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**Harvey Milk, Jane Roe, and James Brady: Why Civic Organizing Matters**

palma joy strand

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HARVEY MILK, JANE ROE, AND JAMES BRADY:
WHY CIVIC ORGANIZING MATTERS

Palma Joy Strand*

You’re better than no one and no one is better
than you.1
Bob Dylan

The struggle is eternal.2
Ella Baker

Abstract

This Article presents a view of the civic underpinnings of law by examining how civic interaction or the lack of such interaction facilitates or inhibits sociolegal change. The Article begins with empirical observations

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1 To Ramona, on “Another Side of Bob Dylan” (Columbia Records 1964).
2 DOROTHEE E. KOCKS, DREAM A LITTLE: LAND AND SOCIAL JUSTICE IN MODERN AMERICA 175 (Univ. of Calif. Press 2000).
of civic experience and engagement, which ground more general conclusions about the importance of civic relationships and civic networks as well as the way personal stories contribute to the creation of both. The Article then applies these conclusions to three currently contentious and unsettled issues: gay rights, abortion, and guns. As to gay rights, the “coming out” process identified with Harvey Milk has transformed the civic landscape, providing a foundation for shifts in law and social norms. As to abortion, privacy—symbolized by the anonymity of the plaintiff in Roe v. Wade—has suppressed the articulation and sharing of personal stories necessary for civic growth; the result has been law and social norms that remain in limbo. As to guns, James Brady as a spokesman fails to tap into a cultural world view of interconnection and egalitarianism that is increasingly seen as underlying a belief that there is a need for greater gun control. With respect to all of these issues, the Article concludes that civic organizing—the intentional creation of civic relationships and civic networks through personal stories—will facilitate the emergence of stable law and social norms.

Table of Contents
I. Citizens and Civic Life ........................................................................................6
   A. Civic Experience .........................................................................................6
   B. Civic Relationships .....................................................................................11
   C. Civic Engagement .......................................................................................15
   D. Civic Networks ...........................................................................................18
II. Harvey, Jane, and James .....................................................................................25
   A. Harvey Milk and Gay Rights ......................................................................26
   B. Jane Roe and Abortion ................................................................................32
   C. James Brady and Gun Control ....................................................................40
III. Civic Organizing ...............................................................................................46
IV. Conclusion ........................................................................................................52

In our law-centered society, law is often the language in which we speak of social norms and social change. The vocabulary of gay rights includes Bowers v. Hardwick, Lawrence v. Texas, the Defense of Marriage Act, Goodrich v. Dept. of Public Health, California’s Proposition 8, and the myriad other state provisions granting or denying same-sex marriage.\(^3\) We

\(^3\) See notes 86-95 infra and accompanying text.
speak of abortion in terms of Roe v. Wade, Planned Parenthood of Southeastern Pennsylvania v. Casey, the Hyde Amendment and the Partial Birth Abortion Act, as well as all the state laws that have prompted alterations to Roe over the years. And the terms of gun control encompass state preemption of local action, the 1968 Gun Control Act along with other federal legislation, and the Constitution’s Second Amendment as well as the cases interpreting it—from United States v. Cruikshank through Miller v. United States to District of Columbia v. Heller and the upcoming McDonald v. Chicago.

In an earlier article, I characterized doctrinal law as a collective myth or story—a social construction that both arises from and is reflected back to the community it governs. In the United States, our overarching myth or story is the Constitution and, as our myth, it embodies who we are. Seen this way, law is comprised of explicit norms that are grounded in the society as a whole and articulated by bodies that are accorded the authority to do so. Law arises from our personal stories and the actions that underlie them and in turn affects and shapes our individual stories and the actions that grow from them. Over time, law weaves divergent stories into a coherent, public story. That story is then offered back to us for affirmation, reworking, or outright rejection. The process is dynamic and messy, yet from it emerges order.

This view of law shifts attention away from doctrine as the exclusive locus of law and toward the interactions among citizens from which doctrine emerges—in particular the articulation, exchange, and reshaping of personal stories into shared stories. In this view, law creation and implementation are not simply a matter of satisfying the requirements of the formalized processes of legislation, litigation, adjudication, and administrative decision-making. They encompass, more deeply, processes through which citizens become aware of and articulate their own stories, sharing those stories with and hearing and understanding the stories of others, and seeing those stories woven into the fabric of the formal processes of law.

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4 See notes 104-112 infra and accompanying text.
5 See notes 139-154 infra and accompanying text.
6 Palma Joy Strand, Law as Story: A Civic Concept of Law (with Constitutional Illustrations), 18 SO.CAL.INTERDISC.L.J. 603 (2009). Cf. ROBERT C. ELLICKSON, ORDER WITHOUT LAW: HOW NEIGHBORS SETTLE DISPUTES (Harvard Univ. Press 1991) (social custom, which may be understood as order in the form of social norms that has not been given explicit anointment as law, can also emerge in this manner).
In this article, I explore how different social dynamics and actions have affected legal developments for the three social change movements identified above. With gay rights, I focus on the “coming out” process, an interpersonal organizing approach that iconic figure Harvey Milk both preached and practiced. With abortion, I focus on privacy, a phenomenon that results from both social taboos and legal doctrine, of which the anonymity of Jane Roe, the plaintiff in *Roe v. Wade*, is emblematic. With gun control, I focus on the failure of gun control advocates to engage with the issues of cultural identity to which gun rights advocates have so successfully appealed: While Charlton Heston has been a charismatic spokesman for the National Rifle Association (NRA), James Brady has been the literally inarticulate symbol of the gun control groups.

The article rests on the observation that legal change goes hand-in-hand with social change, but this is nothing new. Others have remarked upon the way law results from social movements and reflects shifting norms and how norms are in turn affected by law. This discussion, however, has generally not focused on the concrete mechanisms through which citizen interaction leads to legal change. In contrast, my primary interest relates to the conditions that enable the kind of civic engagement that enables the emergence of law as a widespread accepted societal norm. An integral part of this is how sharing or suppressing personal stories facilitates or inhibits this process.

I begin this exploration in Part I with perspectives on civic engagement and the role of stories that are based in personal civic experiences—my own and others. This experiential and empirical work I then reinforce with perspectives from a range of academic disciplines. Throughout this exploration, three themes recur—the same three themes I previously identified as integral to a civic system of law: Relationship, identity, and relevance.

Relationship acknowledges the ability of individuals to engage in respectful interactions with others who are both alike and not-alike. Relationships are what create a resilient social network by holding disparate groups—people with distinct identities—together. Relationships that bind

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8 *See Strand, supra* note 6, at 632-634, 639-642.
not-alike others in ways that do not create a win-lose power dynamic are essential to the creation of a civic social network.

Identity recognizes the importance of group membership or affinity to our perceptions of who we are. In this view, who we are is socially constructed and comprised of the roles we occupy. Identity also recognizes each individual’s quest to articulate a multi-faceted self that is defined and validated by being situated within multiple social groups in an egalitarian whole.

Relevance places explicit value on the existence of a meaningful connection between citizens and those who speak with authority for the group. Relevance provides the opportunity for individuals to find meaning by contributing to the whole. When disparate individuals and groups communicate in ways that promote understanding, the social stories and storytellers that emerge (including law and law-makers) are more likely to fully reflect citizen experiences and views.

In Part II, I use accounts of the three current sociolegal movements identified above to illustrate the connection between civic engagement and emergence of consensus law-stories and social norms. I first describe how the formation of relationships and identity through the gay and lesbian “coming out” process has laid the foundation for relevance on the part of self-identified members of the GLBTIQ9 community and their allies in the form of legal changes that have occurred. And I explore how this dynamic has enabled massive shifts with respect individual gay rights while now being stalled vis-à-vis same-sex marriage.

I next offer the view, in the context of abortion, that while identity has begun to evolve, relationships have not, and this inhibition—which correlates to the shrouding of abortion in a veil of “privacy”—has resulted in a legal pattern since Roe v. Wade that resembles a hamster in a cage going around and around and around once again. Only when civic relationships connect the two abortion camps as well as citizens who are “in the middle” on abortion will stable norms and law that are widely relevant in the sense of being reflective of the broad rand of stories truly begin to develop.

Finally, I suggest that the current wrangle over gun control and gun rights has yet to even engage with both of the underlying identities that are

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9 Gay, Lesbian, Bisexual, Transgendered, Intersexed, and Queer.
in tension. This issue evokes distinct cultural world views that are deeply rooted but generally not explicit—which means that relationships and relevance remain for the time being entirely out of reach.

In Part III, I offer prescriptions for civic organizing, the intentional work of helping essential identities emerge, encouraging bridging relationships between individuals whose identities are constructed through membership in distinct groups, and facilitating participation in the creation of the common law-story by all groups. Civic organizing is the on-the-ground work that enables the emergence of law and social norms that are stable and widely accepted because they respond to the broad range of personal stories.

I. CITIZENS AND CIVIC LIFE

A. Civic Experience

Thomas Jefferson once said, "State a moral case to a ploughman and a professor. The former will decide it as well, and often better than the latter, because he has not been led astray by artificial rules."\(^{10}\) To bring Thomas Jefferson into contemporary life, I substitute “PTA member” for “ploughman.” Being a PTA member is an every-woman or every-man experience, and it provides raw material for looking at ordinary people’s interactions with and perceptions of public decision-making—the local and concrete manifestation of law. It also happens that, as with many people, being a member of the PTA at my children’s schools was my own entry point into civic life.

Beginning when the oldest of my three children went to kindergarten, for approximately 15 years I had one or more child in the Arlington Public Schools, a system in the Washington, DC, area that encompasses a broad range of households, families, and students.\(^{11}\) In


11 As of October 2009, the Arlington Public Schools, Arlington, Virginia, had a total enrollment of 19,298 students. Of these, 48.4% were White; 26.3% were Hispanic; 12.7% were Black; 11.1% were Asian/Pacific Islander; and 0.1% were American Indian/Alaskan Native. In addition, 1.4% were “Unspecified.”


Approximately one-third of the students were eligible for the free-and-reduced-lunch subsidy.
addition to standard PTA participation, I served on various committees charged with considering a number of thorny issues—boundary changes, educational program design, the gap in academic achievement between White students and Black and Latino students, real estate development near schools, school uniforms, strategic planning, and cultural competence. I worked on School Board campaigns and was a candidate myself. I became familiar with the people and the processes of the system. Three personal stories from that time capture key themes from these experiences.

One experience occurred while I was the co-chair of the parent-teacher association at Drew Model School, an elementary school in the County located in a traditionally Black neighborhood, which had been desegregated in the early 1970’s in response to an NAACP lawsuit.12 A countywide magnet program had been created and placed at the school to attract White families by choice while neighborhood children had been separated and dispersed through busing to schools in traditionally White neighborhoods throughout the county.13 “Integration” had forced neighborhood families to send their children elsewhere, and even when limits on neighborhood attendance were removed (as they had been by the time my daughter attended), the magnet program was more welcoming to White than to Black students and families.

Almost thirty years after desegregation, the school building was in extreme disrepair, the program was faltering, and there was pressure from families living nearby to better integrate the school with the neighborhood. The school system had initiated a planning process to reassess the academic program as well as a building renovation process. There were regular meetings on both fronts, and I had accepted responsibility for being the PTA liaison to both.

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13 Id. The desegregation remedy provided by the district was resisted by the Drew neighborhood. Drew was closed as a neighborhood school, only Black children were bused, and the former Drew students were scattered throughout the rest of the system. Black parents argued, unsuccessfully, that the plan placed “all of the burdens and inconveniences of the desegregation process” on Black families. Id. at 954, 956. The scars of that series of events were not yet fully healed at the time of the events I describe, nor are they fully healed today. See Sheryll Cashin, The Failures of Integration: How Race and Class Are Undermining the American Dream 68 (Public Affairs 2004).
Somewhere around the winter holiday of my first year in the leadership position, I found myself frustrated because I was spending what seemed to me an inordinate amount of time on the phone. In particular, I was attempting to address the fact that both the program and building committees were comprised of the “usual suspects”—White middle class parents and teachers appointed by the principal. My first task was making the case that a broader range of participation was necessary for the legitimacy and thus efficacy of the process. My second was finding not-the-usual-suspects parents who were willing to commit. My third was staying in touch with them and others as the processes unfolded.

And then I had an epiphany. A large part of the cause of the problems at Drew was that people didn’t consistently talk to each other—White and Black, White and Latino, and Black and Latino parents, but also parents and teachers and school administrators as well as neighborhood leaders and school parents and personnel. So nurturing those lines of communication was a vitally important part of the overall task of helping the school move forward.\textsuperscript{14} Developing sustainable solutions for the school required creating lines of communication and trust so that the various people involved would be invested in the process and resulting solutions.\textsuperscript{15}

A second set of experiences arose from my participation at a systemwide level in initiatives to narrow and/or close gaps in academic achievement between White students on the one hand and Black and Latino students on the other. In this role, I served for six years as a member of a committee of citizens and staff charged with advising the Superintendent on issues related to the gaps. The Superintendent brought together this committee, faithfully attended our meetings, listened to our deliberations, and instructed his staff to provide responses to our questions.

The creation and continuation of the committee reflected an awareness that articulating a goal with respect to eliminating the gaps in the form of a School Board policy, strategic plan objective, or Superintendent mandate was only one part of the larger project of changing the system to achieve that goal. Such a policy, objective, or mandate would articulate a goal for the school system as an institution but have only limited effect on

\textsuperscript{14} This can be particularly difficult when these lines are cross-racial or cross-ethnic. See CASHIN, supra note 13, at 71-72.

\textsuperscript{15} Though I didn’t have a vocabulary or context for this conviction at the time, the evolving fields of deliberative democracy and civic engagement articulate precisely this understanding. See, e.g., Lars Hasselblad Torres, “Deliberative Democracy FAQ,” at www.deliberative-democracy.net and sources cited there.
the concrete, everyday actions and interactions of teachers, students, administrators, and parents through which the “system” actually operates. Significant change from a systemic point of view required not just one but multiple modes of providing the impetus for change.

One important role of the Superintendent’s committee was to ask uncomfortable questions and push for answers. An early manifestation of this, for example, concerned a previously unquestioned explanation for the underperformance of students of color: the idea that they had not been students in the system since kindergarten but rather had transferred into the system. When the data were examined, however, it turned out that the large majority of underperforming students had been in the Arlington Public Schools for their entire academic careers. Responsibility for their lack of success could not be assigned to other school districts or to their families for moving them. The question, now posed squarely, was why the education that the school system was providing for these students was not working for them.

Considering this and similar questions was entirely consistent with the stances of the School Board, strategic plan, and the Superintendent. What the committee provided was an internal and continuing vehicle for turning the spotlight on assumptions and practices that could inhibit progress toward official goals. The committee’s questions were sometimes resisted, answers were not always forthcoming, and its recommendations were not always followed. But it continues in operation to this day, and its persistence has had results in important arenas. Charging people to work for change from within the system, especially when supported by official policy, was an invaluable way to keep the ball rolling and the pressure on.

A third experience involved the “Veitch Street” development project. I was one of a small group of PTA members at Key School, another elementary school located near Arlington’s urban METRO corridor, that sought to affect the placement and orientation of a proposed high-rise building immediately adjacent to the school building. Following a process that provided ample opportunities for public input as well as personal meetings with members of the Arlington County Board (the ultimate decision-makers on the project) and their staff, our PTA working group achieved a large measure of success in terms of the configuration of the

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16 See also Lani Guinier & Martha Minow, *Dynamism, Not Just Diversity*, 30 HARV. J. L. & GENDER 269, 272 (2007) (“organizational catalysts work best if they exist within and are already tied to the institution rather than superimposed from the outside”).
project that was eventually approved. The final design, that is, responded in key ways to concerns that we had articulated.

Yet, to my surprise, the overall experience felt like an assault. This was an open process, with multiple opportunities for us to participate in public forums—and even to communicate personally with decision-makers. But in spite of and in fact within this structure of openness and in a county that prides itself on citizen participation, when push came to shove, we were nonetheless treated personally as interlopers, as peripheral, as troublesome children who had gotten in the way.

Throughout the process in which the design was considered, the School Board had encouraged our group to proceed, assuring us that our assertions were in line with their interests (the School Board, after all, was ultimately responsible for the school) and that it was to their benefit for us to actively participate (it was easier for them for us to take the political heat of being a fly in the ointment in a development process). Less than an hour before the final County Board meeting, however, as we were preparing final testimony, the word came that the School Board’s assistant superintendent, acting on behalf of the Board, had come to an agreement with the County on the final details of the project. Those details were, by and large, the concessions that we had fought for and extracted from the developer and the County Board staff, but we were neither in the proverbial room when the final deal was cut nor even apprised of what was happening. We were encouraged to carry the School Board’s political water so long as it was convenient and then excluded when the moment of truth arrived. Though the process was formally open, it was ultimately alienating in spite of our substantive success.  

These and similar experiences directed my attention toward the experiential aspects of civic life. Politics, in this view, is not so much local as it is personal. People’s interactions matter. Moreover, this phenomenon appears in several different types of civic interactions. It appears in interactions among parties with various roles in decision-making processes, as when the success or failure of the Drew Model School

17 Cf. John Hibbing & Elizabeth Theiss-Morse, Stealth Democracy: Americans’ Beliefs About How Government Should Work 61-83 (Cambridge Univ. Press 2002) (observing how in politics ordinary Americans ascribe value to “process space”—how decisions are made—as well as to “policy space”—what decisions are made). An opportunity for not just a good decision on the merits but for building trust with the community had been lost.

18 Thomas P. (“Tip”) O’Neil & Gary Hymel, All Politics Is Local: And Other Rules of the Game (Bob Adams, Inc. 1994)
planning rested on personal communication and relationships among those affected by the issues to be resolved. It appears in the context of the interactions among people operating within an institution, as when the progress of the school system vis-à-vis closing achievement gaps would be accelerated or slowed by the existence of individuals within the system pushing for specific multiple measures designed to further officially stated policies and mandates. And it appears when “ordinary citizens” interact with public officials, as when my experience of the Veitch Street decision and of County and School decision-making was shaped by personal interactions with the members of the County and School Boards.

B. Civic Relationships

As I puzzled over these and other personal experiences, searching for a common thread, the word that struck a chord was “respect.” “Respect” in its original, etymological sense refers to “seeing” another person,¹⁹ and relationships of respect can be understood as interactions between people in which each person “sees” the other. This is seeing not simply in the physical sense but in the deeper sense of giving credence to that person’s story or life experience as that of a fellow human being.

Sociologist Sara Lawrence-Lightfoot elaborates on the importance and aspects of respect in her book of verbal portraits of people who occupy positions in which power is traditionally exercised over others but who offer dignity instead.²⁰ In these portraits—of South Bronx nurse-midwife Jennifer Dohrn, Boston South End pediatrician Johnye Ballenger, high school teacher Kay Cottle, photographer Dawoud Bey, Harvard law professor David Wilkins, and Episcopal priest Bill Wallace—Lawrence-Lightfoot offers details of everyday stories that breathe life into the idea of relationships of respect. Respect, she observes, is built through “listening to stories and engaging in conversation”²¹ and has at its core a deep understanding of shared humanity. “Good practice,” writes Lawrence-Lightfoot regarding pediatrician Johnye Ballenger, “requires that doctors enter into ‘relationships’ with their patients, that they actually ‘see’ them.”²²

Lawrence-Lightfoot designates these stories as illuminating six aspects of respect: curiosity, attention, empowerment, self-esteem, dialogue, and healing. Each of these facets of respect speaks volumes. Curiosity is

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¹⁹ From the Latin “specere”—to look; “respecere”—to look back.
²⁰ RESPECT (Perseus Books 2000).
²¹ Id., at 12.
²² Id., at 89.
the attitude of one person being genuinely interested in another and in the world. Attention follows and is the companion of curiosity. Empowerment, particularly of a traditionally subordinate party, invokes parity and a celebration of strength. Self-esteem speaks to the internal regard that grounds externally directed respect. Dialogue characterizes a relationship of mutual communication from which collective understanding may emerge. Healing transforms hurt and division into wholeness. Together these strands of respect form multi-dimensional relationships that engage the whole person.

The relationships that these portraits bring to life have the ring of authenticity: They are textured, messy, dynamic, complex, and contextual. They allow for self-expression that isn’t automatically selfish and connection that resists conflation. They do not envision self-expression as in inevitable opposition to connection. They embody the contradictions of actual experience.

Lawrence-Lightfoot’s description meshes with the work of biologist-turned-conflict-resolution-theorist Mary Clark, who articulates the simple yet transformative idea that the essential quality of human nature is flexibility, which means that humans are not inevitably one way or another. Nonetheless, she contends that our flexibility is tethered by three universal propensities in addition to the biological imperatives for water, food, shelter, and sex: A propensity for connection with or bonding to others; a propensity for individual autonomy; and a propensity to find or create meaning.

The first two propensities may initially appear to be in conflict with each other, but if we accept that human nature calls for both autonomy and bonding, that conflict is transformed into a creative tension. For the group to thrive, individuals must have sufficient autonomy to contribute. For the individual to thrive, there must be sufficient bonding with the group to support its individual members. Both group and individual, bonding and autonomy, are essential. As with Lawrence-Lightfoot’s real-life portraits, Clark’s theoretical work sees these propensities as coexisting.

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23 See Strand, supra note 6, at 624, 626.
24 IN SEARCH OF HUMAN NATURE (Routledge 2002). Specifically, Clark contends that it is human flexibility and the ability to adapt that are the hallmarks of our species. Moreover, the innovations that enables and enable such adaptation were and are primarily cultural and social rather than genetic and individual. Id. At 120-125.
25 Id., at 57-59.
Added to the dynamic push-and-pull of autonomy and connection is the search for meaning. We seek to understand and to create a reason for our lives, a point to our being, an answer to the questions of whether and why our existence matters. This search for meaning can be a metaphysical one, an effort to understand one’s place in the cosmos. Or it can be bound up with our role as individual members of a group. People experience a desire to make a contribution, to be acknowledged as a valuable member, to offer a unique gift.

Clark’s propensities line up to a remarkable degree with Lawrence-Lightfoot’s attributes of respect. Lawrence-Lightfoot’s curiosity and attention are essential aspects of Clark’s propensity to connect with others. Lawrence-Lightfoot’s self-esteem and empowerment ground Clark’s propensity for individual autonomy. And Lawrence-Lightfoot’s dialogue and healing enable the creative interaction, wholeness and purpose, and contribution to a larger whole that lie at the core of Clark’s propensity for meaning. Respect may thus be understood as describing interactions within which all three human propensities are supported.

Lawrence-Lightfoot’s portraits evoke work that considers human nature to be relational. Lawrence-Lightfoot is explicit, moreover, about her goal of generating a conception of respect that departs from traditional views of respect as “involving some sort of debt due people because of their attained or inherent position…. [r]espect [that] implies required expressions of esteem, approbation, or submission.” Her interest is instead in how “respect creates symmetry, empathy, and connection in all kinds of relationships, even those, such as teacher and student, doctor and patient, commonly seen as unequal.”

This “symmetry” and its focus on relationships are echoed by work that sees power as relational. Foremother of the modern conflict resolution movement Mary Parker Follett articulated this insight almost a century ago with a vision of “power-with”—as distinct from “power-

26 Clark describes this third human propensity as characterizing our species alone (in comparison to the first two, which she describes as applying to other primates as well). Id., at 58.
27 Id., at 233-237.
29 LAWRENCE-LIGHTFOOT, supra note 20, at 9.
30 Id., at 9-10.
over.” Similarly, anti-globalization organizer Starhawk identifies “power-with,” “power-to,” or “power-among” relationships “that could also be called ‘influence,’ ‘prestige,’ or ‘moral authority.’ It’s based on respect…” Overall, relationships of respect may be understood as those that promote individuals’ power-to, interactions that are power-with, and interactions with the whole that rest on widespread power-among—even when these dimensions coexist with more hierarchical, power-over ones, as in Lawrence-Lightfoot’s portraits.

When I take these insights into respect and look back to my own civic experiences, I see the search for respect deeply embedded within them. At Drew, in developing lines of communication with different members of the school community, I discovered that connection and the establishment of power-with relationships were indispensable in constructive civic life. In my work with the school district’s minority achievement initiative, I saw that changing the culture of the system began, somewhat counterintuitively, with acknowledging the autonomy of all those who were a part of the system—and the fact that their individual actions, their power-to, were what created, and could change, that culture. In the Veitch Street proceeding, I experienced the hurt and anger that accompany disregard for one’s contribution, for one’s efforts to create meaning, and the pull to be able to exercise power-among.

These three threads of respect echo the three themes identified in my prior article as characterizing a civic social system in which the law-story and social norms are connected through voice and resonance. Relationship weaves together the threads of curiosity and attention, connection, and power-with. Identity comprises empowerment and self-esteem, autonomy, and power-to. Relevance grows from dialogue and healing, meaning, and power-among. Respect thus embodies what individuals are seeking in civic life—not only from government (or other citizens acting with the

33 Webs of Power: Notes from the Global Uprising 174 (New Society Pub. 2002). See also Starhawk, Truth or Dare: Encounters with Power, Authority, and Mystery 9 (Harper San Francisco 1987) (comparing “power-over,” “power-from-within,” and “power-with”).
imprimatur of government) but from each other.  

C. Civic Engagement

My experiences in the Arlington Public Schools led to my working with Melinda Patrician, a fellow parent, to enhance civic engagement in the county overall. Moving beyond the context of the schools, we conducted a research project for the county government in which we explored how people engage with and are engaged in public life. In the course of this study, we conducted conversations with well over a hundred members of the community—those who were active in public affairs as well as those who were not, residents and business people, county employees, youth, young adults, and minorities.

These conversations resoundingly echoed the theme from my own experiences that relationships matter. The quality of specific interactions with individual people shapes people’s perceptions of their civic experiences. “Citizens,” we concluded, “take [their civic engagement]

34 Without endorsing a particular theological tradition, I note that there may be revealing parallels between these civic relationships and other normative work. The thinking within the Jewish tradition of theologian Martin Buber and psychotherapist and Holocaust survivor Viktor Frankl, is one example. Buber celebrated human-to-human connections that are “I-Thou,” which consist of authentic encounter and interchange between two actualized human beings who each recognize the other as such. I and THOU (English translation) (1970) “I-Thou” emphasizes rewarding relationships—the experience of a person relating to another as a fellow human being rather than as a satellite or mask or puppet (Buber’s “I-It” mode of interaction)—that nourish both bonding and autonomy. Frankl characterized people as intrinsically searching for meaning. MAN’S SEARCH FOR MEANING (1956). This search for meaning may be a metaphysical one, an effort to understand one’s place in the cosmos. Or it can be bound up with our experienced existence as individual members of a group.


36 Conversations is a better word than interview because there was no fixed line-up of questions or specific protocol. We had some general prompts, but the questions were open-ended and this allowed us to concentrate in the varying meetings on the different aspects of people’s experiences and how they perceived them. These were for the most part one-on-one conversations, but we also met with some community members in small groups. See id., at 61-62.

37 For the purposes of the study, we defined “citizens” generously: “Citizen” encompassed anyone who participated in the life of the community. Id., at 15. So people who worked in Arlington but didn’t live there were citizens. Similarly, immigrants who had legal citizenship elsewhere but who resided in Arlington were Arlington citizens. We thus took a de facto rather than de jure view of citizenship. See also PALMA J. STRAND, MELINDA D. PATRICIAN, & MARY H. HYNES, CIVIC ENGAGEMENT: A GUIDE FOR COMMUNITIES (2006) (available at}
experiences personally.”

This conclusion has all kinds of practical implications. If you are an elected official who wants constituents to walk away from an interaction with City Hall or the County Courthouse or the State Capitol feeling positive about the government, make sure that the flesh-and-blood person they deal with is courteous and helpful and that people feel that they were listened to when decisions are made, even if the final decision does not go their way. If you are a civic group or PTA or trade association who cares about “diversity” in your community, call up a leader of a group that in some way manifests that diversity, invite him or her to talk over coffee, and listen to how the world looks from where they stand. If you are organizing an event and you want people—even members of your own organization—to come to an event or meeting, don’t just send out a written or e-mail flyer. Pick up the phone, call a few key people, and get them to commit to coming and to themselves calling some additional folks.

Three themes or “touchstones” as to what people are seeking in civic or public life emerged from our study:

1. Civic conversation;
2. Inreach;
3. Civic governance.

Civic conversation “highlights the importance of broad-based discussions and connections among diverse groups and organizations” to “articulate core community values [and] develop a shared story about the community.” The citizens we spoke to envisioned building personal relationships with other community members to develop a sense of connection and an overarching community well-being and direction. The need for building such cross-cutting relationships explains the importance of my phone time while co-chair at Drew. Civic conversation is the means by which civic relationships are built and connection occurs in an actual

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38 PATRICIAN & STRAND, supra note 35, at 22.
39 These touchstones resonated with my own experiences described above; and they were reinforced by additional interviews that we conducted a few years later with members of other communities in other parts of the country for a different but related project. See STRAND, PATRICIAN & HYNES, supra note 37.
40 For a definition of “inreach,” see Strand, supra note 6, at 635 n. 164.
41 We originally used the term “democratic governance” but changed it to civic governance to reflect emphasis on interactions among citizens (including public officials) rather than on formalities. Compare 2003 and 2006 reports, supra notes 35 & 37.
42 STRAND, PATRICIAN & HYNES, supra note 37, at 5 (emphasis in original).
Inreach recognizes that “meaningful civic engagement happens in many different contexts and institutions.” What happens inside governmental organizations is critical in terms of whether their overall work furthers or dampens civic goals. Moreover, most citizens enter and contribute to public life through community institutions and organizations such as PTAs, neighborhood groups, sports leagues, dance groups, faith communities and the like. Inreach happens when the various organizations and institutions of a community—public and private, formal and informal—see themselves as part of the civic fabric and actively embrace that role. My work on the Superintendent’s committee regarding the achievement gap constituted inreach, an enterprise that was not just educational but civic in that it sought to create and develop respectful and productive working relationships within the school system. Through inreach, civic identity is developed and autonomy of citizens in the context of the larger whole is achieved.

Finally, civic governance reflects a conviction that “civic engagement is … about real power in public decision-making.” As one citizen put it, people want to be more than “window dressing.” Civic governance entails a shift “away from a conception of power as being tightly held by public officials and toward a conception of power involving shared initiative and responsibility.” An unwillingness to share decision-making power was what I experienced in the Veitch Street process. Civic governance is the process through which people’s relevance is manifested, through which their participation and contributions are made meaningful. Civic governance is power-with rather than power-over interactions with government officials.

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43 PATRICIAN & STRAND, supra note 35, at 35 (emphasis in original).
44 Somewhat paradoxically, because identity is socially constructed, associating with others not only grounds the co-evolution of social norms and law but the formation of identity as well. Cf. Robert M. Cover, Nomos and Narrative, 97 HARV. L. REV. 4, 32 (1983) (freedom of association as the core constitutional prerogative).
45 PATRICIAN & STRAND, supra note 35, at 36 (emphasis in original).
46 Also, the civic sphere and civic engagement—the participation of citizens in social life relevant to the group and law-as-story—gather in not just the traditional sphere of politics and government but other organizations and institutions as well. Schooled though we are in the public-private demarcation, this broader reach of “civic” recognizes that how we interact in all the contexts of our lives spills over one to another. In this view, “civic” extends to businesses, families, and other contexts we don’t traditionally conceive of in this way. Compare GABRIEL ALMOND & SIDNEY VERBA, THE CIVIC CULTURE: POLITICAL ATTITUDES AND DEMOCRACY IN FIVE NATIONS (Princeton Univ. Press 1963).
47 STRAND, PATRICIAN, & HYNES, supra note 37, at 7 (emphasis in original)
One revelation of the Arlington civic engagement study was the importance of stories and story. My partner and I found stories to be at the core of people’s experiences and perspectives. It was from the individual stories of Arlington that the civic engagement touchstones emerged. A packaged question-and-answer interview would not have allowed in the same way or to the same degree for the emergence of the unexpected and for the spiraling of different people’s stories into a new but coherent pattern over time. As we talked to people, the story grew and our questions matured.

In fact, though I have described the touchstones through definition, their true mode may be story. Civic conversation occurs when people tell their own stories and listen to those of others throughout the community. Inreach ensures the connection between the story of a group, organization, or institution and the stories of those within it. Civic governance happens when decisions for the group reflect the stories of all those who are involved. Stories, my partner and I came to realize, are the lifeblood of civic work, the DNA of a civic body.

In the months that we were conducting the conversations, my partner and I experienced first-hand the story-building and emergence process Keith Sawyer calls collaborative emergence. We saw the collective themes or system-level touchstones emerge from the individual stories. This experience led to the perspective of law as an emergent story presented in my earlier article. But while our work focused on civic engagement and was discrete, localized, and informal, the creation of law and social norms has a longer time horizon, tends to be broader in scope, and includes formal processes that consolidate collective stories that emerge less formally.

D. Civic Networks

As described above, my personal civic experiences led to relationships of respect. Similarly, my observations of civic engagement at the community level prompted a search for a way to describe how relationships of respect among individuals correlate to what people seek and to what makes for collective well-being at the community level. This search led me to the field of social networks. Again, it was a sociologist—but here a sociologist offering quantitative data rather than qualitative

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48 R. Keith Sawyer, Social Emergence: Societies as Complex Systems 210-211 (Cambridge Univ. Press 2005).
observations—whose work resonated.

Sociologist Robert Putnam’s early work addresses the question of why regional governments in different parts of Italy with the same formal structure exhibit significant variance in their effectiveness. After considering numerous possible explanations, Putnam’s data led him to conclude that the variance was caused by the presence or absence of “civic networks.” Where such networks flourish, governments more effectively serve their citizens; where such networks are absent, governments that are formally the same are less effective.

Specifically, Putnam describes how cross-cutting horizontal networks that are “web-like” rather than “maypole-like” (hierarchical) enhance a community’s chances “that its citizens will be able to cooperate for mutual benefit.” Web-like networks join individuals in multiple institutions at multiple levels and in roughly horizontal ways. The resultant communication and trust lead to norms of mutual cooperation that operate through Putnam’s webs or civic networks. These contrast to networks that join individuals in vertical hierarchies and through prescribed and limited channels, which inhibit the development of such trusting relationships and cooperative norms.

Putnam’s observations are consistent with the discussion of relationships of respect above. When people are joined in webs, in multiple ways that defy ordering and are valued in and of themselves rather than for their positions, their desire for relationships of respect and their propensities for autonomy, connection, and meaning can all be addressed. Interactions are not seen as zero-sum, and trust can begin to develop and reign. Cooperation ensues, which enhances the capacity of the whole. Hierarchies, in contrast, prevent those below from exercising autonomy and inhibit meaningful connections by those above. Everyone’s ability to fully develop meaning is stunted due to distrust and fear, and the capacity of the

49 MAKING DEMOCRACY WORK: CIVIC TRADITIONS IN MODERN ITALY (Princeton Univ. Press 1993). Putnam’s later work on social capital in the United States, BOWLING ALONE: THE COLLAPSE AND REVIVAL OF AMERICAN COMMUNITY (Simon & Schuster 2000), is better known but has a somewhat different emphasis. See note 65 infra and accompanying text.

50 MAKING DEMOCRACY WORK, supra note 49, at 173.

51 Id. at 171-174.

52 Id., at 174-175. See also Karen S. Cook & Russell Hardin, Norms of Cooperativeness and Networks of Trust, in SOCIAL NORMS (Michael Hechter & Karl Dieter Opp, eds.) (Russell Sage Foundation 2001) (differentiating roles of norms [small groups] and trust [larger, overlapping networks]).
whole is diminished.\textsuperscript{53} These dynamics create a more—or less—salutory environment within which formal government can be effective—or not.

Clark and Starhawk also link the quality of relationships among individuals and the type of social structure. Clark’s essential distinction is between egalitarian and hierarchical cultures. “Egalitarian cultures are distinguished by mutual respect and trust for all” that “is manifested by minimal ranking and competition among people.”\textsuperscript{54} Egalitarian does not connote equal—either in the sense of being the same or in the sense of the minimal political equality of modern America—but rather a “deeply held cultural belief that human beings are, by nature, due equal respect and of equal value.”\textsuperscript{55} In hierarchies, in contrast, “the task of the cultural narrative is … to say why it is ‘natural’ and ‘right’ for some to have power, wealth, status and control, and others to have very little or none.”\textsuperscript{56}

Clark further identifies two types of hierarchies: “rigid” hierarchies in which people are born and die in their established place with “no culturally perceived possibility of mobility up or down”\textsuperscript{57} and “mobile” hierarchies in which people can legitimately try to improve their status, though at the cost of lower social stability and increased stress and anxiety.\textsuperscript{58} Overall, trust and respect for others’ identities correlate to egalitarian social structures in which holders of authority “stand in [the] midst and [are] but one among many” while the ranking of identities correlates to hierarchical social structures in which holders of authority are “outside, aloof, above.”\textsuperscript{59}

Similarly, Starhawk connects power-with relationships and webs of multiple overlapping relationships in which resources and initiative are shared. Hierarchies, in contrast, “run on power-over: the entitlement and ability of some groups to control others, extract their labor or resources, and impose sanctions or punishment.”\textsuperscript{60} In hierarchies, relationships run one-way; in webs, there is an almost M.C. Escher dynamic in which one

\begin{itemize}
\item \textsuperscript{53} \textsc{Clark, supra} note 24, at 250-262.
\item \textit{Id.} at 252.
\item \textit{Id.} at 250.
\item \textit{Id.} at 254.
\item \textit{Id.}.
\item \textsuperscript{58} “The task of the cultural narrative to justify ranking is no longer god-given, but becomes convoluted, based on a host of myths or social theories about ‘rights,’ ‘fairness,’ and ‘merit,’ that become highly politicized.” \textit{Id.} at 256. Increased stress and anxiety result from constant insecurity and competition. \textit{Id.}.
\item \textit{Id.} at 258.
\item \textsc{Webs of Power, supra} note 33, at 170.
\end{itemize}
person’s hand creates the hand that in turn creates it.\textsuperscript{61}

These observations about web-like civic networks fit into a larger body of work on social networks generally. Networks always consist of both nodes and links, though what the nodes and the links consist of and the structure of the network will vary.\textsuperscript{62} In social networks, people are the nodes and relationships are the links. The very fact of considering people as a social network says something important: Because both links and nodes are components of the network, relationships as well as individuals comprise it. It cannot be defined by the individuals within it alone. This awareness of the relationality of individuals squares with the observations in the previous section.\textsuperscript{63}

Further, the location as well as the nature of the links in a network determine its character and how it functions.\textsuperscript{64} In particular, the two archetypes of social networks are webs and hierarchies, though social networks in reality tend to be mixtures of the two.

The pattern of network that is created is a result of the type of relationships that predominate. Civic relationships—relationships of respect, which are inherently power-with—join people horizontally. Myriad horizontal relationships form webs—networks in which people are connected organically to a miscellany of others whom they encounter in the


\textsuperscript{62} Mark Buchanan, Nexus: Small Worlds and the Groundbreaking Science of Networks (Norton & Co. 2002), Albert-Laszlo Barabasi, Linked: The New Science of Networks (Perseus 2002). For example, a network can be computer terminals (nodes) and electronic connections (links)—the Internet. A network can be electric producers and consumers (nodes) and power transmission lines (links)—the electric power grid. A network can be cities and towns (nodes) and paved roadbeds between them (links)—highway system.

\textsuperscript{63} See note 28 supra and accompanying text. As Kenneth Gergen has said, “I am linked, therefore I am.”

\textsuperscript{64} In a transportation network, for example, it matters whether one has to travel through a hub of some sort to reach other locations or whether there are multiple routes to one’s destination. The former structure is susceptible to disruptions and gives the hubs a lot of control. The latter structure gives travelers more options and is less susceptible to disruptions because there are more alternatives. Our air travel system is generally based on hubs; our interstate highway system on alternatives. Hub systems are hierarchical in that people flow to and from centralized points; systems in which people flow here and there in a more decentralized manners are webs. Further, the nature of the links in a hub system will differ from the nature of the links in a web system. Hub-system links will vary considerably in the volume of traffic they can accommodate. Web-system links will be less disparate.
various arenas of their lives. Power-over relationships, in contrast, join people vertically in hierarchies—networks in which people are connected to provide one-way conduits for resources and authority.

Putnam’s later work highlights an important additional dimension of social networks by distinguishing bonding and bridging relationships. Bonding relationships he defines as those that hold like people together. Bridging relationships are those that join people who are different. In this regard, Putnam’s focus has shifted from the qualities of individual interactions within a social network to whether differentiated sub-networks are, so to speak, “talking to” and “hearing” each other. And, combined with general social network insights, Putnam’s work provides concrete criteria for civic societies. In fact, Putnam’s bonding and bridging relationships describe pragmatically how small civic webs become larger ones—how civic is taken to scale.

Self-organizing networks—networks such as social networks that are created by the individuals who comprise them—are nested. Nesting means that smaller networks themselves become elements or nodes in larger networks. Small communities of people, that is, become nodes of a larger social network. Using Putnam’s terms, individuals clump together in bonded groups through proximity or common identity or interest. In down-to-earth terms, most of us interact most of the time with the people in our close-at-hand communities or networks—our families, our neighborhoods, our schools, our workplaces, our faith communities—the places, institutions, and organizations where we “belong.” And many of the people within those local groups and communities also interact with each other. Our family members know each other. So too do our neighbors, colleagues, and so forth. These networks are “close-knit” by virtue of the interwoven relationships within them, and “bonding” relationships create these clumps.

These bonded sub-networks then become nodes in higher-level networks through relationships that bridge across the clumps and bring them together. These larger networks are joined into still larger networks

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65 BOWLING ALONE, supra note 49, at 22-24. This work shifts from a focus on individual-level interactions to an assessment of system-level effects. From this bird’s-eye view, Putnam sweeps together many different kinds of social connections into the catchall category of “social capital.” Id. at 19-28. Essentially, he makes the statistical case in the context of the United States that social connections generally lead to better system-level outcomes in areas such as education, health and happiness, economic prosperity, safe neighborhoods, and democracy. Id., at 296-349.

66 PETER CSERMELY, WEAK TIES: STABILIZERS OF COMPLEX SYSTEMS FROM PROTEINS TO SOCIAL NETWORKS 32-33 (Springer 2006).
through further bridging relationships and so on and so on up the scale. While most individuals interact most of the time with a few other individuals close at hand (within the clumps or bonded groups), there are also in most local communities at least some individuals who have “long-distance” relationships with individuals in other bonded communities elsewhere.

Sociologists describe social networks comprised of intensely bonded groups linked by more sporadic bridging relationships as small-world networks. In such networks, it is the bridging relationships or “weak ties” that hold the network as a whole together. (See DIAGRAM Below.)

Such weak ties may be weaker dyadically than bonding relationships, but they are the sinews of the network as an entire system. They accomplish this by dramatically decreasing the degrees of separation between various individuals in the overall population and creating a single, albeit loose,
Without the bridging relationships or weak ties, the overall network becomes destabilized; this weakens the system as a whole by diminishing its diversity, a characteristic that—when tolerated—enables it to adapt to changing conditions.

Web-like networks bind a society together in a non-assimilationist mode. These webs do not require uniformity; in fact, they contemplate “clumps” of different kinds that are joined together via civic relationships. Not everyone needs to belong to the same racial or ethnic group, join the same bowling league, embrace the same faith, subscribe to the same political party, speak the same language. This view celebrates the “bonded” clumps as safe havens, places of nurturance and identity-building, and incubators of the difference that enables the health of the system overall so long as these bonded sub-networks have sufficient civic character and so long as bridging civic relationships exist to join them.

This view is consistent with that of political scientist and philosopher Iris Marion Young, who maintains the importance of groups in society and in terms of people’s identities and who asserts “that the ideal of the just society as eliminating group differences is both unrealistic and undesirable. Instead justice in a group-differentiated society demands social equality of groups, and mutual recognition and affirmation of group differences.” Young focuses on the relationships between groups and, in fact, on politics as the “relationship of strangers who do not understand one another in a subjective and immediate sense, relating across time and culture.”

Webs of relationships thus provide a concrete depiction of a society in which individuals are members of multiple groups, in which their

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69 Buchanan, supra note 62, at 55; Csermely, supra note 66, at 195-196.
70 See, e.g., Cook & Hardin, supra note 52, at 342-343; Csermely, supra note 66, at 192-194.
71 Though there is limited analysis of this point, my own experience and indirect observations by others suggest a correlation between civic bonding relationships and civic bridging relationships. People who learn trust and reciprocity in their intimate communities are better able to offer and receive it outside those communities. Cf. Richard T. Pascale, Mark Millemann & Linda Gioja, Surfing the Edge of Chaos: The Laws of Nature and The New Laws of Business 273-275 (Three Rivers Press 2000) (discussing Southwest Airlines as example of organization that focuses on creating positive internal relationships (“employees first”) as its top priority based on the assumption that positive external relationships and results [with customers and for shareholders] will follow).
72 Young, supra note 31, at 191.
73 Id. at 234.
identities are multi-dimensional, in which clumps are loosely joined into a sprawling but functionally and equitably interconnected whole. These webs, moreover, are comprised of individuals interacting through relationships of respect within and between clumps.

This description of civic life comports with the empirically-derived description above. The civic engagement touchstones describe such a civic web from the perspective of those within it. Civic conversation emphasizes the need for people throughout a community to share stories and experiences so as to create bridging relationships among members of disparate groups. Civic conversation ties the diverse parts of a community together and protects against balkanization and polarization. Inreach focuses on people working in their bonded groups, organizations, and institutions to develop and strengthen their own identities so as to articulate their stories. Inreach enables the respectful bonding relationships that provide a solid jumping-off point for entering into civic conversation. Civic governance recognizes people’s propensity to find and create meaning in their membership, participation, and contribution. Civic governance becomes possible when both inreach and civic conversation are occurring and in particular when they take place within government and between citizens inside and outside of government.

As with civic experiences and civic relationships, civic engagement and civic networks map onto the three essential aspects of a civic law-story that emerges from and then immerses back into society so that law and norms evolve together. 74 Civic conversation speaks of relationship—the importance of engaging, communicative, and reciprocal interactions with others. Inreach enables identity—the ability to celebrate a multifaceted sense of self as defined by being situated within multiple social groups that are not locked into unequal power dynamics. And civic governance embodies relevance—the need for a meaningful conversation between citizens and those who speak with authority for the whole.

II. HARVEY, JANE, AND JAMES

Gay rights, abortion, and gun control as major legal and social issues in their current form arose out of the crucible of the 1960’s and 1970’s, though all have roots that extend much further back. 75 All three of these

74 Strand, supra note 6, at 632-634, 639-642.
75 “The first “right-to-life” movement in the United States took place approximately
movements illuminate the link between civic engagement on the one hand and stable legal doctrine and accepted social norms on the other. The critical aspect of civic engagement in all three areas is the articulation and sharing—or not—of personal stories across lines of difference. Where this has occurred, civic relationships and networks have led to the emergence of new legal doctrine and social norms. Where it has not, destabilized and balkanized bonded sub-networks—isolated from each other by the absence of bridging relationships—have inhibited such emergence.

A. Harvey Milk and Gay Rights

The idea of coming out of the closet was first articulated by German intellectual Karl Heinrich Ulrichs in 1869, and a checkered history of gay and lesbian efforts to become both more organized and more visible characterizes the first two-thirds of the 20th century. But it wasn’t until the Stonewall riots in New York City in 1969 and the political campaigns, between 1850 and 1890. This movement, composed primarily of physicians, made what was in the context a novel claim: that abortion at all periods of pregnancy was murder.” But “when we look closely at the circumstances and behavior of these nineteenth-century physicians, we find that even most of them were not certain that abortion was really murder and that their opposition to abortion was based on more complicated motives than a desire to protect embryonic life.” KRISTIN LUKER, ABORTION AND THE POLITICS OF MOTHERHOOD 14 (Univ. of Calif. Press 1984).


A right to bear arms, embodied in the Second Amendment, was supported by essentially all of the Framers—Federalist and Anti-Federalist alike—though their motivations for doing so are less than pellucid. See note 139 infra. The assassinations of the 1960’s put guns on the political agenda in a new way, though federal gun control initiatives were first enacted in the 1930’s.

76 Claiming that invisibility was a major obstacle toward changing public opinion, Ulrichs urged homosexual people to come out. http://www.ilglaw.org/cnfaward.htm

77 The Mattachine Society (from “masks”), founded in 1950–1951, and the lesbian society the Daughters of Bilitis, founded in 1955, were the first sustained organizations of their kind, sought to unite homosexuals around social and political goals, and by the late 1950s emphasized accommodation to heterosexual society while seeking support from the legal and medical professions. These groups focused on normalizing homosexuality, and their publications discussed, among other issues, proper roles and dress for gay men and lesbian women. Vicki L. Eaklor, Gay and Lesbian Movement, DICTIONARY OF AMERICAN HISTORY (2003) www.encyclopedia.com/doc/1G2-3401801662.html.

78 “On Friday evening, June 27, 1969, the New York City tactical police force raided a popular Greenwich Village gay bar, the Stonewall Inn. Raids were not unusual in 1969; in fact, they were conducted regularly without much resistance. However, that night the street
election, and ultimate assassination of Supervisor Harvey Milk in San Francisco in the late 1970’s that gay life and gay rights really moved to the national political stage.

Harvey Milk was an American politician and the first openly gay man to be elected to public office in California. Milk began his tenure by sponsoring a civil rights bill that outlawed discrimination based on sexual orientation. The ordinance was called the "most stringent and encompassing in the nation," and its passing demonstrated "the growing political power of homosexuals."  

Milk, along with San Francisco Mayor George Moscone, was assassinated less than a year after he took office by Dan White, a former fellow Supervisor who had voted against Milk’s civil rights ordinance. In Harvey Milk’s political will, which he prepared for the eventuality of his assassination, he wrote:

I cannot prevent some people from feeling angry and frustrated and mad, but I hope they will take that frustration and that madness instead of demonstrating or anything of that type, I would hope that they would take the power and I would hope that five, ten, one hundred, a thousand would rise. I would like to see every gay lawyer, every gay architect come out, stand up and let the world know. That would do more to end prejudice overnight than anybody erupted into violent protest as the crowds in the bar fought back. The backlash and several nights of protest that followed have come to be known as the Stonewall Riots.”


Les Ledbetter, Bill on Homosexual Rights Advances in San Francisco, N.Y. TIMES, March 22, 1978 at A21. Only Supervisor Dan White, the man who would later assassinate Milk, voted against it; Mayor Moscone enthusiastically signed it into law with a light blue pen that Milk had given him for the occasion. RANDY SHILTS, THE MAYOR OF CASTRO STREET: THE LIFE AND TIMES OF HARVEY MILK 199 (St. Martin’s Press 1988).


The Times of Harvey Milk (1984). Dan White had resigned his position just days before the assassination and was seeking reappointment at the time he killed Milk and Moscone. White was tried for murder but was convicted only of manslaughter based on the so-called “twinkie defense.” After serving five years in prison, he was released. He committed suicide in 1985.
could imagine. I urge them to do that, urge them to come out. Only that way will we start to achieve our rights.\textsuperscript{82}

This admonition echoed statements he had consistently made in speeches prior to his death. Harvey Milk was “out” and living in the most “out” neighborhood in the most “out” city in the nation. But he was also keenly aware that the majority of gays and lesbians do not live in and are not going to move to San Francisco. And even if they do, they are still irrevocably connected to family and friends at home. Milk’s message was that gays and lesbians, even those in San Francisco, won’t be truly themselves or truly accepted until they are known for who they are.

One aspect of coming out, common at least in San Francisco before Milk’s death, was gays and lesbians coming out to each other. The resulting supportive bonding relationships enabled the creation of a gay and lesbian (and later GLBTIQ) identity. Gays and lesbians were members of a group with a sexual orientation different from the socially articulated heterosexual norm. Over time, coming out to others who are straight—another aspect of coming out—has also become an increasingly common part of the gay experience and even something of a rite of passage. And, as it happened, the AIDS epidemic accelerated this process by “outing” gays, particularly gay men, involuntarily.\textsuperscript{83}

From a civic engagement point of view, coming out is a textbook example of gays and lesbians reaching inward and also creating bridging relationships—one by one with parents, siblings, friends, and other loved ones. The effect of these relationships was and is profound. When our neighbors, sons and daughters, nieces and nephews, sisters and brothers, even mothers and fathers “come out,” it becomes much more difficult to regard gays and lesbians as “them,” as some set of “others.” The “gay community” begins to become a different part but a part nonetheless of the larger civic body.

The early gay rights movement did not proceed unchallenged. David Briggs with Proposition 6 in California\textsuperscript{84} and Anita Bryant with Save

\textsuperscript{82} SHILTS, supra note 79, at 374.

\textsuperscript{83} See WARREN JOHANSSON & WILLIAM A. PERCY, OUTING: SHATTERING THE CONSPIRACY OF SILENCE (Routledge 1994); LARRY GROSS, CONTESTED CLOSETS: THE POLITICS AND ETHICS OF OUTING (Univ. of Minn. Press 1993).

\textsuperscript{84} Proposition 6, a California statewide initiative defeated in 1978, would have prohibited gays from teaching the state’s schools.
Our Children in Florida are both early examples of backlash reactions to the ascent of gay rights. The issue was joined, and it eventually made its way to the Supreme Court in two forms. Directly, in Bowers v. Hardwick, the Court considered the question of whether there was a constitutional protection for homosexual behavior; the Court held that there was not. Indirectly, in Romer v. Evans, the Court faced the question whether a state could amend its constitution to prohibit the possibility of gay and lesbian citizens winning legal protection through political organizing; the Court held that such avenues of political change could not be foreclosed only to specified groups.

Then, less than two decades after Bowers, the Supreme Court reconsidered its holding—reversing it in Lawrence v. Texas. Lawrence’s holding of a right to homosexual relationships has been largely accepted, and the political and social controversy has moved on to the question of same-sex marriage. Congress enacted the Defense of Marriage Act in 1996, which defined marriage heterosexually and in effect declared that the Full Faith and Credit Clause of the Constitution does not apply in this context—that states need not recognize same-sex marriages performed in other states. The majority of states enacted provisions barring same-sex marriage as a statutory or state constitutional matter. A few provided for same-sex partnerships legislatively; some have gone further and endorsed

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85 In 1977, Dade County, Florida, passed an ordinance sponsored by Bryant’s former good friend Ruth Shack that prohibited discrimination on the basis of sexual orientation. Bryant led a highly publicized campaign to repeal the ordinance as the leader of a coalition named Save Our Children. The campaign was based on conservative Christian beliefs regarding the sinfulness of homosexuality and the perceived threat of homosexual recruitment of children and child molestation.

89 56 percent of Americans believe that gay relations between consenting adults should be "legal." 40 percent of Americans, however, still think that they should not be legal. Robert Schlesinger, New Poll, California Proposition 8 Show We’ve Got a Ways to Go on Gay Marriage, U.S. NEWS & WORLD REPORT, May 27 (2009) (citing Gallup poll).
91 Forty-one states passed statutory Defense of Marriage Acts, and thirty states have defined marriage in their constitutions (Hawaii passed a constitutional amendment authorizing the state legislature to reserve marriage to opposite-sex couples, and it did so). National Conference of State Legislatures (2009) www.ncsl.org/default.aspx?tabid=16430
92 Vermont, Connecticut, New Jersey, and New Hampshire have provided for civil unions; California, Nevada, Colorado, Washington, D.C., Hawaii, Maine, Maryland, New Jersey, Oregon, Wisconsin, and Washington have provided for domestic partnerships.
same-sex marriage—judicially,\textsuperscript{93} legislatively,\textsuperscript{94} or by executive action.\textsuperscript{95}

Though the legal status of same-sex marriage is far from settled as a national matter, this political and legal history is truly astonishing. A mere four decades after the Stonewall riots, the nation has accepted gay and lesbian sexuality to such a degree that the controversy has moved on to marriage. The question of marriage, after all, only arises when the existence of the underlying relationships is acknowledged. The precondition for this is a degree of “outness” that was inconceivable not only forty but even twenty years ago.

Moreover, the story about gays and lesbians in our society has undergone a sea change. The GLBTIQ identity has migrated from marginal to mainstream. The shift from 	extit{Bowers} to 	extit{Lawrence} embodies this. So do movies such as 	extit{Brokeback Mountain} and 	extit{A Single Man}, TV shows such as 	extit{Will and Grace}, songs such as “I Kissed a Girl.” Many if not most high schools and colleges now have a Gay and Lesbian Student Association or a Gay-Straight Alliance. The Boy Scouts have been criticized for their anti-gay position. Many faith communities now explicitly welcome openly GLBTIQ individuals and couples.

I suggest that our collective story has changed because so many of our individual stories have changed, and our individual stories have changed because of the coming out process—the articulation of gay and lesbian stories and the sharing of those stories with straight society. This process has resulted in the transformation of relationships between gays and lesbians and the larger, generally straight society. “Coming out,” in this

\textsuperscript{93} 	extit{Varnum v. Brien}, 763 N.W. 2d 862 (Iowa 2009); 	extit{Kerrigan and Mock v. Connecticut Dept. of Public Health}, 957 A.2d 407 (Conn. 2008); 	extit{Goodrich v. Dept. of Public Health}, 798 N.E. 2d 941 (Mass. 2003). Additionally, the California Supreme Court ruled on May 15, 2008 that same sex couples have the right to marry in California. 	extit{In re Marriage Cases}, 43 Cal. 4th 757. Proposition 8, which amended the state constitution to limit marriage to one man and one woman, was passed on November 4, 2008. The decision was appealed, and the Proposition 8 amendment was upheld. 	extit{Strauss v. Horton} (S.Ct. of Ca., filed 5/26/09). Same-sex marriages performed before Proposition 8 was passed will remain valid, but same sex marriages are no longer performed in California.

\textsuperscript{94} Maine, New Hampshire, and Vermont. In addition, the Washington DC City Council passed a resolution to recognize same-sex marriages performed in other states. The Maine statute, however, was overturned by a statewide voter referendum in November 2009.

\textsuperscript{95} In 2008, New York Governor David Paterson issued an executive order directing New York state agencies to recognize same-sex marriages performed in other states on equal terms with heterosexual marriages. In 2004, the Rhode Island Attorney General had issued an opinion to the same effect.
view, is not simply a personal therapeutic revelation but an act that, seen collectively, has profound civic consequences.  

But *Lawrence* is not, as we know, the end of the cycle. What do these civic insights suggest about the current simmering issue of same-sex marriage? Surprisingly, they suggest that the Defense of Marriage Act may have had the salutary effect of encouraging voice by ensuring—at least for a time—50 different public conversations on the issue. These conversations are not consistent. In many states, as mentioned above, state constitutional amendments have put pause to political conversation for the time being, though *Romer* ensures that the potential for reopening those conversations remains. But every time one state acts, the reverberations are felt in the others. Massachusetts’s groundbreaking judicial decision to provide same-sex marriage, California’s Proposition 8 and Maine’s voter reversal of legislated same-sex marriage, New York’s executive order requiring state agencies to honor same-sex marriages from other states, and the passage by state legislatures of same-sex marriage laws all serve as reminders that the story overall is unsettled.

More important, the “coming out” process that once applied simply to gays and lesbians revealing their own sexual orientation now often extends to their domestic arrangements. Gays and lesbians, like their heterosexual counterparts, often form bonded pairs. Some do not last, but many do. And with the advent of gay and lesbian couples having or adopting children and building legal protections for each other such as those enjoyed by married couples, “coming out” increasingly encompasses same-sex relationships.

The most attainable resolution of the issues—at least in the short run—may well be to agree to a meta-solution according to which groups agree to disagree but agree on how to disagree. Our Constitution and legal system are examples of this writ large, and the current back-and-forth on same-sex marriage indeed channels the existing conflict. But progress on

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96 This insight came originally from my friend—and athlete, writer, and speaker—Mariah Burton Nelson.
97 This is the case, at least, so long as the Supreme Court does not rule on the issue. A pending case in Federal court in California, however, challenges Proposition 8 as a violation of the Fourteenth Amendment’s Equal Protection Clause. Perry v. Schwarzenegger. A Supreme Court ruling in this or a similar case—whichever way it is decided—will be a conversation-stopper. See Leslie A. Gordon, “Marriage Proposal,” in ABA JOURNAL 18 (Sept. 2009).
98 Estate planning and mutual parenthood of children, for example, can be intentionally provided for.
this legal conflict may be facilitated by progress in the civic arena—in particular by providing a way for opposing camps to engage in civic conversation with an eye to forging bridging relationships through articulating and exchanging stories.\footnote{Interestingly, the highest correlate of opposition to gay rights and same-sex marriage appears to be strong religious beliefs. In a 2003 poll, for example, 76\% of people with a high degree of religious commitment agreed that homosexual behavior was a sin compared to 55\% of others. Religious Beliefs Underpin Opposition to Homosexuality, The Pew Research Center for the People and the Press (Nov. 18, 2003). (Note that the level of acceptance has shifted overall in the 6 years since this poll. See note supra and accompanying text.) Religion may provide not only a counter-story to GLBTIQ personal stories but a counter-story that denies their very validity by categorically designating them to be sin.} As conflict resolution theorist and practitioner Bernard Mayer advises, when conflicts are not ripe for resolution, there are still constructive ways to manage them: “[N]arratives that encourage an effective approach to long-term disputes” and “durable avenues of communication” are among them.\footnote{STAYING WITH CONFLICT: A STRATEGIC APPROACH TO ONGOING DISPUTES xi (Jossey-Bass 2009).}

To summarize, civic engagement in the form of “coming out” has facilitated the creation of a vibrant GLBTIQ identity and respectful civic relationships joining gays and lesbians with the broader society. The system-level effects of these myriad local interactions are immense—in large part because gays and lesbians permeate society as a whole. Though there are still gay and lesbian “clumps,” these clumps are inevitably connected to other, non-gay-and-lesbian clumps. Such relationships have facilitated the emergence of relevant law-stories—first of acceptance of gay and lesbian relationships and now of acceptance of same-sex relationships and marriage. The first of these has progressed to the point of a single public law-story; the second is still in process.\footnote{An important difference between gay rights and same-sex marriage is the formal endorsement sought: Gay rights focuses on non-interference by the society at large; same-sex marriage seeks affirmative sanction. Moving from the former to the latter represents a significant change.}

\section{B. Jane Roe and Abortion}

Compare the trajectory of abortion rights and abortion law. First regulated by being medicalized in the mid-19\textsuperscript{th} century, the political issue around removing restrictions on abortion gained traction with the thalidomide debacle and the highly publicized pregnancy of Sherri Finkbine in 1962.\footnote{See CYNTHIA GORNEY, ARTICLES OF FAITH: A FRONTLINE HISTORY OF THE} From the mid-1960’s, reformers pushed—with some success—
to make abortion safer and more available. In response, several states loosened their restrictive laws, though these states were the exception rather than the rule.  

But in 1973 the Supreme Court in Roe v. Wade declared a constitutional right to abortion under a privacy rubric, creating a trimester approach to abortion rights and regulation. This decision fanned the flames of a backlash that energized abortion foes. The result, in a saga that continues to the present, has been continual efforts to chip away at Roe, primarily in the legislative arena. Congress has prohibited Medicaid funds being used for abortions and declared illegal late-term abortions performed by intact dilation and extraction. States, especially certain states, have enacted all kinds of restrictions on and regulations of the basic Roe right, many of which have been reviewed by the Supreme Court. Some have been endorsed as consistent with Roe; others have been rejected. The essential holding of Roe itself, however, has held, though

ABORTION WARS 49-51 (Simon & Schuster 1988).

103 Id., at 38-94.
104 410 U.S. 113 (1973).
105 See Post & Siegel, supra note 7, at 412 (backlash against the liberalizing state statutes was already underway when Roe was decided).
106 The primary executive action relates to the Mexico City Policy, also known as the Global Gag Rule, an intermittent United States government policy that requires all non-governmental organizations (NGOs) that receive federal funding to refrain from performing or promoting abortion services, as a method of family planning, in other countries. The policy is a political flashpoint in the abortion debate, with Republican administrations adopting it and Democratic administrations rescinding it. The policy was in place from 1984 through January 1993 (President Bill Clinton ended it); reimposed by President George W. Bush on January 22, 2001, his first business day in office - and, not coincidentally, the 28th anniversary of the Roe v. Wade decision; and rescinded January 23, 2009, shortly after President Barack Obama took office.
109 Gornev, supra note 102, at 438-440 (discussing Missouri and Pennsylvania as examples).
the Court shifted from a privacy-based trimester analysis to a liberty-based viability approach two decades after *Roe* in *Planned Parenthood of Southeastern Pennsylvania v. Casey*.\(^\text{112}\)

Noticeably missing from this history are the abortion counterparts to Harvey Milk and coming out. The plaintiff in *Roe* did not disclose even her actual name until a decade after the decision.\(^\text{113}\) Many if not most of the current named abortion-rights litigants are not individuals but service providers. Though *Casey*’s liberty analysis has replaced *Roe*’s focus on privacy, privacy remains the watchword in abortion.

*Roe* has had enormous practical effect: Though estimates vary, at least one study concludes that 43% of American women have had an abortion.\(^\text{114}\) This number (very roughly 20% of the population as a whole) is essentially double the number of the estimated 10% of the population that is GLBTIQ.\(^\text{115}\) And, though opposition to abortion tends to follow religious affiliation, the best data indicate that women of all religions exercise the right itself.\(^\text{116}\) Abortion permeates the population.

Yet abortion continues to be shrouded in silence, secrecy, and

\(^{112}\) 505 U.S. 833 (1992). In addition, several states have enacted so-called trigger laws that would take effect if *Roe* were overturned. Those states include Illinois, Kentucky, Louisiana, Mississippi, North Dakota and South Dakota. Additionally, many states did not repeal pre-1973 statutes that criminalized abortion, and some of those statutes could automatically spring back to life in the event of a reversal of *Roe*. Other states have passed laws to maintain the legality of abortion if *Roe* is overturned. Those states include California, Connecticut, Hawaii, Maine, Maryland, Nevada and Washington. Vestal, Christine. *States Probe Limits of Abortion Policy*. Stateline.org (2007-06-11).


\(^{114}\) Approximately one in every four families has a member who is predominantly same sex attracted.

\(^{115}\) “Women identifying themselves as Protestants obtain 34.7% of all abortions in the U.S.; Catholic women account for 31.3%, Jewish women account for 1.3%, and women with no religious affiliation obtain 23.7% of all abortions. 18% of all abortions are performed on women who identify themselves as “Born again/Evangelical.” [www.agi-usa.org](http://www.agi-usa.org). The 23.7% of abortions obtained by women with no religious affiliation is only slightly larger than the 20% of so of Americans who do not report themselves as being religiously affiliated.
privacy. The 43% of U.S. women who have had abortions do not generally
talk about their experiences or share their stories beyond their spouse or
significant other, a close friend or two, or perhaps a sister. Women who
have abortions—and the parents, friends, partners, and spouses who
accompany them when they get those abortions—do not tend to be “out” of
the closet. Pamela Karlan has observed, “Gays have come out of the closet,
and women who’ve had abortions have gone back into the closet.”117 But in
fact, women who have had abortions have never really been out of the
closet. For a multitude of reasons—the traditional taboos on matters of
sexuality, the professional curtain drawn over abortion consultations and
procedures, the desire of women to make their own choices, and a
continuing stigma associated with having an abortion—this is something we
don’t generally know about people. It is not a known aspect of
relationships in the civic as opposed to the intimate sphere.

Consider in this regard the abortion stories that make it to prime
time. While there are documentaries and collections of personal stories
about abortion, they tend to be informative rather than entertaining—
documentaries instead of feature films (even the feature film Vera Drake is
historical)—and to center on the weightiness of the decision rather than to
simply tell human stories.118 Stories of non-abortion, in contrast, include
the recent comedy Juno about a teenaged girl who gets pregnant and has the
baby, Madonna’s song “Papa Don’t Preach” in a similar vein,119 situation
comedies focused on families with an abundance of children and even
polygamous relationships.120 The idea of a high school or even college
group centered not around positions on abortion but around personal
experiences with abortion boggles the mind. Instead there are websites in
which women can anonymously share their stories.121

Unlike relationships with GLBTIQ people who are “out,” then, our
relationships with women who have had abortions and others, both men and
women, who have supported them, neither join together those who have had

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117 Goodman, supra note 114.
118 There are some exceptions. See, e.g., Party of Five: Before and After (Fox
    television broadcast Feb. 21, 1996); Sex and the City: Coulda, Woulda, Shoulda (HBO
television broadcast Aug. 5, 2001).
119 Even the recent brouhaha about a Family Guy episode that the network declined to
    screen (it was characterized as “hilarious” and “pretty rough”) concerned an episode with
    an antiabortion message. Lisa de Moraes, “Family Guy’s” Look at the Lighter Side of
120 See, e.g., Cheaper by the Dozen (Twentieth Century-Fox Film Corporation 2003);
that experience nor link those who have with those who have not. It is thus
difficult to form a collective identity of those who have chosen abortion—
for whatever reasons and whether they “support” it or not—and to develop
honest and open civic relationships that encompass this key aspect of one’s
life experience, of one’s story. The groups, pro-choice and anti-abortion,
are isolated from each other—not because they do not share members and
experiences but because they cannot acknowledge that sharing. And so
they “talk” almost exclusively via debate and advocacy in the context of
legislation and judicial cases.\footnote{The lack of communicative interactions at the person-to-person level is reinforced
in more formal story- or law-making contexts. Whereas the Defense of Marriage Act
pushes discussion of same-sex marriage into the states, Roe has had a quite different effect.
Roe has provided “cover” for state legislators for the past generation. Pro-choice
legislators can meet “litmus tests” to get pro-life votes knowing that Roe is there to limit
the effects of any state law that is actually passed. Pro-life activists and legislators thus get
a free pass with respect to laws restricting abortion. This dynamic skews the process by
which a law-story that reflects the various viewpoints might emerge. \textit{See, e.g.}, GORNEY,
\textit{supra} note 102, at 438-440.}

From a civic perspective, the dearth of ordinary abortion stories is a
debilitating blow. As Columnist Ellen Goodman observes,

> abortion was legalized on the grounds of the right to
> privacy. And so it remains private. But the more private it is,
> the more we think it only happens to someone else, someone
> "unlike us." The more unlike us she is, the less public
> support there is for the right. Abortion rights slip away as the
> woman slips out of sight.

> Here is the conundrum in the closet. For all the
> lingering opposition to same-sex marriage, being gay is
> losing its stigma. Having an abortion is being more deeply
> stigmatized.\footnote{Goodman, \textit{supra} note 114.}

In this regard, \textit{Roe’s} privacy approach may have been unhelpful and
\textit{Casey’s} shift to a liberty analysis a step toward honesty and the kind of free
flow of storytelling and relationship from which a truly grounded story can emerge.

Not surprisingly, then, the public story about abortion is highly
impersonal. It is about positions: Are you pro-life or pro-choice? The
standard opinion poll questions distance the person polled from the issue.
People are asked if they think abortion should be available in various

\begin{footnotesize}
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\textit{supra} note 102, at 438-440.}
\end{footnotesize}
hypothetical circumstances rather than if they or their daughter, sister, mother, or other female friend or relative were raped, a teenager, a child victim of incest, or carrying a fetus with certain disabilities. Because real abortion stories are so underground, the public story vacuum is filled in other ways, with positional posturing and polling data and legal enactments that are remote from people’s actual life experiences.

Yet there is evidence that people’s different views of abortion are closely tied to their life experiences and world views more generally, specifically their views of women and motherhood. Sociologist Kristin Luker’s interviews with pro-life and pro-choice activists describe two distinct views of the world. Specifically, she concludes that “the abortion debate is so passionate and hard-fought because it is a referendum on the place and meaning of motherhood…[T]wo opposing visions of motherhood are at war.”

To begin with, the profiles of pro-life and pro-choice activists that Luker interviewed demonstrate that their world views reflect concrete life experiences. As compared to the pro-choice activists, the pro-life activists in Luker’s study were less likely to work, had less personal income, were less educated, were more likely to be married and less likely to be divorced, had more children, and tended to have married and had their first child earlier.

124 See, e.g., Gallup’s “Pulse of Democracy”—Abortion (rape, incest, when woman’s life is endangered, when child would be born mentally disabled or with a life-threatening illness, when woman does not want the child for any reason, when woman’s mental or physical health is endangered) (available at www.priestsforlife.org/statistics/08-05-11-gallup-pulse-of-democracy.pdf).
125 LUKER, supra note 75, at 193 (emphasis in original). “[A]ll the previous rounds of the abortion debate in American were merely echoes of the issue as the nineteenth century defined it: a debate about the medical profession’s right to make life-and-death decisions. In contrast, the most recent round of the debate is about something new…the abortion debate has become a debate about women’s contrasting obligations to themselves and others.” Id.
126 Id. at 194-196. “When the social background data are looked at carefully, two profiles emerge. The average pro-choice activist is a forty-four-year-old married woman who grew up in a large metropolitan area and whose father was a college graduate. She was married at age twenty-two, has one or two children, and has had some graduate or professional training beyond the B.A. degree. She is married to a professional man, is herself employed in a regular job, and her family income is more than $50,000 a year. She is not religiously active, feels that religion is not important to her, and attends church very rarely if at all…The average pro-life woman is also a forth-four-year-old married woman who grew up in a large metropolitan area. She married at age seventeen and has three children or more. Her father was a high school graduate, and she has some college education or may have a B.A. degree. She is not employed in the paid labor force and is
Further, in the pro-life view, men and women are “intrinsically different,” “have different roles to play,” and “motherhood—the raising of children and families—is the most fulfilling role that women can have.”\(^{127}\) From this view, abortion is wrong “because it plays havoc with this arrangement of the world.”\(^{128}\) Moreover, “[p]ro-life people as a group subscribe to explicit and well-articulated moral codes,” and “abortion offends the[ir] deepest moral convictions.”\(^ {129}\)

In the pro-choice view, in contrast, “men and women are substantially similar,” “women’s reproductive and family roles [are not] a ‘natural’ niche but [ ] potential barriers to full equality,” and while “women (and men) find children and families a satisfying part of life, [ ] they also think it is foolhardy for women to believe that this is the only life role they will ever have.”\(^ {130}\) In this view, abortion morality is situational and contextual.\(^ {131}\) Overall, unlike pro-life activists, pro-choice activists, “when trying to decide what is the moral thing to do,…ask what is the loving thing to do. The choice of the word loving emphasizes the fact that moral judgment relies upon a subjectively reasoned application of moral principles rather than upon an externally existing moral code.”\(^ {132}\)

Luker’s study suggests further civic insights on the abortion married to a small businessman or a lower-level white-collar worker; her family income is $30,000 a year. She is Catholic (and may have converted), and her religion is one of the most important aspects of her life: she attends church at least once a week and occasionally more often.” \(^{Id.}\) at 197.

Moreover, as with polling data regarding attitudes on gay rights, see note 99 \(^{supra}\), “[p]erhaps the single most dramatic difference between the two groups, however, is in the role that religion plays in their lives. Almost three-quarters of the pro-choice people interviewed said that formal religion was either unimportant or completely irrelevant to them, and their attitudes are correlated with their behavior…Among pro-life people, by contrast, 69 percent said religion was important in their lives, and an additional 22 percent said that it was very important. For pro-life women, too, these attitudes are correlated with behavior.” \(^{Id.}\) at 196-197.

This correlation of abortion views with religion is echoed by other, more recent and widespread polling data. See, e.g., Frank Newport, Religion, Politics Inform Americans’ Views on Abortion, GALLUP POLL NEWS SERVICE, April 3, 2006, http://www.gallup.com/poll/22222/religion-politics-inform-americans-views-abortion.aspx.

\(^{127}\) Luker, \(^{supra}\) note 75, at 159.160.
\(^{128}\) \(^{Id.}\) at 161-162.
\(^{129}\) \(^{Id.}\) at 174.
\(^{130}\) \(^{Id.}\) at 176.
\(^{131}\) \(^{Id.}\) at 184.
\(^{132}\) \(^{Id.}\) at 185 (emhasis in original).
quagmire. Her research suggests, for example, that pro-life women activists
tend to focus on informal activities and to bow out of participation in even
such child-related organizations as PTAs, Scouts, and church activities.\textsuperscript{133}
Not only do activists of differing views not talk to each other, they rarely
occupy the same social spaces so that opportunities for even casual
interaction may be minimal indeed.

Luker’s observations suggest that the issue may not be simply a lack
of abortion stories \textit{per se} but also of motherhood stories more generally—a
category that includes both stories about motherhood and its absence. The
pro-life and pro-choice activists may fall reasonably comfortably into the
two loose groups of “housewives” and “feminists,”\textsuperscript{134} but I venture to
suggest that most American women have a foot in each camp and our
weight shifts over time—hour to hour, day to day, year to year. It’s a
truism to say that the U.S. has not yet come to terms with the role of
women, but that doesn’t mean it isn’t true. If abortion is actually a
particularly sensitive facet of this larger societal question, as the larger story
evolves so will the abortion story.\textsuperscript{135}

Overall, civic engagement around the issue of abortion is seriously
lacking. \textit{Roe}, along with social conventions of privacy, constrains
communicative interactions. Actual life experiences are superseded by
polarizing positional debate that destroys rather than builds bridges. This
debate excludes most citizens, and it focuses on abortion in isolation rather
than on abortion as part of a constellation of issues and world views relating
to motherhood and the role of women in our society. Not only have civic
relationships and webs not been created, attention and energy has been
deflected from the need to create them.

It does appear that to a significant degree the Supreme Court’s
abortion jurisprudence reflects the mores of the country, which endorse a
right to choose abortion generally but also express uneasiness with allowing
its unfettered or indiscriminate exercise.\textsuperscript{136} What the iterative process
engaged in by the Court in abortion jurisprudence since 1973 has not
achieved, however, is not just “staying with the conflict,”\textsuperscript{137} but substantial

\textsuperscript{133} \textit{Id.}, at 204-205 (footnote).
\textsuperscript{134} \textit{Id.} at 193.
\textsuperscript{135} \textit{Cf.} Lisa Belkin, \textit{The Senator Track}, NY TIMES MAGAZINE 9 (Jan. 4, 2009)
(discussing why women’s unpaid work does not “count” as valuable experience in the
working world—using Caroline Kennedy’s potential Senate run as an example).
\textsuperscript{136} \texttt{www.priestsforlife.org/statistics/08-05-11-gallup-pulse-of-democracy.pdf}.
\textsuperscript{137} \textit{See} note 100 \textit{supra} and accompanying text.
Harvey Milk, Jane Roe, and James Brady

progress in working through it. As with same-sex marriage, facilitating communication along with inviting movement rather than reinforcing entrenchment might help move us forward. For both of these, the suppression of stories is harmful.

C. James Brady and Gun Control

The gay rights and pro-choice movements arose in similar sociolegal postures. In both contexts, longstanding statutory prohibitions existed that condemned the behavior sought to be authorized. In both contexts, there was no constitutional mandate for those prohibitions and in fact, once the Supreme Court opened the Pandora’s Box of privacy doctrine, a plausible constitutional justification for striking the prohibitions themselves. Moreover, the social norms that secure anti-gay and anti-abortion sentiment—strictly confined sexuality, home- and motherhood-based roles for women, and traditional religious beliefs associated with both—shifted, losing much of their hold in the social upheaval of the 1960’s and 1970’s.

The gun control movement, in contrast, must contend with the unyielding though oracularly unclear Second Amendment, enshrined in the Constitution since 1791. Notwithstanding the Amendment, the first wave of gun control advocates, predominantly women’s groups, arose in the 1920’s and 1930’s and succeeded in securing passage of the National Firearms Act of 1934 and the Federal Firearms Act of 1938, which introduced national regulation of guns—including such provisions as licenses for dealers and limits on possession of machine guns.

The second wave of gun control advocacy emerged in the 1960’s in response to the assassinations of that decade and a concern on the part of police about the number of guns from states with weak gun laws that were

139 With respect to, for example, the original motivation for the Amendment, compare Don B. Kates, Handgun Prohibition & the Original Meaning of the Second Amendment, 82 Mich. L. Rev. 204 (1983) and Don B. Kates, A Modern Historiography of the Second Amendment, 56 U.C.L.A. L. Rev. 1211 (2009) (private self-defense as a basic individual right) with Mathew S. Nosanchuk, The Embarrassing Interpretation of the Second Amendment, 29 N. Ky. L. Rev. 705 (2002) (arms as a check on a potential national standing army) with Carl T. Bogus, Race, Riots & Guns, 66 S. Cal. L. Rev. 1365 (1993) (Second Amendment as an instrument of slave control and armed militia as mode of suppressing slave insurrections).
involved in urban crime.\textsuperscript{142} Gun control efforts resulted first in the Gun Control Act of 1968\textsuperscript{143} and the creation of the Bureau of Alcohol, Tobacco, and Firearms in 1972.\textsuperscript{144} Over the next forty years, a number of national gun control laws, as well as a few that protect gun rights, have been passed.\textsuperscript{145} The most visible of the gun control measures is likely the so-called “Brady Act,”\textsuperscript{146} which was passed in response to the 1981 assassination attempt on President Ronald Reagan in which his press secretary, James Brady, was seriously injured. Brady, who was left partially paralyzed and essentially unable to speak by the attack, and his wife Sarah were the most visible supporters of the bill. The strategy of the gun control advocates overall has been to focus on the harm caused by guns and to address the issue with national legislation to enable uniform standards.\textsuperscript{147}

In opposition, the NRA has become expert at mobilizing its membership to challenge such statutes and has also succeeded in making support for gun rights a litmus test for political candidates. The NRA has accomplished this by uniting “two distinct American gun cultures: the small town and rural long-gun owners and the gun aficionados for whom firearms are not merely tools but also political-cultural icons.”\textsuperscript{148} The NRA strategy, in contrast to that of the gun control advocates, reflected an awareness of the potential in decentralized lawmaking and blocked that avenue with the enactment of preemptive laws at the state level that render local governments impotent to pass gun regulation.\textsuperscript{149} This strategy took the option of grassroots initiatives and local political efforts away from gun control groups even before Second Amendment judicial rulings to the same effect.\textsuperscript{150}

\textsuperscript{143} Pub. L. No. 90-618, 82 Stat. 1213 (codified as Chapter 44 of Title 18, U.S. Code).
\textsuperscript{144} \url{http://www.infoplease.com/spot/guntime1.html}.
\textsuperscript{146} Brady Handgun Violence Prevention Act (Pub. L. 103-159, 107 Stat. 1536) (imposing background checks and waiting periods on handgun purchases to unlicensed individuals).
\textsuperscript{147} Goss, supra note 142, at 689-692, 696-703. This strategy also reflected a disinclination to undertake the messy and intensive work associated with more decentralized initiatives. Id.
\textsuperscript{148} Id. at 710.
\textsuperscript{149} Id.
\textsuperscript{150} Id.
As with gay rights and abortion, guns have made their way to the Supreme Court. In 2007, the Court held in *District of Columbia v. Heller* that the Second Amendment right is an individual rather than a collective, militia-related one. Based on that conclusion, “the Court struck down the District’s 32-year-old handgun ban...the strictest in the land.” Next, in the 2009-2010 Term, the Court will revisit in *McDonald v. Chicago* the question whether the Second Amendment is incorporated against the states. The last time the Court addressed this question, over a century ago in *United States v. Cruikshank*, incorporation of the Bill of Rights overall lay in the future.

A civic engagement analysis offers insight into why these judicial decisions will not settle the “great gun debate” once and for all. Particularly revealing are the most visible spokesmen—the story-tellers—for each side: Charlton Heston with his Hollywood charisma and pithy slogans for the NRA and James Brady, victim, who not only figuratively but literally cannot articulate his own story, for gun control.

Heston, by the very fact of being a film actor, tapped into a deep well of stories about guns in the United States throughout our history: “From 1903’s Great Train Robbery, through Gary Cooper’s classic performance in High Noon, and to the present day, Wild West figures have always been colloid heroes. Gunmen are celebrated whether they are lawmen or outlaws.” Brady, in contrast, was left with advocacy based on the non-resonant issue of deterrence, a factual argument with little

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554 U.S. ___.


(7th Cir. 2009), *cert. granted* Sept. 30, 2009.

92 U.S. 542 (1875) (holding Second Amendment not incorporated).

www.nrawinningteam.com/hestquot.html. “There's no such thing as a good gun. There's no such thing as a bad gun. A gun in the hands of a bad man is a very dangerous thing. A gun in the hands of a good person is no danger to anyone except the bad guys...”

“I doubt any of you would prefer a rolled up newspaper as a weapon against a dictator or a criminal intruder. Yet in essence, that is what you have asked our loved ones to do, through an ill-contrived and totally naive campaign against the Second Amendment.”; “...Mr. Clinton, sir, America didn't trust you with our health-care system. America didn't trust you with gays in the military. America doesn't trust you with our 21-year-old daughters, and we sure, Lord, don't trust you with our guns...”; and “...You could say that the paparazzi and the tabloids are sort of the 'assault weapons' of the First Amendment. They're ugly, a lot of people don't like them, but they're protected by the First Amendment -- just as 'assault weapons' are protected by the Second Amendment...”


Kahan, *supra* note 140. See also Michael C. Dorf, *Identity Politics and the Second*
emotional resonance.

There is an increasing sense that, to a significant degree, conflicting cultural orientations or identities contribute to the gun debate. Gun rights advocates are disproportionately male, white, rural, Southern and Western, and Protestant. Gun control advocates are disproportionately female, black, urban, Northern and Eastern, and Catholic or Jewish. More deeply, the gun rights cultural world view tends toward the individualistic and hierarchist; the gun control cultural world view tends toward the socially bonded and egalitarian.

If the essential conflict in the gun debate is between a world view of individualism, hierarchy, and competition and one of interconnection, egalitarianism, and cooperation, the issue presented goes to the basic structure of our society, the issue identified by Clark. But if the gun debate, like those over gay rights and abortion, is about identity—about who we as a society are or should be—the conversation is stuck so long as only one side is aware of the need to operate in that dialogic space. Heston’s advocacy evokes a “Wild West” story that speaks to a strong cultural identity. Brady’s, in contrast, offers no story that meshes with a socially bonded or egalitarian world view. The identity associated with


159 Specific values related to the former include “freedom” and “self-reliance,” while those related to the latter include “honor,” “courage,” “obedience to authority,” and “patriotism.” Kahan & Braman, supra note 158, at 1306-1307; Braman & Kahan, supra note 158, at 577-578. The gun control group rejects the possession of guns as “an important symbol of white male status.” Moreover, “[e]very handgun owned in America is an implicit declaration of war on one’s neighbor. When the chips are down, its owner says, he will not trust any other arbiter but force personally wielded.” (sources omitted).

160 Kahan & Braman, supra note 158, at 1306-1307; Braman & Kahan, supra note 158, at 578. The gun control group rejects the possession of guns as “an important symbol of white male status.” Moreover, “[e]very handgun owned in America is an implicit declaration of war on one’s neighbor. When the chips are down, its owner says, he will not trust any other arbiter but force personally wielded.” (sources omitted).

161 See notes 54-59 supra and accompanying text.

162 See Kahan & Braman, supra note 158, at 1318-1323 (“moderate citizens…must…talk through their competing visions of the good life without embarrassment.”) (emphasis in original). In my view, not only moderate but all citizens’ stories should be elicited.

163 In fact, Brady’s value as an advocate may in part have been attributed to the fact that he was was atypical for a gun control advocate.
gun control is thus muted, hardly discernible. Nor is it provided by larger cultural stories, which serve up predominantly competition and violence.\textsuperscript{164}

And if the true issue in the gun debate is the essential structure of our society, it is not surprising that blacks and women are generally on one side of the gun debate while white men tend to be on the other. In the U.S., guns historically have been and are today interconnected with race and gender.\textsuperscript{165} Different groups thus have different stories about guns, their role and their meaning.

As to race, Maxine Burkett observes with regard to the Second Amendment itself:

Originally, the militia was meant to protect white settler communities from Native Americans. The growing number of enslaved Africans, however, soon supplanted the threat of the Native Americans, and the emergent mythology of the gun was nourished by the explicit link between gun ownership and the ability for solitary white slaveholders to resist uprisings by their slaves.\textsuperscript{166}

\textit{Cruikshank}, one of the few Supreme Court cases interpreting the Amendment, is generally for its holding as to the incorporation against the States of the Amendment; what is not so frequently mentioned is that it struck down the convictions of members of a white mob that lynched blacks who had sought, though ineffectually, to resist with firearms.\textsuperscript{167} Today, “the victims of gun violence are disproportionately young black males.”\textsuperscript{168}

As to gender, women were, of course, not included as part of the militia at the time the Second Amendment was framed and ratified, though

\begin{footnotesize}
\begin{itemize}
\item[164] There are counter-stories in popular culture. Take, for example, the song \textit{Desperado} by Eagles Don Henley & Glenn Frye (1973):
\begin{quote}
“…freedom (freedom), well that’s just some people talkin’,
Your prison is walking through the world all alone.”
\end{quote}
Note that, though recorded by both the Eagles and Linda Ronstadt, no version of this song ever made it into the Top 40.
\item[165] And perhaps other kinds of hierarchies as well. \textit{See}, e.g., Presser v. Illinois, 116 U.S. 252 (1886) (Second Amendment did not protect workers who sought to arm themselves to resist private armies of companies in Chicago).
\item[167] 92 U.S. 542 (1875).
\item[168] Herz, supra note 156, at 60, n. 9. (Here is a story that has been well told in the critically acclaimed HBO series \textit{The Wire} (2002-2008).)
\end{itemize}
\end{footnotesize}
the right has been extended to women since. The story of the Amendment, moreover, can be understood as deeply anti-feminist: As Arthur Austin asserts, “Deconstructed, the Second Amendment is a legacy of the patriarchal warrior culture in which women were reified as possessions.” Further, the specific ways in which guns affect women’s lives differ from the ways in which they affect men’s lives, though these differences and their implications have not been fully explored.

Understood as an issue of cultural orientation, the gun debate can be seen as in its very early stages. The personal stories that connect guns and identity for the gun rights supporters exist and have been clearly articulated. The personal stories that connect guns and identity for the gun control advocates, in contrast, have yet to emerge. Such stories, moreover, as with abortion and motherhood stories, will likely need to go beyond gun stories to deeper stories about—perhaps—empowerment, about the essential nature of connection, about both the experiential and practical value of universal dignity and respect. Such stories may probe beneath issues such as racism and sexism to what physicist and renaissance scholar Robert Fuller terms “rankism”—whether or not a society at its core rests on the cultural story that everyone should be treated with dignity.

If the underlying identity issues have to do with the very structure of

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171 Research, for example, shows that women in an abusive relationship are more likely to be the victims of homicide if there is a firearm in the home. See, e.g., Jacquelyn C. Campbell et al, Risk Factors for Femicide in Abusive Relationships: Results from a Multistate Case Control Study, 93 Am. J. of Pub. Health 1089 (2003). But what policy conclusions should be drawn from this are not clear. Compare fact sheet from Family Violence Prevention Fund (available at http://www.endabuse.org/userfiles/file/Children_and_Families/Guns.pdf) (advocating greater gun control) with Larish, supra note 169, at 472 & n. 26 (concluding that women may use guns for self-protection, in which case gun control may harm women).
172 Moreover, the core nature of the cultural identity of individualism and hierarchy can be seen by the vehemence and appeal of associated stories. Clark notes that people feel most threatened when they fear for their identity. CLARK, supra note 24, at 270. If one’s identity is embodied in a hierarchy, being told that the basis for that hierarchy—or the very fact of the hierarchy itself—is invalid is threatening indeed.

society, such stories may extend to the ways in which economic and status inequality stress not only individuals but our society as a whole. Social epidemiologists Richard Wilkinson and Kate Pickett have made the case, for example, that the costs of inequality include damaged social interactions, lower educational performance, lesser mental and physical health, more births to teenagers, greater violence, and higher rates of imprisonment and punishment. The stress and anxiety, the status differences or “rankism” associated with inequality, take a toll. In this view, increased violence in general is a symptom of inequality; guns merely exacerbate the symptom.

The important point here is that inequality affects our overall well-being as a society, not just the well-being of specific individuals, though groups such as women and racial minorities may be at particular risk. Here lies the seed of an affirmative cultural identity and world view: More interconnection and egalitarianism will benefit all of us, even those who think they are well off currently. When we start comparing our whole society to other, less unequal societies, the insight that pulling rank on each other hurts us all may start to take hold.

In sum, gun rights advocates have articulated not only personal stories but also a cultural vision, an identity. To date, however, those who support gun control have not: They have presented their case in purely consequentialist rather than in cultural identity terms. To the extent that their identity is defined, it is negative rather than positive. Until the gun control advocates can tell their own personal stories and articulate their own cultural identity, they are in no position to reach out to the majority of Americans that supports some level of gun control or to those in the gun rights group. This impasse vis-à-vis identity and relationship results in a lack of movement toward broad-based relevance. Particular articulations of law relate to one group or another, but few are relevant to both: The civic body to support such relevance is simply not present.

III. CIVIC ORGANIZING

My work in Arlington led me to civic organizing, an everyday

174 THE SPIRIT LEVEL: WHY MORE EQUAL SOCIETIES ALMOST ALWAYS DO BETTER (Allen Lane 2009).
175 Id. at 31-45.
176 Kahan & Braman, supra note 158, at 1311-1318.
approach to politics that combines a conviction of the importance of the role of citizen with the active approach of community organizing. In civic organizing, citizens within a community intentionally strengthen its civic fabric by creating civic relationships. While civic, as described in Part I, may not be susceptible of precise definition, it can be described generally as comprised of civic experiences, relationships, engagement, and networks. Moreover, all aspects of the civic are capable of being created or intensified by the people within the system. This means that anyone—and everyone—in a community can contribute. Each individual can forge new civic relationships or overlay previously hierarchical relationships with the element of respect. Civic social networks, in fact, can only be created by decentralized interactions of the people within them.

The primary practice of civic organizing is the one-on-one, a technique adapted from community organizing. In community organizing, “[a] one-on-one is a personal conversation with an individual community member to learn about his/her concerns, level of interest and commitment for an issue, and the resources the person has to offer. At the same time, the organizer can introduce the issues of the project/organization, and increase the level of awareness of the issue or problem.” In civic organizing, while the form of the one-on-one is similar and while there may indeed be issues involved, the overarching goal of the one-on-one is the creation of a civic relationship, a relationship of mutual respect (and eventually trust and cooperation) that acknowledges each person’s disparate identity but also acknowledges the value of what each has to offer to the whole. Given the importance of bridging relationships in the creation of civic networks, one-on-ones that cross institutional and other lines of social difference are especially key in civic organizing.

The focus of civic organizing is thus not the establishment of a prescribed set of formal institutional arrangements but individual interactions and the creation of a web-like network. Because of this, there is always improvisation, creativity, and variability. This improvisational quality does not mean that civic organizing is unintentional. As Dorothee Kocks writes of Ella Baker, one of the preeminent organizers of the Civil

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177 Civic organizing is the creation of Peg Michels and Tony Massengale.
178 http://www.marininstitute.org/site/index.php?option=com_content&view=article&id=68:community-organizing-one-on-ones&catid=20:tool-kits&Itemid=23 “One-on-ones should take place in a quiet setting and last 30 minutes to an hour, during which time the organizer and the community member should develop a level of trust with one another. The community member will do most of the talking in a one-on-one, while the organizer asks questions to clarify points and learn more detail.” Id.
Rights Movement, “do not make the mistake of confusing improvisation with lack of intent, training or careful discipline... The difference is that empowerment is the sought-after result, not any particular use of that power.”

There is an awareness, in civic organizing, that innovation arises from what Keith Sawyer refers to as “group genius”—the interplay of people’s ideas, perspectives, and stories. Enabling truly meaningful contribution from people means providing space for their stories in the place where innovation happens. In a one-on-one, therefore, a civic organizer intentionally offers respect to create a civic relationship that acknowledges identity and to elicit a contribution that will enhance the good of the whole. Our social psychologists have often focused on social situations that elicit our worst. But social contexts and interactions can also elicit our best. Civic organizing recognizes the potential of the latter.

Civic organizing is the doing of civic experience, civic relationships, civic engagement, and civic networks. They are all nouns; it is a verb. As Kocks observes, again with regard to Ella Baker, “[i]f community were a verb, perhaps it would be to organize...[t]he habits of language encourage us to favor snapshots over the blur of motion. The habits of language encourage us to turn communities, towns, cities into proper nouns.” Similarly, as Mary Parker Follett observed: “Community is a process.” Civic organizing thus calls us to be active; it directs our attention to what we as citizens do.

The examples of gay rights, abortion, and guns discussed in Part II together highlight three aspects of civic organizing. First, civic organizing

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179 P. 174
181 URIE BRONFENBRENNER, THE ECOLOGY OF HUMAN DEVELOPMENT 86-98 (Harvard Univ. Press 1979) (discussing Stanley Milgram’s “Obedience to Authority” and Philip Zimbardo’s “Stanford Prison” experiments).
182 Id., at 98-103 (discussing how positive as well as negative behavior can be elicited by varying roles and contexts). Cf. ELINOR OSTROM, GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION (Cambridge Univ. Press 1990) (presenting empirical data showing that cooperation can emerge to manage common-pool resources when relationships exist among those who use and manage them).
183 KOCKS, supra note 2, at 164 (emphasis in original). Kocks continues: “...remember that culture is also a verb....Ella Baker cultured community. Forcing an active use of the word culture requires that you abandon a current assumption that culture is a thing or collection of things...Try to imagine culture, instead, as a form of action, as a choice of movement toward or away; as the daily election to participate.” Id. at 164-165 (emphasis in original).
applies in all the places of our lives. Second, civic organizing interacts in
important ways with the evolution of stable law and social norms. And,
third, civic organizing performs an essential function in eliciting people’s
stories to discover what actually underlies volatile social and legal conflicts.

First and foremost, civic organizing tells us that because of the
decentralized character of webs, creating the civic is something that only we
can do. If we act as citizens toward each other, a civic system emerges: Our
interactions, our relationships are what give rise to the civic. As
Lawrence-Lightfoot observes, “Respect breeds respect…One loaf becomes
many.” And we can be civic organizers not just in “public” life but at
work, at home, and elsewhere. The civic can bubble up in every
conceivable social and institutional context. Civic networks extend into all
of these places. So civic work isn’t just about government and people’s
relations with government. The civic encompasses interactions within
government, outside of government, and between those who are inside and
despite who are without. Coming out, for example, takes place in many
different contexts—friendships, families, schools, workplaces, faith
communities.

And so we see that civic organizing is not something that we do
once. Existing relationships can always be sustained, deepened. New
relationships can be created. People who move into positions of authority

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186 LAWRENCE-LIGHTFOOT, supra note 20, at 10.
187 “Civic society,” then, is quite different from “civil society,” which generally
denotes those institutions that are neither government nor business and sees them as apart
from both. See, e.g., Iris J. Goodwin, Donor Standing to Enforce Charitable Gifts: Civil
Society vs. Donor Empowerment, 58 VAND. L. REV. 1093, 1102 (2005) (civil society
includes activities such as “attending church, attending synagogue, contributing to a
charity, volunteering at a hospital or in a tutoring service, serving in the parent-teacher
association, or taking part in a volunteer fire department…activities that neither involve the
government or commerce”). Mostly, it encompasses non-profit organizations—sometimes
including faith communities and more informal institutions such as families, but frequently
not. Id. From a civic point of view, however, the legal form of an organization is
important only insofar as it affects the relationship of actual people, and civic relationships
can extend across institutional lines and within various types of institutions.

Because of the historical theoretical construct (story) that divides the public from
the private, we are unused to envisioning interactions in the economic or domestic spheres
as potentially civic. Even at a recent conference I attended on deliberative democracy, for
example, there was a divergence of views as to whether deliberative democracy was
appropriate only in “public” decision-making or also in venues such as institutions of
higher education. “No Better Time” Conference Plenary Discussion, Durham NH (July 11,
2009).
become distanced and need to be reclaimed. Civic work is continual. It is a struggle—not in the pejorative sense of something that we do not care to do or are not strong enough for but in a celebratory sense of something that we care deeply about and are able to do.

In this endeavor, there are many avenues beyond one-on-ones for the story-telling and story-listening that go hand in hand with civic organizing. Films, magazines, church services, participatory budgeting by cities, themed schools, business practices that encourage team-building, and soccer leagues all provide opportunities for civic story-building because they all provide venues for relationship creation and communication. The principles and values that guide people are hardly ever related explicitly to civics in its traditional, constrained sense but simply to a sense of what it means to be a good neighbor, parent, public official, or employer.

But we should not exempt formal law-makers from the responsibility for civic organizing. They are in a particularly apt position to carve out spaces for stories—or to allow citizens to be barred from such spaces. *Romer v. Evans* can be seen as the Supreme Court ensuring space for stories in the local government arena; the Defense of Marriage Act can be seen as Congress providing such space at the state level. *Roe* rendered pro-choice stories largely unnecessary. State legislators who use *Roe* as “cover” by voting pro-life against their own convictions exacerbate this effect. The Second Amendment places limits on the discussion of gun rights and gun control; *Heller* places the Supreme Court squarely in the role of umpire of sides rather than facilitator of stories. State preemption of local gun laws dampens the ability of people in different locales with diverse experiences to articulate their own collective stories about firearms and the world views that animate them.

Second, to be stable, to be accepted as a widespread social norm, law must resonate with those to whom it speaks. Formal law is more likely to resonate if it emerges from a process in which a broad range of community members had a voice.\(^\text{188}\) And with both voice and resonance, evolution of the law will be hampered if there is deep division within the body politic. Civic organizing allows such a division to be bridged so as to enable sufficient adjustment of social norms for new, stable law to emerge.

This happened between *Brown v. Board of Education* in 1954 and the Civil Rights and Voting Rights Acts in 1964 and 1965.\(^\text{189}\) The

\(^{188}\) Strand, *supra* note 6, at 642.

\(^{189}\) Id. at 615-617, discussing Michael J. Klareman, From Jim Crow To Civil
organizing of the Civil Rights Movement created enough relationships between Whites and Blacks, between Northerners and Southerners to allow broad-based movement forward. The gay rights movement, through coming out, grounded a similar shift between Bowers in 1986 and Lawrence in 2003.

Abortion stands in sharp contrast. The Supreme Court articulated Roe as law in 1973. But there has been little civic organizing to heal the division in the population with respect to abortion that became apparent after Roe. There have, instead, been massive resources of time and energy invested in organizing like with like, which has had the effect of hardening the divide. Not only has a space not been created for personal stories, much of the rhetoric has been to the effect that other stories are illegitimate and should not be listened to.

Third, when law and personal stories are disconnected, law runs the risk of missing the point entirely. The result is law that doesn’t get to the heart of the matter, that in truth speaks to neither “side” of a troubling social issue. When law emerges from a process in which a broad range of stories are woven together, in contrast, it is more likely to tap into the “real” stories that underlie any given issue.

Luker’s work on abortion indicates that activists’ views are tied up in their views of motherhood. Braman and Kahan’s work on guns indicates that people’s views on firearms are related to their world view more deeply: whether they see the world as a hierarchy of individuals or as an egalitarian, interconnected web. Recognizing this doesn’t necessarily mean that laws on abortion or on guns shouldn’t be passed in the short term. It does call for recognizing that law in these areas is part of an ongoing civic conversation. And it calls us to civic organizing to draw out those deeper stories, to face the underlying questions they pose about who we are as a society and who we want to be.

All of this is slow and gradual work. Systems change more slowly than do the individuals within them. A decade or two is a remarkably short

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190 This is not the same as saying that the Court should not have decided Roe as it did; just as it is not the same as saying that the Court should not have decided Brown v. Board of Education as it did. The point, rather, is that Roe, like Brown, is not sufficient on its own. Ella Baker described the NAACP as an organization that was “too wrapped up in legalism;” her point was not that legalism isn’t a valid strategy but that legalism by itself isn’t enough. Fundi: The Story of Ella Baker (1981).
time. This is particularly true when the issues presented implicate questions that are integral to people’s identities. Nor are there any guarantees of eventual agreement. A genius of our system of government is that it allows us to agree on how we will disagree and on how we will proceed in the face of seemingly intractable conflict. Nonetheless, there is peril in allowing the conflict to harden, in not building the bridging relationships that link groups that disagree strongly and deeply. In particular, there is peril in donning the mantle of failing to be willing to listen to the stories of others who disagree. In contrast, there is opportunity in civic organizing, in story-telling and story-listening: As Roslyn Bresnick-Perry has observed, “It’s hard to hate anyone whose story you know.”

IV. CONCLUSION

A final question is how to begin to raise awareness of the value of civic organizing and stories in working through such conflicts. One obvious way is to tell stories about civic organizers. Our society abounds with stories of charismatic orators, skilled courtroom lawyers, statesmen who fill exalted public positions. Perhaps it is time to add to this repertoire stories about civic organizing—to retell some of our deeply grounded cultural stories as civic organizing stories and to acknowledge as such the civic organizers who have played key roles in our history.

A counter-story of the events that led to an independent United States, for example, might highlight the role of Benjamin Franklin as a civic organizer. As biographer Walter Isaacson sums him up: “[T]he essence of Franklin is that he was a civic-minded man.” In the 1730’s, long before the events of the founding of the U.S., he was active on the local level, helping “to launch a variety of community organizations, including a lending library, a fire brigade, and night watchmen corps, and later a hospital, militia, and college.” Decades later, he was the only person to contribute to all of the key founding transformations: The Albany Plan of Union, the Declaration of Independence, the treaty of alliance with France, the peace treaty with England, and the Constitution. Franklin got things done by helping others to get things done. He organized groups, he brought people together, he prevailed upon George Washington to lend his credibility to the endeavor of the Constitutional Convention in Philadelphia.

192 BENJAMIN FRANKLIN: AN AMERICAN LIFE 102 (Simon & Schuster 2003).
193 Id., at 102-106.
194 Id. at 158-162, 310-311, 344-349, 397-398, 444-460.
And yet the story of his political work fades into the background with wordsmith Thomas Jefferson, military leader George Washington, and even legal draftsman James Madison in the foreground.

This phenomenon is typical of organizers. As Robert Moses, one of the key organizers of the Civil Rights Movement observes, “one of the characteristics of organizers is that their work emerges, and they themselves subside.”\textsuperscript{195} But if our story is to be a civic one, we must begin to look not only to the role of ordinary people but to the role of the organizers who help bring us into relationship with ourselves, with others, with those who are in positions of authority.

Another example, one that I use with my students, is Ella Baker. Most of my students, in their mid-20’s, know of the visionary speeches of Dr. Martin Luther King, Jr., and of the brilliant law-craft for the NAACP of later-Justice Thurgood Marshall. But few know of the decades-long organizing career of Ella Baker, who played a key role in the Civil Rights Movement in successive organizations: from the NAACP in the 1940’s to the Southern Christian Leadership Conference (SCLC) in the 1950’s to the Student Nonviolent Coordinating Committee (SNCC) and the Mississippi Freedom Democratic Party in the 1960’s.\textsuperscript{196} When we map her network in class, moreover, we see how her work connected to the labor movement,\textsuperscript{197} the student movement of the 1960’s,\textsuperscript{198} the gay rights movement,\textsuperscript{199} the women’s movement,\textsuperscript{200} and the move for voting rights in the District of


\textsuperscript{197}For example, E.D. Nixon, one of the leaders of the Montgomery Bus Boycott, had been a leader in the Montgomery branch of the Brotherhood of Sleeping Car Porters. Another connection is by way of Baker’s time at the Highlander Folk Center, which also served as a base of training and support for participants in the labor movement.

\textsuperscript{198}Casey Hayden, wife of Tom Hayden, was a member of SNCC. Tom Hayden, along with Robert Alan Haber, was the author of the Port Huron Statement of 1962, the founding document of Students for a Democratic Society.

\textsuperscript{199}Bayard Rustin, who worked closely with Baker to support the Montgomery Bus Boycott and later organized the March on Washington in 1963 (and who was Martin Luther King, Jr.,’s primary advisor on nonviolence), was himself gay and a link to the later gay rights movement.

\textsuperscript{200}Casey Hayden and Mary King raised issues of sex and gender equity within SNCC
Columbia—to name a few. If our story is one of leaders in the traditional sense, we overlook the work of Ella Baker, just as we minimize the role of Benjamin Franklin—which leads to discounting our own role.

The more we tell the stories of people like Benjamin Franklin and Ella Baker as civic organizers—and of the ordinary people they worked with who were the backbone of democracy in the United States and the Civil Rights Movement—the more awareness of the role of what we ourselves can do will grow.

and authored a paper that affected early feminism. Jo Freeman, a participant in Freedom Summer, brought civil rights ideas to feminism as well as to the Free Speech Movement in Berkeley.

Delegte Eleanor Holmes Norton and former mayor and current City Council Member Marion Barry in Washington DC were both early SNCC members.