

## **FOREWORD: HOW MORAL FUSION ADVANCES LAW AND LIBERATION**

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*By Bishop William J. Barber, II*

For over three decades, I have been involved in supporting movements toward racial, economic, and political justice. This work recently brought me to Yale Divinity School, where I was hired as the Founding Director of the Center for Public Theology and Public Policy. Prior to this position, I spent years in North Carolina as a pastor and organizer, building coalitions across the state to stand against systemic inequality.

Beginning in 2007, after I became President of the North Carolina NAACP, advocates for workers' rights, women's rights, immigrants' rights, healthcare, environmental justice, and peace had begun to join forces in a multi-racial coalition committed to working together on issues that would benefit all of us. We did not abandon the particularity of our struggles, but we decided that, if those who opposed us were cynical enough to stick together, we needed to be smart enough to stand together.

Our multi-issue coalition found success in large part through our use of moral fusion politics. Moral fusion is a method of grassroots organizing that brings together people across issue areas and across racial, religious, and political affiliations to coordinate based on shared, internal values. Throughout history, divisions among race and class have been weaponized to conceal what individuals of diverse backgrounds have in common: shared opposition to injustice and immoral policies. The truth is that these shared progressive values transcend racial or political lines because they are fundamentally based in our deepest moral and constitutional beliefs. By focusing on common ground rooted in moral values, moral fusion forms diverse coalitions sustained by powerful commitments to political and social action.

Our moral fusion approach in North Carolina drew inspiration from historic fusion coalitions in the Deep South—alliances between Black and White Southerners based on shared values and opposition to slavery—that had a political foothold in the post-Reconstruction South. Our organizing in North Carolina likewise invited in individuals from all corners of the state, united by a strong commitment to social justice. Our commitment was not based on the political attractiveness of the issues we advocated for but rooted in the firm moral belief that we should try to improve as many lives as possible.

Our movement eventually crossed state lines, transforming into a national call for a moral revival. There are many issues that have drawn individuals into our movement, from inadequate wages and housing to a morally bankrupt carceral system. Progress on these issues is crucial for our collective liberation, but the law alone is unfit to fulfill the demands of liberation. Justice-minded legal practitioners and scholars must recognize that the tool of law is a partial one best complemented by working alongside diverse coalitions of advocates and community members. Moral fusion organizing that brings together individuals in the law and community can help strengthen our advocacy toolkit. My experience organizing in support of voting rights in North Carolina provides a helpful illustration of why collaboration between lawyers and moral fusion movements offers the best prospect for using the law to achieve liberation.

My experience in North Carolina included a successful campaign to challenge voter suppression in a historic voting rights case, *North Carolina NAACP v. McCrory*.<sup>1</sup> Our victory in this historic voter suppression case depended upon the dedication of a talented team of pro bono attorneys. But our legal team understood that they were the spearhead of something larger and more powerful than legal logic could summon: a social movement fueled by moral fusion politics. The arguments crafted in legal briefs were essential tools in our effort to stop an assault on democracy, but even more important was our legal team's commitment to follow the lead of people on the ground as they worked to reconstruct the shared commitments of our common life. A decade later, as legal scholars, practitioners, and law students grapple with the tension between law and liberation, these movement lawyers offer a powerful example of what social justice lawyering can and must look like.

On the same day in 2013 that the Supreme Court issued its *Shelby County v. Holder* decision,<sup>2</sup> which struck down Section 5 of the Voting Rights Act (VRA),<sup>3</sup> the North Carolina General Assembly filed HB 589, the nation's most restrictive voting law.<sup>4</sup> The new voting restrictions were the most severe in North Carolina since the voter suppression legislation of the Jim Crow Era. The legislature enacted the new voter suppression laws only days after *Shelby* when, according to one of its sponsors, the "headache" of the VRA had been removed. In the legal challenge of the legislation, the Court noted that, before passing HB 589, the 2012 North Carolina legislature had requested and received racial data about the usage of various voter access tools that they then subsequently restricted. The Court concluded that "the only clear factor linking these various 'reforms' [was] their impact on African American voters."<sup>5</sup> The Fourth Circuit struck down the law in *North Carolina NAACP v. McCrory*, ruling that the new provisions "target[ed] African Americans with almost surgical precision."<sup>6</sup>

From the beginning of our struggle in *North Carolina NAACP v. McCrory*, the legal team embraced the movement's commitment to moral fusion politics. Our objection to voter suppression and the policies it propelled was not left or right, liberal or conservative. It was a fundamentally *moral* objection rooted in our deepest religious and constitutional convictions. Because a broad cross-section of North Carolinians shared these convictions, they provided a foundation for a *fusion* coalition across lines of race, religion, sexual orientation, and partisan affiliation.

In the case of *NC NAACP v. McCrory*, attorneys and activists worked together to ground our challenge to HB 589 in the recognition that this particular bill joined a larger effort to undermine the changing demographics of the South and the policy goals of our moral fusion coalition, which had been building power and shifting political possibilities. HB 589 was not an offensive attack; it was a reactionary backlash. This is a critical perspective for so many of our social justice struggles: opponents are not fighting us this hard because we are weak but because we are strong.

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<sup>1</sup> 831 F.3d 204 (4th Cir. 2016).

<sup>2</sup> 133 S. Ct. 2612 (2013).

<sup>3</sup> Adam Liptak, *Supreme Court Invalidates Key Part of Voting Rights Act*, N.Y. TIMES (June 25, 2013), [https://www.nytimes.com/2013/06/26/us/supreme-court-ruling.html?\\_r=0](https://www.nytimes.com/2013/06/26/us/supreme-court-ruling.html?_r=0) [https://perma.cc/QCX2-ZXZM].

<sup>4</sup> Ari Berman, *North Carolina Passes the Country's Worst Voter Suppression Law*, THE NATION (July 26, 2013), <https://www.thenation.com/article/archive/north-carolina-passes-country-s-worst-voter-suppression-law/> [https://perma.cc/5YR9-Y966].

<sup>5</sup> *McCrory*, 831 F.3d at 238.

<sup>6</sup> *Id.* at 214.

While I was president of the North Carolina NAACP, advocates from workers' rights, women's rights, immigrants' rights, healthcare, environmental justice and peace movements joined forces to work on issues that would benefit all of us. We launched a mass action called: "Historic Thousands on Jones Street," and we won an increase in the minimum wage and a significant expansion in voting rights through early voting and same-day registration.

This expansion of access to the ballot created the possibility of a new electorate in North Carolina. For the first time since Jimmy Carter in 1976, a Democrat, Barack Obama, won the North Carolina presidential race in 2008. An assault on voting in North Carolina began in response to this new electorate during the subsequent midterms. Republicans adopted a racial redistricting plan that created virtual apartheid districts, packed black voters into a few districts, and carefully limited the power of interracial coalitions.<sup>7</sup> At the time, we implored Attorney General Eric Holder to reject the redistricting plan under the VRA's preclearance requirements, which were still in effect at the time. We cannot fully account for the subversion of voting rights that Republicans have led without acknowledging that Democrats failed to use the tools of the VRA when they had them.

This failure resulted in what a federal court termed a "racial gerrymander" that led to the 2012 election of a veto-proof extremist super-majority in the North Carolina General Assembly. The extremist super-majority used their newfound power to pass HB 589 the following year. When the bill's champion, Thom Tillis, ran for United States Senate in 2014, he won by 48,000 votes.<sup>8</sup> A local voting rights organization, Democracy NC, later produced a report demonstrating that HB 589 had suppressed "the voices of tens of thousands of voters."<sup>9</sup> By successfully narrowing the electorate, Republicans effectively selected a majority that could not only keep them in power but also had the power to swing statewide elections in their favor.

Despite a broad consensus that it would be difficult to establish racist intent in HB 589, our lawyers were willing to make the case because they listened to the movement and knew from those on the ground that racism was a key factor. And moral fusion movements are clear that racism, while it targets Black people, hurts a wide range of the population in practice. To make a successful case against intentional racism, we knew we also needed plaintiffs who were not Black. We easily found white women, religious congregations, and students to join *NC NAACP v. McCrory* as plaintiffs, each demonstrating how the voter suppression bill impacted them and their communities. *By listening to the movement, social justice lawyers can learn winning strategies for the courtroom.*

Another key to our success in North Carolina were movement lawyers who understood that their expertise in the courtroom was best complimented by a moral fusion movement in the streets. While a case is won based on its merits, its power to contribute to social transformation often depends on the broader movement that a legal victory can serve. Just as *Browder v. Gayle* would not have had the same impact on segregation in the Jim Crow South if it were not for a determined bus boycott in Montgomery, Alabama, our legal victory at the Fourth Circuit was complimented by the ongoing struggle of "Moral Mondays"—weekly gatherings of our moral fusion coalition

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<sup>7</sup> This gerrymandering was struck down by a federal court in 2016. Anne Blythe et al., *Federal Courts Invalidates Maps of Two NC Congressional Districts*, THE NEWS OBSERVER (Feb. 6, 2016), <http://www.newsobserver.com/news/politics-government/state-politics/article58756583.html> [<https://perma.cc/QB8L-NJEQ>].

<sup>8</sup> North Carolina Election Results: Tillis Defeats Hagan, N.Y. TIMES (Dec. 17, 2014), <https://www.nytimes.com/elections/2014/north-carolina-elections> [<https://perma.cc/W9H9-8LV8>].

<sup>9</sup> Bob Hall, *Democracy NC Celebrates Supreme Court's Decision on Monster Law*, DEMOCRACY NORTH CAROLINA, <https://democracync.org/news/democracy-nc-celebrates-supreme-courts-decision-monster-law/> [<https://perma.cc/KUD2-VWWS>] (last visited June 9, 2024).

throughout the summer of 2013 that continued to bring people together and keep moral issues at the center of public discourse as the case moved through the courts. When we won against McCrory in court, he was running for re-election as Governor of North Carolina. Our moral fusion coalition educated the voting public about his intentional voter suppression, and he was the only incumbent Republican governor to lose in 2016. Public Policy Polling attributed his defeat to the drop in poll numbers that coincided with Moral Mondays.<sup>10</sup> *When social justice lawyers and movements work in concert, we have the power to win the public narrative.*

Moral Mondays went beyond *NC NAACP v. McCrory*, but they also made that crucial legal victory far more likely and far more meaningful today. As Justice Ruth Bader Ginsberg foresaw in her dissent to *Shelby*, the removal of voting rights protections precipitated a deluge of voter suppression. A decade later, hundreds of voter suppression measures have been introduced in state houses across the United States, and efforts to restore the VRA have been subverted in Congress, most recently by all 50 Republicans and two Democrats when they refused to break the filibuster on legislation that passed the House and would have been signed by President Biden.

This assault on Voting Rights is not the Jim Crow of the Old South; it is, instead, James Crow, Esquire, the son of the old segregationists who went to law school and came back in a business suit to subvert democracy through new and more sophisticated voter suppression tactics that threaten the future of American democracy. Strom Thurmond, the segregationist firebrand, was only able to filibuster the 1957 civil rights bill for 24 hours.<sup>11</sup> But today's extremists have buried voting rights for more than a decade.

To answer these assaults, interracial coalitions like our moral fusion movement must come together and fight for democracy in the streets, at the ballot box, and in the courtroom. This is the strategy that won *NC NAACP v. McCrory*. In truth, a new, more diverse electorate already exists. We witnessed the first and worst assault on voting rights because our fusion coalition broke the "Solid South" in 2008. It is our potential strength that has invigorated our adversaries. *Social justice lawyering can help lead us to the multi-ethnic democracy that we have never yet been.*

America's future is a multi-colored quilt of democracy, which is why the extremists have gone so far to suppress the vote. Their time is short. In the tumultuous last days of South Africa's anti-apartheid movement, folks used to say, "A dying mule kicks the hardest." Those who believe in love and democracy can put the dying mule of inequality to rest in America today. To do so, we need social justice lawyers prepared to work closely with moral fusion movements committed to a Third Reconstruction in America.

Voting rights are not the only issue at stake in the Third Reconstruction. Our quest for a more equitable future must include commitments to workers' rights, housing and food security, healthcare, environmental justice, carceral justice, and peace. Accomplishing this future will take hard work, but it is our strong moral commitment to these goals that will help us see it through.

The reignited Yale Journal of Law & Liberation provides a meeting place for moral fusion movements and allied lawyers to progress towards our next Reconstruction. The Journal, like the moral fusion movement, recognizes the strength of bringing together many different voices, including those that are often excluded from legal circles. Bringing together scholars, practitioners, system-impacted individuals, artists, and students united by their shared moral commitments is crucial for building a sustainable social justice movement. I am thrilled to add my voice to these

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<sup>10</sup> Larry Rubin, *Moral Mondays Coalition Defeats McCrory—Trump's Man in N.C.*, PEOPLE'S WORLD (Dec. 15, 2016), <https://www.peoplesworld.org/article/moral-mondays-coalition-defeats-mccrory-trumps-man-in-n-c/> [<https://perma.cc/GH25-T9RT>].

<sup>11</sup> JOSEPH CRESPIANO, STROM THURMOND'S AMERICA 114-15 (NEW YORK: HILL AND WANG, 2012).

efforts and bear witness to a manifestation of moral fusion in this and future publications of the Yale Journal of Law & Liberation.