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A part of me has always wanted to write something that started the academic equivalent of a rap battle. The idea that two scholars could provide a rich and meaningful discourse about an important topic by arguing with each other *via* academic writing sounds fascinating. The idea becomes even more attractive when the scholarship that is created helps move an entire field forward. This was certainly the case when David Anderson challenged eminent historian Leonard Levy's conclusions about the meaning and intent of the press clause in 1983.[1] Anderson dug deeply into the history of the press clause, finding the Framers intended for it to have a meaning independent of the speech clause.[2] Levy, not to be outdone, responded within the year by delving into historical sources to reinforce his far narrower understandings of the press clause and to refute Anderson's findings.[3] Levy followed that effort with a revised version of his influential original work, *Legacy of Suppression: Freedom of Speech and Press in Early American History*, in 1985 with *Emergence of a Free Press*.[4] Standing on the sidelines of this disagreement were other prominent legal historians and scholars. Anderson thanked Dwight Teeter and Lawrence Powe, his colleagues at the University of Texas, for their feedback on drafts of the article.[5] Levy acknowledged Anderson and Teeter in his book in 1985.[6] Legal historian David Rabban, a colleague of Anderson and Teeter, reviewed Levy's book that same year.[7] It is not an understatement to suggest the Levy-Anderson disagreement benefitted the

[1]David A. Anderson, *The Origins of the Press Clause,* 30 UCLA L. Rev. 455 (1983). *See* also Leonard Levy, A Legacy of Suppression: Freedom of Speech and Press in Early American History (1960). Levy wrote a follow-up to *Legacy of Suppression*, which was published in 1985. In the acknowledgements, he mentioned Anderson, as well as Dwight Teeter, who Anderson credited in his article.

[2]Anderson, *supra* note 1, at 533.

[3]Leonard Levy, *On the Origins of the Press Clause*, 32 UCLA L. Rev. 177, 180-192 (1984).

[4]Leonard Levy, Emergence of a Free Press (1985).

[5]Anderson, *supra* note 1, at 455.

[6]Levy, *supra* note 3, at xxi-xxii.

[7]David Rabban, *The Ahistorical Historian: Leonard Levy on Freedom of Expression in Early American History*, 37 Stan. L. Rev. 796 (1985).

entire field. Certainly, Rabban and Powe, who went on to write influential books about similar concerns, were influenced by this disagreement.[8] As was I.

I first encountered Anderson's article as I started preliminary reading for what would become my book, *The Press Claus and Digital Technology's Fourth Wave*.[9]

Not realizing what I was getting into when I started reading the article, I essentially joined Anderson's discussion with Levy in the same way a person steps into the middle of an ongoing conversation. I did not immediately realize Anderson was doing something more than writing a thorough, deep examination of the history of the press clause. It turned out he was writing a response.

For a variety of reasons, Anderson's article became far more than one of the numberless works I printed and marked up as part of the book project. I discovered he and Levy's disagreement, particularly Anderson's work, as a very junior scholar. I was in the season that most junior scholars experience where the reins of the doctoral program and dissertation committee have been removed and, while freeing, the wide-open scholarly landscape seemed daunting. I encountered Anderson's work at a time when I needed deeper knowledge in my field, guidance regarding how to structure my work, and help with tone of my writing. It provided all three.

Anderson's article carefully, constructively, and with great nuance, refutes Levy's influential conclusions from *Legacy of Suppression*. Levy, who Anderson graciously credited as "our most prominent First Amendment historian," concluded in his 1960 book that the press clause was solely created to protect publishers from governmental prior restraints.[10] His conclusions did not quietly collect dust on library shelves. Levy's ideas had a substantial impact on the Supreme Court of the United States as justices were formulating crucial speech and press decisions. Justice William Brennan cited it in *New York Times Co. v. Sullivan* in 1964.[11] Justices cited him in the family of defamation cases that followed.[12] Perhaps the most interesting, and impactful, use of Levy's ideas, however,

[8]In particular, LAWRENCE POWE, THE FOURTH ESTATE AND THE CONSTITUTION (1991) and DAVID RABBAN, FREE SPEECH IN THE FORGOTTEN YEARS (1997), overlap with Levy's and Anderson's discussion and have become important works in their own rights.

[9]JARED SCHROEDER, THE PRESS CLAUSE AND DIGITAL TECHNOLOGY'S FOURTH Wave (2018).

[10]LEVY, *supra* note 1, at 253-56.

[11]376 U.S. 254, 273 (1964).

[12]*See* Gertz v. Robert Welch Inc., 418 U.S. 323, 382 (1973) (White, J., dissenting); Curtis Publ'g Co. v. Butts, 388 U.S. 130, 149-50 (1967); Time Inc. v. Hill, 385 U.S. 374, 410 (1967).

was in Chief Justice Warren Burger's concurring opinion in *First National Bank v. Bellotti*.[13] Chief Justice Burger wrote the opinion to address concerns put forth by Massachusetts that striking down the law would endanger media organizations' rights under the press clause.[14] With the help of Levy's more limited conceptualization of the scope of the press clause, he dispelled these concerns, contending the Framers never intended for media companies to have more rights than other speakers.[15]

Thus, Anderson was not merely taking on a run-of-the-mill interpretation of the press clause, he was taking on a Pulitzer Prize-winning historian whose ideas about the press clause were mixed into the cement and poured into the Supreme Court's twentieth-century precedential foundations regarding the clause's meaning. As I realized the context in which Anderson's work was situated, my respect for his efforts only grew. "The Origins of the Press Clause" became a model for me – on multiple levels.

First, Anderson's work is breathtakingly thorough. His rigorous examination of the history of the press clause, which was constructed as a sort of scaffolding for his conclusions, provided me with depth and knowledge in my research area during a time when I needed it most. The footnotes alone in Anderson's article are worth reading. I mined those footnotes. I looked up the articles he cited. I read the cases he read. If you look carefully, you will see that the cases and articles he examined, along with his and Levy's work, play starring roles in my book.[16] Even in re-reading Anderson's article for this essay, I became side-tracked on footnote 126 and eventually realized, a few pages later, I had completely abandoned the article and was only reading footnotes.[17] In my defense, footnote 126 details each step the Bill of Rights went through in the House, starting with James Madison's draft. The footnotes detail letters between Madison and Thomas Jefferson, which left me wanting to read the full exchange between them. Anderson's work, particularly because of its thoroughness, became a starting point for me regarding an area of scholarship that was crucial to my own emerging research area.

Beyond content, the structure, approach, and form of the article make it the type of work I would recommend to any early legal scholar. When I first read the article, I remember thinking to myself, if I can make the body of my work as compelling and as useful as the

[13] 435 U.S. 765, 799 (1977) (Burger, C.J., concurring).
[14] *Id.* at 796 (Burger, C.J., concurring).
[15] *Id.* at 799 (Burger, C.J., concurring).
[16] SCHROEDER, *supra* note 9.
[17] Anderson, *supra* note 1, at 476.

footnotes of Anderson's article, I'll be doing well. Anderson's work also provided an incredible template for how to structure a project. As a junior scholar, I was searching for examples of structures that I could replicate for the type of work I wanted to do. I was developing my own identity as a scholar, but still trying to grasp what the boundaries and expectations were for quality, well-organized work in the field. While my dissertation chair, Robert Kerr, had provided a tremendous example in his own work and in the way he guided mine, I wanted to see how other scholars approached these projects.[18]

Anderson's article provided an approach that I could attempt to mirror. His introduction was tightly and clearly written. Early on, he included key sentences, such as, "[N]o Supreme Court decision has rested squarely on the press clause, independent of the speech clause."[19] He cited heavily, ultimately providing forty-five footnotes in the introduction. Anderson also provided a quick review of important understandings of the press clause, citing Justice Potter Stewart and legal scholars Melville Nimmer, Margaret Blanchard, and William Van Alstyen. He did all of this as he built to a point, which he came to in the final paragraph of the introduction – Levy was wrong. Of course, Anderson's collegial treatment of Levy's work was far more nuanced. He explained, "Text and meaning ultimately are inseparable; to understand what the Framers said, we inevitably seek to discover what they meant."[20] Similarly, the body of the article is a study in nuance. It illustrated and encouraged me to go beyond the types of literature reviews I wrote as a graduate student. Anderson's article is excellent at identifying and briefly discussing a series of scholarly works, historical documents, cases, or laws and then bringing the ideas they contribute together to identify themes that reconnect the reader back to the article's broader focus. After reading the article, I started practicing this approach, trying to get it just right.

Anderson applies the body of the article to Levy's findings in his conclusion, choosing to respectfully disagree, rather than to attack ideas he clearly found to be wrongly thought. Anderson wrote, "Levy's thesis is not unassailable. It requires us to accept several remarkable propositions."[21] He explained: "I do not challenge Levy's conclusion that colonial America was a repressive society in which there was

[18] *See, e.g.,* Robert Kerr, *Considering the Meaning of* Wisconsin Right to Life *for the Corporate Free-Speech Movement*, 14 COMM. L. & POL'Y 105 (2009); Robert Kerr, *Naturalizing the Artificial Citizen*: *Repeating* Lochner's *Error in* Citizen's United v. Federal Election Commission, 15 COMM. L. & POL'Y 311 (2010).

[19] Anderson, *supra* note 1, at 457.

[20] *Id.* at 462.

[21] *Id.* at 534.

little meaningful freedom of speech or press. But I think the relevant experience, so far as the press clause is concerned, was the revolution, not the colonial period."[22]

Such nuanced, intentional pivots, which were supported using concepts discussed in the body of the article, provided another example for me regarding how conclusions should be constructed and written.

After reading Anderson's article, I walked to the library and checked out *Legacy of Suppression*. I also printed Levy's response to Anderson's article, "On the Origins of the Free Press Clause."[23] Reading the full discussion between the scholars, as well as works that were influenced by the discussion, such as Powe's and Rabban's, led to my misguided interest in writing something that begins a back and forth with another scholar. The exchange provided a master class in scholarship about a specific subject and in how to structure and construct an excellent article and we are all the better off because of it.

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[22]*Id.* at 535.
[23]Levy, *supra* note 3.