

Dissent Through Destruction:
American Political Activism and the Utilization of Property Disruption as Protest

Lawrence J. Cushnie

A dissertation
submitted in partial fulfillment of the
requirements for the degree of

Doctor of Philosophy

University of Washington

2014

Reading Committee:

George Lovell (Chair)

Jack Turner

Michael McCann

Program Authorized to Offer Degree:

Political Science

©Copyright 2014

Lawrence J. Cushnie

University of Washington

Abstract

Dissent Through Destruction: American Political Activism and the Utilization of Property

Disruption as Protest

Lawrence J. Cushnie

Despite the extensive academic scholarship considering political resistance and activism within the United States, little has been done to orient acts destroying property as a form of political participation. I argue that dissent through destruction, as a mode of protest, is a consistent phenomenon in American political development. This dissertation considers the roots of American understandings of property as a right leading to virulent surveillance, labeling, and punishment of those indulging in destruction as participation. I argue that the state pursues political acts of destruction at levels beyond simple criminality and into the realm of retributive punishment.

Chapter 1 develops the foundations for American understandings of property and the sanctified place it enjoys in the popular imagination. I argue that the liberal roots of property, as a right to exclude, sets the stage for modern forms of categorizing destructive dissent as irrational, crazed, and beyond criminal. The second chapter considers historical case studies enjoying folkloric status as symbols of American resistance—each using the destruction of another’s property as a tactic. I analyze the Boston Tea Party, Underground Railroad, and the

radical temperance movement to forge connections between the radical political past and contemporary realities of dissent through destruction. Chapter 3 continues the theory building of the previous chapter by comparing movements of the New Left including the sit-in movements challenging segregation and bombing campaign of the Weather Underground confronting American imperialism at home and abroad.

In the fourth chapter, I dive into a modern case study contemplating the rising level of punishment issued to militant environmental activists in the political milieu of the ‘War on Terror.’ I argue that levels of punitiveness from the state increase as the political climate redefines moments of vandalism and arson as terrorism, thus requiring prison sentences in decades rather than months. Chapter 5 considers what my assertions mean to the future of dissent through destruction by considering what effects the erosion of physical public space and the growth of digital space mean for modern protest. Investigating the black bloc, Occupy, and Anonymous as the latest vanguard for radical protest; I theorize about the future choices for activists and state actors responding to new political demands.

Dedication

This project is dedicated to my family.

To my parents Jay and Lois, you taught me the importance of education. Not just for personal fulfillment, but as a source of empowerment for others. It is not enough to reap the privileges bestowed upon you by knowledge; it also must be shared and passed on.

To my little birds Wren and Lark, you both came into the world during the final revision process. In a matter of a few weeks, you have shown me a purpose to life I never considered. I am so excited to see you grow into empowered, strong, and conscience-driven women.

To my partner Kara, your love, support, and humor keep me centered, happy, and motivated. Your unwavering faith in my abilities is both insane and lovely. I am so proud and lucky to share a life with you.

Acknowledgments

It takes a collection of intelligent, patient, supportive, and loving individuals to formulate, construct, and execute a dissertation. I'd like to thank a wide array of people for their input in my project, both in terms of content and advice in everything from organization to proper self-medication. Without the assistance of my colleagues in the department this would never come to fruition. Matt Walton, Heather Pool, Jason Lambacher, Adrian Sinkler, James Chamberlain, Allison Rank, Jenn Noveck, Adam Shanko, and Asaph Glosser all deserve praise (and probably monetary compensation) for their help over the past few years.

My committee fluctuated in membership over my time in the department. Each member provided insights and recommendations that were beyond helpful suggestions and closer to earth-shattering epiphanies. Mark Smith and Steve Herbert provided support while holding me to account for many of my outlandish assertions. Your help is above and beyond my expectations. I also want to thank Maria Elena Garcia for stepping in at the last moment to serve as my GSR for the dissertation defense.

Special thanks is reserved for my reading committee of Michael McCann, Jack (Chip) Turner and George Lovell. Michael was a huge factor in my decision to originally attend the University of Washington. We have enjoyed many long discussions about the world outside of academia, with especially memorable discussions about music and musicianship. Chip took me under his wing his first year as a new faculty member. He had absolutely no fear in calling me out, challenging my claims, and supporting my outlandish ideas. Chip also worked with me on the fundamentals of academia in a depth of mentorship rarely seen in PhD programs. I would not have continued along this path without his dedication to me as a person and as an academic. George, as committee chair, had expected duties of keeping the project glued together and in

motion towards completion. He did so much more than that. I have never come across a more empathetic adviser and thinker. George inspired me to approach not just writing and researching differently, but also how I carry myself in the classroom as an instructor. The sheer number of hours he has invested in my development as a well-rounded academic is mind-boggling.

To everyone mentioned, a sincere thank you.

Table of Contents

Introduction	10
Theory Building	11
Chapter Overviews	18
Chapter 1 – The Right to Exclude: Theoretical & Legal Underpinnings of American Property Rights	22
Introduction	22
A Chronological Interrogation of Property	24
Understanding Property outside of Liberal Frames	30
20 th Century ‘Rights-Based’ Understandings	34
The American Experience of Property	45
Conclusions	47
Chapter 2 – From Tea Party to Teetotalism: the Folkloric Celebration of American Militants	49
Introduction	49
Surveillance, Labeling, & Punishment: the Holy Trinity of State Control	53
From Destruction to Revolution: The Boston Tea Party	54
The Theft of Property: the Underground Railroad	64
Destruction as Enforcement: the ‘Hatchetations’ of Carry A. Nation	72
Conclusions	84
Chapter 3 – Property Protest, the Next Generation: Civil Rights, the New Left, & Student Radicals	85
Introduction	85
Occupation as Destruction: The Sit-In Movement	87
Bring the War Home: Weather Underground	93
COINTELPRO and the Battle to Define a Movement	96
Things v. Beings: the Spiritual Death of a Nation	106
Chapter 4 – Mapping Discursive and Punitive Shifts: Punishment as Proxy for Distinguishing State Priorities	108
Introduction	108
Federal Law Enforcement & Agenda Setting	113
Longitudinal Evaluation of Convictions	117
A Tale of Two Actions	127
Discursive Shifts and Theoretical Implications	135
Targeting Property: Implications of Destruction	138
Conclusions	141
Chapter 5 – Smash the State: the Black Bloc, Occupy, Anonymous, & the Future of Dissent through Destruction	143
Introduction	143
The Black Bloc in the United States	146
Occupy and the Disappearance of the Public Forum	151
Anonymous: Contemplating the Future of Dissent through Destruction	155
Conclusion	158

Appendix 1	161
Works Cited	162

Introduction

“When you are right, you cannot be too radical; when you are wrong, you cannot be too conservative.”

-Martin Luther King Jr.

“To be truly radical is to make hope possible rather than despair convincing.”

-Raymond Williams

On a crisp December night, over a hundred men in disguises gather along a dark harbor to prepare for a bacchanal of destruction. Their targets are crates of imported tea, soon to meet their fate in the waters of Boston Harbor. In rural Ohio, a man knocks on the door of a country home. The occupants rush the man inside and down into a crawl space in their cellar. A moral scold with a direct line to god enters a popular Kansas saloon and proceeds to smashing. Every object and structure within is obliterated within minutes. A fuse is lit and a bucket of ‘vegan Jell-O’ ignites a ski resort consuming the structure in moments. Protestors clad in black run down the streets of Seattle smashing windows of multinational corporations and tagging buildings with three-foot high ‘A’s. What do these acts have in common? Each represents an individual act of political protest through the destruction of another’s property. What, if any, commonalities do these actions and activists share? What is the goal of mobilizing political action through destruction? What are the potential pitfalls of this tactic? We lack complete theories explaining these political acts to address these questions. Reception of these acts by varied audiences is complex to decipher and contingent upon several factors. The original participants of the Boston Tea Party are celebrated as heroes and are trotted out as symbols of just opposition across the political spectrum; while militant environmental activists are declared ‘terrorists’ and punished more severely than rapists and murderers in some cases. This dissertation is a first effort to construct an account of the resilient tactic of political protest

through destruction of property. Using the construction of analytical categories for contemplating property destruction, the cataloging of state response and public acceptance, and the use of case studies to arrive at salient conclusions, this dissertation seeks to build theory considering dissent through destruction.

Theory Building

Examining various case studies of property destruction as protest presents an opportunity to learn something beyond frequency of the tactic, or specific historical eras when it arises. The dissertation looks at several cases of protest through property destruction to explore the motivations of the protestors, the reactions of relevant audiences, and the punitive response of the state. The findings help to refine understandings of 1) the place of property rights in United States law, politics, and culture; and 2) the nature of protest, specifically radical protest, in the context of American democracy. I also consider the constraints on and control of protest, the backlash set off by direct action, and the punitive extents of the state. The task of this project is to build theory around distinct analytical categories of the inherent/symbolic value of property ruined, the audience for protest, and the importance of provocation implicit to destruction of property. More work is necessary in these areas, not to justify these acts as potentially legal, but to consider their importance within the lexicon of political resistance.

I see three key contributions offered by this project to studies in American political development, social movements, political participation, and American political thought. First, is the move to understand property destruction as an act of political participation. Second, involves using cases studies in resistance through property disruption as a window onto how the state responds to radical activism and protest. This necessitates establishing connections between how incorporating property into protest reshapes that protest into something radical or militant.

Third, I begin the task of theorizing how activism involving property actually shapes understandings of what counts as property. In other words, considering challenges to practical efforts of exclusion; state responses reiterating the sanctity and sacredness of property as the law expands; and property as an excuse for more acceptable depths of state intervention in protest.

In a country expressing rights in terms of the ability to acquire, to retain, and to exclude others from property, the destruction of material goods makes a substantial statement. Protests, by definition, strive to upset existing relationships of power seen as intrinsic, correct, and/or natural. By targeting deeply held cultural normativity of freedom through ownership and exclusion, a historical impetus for dissent through destruction enjoys a healthy resonance in American political protest. American social movements, revolutionaries, and oppressed minorities align themselves with property destruction as a point of entrance to the public realm. This method leads to attention (both positive and negative) from the citizenry, the press, and the state. I argue that dissent through destruction represents a compelling and continuous method of protest rejecting existing power relationships in American political development.

Another important component of any discussion considering protest is the objective. Typical examinations concerning social movements and protest incidents align within issue-oriented evaluations (i.e., segregation, prohibition, and war). My research spends time with the specific targets for dissent, but the majority of space considers the methods and the symbols of illegal acts. In other words, I am concerned with why protestors choose property destruction as a form of political participation. Why move protest into realms of questionable legality or outright law breaking? What ends are served attacking rights which resonate with Americans beyond most others? In order to address these questions, I demonstrate why targets are chosen, what their destruction represents, as well as what versions of the status quo they challenge. I argue

that attacking property garners a low level of academic attention in comparison to legitimized, routinized forms of political dissent. In other words, certain forms of political objection become mainstream, recognized, and eventually stale over decades. Since protest is conducted to combat established power relationships, the stagnation and/or wide acceptance of certain tactics lose their original radical premise. Movements into new and innovative methods of protest find a catalyst in countering existing notions of property rights and/or utilizing property disruption as a method of resistance. I argue that these moments are not outliers or singular within one historical era or another, rather they are well-worn methods of dissent throughout the political history of the United States. Those engaging in this form of resistance, risk a social and a state backlash for crossing a clear line of the privilege to exclude present in an American understanding of property rights. It is not surprising that state reaction to these events tends to be swift, aggressive, and violent.

Protest and dissent are rarely favored by those in power for the simple fact that it points out hypocrisy, injustice, violence, and/or poor behavior on the part of existing leadership. However, when objection to state policies and actions materialize as illegal actions based upon already established standards of morality and legality, the state not only has the power, but a responsibility to respond. Also, legal standards are in flux and adapt to change with the threat of evolving protest. Thus, activists destroying property as part of their dissent place themselves directly in the crosshairs of various apparatus of state control and punishment. They even create the environment for law to change and alter in response to their actions. Besides a careful consideration of groups using extra-legal tactics in voicing their displeasure for the political and social status quo, I also delve into the lengths the state is willing to go to preserve an existing version of property rights and exclusion. Through an analysis of the surveillance, labeling, and

punishment associated with my case studies, I argue that the state tends to reach beyond the legal limits set on their behavior to send clear messages to those expressing dissent through destruction. Whether discussing the attempts to thwart the Underground Railroad or the pursuit of the Weather Underground, states and the federal government quite often respond with a level of vitriol, violence, and even illegality that goes well beyond routine ‘law enforcement’. I argue that the level and the methods of pursuit and punishment reflect an economic paradigm and understanding of ‘things versus beings’ representing an outgrowth of America’s liberal, capitalist democracy. In other words, violence against things in challenging existing structures of power, lead to violence against beings from the state and many times from society as well. The extent of this violence demonstrates state priorities for control over punishment. It is also important to consider the different normative paradigms of property for the public, the protestors, and the state. For my case studies, it is significant for protestors taking part in property destruction as political protest that their actions are not harming sentient beings. That distinction may not be as salient to members of the public and especially not to federal law enforcement. I argue that this moral distinction is important regardless of the wider perception of property as sacrosanct. It is important because it asserts a person-centered view of the world beyond the material, thus making an attempt to establish humans as an important unit for protection in a political community. This distinction receives further treatment in chapter 3.

Traditional academic study of social movements and protest events tend to exclude the overtly violent and illegal acts in their considerations and classifications. Can one comprehend burning down a ski lodge or kidnapping livestock as political acts? The classic works by Sidney Verba tried to broaden what counts as participation beyond just voting, but not property

destruction as participation.¹ Events and actions turning to violence find themselves in a nebulous category along a spectrum of law breaking, violence, rebellion, and revolution. My argument realigns ‘fringe militancy’ with traditional, American forms of protest. The goal is to provide a three-pronged consideration of property destruction as political protest. The first situates dissent through destruction within a chronological analysis of American political disobedience. An American political development frame allows a cross-comparison of cases regardless of motivation, and with an eye towards messaging and strategy. Second, I consider how the state reacts to these illegal acts and justifies various levels of punishment and/or retribution. This includes an analysis of surveillance, of labeling, and of punishment to demonstrate the perceived threat to established political orders. Finally, I attempt to assess the current landscape of protest and consider what may come next in the protestors’ lexicon of resistance. As public space for protest shrinks (due to a wide variety of factors to be discussed), new methods, tactics, and locations emerge for dissent through destruction to continue.

To establish a clear sense of what destroying property in the course of protest challenges, I consider a specifically American perspective on property and property rights. I choose to approach the issue from the theoretical and the normative writings of political philosophers towards the enshrinement of modern legal understandings of property as ‘the right to exclude.’ Understanding the tenets behind the social and legal creation of ‘things’ or ‘belongings’, establishes a vivid picture of what their destruction alters or attacks. Essentially, the right to exclude sets a paradigm in which the ability and the right to challenge one’s political power is closely tied to challenging an owner’s monopoly on the legal authority to exclude.

¹ Verba, Sidney & Norman H. Nie. *Participation in America: Political Democracy and Social Equality*. Chicago: The University of Chicago Press, 1987.

Besides the normative founding tenets relating to property, I also consider the political folklore surrounding historical acts of destruction as political protest. Many are comfortable discussing justified moments of American rebellion and destruction as tales sanitized and memorialized over centuries. The flouting of corporate property rights by dumping tea into Boston Harbor, conjures images of mischievous firebrands challenging imperialism and becoming patriots. Late nights spiriting away slaves from the south through an underground highway of sympathizers and do-gooders, inspires discussions of freedom and justice rather than theft of property from, those considered at the time, rightful owners.

Part of this project is to reorient more recent acts of property disruption within a similar paradigm of these historical moments; not as justification, but as a re-identification of destructive acts as political challenges, rather than hooliganism, vandalism, or terrorism. More modern examples of this resistance are attacked rather than celebrated. Why? I argue that time, distance, political climate, method of protest, and a healthy dose of historical amnesia justify some destruction while vilifying others.

Another consideration is the selectivity available to decision-makers in charge of punitiveness. Across time, across movements, and even contemporary comparisons within movements, punishment alters with context and actions. One clear example, explored in chapter 4, is the way federal officials began to label militant environmental and animal activists as the number one domestic terrorist threat to the United States in the 2002. Why is the emphasis of federal law enforcement on groups rejecting harm to sentient life rather than right-wing militia, anti-abortion, and white power groups perpetrating a steady rise in violence against human beings? Why the emphasis on destruction of things rather than the destruction of beings?

Selective punishment demonstrates clear priorities of the state in terms of worthiness of protection as well as emphasis on required control and retribution.

This is clearly a controversial claim. Laws are broken in the carrying out of these acts. Almost any political society understands that these destructive actions require punishment rather than celebration. This project does not challenge the supposed legality of destruction; rather it demonstrates ways in which these acts shape political culture, public space, and the modes by which populations voice their discontent. Sometimes tales of bravery and sacrifice replaces the violent and revolutionary acts of the past. I identify these violent political acts in order to demonstrate a category of activism overlooked or written off when considering contemporary protestors choosing to voice their dissent through destruction.

Making the decision to break laws in the course of challenging established power relationships is typically not a first choice for activists. Many of the cases considered in the following pages move towards more militant forms of protest after experiencing a lack of change, disillusionment with legitimized paths of action, and/or disconnect between law and action. While some authors (i.e., Weber & Fanon) consider challenges to the state's monopoly on violence, this considers the rights granted through liberal capitalism to ensconce 'things' in layers of legal protections not reciprocated to the worst off 'beings.' Capitalism is not just a descriptor of economic systems of organization; it is itself violent in its ability to privilege few at the expense of many. In order to challenge a system in which the economic and the political conditions are so thoroughly entwined, attacks against its most sacred rights should be expected. In other words, to challenge what some do not have physical, legal, or economic access to may require the smashing of what others do possess.

One way to pin down this potentially nebulous concept is to think of dissent through destruction as a readily accessible means to counter power established through capital. American political history is full of examples of these actions, and I choose seven different examples to demonstrate their connection normatively and tactically through the decades. All of this is towards understanding property destruction as a prototypical tactic of American political dissidents since before the establishment of the United States. I argue that even as tactics and types of property disruption differ, state response consistently goes beyond previous benchmarks of punishment.

Chapter Overviews

Chapter 1 considers theoretical understandings of property as a thing, as a right, and its point of origination. When considering groups who destroy property as part of their political participation, it is important to also understand the normative framework challenged. This chapter analyzes various conceptions of property important to the United States and seeks to set up analytical categories of inquiry for future chapters. Legal, political, economic, and social realms each encounter and define property in divergent terms. I argue that shifting definitions of property and property rights effect the ways in which the state condemns, labels, and punishes its destruction. This chapter concludes that a rights-based paradigm (specifically the right to exclude) is the most helpful lens through which to consider the dominant property paradigm in the United States.

Following a theoretical and legal literature review, I venture into early American examples of property destruction as political protest. Chapter 2 considers three instances of political dissent achieving folklore status within American political mythology and development. The Boston Tea Party, the Underground Railroad, and the ‘hatchetations’ of Carry A. Nation

provide case studies representing multiple political perspectives, destructive tactics, and normative challenges to existing regimes of power. Each group uses property destruction towards different ends, yet recognize the attention garnered through the annihilation, the theft, and the occupation of another's possession. I argue that dissent through destruction is an overlooked phenomenon in studies of social movements and protest. These cases provide a potentially sympathetic starting point to examine the political history of property destruction in the United States. I also consider why property destruction is a meaningful expression of dissent in each instance and how the state responds in order to retain their monopoly on destruction, violence, and control. This discussion sets the stage for the following chapter considering more modern protest events inheriting the tradition established by these folk heroes.

Uprisings of the New Left provide a historical moment to consider contemporary movements employing destruction of property for political ends. In chapter 3, I explore the actions and justifications of the sit-in movements challenging segregation in the early 1960's. Students choosing this method were met with public astonishment and violence at their assertion of a right to occupy white or any political space. The Weather Underground represents the other side of the coin with those in traditional positions of privilege (upper-middle class, educated, white), attempting to reject the benefits of their skin color and class to destroy symbolic targets of U.S. imperialism at home and abroad. Ideological and tactical analysis of social movements provides a compelling tool to decipher the agenda of any given group. For example, a group who phrases their struggle as against economic systems of exploitation articulates a broader revolutionary agenda rather than a group that leads a narrow campaign to stop Wal-Mart from opening a store in one local setting. Tactically, a line of picketers outside of a lumber company embodies a within system mode of dissent compared to sabotaging logging machinery in the

field. Groups mentioned in chapter 3 and 4 provide a spectrum of actors potentially classified as issue-oriented, revolutionary, or somewhere in between. Chapter 3 addresses modern state responses to perceived threats, and also challenge the more traditional modes of identifying movements as mainstream or revolutionary. I argue that within a single group, tactics and ideologies representing the whole spectrum of militantism are present. Thus, binary classification of a group leads to a lack of nuance and a reductionist understanding of its membership. In other words, one may file a legal injunction in the morning, protest outside of a corporation by day, and set it ablaze at night. Chapters 2 and 3 consider state surveillance, labeling, and punishment of groups using property destruction as their form of participation. I argue that attention to these instances bring into existence a dangerous ‘things’ versus ‘beings’ paradigm in quelling dissent. This paradigm is further refined during the Civil Rights era.

Over the past decade, sentencing rates have climbed steadily for environmental activists choosing property destruction as their form of protest. Chapter 4 examines a tactic that is not new to the protestors’ toolbox, yet is receiving a level of attention and state-sanctioned punishment never before experienced. What explains this reaction? Why has the backlash been so drastic considering the relative inefficiency and singular impact of the individual acts? Why do these acts garner so much attention in comparison to their relatively small costs? Why are sentences issued out against these actions in a disproportionate and punitive fashion compared to similar, non-political actions? I argue that prosecutors and the courts, in sentencing militant environmental activists, have adopted clear signals from the federal government demonstrated by Operation Backfire as a revival of COINTELPRO style intervention. I argue that within a context of the War on Terror, the federal government ramps up punishments for domestic activists through discursive shifts towards ‘terror’ rather than ‘extremist.’ This nomenclature has

real effects within the legal system's punitive outcomes, especially considering the latitude available in sentencing regarding actions labeled as 'terrorism'. Militant environmental activists provide a modern case study demonstrating how political climate dictates punitive outcomes.

After discussing the current alignment of the state to dissent through destruction, chapter 5 considers the addition of recent case studies towards development of a theory about the future of dissent through destruction. The black bloc gained international attention during the Seattle WTO protests in 1999. Many Americans had never seen nor heard of its existence as a tactic in public protest. Smashing storefront windows of major corporate outlets, took much of the attention away from more mainstream marchers and civil disobedients. I argue that the black bloc represents the result of continually limited methods and types of protests available to activists interested in incorporating public space into their actions. With the emergence of 'free-speech zones' and pre-emptive strikes against mass protests, I argue that the new direction of dissent through destruction will be limited to two main channels. One will be the illegal, violent, and destructive acts against corporate representatives of global exploitation in the streets and/or the upsetting of global commerce and policy on the internet. I consider the Occupy movement and Anonymous hackers as a new future for protest challenging property rights, arguing that the short-lived attention and gains of Occupy represents the fading ability of 1960's era tactics of public protest to continue and Anonymous as a representative of a future of radical protest in digital space due to lack of access in the physical realm.

Chapter 1 – The Right to Exclude: Theoretical & Legal Underpinnings of American Property Rights

“God gave the world to men in common; but since he gave it them for their benefit, and the greatest conveniences of life they were capable to draw from it, it cannot be supposed he meant it should always remain common and uncultivated. He gave it to the use of the industrious and rational, (and labour was to be his title to it;) not to the fancy or covetousness of the quarrelsome and contentious.”

-John Locke

“The possessions of the rich are stolen property.”

-Pierre-Joseph Proudhon

Introduction

John Locke describes an idyllic state in which a rational man mixes his labor with the virgin elements of nature to create, refine, and own the product of that work. Property is thus a right derived through a universal and a natural concept of ownership over one’s physical self, and ownership of any object made through the application of oneself to the world. From this seemingly elegant and intuitive description, private property exists and is legitimated in the Western liberal tradition. While definitions and formations of property go much further back than Locke’s seminal work, he is still a touchstone for American versions of a rights-based understanding of private property.¹

This chapter creates a selected timeline of normative understandings of property canonical to the West and specifically informs the evolution of American assumptions; establishing a framework towards comprehension of the relationship between theory, law, and protest when it comes to property destruction as political participation in the United States. Two key strands run through the chapter. First, is the development of property destruction in the Western canon as irrational and incomprehensible; and second, is a contrast between thinking

¹ Lutz, Donald S. “The Relative Influence of European Writers on Late Eighteenth-Century American Political Thought.” *American Political Science Review*, 78, No.1 (1984): 192.

about property as a social construct with government as the foundation and property as a natural right, pre-political and fundament.

Rights-based paradigms dominate the American legal and moral landscape, however it also serves our purposes to mention other considerations of property including utilitarian, communal, and anarchistic explanations. The purpose of this exploration is twofold. First, to demonstrate how shifting understandings of rights-based considerations of private property, are reflected in the protest of different eras in American history. By matching the normative property definitions with the actions violating these rights, we can begin to understand the reasons for and the power of destructive protests challenging deeply respected moral, legal, and political rights. In other words, protestors are consciously responding to their current normative frameworks regardless of era, tactics, or laws. Second, to reveal that conceptions of property are not static even when the law itself does not change. In other words, assertions about the place of property are constantly redefined and in flux as demonstrated by normative descriptions in this section, and consideration of state actions in future chapters. Even with the volatile nature of definitional categories regarding property, it still resonates with each theorist in a fundamental way. Thus, those who consider property as a societal construction lacking in any legitimacy outside of what a civilization grants it, still discuss its existence as central to the definition of political communities. Whether this is demonstrated through normative argument or debunked through critical analysis, property still remains as an essential component. These readings demonstrate a strongly Western bias in my analysis. This is purposeful in that the challenges to the property waged by various groups in the following chapters specifically confront liberal-capitalist understandings of rights and ownership. The chapter concludes with a rights-based lens through which to consider property in the following sections. I argue that a description of

property as the right to exclude frames American conceptions of this essential, seemingly natural right.

In anticipation of future chapters, this discussion is meant to construct a framework of understanding; one that both charts the transitory and constructed nature of property in political life, but also one that acknowledges its central importance regardless of the normative or critical paradigm. In other words, the centrality of property means that its occupation, disruption, or destruction is by definition revolutionary and challenges the underpinnings of Western political societies. Before reaching conclusions about the depth of those challenges, we must understand what is being confronted.

A Chronological Interrogation of Property

C.B. Macpherson conceptualizes the shifting definitions of property as a result of what it provides for society (read the ruling class) at any given time. This is a helpful framework to consider the following normative configurations of property as a *thing* and as a *right*. In order to arrive at Macpherson's compelling claim, an interrogation of ideologies justifying the existence and primacy of liberal-capital ownership is required. John Locke leads us from the creation of the condition of an object as property to the formation of property as natural right. Locke's compelling logic influences both the normative basis of American citizenship (imparted through property) as well as the pragmatic foundation of balanced rule. His most significant addition to American thought involves developing a sense of legitimacy both natural in its ecclesiastical derivation and human-centered through tacit consent, backed by property ownership.

Chapter 5 of the *Second Treatise of Government* is a touchstone for liberal thought in respects to private property. Starting with the understanding of mankind in possession of their own physical bodies, Locke extrapolates upon a labor theory of value to understand how we

create property as object and right. Essentially, adding the labor we own within our own bodies to the natural world around us, refines nature toward our chosen ends. The earth is given to all men in common, and thus the most ambitious and efficient of our kind will alter the gifts of God to their uses.² In order for this description to become reality, there is an assumption that he who first, finds virgin nature, and second, makes the most industrious use of its resources; becomes the proprietor of the results. As Locke states:

Bread, wine and cloth, are things of daily use, and great plenty; yet notwithstanding, acorns, water and leaves, or skins, must be our break, drink and clothing, did not labour furnish us with these more useful commodities: for whatever bread is more worth than acorns, wine than water, and cloth or silk, than leaves, skins or moss, that is wholly owing to labour and industry...³

Inferring that the continued refinement of goods leads to value, leaves little room for conceptions of property as ‘in common’ or carrying inherent worth outside of its application to human enjoyment. Locke does place limits upon how much and what type of property an individual can accumulate, but also provides legitimized understandings of how to overcome these initial limitations through the marketplace and the invention of money. This view also helps to justify taking of land not being used to its fullest potential as remedy to violations of natural law.

This version of property demonstrates a rights-based approach that does not necessarily require a government, a society, or a law for property to exist. It is pre-political. The legal structures created through government are merely attempts to codify natural law to insure protection and enjoyment of property. The purpose of the state is to mitigate disputes over property and insure its protection from others’ abuse. Implicit to this definition is the right of the

² Locke, John. *Second Treatise of Government*. Edited by C.B. Macpherson. (Indianapolis: Hackett, 1980), 18.

³ Ibid, 26

state, or state actors, to make decisions about whether or not land is being used ‘properly’, thus creating justified takings from those violating natural law.

Locke’s original conception is important to this discussion in that if property is pre-political and ultimately natural, any rational human knows that its violation is objectionable to the heavens. Thus, the occupation and development of ‘untrammelled lands’ is self-justifying as innate to human beings, rather than something accomplished by political society. This allows the budding American political project to brush past issues of legitimacy in acquiring lands, and rather enshrine it as a natural right in founding documents. Natural law understandings of property set a rational standard for how humans are supposed to consider and interact with the bounty of earth granted by God. Thus, only irrational, potentially non-human entities participate in property’s willful destruction. I argue that connections between rationality (i.e., humanity) and property continue well beyond the 17th century. Political actors who destroy property are classified by those in power (and popular media as their proxy) as insane, crazy, irrational, and lacking human qualities.⁴ Labeling to remove credibility and legitimacy from activists is apparent in coming chapters considering militant temperance activists, student protestors, and environmental activists.

Jean-Jacques Rousseau provides one of the earliest and most scathing critiques of private property in the Western canon. Rousseau, writing in the mid-18th century, seeks to confront Locke’s natural law assumptions through critical analysis of the state of nature. Besides acting as a counterbalance to the Hobbesian and Lockian assumptions of flawed human nature, he also builds a normative project of how human societies can contain the flaws of their origination. Rousseau’s focus on explicit consent and republican structures of community-based rule

⁴ See chapters 3 & 4’s discussions of media descriptions and perceptions of activists.

seemingly influence the perspectives of Thomas Jefferson and the Anti-Federalists pleading for local rule and escape from federal dominion. He understands previous articulations of property rights as excuses for oppression and domination, rather than as a right understood through universalist principles of natural rights. His indictment of modern conceptions of property is clear from the first lines in part two of the *Discourse on the Origin of Inequality*:

The first person who, having enclosed a plot of land, took it into his head to say this is mine and found people simple enough to believe him, was the true founder of civil society. What crimes, wars, murders, what miseries and horrors would the human race have been spared, had someone pulled up the stakes or filled in the ditch and cried out to his fellow men: ‘Do not listen to this impostor. You are lost if you forget that the fruits of the earth belong to all and the earth to no one!’⁵

Such an enunciation challenges the fundamental tenets of property as a natural right, and instead questions its existence as concept and as actuality. Property becomes an instrument to realize the created ‘necessities’ of life, demonstrate distinction within a community, and as a marker of wealth and status. To define property as the root of societal evil leads to questioning modern society itself.

Rousseau removes property from a rights-oriented paradigm and instead describes it as a communal resource to meet basic needs. Without this critique, his eventual project of a social contract based upon absolute consent would be improbable.

Rousseau brings an understanding of property as a social construction to the forefront. Property is thus the result of creating a community, rather than the reason for its construction. By reversing the directionality of the relationship of civilization to property, he demystifies and, in many ways, removes the sanctified place it occupies in Western understandings as the purpose of human society. Suddenly property is no longer granted by the gods, but simply fabricated by

⁵ Rousseau, Jean-Jacques. *The Basic Political Writings*. Translated by Donald A. Cress. (Indianapolis: Hackett, 1987), 60.

man towards potentially detrimental societal ends. A version of this republican ideology is championed by Thomas Jefferson in letters sent after his political career ends. Even as Jefferson fits within a liberal tradition of exclusivity in private property, he still rejects a version of property as profit or beyond what it offers to meet the needs and development of the community and the individual. In other words, he fits in a Rousseauian critical tradition of fighting against materialism and the creation of necessities. Jefferson asks for a reorganization of political space with an eye towards the local including local decisions made locally and a participatory system of decision-making:

The organization of our county administrations may be thought more difficult. But follow principle, and the knot unties itself. Divide the counties into wards of such size as that every citizen can attend, when called on, and act in person. Ascribe to them the government of their wards in all things relating to themselves exclusively. A justice, chosen by themselves, in each, a constable, a military company, a patrol, a school, the care of their own poor, their own portion of the public roads, the choice of one or more jurors to serve in some court, and the delivery, within their own wards, of their own votes for all elective officers of higher sphere, will relieve the county administration of nearly all its business, will have it better done, and by making every citizen an acting member of the government, and in the offices nearest and most interesting to him, will attach him by his strongest feelings to the independence of his country, and its republic constitutions.⁶

Republican formations consider what is best for the greater good legitimated through explicit consent. However, a Rousseauian republic does not hold a monopoly on explanations of the greatest good. An American sense of justice as fairness resonates with utilitarian explanations of rights. Yet, utilitarian notions of property, while influential in the American experience, demonstrate a potential challenge to property as a natural right. This does not mean it is ignored; rather it arrives at a justification for unequal distribution of resources from a different route. The utilitarian, and sometimes hedonistic, ideology is suspect of rights-based

⁶ Jefferson, Thomas. *Political Writings*. Edited by Joyce Appleby & Terence Ball. (Cambridge: Cambridge University Press, 1999), 213.

explanations of access, power, and community. Concepts of property as right hold little regard in Jeremy Bentham's framework. Rather, property can best be understood as a 'thing' leading to happiness. If we consider property from a utility principle perspective, its unequal distribution is a necessity (see Bentham, *Principles of the Civil Code*).⁷ Property is no longer the core of a political society; it is simply another factor in the calculus of relative happiness of the greatest number. Natural law explanations lose all resonance when property is instrumentalized in such a way.

Utilitarian understandings also introduce 'thingness' important to understanding property outside of rights-based paradigms. 'Thingness' challenges the sacredness constructed when property is considered a natural right. It also allows for a thorough evaluation of what property is functioning towards in any given scenario. For instance, if a unit of property is being used as a way to exclude others, logical arguments about the utility of that use can challenge its actual value. For instance, a segregated lunch counter in 1960's America represents a space of exclusion based in tradition rather than market forces. A utilitarian orientation to property allows for discussion on whether exclusion is just considering its violation of basic principles of utility. It removes the ability of the property owner to appeal to a higher liberal order of innate choice, and rather forces them to legitimate the exclusion in terms of efficacy. Removing the enshrinement of property as a fundamental or natural right can go a long ways towards reconsiderations of its disruption.

Reinterpreting property as essential, but not through the language of rights, opens up a new paradigm of access and agency. Understanding Locke as fundamental to American normativity is necessary to an accurate portrayal of the development of property within citizen

⁷ Bentham, Jeremy. *Principles of the Civil Code*, New York: Evergreen Review, 2008.

aspiration and legal definition. However, including divergent conceptions of property as a constructed norm or just one of many considerations within a political society, assists in removing the almost religious veneration and esteem it enjoys. This more nuanced approach creates space for discussions rejecting its supposedly natural quality, and properly centers it within human construction. Reinvigoration of property attached to human agency and explanations of societal inequity outside of ‘bootstraps’ excuses is necessary. Space for common or public property is normatively possible within these classic, Western approaches. However, in order to understand the destruction of property as critique of the community or targeted annihilation of improper instrumentalization of property by state or private actors, a more critical analysis is required. The following section contemplates alternatives to liberal ideologies of private property as necessary to human flourishing and liberation. Instead, it critiques ‘self-evident’ claims and builds new normative conditions for meeting animal needs and human fulfillment.

Understanding Property Outside of Liberal Frames

Rousseau’s influence is more apparent in the critical and Marxist traditions developed in the 19th century. Marx picks up where Rousseau leaves off constructing a more direct (although arguably just as devastating) attack upon private property developed within capitalism. His critique challenges capitalism as being mistaken for an inherent political economy of all societies. So much of the literature considering property rights falls prey to the same assumptions Marx warns about in *Alienated Labor*:

We have proceeded from the premises of political economy. We have accepted its language and its laws. We presupposed private property, the separation of labour, capital

and land, and of wages, profit of capital and rent of land—likewise division of labour, competition, and the concept of exchange-value, etc.⁸

In other words, the values associated with capitalism and the liberal property assumptions that follow, appear as fundamental or even natural rights. However, more radical traditions and understandings of property require interrogation to fully develop a picture of property in western political traditions.

Proudhon notoriously declares, “Property is Theft!” However, Proudhon’s treatise on the subject provides depth and nuance beyond the punch line. In *What is Property?*, Proudhon discusses an agrarian model of understanding ‘possession’ as the original source for true liberty. Once the tools and dwellings needed to sustain life are achieved, a sovereign is no longer necessary.⁹ Proudhon’s declaration against property is closely linked to the relationship between land and producer. Those who gain at the expense of the laborer without any input of their own are the lamented property thieves. Possession, in lieu of property, is a result of occupation and production, not title or deed.

Proudhon defines ‘possession’ as resources to meet necessities and provide the fundamental elements of life without the need for coercive force.¹⁰ From this general understanding, individual control over one’s land is a source of true liberty, rather than a right in itself. Thus ‘property’ is the state’s definitional and constructed sense of ownership (justifying wealth disparity and exploitation), while ‘possession’ is the necessary resources to meet human requirements without the intervention of or need for government. In fact, ‘possession’ facilitates

⁸ Marx, Karl. *The Marx-Engels Reader 2nd Edition*. Edited by Robert C. Tucker. (New York: W. W. Norton & Company Inc., 1978), 70.

⁹ Proudhon, P.J. *What is Property? An Inquiry into the Principle of Right and of Government* (New York: Dover Publications, 1970), 277.

¹⁰ Ibid, 36-37

an environment in which the state is no longer needed in Proudhon's estimation. Readers are better served starting from, "Property is the right to use and abuse," rather than the other infamous one-liner.¹¹

Property, instead of the vaunted right, is the negation or improper use of nature. Separating property from possession is an important addition to previous considerations in its assertion of a proper use to things. Specifically, it creates a framework for misuse. Owning things for the sake of profit removes the essential human quality from possession and transforms objects into inferior 'property.' Justifications for proper use which privilege human flourishing and liberty outside of the marketplace, provides a radical new paradigm to consider the relationship between human and thing. It also removes an economically centric view of rights-based articulations.

While Marx and Locke seem to be ideological enemies, they begin from strikingly similar propositions. Man is in control of his own movements and when those movements are applied to the world around him, the product becomes his own. The obvious difference between the two is conceptualizing private property versus, what I will call truly human property. Property attained through man's association with capitalism is a corrupted form of ownership as opposed to possession through mixing one's labor with nature to realize one's species-character.¹²

Differentiating between the two becomes easier when considering the motivations behind the action. Applying oneself to nature catalyzes spontaneity, creativity, self-expression, and also

¹¹ Ibid, 280

¹² Marx, Karl. *Selected Writings*. Edited by Lawrence H. Simon. (Indianapolis: Hackett, 1994), 66.

necessity. Marx's property, unsurprisingly, is similar to the conception of Hegel as a means towards some type of ends. Property represents the ability of us to participate in our creative self-actualization through an imbuing of self into the material objects we create. When that labor is coerced or chosen for us, the resulting products are private property and commodities for the marketplace alien to the creator.¹³ Truly human property can only be formed in relationships between individuals lacking coercive force and directed action. The creation of property through labor is not based upon the dependent status of a wage, but rather an independent creation of the mind. The prominence of property as commodity is removed and instead represents human ability, and in Marx's terms, the fulfillment of our species-being.¹⁴ Applying ourselves to the world around us in order to elicit something new is the defining characteristic of our humanity. Much like Hegel, it assumes a necessity of general access of people to nature. Not to survive, but to thrive and achieve human potentiality.

Marx' analysis does not occur in a vacuum. Historical circumstances and changes in modes of production bring theories about the creation and the attainment of property into sharp focus. Modernization in the scale and modes of production forces human society away from providing the necessities of life independently and instead towards wage reliance. This reconstitution of the economic sphere means that liberal analysis of the derivation of property and justifications for unequal distribution become more firmly entrenched. While the development of fundamental resources accelerates dramatically, access to them becomes reliant upon involvement with a third-party employer.

¹³ Ibid, 60

¹⁴ Ibid, 64

Thus, as we move further into the analysis, the destruction of private property (that which is attained through corrupt relationships in production) leads to a normative understanding differing significantly when private property represents an essential, god-given, legally protected right. While early normative constructions of property offer wide variation, as well as clear demonstration of the evolving levels of import placed upon property, more contemporary shifts towards the right to exclude unite possession and law.

20th Century ‘Rights-Based’ Understandings

Normative implications introduced by modern and critical political theorists, set up a conflicting array of theoretical understandings. In order to clearly ground their concepts into modern practice, I consider twentieth century accounts of how the law reifies certain versions of the normative property explanations already discussed. These various accounts demonstrate the evolution of property as a concept, a legal reality, and a locus of rights. Explanations and contentions about the place of modern property, further an understanding of what its destruction represents in a political context.

At the turn of the 20th century, deep into a new industrialized economy, certain economists, philosophers, and political theorists begin a transition away from natural law understandings of legitimating property. While property is deeply ensconced within every industrialized legal tradition around the globe, a few thinkers begin to push back against a sharp rise in material culture. Clearly influenced by or in response to Marx, theoreticians create new normative understandings while also conceptualizing property’s evolving nature within the confines of the law. Many of these discussions aim, not towards a justification for changing economic climates and new approaches to the nation-state, but rather as honing a critical analysis of property and individualism usurping a richer form of citizenship and participation. The

following paragraphs considers a cross-section of Western thinkers dealing with the challenges wrought by global warfare, shifting scales of productions, and reconfigurations of citizenship to critique the existing structure as well as to anticipate what is to come.

English thinker R.H. Tawney writing in 1920, takes a community value approach to property. Tawney rejects property as a source of income in itself and judges its value as defined through functionality to the community. This methodology rejects property as investment or as corporate capital. In other words:

[I]n modern economic conditions ownership is not active, but passive, that to most of those who own property to-day it is not a means of work but an instrument for the acquisition of gain or the exercise of power...¹⁵

Tawney refers to this as ‘passive property’ and the defining characteristic of property in the modern age. Normatively, property should occupy a place of functionality to the individual towards the meeting of necessities and the thriving of creativity. All of these are seen as important towards a community good, rather than just individual flourishing. Tawney is responsive to contemporary concerns of non-productive property ownership and is prophetic of modern laments about corporate personhood and shifting paradigms of what constitutes use value. His critique mirrors contemporary scholarship of Thomas Piketty arguing that wealth inequality spikes during Tawney’s time and again during our own current era for reasons similar to those addressed by Tawney:

Another explanation, which to me seems more plausible and turns out to be much more consistent with the evidence, is that these top managers by and large have the power to set their own remuneration, in some cases without limit and in many cases without any clear relation to their individual productivity, which in any case is very difficult to estimate in a large organization. This phenomenon is seen mainly in the United States

¹⁵ Tawney cited in Macpherson, C.B. *Property: Mainstream and Critical Positions*, (Toronto: University of Toronto Press, 1978), 140.

and to a lesser degree in Britain, and it may be possible to explain it in terms of the history of social and fiscal norms in those two countries over the past century.¹⁶

In other words, the sharp rise in inequality is similar to the idea of inactive property for material gain overtaking property productive to human communities. If property, in the sense of object utility, is not supporting the public good of a community, Tawney sees a violation of what property must represent to fulfill its 'active' purpose. The growing passive nature of property creates an understanding of property as an end in itself, or rather as a means to the ends of more property. Community attachment and use are eliminated towards profit of the individual. Tawney anticipates realignment at the turn of the century towards property as the right to exclude others.

Twentieth century contemporaries of Tawney had similar arguments. Thorstein Veblen, best known for *The Theory of the Leisure Class*, also critiques emerging profit-based paradigms replacing utility and community understandings as to the purpose of property. His contention parallels Marx' earlier work regarding the means and the tools of production as a result of social innovation and collected knowledge. Take the assembly line of Henry Ford. Ford does not invent the wheel, the tires, the combustion engine, the windshield, etc., but he unites these various social inventions into a single process. While Marx describes this as the bourgeoisie marshaling the tools of social invention towards exploitative aims, Veblen describes this as a claim on revenue (see Veblen, *Absentee Ownership*).¹⁷ In other words, modern corporations hold the reins on implementing and using community innovation towards large-scale production. They are the only entities with the capital to mobilize production towards profit, and thus they

¹⁶ Piketty, Thomas. *Capital in the Twenty-first Century*, Cambridge: The Belknap Press of Harvard University Press. 2014.

¹⁷ Veblen, Thorstein. *Absentee Ownership and Business Enterprise in Recent Times: The Case of America*, Piscataway: Transaction Publishers, 1997.

have the ability to give employment as well as reap the profits from inventions they did not conceive of. Modern entities simply have the resources to unite these technologies for profit. Property becomes enmeshed within corporate profit rather than as productive use value. Similar battles are being waged today over patent laws. “Patent trolls,” companies set up exclusively to buy patents in order to litigate for large settlements, invest nothing in innovation or creation. They simply utilize prosaic patent laws towards monetary gain through the courts. It is exactly these types of uses that Tawney and Veblen are confronting in an early 20th century industrial landscape. This erupts in stark relief during global financial crises spawned by credit default swaps in the US housing market and lax investment regulations allowing for the antithesis of productive use value in betting against the successful production of companies and markets.¹⁸ The growing discrepancies in wealth at the beginning of the 20th century, force a reconsideration of property opening perspectives to a contemporary era of property as an end rather than a means.

Following World War II, attempts to enshrine a more personal relationship to property as a right reemerged. The Universal Declaration of Human Rights mentions property twice—1) as an illegitimate reason for exclusion from rights and freedoms and 2) as a fundamental right of the individual to participate in without fear of arbitrary deprivation. While these definitional terms are clearly in the liberal rather than socialist traditions, they still emphasize unification with the individual as an elemental instrument towards the enjoyment of basic rights.

These earlier 20th century critiques problematize the ends of property rights as being separated from their direct use to the community. Granted, a new industrial factory in the

¹⁸ Boushey, Heather. “It Wasn’t Household Debt That Caused the Great Recession.” *The Atlantic*. May 21, 2014. Accessed July 25, 2014. <http://www.theatlantic.com/business/archive/2014/05/house-of-debt/371282/>

neighborhood provides wages to local residents, but it obscures property within an emerging consumer economy of labor exchange value, rather than as a source of liberty or rights. Property may become more tangible in the form of money and possessions, but it loses its original value as a source fulfilling human potential and sufficiency. Missing from these critiques and aspirational treatises are more thorough evaluations of legal understandings and interpretations in assessing property. Morris Cohen and Charles A. Reich help to fill these gaps.

Morris Cohen portends the depression in his lectures at Cornell Law School in 1927. Not in the coming economic collapse specifically, but the expanded way in which government can and should be involved in its relationship to property. Cohen takes a somewhat novel approach in linking property to sovereignty and declaring property as a right not a thing:

[W]e must recognize that a property right is a relation not between an owner and a thing, but between the owner and other individuals in reference to things. A right is always against one or more individuals.¹⁹

Cohen recreates property as sovereignty. Since property is a form of power in the invocation of one's right in contention with other's interests, then the government has the right to set limits upon it towards the public good. Cohen relates the modern 'industrial government' (one focused on economic success of its industries and ultimately in profit) to monarchy:

The subordination of everything to the single aim of monetary profit leads industrial government to take the form of absolute monarchy. Monarchy has a certain simplicity and convenience; but in the long run it is seldom the best for all concerned...the main difficulty...with industrial and financial government is that the governors are released from all responsibility for the actual human effects of their policies...the human element is thus completely subordinated to the profit motive.²⁰

¹⁹ Cohen quoted in Macpherson, C.B. *Property: Mainstream and Critical Positions*, (Toronto: University of Toronto Press, 1978), 159.

²⁰ Ibid, 173-174

In other words, Cohen sets the conditions for tighter state regulation of corporate property going against the general welfare. His critique becomes reality in 1929, and sets up justifications for Roosevelt's New Deal policies to follow. Property in this case loses some of its 'thingness' established in other estimations. This grants a tangibility previously lacking for legal justifications of state intervention into issues of power, sovereignty, and property.

Property as a bludgeon of the rich to assert economic and political control is one clear path of understanding towards contemporary realities. Property's association with individual liberty, privacy, and as a sphere outside of state intervention becomes overlooked with critical analysis of property for its own sake. "The New Property," written by Charles A. Reich, considers a legal approach to modern understandings of the place of property. Reich does this in order to push back against government largess and associations of government control of private property as the proper reforms to control corporate power. As a Yale law professor, Reich takes a legal and political approach clearly informed by political theoretical frames considering normative constructs of the meaning of property to human existence. While previous descriptions focus on the freedom and inclusion granted by ownership, Reich attempts to assess the impact of government regulation and surveillance of private property. While property provides a space of exclusion away from society and the ability to be self-reliant, it also leads to further entrenchment within the public realm as one accumulates more. Reich argues that areas of freedom previously created through property ownership, now become spaces for legitimized state scrutiny.²¹ As the Notorious B.I.G. succinctly stated, "Mo money, mo problems."²²

²¹ Reich, Charles A. "The New Property," *Yale Law Journal*, 74, No. 5 (1964): 774.

²² B.I.G., The Notorious. "Mo Money, Mo Problems," *Life After Death*. New York: Bad Boy Records, 1996. CD.

This leads to an interesting departure from 20th century theorists and possibly a bridge to the critical theorists of the 18th and 19th centuries. Enshrining property as a fundamental right deserving of the highest level of state protection, necessitates involvement of the state in the private realm of citizens. The state backs rights claims through the threat or use of violence on behalf of the wronged party. Much of the structure of the civil justice system in the United States enlists government violence (or the threat thereof) on behalf of claimants in private disputes about property. In this way property is a positive right, though it is not often counted that way. Self-sufficiency assumed through property, paradoxically sets the conditions for further attachment to the state. Rousseau's, and later Marx's, critique of created necessities and human requirements find salience in Reich's analysis.

In the liberal tradition, property continues to hold import as an inalienable freedom as well as a method of asserting rights. John Rawls argues that freedom to hold property is a basic liberty alongside voting, speech, assembly, and the rule of law.²³ Specifics about where this, and other, rights originate from are lacking. It seems that modern scholars eschew origination arguments in favor of universalist assumptions. However, Robert Nozick provides a bridge between the normative stalwarts of introduction to political theory lectures and modern implications of property rights.

Nozick offers realignment with more classic interpretations of the derivation of property, specifically as a right. In fact, he is most helpful in demonstrating the continuous state of flux conceptions of property enjoy. Since right's based approaches to property are not static, a level of ambiguity seeps into the analysis. Ironically, he exhibits its transitory nature by making the same assumption as Locke—property is natural, full stop. Nozick brings us back to our point of

²³ Rawls, John. *A Theory of Justice*, (Cambridge: Harvard University Press, 1971), 61.

origination setting up justifications for a natural law understanding of property's existence and prominence. In fact, the parallels cross into epistemological understandings of property with both theories assuaging any attempt at arguments beyond natural law 'truths' associated with property rights. Nozick's orthodoxy on this lack of construct, demonstrates the limited reach of radical critique in mainstream thought. In other words, the debate concerning property rights challenges interpretations of rights rather than more fundamental questions of property as human constructed.

In *Anarchy, State, & Utopia*, Nozick steals wholesale from Locke's original premise as to the derivation of property.²⁴ While Nozick rejects the ecclesiastical nature of Locke's description, he agrees with the fundamental tenets of its origination. The simplest (and potentially most poetic) iteration of Nozick's analysis and adoption of Locke's paradigm is, "My property rights in my knife allow me to leave it where I will, but not in your chest."²⁵ Another way to think about this is that the right of self-determination a person retains also applies to their possessions to the extent it does not infringe upon another's rights. As Nozick says:

This notion of property helps us to understand why earlier theorists spoke of people as having property in themselves and their labor. They viewed each person as having a right to decide what would become of himself and what he would do, and as having a right to reap the benefits of what he did.²⁶

The normative perspective established by Nozick demonstrates a modern concept of property as natural and existing before establishment through law. While law legitimizes private property to enshrine its protection into defining state documents, an assumption of property's inherent

²⁴ Nozick, Robert. *Anarchy, State, and Utopia*, New York: Basic Books, 1974.

²⁵ Ibid, 171

²⁶ Ibid, 171

character remains. However, constitutional authors took for granted common law limits on property rights which authors such as Nozick assume as fundamental.²⁷ After previous sections interrogated the various contingencies and creations surrounding a concept of property, we find ourselves back where we started with Locke.

Starting with classic modern theorists, I establish the underpinnings of American associations and connections with property. This vast normative platform serves as a foundation for the evolving characteristics and assumptions about property running parallel to global and Western economic transitions. Bringing critical perspectives into the discussion allow space and resonance for groups (in following chapters) which attack the sacrosanct place property occupies. The purpose is to build towards modern legal constructions of property clearly rooted in the past, while contemplating and incorporating contemporary crises in understanding the extent of property rights. So far this discussion of property maps a similar trajectory to *Property* (1978), C.B. Macpherson's classic text on the subject. While much of this ground has been tread, Macpherson also offers a helpful higher level analysis about what the constant shift in understandings of property as rights leads to. Macpherson extends Rawls analysis with a normative imperative of access and need. Modern society's concept of property as the right to exclude, leads to a centralization of wealth and deprivation of others basic needs.²⁸ Macpherson argues that a labor-based assessment of obtaining possession leads to a denial of property to others. Attempts to establish a sense of 'naturalness' through labor theory of value

²⁷ Novak, William J. *The People's Welfare: Law & Regulation in 19th Century America*, Chapel Hill: The University of North Carolina Press, 1996.

²⁸ Macpherson, C.B. *Property: Mainstream and Critical Positions*, (Toronto: University of Toronto Press, 1978), 199.

understandings, justify exclusion through ‘personal responsibility’ rather than fundamental and universalist claims of access or opportunity as a human right.

Macpherson asks for a new conception of property in the public realm—the right to not be excluded from the use or benefit of society’s productive powers. He argues this can be accomplished through equal access and an income from the whole of society not related to work, but to human needs.²⁹ It is interesting to consider the hypothetical of whether those who attack property towards political ends (to be considered in the following chapter), would still find it a suitable target with these more egalitarian conditions set upon it.

Rights-based assertions legitimizing property make up the bulk of earlier considerations. Jeremy Waldron does the important work of breaking down rights claims into four distinct categories for interrogation. He concludes that any rights-based paradigms for justifying private property are disingenuous within a society experiencing drastic inequality.³⁰ An analysis of *The Right to Private Property* helps to address what normative space property occupies chronologically and ideologically.

Waldron’s categories include immunities against expropriation, natural property rights, eligibility to hold property, and general right to private property.³¹ A short foray into each is helpful toward summing up assertions from this chapter; as well as to theorize what best aligns with a modern American conception.

Waldron’s first category contemplates property rights as lack of interference. Immunities against expropriations refer to interference with one’s property (individuals or the state) as

²⁹ Ibid, 206

³⁰ Waldron, Jeremy. *The Right to Private Property*. (Oxford: Clarendon Press, 1988), 5.

³¹ Ibid, 17, 19, & 21-22

forbidden without remuneration. This definition encompasses some of Locke's work but is most clearly found in the 5th amendment to the U.S. Constitution. Waldron critiques this concept for its lack of origin story explaining the derivation of property more generally, and thus falls short in establishing rights outside of existing concepts of property. In other words, it does not provide considerations of access; it only protects those who already possess. It is a post-state of nature scenario which assumes the natural existence of systems of authority.

Category two is the full-fledged Lockian paradigm of property as a natural right. This relies on a pre-political understanding of the inherent nature of property as part of the human experience. Locke grounds his reasoning in a potentially anachronistic justification through god's will. Nozick takes the fundamental reasoning behind Locke's property argument and makes it more palatable to modern readers by updating it into a more secular understanding of rights. However, such an understanding falls short in allying responsibility in universal terms with an individual who may or may not have access. It justifies a certain innate type of ownership, while being exclusionary at the same moment.

Eligibility to hold property is at the crux of most liberal, democratic theory. It is not a guarantee of property, but declaration that it is available to mankind. Waldron demonstrates its prominence in the Universal Declaration of Human Rights and in the work of John Rawls. Waldron sees the main shortcoming in its lack of ability to address those without property.³² This third category provides an origination of property in the human experience, but still creates dangerous spaces of exclusion justified through personal responsibility and fault similar to the previous examples.

³² Ibid, 21

Finally, the most radical potentiality for property rights emerges from the universal right to private property. This assumes that individuals need access and are guaranteed property as part of their fundamental being. They cannot realize their human potential, and their very humanity, without it. No modern state exists which provides such assurances, but it indulges interesting normative considerations towards the development of agency and ability within individuals.

The American state declares a specific version of property rights in legal doctrine (5th amendment), yet includes various aspirational messages of use and ownership. I argue that modern American interpretations from the state's perspective still support a lack of interference paradigm which explains wealth disparity in terms of personal responsibility. Next, I interrogate the roots of this logic as well as what the destruction of property represents in a historical and contemporary political context.

The American Experience of Property

For the purpose of this discussion, I consider property through a rights-based lens as established in United States Constitutional understandings. However, that is not to say that a rights-based conception of property is understood as a single paradigm. Waldron clearly demonstrates this in *The Right to Private Property* (1988). Essentially, different versions of property as a right resonate and gain significance contingent upon changing interpretations of founding documents and the 'naturalness' of the rights-based paradigm over time.

Thomas Jefferson's holy political trinity from the Declaration of Independence of life, liberty, and the pursuit of happiness are helpful in contextualizing American attachments to property. Originally paraphrased from Locke's 'life, liberty, and estates,' Jefferson's substitution sets up an interesting choice. Are property and happiness being conflated as the

same or is Jefferson hesitant to include property as a fundamental human need? Leaving that to the Jefferson scholars, it is still instructive in understanding the place of property in the American political psyche. The original Constitution's text only refers specifically to property once, in Article IV Section 3 discussing congressional powers of regulating U.S. territory. Amendments 5 and 14 readopt the Lockian language of life, liberty, and property in order to ensure due process for property owning white men in the first instance and property owning freed slaves in the second. These instances assign property as a fundamental liberty excluded from governmental interference without legal recourse within contemporary understandings.³³ This sets up an interesting question as we move towards groups who destroy property owned by the government, corporations, and private citizens; what does its destruction represent in a larger normative confrontation over rights?

At the core of each theorist's conception of property, is an understanding of necessity. Even Rousseau's and Proudhon's scathing critiques, require the existence of property as the essence of defining a society. Thus, defiance and destruction of property questions the foundations of a civilization and is revolutionary at its heart.

While property might be the reason for a political community to exist in some cases and the root of all evil in others, it still continues as the fundamental unit to begin understanding power relationships. Thus, the place of property is sanctified even as it is criticized, since it is understood as the locus of understanding normative constructions of a society's ideals for its supporters and the birth of malevolence for its detractors.

³³ Of course, due process expresses its protection as a guarantee of a process. This presumably does not exclude all takings and does not assume recourse for the property owner in every instance. [Remember, *Roe v. Wade*, *Lochner v. New York*, etc.]

Conclusions

Evolving definitions of property mean that implications of its destruction also shift overtime. Burning down a paper mill means a very different thing in the Revolutionary War era, the turn of the 20th century industrialized worker's movement United States, and the post 9/11 'War on Terror' America. Depending on the contemporary conceptions of what property rights imbue an entity with, who owns that entity, and who destroys that entity; definitions shift from treason to law-breaking to terror. Property, as well as its character, is not static. Understandings of property established in the previous pages construct the edifice to be razed by assorted protest groups throughout American political history utilizing property destruction to demonstrate radical opposition.

Towards the ends of a synthesized and comprehensible definition of property, this project considers a rights-based paradigm to analyze the actions of various movements. The rights-based understanding is closely aligned with mainstream political and legal orthodoxy associated with property in the United States. While the previous discussion has considered the various ways in which property is seen as a right, this perspective also helps to demonstrate contestation of these definitions in the public realm. A rights-based approach allows for a nuanced discussion of the right to exclude versus the right to confront various perceived injustices. In other words, property as a right dominates the discourse mobilized from the position of the activist as well as the offender.

The following chapter considers various cases of protest involving the destruction of property in the American political experience. By using the framework established in this chapter, I discuss the events themselves, the specific issue being protested, and how rights-based

understandings of property are challenged to make a political point. Property in America is firmly established as the right to exclude.

Chapter 2 – From Tea Party to Teetotalism: the Folkloric Celebration of American Militants

“We were merry, in an undertone, at the idea of making so large a cup of tea for the fishes.”
-Joshua Wyeth, Tea Party participant

“Why did we go to war for, if not to protect our property?”
-Robert MT Hunter, Pro-Slavery Virginia Senator

“I felt invincible. My strength was that of a giant. God was certainly standing by me. I smashed five saloons with rocks before I ever took a hatchet.”
-Carry A. Nation

Introduction

Revolutionaries, renegades, and outlaws are defining characters in constructing American identity. Their actions and personal stories find celebration in historical narrative as well as symbolic representations of self-reliance, the West, and individualism. However, the stories of early activists become historicized in different ways. This chapter considers three early case studies of activist campaigns that used property destruction as their form of dissent. Targets range from colonial empires, the peculiar institution of slavery, and male-dominated spaces of debauchery. In each of these cases, political actors destroyed legally protected property through various means, including theft, occupation, and outright demolition. Ironically, these early instances have now become celebrated parts of American history and folklore, although the stories told today rarely emphasize that the protestors destroyed property. My goal in the chapter is to show how viewing now-romanticized early American cases as instances of protest through property destruction illuminates certain continuities between these cases and later cases that have not (yet) achieved celebrated status in American folklore. The early cases reveal the resonance of the understanding of property established in the previous chapter. Each group attacked property with a self-conscious understanding of the sanctified place property holds in the normative, the legal, and the political landscape. And in each case, the property destruction was

met by a harsh state response, one unwilling to recognize the legitimacy of the underlying message as justification for property destruction.

I argue that these cases reveal that property destruction, far from being the exclusive preserve of contemporary anti-capital and globalization radicals, enjoys a rich history throughout the American experience. It is a tried and true tactic to garner attention and can lead to tangible change. Moreover, the cases reveal that the seemingly principled vitriol directed at property destruction today is often somewhat selective, suggesting that the problem for critics is not simply the property destruction but the underlying message. Contemporary acts of property destruction tag a movement as radical, criminal, and insane; yet the iconic protests discussed in this section are celebrated as definitional components to American activism. While my goal here is not to defend property destruction as a consistently legitimate political tactic, I do try to orient political activism through obliteration as part of a larger historical narrative. Dissent through destruction is not only justified to many, but is celebrated as part of American political mythology in the following cases. If property is the right to exclude, destruction serves as forced inclusion of and attention to underrepresented voices. From more mainstream perspectives, property destruction is vilified as beyond the acceptable limits of social and political resistance. This chapter serves to demonstrate its strong pedigree in American political activism and how time and distance can sanitize some forms of militancy into folksy narratives of resistance. That sanitation reflects the fact that the positions taken by advocates of American independence, abolition of slavery, and feminist political activism were quite radical at the time of these protests, but are more widely accepted today. While opposition to property destruction is often framed as a content-neutral position that is not about the underlying message, broader and

longer-term cultural responses to such protest suggest that something more complicated is going on.

To support these claims I consider a variety of activists groups from the American Revolution to the turn of the 20th century. I discuss a wide array of tactics, of motivations, and of ideologies with two significant constants—property destructive acts to make a political point and destruction of things not beings. This second point is especially important when considering the difference between violence against an edifice versus a sentient creature. I am not arguing that a lack of damage to persons leads to legitimation, but I am claiming that destruction of life represents a lack of political legitimacy within the normative framework of this project. The distinction of ‘things versus being’ is a vital component to my analysis. I argue that sentience has meaning. In a Hobbesian sense, even if we understand property and its protection as essential to human societies, without protection of life, it has little value. While the state and the general public may be willing to sacrifice harm to individuals to reify property as an institution, I argue that this actually reinforces my claims that destruction of property enjoys a schizophrenic relationship within the American political zeitgeist between historical, patriotic celebration and contemporary condemnation. In other words, establishing a difference in violence based upon who and how an individual suffers, creates the potential for scales of legitimation outside of a binary answer.

First, I consider the touchstone of dissent through destruction—the Boston Tea Party. It’s invocation from activists across the political spectrum serves as a symbol of justified resistance in the face of tyranny. A closer look at the events leading to the Tea Party, allow for contextual analysis comparing across numerous events of political activism. I argue that the

Boston Tea Party not only catalyzes a rich tradition of law breaking towards political ends, but is also invoked to justify contentious (and illegal) activist practices going forward.

The Underground Railroad provided an opportunity for escape and freedom amongst thousands of slaves prior to the Civil War. Few question its legitimacy as a tactic in modern political discussions. However, it is important to remember that within the time and place it operated, assisted escape represented the theft of property from lawful owners. While not an obvious example of political property destruction, it clearly meets earlier established criteria of dissent through destruction by challenging ownership and the right to exclude. It demonstrates how perception of illegal acts of resistance change based upon historical circumstance, outcome, and temporal distance.

Some events of property destruction are perpetrated towards the moral enforcement, or the spirit of existing laws, rather than a reaction against unjust statutes. The hatchetations of Carry Nation struck fear in the hearts of saloon owners across dry states in the Midwest. Nation took the enforcement of law into her own hands through a form of vigilante justice involving the complete obliteration of saloons operating in opposition to temperance laws on the books. Nation acted upon a deeply held personal ethic, and she claimed some support for that conscience in formal law. She represents a form of resistance to a status quo privileging male-dominated spaces and the reinforcement of patriarchy through law rather than the safety and the rights of women and children. Crowds of supporters joined to cheer Nation's actions, demonstrating a broader social sanction even as she sullied the property rights of others. Dissent through destruction can reify and enforce existing law, even as it violates another.

Each of these challenges to structures of reified power through the destruction of property illustrates what happens when a sacrosanct right is contested in the public realm. I argue that this

type of dissent enjoys a rich historical past in the United States, and is underrepresented in academic study of political protest.

Besides the folkloric narratives rejoicing in the efforts and the relative successes of the aforementioned radicals, I also consider the ways in which powerful institutions counter these messages and actions. My framework considers three significant structural attempts to control and ultimately stop destructive protest. Surveillance, labeling, and punishment establish a three-pronged approach to observe illegal actions, construct normative frames for public distribution, and to demonstrate the extent the state is willing to go in removing incentives to participate in dissent through destruction. Beyond only considering the radical actions leading to a constructed American political mythology, I also consider state resistance contemporary to their now celebrated activities.

Surveillance, Labeling, & Punishment: the Holy Trinity of State Control

Whether its British sympathizers, FBI infiltrators, or CCTVs, surveillance is an important tool of control for law enforcement agencies. In the case of political dissenters, a wide variety of methods are available to investigators pursuing and establishing cases against activists. While the implements available to police and federal agents change overtime, the tactics are strikingly similar whether infiltration of colonial patriots or pursuit of student radicals. I argue that methods of surveillance to stop political property destruction tend to rely upon excessive violence and/or questionable legal bases. In other words, the government is permitted to participate in law breaking to protect the legal entitlements of privileged versions of citizenship; i.e., property owners.

Besides pursuing and capturing those who break the law, it is in the interest of the state to also control rhetoric surrounding political activism. This is not a charge of conspiracy or even

evil intentions; it represents a necessary tactic to retain legitimacy in the eyes of the public and to justify state actions in quelling dissent. The public welcomes very few movements challenging the political status quo in America, and political leaders and law enforcement respect even fewer. The ways in which the state describes the actions, the actors, and the claims of dissenters demonstrates priorities and paradigms for ‘correct’ forms of citizen participation. Claiming legitimacy as arbiter of political disputes necessitates labeling participants as outside of societal norms. I argue that from the point of view of the state, the need to discredit protestors (as well as controlling the conversation surrounding their actions) is as necessary as the physical containment of the actors themselves.

Besides the ways the state watches and defines those destroying property as a form of dissent, the state also has a stake in punishing these crimes to dissuade others from taking similar actions. I argue that punishment for these instances of protest throughout American history, are consistently elevated from everyday acts of destruction. Chapter 4 takes this argument further by considering the sentencing rates of militant environmental activists before and after September 11th, 2001. This section looks at the aforementioned historical case studies to uncover a pattern of elevated punishment for the damage of objects in the course of political unrest as a tactic of resistance.

This chapter assesses contemporary reactions to uniquely American mythological acts of dissent through destruction. I begin with the Boston Tea Party and include considerations of the Underground Railroad and the militant temperance activism of Carry A. Nation.

From Destruction to Revolution: The Boston Tea Party

The Boston Tea Party *defines* American activism and protest. The moment catalyzes the revolution to cast off the yoke of British imperial power as well as challenge taxation without

representation. As an event, the Tea Party became one of the most recognizable moments of American resistance. Rarely are the raiders from that night characterized as vandals or terrorists; they are patriots rather than marauders. The colonists believed that they had exhausted all legal means to combat British taxation. The decisions leading up to the destruction of the cargo were long and complex. However, the Tea Party provides a clear example of activism and protest in the form of property violence still mimicked and invoked in the United States hundreds of years after the incident. I argue that the Boston Tea Party represents a touchstone for dissent through destruction in American political resistance. This becomes clear when later movements invoke the example of colonial activists.

Benjamin Woods Labaree writes the authoritative historical account of the events of 1773 in Boston leading up to the Tea Party and eventual revolution. His 1964 text provides a detailed account of the onset of the crisis, the attempts to resolve the standoff, and the solution chosen by the people. After sifting through a variety of historical source materials, Labaree's work constitutes the most comprehensive choice to demonstrate how the Boston Tea Party emerges as an example of destructive, yet non-violent form of protest. A reconstruction of the events, including descriptions of the exhaustion of legal routes, the decision-making process, and the perceived legitimacy, demonstrate how one of the most famous acts of property destruction arose.

Labaree points out that the import of British tea to the colonies accounted for approximately only one-fourth of all the tea available in the early 1770's.¹ Tea imports came from a variety of locations and the cost was relatively low within the colonies. The Townsend

¹ Labaree, Benjamin Woods. *The Boston Tea Party*. New York: Oxford University Press, 1964.

Act of 1767 was a legitimate exercise of British taxation powers, especially considering the services colonists received from across the Atlantic.² In fact, England was losing money on every pound of tea shipped to the colonies and the British wards overseas were receiving an unfairly subsidized price. Colonials were outraged by the passage of another tax rather than recognizing the vital services they received from England. The situation seemed dire since the tax was upon one of the most popular consumables available. Even with a fair price, the tax was attached to a commodity perceived as a necessity, not a luxury by the colonists.³ Behind the tax was a foreign power, perceived by many colonists as illegitimate due to a lack of representation to question the new tariffs. These conditions still do not seem to coalesce into a crisis. It's portrayal as such acts as a justification for the eventual protest, even as an accurate retelling of the situation would not merit the resulting escalation.

The first movements against the Townsend Act began in the Protestant tradition of thrift and self-denial. The strategy was to encourage a colony-wide boycott of tea in order to reduce demand and thus the taxes that went back to the Crown.⁴ Boycotts represent the most passive form of political protest. It is the removal of resources, legitimation, and even oneself from the public realm.

However, a problem occurred when the citizenry, as well as the leaders of the movement, were unable to limit their consumption.⁵ The colonists could not deny themselves the comfort of

² Ibid, 19

³ Ibid, 37

⁴ Ibid, 29

⁵ Ibid, 31

tea even when they agreed with the larger rights-based struggle.⁶ Consumption presents a catalyst for action in a variety of protest events in American history. Backlash against a consumer-based culture provides the foundation for activists in the past and in the present revolting against a society trained to covet property as a fundamental right without limits. Somewhat ironically, the protest was against interference in the colonists' right to consume.

Leaders of the tea boycott realized they were asking too much of a populace attached to their tea and unwilling to give it up. The comfort and connection to tea was stronger than the convictions of many budding 'patriots.' A new fad emerged in which Americans began enjoying tea smuggled in by Dutch traders. The practice was illegal based upon existing import restrictions. This alternative supply gave consumers the ability to rebel against Great Britain while not depriving themselves of their hot beverages. Ironically, before the passage of the Townsend Act, colonists depicted smuggled tea as a source of greed and depravity.⁷ Only after the implementation of the tax did the consumption of smuggled tea become a patriotic exercise.⁸ This example represents a distinction between legality and legitimacy based upon context and perceived principles of fairness accepted by the colonists. When taxation by the British provided a point for colonists to rally around, the explicitly illegal enjoyment of smuggled tea was recast as legitimate and patriotic.

By 1770, the Repeal Act revoked all of the duties imposed by the Townsend Act—except for the tax on tea.⁹ While many in Parliament argued for a complete repeal of the Townsend Act,

⁶ Ibid, 36

⁷ Ibid, 56

⁸ Ibid, 56

the duty on tea remained and was described by Lord North as a necessity for the British government to demonstrate that they retained “the right of taxing the Americans.”¹⁰ Lord North’s principle-driven quest eliminated any chance of a negotiated settlement or passive resistance as options. North had to rely upon the implosion of the colonial resistance movement.

The colonists in Boston were beset by problems of infighting. Difficulties arose in the attempt to unite the people as a single entity in order to wage economic warfare upon Britain. The leaders among the agitators realized they needed a crisis, or catalyst, to regroup and gain momentum in order to push back against the Crown. The passage of the Tea Act by parliament in 1773 renewed their hopes.

The East India Company (EIC) was facing tough times due to large-scale boycotts of a variety of products in the American colonies. The Tea Act gave the EIC exclusive rights to a monopoly on the import of tea into the American colonies from England. This agreement also allowed the EIC to be exempt from British taxes on imports and instead only had to pay the much lower American duties.¹¹ Revolutionaries of Boston finally had the necessary event to reorganize and rally the population.

Once the first ships arrived in Boston Harbor carrying tea from the East India Company, the crisis was in full swing. Colonists refused ships the right to unload at Boston Harbor and the merchants dropped anchor to wait for a resolution. The agitators of Boston began a series of community meetings to discuss what options were available to break the EIC’s monopoly on the

⁹ Knollenburg, Benhard. *Growth of the American Revolution, 1766-1775*. (New York: Free Press, 1975), 72.

¹⁰ Ibid, 71

¹¹ Labaree, Benjamin Woods. *The Boston Tea Party*. (New York: Oxford University Press, 1964), 87.

tea trade. Organizers of the mass meetings were careful not to hold gatherings within the city limits in order to dissolve any official links to the town. If some type of violence or illegal action took place, the town of Boston assumed they could not be condemned as an instigator and held responsible for actions against the Crown.¹² As it turns out, they were wrong. At the time, official town meetings were limited to qualified voters; i.e., restrictions based upon race, gender, and property. The unofficial meetings granted leaders the ability to include a larger number of participants and construct a truly grassroots opposition regardless of property ownership.¹³

This instance of incorporating non-traditional participants into public and political realms marks, arguably, the most important aspect of what colonial defiance comes to represent. The rebellious and revolutionary American spirit of this time is remarkable as a new form of inclusion; one that moves outside of traditional British constructs of generational titles and wealth, and into a more open appeal for political participation. Groups working beyond the bounds of law lead to an opening of the public realm to new actors not allowed in official channels. For instance, the abolition and the temperance movements created spaces for women to speak and work in the political realm as outside agitators attempting to challenge the status quo. Further in the chapter, I discuss implications as to why women's roles in the public forum expanded in the battles against slavery and alcohol.

Extra-legal, unofficial town meetings allowed groups as large as 5,000 participants to discuss the potential benefits and pitfalls of strategies for confronting the tea floating in limbo upon the harbor. Since none of the consignees would sign commissions to bring the tea ashore, other channels of actions could only be determined through community discussion.

¹² Ibid, 125

¹³ Ibid, 124

The decision came down to two options, sailing the ships back to England, which would result in ruin for the ship's captains, or unload the tea without commissions from consignees in Boston. At this time, the destruction of the tea was a scenario of last resort for those opposed to the Tea Tax.¹⁴ All legal means had to seemingly be exhausted before the patriots encouraged the destruction of private property. Hesitation to destroy property on the part of resisters is important. Unease in using this tactic demonstrates some fidelity to a law perceived to be legitimate. However, pursuing legal ends to their furthest extent provides opportunities for protestors to claim moral high ground, demonstrate fidelity to the law (to a point), and also to strategically manufacture crisis. In the case of the patriots, it is difficult to determine absolute motivation, but it becomes an important jumping off point for other movements going beyond the law. When it was obvious that neither side was willing to give in, the agitators in Boston laid out their plans for destroying the ships' cargo.

The Tea Party was a relatively solemn and well-planned affair. Most accounts of the events of December 16, 1773 spoke of a quiet band of men, barely disguised as Mohawk tribe members, working for hours diligently and quietly dumping the tea overboard. Those participating made sure that no man left with stolen tea and that the damage to the ship itself was minimal. The event was not a chaotic performance of men dressed as Indians whooping and causing havoc; instead it was a well-designed and well-executed plan to rid the ship of its stores as quickly as possible. These actions became a touchstone and rallying cry for activists in generations to follow. Confronting an unjust law directly through the destruction of its physical manifestation creates a framework of legitimation. Not that all property destructive acts are

¹⁴ Ibid, 141

legitimate, but rather that direct action has a relationship to foundational political acts of resistance. The other groups considered in this chapter operate upon a similar ethic.

Regardless of the century, surveillance, labeling, and punishment offer a three-pronged attack from the state to delegitimize and control those assuaging the well-worn path of accepted resistance. These three tactics seem modern in their utilization and phrasing; however, the case studies to follow each experience similar forms of state repression. Clearly the government and its security forces must react to violations of existing law; this is not the argument. Rather, I am concerned about the level of surveillance, labeling, and punishment utilized in comparison to the violation of state interests. I argue that the implication of property within resistance frameworks leads to a disproportionate state response. This metric is difficult to assign specific values, rather I construct frameworks of analysis towards broader theoretical understandings. Beginning with the Boston Tea Party, surveillance was a necessary objective to validate the punishing blockade of Boston Harbor.

Implementation of the Coercive Acts were not taken lightly and justification had to be clear before the British government could declare, enforce, and execute such a detrimental penalty upon the residents of Boston. According to Labaree this surveillance included: “...correspondence from the governors, consignees, and others in America, copies of newspaper articles, handbills and other inflammatory literature, and the depositions of witnesses to the Boston meetings and to the destruction of the tea.”¹⁵ These methods of surveillance are strikingly similar to contemporary examples. Justifications for destabilization of anarchist groups rely upon inflammatory literature, eyewitnesses, and agents sympathetic to the state. British imperial forces understood the necessity of substantive reasoning to block commerce and

¹⁵ Ibid, 184

the necessities of life to the people of Boston. Collecting incendiary information provided the evidence necessary in justifying actions against the colonists to the international community.¹⁶

Controlling the conversation surrounding protest events is an effective tool as the state builds a case towards punitive measures. Even colonists faced an uphill battle when it came to attacks on the character, the morals, and the abilities of colonial subjects according to popular press accounts and condemnations by those in positions of power. Colonials contestation of their subject status led to descriptions of “immoral men” who were “religious hypocrites, and possessed ‘morose and sour’ tempers;” with Boston being as bad as “Sodom itself” full of the “treacherous and seditious.”¹⁷ Attempts to discredit Bostonians in England included every method available to delegitimize colonial action and justify the impending Coercive Acts. These acts would close Boston Harbor as punishment for the destruction of imported tea. The strategy towards justification included descriptions of Bostonians as “cowards, whimpering wretches,” “fraudulent, hypocritical, vindictive, detestable,” and that “three-fourths of them were Scotsmen!”—devastating critique to say the least.¹⁸ Letters flooded London newspapers concerning what should be done with the upstart colonists. Some declared the Americans to be living in a state of anarchy marked by “licentiousness and cruelty.”¹⁹ Boston needed to be made an example of, and the path to carrying out this punishment required a universalized understanding of the residents as ‘others,’ deserving of the coming retribution. Compared to more contemporary case studies, Boston patriots received relatively cordial treatment. Once the

¹⁶ Ibid, 185

¹⁷ Ibid, 177

¹⁸ Ibid, 191

¹⁹ Ibid, 179

intersectionality of race and gender enter public discussions of protest actions (as in the forthcoming case of Carry A. Nation), the descriptions and the vitriol elevate significantly.

Even though the Tea Party participants and supporters did not have an American federal government to deal with, they still faced a formidable foe in an imperial British regime.

Protestors knew their actions would force a response from across the Atlantic. However, the eventual punishment and showdown it sparked led to a unification of the colonies.

Remembering that the crime committed was the destruction of a large corporation's private property, the punishments were actually more political in nature. Leveling a blockade upon the colonists of Boston began with a legal charge—high treason.

George III's cabinet declares the dumping of tea into Boston Harbor as 'high treason' constituting an act of war.²⁰ The Crown attempted to both condemn those directly responsible, while punishing the city for its support of the marauders. The eventual solution was the blockade of Boston's port. Sympathetic voices in England feared that such a measure overstepped a rational response to the actions of a handful of angry colonists. However as Labaree points out:

Why had Opposition M.P.'s not made a better showing on the question of the Boston Port bill? The most obvious answer is that many of them as individuals could not condone the destruction of property at Boston no matter how sympathetic they had been in the past to the American cause.²¹

The voice of reason in mitigating punishment was trumped by an overreach on the part of activists—destroying private property. Even prior to the enshrinement of the U.S. Constitution, free use of commerce enjoys an almost religious reverence to British decision-makers of the time. To demonstrate the regard held for property enforcement and protection, General Thomas

²⁰ Ibid, 174

²¹ Ibid, 189-190

Gage was sent as the new governor of Massachusetts and administrator of the Boston Port Act. His task was to find those guilty of treason, to shift the seat of Massachusetts's power to Salem rather than Boston, and to enforce the blockade.²² Gage, backed by a force of British warships and four infantry regiments, began a stranglehold on Boston leading to a colonial unification of previously unseen proportions. While the closing of Boston's port was officially declared as a limited action to recoup the losses of the East India Company, it was clearly a punitive act against the people of Boston.

The Theft of Property: the Underground Railroad

The Underground Railroad enjoys a vaunted place in the history of American resistance.

As Bordewich describes it:

The nation's first great movement of civil disobedience since the American Revolution, it engaged thousands of citizens in the active subversion of federal law and the prevailing mores of their communities, and for the first time asserted the principle of personal, active responsibility for others' human rights.²³

There is little debate as to its understood legitimacy as a system for spiriting away slaves from an abhorrent institution. However, according to the laws of the time, 'conductors' and 'abductors' on the Underground Railroad were in clear violation of existing property laws. Essentially, they were stealing lucrative investments and expensive tools from the South. While it seems crass to discuss human life in this way, it is instructive in understanding the types of rights claims made by southern slaveholders in American courts. Their claims were not about kidnapping, but about theft. Existing property law statutes provide the necessary factors of legitimation to make them whole again. Thus, the Underground Railroad represents a large-scale conspiracy to steal

²² Knollenburg, Benhard. *Growth of the American Revolution, 1766-1775*. (New York: Free Press, 1975), 163.

²³ Bordewich, Fergus M. *Bound for Canaan*. (New York: Amistad, 2005), 5.

property from its legal owners in the time and place which the actions occur. I argue that the Underground Railroad is yet another form of resistance through violating property laws by not allowing owners fair use of their possessions. This point of view considering fair use is from those being 'wronged' within justified systems of a uniquely American attachment to slavery, not necessarily from those participating in liberation. In other words, those contributing to the efforts of the Underground Railroad did not consider the legal ownership worthy of any respect.

The Underground Railroad slowly developed through an informal trail of abolitionists, Quaker communities, free blacks, and various sympathizers who directed runaway slaves to individuals friendly to their cause. It did not become an active, systematic construction of 'stations' until the late 1840's and early 1850's.²⁴ The shift to a more organized and proactive movement changed the dynamics from assistance to outright infiltration.²⁵ This evolution to more overt forms of law-breaking set a path followed by many activists to come. The other remarkable aspect of the Railroad, were the participants themselves. The traditional folklore surrounding the Underground Railroad speaks of whites risking themselves for the good of brutalized and frightened blacks. In reality, the railroad was made up of many free blacks who had much more on the line than their white sympathizers. It also included women as equals in hatching and carrying out plots to move slaves north.²⁶ The participants are important because, as mentioned earlier, realms of illegality opened space for non-traditional actors in the political

²⁴ Ibid, 196

²⁵ Underground Railroad participants entered plantations to circulate information amongst slaves and to find volunteers willing to take the risks necessary to make their escape. This move from spirited away the willing to inspiring the enslaved demonstrates a movement towards overt, direct action.

²⁶ Ibid, 369-370

realm much in the same way that unofficial town meetings allowed non-citizens to participate in the public forum leading up to the Boston Tea Party. In fact, the Boston Tea Party and the American Revolution were invoked as symbols to provide legitimacy to their struggle. In Boston, free blacks stormed a courthouse where Shadrach Minkins was on trial for essentially stealing himself from his master.

The rescuers streamed like a squall in a shouting procession north along Court Street, past the Paul Revere house, whose symbolism could not have been lost on the crowd, whose leaders knew full well that they were part of a second, abolitionist American revolution.²⁷

Allusions to the Boston Tea Party are present in black literature at the time celebrating the Underground Railroad. Escaping slaves saw the symbolism of the Tea Party as working hand in hand with “the right of the African American people to refuse to be slaves, to refuse to stay in a country that allows them no political representation, and lends to the actions of those involved with the Underground Railroad.”²⁸ Thus, in a matter of a few decades, property destruction as political protest was already established in the minds of American activists undermining existing law. Politics of resistance and violation of laws were covert enough spaces for free blacks and women to finally find an active role in political protest.

One way to assess the perceptions from either side of this issue is an examination of the discursive choices used by abolitionist activists and southern slaveholders to define the actions perpetrated by the Underground Railroad. By describing themselves as ‘abductors,’ activists on

²⁷ Ibid, 320-321

²⁸ Zabel, Darcy. *The Underground Railroad in African American Literature*. (New York: Peter Lang Publishing, 2004), 49.

the Railroad were ascribing humanity to the runaway slaves.²⁹ Abduction and kidnapping imbues a human quality to those being sent north. Southerners describe the ‘conductors’ as simple thieves. Expensive tools and ‘livestock’ were stolen from their lawful owners. Following the expansion of fugitive slave laws after the compromise of 1850, slave catchers and slave owners filed *writs of replevin* in federal and state courts to reclaim their property before the cases could be adjudicated. In fact, the justice system weighted against former slaves or free blacks in the north as judges were paid by case and received ten dollars for sending slaves south and five dollars for declaring suspected runaways as ‘free’.³⁰ Future case studies also demonstrate the propensity for federal law enforcement to protect and punish the rights *to* things over the rights *of* beings (see chapters 3 & 4).

The Underground Railroad represents another celebrated instance of American resistance, yet one destroying property in the process of its activism. It’s after the fact legitimization as a system upholding human rights in the face of repressive laws, leads to its popular perception as necessary civil disobedience. The rest of this chapter and next considers more controversial movements, some legitimized through time and others that have not. I argue that regardless of the light cast by historical hindsight, each instance of protest represents dissent through destruction of another’s property.

State surveillance is a more salient factor in attempts to upset the workings of the Underground Railroad. Tactics including preemptive strikes against abolitionist speakers, monitoring the movements of known abolitionists, watching homes of suspected Underground

²⁹ Wellington, Darryl Lorenzo. “The Most Famous Abductor on the Underground Railroad.” *The Christian Science Monitor*, January 20, 2004. Accessed on July 15, 2013. <http://www.csmonitor.com/2004/0120/p19s02-bogn.html>

³⁰ Finkelman, Paul. *Dred Scott v. Sanford: A Brief History with Documents*. Boston: Bedford/St. Martin’s Press, 1997.

Railroad stops, and opening mail from northern cities heading to southern sympathizers were commonplace (Bordewich, pgs. 160, 161, 183, 304).³¹ In 1850, following the passage of the Missouri Compromise and the Fugitive Slave Act surveillance became more prevalent. The Fugitive Slave Act deputized northern citizens as enlisted members of a national search party for any and all blacks suspected of being escaped slaves. Even free blacks were caught in this net and sent into southern servitude, requiring more creative massaging of existing law in order to be upheld by the Supreme Court. Federal statutes set a clear national agenda reifying the peculiar institution and justifying increased surveillance of those associated with the abolition movement.

Democrat newspapers in the 1850's described abolitionists working through legal channels to challenge slavery as "fanatics, amalgamationists, disorganizers, disturbers of the peace, and dangerous enemies of the country."³² It is not difficult to imagine the popular rejection of those working outside of the law, clandestinely, with malice towards the property rights of southern slaveholders. Biblical allusions (mirroring the Tea Party era) were utilized to disrupt the abolitionist convention in New York advising that it is "better to have Utica razed to its foundations, or to have it destroyed like Sodom and Gomorrah, than to have the convention meet there."³³ Free blacks, abolitionist activists or not, could not escape accusations. Discourse assuming the criminality of free blacks began during this era and continues today.³⁴ Southern slaveholders as well as the federal government saw militant abolitionists as the equivalent of

³¹ Bordewich, Fergus M. *Bound for Canaan*. (New York: Amistad, 2005), 160-161, 183, & 304.

³² Ibid, 32

³³ Ibid, 149

³⁴ Ibid, 169

cattle-rustlers in the West, stealing livestock and violating the property rights of those in the South, regardless of the motivation or moral impetus. While abolitionists established their own press and papers to defend their actions and encourage the support of northerners, mainstream media condemning their actions dominates much of the national discourse. Abolitionists rarely interacted with property arguments from southern plantation owners and politicians; they relied on dogmatic beliefs forged in a Northern Quaker and/or transcendental ethic justifying their resistance in terms of laws above those made by man.

Within the abolitionist movement, debates raged as to the level of opacity concerning the existence and the functioning of the Underground Railroad. In his autobiography, Frederick Douglass lamented the openness animating some discussions of the Railroad's inner-workings and worried that the growing prominence of select abolitionists could do more damage than good.³⁵ Both the colonists of Boston and the abolitionists of the North organized their own media outlets to combat labeling campaigns, but their work did more to reassure those already within their ranks than to truly upset national assumptions.

A continuous theme of government surveillance of activist groups is the questionable legality of tactics and actions used to gather intelligence. This is clearly the case in the Southern battle against abolitionism. Monitoring the movements of individuals became commonplace as "suspicious travelers were interrogated by local vigilante committees, and their belongings investigated by force."³⁶ While this may seem like a small, regional example of elevated control and monitoring, the federal government also acquiesced to the demands of the South. "Mail

³⁵ Douglass, Frederick. *Narrative of the Life of Frederick Douglass*. (Mineola: Dover Publications, 1995), 60.

³⁶ Bordewich, Fergus M. *Bound for Canaan*. (New York: Amistad, 2005), 161.

from the North was routinely opened by local post offices, and anything that could be remotely construed as challenging slavery was confiscated and destroyed,” and with the consent of federal authorities, “mail coming from the North was searched and local postmasters were empowered to destroy anything that they judged subversive.”³⁷ Remember, that under the existing statutes these actions combatted the theft of property. Violation of one’s right to free use and ownership, led the federal government to allow the monitoring of civilian populations in an 1850’s equivalent of wire tapping, with the added punishment of stopping messages from getting to their intended audience. It is clear more was at stake then a simple property crime. A schism was forming within a nation and abolitionism represented a challenge to an idealized way of life for some and the brutal nightmare of existence for others. A dangerous precedent is set by the federal government in the pursuit and the surveillance of dissidents outside existing protections for freedom of movement, of speech, and of privacy.

Abolitionists dealt with ad hoc punishments for their views long before the Underground Railroad was active. Mob violence, from heckling to murder, followed abolitionist conferences, meetings, and rallies across the United States and territories. This section focuses on methods of punishment most clearly attached to the actions of Underground Railroad participants. I argue that the Underground Railroad’s relative success catalyzed a concerted national effort to punish those involved through federal legal and policy changes as well as individualized abuse and violence, with property law statutes offering a means to justify government actions against abolitionists. The clearest articulation of law and property as the basis for punishment of activists is forged in the Fugitive Slave Act. The adaptation of law in direct reaction to and contestation of property destructive protest will be more fully addressed in chapter 3.

³⁷ Ibid, 304 & 161

One of the first national policies addressing the escape and the ‘theft’ of slaves is the Fugitive Slave Act of 1850. Besides ‘deputizing’ anyone considered a government (federal, state, or local) official as a slave catcher, the act also punishes those involved with aiding a runaway with six months in jail and a \$1,000 fine (over \$27,000 in 2012 terms). Those suspected of being runaways could not bring their dispute to court since slaves had no standing as citizens. As part of the Missouri Compromise, the Fugitive Slave Act significantly elevated punishments for those escaping the Southern slave states as well as those assisting them north. The threat to Southern commerce and ‘way of life’ led to a punitive reaction eventually forcing a constitutional crisis.

Local slavery advocates found various ways to terrorize those suspected of being participants in the Underground Railroad, including attempted murder, arson of suspected runaway slave hideouts, and false criminal reports to incriminate participants.³⁸ The combined effort of legal and extralegal tactics to upset the workings of the Underground Railroad was largely ineffective. The biggest change following the legislation of 1850 was an increase in the numbers of free blacks moving to Canada rather than Northern states.

At stake in the battle over slavery was more than the property rights of southern slave holders. Reification of racialized forms and justifications for domination are clearly part of the narrative. The coalescing of challenges to dominant paradigms of justified brutality in the form of property rights and white privilege create a remarkable confrontation with the status quo. Thus, participants in the intersectionality of resistance present within the battle against chattel slavery were ripe for vengeance. This occurred both within and outside of the law. When property destruction is used as a tactic of political expression or activism, the punishments are

³⁸ Ibid, 212-213

not strictly from legitimized channels. The depth of conviction surrounding the sanctified place property holds in the popular American conscience, also leads to grassroots pushback in the form of vigilantism and violence against perpetrators. This is clearly the case in responses to the Underground Railroad and to the radical temperance movement challenging gender norms, domestic violence, and who constitutes a political subject.

Destruction as Enforcement: the ‘Hatchetations’ of Carry A. Nation

Carry A. Nation became a figurehead of the prohibition movement at the turn of the twentieth century. Her legend grew quickly traveling from town to town in Kansas appealing to the law, the Lord, and a nascent construction of women’s rights to justify her ‘hatchetations.’ Nation’s modus operandi for these visits entailed storming into saloons (either alone or with a platoon of modestly dressed women) armed with axes and rocks, and proceeding to ‘smashing’. While religious fervor and moral self-righteousness play a large role in her justifications, she also discusses her actions as a last resort for an unrepresented and brutalized silent majority within American society. Her ‘hatchetations’ are also tactical, spiritual, and idealistic brethren of the Boston Tea Party. On many occasions, Nation voices her concerns as to the limited options available within a country not granting women access to the political realm. Nation’s solution was one part demolition, one part vaudeville, and one part holy imperative, all coalescing into action directed towards the annihilation of the saloon-lifestyle.

While many authors discuss Nation as a historical figure of note to the temperance movement, one particular book captures the factual and theoretical factors in an academic context. Fran Grace’s *Carry A. Nation: Retelling the Life* is the authoritative account of Nation’s life and the historical conditions allowing for her unique brand of protest to emerge. Grace constructs a fully articulated portrait of Nation as an activist, healer, entrepreneur, wife, and

mother. Many depictions of Nation continue to fall prey to descriptions popular with newsmen of her time—hysterical, irrational, possessed, and crazed. Through an examination of state selectivity in law enforcement, the following section examines: Nation’s motivations, actions, and justifications; gender norms in politicized space; inalienable property rights trumping moral statutes; and justifications for punishment of those violating law through physical destruction and rejection of gender normativity.

The involvement of women in the temperance movement had its roots in the Civil War. While many of the men were absent, women were recruited as ‘sanitation’ leaders for their local communities.³⁹ This public service provides the initial opportunity for women across the North and West to enjoy a taste of participation in local governance and organizing. Many women realized a gift for public service and found opportunities in which their presence is acceptable and appreciated in the public realm—abolitionism and temperance.⁴⁰ In many ways, the temperance movement is the precursor to the suffrage movement of the late nineteenth and early twentieth centuries. Temperance, as an entrance to the public realm, was available only as long as the values and the morals expected of a woman within American society were on display. The restrictions of gender allowed few other avenues for women to be outspoken, or even present in the political space. Essentially, the norms attached to gender at the time purport women as the locus of morality, inherent within their nature. Thus, issues perceived as dealing with ethical and moral acts fell within a domain proper to the expertise of women. This opportunity legitimizes women’s entrance to political forums by providing the greater public with a version of femininity

³⁹ Grace, Fran. *Carry A. Nation*. (Bloomington & Indianapolis: Indiana University Press, 2001), 12.

⁴⁰ Skylar, Kathryn Kish. *Women’s Rights Emerges within the Anti-Slavery Movement: A Short History with Documents, 1830-1870*. Boston: St. Martin’s Press, 2000, 47.

that may be outspoken, but still only speaks to issues of moral living and concerns of the household. It was allowed as long as women stressed moderation of action, humility of spirit, and protection of families. In many ways, the movement is defined by the struggle for women to protect themselves against the alcohol-inspired abuses of men.⁴¹ Women had little recourse in abusive relationships, and legal regulation was dangerously absent. Temperance sometimes suffers from superficial descriptions as a one-dimensional religious movement, yet many of its underlying principles pave the way for women's suffrage, protections against domestic violence, and expanded rights-based discourse. The fight against alcohol is not specifically moral or religious. It is a political endeavor revealing public and political avenues for women where none previously exist.

The public service of Carry A. Nation is well documented. She spent the last decade of the nineteenth century participating in ministry work while traveling around the Midwest teaching and preaching.⁴² Nation spent days and weeks on the road by herself while her husband remained at home. The Nation family was barely able to survive on their meager incomes forcing Carry into other, more profitable realms of community service. She practiced osteopathy; one of the few trades in which women were on equal footing with men in both expertise and pay.⁴³ Osteopathic healing took Nation back and forth across Kansas and the Midwest where she was able to observe first-hand, the prevalent debauchery of saloon life and negation of temperance laws on the books. She developed her public speaking skills in her

⁴¹ Grace, Fran. *Carry A. Nation*. (Bloomington & Indianapolis: Indiana University Press, 2001), 12

⁴² *Ibid*, 78

⁴³ *Ibid*, 132

ministry and her interpersonal skills in her healing. The combination of vocations creates a uniquely autonomous experience for a woman in the late nineteenth and early twentieth century. Nation was able to provide for her family by traveling independently across the country and began to experience some of the freedoms that most women had yet to encounter.

Nation's background provided her with the speaking and participatory experience required for her future temperance strategies. Her time as a "preacher and osteopath empowered her to look for even more public arenas for her political activism."⁴⁴ Nation's tactic of 'moral suasion' was failing within the prohibition movement, a fact demonstrated by state agents' intentionally ignoring prohibition laws.⁴⁵ The state was complicit in law breaking by not enforcing existing legal statutes and turning a blind eye when these laws were openly flouted. While some states adopted differing forms of temperance across the Midwest, few took the time to enforce these laws. I argue that this lack of implementation was due, in some way, to a lack of motivation from local law enforcement to trample on the property rights of saloon owners. More likely, these statutes provide a normative imperative for community standards, while local custom and personal relationships led to little action. A change in strategy was necessary to shut down the saloons. Nation viewed taverns as both the source and symbol of alcohol-related problems in society. The saloon was one of the most obvious bastions of male dominance and power.⁴⁶ The establishments did not allow women to enter the premises, and were a one-stop shopping center for all varieties of debauchery available to men at the turn of the century. With these challenges at hand, Nation began her pleas for agitation. Her attempts at value-laden

⁴⁴ Ibid, 138

⁴⁵ Ibid, 139

⁴⁶ Ibid, 13

persuasion fell by the wayside after repeated failures and she moved into a participatory realm of direct action.⁴⁷

The temperance movement as a whole attempted a variety of tactics including political campaigns, lawsuits, letter writing, and petitioning officials at every level of politics to enforce the prohibition laws on the books and to expand the reach of existing statutes. Women were turned away at each attempt due to entrenched gender bias and an overwhelming lack of access.⁴⁸ Nation's crusade moved in a new direction. It was fueled by her taste for the public stage and her distaste with the 'knowing wink' treatment saloons received.

Nation chose targets of virulent saloon decadence. One of her most famous rampages was in Wichita near the end of 1900. Nation scouted the location the previous evening and put her plan into action early the next morning. She chose her target not only for the lasciviousness within, but also for what the saloon represented: the willful defiance of the law, the gendered hierarchy, and the consumption of alcohol. Her main target was the aptly named Carey Hotel Bar, described as the most finely appointed in the state.⁴⁹ The saloon's decorations consisted of a vast collection of rarities from around the world representing the zenith of what a bar could offer during the period. This collection included a life-sized nude painting of Cleopatra, various

⁴⁷ Ibid, 91

⁴⁸ Part of this lack of access and resonance with the political realm is easy to explain. Women lacked the general rights and benefits of citizenship. Without being able to access the political realm through voting, as well as a different level of rights established through property and marriage laws, second-class citizenship did not allow for a response from representatives. Even as individual states passed suffrage laws well before the federal amendment (Wyoming, Utah, Colorado, Idaho, Washington, and California), women were largely excluded from more robust forms of political participation. In fact, Kansas included women in 1912 due to the fervor of political action by women such as Nation in the first part of the 20th century.

⁴⁹ Ibid, 150

décor from the Chicago World's Fair in 1893, and a \$1,500 Venetian mirror.⁵⁰ The bar was an unmistakable symbol of the decadence and the gluttony of the saloon lifestyle. Nation quickly demolished the interior of the bar—axe blow by axe blow. Afterwards, collecting herself for a public address to enlighten those gathered watching the spectacle, she was jailed by local authorities.⁵¹ The result was electric. Thousands of people began attending her protests as spectators and supporters in a matter of weeks. The response reveals the power of property destruction as a spectacle for attracting public attention to a violent expression of grievances.

People collected remnants of her 'hatchetations' as souvenirs and shared ever-expanding tales of her demolitions followed by fiery orations. Merchandise, solid in the form of tiny pewter hatchets and other collectables, financed her crusade.⁵² In Kansas it was difficult to dodge the John Brown comparisons; and many churches, newspapers, and other public forums spoke to the similarities of their crusades—descriptions of Nation as saint, martyr, and reincarnation of the free soil activist proliferated.⁵³ As a man of action imbued with the holy spirit of righteous vengeance, John Brown provides a salient example of open, destructive political action based in a radical Christian ethic to which Nation was compared.

Nation appreciated the public support and attention garnered by her actions. She typically announced the next city on her list in order to galvanize the support of locals who favored her brand of temperance work. Crowds increased in size for each 'hatchetation' and her exploits reached national audiences. The 'hatchetations' were potentially dangerous not only for

⁵⁰ Ibid, 151-152

⁵¹ Ibid, 153

⁵² Ibid, 180

⁵³ Ibid, 33

bar patrons and owners, but for Nation as well. On a multitude of occasions, she received both verbal threats and direct physical harm. In one instance, an individual whose property was destroyed in one of her rampages struck her in the face.⁵⁴

While preaching on a street corner the night after she had demolished saloons in Enterprise, Kansas, a bar owner and his wife came upon her post-hatchetation oration. The barkeeper's wife proceeded to punch Nation in the eye. Lore says that Nation walked directly to the local butcher shop, picked up a slab of raw beef, and was back on the corner with the flesh over her eye.⁵⁵ These tales fed her legend and led to admiration, not just in Kansas, but across the country. Nation began receiving letters from all over the United States pledging support and asking advice on how to perpetrate their own local agitation. Nation was fully aware of how important the elements of theater and performance were to her movement, and understood the necessity of promoting her actions with moral claims, sensationalism, and humor. She demonstrated this fact by refuting the words and threats of her enemies and acknowledging them as patently absurd. Nation took control of political space through physical and rhetorical performance, daring her enemies to retribution. Many insisted that she was insane and belonged in an institution. Nation's response: "As far as the lunatic asylum is concerned, I would as soon go to a sausage mill as to one."⁵⁶ In an age where gender-based discrimination led to negative comparisons of activist women with Native Americans, convicts, the insane, and the mentally handicapped, Nation was attempting to forge a new role with more favorable political

⁵⁴ Ibid, 157

⁵⁵ Ibid, 158

⁵⁶ Ibid, 178

company.⁵⁷ Her quest was not solely religious, moral, or sensationalist; it was an attempt at inclusion of women in the political and the public realm—a realm that had previously been off-limits. Nation’s acts of destruction were a cathartic release of the pent up energy and frustration within a political movement run by the traditionally oppressed. Nation found an access point to the political realm and exploited it the only way her conscience would allow. Her cause and tactics represent important challenges to the normative implications of property discussed in the previous chapter. Nation’s acts were destroying *illegal* space. However, Nation was appropriating legality rather than literally acting upon official law. In contestation to previous examples, which clearly violated existing statutes, Nation broke the law as she enforced it. In fact, her actions demonstrate a tiered system of law enforcement. Nation’s crimes of property destruction (regardless of the legality of that property; i.e., the destruction of beer and liquor) superseded the statutes forbidding the sale of alcohol. I argue that this is to be expected considering the level of protection applied to property as an inalienable right in comparison with ‘moral statutes’ forbidding the consumption of alcohol. Her multiple incarcerations come as no surprise considering the intersectionality of gender and property violence wrapped up in one individual. Harsh legal responses could have been tempered had judges recognized her claims to legitimacy. In other words, the property rights of those operating illegal businesses trump the rights of those subject to the poverty, the abuse, and the dangers these institutions proffered and facilitated.

⁵⁷ A painting titled “Woman and Her Political Allies” by Henrietta Briggs-Wall depicts political activist Frances Willard with individuals of ‘dubious reputation’ including indigenous peoples and the mentally handicapped (1893). Tellingly, this grouping depicted in the painting also map onto understandings of human rationality and worthiness for citizenship. Found in Grace, 119.

In the cases of the Underground Railroad and militant temperance, activists uphold a personal and (in the case of temperance, a state-supported) moral code. Their concerns match a modern definition of civil disobedience, one not necessarily well established at the time of their actions. In fact, a young Abraham Lincoln defended militant temperance activists in Illinois during the 1850's: "When nine Marion, Illinois, women were brought to trial for saloon destruction in 1854 one of their lawyers, Abraham Lincoln, claimed the Boston Tea Party as a moral precedent for their action."⁵⁸ Situations in which deeply held American values confront each other, holding true to a personal ethic versus upholding the right to exclude from one's property, create contentious spaces for analysis. It is in response to these spaces, that the federal government demonstrates preference and reinforces a version of truth and of right. It makes intuitive sense for the government to enforce laws when they are broken and prosecute those responsible for the destruction of property. The key aspect to consider is the length and level of punitiveness pursued to reify a state-sanctioned version of the public political realm. Chapter 4 considers this question more rigorously.

Descriptions of temperance activists in the 19th century have no equal for the level of outlandish claims, the colorful language, and the pseudo-scientific justifications. A selection of arguments and publicized descriptions of women deciding to enter (and at times destroy) the public realm demonstrates the depth of gender bias, of misogyny, of patriarchy, and of violence

⁵⁸ Dannenbaum, Jed. "The Origins of Temperance Activism and Militancy among American Women." *Journal of Social History*, 15, No. 2 (1981): 243.

Irony abounds in this instance, especially considering Lincoln's *Address to the Young Men's Lyceum* in which he declares, "Let every American, every lover of liberty, every well wisher to his posterity, swear by the blood of the Revolution never to violate in the least particular, the laws of the country; and never to tolerate their violation by others," and "I do mean to say, that, although bad laws, if they exist, should be repealed as soon as possible, still while they continue in force...they should be religiously observed."

against those contesting long held sex roles. It seems likely to be the case in the face of dissent through destruction as well.

Carry Nation as the figurehead of the militant temperance movement suffers from stereotypical descriptions as ‘Amazonian’ and ‘irrational’ applied to strong women in the public realm. Even biographies of her life focus on the most sensationalist aspects of her relationship with her husband and pejorative descriptions of flipped gender roles within the marriage.⁵⁹ However, the descriptions from the time of her ‘hatchetations’ reveal a depth of distaste and hatred largely condoned and mimicked by media outlets across the country—including even those sympathetic to the temperance movement. The three most widely used excuses for her behavior fall into the categories of: “the western crank, the menopausal virago, the hysterical and probably insane woman.”⁶⁰ The last two descriptors are present in a multitude of newspaper articles from the time. Reporters and onlookers needed reasons explaining her actions outside of a deeply held personal, political ethic. They turned to pseudo-science and emerging Freudian interpretations of her femininity and its lack of readiness or tolerance for the political realm.

Besides the media portrayals, Nation and her followers were ridiculed by the likes of Thomas Edison who made short movies mocking the actions of the temperance renegades. Edison experimented with the new motion picture medium to make films condemning the practice of ‘hatchetations’ as well as attacking Nation personally.⁶¹

The movie makes clear ‘why Mr. Nation wants a divorce’ his wife has neglected her natural role in the private sphere as mother and wife to pursue her reform career outside

⁵⁹ Grace, Fran. *Carry A. Nation*. (Bloomington & Indianapolis: Indiana University Press, 2001), 1.

⁶⁰ *Ibid*, 5

⁶¹ *Ibid*, 137 & 161

the home, leaving him with responsibilities of child care and homemaking for which his gender does not apparently equip him. Worse yet, her neglect and role perversion have caused him to start drinking.⁶²

Cries of insanity came from the towns left in her wake. Newspapers describe her with every synonym of insane and irrational available. Many argue the need for her to be institutionalized in an asylum. This is more than a casual threat at the turn of the 20th century when husbands or fathers, for any manner of ‘hysteria,’ could easily send women to sanatoriums. Women with a passion for politics were defined as ‘mannish’ and submitted to the horrors of early 1900’s mental institutions.⁶³ As seen in previous cases of property destruction as political participation, insanity is an easy claim to lob at purveyors of this strategy to discredit and condemn their actions, rather than confront the reasons for their demolition.

Carry Nation endured the gamut of retribution for her ‘hatchetations’. Some of Nation’s punishments occurred through legal channels, but many contesting her brand of rebellion utilized mob violence as their brand of justice. According to Grace:

In all, she was jailed over thirty times in states from Maine to California; she was beaten with a broom, horsewhipped in the street, bombed with raw eggs, kicked into a gutter, beaten by a band of prostitutes hired especially for the purpose, knocked on the head with chairs, and hit so hard one time that she swallowed a false tooth.⁶⁴

The state was complicit in much of the violence Nation suffered by refusing to protect her or prosecute those responsible. In fact, various authorities did all they could to make sure that Nation reconsider her actions. After her 1901 ‘hatchetations’ in Wichita, Kansas, Nation was arrested and remanded to the custody of the city jail. A bond for her release was accepted

⁶² Ibid, 161

⁶³ Ibid, 178

⁶⁴ Ibid, 2

and it seemed as if she would be free after going through the usual procedural rigmarole, but city officials found a way to punish her without sentencing. The judge issued a false quarantine for the jail declaring a ‘smallpox outbreak’. While incarcerated for the *three weeks* of the quarantine, the occupant (chosen by local law enforcement) of the adjoining cell was a deranged man uttering an unending stream of expletives while tearing his clothes off. If that was not punishment enough, the sheriff provided all of the inmates with cigarettes (cigarette smoke was widely know as an irritant abhorred by Nation) and locked her in a bare, cement room.⁶⁵ Nation represents a threat to male dominated spaces, a threat to private property, and a threat to the monopoly of power and violence of the state. Remember, that while Nation clearly violated the law in her actions, she was attempting to enforce existing statues making alcohol sales and consumption illegal.

Besides the state sanctioned violence and borderline torture, ad hoc methods of intimidation and control arose from the male-dominated business community and angry bar patrons. Following her eventual release from the Wichita jail, a lynch mob formed to end her brand of activism once and for all. She was remanded back to jail for her own protection. In Enterprise, Kansas, she was beaten and whipped by weapon-wielding prostitutes hired specifically for the occasion. Nation dragged herself to the train in which her compartment had been doused with rotten eggs.⁶⁶ These types of punishments followed Nation across the country with little protection offered by local law enforcement. Once again, intersectionality comes into focus. Not only was Nation violating local customs involving the consumption of alcohol, she also challenged male spaces of domination. To top it off, she destroyed property as a tactic in

⁶⁵ Ibid, 152

⁶⁶ Ibid, 158-159

her challenge to the status quo. These factors converging in the form of one woman, was too much for turn of the century America to handle. Even as she violated, deconstructed, and obliterated gender norms, she also enjoyed some mainstream success as various towns began enforcing temperance statutes following her actions. Nation also managed to motivate thousands of women to find space in public to voice their discontent, to protest, and to smash.

Conclusions

Each group discussed in this chapter represent an attempt to change the status quo through the destruction of the legitimate property of another. While their motivations, their tactics, and their explanations differ, they share similar implications: their actions use an attack against an existential symbol of state power to draw attention to a perceived injustice, to reclaim power, and to make pragmatic strides in their cause; they enjoy a sanitized retelling of property destruction as American folklore; and they provide symbolic points of reference for American activists in the future. The following chapter considers tactics, claims, and reactions to more contemporary versions of dissent through destruction. More recent case studies extend the assertions made in this chapter in order to understand how the stark light of contemporary systems of control leads to different perspectives. I argue that the aura of folksy narratives obscure the consistency and resilience of property destruction as a political tactic.

Chapter 3 – Property Protest, the Next Generation: Civil Rights, the New Left, & Student Radicals

“Those who invaded private property in violation of the regulations of the owners are the violators of our oldest and most time-honored laws and should be dealt with as lawbreakers.”

-T.W. Chandler, Letter to Editor of *Greensboro Daily News*

“There’s no way to be committed to non-violence in the most violent society that history has ever created. I’m not committed to non-violence in any way.”

-Bernardine Dohrn

Introduction

An explosion tore through the basement of the United States Capitol creating a three-foot crater in the Senate washroom on March 1st of 1971. Along with the porcelain casualties, the Congressional barbershop and senator’s dining room also suffered collateral damage. No one was injured, but a clear threat emerged as the Weather Underground demonstrated its ability to strike the highest symbolic seats of American political power. A communiqué following the blast called the Nixon administration to task for its illegal invasion of Laos as part of the ever-expanding conflict in Indochina.

It is in the state’s interest to remove legitimacy connoted by words such as ‘protestor’ or ‘activist,’ and instead to frame actors as radicals, militants, and/or terrorists. Typically, those opposing a version of the political mainstream are also challenging state interests. While this is clearly the case in more contemporary examples of political militancy, the previous chapter demonstrates the consistency of governmental reaction. Even as the methods and the targets of protest change, state retribution remains at an elevated level. In order to develop a fully realized vision of state and popular perceptions of dissent through destruction, I consider modern cases yet to attain the romanticized luster of America’s political past. This chapter considers actions of the student protestors within the New Left. Specifically, I examine the earliest student

occupation actions contesting Southern segregation as well as the violent actions of the revolutionary student left.

I consider the perceived orientation of the groups being prosecuted, the ways in which the state monitors their actions, the evolving legal responses, the labeling of groups, and the punishment of individuals directly or tangentially associated with dissent through destruction. First, I argue that the state emphasizes the destruction of ‘things’ at a level leading to detrimental consequences for political activism. State agenda setting to combat alternative and dissident messages also begin to alter the laws themselves (i.e. the Fugitive Slave Act). In other words, legal recognition of property is shaped and expanded in response to these kinds of protests. Second, I argue that this does not constitute a new reality, but is present across the American political experience. In other words, the prophetic warning by Martin Luther King Jr. that a country more concerned with things than beings is approaching spiritual death, finds resonance in the ways in which the state pursues political dissent.¹

In recent years, occupation as a form of resistance enjoyed a resurgence. Many associated with the Occupy movement, utilize law breaking through the questionably legal use of one’s body to obstruct the enjoyment of another’s property, as well as the reclaiming of public space from private ownership. Of course, their tactics and methodology are not original. These tactics also predate the most celebrated users of occupation during the Civil Rights Movement. However, the lunch counter sit-ins display resistance to an American form of apartheid by forcing those in power to confront their treatment of citizens constructed as ‘less than.’ Occupation of segregated spaces in the 1960’s, challenged property rights and/or local custom of

¹ King Jr., Martin Luther. “Beyond Vietnam,” published in *A Call to Conscience: the Landmark Speeches of Dr. Martin Luther King, Jr.* Edited by Clayborne Carson & Kris Shepard. New York: Grand Central Publishing, 1967.

owners to refuse service. Thus, it continues a paradigm of dissent through destruction by deconstructing a version of the essential right of property holders established in Chapter 1—the right to exclude.

From the historically justified to the overtly revolutionary, the Civil Rights Era and the anti-war movement which follows, heralds the rebirth of the American revolutionary. The Weather Underground bombed various government targets throughout the 1970's. Their actions contest United States involvement in Southeast Asia, support prisoners' rights, and combat police brutality. As a slogan, 'Bring the War Home' attempts to enlighten Americans to the daily hostilities experienced by those in prison; by those in America's inner cities; and by the people of Vietnam, Cambodia, and Laos. Their sustained bombing campaign [and evasion of federal authorities working within the FBI's Counter Intelligence Program (COINTELPRO)], blatantly and publicly destroyed symbolic property to challenge U.S. imperialism abroad and domestic policies disproportionately harming minority communities. I argue that they do not represent an outlier in the cases previously mentioned, rather they exist as a group using similar tactics but lacking in popular historicized support even as they fall into a romantic revolutionary idealism of the past century.

Occupation as Destruction: The Sit-In Movement

Many of the most celebrated and revisited symbols of the Civil Rights era are the various sit-in movements across the segregated south. Lunch counters, libraries, beaches, buses, parks, swimming pools, even zoos and state fairs were targeted for occupation.² While sit-ins do not seem to match the imperative set by earlier 'destructive' movements, those participating and

² O'Brien, MJ. *We Shall Not Be Moved*. (Jackson: University of Mississippi Press, 2013), 26.

arrested were still charged with various property crimes. In fact, how one treats, behaves, and interacts with public space is highly codified in criminal law. Protestors in the early 1960's were charged with a multiplicity of violations including breach of peace, refusing to leave private facilities, criminal mischief, criminal anarchy, trespass, and conspiracy.³ Most of these crimes involve inciting conflict and challenges to the claims of business owners exercising their right to exclude. It is from this perspective I analyze the sit-in movement as a version of property destruction as political protest. I argue that the sit-in movement, no matter what moral ground and historicized legitimacy it enjoys, represents an instance of destroying the 'fair use' of another's property as a form of dissent through destruction by challenging one's right to exclude. I assume that few of the protestors thought of their actions as destructive of property, yet the motivations of the protestors matter little in terms of how business owners justified their exclusion. The same can be said for those participating in violence against the occupiers. Counter-protestors supported a system of American apartheid upheld habitually through violence and demonstrated their fidelity to that tradition. Property may not be the first issue in the minds of participants, however invoking the local customs to exclude is the normative bludgeon used to justify racist exclusion, regardless of its lack of official legal support. This section considers the rhetoric and actions mobilizing property rights as justification for exclusion. I consider cases in which protestors challenged alleged property claims made by owners subject to laws supporting public accommodation. It is worth noting at the outset the claims about rights to property have a broader and ignominious history of being used to support racist exclusion. As Jeannine Bell shows in a recent study, many proponents of housing segregation have tried to deny their racist

³ Civil Rights Movement Veterans. Accessed July 22, 2013.
<http://www.crmvet.org/tim/timhis60.htm>

motivations by claiming an interest in protecting the value of their property.⁴ Such claims continue to be made today by perpetrators of racist exclusion towards preserving housing segregation.

Greensboro, North Carolina is typically given credit as the birthplace of the lunch counter sit-in movement, while examples go back to the 1940's and 1950's; it provides a salient place to begin considering occupation challenging segregation as a political property crime. In lunch counters across the South, Peñalver & Katyal argue that:

[T]he segregation of privately owned places of public accommodation, such as the Woolworth's lunch counters targeted by the Greensboro students, was not accomplished by mandate of state or local law...black patrons were typically excluded as a matter of local 'custom,' that is, through owners' private exercise of their common law property right to exclude. By disobeying store owners' instructions to leave the premises, the black students...were...intentionally disregarding the very property rights they sought to change.⁵

In other words, the legally constructed understandings of property established in chapter 1, the right to exclude, allow local customs violating federal law to continue regardless of its actual legality. Responses to this burgeoning form of intentional property destruction was condemned in both law and public regard. Local legislatures enacted new laws when trespass regulations were ineffective or insufficient to punish offenders. Georgia and Virginia made it a crime "to refuse to leave an establishment when requested to do so by its operator."⁶ City newspapers received letters to the editors directly critiqued the abuse of property to justify their

⁴ Bell, Jeannine. *Hate Thy Neighbor: Move-In Violence and the Persistence of Racial Segregation in American Housing*. New York: New York University Press, 2013.

⁵ Peñalver, Eduardo Moises & Katyal, Sonia K. *Property Outlaws: How Squatters, Pirates, and Protesters Improve the Law of Ownership*. (New Haven: Yale University Press, 2010), 64-65.

⁶ *Ibid*, 67

displeasure: “those who invaded private property in violation of the regulations of the owners are the violators of our oldest and most time-honored laws and should be dealt with as law breakers.”⁷ While letters like this provide a strategy to voice opposition while side stepping the racial issue, it demonstrates ways in which these protestors challenged American values and principles through their violation of the right to exclude. This fits well with earlier arguments in chapter 1; arguments questioning the place property occupies in the popular American conscience as well as its invocation to stop reform movements and/or to limit the expansion of democratic rights all while justifying various forms of oppression.

Lunch counter protestors were met with differing levels of physical, punitive, and social violence. Film of mobs covering protestors in drinks, condiments, epithets, and fists beamed out across the country. Snapshots of well-dressed, young black and white women and men surrounded by snarling faces captured national attention and sympathy. While the students were the individuals being arrested for violating the property rights of others, their antagonists were rarely if ever charged. Once again an example of a ‘things’ versus ‘beings’ paradigm appears. Physical violations to the body are ignored or justified because of the existential threat to social exclusivity norms; private property perpetuates excuses to defy the integrationist threat protestors represent.

The civil rights era, followed by the radical student movement, experienced an abundance of state surveillance tactics developed during the Red Scare.⁸ Under the control of J. Edgar Hoover starting in the 1930’s, the Federal Bureau of Investigation developed powers and technologies to disrupt and punish anyone with suspected communist sympathies. The rise of

⁷ Ibid, 66

⁸ Berger, Dan. *Outlaws of America: the Weather Underground and the Politics of Solidarity*. (Oakland: AK Press, 2006), 62.

social movements united around civil rights and later against a burgeoning war in Vietnam, gave Hoover and federal authorities the opportunity to refine and hone their skills. Both the monitoring of the early sit-in movement and the pursuit of the Weather Underground demonstrate the lengths federal and local (acting as proxy) law enforcement were willing to reach in gathering information on groups using property occupation and destruction as their form of activism.

As the civil rights movement was galvanizing across the country, the federal government took notice. Not just in a subversive, disruptive mode organized by federal police forces, but also attuned to rising violence from those attempting to preserve racial oppression. Counter-mobilizations from segregation supporters (from local church groups to the Ku Klux Klan) were learning new tactics to thwart more aggressive and combative forms of protest. Student led sit-ins and the Freedom Rides brought confrontation into physical realms of property occupation. Time and again, the Kennedy administration was forced to act when marchers were beaten, buses lit aflame, and leaders murdered. However, federal law enforcement also pursued a separate agenda to gather information on activists necessary to achieve their preferred political ends. With Hoover at the helm, holding even the Kennedys at bay, law enforcement attempted to discredit privately as they protected publicly. A few clear instances of these tactics emerged in response to the growing sit-in movement. Campus activists at various universities across the south were put under surveillance after the first rounds of occupation.⁹ Information gathered during this period of monitoring attempts to discredit protestor's actions and even question their mental stability. As a tactic, attacking the psychological welfare of activists draws clear parallels

⁹ O'Brien, MJ. *We Shall Not Be Moved*. (Jackson: University of Mississippi Press, 2013), 35.

with historic movements discussed in the previous chapter. Besides covert surveillance of activists personal lives, there was also infiltration of another type. For instance, a Jackson, Mississippi detective was sent undercover by his captain. He posed as a local reporter in order to gain access the police could not otherwise obtain:

[Police Chief] Ray asked the newly minted detective to go undercover and begin spying on the activities of the city's civil rights organizations so that the police could have the inside information they would need to maintain order. By the time of the Woolworth's sit-in, [Detective] Black had already begun to pose as a reporter...to picketing and whatever public meetings the Jackson Movement was holding. Besides looking the part of a newsman, with stenographer's pad and pen in hand and a classic fedora on his head, Black was also wired for sound. The police department would...outfit Black with undercover sound equipment so that the meetings he attended could be transmitted to a receiving station located in a police vehicle nearby.¹⁰

These instances demonstrate the length police are willing to go, as well as the depth of the perceived threat the civil rights movement represented. Existing property laws and ideas about the lengths of justified resistance bestowed upon law enforcement the necessary tools to quell dissent. In the following decade (and the discussion to follow), a more virulent and violent form of surveillance takes shape. Race-based militants, movement leaders, popular culture idols, and student radicals were all targets of the FBI's Counter Intelligence Program.

Violations of norms relating to race received violent responses from the state and the public in the 1950's and 1960's. Long standing stereotypes, pervading all the way back to my earlier discussions of the Underground Railroad, led to labeling of student activists in vulgar terms. Besides vitriolic letters to editors with repeated use of defamatory descriptors and claims, popular media also did their part to discredit the work of young women and men using occupation to fight segregation. Early demonstrations in college towns across the south led to

¹⁰ Ibid, 72

questioning the psychological health of participants, especially white ones.¹¹ Questioning the mental capabilities of protestors gave a shorthand explanation to those needing a reason for why the status quo of racial separation was in such a state of upheaval. If those confronting segregation are painted with a broad brush as ‘irrational Northerner’ or ‘confused youth’ all corrupted by modern culture, no attention needs to be paid to their claims. As seen later in the Freedom Rides, white participants in desegregation activities were attacked as ‘race-traitors’ and ‘nigger lovers’ as well as physically assaulted for their unification with black activists, at times more brutally than their black counterparts.

Bring the War Home: Weather Underground

Following the Students for a Democratic Society (SDS) Conference in Chicago circa 1969, a handful of leaders of the burgeoning student left decided that their tactics were not working. The civil rights movement of the early sixties (and its strategies) seemed already outmoded. The student left consisted mostly of middle class whites more interested in being swept up in a cultural rather than political wind. A new strategy focusing on organizing poor, urban youth assumed a deeper investment in radical social and economic change. The Weather Underground sprouted from an impetus to bring revolutionary struggle to those who would benefit from it the most. They were determined to make the citizens of the United States aware of and realize the terror reigned upon the people of Vietnam and soon Cambodia and Laos. The united struggle of colonial revolution, of urban uprising, and of revolutionary politics coalesced into the slogan “Bring the War Home.”

Ultimately, the plan to organize inner-city residents across the United States failed, but a new strategy was created. Targeted bombing of local, state, and federal sites representing the

¹¹ Ibid, 35

violence being exercised upon the most vulnerable global citizens. Over a decade, the Weather Underground bombed dozens of targets with minimal harm to life.¹² Each action was followed by a communiqué announcing the choice of target, the motivation for its destruction, and the reality they hoped to bring into being. Clearly, a concentrated and organized domestic bombing campaign deserves swift state response and reaction. The potential threat to third parties is obvious. State pursuit is expected and necessary. While the specific acts are radical, they still fit within an established framework of American activism. The state is not required to take the word of activists as being conscious of human safety while partaking in illegal acts of destruction. However the Weather Underground, being outspoken about strategies to not harm human beings is important to the normative arguments of those resisting state sanctioned violence.

Outright destruction of political targets is the clearest example of dissent through destruction since the Boston Tea Party. The crimes are explicit and take little imagination to name. Arson, incendiary devices, bomb making, destruction of federal property, are clearly viable options for law enforcement in prosecuting members of the Weather Underground. The group's strategy stems from an idea that the United States was perpetrating crimes and violence upon peoples thousands of miles away as well as within the ghettos of urban America. Individual citizens of the United States had no way to comprehend the level of death and destruction taking place. "Bring the War Home" purports to give at least a small sense of the current global violence to shake citizens from their easy apathy.

¹² An independent cell of Weather Underground operatives were killed in a premature explosion while a bomb was under construction in a New York City home. This incident persuaded the Weather Underground to ensure their tactics took all precautions against harming human life.

One such action was the bombing of the United States Capitol. On February 28, 1971, newspapers received a communiqué from the Weather Underground announcing their reasons for hiding a bomb in a men's restroom at the Capitol Building. The only problem was that the bomb had not detonated as planned, and now, in order to carry out the attack, a second device had to be smuggled in under increased security. They succeeded and the bomb detonated on March 1st at 1:30am. Their communiqué spoke of the Nixon administration furthering the conflict in Southeast Asia through bombings in Laos.

We have attacked the Capitol because it is...the worldwide symbol of the government which is now attacking Indochina. To millions of people here and in Latin America, Africa and Asia, it is a monument to U.S. domination over the planet. The invaders of Laos will not have peace in this country. Young people here will do everything we can to harass, disrupt and destroy this murderous government. The thousands of people who have begun to protest and fight this new escalation are saying to the world that we will retaliate against Amerika's crimes. Our actions, our protests and the spirit of our resistance will be welcomed and supported by people all over the world.¹³

The communiqué unites their struggle with a global revolution, while articulating defiance of specific acts. Through the destruction of symbolic targets of United States' violence abroad and at home, the Weather Underground hoped to bring clarity to those in the country safely removed from external and internal wars, in order to comprehend what others suffer through. The difference is that they were not being physically assaulted, but rather challenged to contend with their complicity through inaction. Property as a target and its destruction as a tactic offers two major advantages: 1) property destruction is public, dramatic, and symbolic; and 2) destroying property challenges deeply held commitments to American capitalism seen as behind many of the country's atrocities. When the above quote speaks of 'U.S. domination over the planet,' this is not only referencing ideological authority, but also the economic motivations for supremacy.

¹³ Weather Underground. *Sing a Battle Song: The Revolutionary Poetry, Statements, and Communiqués of the Weather Underground 1970-1974*. Edited by Bernadine Dohrn, William Ayers, & Jones. (New York: Seven Stories Press, 2006), 170.

The communiqué as tactic of revolutionary expression as well as agenda setting for the unsympathetic media, revives during the militant environmental movement of the 1990's. Earth Liberation Front and Animal Liberation Front are considered in the following chapter which interrogates punitive state responses to destructive activism.

The actions of the Weather Underground did not spark a revolution. In fact, they gave fuel to a Nixon administration already deeply involved in the covert surveillance and infiltration of various political organizations on the left. It was exactly this pursuit that saved members of the Weather Underground from prosecution once they emerged into the public eye throughout the late 1970's and early 1980's. Overzealous and outright illegal tactics used by the FBI and local law enforcement, left prosecutors without admissible evidence to file charges and few Weather Underground operatives served any time in prison.¹⁴

COINTELPRO and the Battle to Define a Movement

The FBI's Counter Intelligence Program (COINTELPRO) was a complex system of observation, infiltration, and targeted violence in operation from 1956 to 1971. All of the surveillance tools and tactics available to the FBI were deployed against various political organizations, activists, civil rights leaders, and even celebrities and politicians during the 1960's and 1970's. Techniques established over previous decades assisted an intense campaign to find and prosecute members of the Weather Underground. As an organization, the Weather Underground warranted this level of response with their overtly revolutionary agenda and tactics. Bombings of federal and state buildings require a swift response to remove any doubt as to the legitimacy of domestic police forces as the only arbiters of legal violence. I speculate that the

¹⁴ Berger, Dan. *Outlaws of America: the Weather Underground and the Politics of Solidarity*. (Oakland: AK Press, 2006), 242.

racial and social demographics of Weather Underground members saved them from the blatant violence and assassinations committed against organizations such as the Black Panthers.¹⁵ However, they did not avoid a wide range of other tactics of questionable legality employed by the FBI. These tactics were not limited to members of the Underground. While acquaintances and allies were also pursued, these tactics expanded more generally to patrol and punish the New Left throughout the 1960's and 1970's.

Early on, the FBI infiltrated the student left through undercover agents posing as politically motivated university students. Federal agents gathered information about various New Left group members and causes, to start bad-jacketing campaigns, and to act as agent provocateurs.¹⁶ Infiltration reached ridiculous heights as, “an agent in the Northern Illinois University SDS chapter attacked the university president and threw him off a stage, ‘creating a pretext for official action against the chapter.’”¹⁷ More banal forms of observation including phone taps, opening mail, and tails were also present. Blanket deployment of these tactics pushed law enforcement into questionable legal territory time and again.

Ironically, the FBI helped to facilitate the march towards the more militant underground. The lengths the FBI was willing to go to disrupt the New Left was a clear catalyst. A 1968 internal memo outlined a campaign “to expose, disrupt and otherwise neutralize the activities of

¹⁵ The infamous murder of Black Panther leader Fred Hampton enlightened many in the radical left to the lengths law enforcement was willing to go. Hampton was gunned down in Chicago while asleep in his bed by Chicago police officers working in conjunction with federal law enforcement.

¹⁶ Ibid, 61 & 63. Bad-jacketing is a tactic involving federal agents sending fake letters to and information about organization members to activist leaders as well as partner organizations. Most famously were the false letters sent to members of the Black Panther Party creating a perpetual state of paranoia and anxiety eventually leading to the murder of suspected (but not actual) double agents within the Party.

¹⁷ Ibid, 63

[the New Left] and persons connected with it.”¹⁸ The SDS caught on to the infiltration and at their 1968 convention created a fake workshop on ‘sabotage and explosives’ to remove federal agents from other more important meetings; a later FBI memo “developed a twelve-point plan of action, recommending that the ‘hostility among SDS...and the Progressive Labor Party...should be exploited wherever possible’.”¹⁹ A necessity for change in the tactics by some members of the student left was clear. By this time many became disillusioned by seemingly ineffective non-violence.

Once the continuous bombing campaign of the Weather Underground began, the level of monitoring went through the roof. These attempts to shock apathetic and complacent Americans into the realities of United States violence abroad are difficult to gauge. It was the destructive acts executed by members leading to placement on the FBI’s most wanted list, rather than their abilities to mobilize large scale political resistance. Regardless, accompanying their new status was an increase in surveillance. Even in the unsympathetic case of the Weather Underground’s violent actions, the government still went beyond the law in their pursuit. Violations of existing statutes by federal agents included: illegal wiretaps; break-ins of suspected hideouts; physical intimidation of friends and family;²⁰ burglaries of homes, offices (including attorneys), and universities; and opening mail from family and suspected friends.²¹ Grand jury indictments

¹⁸ Ibid, 64-65

¹⁹ Ibid, 65 & 66

²⁰ This includes hanging Robert Roth (Weather Underground friend) by his ankles over a third floor balcony in Chicago threatening to drop him, after following Roth to a suspected hideout (Berger, 106).

²¹ Ibid, 160

based upon this information were short-lived, as the illegality of evidence collection torpedoed the government's case and made federal prosecutions impossible.

Besides the consistent use of pejoratives including insanity and violation of social conventions (gender, race, etc.) to label protestors expressing their dissent through property destruction throughout American history; discursive shifts towards terrorism represents a modern invocation of illegitimacy to quell and discredit dissent without discussion. The Weather Underground most clearly fits definitions of terrorism in a contemporary sense, yet that moniker becomes more widely used in the decades following their actions. Chapter 4 considers the efficacy of this governmental tactic as well as its aftermath.

All of the groups discussed so far violate existing laws and deeply entrenched social norms with their actions. The Weather Underground goes further in their targeting of symbols of U.S. imperialism, violence, and hypocrisy at home and abroad. Their decade long campaign of bombing institutions representative of America's crimes against oppressed populations, does lend itself to many mainstream definitions of terror. Previous discussion outlined the questionable ways members of the Underground were pursued; yet it is also important to identify popular depictions of their acts strategically constructed to discredit their cause.

Condemnation of Weather Underground's actions was an easy decision for mainstream media outlets in the United States.²² Targeting and bombing federal buildings and local state offices violate traditional and legitimated channels of protest. However, more covert forms of

²² Over thirty years after the fact, individuals involved with the Weather Underground (but were never convicted) continue to be used for political purposes by media outlets. The clearest example involves rhetoric surrounding the relationship between presidential candidate Barack Obama and Bill Ayers a former member of the Weather Underground. Obama's "terrorist friend" retired from his post as faculty member in the College of Education at University of Illinois at Chicago in recent years. President Obama was 9 years old at the time of the Weather Underground's initial actions.

infiltration and control were waged against left-leaning media. The FBI and CIA infiltrated, forged, and created radical news outlets and stories. Dan Berger outlines the various ways in which the independent press was abused including: the formation of completely fabricated alternative papers (*The Armageddon News*); infiltration of the radical press (*Ramparts*, *Quicksilver*, and *The Washington Free Press*); ramped up drug charges for unsympathetic reporters (including a ten year prison sentence for possession of two joints); and exercising control over prison, military base, and even high school newspapers.²³

Mainstream media was not exempt from this level of control. My argument does not assume that any favorable coverage should congratulate the Weather Underground's actions, rather it is interesting to observe the extent the federal government was willing to reach insuring that the news coverage fit their needs. COINTELPRO is not just a surveillance strategy. It also relies upon a public construction of dissident identity set by the federal government. In other words, the program used an epistemological approach to control 'facts' about the activists, and more importantly creates frameworks of knowledge and understanding for the public. One major step in accomplishing such a totalitarian feat was establishing federal influence on regional and national media outlets. The FBI built files in several regional offices of 'friendly' reporters writing and publishing stories to assist in discrediting black nationalists and the student left. Senate hearings on COINTELPRO in 1976 brought these tactics to light and revealed their effectiveness.²⁴ Nationally syndicated news services actively participated in writing stories asked for by federal law enforcement including a 'special visual feature story' about Weather

²³ Berger, Dan. *Outlaws of America: the Weather Underground and the Politics of Solidarity*. (Oakland: AK Press, 2006), 69-70.

²⁴ *Ibid*, 71

Underground fugitives in 1970. A Scripps-Howard News Service reporter received a personal ‘thanks’ from Director Hoover for the report.²⁵ Encouragement to ghettoize student activists on campuses, as non-representative of mainstream views was a popular tactic; and major media outlets were complicit in painting the rising student left as rejecting traditional American values. Labeling does not do justice to the depth of involvement from law enforcement in the fourth estate when it came to the student left.

Unfavorable coverage of groups pushing against the status quo is consistent across my case studies, however the depth of state involvement was not. This went to the extent of laws changing in response to the property disruption of activists. Similarities across centuries are striking. When the South thought it was losing control over runaway slaves, the Fugitive Slave Law was passed. When the South that it was losing control over college students occupying lunch counters, new state criminal statutes were passed. These statutes, as direct reactions to various occupations, made it a crime to remain on premises after being asked to leave, filling existing gaps in state laws.²⁶ Justification for these new legislative actions relied upon property as the right to exclude. Clearly a simple enforcement of pre-existing standards was not the only consideration; rather these actions are demonstrative of who has access to the power to bend law to protect their interests and how challenges to these interests can reconstruct the legal landscape. As in the case of the Underground Railroad, direct violence and intimidation also arose in response to challenges to segregation statutes. Brutalization perpetrated by counter protestors

²⁵ Ibid, 71

²⁶ Peñalver, Eduardo Moises & Katyal, Sonia K. *Property Outlaws: How Squatters, Pirates, and Protesters Improve the Law of Ownership*. (New Haven: Yale University Press, 2010), 67.

and the police (sent supposedly to keep mobs in order) was frequent.²⁷ Disproportionate punishment was similarly suffered by Carry Nation during her stints of incarceration; including the various forms of cruelty and torture suffered at the hands of private citizens and state actors (see chapter 2).

Protestors arrested after a Mississippi library sit-in, were subject to arrest without bail. Once they were finally tried several days later, the courtroom broke out in violence initiated by policemen. As the protestors were lead in, a sympathetic crowd broke out into cheers. In retribution, those in the crowd were pistol-whipped and clubbed while attack dogs were let loose—in the courtroom.²⁸ One member of the crowd subject to these beatings was Medgar Evers. Notoriously, Evers is later murdered for his work and support of actions challenging segregation in Mississippi. Fire hoses, clubs, attack dogs, fire bombings, and mob beatings followed civil rights activists across the South. Violence from the state came from police allowing mobs time to perpetrate violence before law enforcement responded as well as directly participating in violence themselves. It is important to discuss the intentionality of some civil rights groups in their choice of locations for protest with full knowledge of the potentially violent actions to follow; not to blame them for encouraging violence, but rather that the threat of violence was so obvious they could easily predict its emergence. Thus, regardless of strategy of those challenging Jim Crow, private and state viciousness demonstrates a dangerous consistency. Segregation mobilizes property law as part of a strategy to reify its sanctified place in the

²⁷ This does not even begin to consider the murder of student activists including three young men attempting to register black voters in rural Mississippi during the ‘Freedom Summer’ of 1964.

²⁸ O’Brien, MJ. *We Shall Not Be Moved*. (Jackson: University of Mississippi Press, 2013), 26.

American conscious and these customs remain in force regardless of federal court decisions to the contrary (i.e., *Brown v. Board*). When multiple norms are violated (both racial and property based) through actions challenging the right to exclude, retribution from state and citizen actors breaks the plane of destruction of things into violence against beings. This occurs formally (as an excuse for law enforcement) and informally (when private citizens supporting segregation fight to protect their property rights).

As discussed in a previous section, much of the FBI and law enforcement punishment of the Weather Underground concentrated on surveillance and intimidation. Unofficial channels of retribution and coercion provided the necessary punitive elements since official channels were closed following the depth of illegal law enforcement activities. However, a few within system methods were deployed to curtail militant activist actions during the time. Reacting to the growing power of the New Left, “Congress passed laws in 1967 prohibiting the crossing of state lines to ‘promote rioting’.”²⁹ These statutes inserting federal law enforcement into traditionally local issues of law and order continue today. Modern incarnations include state responses to global economic organization protests, preemptive strikes against known members of protest networks, punitive responses to uncooperative witnesses, and ad hoc statutes to make previously legal actions illegal. In chapter 5 I begin to theorize how contemporary changes in law and in policing target emerging protest threats.

Statute-driven curtailing of protest actions continues across historical examples in this case. A quick and effective way to regain legitimacy in the face of opposition is to invoke the rule of law through new legislation. In other words, the state can legally construct its way out of

²⁹ Berger, Dan. *Outlaws of America: the Weather Underground and the Politics of Solidarity*. (Oakland: AK Press, 2006), 66.

trouble. Take for instance *United States v. O'Brien* (1968) in which a 1st amendment challenge stemming from burning a draft card led to a justification for ad hoc laws targeting protestors, as long as there was a substantial governmental interest to do so, and that other channels of communication were available for political speech.³⁰ First, in order to punish the draft card burners, the court had to convert a symbolic protest into something that was about destruction of government property. This was despite a very negligible government interest in the value of the property as the individual draft cards were printed on cardboard. Second, the criminal law making it a crime to destroy or mutilate a draft card was passed *after* the protests started. The discussion in Congress was transparently about the need to stop the protestors from weakening support for the war.

Even with new laws, FBI surveillance and intimidation, and clearly illegal acts of bombing significant political targets, most members of the Weather Underground avoided punishment. Many activists turned themselves in to federal authorities and charges had to be dropped due to the employment of illegal tactics in their pursuit. It seems ironic that the group most clearly in violation of the law and property rights, receives the least punishment due to the illegal actions of law enforcement pursuing them. The federal government was eventually successful at stopping regular attacks, but the broader pattern of response to New Left protest demonstrates a need for a higher level of punitiveness at the ready for political dissenters. A 'means/ends' argument exists supporting federal actions as effective in stopping the bombing campaign through their overzealous (and illegal) tactics, even as the perpetrators escaped prosecution. However, differences due to systems of privilege deeply engrained in American political life around issues of race and class also come into play. Weather Underground

³⁰ *United States v. O'Brien*, 391 U.S. 367 (1968)

members openly recognized the benefits of their race compared to their Black Panther compatriots. While Black Panthers were targeted for assassinations and overt forms of violent repression, the Weather Underground was subjected to intimidation and attempted infiltration towards imprisonment rather than annihilation.

“By recognizing it as a political system, the ‘Racial Contract’ voluntarizes race in the same way that the social contract voluntarizes the creation of society and the state,” and thus “whiteness is not really a color at all, but a set of power relations.”³¹ Identifications of the power dynamics clearly articulated through constructions of race, lead to real outcomes regardless of the tangibility of race as an actual thing. In other words, the power relationships generated through centuries of racial animus in the United States have lasting effects on the perceived threat and real outcomes related to punishment for white activists versus activists of color. While charges against Weather Underground conspirators were thrown out, Black Panther members convicted under even more questionable circumstances are still incarcerated.³²

Considering all of the activist groups and individuals discussed in these case studies never harmed human life, violence against them, as persons seemed an everyday option for those opposed to their actions. The consideration of ‘things vs. beings’ is an important normative question. At what point should sentence be considered as an aspect of punishment for crimes against property that do not injury people? The following section considers this question and

³¹ Mills, Charles. *The Racial Contract*. (Ithaca: Cornell University Press, 1997), 126-127.

³² Specifically, I refer to the case of Marshall ‘Eddie’ Conway imprisoned in 1970 under questionable circumstances after being charged with the murder of a Baltimore police officer. Conway spent 44 years in prison before his release on March 4, 2014. His conviction was based upon evidence trumped up through COINTELPRO channels and gathered and/or fabricated illegally in ways similar to information gathered on the Weather Underground (Goodman & Moynihan, 2014).

reflects upon what increased levels of punitiveness for crimes against ‘things’ says about the priorities of a political community.

Things v. Beings: the Spiritual Death of a Nation

I am convinced that if we are to get on the right side of the world revolution, we as a nation must undergo a radical revolution of values. We must rapidly begin the shift from a thing-oriented society to a person-oriented society. When machines and computers, profit motives and property rights, are considered more important than people, the giant triplets of racism, extreme materialism, and militarism are incapable of being conquered.³³

The normative direction of this dissertation considers what property rights mean to a perceived understanding of the animating spirit of America. I use various activist groups through the country’s history to consider the lengths individuals are willing to cross to uphold a personal, political ethic; as well as the lengths the state and citizens are willing to go to retain a firm grasp on the status quo. Property becomes the lynchpin in understanding the importance a society places on the freedom of and to things versus the freedom of and for beings. I argue that a society, which punishes property destruction with overt violence against human beings, requires careful consideration and pause. Even if violence is at the heart of law,³⁴ the extent it is marshaled and justified by the state to punish transgressions against things requires further deliberation.

The case studies in this chapter and chapter 2 demonstrate two things: (1) property destruction enjoys a prominent place in the history of American political participation and (2) state reaction to property destruction as protest elicits an inordinately punitive response. Each of

³³ King Jr., Martin Luther. “Beyond Vietnam,” published in *A Call to Conscience: the Landmark Speeches of Dr. Martin Luther King, Jr.* Edited by Clayborne Carson & Kris Shepard. New York: Grand Central Publishing, 1967.

³⁴ Cover, Robert. “Violence and the Word.” *Yale Law Journal*, 95 (1986): 1601-1629.

the examples provides a broad view and general assertions about dissent through destruction.

The following chapter examines a specific case study to more thoroughly measure my claim of inordinate punishment for political crimes of property destruction. To determine whether this claim has merit, I consider the difference in sentencing rates for similar crimes, once these actions become part of a political lexicon of militant activism and/or terrorism. Militant environmental activists provide a case study rich in data and theoretical implications to more fully evaluate my claims in a contemporary perspective.

Chapter 4 – Mapping Discursive and Punitive Shifts: Punishment as Proxy for Distinguishing State Priorities

“We are the burning rage of this dying planet. The war of greed ravages the earth and species die out every day. ELF works to speed up the collapse of industry, to scare the rich, and to undermine the foundations of the state.”

-Earth Liberation Front, Beltane Communiqué

"The No. 1 domestic terrorism threat is the eco-terrorism, animal-rights movement."

-John Lewis, FBI Deputy Assistant Director

Introduction

On New Years Eve of 1999, Marie Mason burned down the Agriculture Hall on the campus of Michigan State University. The arson was in protest of the genetic engineering research carried out within. The research was part of a federally funded program to genetically modify foodstuffs for consumption in the United States. On February 5, 2009, Mason was sentenced to 22 years in prison. Prosecutors acknowledged that the fire was not set in an attempt to damage human life, yet Mason received the longest sentence ever for an act of environmental activism. Leading up to her sentencing, the FBI warned the press of the possibility of ‘terrorists’ attending the court date to protest or otherwise interrupt the proceedings potentially through violent means.¹ Similar intimidation tactics (not backed by any actual threats) were used by the federal government in the mid-1970’s during the trials of various American Indian Movement (AIM) activists.² Federal prosecutors asked for a sentence of 20 years, the judge added another

¹ Potter, Will. “Environmentalist Sentenced to 21 Years as a ‘Terrorist’.” *Green is the New Red*. February 5, 2009. Accessed July 24, 2012.
<http://www.greenisthenewred.com/blog/marie-mason-sentenced/1023/>

² Churchill, Ward and Jim Vander Wall. *Agents of Repression: The FBI’s Secret Wars Against the Black Panther Party and the American Indian Movement*. Cambridge: South End Press, 2001 and Matthiessen, Peter. *In the Spirit of Crazy Horse*. Penguin Books, 1992.

two for Mason's involvement with the Earth Liberation Front.³ The judge reasoned that Mason's acts fit within the definition of terrorism constructed by the PATRIOT Act⁴ and the Animal Enterprise Terrorism Act (AETA).⁵ Chief US District Judge Paul Maloney also used a vague 'terrorism enhancement' established by Omnibus Counterterrorism Act of 1995 which allows broad discretion in sentencing by up to 20 years for acts targeted at influencing the government and on a list of specific terrorist acts developed in Congress.⁶ What political processes, climates, and strategies led to such a harsh penalty? Why have courts in recent years issued several sentences to property-destroying environmental activists beyond those typically given for rape and murder? Why has the executive branch through federal law enforcement been so aggressive in applying statutes (some already in existence for a decade, yet rarely used) targeting property destructive protest?

In this chapter, I document a variety of changes in political priorities and statutory weapons for prosecutors that contributed to the rise in punitiveness against radical environmental activists. These include courts and judges carefully monitoring cues from the federal government as to how contentious political controversies are resolved in the legal realm. This link is most clear between publicized, concerted efforts on the part of federal law enforcement,

³ Fox News. 2009. "Activist Gets Nearly 22 Years in Prison for Michigan State University Arson." *Fox News Online*. February 5, 2009. Accessed January 18, 2011. <http://www.foxnews.com/story/2009/02/05/activist-gets-nearly-22-years-in-prison-for-michigan-state-university-arson/>

⁴ PATRIOT Act. *Public Law 107-53*. (2001) Accessed January 18, 2011. <http://www.gpo.gov/fdsys/pkg/BILLS-107hr3162enr/pdf/BILLS-107hr3162enr.pdf>

⁵ Animal Enterprise Terrorism Act. *Public Law 109-374; 18 U.S.C. § 43*. (2006) Accessed April 2, 2014. <https://www.govtrack.us/congress/bills/109/s3880/text>.

⁶ *H.R. 896* H.R. 896--104th Congress: Omnibus Counterterrorism Act of 1995. (1995). In www.GovTrack.us. Retrieved July 10, 2014, from <http://www.govtrack.us/congress/bills/104/hr896>

demonstrated through attorney general, Department of Justice, and Homeland Security yearly strategic plans. I also integrate previous discussions of the theoretical and normative arguments about the place of property in American society. I argue that one method of understanding the priorities of a community is to consider which crimes receive the most punitive sentences. While the severity of sentencing applied to environmental activity is a relatively new phenomenon, the trend represents a continuation of earlier arguments considering the destruction of *things* on par with the destruction of *beings*.

In the United States, courts provide a multi-directional tool for competing environmental interests. Individuals may petition the court for grievances against private corporations and/or government interests, or they could find themselves as defendants for their activism. In the case of environmental activists, the interplay with American courts shifts overtime. Federal law enforcement sets the agenda for the judiciary in their pursuit of various threats; and courts, over the past 10-15 years, responded with elevated sentences for similar crimes. Specifically, the government pursued higher penalties (in months of incarceration) for environmental activists over the past decade than in previous ones. The crimes are similar in tactics, scope, and severity; yet the sentencing of convicted environmentalists rose steeply. I demonstrate this trend through an evaluation of sentencing rates for similar crimes over the past two decades focusing on instances of property destruction, arson, vandalism, etc. Why has sentencing rates for similar acts of militant environmental activism increased? What factors explain this variation?

One possible reason for an increase in punitiveness considers activists as shifting from conventional protest to activities destroying property and breaking laws. However, I find that the dramatic shift in punitiveness does not track any change in tactics. The shift occurred long after activists began using the tactic of destroying property. I seek to demonstrate how the political

milieu and discourse surrounding ‘eco-terrorism’ serves to increase attention to extra-legal activism in defense of the environment. Domestic security forces (FBI) in conjunction with the federal legal apparatus (Department of Justice and Homeland Security) have made ‘eco-terrorism’ a top priority since September 11, 2001.⁷ Clear evidence of this emphasis exist in FBI press releases, congressional testimony, and reveal the strategic agendas laid out by various federal entities discussing the threat of ‘eco-terrorism’. This chapter argues that, while this new focus on activists leads to slightly more arrests and convictions, it disproportionately assigns more severe penalties to environmental militants in comparison to pre-9/11 cases. Illuminating the agenda-setting power of federal law enforcement’s response to militant environmental action, demonstrates a realignment of federal priorities in the wake of 9/11 to reclassify destructive dissent as terrorism.

The directionality of this process is difficult to map. There are several possibilities for how the timing of massive international terrorist actions coincides with the rise in punishment for domestic political activists. One is that Congress passed a law targeting the specific threat of those affiliated with the perpetrators of the September 11th attacks, but utilized vague language and definitions thus opening substantial legal space for pursuit of domestic agitators. Such a lack of specificity led to an overreach on the part of federal prosecutors to use the law in new ways. Another is that the crisis of 9/11 provided cover for legislators to mobilize broad law salient to a wide array of dissent. While the new legislation met the timing of an immediate tragedy, its existence and push for implementation preceded the events ultimately justifying its passage into law. While my arguments tend to incorporate the latter scenario, either one demonstrates the

⁷ Jarboe, James. “Congressional Testimony ‘The Threat of Eco-Terrorism’.” *Federal Bureau of Investigation*. February 12, 2002. Accessed March 7, 2009. <http://www.fbi.gov/news/testimony/the-threat-of-eco-terrorism>

wide latitude given to federal actors to pursue a form of dissent as old as the country under a new guise of preventing terrorism. I discuss American priorities towards the protection of property as a cause of more stringent penalties for activists in conjunction with a ‘War on Terror.’ My argument aligns with earlier discussions of property rights and various forms of activism to provide a modern case study of how the American state confronts dissent through destruction.

This chapter is divided into four sections. The first outlines the agenda setting of the justice department and federal law enforcement’s increasing interest in and emphasis upon militant environmental activists. The section provides an initial foundation and discussion about how concentrated federal efforts provide roadmaps to courts and their actors in the sentencing process. While some of these changes seem statute driven, I demonstrate how various acts salient to stricter sentencing were present for decades. Rather, the change is the result of increased political attention towards the War on Terror and the new priorities of the Department of Justice (DOJ) and the FBI. In other words, legislation such as the PATRIOT Act set a new agenda for federal actors, while also opening up the legislative past for previously under-used statutes.

In the second section, I created a longitudinal data set documenting length of sentences in cases involving property destruction by environmental activists. The data reveals upward movement in the rhetoric of terror and fear from federal entities, which mirrors the increase in punitive sentences. Descriptions of environmental activists as terrorists and as significant threats to domestic security, becomes the new standard. FBI, Department of Justice, and Homeland Security press releases, congressional testimony, and newspaper articles comprise the bulk of the data. From the case studies, it is immediately apparent that a steady increase in sentencing terms since the latter part of 2001 is present.

The third section analyzes the data to hypothesize reasons for the observed changes. The analysis includes deeper interrogations of individual cases, analysis of discourse from the state, and considerations of the political landscape. These three areas enable the reconstruction of a political, a legal, and a law enforcement climate leading to longer rates of incarceration.

The final section considers the theoretical implications of increasing punishment for damage to property which explicitly rejects harm to individuals. The situation has not been one of a gradual rise in sentencing for environmentally motivated property crimes. Rather, sentencing vaults upward to a level reserved for rape, murder, and other violent crimes against sentient beings.

The chapter concludes with a discussion of the results and the implications the data provides for future interactions of activists and the courts. Effects are not a simple top-down description of increased state attention and condemnation, but a multi-directional interaction effect, in which courts are less responsive to the rights-claims of activists. The political climate allows for questionable prosecutorial tactics towards environmental activists, due to their participation in law breaking activities against symbolic property targets. While a lack of sympathy is expected, the change in levels of punitiveness demonstrates a normative arena of contention. I theorize that property as a sacrosanct symbol of the right to exclude in the liberal state, leads to emotional and reactive policies when property is destroyed in the course of protest. When an environment of terror complements these actions, we can expect a steep rise in the level of punitiveness for participants.

Federal Law Enforcement & Agenda Setting

Since the 1980's, the Department of Justice publishes yearly or semi-yearly reports on the status of foreign and domestic terrorist concerns. These reports offer a clear public agenda for

FBI response to domestic incidents perceived as a terrorist threat. *Terrorism in the United States*, renamed *Terrorism* in 2001, significantly alters its labels and descriptions of environmental activists between 1996 and 2001. While groups such as ELF are discussed as a significant threat going back to 1998, they are not anointed as ‘eco-terrorists’ until the reports published in 2002. The 1998 DOJ *Terrorism in America* briefing uses an image from an ELF action in Colorado as the *cover* of the report, yet refers to ELF as “an extremist environmental movement.”⁸ While their actions gain enough prominence to make the cover of the report, they are still described in terms of radical activists. Fast forward to 2002 and for the first time we see descriptions of “the challenge to respond to animal rights and ecoterrorism...”⁹ Before 2001, eco-terrorism as a term was used sparingly in newspaper stories and other forms of popular media. In fact, the earliest use of ‘eco-terror’ that I can find using a popular internet search engine is in 1987 by an environmental group who named themselves the *Evan Mecham Eco-terrorist International Conspiracy*. Later in this chapter I explore the strategic rhetorical use of ‘terror’ attached to militant environmental activists as one of several tools deployed by the federal government to realign destructive dissent with terror. The ‘War on Terror’ provides a nebulous category to encompass many groups who contest federal power, especially when property is involved. I argue this response fits within previously discussed historical cases of government attempts to combat other controversial messages and actions of dissent.

The discursive shift that began just before the 2001 attacks became much more significant after Congress responded to those attacks by giving federal law enforcement broad

⁸ Department of Justice. “Terrorism in the United States.” *Counterterrorism Threat Assessment and Warning Unit, National Security Division* (1998): 1-29.

⁹ Department of Justice. “Terrorism 2001/2002.” *Homeland Security/Federal Bureau of Investigation*. (2001): 1-49

new powers to investigate and punish acts of 'terrorism'. The FBI began to use newly aggressive tactics similar to the ones used in an earlier generation with COINTELPRO. Significantly, however, federal law enforcement officials were much more open in announcing and taking credit for the tactics used in the post 2001 campaign against radical dissent. The FBI, in conjunction with the ATF, to curb militant environmental activism, launched Operation Backfire in 2004. The program targets environmental and animal-rights activists participating in sabotage of industries harmful to the environment and animal welfare. My aligning the program with COINTELPRO is not due to its covert nature, but due to tactics law enforcement uses to find, to arrest, and to prosecute activists. While Operation Backfire represents the clearest example of a policy shift from the federal government in the aftermath of 9/11 to combat domestic terrorism, various other crackdowns on public forums of protest demonstrate the extent that the control over discourse about dissent reaches. Further examples are discussed in the next chapter.

Operation Backfire utilizes secret grand juries, FBI provocateurs, informants, unnamed sources, surveillance, pre-emptive arrests, and other tactics walking along the border of legality. These are the same methods executed throughout the 1960's and 1970's against groups such as the Weather Underground, the Black Panther Party, the American Indian Movement, and the New Left more generally. While many of these actions fall in a grey area of legality, federal prosecutors legitimize them as necessary and relevant when the moniker of 'terror' is attached to those being investigated. As discussed in previous chapters, these same tactics appear more recently against various protest groups leading up to WTO, G8, and other international monetary conferences.

After a shaming *60 Minutes* report ("Burning Rage" in 2005), it was clear that the FBI had failed to arrest anyone as part of Operation Backfire. While there was little public outcry at

the time, the federal government was embarrassed by the combination of resources used and lack of tangible outcomes pointed out by CBS journalists.¹⁰ Not long after, federal law enforcement dramatically ramped up both enforcement activity and publicity surrounding examples of ‘successes’ targeting domestic dissenters as ‘terrorists’. The most efficacious tactic in developing cases against activists involved threatening an informant with federal drug charges if he did not cooperate in secretly taping discussions with his conspirators and friends about events from years previous. Jacob Ferguson was flown around the country, while wearing a wire, in order to casually run into old acquaintances from his ELF days. Ferguson was a prolific arsonist and acknowledged his responsibility in most of the major actions perpetrated by an active cell of ELF.¹¹ Indictments began raining down on members of a group dubbed ‘The Family’ for various ecotage events going back to 1996. The eventual result was multiple convictions, helpful in reversing the image issue Operation Backfire suffered, as well as the imprisonment of 13 men and women.¹² These indictments, as well as the accompanying arrests and convictions, were widely published by the FBI through press releases, media interviews, and congressional testimony. These documents and statements conjure a picture of domestic terror cells conspiring to destroy the property of regular American citizens as part of their radical environmental agenda. Understandably, the FBI does not mention or discuss motives for these illegal acts. Rather, the actions are lumped together with the larger ‘War on Terror’. As Attorney General Alberto Gonzalez states, “Today’s indictment proves that we will not tolerate any group that

¹⁰ Bradley, Ed. 2005. “Burning Rage.” *60 Minutes*. Originally aired November 13, 2005. Accessed July 26, 2014. <http://www.cbsnews.com/news/burning-rage/>

¹¹ Bernton, Hal. 2006. “An activist-turned-informant.” *The Seattle Times*. May 9, 2006. Accessed July 13, 2014. http://seattletimes.com/html/localnews/2002977591_ecoarrests07m.html

¹² Ibid

terrorizes the American people, no matter its intentions or objectives.”¹³ I argue that the type of pursuit, the tactics, and state descriptions of property destruction set the agenda for courts and judges who issue sentences to environmental activists. Next, I consider the conviction record to establish an actual increase in punitiveness for similar crimes following 2001.

Longitudinal Evaluation of Convictions

Twenty-nine cases of property destruction, designated as acts of environmental activism associated with the ELF, from 1987-2012 constitute the case studies for analysis. The cases were found through a wide variety of sources. While the most dramatic cases were present across national news syndicates, the federal government provides the most salient examples. Since the focus of this chapter is on federal law enforcement’s change in approach and veracity in sentencing, the cases promoted by the FBI (touted in press releases and press conferences) are most helpful. This demonstrates two important concepts: 1) federal agenda setting displayed in public dissemination of information including press releases and congressional testimony, and 2) the shift in federal attention to these activists even as my research shows a presence of these illegal actions over decades. There are potential problems with this sampling method in an overreliance on federally controlled messaging and information. In other words, the entire universe of actions may not be present. Lower level offences taken care of at the city or county level might be excluded. However, since the argument is about federal attention to these acts, the sampling demonstrates shifts over time in the public attention granted to environmental activists. Another issue is the assigning of monetary damages that the events represent. These numbers are notoriously difficult to pin down with any real precision. As with large-scale drug

¹³ FBI. 2006. “Eco-Terror Indictments: 'Operation Backfire' Nets 11.” *Federal Bureau of Investigation*. January 20, 2006. Accessed March 10, 2009. <http://www.fbi.gov/news/stories/2006/january/elf012006>

busts, dollar amounts trend towards the dramatic. For this reason, I consider the punishment upon the individual perpetrators for the acts rather than for the monetary damage of their destruction.

Seven of the incidents reach the sentencing stage before September 11, 2001 and twenty-two occur afterwards. This date is chosen as the point of departure due to a concerted effort from federal law enforcement to crack down on environmental activists and any entities construed as terrorist elements. Accompanying this higher level of attention is also a discursive shift. It is difficult to make a perfect comparison since many acts differ in levels of damage. This includes differences in cost (as ascribed by property value) and impact (as determined by symbolic importance). Therefore, my data shows a potential trend, rather than a clear outcome.

‘Eco-terrorism’ is the term used exclusively in 2002 by the FBI and other federal institutions to label the destructive acts of environmental militants.¹⁴ The twenty-nine cases in the data set are found in press releases, newspaper articles, congressional testimony, environmental activist message boards, and civil rights newsletters. Simple comparisons of the mean and median of cases before and after September 11, 2001 illustrate a disparity and shift in the severity of sentencing. I also describe the circumstances surrounding specific cases to demonstrate how the courts construed similar activism differently within a relatively short period of time. I hypothesize that the increase in rates of sentencing are attributed to the increased political attention from the federal government. I demonstrate how publicity surrounding federal law enforcement campaigns, directs political attention to a specific issue increasing awareness and salience for the courts. In effect, I argue that the political climate contributes to actual legal

¹⁴ Jarboe, James. “Congressional Testimony ‘The Threat of Eco-Terrorism’.” *Federal Bureau of Investigation*. February 12, 2002. Accessed March 7, 2009. <http://www.fbi.gov/news/testimony/the-threat-of-eco-terrorism>

outcomes and that these cases are demonstrations of that trend. This is not a stunning or remarkable outcome in general terms concerning how political climate affects enforcement priorities; however, it is important in terms of the impact on the suppression of dissent more generally.

My analysis is divided into four main parts. First, is a discussion of the results of the data gathered. The twenty-nine cases demonstrate a steady rise in rates of sentencing. A variety of confounding factors present significant effects on the results including: invocation of federal statutes, pleading guilty or not guilty, cooperation with law enforcement, testifying against other defendants, becoming an informant, previous convictions, and additional charges. Even with these considerations, an increase in severity of sentencing is present. Second, I select a few individual cases for closer examination in order to build a deeper account of the events surrounding specific convictions. Disproportionately harsh penalties arise following 2001 compared to crimes before that date. Third, I apply the logic of courts as political actors to understand how the political climate influences the supposedly insulated judicial realm. Finally, I consider the implications of government labeling and FBI counterintelligence programs on the future of environmental activism and its prosecution.

The data gathered represents a collection of the most prominent prosecutions of militant environmental activism, specifically described as ‘ecotage’. Ecotage represents acts conducted to eliminate the profit motive of environmentally harmful actions. “In addition, ELF ecotage is also meant to question and confront the social, economic, and political realities of the world and to undermine them through their active problematization.”¹⁵ Ecotage can take many forms.

¹⁵ Parson, Sean. “Understanding the Ideology of the Earth Liberation Front.” *Green Theory & Praxis* 4 no. 2 (2008): 53.

Stereotypically, the word describes acts of arson and vandalism upon easily identifiable sources of environmental degradation. Debate remains within the activist community about whether these acts constitute a response to reduce the profit motive of individual issues or represent a larger revolutionary perspective. This distinction is unimportant to the federal government who reserve the legitimate authority to ascribe motive in their prosecutions. The distinction is more interesting in terms of comparisons to historical movements of chapters two and three. Whether the burning down of a planned community in environmentally sensitive wilderness represents an attempt to stop a specific instance of urban sprawl, or its arson constitutes a larger struggle against commerce trumping protection of eroding ecosystems.

Parson provides a helpful analysis of competing ideologies within the movement. Parson discusses the radical ecological traditions behind environmental activist groups such as Earth First! and Earth Liberation Front. He implicates three ideologies that help to encompass the reasoning and motivation behind these actions including deep ecology, social ecology, and green anarchism.¹⁶ Each provides a different understanding of the place of the activist and motivation for their actions against corporations, research entities, etc. For instance, a social ecology perspective may argue for the potential benefits that technology offers towards agricultural reform merging compassionate environmental policies in line with benefits to human communities. At the same time, some green anarchist perspectives may view technology as inherently oppressive and a move towards more 'primitive' society as necessary. This creates different priorities in target assessment for militant activists using property destruction as a tactic.

¹⁶ Ibid, 54-58.

Thus, assorted actions fall within varying definitions of justified ‘ecotage’ including animal release, vehicle sabotage, and tree spiking. Ideologies that influence activists lead to fluctuating understandings of legitimate resistance. Comparisons between ecotage and civil disobedience provide a unique perspective for understanding the actions and potentially justified scenarios of destructive activism.¹⁷

This data set suffers from many limitations. It is not an exhaustive list of all cases of ecotage and it is not necessarily representative of the entire population of cases. However, it does constitute the most salient cases due to the publicity surrounding them. These cases received the most attention in federal law enforcement press releases and testimony as well as availability from national news sources. As Figure 1 demonstrates, acts of ecotage sentenced by the courts before September 2001, have a mean sentence of 42.4 months and a median of thirty-six months. The shortest sentence out of the sample is twelve months while the longest is eighty-four months. These seven cases show a relatively homogenous reaction by the courts for crimes involving property destruction.

Sentence Lengths, in months, of Environmental Activists - Property Crimes (Figure 1)¹⁸

Date Range	# of Convictions	Mean	Median	Shortest Sentence	Longest Sentence
1/1/91 - 9/11/01	7	42.4	36	12	84
9/12/01 – 3/31/12	22	92.9	81	6	262

¹⁷ Vanderheiden, Steve. “Eco-terrorism or Justified Resistance? Radical Environmentalism and the "War on Terror"." *Politics and Society* 33, no. 3 (2005): 425-447. Vanderheiden develops spheres of potentially justified acts of ecotage which do not constitute terrorism, yet also fall outside of civil disobedience. His discussion is helpful in developing a spectrum of activism overcoming federally constructed binaries.

¹⁸ Compiled by the author. See Appendix 1 for list of cases.

Incidents after September 2001 experience a clear change. In Figure 1, the mean has more than doubled to 92.9 months and the median is up to eighty-one months, close to the largest penalty before September 2001. Across the cases, the shortest sentence is six months and the longest drastically increases to 262 months or 21.8 years. In addition, the sentences after September 2001 do not match with the more generally consistent convictions for vandalism and arson.

There is a variety of factors particular to the cases that might account for such changes, including value of those objects and/or structures vandalized or destroyed. It is difficult to rule out such factors completely with available information. Assigning value to damages is notoriously difficult, but publicized numbers tend towards the dramatic. Nevertheless, it seems that there is, at most, a small uptick in the amount of damage associated with the protest actions, and certainly not an increase proportional to the substantial increase in the level and length of incarceration. It is difficult (if not impossible) to make an accurate damage comparison, as figures are not reliable; however, there is little reason to believe that tactics intensified toward more substantial losses.

Few of the cases before September 11, 2001 involve the use of federal laws for sentencing, however federal law enforcement acts did exist before 2001 and were available to prosecute environmental activists. In 1995 & 1996, Congress passed the Omnibus Counterterrorism Act and the Federal Crime Bill and the Anti-Terrorism and Effective Death Penalty Act, respectively, in the wake of the Oklahoma City bombing.¹⁹ The acts articulate

¹⁹ Singh, Nikhil. "The Afterlife of Fascism." *Southern Atlantic Quarterly* 105 (2006): 71-93.

expanded definitions of domestic terrorist related activities as well as federal sentencing guidelines. Most importantly, the birth of ‘terror enhancements’ gave judges a tool allowing for an additional 20 years added to sentences at their discretion. Neither of these acts were mobilized against environmental activists prior to 2001. Thus, the availability of guidelines allowing for more punitive sentences were present, but remained quiescent. The RICO Act is also available to prosecute activists across causes; though it was originally written as a method to convict high-level mafia members well before 2001. The Animal Enterprise Protection Act passed in August of 1992 makes it a terrorist offense for commerce clause violations by anyone crossing state lines who “intentionally damages or causes the loss of any property (including animals or records) used by the animal enterprise, or conspires to do so.”²⁰ The law lay dormant for six years until it was used to convict Justin Samuel in 1998, which is one of the cases included in my sample. In 2006, Congress amended the law and renamed it the Animal Enterprise Terrorism Act (Pub.L. 109-374; 18 U.S.C. § 43). Alterations to the statute went beyond simple naming to include further expansion of terrorism and expanded powers for the courts to sentence wrong doers.²¹ Examples of the discursive shift towards terrorism and the potential impacts of this key rhetorical change are elaborated upon later in the chapter.

So what was the difference after 2001? Key changes include an increase in attention to acts construed as anti-capitalist, anti-American, violating copyright, and/or targeting property after 9/11; a reassertion of previously unused pre-9/11 statutes; and, most importantly, a shift in discourse and attention towards environmental activism from federal law enforcement. The

²⁰ Animal Enterprise Protection Act. *Public Law 102-346*. (1992) Accessed January 18, 2011. <http://www.nal.usda.gov/awic/legislat/pl102346.htm>.

²¹ More recent events demonstrate the rise of ‘Ag-Gag’ laws to preempt exposé journalism or activist infiltration with agro-business facilities.

move towards more aggressive pursuit of all types of ‘terrorism’ made it much easier to facilitate and further a punitive agenda. Specifically the discourse of ‘terror,’ justifies increased lengths of incarceration based upon more widely available sentencing guidelines at the federal level.

Descriptions of terror also demonstrate a moral high ground for federal officials and allow the construction of activists as irrational or insane actors outside of political consideration.

In February of 2002, the Domestic Terrorism Section Chief testified before Congress naming the Earth Liberation Front (ELF) and the Animal Liberation Front (ALF) as the two most dangerous domestic terror groups in the United States.²² In this instance, congressional testimony serves as the point of departure from reactionary policing, and towards preemptive, concentrated, and organized prevention of actions by militant environmentalists. Before this point, the crimes committed by members of ELF were prosecuted just as any other arson or act of property destruction, many times at the state rather than federal level. Following this address, rates and lengths of incarceration went up drastically. Militant environmentalists find themselves labeled as ‘terrorists’ by the federal government in press releases, congressional testimony, and other public discourse. FBI monitoring of environmental activists became tactically similar to the COINTELPRO program of the 1960’s and 1970’s. In the past decade, Operation Backfire was initiated to infiltrate and close down individual cells of the Earth Liberation Front (ELF). Later in this discussion, I focus and elaborate upon Operation Backfire and its varying outcomes.

ELF and ALF have never harmed nor supported actions targeting sentient beings. In their own mission statement of sorts, they proclaim that their tenets require the step “...to take all

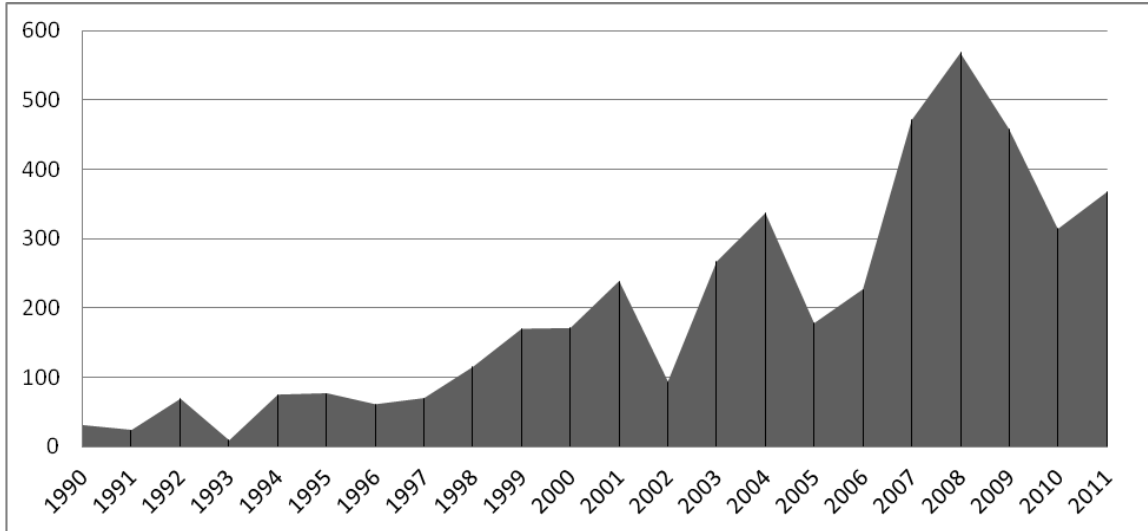
²² Jarboe, James. “Congressional Testimony ‘The Threat of Eco-Terrorism’.” *Federal Bureau of Investigation*. February 12, 2002. Accessed March 7, 2009. <http://www.fbi.gov/news/testimony/the-threat-of-eco-terrorism>

precautions against harming life.”²³ In other words, they repeatedly declare normative principles assuaging the targeting of life, and have so far lived up to that promise. Other, more violent groups, neither profess to be non-violent nor demonstrate any commitment to similar ethical imperatives. ELF and ALF were elevated above the Ku Klux Klan, armed militias, violent anti-abortion activists, and the Aryan Brotherhood as the top domestic threat to the United States. According to congressional testimony (as of 2002) the ELF and ALF were responsible for over \$40 million worth of property damage without harming a single individual or being.²⁴ In my own research, I have been unable to find harm to sentient life in any of their actions since this addition to the congressional record. The reaction of the FBI and the federal government seems to protect economic interests, rather than address threats including hate-based rhetoric to incite fear and to destroy human life. Specifically, a study by the Combating Terrorism Center at West Point addressed the growth of and acts perpetrated by domestic right-wing groups resulting in harm to human life.

²³ Parson, Sean. “Understanding the Ideology of the Earth Liberation Front.” *Green Theory & Praxis* 4 no. 2 (2008): 50-66.

²⁴ Jarboe, James. “Congressional Testimony ‘The Threat of Eco-Terrorism’.” *Federal Bureau of Investigation*. February 12, 2002. Accessed March 7, 2009. <http://www.fbi.gov/news/testimony/the-threat-of-eco-terrorism>

Attacks Initiated by Far-Right Groups/Individuals per Year – (Figure 2)²⁵



In their study, members of far rights organizations perpetrate a clear rise in violent acts against human beings. Each of these data points represents the attempt to physically attack a target. In sum, there were 4,420 violent incidents over the span of 22 years. 670 of the incidents resulted in fatalities and 3,053 resulted in physical injuries.²⁶ During the same period of intense focus upon militant environmental and animal rights activists, actual harm was skyrocketing against human beings. Making a public statement that environmental activists constitute the number one domestic terror threat, while at the same time a steady rise of harm to actual human beings is perpetrated by another, sets a dangerous precedent. Thus, priorities of federal labeling and perceived threat-level of ‘domestic terrorism’ against inanimate objects versus sentient life

²⁵ Perliger, Arie. “Challengers from the Sidelines: Understanding America’s Violent Far-Right.” *The Combating Terrorism Center at West Point*. November 2012, 88. The vertical axis of the graph represent the number of violent attacks perpetrated by individuals/groups associated with the far right. The attacks are categorized by (1) the date of the attack; (2) perpetrator(s) characteristics and their organizational and ideological affiliation; (3) target characteristics; (4) implications of the attack (number of fatalities and injured, and whether it was completed successfully); (5) geographical aspects; (6) tactical details; and (7) a concise description of the attack. The horizontal axis represents the year of the attack.

²⁶ Perliger, Arie. “Challengers from the Sidelines: Understanding America’s Violent Far-Right.” *The Combating Terrorism Center at West Point*. November 2012, 87.

comes into question. It is not that federal law enforcement was not pursuing these violent, right wing groups; but rather the public perception developed through press releases and congressional testimony emphasizes the danger of property destruction as a higher order threat. Setting the agenda in this way elevates the protection of property in a way that must be interrogated in the face of actual human violence.

However, this would be too base and stark a contrast. Rather, this example provides a set of priorities for domestic security forces in the United States that conjure interesting theoretical questions of law enforcement and sentencing priorities. I discuss this issue in a later section to theorize how potentially excessive punishment of property crimes leads to demonstratively detrimental priorities for the state.

Length of sentences change in relation to the level of cooperation from individuals in custody. Before 2001, individuals who assisted investigators would typically receive probation or short jail terms. After 2001, individuals who helped with an investigation were still given years in jail similar to non-political incidents of vandalism and arson. Federal prosecutors offer deals in which they promise not to pursue prosecution by federal terror statutes, yet still prosecute the individuals at rates that match or exceed pre-2001 levels. In other words, the standards shift towards increasing severity for the same crimes, even in the case of plea bargains.

A Tale of Two Actions

A discussion of two individual cases is helpful towards understanding the circumstances and the differing results of pre versus post 9/11 convictions. Qualitative investigations assist in determining the context and the discourse surrounding each event. While it is not possible to draw firm conclusions about disproportionality by making comparisons across a small number of select cases, in the context of the data just presented, the additional details in this section lend

additional plausibility to my claim that something changed after 2001. Earlier convictions of politically destructive acts, lack implications of ‘terrorism’ compared to later convictions. Terrorism connotes more than just a definitional characteristic of the actors and actions participating in political violence, it also gives wide leeway to those in pursuit. Defining an individual as terrorist removes rationality from them as a political or conscience driven actor. This allows for a wide variety of justifications in their surveillance and punishment. The individual with such a moniker is beyond existing laws because they declare themselves outside of societal norms to such an extent, that they seek the overthrow or destruction of a political entity or innocent citizens. However, that description is rarely controlled by the one labeled as terrorist. The state decides who counts and thus who is worthy of aggressive pursuit and prosecution.

Besides the discursive power of the term ‘terrorism,’ there are also legal ramifications for defendants. Most prominent are ‘terror enhancements’ available with wide judicial discretion in their application. Accompanying legal statutes are a wealth of government resources, at the ready, with the directive to capture and punish. Thus, the character of state actions varies drastically from typical policing. The stakes are seemingly higher in the case of fighting terrorism rather than the preservation of law and order. The difference in convictions is a result of a variety of factors, but I argue the most salient factor seems to be the divisive political climate surrounding each incident and state directed implications as to what these actions represent; i.e., the difference between controlling activists and punishing terrorists.

In a 1997 indictment, Douglas Ellerman received sixteen federal counts including purchasing, constructing, and transporting five pipe bombs as well as setting fire to a fur

breeding facility in Utah.²⁷ Ellerman's sentence was seven years in prison. Ellerman admits to being part of a militant environmental organization, yet he was not prosecuted under enhanced federal statutes. All of the information necessary to use federal guidelines towards increased sentencing (as well as the federal statutes themselves; i.e., the 1995 and 1996 congressional acts) were present in this case. They chose not to. Why would prosecutors decide to not throw the book at an admitted member of a radical organization who participated in every step of the process eventually leading to almost \$1 million in destruction? I argue the answer lies in the political climate. In 1997, the word 'eco-terrorism' was not part of the federal government's lexicon even as new domestic terror statutes were in effect. The term itself originates from the Center for the Defense of Free Enterprise in an attempt to set the agenda in the face of the growing environmental protest movement of the 1980's and early 1990's.²⁸ Ron Arnold (who takes credit for coining the phrase) used the term to describe any "crime committed to save nature."²⁹ Activists participating in property destruction were convicted based upon existing statutes dealing with arson, incendiary devices, and vandalism. Statutes did exist at the federal level which could be applied in these cases, yet none was invoked.³⁰

The shift after 2001 emerges when comparing Ellerman's case with that of Eric McDavid. On March 6, 2008, Eric McDavid was convicted on charges of conspiracy to destroy

²⁷ Jarboe, James. "Congressional Testimony 'The Threat of Eco-Terrorism'." *Federal Bureau of Investigation*. February 12, 2002. Accessed March 7, 2009. <http://www.fbi.gov/news/testimony/the-threat-of-eco-terrorism>

²⁸ Potter, Will. *Green is the New Red*. (San Francisco: City Lights Books, 2011), 55.

²⁹ Ibid, 55

³⁰ These include: Hobbs Act, RICO Act, Federal Crime Bill of 1996, Animal Enterprise Protection Act, Omnibus Counterterrorism Act of 1995, and the Anti-Terrorism and Effective Death Penalty Act.

property by fire or explosion. He was sentenced to 20 years in prison. The charges stem from the planning and preparation to destroy four targets symbolic of supporting environmental degradation.³¹ McDavid was arrested before any damage occurred due to an undercover, independent contractor working for the FBI. “Anna”³² was a paid informant who asked for the position with federal law enforcement after years of work as a volunteer infiltrator of left leaning movements.³³ The sentence McDavid received is longer than the average sentence for murder (19 years) in the United States. What differences in the two cases led to such divergent outcomes? Both men conspired with other individuals to destroy property as a means of protest. Both men purchased the materials necessary to make incendiary devices. Both men planned (or assisted in planning) attacks to guarantee maximum damage. One of the perpetrators, Ellerman,

³¹ Scott, McGregor. “Eco-Terrorist Given Nearly Twenty Years in Prison.” *Department of Justice*, Press Release. May 8, 2008. Accessed March 7, 2009. <http://sacramento.fbi.gov/dojpressrel/pressrel08/sc050808.pdf>

³² Due to the perception of entrapment on the part of activists sympathetic with McDavid, a campaign was launched to demonstrate the depth of “Anna’s” commitment to finding a ‘terror’ cell to infiltrate. This went to the extent of court documents showing the depth of Anna’s frustration in the lack of motivation of the three young men to do anything more than smoke marijuana and talk politics. The May 2008 issue of *Elle* was ‘sticky bombed’ with fake retraction stickers on the first page of the article about ‘Anna’. The fake retraction read: “Following consultation with federal agencies, we at *Elle* wish to retract this article. Not because of the stream of factual inaccuracies beginning in the second sentence (there has never been a CrimethInc. convergence in Athens, Georgia), but because in the current political climate it is irresponsible to even pretend to give a fair hearing to radical anti-capitalists. Even if Anna’s story is a cut-and-dried case of entrapment, we have to understand this as a necessary defense of our free market freedoms. Not to say that we are not concerned about the environment at *Elle*. On the contrary, the global environmental crisis offers unprecedented opportunities to promote sustainable fashions (p. 98), give the meat industry a makeover (p. 245), and renew faith in this country’s discredited electoral process (p. 104); even the color green itself is making a comeback (p. 72). Consumer capitalism may be threatening life on earth, but there’s simply no other option—that is, not unless you’re willing to join the ranks of the eco-terrorists.”

³³ Todd, Andrea. “The Believers.” *Elle Magazine*. May 2008. Accessed July 24, 2012. <http://veganxjen.livejournal.com/4471.html>

was successful in his plot and destroyed almost \$1 million worth of property. The other was arrested before he was able to carry his plan to fruition. The resulting prison sentences differ by 13 years, with the longer sentence being given for an action that did not even take place.

I argue that these differences can be attributed to the discursive shift since September 11, 2001, which puts militant environmentalism and property damage in the same category as terrorism. A quote from the prosecuting attorney in the McDavid case is revealing:

Today's severe punishment of nearly 20 years in federal prison should serve as a cautionary tale to those who would conspire to commit life-threatening acts in the name of their extremist views.³⁴

This statement demonstrates the federal government's concern with making an example of McDavid, rather than simply prosecuting a planned arson. Groups, such as ELF, condemn practices that could potentially harm innocent life. The FBI has acknowledged that fact.³⁵ One can imagine the difference in outcomes if the Ellerman case shifted ten years into the future. Ellerman participates in a conspiracy to destroy property, purchases and assembles the materials necessary for destruction, and carries out the act successfully. He receives seven years for his crimes. An examination of the academic literature concerning the integration of the legal and political realms is helpful towards understanding the discrepancies between these case studies.

A key factor to consider is judicial decision-making determining the length of sentence and whether or not to use additional federal guidelines. While prosecutors make recommendations for length of sentence, judges retain discretion after a jury assigns a conviction

³⁴ Scott, McGregor. "Eco-Terrorist Given Nearly Twenty Years in Prison." *Department of Justice*. May 8, 2008. Accessed March 7, 2009. <http://sacramento.fbi.gov/dojpressrel/pressrel08/sc050808.pdf>

³⁵ Jarboe, James. "Congressional Testimony 'The Threat of Eco-Terrorism'." *Federal Bureau of Investigation*. February 12, 2002. Accessed March 7, 2009. <http://www.fbi.gov/news/testimony/the-threat-of-eco-terrorism>

or a guilty plea is entered. In these specific cases, a wide range of options are available to a judge not available in cases involving harm to individuals. The fact that judges become the ultimate arbiters of which type of sentence, sentence length, and application of federal statutes is important to identifying the various actors who react to volatile political climates. As a supposedly insulated figure within the legal realm, one would expect sentencing rates to remain static unless the specific laws pertaining to arson change. Since these laws remain the same, the change in sentencing results from other factors.

The strategic approach in judicial behavior literature acknowledges that judges make decisions based upon their perceptions of whether or not a decision will be viewed as legitimate by the government and the public.³⁶ While this literature tends to focus on the Supreme Court, its application to federal justices is also enlightening. Judges are aware of the standards and expectations criminal cases can set. Even though the criminal court system does not specifically function upon a system of precedent, other decisions in similar cases are still pertinent. If a contemporary issue is salient due to attention in the media, acknowledgment in official government channels, and attempts to influence public opinion, judges will also be aware. For instance, if ‘eco-terrorism’ is publicly discussed by the federal government as a problem requiring sustained attention and renewed focus, judges may feel pressured to issue decisions consistent with contemporary understandings of environmental activists as terrorists. Courts mediate issues that fluctuate in saliency. In 1997, Douglas Ellerman was considered part of a fringe group of activists who destroyed property in an attempt to make a political point. He was dealt with as other vandals or arsonists regardless of his affiliation. In 2008, Eric McDavid was

³⁶ Baum, Lawrence. *Judges and Their Audiences: A Perspective on Judicial Behavior*. Princeton: Princeton University Press, 2006.

arrested in an atmosphere of heightened political and legal awareness of the threat posed by ‘eco-terrorism’. Courts react to the discursive shifts of the federal government. Political situations can sometimes find their resolution in the courts, and the courts can take their cues from the political realm.

Why were federal prosecutors successful in increasing rates of sentencing for militant activist? What strategies and tactics led to a clear rise in punitiveness of sentences? I argue that three main factors accounted for the change. First, the discursive shift from ‘activist’ to ‘terrorist’ assisted federal law enforcement and prosecutors in gaining a favorable position in political and legal opinion. This tactic restructures law enforcement’s position beyond legal authority to a place of moral authority. Descriptions of ‘countering terrorism’ dismiss the environmental concerns in question as secondary or simply not pertinent. It also removes rationality from actors described as ‘terrorist’. Second, the FBI undertook a counter intelligence program—Operation Backfire. Operation Backfire originally directed its attention at one specific cell, but expanded its operations after successfully disbanding their original target. Operation Backfire symbolizes the archetype of the federal government’s interaction with and against ‘eco-terrorists.’ It demonstrates a marked change from simple prosecution to active infiltration. Third, time itself is an actor. The salience of these groups increases as they register as a more substantial threat to the federal government.

Operation Backfire is the physical realization of time and the discursive shift mentioned above. The FBI spearheaded the plan assisted by ATF and other law enforcement organizations, in order to target and infiltrate militant cells. The task force was originally conceived to target a specific cell of activists responsible for some of the most highly publicized attacks on private property. These included the \$12 million arson of a Vail ski resort threatening lynx habitat, the

disabling of a high-tension power line near Bend, Oregon, as well as acts spanning across Wyoming, California, and Washington. After completing their objective, the FBI continued Operation Backfire as a semi-clandestine mission to pursue similar militant entities such as the individuals responsible for arson at the University of Washington Center for Urban Horticulture.³⁷ Activists, independent media outlets, and the National Lawyers Guild denounced the tactics used by the FBI during this campaign.³⁸

Months after the patriotic fervor sparked by 9/11 (allowing for overarching support of the PATRIOT Act) attacks from civil liberty groups grew in response to the expansive powers granted to the federal government and, more specifically, the executive branch. The pursuits of ‘eco-terrorists’ fell under its expansive language and provided a legal basis for engaging in questionable levels and method of surveillance as well as the opportunity for newly appropriated federal funds for law enforcement. The PATRIOT Act also sets a point of emphasis for federal attention to any movements or actors threatening the United States after 9/11. It’s passage marks a sense of legitimation for ramped up federal attention and pursuit of dissidents.

³⁷ Bartley, Nancy and Mike Carter. 2008. “UW arsonist, Brianna Waters, sentenced to 6 years.” *Seattle Times*. June 20, 2008. Accessed January 28, 2001. http://seattletimes.nwsourc.com/html/localnews/2008008001_uwarson20m.html

³⁸ Flynn, Jim. 2006. “Operation Backfire Backfires on FBI.” *Earth First! Journal*, May-June 2006. Accessed July 15, 2014. <http://news.infoshop.org/article.php?story=20060510125753518;>

Independent Media Center. 2006. “Secret Grand Jury investigations have led to indictments of 12.” January 24, 2006. Accessed July 15, 2014. <http://www.indymedia.org/en/2006/01/831928.shtml>; and

National Lawyers Guild. 2006. “National Lawyers Guild Condemns Operation Backfire as Unconstitutional.” *NLG Press Release* published on Common Dreams NewsCenter. Accessed July 15, 2014. <http://www.commondreams.org/news2006/0612-10.htm>

Discursive Shifts and Theoretical Implications

Describing someone as a ‘terrorist’ serves an explicitly rhetorical purpose in contemporary discourse, through the very language and imagery the term conjures obscures its rational analysis: it implies a moral claim for their aggressive pursuit and prosecution unconstrained by the conventional limits set upon military or law enforcement action.³⁹

The discursive use of ‘eco-terrorist’ helps to justify surveillance and aggressive prosecution of environmental activists. By utilizing the term ‘terrorist’, the government signals its retention of “the legal powers to pursue activists free from the constraints of conventional civil liberties.”⁴⁰ Vanderheiden’s reference to ‘legal powers’ involves various federal statutes constituted before and after September 11, 2001 giving wider leeway to federal prosecutors and increased funds for law enforcement. Thus, defining an organization as supporting terrorism or participating in terrorism serves a variety of functions. The term signals to the public, political, and legal realms that militant activists do not deserve the same rights as others; it provides the government with a moral claim to back their actions; and it introduces individuals into the legal system and exposes them to punishment beyond regular criminal prosecution. As discussed in previous sections, ‘terror enhancement’ sentencing grants discretion for added punishment in terms of decades, rather than months. Expanded definitions of terrorism also appear in the PATRIOT Act justifying detention without trial and expanded search and seizure provisions, all of which grant the federal government expanded instruments in pursuit of environmental militants.

³⁹ Vanderheiden, Steve. “Eco-terrorism or Justified Resistance? Radical Environmentalism and the “War on Terror”.” *Politics and Society* 33, no. 3 (2005): 425.

⁴⁰ *Ibid*, 427

Terrorism has a wide variety of definitions, but an understanding of it as “the calculated use of violence or threat of violence to attain goals that are political, religious, or ideological in nature...through intimidation, coercion, or instilling fear” provides a resonate starting point.⁴¹ I argue that it is important to start from a more generalized definition of terrorism in order to articulate how federal understandings shift in the 21st century. Typically, ‘terrorist’ refers to individuals who do not recognize noncombatant immunity.⁴² Inciting fear and intimidation among innocents are clear goals. Applying this definition to militant environmental activists requires amplification in a variety of directions. First, violence is perpetrated upon property rather than people.⁴³ This removes the *purposeful* threat to human life. Second, the goals are ideological in nature and towards specific actors. Their specific attacks are linked to instances of environmental degradation typically with corporations as targets. While messaging is meant to reach the general public, they do not represent a threat to ‘noncombatants’—i.e., the average citizen. In testimony before the Senate Judiciary Committee, John Lewis the Deputy Assistant Director of the FBI, defines domestic terrorism as:

...acts of violence that are a violation of the criminal laws of the United States or any state, committed by individuals or groups without any foreign direction, and appear to be intended to intimidate or coerce a civilian population, or influence the policy of a

⁴¹ Chomsky, Noam. “Terror and Just Response.” In *Terrorism and International Justice*. (New York: Oxford University Press, 2003), 69.

⁴² Walzer, Michael. *Just and Unjust Wars*. New York: Basic Books, 1977.

⁴³ This also raises theoretical questions of whether or not violence can be perpetrated against a ‘thing’ or only against a ‘being.’ Associations of labor and material possessions as linked to an essence of our personhood do push the concepts of ‘thingness’ and ‘beings’ closer together.

government by intimidation or coercion, and occur primarily within the territorial jurisdiction of the United States.⁴⁴

The state's definition may successfully encompass many of the actions of activists already mentioned; however the rhetoric itself is suspect. A better application of the definition postulated by the FBI, throws a vast net of inclusion that resonates with violent groups of the far right more so than the property destroyers of the far left.

This is not to say that militant environmental and animal activists are perfectly legitimate political actors, but it does ask important questions about legitimate levels of punitive sentences for acts bestowed with moral dimensions by the federal government—especially considering the real consequences of prison. Many of the activists convicted after 2001 are being held in Communication Management Units (CMU). CMUs were set up in 2006 to control the communication of convicted individuals with relationships to terrorist organizations or who committed terrorist acts.⁴⁵ The majority of prisoners held in these facilities are aligned with modern Islamic radical groups; however, various environmental activists have found themselves confined in these highly restricted areas.⁴⁶ The facilities are notorious for their intensely controlled, solitary environments. The philosophical implications of punishment for destruction of property going beyond punishment for the destruction of beings are critical elements when studying the suppression of dissent.

⁴⁴ Lewis, John. "Animal Rights Extremism and Ecoterrorism." *Congressional Testimony*. May 18, 2004. Accessed on April 8, 2014. <http://www.fbi.gov/news/testimony/animal-rights-extremism-and-ecoterrorism>.

⁴⁵ Johnson, Carrie & Margo Williams. "'Guantanamo North': Inside Secretive U.S. Prisons." *National Public Radio News*. March 3, 2011. Accessed July 25, 2014. <http://www.npr.org/2011/03/03/134168714/guantanamo-north-inside-u-s-secretive-prisons>

⁴⁶ Center for Constitutional Rights. "CMUs: the Federal Prison System's Experiment in Social Isolation." *Center for Constitutional Rights Factsheet*. March 2013. Accessed July 25, 2014. http://ccrjustice.org/files/CCR_CMU_Factsheet_March2013.pdf

Targeting Property: Implications of Destruction

One of the more interesting and controversial implications of property destruction as a political tactic involves the deep roots of liberalism and capitalism in the United States. A Lockian understanding of property as a fundamental right bestowed upon man from God is present in the founding philosophical tenets of American liberal democracy as discussed in chapter 1.⁴⁷ Property is the primary unit of the economic system, the symbol of accomplishment, and the mark of status for individuals in the United States.⁴⁸ When property suffers public defacement and destruction, the reactions of citizens as well as the state is clearly disapproval. Property destruction moves beyond a simple act of rebellion or a violation of the legal code; it has the potential to be perceived as an attack upon a normative paradigm of Americanism.

Modern examples of this alternative form of political participation receive concentrated attention from the federal government against the backdrop of the “war on terror.” In a post-9/11 legal environment, actions traditionally dealt with through preexisting statutes (i.e., vandalism, criminal mischief, arson, etc.) are now within the purview of federal prosecution and increasing levels of punishment (i.e., PATRIOT Act). For instance, the United States labels property destruction by militant environmental activists (such as Earth Liberation Front) as acts of terrorism meant to incite fear among the general populace.⁴⁹ Prosecutions and sentencing reflect

⁴⁷ Locke, John. *Second Treatise of Government*. Edited by C.B. Macpherson. Indianapolis: Hackett, 1980.

⁴⁸ Veblen, Thorstein. *The Theory of the Leisure Class*, New York: Dover Publications, 1994.

⁴⁹ Yang, Debra. “Pasadena Man Who Participated in Firebomb Attacks on SUVs Sentenced to over Eight Years in Federal Prison.” *US Department of Justice*. April 18, 2005. Accessed March 7, 2009. <http://www.justice.gov/usao/cac/Pressroom/pr2005/059.html>

PATRIOT Act statutes expanding the criteria for what constitutes a terrorist act.⁵⁰ The federal government perceives property as an entity, which when destroyed, represents a more general attempt to incite fear or attack the foundations of modern society through expanding definitions of terrorism. These assumptions relate to fundamental understandings of property and the place it holds in capitalist economies. In essence, the preservation of property is so sacrosanct that larger-scale attempts to destroy it results in national fear and terror. In other words, violence against property constitutes an attack upon the normative tenets of the United States rather than as an act of conscience. Press releases from the United States government discussing militant environmentalism, describe destructive acts in a similar nature.⁵¹ Any discussion attempting to reorient property destruction, as a method to enter the political arena, must confront issues associated with the status of property in the United States.

ELF concentrates upon symbolic and functional targets for destruction. They call attention to specific instances of environmental degradation, as well as reveal topics of larger environmental concern. Ironically, their actions serve to protect property owned or controlled by third parties (i.e., air, water, forests, etc.) Under a Lockean ideal these acts constitute irrational meddling where one's interest is in what one owns, and nothing else. Their many actions include the destructions of a ski resort in Colorado, a massive construction site in San Diego, a Hummer dealership in Southern California, and a rural cluster development in Washington State. These four events were committed by loosely organized cells of militant activists who in the case of the Aspen ski resort, the San Diego event, and the 'green' rural cluster development, attempt to draw attention to three specific cases previously challenged in formal legal channels. The destruction

⁵⁰ Ibid.

⁵¹ Ibid.

of the car dealership in West Covina, California was an attempt to spread a further reaching, symbolic message against disproportionate consumption of fossil fuels by luxury automobiles and the tax breaks available to owners due to federal loopholes.⁵² Whether or not that message resonated with attentive members of public is questionable. While some may ask ‘why?’ when perpetrators carry out such a large-scale destructive act, many were likely to question the rationality of the actors behind the vandalism.

ELF actions reveal the complicity of the state in environmental degradation. Therefore, the use of legal and political channels to contest their messages reinforces a government monopoly on defining legal and rational acts of participation. The federal contestation and response was not in an argumentative form, but rather through the same methods established in chapters two and three—labeling, surveillance, and punishment. The performative element of any given act is an attempt to seize the public’s attention in regards to an issue deemed too important to overlook.⁵³ ELF tactics seek to generate aesthetic awe in the experience of individuals witnessing such dramatic acts of protest. However, with the federal government launching campaigns like Operation Backfire under heavy publicity, aesthetic awe can quickly turn to witnessing irrationality, unchecked militantism, or terror within the discursive choices of state actors. This brief discussion harkens back to chapters two and three illustrating the role performance plays in acts of dissent through destruction. It is this theatrical element which lends

⁵² Plungis, Jeff. “SUV, Truck Owners Get a Big Tax Break.” *USA Today*. December 18, 2002. Accessed July 26, 2014. http://usatoday30.usatoday.com/money/autos/2002-12-18-suv-tax-break_x.htm

⁵³ Vanderheiden, Steve. “Eco-terrorism or Justified Resistance? Radical Environmentalism and the “War on Terror.”” *Politics and Society* 33, no. 3 (2005): 425-447; and Parson, Sean. “Understanding the Ideology of the Earth Liberation Front.” *Green Theory & Praxis* 4 no. 2 (2008): 50-66.

itself to the current level of attention from federal security forces. These actions challenge a fundamental American perspective as to the sanctity of private property. By attacking a seemingly definitional component of American culture, federal response will rise to meet it—especially in an era of terror.

Conclusions

Since September 11, 2001, the federal government's campaign against militant environmental activists (who participate in ecotage) has drastically increased sentencing rates. Lengths of sentences usually reserved for murderers and rapists now appear in the convictions of arsonists and of vandals. The culmination of several factors accounts for the new levels of punitiveness.

The specific causes include: shifts in governmental discourse, concentrated law enforcement activity, and large-scale changes in the political climate. In my research, reference to 'eco-terrorists' was not consistently apparent until after the events of 9/11. A new frame emerges during the 'war on terror' to justify inordinate amounts of resources and attention to domestic threats upon the status quo. Environmental activists using property destruction as political protest are symbolically important targets for punishment and control. The federal government's concern with quelling dissent is especially pertinent when such actions are accomplished through anti-capitalist means. Operation Backfire is the clear implementation of discourse, policing, and punishment towards controlling militant elements of the population. The FBI's campaign is successfully infiltrating and discrediting the fringes of the environmental movement.

The result of these new federal efforts is a significant rise in the level of punishment for property crimes with environmental associations. Agenda setting and judicialization of politics

literature discuss how the political climate has direct affects upon the actors within the legal realm as well as the legal institutions themselves. Increased sentences over time for similar actions are directly related to the discursive shift from law enforcement at the federal level. The following chapter sums up the conclusions of previous sections and considers what the future of this specific type of dissent may look like.

Chapter 5 – Smash the State: the Black Bloc, Occupy, Anonymous, & the Future of Dissent through Destruction

"Relax people. It's us, the Black Bloc. What you can't do, we can. We don't just attack, we defend people against police abuse and defend our right to protest."

-Brazilian Black Bloc Leaflet

“The corrupt fear us, the honest support us, the heroic joins us.”

-Anonymous Hacktivist Motto

Introduction

On July 10th, 2012 at 5:45 am, an apartment building in the Central District of Seattle was raided by the Seattle Police Department's SWAT team. While this constitutes a relatively rare instance, considering Seattle's crime rate, the purpose of the raid was even more unlikely.¹ The SWAT team was not breaking up a drug distribution ring or searching for weapons held by feuding gangs. According to the search warrant, police were looking for black clothing, anarchist literature, paint, and electronics.² The front door was forced open and a 'flash bang' grenade thrown inside. The occupants submitted to a search of the premises involving the tossing of each room in the unit along with the seizure of a black hoodie, one glove, a pair of sunglasses, Occupy Seattle fliers, and a notepad.³ Similar raids also took place in Portland,

¹ Seattle experiences dramatically fewer instances of violent crime both per capita and in relation to similarly sized cities across the United States according to the most recent FBI crime statistics.

Federal Bureau of Investigation. "Crime in the United States 2013." *US Department of Justice, FBI*. Accessed July 26, 2014. http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/preliminary-semiannual-uniform-crime-report-january-june-2013/tables/table-4-cuts/table_4_offenses_reported_to_law_enforcement_by_state_oklahoma_through_wisconsin_2013.xls

² Kiley, Brendan. "Political Convictions?" *The Stranger*. August 8, 2012. Accessed March 13, 2014. <http://www.thestranger.com/seattle/political-convictions/>

³ Gosztola, Kevin. "SWAT Team Raids Occupy Organizers' Apartment in Seattle." *The Dissenter*. July 10, 2012. Accessed March 13, 2014.

Oregon (carried out by the FBI) and Olympia, Washington. These actions were in response to the 2012 May Day protest in Seattle in which a handful of windows were shattered and buildings defaced due to actions of a black bloc. The search warrants identified items used to destroy government property, conspiracy to destroy property, and interstate travel with the intent to riot.⁴ While the raids in Washington involved local police officers, the charges were federal due to the targeting of a courthouse. In Portland, Oregon, the FBI conducted the raid due to interstate issues crossing the southern Washington border with intent to riot.

Besides the search warrants, subpoenas were served to various witnesses to appear before a grand jury. Three of these witnesses refused to testify and were held for over five months,⁵ mostly in solitary confinement, in order to persuade them to comply with the court.⁶ Why this level of federal and local law enforcement response? Why early morning raids to serve search warrants and subpoenas for witnesses, not participants? Why the use of militarized police teams to execute these actions?

Considering previous chapters and discussions of militant protest, police actions come as no surprise. Those involved with the black bloc continue an arc of historical American protest confronting property. Unification of these activists' support of destructive protest and normative

<http://dissenter.firedoglake.com/2012/07/10/swat-team-raids-occupy-organizers-apartment-in-seattle/>

⁴ Potter, Will. "FBI Agents Raid Home in Search of 'Anarchist Literature'." *Green is the New Red*. July 30, 2012. Accessed August 19, 2013. <http://www.greenisthenewred.com/blog/fbi-raid-anarchist-literature-portland-seattle/6267/>

⁵ The five months of incarceration was longer than time served by those actually caught participating in the vandalism under consideration.

⁶ Kiley, Brendan. "Political Convictions?" *The Stranger*. August 8, 2012. Accessed March 13, 2014. <http://www.thestranger.com/seattle/political-convictions/>

anarchist leanings, provide all the necessary attributes for state interference. This chapter considers the contemporary reality and speculates on the possible future of dissent through destruction. I argue that protest communities forming against international economic conferences, as well as events challenging global capitalism, construct the basis of modern uses of public space for demonstration. Specifically, I consider how the disappearance of public space for protest forces two trajectories for militant protest going forward: 1) illegal acts of occupation and destruction, and 2) movement to digitally mediated channels for dissent. As public space for protest degrades, simple use and occupation of these spaces becomes illegal. Thus, protestors already labeled as lawbreakers by geographical designations, continue their illegality in more vigorous confrontations with these spaces of exclusion; i.e., tagging, smashing, and/or arson. With the emergence of ‘free-speech zones’ and pre-emptive strikes against mass protests, I argue that the new direction of dissent through destruction will be limited to two main channels. One will be the illegal, violent, and destructive acts against corporate representatives of global exploitation in the streets and/or the upsetting of global commerce and policy on the Internet.

While the black bloc offers varying levels of anonymity (discussed later in the chapter), computer networks allow deeper cover for social, political, and economic activists. Hacktivists and collectives of digital protestors form the core of a new wave of property destructive techniques, tactics, and targets. Anonymous represents the most vivid articulation of this new threat to government power. This chapter considers the historical movements leading to the modern black bloc and speculates what new players on the protest scene (Occupy and Anonymous) represent for the future of dissent through destruction.

The Black Bloc in the United States

The demonstrations against the World Trade Organization meeting in 1999 were dubbed ‘The Battle in Seattle.’ Protestors united and executed a wide variety of techniques developed in previous decades to confront police attempts to herd protestors and to break up demonstrations. It marks a new era of organized protest using multiple methods to confront the property rights of corporations, business owners, and local governments. One outcropping of the WTO protests, the black bloc, acts as both a culmination of centuries of protest in the United States, and a point of departure for a country with more heavily monitored public space than ever before. I argue that black bloc action during the WTO conference and the May Day protests of 2012 in Seattle, are symbolic of a past era and prophetic of a new one to come.

Global economic policy conferences provide a target for groups concerned with working conditions, environmental degradation, overzealous international banks, globalization, and exploitation of the global south. The growth of the G8, G20, World Bank, International Monetary Fund, and World Trade Organization demonstrates a new economic hegemony of world powers and multinational corporations dictating economic policy to the rest of the globe. In response, protest events erupted internationally in cities hosting global economic policy conferences.⁷ While a plethora of agendas exist in any of these demonstrations, the focus and attention is stolen, on various occasions, by anarchists participating in a version of protest known as the black bloc. While brick wielding, chaos seeking, figures in black provide a visual representation of destruction for destruction’s sake, their unique brand of dissent allows for a

⁷ Black blocs were involved with the World Trade Organization’s 1999 conference in Seattle, the IMF’s 2000 conferences in Prague & Washington DC, the G8’s 2001 conference in Genoa, the G8’s 2007 conference in Rostock, the World Bank’s 2009 conference in Washington DC, and the G20’s 2010 conference in Toronto.

modern and under-appreciated case study of political property violence. Even these contemporary dissidents and their serious qualms with American capitalist mythology, invoke and are compared to the actions this project began with—the Boston Tea Party. According to Crimethinc:⁸

The Boston Tea Party, for example, was a perfect example of a Bloc at work: the participants organized secretly, wore matching disguises (though their choice to costume themselves as “Indians” wasn’t exactly politically correct), and engaged in a mass act of provocative property destruction; presumably their strategies for communication and mutual defense weren’t much different from those used by the famous Black Blocs that, a couple hundred years later, attacked similarly noxious coffee corporations in Seattle.⁹

The destruction of Starbucks by a black bloc during the 1999 WTO protests in Seattle is also present in academic texts on activism and protest as a modern day tea party.

[F]ew commentators drew parallels between *these* masked protestors destroying *coffee* and those more celebrated protestors who in 1773 similarly wore masks and climbed aboard three ships owned by the East India Company and engaged in the destruction of *tea*...¹⁰

Historical assertions aside, I argue that the black bloc represents a continuation of the existential threat that property destruction as a form of political protest provides in the view of the state. While these instances of destruction seem easier to write off as chaos and violence without purpose, I argue that these acts fit within an American historical form of protest and constitute politically expressive acts against exploitative capitalism.

⁸ Crimethinc. is a hub for anarchist activists, information swapping, and publishing related to anarchist causes and anti-globalization. They publish everything from activist how-to manuals to anarchist philosophies to narratives about traveling without money.

⁹ Crimethinc. “Blocs, Black and Otherwise.” Accessed August 7, 2013. <http://www.crimethinc.com/texts/pastfeatures/blocs.php>

¹⁰ Lovell, Jarret S. *Crimes of Dissent: Civil Disobedience, Criminal Justice, and the Politics of Conscience*. New York: New York University Press, 2009.

The black bloc grew alongside autonomous and anarchist movements across Western Europe in the 1970's. Many of their tactics stem from the early Italian 'autonomia' movement uniting various causes under a banner of self-control without state interference.¹¹ Many of the ideals forged in Italy spread to Germany and were incorporated into the squatters' rights movement. These groups took to the streets to protest alongside mainstream workers' and feminist movements. During the 1970's in West Germany, police used coercive force and violence to stop labor protests and to round up dissidents. In order to make it more difficult for police forces to target individuals, group members obscured their faces and dressed in black to become anonymous within the crowds.¹² This also allows for greater freedom of movement to perpetrate property destruction and wage street battles with law enforcement including a lower risk of identification and capture.

May Day protests and anti-globalization events become the preferred stages for large-scale black bloc actions. The unification of various left-leaning protests provide cover for their actions, as well as demonstrate a level of solidarity against global capitalism more generally. The city of Seattle experienced two significant black bloc events in recent years. The most publicized happened within the WTO protests of 1999. Organized civil disobedients using tactics of occupation brought the conference to a standstill through coordinated blockading of access points to the main conference sites. These activists expressed their dissent through

¹¹ Young, Daniel Dylan. "Autonomia and the Origin of the Black Bloc." *A-Infos News Service*. June 10, 2001. Accessed July 27, 2013. <http://www.ainfos.ca/01/jun/ainfos00170.html>

¹² Katsiaficas, George. *The Subversion of Politics: European Autonomous Social Movements And The Decolonization of Everyday Life*. (New Jersey: Humanities Press International, Inc., 1997), 173.

occupation and the control of space. However, their effective (yet illegal) tactics were overshadowed by coverage of a more militant wing of the collected activists.

On November 30th, 1999, a black bloc shattered storefront windows of major corporate chains in downtown Seattle as a response to increased police violence and widespread use of tear gas and rubber bullets to control non-violent demonstrators. Any and all protestors were considered fair game for pursuit, arrest, and beatings. In fact, any type of clothing accessory, or sign determined by the Seattle police to represent “anti-WTO” propaganda, was subject to exclusion from the downtown corridor.¹³ The only subjects allowed within the confines of downtown were WTO conference participants and consumers shopping for the upcoming Christmas holiday.

Black bloc protestors reemerged in Seattle during May Day of 2012. Following a winter of Occupy Seattle protestors making headlines for taking over small portions of downtown, protest conditions seemed to favor more robust forms of dissent. Protestors clad in black, disguised their weapons as poles for banners announcing anti-capitalist and anarchist messages. Niketown and a federal courthouse were two of the targets for smashed windows and defacement. Arrests followed, including holding three witnesses in solitary confinement for months due to their refusal to testify.¹⁴

Ideologically and pragmatically, the black bloc directly challenges the state’s monopoly on the use of violence. It destroys, but through that destruction redistributes power in the hands

¹³ Herbert, Steve. “The ‘Battle of Seattle’ revisited: Or, seven views of a protest-zoning state.” *Political Geography*, Vol. 26 (2007): 602.

¹⁴ Murphy, Kim. 2013. “Seattle judge orders release of two activists held for contempt.” *Los Angeles Times*. February 28, 2013. Accessed August 19, 2013. <http://articles.latimes.com/2013/feb/28/nation/la-na-nn-seattle-protesters-ordered-freed-20130228>

of individuals who can anonymously confront symbols of global economic domination. When the perceived threat to society is one which appears at nebulous levels of international government, international banking, and globalized labor policy, it is difficult to pick a single significant target. Boycotts, letter-writing campaigns, marches, picketing, etc. are legitimized forms of public expressions of displeasure. However, there is little transfer of physical power in public space. Black blocs allow individuals to anonymously take back space and destroy symbolic iterations of larger normative policy. This is not to say that a justified wave of property violence should sweep the country, but rather writing off these actions as crazed or outside of rationality lead onlookers down a similar path taken by those who neglected significant American protest movements discussed in previous chapters.

While these tactics may seem like a relic of a bygone era, modern anarchist collectives and organizations experience similar levels of surveillance and abuse as their historical counterparts. Besides the story this chapter began with, other methods of intelligence gathering reappear in modern incarnations of COINTELPRO. In the wake of the 1999 World Trade Organization conference in Seattle, federal and local police agencies focus on activists with the potential to disrupt other global economic gatherings. Preventative tactics such as preemptive arrests and ‘free speech zones’¹⁵, allow law enforcement to physically remove protestors from conference sites as well as to marginalize their actions within easily patrolled spaces.¹⁶

¹⁵ See *Arrested Development* Season 1, Episode 20 (“Whistler’s Mother”) in which a character protesting a military base is given access to a ‘free speech zone’ (actually a cyclone wire cage), in which protestors are locked with their placards. The media is unable to gain access to the protestors since they are herded into a similarly appointed ‘free press zone.’ While obviously a caricature of modern policy concerning protest zones, it is nonetheless prophetic of methods of control deployed both domestically and internationally. Take for instance the Sochi Olympics of 2014 in which a free-speech zone was created in a park, under a freeway overpass, and miles away from the actual events. This follows actions across the globe opening zones of protest in stadiums miles away from global economic conferences.

The narrative beginning this chapter continues into the courts and prisons. Individuals served with subpoenas during police raids were asked to identify participants in the May Day events of 2012. Three of these potential witnesses refused to testify, were held in contempt, and sent to prison. Each of them spent the majority of their five and a half month stay in 23 hours a day of solitary confinement.¹⁷ None of the three were suspected of participating in property destruction, and at least one of the uncooperative witnesses was not in Seattle during the protests. However, they spent a combined 16 months locked up.

The black bloc represents a potential new reality for protest going forward. The combination of disappearance of legal, public space for protest creates the subjectivity of protestors as illegal actors. With global capitalism growing as a target for protest and a less responsive political environment to the concerns of activists, more militant, destructive, and potentially violent forms of disruption may define a new normal in political protest.

Occupy and the Disappearance of the Public Forum

One of the most dramatic ironies of the Occupy movement was that the epicenter of organizing was only possible because of corporate control. Zuccotti Park is private. Hundreds if not thousands of these private ‘parks’ exist throughout New York City as a mandated creation of space for public access. These areas correspond to a legislated percentage of public space based upon new development of private square footage. In other words, for every private building constructed in New York, a certain amount of space must be set aside for public parks or

¹⁶ Gottfried, Mara & Elizabeth Mohr. “Houses raided, 5 arrested; critics decry crackdown.” *St. Paul Pioneer Press*. August 30, 2008. Accessed March 13, 2014. http://www.twincities.com/ci_10346122

¹⁷ Kiley, Brendan. “Political Convictions?” *The Stranger*. August 8, 2012. Accessed March 13, 2014. <http://www.thestranger.com/seattle/political-convictions/>

thoroughfares. Spaces include everything from loading docks and sitting areas, to alleys and more traditional parks. Since Zuccotti Park is a result of this city policy, it must remain accessible to members of the public twenty-four hours a day. By comparison, public parks have open/closed hours which local law enforcement mobilizes to clear these spaces when necessary.¹⁸ Thus, the great irony of the birthplace of Occupy is that its private character allowed for its very public occupation.

Occupy's lack of physical staying power, mostly due to state violence, is made up for by its reconstituting of a national discussion about wealth inequality. Objections to the consolidation of resources into a smaller number of pockets compliments a country embroiled in financial collapse. However, the supposed cause and effect sequence of events misses a larger geopolitical situation giving rise to mass occupations. As Wendy Brown argues:

The OWS events this fall are the twin gifts of, on the one hand, the inspirational Arab Spring and, on the other, the colossal failure of the Obama presidency to place even a light rein on neoliberal de-regulation or install a modest interval of separation between Wall Street and Washington. If the first was an obvious trigger, the second should not be minimized: Had any of the promised Obama "hope" been substantially realized—early withdrawal from Iraq war, closing Guantanamo, stimulating economic recovery with jobs creation, repealing the Bush tax cuts, tightening regulations on finance capital, expanding access to affordable higher education, reining in health care costs—many Occupy Wall Streeters, especially the young, might have remained wedded to the electoral political process that engaged them so intensely just three years ago.¹⁹

Brown touches on the intensity of expectations focused upon new political leadership, frustration with conventional politics, and an economic downturn as the true catalysts for mobilization of various actors occupying public/private spaces—legally or otherwise. Occupy has the feeling of

¹⁸ For instance, Central Park opens at 5 am and closes at 1 am to discourage overnight stays.

¹⁹ Brown, Wendy. "Occupy Wall Street: Return of a Repressed *Res-Publica*." *Theory & Event* 14, no. 4 (2011) Supplement.

the sit-ins discussed in chapter 3, but lacks clear, salient targets to dismantle. Thus, the majority of media sources portray the occupiers as elements of an unemployed, fringe left even as discourse surrounding the 99% became mainstream parlance. Occupy exists in a new era of protest dealing with a disintegration of public space for political performance, as well as a diversity of initiatives insuring that participants are marginalized while their actions are made illegal. It represents the last gasp of traditional forms of physical protest associated with the Civil Rights Era. I argue that physical occupation of public space for protest either falls into permitted, bureaucratically controlled marching (i.e., officially sanctioned acts of protest involving local permits); free-speech zones of surveilled space miles from actual events; or increasing violence in the streets quickly becoming zones of exclusion for public dissent. I discuss each in turn, but also consider how the new frontier in protest requires innovative spaces of inclusion—digital ones.

The events of May 1, 2012 in downtown Seattle offer a case study in each of the three potential ways future mobilizations of physical, political subjects manifest. First, labor activists and supporters come together on International Worker’s Day in solidarity to demonstrate shared interests in pursuing a social justice agenda. Activists go through designated channels to coordinate with city officials in order to receive a permit. A permit represents recognition from local decision-makers as to what types of protest are legitimate and allowed. It demonstrates a moment of waving their monopoly on the right to exclude, to sanction a traditional form of non-violent protest. I argue that these moments of protest expose demonstrators to the confines of any and all state demands on the limits of their actions. Planned protests allow the state to

appear open to demands of citizens, while still maintaining physical control over the events themselves.²⁰

Second, zones set up at the point of origination of the march, as well as the finish-line, constitute specific spaces with geographic and temporal limits on gatherings of citizens. The spaces depict a seemingly open opportunity to voice public dissent with contemporary policies relating to the most disadvantaged in the workforce. However, city officials retain final word in negotiations with activists about the number of participants, length of stay, and sphere of protest. Public parks in the middle of downtown Seattle allow for appearance and attention, and do not separate protestors to ridiculous zones of exclusion pioneered in the aftermath of the 1999 WTO conference; yet construct acceptability standards in which protestors have little input.²¹

The black bloc previously discussed, offers the third element of modern protest in physical, public, corporate space. A lack of access for more spontaneous forms of protest combined with heavy state regulation of public spaces leaves the potential for more radical forms of participation. In other words, it is difficult to legally perform political protest in public space, so if one's presence is illegal without the proper state sanction, then why not push that illegality further into symbolic destruction? This explanation is admittedly reductionist but is helpful in illustrating the political and the punitive culture surrounding public protest. A citizen acts as a legal subject by walking from one state-designated, permitted area along a state-designated,

²⁰ Spangenthal-Lee, Jonah. "What You Need to Know for May Day 2014." *Seattle Police Department Blotter: Seattle Crime News*. April 30, 2014. Accessed on July 26, 2014. <http://spdblotter.seattle.gov/2014/04/30/what-you-need-to-know-for-may-day-2014/>

²¹ Mitchell, Don. "The Liberalization of Free Speech: or, How Protest in Public Space is Silenced." *Stanford Agora*, 4 (2003): 1-45.

Zick, Timothy. "Space, Place and Speech: the Expressive Topography." *George Washington Law Review*, 74 (2006): 782-841.

permitted path to another state-designated, permitted area; the farce of modern and regulated political dissent is clear. Thus, action that truly confronts existing paradigms of acceptability (many times a definitional component of protest) may require a breaking of the status quo and the law. For the same reasons that moments of celebrated political activism broke legal boundaries protecting property, modern movements confronting structures of oppressive power will as well. If protest is regulated and refined down to a highly regulated and controlled parade, what is the use of its continuance as a tactic?

Anonymous: Contemplating the Future of Dissent through Destruction

With the continuing degradation of public space for protest, few options remain within mainstream channels. However, the growth of digitally mediated activism through social networks, blogs, petitions, etc. allows access to many more individuals. This activism, popularly referred to as ‘clicktivism’ or ‘slacktivism’, mobilizes large numbers of people with varying levels of success. While uprisings within the Arab Spring utilized social networks towards active and successful ends, other campaigns peak interest and then falter without physical action (i.e., Kony 2012). Few of these burgeoning digital activities have much to do with the property destructive tactics discussed thus far, except for one large exception—Anonymous. As these modes of participation proliferate, the state has a responsibility to monitor these actions to insure they stay within existing laws. The protection against cyber crimes is yet another extension of property protection; and the suppression of dissent is closely linked.

In August of 2012, a 16-year-old girl was brutally raped by members of a high school football team in Steubenville, Ohio. Following the events, community leaders conspired to hide evidence of the assault to preserve the good name of the school and town. Months afterwards news broke of a second rape of a 14-year-old girl in the same community under similar

circumstances. After the dust settled, six people were charged with various crimes from rape, obstructing justice, supplying alcohol to a minor, and failure to report child abuse.²² However, the local police forces refused to pursue any of the eventual charges until after Anonymous became involved. While pressure came from various local and national groups for further investigation before Anonymous' involvement, it was only after physical evidence was obtained by a hacker did the police actually take steps to make arrests.

Anonymous enjoys a wide and varied reputation as a “very loose and decentralized command structure that operates on ideas rather than directives.”²³ Anonymous operatives participate in everything from monkey wrenching aimed at Scientology to assisting in cyber attacks against multinational corporations and nation-states. While their motivations and justifications are fluid, they take on legal and political issues with regularity. Steubenville is just one example, but offers a corollary to groups previous discussed. Self-appointed members of Anonymous started a campaign to uncover the events in Steubenville and to bring the assailants to justice. A young computer hacker named Deric Lostutter is largely responsible for exposing the perpetrators as well as those protecting them from prosecution. Lostutter, a 26 year-old computer programmer from Kentucky, helped to start a program through Anonymous referred to as Justice Ops. Their targets included the Westboro Baptist Church famous for protesting the funerals of US military personnel killed in the line of duty as god's retribution for permissive national policies towards the LGBTQ community. Deric Lostutter was ultimately successful, but

²² Baker, Katie JM. “Why is No One Talking About the Second Steubenville Rape Case?” *Newsweek*, November 27, 2013. Accessed March 17, 2014. <http://www.newsweek.com/why-no-one-talking-about-second-steubenville-rape-case-207333>

²³ Kelly, Brian. "Investing in a Centralized Cybersecurity Infrastructure: Why 'Hacktivism' can and should influence cybersecurity reform". *Boston University Law Review* 92 no. 5 (2012): 1663–1710.

currently faces decades in federal prison for violating the Computer Fraud and Abuse Act (CFAA). In contrast, the rapists received a year each. Lostutter obtained physical evidence against the rapist and Steubenville community members through illegal means. Lostutter never physically occupied another's space or materially destroyed property, yet he violated privacy laws allowing others a right to exclude individuals from their digital property. He helped to set up missions for hackers to gather information pertaining to the case and send it to him for exposure. Violations of the CFAA passed by Congress have Lostutter facing a potential 10-year sentence for illegal use of a computer as means to uncover private information, and in this case evidence of a crime. 'Cyberterrorism' is joining 'ecoterrorism' as catch phrases to control discussion about militant forms of political activism. Lostutter's attorney's comments are telling declaring, "Hackers are the new communists."²⁴ Much like Will Potter's work *Green is the New Red*, discussed in the previous chapter, federal labeling, surveillance, and punishment focus upon property violations for retributive punitiveness rather than the actions committed sparking dissent through destruction. The Steubenville case and its aftermath serve as a singular example to begin considering what form property destructive protest takes in the future. Rallies were a significant tactic of mobilization after information from Anonymous became public, yet many recent events of public action were facilitated by digital sources.

²⁴ Kushner, David. "Anonymous vs. Steubenville" *Rolling Stone*. November 27, 2013. Accessed March 20, 2014. <http://www.rollingstone.com/culture/news/anonymous-vs-steubenville-20131127>

Conclusion

Beginning with the right to exclude, an American brand of property rights constructs spaces of protection for those lucky enough to own. Power deriving from possession is a recurrent target for activism. Chapter 1 reconstructed a Western theoretical history of property as exclusion and constructs an analytical frame for theory building. It attempted to remove some of the ‘naturalness’ appointed to property as a right, while still acknowledging how the perception and psychic construction of property relies upon this false essentialist quality.

The second chapter delved into American political history of resistance considering three touchstone moments of radicalism. Each confronts the right to exclude and utilizes the destruction of property as a means of access to forbidden space. The Boston Tea Party mobilizes rights discourses from across the political spectrum for good reason; it sets a standard of political resistance as patriotic and as a definitional characteristic of American revolution. Theft of chattel for the purpose of liberation is not the typical approach to discussions of the Underground Railroad, yet it captures how law encounters dissent through destruction. ‘Hatchetations’ add another level of complexity and nuance as the intersectionality of morality, gender, religion, property, and law coalesce in the figure of Carry A. Nation. Nation’s actions challenged spaces of exclusion, while enforcing existing law through the violent violation of another. These three cases assert a historical connection between the destructive dissent of the past and continuing resistance of the present. Patriots, conductors, and firebrands do not justify destruction of another’s property as legitimate, but they do situate modern activism within a context of American history.

While the Civil Rights Era constructs the epitome of non-violent civil disobedience, it still manages to confront property rights and the privilege of owners to control who enters their

space. Simple occupation confronts and challenges perceived rights of exclusion. While seemingly more mundane in comparison to shattering wood and glass, pushing back against established cultural and legal norms of exclusion with centuries of precedent is no small task. Combine these events with the privileged class waging revolution on behalf of oppressed global peoples, one finds a spirit of radical change through obliteration of edifices symbolic of state control. The sit-in movement and the Weather Underground take up the mantle of resistance ever present in the United States, and reposition the city upon a hill as more reminiscent of the imperialism it original sought to avoid.

State reaction and curtailment of these activities demonstrates priorities. It demonstrates what constitutes the most significant threats to American ideology from the perspective of the state. It demonstrates who is worthy of labeling, of pursuit, of infiltration, and of punishment. It demonstrates that when property is attacked in the course of protest, elevated punishment follows. Deeper consideration of a concentrated state effort against radical environmentalists demonstrates how crime and punishment alter with political context. Incarceration rates spike when activists are redefined as terrorists. Thus, the priorities of the state are apparent. Protection of real and symbolic property can trump protection of human and social life when political environments allow.

Finally, we must hypothesize what the present can tell us about the future when it comes to dissent through destruction. I argue that rather than assuming a disappearance of public space, we are witnessing a shift in its location. Thus, I anticipate two channels for the future of dissent through destruction. First, a movement towards more violent and destructive forms of participation in the physical realm is expected. As spaces for participatory, public protest erode,

the illegality of subjects in these spaces facilitate further illegality in the destructive nature of their actions.

Second, as public space disappears, activism shifts to digital realms for better or worse. Access, ease of use, and numbers of participants are clear benefits of this new dominion, but potentially shortcomings could outweigh these benefits. Movements towards knowledge of oppression rather than direct action against it, represent a new orientation to information and spheres of influence. While dissent through destruction is in no danger of disappearing, its form may take on the most significant shift and divergent tactics ever witnessed in the political history of the United States.

The history of political resistance in the United States displays a wide variety of causes, tactics, and approaches. I argue forms of resistance damaging property are one such approach. Legitimacy in these situations is questionable and the actions objectionable to most outside observers. This reaction is firmly entrenched in American values privileging property rights above many others. While these reactions are understandable, they tend to overlook the rich history of dissent through destruction. However, the stakes are much higher than simply public opinion. Activists utilizing tactics of destruction suffer at the hands of the state disproportionately. Their violations represent an attack on fundamental values rather than simple objects. Thus, my arguments do not serve to glorify this brand of activism; rather they attempt to demonstrate the perverse legal outcomes of resistance to oppression.

Appendix 1

Date	Name	Plea	Sentence
9/1/91	Marc Leslie Davis	Guilty	72m, \$19,821
9/1/91	Margaret Katherine Millet	Guilty	36m, \$19,821
9/1/91	Marc Andre Baker	Guilty	12m, \$5,000
9/1/91	Ilse Washington Asplund	Guilty	12m, \$2,000
7/3/95	Rodney Adam Coronado	Guilty	57m, \$2mil
6/19/97	Douglas Joshua Ellerman	Guilty	84m, \$750,000
9/16/98	Justin Samuel	Guilty	24m, \$364,106
2/11/02	Mark Warren Sands	Guilty	216m, 2.82m
7/23/04	George Mashkow	Guilty	12m
7/26/04	Jared McIntyre	Guilty	42m, \$300k
8/30/05	Peter Young	Guilty	36m,
9/1/06	Matthew Rammelkamp	Guilty	6m
6/13/07	Chelsea Dawn Gerlach	Guilty	108m
6/13/07	Joyanna L. Zachler	Guilty	92m
6/13/07	Nathan Fraser Block	Guilty	92m
6/13/07	Sarah Kendall Harvey	Guilty	46m
6/13/07	Daniel Gerard McGowan	Guilty	84m
6/13/07	Stanislas Gregory Meyerhoff	Guilty	156m
6/13/07	Jonathan Mark Christopher Paul	Guilty	51m
6/13/07	Suzanne Savoie	Guilty	51m
6/13/07	Darren Todd Thurston	Guilty	37m
8/3/07	Kevin M. Tubbs	Guilty	151m
5/8/08	Eric McDavid	Not Guilty	235m
6/19/08	Brianna Waters	Not Guilty	78m
7/18/08	Jennifer Kolar	Guilty	60m, 7.1m
9/19/08	Lacey Phillabaum	Guilty	36m
10/20/08	Frank Ambrose	Guilty	108m, 3.7m
2/5/09	Marie Mason	Guilty	262m
3/20/12	Justin Solondz	Guilty	84m

Works Cited

- Animal Enterprise Protection Act. *Public Law 102-346*. (1992) Accessed January 18, 2011. <http://www.nal.usda.gov/awic/legislat/pl102346.htm>.
- Animal Enterprise Terrorism Act. *Pubic Law 109-374; 18 U.S.C. § 43*. (2006) Accessed April 2, 2014. <https://www.govtrack.us/congress/bills/109/s3880/text>.
- Anti-Defamation League. "Ten Ecoterror Arsonists Sentenced in Oregon." July 13, 2007. Accessed January 28, 2011. <http://archive.adl.org/nr/exeres/97d40331-06fc-43e7-a8b8-40657fc5085e,18aa02a5-13a1-44f3-b4d4-6176e1ecc36c,frameless.html>
- Baker, Katie JM. "Why is No One Talking About the Second Steubenville Rape Case?" *Newsweek*, November 27, 2013. Accessed March 17, 2014. <http://www.newsweek.com/why-no-one-talking-about-second-steubenville-rape-case-207333>
- Bartley, Nancy and Mike Carter. 2008. "UW arsonist, Brianna Waters, sentenced to 6 years." *Seattle Times*. June 20, 2008. Accessed January 28, 2001. http://seattletimes.nwsourc.com/html/localnews/2008008001_uwarson20m.html
- Baum, Lawrence. *Judges and Their Audiences: A Perspective on Judicial Behavior*. Princeton: Princeton University Press, 2006.
- Bentham, Jeremy. *Principles of the Civil Code*, New York: Evergreen Review, 2008.
- Berger, Dan. *Outlaws of America: the Weather Underground and the Politics of Solidarity*. Oakland: AK Press, 2006.
- Bernton, Hal. 2006. "An activist-turned-informant." *The Seattle Times*. May 9, 2006. Accessed July 13, 2014. http://seattletimes.com/html/localnews/2002977591_ecoarrests07m.html
- B.I.G., The Notorious. "Mo Money, Mo Problems," *Life After Death*. New York: Bad Boy Records, 1996. CD.
- Bordewich, Fergus M. *Bound for Canaan*. New York: Amistad, 2005.
- Boushey, Heather. "It Wasn't Household Debt That Caused the Great Recession." *The Atlantic*. May 21, 2014. Accessed July 25, 2014. <http://www.theatlantic.com/business/archive/2014/05/house-of-debt/371282/>
- Brown, Wendy. "Occupy Wall Street: Return of a Repressed *Res-Publica*." *Theory & Event* 14, no. 4 (2011) Supplement.
- Button, Mark et al. "New Challenges in Public Order Policing: The Professionalization of Environmental Protest and the Emergence of the Militant Environmental Activist" *International Journal for the Sociology of Law* 30, no. 1 (2002): 17-32.

- Center for Constitutional Rights. "CMUs: the Federal Prison System's Experiment in Social Isolation." *Center for Constitutional Rights Factsheet*. March 2013. Accessed July 25, 2014. http://ccrjustice.org/files/CCR_CMU_Factsheet_March2013.pdf
- Chomsky, Noam. "Terror and Just Response." In *Terrorism and International Justice*, New York: Oxford University Press, 2003.
- Churchill, Ward and Jim Vander Wall. *Agents of Repression: The FBI's Secret Wars Against the Black Panther Party and the American Indian Movement*. Cambridge: South End Press, 2001.
- Civil Rights Movement Veterans. Accessed July 22, 2013. <http://www.crmvet.org/tim/timhis60.htm>
- CNN. "Officials: Earth Liberation Front members indicted in fire." *CNN Online*. March 11, 2008. Accessed January 28, 2011. <http://www.cnn.com/2008/CRIME/03/11/elf.indictments/index.html?iref=allsearch>
- Cover, Robert. "Violence and the Word." *Yale Law Journal*, 95 (1986): 1601-1629.
- Crimethinc. "Blocs, Black and Otherwise." Accessed August 7, 2013. <http://www.crimethinc.com/texts/pastfeatures/blocs.php>
- Dannenbaum, Jed. "The Origins of Temperance Activism and Militancy among American Women." *Journal of Social History*, 15, No. 2 (1981): 235-252.
- Department of Justice. "Terrorism in the United States." *Counterterrorism Threat Assessment and Warning Unit, National Security Division* (1998): 1-29.
- "Terrorism 2001/2002." *Homeland Security/Federal Bureau of Investigation*. (2001): 1-49
- Douglass, Frederick. *Narrative of the Life of Frederick Douglass*. Mineola: Dover Publications, 1995.
- ELF Press Office. "ELF Press Office Calls Activist's 22 Year Sentence Cruel and Unusual." *Mostly Water*. February 5, 2009. Accessed March 7, 2009. http://mostlywater.org/media_release_elf_press_office_calls_activists_22_year_sentence_cruel_and_unusual
- FBI. 2006. "Eco-Terror Indictments: 'Operation Backfire' Nets 11." *Federal Bureau of Investigation*. January 20, 2006. Accessed March 10, 2009. <http://www.fbi.gov/news/stories/2006/january/elf012006>
- "Michigan State University Eco-Terrorist Sentenced in Arson Case." *US Department of Justice*. February 5, 2009. Accessed March 7, 2009. <http://www.fbi.gov/detroit/press-releases/2009/de020509.htm>

- “Crime in the United States 2013.” *US Department of Justice, FBI*. Accessed July 26, 2014. http://www.fbi.gov/about-us/cjis/ucr/crime-in-the-u.s/2013/preliminary-semiannual-uniform-crime-report-january-june-2013/tables/table-4-cuts/table_4_offenses_reported_to_law_enforcement_by_state_oklahoma_through_wisconsin_2013.xls
- Finkelman, Paul. *Dred Scott v. Sanford: A Brief History with Documents*. Boston: Bedford/St. Martin’s Press, 1997.
- Flynn, Jim. 2006. “Operation Backfire Backfires on FBI.” *Earth First! Journal*, May-June 2006. Accessed July 15, 2014. <http://news.infoshop.org/article.php?story=20060510125753518>
- Fox News. “Activist Gets Nearly 22 Years in Prison for Michigan State University Arson.” *Fox News Online*. February 5, 2009. Accessed January 18, 2011. <http://www.foxnews.com/story/2009/02/05/activist-gets-nearly-22-years-in-prison-for-michigan-state-university-arson/>
- Goodman, Amy and Denis Moynihan. “44 Years a Prisoner: The Case of Eddie Conway.” *Democracy Now!*. March 6, 2014. Accessed July 9, 2014. http://www.democracynow.org/blog/2014/3/6/44_years_a_prisoner_the_case
- Gosztola, Kevin. “SWAT Team Raids Occupy Organizers’ Apartment in Seattle.” *The Dissenter*. July 10, 2012. Accessed March 13, 2014. <http://dissenter.firedoglake.com/2012/07/10/swat-team-raids-occupy-organizers-apartment-in-seattle/>
- Gottfried, Mara & Elizabeth Mohr. “Houses raided, 5 arrested; critics decry crackdown.” *St. Paul Pioneer Press*. August 30, 2008. Accessed March 13, 2014. http://www.twincities.com/ci_10346122
- Grace, Fran. *Carry A. Nation*. Bloomington & Indianapolis: Indiana University Press, 2001.
- Grimsted, David. *American Mobbing, 1828-1861*. Oxford: Oxford University Press, 1998.
- Herbert, Steve. “The ‘Battle of Seattle’ revisited: Or, seven views of a protest-zoning state.” *Political Geography*, Vol. 26 (2007): 601-619.
- Hirschl, Ran. “The Judicialization of Mega-Politics and the Rise of Political Courts.” *Annual Review of Political Science* 11 (2008): 93-118.
- Independent Media Center. 2006. “Secret Grand Jury investigations have led to indictments of 12.” January 24, 2006. Accessed July 15, 2014. <http://www.indymedia.org/en/2006/01/831928.shtml>

- Jarboe, James. "Congressional Testimony 'The Threat of Eco-Terrorism'." *Federal Bureau of Investigation*. February 12, 2002. Accessed March 7, 2009. <http://www.fbi.gov/news/testimony/the-threat-of-eco-terrorism>
- Jefferson, Thomas. *Political Writings*. Edited by Joyce Appleby & Terence Ball. Cambridge: Cambridge University Press, 1999.
- Johnson, Carrie & Margo Williams. "'Guantanamo North': Inside Secretive U.S. Prisons." *National Public Radio News*. March 3, 2011. Accessed July 25, 2014. <http://www.npr.org/2011/03/03/134168714/guantanamo-north-inside-u-s-secretive-prisons>
- Katsiaficas, George. *The Subversion of Politics: European Autonomous Social Movements And The Decolonization of Everyday Life*. New Jersey: Humanities Press International, Inc., 1997.
- Kelly, Brian. "Investing in a Centralized Cybersecurity Infrastructure: Why 'Hacktivism' can and should influence cybersecurity reform". *Boston University Law Review* 92 no. 5 (2012): 1663–1710.
- Kessler, Robert E. "Sentence Draws Gasps." *Long Island News*. July 27, 2004. Accessed January 28, 2001. <http://www.newsday.com/news/sentence-draws-gasps-1.730566>
- Kiley, Brendan. "Political Convictions?" *The Stranger*. August 8, 2012. Accessed March 13, 2014. <http://www.thestranger.com/seattle/political-convictions/>
- King Jr., Martin Luther. "Beyond Vietnam," published in *A Call to Conscience: the Landmark Speeches of Dr. Martin Luther King, Jr.* Edited by Clayborne Carson & Kris Shepard. New York: Grand Central Publishing, 1967.
- Kirkpatrick, Jenet. *UnCivil Disobedience: Studies in Violence and Democratic Politics*. Princeton: Princeton University Press, 2008.
- Knollenburg, Benhard. *Growth of the American Revolution, 1766-1775*. New York: Free Press, 1975.
- Kushner, David. "Anonymous vs. Steubenville" *Rolling Stone*. November 27, 2013. Accessed March 20, 2014. <http://www.rollingstone.com/culture/news/anonymous-vs-steubenville-20131127>
- Labaree, Benjamin Woods. *The Boston Tea Party*. New York: Oxford University Press, 1964.
- Lewis, John. "Animal Rights Extremism and Ecoterrorism." *Congressional Testimony*. May 18, 2004. Accessed on April 8, 2014. <http://www.fbi.gov/news/testimony/animal-rights-extremism-and-ecoterrorism>.

- Lincoln, Abraham. "Address to the Young Men's Lyceum." January 27, 1838. Accessed on August 7, 2013. <http://www.abrahamlincolnonline.org/lincoln/speeches/lyceum.htm>
- Locke, John. *Second Treatise of Government*. Edited by C.B. Macpherson. Indianapolis: Hackett, 1980.
- Lovell, Jarret S. *Crimes of Dissent: Civil Disobedience, Criminal Justice, and the Politics of Conscience*. New York: New York University Press, 2009.
- Lutz, Donald S. "The Relative Influence of European Writers on Late Eighteenth-Century American Political Thought." *American Political Science Review*, 78, No.1 (1984): 189-197.
- National Lawyers Guild. 2006. "National Lawyers Guild Condemns Operation Backfire as Unconstitutional." *NLG Press Release* published on Common Dreams NewsCenter. Accessed July 15, 2014. <http://www.commondreams.org/news2006/0612-10.htm>
- Macpherson, C.B. *Property: Mainstream and Critical Positions*, Toronto: University of Toronto Press, 1978.
- Marx, Karl. *Selected Writings*. Edited by Lawrence H. Simon. Indianapolis: Hackett, 1994.
- The Marx-Engels Reader 2nd Edition*. Edited by Robert C. Tucker. New York: W. W. Norton & Company Inc., 1978.
- Matthiessen, Peter. *In the Spirit of Crazy Horse*. Penguin Books, 1992.
- Mattingly, Carol. *Well-Tempered Women: Nineteenth-Century Temperance Rhetoric*. Carbondale: Southern Illinois University Press, 1998.
- Mills, Charles. *The Racial Contract*. Ithaca: Cornell University Press, 1997.
- Mitchell, Don. "The Liberalization of Free Speech: or, How Protest in Public Space is Silenced." *Stanford Agora*, 4 (2003): 1-45.
- Murdock, Catherine Gilbert. *Domesticating Drink*. Baltimore: The John Hopkins University Press, 1998.
- Murphy, Kim. 2013. "Seattle judge orders release of two activists held for contempt." *Los Angeles Times*. February 28, 2013. Accessed August 19, 2013. <http://articles.latimes.com/2013/feb/28/nation/la-na-nn-seattle-protesters-ordered-freed-20130228>
- Novak, William J. *The People's Welfare: Law & Regulation in 19th Century America*, Chapel Hill: The University of North Carolina Press, 1996.
- Nozick, Robert. *Anarchy, State, and Utopia*, New York: Basic Books, 1974.

- O'Brien, MJ. *We Shall Not Be Moved*. Jackson: University of Mississippi Press, 2013.
- Parson, Sean. "Understanding the Ideology of the Earth Liberation Front." *Green Theory & Praxis* 4 no. 2 (2008): 50-66.
- PATRIOT Act. *Public Law 107-53*. (2001) Accessed January 18, 2011.
<http://www.gpo.gov/fdsys/pkg/BILLS-107hr3162enr/pdf/BILLS-107hr3162enr.pdf>
- Peñalver, Eduardo Moises & Katyal, Sonia K. *Property Outlaws: How Squatters, Pirates, and Protesters Improve the Law of Ownership*. New Haven: Yale University Press, 2010.
- Perliger, Arie. "Challengers from the Sidelines: Understanding America's Violent Far-Right." *The Combating Terrorism Center at West Point*. November 2012.
- Peterson, Erik. "Press Release – 'Defendants Sentenced to Prison in ELF Action from 2000'." *Federal Bureau of Investigation*. February 26, 2009. Accessed March 7, 2009.
<http://milwaukee.fbi.gov/dojpressrel/pressrel09/mw022609a.htm>
- Piketty, Thomas. *Capital in the Twenty-First Century*. Cambridge: The Belknap Press of Harvard University Press, 2014.
- Plungis, Jeff. "SUV, Truck Owners Get a Big Tax Break." *USA Today*. December 18, 2002. Accessed July 26, 2014. http://usatoday30.usatoday.com/money/autos/2002-12-18-suv-tax-break_x.htm
- Potter, Will. "Animal Enterprise Protection Act." *Green is the New Red*, 2006. Accessed January 18, 2011. <http://www.greenisthenewred.com/blog/aepa/>
- "Environmentalist Sentenced to 21 Years as a 'Terrorist'." *Green is the New Red*. February 5, 2009. Accessed July 24, 2012. <http://www.greenisthenewred.com/blog/marie-mason-sentenced/1023/>
- *Green is the New Red*. San Francisco: City Lights Books, 2011.
- "FBI Agents Raid Home in Search of 'Anarchist Literature'." *Green is the New Red*. July 30, 2012. Accessed August 19, 2013. <http://www.greenisthenewred.com/blog/fbi-raid-anarchist-literature-portland-seattle/6267/>
- Proudhon, P.J. *What is Property? An Inquiry into the Principle of Right and of Government*, New York: Dover Publications, 1970.
- Rathjen, Gregory and Harold Spaeth. 1979. "Access to the Federal Courts: An Analysis of Burger Court Policy Making." *American Journal of Political Science* 23, no. 2 (1979): 360-382.
- Rawls, John. *A Theory of Justice*, Cambridge: Harvard University Press, 1971.

- Regan, Lauren. "Briana Waters Found Guilty on Two Counts." *Olympia Civil Liberties Resource*. March 6, 2008. Accessed March 7, 2009.
<http://olycivlib.blogspot.com/2008/03/briana-waters-has-been-found-guilty-on.html>
- Reich, Charles A. "The New Property," *Yale Law Journal*, 74, No. 5 (1964): 773-787.
- Reuters News Service. "Arizona 'Eco-Arsonist' Gets 18 Years in Prison." *Los Angeles Times*. February 12, 2002. Accessed January 28, 2011.
<http://articles.latimes.com/2002/feb/12/news/mn-27647>
- Richmond, Todd. "Animal activist accused of freeing thousands of mink to plead guilty and serve two years." *Associated Press*. August 31, 2005. Accessed January 28, 2011.
<http://legacy.signonsandiego.com/news/nation/20050831-1449->
- Rousseau, Jean-Jacques. *The Basic Political Writings*. Translated by Donald A. Cress. Indianapolis: Hackett, 1987.
- Schubert, Glendon. "Jackson' Judicial Philosophy: An Exploration in Value Analysis." *American Political Science Review* 59, no. 4 (1965): 940-963.
- Scott, McGregor. "Eco-Terrorist Given Nearly Twenty Years in Prison." *Department of Justice*. May 8, 2008. Accessed March 7, 2009.
<http://sacramento.fbi.gov/dojpressrel/pressrel08/sc050808.pdf>
- Segal, Jeffrey and Harold Spaeth. *The Supreme Court and the Attitudinal Model Revisited*. Cambridge: Cambridge University Press, 2002.
- Shapiro, Martin and Alex Stone Sweet. *On Law, Politics, & Judicialization*. New York: Oxford University Press, 2002.
- Singh, Nikhil. "The Afterlife of Fascism." *Southern Atlantic Quarterly* 105 (2006): 71-93.
- Skylar, Kathryn Kish. *Women's Rights Emerges within the Anti-Slavery Movement: A Short History with Documents, 1830-1870*. Boston: St. Martin's Press, 2000.
- Smith, Carlton. "Grooming an ELF." *Willamette Week Online*. November 26, 2003. Accessed March 7, 2009. http://www.wweek.com/portland/article-2692-grooming_an_elf.html
- Spangenthal-Lee, Jonah. "What You Need to Know for May Day 2014." *Seattle Police Department Blotter: Seattle Crime News*. April 30, 2014. Accessed on July 26, 2014.
<http://spdblotter.seattle.gov/2014/04/30/what-you-need-to-know-for-may-day-2014/>
- Still, William. *The Underground Railroad*. New York: Arno Press, 1968.
- Thomas, Janet. *The Battle in Seattle: the Story Behind and Beyond the WTO Demonstrations*. Golden: Fulcrum Publishing, 2000.

- Thompson, AK. *Black Bloc, White Riot: Anti-Globalization and the Genealogy of Dissent*. Oakland: AK Press, 2010.
- Todd, Andrea. "The Believers." *Elle Magazine*. May 2008. Accessed July 24, 2012. <http://veganxjen.livejournal.com/4471.html>
- Vanderheiden, Steve. "Eco-terrorism or Justified Resistance? Radical Environmentalism and the "War on Terror"." *Politics and Society* 33, no. 3 (2005): 425-447.
- Veblen, Thorstein. *The Theory of the Leisure Class*, New York: Dover Publications, 1994.
- Absentee Ownership and Business Enterprise in Recent Times: The Case of America*, Piscataway: Transaction Publishers, 1997.
- Verba, Sidney & Norman H. Nie. *Participation in America: Political Democracy and Social Equality*. Chicago: The University of Chicago Press, 1987.
- Waldron, Jeremy. *The Right to Private Property*. Oxford: Clarendon Press, 1988.
- Walzer, Michael. *Just and Unjust Wars*. New York: Basic Books, 1977.
- Weather Underground. *Weatherman*. Edited by Harold Jacobs. Berkeley: Ramparts Press, 1970.
- Sing a Battle Song: The Revolutionary Poetry, Statements, and Communiqués of the Weather Underground 1970-1974*. Edited by Bernadine Dohrn, William Ayers, & Jones. New York: Seven Stories Press, 2006.
- Wellington, Darryl Lorenzo. "The Most Famous Abductor on the Underground Railroad." *The Christian Science Monitor*, January 20, 2004. Accessed on July 15, 2013. <http://www.csmonitor.com/2004/0120/p19s02-bogn.html>
- Winzelberg, David. "Earth Liberation Member Gets 3 ½ Years for Arsons." *New York Times*. August 1, 2004. Accessed January 28, 2001. <http://www.nytimes.com/2004/08/01/nyregion/in-brief-earth-liberation-member-gets-3-1-2-years-for-arsons.html?src=pm>
- Yang, Debra. "Pasadena Man Who Participated in Firebomb Attacks on SUVs Sentenced to over Eight Years in Federal Prison." *US Department of Justice*. April 18, 2005. Accessed March 7, 2009. <http://www.justice.gov/usao/cac/Pressroom/pr2005/059.html>
- Young, Daniel Dylan. "Autonomia and the Origin of the Black Bloc." *A-Infos News Service*. June 10, 2001. Accessed July 27, 2013. <http://www.ainfos.ca/01/jun/ainfos00170.html>
- Zabel, Darcy. *The Underground Railroad in African American Literature*. New York: Peter Lang Publishing, 2004.

Zick, Timothy. "Space, Place and Speech: the Expressive Topography." *George Washington Law Review*, 74 (2006): 782-841.

Zollinger Giele, Janet. *Two Paths to Women's Equality: Temperance, Suffrage, and the Origins of Modern Feminism*. New York: Twayne Publishers, 1995.