Harvey Milk, Jane Roe, and James Brady: The Contribution of the Civic to the Evolution of Law

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Abstract

The lack of civility in political discourse and asserted negative effects of that lack of civility have recently drawn an increasing amount of popular attention. At the same time, legal scholars have characterized law—especially constitutional law articulated by the Supreme Court—as the result of a dialogue between the Court and the people. This article links these discussions with a unified explanation of how civic discourse among ordinary citizens in the form of personal story-telling and story-listening grounds stable and sustainable law—especially law in areas of evolving social norms.

The article uses three contemporary sociolegal movements—gay rights, abortion rights, and gun control—to describe the civic conditions that underlie stable law-stories and in particular the social dynamics that

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lead to legal change. Civic organizing emerges from this analysis as a
tangible action available to all citizens to build civic society and strengthen
civic discourse.

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In an earlier article, I characterized law as a collective myth or story—a social construction that arises from and is reflected back to the community it governs. Law arises from our personal stories and experiences; it then affects 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.

A civic law-story is one that emerges when citizens have voice and that resonates with members of the society it governs. The more inclusive the group of citizens who have voice and the deeper and wider the resonance, the more civic the law-story. Polarization and balkanization, in contrast, undermine the civic character of law because they interfere with both voice and resonance.

Voice and resonance are characterized by the presence of relationship, identity, and relevance. Relationship describes collaborative communication with others who are both alike and not-alike. Relationship allows for the emergence of law through the sharing of individual stories and the weaving of those threads into a coherent pattern.

Identity recognizes the importance of group membership or affinity to our perceptions of who we are and to our ability to enter into relationship with others. Who we are is socially constructed and comprised of the

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1 DOROTHEE E. KOCKS, DREAM A LITTLE: LAND AND SOCIAL JUSTICE IN MODERN AMERICA 175 (Univ. of Calif. Press 2000).
2 Palma Joy Strand, Law as Story: A Civic Concept of Law (with Constitutional Illustrations), 18 SO.CAL.INTERDISC.L.J. 603 (2009). See also Jerry L. Anderson, Protection for the Powerless: Political Economy History Lessons for the Animal Welfare Movement, 4 STAN. J. ANIMAL L. & POL’Y 1 (2011) (applying this understanding of law and social movements to the historical genesis of protection of child labor during industrialization and the current animal welfare movement related to factory farming) (available online at http://sjalp.stanford.edu/. Cf. ROBERT C. ELICKSON, 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 not given explicit anointment as law, can also emerge in this manner).
3 Strand, note 2, aupra, at 631-647.
various roles we occupy. Each individual seeks to articulate a multi-faceted self that is defined and validated by being situated within multiple, egalitarian social groups.

Relevance explicitly values meaningful connection between ordinary citizens and those who speak with authority for the group. Relevance offers individuals the opportunity 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.

A civic concept 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 shaping of personal stories into shared law-stories. In this view, law creation and implementation extend beyond the formalized processes of legislation, litigation, adjudication, and administrative decision-making and encompass processes through which citizens become aware of and articulate their own stories, share those stories with and hear and understand the stories of others, and see those stories woven into the fabric of the formal processes of law.

In this article, I seek to define the conditions associated with a civic law-story and to begin to understand how the presence of those conditions enables the emergence of a broad-based legal consensus. To this end, I compare the dynamics of three contemporary sociolegal movements—gay rights, abortion rights, and gun control/gun rights—with a working definition of civic conditions.

This exploration begins with the assumption that legal change goes hand-in-hand with social change, but this is nothing new. Others have noted that law results from social movements and reflects shifting norms and that norms are in turn affected by law. This discussion, however, has generally not focused on the actual processes through which citizen interactions lead to legal change or on how social dynamics correlate to legal outcomes. My primary interest, in contrast, relates specifically to the kind of civic engagement from which changes in law associated with widespread and stable changes in social norms emerge.

In Part I, I offer a brief overview of the gay rights, abortion rights, and gun control movements and the law that has (and has not) emerged from those movements. I then map these movements onto the civic law-story Relationship-Identity-Relevance framework and note patterns in the civic conditions that are associated with sociolegal change. I pay special attention to personal stories and how they connect to collective law-stories.

In Part II, I describe the civic conditions that characterize the Relationship-Identity-Relevance framework. This description draws from two primary categories of sources. The first consists of actual experiences of public life: my own those of others. The second category is comprised of perspectives offered by a variety of disciplines—sociology, biology, conflict resolution, political philosophy, network and systems theory.

Finally, in Part III, I apply the civic conditions for broad-based sustainable social change from Part II to Part I’s discussion of social movements and legal changes. I view the three contemporary sociolegal shifts from a civic perspective and suggest avenues for moving forward. In particular, I prescribe civic organizing as a way to enhance the civic conditions that ground the evolution of law.

I. Harvey, Jane, and James

Gay rights, abortion rights, and gun control in their current form arose from the crucible of the 1960’s and 1970’s, though all have roots that extend much further back. All three of these movements illuminate the link between the civic on the one hand and stable legal doctrine and accepted social norms on the other. All three map onto the Relationship-Identity-Relevance framework. All three demonstrate the importance of the personal stories of ordinary people.

A. Harvey Milk and “Coming Out”

While sodomy was criminalized from the very earliest days of the nation, it wasn’t until the late 1800’s in Europe that the idea of homosexuality—relating to a person rather than to an act—arose. The term “homosexuality” was coined in Germany in 1869; the first gay liberation organization was formed there in 1897, and it urged the concept and importance of “coming out” in the 1910’s. After a period of quietude during the World Wars, a “second wave”

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gay movement arose in the United States in the 1950’s beginning with the founding of two affinity groups: the Mattachine Society for gay men and the Daughters of Bilitis for lesbians. Though the next couple of decades saw significant political ferment, it was in 1969 that the Stonewall riots in New York helped to catalyze subtler changes from the intervening years into the gay liberation movement.

Over the next decade, the political campaigns, election, and ultimate assassination of Supervisor Harvey Milk in San Francisco represented the vanguard of the movement and symbolized the arrival of gay life and gay rights on the national political scene. After three unsuccessful runs for public office, Harvey Milk was elected in 1977 to the Board of Supervisors. “He was the first openly gay candidate to attain elected office in the city…[and] only the second acknowledged homosexual in the nation…to be elected to any prominent public office.”

Once elected, Milk introduced, championed, and succeeded in getting passed a strong city ordinance prohibiting discrimination against gays and lesbians. In November 1978, however, less than a year after he took office, Milk was assassinated along with Mayor George Moscone by former Supervisor Dan White, who had supplied the only vote in opposition to the ordinance.

In Harvey Milk’s political will, which he prepared in case he was assassinated, 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

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8 Id. at 1 (“second wave” akin to feminism); id. at 81 (movement in hiatus from 1930’s to 1950’s); ERIC MARCUS, MAKING HISTORY: THE STRUGGLE FOR GAY AND LESBIAN EQUAL RIGHTS 1945-1990 26-36 (“The Organizer: Chuck Rowland”), 70-80 (“The Teacher: Billie Tallmij”) (Harper Perennial 1992); D’EMILIO & FREEDMAN, note 6 supra, at 320.

9 The Stonewall Inn was a gay bar where, during a standard police raid on June 27, 1969, the patrons “refused to behave according to script” [allow the arrest, go quietly, and be bailed out later] and resisted with violence. The resulting riots lasted throughout the weekend. D’EMILIO & FREEDMAN, note 6 supra, at 318-319.

10 DUDLEY CLENDINEN & ADAM NAGOURNEY, OUT FOR GOOD: THE STRUGGLE TO BUILD A GAY RIGHTS MOVEMENT IN AMERICA 321-322 (Simon & Schuster 1999).


12 Id. at 199, 256-272. Dan White had resigned his position just days before the assassination and was seeking reappointment at the time he killed Milk and Moscone. The Times of Harvey Milk (1984). White was tried for murder but was convicted only of two counts of voluntary manslaughter, the sentence for which was only seven years and eight months. “With time off for good behavior, White would probably be out of jail in less than five years.” SHILTS, note 11 supra, at 306, 324-325.
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 could imagine. I urge them to do that, urge them to come out. Only that way will we start to achieve our rights.  

Harvey Milk was “out” and living in what may have been 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 those who do remain 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 even before Milk’s death, is gays and lesbians coming out to each other, which facilitates the creation of a gay and lesbian (and later GLBTIQ) identity. Over time, coming out to straight people—which transforms existing gay-straight relationships from those in which homosexuality is hidden to those in which it is overt—has also become an increasingly common part of the gay experience and even something of a rite of passage. In the 1980’s, the AIDS epidemic accelerated this process by “outing” gays, particularly gay men, involuntarily.

San Francisco was joined by other localities that passed gay rights ordinances in the late 1970’s, but the gay rights movement did not proceed unchallenged. A successful move led by Anita Bryant to vote down a new gay rights ordinance in Miami and an unsuccessful referendum led by John Briggs to remove gay teachers from public schools in California were both examples of backlash reactions to the ascent of gay rights.

The issue of gay rights was joined in the legal as well as the political context, and it eventually made its way to the Supreme Court. In 1986 in

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13 SHILTS, NOTE 11 supra, at 374 (emphasis added). This admonition echoed statements Milk had consistently made in speeches prior to his death. See, e.g., CLENDINEN & NAGOURNEY, note 10 supra, at 390 (Harvey Milk on the occasion of the defeat of the Briggs initiative: “‘The next step, the more important one, is for all those gays who did not come out for whatever reason to do so now…Every gay person MUST come out.’”).

14 Gay, Lesbian, Bisexual, Transgendered, Intersexed, and Queer (or Questioning).


16 See CLENDINEN & NAGOURNEY, note 10 supra, at 322 (by the fall of 1977, more than 40 localities around the country had enacted gay rights ordinances).

17 Id., at 291-311, 377-390.
Bowers v. Hardwick, the Court held that there was no affirmative constitutional protection for homosexual behavior.\(^{18}\) Ten years later, in Romer v. Evans, the Court signaled a level of receptivity to gay and lesbian issues, holding that avenues of local political action could not be foreclosed to them alone.\(^{19}\) Then in 2003, the Court held in Lawrence v. Texas\(^{20}\) that homosexual relationships are constitutionally protected, overruling Bowers less than twenty years after it had been decided.

The Lawrence holding has been largely accepted, though there is still a substantial minority of Americans who oppose gay rights.\(^{21}\) And, in 2010, Lawrence’s judical affirmation of gay and lesbian rights and identity was joined by legislative affirmation in the form of the repeal of the controversial “Don’t Ask, Don’t Tell” policy for members of the U.S. military.\(^{22}\)

Controversy has now shifted to the question of same-sex marriage. Congress enacted the Defense of Marriage Act (DOMA) in 1996, which in effect declared that the Full Faith and Credit Clause of the Constitution does not apply—that states need not recognize same-sex marriages performed in other states.\(^{23}\) Pursuant to DOMA, the majority of states enacted statutory or state constitutional provisions barring same-sex marriage—or both.\(^{24}\) A few provided for same-sex partnerships legislatively,\(^{25}\) some have gone further and endorsed same-sex marriage—judicially,\(^{26}\) legislatively,\(^{27}\) or by

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\(^{18}\) 478 U.S. 186.

\(^{19}\) 517 U.S. 620 (1996).

\(^{20}\) 539 U.S. 558.


\(^{22}\) www.whitehouse.gov/blog/2010/12/22/president-signs-repeal-don't-ask-don't-tell-out-many-we-are-one.


\(^{24}\) "Thirty-seven states currently have statutory Defense of Marriage Acts...Thirty states have defined marriage in their constitutions." National Conference of State Legislatures (Sept. 2010) (available at www.ncsl.org/default.aspx?tabid=16430).

\(^{25}\) Vermont, Connecticut, New Jersey, and New Hampshire have provided for civil unions; California, Nevada, Colorado, Washington, D.C., Hawaii, Maine, New Jersey, Oregon, Wisconsin, and Washington have provided for domestic partnerships. Id.

\(^{26}\) Varnum v. Brien, 763 N.W. 2d 862 (Iowa 2009); Kerrigan and Mock v. Connecticut Dept. of Public Health, 957 A.2d 407 (Conn. 2008); 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. 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
executive action. 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, can only arise when the underlying relationships are acknowledged and accepted.

Moreover, the story about gays and lesbians in our society has undergone a sea change, with the GLBTIQ identity migrating from marginal to mainstream. Movies such as Brokeback Mountain and A Single Man, TV shows such as Will and Grace and Modern Family, and songs such as “I Kissed a Girl” embody this. It is now common for high schools and colleges to 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 explicitly welcome openly GLBTIQ individuals and couples.

All of this rests on a degree of “outness” that was inconceivable not only forty but twenty years ago. Underlying the sea change in attitudes toward gay rights and applicable law over the past generation is a vast decentralized set of interactive story-telling—story-telling not so much of individuals to an undefined “public” but story-telling of one person to another. Our collective story has changed because so many of our individual stories have changed, and our individual stories have changed because we have heard other people’s stories, and this has occurred 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 members of the larger, generally straight society. Coming out, seen this way, is not simply a personal therapeutic revelation but an act of organizing that collectively has profound civic consequences.

appealed, and Proposition 8 was upheld. Strauss v. Horton, 46 Cal. 4th 364 (2009). Same-sex marriages performed before Proposition 8 was passed, however, remained valid. For further events associated with Proposition 8 see note 160 infra.


Rhode Island, New York, and Maryland recognize same-sex marriages from other states. Id.

An important difference between gay rights and same-sex marriage is that the posture of gay rights is non-interference by the society at large, while same-sex marriage seeks affirmative sanction.

This insight came originally from my friend—and athlete, writer, and speaker—Mariah Burton Nelson.
Coming out, moreover, is a textbook example of gays and lesbians telling their own personal stories to create a strong collective identity, which provides a springboard for them to reach out and create relationships—one by one with parents, siblings, friends, and other loved ones—with the broader community. The effect is profound: When our neighbors, sons and daughters, nieces and nephews, sisters and brothers, 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” becomes a part, though still a distinctive part, of the larger civic body. These interactions, grounded in group identity, then enable the collaborative emergence of law that reflects GLBTIQ stories, law that is relevant to their lives. This law-story has evolved to the point of broad acceptance of GLBTIQ people but not of same-sex marriage.

B. Jane Roe and Privacy.

Compare the trajectory of abortion rights and abortion law. At common law, life was generally held to begin at “quickening”—the point at which a woman first felt a fetus move during pregnancy. Laws regulating abortion in the early part of the 19th century retained that approach and focused on “protect[ing] women from unwanted abortion.” It was later, in the second half of that century, that states enacted statutes rejecting the quickening doctrine and significantly restricting access to abortion. In the twentieth century, though criminalized, “various sources suggest that [abortion] was certainly widespread … By the early 1960s, police experts called [it] the third-largest criminal activity in the country, surpassed only by narcotics and gambling.”

Efforts to remove these restrictions on abortion and to make it legal began mounting in the 1950’s and gained traction with the thalidomide debacle and highly publicized pregnancy of Sherri Finkbine in 1962. 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

32 D’EMILIO & FREEDMAN, note 6 supra, at 65-66.
33 Id., at 66, 147.
34 Id. at 147. See also KRISTIN LUKER, ABORTION AND THE POLITICS OF MOTHERHOOD 14 (Univ. of Calif. Press 1984).
35 D’EMILIO & FREEDMAN, note 6 supra, at 253.
36 See CYNTHIA GORNEY, ARTICLES OF FAITH: A FRONTLINE HISTORY OF THE ABORTION WARS 49-51 (Simon & Schuster 1988). Doctors, especially those with experience treating women who had had illegal abortions, participated in these efforts. See, e.g., id. at 16-17, 25-27, 217-218, 302-303.
Then in 1973 the Supreme Court in *Roe v. Wade* declared a constitutional right to abortion under a privacy rubric, articulating 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 from being used for abortions and declared illegal later-term abortions performed by intact dilation and extraction. States, especially certain states, have enacted various restrictions on and regulations of the basic *Roe* right, many of which have been reviewed by the Supreme Court: Some restrictions have been endorsed as consistent with *Roe*; others have been rejected. The essential holding of *Roe* itself, however, has held, though

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37 Id., at 38-94.
38 410 U.S. 113 (1973).
39 See Post & Siegel, supra note 4, at 412 (backlash against the liberalizing state statutes was already underway when *Roe* was decided). For additional historical context for *Roe*, see LINDA GREENHOUSE & REVA SIEGEL, BEFORE ROE V. WADE: VOICES THAT SHAPED THE ABORTION DEBATE BEFORE THE SUPREME COURT’S RULING (Kaplan Books 2010).
40 Perhaps the predominant executive policy-making action on abortion, which has tracked party lines since its inception, centers on what is known as the “Mexico City Policy.” “On January 23, 2009, President Obama rescinded the Mexico City Policy. The Mexico City Policy had required foreign nongovernmental organizations to certify that they will not perform or actively promote abortion as a method of family planning using funds generated from any source as a condition for receiving USAID family planning assistance. The Mexico City Policy had been in effect [during the Reagan and Bush I administrations] from 1985 until 1993, when it was rescinded by President Clinton. President Bush reinstated the policy in 2001, and it had remained in place since that time. In rescinding the policy, President Obama directed USAID to immediately waive the policy’s conditions in any current grants; notify current grantees, as soon as possible, that these conditions have been waived; and immediately cease imposing these conditions in any future grants.” [http://www.usaid.gov/our_work/global_health/pop/restrictions.html#mcp](http://www.usaid.gov/our_work/global_health/pop/restrictions.html#mcp)
43 GORNEY, supra note 36, at 438-440 (discussing Missouri and Pennsylvania as especially active in producing right-to-life legislation).
the Court shifted from a privacy-based trimester analysis to a liberty-based viability approach in 1992 in *Planned Parenthood of Southeastern Pennsylvania v. Casey.*

*Roe* has had enormous practical effect: Though estimates vary, at least one study concludes that “roughly one-third of [American] women will have an abortion during their reproductive lifetime.” This number (very roughly 15% of the population as a whole) is half again as great as the estimated 10% of the population that is GLBTIQ. And, though opposition to abortion tends to follow religious affiliation, the best data indicate that women of all religions exercise the right. Abortion permeates the population.

Yet abortion continues to be shrouded in silence, secrecy, and privacy. The one-third of U.S. women who have 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.”

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50 According to one survey, women identifying themselves as Protestants obtain 37.4% of all abortions in the U.S.; Catholic women 31.3%, Jewish women 1.3%, and women with no religious affiliation 23.7%. 18% of all abortions are performed on women who identify themselves as “Born again/Evangelical.” Stanley Henshaw &Kathryn Kost, “Abortion Patients in 1994-1995: Characteristics and Contraceptive Use,” in Family Planning Perspectives 28: 140, 142 (1996) (available at www.guttmacher.org/pubs/journals/2814096.html). In one 2007 survey, by comparison, 51.3% of Americans identified themselves as Protestant, 23.9 % as Catholic, 1.7% as Jewish, and 16.1% as unaffiliated. 26.3% identified themselves as members of Evangelical churches. Pew Forum on Religion and Public Life, Summary of Key Findings: U.S. Religious Landscape Survey 1 (2007) (available at http://religions.pewforum.org/reports).

51 Goodman, note 47 supra.
women who have abortions have never really been out of the closet. For a multitude of reasons—traditional taboos on matters of sexuality, the professional curtain drawn over abortion consultations and procedures, the desire of women to make their own choices, a continuing stigma associated with having an abortion, and violence against abortion providers—these are life experiences that are not widely shared.

Noticeably missing from the abortion history, then, are counterparts to Harvey Milk and coming out. The plaintiff in Roe did not disclose even her name until a decade after the decision. 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.

Consider also, in contrast to GLBTIQ stories, 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.

Stories of non-abortion, in contrast, include the comedy Juno about a teenaged girl who gets pregnant.

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52 Norma McCorvey did not reveal her name until 1984.
53 A 2010 cover story in the New York Times Magazine and a response to that story are emblematic of this silencing. The original story featured the Family Planning Fellowship, an initiative funded primarily by a private foundation affiliated with billionaire Warren Buffett’s family that has created programs at medical schools that “train[ ] doctors to be expert in abortion and contraception.” Emily Bazelon, “The New Abortion Providers” 30, 33 (July 18, 2010). By training family medicine and ob-gyn doctors to provide these services as part of overall patient care, the Fellowship seeks to integrate abortion into everyday medical practice. On the cover of the magazine is a photograph of one of these doctors.

Two weeks later, the first reader response letter read as follows:

The photo of Dr. Emily Godfrey on the cover gave me goose bumps. I applaud her willingness to stand up and be seen as an advocate and a physician, meeting her patients’ needs as they arise. My ob-gyn (along with other doctors in her large practice) has provided care for me through cervical surgery, the birth of my two children and an abortion after my second child was born. I expect she will guide me through whatever else life may bring, because she is my doctor when I need her and not when it suits her. NY TIMES MAGAZINE (August 1, 2010).

Though the writer shared the life experience of abortion, the fact that she signed the letter, “NAME WITHHELD, Baltimore,” epitomizes the continuing pervasiveness of privacy with respect to abortion and the reticence of people to share their abortion stories.

54 As with individual personal stories, there are 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).
and has the baby, Madonna’s song “Papa Don’t Preach” in a similar vein,\textsuperscript{55} situation comedies focused on families with an abundance of children and even polygamous relationships.\textsuperscript{56} The idea of a high school or even college group centered not around \textit{positions} on abortion (pro-life/pro-choice) but around personal \textit{experiences} with abortion boggles the mind. Instead there are websites in which women can anonymously share their experiences, though there are signs of stories beginning to break through the silence.\textsuperscript{57}

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

\begin{quote}
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.\textsuperscript{58}
\end{quote}

In this regard, \textit{Roe}’s privacy approach may have run counter to the ultimate goal of abortion rights, and \textit{Casey}’s shift to a liberty analysis may represent a step toward the kind of free flow of storytelling and relationship from which a broadly grounded story can emerge.

Unlike relationships with GLBTIQ people who are “out,” then, our \textit{relationships} with women who have had abortions and others, both men and women, who have supported them, neither join together those who have had that experience nor link those who have with those who have not. It is thus difficult to form a collective \textit{identity} of those who have chosen abortion—for whatever reasons and whether they “support” it or not—and to develop

\begin{itemize}
\item[]\textsuperscript{55} Even the 2009 brouhaha about a \textit{Family Guy} episode that the network declined to screen (it was characterized as “hilarious” and “pretty rough”) concerned an episode with an anti-abortion message. Lisa de Morales, ‘‘\textit{Family Guy’s}’ Look at the Lighter Side of Abortion,’’ \textit{WASH. POST} C7 (Aug. 12, 2009).
\item[]\textsuperscript{56} See, e.g., \textit{Cheaper by the Dozen} (Twentieth Century-Fox Film Corporation 2003); \textit{Big Love} (HBO television series 2006 – 2009).
\item[]\textsuperscript{57} See, e.g., “Sharing Stories and Information,” \texttt{www.afterabortion.com/sharing/html}.
\item[]\textsuperscript{58} Goodman, note 47 supra.
\end{itemize}
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, become isolated from each other—not because they do not share members and experiences but because they cannot acknowledge that sharing.

As a result, abortion “talk” takes the form of debate and advocacy, which divides rather than connects.\textsuperscript{59} Even standard opinion polls pose yes or no questions that distance the person polled from the issue: People are asked if they think abortion should be available in various hypothetical circumstances\textsuperscript{60} 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 space for stories is filled in other ways, with positional posturing and polling data and legal enactments that are remote from actual life experiences.

The Supreme Court has done a remarkable job of discerning the American public’s stance on abortion,\textsuperscript{61} but it has taken a significant investment of judicial time and thought. And, though the result articulated by the Court may be relevant to the social norms of the country as a whole, the process leading to that result is detached from rather than grounded in the stories and life experiences of ordinary citizens.\textsuperscript{62}

C. James Brady and the “Colloid Hero”

The gay and abortion rights movements arose in similar sociolegal postures. For both, longstanding statutory prohibitions condemned the behavior sought to be allowed. For both, the Constitution did not mandate those prohibitions; and, in fact, after the Supreme Court opened the

\textsuperscript{59} 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, \textit{Roe} has had a quite different effect. \textit{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 \textit{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. See, e.g., GORNEY, note 36 supra, at 438-440.

\textsuperscript{60} See, e.g., Gallup’s “Pulse of Democracy”—(in the case of rape or 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.gallup.com/poll/1567/Abortion.aspx?version=print(2010).


\textsuperscript{62} See notes 2-3 supra and accompanying text.
Pandora’s Box of privacy doctrine, plausible constitutional justifications existed for invalidating them. Constitutional space thus existed for the creation of new law-stories once the personal story-telling to ground them had taken place.

The gun control movement, in contrast, must contend with the 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.

The second wave emerged in the 1960’s in response to the assassinations of that decade and police concern about the number of guns involved in urban crime from states with weak gun laws. These gun control efforts resulted in the Gun Control Act of 1968 and the creation of the Bureau of Alcohol, Tobacco, and Firearms in 1972. Since then, a number of national gun control laws, as well as some that protect gun rights, have been passed. Perhaps the most visible is the “Brady Act,” passed


66 Ch. 757, 48 Stat. 1236.

67 Ch. 850, 52 Stat. 1250.


in response to the 1981 assassination attempt on President Ronald Reagan that left his press secretary, James Brady, partially paralyzed and essentially unable to speak. Brady and his wife Sarah were the most visible supporters of the bill, which imposed background checks and waiting periods on handgun purchases by unlicensed individuals. Overall, the strategy of the gun control advocates has been to focus on the harm caused by guns and to seek national legislation that will set uniform standards.

In opposition, the National Rifle Association (NRA) has become expert at expanding its membership, mobilizing challenge to gun control measures, and making support for gun rights a litmus test for political candidates. It has united “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.” The NRA strategy, in contrast to that of the gun control advocates, has reflected an awareness of the potential of decentralized lawmaking and blocked that avenue with the enactment of preemptive laws at the state level that rendered local governments impotent to pass gun regulation. This strategy took the option of grassroots initiatives and local political efforts away from gun control groups even before individual Second Amendment gun rights were judicially guaranteed by the Supreme Court.

As with gay rights and abortion, gun issues have made their way to the Supreme Court. In 2008 in District of Columbia v. Heller, the Court held that the Second Amendment right is individual rather than collective and militia-related. Based on that conclusion, “the Court struck down the District’s 32-year-old handgun ban…the strictest in the land.” Two years later, the Court applied the Second Amendment to the states in McDonald v. Chicago. The Court has been careful to note, however, that these cases do

73 See Dan M. Kahan & Donald Braman, More Statistics, Less Persuasion: A Cultural Theory of Gun-Risk Perceptions, 151 U. PENN. L. REV. 1291, 1311-1318 (2003) (asserting that most of the gun control/gun rights debate has been conducted in “consequentialist” terms). A conclusion I draw from the discussion in this article is that this generalization is more true of the gun control than of the gun rights advocates.

74 Goss, note 68 supra, at 689-692, 696-703. This approach also reflected a disinclination to undertake the messy and intensive work associated with more decentralized initiatives. Id.

75 Id. at 710.

76 Id.

77 Id.

78 554 U.S. ___.


80 561 U.S. ___ (2010) (plurality opinion joined by four Justices to the effect that the Second Amendment is incorporated into the Due Process Clause of the Fourteenth Amendment with concurrence by Justice Thomas concluding that the Second Amendment
not cast into doubt the constitutionality of gun control enactments overall.\textsuperscript{81}

From a story perspective, what is notable about gun control and gun rights is the onesidedness of the story-telling. The gun rights story has been powerfully told by, for example, Charlton Heston with his Hollywood charisma and pithy NRA slogans.\textsuperscript{82} Heston, in fact, simply by virtue 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.”\textsuperscript{83}

These colloid heroes evoke potent American myths—myths such as the United States as a nation of rugged individualists and Manifest Destiny. Indeed, these two myths may roughly correspond with the two groups that comprise the NRA coalition: hunters whose sport hearkens back to a way of life in which solitary souls wrested their living from the land and collectors

right is included in the Fourteenth Amendment’s Privileges and Immunities Clause). These were not the first Supreme Court decisions to apply the Second Amendment, but they do represent a new generation of interpretation. Compare United States v. Miller, 307 U.S. 174 (1939) (emphasizing militia-related purpose of Second Amendment in upholding National Firearms Act of 1934); Presser v. Illinois, 116 U.S. 252 (1886) (upholding state law restricting association with others for military purposes to state militia); United States v. Cruikshank, 92 U.S. 542 (1876) (holding Second Amendment to protect only against congressional interference in invalidating convictions of Whites for violence against and alleged deprivation of constitutional rights of Blacks in Reconstruction Louisiana).

\textsuperscript{81} McDonald, note 80 supra, 561 U.S., at ___ (“We made it clear in Heller that our holding did not cast doubt on such longstanding regulatory measures as ‘prohibitions on the possession of firearms by felons and the mentally ill,’ ‘laws forbidding the carrying of firearms in sensitive places such as schools and government buildings, or laws imposing conditions and qualifications on the commercial sale of arms.’ We repeat those assurances here. Despite municipal respondents’ doomsday proclamations, incorporation does not imperil every law regulating firearms.” [citation omitted]).

\textsuperscript{82} 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...”

for whom guns are symbols of American power and exceptionalism.  

On the other hand, it is difficult to even discern the gun control counter-story. The primary identity of James Brady—the most notable spokesperson for the movement—is that of victim, and his story is the consequentialist one of deterrence.  

Gun control lacks an affirmative identity—a fact that reflects the absence of anti-violence or pacifist heroes in larger cultural stories, which serve up predominantly competition and violence.  

In civic terms, the gun rights lobby has a powerful identity. The gun control movement, at least in its current manifestation, lacks one. Moreover, few relationships between the groups appear to invite the sharing of stories that might reveal common ground. This separation creates, instead of the civic conditions for the emergence of a collective law-story, precisely the polarized conditions that inhibit such a story. Relevance in the sense of a broad-based legal consensus appears unlikely any time soon.  

But who knows? There is evidence that, at least before McDonald, the country was evenly divided regarding “whether it is more important to protect the rights of gun owners (46%) or to control gun ownership (46%)”. And, given the ambiguity inherent in the Second Amendment, additional gun control is legally possible if it is politically feasible—if the necessary civic conditions are present: Even gun-friendly interpretations allow for substantial legislative action controlling guns; and gun-hostile interpretations are entirely plausible. Without the civic conditions enabling that collective story to coalesce, however, a coherent law-story remains out of reach.

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84 See note 75 supra and accompanying text. See also Kahan, note 65 supra, at 454.  
86 The gun control identity to date is defined primarily as countering the dominant gun rights identity. See, e.g., Kahan, note 65 supra, at 460. Scattered counter-stories do appear in popular culture. Take, for example, the song Desperado by Eagles Don Henley & Glenn Frye (1973):  
“…freedom (freedom), well that’s just some people talkin’,  
Your prison is walking through the world all alone.”  
Note that, though recorded by both the Eagles and Linda Ronstadt, no version of this song ever made it into the Top 40.  
88 See note 81 supra and accompanying text.  
89 See, e.g., McDonald, note 80 supra, (Stevens, J., dissenting) (Breyer, J., dissenting); Heller, note 78 supra (Stevens, J., dissenting) (Breyer, J., dissenting).
II. CIVIC CONDITIONS FOR A CIVIC LAW-STORY

Gay rights, abortion rights, and gun control all fit into the civic Relationship-Identity-Relevance framework. In this Part, I describe with more specificity the social conditions associated with that framework and with civic law-stories. My starting point for this task is my own civic experiences. Extensive interviews with others about their civic experiences and interdisciplinary perspectives corroborate and solidify the insights from the initial empirical work.

A. Civic Experiences

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.”

To bring Thomas Jefferson into contemporary life, I substitute “PTA member” for “ploughman.” Being a PTA member is an everyday civic 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 point of entry into civic life.

Beginning when the oldest of my three children went to kindergarten, for almost 20 years I had one or more child in the Arlington Public Schools, a district in the Washington, DC, area that encompasses a broad range of households, families, and students. As a PTA member, I served on committees charged with considering various 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

91 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.
the system. Three experiences from that time capture key themes from these experiences.

1. **Relationship.**

In the late 1990’s, I was the co-chair of the parent-teacher association at Drew Model School, an elementary school located in a traditionally Black neighborhood, which had been desegregated in the early 1970’s in response to an NAACP lawsuit. A countywide magnet program had been created and placed at the school to attract White families while neighborhood children had been separated and dispersed through busing to schools in traditionally White neighborhoods throughout the county. “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, and I had accepted responsibility for being the PTA liaison to both.

Around the winter holiday of my first year as co-chair, 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 broader participation was necessary for the legitimacy and efficacy of the process. My second was finding not-the-usual-suspect parents who would commit. My third was staying in touch with them and others as the processes unfolded.

And then I had an epiphany. A significant 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

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93 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).
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. Developing sustainable solutions for the school required creating lines of communication and trust and working relationships so that the various people involved would be invested in the process and resulting solutions.

2. Identity.

From 2000 to 2006, I served on a committee of citizens and staff charged with advising the Superintendent on system-level 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. The Superintendent convened this committee, faithfully attended our meetings, listened to our deliberations, and instructed his staff to provide responses to our questions.

The creation and operation of the committee reflected an awareness that articulating a goal with respect to eliminating achievement 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. An articulated goal alone would have only limited effect on 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.

Over time, it became clear to me that the committee was part of an effort to change institutional culture, to change the identity of the system from one that saw achievement gaps as unavoidable and thus acceptable to one that did not—and to bring the identities of the individuals in the system in line with that new collective cultural identity.

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94 This can be particularly difficult when these lines are cross-racial or cross-ethnic. See Cashin, note 93 supra, at 71-72.
95 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.
97 Cf. 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”).
98 From this and other school system processes eventually emerged a cultural
3. Relevance.
In the mid-1990’s, 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—what came to be known as the “Veitch Street project.” 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 project that was eventually approved: The final design responded in key ways to our concerns, primarily in shifting the building away from the school.

Yet, to my surprise, the overall experience felt like an assault. 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, not the PTA, was responsible for the school) and that it was to their benefit for us to actively participate: It was easier for them that we take the political heat of being a fly in the ointment in a development process.

Less than an hour before the decisive 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 details of the project. Despite our contributions, we were neither in the proverbial room when the final deal was cut nor even apprised of what was happening. Though the process was formally open in many ways, it was ultimately alienating in spite of our substantive success.99 Our relevance to the final story had been short-circuited.

B. Civic Interactions
As I puzzled over these and other civic experiences, searching for a common thread, the word that struck a chord was “respect.” “Respect” in

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99 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.
its original, etymological sense refers to “seeing” another person, and respect can be understood as describing 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.

1. Respect.

Sociologist Sara Lawrence-Lightfoot considers 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. 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 detailed stories that breathe life into the idea of respect. Respect, she observes, is built through “listening to stories and engaging in conversation” and has at its core a deep understanding of shared humanity. “Good practice,” writes Lawrence-Lightfoot of pediatrician Johnye Ballenger, “requires that doctors enter into ‘relationships’ with their patients, that they actually ‘see’ them.”

Lawrence-Lightfoot ties these portraits to six aspects of respect: curiosity, attention, empowerment, self-esteem, dialogue, and healing. Curiosity is the attitude of one person being genuinely interested in another and in the world. Attention follows and is the manifestation 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 describes mutual communication from which collective understanding may emerge. Healing transforms hurt and division into wholeness.

The interactions in these portraits 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.

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100 From the Latin “specere”—to look; “respecere”—to look back.
102 Id., at 12.
103 Id., at 89.
104 See Strand, note 2 supra, at 624, 626.
2. **Human Propensities.**

Lawrence-Lightfoot’s analysis meshes with the work of biologist-turned-conflict-resolution-theorist Mary Clark. Though Clark articulates the simple yet transformative idea that the essential quality of human nature is flexibility,\(^{105}\) she nonetheless 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*.\(^{106}\)

The first two propensities may initially be seen as opposing each other, but if we accept that human nature calls for both bonding and autonomy, that opposition appears instead as creative tension. For individuals to thrive, they must be supported by way of sufficient bonding with a group. Conversely, for a group to thrive, individual members must have sufficient autonomy to make diverse contributions for the group’s well-being. Both group and individual, bonding and autonomy, are essential.

To the dynamic push-and-pull of connection and autonomy, Clark adds the search for meaning.\(^{107}\) 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.\(^{108}\) 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 the practical 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 in which all three human propensities are supported.**

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\(^{105}\) *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 enabled and enable such adaptation were and are primarily cultural and social rather than genetic and individual. *Id.*, at 120-125.

\(^{106}\) *Id.*, at 57-59.

\(^{107}\) 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.

\(^{108}\) *Id.*, at 233-237.
3. **Relational Power Dynamics.**

Lawrence-Lightfoot is explicit about her intent to generate 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.”¹⁰⁹ 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.”¹¹⁰ This focus on interactions echoes work that considers human nature to be relational, work that views cognition and norms as emerging from interactions between individuals rather than from individuals in isolation.¹¹¹ Further, the “symmetry” Lawrence-Lightfoot describes is consistent with views of power as relational rather than distributive.¹¹²

Foremother of the modern conflict resolution movement Mary Parker Follett combined these insights of relation and symmetry almost a century ago with a vision of “power-with”—as distinct from “power-over.”¹¹³ Similarly, anti-globalization organizer Starhawk describes “power-with,” “power-to,” or “power-among” relationships “that could also be called ‘influence,’ ‘prestige,’ or ‘moral authority.’ It’s based on respect…”¹¹⁴ Overall, respect may be understood as grounding power-with relationships, which enable healthy connection; power-to identity, which serves as the basis for autonomy; and power-among relevance, which opens a path to the creation of meaning as contributing to the group. Civic interactions are those in which respect—and power—run both ways.

¹⁰⁹ LAWRENCE-LIGHTFOOT, note 101 supra, at 9.
¹¹⁰ Id., at 9-10.
4. The Relationship-Identity-Relevance Framework.

When I project these insights back onto my own civic experiences, I see the search for respect deeply embedded within those experiences. 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 through curiosity and attention were indispensable in constructive civic life. In my work with the school district’s minority achievement initiative, I saw the importance of developing a coherent group identity that embraced all members of the school system in ways that empowered them and forged self-esteem as part of that group. In the Veitch Street proceeding, I experienced the need for healing that accompanies interruption of dialogue and disregard for one’s contribution, for one’s efforts to create meaning and relevance, and the pull to exercise power-among.

The three aspects of respect, the three human propensities, and the three relational power dynamics thus echo the Relationship-Identity-Relevance triad. Relationship weaves together the threads of curiosity and attention, connection, and power-with. Identity comprises empowerment and self-esteem, autonomy, and power-to. And relevance grows from dialogue and healing, meaning, and power-among. Respect embodies what individuals are seeking in civic life—not only from government (other citizens acting with the imprimatur of government) but from each other.115

C. Civic Engagement

Around 2000, I began working with Melinda Patrician, a fellow parent, to enhance civic engagement in the county overall, and we were selected by the county government to conduct a research project on people’s engagement with public life.116 We conducted conversations117 with well

115 Without endorsing a particular theological tradition, I note that there may be revealing parallels between civic relationships and other normative work. The thinking within the Jewish tradition of theologian Martin Buber and psychotherapist and Holocaust survivor Viktor Frankl offers 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.

over a hundred members of the Arlington 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.

A resounding theme that emerged from these conversations is that
the quality of interactions with individual people shapes people’s
perceptions of their civic experiences. “Citizens,” we concluded, “take
[their civic engagement] experiences personally.” Three themes or
“touchstones” as to what people are seeking in civic or public life emerged
from our study:

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

These touchstones were reinforced by additional conversations that we
conducted a few years later with members of other communities around the
country for a related project for a national foundation.

117 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.

118 For the purposes of the study, we defined “citizen” generously to encompass
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.

119 PATRICIAN & STRAND, note 116 supra, at 22. 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, regardless of how the final decision goes. If you are a civic group or PTA or trade
association who cares about “diversity” in your community, call up the leader of a group
that 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.

120 “Inreach is acknowledging the civic, public role within our everyday lives and
institutions within which we operate.” Strand, note 2 supra, at 635 n. 164.

121 We originally used the term “democratic governance” but changed it to civic
governance to emphasize interactions among citizens (including public officials).
Compare 2003 and 2006 reports, notes 116 and 118 supra.

122 See STRAND, PATRICIAN & HYNES, note 118 supra.
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 at Drew.

Inreach recognizes that “meaningful civic engagement happens in many different contexts and institutions.” Most citizens enter and contribute to community life through organizations such as PTAs, neighborhood groups, sports leagues, dance groups, faith communities and the like. Inreach calls on all the various organizations and institutions of a community—public and private, formal and informal—to see themselves as part of the civic fabric and to actively embrace that role in how they operate. My work on the Superintendent’s committee regarding achievement gaps constituted inreach in that it sought to create a collective identity infused with a passion for educational equity for the school system overall.

Finally, civic governance manifests a conviction that “civic engagement is ... about real power in public decision-making.” 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, a lack

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123 STRAND, PATRICIAN & HYNES, note 116 supra, at 5 (emphasis in original).
124 PATRICIAN & STRAND, supra note 116, at 35 (emphasis in original).
125 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).
126 PATRICIAN & STRAND, note 116 supra, at 36 (emphasis in original).
127 Also, the civic sphere and civic engagement—the participation of citizens in social life relevant to the group and law-as-story—encompass 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).
128 STRAND, PATRICIAN, & HYNES, note 118 supra, at 7 (emphasis in original). A common counter to the idea of civic governance is the observation that public officials are abdicating their responsibility when they share power with ordinary citizens. One response to this is that public officials’ first imperative is to promote the common good to the best of their ability; if sharing power facilitates greater progress, then it is entirely consistent with
of relevance, was what I experienced in the Veitch Street process.

One revelation of the civic engagement studies was the importance of stories. Stories lie at the core of people’s experiences and perspectives, and it was from individual stories that the civic engagement touchstones emerged. 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 a group reflect the stories of all those who are affected.**

Stories are the lifeblood of the civic, the DNA of a civic body.¹²⁹

### D. Civic Networks

Respect was the common thread woven through my own civic experiences. Was there also a recurring theme in civic engagement at the community level and in the civic engagement touchstones? An understanding of social networks, and small-world social networks in particular, offered insight into the patterns of connections described by the civic engagement observations.

1. **Empirical Work.**

   In his study of why regional governments in different parts of Italy with the same formal structure exhibit significant variance in their effectiveness, sociologist Robert 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.¹³⁰

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¹²⁹ 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. R. KEITH SAWYER, SOCIAL EMERGENCE: SOCIETIES AS COMPLEX SYSTEMS 210-211 (Cambridge Univ. Press 2005). 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.

¹³⁰ 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 different emphasis. See note 138 infra and accompanying
Putnam describes how cross-cutting horizontal networks that are “web-like” (egalitarian) 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 at various levels in multiple institutions in roughly horizontal ways. The resulting communication and trust lead to norms of mutual cooperation. These civic networks contrast to networks that join individuals in vertical hierarchies through prescribed and limited channels, which inhibit the development of trusting relationships and cooperative norms.

Putnam’s observations are consistent with the previous discussion of respect. When people are joined in web-like social networks, in ways that defy ordering and that are not defined wholly by position, interactions of respect are more likely to occur. Interactions are not seen as zero-sum, and trust can take root. Cooperation ensues, which enhances the capacity of the whole. Hierarchies, in contrast, are by their nature not conducive to respect. Hierarchies prevent those below from exercising autonomy and inhibit meaningful connections by those above. Everyone’s ability to fully develop meaning is stunted because of distrust and fear, and the capacity of the whole is diminished. These different dynamics create more—or less—salutary environments for formal government.

2. Social Networks.

Putnam’s observations about web-like civic networks fit into a larger body of work on social networks. In general, networks consist of nodes and links. 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

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131 MAKING DEMOCRACY WORK, note 130 supra, at 173.
132 Id. at 171-174.
133 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]).
134 CLARK, note 105 supra, at 250-262.
135 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.
of the relationality of individuals squares with the observations above. The structure of a network affects its character and how it functions. The two archetypes of social networks are webs and hierarchies, though social networks in reality are mostly mixtures of the two. Links in a web tend to be more alike (relationships are more similar when the individuals linked have no particular status), while links in a hierarchy tend to be more different (relationships between superior and inferior are quite different than those between peers).

Conversely, the type of relationships that predominate in a network affects its structure. Interactions of respect, which are inherently power-with—join people horizontally. Myriad horizontal relationships form webs—networks in which people are connected to miscellaneous others whom they happen to encounter in the various arenas of their lives. Power-over interactions, in contrast, join people vertically in hierarchies—networks in which people are connected to others in ways that create directional conduits for resources and authority.


Putnam’s later work highlights an important additional aspect of social networks: the distinction between bonding and bridging relationships. Bonding relationships are those that hold “like” people together. Bridging relationships are those that join people who are “not alike.” Bonding relationships describe the individual interactions within a social group; bridging relationships look to the connections between social groups.

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136 See note 111 supra and accompanying text. As Kenneth Gergen has said, “I am linked, therefore I am.”

137 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 differentiated.

138 BOWLING ALONE, note 130 supra, at 22-24. In this later work, Putnam’s attention moves from individual-level interactions to 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.
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.

Bridging relationships join people in these different clumps. A former student moves to another country; a colleague retires to a warmer climate; a neighbor’s child attends a magnet school; two churches work together on a joint service project. Each of these provides a link that joins one bonded group to another.

Putnam’s bonding and bridging relationships explain how small civic webs become larger ones—how the 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 become sub-networks in larger networks. Small communities of people, that is, become nodes of a larger social network.

These larger networks are joined into still larger networks through further bridging relationships 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, bridging relationships with individuals in other bonded communities. And so the nesting property of these networks results in local, individual experiences having the capacity to make a difference in larger-scale social movements and larger collective law-stories.

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

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139 PETER CSERMELY, WEAK TIES: STABILIZERS OF COMPLEX SYSTEMS FROM PROTEINS TO SOCIAL NETWORKS 32-33 (Springer 2006).
140 See SAWYER, note 129 supra, at 210-211.
141 BUCHANAN, note 135 supra, at 48-60.
142 Id., at 42-44.
Paradoxically, though weak ties are more tenuous in terms of the dyads they create, they are the sinews of the network as a system: They dramatically decrease the degrees of separation between various individuals in the overall population and create a single network from disparate groups. Without the bridging relationships/weak ties, the overall network loses its integrity and becomes destabilized.

A social system comprised of diverse groups linked by bridging relationships enjoys stability in large part because of that diversity, which becomes a resource of the system. Different groups have different customs, knowledge, practices, sub-cultures. If the conditions within which the system operates change—its physical environment or political context, for example—greater diversity leads to a higher chance of there being an adaptive response already available within the system that can be tapped and disseminated widely. Social diversity, then, is a strength.

Small-world networks bind a society together in a diverse, non-assimilationist web comprised of clumps of different groups joined together via loose but accepting interactions. Not everyone needs to belong to the

144 BUCHANAN, note 135 supra, at 55; CERMEY, note 139 supra, at 195-196.
145 See, e.g., Cook & Hardin, note 133 supra, at 342-343; CERMEY, note 139 supra, at 192-194.
146 As are other types of systemic diversity. See, e.g., ERIC CHIVIAN & AARON BERNSTEIN, EDs., SUSTAINING LIFE: HOW HUMAN HEALTH DEPENDS ON BIODIVERSITY (Oxford Univ. Press 2008) (describing how human physical health depends on diversity of global ecosystem(s)).
same racial or ethnic group, join the same bowling league, embrace the same faith, subscribe to the same political party, speak the same language. Better, in fact, if they don’t. Instead, the “bonded” clumps can be celebrated 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 respectful bridging relationships exist to join them.\textsuperscript{147}

4. Political Insights.

This sociological view of small-world social networks is consistent with the insights of political scientist and philosopher Iris Marion Young, who maintains the importance of groups in society and in terms of people’s identities. Young 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.”\textsuperscript{148} Young focuses on equalizing 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.”\textsuperscript{149}

Young’s insights relate back to Clark and Starhawk, who also link social structure to the quality of relationships among individuals. 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{150} Egalitarian connotes a “deeply held cultural belief that human beings are, by nature, due equal respect and of equal value.”\textsuperscript{151} 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{152} Trust and respect for others’ identities correlate to

\textsuperscript{147} Though there is limited analysis of this point, my own experience and indirect observations by others suggest that 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).

\textsuperscript{148} YOUNG, note 112 supra, at 191 (emphasis added).

\textsuperscript{149} Id. at 234.

\textsuperscript{150} CLARK, note 105 supra, at 252.

\textsuperscript{151} Id. at 250.

\textsuperscript{152} Id. at 254. 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” and “mobile” hierarchies in which people can
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.”

Starhawk also connects power-with relationships and webs of multiple overlapping relationships in which resources and initiative are shared. Hierarchies, on the other hand, “run on power-over: the entitlement and ability of some groups to control others, extract their labor or resources, and impose sanctions or punishment.” In hierarchies, relationships run one way; in webs, there is an almost M.C. Escher dynamic in which one person’s hand creates the hand that in turn creates it.

5. Civic Networks and Civic Engagement.

This description of civic life in small-world social network terms meshes with the empirical description above. The civic engagement touchstones describe a civic web.

- **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 via membership, participation, and contribution. Civic governance becomes possible when both inreach and civic conversation are occurring and especially when they are taking place within government and between citizens inside and outside of government.

Overall, webs of relationships create civic conditions in which legitimacy try to improve their status, though at the cost of lower social stability and increased stress and anxiety. Id. at 254-256. “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.” Id. at 256. Increased stress and anxiety result from constant insecurity and competition. Id.

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153 Id. at 258.

154 WEBS OF POWER, note 114 supra, at 170.

individuals are members of multiple groups, in which their identities are multi-dimensional, and in which clumps are loosely joined into a sprawling but equitably interconnected whole. These webs, moreover, are comprised of individuals interacting respectfully within and between clumps. By virtue of this small-world network, each individual is connected by a relatively small degree of separation and via horizontal ties to every other. This increases the chance that the story of any given individual will contribute and thus be relevant to the collective stories—including law-stories—that emerge from the society as a whole.

III. THE “CIVIC”-NESS OF HARVEY, JANE, AND JAMES
As I view the sociolegal movements from Part I through the civic lens crafted in Part II, I see again three familiar themes: (1) relationship corresponds to civic conversation that forges bridges joining diverse groups, which enables the development of a civic law-story and the evolution of sustainable law; (2) identity in the form of strong group story and consciousness facilitated by inreach nurtures the supportive in-group bonds that ground civic interactions between members of different groups and ensure the articulation of diverse stories; and (3) relevance as evidenced by small-world civic networks puts ordinary citizens within reach of those who make decisions for the whole group—the civic governance and emergence of resonant law from voice that gives meaning to civic engagement.

A. Relationship Bridges Social Divides.
To be accepted as a widespread social norm, law must resonate with those to whom it speaks. Formal law will more likely resonate if it emerges from the exercise of voice by a broad range of community members. Deep divisions will interfere with both voice and resonance and so with the evolution of law. Conversely, relationships that reach across social, cultural, or political chasms will pave the way for stable, sustainable sociolegal change.

Such change occurred in the context of law governing race relations after Brown v. Board of Education. The organizing of the Civil Rights Movement created cross-cutting relationships between Whites and Blacks, between Northerners and Southerners. These relationships propelled the Movement forward to the national legislative successes embodied in the Civil Rights and Voting Rights Acts of 1964 and 1965 a decade after

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156 Strand, supra note 2, at 642.
157 Id. at 615-617, discussing Michael J. Klaman, From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality (Oxford Univ. Press 2004).
Harvey Milk, Jane Roe, and James Brady

January 2011

Brown.

The gay rights movement, through widespread coming out beginning in the late 1970’s and accelerating through the 1980’s, laid the groundwork for a similar shift between Bowers in 1986 and Lawrence in 2003. Coming out connected gay and straight “camps” with personal relationships between people in each. These interactions enabled the sharing of GLBTIQ life experiences with the straight majority, the dissemination of those stories throughout the population at large, and the emergence of a collective story that incorporated those life experiences. From this vantage point, Bowers was on shaky ground from the moment it was decided.

Abortion stands in sharp contrast. The Supreme Court declared Roe law in 1973, but there has been little civic conversation to heal the division in the population with respect to abortion that became apparent after Roe. Instead, massive amounts of time and energy invested in organizing like with like have hardened the divide.158 Not only has space not been created for personal stories, much of the rhetoric (on both sides) has asserted that other stories are illegitimate and should not be heard.

Progress on gun control and gun rights is also impeded by deep social divisions reinforced by advocacy groups. On the gun rights side, Charlton Heston’s broad brush pronouncements have painted over the fact that many supporters don’t fully buy his story. Yet the NRA has employed a “slippery slope” argument to oppose the development of a more textured view. Gun control groups, for their part, have disdained grass-roots organizing that could elicit variegated life experiences and person-to-person interactions and story-telling. The camps remain disconnected from each other.

One noteworthy aspect of the histories of all three movements is how actions by formal law-makers can expand—or contract—the spaces for stories from which bridging relationships are forged. Romer v. Evans, for example, helped to ensure space for stories related to gay and lesbian experiences through localized political action. The Defense of Marriage Act may have encouraged voice by ensuring—at least for a time—50 different public conversations on the issue of same-sex marriage or, in a sense, one large national conversation with 50 voices. Every new state

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158 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).
development sets off reverberations that cross state lines,\textsuperscript{159} and each one continues that overall conversation.\textsuperscript{160} State decisions on same-sex marriage constitute a back-and-forth process in which collective voices are expressed through various processes. They maintain lines of communication through which a broader social consensus may eventually be reached.\textsuperscript{161}

\textit{Roe}, in contrast, may have constricted the space for voice by rendering pro-choice stories largely unnecessary. State legislators who use \textit{Roe} as “cover” by voting pro-life against their own convictions exacerbate this effect. It does appear that to a significant degree the Supreme Court’s abortion jurisprudence reflects the mores of the country,\textsuperscript{162} which endorse a right to choose abortion generally but also express uneasiness with allowing its unfettered or indiscriminate exercise.\textsuperscript{163} But the iterative process engaged in by the Court in abortion jurisprudence since 1973 has not achieved substantial progress in the nation as a whole working through abortion conflict through civic conversation. Abortion law may have arrived at an acceptable compromise, but the covert nature of the conversation brings its stability into question.

As to civic conversation on guns, the available space has been configured primarily by recent Supreme Court decisions on the Second Amendment. Though the precise parameters are unclear, \textit{Heller} and \textit{McDonald} set explicit limits on the discussion of gun rights and gun control.

\textsuperscript{159}The electoral recall of three of the Iowa state Supreme Court justices who held same-sex marriage to be constitutionally required, for example, was both noted nationally and the apparent result of the infusion of substantial out-of-state funds into the Iowa election process. A.G. Sulzberger, "Ouster of Iowa Judges Sends Signal to Bench," \textsc{NY Times} (Nov. 3, 2010), available at www.nytimes.com/2010/11/04/us/politics/04judges.html.

\textsuperscript{160}This more formal conversation may be entering a new phase of active participation by federal as well as state courts. In two recent cases, U.S. District Courts granted relief from constraints on same-sex marriage. In \textit{Massachusetts v. U.S. Dept. of Health and Human Services}, the District Court for Massachusetts upheld a challenge to the Defense of Marriage Act based on the assertion by the Commonwealth of Massachusetts that the Act caused it to discriminate between same-sex and other marriages. (No. 1:09-11156-JLT, July 8, 2010) (Tauro, J., appeal filed Oct. 12, 2010). In \textit{Perry v. Schwarzenegger}, the District Court for the Northern District of California invalidated California’s Proposition 8 on Equal Protection grounds (No. C 09-2292 VRW, August 4, 2010) (Walker, C.J.). Especially with respect to the latter case, there has been concern that an eventual Supreme Court ruling might be a “conversation-stopper.” See, e.g., Leslie A. Gordon, “Marriage Proposal,” in \textsc{ABA Journal} 18 (Sept. 2009). The unusual procedural posture of the case, however, with the named defendants declining to defend or appeal, makes its future uncertain.


\textsuperscript{162}See note 61 \textit{supra} and accompanying text.

\textsuperscript{163}See Newport & Saad, note 49 \textit{supra}. 
by mandating certain constitutional protections. As with abortion, these decisions channel debate into judicial rather than other fora. The one bright spot may be that by foreclosing the possibility that the use of guns will be prohibited, they may have created space for civic conversation by rendering less persuasive the bogeyman slippery slope argument used to cut off discussion.\footnote{Dennis Henigan, Book Review, Mark Tushnet, Out of Range: Why the Constitution Can’t End the Battle Over Guns, 60 J. LEGAL ED. 321, 337 (2010).}

That civic space, however, is severely cabined by state preemption of local gun laws. Even within areas of action allowed by the Court’s Second Amendment interpretations, 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. The most likely venues for the generation of diverse collective stories about guns have thus been declared off-limits. Compare this to Romer v. Evans’s insistence on the availability of such spaces.

Some have said that the Supreme Court is engaged in conversation with the American public.\footnote{See, e.g., FRIEDMAN, note 61 supra, at 384.} A civic perspective sees the conversation less as a two-way dialogue between the Court and the public and more as populist Babel that the Court distills and reflects back to the population as a whole. In this, the Court also has the ability to either encourage or suppress the Babel itself.

Most fundamental, then, to the emergence of a civic law-story is the presence of civic interactions that bridge pertinent social divides. These civic interactions are decentralized and personal, and they often consist of story-telling. Where stories are not told (abortion) or neither articulated nor shared across ideological lines (gun control/gun rights), progress toward a civic law-story stalls.

B. Identity Provides Necessary Stories.

To say that identity is socially constructed means in large part that we are who we are because of the various groups we consider ourselves to be part of. Coming out by gays and lesbians, for example, can be understood as the creation of identity in that it is an acknowledgement of group membership—to oneself as well as to others. Telling each other stories of similar life experiences of sexuality hones and crystallizes them. Once a GLBTIQ identity is created based on shared stories, interactions with non-GLBTIQ others can forge relationships that bridge to the broader community. This same process applies to the identity of people in committed same-sex relationships. The collaborative emergence of civic law-stories on gay rights and same-sex relationships from bridging
interactions would be impossible without the GLBTIQ and same-sex relationship knowledge of who they are and articulation of that identity.

There is evidence that people’s different stances on abortion are also 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—two identities. 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.”

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.” From this view, abortion is wrong “because it plays havoc with this arrangement of the world.” 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.”

Luker’s observations suggest that the identity issues associated with abortion relate to identities of mothers—and women—more generally. Acknowledging this could open the door to a deeper understanding of the apparently conflicted American psyche vis-à-vis abortion. After all, while strong pro-life and pro-choice activists may be characterized as

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166 LUKER, note 34 supra, 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.”

167 Id., at 159, 160.

168 Id. at 161-162. Moreover, “[p]ro-life people as a group subscribe to explicit and well-articulated moral codes,” and “abortion offends the[ir] deepest moral convictions.”

169 Id. at 174.

170 Id. at 176. In this view, abortion morality is situational and contextual. Id. at 184. Luker’s study offers further civic insights on the polarizing effect of beliefs about abortion. 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. Id. at 204-205 (footnote). These observations relate back to the lack of story-telling between those who identify as pro-life and those who identify as pro-choice. Because these groups rarely occupy the same social spaces, opportunities for even casual interaction may be minimal indeed.
“housewives” and “feminists,” 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 may be 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. Our identity as women—especially as mothers, as part of the paid work force, and as both—is murky for most but clearer and better defined for the pro-life and pro-choice groups. More stories from those along the entire continuum could help develop an identity for women (and for the men in our lives) that is more explicit and nuanced and that has more widespread appeal.

And what of gun rights/gun control identities? There is an increasing sense that conflicting cultural orientations or identities underlie 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. The gun rights world view tends toward the individualistic and hierarchist; the gun control world view tends toward the socially bonded and egalitarian.

That conflict hearkens back to core identity issues related to how people see themselves, society, and themselves in social context. It is thus not surprising that Blacks and women gravitate to one side of the gun debate and White men to the other: In the U.S., guns were and are

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170 Id. at 193.
171 Cf. Lisa Belkin, 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). The creation of space for alternative motherhood (and fatherhood) stories may thus contribute to progress on abortion.
173 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, note 73 supra, at 1306-1307; Braman & Kahan, note 172 supra, at 577-578.
174 Kahan & Braman, note 73 supra, at 1306-1307; Braman & Kahan, note 172 supra, 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.” Id. (sources omitted).
175 See notes 150-155 supra and accompanying text.
As to race, Maxine Burkett observes with regard to the Second Amendment:

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. United States v. Cruikshank, one of the few Supreme Court cases interpreting the Amendment, is generally cited for its holding (before McDonald) that the Amendment was not incorporated against the states; what is not 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. Today, “the victims of gun violence are disproportionately young black males.”

The history of guns in the U.S. is a racialized history.

As to gender, women were not included as part of the militia at the time the Second Amendment was framed and ratified. The story of the Amendment, moreover, can be understood as deeply anti-feminist: 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.

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176 And perhaps other kinds of hierarchies as well. See, e.g., Presser v. Illinois, note 80 supra, (Second Amendment did not protect workers who sought to arm themselves to resist private armies of companies in Chicago).


178 92 U.S. 542 (1875).

179 Herz, note 83 supra, at 60, n. 9. (Here is a story that has been well told in the critically acclaimed HBO series The Wire (2002-2008.).

180 This is no longer the case. See Inge Anna Larish, Why Annie Can’t Get Her Gun: A Feminist Perspective on the Second Amendment, 1996 U. ILL. L. REV. 467, 472.


182 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). The policy conclusions that should be drawn from this, however, are not clear. Compare fact sheet from Family Violence Prevention Fund (available at...
Given these divergent experiences and stories, the development of an overall social identity vis-à-vis guns can be seen as in its very early stages. The story that grounds identity for gun rights supporters has been clearly articulated for a long time, but the textured personal stories of gun rights advocates are overwhelmed by the one-dimensional broadcasts of the NRA. The stories and identity of gun control advocates, in contrast, are embryonic and inhibited by a lack of local fora for political action. Both sets of stories, and their related identities, also have yet to connect to deeper stories about empowerment, about the essential nature of connection, about both the experiential and practical value of universal dignity and respect—about the very essence of the social structure we have and seek.

http://www.endabuse.org/userfiles/file/Children_and_Families/Guns.pdf (advocating greater gun control) with Larish, supra note 180, at 472 & n. 26 (concluding that women may use guns for self-protection, in which case gun control may harm women).

Moreover, the importance 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, note 105 supra, 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.

See Mark Tushnet, Out of Range: Why the Constitution Can't End the Battle Over Guns 135-136 (Oxford Univ. Press 2007). Tushnet diagnoses the problem as "getting us to a place where [policies that accommodate our respective world views] are at the center of our political discussion, instead of the policies and the constitutional arguments that interest groups and politicians use to mobilize their supporters….we are not as polarized as some political leaders want us think we are." Tushnet, however, does not take the next step and prescribe story-telling among individuals.

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. Somebodies and Nobodies: Overcoming the Abuse of Rank (New Society Pub. 2003); Robert W. Fuller, Dignity for All: How to Create a World Without Rankism (Berrett-Koehler Pub. 2008). Cf. Joshua Glasgow, Racism as Disrespect, in ETHICS, Vol. 120, #1 (Oct. 2009) p. 64. If the underlying identity issues have to do with the very structure of society, such stories may extend to the ways in which economic and status inequality create stress not only for individuals but for 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 Spirit Level: Why More Equal Societies Almost Always Do Better (Allen Lane 2009). The stress and anxiety, the status differences or “rankism” associated with inequality, take a toll. Id. at 31-45. In this view, increased violence in general is a symptom of inequality; guns are simply an associated symptom. Id. at 136-137. See also James Gilligan, Violence: Our Deadly Epidemic and Its Causes (G.P. Putnam’s Sons, NY 1996) (concluding that shame and humiliation are the primary triggers of violence and that punishment, patriarchy, and poverty all contribute).
C. Relevance Grows from Civic Organizing.

Where civic networks exist, the people within them are only a few relatively horizontal steps removed from those who make decisions for the whole group. This relative openness of conduits for communication offers a plausible possibility of ordinary people’s stories flowing into the collective law-story—the possibility, that is, of relevance.

Because the links in social networks are created by the people in those networks, creating civic networks is something that only we can do. If we cultivate our own identities and stay in relationship with others, a civic system emerges: Our interactions give rise to the civic. As Lawrence-Lightfoot observes, “Respect breeds respect…One loaf becomes many.”

Civic organizing is an everyday approach to politics and the creation of civic networks that combines a belief in the role of citizen with the active approach of community organizing. In civic organizing, citizens intentionally strengthen the civic fabric. Each individual can contribute to the civic network by forging new civic relationships or overlaying previously hierarchical relationships with the element of respect. Because all aspects of the civic are capable of being created or intensified by the people within a social system, anyone—and everyone—can contribute.

The primary practice of civic organizing is the one-on-one, a technique adapted from community organizing. In civic organizing, the overarching goal of the one-on-one is the creation of a civic relationship, a relationship of mutual respect that acknowledges each person’s disparate identity but also acknowledges the relevance and value of what each has to offer to the whole. Given the importance of bridging relationships in the creation of small-world civic networks, one-on-ones that cross institutional and other lines of social difference are especially important in civic organizing.

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187 LAWRENCE-LIGHTFOOT, note 101 supra, at 10.
188 Civic organizing is the creation of Peg Michels and Tony Massengale.
189 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.”
190 The emphasis in community organizing is on creating strong identities for previously disempowered or unheard groups. Community organizing is thus an important
Because the focus of civic organizing is decentralized individual interactions and the emergence of a social web from those interactions, it always has a large element of improvisation, creativity, and variability. This does not mean that civic organizing is aimless. As Dorothee Kocks writes of Ella Baker, one of the preeminent organizers of the Civil 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 interactions, 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.”

complement to civic organizing, which emphasizes the creation of egalitarian bridges between distinct groups with strong identities.

191 Kocks, note 1 supra, at 174


193 See, e.g., 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).

194 See id., at 98-103 (discussing how positive as well as negative behavior can be elicited by varying roles and contexts). Cf. Elíñor 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).

195 KOCKS, note 1 supra, 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).
Mary Parker Follett observed: “Community is a process.”¹⁹⁶ Civic organizing calls us to be active; it directs our attention to the civic that we as citizens do.

And because networks are organic “living” entities, civic organizing is not something that we do once. Existing relationships can always be sustained, deepened. New relationships can be created and collective identities defined or strengthened. Identities are in continual growth and flux. People who move into positions of authority become distanced and need to be reclaimed. Civic work is an ongoing struggle—not in the pejorative sense of something that we do not care to do or are not strong enough for but in the celebratory sense of something that we care deeply about and are able to do.

This struggle is what gives us relevance as individuals in the massive social network of which we are a part. Understanding law as a complex system¹⁹⁷ illuminates for us the truth that we hold the power—in the sense of the ability—to determine what law is. It is our communicative interactions and our relationships based on our articulated identities from which the collective law-story emerges. This means that if we feel irrelevant, if we feel that the collective law-story does not reflect our own story, the first step is to define that story and to tell it to others—those who are like us and those who are not like us. Conversely, we have a civic responsibility to listen and to hear the stories of others, especially those with different experiences.¹⁹⁸

We can be civic, moreover, not just in “public” life but at work, at home, and elsewhere. The decentralized and unbounded character of webs tells us that there are many places in which civic story-telling and story-listening may occur. Films, magazines, church services, participatory budgeting by cities, theme and other schools, business practices that encourage team-building, and soccer leagues all provide opportunities for civic story-building because they all provide venues for identity and relationship creation and communication. Networks of interactions extend into and across traditional civic life, “civil society,” for-profit business, families, and even into government itself.¹⁹⁹

¹⁹⁶ “Community is a Process,” in PHILOSOPHICAL REVIEW, Vol. XXVIII, 576 (1919). See also Young, note 112 supra, at 32-33 (characterizing power relations as “a function of dynamic processes of interaction”).

¹⁹⁷ See Strand, note 2 supra, at 606-607, 619-626.

¹⁹⁸ The civic focus, then, is on listening. This is in contrast to the standard democratic emphasis on speech.

¹⁹⁹ “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
Coming out, for example, takes place in many different contexts—friendships, families, schools, workplaces, faith communities. Abortion and motherhood stories touch many parts of people’s lives and identities. Attitudes toward guns strike a nerve that goes to a person’s very sense of his or her place in the world. When people tell their stories relating to these issues—in whatever venue—the process of civic network creation is underway.

Recognizing this doesn’t mean that law on gay rights, abortion, or guns shouldn’t be articulated—by courts, by legislatures, at the national, state, or local levels—until the civic story is somehow “complete.” It does call for recognizing that law in these areas is only one part of a larger 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. In particular, it calls us to seek out and listen to the stories of those with different life experiences from our own. Such civic organizing will serve as midwife to the birth of a stable and relevant law-story for our society as a whole.

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 time in the life of a human society. This is particularly true when issues 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

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, civil society 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 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).
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 in working through difficult social 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—to
retell some of our deeply grounded cultural stories as civic organizing
stories and to acknowledge the civic organizers who have played key roles
in our history.

A retold story of the events that led to an independent United States,
for example, might highlight the role of Benjamin Franklin as a civic
organizer. According to biographer Walter Isaacson, “the 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., Franklin 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. 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

200 http://traubman.igc.org/story.htm. See also BERNARD MAYER, STAYING WITH
CONFLICT: A STRATEGIC APPROACH TO ONGOING DISPUTES ix (Jossey-Bass 2009) (when
conflicts are not ripe for resolution, there are still constructive ways to manage them such as
“narratives that encourage an effective approach to long-term disputes” and “durable
avenues of communication”).
201 BENJAMIN FRANKLIN: AN AMERICAN LIFE 102 (Simon & Schuster 2003).
202 Id., at 102-106.
203 Id. at 158-162, 310-311, 344-349, 397-398, 444-460.
subside.” 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. When we map her network in class, moreover, we see how her work connected to the labor movement, the student movement of the 1960’s, the gay rights movement, the women’s movement and the move for voting rights in the District of Columbia. 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

206 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.
207 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.
208 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.
209 Casey Hayden and Mary King raised issues of sex and gender equity within SNCC 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.
210 Delegate Eleanor Holmes Norton and former mayor and current City Council Member Marion Barry in Washington DC were both early SNCC members.
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 what we ourselves can do will grow. These stories will also provide templates for our own civic organizing, that actions that we ourselves can take to build the civic fabric that underlies civic law-stories.