

First Women: The Contribution of American Women to the Law

Crystal Eastman: Organizer for Women's Rights, Peace, and Civil Liberties in the 1910s

Sylvia A. Law

Follow this and additional works at: <https://scholar.valpo.edu/vulr>



Part of the [Law Commons](#)

Recommended Citation

Sylvia A. Law, *Crystal Eastman: Organizer for Women's Rights, Peace, and Civil Liberties in the 1910s*, 28 Val. U. L. Rev. 1305 (1994).

Available at: <https://scholar.valpo.edu/vulr/vol28/iss4/6>

This Article is brought to you for free and open access by the Valparaiso University Law School at ValpoScholar. It has been accepted for inclusion in Valparaiso University Law Review by an authorized administrator of ValpoScholar. For more information, please contact a ValpoScholar staff member at scholar@valpo.edu.



CRYSTAL EASTMAN: ORGANIZER FOR WOMEN'S RIGHTS, PEACE, AND CIVIL LIBERTIES IN THE 1910s

SYLVIA A. LAW*

Some historic periods are more exciting than others and have more impact on future generations. My students often lament that they missed the Sixties. I did the Sixties. But many people of my generation, concerned about social welfare and constitutional law, appreciate that it would have been exhilarating to have been part of the New Deal. Literary folk appear endlessly fascinated with the London of the Blumsbury era and the Paris of Albert Camus, Simone De Beauvoir, John Paul Sartre, Ernest Hemingway, and F. Scott Fitzgerald.

The 1910s were a singularly exciting decade, though much less vivid in contemporary memory. Historian William O'Neill characterizes 1912 as "a banner year for radicals, perhaps the best ever."¹ Historian Henry F. May calls the five year period ending in 1917 the "first years of our own time."² Certainly the decade was a foundational period for the movements for feminism, civil liberties, consumer and worker protection, and world peace.³ It was also a decade, like the more familiar Sixties, integrating movements for political, artistic, and personal liberation.⁴

Crystal Eastman was a principal actor in all of the social movements of the

* Professor of Law, New York University. B.A., 1964, Antioch College; J.D., 1968, New York University. The copyright to Crystal Eastman's letters located at the Schlesinger Library at Radcliffe College are owned by Yvette Eastman, widow of Crystal's brother Max. I am grateful to Yvette Eastman for permission to quote from these materials. NYU's Filomon D. Greenberg Legal Research Program has supported my research on Eastman, and I appreciate their support. Tova Wang, a NYU law student, has contributed energy, insight, and intelligence to my work on Eastman. My assistant, Katharina Munz, is an invaluable source of support and cheer.

1. WILLIAM O'NEILL, *THE LAST ROMANTIC: A LIFE OF MAX EASTMAN* 27 (1978).

2. HENRY F. MAY, *THE END OF AMERICAN INNOCENCE: A STUDY OF THE FIRST YEARS OF OUR OWN TIME, 1912-1917* (1959).

3. Every state enacted workers compensation and other lasting social welfare legislation during this decade. The American Civil Liberties Union was founded in 1917. International organizations for peace in this decade laid the ground for international cooperation, first through the League of Nations and eventually through the United Nations. Finally, the passage of the 19th Amendment in 1920 ended a century long struggle for women's suffrage.

4. In describing the Greenwich Village of this decade, Arthur Bullard said: "New York had an ethical, where Paris had an aesthetic, Bohemia." MAX EASTMAN, *ENJOYMENT OF LIVING* 266 (1948) [hereinafter MAX EASTMAN].

1910s.⁵ Poet Genevieve Taggard observed that Eastman and her friends constituted "the most significant group that ever managed to dominate, for a time, an entire generation." They epitomized "the unity of life, the dance of it."⁶

This Article is part of a larger project of critical reconstruction of the life of this remarkable woman. It focuses on Eastman's work for women's rights, peace, and civil liberties between 1910 and 1920. In previous articles I discuss the first three decades of her life, including her contribution to the movement for workers compensation⁷ and feminism.⁸ The Schlesinger Library contains a wonderful collection of her correspondence with her mother, prior to 1910.⁹ Unfortunately I have been unable to locate Eastman's personal correspondence and journals for this period.¹⁰ Thus, this Article is based on public records, Eastman's published work, the records of the organizations with which she worked, and general histories and biographies. Life is complex.

I. EASTMAN'S EARLY YEARS¹¹

Eastman was born in 1881 to two ministers, her mother ordained as the first woman Congregational minister in 1890. The couple raised their three children in the feminist, humanistic, intellectual, fun-loving, and progressive environment of the Park Church in Elmira, New York. Eastman and her brothers each had an intense, engaged, loving relation with their talented mother. The three children were also close with one another.

Eastman earned a bachelor's degree from Vassar in 1903, a master's degree in sociology from Columbia in 1904, and a law degree from New York

5. Blanch Wiesen Cook is the principal collector of Eastman's published work. See BLANCH WIENEN COOK, *CRYSTAL EASTMAN: ON WOMEN AND REVOLUTION* (1978). I rely on Cook's work and am grateful to her for assembling it.

6. MAY DAYS: AN ANTHOLOGY OF VERSE FROM MASSES-LIBERATOR 7 (Genevieve Taggard ed., 1925), quoted in MARI JO BUHLE, *WOMEN AND AMERICAN SOCIALISM, 1870-1920*, at 258-59 (1981).

7. Sylvia A. Law, *Crystal Eastman: NYU Law Graduate*, 66 N.Y.U. L. REV. 1963, 1978-79 (1991) [hereinafter Law, *NYU*].

8. Sylvia A. Law, *Crystal Eastman*, 12 PACE L. REV. 529 (1992).

9. Schlesinger Library, Radcliffe College, Crystal Eastman Collection [hereinafter Schlesinger Collection]. Yvette Eastman gave this collection to the Schlesinger Library for release in 1992.

10. Cook asserts that Crystal's personal life is inaccessible because her personal papers "are in the possession of Yvette Eastman, Max Eastman's widow." COOK, *supra* note 5, at v. Yvette Eastman has always been gracious and helpful to me. She says that she has no knowledge of Crystal's personal correspondence, including her correspondence with Max. I do not know where Crystal's personal journals and correspondence are.

11. This section is presented in greater detail in MAX EASTMAN, *supra* note 4, and in Law, *NYU*, *supra* note 7, at 1907-73.

University in 1907. After graduation from law school, she led a pathbreaking investigation into the causes of death and disability in industrial work in Pittsburgh. Her acclaimed and influential book documented problems and proposed practical solutions for prevention and compensation for worker death and injury. In 1909, the Governor of New York appointed her as the only woman on its new Employers' Liability Commission. The Commission elected her executive secretary, its only paid position, and turned its work over to her. She wrote and defended the nation's first workers compensation law. By the end of the decade, all but a handful of states had adopted workers compensation laws. Workers compensation was part of a larger Progressive agenda seeking protective child labor laws and minimum wages and hours. While thousands of talented people joined in this effort, Eastman's contribution cannot be understated.

II. 1910: THE END OF CHILDHOOD

As the 1910 decade began, Crystal lived with her brother Max in Greenwich Village. John Dewey hired Max to teach the philosophy of science at Columbia, even though Max had no formal training in science or the philosophy of science at the time he was hired.¹² He subsequently earned a Ph.D. in philosophy, though his real work passion at this time was to write poetry and to understand it. Crystal continued her efforts on workers compensation and was more generally engaged by the progressive political and artistic movements of the period.¹³ By all reports she was stunningly attractive and charismatic. John Spargo called her "a 'superb creature' who could have modeled for the 'perfect American woman.' Wherever you met her, 'she was the most intelligent person in the room.'"¹⁴ A long-time colleague, Frieda Kirchwey, said, "When she spoke to people—whether it was to a small committee or a swarming crowd—hearts beat faster and nerves tightened as she talked. She was simple, direct, and dramatic. Force poured from her strong body and her rich voice, and people followed where she led."¹⁵ Max reported that in 1910, "the papers were full of Crystal's beauty and intelligence, and our apartment was full of her friends."¹⁶

12. MAX EASTMAN, *supra* note 4, at 268-70; O'NEILL, *supra* note 1, at 16-17.

13. See *Portia Appointed by the Governor*, N.Y. HERALD, Apr. 24, 1910 (Magazine Section), reprinted in COOK, *supra* note 5, at 358.

When the Triangle Shirt Waist factory burned on March 25, 1911, killing many innocent women workers, Crystal led the effort to persuade the state to strengthen safety regulation and enforcement. Letter from Crystal Eastman to Max Eastman (April 3, 1911), Schlesinger Collection, *supra* note 9.

14. O'NEILL, *supra* note 1, at 15 (quoting John Spargo).

15. Frieda Kirchwey, *Crystal Eastman*, THE NATION, Aug. 8, 1928 (Obituary), reprinted in COOK, *supra* note 5, at 371, 372.

16. MAX EASTMAN, *supra* note 4, at 319.

On October 22, 1910, the Eastmans' mother died. While Max and Crystal had many close friends and ardent admirers, as they approached thirty, it seemed that neither had ever been in a long-term intimate relationship with anyone outside the family.¹⁷ Before the year was out, both were married.

Just before her mother's death, Crystal met Wallace Benedict (Bennie), an insurance agent from Milwaukee, Wisconsin. Max described Bennie as

quick and open-minded, genial, witty, and ready to embrace anything from socialism to Shinto . . . [His] concentration on pleasure was . . . brash, and pleasure for him had so little to do with attaining ideals. . . . [T]heir close friendship was a pain to my mother and a topic of curious speculation to us all. His sturdy boyish masculinity, contrasting with something milk-blooded in the cerebral and social-worker types around her, aroused Crystal for the first time physically. And he was one of those rare males . . . who like to have the woman they love amount to something. His admiring passion gave her poise and confidence.¹⁸

Crystal apparently shared her friends' and family's doubts about Bennie and sought psychiatric help to resist her attraction to him.¹⁹ With great trepidation about marriage and Milwaukee, they married in May at New York City Hall and moved to Wisconsin.²⁰ Within weeks Max married Crystal's friend and former roommate, Ida Rauh, and they went to Europe.²¹

William O'Neill, Max's biographer, speculated that:

Crystal and Max can live innocently together while mother is alive because she forms the third side of their triangle even when absent. But with mother's death the triangle collapses, raising, on some buried but deeply-felt level, the spectre of incest. Hence the rush into

17. On Crystal, see Law, *NYU*, *supra* note 7, at 1978-80. On Max, see MAX EASTMAN, *supra* note 4, at 319-64; O'NEILL, *supra* note 1, at 22-23.

18. MAX EASTMAN, *supra* note 4, at 341.

19. *Id.* at 356; O'NEILL, *supra* note 1, at 22.

20. She wrote Max, saying,

I've been feeling very scared about getting married. . . . Getting back to New York and living with you was the hope I fed my drooping spirits on—not Milwaukee and the married state. Your suggestion . . . that if I can't stand it you'll know it's not for you gives me a humorous courage. I can see that perhaps—after we've both experimented around for a few years—we may end up together again. That's a delightful alternative to the story book ending

Letter from Crystal Eastman to Max Eastman (Feb. 1911), Schlesinger Collection, *supra* note 9.

21. MAX EASTMAN, *supra* note 4, at 358-75; O'NEILL, *supra* note 1, at 23-24.

marriages, which, however awkward, save Max and Crystal from a worse fate.²²

Max commented that their mother's death did not draw Crystal and him closer together. "It seemed rather to increase my strong resistance to intimacy with her." Although they lived together, they did not talk often about their grief at losing their mother or about their prospective mates.²³

III. 1911-1912: THE WISCONSIN SUFFRAGE CAMPAIGN

When Eastman moved to Milwaukee in 1911, it was clear that she would work. Bennie had quickly found work as an insurance agent, which enabled him to contribute to the couple's financial support. Eastman's first choice was to practice law. While investigating workplace accidents in Pittsburgh, she studied liability law and wrote articles urging law reform.²⁴ She loved it.²⁵ She lobbied hard for a job at a plaintiff's negligence firm in Milwaukee, but was turned down.²⁶ The reasons for the rejection are not clear. But given the high quality of her legal work and the luster of her national reputation, it seems probable that sexism provides part of the explanation. She also sought a job in state government, addressing problems of workplace safety. While the Governor and the industrial commissioner admired her national reputation and welcomed her warmly, they did not offer her work.²⁷

As Eastman sought work as a labor lawyer, the women involved in the Wisconsin suffrage movement sought to recruit her for their cause. Eastman

22. O'NEILL, *supra* note 1, at 24.

23. MAX EASTMAN, *supra* note 4, at 356.

24. See Crystal Eastman, *Employers Liability in Pennsylvania*, 70 ALBANY L.J. 68 (1908). This is a doctrinally sophisticated and eloquently written analysis of the law of employer liability to workers in Pennsylvania. It demonstrates the need for fundamental statutory modification of current law and also provides support and authority for judges and lawyers working within the strictures of the existing unjust law. She confronts a dilemma facing all who seek legal reform at both individual and systemic levels.

25. "This legal work interests me so much that I am dead sure I want to stop this investigating . . . and get at my profession . . . There is a joy in doing things, fighting fights, etc., that there isn't in merely finding out things so that others may do." Letter from Crystal Eastman to Annis Eastman (Oct. 10, 1907), Schlesinger Collection, *supra* note 9.

26. Letter from Crystal Eastman to Max Eastman (Oct. 17, 1911), Schlesinger Collection, *supra* note 9.

27. She "dropped in" to see the Governor. "He knew all about me. . . . Oh, I like these simple approachable state officials out here!" Letter from Crystal Eastman to Max Eastman (June 29, 1911), Schlesinger Collection, *supra* note 9. She also had lunch with the new industrial commissioner. "I want them to remember that I'm here, in case any little cases come up where they want a 'labor expert's' legal services." Letter from Crystal Eastman to Max Eastman (June 29, 1911), Schlesinger Collection, *supra* note 9.

comments,

[B]oth sides beg my advice and hang on my words! . . . I could be Secretary of the League—and run the whole campaign to the end on a good salary. Or I could be president and boss the job without a salary. But I think I prefer being ‘advisor’ in general, especially if Schmitz takes me in.²⁸

1911 was a critical moment in the century-long struggle for women’s suffrage. Between 1896 and 1910 no state had extended the vote to women. These years came to be known among suffragists as “the doldrums.”²⁹ The national suffrage organizations operated on a shoestring and directed their efforts solely toward educating elite opinion. In 1907, while Eastman was a law student, she and her friends had sought to revitalize the suffrage movement through grass-roots organizing, public demonstrations, and more confrontational tactics.³⁰ By 1909, both Crystal and Max had become nationally popular speakers for suffrage and earned small fees for their work.³¹ In 1911 California suffragists used these grass-roots tactics to win suffrage in that state. Buoyed by the California victory, in 1912 referendum campaigns for women’s suffrage were launched in six states—Arizona, Kansas, Oregon, Michigan, Ohio, and Wisconsin.³²

In October 1911, Eastman accepted a position as the Campaign Manager of the Wisconsin Political Equality League and assumed leadership of the

28. Letter from Crystal Eastman to Max Eastman (Oct. 17, 1911), Schlesinger Collection, *supra* note 9.

29. ELEANOR FLEXNER, *CENTURY OF STRUGGLE: THE WOMAN’S RIGHTS MOVEMENT IN THE UNITED STATES* 248 (1973).

30. This effort was led by Harriot Stanton Blatch, daughter of suffrage pioneer Elizabeth Cady Stanton. From 1882 to 1902, Blatch lived in England with her husband and daughter. She observed and participated in the rejuvenation of the English suffrage movement, under the leadership of Mrs. Emmeline Pankhurst. The English broke out of their tea and cookies, elite educational mode through direct action, pressing public officials for commitment to suffrage and provoking violent reprisals to embarrass party leaders.

When Blatch returned to the U.S., she was dismayed to find so little active effort for suffrage. She called a meeting in January 1907—on Fourth Street just off the Bowery. Forty women, including Eastman, gathered to figure out how to make suffrage a political, rather than simply an educational campaign. They founded the Women’s Political Union and within months had organized large demonstrations on Fifth Avenue, rallies and dramatic hearings in Albany in which trade union women testified on the need for women’s equality. The new organizing strategy spread quickly among younger women in other states. FLEXNER, *supra* note 29, at 249-54.

31. Letter from Crystal Eastman to Max Eastman (n.d. 1909), Schlesinger Collection, *supra* note 9. By 1909 Max could earn \$50 a lecture for suffrage talks. At the request of a group of wealthy progressive men, Max became the (unpaid) Executive Secretary of the Men’s League for Woman Suffrage. MAX EASTMAN, *supra* note 4, at 306-08, 340; O’NEILL, *supra* note 1, at 19.

32. FLEXNER, *supra* note 29, at 259.

Wisconsin campaign for suffrage.³³ The local press was filled with flattering stories about Mrs. Crystal E. Benedict.³⁴ The job paid \$2000 a year.³⁵ Her speeches received almost daily press attention.³⁶

The basic strategy of the Wisconsin campaign was to create an organization and gather pledge cards in every precinct, while at the same time maintaining a public hoopla of speeches and public meetings.³⁷ By April, they had local organizations in thirty of the seventy-two counties, and by June they had sixty-four local groups.³⁸ In addition, the campaign targeted special efforts at Germans, Catholics, African-Americans, and union members.³⁹ Crystal persuaded Bennie to serve as the head of the Wisconsin Men's League for Woman Suffrage.⁴⁰

All of this was accomplished against great odds. The national suffrage

33. *Mrs. Crystal E. Benedict: Suffrage Worker Who Has Been Appointed Campaign Manager of the Political Equality League*, MILWAUKEE FREE PRESS, Nov. 2, 1911, available in the Ada James papers, Suffrage Scrapbooks, at University of Wisconsin, Madison [hereinafter Ada James papers].

34. See, e.g., *Ready for Struggle*, MILWAUKEE DAILY NEWS, Nov. 18, 1911; *Will Open Campaign*, MILWAUKEE DAILY NEWS, Nov. 14, 1911; *Mrs. Benedict Talks Suffrage*, MILWAUKEE J., Nov. 15, 1911, all in the Ada James papers, *supra* note 33.

35. Letter from Crystal Eastman to Max Eastman (Nov. 6, 1911), Schlesinger Collection, *supra* note 9.

36. See generally Ada James papers, *supra* note 33. For example, the Madison State Journal describes Eastman as "a forceful and brilliant speaker." *Women Directing Campaign for Suffrage, Has Fine Training*, MADISON ST. J. (Wis.), Feb. 5, 1912, Ada James papers, *supra* note 33.

37. Letter from Crystal Eastman to Mrs. H.M. Youmans (Mar. 18, 1912), Ada James papers, *supra* note 33.

38. Letter from Crystal Eastman to Jane Addams (Apr. 22, 1912), Ada James papers, *supra* note 33. Letter from Crystal Eastman to Alice Stone Blackwell (June 13, 1912), Ada James papers, *supra* note 33.

39. Letter from Crystal Eastman to Judge Benjamin Lindsay of Colorado (Mar. 27, 1912) (describing conflicts among the Catholic hierarchy on suffrage and urging Lindsay to write a letter describing the effects of suffrage in Colorado), Ada James papers, *supra* note 33. Letter from Crystal Eastman to Jane Addams (Apr. 22, 1912) (describing plans to create a German-American suffrage organization), *id.* Letter from Crystal Eastman to Dr. M. Carey Thomas, President, Bryn Mawr College (May 13, 1912) ("[W]e are speaking at every trade union meeting in Milwaukee and getting the members pledged to vote for woman suffrage As there are over 200 unions in the city this is perhaps the simplest and most direct way of reaching the most intelligent class of workmen."), *id.* Letter from Crystal Eastman to Fola LaFollette (June 7, 1912) (describing efforts to recruit local German leaders and asking her help in rebutting Catholic anti-suffrage propaganda), *id.* Letter from Crystal Eastman to Mary W. Ovington (Aug. 1, 1912) ("We have just had a splendid meeting among the colored people with Miss Alice Waytes as the speaker. . . . We took twenty-three names of those who are interested and a good big collection"), *id.*

40. Letter from Crystal Eastman to Mrs. Julia Lovejoy (Apr. 15, 1912), Ada James papers, *supra* note 33.

organization contributed little financial support.⁴¹ The national organization had few resources and was spreading them among six states. Hence the Wisconsin campaign was forced to raise most of its own money.⁴² Despite the challenges she confronted in Wisconsin, Eastman consistently urged support for the effort in Ohio. She saw Ohio as more important because "it is bigger and further east . . ."⁴³ "[E]very single suffragist, even including the campaign states, ought to be thinking about winning that campaign in Ohio. If they win, it will be a great help to us, and if they lose it will be a blow."⁴⁴

Money was not the only problem. Through the year Eastman appealed to her friends in New York, Washington, and Chicago—national suffrage leaders and politicians—to come to Wisconsin to speak. Most declined. Even more disturbing, some agreed to come and then did not appear.⁴⁵

The beer brewers of Wisconsin conducted a well-organized and well-financed campaign against suffrage. In August, brewer-controlled newspapers, seeking to appeal to temperance voters, published an anonymous story saying that in states where women got the vote, saloons flourished. Eastman hired detectives and proved the story false, to the satisfaction of the state Attorney General who threatened to prosecute the papers. Brewer-controlled papers continued to publish the story. Eastman had workers buy up all the papers, clip the story, and send it in a plain envelope to saloon keepers in the hope that the

41. The Wisconsin campaign had a budget of over \$1000 a month, including \$85 for postage. Letter from Crystal Eastman to Dr. M. Cary Thomas, President, Bryn Mawr College (May 25, 1912), Ada James papers, *supra* note 33. Until August 1912, the national organization contributed \$200 a month to the Wisconsin campaign; then it was reduced to \$100. Letter from Crystal Eastman to Jessie Ashley (Aug. 12, 1912), *id.* By August, Eastman and the organizers were working without pay and only the secretaries were paid. Letter from Ada James to Anna Shaw (Aug. 13, 1912), *id.*

42. For example, on May 21, Eastman mailed 57 individually typed letters urging people in New York to pay pledges, mostly of \$5. See letters dated May 21, 1912, Ada James papers, *supra* note 33.

43. Letter from Crystal Eastman to Jessie Ashley (Mar. 21, 1912) (urging her to help in Ohio), Ada James papers, *supra* note 33. See also Letter from Crystal Eastman to Marie Jennie Howe (May 20, 1912) (urging her to come to Wisconsin to speak, but noting "of course if you are planning to go to Ohio instead I couldn't plead for Wisconsin"), *id.*

44. Letter from Crystal Eastman to Mrs. H.M. Youmans (Mar. 18, 1912), Ada James papers, *supra* note 33. In July, the Wisconsin campaign sent money to Ohio, even though they were unable to pay their own expenses. Letter from Crystal Eastman to Mary Ware Dennett (July 31, 1912), *id.*

45. See, e.g., Personal Letter from Crystal Eastman to Mary Ware Dennett (July 18, 1912) (asking her to make discrete inquiries whether Anna Shaw, President of the National Suffrage Association, will really come to Wisconsin in September as promised, noting that her failure to appear as promised in May had "made a lot a of trouble with the local organizations"), Ada James papers, *supra* note 33. See also Letter from Crystal Eastman to Mrs. Frank Belmont (Sept. 4, 1912) (expressing disappointment that Mrs. Belmont can't come to Wisconsin as promised and begging for funds), *id.*

concededly false story would encourage support among drinkers.⁴⁶

At the last minute, anti-suffrage forces persuaded election officials to put the suffrage referenda on a separate pink ballot. Eastman protested that "we are counting on the thoughtful voter who has had an opportunity to think this matter over."⁴⁷ Eastman lost, and the suffrage proposal appeared on a separate pink ballot. The anti-suffrage forces were empowered to mobilize anti-pink support. On November 5, the Wisconsin suffrage referenda lost by a large margin.⁴⁸

Eastman's report on the Wisconsin campaign to the National Suffrage Association reveals her skills as a political person.⁴⁹ She began by thanking the "older [generation of] suffragists . . . under the inspiration of their devoted leader, the Rev. Olympia Brown."⁵⁰ Brown fought Eastman's goals and tactics in the Wisconsin campaign from beginning to end.⁵¹ Eastman then became more sincere. She praised Ada James as "a saint on earth."⁵² Ever optimistic, she cited absentee ballots to refute the claim that they lost two to one. But why did they lose? "[W]e over-estimated the friendliness of the large Scandinavian vote. . . . the Progressive Republican voters . . . [and] the Socialist vote."⁵³ More important, Eastman argued, they underestimated the power of the brewing industry that controlled a large proportion of Wisconsin jobs and, rightly or wrongly, "decided that giving women the vote will hurt their business."⁵⁴

After congratulating local workers for their good efforts,⁵⁵ raising the

46. Letter from Ada James to Anna Shaw (Aug. 13, 1912), Ada James papers, *supra* note 33.

47. Letter from Crystal Eastman to John M. Olin, Attorney General, Madison, Wis. (Aug. 29, 1912), Ada James papers, *supra* note 33.

48. The vote was 135,736 to 227,054. See Crystal Eastman Benedict, *Why We Lost in Wisconsin* (source unknown, n.d.), Ada James papers, *supra* note 33, reproduced in COOK, *supra* note 5, as "Report on the Wisconsin Suffrage Campaign," at 66. See also *Suffragists Lose, But Are Hopeful of Success Later*, MILWAUKEE DAILY NEWS, Nov. 6, 1912, Ada James papers, *supra* note 33.

49. Report on the Wisconsin Suffrage Campaign, Proceedings of the 44th Annual Convention of the National American Women's Suffrage Association, Philadelphia, Pa. (Nov. 21-26, 1912), reprinted in COOK, *supra* note 5, at 66.

50. *Id.* at 67.

51. See, e.g., Letter from Crystal Eastman to Dr. Anna Shaw (June 1, 1912), Ada James papers, *supra* note 33.

52. Report on the Wisconsin Suffrage Campaign, reprinted in COOK, *supra* note 5, at 68.

53. *Id.* at 68-69.

54. *Id.* at 70.

55. See, e.g., Letter from Crystal Eastman to Mrs. Frank Eggers (Nov. 7, 1912) ("I want to tell you before I go to New York that I think your result in Manitowoc was quite wonderful. It makes me sure we will win next time easily."), Ada James papers, *supra* note 33.

money to pay the campaign debts,⁵⁶ and promising success in the near future, Eastman left for New York to march in a torch-light parade celebrating the victories in Arizona, Kansas, and Oregon.⁵⁷

Through the year in Wisconsin, Eastman indicated to friends that she would return to New York when the campaign was over.⁵⁸ After six months in Milwaukee, Crystal reported to Max that she was "getting to know some fine people and some that like me. But we haven't any real companions"⁵⁹ The files of the Wisconsin campaign contain thousands of letters from Eastman to other suffrage supporters in Wisconsin and through the nation. The vast majority of Eastman's letters address her co-workers by formal title and seldom contain personal information or inquiries. By contrast, the letters of Ada James, President of the Wisconsin Women's Suffrage Association, typically address people by their first names, share information about her family and health, inquire about her correspondents' personal life, and sign off "cordially" or "with love." Eastman did address some of her old friends in a more personal way: Max, of course, Jessie Ashley, Inez Milholland, Elinor Byrns, and Fola LaFollette. In addition, she wrote warm and encouraging notes to the young women doing field organizing in Wisconsin, urging them to save their voices, read a novel, and protect their health.⁶⁰ But it seems that her heart was in New York.

IV. 1913-1920: THE CONGRESSIONAL UNION AND FEDERAL SUFFRAGE CAMPAIGN

With Wisconsin and Ohio defeats, Eastman and her friends sought to develop a new approach to winning women's suffrage. On January 2, 1913, Alice Paul, Lucy Burns, and Eastman launched their new movement from a

56. See, e.g., Letter from Crystal Eastman to Mrs. Chas. W. Norris, (Nov. 3, 1912) (containing a last-minute appeal for \$700 to run an ad rebutting an anti-suffrage ad), Ada James papers, *supra* note 33.

57. Letter from Crystal Eastman to Mrs. Chas. W. Norris (Nov. 7, 1912), Ada James papers, *supra* note 33.

58. On May 6, 1912, Eastman wrote to Fola LaFollette, "They are a funny, funny lot out here and I suppose Milwaukee is as amusing a principal city as there is on the face of the earth. All the same, I like it and am going to stick to it, at least until we get the vote." Letter from Crystal Eastman to Fola LaFollette (May 6, 1913), Ada James papers, *supra* note 33. Letter from Crystal Eastman to Max Eastman (June 4, 1912) (stating plans to come to New York after the election and prepare a collection of their mother's prayers for publication), Schlesinger Collection, *supra* note 9.

59. Letter from Crystal Eastman to Max Eastman (Nov. 26, 1911), Schlesinger Collection, *supra* note 9.

60. See, e.g., Letter from Crystal Eastman to Elizabeth Corbett (July 18, 1912) (urging her to take care of her voice and telling about her mother and sister), Ada James papers, *supra* note 33.

basement room in Washington, D.C.⁶¹ Alice Paul was a Quaker social worker who had gone to England in 1907 to study. She was jailed for suffrage activities, went on a hunger strike, and suffered the ordeal of forced feeding. She came home in 1910 and began speaking to American suffrage groups on the lessons of the British movement. In Great Britain, Paul made friends with Lucy Burns, another American who was working with the militants. In 1912, they had both returned to the United States and renewed their friendship. They enlisted Eastman to form a new organization to fight for suffrage.⁶²

The new organization differed from the traditional suffrage groups in that it sought a federal amendment, rather than a state-by-state approach. Further, it favored direct action, demonstrations, parades, large meetings and rallies, and public education, rather than appeals to elite decision-makers.⁶³

Eastman and Lucy Burns approached the board of the National Women's Suffrage Association (NWSA), the mainstream organization, and persuaded it to appoint the new group as the NWSA's Congressional Committee to concentrate on the effort to obtain a federal suffrage amendment.⁶⁴ By March 2, when President Wilson was inaugurated, the Congressional Committee had organized a demonstration of 5000 suffragists in Washington, D.C. The women fought their way through hostile anti-suffrage crowds.⁶⁵ The mistreatment of the women produced a outsurge of support for them. Through 1913, the Congressional Committee, reconstituted as the Congressional Union, organized dozens of demonstrations at which many women were arrested and jailed.⁶⁶

Eastman later described this period in a tribute to Alice Paul:

In less than three months, raising the money day by day, she organized a suffrage parade in the national capital of such size and beauty and distinction that the arrival of Woodrow Wilson . . . passed almost unnoticed. . . . One month later a procession of women representing each of the 435 congressional districts carried a petition to Congress. [Three months later] Congress was presented with a monster petition signed by hundreds of thousands of citizens, and woman suffrage was debated in Congress for the first time in twenty-

61. INEZ HAYNES IRWIN, *ANGELS AND AMAZONS: A HUNDRED YEARS OF AMERICAN WOMEN* 355 (1933).

62. FLEXNER, *supra* note 29, at 263.

63. *Id.* at 263-67.

64. Letter from Mary Ware Dennett to Alice Paul (Dec. 5, 1912), *available in* the National Women's Party papers, 1913-1974, Uniform Microfilms Int'l, Ann Arbor, Michigan, and the Library of Congress [hereinafter NWP papers].

65. FLEXNER, *supra* note 29, at 263.

66. *Id.* at 265.

six years.⁶⁷

Eastman organized the Wisconsin delegation to the Congressional procession, but did not attend.⁶⁸ Rather, she and Bennie took off for Europe and Africa. "He makes more money every year, and we want to escape dependence on it."⁶⁹ After some months as tourists, in June she attended the Seventh Congress of International Woman Suffrage Alliance at Budapest,⁷⁰ where she gave a speech suggesting how the suffrage movement might reach the wage-earning woman.⁷¹

In the fall of 1913, Crystal and Bennie returned to New York and found an apartment in the Village close to Max and Ida.⁷² In August 1912, Max had become the editor of *The Masses*.⁷³ The monthly magazine published poetry, literary essays, progressive political reports, art, and political cartoons. Its contributors included John Reed, Floyd Dell, Carl Sandburg, Sherwood Anderson, Vachel Lindsay, Amy Lowell, William Carlos Williams, Randolph Bourne, Bertrand Russell, Robert Minor, and Art Young. William O'Neill says that three things made *The Masses* special: "[I]t was for revolution, not reform; it was a rebellion against commercial journalism by commercial journalists; it was beautifully designed."⁷⁴ He observes that the magazine "was not so much a publishing venture as a movement, . . . a way of life."⁷⁵ *The Masses* was collectively owned and governed, and Crystal was a vital part of it. Irving Howe described *The Masses* as "'a combination of Circus, nursery, and boxing ring—for almost everything that was then alive and irreverent in American culture.'"⁷⁶ Floyd Dell said that *The Masses* stood for "'fun, truth, beauty, realism, freedom, peace, feminism, revolution.'"⁷⁷

67. Crystal Eastman, *Personalities and Powers: Alice Paul*, TIME & TIDE, July 20, 1923, reprinted in COOK, *supra* note 5, at 63.

68. Letter from Crystal Eastman to Lucinda, Congressional Union (Jan. 1913), NWP papers, *supra* note 64 (describing plans for Wisconsin delegation; stating that she will be in Washington the following week to discuss the program; explaining that she cannot delay her trip to attend the March 3 demonstration).

69. Letter from Crystal Eastman to Max Eastman (Jan. 15, 1913), Ada James papers, *supra* note 33.

70. Crystal Eastman, *Suffragists Ten Years After*, 35 THE NEW REPUBLIC 118 (1923).

71. 6 THE HISTORY OF WOMAN SUFFRAGE, 1900-1920, at 858 (Ida Husted Harper ed., 1922).

72. Max Eastman recalls that Crystal and Bennie returned to New York in 1915, MAX EASTMAN, *supra* note 4, at 526, but many documents indicate that they moved there in the fall of 1913.

73. MAX EASTMAN, *supra* note 4, at 394.

74. O'NEILL, *supra* note 1, at 32.

75. *Id.* at 34.

76. *Id.* at 40 (quoting Irving Howe).

77. *Id.* at 40 (quoting Floyd Dell).

When she returned to New York in 1913, Eastman threw herself into the work of the Congressional Union (CU).⁷⁸ In the next year, Eastman gave hundreds of speeches for suffrage, organized fund-raising events, lobbied members of Congress, and did a tour of demonstrations and speeches in Pennsylvania, Ohio, Indiana, Wisconsin, Minnesota, North Dakota, Montana, and Wyoming.⁷⁹ In September 1914, she declined the CU's plea to do another national tour. "I haven't been home more than two weeks at a time since Nov. 1 last year—except when I was sick for six weeks. That doesn't make much of a family."⁸⁰

In April 1914, at the end of her western tour, Eastman was hospitalized in Michigan for several days.⁸¹ In May of that year she was again bed-ridden.⁸² In June she was hospitalized in New York for two weeks.⁸³ In September she was back in bed.⁸⁴ I do not know why Eastman was ill. When she was not bed-ridden she worked incredibly hard. Eastman suffered, and eventually died, from nephritis, a kidney condition that was painful and dangerous in the days before antibiotics and dialysis.⁸⁵

From her marriage to Wallace Benedict in 1911 until their divorce in 1916, Eastman was listed on letter-heads and in formal documents by her married name. Early in her marriage, during the Wisconsin campaign, she asked the press to call her Crystal Eastman Benedict.⁸⁶ In 1914 she wrote to her long-time friend, Doris Stevens, "Don't call me 'Mrs. Benedict' unless you like to."⁸⁷ Despite their close working relation, Eastman always wrote to Alice Paul as "Miss Paul" and Paul always wrote to her as "Mrs. Benedict." Lucy Burns and Eastman addressed one another by their first names.⁸⁸ I do not know what to make of this. Plainly Eastman was deeply radical and feminist. At the same time, she sought alliances with anyone—radical, liberal, or conservative—who

78. NWP papers, *supra* note 64, *passim*.

79. Available in the Women's Peace Party papers, available in the Swarthmore College Peace Collection, Swarthmore, Pennsylvania [hereinafter WPP papers].

80. Letter from Crystal Eastman to Alice Paul (Sept. 1914), NWP papers, *supra* note 64.

81. Letters from Crystal Eastman to Lucy Burns, (Apr. 3 and Apr. 9, 1914), WPP papers, *supra* note 79.

82. Letter from Mary Beard to Alice Paul (May 15, 1914), NWP papers, *supra* note 64.

83. Letter from Crystal Eastman to Alice Paul (June 29, 1914), NWP papers, *supra* note 64.

84. Letter from Crystal Eastman to Alice Paul (Sept. 24, 1914), NWP papers, *supra* note 64 ("My wonderful summer vigor has taken a plunge. By doctor's orders I've got to take it easy again for quite a while.").

85. COOK, *supra* note 5, at 27.

86. Letter from Crystal Eastman to the City Editor, *Milwaukee Free Press* (May 20, 1912), Ada James papers, *supra* note 33 ("Will you kindly see that my name appears in your columns as Mrs. Crystal Eastman Benedict, and not as 'Mrs. W. J. Benedict'?").

87. Letter from Crystal Eastman to Doris Stevens (Aug. 1914), NWP papers, *supra* note 64.

88. NWP papers, *supra* note 64, *passim*.

could help achieve concrete reform for peace, women, or economic justice. Perhaps she decided that using the name "Mrs. Benedict" brought a measure of respectability at little cost. At the same time, she knew herself to be Crystal Eastman.

Eastman's feminism was not limited to the struggle for suffrage. In 1918, she published an article acknowledging that "[f]eminism means different things to different people," including the rights to vote, run for office, and compete in athletic events.⁸⁹ But for her, the central "fact of feminism" was economic independence from men, without sacrificing the "joys of love and motherhood." She recognized that other feminists might disagree "that the economics is the fundamental aspect of feminism." "But on this we are surely agreed, that Birth Control is an elementary essential in all aspects of feminism."⁹⁰

Feminists are not nuns. . . . We want to love and to be loved, and most of us want children, one or two at least. But we want our love to be joyous and free—not clouded with ignorance and fear. And we want our children to be deliberately, eagerly called into being, when we are at our best, not crowded upon us in times of poverty and weakness. We want this precious sex knowledge not just for ourselves, the conscious feminists; we want it for all the millions of unconscious feminists that swarm the earth,—we want it for all women.

Life is a big battle for the complete feminist even when she can regulate the size of her family.⁹¹

V. 1914-1919: THE WOMEN'S PEACE PARTY

The work of the suffrage movement was transformed when World War I broke out in Europe on August 7, 1914, and the attention of many women activists turned toward the issue of world peace. In November, Emmeline Pethick-Lawrence and Rosika Schwimmer, feminist peace activists from Great Britain, came to New York and sought Eastman's help. Schwimmer, a Jewish Hungarian feminist, had worked in London as the press secretary of the International Woman Suffrage Alliance. Carrie Chapman Catt helped her to come to the United States to speak with Secretary of State William Jennings Bryan and President Woodrow Wilson about mediating the war.⁹² The women contacted Eastman, who then organized a meeting at Carnegie Hall. They

89. Crystal Eastman, *Birth Control in the Feminist Program*, BIRTH CONTROL REV., Jan. 1918, reprinted in COOK, *supra* note 5, at 46.

90. COOK, *supra* note 5, at 47.

91. *Id.*

92. HARRIET HYMAN ALONSO, PEACE AS A WOMAN'S ISSUE 58-59 (1993).

appreciated that Eastman and her radical Village friends were not "the most politically astute way to influence the nation's President."⁹³ On the other hand, Eastman was willing and able to organize a rally and create an organization.

The Carnegie Hall meeting led to the creation of the Women's Peace Party of New York. Eastman became its Executive Secretary. Women "don't feel as men do about war. They are the mothers of the race. Men think of the economic results; women think of the grief and pain, and damage to the race."⁹⁴ The New York women persuaded Jane Addams to head the national Women's Peace Party.⁹⁵

By 1916; the New York Women's Peace Party, with Eastman at the helm, signed up 50,000 members, ran a national press service, distributed 600,000 pieces of literature, organized many congressional hearings, and held mass meetings in eleven cities. They produced a graphic anti-war exhibit that drew a crowd of five to ten thousand a day for six weeks.⁹⁶ The Women's Peace Party believed that women had a special role to play in promoting peace and that this was best done through a broad agenda of women's rights and suffrage. The international women's peace group with whom Eastman met in 1913 had agreed to meet in Berlin in 1915. War prevented that, but women from Britain, Germany, Belgium, and Holland met in Amsterdam in 1915 to establish the International Committee of Women for Permanent Peace.⁹⁷

In a 1915 article in *The Survey*, Eastman laid out her own agenda for peace.⁹⁸ First, she appealed to fiscal conservatives, asking for a congressional accounting of the defense budget. Second, she defended "national manufacture of armament." Having sought the support of the right and the middle, she then moved to a more Progressive agenda, calling for Philippine independence by 1916, substantial federal funding for "an oriental-occidental-understanding foundation," and abandonment of the Monroe Doctrine in Latin America. Eastman's vision was not isolationist. In calling for an end to U.S. imperialism in Latin America, she urged appointment of "a small commission to confer with the other American republics concerning the advisability of forming a permanent union for our mutual benefit." But her main concern was to keep the United

93. *Id.* at 58-59.

94. Crystal Eastman, "Now I Dare Do It": *An Interview with Dr. Aletta Jacobs, Who Called the Women's Peace Congress at the Hague*, *THE SURVEY*, Oct. 9, 1915, reprinted in COOK, *supra* note 5, at 237, 240.

95. ALONSO, *supra* note 92, at 63.

96. Letter from Crystal Eastman to Lillian Wald (May 27, 1916), NWP papers, *supra* note 64.

97. Eastman, "Now I Dare to Do It," *supra* note 94, at 47, reprinted in COOK, *supra* note 5, at 237.

98. Crystal Eastman, *A Platform for Real Preparedness*, *THE SURVEY*, Nov. 13, 1915, reprinted in COOK, *supra* note 5, at 241.

States out of the European War.

A fire as big as that with only the ocean between us is bound to scorch us. It is only by keeping cool, by playing the hose on our roofs all the time . . . that we can keep from catching fire. . . . [T]o talk, think, and act "preparation for war," is psychologically speaking, like pouring kerosene on the roofs instead of water. Sparks are bound to fall—if they fall on cool wet roofs there is a chance of their going out. If they fall on dry roofs prepared with kerosene, what chance is there?⁹⁹

VI. 1915-1917: THE AMERICAN UNION AGAINST MILITARISM

In December 1915, Crystal, Max, Lillian Wald, Paul Kellogg, and other prominent leaders of social reform met at the Henry Street Settlement to create the American Union Against Militarism (AUAM) to fight United States intervention in the European war and seek a just peace at the war's end.¹⁰⁰ The AUAM was relatively small and elite. However, it had a capacity to reach decision-makers in the Congress and the Executive. By lobbying Congress, participating in hearings, and organizing letter-writing campaigns, the AUAM was able to prevent passage of a bill mandating the nationwide use of physical education classes for military training.¹⁰¹

The AUAM was so effective in opposing Wilson's proposal for compulsory military training that he did a national tour to support his proposal. Wilson challenged his opponents to hire their own halls to set their case before the public. The AUAM took the challenge and organized a national campaign against conscription.¹⁰² In April 1916, Eastman organized and led the tour in eleven cities for the anti-preparedness campaign.¹⁰³ In the summer of 1916, the AUAM organized a lobbying and letter-writing campaign that averted war with Mexico, and Eastman went to El Paso to assure that the plans were implemented as intended.¹⁰⁴ Between December and May, the AUAM had collected 50,000 names, run a national press service, distributed 600,000 pieces of literature,

99. *Id.* at 245.

100. DONALD JOHNSON, *THE CHALLENGE TO AMERICAN FREEDOMS: WORLD WAR I AND THE RISE OF THE AMERICAN CIVIL LIBERTIES UNION* 4-5 (1963).

101. ALONSO, *supra* note 92, at 71.

102. Editorial, *The Latest Publicity Features of the Anti-Preparedness Committee*, 36 *SURVEY* 37 (April 1, 1916).

103. Letters from Crystal Eastman to Lillian Wald (Apr. 9, 11, 12, 13, and May 23, 1916), available in Lillian Wald papers, American Union Against Militarism File, Columbia University Collection [hereinafter Lillian Wald papers].

104. Crystal Eastman to Lillian Wald (June 23, 1916), Lillian Wald papers, *supra* note 103.

organized Congressional hearings, and conducted the national tour.¹⁰⁵ In addition, the AUAM organized an intensive, but unsuccessful, effort to oppose conscription.¹⁰⁶

On April 2, 1917, the United States entered the European war. Weeks later the President signed the Espionage Act.¹⁰⁷ Entry into the war changed the focus and strategies of all of these groups and brought out conflicts within and among them. For example, much of the suffrage movement threw itself into relief work, while the New York Women's Party, under Eastman's leadership, declined to do so and continued to advocate a just peace as a woman's issue.¹⁰⁸

VII. HOW DID SHE DO IT?

From 1915 to 1919 Eastman served as the chief staff person of two major organizations: the Women's Peace Party (WPP) of New York and the AUAM. To be sure, there was significant overlap in the membership and goals of both groups. Nonetheless, there were also real differences: the Women's Peace Party tended to favor demonstrative tactics, while the AUAM preferred sweet reason and elite connections. Serving two groups necessarily required Eastman to make daily judgments about the appropriate allocation of her own time. Since fund-raising was a big part of her work for each group, that too required continual decisions whether to solicit funds for one group or another. Throughout this period Eastman also served on the Executive Committee of the Congressional Union that continued to lead the national effort for a federal suffrage amendment. For a brief period in the summer of 1916, she served as the temporary Executive Secretary of the InterAmerican Peace Committee, an outgrowth the AUAM's effort to avert war with Mexico. Eastman pleaded with Lillian Wald to find a Spanish-speaking replacement.¹⁰⁹ It is a tribute to her energy and skill as an organizer that these groups believed that a portion of

105. Letter from Crystal Eastman to Lillian Wald (May 27, 1916), Lillian Wald papers, *supra* note 103.

106. Letter from Crystal Eastman to Lillian Wald (Jan. 9, 1917), Lillian Wald papers, *supra* note 103. *Crystal Eastman Deplores Enlistment Oath and Recommends Obtaining Recruits for Army by Paying Higher Wages*, at Symposium of Rand School of Social Science, N.Y. TIMES, Feb. 19, 1917, at 18.

107. Espionage Act, ch. 30, 40 Stat. 217 (1917). Then, on May 18, 1918, the President signed the Alien and Sedition Act. The Sedition Act, ch. 75, 40 Stat. 553 (1918).

108. *Crystal Eastman Resents Action of Mrs. Catt in Offering Service of National American Woman Suffrage Association to President Wilson in Event of War*, N.Y. TIMES, Feb. 9, 1917, at 11. Beginning in February 1917, the New York WPP published a magazine, *Four Lights*, that featured, e.g., an article by Jannette Rankin, the only woman in Congress who provided the only vote against the declaration of war, and an article condemning relief work as "taking work away from self-supporting women in knitting mills and garment factories." ALONSO, *supra* note 92, at 80.

109. Telegram from Crystal Eastman to Lillian Wald (July 14, 1916), Lillian Wald papers, *supra* note 103.

Eastman's devotion and talent was better than the full commitment of any other person.

Eastman also had a personal life. During 1916, she divorced Bennie and married Walter Fuller.¹¹⁰ Fuller came from a family much like her own: middle class, educated, progressive, artistic. All of the siblings were deeply attached to one another and to their parents. Fuller's three sisters were folk singers who performed a repertoire with a pacifistic and internationalist orientation. During their 1915 New York tour, Eastman became friends with all of them.¹¹¹ We can surmise that her marriage with Bennie ended because they were not particularly well-matched from the beginning and, as Eastman acknowledged,¹¹² she devoted little time to family life. Fuller's sister Rosalinde writes of her brother's marriage to Eastman,

Their marriage was not an easy one, like me, my brother was not 'one of the marrying kind.' But unlike me, it wasn't that he believed in free love, he just wasn't interested in physical sex. I remember a psycho-analyst who had once treated him, telling me that he 'didn't really exist below the waist'. All his love and feelings were expressed in words.¹¹³

Why was Eastman attracted to Fuller? Perhaps it was that she wanted to have children, but not with Bennie. She and Fuller did, in any case, have two children, Jeffrey (1917) and Annis (1921).¹¹⁴ Perhaps she wanted to recapture her childhood experiences of being part of a large, loving family by joining another family that functioned in that way.¹¹⁵ Certainly Fuller was a talented contributor to the causes that captured Eastman's political passions. For example, for the 1916 WPP exhibition, he designed a huge, armored dinosaur that symbolized the military establishment—well protected, with a brain the size

110. *Crystal Eastman Married Walter Fuller*, N.Y. TIMES, Nov. 14, 1916, at 11.

111. MAX EASTMAN, *supra* note 4, at 563; O'NEILL, *supra* note 1, at 55.

112. *See supra* note 80 and accompanying text.

113. Rosalinde Fuller, *Subject to Love* 137 (unpublished autobiography on file with the *Valparaíso University Law Review*).

114. The birth certificate of Eastman's son states that Jeffrey S. Fuller was born on March 19, 1917, at #3 Riverside Drive. On the top of the form is typed 102 Waverly Place. Annis Eastman Fuller was born in December 1921. Telephone Interview with Joyce Fuller (Apr. 20, 1994). Neither Jeffrey's widow, Joyce Fuller, nor I understand the middle initial S. or the Riverside Drive address.

Eastman apparently became pregnant again shortly after the birth of her son and had a miscarriage. Her sister-in-law, Rosalinde Fuller, writes that in the Spring of 1917, Eastman "was busy writing and expecting another baby." Fuller, *supra* note 113, at 47.

115. On Eastman's childhood, see Law, *NYU*, *supra* note 7, at 1967-71. Max Eastman said that Fuller "supplied that companionship in idealism for which, with pleasure-bent Bennie as a husband, she had been starving." MAX EASTMAN, *supra* note 4, at 563.

of a pea.¹¹⁶

VIII. 1917: THE FOUNDING OF THE AMERICAN CIVIL LIBERTIES UNION

With the passage of the Espionage Act and increased prosecution of "radicals" and conscientious objectors, some of the members of the AUAM sought to create a civil liberties bureau to defend those prosecuted.¹¹⁷ Others—including Lillian Wald and most of the senior leadership people on the AUAM Board—believed that such adversarial tactics would be counter-productive. Wald thought that the organization could be more productive through behind the scenes lobbying to persuade officials in the War Department to adopt a humane and liberal policy toward conscientious objectors.¹¹⁸ Eastman sought to create a civil liberties bureau, but to keep it within the structure of the AUAM. In March 1917, Roger Baldwin joined the AUAM staff as head of the new civil liberties bureau.¹¹⁹ Eastman wrote Wald in 1917, "[I]t would be very hard indeed for me to lose you as chairman . . . not only because of your influence with the 'powers that be,' but because of your patience, devotion, wisdom and tact"¹²⁰ A compromise was reached and then fell apart almost immediately when Baldwin and Eastman participated in events of the People's Council, a new coalition of radical organizations.¹²¹ Wald denounced it as "impulsive radicalism" rather than "the organized reflective thought of those opposed to war."¹²² Wald resigned when the Board supported Eastman and Baldwin. The American Civil Liberties Union (ACLU) was born, and the AUAM quietly faded away.¹²³

From a modern point of view, the conflict within the AUAM seems very odd. The younger, more progressive faction sought to defend civil liberties, while the older, more conservative faction believed that pursuit of world peace was the central goal and that the pursuit of civil liberties was too radical. It must be remembered, however, that in 1917 *no* court had ever held that the First Amendment protected the rights of a speaker against state suppression. Suppression of speech was quite common: obscenity laws, bans on birth control information, nuisance and disorderly conduct statutes invoked against peaceful demonstrators. The First Amendment had not been interpreted to reach these

116. ALONSO, *supra* note 92, at 71.

117. SAMUEL WALKER, IN DEFENSE OF AMERICAN LIBERTIES 19-20 (1990).

118. *Id.*

119. JOHNSON, *supra* note 100, at 10.

120. Letter from Crystal Eastman to Lillian D. Wald (Aug. 24, 1917), Lillian Wald papers, *supra* note 103.

121. WALKER, *supra* note 117, at 20.

122. Letter from Lillian Wald to Crystal Eastman (Aug. 27, 1917), Lillian Wald papers, *supra* note 103.

123. WALKER, *supra* note 117, at 20.

common forms of suppression. In this context, the very concept of civil liberties seemed radical. In the intervening decades, and particularly since the 1960s, the Court has developed a robust jurisprudence protecting expression of the ideas we hate. Further, our collective history of the twentieth century—the depression and organized labor's response, the rise of Fascism, Communism, and McCarthyism, and the Civil Rights movement—all support the notion that strong protection of individual conscience and expression are vital to a strong and diverse society. Today, while civil liberties enjoy broad support across the political spectrum, world peace may be seen as utopian, or at least as more radical.

The dissolution of the AUAM and founding of the ACLU were direct consequences of the war and the Espionage Act. For years Eastman had been organizing large rallies and participating in coalitions with other progressive organizations. But under the new Espionage Act, it was not at all clear whether the Act's prohibition on "willful obstruction of the draft" included AUAM leaflets advising young men about conscientious objection. In 1917 the FBI routinely seized the mail and publications of both the Civil Liberties Bureau and the AUAM.¹²⁴ An influential delegation sought to persuade President Wilson to provide guidance on what speech was allowed, but to no avail. One official bluntly told them to "cut out the war criticism."¹²⁵

With the demise of the AUAM, Eastman continued to work with the Women's Peace Party and the Civil Liberties Bureau. Also, through this period Eastman wrote prolifically, both in her capacity as organizational propagandist and as private journalist.¹²⁶ World War I was a period of pathbreaking litigation for the Civil Liberties Bureau. Hundreds of conscientious objectors were referred to cooperating attorneys. The Civil Liberties Bureau defended many people prosecuted under the Espionage Act.¹²⁷ Almost all of these cases were unsuccessful, as the courts held that, particularly in time of war, the government was entitled to suppress any criticism.¹²⁸ One of the few civil liberties victories in this period arose from the prosecution of Max Eastman and the *Masses*.

124. *Id.* at 37.

125. *Id.* at 23.

126. *See, e.g.*, Crystal Eastman, *Birth Control in the Feminist Program*, BIRTH CONTROL REV., Jan. 1918, reprinted in COOK, *supra* note 5, at 46; Crystal Eastman, *War and Peace*, THE SURVEY, Dec. 30, 1916, reprinted in COOK, *supra* note 5, at 252; Crystal Eastman, *A Platform of Real Preparedness*, 35 THE SURVEY 160 (Nov. 13, 1915), reprinted in COOK, *supra* note 5, at 241; Crystal Eastman, *To Make War Unthinkable*, 35 NEW REPUBLIC 118 (July 24, 1915), reprinted in COOK, *supra* note 5, at 235.

127. WALKER, *supra* note 117, at 24. The NCLB also defended the prosecution of the Women's Peace Party publication, *Four Lights*, WPP papers, *supra* note 79.

128. *Schenck v. United States*, 249 U.S. 47 (1919); *Debs v. United States*, 249 U.S. 211 (1919); *Abrams v. United States*, 250 U.S. 616 (1919).

Despite the law, Max persuaded a jury that he, and the other editors of the *Masses*, were innocent.¹²⁹ While Crystal was active in the organizational work of the group, it appears that she never functioned as the lawyer she had once very much wanted to be. In February 1918, Crystal and Max founded the *Liberator* as a successor to the *Masses*.

IX. THE END OF THE WAR AND THE RESURGENCE OF FEMINISM

With the end of the war in 1919, the prospects for a federal suffrage amendment seemed brighter than ever. All through the war, the Women's Peace Party of New York had maintained a local organizational structure that encouraged women to seek an equal role in the reconstruction of the post-war world. In March 1919, Eastman organized a "Woman's Freedom Conference" that drew over 600 participants. Eastman gave the keynote address. She noted that the whole western world, and especially the U.S., had been fighting for "freedom and democracy." She urged women to compare these "popular abstractions" and the concrete reality of women's lives. Women are denied the right to vote. Few have served in public office. They can't sit on juries. Women are paid less than men. Girls are not educated. Women's work in the home is not recognized or compensated. They are denied access to scientific information to control reproduction. "Laws, judges, courts, police, and social custom still disgrace, punish and regulate the woman prostitute and leave uncensured the man who trades with her,—though in case of all other forbidden vices the buyer as well as the seller suffers if caught."¹³⁰ Eastman's agenda was remarkably similar to that of feminists today, though the specific examples of each problem have changed in significant ways.

While, on one level, the conference seemed a tremendous success, in the short run it was not so regarded. At its meeting in May 1919, many members of the WPP board expressed dissatisfaction. First, the conference overran its budget. However, everyone acknowledged that this was quite common in non-profit work and that there was no suspicion that funds had been stolen or misspent. The second, more serious complaint was political. The conference included too many "ultra radicals," who had moved away from an antiwar position towards one of "violent revolutionary attitude." Examination of the program however reveals an agenda much like those that the Women's Peace Party had been conducting through its history. It is also a program much like a contemporary women's rights course or conference—exploration of practical strategies to gain real power for women. Further, the war was over. Adoption

129. *Masses Publishing Co. v. Patten*, 244 F. 535 (S.D.N.Y. 1917) (deciding that the magazine is not seditious, and therefore denial of mailing under the Espionage Act of 1917 is invalid).

130. Crystal Eastman, *Feminism*, Statement at the First Feminist Congress in the United States (Mar. 1, 1919), reprinted in COOK, *supra* note 5, at 49-50.

of the federal suffrage amendment seemed, at last, probable. The intent of the conference was to look forward to develop a progressive social agenda for women.

Just as it was curious to see “civil liberties” regarded as more threateningly radical in the AUAM/NCLB conflict, here too it is odd to see gender equality as “revolutionary,” while pacifism and world peace are mainstream. One possible explanation is that the concrete measures for incremental increases in gender equality were practically possible, and hence more threatening to the status quo, than a more utopian goal of world peace.

There was some sentiment to fire Eastman. She did not fight it, but resigned to devote herself to her journalism and to be more free to live with Fuller, who had then moved to England.

X. POSTSCRIPT

In June 1919, Congress reported the Nineteenth Amendment to the states for ratification. Wisconsin, where Eastman had worked so valiantly and unsuccessfully just a few years earlier, was not only pro-suffrage, but sought the honor of being the first state to ratify. The legislature quickly ratified and sent Senator James, husband of Ada James, the Chair of the Wisconsin suffrage organization, on the night train to Washington. Simultaneously, Illinois was engaged in an effort to capture this honor. The Illinois delegate arrived hours before Senator James. It was then discovered that the Illinois ratification resolution had misworded the Amendment, and Wisconsin became the first state to ratify.¹³¹

Eastman died in 1928, at the age of 47.¹³² In the last decade of her life, she lived in London, cared for her children, wrote prolifically, and worked to promote her vision of justice and liberation. This chapter of her life remains to be told.

131. FLEXNER, *supra* note 29, at 315.

132. Kirchwey, *supra* note 15.