Smith, 2020).

In countries transitioning to democratic governance after autocratic or military rule, wars, or mass violence, the U.S. and other Western governments have – despite their own spotty track records (Cobb, 2020) – tried to reduce the risk of violence by providing advice and funding to strengthen electoral systems. Codes of conduct for elections – typically agreements in which candidates and other members of political parties commit to uphold certain standards during and after an election campaign – is one tool they offer. Such codes may be voluntary, with politicians agreeing to uphold the values enshrined in the code, or they may be codified in election laws. The first such codes focused on technical matters like campaign finance regulation, but since the 1980s they have also tried to prevent violence by discouraging certain types of speech and behavior (Monney & Valladres Molleda, 2017, p. 17). This includes dangerous speech, defined as any form of expression (e.g., speech, text, or images) that can increase the risk that its audience will condone or participate in violence against members of another group (Dangerous Speech Project [DSP], 2020). Such speech has abounded in the U.S. in recent years and became even more common and more potent in the final weeks of the 2020 presidential campaign and the post-election period, contributing to the deadly attack on the U.S. Capitol on January 6, 2021.

To understand how the U.S. might mitigate the use and impact of dangerous speech in future elections, we examined electoral codes from around the world for attempts to guide or govern speech. We found speech-related election codes in 30 countries and 1 Canadian province: 16 in Africa, 8 in Asia, 3 in Europe, 3 in North America, and 1 in South America. Based on this research, in this report we offer several suggestions for the U.S.:

1. Various codes of conduct should be tested in cities, counties, and states, and with stakeholders other than candidates, such as journalists or business leaders. The fact that the U.S. has thousands of electoral authorities offers myriad opportunities for experimenting and testing codes of conduct related to speech.
2. Each code of conduct needs an organizing or implementing body to hold signatories accountable. In several cases, citizens or scholars have noted that a code's effectiveness was diminished due to the lack of accountability mechanisms (Gyampo, 2008; Thomas, 2018). While legally binding speech restrictions would likely be unconstitutional, there are ways to incentivize signing and complying with them such as publicizing lists of signatories and encouraging journalists to report on them.
3. Any code of conduct should proscribe dangerous speech and require that politicians denounce it and other prohibited speech. It should also require politicians to unequivocally denounce all political violence – specifically when such violence is committed by one of their *own* members, candidates, or supporters.
4. Where implemented, the effects of such codes should be evaluated, and the findings from the evaluation should be used to refine the codes for future elections.

In this paper, we will describe the connection between dangerous speech and elections; summarize the literature on electoral codes of conduct; present our research findings alongside key examples from various countries; analyze the U.S. context; and offer ideas for policy experiments and future research.

Literature Review

Passionate debate can be good for democracy, but ardent divisions can lead to violence, especially when opposing groups are taught to fear one another. In many parts of the world, election violence is common. Among nearly 300 elections in sub-Saharan Africa between 1990 and 2014, researchers found that violence occurred in nearly half (Bekoe & Burchard, 2017, p. 75). Notably, another study of electoral violence in that region found that in nearly every case, violence occurred before the election, suggesting that campaigns can be even more dangerous than voting and the announcement of results (Straus & Taylor, 2009).

In many of these campaigns, political rhetoric was not only passionate but also dangerous: It incited violence. It is crucial to maintain freedom of expression for politics, including vigorous and even intemperate debate. To distinguish between language that is heated, offensive, or even

defamatory and that which can inspire violence, DSP (2020) uses a 5-part framework to estimate the capacity of speech to catalyze intergroup violence. The framework focuses on five elements that can affect the violence-inciting potential of a particular message: certain rhetorical patterns in the speech (“dangerous speech hallmarks”); the speaker’s influence with the relevant audience; the audience’s susceptibility to the message; the social and historical context; and the medium by which the message was transmitted. Politicians are frequent producers of dangerous speech, as they are generally authoritative and often reach large audiences.

Drawing on data from 2014 and 2018, Martherus et al. (2019) documented a willingness among those who strongly identify with one political party or another to use dehumanizing partisan language in the United States (p.19). Dehumanization, a hallmark of dangerous speech, describes other groups of people as less than human, making their suffering or deaths seem acceptable, or even justified (DSP, 2020).

Also, it can be more socially acceptable to attack and denigrate people for their politics, than for immutable characteristics like race or ethnicity. Iyengar and Westwood (2015, p. 690) note that hateful rhetoric in the U.S. about members of another political group can be extreme because there are few social norms discouraging it, whereas stronger (though often violated) norms exist discouraging such speech and behavior along racial, ethnic, or gender lines. And politicians have an incentive to use speech that drives dislike of their opponents: “Negative partisanship” – defining one’s political identity by dislike of the other party, rather than loyalty to one’s own – is an effective driver of voter turnout (Caruana et al., 2015, p. 782).

When there are strong incentives to promote hatred and few social and political costs for doing so, divisive rhetoric can escalate so much that it lowers barriers against violence. Election experts have tried a variety of speech-related methods to attempt to prevent or mitigate election-related violence. A code of conduct for politicians and party members is a tool typically used alongside other interventions like building the capacity of electoral management bodies; facilitating intergroup mediation and dialogue; and coordinating “peace advocacy” campaigns with civil society organizations (Birch & Muchlinski, 2018, p. 386).

Ethical codes of conduct guiding behavior for a specific group of people such as doctors, lawyers, or politicians are common. As Gilman (2005) notes, “they are the framework upon which professions are built,” (p. 4). Codes of conduct may be legally binding or voluntary, where individuals state their commitment to follow specific rules of behavior. Many studies have been

written analyzing codes of conduct as they relate to corporate behavior (White & Montgomery, 1980; Erwin 2011), and others have examined codes of conduct for specific professions such as horticulture (Barrientos et al., 2003) and tourism (Garrod & Fennell, 2004). Few, however, have focused on electoral codes of conduct.

In 2017, Tatiana Monney and Jorge Valladares Molleda edited a definitive “Facilitator’s Guide” on voluntary electoral codes of conduct, noting that the dialogues surrounding their writing have “proved particularly useful in enabling political parties to reaffirm their political and ethical commitments to fair play in the electoral competition” (p. 9). Outside of this report, scholars have generally engaged with codes of conduct as part of a toolkit of interventions that may be used to reduce violence and promote democratic norms within a country.

For example, Birch and Muchlinski (2018) found that both capacity-building and “attitude-transforming” interventions (like codes of conduct and intergroup mediation) are associated with reduced violence, but in different ways: Attitude-based interventions reduced violence by state actors, while increasing confidence in electoral processes with capacity-building interventions reduced violence by non-state actors (p. 396).

Most voluntary codes of conduct rely on the mechanism of “naming and shaming” to compel compliance. This mechanism has proven useful in other domains: A study conducted by Krain (2012) on its effectiveness in reducing ongoing atrocities found “significant ameliorative effects on the severity of the most extreme atrocities” (p. 574). In one of the most comprehensive studies on the subject, Hafner-Burton (2008) examined the relationship between human rights adherence and naming and shaming efforts in 145 countries from 1975-2000. She found that although the practice may encourage government improvement in some areas (notably, political rights), it may have a neutral, or even negative, effect in other areas, such as terror attacks against civilians. As she notes, “Naming and shaming is not just cheap talk. But neither is it a remedy for all abuses” (p. 707). Hafner-Burton's research helps explain the potential value of using codes of conduct alongside other interventions to prevent violence and increase adherence to democratic norms.

More recently, Neier (2018) has argued that even if naming and shaming fails to induce compliance from those being called out as violators, it may still have other benefits. One of these is that the practice is generally accompanied by efforts to collect “detailed and reliable information” on violations – data that can later be used to inform interventions and policy changes.

Methodology

We focused on codes of conduct in our research since they present an opportunity to acknowledge and disrupt the connection between speech and violence. This relationship is complex; it is difficult to identify a simple causal relationship while controlling for other societal variables. Some studies have tried, however, using various techniques (see Yanigazawa-Drott, 2014).

We searched for codes of conduct in countries that 1) Freedom House rated as either Free or Partially Free in 2020; and 2) had a population of at least 10 million people based on U.N. statistics. We also added codes of conduct that were readily available from existing collections even if they were from countries that did not meet these thresholds. In cases where multiple codes exist for different stakeholder groups, we focused our analysis on the one that applies to candidates and political parties.

Where possible, we obtained codes directly from the country's election regulator. In other cases, we relied on databases or publications from third parties including the ACE Electoral Knowledge Network, the International Institute for Democracy and Electoral Assistance (IDEA), and the International Foundation for Electoral Systems (IFES). In a few cases, we could not obtain the code itself but found a secondary source describing its contents.

We analyzed the codes using qualitative content analysis (Schreier, 2013) and an inductive approach to coding, starting with an initial set of categories, and letting the data guide their development. For example, "Speech prohibited by code" was one of our initial categories, and "Speech required by code" was one we added later in the process. We chose this approach because, as this is the first study of speech regulations in codes of conduct, there were no guiding theories or preconceived sets of categories available (Elo & Kyngäs, 2008). Our analysis is focused on description and categorization, rather than evaluating comparative effectiveness. Although we have some anecdotal evidence about the effectiveness of specific codes, currently available data is not complete enough to determine the effectiveness of each code in our dataset. Since codes are almost always one piece of a comprehensive approach to strengthening democratic institutions, to our knowledge there have not been any formal attempts to evaluate the impact of codes alone (though we hope our dataset may be useful for such efforts in the future). However, practitioners have identified best practices, including that codes should:

- be developed in a participatory manner.

- offer clear and explicit guidance about to whom and when the code will apply.
- include accountability mechanisms and reasonable sanctions for breaches, including exposing violations to the public. (International IDEA, 1998)

The Codes: Prohibited and Required Speech

We identified 31 codes that address speech and gathered data on the kinds of speech that these codes prohibit and require.

Some notable findings:

- 20 explicitly prohibit speech that could lead to violence.
- 14 prohibit spreading lies or disinformation, generally or about specific topics (such as voting or candidates).
- 15 of the codes prohibit hate speech or promoting hatred.
- 13 of the codes prohibit some form of discrimination.

Many codes use vague language when describing the limits imposed on speech. For example, Kenya, Lesotho, Pakistan, and Zambia all prohibit speech that may, or is likely to, “lead to violence,” but offer no guidance for determining what speech falls into this category. Others provide a few more details. For example, more than a third of the codes specify that inciting hatred, using inflammatory rhetoric, insulting, or creating tension refers to speech aimed at groups defined by identities such as race, gender, tribe, and religion.

Sixteen of the codes also require that politicians and party leaders speak out in specific ways. For example, the codes of Ghana, Kenya, Kosovo, Lesotho, Nigeria, and Zimbabwe all require political parties and candidates to publicly condemn political violence.

Kenya, Lesotho, Malawi, South Africa, and Zambia require candidates and parties to publicize the codes themselves, although most do not describe how. Malawi provides the most specific guidance, mandating the posting of the code “in a conspicuous place in every contesting political party and campaign office” (Malawi Electoral Commission, 2019, p. 4). Peru requires candidates to encourage responsible, respectful, and truthful use of social networks with respect to elections (Jurado Nacional de Elecciones, 2020, p.5).

One area in which most codes are silent is the period in which candidates and parties are bound by the code. We believe this is because, in contrast to the U.S.’ seemingly endless campaigns, many countries strictly enforce timeframes in which electoral activities can occur. As a result, most codes refer simply to an “election period,” established elsewhere in law or regulation.

From all the codes, one thing is clear: Each is a product of its own place and time. Codes of conduct are – and should be – tailored to the problems a community seeks to solve, the norms it wishes to establish, and the social and historical context. Accordingly, some codes are highly idiosyncratic and specific. For example, Ukraine prohibits “appeals to terminate the independence of Ukraine, change its constitutional order by violence, [or] infringe upon the sovereignty or territorial integrity of the state” (Law on Elections of the People’s Deputies of Ukraine, 2011). Indonesian political candidates and campaign organizers are forbidden from questioning Pancasila (the country’s official philosophy) and the Constitution as the foundations of the country (Law of Republic of Indonesia Governing Elections, 2007, p.179); and in Tunisia, politicians are barred from accusing their opponents of apostasy (Charter of Honor, 2014, p. 3) These specifications are rooted in each country’s unique historical and sociocultural realities.

As we argue at DSP (2020), the social and historical context in which a message is spread can dramatically affect how it is understood and the impact it can have. When crafting a code to reduce dangerous speech, it is critical to incorporate such case-specific elements when defining speech that parties agree not to use.

Enforcement and Accountability

Sixteen of the 31 codes of conduct we analyzed are legally binding; the rest are voluntary agreements. For legally binding codes, violations can incur fines, imprisonment, or the removal of candidates or parties from future elections, and in some cases, this constitutes unjust limits on freedom of expression. Pakistan, for example, prohibits candidates from questioning the judiciary’s integrity or independence, or defaming the judiciary or the armed forces (Election Commission of Pakistan, 2018). This is especially concerning since Pakistan’s defamation law is regularly used to violate human rights (Amnesty International, 2020). Codes that use vague terms like language that “may lead to violence or intimidation” (Independent Electoral Commission - Lesotho, 2011, p. 3), “irreverence and insult” (Islamic Republic of Afghanistan Independent Election Commission, 2014, p. 2), or “appeal to caste or communal feelings” (Election Commission of India, 2007) may chill important political speech and allow those in power to selectively enforce codes to harass their opponents.

The other half are voluntary codes: While political parties or candidates commit to respect them, any consequences for violation are social, reputational, or political. For a voluntary code to be effective, political candidates and party leaders must feel that it is in their best interest to comply

with it. Getting them to participate in writing the code is one way to achieve this (Monney & Valladres Molleda, 2017).

A good example of this is Tunisia's 2014 Charter of Honour. Three years earlier, the country's president Zine El Abidine Ben Ali had been ousted after five decades of autocratic rule. Despite some efforts to build a multi-party coalition, distrust remained high, sparked by incidents like the assassination of opposition politician Chokri Belaïd (Thornton, 2014). Amidst the tension, the Centre for Humanitarian Dialogue brought together nineteen of Tunisia's political parties to write a voluntary code of conduct (Centre for Humanitarian Dialogue, n.d.). The Charter prohibits intimidation, incitement of violence, insults, defamation, denigration, and speech that could fuel regionalist or clan-based divides, as well as charges of "apostasy, treason, terrorism, of cooperation with foreign forces, or any other similarly serious accusation."

The dialogue process lasted almost eight months. After the 2014 Tunisian parliamentary and presidential elections, the Charter was deemed effective by the political parties and the Tunisian Election Commission, who "all recognized that the Charter of Honour contributed to reducing tensions during the electoral process, and facilitated acceptance of the results" (Monney & Valladres Molleda, 2017, p. 11). According to Christopher Thornton, who studies transitional governance, part of this success came from the process of writing the Charter: bringing people physically together; connecting them across political divides; and laying the groundwork for inter-party cooperation during the election (Monney & Valladres Molleda, 2017, p. 11).

Once parties have publicly agreed to rules, they may be held accountable through naming and shaming, a practice familiar to activists attempting to advance human rights in contexts where they are not readily enforceable through law. For this to work, members of the public, not only those active in politics, must be aware of their contents and signatories: This serves to make the reputational costs high enough that they serve as a deterrent to violating the code.

Accordingly, several codes (Kenya, Lesotho, Mali, Namibia, South Africa, and Zambia) specifically require political parties to publicly disseminate them. In the run-up to the Tunisian election, the Charter of Honour was published online; 50,000 copies were printed and distributed; and there was a "comprehensive publicity campaign on Tunisian television and radio and in the press" (Monney & Valladres Molleda, 2017, p. 11).

Publicizing codes of conduct may also facilitate behavior changes in the wider public. How people behave is closely linked to perceived social norms – but perceptions of norms are not always

accurate (Miller & Prentice, 2016). Explicitly communicating norms through a code of conduct may therefore also influence election-related speech and behavior throughout a community.

The United States

Preventing election-related violence in the U.S. has shifted from a matter of foreign policy to an urgent domestic concern (Smith & Wilson, 2020). In August 2020, ACLED (2020a), which collects real-time data on political demonstrations and violence in 150 countries, identified the U.S. as one of “10 conflicts to worry about in 2020.” One reason for this is that as political demonstrations multiplied, government responses became harsher. In July 2019, under 2% of demonstrations were met with state intervention – fewer than 30 events – and authorities used force at just three of those. In July 2020, there were at least 170 with state intervention (9% of the total number recorded), and at least 65 of those saw police use violent force including tear gas, pepper spray, rubber bullets, and batons (ACLED, 2020a). Violence did not come only at the hands of the state: Between May 24 and August 22, ACLED (2020b) recorded 56 incidents where a driver plowed into demonstrators. Ari Weil of the Chicago Project on Security and Threats has pointed to content on social media as a contributing factor to the widespread nature of these attacks (MacFarquhar, 2020). Bloom (2020) has also drawn connections to similar attacks and related speech in several other countries.

Increasing levels of violence, whether instigated by state actors or third parties, can contribute to a cycle in which dangerous speech inspires additional violence. In the U.S., such speech has almost universally come from Republicans, especially former President Donald Trump. Of course, Democrats also use divisive and threatening rhetoric. For example, in 2019 U.S. Senator Jon Tester said “I don't think... it does you any good running away from Donald Trump. You need to go back and punch him in the face” (Ouellet, 2019). In a 2020 Facebook Live video, Michigan State Representative Cynthia Johnson told viewers to “hit [Trump supporters'] asses in the pocketbook” and called on “soldiers” to “make them pay” after she received violent threats (Ibrahim, 2020). However, the context of and response to such statements usually indicates that the speaker and audience both understand them as referring to political or economic consequences – or nonviolent civil disobedience – rather than physical violence. As in these examples, Democrats also typically use such rhetoric against people with social and political power, rather than marginalized or minority groups.

Trump’s speech is different. He doesn’t usually call for violence directly – though there are exceptions, like a 2016 rally where he encouraged attendees to “knock the crap out of” protestors (White, 2016). Instead, he uses divisive rhetoric that casts groups as threatening Others that the U.S. must protect itself against. For example, Trump infamously began his 2016 campaign by characterizing Mexican immigrants as criminals, drug dealers, rapists, and bearers of infectious diseases (Lind, 2015); a wall between the U.S. and Mexico and a ban on Muslims entering the U.S. later became centerpieces of his campaign. He later targeted immigrants from Africa and Haiti (described as coming from “shithole countries”) and Chinese people (by using “Chinese virus” and “kung flu” to discuss COVID-19), among several other reprehensible examples (Benesch, 2018; Benesch, 2020; Livingstone Smith, 2018; Lopez, 2020).

As Trump’s dangerous rhetoric increased, so did the number of reported hate crimes – especially in areas where Trump held rallies (Williamson & Gelfand, 2019). Some perpetrators explicitly named Trump as influencing their attacks (Reuters Staff, 2016; Rocah, 2019); others echoed Trump’s rhetoric in statements before or after committing violence (Baker & Shear, 2019).

Trump commonly failed to denounce such incidents, even when directly asked to do so, instead using them as opportunities to spread disinformation and support perpetrators. In August 2020, after 17-year-old Kyle Rittenhouse killed two people protesting against police brutality in Wisconsin and injured a third, Trump (2020) falsely claimed Rittenhouse was “trying to get away” from the protesters he shot when he was “violently attacked;” an internal memo instructed Homeland Security officials to claim that Rittenhouse had been “chased and attacked by rioters” and to emphasize that “[c]haotic and violent situations lead to chaotic, violent and tragic outcomes” (Ainsley, 2020).

During the first debate between Trump and Joe Biden, on September 29, 2020, when asked to condemn white supremacist and militia groups like the Proud Boys – a self-described “Western chauvinist” organization (Wilson, 2018) – Trump insisted that the vast majority of violence is in fact committed by anti-fascists (“Antifa”) and told the Proud Boys to “stand back and stand by” (Trump & Biden, 2020). In an interview, the group’s leader said he understood this to mean they should continue their activities; Trump’s words were also immediately incorporated into memes and merchandise supporting the group (Murphy, 2020).

The next day, after his words were widely condemned, Trump claimed he did not know who the Proud Boys were and said, “They have to stand down [and l]et law enforcement do their

work,” while also reiterating that anti-fascists were the ones instigating violence, saying “the problem is on the left” (Samuels, 2020). This tactic – inflammatory statements that resonate with extremists, followed by backpedaling in the face of criticism – is one that President Trump has used since at least 2017, when he infamously claimed that there were “very fine people on both sides” (Holan, 2019) of a white supremacist march and counter-protests in Charlottesville, Virginia, where a marcher killed a protester by ramming his car into a crowd (Benesch & Wright, 2017).

Trump’s dehumanizing rhetoric and endorsement of perpetrators of violence is dangerous speech. Trump is a credible, influential speaker among his supporters, including white nationalist extremists (Benesch & Wright, 2017). Continuing with the Rittenhouse and Proud Boys examples, Trump made these statements in venues that enhanced their credibility and reach: a White House press conference, and a nationally televised debate that over 73 million people watched live (Barr, 2020). Additionally, Trump’s repeated claims of violence instigated by anti-fascists rather than right-wing activists is an example of accusation in a mirror, a common hallmark of dangerous speech. An analysis of 893 terrorist attacks and plots in the U.S. between January 1994 and May 2020 found that right-wing actors were responsible for the majority, including 90% of those between January and May 2020 (Jones et al., 2020). Describing an opposing group as planning violence against the in-group (in this case, Trump supporters) makes it easier to justify violence against them as a form of collective self-defense.

President Trump has also spread disinformation about the legitimacy of the electoral process (Farley, 2016), which further increases the risk of election-related violence (Birch & Muchlinski, 2018). Leading up to the 2016 election, Trump and his surrogates warned of widespread voter fraud. Even after he won, he claimed that fraud was the reason Hillary Clinton received more votes than him (LoBianco, 2016). In 2020 he regularly made baseless claims that widespread vote-by-mail in response to COVID-19 would result in a “rigged election” (Dickinson, 2020). At a rally in late September 2020, Trump went so far as to predict, “We’re not going to lose this except if they cheat” (Reynolds, 2020). Even after he lost the election, Trump continued to spread conspiracy theories and allegations of voter fraud on social media (McCarthy, 2020), at public appearances (Caballero-Reynolds, 2020), and in dozens of unsuccessful and baseless lawsuits (Sheth & Shamsian, 2020) seeking to overturn election results in key states.

Research suggests that such messages influence public opinion, especially among Trump’s supporters. Immediately after the 2018 U.S. elections, a survey of 4,280 people in the U.S. (Berlinski et al., 2020) found that even low-level exposure to unfounded claims about election integrity “significantly reduced confidence in elections,” even after respondents viewed independent fact-checks debunking them (Berlinski et al., 2020, p. 4). Republicans and people who approved of Trump’s performance in office were particularly susceptible to this type of misinformation (Berlinski et al., 2020, p. 2).

This systematic attack on confidence in elections also seems to have increased the risk of election-related violence: Besides the January 6th attack on the U.S. Capitol – which was ostensibly intended to prevent Congress from certifying the presidential election results – there has been significant terrorization of the public officials and civil servants involved in election administration. For example, a Reuters investigative report in September 2021 documented 102 threats of death or violence against 40 election officials, workers, and their relatives in 8 different states (So & Szep, 2021).

Improving Election Norms Can Start at the Local Level

In 1932, U.S. Supreme Court Justice Louis Brandeis wrote, “a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country” (New State Ice Co. v. Liebmann). This is particularly applicable to U.S. elections, since even national elections are conducted through more than 10,000 local agencies, some responsible for a few hundred voters, and others for millions (National Council of State Legislatures, 2020). Codes of conduct could therefore be tested in many small laboratories – states, counties, or cities.

Four decades ago, a few states did just that. Since 1979, Montana has invited candidates to sign a Code of Fair Campaign Practices, pledging (among other things) not to “make any appeal to prejudice based on race, sex, creed, or national origin,” misrepresent or distort facts, or “use malicious or unfounded accusations” to raise doubts about an opponent’s “loyalty and patriotism” (Mont. Code Annot. § 13-35-301). Candidates also pledge to “immediately and publicly repudiate support” from others using such language. California, Illinois, Maine, and Texas have nearly-identical voluntary codes (Calif. Elec. Code § 20440; 10 Ill. Comp. Stat. 5/29B-10; Maine Rev. Stat. 21-A § 1101, Tex. Elec. Code 15 § 258), suggesting this was part of a concerted effort, but it’s unclear who organized it or what their motivations were.

It's also unclear who signs on to the codes, making it impossible to hold candidates accountable. In 2009, David Morrison of the Illinois Campaign for Political Reform (now Reform for Illinois [RFI]) explained one barrier: "There are some political insiders who say, oh, don't sign the code because then you'll just be accused of violating it all the time" (Rhodes, 2009). In 2020, Alisa Kaplan, RFI's Executive Director, said that even tracking which candidates have signed the pledge would be a challenge: "[T]he pledge is voluntary and I don't believe candidates are required to submit them to the Board of Elections or if there is even any method for them to do so. And boy do we have our share of nasty campaigns" (personal communication, Sept. 11, 2020). An independent body tasked with implementing a code of conduct could, among other things, maintain a public record of who had and had not signed on – a crucial first step for accountability.

At least one other country has a sub-national code of conduct governing political speech. In 2000, political parties in the Canadian province of Manitoba drafted and agreed to a Code of Ethical Conduct. The Code states that members of parties shall refrain from knowingly making statements that are untrue or that are "defamatory with respect to another Member, leader, or any candidate of another political party, or another political party generally" (Elections Manitoba, n.d.). Unlike the U.S. codes, Manitoba's has a mechanism for self-regulation, but it is poorly defined: It requires parties to create and publicize a complaints process, but it does not offer any guidelines for what that process must include, or any form of independent oversight (Standing Committee on Legislative Affairs, 2008) – weaknesses that have led some to see the code as purely symbolic (Thomas, 2018).

For local codes in the U.S. to be effective, we suggest that they include the following:

- Clear definitions of the types of speech that signatories agree not to use, including dangerous speech, misinformation about how to vote, and unsubstantiated claims of election fraud.
- An agreement to condemn political violence, especially when committed by one's own supporters.
- An independent and transparent body to ensure compliance and handle complaints.
- Clearly defined consequences for violations (these would be community-specific but might include loss of endorsements or financial support).
- A process for evaluating the impact of the code and refining it for future elections.

We also recommend that such codes be written by independent facilitators working collaboratively with the parties and candidates. A government-imposed code would likely be an unconstitutional restriction on speech, and in any case engaging political figures in the drafting process will improve the chances that they will comply. Such a process might also allow candidates to reach agreement on matters that would be difficult for a third party to impose, like committing to issue joint statements condemning violence or threats.

Clarity about what speech is prohibited and the processes and consequences for violations, an independent oversight body, and opportunities for the people subject to the rules to play a role in creating them would address the shortcomings of the U.S. and Manitoba examples and hopefully improve the chances of meaningful impact.

Local-level codes of conduct could offer many advantages. Even in the age of the internet and social media, speech and behavior norms vary dramatically across the country. A local approach better allows accounting for and responding to those variations in a detailed code of conduct.

At least once before the November 2020 election, opposing U.S. candidates called for civil campaigning and political debate. Two weeks before Election Day, the Republican and Democratic candidates for governor of the state of Utah released joint advertisements in which they stated that “we can debate issues without degrading each other’s character” and “we can disagree without hating each other” (Boden, 2020). This type of collaboration between two opposing candidates is a perfect example of what we hope local codes of conduct could inspire.

Advancing norm change at the local level is nothing new. A similar strategy has been used to advance recognition for human rights standards within the U.S. While the federal government is reluctant to commit to international human rights law (even as it demands that other nations do so), several cities have passed ordinances or resolutions to uphold the principles of treaties like the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Nine cities and counties have a CEDAW ordinance and 32 more have passed CEDAW resolutions (Cities for CEDAW, 2019). These local efforts could potentially serve as a roadmap for drafting local level electoral codes of conduct.

In the 2020 campaign, false and inflammatory language notoriously came from the top of the political food chain, so it might seem that local codes would not solve the problem. But state and national leaders often begin their political careers at the local level, so establishing and

enforcing norms at those levels could help cultivate a new generation of political leaders who would carry those norms on to the national stage.

Indeed, developing norms and laws in smaller constituencies is often used to drive social change on a broader scale. For example, in the early 1970s, a few states began adopting anti-smoking policies, including Arizona, the first state to ban smoking in some public places (Institute of Medicine, 2010), and Minnesota, which required separate areas for smoking in public places in 1975 (American Lung Association, 2020). By 1986, 41 states and D.C. had restricted smoking in some way (Bayer & Colgrove, 2002, p. 951). During the same period, self-reported smoking rates declined significantly, from about 40% of American adults in the 1970s to 13.7% in 2018 (Centers for Disease Control, 2020). As these examples demonstrate, it is often cities and states that lead the way in shifting norms and driving social change.

In all these cases, accountability mechanisms are a key aspect of shifting norms. The successes and failures of local human rights implementation efforts illustrate this. In most cases, U.S cities that have committed to comply with human rights law have failed to include mechanisms for holding governments accountable. San Francisco is an exception: When adopting its CEDAW ordinance, it also launched a task force to facilitate community participation and oversight (Davis, 2016). Putting specific people in charge of implementing the resolution and developing channels for stakeholder participation helped San Francisco advance gender equality where others have failed (Haddad, 2020). For example, the task force worked with one of the city's largest unions to successfully lobby for improved telecommuting and flexible schedule policies, which led to the establishment of San Francisco's paid parental leave charter amendment (Columbia Law School Human Rights Institute, 2017). Successes such as these inform our recommendation that where codes of conduct are adopted, a central body should be tasked with ensuring compliance.

Opportunities for Civil Society and Other Stakeholders

Another insight from our research is that politicians should not be the only ones creating and enforcing electoral norms. Most of the codes of conduct that we found apply primarily to political candidates and party officials, but some specifically address other groups, such as journalists or law enforcement.

Some countries involve non-politicians by giving them a role in monitoring and/or enforcing codes of conduct. In 2013, Malawi established Multiparty Liaison Committees (MPLCs), panels of local leaders (including politicians) from all parties participating in the

election who are trained to “manage and settle electoral disputes at the district level” (Mwafuilirwa, 2013). The Malawi Electoral Commission (MEC) has issued statements reminding local chiefs that they have a “duty to report to the [MPLCs] any candidate, political party or supporters not adhering to the code of conduct for political parties and candidates” (Mlanjira, 2020). In 2020, the MEC chair said, “the role of traditional leaders needs no emphasis” because “Chiefs are parents and all subjects are their children[;] since they stay with the people and have influence over them, they have a crucial role in ensuring that elections are held in a free and fair environment” (Mlanjira, 2020).

In Ghana, the press helps enforce the code of conduct by reporting on violations. The 2012 Code of Conduct instructs candidates and parties to avoid “defamatory, inflammatory, and foul language in all forms” as well as “incitement to hatred on the basis of gender, ethnicity, religion, creed or sect or any other criteria” during the campaign (Institute for Economic Affairs [IEA], 2012, pp. 5-7). It also outlines enforcement mechanisms, including requiring the National Commission for Civic Education (NCCE) to monitor breaches and widely publish details in the media (IEA, 2012, p. 13). The NCCE does this by speaking with journalists, publishing press releases, and raising the issue in public addresses. For example, in 2019, the National Chairman of the National Democratic Congress was caught on video making statements that seemed to support using violence against members of the primary rival party, the New Patriotic Party (Okertchiri, 2019). NCCE issued a statement condemning the comments, stating, “Unguarded utterances that have the potential to create fear and panic should be condemned in no uncertain terms by all and not be allowed to fester in Ghana’s democracy” (Adogla-Bessa, 2019). Incorporating trusted media outlets into the accountability and enforcement mechanisms of codes of conduct could increase their impact. Such outlets might also consider writing their own standards for how to cover the types of harmful speech identified in the code, as the Ethical Journalism Network (2015) has suggested for hate speech.

Non-political leaders are often influential speakers within their communities, and so their support for a code of conduct calling for the rejection of dangerous speech could reinforce positive discourse norms. In the U.S., there are many stakeholder groups that could draft codes of conduct for their own members’ behavior during election campaigns, such as faith communities, professional associations, or chambers of commerce.

There are at least two such efforts already underway. One of these is Golden Rule 2020, launched by the National Institute for Civil Discourse (NICD) in November 2019. The NICD was founded in 2011 after a man with a pistol attacked an event hosted by then-U.S. Congresswoman Gabrielle Giffords, wounding her and a dozen others and killing six. Its goal is to promote “healthy and civil political debate” (National Institute for Civil Discourse [NICD], 2020a). The Golden Rule program was developed by “Christian leaders who believe that applying the ethical principle of the Golden Rule [treat others as you wish to be treated] is the best way to bring dignity and respect” to political interactions (NICD, 2020b). The program encourages individuals from all faith backgrounds to take a pledge, which reads “I commit to do my best to practice the Golden Rule and treat others with respect and dignity in political discourse and behavior.” That’s very broad, but the program’s website provides some examples, including using “precise and truthful language” and refraining from using inflammatory speech, demonizing opponents, or calling them enemies. It also provides suggestions for congregations to promote the program, like issuing a joint press release signed by church leaders with differing political beliefs (NICD, 2020c). Anyone can sign on to the pledge, and NICD publishes a list of prominent signatories.

The U.S. Conference of Catholic Bishops (USCCB) has a similar program, “Civilize It,” which was launched on the same day (S. Smith, 2020). Signatories pledge to “recognize the human dignity of those with whom [they] disagree, treat others with respect, and rise above attacks when directed at [them]....speak out when [they] witness language that disparages others' dignity, while also listening and seeking to understand others' experiences,” and to “encounter others with a tone and posture which affirms that [they] honor the dignity of others and invites others to do the same” (USCCB, 2019). At least 1,300 people have signed on, and the campaign website features a searchable database of signatories (USCCB, 2022).

Such pledge-based codes lack formal enforcement mechanisms, but the Golden Rule program encourages people to publicize their commitments and suggests that congregations hold events and issue press releases in support of the values espoused in the pledge. This allows the pledge to serve as a positive norm setting device, and if violations do occur, could provide a tool for activists to hold the violator publicly accountable.

Technology companies – especially social media platforms – could also play an interesting and important role. Meta’s Facebook, for example, has made significant progress toward establishing a *de facto* code of conduct for electoral candidates. During the 2016 U.S. election,

Meta CEO Mark Zuckerberg intervened to keep Trump’s posts on Facebook even when they violated company rules, under a vague commitment to content that was “newsworthy, significant, or important to the public interest” (Seetharaman, 2016); in September 2019, Meta clarified that all non-advertising content from politicians would be exempted from Facebook’s rules, unless it posed safety risks that outweighed its public interest value (Clegg, 2019). Nine months later, Meta changed its approach, declaring that politicians would not be allowed to incite violence or attempt to suppress voting on Facebook, and that if politicians violated other rules (like using hate speech) a warning label would be affixed to that content (Lerman & Timberg, 2020).

As the 2020 U.S. election neared, Meta instituted further restrictions, informed by the content its staff was seeing: In September it banned claims that voters will get COVID-19 by voting in person (“New Steps to Protect the US Elections,” 2020), and in October it explicitly forbade efforts to coordinate voter intimidation, even if they use veiled language (“Preparing for Election Day,” 2020). The company also signaled disapproval of unsubstantiated claims about election integrity or claims of victory before a winner has been declared: Though such claims are allowed on the platform, Meta promised to add “contextual notices” in response (“Preparing for Election Day,” 2020).

After years of inaction, other companies like Twitter (McNamara, 2020) and Google (2020) also scrambled to establish new policies to regulate election-related speech, though experts have criticized all three companies’ responses as insufficient (Fung, 2020). Perhaps in the future, a more robust and effective version of these policies could be developed into a multistakeholder election code – like the European Commission (2018) Code of Practice on Disinformation, which has online platforms, advertisers, and advertising firms as signatories – that could proactively encourage candidates to refrain from using harmful speech online.

Research and Policy Opportunities

It would be naïve to suggest that even the best-designed code of conduct could stop politicians from spreading dangerous speech and other harmful content on its own. But it could be one tool in a comprehensive strategy to mitigate the impact of dangerous speech during elections. And if authoritative speakers widely publicize support for such a code, it could help set positive norms.

We suggest local leaders and civil society organizations review the best practices established by international election experts like IFES and International IDEA, and push for local

codes of conduct in the U.S. that focus explicitly on preventing intergroup violence while protecting freedom of expression, and have meaningful accountability mechanisms. We also hope to see more community associations and other non-politicians play a role in discouraging inflammatory speech and preventing election-related violence.

Finally, to support these efforts, further research on the possible impact of codes of conduct on reducing the risk of electoral violence and shifting discourse norms for candidates and the public is sorely needed; for newly implemented codes, we recommend monitoring and evaluation mechanisms be built in. On a smaller scale, a data collection project specifically focused on identifying state or local codes of conduct – and ideally evaluating their effectiveness – would provide further support for efforts to pilot such codes in the U.S.. And if multiple jurisdictions pilot such codes in the U.S., a comparative analysis of their structures and outcomes would be extremely valuable.

On its own, implementing and studying codes of conduct is not going to save democracy or even ensure civil discourse in any given election. But at a time when the U.S. seems hopelessly polarized and the promise of free and fair elections feels increasingly fragile, it seems worth it to try the strategy that the U.S. has promoted abroad for decades: using codes of conduct as one part of a comprehensive effort to strengthen democratic institutions and discourage election-related violence.

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