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“You’re Creating New Categories:” Anglo-American Radical Feminism’s Constitutionalism in the Streets

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September 7, 1968, Atlantic City.¹

The New York Radical Women wanted permission for their protest of the Miss America pageant. The poet, activist, and New Left Prankster² Robin Morgan had been busy getting a parade permit for the 100 women who planned on marching in front of the Atlantic City Convention Center.³ The protest was inspired, in part, by the confrontational theater of Yippies such as Abbie Hoffman and Jerry Rubin, who had crowned a pig at the Democratic National Convention in Chicago a week before.⁴ But where the Yippies at the famous 1968 D.N.C. action had protested without permits, and found themselves at the center of a violent maelstrom,⁵ Morgan had worked hard to gain a fire permit so the protesters could burn girdles, high heels, and other oppressive paraphernalia in the “Freedom Trash Can.” When the city refused to allow the women to do so,⁶ the NYRW instead performed a “symbolic”⁷ burning of patriarchal garbage⁸

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¹ See, e.g., Susan Brownmiller, In Our Time 36 (1999).
² Id.
³ Id.
⁴ Id.
⁵ See text accompanying notes 264–267, infra. Festival of blood description.
   AMATNIEK: We had something called the Freedom Trash Can.
(which would later be falsely mythologized as the infamous “bra-burning”). They dashed about on the boardwalk, shouting out woman-power parodies of the ditty “Ain’t She Sweet” and hoisting placards that jeered “Miss America Sells It” and “Miss America, Up Against the Wall” as well as a ghoulish papier mache Miss America puppet that was draped with chains and “auctioned.” They also catcalled at the contestants, jeering that the girls themselves were products, and handed out leaflets that demanded “No More Miss America!” After crowning a sheep, several of the more elegantly turned out protesters, including ringleaders Carol Hamisch and Katie

CEBALLOS: I was told to bring something oppressive to women.
AMATNIEK: At first we were going to burn all these instruments of female torture.
CEBALLOS: But we were not allowed to make a fire. So the story that we burned our bras is wrong.

7 See Jimmy Breslin, A Hunter Stalks a Meat Market, Newsday February 13, 1992, at 2 (“They threw bras, mops, brooms into a trash can. They wanted to set these things on fire, but they could not because Atlantic City refused to give them a permit. So they gathered around the trash can and had a “symbolic burning.”).

8 Michele Landsberg, Eloquent Essays Prove Feminism Far from Dead, Toronto Star, Mar. 29, 2003, at K01 (“Morgan, as most Canadian admirers know, was a charter activist, one of the organizers of that first, outrageous feminist action when protesters threw bras and girdles and steno pads into a “Freedom Trash Can” to protest the Miss America contest in 1968.”)

9 See Jan Freeman, Deerslayers, bra-burners, honeymoons and car designs, The Boston Globe, Oct 7, 1992, at 75 (detailing how reporter Lindsay Van Gelder made up the story about bras actually being burned in the trash can.)

10 Ann Hepperman, Kara Oehler, This Week in 1968: Miss America, National Public Radio January 24, 2008. Supra note 6 (interview with Jackie Ceballos and Kathie Amantiek). See also Rosalind Rosenberg, Divided Lives: American Women in the 20th Century 193 (2008) (hereinafter Divided Lives) (“(T)he women . . . shout(ed) their scorn for the contest taking place in the convention hall behind them, and singing songs that ridiculed not only the pageant but the contestants themselves: “Ain’t she sweet? / Makin’ profit off her meat./ Beauty sells, she’s told/ So she’s out pluggin’ it / Ain’t she sweet?”).

11 Newsday, supra note 7.

12 Id. See also Brownmiller, supra note 1 at 39.

13 Brownmiller, supra note 1 at 39 (“Peggy Dobbins, playing a Wall Street financier in her husband’s suit, conducted a mock auction: ‘Step right up, gentlemen, get your late-model woman right there! She can push your product, push your ego, push your war!’”). See also Miss America, Up Against the Wall, http://www.youtube.com/watch?v=awCRaGkowiY, which shows footage of the protest and shows Dobbins’ auctioneer-type pantomime.

14 For the text of the pamphlet, see http://www.redstockings.org/index.php?option=com_content&view=article&id=65&Itemid=103

15 Divided Lives at 193. Here, Rosenberg notes that this gesture was inspired by the Yippies “who had nominated a pig for President the week before at the Democratic Convention in Chicago.”

16 Brownmiller, supra note 1 at 35. See also No More Miss America, supra note 14..
Amatniek,\textsuperscript{17} presented tickets that they had earlier purchased,\textsuperscript{18} and so gained entry to the Convention Center. Here, they would commit one last, but this time unlicensed act: They unfurled a fabric banner that read *WOMEN’S LIBERATION* and shouted down the speech given by Debra Barnes, the previous year’s Miss America.\textsuperscript{19} Some of the NYRW were arrested, the police “hustl(ing)” them from the Convention Center.\textsuperscript{20} The women did not resist.\textsuperscript{21} Meanwhile, Radical Women Bev Grant, Miriam Bokser and Peggy Dobbins, in an escapade that did not have the sanction of the rest of the rebels, set off stink bombs made of Toni Home Permanent on the convention floor.\textsuperscript{22} Grant and Bokser escaped, but Dobbins was arrested.\textsuperscript{23}

The Miss America protest would have a lot of impact, not the very least on the protesters themselves, some of whom later wondered whether they’d made some serious political blunders. They vacillated between euphoria at their audacity\textsuperscript{24} and

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\item \textsuperscript{17} Brownmiller, supra note 1 at 35.
\item \textsuperscript{18} See Charlotte Krolokke and Ann Scott Sorensen, *Gender Communication theories and analyses: from silence to performance* 8 ("A small group of women brought tickets to the pageant show and smuggled in a banner that read ‘WOMEN’S LIBERATION,’ while shouting ‘Freedom for Women’ and ‘No more Miss America,’ thereby exposing the public to an early second-wave feminist agenda.") (These authors give the date of the protest as 1969; there was a protest that year, but ’68 constituted the first NYRF protest of the pageant). For details on how the NYRW dressed up to gain entrance, see note 285, infra.
\item \textsuperscript{19} Id. See also Brownmiller, supra note 1 at 40. They shouted “No More Miss America!” See *This Week in 1968: Miss America*, supra note 6.
\item \textsuperscript{20} Brownmiller, supra note 1 at 40.
\item \textsuperscript{21} *This Week in 1968: Miss America*, supra note 14 (AMATNIEK: You know, it was not as militant perhaps as it might have been. We did not resist the police but we went along with them and then they shoved us out the side door. . . And that was it, they just let us go.")
\item \textsuperscript{22} Brownmiller, supra note 1 at 40.
\item \textsuperscript{23} Id.
\item \textsuperscript{24} See *Divided Lives* at 193 (quoting civil rights attorney Flo Kennedy, who said that participating in the protest was “the best fun I can imagine anyone wanting to have on any single day of her life.”)
\end{itemize}

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regret over insulting the candidates and Ms. Barnes.\textsuperscript{25} As Carol Hanisch fretted in her post-mortem pamphlet \textit{What Can Be Learned: A Critique of the Miss America Protest}, “one of the biggest mistakes of the whole pageant was our anti-womanism. . . .”\textsuperscript{26} In particular, Hanisch regretted the confrontational placards, in which “Miss America and all beautiful women came off as our enemy instead of as our sisters who suffer with us.”\textsuperscript{27} The stink bombs also struck Hanisch as botched heterodoxy; she called them an “underground” action in her essay.\textsuperscript{28}

The ’68 protest shows that this contingent of radical feminism possessed strong opinions about the roles that outrage, lawbreaking and violence would have in their protest against “Miss America’s” legally sanctioned exploitation of women. All agreed that outrage was great – that is, up to the point where feminist madcappery got too nasty. The NYRW weren’t particularly interested in breaking the law, though: Unlike the wild anti-war protesters and Yippies at DNC who violated curfews, threatened to burn

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\item \textsuperscript{25} See \textit{Pageant Protest Sparked Bra-Burning Myth}, \textit{National Public Radio}, September 5, 2008, http://www.npr.org/templates/story/story.php?storyId=94240375 at 4:59-5:12 (where a woman, who might be Carol Hanisch, says “(t)his was the woman’s big moment, and I hated to interrupt her. You know, I was very much in the you don’t interrupt people, you be nice. . . . But then as soon as we did it, it felt great.”). See also id, at 5:20-25. Here Alex Kate Shulman says “We did not want to attack Miss America, not at all. We wanted Miss America to come and join us.”).
\item \textsuperscript{26} Http://www.carolhanisch.org/CHwritings/MissACritique.html
\item \textsuperscript{27} \textit{Id.}
\item \textsuperscript{28} \textit{Id.} (“A more complex situation developed around the decision of a few women to use an “underground” disruptive tactic. The action was approved by the group only after some women said they would do it anyway as an individual action. As it turned out, we came to the realization that there is no such thing as an “individual action” in a movement. We were linked to and were committed to support our sisters whether they called their action “individual” or not.”) See also Brownmiller, supra note 1 at 41 (“(Hanisch) thought some demonstrators had been needlessly disruptive. (Because of Peggy Dobbins’s court case, she refrained from mentioning the stink bombs.”)
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Chicago down, and pour LSD into its water supply, the feminists only wanted to perform a relatively serene peace-disturbance. Then, they were happy enough to “hustled” offstage by security. Moreover, tactics that smacked of oafish or even violent behaviors – insulting the contestants and assaulting (even via scent) bystanders -- would be cause for later reconsideration and disapproval.

The Miss America protest was a depth charge in American politics. It would be deemed as one of the initiations of second wave feminism in the United States. It would also, as it happens, be an important influence in constitutional politics, and even feminist legal theory down the line.

And yet, the NYRW’s chanting and banner-hurling seemed pretty gentle stuff compared to what would happen in London two years later.

November 20, 1970, the Royal Albert Hall, London.

The busloads of members of the Women’s Liberation Workshop (and other, unaffiliated dissidents) who had come to rage at the 1970 Miss World pageant came

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29 See, e.g., Chicago Examined: Anatomy of a Police Riot, Time Dec. 6, 1968, found in Time archives, http://www.time.com/time/magazine/article/0,9171,844633,00.html (“Chicago’s newspapers repeatedly listed diabolical threats aimed at the city, ranging from burning Chicago down by flooding the sewers with gasoline, to dumping LSD in the water supply, to have 10,000 nude bodies float on Lake Michigan.”)

30 See, e.g., Imelda Whelehan, Modern Feminist Thought: From Second Wave to Post Feminism 14 (1995) (“(The) 1968 Miss America protest in Atlantic City brought feminism out into the public sphere.”).

31 Beatrix Campbell, Tomorrow is the anniversary of the flour-bombing of the 1970 Miss World. Beatrix Campbell talks to the women behind the protests, The Guardian, Nov. 19, 2010, Guardian, Features, at 19. (“Jenny Fortune saw the signal. She had come with a busload of women from Essex University. ‘We threw leaflets, bags of flour and smoke bombs - the Albert Hall was covered with smoke and leaflets. It was pandemonium.’).
equipped with pickets, a woman dressed as a big cow,\textsuperscript{32} rotten produce, water pistols filled with ink, plastic mice, and “flour bombs,” meaning sacks filled with flour that would explode in a cloudy detonation when they hit their target.\textsuperscript{33} The key members of the evening’s rebellion had begun to mobilize two months before, at the first Women’s Liberation Movement Conference at Ruskin College, Oxford.\textsuperscript{34} The young\textsuperscript{35} agitators came from “a variety of women’s groups.”\textsuperscript{36} Though earlier in the day, an unrelated clique of saboteurs had detonated a bomb beneath a BBC van parked next to Royal Albert Hall,\textsuperscript{37} the feminists remained united in their mission, and undeterred by this violence.

\textsuperscript{32} Check out the cow at \textit{Protest Outside Royal Albert Hall}, \url{http://www.youtube.com/watch?v=ejV2BQpkd8g}, at 0:23.

\textsuperscript{33} \textit{Tomorrow is the anniversary of the flour-bombing of the 1970 Miss World, supra note 31} (“Forty years ago tomorrow the televised Miss World beauty pageant was hit by tomatoes as well as smoke-, flour- and stink-bombs.”) See also BBC Radio 4, \textit{The Reunion: Miss World 1970}, \url{http://www.bbc.co.uk/programmes/b00tkpc1} at 9:44 (statement of Jo Robinson, a protester, who described bringing an “arsenal” in her handbag that included “rotten tomatoes and lettuce from the market.” See also \textit{Why Miss World?}’ in \textit{The Body Politic} 254 (1972) (“We threw smoke bombs, flour, stink bombs, leaflets, blew whistles, waved rattles.”) (hereinafter \textit{Why Miss World}? See also Anna Coote and Beatrix Campbell, \textit{Sweet Freedom} 23 (1982) (discussing plastic mice).

\textsuperscript{34} See Beatrix Campbell, \textit{Tomorrow is the Anniversary}, supra note 31. See also Geoff Eley, \textit{Forging Democracy: The history of the Left in Europe} 369-370 (2002) (“The first National Women’s Liberation Conference met in Ruskin College, Oxford, on 27 February 1970, drawing five hundred women (plus 60 children, 450 men) from around the country. . . . The practical outcomes were a National Women’s Coordinating Committee and the Women’s Liberation Movement’s Four Demands: equal pay; equal education and opportunity; 24 hour-nurseries; and free contraception and abortion on demand. . . . Especially notable was the disruption of the Miss World pageant in 1970.”); Lesley McDowell, \textit{Girl’s World}; Lesley McDowell examines how the flour bombs of the 1970 Miss World contest marked a defining moment for the feminist cause, \textit{The Sunday Herald}, Jan. 13, 2002, at 7. (“For teacher (Jo) Robinson (one of the Miss World protesters), 1970 was ‘year zero.’ It marked the beginning of second-wave feminism – Germaine Greer’s \textit{The Female Eunuch} had just been published and the very first National Women’s Liberation Conference was held at Ruskin College, Oxford.’);


\textsuperscript{36} Id.

\textsuperscript{37} See Jonathan Green, \textit{The Urban Guerillas Britain Forgot}, \textit{New Statesmen}, Aug. 27, 2001, \url{http://www.newstatesman.com/200108270005} (“As far as history goes, the Angry Brigade is barely a footnote. Between 3 March 1968 and 22 May 1971, England suffered a campaign of
Outside of the Royal Hall, the revolutionaries heckled the contestants by screaming “shame on you all!” and “they’re degrading you!” as the beauty queens skittered from buses and entered the amphitheater. The protesters also held placards that read “You Poor Cows” and trundled out the ersatz bovine. Sally Alexander, one of the Ruskin’s conference’s organizers, along with twenty four other women, went even further. Having “bought tickets” to the 1970 Miss World Pageant, and dressed

around 25 bombings. The targets included senior politicians and policemen, captains of industry, a fashionable boutique and the Miss World competition, a Territorial Army drill hall in north London and the Metropolitan Police computers.”); Gordon Carr, The Angry Brigade: A history of Britain’s First Urban Guerilla Group 56-7 (2010) (“On 19 November the BBC outside broadcast vans were parked round the side of the Royal Albert Hall . . . about two o’clock in the morning a group of youths, four or ive of them, gathered quickly round one of the vans and slid their home-made bomb underneath it. The four ounces of TNT wrapped in a copy of The Times exploded a few minutes later. . . The damage was not enough to delay the broadcast itself, but there was a slight interruption the following evening through an intervention from the balcony by a group of women’s liberation supporters.”).

It should be noted that some accounts indicate that radical feminists in The Angry Brigade were “key” players in the Miss World protest. See Lynne Seagal, Making Trouble: Life and Politics 60 (2008) (“It was these Grosvenor Avenue women who had played a key part in, and been arrested at, the Miss World Contest in 1970. They were also the women who had chalked up slogans on the walls of Ruskin College at the first ever Women’s Liberation conference in 1970: WOMEN IN LABOUR KEEP CAPITALISM IN POWER, DOWN WITH PENILE SERVITUDE, much to the annoyance of other women, such as Sally Alexander, who had worked hard to organize the event and felt responsible for repairing the damage.”) However, members of the Women’s Liberation Workshop deny any such connection. See Micheline Wandor, The Body Politic 259 (“The Special Branch . . . jumped to the conclusion that there must be some connection between Women’s Liberation and the Angry Brigade . . . (But we) were neither vengeful harridans . . . nor a tightly-knit terrorist unit.”) (quote from the Miss World pamphlet, published in 1971).

38 See Protest Outside Royal Albert Hall, http://www.youtube.com/watch?v=ejV2BQpkd8g, supra note 32 at 0:25.
39 Id. See also Sally Jeffrey, Red rags to the male chauvinist bulls, vol. 19 no. 75 The Eye the international review of graphic design, Mar. 22, 2010 at 88 (“The words ’you poor cows’ on one of the placards visible in a photograph of protesters exhibited at ’Ms Understood’ may have been a bit of a failure as a declaration of sisterly solidarity with the exploited contestants, but they do point to arguments about beauty and appearance and fashion that persist today.”
40 See note 32, supra.
41 See Kira Cochrane, note 35, supra (“The conference was organised by Alexander, with another young woman at Ruskin, Arielle Aberson, who would sadly die in a car accident a few months later. Alexander remembers the conference as exciting, and hugely hard work.”
42 Angela Phillips, Women: Flour power; It was 1970 and revolution was in the air, The Guardian, Apr. 7, 1998 at F4.
“carefully” they entered the Hall where Hollywood comedian Bob Hope was to take the stage with Miss World founder Eric Morley. The feminists rushed down to the floor and waited for a sign, which was a “football rattle.”

The scene behind the curtain, meanwhile, was a welter of gendered as well as specifically racial complexities, as South Africa had submitted two contestants, one white (“Miss South Africa”), and one black (“Miss Africa South”). Also, the unflappable Jennifer Hosten would represent Grenada for the first time in the pageant’s history.

The feminists, however, cared most about the pageant’s capacity to sexually subjugate women, and insults such as the M.C.’s instruction to the contestants to “turn” when in their swimsuits – and show their bottoms off to full advantage.

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43 In the BBC interview, Jo Robinson, one of the protesters, describes how the women dressed up “gorgeously to get inside without triggering the suspicion of pageant security.” Her wardrobe choice was a pink coat and a “big pink hat” that she “thought would look . . . suitable to go to Ascot in. . . . It was very easy.” BBC Radio 4, The Reunion, supra note 3 at 16:00-16:20. Jenny Fortune, in contrast, thought it was “amusing” that Jo and Sally had dressed up “glamorous[ly]” because she and her friends “didn’t have any glamorous clothes between us. (We wore a) strange hotchpotch of garments. (I) had to squeeze into a purple dress that was four sizes too small.” Id. at 16:40-17:00.

44 The Reunion, supra note 3 at 0:26:06 (statement of Jenny Fortune, who answers Sue MacGregor’s question about a “signal,” saying that the protesters began their action at the sound of a football rattle.

45 The not so beautiful side to South Africa’s Miss World past, The Weekend Post (South Africa), July 3, 2010 (“From 1970 to 1977, while South Africa teetered on the brink of meltdown, international pressure forced the apartheid regime to send two finalists to the pageant - one white, and one black.”); South Africa has Biracial Entries for Miss World, Jet, Nov. 19, 1970 at 27 (“This year comely Black Pearl Jansen, a Capetown factory machinist, and white socialist Jillian Jessup, a commerce student, will both represent South Africa in the ‘Miss World’ contest in London, England. But there is a synthetical difference. Miss Jansen, 19, with a 36-24-36 form, the first nonwhite to represent South Africa in the contest, was chosen ‘Miss Africa South.’ Miss Jessup, with the same measurements, was chosen ‘Miss South Africa.’

46 In BBC’s The Reunion interview, Jennifer Hosten says, “This was the first time that Grenada had ever sent a representative. . . . This was a big thing; the Tourist Board was involved.” The Reunion, supra note 3 at 0:18:25-38.

47 Sally Alexander, in the BBC interview admits: “One of the most interesting things about this conversation . . . has been to hear the story of Jennifer herself, of Miss World . . . and the issues around race, and ethnicity, and racial politics that were there at the time. Because for us it was intended always a huge spectacular event which would, as it were, waken consciousness. The
Bob Hope, Miss World’s host, appeared on stage, and though he’d dazzled in the *Road* flicks and *Son of Paleface*, ol’ Ski Nose wasn’t in his finest form that night. In response to the feminists who began hollering to the effect that Miss World turned women into chattel, he babbled that he, for one, was “very happy to be here at this ‘cattle market’ tonight.” When protesters only screamed louder, he made a face and mumbled back: “Moooon!” No, it’s quite a cattle market, I’ve been back there checking calves.”

Hope continued talking as the protesters commenced shaking their football rattles and blowing whistles. As BBC correspondent Sue MacGregor noted in her September 2010 “Reunion” interview of the protesters and the organizers, “banners

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*Reunion*, supra note 3 at 0:39:41-0:40:08. See also *Why Miss World?* supra note 33 at 252 (“The conventionality of the girls’ lives and the ordinariness of their aspiration were the keynotes of all the pre and post-competition publicity, eg the example of Miss Granada (Miss World): ‘Now I’m looking for the ideal man to marry.’”). *But see also id.* at 251 for a critique of the pageant’s “racism.”

49 In the BBC interview, host Sue MacGregor asks Jennifer Hoston, “And what you had to do on stage eventually, and we’ve heard the instruction ‘to turn,’ in other words, ‘show the audience and judges your bottom.’ What was that like?” Hoston replies, “Remember, Sue, this was 1970. In those days, it wouldn’t have seemed quite so strange. They were fairly modest bathing costumes. Nothing like you would see today in Victoria’s Secret.” *The Reunion*, supra note 3 at 0:18:56-0:19:20. See also Gaby Wood, *The Bottom Line, Miss World is 50*, *The Observer*, Apr. 15, 2001 at 1 (“It did seem very unnatural to me as a woman,’ she says, ‘that girls should turn, turn, turn on the stage, for a start. And I didn’t feel comfortable with swimsuits on stage. Not because I thought there was anything wrong with them, but I thought that you don’t generally feel comfortable if someone’s interviewing you in a dinner jacket and you’re in a swimsuit. I thought it was pretty awful to see women standing there with practically nothing on, with old Aspel saying, ‘what did you eat for breakfast?’ - it was so stupid. But you can’t change things overnight.’”) (quoting Julia Morley, Chairman and CEO of Miss World Limited, and widow of Eric Morley, the founder of the Miss World Pageant); Brian Viner, *Some like it hotter*, *The Independent Extra*, Jan. 29, 2010, at 19 (reviewing a BBC program on “sex”) (“It was good to be reminded how splendid those flour-chucking feminists were, for realising long before the rest of us that Miss World really did degrade women. Hell, contestants in the swimsuit round actually had to turn to show the judges their backsides. And I confess that on such occasions I was at home with my mum and dad, it being an annual treat to be allowed to stay up for Miss World, all of us earnestly discussing the size of Miss Spain’s bottom. As, I should add, was half the nation.”) 50 In the BBC interview, a tape of this sound is played.

51 BBC interviewer Sue MacGregor narrates this action in her interview.
were unfurled." The protesters then began to heave the flour bombs onto the stage, which eventually got Hope to shut up and flee. Some protesters, including Sally Alexander, then pounded up to the stage. In the BBC interview, Alexander claimed that she didn’t know what she was going to do on the stage except for “make a protest.” This “protest” might have included “stubbing her cigarette out on” a police officer, for which she was arrested.

At the same time, feminists such as Jenny Fortune threw smoke bombs, leaflets, and more flour bombs. Protester Jo Robinson later explained that the feminists were so “enraged” by Bob Hope’s jokes that they didn’t wait for any signal, and the action spontaneously commenced. Robinson “climbed down” the balcony, “got the lettuces out” and “started throwing” and “shouting things” at the

52 Id.
53 See Miss World Bob Hope Bloopers, http://www.youtube.com/watch?v=reCX3_OAkv8&playnext=1&list=PLEE6FBB07BB2DB46C, at 1:55. See also Why Miss World? supra note 33 at 254 (“Bob Hope freaked out, ran off the stage.”) In footage of the pageant, he can be heard to say “What the hell is that?” and then is led off the stage. Miss World Bloopers at 1:55. See also BBC interview at 0:23:26, where Sue MacGregor narrates: “Bob Hope was pulled off the stage, as the BBC’s Martin Bell tried to explain to baffled viewers what was going on.”
54 BBC interview at 0:23:36, where BBC’s Martin Bell reports “One or two people have managed to get onto the stage.” See also id. at 029:07 -17 (Sally Alexander recollecting “(a)ll I can remember is clambering over people, the audience, and trying to get into the aisle, because the aim was to get into the aisle and then to rush onto the stage and leap onto the stage, which, beautifully, I did.”
55 Id. at 0:29:22-23.
56 Id. at 0:29:18-19 (Sally Alexander recalling “(a) policeman grabbed me.”) Why Miss World gives the detail about the policeman and the cigarette. See Why Miss World, supra note 33 at 254
57 The Reunion at 0:26:03.
58 Id. (Fortune describes herself mirthfully as a “smoke bomber.”).
59 Id. at 0:26:20..
60 Id. at 0:26:21.
61 Id. at 0:26:37-43.
62 Id. 0:26:53.
63 Id. at 0:26:56.
64 Id. at 0:26:58.
65 Id. at 0:27.00.
“press.” Feminist Maia Davies would be arrested for using “abusive language” at a policeman. Beyond Hope and the police, the media was also considered a “target” because, as acknowledged by Sally Alexander, it was very rare “in those days” to have a “woman reporter.”

Robinson had a direct confrontation with a “bouncer” who was “coming along toward” her. She noticed that he was wearing a “white tuxedo.” She wondered what weapons she had “left,” and, after searching in her bag, found her “water pistol” full of blue ink. She sprayed his shirt with the ink, cheekily trying to make a “woman’s sign” on his clothes, the memory of which caused her and her sister protesters to bust up with laughter on recollection in 2010. People around Robinson “leaned back and put their hands up,” because there was a “mad woman with a gun on the loose.” She fled, running out of the Hall and into the trafficked street outside, where she was chased, tripped, and “pulled down” by a plain clothes police officer. He searched her, found a prescription in her bag, and accused her of being

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66 Id. at 0:27:01.
67 Why Miss World at 254 (“Maia was arrested for abusive language (telling a policeman to fuck off): her charged was dismissed early on in the case.”)
68 Id. at 0:27:04.
69 Id. at 0:27:09.
70 Id.
71 Id. at 0:27:37.
72 Id. at 0:27:40.
73 Id. at 0:27:43
74 Id. at 0:27:46.
75 Id. at 0:27:48-51;
76 Id. at 0:27:53.
77 Id. at 0:27:57.
78 Id. at 0:28:06.
79 Id. at 0:28:09.
80 Id. at 0:28:12-
81 Id. at 0:28:18-23. It is in this section that Robinson describes the street where she was pulled down by the police as being trafficked.
82 Id. at 0:28:27.
a drug addict. She denied it as the drugs were for her pregnancy. The police officer told her to go home, but instead, she met people at the bus stop who were going to “carry on” the protest at the Café de Paris.

Inside the Hall, “(s)ecurity guards and police” had “bundled off almost a dozen protesters.” Bob Hope then returned to the stage, weirdly booming out a speech about how the protests couldn’t “go on much longer,” and how “(a)nybody who wants to interrupt as something as beautiful as this . . . “must be on some kind of dope.” Miss “Africa South” was named first runner up and then Miss Grenada, Jennifer Hosten, was crowned.

After the contest ended, the feminist action persisted at the Café Paris, where activists began rushing at vans transporting contestants and BBC personnel as they drove past. Jo Robinson was here arrested, as had been already Alexander, Maya Davies, and Jenny Fortune. A trial of the protesters Alexander, Robinson, Davies, 89

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83 Id. at 0:28:30-31.
84 Id. at 0:28:33.
85 Id. at 0:28:42. It’s unclear if she was lying or not to me from her comments.
86 Id. at 0:28:47.
87 Id. at 0:23:49.
88 Id. at 0:23:50
90 The Reunion at 0:24:36-0:24:49. There would be a great deal of naysaying after the pageant, and not just about the feminist protest. Some critics accused the Miss World organizers of committing some sort of reverse racism. In The Reunion interview, Sue MacGregor notes to Jennifer Hosten, “Miss Sweden felt very indignant because she felt that she should have come second, and not Miss Africa South.” Id. at 0:37-20-22. Hosten agrees that racist critics came out of the woodwork after two “black girls came in first and second.” Id. at 0:37:48-50. MacGregor observes that “there were a lot of racist comments in the press.” Id. at 0:37:57.
91 Id. at 0:33:36. People were “shouting and jumping in front of the bus and hammering on the glass.” Id. at 0:3:41-41.
92 0:28:57-0:29:04.
93 For criminal assault on a police officer, a.k.a. stubbing out a cigarette on him. See Why Miss World at 254.
94 For criminal assault in the form of “throwing flour and rotten tomatoes at Mecca pimps.” Id.
Fortune, as well as protester Catherine McLean took place three to four months later, according to the recollection of Alexander. The trial became a cause célébre, particularly when the defendants were forced to spend a night in Holloway prison because they had extended the proceedings with their speeches.

The protesters’ mood after the pageant seems to have been uniformly triumphant, and there was little regret over the methods that had been used. This remained true as of 2010, when the interviewed protesters rejoiced in their memories of the action, implying that if anyone (that is, the female contestants, such as Hosten) had been frightened or peeved, the protest still measured out in terms of cost-benefit, because they were just a few women, and the Miss World pageant injured or objectified millions of other women around the world.

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96 For abusive language. Id.
97 Id. (naming Catherine McLean). See also Why Miss World at 254, naming “Kate” as a rotten tomato and flour-thrower along with Jo Robinson.
98 0:34:00-03. See also Remand for Five Women in Miss World Case, supra note 98.
99 0:34:00-35:00. See particularly id. at 0:34:04-00 (Sally Alexander says “we were holding up the trial, and taking as long over the trial as possible that we were sent to Holloway for the night.”) See, e.g., Why Miss World? at 260 (“This Miss World action was a reaction against humiliation, powerlessness.”) See also note 102, infra.
100 BBC at 0:40:13-18 (Jo Robinson says that afterward, she has met many women who have told her that, “oh, I saw that on the telly that night and I wish I was there.”). See also Alexander’s surprise at the “issues around race and ethnicity and racial politics” that were aired in the 2010 The Reunion interview, supra note 49 at 0:39:40-56. Alexander, recall, still conceived of it as a “huge kind of spectacular event which would, as it were, waken consciousness.” Id. at 0:9:38--0:40;12.
101 Robinson said she does not worry about the racial and other complications that the pageant presented (say, by draining the glory from the titled Miss World), because Hoston is “only one person.” Id. at 0:40:30-35.
What do these two snapshots of radical feminist protest have to do with the law?

In this Article, I will show how these two initial radical feminist protests infiltrated U.S. and British constitutional conversations, and also influenced the shape of feminist jurisprudence in those countries. My starting point is recent legal scholarship by U.S. legal scholars Lynda G. Dodd, Reva Siegel and Jack M. Balkin, among others, who have paid attention to the role activists, or those involved in “social movement conflict”\(^\text{103}\) play in developing “enforceable (American) constitutional understandings.”\(^\text{104}\) Siegel, for one, argues that certain political protesters operate within “constitutional culture,”\(^\text{105}\) that is, a “field in which citizens and officials interact.”\(^\text{106}\) These dissidents’ spectacles not only may change constitutional meaning, but also “enable() the forms of communication and deliberative engagement among citizens and officials that dynamically sustain the Constitution’s democratic authority in history.”\(^\text{107}\)

Building on this platform, Jack M. Balkin reasons that protest movements can influence constitutional understandings either by persuading political leaders on issues

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\(^{105}\) See *Constitutional Culture* (social conflict mentioned in the very title).

\(^{106}\) Id. at 1325.

\(^{107}\) Id.
(say, those that touch on women’s rights) that will achieve change through judicial appointments,108 or by influencing “elite opinion.”109 Social movement activists, Balkin says, will gain the greatest success where they merge these two strategies,110 and they will fail when they don’t, as their arguments for social reform will be regarded as fringe, or “off the wall.”111 Then again, though a social protest movement may initially be regarded as bizarre, it can slowly transform its reputation from “off the wall” to “on the wall,”112 provided that activists frame their interpretation within the limited boundaries of the Constitution,113 and find supporters among the “respected” members of the legal profession,114 or “friends in high places.”115

Lynda G. Dodd characterizes these efforts as “constitutionalism in the streets,” which can lead to “transformative moments.”116 Dodd also notes that “unruly” and “outsider” agitation – and not just the smooth courtship of populist opinion or wagon-hitching to elites – may also provide the catalyst to achieve the gains sought by protesters,117 possibly by acting as a “useful foil” to their less contentious counterpart.118

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108 Balkin, *How Social Movements Change*, supra note 103 at 32 (“(S)ocial movement protest shapes the issues and positions of the major political parties, which, in turn, leads to the appointment of judges who sincerely believe that the best interpretation of the Constitution is one that happens to be sympathetic with social movement claims.”).
109 Id. at 32 (“Where popular and elite opinion diverge, the Supreme Court tends to reflect the values of elites.”)
110 Id. at 36 (“To be truly successful, a social movement must win over both elite and popular opinion.”).
111 Id. at 51 (citing Stanley Fish, *Is there a Text in This Class: The Authority of Interpretive Communities* (1980)).
112 Id. at 52.
113 Id. Balkin notes that the Constitution is not ever-distensible. Id.
114 Id. at 54.
115 Id. at 58.
116 Dodd, supra note 103 at 344.
117 Id. at 354 (analyzing the roles of suffragists Alice Paula and Lucy Burns, the leaders of the National Women’s Party, who, working at the same time as the National Women Suffrage Association “insiders,” created an insider-outsider dynamic that influenced President Wilson to support the 19th Amendment.).
118 Id. at 412. (discussing relationship between the SWP and the NAWSA).
In particular, Dodd notes how “outsider” protesters may use “visual, emotionally resonant appeals as well as cognitive claims” to “disrupt( ) power,” creating “shifts in public (and elite) opinion and significant political change.”

As these scholars observe, protest moves constitutional culture under certain conditions. In the following sections, I will analyze how 1968-70 U.S. and British radical feminist protest fit into the “street constitutionalism” model constructed by Siegel, Balkin, and Dodd, and also extend it. In the case of the Miss America protest, I will consider how the actions of NYRW influenced (or did not) constitutional understandings. In this vein, I will first engage in historical and social studies of the protest itself, to better comprehend the Miss America action’s roots and meanings. This will involve an analysis of how the protesters were influenced by early 20th century as well as contemporary history: Specifically, I will inquire about how early 1900’s pacifist suffragists and late 1960’s social movements, assassinations, and civil disturbances influenced the protesters. My study of the protest will also focus on Dodd’s “visual” “disruptive” and “resonant” appeals; this will allow me to examine how the protesters artfully (in some cases, I’ll mean this term literally) negotiated around three tactics in their action, these being outrage, lawbreaking, and violence. I will then investigate how the protests influenced U.S. constitutional culture. By way of extension, I will also look to how the Miss America action (and its tactics) may have also helped shape different aspects of feminist legal theory, a relevant inquiry as feminist jurisprudence attempts to construct a

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119 Id. at 403.
120 I’ll give special attention to the ways that the NYRW (and, as well, the NWP) played with fabric arts, guerilla theater, and other performance arts in their mediations with outrage, lawbreaking, and violence. See text accompanying notes 294-204, 251-252, and 283-288, infra.
constitution that makes a home for women. In so doing, I will pay particular attention to
the feminist legal theory of Catharine MacKinnon and her critics.

Siegel, Balkin and Dodd’s theory needs tweaking when used to discern the
meaning of the ’70 Miss World protest: When I write of how those agitators may have
(or not) challenged British constitutional culture, I’m referring to a different set of
concepts than in the U.S. context, as Britain has no single four corners constitutional
document. Its unwritten constitution is informed by a set of principles, being the
doctrines of parliamentary sovereignty, the rule of law, which insists on the
“sovereignty or supremacy of law over man,” and of the separation of powers.
“(H)istory, politics, and political philosophy . . . underpin (this) constitution,” which
emerges from a system where “non-legal rules and practices . . . are at least as
important – if not more important on many occasions -- as the legal rules.” As such,
my analysis of the Miss World action will consider how it influenced British constitutional
fathomings; more precisely, it will examine how this radical feminist protest related to

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Kingdom appears to be almost unique in not having a constitution which is conveniently set out
in a single written document.”

123 Hilaire Barnett and Jago, supra note 121 at 52.
124 Martins Fabunmi and Marcus Araromi, The Impact of Constitutional Principles on the
Administration of Justice in United Kingdom, 33, no. 1 European Journal of Scientific Research
195, 195 (2009). Note, however, that this picture of English constitutionalism is not without significant critique, namely from those British legal
theorists who believe that “common law constitutionalism” appropriately would announce or
recognize significantly more power in the British judiciary than the “parliamentary sovereignty”
doctrine would permit. See, e.g., Douglas E. Edlin, From Ambiguity to Legality: The Future of
125 Barnet and Jago, supra note 121 at 4.
126 Id.
the “underpinnings” of British constitutional understandings, which were later reflected in acts of Parliament.

As when I tackle the U.S. protest, I will look at the historical context of the Miss World protest, tracing its lineage to exceptionally violent early 1900’s British feminist protest, and framing it in terms of quite aggressive contemporary protests sweeping Europe at that time. I will also examine the tactics used in the Miss World action – again, the artful\textsuperscript{127} uses of outrage, lawbreaking and violence – noticing in particular how the British feminists had different approaches to lawbreaking and violence than did their American sisters. I will then analyze what impact the protest had on British constitutional understandings. And, as a parallel to my U.S. study, I will extend the “constitutional culture” analysis by considering how reverberations of the Miss World protest may be felt in current British feminist legal theory, which in some instances turns out to be more “anti-institutional” and “oppositional”\textsuperscript{128} than its U.S. counterpart – just like the protest itself.

Thus, in section A, I will put the U.S. and British protests in historical context, which will allow me to study the reasons why the Miss America and Miss World agitators divided on lawbreaking and violence. Specifically, I will argue that the roots of this distinction lie in the first waves of U.S. and British feminism, where suffragette activists on both sides of the pond had sometimes wildly different approaches to outrage, lawbreaking and violence. I will then, in section B, look to contemporary U.S. leftist protests and events, such as the ’68 protest at the Democratic National Convention

\textsuperscript{127} As in the case of the U.S. feminists, I’ll be considering how art (fabric, guerilla theater) formed an important instrument in the deployment of outrage, lawbreaking, and violence in the cases of the Miss World agitators as well as the WSPU. See text accompanying notes 156-157 and 369, infra.

\textsuperscript{128} See text accompanying note 393, infra.
and the assassination of Martin Luther King, to further comprehend the relative orderliness of the Miss America action. In Section C, I will consider the effects Miss America had on constitutional and legal theoretical culture, in its relationship to the later E.R.A. and abortion rights battles, and the work of MacKinnon. In section D, I will bracket the ‘70 Miss World action with the ‘68 Paris student protests and the rise of European Situationist politics to show how “68” reinforced a British radical feminism that was more comfortable with lawlessness and even violence. In section E, I will consider how the Miss World protest influenced the promotion of bills that would be passed in Parliament, and also helped shape British feminist jurisprudence. Throughout, I will examine how radical feminists’ tactical use of lawbreaking, outrage, and violence intersected with these struggles to change constitutional cultures in both countries.

A. Suffrage protest methods in Britain and the U.S.: Bomb-throwing Suffragettes and Hissing Suffragists

i. Britain

In the case of the second wave protests, the Americans prefigured the British, launching the Miss America protest two years before Miss World. Yet when it came to first wave radical feminist activism surrounding the early 1900’s suffrage issue, the British feminists were at the vanguard, and their deeply influential example would be felt in British feminist politics for the next hundred years.

129 “Suffragists” refers to the Americans while “Suffragettes” refers to the British. See Catherine Gourley, *Gibson Girls and Suffragists: Perceptions of women from 1900 to 1918* 68 (2008).
The most famous British suffrage group was the notorious and revered Women’s Social and Political Union, founded in 1905 by Emmeline Pankhurst and her daughter Christabel, as well as Annie Kenney and Teresa Billington.\textsuperscript{130} Emmeline and Christabel were the charismatic leaders of the WSPU, though Emmeline’s other daughters, Sylvia and Adela, were other important figures in the organization – that is, until Sylvia was eventually be ousted from the WSPU because she disagreed with its tactics.\textsuperscript{131} In the history, it is the volcanic Christabel who emerges as the dangerous cynosure of the WSPU, as she rallied her troops to an agenda advocating separatism and even terrorism.\textsuperscript{132}

The WSPU’s leadership dedicated itself to seeing a government-sponsored women’s suffrage bill being passed into law.\textsuperscript{133} At the WSPU’s very inception, Christabel made outrage, lawbreaking and violence primary strategies for achieving that goal. In 1905, she made news for conducting a demonstration at the Manchester Free Trade Hall, where she appeared with a banner (“Votes for Women”) and, with her sister Sylvia and Annie Kenney, “put the question” to a group of men who had assembled for a

\textsuperscript{130} Dale Spender, \textit{Women of Ideas, And What Men Have Done to Them} 404 (1982).
\textsuperscript{131} See June Purvis, \textit{Emmeline Pankhurst: A Biography} 84 (2004) (“Emmeline felt particular concern for Adela, a frail child, who was serving a one-week imprisonment in Manchester after being charged with ‘disturbance assault, and endeavouring to rescue a prisoner’ when heckling a meeting addressed by Churchill and Lloyd George in Belle Vue Gardens.” See also id. at 2 (describing Sylvia’s eventual expulsion).
\textsuperscript{132} \textit{Id.} at 4, citing historian George Dangerfield’s depiction of Emmeline and Christabel Pankhurst as a pair of violent gurus: “‘They had only to say the word and castles and churches went up in flames, pictures were slashed, windows shattered, the majesty of parliaments and kings affronted.’”, Timothy Larsen, \textit{Christabel Pankhurst: Fundamentalism and Feminism in Coalition} 1 (2003) (“(Christabel) was a founding member of the Women’s Social and Political Union . . . and although her mother, Emmeline Pankhurst, was considered its titular head, her eldest daughter was often considered its primary strategist and decision maker.”
\textsuperscript{133} Bob Whitfield, \textit{The Extension of the Franchise: 1832-1931} 154 (2001) (“It therefore became the suffragettes’ central objective to bring forward a women’s suffrage bill.”)
political meeting. On the morning of the demonstration, she’d crowed “(w)e shall sleep in prison tonight!” and she received her wish: Declaring her ambition to be imprisoned a necessary move to publicize her cause as well as to force “men” to reveal their brutality when challenged, she “tried technical assault:” When the police tried to drag her out, she resisted arrest, “hitt(ing) one policeman and sp(itting) at another.” She was promptly arrested, probably for battery.

The WSPU soon thereafter developed a “style” that was in “opposition to men,” which would “convinc(e) men that they had much to fear if women were not enfranchised.” They wanted a “sex war” and a “guerilla war.” Sexist biographer George Dangerfield attributed these methods to hysteria; infamously, he made a point of linking Christabel’s waywardness to lesbianism. A feminist view of the Pankhurst style may see the Pankhursts as being motivated to take such extreme action because

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134 Emmeline Pankhurst, My Own Story 46 (1914).
135 Purvis, supra note 131 at 75.
136 Spender, supra note 130 at 405 (“She planned that she and Annie Kenney should go to gaol . . . not for the publicity . . . but because it would demonstrate . . . that men were prepared to use their power to imprison women for stepping out of their sphere.”).
137 Id.
138 Id. at 406.
139 Id. In Emmeline Parker’s autobiography, Emmeline does not go into detail about Christabel’s actions, which, in any case, come across as self defense and defense of another in her narrative (“(T)he audience became a mob. They howled, they shouted and roared, shaking their fists fiercely at the woman who dared to intrude her question into a man’s meeting. Hands were lifted to drag her out of her chair, but Christabel threw one arm about her (Annie) as she stood, and with the other arm warded off the mob, who struck and scratched at her until her sleeve was red with blood.”) My Own Story, supra note 134 at 48.
140 Spender, id. (“The charge she faced was spitting at a police superintendent and an inspector.”)
141 Id at 410. See also Larsen, supra note 132 at 1 (“Thus the militant phase of the campaign for women’s suffrage began.”).
142 Spender, id.
143 In winter of 1913 Emmeline Pankhurst declared “It is guerilla (sic) warfare that we declare.” Purvis, supra note 131 at 208.
144 See June Purvis’s critique of Dangerfield, supra note 131 at 4. Purvis notes that “(m)ore recent group biographies of the Pankhurst women have no deviated largely from this (misogynist) path.”
early and mellower suffrage efforts had been so unsuccessful, a debacle explained by
the WSPU precursors’ “fail(ure) to realize the necessity for pressure (as well as their)
diffusion of () political effort along lines that were vague and antiquated.” It cannot
be denied, however, that the Pankhurts also had a native fearlessness and gift for
publicity; also, despite Christabel’s Christian leanings, she and some of her followers did
not have any moral problem with the use of violence, either directed toward men, the
public, or themselves.146

In June of 1906, fellow WSPU member Teresa Billington-Grieg and Annie Kenney
were arrested after “causing a disturbance” outside of then Chancellor of the
Exchequer Herbert Henry Asquith’s house; Teresa slapped a policeman three times.
When in court after arrest, she refused to acknowledge “the authority” of any “Court of
law made by man.” Asquith, who would serve as Prime Minister from 1908-1916, had

demonstrated hostility to female suffrage through most of his political career.149
After experiencing repeated failures at getting the government to sponsor a woman’s
suffrage Bill, as well as enduring beatings and sexual violence by anti-suffrage forces,150

145 Teresa Billington-Greig, The Nonviolent Militant: The Writings of Teresa Billington Grieg 155
146 Emmeline Pankhurst understood that women’s motivations are more likely to be quizzically
studied than men’s when they engage in political violence; in a speech she gave in New York,
she described suffragettes’ stone-throwing as “a time-honored argument in (Britain). just as (she)
ha(d) been told the revolver is in (the U.S.)” Purvis, supra note 131 at 140.
147 Teresa Billington-Grieg, supra note 143 at 415.
148 Robert Eccleshall, Graham S. Walker, Biographical Dictionary of British Prime Ministers 244
149 Elizabeth Cady Stanton, Susan Brownell Anthony, Matilda Joslyn Gage, and Ida Husted
Harper, History of Woman Suffrage: 1900-1920 727 (1881) (“The Premier was himself a suffragist
but his Cabinet contained several determined anti-suffragists, notable among whom were Mr.
Herbert H. Hasquith, Chancellor of the Exchequer.”); Whitfield, supra note 133, at 154 (“Asquith .
. . was opposed.”).
150 See Spender, supra note 130 at 420 (“there was violence – clothes torn, hailed pulled,
handbags stolen, bodies pummeled, punched and pinched; none of it stopped the
suffragettes!”).
WSPU members resorted to more dramatic wargames. On “Black Friday,” in November of 1910, suffragettes attempted to “storm” Parliament, and had a “battle” with police. They were met with sexual and other violence. Black Friday ushered in a new stage of militancy, wherein the suffragettes aimed to commit vandalism. As Christabel would write in her memoir Unshackled: “(The) Black Friday struggle made (the women) think again that property, rather than their persons, might henceforth pay the price of votes for women. . . .(o)ur women were insisting that a broken window was a lesser evil than a broken body.”

The WSPU embarked upon a campaign of window breaking throughout London, famously using toffee hammers as their weapons. They also made a point to make a “pageantry” of their violent protests, by producing and using a multiplicity of banners and flags. These were flown during the actions, and in at least one documented case stitched by the same women who committed acts of vandalism.

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151 See Whitfield, supra note 133 at 156.
152 Spender, supra note 130 at 423 (“Assault escalated into sexual violence against women on ‘Black Friday’. “)
154 Larsen, supra note 132 at 5.
155 The Museum of London currently displays one of the toffee hammers, advising museum goers that “In November 1911, window-smashing became an official policy (of the WSPU). “
156 See note 157 infra (Andrew Rosen).
157 See Elizabeth Crawford, The Women’s Suffrage Movement: a reference guide, 1866-1928 232 (2001) (detailing the biography of Helen Friedlander, a poet and novelist, who, with her brother, “helped to make the banner for the WSPU West Ham society, which is now in the collection of the museum of London.” . . . In March 1912, she took part in the window-smashing campaign and was sentenced to four months’ imprisonment.” The West Hammer banner shows a white silk angel blowing a trumpet, above the maxim Courage Constancy Success. See http://www.museumoflondonprints.com/image/195346/womens-social-and-political-union-suffrage-banner-of-the-wspu-west-ham-20th-century. For other examples of WPSU textiles, see
Much in the same way that these textiles added glamour to the violent campaigns of history’s war heroes, these intriguing, and painstakingly made fabric arts were elemental to the high-profile wreckage that the WPSU committed in the name of woman’s suffrage.

When arrested, the suffragettes would react with hunger strikes, which in turn were treated by authorities with a brutal program of force feeding. This purge-and-binge cycle created a serious threat to suffragettes’ health, at least until the passage of the ghastly “Cat and Mouse Act,” which permitted the temporary discharged of prisoners who had injured themselves through hunger striking; they would be re-imprisoned upon the regaining of their health. In April of 1913, Emmeline was sentenced to three years in prison for “inciting the destruction of Chancellor of the Exchequer Lloyd-George’s country house.” The WSPU responded with a statement
that “(h)uman life now will, we have resolved, be respected no longer, and trouble of all sorts may be expected.”\footnote{162}

The radical suffragettes led up to their attacks on “human life” with a sustained program of property damage: Through 1913 and 1914, WSPU members “set() fire to pillar-boxes, (engaged in setting off) false fire alarms, arson and bombing, attacks on art treasures, the cutting of telegraph and telephone wires, and damage to golf courses.”\footnote{163} The WSPU vandalism of the artwork received particular notice from the press, especially that of arsonist Mary Robinson, who in March of 1914 entered the National Gallery and “and used a small chopper with a long narrow blade to slash the famous painting by Velazquez, \emph{Rokeby Venus}, in order to protest the government’s rearrest of Emmeline Pankhurst.”\footnote{164}

Eventually, there would be a killing, namely a suicide. June of 1913, WSPU member Emily Wilding Davison became one of the most scandalous suffragettes when she “sew(ed) the W.S.P.U. colours (purple, white and green) on to the inside of her coat,”\footnote{165} and, so equipped, hurled herself under the King George V’s horse at the Derby.\footnote{166} She was considered a martyr in the WSPU: In her memoir, Emmeline Pankhurst describes Emily as bearing a “character almost inevitably developed by a struggle such as ours;” one which was “untiring() and fearless().”\footnote{167}

\begin{footnotes}
\footnote{162 Id.}
\footnote{163 Sandra Holton and June Purvis, supra note 160.}
\footnote{164 Christine Skelton, Becky Francis, \textit{A Feminist Critique of Education: 15 Years of Gender Development} 139 (2005); \textit{see also} id. at 194 (detailing Richardson’s bomb-making efforts on the part of the WPSU).}
\footnote{165 Larsen, supra note 132 at 8.}
\footnote{166 Id.}
\footnote{167 Emmeline Pankhurst, \textit{My Own Story}, at 314.}
\end{footnotes}
The WSPU agreed upon a “truce” of this “war” only upon the advent of WWI, after which, in 1918, a law was passed granting British women the vote, provided they were over 30 and property owners (or married to one) or university educated. By 1917, the WSPU had been dissolved, and Emmeline and Christabel now headed up the “Woman’s Party,” devoted to issues of unions. Christabel later stood for office but was defeated in her bid. She then directed her energies to fundamental Christianity, denouncing her earlier political activities. Her notoriety did not hurt her claims on posterity, however. She was proclaimed the Dame Commander of the British Empire and treated to honorifics upon her death. 

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168 Larsen, supra note 132 at 9: “And then this low-level war was swept away by the Great War. The government ordered the release of the Suffragette prisoners. Alive with patriotism, Emmeline Pankhurst and her eldest daughter were delighted to call another ‘truce,’ give up militancy for the time being, and throw themselves and their organization wholeheartedly into the war effort.”

169 Representation of the People Act, 1918, 7 & 8 Geo. 5, c. 64 (Eng.) See also Larsen, supra note 132, for a general description. See also Ruthann Robson, A Servant of One’s Own: The Continuing Class Struggle (reviewing Alison Light, Mrs. Woolf and the Servants: An Intimate History of Domestic Life in Bloomsbury, 23 Berkeley J. Gender L. & Just. 392, 402 (2008) (the new British law permitted a woman to vote “if she were thirty years of age, not subject to any legal incapacity, and was entitled to be registered ‘in respect of the occupation in that constituency of land or premises (not being a dwelling house) of a yearly value of not less than five pounds or of a dwelling house, or is the wife of a husband entitled to be so registered,’ or in another subsection if she were thirty and had a university education.”)


171 Angela K. Smith, Suffrage Discourse in Britain During the First World War 32 (2005) “The Woman’s party itself fielded many candidates in the General Election of 1918, including Christabel Pankhurst. However, none were elected.”

172 Spencer Tucker and Priscilla Mary Roberts, World War I: Encyclopedia, Vol. 1 897 (2005). See also Paul S. Boyer, When Time Shall Be No More: Prophecy Belief in Modern American Culture 105 (1992): “A celebrity recruit to the cause was the erstwhile British suffragist Christabel Pankhurst. ‘Those days of the suffrage campaign were the days of political childhood,’ wrote Pankhurst in 1924. ‘Now is the time . . . to abandon the childish, nay foolish dreams of a human-made Utopia, and in its stead hold fast, rejoicing, to the certainty that the Lord cometh.”

173 A Revolutionist Dies, N. Y. T., Feb. 16, 1958, at (need pin cite).

the Conservative Party; Sylvia had a child out of wedlock as a political act. Adela, “rejected by her mother,” fled to Australia where she became a “militant pacifist.”

ii) The U.S.

In the United States, the women’s suffrage movement was headed by, among others, Elizabeth Cady Stanton and Susan B. Anthony, who formed the National American Woman Suffrage Association in 1890, and Alice Paul and Lucy Burns, who formed the National Women’s Party in 1916. In this history, it is the National Women’s Party members who emerge as the radicals and the militants. Though Paul and Burns had studied militancy at the feet of the Pankhurs while agitating for the women’s vote in Britain, these U.S. revolutionaries did not go as far as their teachers once they

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174 World War I: Encyclopedia, supra note 172.
175 Id.
179 See id. (“NWP members picketed the White House, chained themselves to the White House fence, and ceremoniously burned the President’s speeches. SAWSA leaders deplored ‘those wild women at the gates,’ but when the picketers were arrested and sentenced to prison, and especially after they embarked on a hunger strike to which officials responded with forced feedings, the militants generated wide publicity and even sympathy.”). See also Jack Balkin, How Social Movements Change, supra note 105 at 48 (“A younger generation of suffragists revitalized the suffrage campaign, with a more radical edge.”).

Note, however, that as I apply the term radical to the WSPU, I must also recognize that historians have suspected attempts to append this label to first wave feminist methods and philosophies, as “radical feminism” is a category best understood in a 20th century feminist context. See, e.g., Naomi Black, Virginia Woolf as Feminist 9 (2004) (“insist(ing) that Woolf’s feminism is radical” but acknowledging that “(t)he term radical feminism itself has a specific history that makes it seriously anachronistic when applied to a theorist writing in the 1930’s.”).

180 See Estelle Sylvia Pankhurst, The Suffragette: The History of the Women’s Militant Suffrage Movement, 1905 416-17 (1911) (“On August 20th (1909), when Lord Crewer spoke at the great St. Andrew’s Hall, Glasgow, Miss Alice Paul succeeded in climbing to the roof () in the hope of being able to speak to the Cabinet Minister. . . . Later, when (Paul and other WSPU members) attempted to force their way into the building, . . . the police who were guarding the entrance were obliged to use their truncheons to beat them back. Eventually Adela Pankhurst, Lucy Burns, Alice Paul and Margaret Smith were taken into custody.” See also Jean H. Baker, Votes for Women: The Struggle for Suffrage Revisited 176 (2002) “As young women, Alice Paul, Lucy Burns, and Anne Martin all had extended terms of service with the WSPU . . . Burns and Paul came directly from their British apprenticeships to revive the woman suffrage struggle in America. The
brought the cause to their home country. Like the WSPU, the NWP would employ lawbreaking as a means by which to gain publicity for their cause, to express their rage, and to put pressure on the presidency and Congress to enact the vote for women. But whereas Paul and Burns had committed property damage and had assaulted policemen while in Britain,¹⁸¹ they did not import these forms of violence back in the U.S., largely because of Alice Paul’s Quaker beliefs – namely, her pacifism.¹⁸²

Nevertheless, even though Paul and her NWP refused to commit violent acts in the name of women’s suffrage, they were regarded as unruly and troublesome militants within the larger suffragist movement.

Moderate suffragists, for example, did not take it upon themselves to break the law: An “open air” meeting held by suffragists in New York were described in 1908 as “quiet and orderly,”¹⁸³ even though it was spearheaded in part by Mrs. Boorman Wells, an English suffragette notorious for having been imprisoned in England for three weeks English experience initiated them into protest marches and demonstrations, as well as jail, hunger strikes, and forced feedings. It also taught them the use of publicizing those actions in order to create public sympathy.  

¹⁸¹ Baker, id., at 176: “Paul and Burns participated in breaking windows and slapping bobbies.” See also id: “Radical remains useful adjective for feminism to the extent that it means drastic or thorough going rather than membership in some self-identified group.” ¹⁸² Baker, id. at 179 “Yet even when victimized by mob attacks and government-sanctioned police violence, Woman’s party suffragists did not use violence but confined their protest to acts of symbolic pageantry, picketing and holding public meetings and demonstrations. To do so, Alice Paul drew on ideas and protest techniques of earlier militant suffragism, America labor activism, especially picketing, and her own heritage of Quaker pacifism.”; Katherine H. Adams, Michael L. Keene, Alice Paul and the American Suffrage Campaign xvi (2007) (“(M)any writers have labeled Paul as ‘militant,’ and she has frequently been compared to the Pankhursts and the WSPU, a group for whom militancy included violence to persons and property. But Paul was a Quaker, and her goal was to establish a campaign grounded in nonviolence.” ¹⁸³ Suffragettes Open their Campaign Here, N.Y.T., Jan. 1, 1980, at 16, http://query.nytimes.com/mem/archive-free/pdf?res=9503E7DC173EE233A25752C0A9679C946997D6CF
after leading particularly antic protests there. Similarly, a National Woman’s Suffrage Association march in 1912, attended by up to twenty thousand women, was described by the New York Times as being peopled by “well-dressed, intelligent women (who were) deeply concerned in the cause they are fighting for;” the parade was judged “a thing beautiful to look upon.” In 1913, delegates of the NWSA met with President Woodrow Wilson to ask him to recommend to Congress a Constitutional Amendment that would create equal voting rights. Wilson said that he would do so, but when he did not, some women did hiss at him during a speech that he gave in 1916. These women included Mrs. Harvey Wiley, Mrs. Ellis Logan, and Mrs. Rheta Childe Door; at least Wiley and Childe Door claimed membership of the NWP, showing that outrage was a tactic being used at the very early stages of the NWP’s advocacy.

After the 1916 Wilson speech, the National Woman Suffrage Association President, Anna H. Shaw, made sure to write Wilson a letter denying the presence of

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184 See id. (naming Wells as a participant); Suffragists Invade Opposition Meeting: Police Retire Abashed Before Mrs. Wells and Mrs. Loebinger, N.Y.T. Dec. 5, 1908 at X. (pin cite?).
http://query.nytimes.com/mem/archive-free/pdf?res=F10D11FA3C5517738DDDAC0894DA415B888CF1D3 (describing Wells’ actions, which included playing a “game of tag” with policemen during a suffragette rally and outside of Parliament her consequent imprisonment in England). Otherwise, the march seems to have been attended by women associated with a variety of suffrage groups, such as the Progressive Woman Suffrage Union. See also Suffragettes Open Their Campaign, id. (naming Maude Malone and Christine Ross Barker as members of this march) and Suffragettes Lose Hearer, Jan. 22, 1908, NYT at (x). http://query.nytimes.com/mem/archive-free/pdf?res=FA0B1EFB3C5A17738DDDAB0A94D9405B888CF1D3 (naming Malone and Barker as members of the PWSU).


187 Anna K. Wiley is listed as the 1913 Congressional Union Hospitality Chairman for the NWP and Dorr is listed in NWP papers as editor of the Suffragist from 1913-14, to be succeed by Lucy Burns. See National Women’s Party Papers: The Suffrage Years 1913-1920 126 http://www.lexisnexis.com/documents/academic/upa_clis/2806_NatWomParPapersPt2Ser1.pdf
any NWSA women: “We greatly deplore any acts in the name of woman suffrage which mar[] the record of dignity, lawfulness, and patriotism which has marked the conduct of the campaigns to obtain political justice for women in the United States.”

The *New York Times* reported that five hundred non-NWSA (perhaps NWP) women had made their displeasure known to the President by “attempt[ing] to question him.”

When forbidden to do so the women “expressed” their “disapproval” “after the President had retired.” Hissing seems to have been a favorite protest technique of militant suffragists.

NWP’s outrageous acts soon were regarded as common lawbreaking and even sedition by authorities and the public. In June 1917, NWP members, including Lucy Burns and Mrs. Lawrence Lewis, put up a banner in front of the White House, which was “intended to impress (visiting) the members of the Russian war mission to the United States. This banner read: “To the Russian Mission: President Wilson and Envoy Root are deceiving Russia. They say, ‘We are a democracy. Help us win a world war, so that democracies may survive.’ We the women of America, tell you that America is not a

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188 *Disavows Wilson Insult: Dr. Shaw Tells President Suffrage Association was not even there*, *N.Y.T.*, Jul. 4, 1914, at (x), http://query.nytimes.com/mem/archive-free/pdf?res=F30F11F83A5B13738DDAD0894DF405B848DF1D3.

189 Id.

190 Id. (“[H]e informed them that he did not consider it proper for him to submit to a cross-examination.”

191 Id.


193 Burns filled a variety of roles in the NWP. See *National Women’s Party Papers: The Suffrage Years 1913-1920*, supra note 187 at 125-126.

democracy. Twenty million American women are denied the right to vote. \(^{195}\) Secret Security agents scoped out the protesters, a policeman copied down the banner into a notebook, and one observer yelled that the banner was “treason,”\(^{196}\) a charge holding special resonance considering that Congress had had declared war on April 6, 1917.\(^{197}\) A crowd tore down the banner.\(^{198}\) Wilson did not order the women’s arrest, “direct(ing) that the suffragists . . . were not to be interfered with.” However, Alice Paul said that they intended to put up another banner.\(^{199}\) The police superintendent told the NWP members that arrests were “likely” should another banner appear. Later, Dr. Anna Shaw, honorary chairman of the National Woman Suffrage Association, “issued a statement saying that agitation of this sort was injurious to the suffrage cause.”\(^{200}\)

At this point, it is worth noting the textiles used in this protest. The NWP banner that caused so much excitement existed in a lively tradition of NWP textile making. It was stenciled; it may also have been fringed, if pictures of similar banners in this exact time period can be used as any guide.\(^{201}\) It is likely to have been produced in the traditional manner of quilting or sewing circles, in which a group of women work on a piece of fabric art at a time.\(^{202}\) The NWP’s energetic and prolific production of

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\(^{195}\) Id.

\(^{196}\) See James Brown Scott, *A Survey of International Relations Between the United States and Germany* 298 (1917)

\(^{197}\) See Lynda J. Dodd, supra note 103, at 400-402, analyzing the political climate in which the NWP made its protests at this time.

\(^{198}\) See Crowd Destroys Suffrage Banner, supra note 194.

\(^{199}\) Id.

\(^{200}\) Id.

\(^{201}\) http://americanphotoarchive.photoshelter.com/gallery-image/Womens-History/G0000WyczblkpA0/I0000t3VcCjJ6Dfo; see also http://americanphotoarchive.photoshelter.com/gallery-image/Womens-History/G0000WyczblkpA0/I0000N9b5D.1F2mk

\(^{202}\) An intriguing NWP photo that alludes to classic quilting circle production methods can be found at http://americanphotoarchive.photoshelter.com/gallery-image/Womens-History/G0000WyczblkpA0/I0000Mqsjn3NA8HU
carefully stitched and decorated banners was such that a considerable trove of these textiles is now housed at the Sewall-Belmont House and Museum in Washington, D.C.\textsuperscript{203}

In its use of banners and fabric arts, then, the NWP resembles the WSPU, with its gorgeous fabric flags and signs, but with an important difference. In the WSPU, banners signaled a martial majesty that resembles the medieval use of color-flying on the battlefield;\textsuperscript{204} this impression is only reinforced by these textiles’ use in tandem with acts of violence against property, persons, and in one case, a suicide. In other words, the WSPU enlisted textile art as an instrument to press them beyond outrage and lawbreaking and into violence itself.

It may be that the NWP used their signs to align their protests with the martial spirit of the American revolution,\textsuperscript{205} in order to strengthen their case that they were agitating for “changes that (were) necessary to make the Constitution true to its real nature,”\textsuperscript{206} and in so doing come very close to the WSPU’s energizing, historicizing, and justifying use of textiles. Certainly the banners served as tools that assisted NWP tactics of outrage and lawbreaking (recall the incident with the Russians). Yet the NWP did not use these signs to push violence: On the contrary, NWP textile making appears to have existed within a program of Quaker-inspired nonviolent action. The NWP’s refusal to use the bloody tactics of the WSPU, and the central place of textiles within their outrageous and law-breaking, but otherwise pacifist protest methods, may relate their banner-

\begin{footnotes}
\item[203] \url{http://sewallbelmont.pastperfect-online.com/36836cgi/mweb.exe?request=ks}
\item[204] See, e.g., Robert W. Jones, \textit{Bloodied Banners: Martial Display On The Medieval Battlefield} 49 (2010) (“As a symbol of martial and lordly authority, the banner’s unfurling came to indicate the intent to engage in battle.”)
\item[205] See Balkin, supra note 103 at 50 “((S)uffragists summoned images of the American Revolution to buttress their claims.”
\item[206] \textit{Id.} (Balkin).
\end{footnotes}
making to the Quaker tradition of making and using textiles in the service of pacifist civil disobedience. \textsuperscript{207}

As such, the NWP maintained their signature practices of lawbreaking, outrage, textile and other craft production and use, and pacifism. The month after the episode with the “democracy” banner, the NWP continued picketing the White House.\textsuperscript{208} Eventually, NWP protesters were jailed, and when they reacted with hunger strikes, they were force fed in parallel treatment to their sister suffragettes in Britain. \textsuperscript{209}

In 1919, on the eve of the vote on the 19\textsuperscript{th} Amendment, the “militant” members of the NWP burned Wilson’s form in a two foot cardboard effigy before the White House.

\textsuperscript{207} Namely, the NWP practices resemble the Quaker abolitionist tradition, of which Alice Paul would have been aware. In this system, quilt-making brought women together for political discussion, resulting in fabric signage that served the transgressive yet pacifist goals of Quaker abolitionism. The famous 1842 Hadley Abolitionist Quilt serves as only one example of fiber arts being used in this tradition. See, e.g., Elise Schebeler Roberts, Jennifer Chiaverini, Sandra Dallas, Helen Kelley and Jean Ray Laury, \textit{The Quilt: A History and Celebration of an American Art Form} 78-79 (2010) (describing the politics and events that led to the quilt). See also Mary Holton Robare, \textit{Quaker Networks Revealed in Quilts. Proceedings of the Textile History Forum} (2007) (yxta get); Margery Post Abbott, Mary Ellen Chijioke, Pink Dandelion, \textit{Historical Dictionary of the Friends} 173 (2003) (“In rural areas, quilting and praying together strengthened bonds of Christian fellowship for Quaker women and fostered a concern for organized activity, ranging from assistance to freedmen . . . to support for missions later in the century.”)

\textsuperscript{208} Excuses for white House Picketing: A Statement in Extenuation from Mrs. O.H.P. Belmont, Of the National Woman’s Party, \textit{N.Y.T.} Jul. 7, 1917, at (x) (“picketing is just an advance form of demonstration which the women are forced to make in order to call to the attention of a resisting Government.” http://query.nytimes.com/gst/abstract.html?res=9501EEDC133BE03ABC4153DFB166838C609EDE &scp=1&sq=national+woman%27s+party+and+wilson+and+democracy&st=p

\textsuperscript{209} Sidney R. Bland, \textit{Preserving Charleston’s Past, Shaping Its Future: the life and times of Susan Pringle Frost} 37 (1999) (“Indeed, the words and phrases on (NWP’s) colorful banners became increasingly sharper, especially dramatizing the inconsistency of fighting a war to make the world safe for democracy when the latter did not exist at home. Arrests followed, the first in June 1917, and the pattern of imprisonment, hunger strikes, and forced feeding that sensationalized the British movement was repeated here in the United States.” See also http://americanphotoarchive.photoshelter.com/gallery-image/Womens-History/G0000WycxJblkpAO/I000hNE6v5r_LKQ, showing Alice Paul carrying a banner in October of 1917, and noting that the NWP picketers received a six month sentence for this protest.
and made “violent” speeches. Here, too, we can find handworked crafts supporting nonviolent, but outrageous and lawbreaking NWP tactics. Effigy burning enjoys a vaunted place in American political protest; it evokes the eighteenth century practice of burning icons of unpunished criminals as well as the Revolutionary gesture of burning likenesses of George III. Effigies also take part in a longer history of not only political protest but also religious ritual; they are now recognized as a kind of liminal “folk art” that, in the context of NWP protests, can be seen as occupying the space between lawbreaking, outrage, and violence. The burning of Wilson’s effigy on the White House lawn breaks the law and certainly constitutes a form of outrage, but stops just short of violence against persons. Bloodshed is replaced with performance, fiber art, and a species of sympathetic magic.

Alice Paul herself was conscious of this interplay between outrage and violence. She would explain that the NWP decided to take this particular step in order to do something “drastic;” otherwise, she feared, the Administration wouldn’t “fight” the suffragists, and the issue would fade away in public consciousness.

About seventy five women attended the demonstration, during which NWP member Sue White complained about Wilson possessing “tyrannical power” (that) holds

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210 Suffragists Burn Wilson in Effigy; Many Locked Up; Police Stop Demonstration Before White House on Eve of Amendment Vote; Violent Speeches Made, N.Y.T., Feb. 10, 1919, at 1.
211 See Katherine H. Adams, Michael L. Keene, Alice Paul and the American Suffrage Campaign 236 (2007).
212 Juliette Wood, The Great Scarecrow in Days Long Ago: Gothic Myths and Family Festivals, http://www.juliettewood.com/papers/scarecrow.pdf. (I have contacted this professor for a proper cite but as yet this is it.) For other anthropological work detailing the use of effigies and puppets as “liminal” features in “transitional” events, see John Emigh, Masked Performance: The Play of Self and Other in Ritual and Theatre 2-14 (1996) (addressing effigies and masking in Papua New Guinean ritual).
213 Id.
millions of women in political slavery.”214 Between forty and sixty-five of the protesters were “bundled into patrol wagons” and “later, refusing to give bail, were sent to the House of Detention.” 215 Twenty five protesters were sentenced to between five and two days in jail for the crimes of “building fires on Government property, standing on the coping around the White House, or attempting to make disorderly speeches,”216 a punishment that the NWP members reacted to with hunger strikes, or at least the threat thereof.217 The “militants apparently were not perturbed by the action of the court and showed no regret for what they had done. Mrs. Havermeyer, in fact, stoutly defended their action.”218

When asked to comment, leaders of the National Woman’s Suffrage Association criticized the NWP as “outrageous” and “misguided.”219 And, alas, these perceptions perhaps led to the Amendment failing by one vote the next day.220

The Amendment eventually passed in the House on May 21, 1919,221 and in the Senate on June 4, 1919.222 On June 5, the New York Times reported that members of

215 Id.
217 Five days in jail, id.
218 Id.
221 Harriet Siegman, Elizabeth Cady Stanton: The Right is Ours 130 ().
the upcoming Republican National Convention, to be held in Chicago, were “apprehens(ive) about being rushed by the members of the NWP,” who wanted more than “mere adoption of a resolution” but rather passage plus “effective political action to bring about ratification.” The Times reported that the NWP planned on carrying banners. But the Republicans were said to be more nervous about women entering the Republicans’ Convention Hall, as NWP members had reportedly bought tickets. Records that I have found reveal the NWP members to have brandished banners outside of the Convention in Chicago that read “No Self Respecting Woman Should Wish or Work For the Success of a Party that Ignores her.” But I cannot find any evidence that they succeeded in disrupting the proceedings within.

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The NWP, thus, was an early harbinger of U.S. radical feminist talents for combining outrage, lawbreaking, and nonviolence with theater, as a way to raise

223 Official report of the proceedings of the seventeenth Republican National Convention: held in Chicago, Illinois, June 8, 9, 10, 11 and 12, 1920, resulting in the nomination of Warren Gamaliel Harding, of Ohio, for president, and the nomination of Calvin Coolidge, of Massachusetts, for vice-president (Google eBook), http://books.google.com/books?id=-EHR4jGLA14C&printsec=frontcover&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false


225 Id.

226 Id.

227 See photo at America Photo Archive, http://americanphotoarchive.photoshelter.com/gallery-image/Womens-History/G0000WyczblkpA0/l00001DbusCWOac (the banner credits Susan B. Anthony for the quote.)
consciousness (and publicity) through pageantry. The WSPU, too, presaged a second wave British radical feminism that issued permissions to its ranks to use more aggressive means to achieve its goals.

The explanations for why Miss America protesters were more law abiding and nonviolent than their British sisters, however, expand beyond those found in early 20th century history. To more fully comprehend their different approaches – and to better fathom how the Miss America and Miss World protests would affect the respective constitutional conversations in legislation and theory -- we should consider the contemporary politics influencing 1968-1970 U.S. and British radical feminisms as well.

**B. The contemporary context of the beauty pageant protest in the United States**

NYRW used outrage, but very little lawbreaking and violence in their ’68 protest. The reasons for these tactical decisions are found both in the NWP historical example, and even more pressingly in the domestic political situation that the radical feminists worked in at that time.

1) Violence

NYRW had a variety of protest styles to draw upon when choreographing the Miss America action in 1968. Nonviolence was one of the preeminent American protest

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228 See Katherine H. Adams, Michael L. Keene, *Alice Paul and the America Suffrage Campaign*, supra note 182 at 246-7 (“Paul (learned from) . . . her Quaker upbringing and from the influence of writers like Thoreau and Tolstoy . . . (to build) . . . self-respect through determined action and sacrifice (and) the exploitation of well-planned symbolic actions.” See also Linda G. Dodd, *supra* note 105 at 369 fn. 128 (“suffragists were ‘the first group to use pageants to agitate for social change,’ as part of an effort to incorporate emotional appeals that would inspire viewers.”) (citing Linda J. Lumsden, *Rampant Women: Suffragists and the Right of Assembly* (1997).
modes of the day, and the New York Radical Women specifically courted Alice Paul to collaborate in a voter registration card burning action, out of recognition of Paul’s history of activist lawbreaking and pacifism.229 Other schools of nonviolent protest had even greater influence on the radicals, as the women’s movement had deep roots in anti-war and civil rights politics. Early U.S. second wave feminists such as Casey Hayden and Mary King, whose activism caused rifts in the Student Nonviolent Coordinating Committee as well as Students for a Democratic Society,230 had developed their conception of women’s liberation in the evolving231 world of nonviolence politics: The SNCC’s freedom rides and lunch counter sit-ins are just two of the best known examples of this organization’s dramatic and peaceful acts of lawbreaking.232 Initial second wave feminism struggles can also be seen in the gender rifts occurring within Students for a Democratic Society. Hayden and King’s “Sex and Caste” pamphlet prompted an

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229 See Alice Echols, Daring to Be Bad 12 (1989) (hereinafter Daring to Be Bad). Paul rejected this invitation, as might be expected. Id.
230 Id. at 35.
231 See, e.g., Howard Zinn, The SNCC: The New Abolitionists 221 (1964) (The actions of SNCC in the last four years have in themselves fashioned a more complex attitude towards nonviolence than is shown. . . . .[Not that SNCC has adopted violence. . . .But between the use of violence and complete reliance on moral suasion, there is a vast range of possibilities within which the thoughts and actions of SNCC people fluctuate.”); Clayborne Carson, In Struggle: SNCC and the Black Awakening of the 1960’s 164 (1981) (“Stokeley Carmichael) asserted that for King nonviolence was ‘everything’ but for SNCC it had always been simply a tactic. . . . .Nearly all of the black organizers working in the deep South were armed.’.”); Ehud Sprinzak, The Psychopolitical Formation of Extreme Left Terrorism in a Democracy: The Case of the Weathermen, in Origins of Terrorism: Psychologies, Ideologies, Theologies, States of Mind 74-5 (1988) (“The SNCC had also become radicalized. In 1966 it had dropped its previous liberal identity and its commitment to nonviolence in order to become a militant antigovernment organization. It now adopted ‘black power’ as its slogan.”
232 See, e.g., Clayborne Carson, supra note 231, at 32, quoting SNCC’s executive secretary, who in 1961 called upon desegregationists to “join (Greensboro protesters) at the lunch counters and in jail. Only by this type of action can we show that the non-violent movement against segregation is not a local issue for just individual community, but rather a united movement of all those who believe in equality.”); id. at 36 (“A Freedom Riders Coordinating Committee was formed by representatives of SNCC, CORE, and SCLC. During the following months, more than three hundred protesters were arrested in Jackson.”)
(eventually) all-woman’s workshop within SDS, wherein member Marilyn Webb found women “(for) the first time . . . appl(ying) politics to ourselves.”

Yet there were other examples of violent protest that the NYRW could have accessed in their planning for Miss America. In ’68 some prominent members of SNCC had already rejected nonviolence, and in 1967, SDS member John Veneziale wrote in New Left Notes that “working class people” would not take “student struggle seriously until students” demonstrate a “willing(ness) to kill and die for (it) (i.e. the people’s freedom.). “

As well, for the four months preceding the Miss America action the ’68 student riots in Paris had been major international news. French student rioters numbered in the tens of thousands, with rebels breaking the streets into cobblestones and creating barricades, resulting in a thousand recorded injuries and 468 arrests. Such violent action was supported by popular European movements like that led by the Situationists, European agitators who were influenced by Marx, Dada, and surrealism. Situationists directed their ire the capitalist “spectacle,” defined by historian Sadie Grant as a “frozen moment of history in which it is impossible to experience real life or actively participate in the construction of the lived world.”

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233 The history of the women’s workshop can be found in Echols, Daring to be Bad at 34-35.
234 See note 231, supra.
235 Daring to be Bad at 39.
236 Geoff Ely, Forging Democracy 344-345 (2002). That revolution, which began as a reaction to the disciplinary charges levied against eight Nanterre students, was characterized by not just police brutality but students “attack(ing)” the CRS with “bottles, ashtrays, and mustard pots taken from cafes.”
237 Id. at 346.
239 Id.
“revolutionary contestation to modern society,” specifically the spectacle; and, as such, Situationism was regarded as the theory, and events like ’68 Paris the practice.

Moreover, back in the United States, relevant violent protest was also gaining domestic headlines at this time. Radical feminist Valerie Solanas earned notoriety for her *SCUM MANIFESTO*, which announced a feminist mission to “destroy” men, and was highly critical of male artists. New York Radical Women became aware of Solanas and her beliefs when she attempted to assassinate Andy Warhol in June of 1968, less than three months before the beauty pageant protest. Solanas, a one time member of the Factory, believed that Warhol was stealing her art, and so shot at him three times, hitting him once in the chest.

Robin Morgan and other members of NYRW supported Solanas after the shooting, and Florynce Kennedy, who participated in the Miss America protest, said that Solanas was “the first outstanding champion of women’s rights.” Further, Peggy Dobbins, the wielder of the Toni Home Permanent stink bomb at the ’69 pageant, has

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240 *Id.* at 9, quoting Guy Dobord and Ken Knabb’s *The Society of the Spectacle* (1983).
241 *Id.* (“the ‘troubles’ of 1968 which we . . . were regarded by the situationists as the mass demonstrations of their theory.”)
243 See *Daring to be Bad* at 105 (“NYRW knew next to nothing about Solanas until she shot and nearly killed Pop artist Andy Warhol in June 1968.”).
245 See Robin Morgan, *Goodbye to All that in The Word of a Woman* 73 (1968) “Free Valerie Solanas!”
246 Flo Kennedy, *Color me Flo: My Hard Life and Good Times* 62 (1976). Kennedy may not have been a formal member of the NYRW; she identifies herself as being a member of NOW before leaving it to found the Feminist Party. *Id.*
said in an interview that she attended Solanas’ trial in solidarity, because Solanas was a
“an angry woman who got into trouble for standing up to a man.”

However, the NYRW’s tactics at the ‘68 pageant belied any role modeling on
violent U.S. or European agitators, or even those who broke the law in the name of civil
rights. With respect to the use of violence, the ‘68 pageant protest is a model of pacifist
action, except, arguably, in the case of the stink bombs thrown by Peggy Dobbins, Bev
Grant, and Miriam Bokser, which may qualify as violence under certain definitions. As
Peggy Dobbins has explained to me, the protest outside of the Atlantic City Hall was a
form of nonviolent street or guerilla theater and “zap actions,” the likes of which can
be traced back to Bolshevik street protests in the early 20th century. Dobbins also links
the street theater of the ‘68 Miss America action to the work of Richard Schechner, the
founder of The Performance Group in 1967, and who devised a system of guerilla
theater that she regarded as resistant to the capitalist social order but nonviolent.

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248 Author’s phone interview with Peggy Dobbins, May 12, 2011.
249 See, e.g., Yxta Maya Murray, A Jurisprudence of Nonviolence, 9 Conn. Pub. Int. L.J. 65, 113-
120 (2009) (essaying a definition of violence that includes concepts of invasion, unconsented
penetration, and fractures of connectivity. Being forced to breathe in a noxious fume may
qualify as a kind of invasion that fractures one’s connection with the environment.). See also
note 293, infra, addressing the illegality of Dobbins’ act.

250 Echols defines these as actions designed to “shock and offend.” Daring to be Bad at 76.
251 See Eley, supra note 34 at 206: (“In vast popular festivals . . . the masses staged symbolic
dramas of history, while the artists seized the potential of the streets – of carnival and circus,
puppetry and cartoons, and other popular media.”)
252 Schechner’s writings do reveal a taste for the theatrical destruction of property as a way to
object to social policies, but less so for personal confrontations or attacks See, e.g., his The Future
of Ritual: Writings on Culture and Performance 47 (1995). Here, Schechner writes about festivals,
and their meaning in social and political frameworks. Noting that in ancient and even modern
festivals “sacrifice is necessary to inoculate society against ‘interminable violence,’” he cites with
approval the potlatch rituals of Native Americans on the Pacific coast in the late nineteenth
century, at which goods were publicly destroyed, as a kind of purging. He compares the
potlatch favorably to the Roman Saturnalia “where the scapegoat slave was sacrificed,” or to
In addition, the NYRW were impressed by the teachings of Martin Luther King. When asked about the dearth of violence in the ’68 action, Peggy Dobbins responded that King’s nonviolence “influenced” her, and that as a result, “violence just didn’t come up.”

MLK’s legacy, indeed, was much in the air in those days. Radical feminists would be painfully reminded of his legacy after his assassination on April 4, 1968 in Memphis; many Americans, as well, were put off from violent actions on account of the June assassination of Robert F. Kennedy. An aspiration to pacifism, also, may have been strengthened by an instinct for self-preservation: For there was one other famous protest event that would have been yet fresher in the minds of U.S. activists than the ‘68 Paris riots, being the extraordinarily violent events at the August ’68 Chicago Democratic National Convention. In this action, Situationist-inspired (or at

the “Athenian theatre of Dionysus where actors pretended to suffer and die,” because “potlatchers gave up the real thing: the material substance of their wealth.”

Interview with Peggy Dobbins.

See Michael Eric Dyson, April 4, 1968: Martin Luther King, Jr.’s Death and How it Changed America (2008).

For example, President Lyndon Johnson activated a Commission on Violence directly after Robert Kennedy’s assassination, charging the group with the task of “begin(ning) a broad inquiry into the nature of violence in America.” One of the questions the Committee would study was “What is the relationship between mass disruption of public order and individual acts of violence?” Fred Reed, President Meets Violence Panel; Stresses Danger to Candidates, NYT June 11, 1968 A1. http://select.nytimes.com/gst/abstract.html?res=FB0814FB3D5C147493C3A178DD85F4C8685F98

In addition, commencement speakers that year were noted by the New York Times as being highly influenced by the issues of violence and political dissent. Such was the case, for example, of Arthur M. Schlesinger, who said at the commencement of the Graduate Center of the City University of New York: “If we are to survive as a nation, we must resist our inbred impulse to violence, not capitulate to it, not celebrate it.” Fred M. Hechinger, Fear of Violence and Duty to Contain It Dominates Commencement Talks in U.S., N.Y.T. June 10, 1968, at 52. It is worth noting also that catastrophic violence followed the assassination of King. See Frank Kusch, Battleground Chicago 34 (2008) (listing 202 racial disturbances in 172 cities, forty-three deaths, 3,500 injuries, and a 27,000 arrests.).
least similarly positioned) Yippies including Abbie Hoffman and Jerry Rubin, used a particular brand of guerilla theater, known as “media-freaking.” These antic actions were intended in the ’68 protest in Chicago to draw the media gaze to their “militant,” unauthorized antiwar demonstrations, which were influenced by the writings and street productions of such impresarios as R.G. Davis and his San Francisco Mime Troupe, and their practice of clashing with the authorities. The end result of the Yippie demonstration at the ’68 DNC was a violent mass confrontation between 10,000 protesters and 11,500 policemen, 5,600 Illinois National Guardsmen, 1,000 federal agents, and 7,500 U.S. Army reservists. The ensuing fracas, later known as the “Festival of Blood,” resulted in 668 recorded arrests, 192 injuries of police officers, and between 100-200 protester injuries. Lyndon Johnson’s Commission on Violence found that the police had indiscriminately used tear gas, and that their crowd control devolved into a “club-swinging melee,” with police “striking anyone they could

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258 Michael William Doyle, Staging the Revolution, in Imagine Nation: The American Counterculture of the 1960’s and ’70’s 85 (2002)

259 Doyle hypothesizes that the Yippies’ version of guerilla theater was influenced by the militancy of R.G. Davis. Id. at 89.

260 Id. at 90 (“Ultimately no permits were granted, thus ensuring a confrontation.”).

261 See Jeffrey W. Fenn, Levitating the Pentagon, evolutions in the American theatre of the Vietnam War Era 51-2 (1992)

262 Doyle, supra note 258 at 90 (quoting Jerry Rubin as planning a confrontation at the Yippie demonstration in the months before the DNC).

263 Id. at 90.

264 Id. at 96 fn. 39. (noting that this term was coined even before the DNC by Chicago Seed editor Abe Peck.).

265 Frank Kusch, Battleground Chicago, supra note 256 at 149.

266 Id. at 186.

Nevertheless, there was a rapid institutional condemnation of the Chicago Eight, as key members of the Yippies would be labeled. Congress had enacted the Anti-Riot act shortly after the assassination of King, and it was under this law that the Chicago Eight would be tried for conspiracy.

Robin Morgan referred to these events when describing her concerns during her preparations for Miss America: She told a reporter, “We don’t want to incite or provoke. We don’t want another Chicago.” Like the members of the NWP fifty years before, NYRW abstained from violent protest, but not solely on account of U.S. radical feminism’s Quaker lineage, the likes of which were present but not first in their minds. More prominent reasons for the NYRW’s nonviolence were the political tragedies of the time, as well as a pragmatic decision to avoid injury at the hands of a frightening police force.

**ii) Law-abiding and law breaking**

Similarly, just as the NYRW did not aim to commit violence, they also lacked ambition to break the law at the ’68 action. Again, Robin Morgan applied for permits, and when none was forthcoming for the fire the NYRW wished to start in the freedom
trash can, the NYRW abandoned that plan. Morgan avoided dangerous confrontations by choreographing literally permitted street theater, picketing, dress up, and hollering to resist the forces of patriarchy. Historian Alice Echols notes that the NYRW also sought to remain within the law because they lacked money to pay for a legal defense.\textsuperscript{272}

A yet further interpretation of law breaking and law abiding in radical feminist protest has been articulated by Peggy Dobbins. In my interview with her she claimed that she never attempted to break any laws in the protest,\textsuperscript{273} but not out of fear of retaliation. Rather, she explained that NYRW were trying to expand consciousness, and create a new reality through street theater: “When you’re involved in creating something revolutionary, you don’t do it in terms of the legal categories, because you’re creating new categories -- you’re breaking the old categories by creating new categories -- you come and participate in the new way of doing things, and you do what you think is right.”\textsuperscript{274} In this view of radical feminist rebellion, then, law is a symptom of patriarchy, and patriarchy has to be dismantled before the law can change. Thus Dobbins’ radicalism aimed her artistic and political energies at that vast force, rather than the laws that protected it.

In this law abiding, the NYRW contradict the NWP protesters, who used lawbreaking (that is, trespass and the making of illegal fires) to shock the government with “drastic”\textsuperscript{275} illegality that would require the authorities to get into a “fight.”\textsuperscript{276}

\textsuperscript{272} \textit{Daring to Be Bad} at 94.
\textsuperscript{273} Phone interview with Peggy Dobbins, May 12, 2011.
\textsuperscript{274} \textit{Id}.
\textsuperscript{275} See note 213, supra.
\textsuperscript{276} \textit{Id}.
There are, however, two exceptions to this characterization of the NYRW as scrupulous law-followers. The first is their use of “disguises” to enter into the Convention Hall and disrupt the proceedings by yelling, which courted arrest for disorderly conduct (though there may have been a constitutional problem with such a charge). In this way, they harkened back to the “disorderly speeches” that the NWP protesters were convicted of in the early 1900’s, and also brought themselves into a longer tradition of women whose protesting speech marked them as outlaws.

277 The applicable law in 1968 would have been the disorderly conduct prohibition of N.J.S.A. 2A:170-29, which “prohibited public utterances of loud and offensive or profane language.” It was repealed in 1978. See State v. Hoffman, 149 N.J. 564, 578-9 (1997). 170-29 was deemed unconstitutional in State v. Rosenfeld, 62 N.J. 594 (1973) as being violative of the first amendment. Another applicable law was N.J. Stat. § 2A:170-28, which prohibited public disturbances. A 1970 New Jersey Superior Court rejected a First Amendment challenge to the public disturbance law when applied to a spontaneous political protest of a mandate that spectators rise during the national anthem, and during which obscenity was used. See State v. Morgulis, 110 N.J. Super. 454, 458 (1970) (“the state may protect its citizens, in the exercise of their right to peaceable assembly, from riotous or potentially dangerous disturbances.”). NJSa 2a:170-28 was also repealed in 1978.

The current law in New Jersey prohibiting disorderly conduct is N.J.S.A. 2C:33-2, which prohibits “improper behavior,” defined as (in relevant part) “engage(ing) in . . . violent or tumultuous behavior “with the “purpose to cause public inconvenience, annoyance or alarm.” NJSA 2C:332a(1). Public disorder will also be established where an offender uses “offensive language,” under NJSA 2C33-2(b). This provision has been held unconstitutional in State in the interest of H.D., 206 N. J. Super. 58, 61 (App. Div. 1985) for basically the same reasons as the previous law was deemed illegal by Rosenfeld.

One other note on possible criminal violations that the NYRW committed: Unlike members of the NWP, the NYRW did not risk a conviction of trespass because they did not commit an unlicensed entry into the Convention Hall. Under N.J.S.A. 2C:18-3(a), a defendant is guilty of criminal trespass if he: (1) “enters or surreptitiously remains in;” (2) a “research facility, structure, or separately secured or occupied portion thereof;” (3) “knowing that he is not licensed or privileged to do so.” NJSA 2C:18-3(a); see also State v. Braxton, 330 N.J. Super. 561, 567, 750 A.2d 185 (App. Div. 2000). Criminal trespass is a disorderly persons offense. N.J.S.A. 2C:18-3(a).

278 See, e.g., Sandra M. Gustafson, Review of Terri L. Snyder’s Brabbling Women: Disorderly Speech and the Law in Early Virginia, 23 Law & Hist. Rev. 464 (2005) (noting a “1662 Virginia statute designed to control disruptive female speech,” namely, female “‘brabbling,’” which “‘signified a (woman’s) wrangling, quibbling, quarrelsome, or riotous disposition.’”)
Further, though Peggy Dobbins never intended to break the law, she was the one NYRW at the protest who was arrested and charged. Recall that she, Bev Grant and Miriam Bokser sprinkled bottles of foul-smelling Toni Home Permanent Solution in the Convention Center, because Toni was a Ms. America sponsor and regarded by these three as symbolic of repressive beauty dogmas. Though Grant and Bokser ran from the police, Dobbins was arrested for releasing a noxious substance and held on $1,000 bail before the charges were dropped. Though this is the most explicit incident of lawbreaking, however, we may believe Dobbins when she explains that she never intended to break the law, as the courts themselves were in disagreement as to whether the Pollution Code covered the release of unpleasant odors. The upshot is, though the ’68 action was intended as a “defiance,” lawbreaking was not as important to the NYRW as it was to members of the NWP; the NYRW only courted arrest in the final moments of the protest, by committing behaviors that were on the edges of

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279 Phone interview with Peggy Dobbins, supra note 248. See also Daring to Be Bad at 94.
280 Chapter VI section 2.1 of the New Jersey Air Pollution Code, which prohibited the release of “substances . . . in such quantities as . . . to unreasonably interfere with the comfortable enjoyment of life” had been declared by a New Jersey County Court to preempt a municipal ordinance which prohibited the release of substances that created foul odors, because the Pollution code does not to “contain any prohibition on odors.” Verona v. Shalit, 92 N.J. Super 65, 68 (1966). The Shalit court also objected to the municipal ordinance for vagueness. See id. at 69 (“Section 6 is invalid for another reason, because it fails to inform those to whom it is addressed of a proscribed standard of conduct, so that men of common intelligence must necessarily guess at its meaning and differ as to its application.”) But see Department of Health v. Owens-Corning Fiberglas Corp., 100 N.J. Super. 366, 392 (1968) (“Thus, in prohibiting emissions of noxious substances the obvious legislative purpose was to include odors.”). This decision was handed down by the Superior Court of New Jersey, Appellate Division in April of 1968.
281 Carol Hanisch, Two Letters from the Women’s Liberation Movement in The Feminist Memoir Project 197 (2007) (“On September 7, 1968, the Women’s Liberation Movement protested the Miss America Pageant in Atlantic City. It was, for its time, a daring act of defiance against everything that women were supposed to be.”).
criminality, and the subjects of laws that would be challenged for constitutionality
under first amendment and vagueness principles.282

iii) Outrage

We may find the most correspondence between the NWP and the NYRW in their
outrages of government and society. Both organizations used pageantry, fiber art, and
street performance as tools to annoy their targets. Like the NWP had used fabric
pickets in its day, the NYRW abused patriarchy with their deliberately offensive
cardboard-and-paint placards,283 and their “great, white bed sheet, emblazoned with
the words WOMEN’S LIBERATION.”284 An intriguing mixture of fabric art, performance,
transgender disguise and subterfuge was also employed by the insurgents who dressed
as respectable women to gain entrance into the hall.285 Other outrages include the
performance of “trashing” the accoutrements of female objectification in the freedom
trash can, refusing to speak to male reporters, the singing of songs like the re-purposed

282 See note 277 supra.
283 An excellent resource for visuals of Miss America protest pickets can be found at
Freeman is a documentary photographer who has been taking images of political events since
the 1960’s. The placards documented by Ms. Freeman are those displayed at the radical
feminist action in 1969, which was forestalled by a preliminary injunction that the Miss America
pageant organizers had applied for before the ’69 contest. As soon as radical feminist arrived
at the ’69 action, they were read the “riot act” and prevented from picketing directly in front of
the Convention Center. See id. According to Freeman, at the ’69 event, “(a)n officer examined
the protest signs to see if any had prohibited ‘offensive language.’ Afterwards, the women were
kept on the beach side of police barricades, well away from the entrance to the hall. They
marched and performed skits while members of the public gawked from the other side of the
barricades.” Id.

The placards that Freeman documented are creatively presented. Some contain images of
Harriet Tubman and Susan B. Anthony. In one picture, a demonstrator carries a picture of U.S.
suffragist Lucy Stone, with the caption “Our Hero.” Agitators also performed women’s condition
by pretending to do domestic tasks on the boardwalk. Id.
284 Divided Lives at 193.
285 Daring to Be Bad at 94 (“The women tried to disguise themselves with ‘straight’ clothes and
lots of makeup.”) (internal quotes omitted).
classic “Ain’t She Sweet?”, and the crowning of the sheep. Furthermore, Peggy Dobbins’ playacting with the papier mache, “chained” and “auctioned” Miss America echoes the demonstration tactics of the NWP agents who burned the effigy of President Wilson. Like the NWP, the NYRW used liminal fabric arts and performance to publically fantasize violence against and by their oppressors, but they refused to cross the threshold from mimicry to actual assault. Bystanders, as it happens, were predictably piqued by the NYRW’s use of outlandish pageantry, which also helped form a second wave link with the NWP.

C) The Miss America Protest and “Constitutionalism in the Streets.”

Like the protests of the NWP, NYRW’s Miss America action served as “constitutionalism in the streets,” and more: It would infiltrate cultural and legal comprehensions of gender justice, as well as influence feminist legal theory. With respect to its former function, NYRW had a direct influence on Equal Rights Amendment debates, albeit in a manner different than the NWP’s agitating efforts influenced the politics surrounding the 19th Amendment. As Lynda G. Dodd has shown, the NWP’s actions served as foil to the NWSA, and the combination of this “insider-outsider”

286 See text accompanying notes 1-19, supra.
287 Id.
288 Charlotte Curtis, Miss America Pageant is Picketed by 100 Women, N.Y.T., Sept. 8, 1968, at 81. (Male onlookers declared the protesters to be “vulgar” and that the women should throw themselves into the trashcan.)
289 See Dodd’s analysis, supra note 103.
dynamic helped push President Wilson into supporting the Amendment, which led the
way to its passage.  

NYRW, too, served as “outsiders” to Betty Friedan and the National Organization
of Women’s “insiders” – so much so that Susan Brownmiller would castigate NOW for
being “hopelessly bourgeois” in the New York Times, and Friedan would condemn
radical feminists for supporting Valerie Solanas and other decisions. Yet the pattern of
a double agitation – one inside, one outside – which led to unqualified success is not
completely replicated in the case of NYRW. With respect to the E.R.A., some, indeed,
have pointed fingers at radical feminist outbursts like the “bra-burning” at Miss America
as reasons why the Amendment failed.

Did the radical feminists help dash E.R.A. hopes, because their outrageous acts
disqualified them from having friends in “high places,” or finding “respected” backers? It is true that anti-Equal Rights Amendment activist Phyllis Schlafly used the
imagined iconography of the Miss America protest to savage the E.R.A. lobby. In her
book, The Power of the Positive Woman, Schlafly raises the bra burning in her
(undeniably, popularly successful) effort to characterize E.R.A. supporters as “nuts.”

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290 See Dodd, supra note 117.
291 See Susan Brownmiller, Sisterhood is Powerful, N.Y.T. Magazine, Marc. 15, 1970, at 27, 128. See also Robin Morgan, Going Too Far 15 (1977) (“Once I would have sneered at . . . (NOW).”).
292 See Daring to Be Bad at 168.
293 See Mary Frances Berry, Why the ERA Failed 82 (1988) (“Some analysts blamed defeat on the leadership style of ERA supporters, lesbians, radicals, and the like.”)
294 See note 115, supra.
295 See note 114, supra.
296 See Martha F. Davis, The Equal Rights Amendment: Then and Now, 17 Colum. J. Gender & L. 419, 246 (2008) (“Phyllis Schlafly emerged as a leading opponent of the ERA in the early 1970s. Her organization, STOP ERA (STOP stands for ‘Stop Taking Our Privileges’), was the central organization opposing the amendment. As Professor Reva Siegel observes, Schlafly’s “success in mobilizing opposition to the ERA forced the women’s movement to take account of her, in ways that shaped its constitutional advocacy for decades.” Schlafly “linked together the ERA,
She also founded her case against the E.R.A. on the basis that the “radical feminists” who backed it “denigrat(e/d)” “housewives;” in so doing, Schlafly was certainly reacting to N.O.W.’s lobbying, but also in part to the gestural politics of NYRW. Schlafly contrasted her “STOP-ERA” agenda to that of radical feminism by emphasizing the virtues of “the womanly attributes that make women deliciously different from men,” and arguing that “the feminine woman enjoys her right to be a woman. She has a positive outlook on life.” Furthermore, in Schlafly’s anti-ERA politicking, she also responded to NYRW-type performance with her own playacting. As the New York Times reported in 1975, “(p)erhaps the Schlafly strategy that is deplored most by her opponents is her advocacy of ‘femininity tactics,’ in which her supporters wear long dresses and hand out such things as homemade bread, apple pie and jam to legislators. ‘It’s our best tactic,” Mrs. Schlafly said.’

If NYRW’s action and politics did not productively conflate with N.O.W.’s E.R.A. lobbying in the same way that NWP’s did with the NWSA, that should be not so surprising – since NYRW disparaged the E.R.A. as an incomplete and misguided

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298 Serena Mayerti, A New E.R.A. or a new Era? Amendment Advocacy and the Reconstitution of Feminism, 103 N.W. U.L. Rev. 1223, 1255 (2009). Schlafly’s definition of radical feminism, of course, is different than the ones that feminists themselves use. For just one example of this misnomer in action, see, e.g., 108 CONG. REC. 7207, 6803 (daily ed. Mar. 27, 2003) (statement of the Honorable Robert B. Aderholt) (“In a ten-year battle, she led the profamily movement to victory over the principal legislative goal of the radical feminists, called the Equal Rights amendment.”). The record can be found here: http://books.google.com/books?id=KnCTdk5jxggC&pg=PA7803&dq=phyllis+schlafly+radical+feminists+e.r.a.&hl=en&ei=4NbvTfenl2KosA0uuOz_Bg&sa=X&oi=book_result&ct=result&resnum=10&ved=0CFkQ6AEwCQ#v=onepage&q&f=false
299 Schlafly, supra note 297 at 1 in the above hyperlinked online edition.
measure: It was deemed a “paper” as opposed to real justice. Peggy Dobbins’ “new categories,” not “attempts to ‘buy women off’” were being called for by the radicals. In this way, then, the NYRW’s outrageous street constitutionalism was too broadly phrased, largely ambitious and thus “off the wall” to intersect with the focus of N.O.W., and their methods and philosophies rejected the type of diplomacies with “friends in high places” that would win them much favor in the E.R.A. fight.

It is possible, however, to see the influence of the different “categories” sought by the NYRW in later radical feminist protest, which, in time, “on the wall(ishly)” connected up with the constitutional development of abortion rights in the case of Roe v. Wade. This connection may be found in the persistent radical feminist exercise of outrage tactics when lobbying for reproductive freedoms. Five months after the Miss America protest, radical feminists, including NYRW member (and Miss America protester) Kathie Amatnick organized a group called the Redstockings, which was intended be more radical than NYRW and that would take aim at abortion rights. In February of ’69, while N.O.W. members picketed a New York legislative hearing on abortions that excluded testimony from women (except for a nun), the Redstockings “disrupt(ed) the hearing” by demanding that testimony be taken from “real experts,“

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301 Daring to Be Bad at 200.
302 Id. (quoting Shulamith Firestone, an important member of the NYRW. For Firestone’s radical bona fides, see id. at 73).
303 Cf. Katie Sarachild, a radical feminist member of the Redstockings, who maintained that that “(i)t was the radical leaders’ militancy that got the ERA through Congress, and the ‘popularizers’ do not seem to have been much help in carrying it any further.” Sarachild, The Power of History in Feminist Revolution 23 (1975).
304 See Balkin, supra note 113 (to succeed, this advocacy must relate to the text of the constitution, which is not ever-distensible).
305 Id.
306 Daring to Be Bad at 140. Echols names “Kathie Sarachild” as one of the Redstocking founders; Kathie Sarachild is also known as Kathie Amantiek. See Barbara J. Love, Feminists Who Changed America 1963-1975 (2006).
being those who had received abortions. In this “disruption,” the Redstockings repeated the pattern set at the Miss America protest, wherein they clamored, but did not break the law or use physical violence to communicate their dissent. At least one legislator present at the hearing – Senator Seymour Thaler – told reporters that he was “entirely in sympathy” with the protesters.

“Inspired by the success of this action,” the Redstockings later held abortion speakouts in March of that year, where women talked “in personal terms” about their “empathy, anger, (and) fear” about abortion laws and their own procedures. This may, too be seen as a kind of outrage tactic, as it aired women’s deepest and most controversial privacies in public. This version of “constitutionalism in the streets,” which can be traced from the Miss America protest to the speak-outs, may be felt in the tone of Roe v. Wade itself, which depended so much upon limning women’s pain to buttress its holding that the due process clause contains a right to abortion. If it is true, as Reva Siegel writes, that “(p)opular debate over questions of constitutional

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308 Id.
309 Id.
310 Daring to Be Bad at 142.
311 Id. (quoting Ellen Willis). See also Susan Brownmiller, Sisterhood is Powerful, supra note 305 (“12 women (testified) about abortion, from their own personal experience, before an audience of 300 men and women. The political message of the emotion-charged evening was that women were the only true experts.”).
312 Rosalind Rosenberg calls the speakouts a means by which “the unspeakable became the center of public debate.” Divided Lives at 206.
313 Roe v. Wade, 410 U.S. 113, 153 (1973) (“The detriment that the State would impose upon the pregnant woman by denying this choice altogether is apparent. Specific and direct harm medically diagnosable even in early pregnancy may be involved. Maternity, or additional offspring, may force upon the woman a distressful life and future. Psychological harm may be imminent. Mental and physical health may be taxed by child care. There is also the distress, for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it. In other cases, as in this one, the additional difficulties and continuing stigma of unwed motherhood may be involved. All these are factors the woman and her responsible physician necessarily will consider in consultation.”)
meaning produces understandings that ground individual and collective identity. . . .

collective deliberation gives infrequent acts of constitutional lawmaking much of the
democratic authority they possess,” then these two related actions – these exercises
of obstreperous female voice and resulting outrage – may have “produce(d)
understandings” that held pave the way to Roe.

Beyond NYRW’s possible direct influence upon legislation and Supreme Court
jurisprudence, its actions, such as its Miss America protest, may have also played a role
in “producing understandings” that influence feminist legal writings. The prime
candidates for this influence are Catharine MacKinnon and her critics. MacKinnon, like
the NYRW at the Miss America action, would critique public displays of female bodies in
ways that objectified them. The Miss America protest would also prefigure
MacKinnon’s efforts to name and challenge the “metaphysics” of (or “categories”
created by) male dominance, which is promoted in culture as well as in constitutional
law.

Furthermore, the NYRW’s use of outrage, but not lawbreaking and violence, is
also echoed in MacKinnon’s work. Both MacKinnon’s theory and readings of it may be
characterized as outrageous. With respect to the former, MacKinnon is noted for her
use of profanity and shocking constructions of sexuality. With respect to the latter,

314 Reva Siega, The Defacto ERA, supra note 103 at 1343.
315 See, e.g., Andrea Dworkin & Catharine MacKinnon, Model Antipornography Civil-Rights
316 Catharine A. MacKinnon, Feminism, Marxism, Method and the State: Toward Feminist
Jurisprudence, in Feminist Legal Theory: Readings in Law and Gender 182 (Katherine T. Bartlett &
Rosanne Kennedy, eds., 1991). (“male dominance is perhaps the most pervasive and tenacious
system of power in history . . . and is metaphysically nearly perfect.”)
woman; subject verb object.”); id. at 175 (“These categories tell men whom they can legally
fuck, who is open season and who is off limits, not how to listen to women.”); Feminism
MacKinnon has been read by some as saying that all sex is rape, or that all men are “beasts,” which has led to counter-charges of outrage.\textsuperscript{319}

Yet, MacKinnon respects the law as did the NYRW, who were so chary of lawbreaking. She does not despair of using the law to promote feminist causes; she does not advocate an extra-legal or violently revolutionary approach to garnering women equality in this country. She has, indeed, possesses an anger at but also a faith in law,\textsuperscript{320} including the Constitution, as can be seen in her work in sexual harassment legal reform, rape law, and pornography. Thus we see the long, textured strands the U.S. radical feminism woven into 1980’s radical feminist theory (an important fact to

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\textsuperscript{318} \textbf{Gavin Last,} \textit{Advances Less Criminal than Hormonal: Rape and Consent in R. v. Ewanchuk, 5 Appeal} 18, 18 (1999) (“Feminist theorist Catharine MacKinnon shocked us in 1983 by declaring that heterosexual intercourse is rape. She said: ‘perhaps the wrong of rape has proven so difficult to articulate because the unquestionable starting point has been that rape is definable as distinct from intercourse, when for women it is difficult to distinguish them under conditions of male dominance.’”).

\textsuperscript{319} See, \textit{e.g.}, Susan Williams and David Williams, \textit{A Feminist Theory of Malebashing}, 4 \textit{Mich. J. Gender & L.} 35, fn. 354 (1996) (“It is an outrageous misreading of MacKinnon to suggest, as some have, that she sees men as beasts by biology.”) (citing Kenneth Lasson, \textit{Feminism Awry: Excesses in the Pursuit of Rights and Trifles}, 42 \textit{J. Legal Educ.} 1, 12-13 (1992)).

\textsuperscript{320} Ranjana Khanna, who received her Ph.D. at the University of York, so characterizes MacKinnon in \textit{Queer Theory, Feminism, and the Law: Signatures of the Impossible}, 11 \textit{Duke J. Gender L. & Pol’y} 69, 70 (2004) (“MacKinnon and Dworkin would call upon the law to reject its “male” position. . . They . . . continue to have absolute faith in the power of the law to effectuate change in women’s cultural, economic, and political realms.”). This was not always so, however; Ian/Janet Halley notes that MacKinnon’s earlier work despaired of using the law to fight patriarchy. See Ian Halley, \textit{Queer Theory by Men}, 11 \textit{Duke J. Gender L. & Pol’y} 7, 11 (2004) (“Early MacKinnon used to embrace a critique of the state and of the law. The state and the law were, she proposed, male - not in the sense that men ran them, but in the sense that they fully recapitulated male ontological and epistemological powers and were in a sense therefore fully dependent on female subordination to be what they were. The state could not be used against something so constitutive of it as male power . . . It was not too long before MacKinnon significantly departed from some of these claims. . . Rights . . . enforced by the state would be feminist.”)
note, as we will discern a somewhat different heritage in the British radical feminist example, and the way it played out in British feminist theory.)

In addition, just as NYRW (and the NWP) performed violence with street theater and fabric arts, we may see MacKinnon also performing violence with the art form of language. As noted, she is an avid user of profanity to get her point across – words such as “fuck” figure proudly in her theory – and she exhibits emotional animosity toward men and patriarchy in these displays. MacKinnon herself well understands the connections between language and violence, so much so that it is a central thesis of her theory. To MacKinnon, words can open the door to terrible violence. As such, her use of profanity and emanations of hostility can be seen as performing a kind of cheeky, feminist violence through words in ways that parallel Dobbins’ theatrical violence on the puppet and NYRW’s effigy-burning.

As we may trace radical feminist action’s influence on MacKinnon’s jurisprudence, so, too, would the aftermath of the Miss America protest find itself reflected in the critiques of radical feminist theory – namely, in feminists’ reaction to MacKinnon’s delineation of “false consciousness” – the phenomenon wherein

\[321\text{ See text accompanying notes 389-402 infra.}\]
\[322\text{ Supra note 317.}\]
\[323\text{ See, e.g., Catharine A. MacKinnon, Only Words 72-73 (1996) (“(T)he power of those who have speech has become more and more exclusive, coercive, and violent as it has become more and more legally protected. Understanding that there is a relationship between these two issues – the less speech you have, the more the speech of those who have it keeps you unequal; the more the speech of the dominant is protected, the more dominant they become and the less the subordinated are heard from – is virtually nonexistent.”})\]
\[324\text{ Catharine A. Mackinnon, Francis Biddle’s Sister: Pornography, Civil Rights, and Speech, in Feminism Unmodified, supra note 331 at 184 (“Specific pornography does directly cause some assaults. Some rapes are performed by men with paperback books in their pockets.”)}\]
\[325\text{ MacKinnon herself does not use the term; she says that women do not speak in their own, true voice. See Ellen C. DuBois et al., Feminist Discourse, Moral Values, and the Law - A Conversation, 34 Buff. L. Rev. 11, 27 (1985) (statement of Catharine A. MacKinnon) (“The ‘voice that (women)...”}\]
women internalize patriarchal values and enforce them. Recall that the NYRW challenged the Miss America contestants to comprehend their own debasement, and their antics were read by many to be criticisms of the contestants themselves. It was this reading that prompted Carol Hanisch to revise her thoughts on radical feminist protest, and with it, the substance of radical feminist definitions of equality. Namely, Hanisch expressed regret for signs that appeared to make fun of the contestants, the crowning of the sheep, the papier mache Miss America, and some of the songs sung at the action because they were “anti-woman.” As Hanisch later wrote, this anti-womanism was “one of the biggest mistakes” of the action, because “Miss America and all beautiful women came off as our enemy instead of our sisters who suffer with us.”

A direct result of this critique would be Hanisch’s development of the “pro-woman line,” which “recognize(s) the need to fight male supremacy as a movement instead of blaming the individual woman for her oppression. . . It challenge(s) the old anti-woman line that use(s) spiritual, psychological, metaphysical and pseudo-historical explanations for women’s oppression with a real, materialist analysis for why women do what we do.”

Similarly, feminist responses to MacKinnon’s charges of false consciousness would echo the pro-woman line. I am speaking here in particular of cultural feminist Robin West’s famous rejoinder to Mackinnon’s thesis, The Difference in Women’s Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory, wherein she rehabilitates have been said to speak in is in fact in large part the “feminine’ voice, the voice of the victim speaking without consciousness.”

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326 Carol Hanisch, What can be Learned: A Critique of the Miss America Protest, http://www.carolhanisch.org/CHwritings/MissACritique.html
327 Id.
328 Carol Hanisch, preface to The Personal is Political, in http://www.scribd.com/doc/55802449/Carol-Hanisch-The-Personal-is-Political
female sexual pleasure as the positive, “human” need to “trust” another person. West, in fact, is so wary of blaming women that she advises women to trust their own feelings, as well as to attend to the “factual question(s)” of what harms them. Other critics, as well, have taken MacKinnon to task for hijacking their own experience.

Further, to demonstrate the richness of the source material that groups like NYRW would later supply to feminist legal theorists, the historians of radical feminist activism like NYRW’s have noted that these groups – and NYRW in particular – were the birthplace of three important developments in feminism: These were 1) consciousness raising, 2) the “construction of a specifically female culture and community,” 3) and of the resulting practice of attending to the details and politics of women’s privacy. As it so happens, these were also the building blocks of cultural feminism. Thus, NYRW’s theories and tactics not only presaged radical feminist theory, but radical feminism’s supposed jurisprudential antagonist – cultural legal feminism – as well.

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329 15 Wis. Women’s L.J. 149, 205 (2000)
330 Id. at 206.
331 Id.
332 Linda C. McClain, Toward a Formative Project of Securing Freedom and Equality, 85 Cornell L. Rev. 1221, (2000) (“Some of MacKinnon’s critics contend that her claims about women’s lives and experiences are categorical and totalizing, subsume women into the category of victim, and insufficiently address differences among women."

333 Daring to Be Bad 200-201
334 See, e.g., id.
335 Compare id. at 201 (“The characterization of ‘woman’ as a unitary category, the depiction of men as irrevocably sexist and of women as powerless victims, and the conviction that feminism was the single transformative theory – all helped to pave the way for cultural feminism.”) to, e.g., Martha Albertson Fineman, The Feminism and Legal Theory Project, 13 Am. U.J. Gender Soc. Pol’y & L. 13, 17 (2005) (“cultural feminists” argued that women were different from men and had a unique way of “knowing” or feeling.”).
Finally, Hanisch’s self-criticism also looks forward to critical race and lesbian and queer legal responses to both of these theories, as these camps urge all theorists to urge us to constantly interrogate our own assumptions.336

D) The contemporary context of the beauty pageant protest in Britain

Like their U.S. sisters, radical337 feminists in late ’60s Britain also worked in a national feminist and left tradition that offered pacifist as well as more aggressive models for protest. Quakers Anne Knight338 and Priscilla Peckover provided early examples of British feminist pacifism.339 The American (but widely read in Britain) Charlotte Perkins Gilman and Oliver Schreiner provide slightly later inspirations for

336 See A Jurisprudence of Nonviolence, supra note 249 at 103-106 and 111-113.
337 My characterization of the Miss World feminists as radicals is supported by David Bouchier, who acknowledges that radical feminism delivered the insight that the “social definition” of biology must be reevaluated (which was done in the action) and that zap actions are signatures of radical feminist method. David Bouchier, The Feminist Challenge: The Movement for Women’s Liberation in Britain and the United States 77, 88 (1984).
338 Anne Knight was a British abolitionist and feminist, who lobbied for women’s suffrage as well as worked in the temperance movement. See Jill Liddington, The Road to Greenham Common: Feminism and Anti-Militarism in Britain Since 1820 17 (1989) (detailing Knight’s dual Quaker quietism and feminism, noting that she “believed women’s suffrage would bring peace,” and her rebuffed efforts to be a delegate at the Peace Society conferences).
339 Peckover is now regarded as a pioneer in the British peace movement. She worked with the Wisbech Peace Association and made the famous observation that “It is a part of militarism to deny any political influence to the gentler sex. They may suffer but not protest.” Heloise Brown, The Truest Form of Patriotism: Pacifist Feminism in Britain, 1870-1902 91 (2009). But see Jill Liddington, id. at 29 (describing Peckover’s Quaker quietism while also noting that Peckover lacked a “sharp analysis of British feminism.”). See also Brown, The Truest Form at 89 (“Peckover was reticent, to say the least, on women’s roles and, more importantly, the women’s movement itself.”).
mingling feminism with nonviolence in political work.\textsuperscript{340} The magisterial Vera Brittain must also be added to this list, for her forceful advancement of pacifism through her novels and autobiographical writings, as well as her peace activism.\textsuperscript{341} And then, of course, there is Virginia Woolf, who emerges as a kind of complicated god in this pantheon of first wave feminist pacifism in Britain.\textsuperscript{342}

Yet this storied matrileneage of peaceful feminism was not as beguiling to many radicals storming London in ’70 as were other influences. Historians including Martin Pugh characterize second wave British feminism as “emerging during 1968-70” from a variety of group actions and initiatives, including “local industrial action by low paid

\textsuperscript{340} Jill Liddington, supra note 337 at 13 (“(O)n the eve of the First World War writers like Olive Schreiner and Charlotte Perkins Gilman found an enthusiastic readership in Britain for their proclamation of women’s natural peace instincts and their attack on ‘man-made’ war.”).  
\textsuperscript{341} Among other examples of Brittain’s pacifism is her 1944 work Massacre by Bombing that criticized the Blitz. Vera Brittain, Massacre by Bombing, in vol. X no. 3 Fellowship 49-64 (March 1944), cited in Vera Brittain, Shirley Williams, One Voice: Pacifist Writings from the Second World War xvii, xxiv n. 39 (2005).  With respect to Brittain’s feminism, see Harold L. Smith, British Feminism in the Twentieth Century 84 (1990) (“For Vera Brittain, feminism was more than a cause she espoused. It was the central organizing principle of her personality.”).  See also generally Deborah Gorham, Vera Brittain: A Feminist Life (2000).  Note, however, that there is some disagreement as to whether Brittain actually qualifies as a feminist.  See Andrea Peterson, Self-portraits: Subjectivity in the Works of Vera Brittain 24 (2006) (“Whilst Britain’s commitment to both socialism and feminism is often called into question by her critics, her commitment to pacifism would seem beyond doubt.”); Lucy Delap, The Feminist Avant-Garde: Transatlantic Encounters of the Early Twentieth Century 326-7 (2007) (“Vera Brittain was skeptical about feminism. . . . feminists were, she felt, ‘hopelessly entangled’ in ‘(t)he complicated machinery of conferences, conventions, resolutions and recommendations.’’”)

\textsuperscript{342} For example, in her famous tract, Three Guineas, Woolf lauded the Pankhursts. Three Guineas 163 (1966).  See also id. (“The younger generation therefore can be excused if they believe that there was nothing heroic about a campaign in which only a few windows were smashed, shins broken, and Sargent’s portrait of Henry James damaged, but not irreparably, with a knife. Burning, whipping, and picture-slashing only it would seem become heroic when carried out on a large scale by men with machine-guns.” However, she ultimately tied feminism to nonviolence. See id. at 84 (“The causes it seems are connected.”).  See also Hermione Lee, Virginia Woolf 121 (1997) (“Her private opinion of the women involved in (political) activities was in sharp contrast to her public appreciation of them in a work such as Three Guineas. And for herself such work was anathema, though she was always looking in on it and snifffing at it.”).
women workers,” and Marxist, Socialist, and Communist groups.\textsuperscript{343} Pugh also identifies British second wave feminist methods as aligning with “traditional liberal practice(s)” like “debates, conferences, journals, and marches designed to educate public opinion and influence the politicians.”\textsuperscript{344} These strivings of the women’s liberation movement would ultimately help foment the Ruskin conference at Oxford which saw the formation of the Women’s National Co-ordinating Committee and its announcement of “four demands,” being equal pay for equal work, equal opportunities and education, free contraception and abortion on demand, and free 24 hour child care.\textsuperscript{345} The Ruskin Conference was also one of the cradles of Miss World, as that protest was spurred on by the same complaints that ushered in the demands, and which were brought to light by this eclectic group of influences.\textsuperscript{346}

To hone their style as participants in this specific constitutional conversation, radicals preparing to protest in ‘70 looked not only to their Marxist and Socialist forbears for inspiration, but also to other inspirations. David Bouchier traces the Miss World action’s lineage to the ‘68 Miss America engagement,\textsuperscript{347} and certainly the similarities between the two events demonstrate that the ‘70 protest was influenced by Miss

\begin{footnotesize}
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\item \textsuperscript{343} Martin Pugh, \textit{Women and the Women’s Movement in Britain 1915 to 1999} 317 (1995). \textit{See also id.} at 319 (characterizing British second wave feminism as being less divided than its U.S. counterpart). British feminist Sheila Rowbotham’s socialist feminist writings are a high point in this development of British second wave feminism, particularly her 1969 pamphlet \textit{Women’s Liberation and the New Politics}. \textit{See Sheila Rowbotham, Women’s Liberation and the New Politics} in \textit{The Body Politic} 3,4 (1972) (“It is necessary to try and understand the awkwardness with which Marxism has touched upon the situation of women.”); Anna Coote and Beatrice Campbell, \textit{Sweet Freedom: The Struggle for Women’s Liberation} 17 (1982) (“Sheila Rowbotham’s brilliant pamphlet . . . published in 1969, had a profound influence on the development of feminism. Linking housework with unequal rights at work, and placing both in the context of cultural traditions which objectify and silence women, she insisted that such an analysis was crucial to socialist theory.”).
\item \textsuperscript{344} Pugh, \textit{id.} at 319.
\item \textsuperscript{345} \textit{See Bouchier, supra} note 337 at 93-4.
\item \textsuperscript{346} For the Ruskin’s relationship to Miss World, \textit{see Sweet Freedom, supra} note 34 (“cluster” quote).
\item \textsuperscript{347} \textit{See Bouchier, supra} note 337 at 60.
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America of ’68. But just as the U.S. feminists at Miss America used tactics that echoed their first wave counterparts (there, outrage), the British feminists also looked to their own national foremothers for guidance -- being the WSPU suffragettes, who modeled different methods and permissions than did NWP, or for that matter, Knight, Peckover, Gilman, Schreiner, Brittain, or Woolf. As an unsigned member of the Women’s Liberation Workshop wrote in the post-action 1970 pamphlet ‘Why Miss World?’:

“Demonstrating against Miss World, Women’s Liberation struck a blow against (women’s) narrow destiny, against the physical confines of the way women are seen and the way they fit into society. Most of all it was a blow against passivity, not only the enforced passivity of the girls on the stage, but the passivity we all felt in ourselves. We were . . . terr(ified) at what we were about to do. To take violent action. To take violent action. . . .

The Miss World action and the trial which followed was the first militant confrontation with the law by women since the suffragettes. . . . (which resulted in the 1908) celebrated trial of Mrs. Pankhurst. . . . In the course of (our own) trial we re-discovered the political importance of self-defence, both as a means of defending our self-respect and . . . our refusal to collude in our own repression.”

The recent events on the Continent may also have made the WSPU’s aggressive model of protest relevant to British radical feminists. While it is true the British feminists in the’70 action might have studied the pacifist methods of the protesters in the Prague Spring, the ’68 riots in France created a more appealing example of rebellion, as

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348 Why Miss World? In Micheline Wandor, The Body Politic: supra note 37 at 252, 254. Various other accounts also directly link the WSPU actions with the second wave actions of the 60’s and 70’s, including the Miss World protest. Coote and Campbell, Sweet Freedom, supra note 33 at 11 (“Newcomers to feminism in the 1960s began to refer back to the suffrage era and to re-examine it.”). See also c.f., Audrey Battersby, Audrey Battersby, in Once a Feminist: Interviews by Micheline Wandor 113, 114 (1990) “(I remember one extraordinary woman . . . she was the one who broke the windows of Selfridges. Something to do with smashing up cosmetic counters, and pinching men’s bottoms on escalators. She was an activist militant . . . it was beginning to dawn on me that feminism had a link with the suffragettes.”

“(y)oung people, in Paris and elsewhere, were yearning for a fight.” May ’68 ushered in a rowdy mood that, despite the evidence of police brutality visited upon the Parisian protesters, did not necessarily inspire the caution that would influence the organizers of the ‘68 Miss America action. The French student protesters, who issued a “counterblast” to the “West’s complacencies,” reacted to police attacks on fellow dissenters with an outrage that pushed students to greater and greater militancy. The Paris protests, which ushered in a strike and a street war complete with the famous barricades, lasted for days; the ensuing violence generated such universal sympathy for the students that even today they are venerated as glamorous freedom fighters throughout Europe, which cannot be said for the U.S. reputation of the protesters at the DNC. A highly charged, bumptious feminism perhaps foreseeably ascended in

351 Geoff Eley, Forging Democracy, supra note 34 at 344.
352 *Id.*
353 *Id.* at 345.
354 There is a wide, various body of literature devoted to this subject. See e.g., Graham Robb, *Parisians: An Adventure History of Paris* 377-8 (2010) (“Female students had participated mostly by distributing tracts, organizing crèches and by lying unconscious on the ground, being filmed by cameramen. Only a few of them had thrown missiles, and none of them had appeared on television as leaders of the revolt. Their equal treatment by the forces of order, however, had given them a sense of civic importance and consumer rights. . . . ’May ’68’ came to stand for personal liberation and the bankruptcy of a paternalistic, gerontocratic system.”); Richard Porton, *Film and the anarchist imagination* 31-32 (1999) (calling May ’69 a “brief exhilaration.”); Ian McCay, *Rebels, Reds, Radicals: Rethinking Canada’s Left History* 186 (2005) (musing on “the French Revolution of May 1968, those miraculous days when Paris suddenly reclaimed its great stature as the world capital of enlightenment and revolutionary reason.”).
Britain. It had already been gathering momentum not only because of the Ruskin conference but also because of the 1967 legalization of abortion. And, as importantly, it “grew from ‘1968’,” the *annus mirabilis*, as did the feminisms of France, the Netherlands, and West Germany.

Furthermore, the rabble-rousing (that is, violent, bomb-planting) Situationists may have had a more direct influence on British radical feminism in ‘70 than it did on its U.S. counterpart, if one, oft-repeated anecdote is to be given weight in this history. Some feminists, recalling the Ruskin conference, made special mention in an oral history of a Situationist graffiti that had been sprayed on the walls of Oxford: “End Penile Servitude.” Though the “criminality” of the Situationists bothered some attendees, as some observers viewed the trial as lacking in importance, others viewed the trial as a source of inspiration for American citizens.” Paul Wood, *Modernism in dispute: art since the Forties* 94 (1993) (“Massive publicity fed further divisions in public opinion both during the trial (of the Chicago Eight) and, at the end, when five . . . were found guilty.”).

Eley numbers the British feminist movement as one of the “strongest” in Europe. Eley, supra note 34 at 377.


Eley, supra note 34 at 377.

Bouchier, supra note 337 at 56.

Eley, supra note 34 at 377. See also id., noting that the feminisms of Austria, Belgium and Switzerland were more conservative, as they were still focusing on winning the vote (presumably not taking the WSPU as a model) or achieving basic civic equality.

Amanda Sebeysten, in *Once a Feminist*, supra note 348 at 140: (“At the very end of the conference the Situationists did their graffiti, ‘End Penile Servitude’ on the walls o Ruskin, and put out a pamphlet. I liked the pamphlet, but in the end it was nothing about men and women. They always had quotations from Bob Dylan. It seemed at first that the pamphlet was going to be about sexual antagonism, but in the end it was just about smashing the spectacle, that sort of thing. I was very torn about the graffiti, because I liked what they wrote, I thought it was witty. At the same time I didn’t like the criminality of it. And we also felt very aware of the cleaning women who would have to scrub it off.”); Barbara Winslow interviewed by Kate Weigand in *Voices of Feminism Oral History Project* 23 (May 3-4 2004), (“I remember a whole bunch of women wrote signs that said, ‘Down with Penile Servitude.’ And I thought it was great; but people said that the cleaning women had to clean it up and they didn’t like it.”) http://www.smith.edu/library/libs/ssc/vof/transcripts/Winslow.pdf See also note 37, supra, noting a connection between the graffiti and the Angry Brigade; see also the first chapter of Gordon Carr, *The Angry Brigade*, supra note 37, for connections between Situationism and the Angry Brigade.
did that group’s failure to focus sufficiently on the problem of gender,\textsuperscript{362} the Situationists’ example remained an important touchstone for women developing their burgeoning feminist consciousness that would next find its expression at Prince Albert Hall. Though the participants in the Miss World protest did not align themselves with the increasingly volatile Situationists, they were not sufficiently put off from the morning’s bombing of the BBC van to cancel their protest; more pressingly, they revealed some sympathy with Situationist ideology by attacking what they called an anti-feminist “spectacle.”\textsuperscript{363}

In the end, then, all of these ingredients cooked up a British feminist protest style whose actors were less wary of violence than their ’68 U.S. counterparts. They also were less hesitant of lawbreaking. Outrages acts, as well, were a favorite of the radicals who acted out on that evening in London.

\textit{i) Violence}

Though the use of flour bombs, ink bombs, rotten produce, and physical attacks wildly pales in comparison with the deadly violence of the WSPU – as well as contemporary rebels like the Black Panthers\textsuperscript{364} the Angry Brigade,\textsuperscript{365} the German radical

\textsuperscript{362} \textit{Id.}

\textsuperscript{363} See e.g. \textit{Why Miss World} at 249-50 (favorably comparing “carnival” contests to the “slick, hence more insidious prefabrication of Miss World.”); \textit{id} at 251 (“Over 27 million people watch the Miss World spectacle.”); BBC4 \textit{Reunion, supra} note 33 at 9:27-9 (Jo Robinson remembers thinking, when presented with the idea of the protest, “(i)t’s a golden opportunity for us to . . . challenge this awful spectacle.”)

\textsuperscript{364} See, e.g., Wallace Turner, \textit{Black Panthers, White Power: Violent Confrontations on Coast, N.Y.T.} July 19 1968 at (x) (“Eldridge Cleaver . . . (leads) a group of gun-carrying Negroes who have become the effective voice of the extreme militancy of Oakland’s Negro slum.”); Sol Stern, \textit{The Call of the Black Panthers, N.Y.T.} Aug 6, 1967, at 186. (“In early May, front pages across America carried the illustrated story of an ‘armed invasion’ of the California Legislature by a group of black men known as the Black Panther Party for Self Defense. What actually happened that day in Sacramento was something less than the beginning of a Negro insurrection, but it was no less important for all that.”)

\textsuperscript{365}
Petra Kraus, the Symbionese National Liberation Army or the Weathermen— the Miss World protesters nevertheless committed assaults on members of the press, pageant audience, and police during their action. It may be said that flour bombs and the like served as mere pantomimes of “real” attacks, yet physical attacks of these kinds may also be seen as “authentic” violence. Whereas their U.S. counterparts had used guerilla theater, fabric arts, gender-performance subterfuges and puppetry to act out, but not cross the threshold of violence, for the British rebels performance and protest art opened the doors to acts of illegal force, just as it had members of the WSPU, for whom fabric arts served to symbolize and energize martial magnificence. As drama critic Michelene Wandor writes, the guerilla theater of the protesters did not substitute for violence, but rather the flour and ink bombs, cigarette-stubs and lettuce-throwing was the denouement of the plays put on by the protesters outside of the Albert Hall.

Indeed, violence seems to have been one of the goals of the London activists, as the events were later described by the author or authors of the pamphlet Why Miss World? The “violent action” was a necessary “self-defence” that announced “a public demonstration of our refusal to collude in our own repression.” British feminist gestures here shared none of the careful negotiations of Morgan and Hanisch, but rather

365 See note 37, supra.
366 Paul Hoffman, Case Involving a German Radical Deepens Divisions in Italian Left, N.Y.T., Sept. 5, 1977, at 2 (“[Far Left Communist] radical, Petra Krause, who was instrumental in deepening the antagonisms in the left-wing camp, faces terrorism charges in Italian and Swiss courts, and is also wanted by West Germany.”)
368 See, e.g., John Kifner, A Radical ‘Declaration’ Warns of an Attack by Weathermen, N.Y.T. May 25, 1970 at 27. Note that this is a very partial list of violent political protesters in the 60’s and ‘70’s.
369 Michelene Wandor Post-War British Drama 122-3 (2001) (describing the assaults themselves as “street and public theatre” that created “alternative displays.”)
370 Why Miss World? at 254-5.
emerged from a distinctly cathartic\textsuperscript{371} reaction to sexism, a charge of resentment that would require even more than self-defense: “We wanted to go further than defending ourselves. We wanted to ATTACK.”\textsuperscript{372}

\textit{ii) Lawbreaking}

The attackers did not just want to be violent, however; lawbreaking emerged as a central premise of the British provocation. Lawbreaking, like violence, would communicate the feminists’ rage at and refusal of the patriarchy that constituted the larger part of their efforts to shape British common law “norms,”\textsuperscript{373} and become “transformational”\textsuperscript{374} legal players. As Jenny Fortune would recall to the BBC, “(b)efore I went out that night, it just occurred to me, ‘I might be arrested for this. And I thought, so be it. . . . I was really, really prepared to be arrested.”\textsuperscript{375}

This hope of using law breaking to achieve the change of state necessary to see the four demands come into existence\textsuperscript{376} is manifest in the four arrested protesters’ aims when they conducted their own trial defenses. The protesters wanted to fill up the legal space of the courtroom, particularly with their voices; at many points in the \textit{Why Miss World?} pamphlet, the authors articulate ambitions to “shatter the silent static

\textsuperscript{371} \textit{Id.} (recalling the trial after the action) (“Suddenly the roaring horror of my own passivity hit me in the face.”); see also BBC interview, supra note 33 at 26:47-50 (Jo Robinson remembered “I just stood up and looked at the Albert Hall and thought, ‘My God, (someone) do something.’”). The WSPU’s violence, too, seems to have issued from a cathartic impulse; the suffragettes’ arson, wire-cutting, picture-slashing and golf-course burning are acts communicating deep hostility, and were choices design to punish mainstream society, as “(t)hey are all responsible unless they put a stop to the way in which women are being treated.” June Purvis, supra note 133 at 208.

\textsuperscript{372} \textit{Id.} at 256.

\textsuperscript{373} Lynda G. Dodd, supra note 103 at 343.

\textsuperscript{374} \textit{Id.} at 341-2.

\textsuperscript{375} BBC supra note 133 at 17:20-40.

\textsuperscript{376} See note 346, supra.
procedure” of the trial, as well as to “break down the structure of the court itself.” But lawbreaking at the pageant and trials was not designed to destroy all law. Rather, it was intended to “create a space in the court,” redefine the notion of guilt, and rewrite precedent on ideas like judicial neutrality, even while risking charges of contempt of court. Recalling the WSPU’s intentional lawbreaking, as well as Yippies’ use of theatrical moves at their own trials for conspiracy in ’68, the five Miss World protesters attempted to create legal space through illegal contempt and street theater that announced their solidarity and a new take on rights.

iii) Outrage

As the foregoing demonstrates, the rebels at the Miss World pageant performed gestures of outrage, along with lawbreaking and violence, in their action. The throwing of food “bombs” was designed to infuriate victims and onlookers, as were the interruptions of the male celebrity spokesmen by screaming and the shaking of rattles. Furthermore, the performances of the agitators outside the Royal Albert Hall intentionally raised the ire of the public, and also insulted the pageant contestants,

377 Why Miss World? at 256.
378 Id. at 256.
379 Id. at 257. “We asked for our 4 cases to be heard together. We started by pleading ‘not guilty – ‘we’ve been guilty all our lives as women and we won’t plead guilty any more.”
380 Id. at 257.
382 For a study of the Yippie use of guerilla theatrics at the Chicago Eight’s trial, see Pnina Lahay, Theater in the Courtroom, The Chicago Conspiracy Trial, 16 Cardozo Stud. L. & Lit. 381, 394 (2004) (“Even though a trial should be distinguished from theater, theater does illuminate certain qualities of trials. Occasionally the presence of the theatrical elements is so strong that it is ignored at the spectator’s (scholar’s?) own peril.”)
much in the same ways as did the behaviors of the U.S. protesters of ’68 Miss America. The trundling out of an ersatz cow, the signs that called the contestants cows, and the shouted recriminations that the contestants were being “degraded” all offended the organizers and participants of Miss World.

E) British radical feminist Constitutionalism in the Streets

These acts of violence, lawbreaking, and outrage were regarded as necessary predicates for British feminists’ “constitutionalism in the streets,” which (it was hoped) would lead to the enactments of new laws. The Miss World protest may be understood as an initial effort “change the categories;” specifically, the categories that impeded the realization of the “four demands.” Once more, these demands were for equal pay for equal work, equal opportunities and education, free contraception and abortion on demand, and free 24-hour childcare.

With respect to abortion rights, recall that the Abortion Act of 1967 had been enacted three years before the Miss World Protest. However, feminist critiques of the law had been levied, namely that abortion would not be granted on demand, but only before 28 weeks and upon the advice of the treating physician; this doctor was also
obligated to take advice from one other physician. The women at Ruskin and at the Miss World protest seemed to be reacting particularly against the lobbying tactics of the Abortion Law Reform Association (ALRA), which pressed for abortion reform through the 1960’s. These were “dress(ing) conservatively in order not to alienate the support of the majority” and emphasizing the “personal problems” and “emotive” consequences of the lack of abortion rights in Britain. That such tactics had created an insufficient abortion right created, it was felt, a need for a protest style that would draw upon the Pankhurstian and “68” methods. As the authors of the Why Miss World pamphlet suggest, prim and emotionally calculating lobbyists may have belonged to the camp of “passive” and “collusive” women who were less likely to achieve true change than modern Pankhursts exercising their right to self-defense. Yet, in the hindsight of history, it does not seem that either emotive ladylikeness of the ALRA or the riot at Miss World would lead to radical progresses in this area. It may be that transformative reproductive rights reform was itself deemed off the wall, or that the Miss World protest itself was too outré to convince “respected” friends in “high places” that flour-bomb throwing women should be given authority over their bodies.

383 See Abortion Act of 1967 ch. 87 (Eng.). See also Colin Francome, Abortion in the USA and the UK 59 (2004) (“The (Abortion Law Reform Association) turned its back on a woman’s right to choose.”). Emphasis in original.

384 Id. at 62.

385 See text accompanying note 369, supra. Despite these efforts, abortion rights have only been restricted since the 1970’s reforms. In the 1990’s, the ’67 Abortion Acts provision that abortion would be provided in the event of risk of mental or physical harm to the woman was cut back to 24 weeks. See the Human Embryology and Fertilisation Act 1990. With respect to contraception, U.K. feminists would have been understandably frustrated by a political climate that restricted contraception to “sick” or nursing women, and denied it to “minors, single women or on non-medical grounds.” Up until the late 1960s, establishment attitudes were still resistant to birth control. This created countless difficulties for women attempting to limit pregnancies and have control over their own sexual health.” Melanie Latham, Regulation Reproduction: a Century of Conflict in Britain and France 23 (2002). Feminists continue to battle with the government over
Miss World’s violence, lawbreaking, and outrage were also intended to create a climate that would “change the categories” of childcare (an area of legal reform that had remained stagnant despite feminist rage), though this too proved unsuccessful: Lobbying feminists hit many of the same walls that they did on the childcare front, conceivably because the dramatic protest of Miss World did not match the sensibilities that were in charge of changing childcare laws.\(^{386}\)

The Miss World rebels’ volcanic critique of sexual objectification additionally targeted sex discrimination in the workplace.\(^{387}\) And here, the uses of outrage and violence may have borne more fruit than in the reproductive and child care arenas:

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\(^{386}\) See Ann Taylor Allen, *Feminism and Motherhood in Western Europe, 1890-1970: The Maternal Dilemma* 80 (2007) (“Nothing angered most feminist reformers more than the forced economic dependence of the mother on the father of her children, which exposed her in the best case to a humiliating subservience and in the worst to abandonment and destitution.”) A “radical” lobby for childcare may have been regarded as necessary, since “socialist feminists” had trouble getting solid backing in the socialist movement for childcare, the critique being that it would enlarge states supported service that could be used to indoctrinate children into capitalism. See Nickie Charles, Jo Campling, *Feminism, the State, and Social Policy* 182 (2000).

\(^{387}\) See Ann Taylor Allen, *Feminism and Motherhood in Western Europe, 1890-1970: The Maternal Dilemma* 80 (2007) (“Nothing angered most feminist reformers more than the forced economic dependence of the mother on the father of her children, which exposed her in the best case to a humiliating subservience and in the worst to abandonment and destitution.”) A “radical” lobby for childcare may have been regarded as necessary, since “socialist feminists” had trouble getting solid backing in the socialist movement for childcare, the critique being that it would enlarge states supported service that could be used to indoctrinate children into capitalism. See Nickie Charles, Jo Campling, *Feminism, the State, and Social Policy* 182 (2000).

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Labour MP Joyce Butler, a longstanding proponent of the Sex Discrimination Act of 1975, would credit organizations that and protested in the 70’s with the Act’s passage, indicating that the Miss World rebels’ outrageousness and lawbreaking and, perhaps, some forms of violence had received notice from policymakers.  

In the long aftermath, we may wonder if violence and lawbreaking efficiently undermined the sex object stereotypes that promoted workplace discrimination, but imploded when addressing issues that tend to mesmerize the larger population with religious fundamentalist imaginaries of naturally gentle, nurturing mothers and their children.

Still, if British feminists’ acts of outrage, violence, and lawbreaking did not penetrate as deeply into male bastions of constitutional culture (that is, Parliament) as NYRW’s influenced the U.S. Constitution, the Miss World action nevertheless provided a paramount, indigenous exemplar for feminist theorists of British constitutionalism. The loudest echo of the ’70 rebellion may well be in the signal difference between U.S. and British radical feminists: Their attitudes toward law itself. Put simply, some very well-regarded British feminist legal theorists are much less reverent of law than U.S. feminist scholars.

While U.S. radical feminist theory – that is, MacKinnon’s work – has been noted for its faithfulness to law, certain British feminist legal theorists distrust law’s ability to change women’s condition. One of the most noted dissenters in this regard is Carol Smart, a criminologist at the University of Manchester, and author of books such as *Feminism and*

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388 Nicki Charles and Jo Camplin supra note 386. See also id. ("(Butler) saw the formation of the women’s liberation movement and the pressure it brought to bear as a factor in explaining the public support for a bill outlawing sex discrimination. . . . Feminist organizations, old and new, were therefore crucial in getting the Sex Discrimination Act onto the statute books and operated in alliance with other social movements and organizations and with women in political parties and in government. . . . Thus it was both insiders and outsiders who were important in ensuring that this bill became law.")
the Power of Law (1989). Smart has questioned whether women can trust the field of criminology at all, positing that “feminists’ attempts to alter criminology have only succeeded in revitalizing a problematic enterprise, and . . . as feminist theory is increasingly engaging it with and generating postmodern ideas, the relevance of criminology to feminist thought diminishes.”389 She has also queried whether feminist jurisprudence is fruitless, as it may simply only become coopted by the state or other organs of power.390 In addition, she has described the criminal law supposedly designed to protect women as abusive, arguing that the very enforcement of constitutional, Parliament-passed rape laws – which includes the holding of rape trials – only brutalizes them.391

Although scholars such as Canadian criminologist Gillian Belfour critique Smart for encouraging feminists to “abandon the state and gender as limited conceptual tools and in the process . . . forsake() women whose lives are inextricably linked to the state,”392 Smart has not been the last feminist legal theorist in Britain to challenge the basic concepts of law, and in so doing bring an extra-legal character to her theory.

389 Carol Smart, Postmodern woman meets atavistic man, in Crime 153 (2003).
390 Carol Smart, Feminism and the Power of Law 66-68 (1989); Carole Smart, Feminist approaches to criminology or postmodern woman meets atavistic man, in Feminist Perspectives in Criminology 82 (1990) (“for a long time, we have been asking ‘what does feminism have to contribute to criminology (or sociology)?’ . . . . Perhaps it is now apt to rephrase the traditional question to read ‘what does criminology have to offer feminism?’ “); Richard Collier, Masculinities, Law and Personal Life: Toward a New Framework for Understanding Men, Law, and Gender, 33 Harv. J.L. & Gender 431, 443 (2010) (“Smart’s argument was . . . attuned to sociological engagements with masculinity, embracing a recognition that law, far from unproblematically oppressing women, could in certain instances be open-ended and contradictory in how it reproduced (or challenged) patriarchal relations.”).
391 Law’s power, the sexed body, feminist discourse, in Law, Crime and Sexuality: Essays in Feminism 83-84 (1995) (“The process of the rape trial can be described as a specific mode of sexualization of a woman’s body,’ which disqualifies her from trustworthiness and thus juror belief.”).
392 Gillian Balfour, Re-Imagining a Feminist Criminology, Vol. 48, No. 5 Canadian Journal of Criminology and Criminal Justice, 735-752 (September/Septembre 2006). Yxta need pin cite.
Oxford feminist legal theorist Nicola Lachey notes this difference between American and British feminists, and roots it in the “British women’s movement’s . . . relative() anti-institutionalism() and oppositional(ism)”, which she contrasts with U.S. feminist “optimi(sm) about using law for radical purposes.” While a simplistic construction of British legal feminists as anti-law and U.S. feminists as law-hopeful would be just that, elements of the anti-authoritarian culture that Lachey notes can be found in the work of yet other British theorists.

Penny Green, professor of law and criminology at King’s College, London, reflects this brand of anti-institutionalism when she critiques feminist legal theory for its “reformist nature,” and Lena Dominelli and Jo Campling also sympathize with this distrust of the state, praising “self-help” efforts in social work; these efforts (such as the developments of independent women’s shelters) depend more on women’s unpaid labor than state aid to address the needs of sexual abuse and domestic violence victims, so that women can “control” these venues of succor. Similarly, criminologist Margaret Shaw notes a lineage of British and Canadian feminist legal theorists who are “concerned with the inability of some twenty years of reform attempts to bring about real social change for women in relation to such issues as wife abuse, child sexual abuse, pornography, or reproductive rights. Much of this concern relates to the limitations of working with the legal system and the state to bring about changes in

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394 For one, Ruthann Robson has given us a thrilling anti-authoritarian feminist legal theory in works such as *Lesbian (Out)law* (1992).
relation to violence against women.” Shaw, a Briton, also reflects this pessimism about law in her own work.

Further, the echoes of anti-institutionalism that Lachey finds in British feminist legal theory and Shaw hears echoed in Canadian feminist legal theory are also present in the work of Carol Smart-quoting, Australian legal feminist Suzanne Hatty, who nearly conspires against the law with assertions like “(t)he promotion of the criminal justice system as the primary solution to male violence against women has the potential to increase state control over families, particularly female members of those families” and “(t)hrough engagement with crime, some women have attempted to disentangle themselves from the discourses of femininity... For some of these women, this has entailed finding new routes to sexual autonomy or the varieties of pleasure.” Hatty also makes visible her anti-authoritarianism in her valorizing descriptions of women’s

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397 Margaret Shaw, *Conflicting agendas: Evaluating Feminist Programmes for Women Offenders*. PhD thesis, University of Nottingham 10 (1997), available at [http://etheses.nottingham.ac.uk/1769/1/267143.pdf](http://etheses.nottingham.ac.uk/1769/1/267143.pdf). See, e.g., Laureen Snider, worrying about the "unintended and unwanted consequences of some feminists' fights on social control: the increased recourse to criminal law provided limited feminist gains and provoked a backlash on civil liberties." Laureen Snider, "Effet pervers de certaines luttes feministes sur le controle social." 25(1) *Criminologie* 5, 5 (1992); Dawn H. Currie, *Battered Women and the State: From the Failure of Theory to a Theory of Failure*, Vol. 1, No. 2 *The Journal of Human Justice* 84 (1990) (“Because I agree with Smart’s conclusions, I think that (her) recommendation(s) (are) worth pursuing. At the same time, however, it is not so clear how we can offer the resistance to law which Smart recommends, nor how we can sustain-an emphasis upon nonlegal strategies and local struggles.”)

398 Shaw, *id.*, at 197 (“Carol Smart’s (1990) complaint that all criminal justice interventions are inadequate and we will never find a ‘solution’ is in fact closer to the mark than most. All that a feminist perspective can hope to do is to work to enable a fuller understanding of the lives and experiences of women within the justice system (and of the components of that system itself). It can help to guard against the exploitation of that understanding to further repress or denigrate them. It can hope to work to reduce the control and further penalizing of those women by housing authorities, child welfare agencies, social services, or medical services. There are no ‘absolute solutions.’”) 


400 *id.* at 30.
taking and dealing illegal drugs, and her agreement with British criminologist Elizabeth Ettorre’s argument that we “redefine the ‘alcohol (or other drug) dependence syndrome’ as the ‘patriarchal defiance syndrome’.”

Thus far I have developed profiles of British legal feminisms rooted in the radical feminist actions of the ’70 Miss World protest and the precedent Pankhurst dissents. Specifically, violence, outrage, and lawbreaking of the ’70’s action energized and authorized British radical feminists’ participation in the constitutional conversation concerning the four demands (though with sketchy results). Further, an outlaw sympathy characterizes later British feminist legal theory such as Smart’s, Hatty’s, and Ettore’s, who make pronouncement that some would also view as outrageous.

However, I have not seen incitements to or even MacKinnonesque performances of violence in British or British-inspired feminist legal thought, except in one wildly exceptional case. This comes from the life of aforementioned Australian criminologist Suzanne Hatty. And if hers is not precisely proof of violent feminist theory, it does offer such a galactic episode of a feminist theorist’s violence that it deserves mention: In 1998, Hatty helped her boyfriend Stuart Burke commit armed robbery against Summerland Credit Union in New South Wales, when she was a professor at Southern Cross University. Burke, whom Hatty had met while studying inmates

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401 “‘We need to look closely at the meaning and significance of women’s drug-use, acknowledging the gender-based power disparities in society. She suggests that we begin by asking ‘what pleases women?’ The answer to this question may hinge on the significance of empowerment. Hence, drug use, for women, may instigate feelings of autonomy and independence.” Id. at 28, quoting Elizabeth Ettore, vol. 12, no. 6 Women and substance use/abuse: towards a feminist perspective or how to make dust fly, Women’s Studies International Forum 593-602 (1989).

402 Id.

at Sydney jail,\footnote{See Louis Nowra, Captive Hearts, Sydney Morning Herald, Apr. 3, 2004, at page 6.} evidently was “brutal” toward Hatty during their relationship,\footnote{Id. See also Guillatt, supra note 403: (“Hatty casts herself as a feminist crusader who fell victim to male violence and the retribution of Australian authorities.”)} and her participation may possibly be explained as the product of battered women’s or Stockholm syndrome – or, conceivably, it was Hatty’s way of making real her earlier assertion that criminal engagement allows women to access routes to pleasure.\footnote{See text accompanying note 400, supra.}

Yet to look to Hatty as some kind of proof that Miss World planted a seed of radical feminist violence that crested in Smart’s work and then exploded in Hatty’s life would be – how can I put this? Insane. Although it is true that Miss World would not be the last time that radical British feminists would use violence in their protests – if anything, there would be a ramping up of violence in protest actions surrounding the “Take Back the Night” marches in the 1970’s with their Pankhurstian window-bashing of pornographers’ offices\footnote{See Geoff Eley, supra note 34, at 376 (“Take Back the Night” actions pushed this further, attacking the climate of fear restricting women in public – red light districts, porn shops, X rated cinemas, men only bars, violent and demeaning imagery in advertisements. Women marched rowdily through the streets of London and other cities on 12 November 1977, demanding freedom ‘to walk down any street, night or day, without fear.’ This progression, from exposing physical violence to attacking violence representation in culture was spurred in Britain by public sensationalism and police sexism surrounding the serial rape murders of the Yorkshire Ripper in 1977-80. On November 27 1980, 10 days after the thirteenth killing, Women Against Violence Against Women (WAVAW) was founded in Leeds: ‘women demonstrated outside cinemas, glued up the locks of sex shop doors, smashed windows or strip clubs, daubed angry messages on walls (‘MEN off the streets’), and marched to ‘Reclaim the Night.’”). See also Amanda Sebesteyn, Britain: The Politics of Survival, in Robin Morgan, Sisterhood is Global: The International Women’s Movement Anthology 96 (1996) “By 1977 the movement had such a low profile that even the word ‘liberation’ was being dropped. Then, from several directions and for a number of reasons, came revival. Consciousness-raising groups started gaining on academic study groups; the National Abortion Campaign’s patient petitioning and lobbying gave way to a woman’s takeover of Roman Catholic Westminster Cathedral; a new grouping called itself Revolutionary Feminists emerged to counter ‘the liberal takeover of the Women’s Liberation Movement’ and to start direction action against male violence.” For an intriguing look at radical feminist “direct action,” which includes admitted acts of violence, see the BBC program Angry Wimmin, which can be found on youtube. In particular, consider this link: http://www.youtube.com/watch?v=u-UMEKOqzWw at 8:36- 9:29 (“A group of extremists, calling
extraordinary example an affinity for violence or even performative violence in later radical feminist protesting or, again, in the British jurisprudence. I have not seen calls, for example, for violent civil disobedience, but more cautions like those of London Metropolitan University professor Liz Kelly, who warns against “heroizing” female violence, or depending on an “amazon” trope. Further, the radical, outrageous, and nonviolent zap actions of the Greenham Common Women’s Peace Camp, founded by feminist anti-nuclear protesters, have made indelible marks in feminist history. Though the pendulum may eventually swing the other way, this rejection of violence may indicate that it has lost its charms as a device in radical feminist protest and theory.

F) Conclusion

Perhaps at first glance two groups of women crowning fake farm animals and throwing lettuce do not seem like bona fide participants in constitutional conversations. Yet in their rage, their flair for the dramatic, and their eloquence, NYRW and the various women who participated in Miss World occupied their respective constitutional stages themselves Angry Wimmin, splintered off from WAVAW. . . . . "There was quite extreme action taken on sex shops; one of them were burnt down."  


409 See, e.g., Greenham Common Women’s Peace Camp 1981-2000 http://www.greenhamwpc.org.uk/ (detailing the history of the feminist peace camp set up at the Greenham Common Airbase); David Fairhall, Common Ground: The Story of Greenham 7 (describing feminist protesters chaining themselves to airfield fences, “suffragette fashion,” though without using violence.). See also id. at 30 (affirming Greenham’s belief in nonviolent tactics).

410 The pendulum may swing in unexpected directions in either the U.S. or Britain. Consider the 2010 blogger reports of Williamsburgh "femininjas" doing a violent "take back the night" action, complete with Pankhurstian glass assault. http://www.theladyfinger.com/2010/04/femininjas-wreck-property-and-image-of.html Yet hopefully one clique of window-smashers will not a winter make, to mangle the old phrase.
in powerful ways. Miss America and Miss World agitators attempted to change the categories created by patriarchy through antic, giddy gestures that outraged. In the case of the British radical feminists, they also took it upon themselves to break the law, and commit some forms violence in support of their cause.

The reasons for why the Americans in large part restricted themselves to outrageous acts and the British radical feminists asserted their power in yet more anti-authoritarian ways may be seen in the historical and contemporary political worlds in which they protested. U.S. radical feminist sensibility was shaped by the NWP legacy, recent assassinations, and the DNC debacle. The British feminists worked within a different tradition, which was limned by the WSPU, the Situationists, and “68,” among other influences. Despite these differences, the Americans and British shared fury at patriarchy, and also the strategic use of art forms – fabric, street theater and other performance arts – to negotiate the thin line between communicating the pain of male dominance and physically fighting back against it.

These two protests flourished in future constitutional conversations, certainly in some ways that did not please all feminists. The myth of “bra-burning,” for one, helped Schlafly in her vendetta against the U.S.’s E.R.A. Yet the enthusiasm and emotion expressed by radical feminists helped pave the way for the emotive Roe v. Wade. Further, the British reclaiming of the Pankhursts may not have succeeded in gaining reproductive and childcare rights, but it may have helped create a climate change that led to Parliament’s passage of Sex Discrimination Act of 1975.

The radical feminists’ lawbringing would also make its way into feminist legal theory. Catharine MacKinnon, on the U.S. side, would reflect the content and outrageous style of NYRW; and like them, too, she would draw the line at performative
violence. With respect to the British feminists, the anti-authoritarianism invented by the WSPU and the Miss World agitators is expressed in work such as that of Carol Smart, who energetically questioning women’s engagement with law. Yet, despite some repercussions of the violence of Miss World that were felt in the later ‘70’s political actions and the case of Professor Hatty, violence seems to have fallen to the wayside as a radical feminist expedient.

Feminism has a variety of artful technologies to draw upon when protesting about women’s constitutional need. Selections of these tactics will depend upon many things, including history as well as the temperaments of the dissenters involved. Outrage, it seems, will always have a home in British and American radical feminism. Lawbreaking may also play its part in constitutional conversations, particularly where the object of change is law itself; here, the British feminists have outpaced their U.S. sisters in creative outlawing. But there is a tradition of peaceful dissent in the U.S. radical feminist tradition, which by the 1970’s may have been more effective than Pankhurstian aggression. Perhaps this accounts for that aggression’s diminishment: For from the intensity of the WSPU bomb-planting, to the relative gentleness of the Miss World agitators, to the cool querying in British feminist legal theory, and the anti-nuclear protesting of the Greenham Collective, we may be seeing a passing of violence in British feminist agitation.