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### Dissent is Patriotic: Disobedient Founders, Narratives, and Street Battles

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## **DISSENT IS PATRIOTIC: DISOBEDIENT FOUNDERS, NARRATIVES, AND STREET BATTLES**

Laura R. Woliver\*

ROBERT W. T. MARTIN, *GOVERNMENT BY DISSENT: PROTEST, RESISTANCE, AND RADICAL DEMOCRATIC THOUGHT IN THE EARLY AMERICAN REPUBLIC* (2013). Pp. 273. Hardcover \$ 49.00

FREDERICK W. MAYER, *NARRATIVE POLITICS: STORIES AND COLLECTIVE ACTION* (2014). Pp. 192. Hardcover \$49.95

LEWIS PERRY, *CIVIL DISOBEDIENCE: AN AMERICAN TRADITION* (2013). Pp. 424. Cloth \$ 35.00

JOSHUA C. WILSON, *THE STREET POLITICS OF ABORTION: SPEECH, VIOLENCE, AND AMERICA'S CULTURE WARS* (2013). Pp. 260. Paperback \$24.95

American politics, culture and history celebrate rebellious Founders, a lady who refused to give up her bus seat, and little guys who challenge the mighty. The story lines are often triumphalist and reassuring. Scholars of dissent, reform, political change, and the practice of freedom note that rebels need other people, commitments to higher powers, and a willingness to play the long game. People who dissent have lost their property, livelihoods, communities, peace and quiet, parts of their bodies, the trust of other people, and their lives. Social movements, communities, religions, pride, hope, and solidarity help dissenters. Many scholars, including the authors of the four books reviewed here, also teach us that dissenters might not win, but their oppositional stances leave residues of reform which are “cumulative”.<sup>1</sup>

Hagiographies of dissenters are not the point. In his preface to *Narrative Politics*, Fredrick W. Mayer eloquently explains how stories captivate him:

I have long been fascinated by their powers: to capture our minds, to touch our hearts, to imagine ourselves into other lives and other worlds, and to teach about our own. Perhaps, too, as the grandson of a Holocaust victim for whom I am named and the son of a survivor, I have also long

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1. SIDNEY TARROW, *POWER IN MOVEMENT: SOCIAL MOVEMENTS AND CONTENTIOUS POLITICS* 191 (2011).

had an appreciation for narrative's darker powers.<sup>2</sup>

He notes that the bad and the ugly dissent as well as the good. Discerning the differences depends on the practice of critical thinking, a privileged place for democratic dissent, and recognition that “public indifference can only be countered with public enlightenment via popular dissent.”<sup>3</sup>

#### GOVERNMENT BY DISSENT

In *Government by Dissent: Protest, Resistance, & Radical Democratic Thought in the Early American Republic*, Robert W. T. Martin examines the thinking and actions of Federalists and Anti-Federalists. His use of primary sources to explain fully the citizen uprisings such as Shay's Rebellion, the doubts and debates concerning the proposed U.S. Constitution, and the thinkers trying to sway public opinion and state legislatures to their point of view is fresh and creative. Readers get a taste of how heartfelt people's beliefs were and how deep their concerns went about a republic based on the will and wisdom of the people. The book pays worthy tribute to the farmers and country people in the rebellions against banks, overwhelming debt during a specie shortage, and foreclosures. Communities joined “together to acquit their neighbors as part of concerted efforts at ‘regulation’ via popular disorder.”<sup>4</sup> Today, he notes we would call this “jury nullification.”<sup>5</sup>

Martin documents how people “did whatever it took to save their neighbors' farms.”<sup>6</sup> Locals promised not to bid on foreclosed property and threatened people who waived in “no-bid” associations.<sup>7</sup> If the militia were called out to establish order in places like western Pennsylvania, the men “would simply refuse to muster in any crisis that seemed a matter of elite self-interest rather than the public good.”<sup>8</sup> They closed and destroyed roads and bridges to impede wealthy outsiders coming in for foreclosure auctions.<sup>9</sup> In short, the story is much more complex than the implication that they were angry about taxes (the Whiskey Rebellion). For instance,

In the end, Kentuckians neither paid their taxes nor convicted their neighbors until Thomas Jefferson, as president in 1801, arranged to have the tax itself repealed. This shift alone demonstrates that the protests throughout the backcountry were about much more than a tax on booze; they were a medium for opposition to federal policy and an undemocratic politics.<sup>10</sup>

Martin argues that the era shaped a “dissentient democracy,” which values “dissent as an essential core element.”<sup>11</sup> Dissenters are often disadvantaged given the power of

2. FREDERICK W. MAYER, *NARRATIVE POLITICS: STORIES AND COLLECTIVE ACTION* vii (2014).

3. ROBERT W. T. MARTIN, *GOVERNMENT BY DISSENT: PROTEST, RESISTANCE, & RADICAL DEMOCRATIC THOUGHT IN THE EARLY AMERICAN REPUBLIC* 77 (2013).

4. *Id.* at 23.

5. *Id.*

6. *Id.* at 35.

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.* at 36.

11. *Id.* at 2.

social inertia, deference to the status quo, and “the myriad powers of the existing order.”<sup>12</sup> Many people contributed to this tradition and Martin is to be commended for highlighting the contributions of undervalued thinkers of the 1790s such as Samuel Bryan, Tunis Wortman, and William Manning. Martin pays special tribute to James Madison and Thomas Cooper. During the War of 1812, James Madison was not rattled by dissenters and critics. Unlike previous presidents, he did not use war as a reason to suppress free speech.

The chapter on Thomas Cooper riveted me. Full disclosure: I have taught at the University of South Carolina for decades, have used the Thomas Cooper Library repeatedly, and have admired the Thomas Cooper Society’s work on behalf of scholarship and the Library. Cooper’s life, activism, and writings were relatively new to me. While understanding and admiring Cooper’s support for the necessity of dissent in a democratic society (I should specify, the “early Cooper”), the book treats the later Cooper’s activism, politics, and thinking with a kid glove from which I must dissent. Most likely Martin will not mind my dissent as he asserts “[w]e are, after all, a nation that was literally created by riotous refusal.”<sup>13</sup>

My dissent is that the Thomas Cooper who came and stayed in South Carolina needs to be more fully explained. The early Thomas Cooper was a radical democrat who privileged dissent. He also incorporated human fallibility into his work. Cooper left England for America because he had to quit a country where people could not be free. In Philadelphia he practiced what he preached and was jailed for his trouble under President John Adams’ Alien and Sedition Acts. Then he moved to South Carolina, was tenured as a chemistry professor and became the President of South Carolina College (today The University of South Carolina). Throughout the book Martin reminds readers that enslaved people, African Americans, and women did not participate, have a voice, or dissent without being in grave danger. Yet Martin does not fully explain how this radical democrat became an apologist for the slavocracy. Martin writes, “[b]y the end of his life, Cooper had become such an advocate for slavery and states’ rights that he even tempered his stress on dissent, apparently supporting the Post Office ban on abolitionist newspapers and the congressional ‘gag law’ against abolitionist petitions.”<sup>14</sup> Martin suggests that Cooper’s earlier commitment to dissentient democracy became “too demanding for him, or it came to seem too politically ambitious. But just as his early arguments for racial equality are not disproved by his later pro-slavery views, so his later intolerance for abolitionism does not undermine, for us, his earlier theory of democratic dissent.”<sup>15</sup> It undermines it for me and will doubtless do so for many other readers. The later Cooper does display the fallibility of people. Interpreting what the later Cooper advocated and supported as a “great man” in South Carolina (President of the College, learned professor) is shaped by how the reader reads the story.<sup>16</sup> Given the high quality of Martin’s scholarship and insights, I wish he had more fully explained the mature Thomas Cooper in South Carolina who fought against dissent.

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12. *Id.* at 5.

13. *Id.* at 1.

14. *Id.* at 194-95.

15. *Id.* at 195.

16. See JONATHAN CULLER, ON DECONSTRUCTION: THEORY AND CRITICISM AFTER STRUCTURALISM (1982).

LEWIS PERRY'S *CIVIL DISOBEDIENCE*

Lewis Perry's overview of civil disobedience in America is a *tour de force*.<sup>17</sup> He provides a smooth, compelling narrative of people standing up, often for more than self-interest. The study covers the founding period, issues of race, gender, social class and sexuality and the overlapping, simultaneous combinations of race, gender, ability/disability, class and sexuality. It is an excellent source on social movements, citizen participation, and collective action. His story includes the history of government treatment of Native Americans and the individuals and groups who tried to stop some of the brutalities. Particularly noteworthy is Perry's knowledge of labor union activities in American history and politics. He astutely teaches readers, "[i]t is important not to underestimate the transformative importance of the IWW [Industrial Workers of the World]."<sup>18</sup> The points he makes about how movements affect each other remind us of the hard work we all benefit from given the efforts of abolitionists, labor activists, environmentalists, civil rights workers, LGBT people, and religious people of all faiths, and citizens of no faith.

Perry captures the stress individuals experience when they challenge authority and their anguish when witnessing and experiencing illegal, unjust, cruel treatment. He organizes his examination around several themes: the definition of civil disobedience, the various justifications for it, possible punishments—just and unjust—for it, the beloved community aspect of activism, the audiences for political actions, and the discipline needed to sustain over time effective civil disobedience.

Perry begins with an erudite overview of Mahatma Gandhi's nonviolent civil disobedience philosophy and the interpreters and practitioners of Gandhi in America. The book is so rich with research, cogent analysis and wise interpretation that even many of the footnotes are gems. In excavating the precursors to Gandhi's movement of nonviolent resistance he profiles Henry David Thoreau, John Stuart Mill, and many others. Religious leaders' legacies rang clearly throughout, Perry explains: "A prize-winning essay in Gandhi's weekly newspaper in 1908 identified three saintly precursors of passive resistance: Jesus, St. Stephen, and Henry David Thoreau. Gandhi himself, in the same year, also praised Thoreau's fearless devotion to principle and added three additional exemplars of the courageous defiance of social convention that he urged Indians to emulate: Luther, Galileo, and Columbus."<sup>19</sup>

The Gandhian position that nonviolence was active strength, not weakly demurring, is a thread throughout the book. Particularly poignant and fully human are the people who struggled to be nonviolent civil resisters but wavered, faltered, amended, or rejected the tactic and philosophy.

An early instance of religiously based civil disobedience and dissent was in 1829 when "over a dozen Presbyterian-Congregationalist missionaries refused to cooperate with Georgia laws aimed at removing the Cherokees."<sup>20</sup> Two Georgia missionaries were jailed and served hard time to vindicate the rights of others, not to protect their own rights of

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17. LEWIS PERRY, *CIVIL DISOBEDIENCE: AN AMERICAN TRADITION* (2013).

18. *Id.* at 170 n.46, 172-78, 353. See also ROBIN D.G. KELLEY, *HAMMER AND HOE: ALABAMA COMMUNISTS DURING THE GREAT DEPRESSION* (1990); NANCY MACLEAN, *FREEDOM IS NOT ENOUGH: THE OPENING OF THE AMERICAN WORKPLACE* (2006).

19. PERRY, *supra* note 17, at 183 n.7, 355.

20. *Id.* at x.

worship. Perry explains, “As their law breaking aimed to aid Indian noncitizens, it pointed toward future practices of civil disobedience directed to the causes of others who were not fully citizens—slaves, blacks, women.”<sup>21</sup>

Movements overlap and interweave. They are iterative of each other and path dependent. When it comes to civil disobedience, past movements are prologue. For instance, the masthead of William Lloyd Garrison’s newspaper, the *Liberator*, depicted participants in a slave market trampling Indian treaties under their feet. “Virtually every antislavery reformer,” Perry explains, “who withdrew from the gradualist colonization movement in favor of immediate abolitionism linked this radical step to disgust at Jacksonian Indian policy.”<sup>22</sup> Perry proves that there are antecedents, legacies and heralds for many movements.

He chronicles the decades of resistance to slavery by enslaved and free people. The Underground Railroad, Manumission Societies, Anti-slavery Societies, and gangs of people who thwarted capture and re-enslavement of people and in the process disobeyed the reviled Fugitive Slave Laws are given just attention and recognition in his long, insightful chronicle of American civil disobedience. “The Fugitive Slave Law provoked an opposition that lifted the rhetoric of disobedience to new levels of boldness and creativity.”<sup>23</sup> Court cases stemming from the Fugitive Slave Law involved questions of obedience and obligation.<sup>24</sup>

The remarkable A. Philip Randolph, leader of the Brotherhood of Sleeping Car Porters, organized draft resistance to the segregated, Jim Crow military during World War II, no less.<sup>25</sup> In 1948 President Truman ended Jim Crow in the American military, ending the widest and longest civil disobedience campaign in U.S. history.<sup>26</sup>

*Civil Disobedience* portrays many activists and rebels with attentiveness to their backgrounds, their setbacks as well as triumphs. Perry teaches us that charismatic, creative, eloquent and brave leaders are important for effective civil disobedience. But, he traces their success to the everyday people who sustained them and emphasizes that without them leaders have high probabilities of being cut down. One example is Bayard Rustin, an African American peace and civil rights activist. Rustin was a Gandhian nonviolent activist who bore many beatings and humiliations without physically fighting back. Perry writes, “[f]ew others could equal Rustin’s charisma and courage, but a point to stress is that he belonged to a movement that sustained him before and after moments of spontaneous courage.”<sup>27</sup> Perry’s detailed analysis of the effects of the Fugitive Slave Laws on citizens political dissent is further evidence of a very long American civil rights movement.<sup>28</sup>

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21. *Id.* at 58.

22. *Id.* at 60.

23. *Id.* at 110.

24. *Id.* at 119.

25. *Id.* at 204-05.

26. *Id.* at 206.

27. *Id.* at 202.

28. Jacqueline Dowd Hall, *The Long Civil Rights Movement and the Political Uses of the Past*, 91 J. AM. HIST. 1233 (2005); see also CHARLES M. PAYNE, I’VE GOT THE LIGHT OF FREEDOM: THE ORGANIZING TRADITION AND THE MISSISSIPPI FREEDOM STRUGGLE (2007); PATRICIA SULLIVAN, LIFT EVERY VOICE: THE NAACP AND THE MAKING OF THE CIVIL RIGHTS MOVEMENT (2009).

The most effective civil disobedience is disciplined mass action like the Montgomery bus boycott. Part of the discipline of the activists is their “moral jiu-jitsu,”<sup>29</sup> arising, in part, out of their awareness of the importance of onlookers, and latent publics. Moral jiu-jitsu is weaponless self-defense where the attacker’s own strengths are hurled against them. Choreographed within the moves are moral concepts from the attackers own quiver of weapons: equal rights, free speech, the pursuit of happiness. Pauli Murray and others pointed out that American techniques of showmanship spotlight these movements.<sup>30</sup> The dynamic Montgomery bus boycott, for example, was grounded in both strong southern Protestant energies and influential currents of Hegelian thought.<sup>31</sup>

Distinctive to American civil disobedience, given the growth of republican and democratic institutions, was how specific laws were broken but the rule of law respected. The results mediated between revolution and submission to majority rule.<sup>32</sup> In large social movements struggles which included civil disobedience, “Indian removal, slavery, women’s rights, labor organization, marriage, conscription—the issue went beyond a specific law to include a systematic inequality of power. The ‘law’ contested in the civil rights movement was the rule of segregation and codified black inequality.”<sup>33</sup>

Women were central to all of these movements. In the old days, if the issue involved moral reform (temperance, slavery, war, for instance) it was more acceptable for women to be involved. The Grimke sisters of South Carolina grounded their anti-slavery writings and activism in religious beliefs.<sup>34</sup> After the Civil War women’s use of civil disobedience to advance their rights was an important theme. Women pushed for equal rights for all citizens through agitation, court cases and innovative legal reasoning.<sup>35</sup> In the American civil rights movement, black sororities were steadfast, and sometimes subtle, in their moral, physical, intellectual and financial support.<sup>36</sup> The moral jiu-jitsu moves include, “By 1944 African Americans had perfected the rhetoric of dual citizenship and helped convince many whites that antidiscrimination speech, acts, and laws were good for America. By denouncing discrimination while pledging their loyalty, they transformed their critique of U. S. democracy from sedition into patriotism.”<sup>37</sup>

The bottom line for Perry is, that “women whose citizenship seemed anachronistically compromised in an era of expanding national rights made inventive use of precedents of civil disobedience and did so in ways of crucial significance for our understanding of American citizenship.”<sup>38</sup> Perry understands how rights are “of a piece” or intertwined. In the context of the post-Civil War women’s rights movement, for instance, “[f]or many years any endeavor by women to secure their own constitutional rights as citizens were

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29. *Id.* at 146.

30. *Id.* at 204.

31. *Id.* at 223.

32. *Id.* at 23.

33. *Id.* at 245-46.

34. *Id.* at 66-68.

35. *Id.* at 128.

36. PAULA GIDDINGS, IN SEARCH OF SISTERHOOD: DELTA SIGMA THETA AND THE CHALLENGE OF THE BLACK SORORITY MOVEMENT (1988).

37. GLENDA ELIZABETH GILMORE, DEFYING DIXIE: THE RADICAL ROOTS OF CIVIL RIGHTS, 1919-1950, 393 (2008); *see also* S. LAUREL WELDON, WHEN PROTEST MAKES POLICY: HOW SOCIAL MOVEMENTS REPRESENT DISADVANTAGED GROUPS (2011); GLENDA ELIZABETH GILMORE, GENDER & JIM CROW: WOMEN AND THE POLITICS OF WHITE SUPREMACY IN NORTH CAROLINA, 1896-1920 (1996).

38. PERRY, *supra* note 17, at 128.

blocked by courts that had limited the civil rights of the ex-slaves.”<sup>39</sup>

Perry’s intent with his book is to do more than narrate history. He explains:

[This book] highlights some recurrent problems as experienced by those who have violated laws in the name of a higher morality and as observed by critics concerned that any law breaking undermines public order. Especially, it focuses often on the underlying paradoxical feeling of wanting to respect the law and institutions of civil society while being unable to acquiesce in or ignore immoralities in those laws and institutions.<sup>40</sup>

Perry accomplishes this and more in this excellent study.

#### NARRATIVE POLITICS

Good teachers know that students respond to stories. “Many a truth,” Frederick W. Mayer reminds us, “has been conveyed by wise fictions.”<sup>41</sup> Leaders inspire people with stories, narratives of forbearers, kinfolk, heroes, elders, and brave souls. Story lines imply that listeners, especially when joined in solidarity, have in them similar and synergistic skills and potentials. Facts might not persuade us but illustrative narratives do since “[s]tories that capture our minds can alter our attitudes, transform our beliefs, and construct our interests.”<sup>42</sup> It helps that “[s]tories engross us because they are in the same code as our normal consciousness; they have the same form as our constructed reality.”<sup>43</sup>

Inspiring narratives often list injustices and leaven the tale with the possibility of improvement if the team, the troops, the nation act as one. Otherwise, “[w]ithout hope, anger can become despair.”<sup>44</sup> In collective action, then, the good has to be constructed. People need to be encouraged to listen to their better angels and act for the common good.<sup>45</sup> Inspiration and explanation through narrative is part of the winning formula. “Storytelling,” Mayer asserts, “is the lifeblood of politics.”<sup>46</sup>

When narratives become iconic, a single evocative phrase or allusion—such as “I have a dream”—can trigger rich, inspiring images and lessons. Mayer shows how the power of phrases like “I have a dream . . .” come from formative socialization, previous narratives, and folk histories. “[Abraham] Lincoln, [Martin Luther] King [Jr.], and the other leaders I have been citing were not merely transmitters of culture; they were also agents whose power lay in forging new narratives from cultural ingots.”<sup>47</sup> In his “Dream” speech, therefore, “King wove a new narrative with pitch-perfect harmonic resonance with the old.”<sup>48</sup>

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39. *Id.* at 130.

40. *Id.* at 1.

41. MAYER, *supra* note 2, at 64.

42. *Id.* at 83.

43. *Id.* at 82-83.

44. *Id.* at 130.

45. *Id.* at 27.

46. *Id.* at viii.

47. *Id.* at 114.

48. *Id.* at 116.



After a story is told and accepted by many people, the truth of it is not as important as the schema it conjures. Examples include George Washington and the cherry tree (honesty) and the welfare queen (race, poverty, dishonesty). These are powerful tropes that can type-cast people and deflect us from their true messages and stories. The tropes “strident feminist,” “tree hugger,” “limousine liberal,” “angry black woman,” and “rightwing wing nut,” also illustrate the point. Sometimes these schemas are artifacts of meta-narratives.<sup>49</sup> Framing an international political situation as “another Munich” or “another Vietnam” are short-cut phrases to cognitive frames of appeasement, and quagmires

The phrase “take America back” as used by the current Tea Party highlights how this power works. Mayer clarifies:

But ‘taking America back,’ restoring the Constitution, and returning to the Founding Fathers are goals that only make sense in the context of a narrative in which America has been taken from *us* by some *other*. The basis for these interests is a story in which personal freedom is under assault by liberals, socialists, and big government.<sup>50</sup>

*Narrative Politics: Stories and Collective Action* illuminates the power of stories in politics with insights from cognitive psychology, institutional history, and courtroom narratives. Institutions and previous power dynamics shape “who gets to speak and who gets to be heard.”<sup>51</sup> Narratives, however, “can overcome the three obstacles to collective action in pursuit of a collective good by compelling cooperation, facilitating coordination, and providing assurance.”<sup>52</sup> In a nutshell, leaders evoke resonate narratives and,

[t]hus, by harnessing the power of narrative to engross us and stir our passions, to foster a sense of dramatic crisis, to transform us from audience to players on the stage of history, and perhaps most importantly, to make participation in collective action the dramatic imperative of our autobiographical narrative, leaders overcome the free rider problem.<sup>53</sup>

Martin Luther King, Jr.’s narratives are timelessly powerful because, as the evidence in Mayer’s book shows:

[B]y engrossing his listeners in story, he lifted them out of the cool calculus of self-interest to a passion for justice, enabled them to feel the dramatic potential of the moment both in the American story, and crucially, in the story of their own lives, so that participation in the grand social drama became a personally meaningful and identity-affirming act.<sup>54</sup>

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49. *Id.* at 69.

50. *Id.* at 90 (emphasis in original).

51. *Id.* at 114.

52. *Id.* at 126.

53. *Id.* at 134.

54. *Id.* at 140; see also ROBERT COLES, *THE CALL OF STORIES: TEACHING AND THE MORAL IMAGINATION* (1989).

Our emotions and narratives are closely intertwined so that, “[w]hen we act we are often to a great extent *enacting*, we are acting out the story as the script demands, acting in ways that are meaningful in the context of some story and that are true to our character’s identity.”<sup>55</sup> This is the same process by which feminist theorists have argued that narrative scripts also instruct us on how to enact gender.<sup>56</sup>

Informed judgment, the capacity for critical thinking, and other gifts our founders hoped we would use if we dug really deep into ourselves are also needed to blunt the power of stories that aim to do evil. Mayer cautions, “[l]ike many of our evolved traits—our taste for sugar, salt, and fat, for example—our narrative capacity is not an unalloyed good. The same tool that can be used to rally the people for a good cause can be used to provoke the mob for a bad.”<sup>57</sup> He claims that narrative is an essential human tool for collective action, “a tool of enormous power and flexibility for constructing shared purposes, making participation in collective action an affirmation of personal identity, providing assurance that others will join us in the cause, and choreographing coordinated acts of meaning.”<sup>58</sup> Narratives, then, are important elements in civil disobedience as they summon people to a collective cause and provide the scripts and discipline needed for movements to stand a chance and bring about social and political reform. In sum, Mayer convincingly argues for a narrative theory of collective action. Compelling stories pull us onto the stage, sometimes the stage of history.

#### THE STREET POLITICS OF ABORTION

In his book, *The Street Politics of Abortion: Speech, Violence, and America’s Culture Wars*,<sup>59</sup> Joshua C. Wilson examines three U.S. Supreme Court cases concerning regulation of speech in the public forum: *Planned Parenthood Shasta-Diablo v. Christine Williams*,<sup>60</sup> *Schenck v. Pro-Choice Network of Western New York*,<sup>61</sup> and *Hill v. Colorado*.<sup>62</sup> The disputes are about anti-abortion activities outside women’s health facilities. His study includes fifty interviews with activists, litigants, attorneys and policy makers involved in the cases. Wilson calls the cases “secondary movement litigation” as there is a disconnect between these First Amendment cases and the opposing movements ultimate goals regarding the legality of abortion.<sup>63</sup>

Wilson highlights the strategic creativity of the anti-abortion movement and the defensive stance of abortion-rights activists in these three cases. However, there is evidence of abortion-rights political acumen, which Wilson later documents. “The abortion-rights movement’s innovative use of law in all three of the above cases increased the risks associated with clinic-front activism.”<sup>64</sup> He shows why activists from both sides in abortion

55. MAYER, *supra* note 2, at 7 (emphasis in original).

56. JUDITH BUTLER, *GENDER TROUBLE: FEMINISM AND THE SUBVERSION OF IDENTITY* (1990).

57. MAYER, *supra* note 2, at 140.

58. *Id.* at 49.

59. JOSHUA C. WILSON, *THE STREET POLITICS OF ABORTION: SPEECH, VIOLENCE, AND AMERICA’S CULTURE WARS* (2013).

60. *Williams v. Planned Parenthood Shasta-Diablo, Inc.*, 513 U.S. 956 (1994).

61. *Schenck v. Pro-Choice Network of W. N.Y.*, 519 U.S. 357 (1997).

62. *Hill v. Colorado*, 530 U.S. 703 (2000).

63. WILSON, *supra* note 59, at 12.

64. *Id.* at 106.

politics have shifted for such activism to the state legislatures and courtrooms. He traces how some anti-abortion organizations and leaders “have used their experiences in these conflicts to become important not only within abortion politics but also within the New Christian Right and the modern Republican Party.”<sup>65</sup>

Activists in these cases were placed in dissonant situations. “The activists’ beliefs about the moral duty to resist abortion were not legally suitable to challenge the regulations – a point that chafed some activists. Given this, the anti-abortion activists were suddenly required to become champions of a new cause,”<sup>66</sup> i.e., advocates of an expansive reading of the First Amendment. Correspondingly, this put the clinics and their advocates supporting a limited reading of speech rights. This complicated ideological alignments and brought newly interested parties to these cases. “This leaves movements open to using secondary-movement litigation as a bludgeon, a means to tie up and bleed their opponent’s resources, and/or as a means to defend or force changes in movement tactics.”<sup>67</sup>

Anti-abortion activists have had more success using indirect legislative routes to limit access to abortion<sup>68</sup> through laws which seek to provoke the Court to reconsider abortion’s absolute or effective legality.<sup>69</sup> As such: “Taken as a whole, the new state law-based fight over abortion policy is a slow, incremental, less participatory, and underpublicized one, and it is proving far more effective for the anti-abortion movement.”<sup>70</sup> Moreover, state by state litigation of the new restrictions also forces state taxpayers to spend resources defending various anti-abortion statutes when they are inevitably litigated in the courts.<sup>71</sup>

The anti-abortion movement lost in the three cases Wilson studies, yet in significant part, won in the long term by cultivating a cadre of conservative lawyers.<sup>72</sup> The lawyers internalized “the value of controlling the law. An example is how the Schenck brothers transitioned from leading rescues in western New York to working at the American Center for Law and Justice and cultivating a network of government connections. In this way “the anti-abortion movement learned from and responded to these measures by internalizing the value of controlling the law. Anti-abortion activists have correspondingly relocated the main abortion politics battlefield from the visible, participatory, and volatile streets to the more private, elite, and staid state legislative halls.”<sup>73</sup> Abortion opponents were thus “enabled in their defeat.”<sup>74</sup>

In spite of the demise of the street politics of abortion, the conflicts in court appear to have brought net political and organizational gains for the anti-abortion movement. Their legal responses helped professionalize not only their movement but also the larger New Christian Right of which they are a major part. Following the cliché, that which did not kill

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65. *Id.* at 5.

66. *Id.* at 15.

67. *Id.* at 17.

68. *Id.* at 108.

69. *Id.* at 109.

70. *Id.*

71. *Id.* at 11.

72. *Id.* at 110.

73. *Id.*

74. *Id.* at 130.

them made them stronger.<sup>75</sup>

Wilson also describes the way some anti-abortion activists “justify their actions via an appeal to an extrastate conception of higher law—but higher law as it relates to abortion, not free speech.”<sup>76</sup> In doing so, these activists actually reaffirm the state’s authority to regulate disruptive activists. Their point is about abortion. Other anti-abortion activists did use free speech rights talk, however. Court rulings threatened their self-image as law abiding Christians. Many activists adopted the master frame of demonizing the clinics.<sup>77</sup> Those activists absolve the state from wrongdoing because the state was deceived by the lying greedy clinics. So, they salvage their ability to appeal to state law as still legitimate. They do not attack the state’s fundamental authority; they also obey the rulings.

All of the anti-abortion activists simultaneously held two interrelated conceptions of law. Specifically, their stories present both state law and extrastate law in the form of God’s law. In this two-part construction of law, the two forms were intimately entwined but hierarchically arranged. God’s law legitimated, and thus trumped, state law.<sup>78</sup>

A problem for anti-abortion religious activists, however, is that the U.S. does not base law on one conception of a divine power, “and therefore these activists are rightly seen as engaging in a form of jurisgenesis. That is, they are creating a conception of law that competes with state law.”<sup>79</sup>

“Good Christians follow the law because the law is just,”<sup>80</sup> and American law, their script tells them, is just:

[B]ecause it is rooted in God’s teachings—or at least the belief is that law was and should and can still be. These anti-abortion protesters, like the broader new Christian Right, are invested in constructing a principled conception of law because the purity of law and the state essentially motivate their activism. The New Christian Right can be understood in the unifying terms of defending or restoring their conception of God’s central place in the public sphere and the political realm.<sup>81</sup>

In addition;

Christian Conservatives have opened new conservative law schools, created public-interest law firms, and become actively involved in the processes of stocking the judicial bench. By building up these legal resources, social conservatives are creating the means to defend their

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75. *Id.* at 159.

76. *Id.* at 124.

77. *Id.* at 127.

78. *Id.* at 176.

79. *Id.*

80. *Id.* at 182.

81. *Id.*

legislative achievements in the inevitable court challenges that they will face. They are also increasing their potential to further develop novel strategies that will enhance their offensive capabilities and move them closer to their ultimate goals. These moves therefore speak to Christian conservatives' high levels of organization and foresight.<sup>82</sup>

The American Center for Law and Justice, Regent University Law School, Liberty University Law School, and Ave Maria School of Law "show the long-term view taken in restructuring Christian Right activism."<sup>83</sup> Intimately entwined, the schools and socially conservative law and policy organizations are advocacy conglomerates:

Beyond these more immediate strategies, the New Christian Right institution-building efforts reveal that, like a good chess player, they are thinking multiple moves ahead. The Christian conservative law schools and political/legal organizations not only provide new strategies and the lawyers to defend them, but they strive to produce the future politicians and judges that will control state policies.<sup>84</sup>

As Perry might put it, they are "taking their government back."<sup>85</sup>

These developments, Wilson asserts, have forced the abortion rights movement into a tactical defensive stance. "As a result, the abortion-rights activists are deprived of a comfortable and compelling rights lexicon. While there is still an ability to claim a right to safety, these shortcomings make this right's claim less accessible for liberals, lace it with suspicion, and therefore limit its value."<sup>86</sup> My interpretation, however, is that the pro-choice dilemma is not simply about limiting speech. The speech issues are being litigated because they restrict access to legal abortion. Wilson observes: "[a]lthough the clinics won these cases, abortion-rights advocates' narratives exhibit that these actors experienced significant difficulty accessing state law as a normative device."<sup>87</sup> Critical legal theorists assert that elites (lawyers) temper activists' more radical views; however, Wilson did not find that here. Instead, for anti-abortion activists, even though they lose in court, the stories told are affirmations of state legal power and allows transition of their movement into current elite institution-based form:

That is, instead of being defeated by these rulings, finding fault in themselves, and giving up on the legitimacy and efficacy of state legal institutions, the stories told by anti-abortion activists give them reasons to continue to engage with the state and to prove that they were and are solidly embedded in the political mainstream. These stories are thus clear examples of the real-world significance of law's cultural aspects.<sup>88</sup>

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82. *Id.* at 110 (footnotes omitted).

83. *Id.* at 162-63.

84. *Id.* at 165.

85. *See* PERRY, *supra* note 17, at 258.

86. *Id.* at 119.

87. *Id.* at 21.

88. *Id.* at 24.

Thus, “[j]ust as one can win in spite of losing, it appears that one can lose in spite of winning.”<sup>89</sup>

*The Street Politics of Abortion* adds much to our understanding of dissent, abortion politics, and the evolution of new Christian conservative leaders, institutions, and tactics. There is less insight into the pro-choice movement and the women’s health movement of which it is a part. Wilson does not provide as much context for the pro-choice movement as he does for the anti-abortion activists. For instance, he does not discuss grass roots and religious components to pro-choice beliefs and activism. More evidence is needed for his assertions that pro-choice did not grow and restructure over time. A fuller narrative about the conception of law by pro-choice adherents, the careers of pro-choice activists, and the efforts to pass the FACE Act<sup>90</sup> would have been helpful. Wilson mentions the clinic escorts, for instance, but does not incorporate their mobilization and activism as part of the street skirmishes. His detailed account of the Pro-Choice Network in New York entails more than the defensive stance he sees pro-abortion groups taking throughout the study.

The safety frame the clinics use in these cases is more than a defensive or limited strategy without a reference to abortion politics. In the history, context, and narratives of women’s reproductive politics, women’s safety is a key theme. Safety for the clinics is an abortion frame. Wilson, however, often misses these subtexts based on the complicated background history and politics of women’s reproductive choices or lack of choices. When the clinics rely on safety defenses, then, one reading of the move is that their point is access to a legal, safe choice. Pro-choice litigators are, then, contrary to Wilson, using movement language in the courts.<sup>91</sup> Wilson is right that these are nuanced issues of ideology and ethics.<sup>92</sup> His analysis of some of the interviews miss the prequels, the first stories, and the initial chapter narratives that shaped how the street fighters came to where they are, either as litigants, escorts, or rescuers. The FACE Act, for instance, wasn’t just enacted. The FACE Act was a long term battle at the national level, based on astute strategy to try to shut down the state by state, city by city, tactic by tactic actions and litigation of anti-abortion activists to disrupt the clinics.

## CONCLUSION

Dissent is a longstanding, powerful, and consistent undercurrent in American politics.<sup>93</sup> It often surprises us when—like the current “Tea Party” activities—it jumps up and leaps to the surface. Martin wisely reminds us that we should not be surprised, “[r]ather, we should return to this neglected element of our tradition, rediscover the centrality of dissent, and reconsider why, even now, we need to privilege it. Only then can we rethink how we might, following the promising leads of some early radicals, seek to make our democracy more legitimate.”<sup>94</sup>

All four books distinguish between political “flash in the pans” and episodes with

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89. *Id.* at 22; see also TAMIKO BROWN-NAGIN, *COURAGE TO DISSENT: ATLANTA AND THE LONG HISTORY OF THE CIVIL RIGHTS MOVEMENT* 428-29 (2011).

90. Freedom of Access to Clinic Entrances Act (1994), 18 U.S.C. § 248 (West 2014).

91. WILSON, *supra* note 61, at 137.

92. *Id.* at 143.

93. See STEPHEN M. FELDMAN, *FREE EXPRESSION AND DEMOCRACY IN AMERICA: A HISTORY* (2008).

94. MARTIN, *supra* note 3, at 19.

long-term effects. Speaking up and acting up for a cause can help inspire “self-confidence and assertiveness by groups not prominent in the nation’s original constitutional framework.”<sup>95</sup> Awareness that sometimes your dissent reaps “measures of justice” instead of wide social change unites activists with hope for the long term struggles ahead.<sup>96</sup>

Powerful institutions fight back against dissenters. Perry reminds his audience of the shameful legacy of Vanderbilt University leaders who expelled James Lawson, a Methodist clergyperson and Vanderbilt divinity student, for his involvement in civil rights and civil disobedience.<sup>97</sup> Scholars should document the failures and shortcomings of academic institutions and professionals regarding free speech and expression, as Perry does. Telling these stories reminds students and readers that what could be taken for granted (academic freedom, tenure, and faculty governance) were also hard fought rights requiring constant protection from erosion and decline.

“Rumors of civil disobedience’s death [have been] exaggerated,” Perry quips.<sup>98</sup> John Brown’s body is lying in his grave, the Union military anthem asserts, yet, “his truth goes marching on.”<sup>99</sup> “Civil disobedience,” like Joe Hill’s, he testifies, “never died.”<sup>100</sup> Some of the disobedience for a cause is ignored by our mainstream media or underreported. The long term religious, peace, human rights and student civil disobedience at Fort Benning, Georgia, speaks volumes about moral persistence and relative media silence. Perry reveals:

In 2000 Father Lawrence Biondi, S.J., the president of my university [Saint Louis University], joined with Martin Sheen, well known for playing a U.S. President on television, as the ‘two presidents’ marched at the head of 3,600 protesters who ‘crossed the line’ and entered the fort in an act of civil disobedience.<sup>101</sup>

What a story, with actors and activists enacting multiple scripts and narratives.

A current oft-used chant in the U.S. these days goes, “Freedom is not Free.” Usually it is evoked by people celebrating and honoring the sacrifices of military personnel and their families during America’s long wars in Iraq and Afghanistan. These four books encourage us to also hear the slogan “Freedom is not Free” as a trope of the debt we owe to the long list of dissenters, mostly civilian, who also fought and sacrificed for freedom.

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95. PERRY, *supra* note 17, at 158.

96. See LAURA R. WOLIVER, FROM OUTRAGE TO ACTION: THE POLITICS OF GRASS-ROOTS DISSENT 61-101 (1993).

97. PERRY, *supra* note 17, at 229-31.

98. *Id.* at 284.

99. *Id.* at 123.

100. *Id.* at 304; see also MICHAEL WALZER, OBLIGATIONS 4 (1970).

101. PERRY, *supra* note 17, at 305.