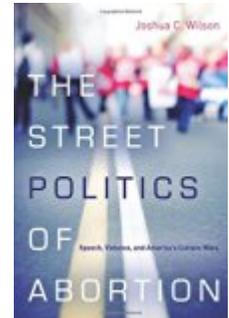


Joshua C. Wilson. *The Street Politics of Abortion: Speech, Violence, and America's Culture Wars.* The Cultural Lives of Law Series. Stanford: Stanford University Press, 2013. xi + 244 pp. \$24.95, paper, ISBN 978-0-8047-8534-1.



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In this multifaceted book, Joshua C. Wilson sets out to accomplish a number of ambitious goals. Based on fifty interviews and secondary and primary source materials, including newspapers, Wilson tells the stories behind three distinct court cases. What these court cases share is that they stem from an actual or perceived conflict of interest regarding people's rights in relation to the physical space around health clinics where abortions occur. Firstly, he attempts to develop these stories through the lens of "movement-counter-movement" analysis whereby he analyzes "how directly competing movements interact with one another—and possibly with a more traditional entity like the state—in a dynamic process where each movement in part creates the conditions within which the other acts" (p. 10). At the same time, he sets out to understand what we can learn about these stories regarding questions raised by traditional "legal consciousness" research, including "determining if and how law mattered for those involved in these disputes; how their stories may or may not reproduce, chal-

lenge, or amend legal power and state authority; ... and how their conceptions of law affect the ongoing politics of abortion" (p. 111). Lastly, Wilson includes the perspective of a group of participants in these legal conflicts that is often explicitly excluded in traditional legal consciousness research: state legal insiders or legal "elites," specifically lawyers, legislators, and amicus brief authors. Overall, this book achieves the ambitious goals it sets for itself in that it engages with and furthers two types of socio-legal-historical research: movement-counter-movement literature and legal consciousness literature. Nonetheless, certain aspects of the conclusions reached by Wilson raise questions and leave room for further analysis.

In the first half of the book, Wilson tells the stories behind *Planned Parenthood Shasta-Diablo v. Williams* (1995), *Schenck v. Pro-Choice Network of Western New York* (1997), and *Hill v. Colorado* (2000). These three cases frame Wilson's investigation and arise from a particular historical moment in the late 1980s and early 1990s when the primary battleground over abortion was set, liter-

ally, in the street. This is not to say, as Wilson explicitly notes, that all abortion wrangling was occurring on the streets at this time or that all street-level protests and actions have ceased since then but rather that clinic-front direct action was one of the anti-abortion movement's "identifying hallmarks" during this time (p. 1). As Wilson notes briefly, this move to the street partly occurred as a result of failures and setbacks for the anti-abortion movement within the courts and on judicial benches. This led to a new set of tactics being developed on both sides of this controversy.

Two specific types of anti-abortion protestors, as identified by Wilson, were created during this time: the picketers and the rescuers. Both targeted their direct-action tactics at health clinics where abortions occur. However, the picketers tended to be more peaceful, less aggressive, and generally more interested in educating and counseling women who were considering abortion. The rescuers, so called due to their connection with organizations like Operation Rescue, were involved with large-scale demonstrations that often explicitly included illegal activities, such as participating in sit-ins in parking lots and/or using their bodies to prevent entrance and exit from health clinics in other ways.

Both types of direct-action anti-abortion protestors sparked various reactions from abortion rights advocates, particularly those affiliated with the specific clinics that were heavily targeted. One direct-action tactic abortion rights advocates used included the regular use of "escorts," people who were willing to walk patients from their car to the entrance of the clinic in order to physically separate the protestors from the patients and to help shield patients from some of the more explicit photos employed. Increasingly, however, abortion rights advocates found themselves turning to the law to find a solution. The three cases Wilson details are examples of the move to engage the law to help solve the problems created by these street-level anti-abortion tactics.

To tell the stories in a way that engages with movement-counter movement and legal consciousness research, Wilson utilizes the accounts of participants on both sides of the cases and includes perspectives of street-level activists and legal "elites" in their own words to help explain what these individuals thought these cases were about. Both *Planned Parenthood Shasta-Diablo v. Williams* and *Schenck v. Pro-Choice Network of Western New York* dealt with the use of court-ordered injunctions. In *Williams*, the permanent injunction pushed anti-abortion protestors so far away from the clinic that they were separated from it by a busy four-lane street. In *Schenck*, the permanent injunction included, among other things, a fixed no-protest buffer of fifteen feet around all clinic entrances and driveways and a cease and desist provision. The cease and desist provision required that, although two picketers at a time were allowed within the fifteen-foot buffer to counsel patients, those picketers must stop counseling or engaging with patients within that fifteen-foot buffer if they were asked to stop by the patients. *Hill v. Colorado* dealt with a law passed by a Republican-dominated legislature in the state of Colorado in 1993 to limit the means by which protestors may target patients entering clinics. The law created a "floating bubble" that required anyone within one hundred feet of a clinic entrance to first get permission before approaching closer than eight feet to another person to pass out a leaflet, counsel, display a sign, protest, or educate. However, if a person approached within eight feet of the protestor, the protestor need not move away but could remain standing in place without violation of the law. All of these legal solutions were ultimately upheld by the reviewing courts as content-neutral and as valid "time, place, and manner" restrictions on speech and therefore not in violation of the protestors' First Amendment rights.

The unique and most important contribution of this book is made through Wilson's choice to

pick this set of cases and, in fact, this entire controversy. He explicitly chooses these cases in a calculated and effective move to broaden the scope of traditional movement-counter movement and legal consciousness research. His choice to examine these cases is driven by their classification as, in his terms, "secondary movement litigation" (p. 12). By this classification, he explicitly draws two important parallels between these cases. First, they all arose from back-and-forth reactions to the tactics taken by both sides of the controversy rather than being brought as part of an intentional legal strategy. Second, he claims, these cases "are not meant to, nor do they even have the ability to, incrementally or immediately achieve either movement's ultimate policy goals" (p. 14). Further, he suggests, a third way to understand the status of these cases as secondary litigation is by noting, jurisprudentially, that these cases were about competing interpretations of the First Amendment right to free speech rather than the Fourteenth Amendment due process right to privacy and liberty around which reproductive rights have been legally framed. This type of litigation, he points out, has rarely been examined explicitly in either movement-counter movement or legal consciousness literature. His insights regarding what this less deliberative type of litigation can tell us about how movements respond to each other and how individual participants understand and shape law is unique and useful in many ways. Nonetheless, I believe there is a conceptual flaw in part of his definition of these cases as secondary litigation.

I believe Wilson got it wrong when he claims that these cases are unrelated to either movement's ultimate policy goals. Both anti-abortion picketers and rescuers were at the clinics to stop women from having abortions through education and/or counseling they thought would be effective in reducing abortion and through blocking access to the clinics more directly. This action relates directly to anti-abortion policy goals of, at the very least, reducing the absolute number of abortions

that take place. Similarly, abortion rights advocates were compelled to defend against these actions. If intimidation of patients and the effective shutting down of clinics for short periods of time were allowed to continue, the most important policy goal for abortion rights activists, safe and reliable access to abortion, would be compromised as well. Although Wilson is correct in the idea that this litigation is "secondary" in that it was reactionary and legally distanced from the normal abortion jurisprudence issues, it is not accurate to suggest that the aims being sought by this litigation for both sides were not central to the overall aims of both movements. This mischaracterization, although leaving many parts of his otherwise excellent analysis untouched, does affect some of the conclusions Wilson reaches.

For example, one conclusion Wilson examines in relation to secondary movement litigation is that "one would expect the movements not to be fully invested in them.... The movements may be better able to end these cases if they seem too great of a drain on financial or emotional resources" (p. 167). Yet he also notes, "these cases persisted through the appeals process even when they were quite costly for both sides. This shows that the movements were deeply invested in these cases" (p. 170). He looks for reasons why this might be the case here when, given his earlier assumptions about secondary litigation, it seems as though there should be more of a divestment in cases such as this. Finally he adds, "the risk of a movement harming itself through overinvesting in secondary movement litigation should be recognized" (p. 171). The fact missed by Wilson throughout this analysis is that defeat in these cases would reduce the ability of both sides to achieve their ultimate policy goals, either the goal of reducing abortion or the goal of ensuring safe and reliable access to abortion. This is an additional factor that could help explain why these cases were not easily abandoned and why the cases were seen by the participants as "personally

important" and "highly significant" for both sides (p. 170).

The second half of Wilson's book engages in analysis of the effect of these cases on the legal consciousness of the various participants. As he says, "We know how the actors in these disputes have behaved, but in order to fully understand the nature of legal power, we need to explore how they understand their behavior and construct law in their stories" (p. 113). His analysis of this question leads to several interesting insights. Briefly, he forwards two conclusions regarding the street-level participants' beliefs in the legitimacy of state power and access to law's narrative power after the conclusion of these cases.

First, even though abortion rights advocates won in the courts and were able to recognize and make use of the coercive nature of state power, this victory did not enable the victors to have unlimited access to the normative power of law. This is best understood as a result of the fact that these cases arose as secondary litigation where, specifically, abortion rights advocates found themselves arguing for a more conservative view of First Amendment rights to free speech in this area. Since many of the activists in the movement tended to believe in an expansive reading of the right to free speech in other contexts, this position required the activists to carefully articulate the interests being balanced in these cases rather than have access to a clear-cut and powerful rhetoric regarding absolute "rights" in these cases.

Second, even though anti-abortion forces lost in the courts and were made subject to coercive state power, this loss did not require them to either delegitimize state law or to give up their beliefs or sense of themselves as law abiding citizens. Rescuers' narratives generally underscore their belief that the courts were simply enforcing law that probably should be enforced, for example, anti-trespassing laws, but were doing so because the state misunderstood the nature of what was at stake. For rescuers, the appeal to a higher

extra-state law, found in their belief in God's law, fueled their anti-abortion actions but also allowed the participants to recognize that, in these cases specifically, they were actually breaking state law and the state responded appropriately. The picketers, on the other hand, saw their actions as legal and justifiable and the courts as wrong in imposing punishment on them. However, in their overall narratives, rather than regard state law as illegitimate, the picketers tended to minimize their critique of state law by claiming that the cases were a result of individual corrupt judges or lying clinic owners. Further, the anti-abortion movement, partly through the interplay of participants in these three cases, has been advantaged by these cases in the long run by making key connections and marshaling resources that have continued to serve them in the state legislative battlefield.

Another innovative aspect of this book, and one of the most interesting conclusions Wilson generates from his research, revolves around his choice to extend this legal consciousness analysis to the legal "elites" he interviewed regarding these three cases: the cause lawyers, state attorneys, "hired gun" lawyers, legislative members, and amicus authors. Most research on elites tends to focus on the way that elites may have a detrimental effect on movements and alienate activists by taking over the rhetorical framing through focusing on law and litigation strategies. In his research, Wilson thought it useful to "revers[e] the causal arrow and not[e] the degree to which the lawyers and other elites that work with movements adopt the street-level frames and rhetoric" (p. 133). He made three crucial claims regarding the legal consciousness of "elites" based on these cases.

First, lawyers, especially those in closest coordination with the movement's street-level participants, did demonstrate similar rhetorical constructions of the issues at stake and the view of law that the street-level activists accepted to some extent. Second, the "elites" placed further away

from the movement were less likely to share the movements' rhetoric and, more important, "the overwhelming majority of elites constructed images of law that were unprincipled and infused with politics and showmanship" (p. 178). Yet, third, he claims the elites' "anemic" version of state law, which tended to undermine state law's legitimacy, did not seem to pass to the street-level activists (p. 180). Although he mentions a number of reasons why this may be so, one reason Wilson proffers is the distance between the activists and the legal battles of the elites. Wilson suggests that rather than alienating the street-level activists in these cases, the distance between the activists and the "legal fights in a foreign world being waged by distant surrogates" actually insulated the activists from the problematic versions of state law created by these distant legal "elites" (p. 183). Thus, while many studies warn of the problems created by this separation between legal elites and activists in movements, he recognizes one possible benefit that this distance may afford.

Finally, although Wilson's close analysis of these three cases reveals some really interesting dimensions related to movement-counter-movement and legal consciousness research, it also shields from view some important and useful insights, particularly interesting movement-counter-movement dynamics. Although Wilson does briefly mention that the anti-abortion movement has had some considerable success in the state legislative arena since these cases were fought, he misses some specific connections between the goals of the anti-abortion activists in the street and the form of some recent state laws. For example, some recent state laws require women who present themselves for an abortion to be told that personhood begins at conception and that there might be serious negative psychological effects on the women due to abortion, and/or to receive information on the ability of the fetus to feel pain. [1] In Texas, the state has gone so far as to require women who present themselves for an abortion be given a sonogram, often a vaginal sonogram,

even when not medically necessary and even against the woman's will. The doctor is required to turn the screen toward her face and describe various body parts of the fetus although the woman may close her eyes and cover her ears.[2] In effect, these state laws have taken the messages and images conveyed by the protestors outside the clinics and put them into the mouths of the doctors and/or other health professionals inside the clinics. Wilson symbolically demarcates the end of the street politics of abortion with an image of a picketer who claimed that after the bubble bill was passed she felt unsure how to proceed and would sometimes not move or speak when a woman walked by in case she was accidentally violating the law. He says, "The resulting street-level demobilization is captured in the image of [the anti-abortion activist] standing stock-still and silent" (p. 106). The insight he misses by cordoning off the street aspect of the anti-abortion movement from the wider movement itself, however, is another symbolic picture: this one of the health-care practitioner speaking the messages and reproducing the images of the anti-abortion movement at the coercive behest of the state. The street activist is now, effectively, inside the clinic and wearing the doctor's coat. Nonetheless, given the scope and aims of the book Wilson set out to write, he has done an admirable job of furthering the existing socio-legal-historical research.

Notes

[1]. Guttmacher Institute, *State Policies in Brief: Counseling and Waiting Periods for Abortion* (2015), <https://www.guttmacher.org/sections/abortion.php#>.

[2]. For further analysis and critique of this law, see Vicki Toscano and Elizabeth Reiter, "Upholding a 40-Year-Old Promise: Why the Texas Sonogram Act Is Unlawful According to *Planned Parenthood v. Casey*," *Pace Law Review* 34, no. 1 (2014): 128-184.

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