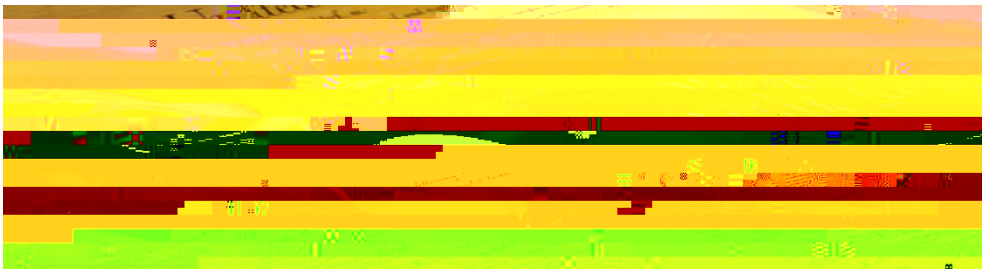

The 19th Amendment at 100: From the Vote to Gender Equality

Center for Constitutional Law at
The University of Akron School of Law

Friday, Sept. 20, 2019

CONTINUING EDUCATION MATERIALS

More information about the ***Center for Con Law at Akron*** available on the Center website, https://www.uakron.edu/law/ccl/ and on Twitter @conlawcenter

11:45pm Lunch (McDowell Common)

12:30pm Keynote Speaker:Prof. Ellen Carol DuBois (UCLA, History), The Afterstory of the Nineteenth Amendment
Introduction: Michael Grund, Editor in Chief, Akron Law Review
DuBois is Professor Emeritus of History at UCLA.

first-wave movement envisioned a full-scale reform of law and society to bring about women's

Suffrage, which prioritized its efforts on the vote, first for Negro suffrage, and then women's suffrage, while also supporting some family and economic reforms.[19]

Pulled into this national constitutional movement, women's rights activists utilized the demand for the vote as a proxy for greater comprehensive agenda of both equality and emancipation from oppression. As Stanton later recalled, the vote was not the central idea of Seneca Falls, but rather "the social wrongs of my sex occupied altogether the larger place" in the

new allegiances of the suffrage women with the socially conservative Women's Christian Temperance Union (WCTU) advocating prohibition, brought an increase in numbers, but shifted the arguments in support of the vote to traditional domesticity reasons where women's moral compass and home protection role.[29] The woman's suffrage movement, however, entered what has been called the "doldrums" as few victories aside from some limited municipal and school board suffrage rights were achieved, and constitutional efforts stalled as the national organization focused almost exclusively on the states.[30]

It would take the next generation of activists under the leadership of Alice Paul and her more radical and sensationalist politics for the vote to be passed.[31] Paul organized media events, suffrage parades, and pickets of the White House to force the issue of women's suffrage after seventy years of activism.[32] She and her White House protest group were arrested and inhumanely imprisoned and force fed, creating the final public and political pressure to force President Wilson to endorse women's suffrage.[33] Congress passed what had become the Nineteenth Amendment in June 1919 on the eve of World War I. It was ratified by the on August 20, 1920. As the story goes, the definitive vote came from a young Harry Burn, a member of the Tennessee state legislature who had received a strongly worded letter from his mother urging him to vote in favor of women's suffrage.[34]

An early promise of a broad reading of the Nineteenth Amendment by the U.S. Supreme Court as a systemic change guaranteeing women's full equality and emancipation, as the Declaration of Sentiments envisioned, was quickly abandoned. Instead, women's rights became entangled with protectionist labor politics, focused on emphasizing women's difference, weakness, and inferiority in order to support workplace protection laws.[35]

ninety-eight years after it was first proposed, delayed and denied the original intent of the women's rights movement for reform in all venues of law and society.

This essay first details the origins of women's political demand for the vote as part of a comprehensive social reform.[37] It then discusses the four strands of the comprehensive early women's rights agenda for gender equality focused on the political state, domestic family, economic industry, and religious church.[38]

that the "law of Nature being coeval with mankind, and dictated by God himself, is of course superior in obligation to any other."[67] Another resolution stated that "all laws which prevent woman from occupying such a station in society as her conscience shall dictate, or which place her in a position inferior to that of man, are contrary to the great precept of nature, and therefore of no force or authority."[68] Further resolutions stated that "woman is man's equal—was intended to be so by the Creator,"[69] and that women had a right to address a public audience, a right that had been denied at the London Anti-Slavery Convention.[70] The resolutions also included one very concrete statement "that it is the duty of the women of this country to secure to themselves their sacred right to the elective franchise."[71]

On the second day, the convention debated the key operative document, the Declaration of Sentiments, prepared by Stanton.[72] Borrowing its title from an anti-slavery track and modeled in part on the Declaration of Independence, the Declaration documented the "history of repeated injuries and usurpations on the part of man toward woman, having in direct object the establishment of absolute tyranny over her."[73] Stanton's Declaration of Sentiments itemized eighteen specific civil rights women were denied in violation of their happiness and equality.[74]

The Declaration was organized in four parts, highlighting the four institutional arenas of needed reform: state, family, industry, and church.[75] First, in the political sphere, Stanton challenged that women had not be permitted "to exercise her inalienable right to the elective franchise."

property, and labor.[90] In the Declaration of Sentiments, Stanton explained how the institutions of government, church, family, and industry were connected four cords of oppression so tightly intertwinedthat "attempt to undo one is to loosen all."[91] Stanton returned to this integrative understanding of gendered reform decades later, arguing that in order to break down the systemic complexity, women must have "bravely untwisted all the strands of the fourfold cord that bound us and demanded equality in the whole round of the circle."[92] Only a holistic agenda that addressed all aspects of women's lives and "happiness and development" in addition to targeting societal factors "in all directions" would be effective to break this cord of gendered oppression. "We should," Stanton argued, "sweep the whole board, demanding equality everywhere and the reconstruction of all institutions that do not in their present status admit of it."[93] Embracing both concepts of women's rights—civil legal righa10 (t)-2 (s)-1 [.9 (s)1 (e)6 (n-10 (ct(ne)4 (s)-1 (s)-1 (a)4 (

accountability from lawmakers.[102] The vote also carried with it correlative political rights of public citizenship, such as the right to hold office and serve as jurors. For example, Stanton and Anthony's 1876 Declaration of Rights, written as a demonstration for the American centennial,

The focus on family reform continued to be part of Stanton's advocacy for the women's movement in the decades after Seneca Falls.[122] Her 1854 speech to the New York legislature,

women into social and economic power.[133] At the individual level, pecuniary independence, what Stanton called "a purse of their own," was critical for self-support and autonomy.[134] For "a right over my subsistence," she explained, "is a power over all my thoughts and actions."[135] "The coming girl," of the next generation, she said, must be educated and engaged in market work. "There must be a mone(a)4 2h6 (r)3 (m) 2 (bue)4 (upon he)4 (r)3 (t)-2 (i)-12 (m)-2 (e)4 (.")]TJ

women's work.[144] The case of teachers illustrated the problem, as the profession evolved from all-male to predominantly female. "What is the reason," Stanton asked, "that the majority of the teachers in all our schools are women?" "Is it because women are better teachers than men? Not at all—simply because they teach at half the price." And why were so few able and ambitious men found "in that most important of all professions" as the educators of the nation? Only one reason: "

woman's emancipation the Bible has been used to hold her in the 'divinely ordained sphere.'"[162] "Whenever," she argued "during the struggle of the last forty years we have demanded a new

addition, by the late nineteenth century, the suffrage movement had been integrated by socially conservative women from the WCTU.[171] While supporting women's right to vote as a moral imperative, its members rejected calls for reforms of marriage and the family, and to the contrary, advocated a strengthening of patriarchal norms of male headship and the return to a revered domesticity for women.

Speaking to the next generation of activists in 1900, eighty-five year old Stanton warned of the narrow focus of the feminist agenda. "I would advise our coadjutors to beware of narrowing our platform." The success of a movement, she said, "does not depend on its numbers, but on the steadfast adherence to principle by its leaders." "We should not rest satisfied to sit on the doorpost of the great temple of human interests like Poe's raven simply singing 'suffrage evermore.'" "The ballot box," she said, "is but one of the outposts of progress, a victory that all orders of men can see and understand." But "only the few," Stanton said, "can grasp the metaphysics of this question, in all its social, religious, and political bearing."[172]

Even with increasing numbers, it would be several more decades of wandering in the wilderness. A few more states passed suffrage. But women's suffrage overall was blocked by anti-prohibition efforts, concerned that the moralistic women associated with the WCTU and how suffrage would ban alcohol. Women gained the right to vote in some municipal and school board elections, buoyed by the notion of women's domesticity and moral leadership in issues of home, school, and the local community. The merged suffrage organization, under the leadership of Carrie Chapman Catt, continued the same, worn campaign strategies advocating both state and federal action, but focused narrowly on the vote.[173] Alice Paul would break through this ineffective status quo, incorporating her radical demonstrative politics first as the Congressional Union of the National American Woman's Suffrage Association (NAWSA) and then in her own National Woman's Party.[174] Paul's tactics finally pushed the political will, achieving women's suffrage in what had come to be known as "The Susan B. Anthony Amendment" (which dismissed Stanton's pioneering and philosophical efforts for the franchise).[175] But the question remained as to whether the vote actually accomplished any meaningful change for women.

National Woman's Party," Paul said, "is to take sex out of law—to give women the equality in law they have won at the polls."[179] In 1921, Paul chose Burnita Shelton Matthews, later the first woman to be appointed a federal district judge, to lead a NWP committee of thirteen attorneys "charged with making a study of discriminatory laws in each state concerning women's property rights, child custody, divorce and marital rights, jury duty, education and professional employment, and national and citizen rights."[180] "Their mandate was to expose legal inequalities between men and women that were embedded in all facets of law . . . proposing new legislation to counteract such inequalities."[181] Paul also proposed the first constitutional Equal Rights Amendment, and thus the "sunset of the women's suffrage movement" became the "dawn of the first ERA."[182]

The National Woman's Party worked early on to secure women's equality in the courts, there were signs that the courts—including the United States Supreme Court—interpreted

labor/business distinction toward a civil rights orientation, and with the support of both political parties already obtained, support quickly built for an equal rights amendment.[214]

The penultimate goal of the ERA is the same one as the Declaration of Sentiments one hundred and seventy-one years ago: comprehensive equality for women in all avenues of life. Both movements sought to establish gender equality across the board, rather than reducing it to only narrow issues. The constitutional text for women's full equality and emancipation has changed over the centuries, first embodied in the grant of the vote as proxy for structural change, and now incorporated into the demand for "equal rights." What is clear is that women have been consistent over time in understanding the radical idea that systems of governance, family, business, and church need dismantling and reconstructing in order to support women's equality and emancipation.

This same platform of systemic gender justice was evidenced by the women's movement in 1977 at the National Women's Conference held in Houston, Texas.[227] There, the organizers of the federally-funded conference drafted a modern "Declaration of the American Woman," playing on Stanton's original document, and crafting a comprehensive agenda for gender equality. Adopting demonstrative politics of their foremothers, Olympic-like runners carried the flame of women's equality from Seneca Falls to Houston, and poet Maya Angelou opened the conference with a retelling of Stanton's Declaration of Sentiments, connecting the first broad demand for women's equality with the modern one.[228] The Houston delegates from each state endorsed twenty-six policy resolutions calling for a wide range of measures including ratification of the ERA, equal employment, domestic violence protections, accessible child care, homemaker financial protections, elimination of discriminatory insurance and credit practices, reform of divorce and rape laws, federal funding for abortion, equal access to government contracts and grants, and access to elective and judicial office.[229] These resolutions were presented in a report to President Carter, and they produced little concrete results, but served as a roadmap for future grassroots reform.[230]

This long view of women's constitutional history and its comprehensive agenda leads to a deeper way of understanding women's equality demands today. For the intent nor the context of the Nineteenth Amendment was meant to produce an "irrelevant" amendment, as some have concluded.[231] First, the vote was part of a holistic plan for "women's rights" that has

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[227] Gillian Thomas, Book Review, "Four Days That Changed the World: Unintended Consequences of Women's Rights Conference," N.Y. TIMES, Mar. 6, 2017 (reviewing Marjorie J. Spruill, Divided We Stand: The Battle Over Women's Rights and Family Values That Polarized American Politics). The conference was organized by the National Commission on the Observance of International Women's Year, set up by the Ford administration in 1975 to coordinate American participation in the United Nations-sponsored Decade for Women." Greenhouse, supra. Over 130,000 people, most women, took part in state level meetings to select delegates and debate the conference's agenda in order to come up with a national platform at the conference to present to Congress and the White House. Two

always been a multiple issue, multiple system platform, even as certain issues like suffrage or abortion have come to dominate the public discourse, often driven by opponents of gender equality. Second, this context and constitutional history of the Nineteenth Amendment support a more robust understanding of constitutional guarantees of gender equality, interpreting "equal protection" under the Fourteenth Amendment to include both public and private spheres and reaching so-called personal rights of maternity leaves, sexual harassment, and assertions of religious liberty.[232] Finally, understanding this longer history of women's rights "women's rights" means not just formal, equal rights, but also removal of oppressive norms of society and religion that construct barriers against meaningful change. The modern debate has embodied itself in judicial attacks for equal protection and constitutional demands for the ERA, but it asks nothing different than women have been asking for one hundred and seventy years.

[232] Siegel, She the People, supra note 15, at 949, 951; see Rhodes, supra note 6, at 646-47 (stating that the Nineteenth Amendment can be interpreted as an "emancipation proclamation which extends the guarantees of all three Civil War Amendments to all women"); Brown, supra note 214, at 2175.

Center for Constitutional Law

Conference—The 19th Amendment at 100:

From the Vote to Gender Equality

University of Akron School of Law (Sep. 20, 2019)

THE TEMPERANCE MOVEMENT'S IMPACT ON ADOPTION OF WOMEN'S SUFFRAGE

RICHARD H. CHUSED*

INTRODUCTION:

at 35 in 1977; it did not receive the three additional positive votes needed by the originally set deadline of 1979, several states actually rescinded their votes.[3] Though the deadline was extended by an act of Congress, no additional states ratified the amendment by the new (and potentially invalid) 1982 deadline. Over half a century of effort—the ERA was first introduced in Congress in 1923 at the urging of The National Women's Party—ended in failure. Contemporary efforts to revive the process also have not met with success.[4]

That history teaches us an important lesson about altering the national charter. In the absence of a broad consensus favoring a change it probably is impossible to amend the constitution. A cross section of people favoring an amendment is required to gain approval. Traditional political, cultural, social, demographic, and economic divisions must be breached in order to succeed. The Progressive Era years between 1913 and 1920 when four amendments were ratified exemplified a remarkable historical moment when changing the Constitution was possible. The average rate of one amendment adoption every 25 years between 1789 and 1913 was buried in a flurry of activity. The 16th and 17th Amendments dealing with the income tax and direct election of Senators, were both ratified in 1913. The 18th Amendment on Prohibition and the 19th Amendment on Women's Suffrage were ratified in 1919 and 1920 respectively. Each of the four changes arose both from an increasing recognition of the importance of the federal government in our national polity and from a sense that compulsion by a central regime was an important aspect of gaining control over business concentration, labor unrest, moral, and international controversies, and a rambunctious, conflict ridden, and racially and ethnically divided nation.[5] World War I had a related impact. Sending men overseas to fight, motivating the nation to go to battle, developing national industrial

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3 The Equal Rights Amendment read:

Section 1. Equality of Rights under the law shall not be denied or abridged by the United States or any state on account of sex.

Section 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

Section 3. This amendment shall take effect two years after the date of ratification.

It was originally proposed by the National Women's Party shortly after the 19th Amendment was ratified and first introduced in Congress in 1923. Both houses of Congress finally approved it by overwhelming votes in 1972. That resolution provided that state ratification had to occur within seven years. Only thirty-five of the required thirty-eight states did so by 1979. In 1978 Congress adopted another resolution extending the time period by an additional three years but no additional states did so. Four actually resolved to rescind their prior actions. Questions about the legitimacy of both the time period extension and the rescissions were mooted by the failure of sufficient states to ratify. The timeline is available at Equal Rights Amendment, https://en.wikipedia.org/wiki/Equal_Rights_Amendment

strategies, and enunciating moral obligations to support the nation's armed forces each accentuated the nationalization of moral messaging and governmental authority. A cultural and political environment for national moral controls was solidly in place during the opening decades of the

only after intense lobbying and the defeat of two opposing Senators in the 1918 elections. Though ratified in about the same amount of time it took for prohibition, with Tennessee approving the new amendment by one vote on August 18, 1920, opposition was strong. Liquor interests, hoping

especially middle and upper class white women—with greater control over the morality and demeanor of both the home and of society at large, to aid in controlling alcohol consuming immigrants and people of color, and to furnish a motivation for adoption of women's suffrage.

The history of the 18th Amendment goes deep into America's past. The temperance movement—given its name from a cultural sense early in our history that moderating risky behavior by use of moral suasion was the proper pathway both to reduction of alcohol consumption and to alteration of other actions deemed socially destructive—grew notably in the same era as the first significant women's movement in the 1830s and 1840s.[10] In time, the failure to gain headway in reducing alcohol use led to growth in sentiment to ban drink. In Maine, for example, The Total Abstinence Society was formed in 1815 and the state was the first to move from temperance to prohibition by becoming dry in 1851 when the state legislature belatedly adopted legislation enforcing an alcohol ban first adopted in 1846. It barred sale of alcoholic beverages except for "medicinal, mechanical or manufacturing purposes" to protect the morality and well-being of the state.[11] The process in Maine certainly was not smooth. The state repealed its law in 1856 after an opposition riot seeking access to alcohol stored by the state for medicinal use. But it was readopted off and on until the state's dry status was enshrined in its state constitution in 1885 during a period of widespread national temperance sympathy.[12]

Maine was not the only center of temperance agitation. Twelve other states adopted "Maine Laws" by 1855, though by the Civil War most had been repealed or nullified. Many of the[13]

temperance cause before the Civil War.[15]

While the growth of the movement slowed during the Civil War, it took deep root after hostilities ended. One primary series of events, a catalyst for much of what occurred later, has drawn attention in the literature.[16]

was much more difficult than distilled spirits to store at home. Bottles did not begin to become common until much later.[21] A number of women felt they were losing control over domestic alcohol consumption. In prior decades drinking had typically occurred out of (often locked) liquor cabinets at home. But by the 1870s, tales of men—both immigrant and native—coming home drunk and beating up their wives and children became standard fare.[22] As a result, many white Christian women feared loss of control over both home-based alcohol consumption and cultural hegemony as drug stores, bars, and saloons became some of the antipathy to drinking certainly came from disdain for newly arriving immigrant populations, but the fervor with which the women undertook their activities and their willingness to enter male environments typically off limits for "respectable" women spoke volumes about the passion. By the time Maine enshrined prohibition in its state constitution in the 1880s, national women's movements, especially were at the height of their

As large numbers of southern Ohio women took seriously Diocletian Lewis' call for sit-in actions in 1874, they dressed up in their Sunday best, began with prayers and singing at local churches, before marching down the streets in groups, then boldly entered male dominated bars, saloons, and drugstores, singing hymns, demanding closure of the establishments, and sending men scurrying on their way with their tails between their legs. These events were widely described and commented on in the local press. Many articles detailed vivid stories

determined that if the door was locked on Saturday, they would hold a day prayer meeting in front of his store. Saturday morning a bitter cold wind made it very uncomfortable on the streets, and many doubted their ability not only to carry out the determination, but of their being able to hold even a short prayer meeting. But promptly at 10 o'clock this determined army were seen coming up from the Presbyterian Church, stopping first in front of Uprig's saloon, where they held their usual prayer meeting, then after visiting the saloons of Messrs. Ward and Bales, they assembled in front of Mr. Dunn's drug store, and as the first song, with the enthusiastic chorus, "I am glad I'm in this army." rose on the air, it carried conviction to the large crowd that had gathered around that they were terribly in earnest and would endure all things until victory crowned their every effort. As prayer after prayer and song after song arose, men wondered at their persistent determination, for the wind blew so bitterly cold that men could scarcely keep warm but by constant exercise, yet those brave hearted women kneeling on that freezing pavement utterly regardless of the cold, showed the invincible spirit that was within them, and with one accord for almost six hours kept up two prayer meetings, one at the front and the other

converting all to statues, the tableau could not have been more impressive. For one full minute they stood as if turned to stone; then a slight motion was evident, and lager beer and brandysmash descended slowly to the counter, while cigars dropped unlighted from nerveless fingers. Happily, at this juncture the ladies struck up—

"O, do not be discouraged.

For Jesus is your friend."

It made a diversion, and the party escaped to the street, "scared outa growth."[24]

Though these tales may be amusing to contemporary audiences, there are very serious lessons to be drawn from them—the deeply felt sense of the women about the rightness of their cause, the

outside interpretation of right; so intolerant and insulting, violating law and order, disturbing the tranquility

publication arm in 1876, and became its leader in 1879—a position she retained until her death almost twenty years later. Willard was an incredibly charismatic speaker and a convincing pamphleteer.[28]

Reactions of suffragists to the crusade were intriguingly mixed. While captivated by the activism of so many women taking on new cultural roles, they were disappointed by the Crusaders disinclination to push for suffrage.[29] One of the most interesting responses is reported in a letter from Miriam M. Cole that was transcribed by Elizabeth Cady Stanton, Susan B. Anthony, and Matilda Joslyn Gage and published in the HISTORY OF WOMAN SUFFRAGE well after the Crusades ended

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> on women. * * * Tears, prayers and songs will soon lose their novelty. This spasmodic effort will be likely soon to spend itself; Is there any permanent good being wrought? Liquor traffic opposed woman suffrage, and with good reason. It knows that votes change laws, and it also knows that the votes of women would change the present temperance laws and make them worth the paper on which they are printed. While this uprising of women is a hopeful sign, yet it cannot make one law black or white. It may, for a time, mold public opinion, but depraved passions and appetites need wholesome laws to restrain them. If women would only see this and demand the exercise of their right of suffrage with half the zeal and unanimity with which they storm a man's castle, it would be granted. This is the only ax to lay at the root of the tree.[30]

The desire of Cole and other suffragists for a shift in strategy among women temperance advocates was soon answered. By the early 1890s the WCTU was the largest women's organization in the United States, as well as its largest suffrage organization, a fact not commonly discussed today.[31] Under Willard's guidance it developed a "do everything" strategy to improve the status of women, support the union movement, control domestic violence, raise the age of consent to make it easier to

society he has ordained King Alcohol, that worst foe of the social state, an enemy beneath whose blows he is to bite the dust. Take the instinct of self-preservation (and there is none more deeply seated). What w -prndnhe sockor-2 (or-82 (ns)-1

As the best known and most popular woman of the time, she was welcomed by huge crowds in auditoriums all over the country and much of Europe.[35] As Ruth Bordin has written, "Frances Willard was a household word by 1889 and her reputation spanned the continent. Of equal importance, she had moved a social philosophy that revolved around temperance and the woman question to support of the labor movement and acceptance of Christian Socialism."[36]

Willard's gradual departure from day-to-day activity with the American WCTU in the 1890s, first to organize in Europe and then from illness, led to its partial decline from its lofty status as the largest women's membership organization in the United States. After her death in 1898, the WCTU returned primarily to a single issue, temperance organization

A prohibition march on December 10, 1913, jointly sponsored by the WCTU and Anti-Saloon League, ushered in the beginning of the formal effort to gain passage of a Constitutional Amendment. In the largest, public prohibition demonstration in the nation's capital up to that time, one-thousand women from the WCTU and one-thousand men from the Anti-Saloon League silently and solemnly marched in separate groups to the Capitol Building to present a number of petitions from around the country to Senator Morris Sheppard and Congressman Richmond Hobsonseeking constitutional change. A resolution for an amendment was introduced later that

day.[39]

The Progressive Era witnessed a profound shift in attitude about the exercise of government moral and regulatory power after the turn of the twentieth century. The early temperance fervor typically was based on persuasion not coercion—an effort to convince the population to be temperate in their consumption of alcohol. Willard herself had to convince the WCTU membership to begin moving toward more compulsory regulation during her time as President of the organization. State anti-liquor laws were sought; federal controls were not originally on the table. But the strong morality-based forces of the Progressive Era gradually gained strength. Temperance was not the only movement steeped in such motivations. Agitation for legal control of opiates and other drugs, control of white slavery, containing immigration, controlling corporate power, cleaning up slums and tenement houses, reducing vagrancy, as well as adoption of women's suffrage, all began to move from the realms of persuasion, religiosity, and street level social services to compulsion, and for some issues from local and state control to federal regulation.[40]

The Congressional debates on the Prohibition amendment displayed these trends. Much energy was spent debating whether it was appropriate to shift regulation of alcohol from local to federal control. But there also were many speeches devoted to the debilitating moral impacts of its use on society—especially on women and children. Senator William Kenyon of Iowa perhaps best summed up such sentiments. While stated with a style of cowardice Willard never used, she certainly would have applauded his sentiments about the need to protect children, women, and the frail.

> It is a trap for the youth; a destroyer for the adult; a foul spawning place for crime; a corrupter of politics; knows no party; supports those men for office whom it thinks can be easiest influenced; has no respect for law or the courts; debauches city councils, juries, and everyone it can reach; is powerful in the unity of its vote, and creates cowards in office.
>
> It flatters, tricks, cajoles, and deceives in order to accomplish its purpose; is responsible for more ruin and death than all the wars the Nation has ever engaged in; has corrupted more politics, ruined more lives, widowed more women, orphaned more children,

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39 Anti-Rum Army at Capitol: National Prohibition Amendment Cheered in the Senate, THE NEW YORK TIMES (Dec. 11, 1913). A firsthand description of the events may be found in Wesley Spragg Gives His Impressions of Americans: A Flashlight on the Committee of One Thousand, 22 The American Issue 4 (May, 1914).

40 The sources on this issue are legion. Here are just a few covering different areas on the impact of moral movements in the late nineteenth and early twentieth centuries. IAN TYRELL, REFORMING THE WORLD: THE CREATION OF AMERICA'S MORAL EMPIRE (2010); Richard Chused, Euclid's Historical Imagery, 51 CASE WESTERN RESERVE L. REV. 597 (2001); NICOLA BEISEL, IMPERILED INNOCENTS: ANTHONY COMSTOCK AND FAMILY REPRODUCTION IN VICTORIAN AMERICA (1997); WALTER RAUSCHENBUSCH, A THEOLOGY FOR THE SOCIAL GOSPEL MOVEMENT (1918).

destroyed more homes, caused more tears to flow, broken more hearts, undermined more manhood, and sent more people to an early grave than any other influence in our land.

Its day has come. No subterfuge can long save it. It will be dragged into the open, the influences behind it stripped of their masks. A mighty public conscience is aroused, moving on rapidly, confidently, undismayed, and undeceived. Behind it are the churches of the Nation—Protestant and Catholic schools, colleges, and homes. This public conscience is not discouraged by defeat or deceived by any cunning devices, by any shams or pretenses. Its cause is the cause of humanity, of righteousness, and God Almighty fights with it.[41]

41 The entirety of the 1917 debates may be found for the Senate in 55 Cong. Rec. 5663-5674 (Aug. 1, 1917) and for the House at

make her a better wife and mother and just as good a Christian."[46] This interplay between notions of virtuous women and political indecorum continued unabated until suffrage finally was approved—some claiming that women would clean up the polls and others rebelling at the notion that women should step foot in the boisterous and unseemly political realm. Suffrage efforts across the nation were strongly opposed by alcohol interests,[47] as well as those preferring to leave the issue to the states or to those taking traditional views on the impropriety of women participating in public, governance activities. Efforts to amend the Ohio constitution to grant women the right to vote were blocked by the legislature in 1888, 1890, and 1891.[48] Legislation by liquor interests against suffrage apparently was intense.[49] Those failures led to efforts to seek more modest reform by allowing women to vote in school elections—a realm filled with women teachers and often thought of as an extension of home life. Education suffrage was finally obtained by Ohio women in 1894.[50]

Efforts continued in Ohio to obtain full suffrage, including during vibrant debates on the subject at the 1912 state constitutional convention. In addition to debating prohibition, the right of women to vote took center stage. While the proposal to grant suffrage adopted at the convention went down to defeat at the polls, debate at the convention

streets and highways kept in repair and your cities kept sanitary, let the women vote. If you want your school houses kept in order and made sanitary, let the women vote. They will keep them in order. If you want your schools run right and your school teachers kept up to the mark, let the women vote. They will take care of that. If you want playgrounds for the children, let the women look after it by their votes.

These are some of the things women will do and there are many others that I might enumerate. It is all in the one direction. There is nothing but what favors the same conclusion. Take in the matter of civics—anything that pertains to the life of the community, especially the moral welfare of the whole community. I am speaking of this with reference to the whole community, but I am speaking of it as a matter of

of no fireside that has burned one dimly because of any difference of opinion about the use of the ballot. To permit the mothers of this country to express their views on important issues will not injure the homes. As I reflect now I realize that every time I followed my mother's advice I did well. Generally when I did not listen to her I lived to regret it. She was a thoughtful and prudent woman. The long and short of the whole matter is that for

White House in 1917.[59] The work of the Women's Party, together with the rejuvenation of the National American Women's Suffrage Association overseen by Carrie Chapman Catt, and the increasing success of state suffrage referenda helped carry the day. The critical approval of suffrage in a 1917 New York referendum, breaking through the previously solid opposition in the northeast, was critical.[60]

Strangely, perhaps, one of the most revealing statements made during the final suffrage campaign came not from any member of the legislature but from President Wilson—a recent and perhaps reluctant convert to the cause in 1918. Taking a cue from the strategically wise decision of Carrie Chapman Catt and the National American Women's Suffrage Association to support the war effort,[61] Wilson began his speech by giving credit to the women for all of their support. He commented on their patriotism, their willingness to take on jobs and tasks normally performed by men, and their sensible judgments that were needed as counselors during and after the conflict. "Are we," he said, "to ask and to take the utmost that women can give,—service and sacrifice of every kind,—and still say that we do not see what title that gives them to stand by our sides in the guidance of the affairs of their nation and ours?"[62] And he closed with a ringing statement of support for suffrage, based not only on the war support of suffragists, but also on the special spiritual and moral influence that would benefit both the country and the world:

> Have I said that the passage of this amendment is a vitally necessary war measure, and do you need further proof? Do you stand in need of the trust of other peoples and of the trust of our women? Is that trust an asset or is it not? I tell you plainly, as commander-in-chief of our armies and of the gallant men

Suffragist Prisoners and the Importance of Protecting Prisoner Protests

Nicole B. Godfrey*

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infamously brutal.[12] But despite the effort to feature incarcerated voices by some news organizations, the 2.2 million people currently confined to American prisons and jails are largely out of sight and mind for most of the public.[13]

This lack of visibility is purposeful and is perpetuated by a lack of independent monitoring of prisons and jails and by the leniency afforded to prison systems by the federal courts.[14] [15] In 2006, the Commission on Safety and Abuse in Am H U L F D ¶ V 3 U L V R Q V U H O H D V H G D U H S R U W G R F X P H Q W Q D W L R Q ¶ V S U L V R Q V D Q G M D L O V D Q G F D O O L Q J I R U D Q L systems in order to increase W U D Q V S D U H Q F \ D Q G D F F H [illegible] W D E L O L W \ L institutions.[16]

> Every public institution² hospitals, schools, police departments, and prisons and jails³ needs and benefits from strong oversight. Perhaps more than otherinstitutions, correctional facilities require vigorous scrutiny: They are uniquely powerful institutions, depriving millions of people each year of liberty and taking responsibility for their security, yet are walled off from the public.[17]

Without an external system ofchecking their power, prison systems across the country are free to operate with little transparency and accountability.[18] This lack R I H [W H U Q D O D F F R X Q W D E L O L W \ D O O R Z V S U L V R Q V \ V W foreign to the culture of the real wor W K D W D Q \ D-p W\ H[S H U W V W R V H O I and prison officials are placed under ex P H S U H V V X U H W R ³ N H H S T X L H W e (.)n19 (TJ ET prob (nclems Q q 0 0 612 792 re W* n BT /TT2 8.04 Tf 0.06 Tc 447.55 619(183

accountability of prison officials and further the democratic and societal values embedded in the First Amendment. To advance this argument, I focus on the activities of the women jailed because of their protest activities in support of the Nineteenth Amendment as an example demonstrating why prison protest is worthy of robust constitutional protections.

The Article proceeds in three parts. First, I provide

U L J K W [28] Rey stood in peaceful silence.[29] While the New York Times
L Q L W L D O O \ F D O O H G W K H S L F N H W H H W ³ X Q O D G \ O L N H D Q
organizations lauded the Z R P H Q ¶ V [30] H ½ I R U W > W @ D N L Q J D V K L I W D V D V
much harder work than it might appear. The pickets stood outside no matter what
the

whenever it hosted a foreign envoy at the White House.[38] This embarrassment reached a tipping point in June 1917, when a Russian envoy visited the White House.[39] Seeking to harken on the sentiments of the Russian Revolution, suffragettes arrived at the White House on June 20, 1917 with a banner stating

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The conditions of the Occoquan Workhouse likened to the conditions of the Victorian-era workhouses in England, the women confined there were subjected to inedible food, humiliating treatment, lack of communication with the outside world, and especially on the infamous "Night of Terror" on November 15, 1917.[59] Physicians described the prison as filthy, with worms in the food, and gave them blankets that had not been washed or cleaned for a year.[60]

The women confined to Occoquan were also subjected to ruthless forms of punishment.[61] The prison superintendent and his son beat the women, and prison officials punished certain prisoners by limiting their food to only bread and water.[62] Prison officials exploited pre-existing racial tensions by forcing women of one race to brutally attack women of another, under the threatening punishment to those who refused.[63] Women who disobeyed prison rules often were subjected to a form of punishment known as the "[64]

This method of punishment consisted of strapping girls with their hands

B. 7KH 6LOHQW 6HQWLQHOV¶ 3URWHVWV IURP :LWKL

The very fact of the first sentences to Occoquan caused a stir, and one should not underestimate how the LPSULVRQPHQW RI VL[WHHQ ³OHDG suffragists and very well-FRQQHFWHG ZRPHQ´ helped garner immediate public support.[69] There can be no doubt that the effectiveness of the arrests in furthering the suffrage movement is no doubt tied to the wealth and elite status of the women suddenly labelled prisoners.[70] Indeed, the outrage following the initial arrests was certainly IXUWKHUHG E\ WKH ZHDOWK DQG VWDWXV R DQG 3UHVLGHQW :LOVRQ¶V RZQ SDUW\ RI women sentenced was LQ SDUW GULYHQ E\ UDFLVW QHZV FRYHUDJH KHUDOGL ZLWK 2FFRTXDQ¶V GHVHJUHJDWHG HQYLURQPHQW[71]

But, no matter their social status and background, the introduction to 2FFRTXDQ¶V conditions did little to stem the conviction of the picketers, and by August 17, 1917, more picketers were arrested and sentenced to Occoquan.[72] No pardon followed these arrests or the others that ensued in the forthcoming weeks.[73] Garnering no special treatment at the prison, the suffragist prisoners OLYHG LQ DQG ZLWK FRQGLWLRQV RI ³SRRU VDQLWDWL IDFLOLWLHV´[74]

> At first, the suffragist prisoners abide[d] by the routine of the institution, disagreeable and unreasonable as it was. They performed the tasks assigned to them. They ate the prison food without protest. They wore the coarse prison clothes. But at the end of the first week of detention they became so weak from the shockingly bad food that they began to wonder if they could endure a diet of sour bread, half-cooked vegetables, and rancid soup with worms in it.[75]

But it soon became clear that the arrested suffragists would face longer and longer terms of imprisonment, so the women moved the protest inside the prison walls.

Claiming to be political prisoners, the women sought to intensify the pressure the picketing placed on the Wilson Administration by highlighting the injustice of their plight.[76] /XFN %XUQV EHJDQ ³TXLHWO\ RU JDQL]LQJ

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[69] Dodd, *supra* n. 30 at 405.

[70] Id. ³One was a daughter of a former ambassador and secretary of state. Another was the wife of a Progressive Party leader. Others were noted society figures, relatives of politicians, and high-ranking PHPEHUV RI WKH 1:3´

[71] Id. at 407, n.299.

[72] Id. at 408.

[73] Id.

[74] Id. at 411.

[75] Stevens, *supra* n. 24 at 95.

[76] Id. at 105.

for several weeks to circulate a petition among the prisoners.[77] When the prison officials learned of her activities, the Occoquan officials placed Miss Burns in solitary confinement.[78] The first in-prison protest took the form of a petition requesting to be treated as political prisoners. The petition initiated the most organized group action ever made in the American women's prison system. The petition was followed by a prison work strike.[79]

In addition to the request to be treated as political prisoners, the petition listed several other demands: (1) that the suffragists be allowed to

sentence to Occoquan.[89] Q 1 R Y H P E H U -one woman@ Fr LWV
from fifteen [s]tates were arrested . . . for picketing outside W K H : K L W H + R X V H ´[90]
The women arrived at Occoquan on November 15, 1917 and their arrival
X V K H U H G L Q Z K D W V X I I U D J L V W V Z R X O G O D W H U F D O O W
³G X U L Q J Z K L F K P R V W V X I I H U H G S K \ V L F D O L Q M X U L

thesuffragists had been illegally imprisoned at Occoqu

, Q W K H P R Q W K V W K D W I R O O R Z H G W K H Z R P H Q ¶ V S U
district police made periodic arrests.[113] With each arrest, conviction, and sentence,
the women continued their practice of hunger striking in protest.[114]

C. 2 I I L F L D O 5 H V S R Q V H V W R W K H 6 X I I U D J L V W V ¶ 3 U R W

Undoubtedly, the suffragists' protest activities both in and out of prison
helped advance the passage of the Nineteenth Amendment. The National
: R P D Q ¶ V P party experienced a dramatic increase in donations after the 1918
arrests and consequent exposure to the conditions in the Occoquan workhouse and
the District of Columbia jail. On September 14, 1917, a month after the second
large set of suffragist prisoners arrived at Occoquan, Senator Andrieus A. Jones,
the Chair of the Senate Committee on Woman Suffrage, visited Occoquan.[115] The
next day, the Nineteenth Amendment was reported out of committee, and by
6 H S W H P E H U W K H + R X V H ¶ V 6 H Q D W H C R P P L W W H H
R Q V X I I U D J H D Q D U \ ³ H [D F W O \ I R U W \ \ H D U V W R D
the suffrage amendment was first introduced into Congress, exactly one year
to a day from the time the first picket banner appeared at the gate of the White
+ R X V H ´ W K H + R X V H R I 5 H S U H V H Q W D W L Y H V ´[117] While the fight to
push the Amendment through the Senate lasted for an additional year and a half,
the will of the suffragists to continue their protest strategy was never questioned,
and by March 4, 1918, the D.C. Court of Appeals invalidated the pickets'
convictions.[118]

But the consequences of the suffragists' protest activities and subsequent
convictions and confinement extended beyond just advancing their cause. By
H Y D G L Q J 2 F F R T X D Q ¶ V F R Q G L W L R Q V , the District Jail's controls, the
suffragists' letters, and messages about life in the workhouse garnered press
coverage[119] and eventually led to a Congressional investigation into the conditions
at Occoquan.[120] Even the Wilson White House requested an inquiry into
2 F F R T X D Q ¶ V 3 R O L F H after receiving so many protest letters about the
imprisoned suffragists' plight.[121] While the President's secretary and right-hand
man confirmed the women's poor treatment, the President rejected this opinion,
instead tasking a district commissioner with the assignment of preparing an

[113] See, e.g., id. at 162, 168, 172-73, 179.
[114] Id. at 162.
[115] Dodd, supra n. 30 at 411.
[116] Id.
[117] Stevens, supra n. 24 at 137-40.
[118] Hunter v. District of Columbia, 47 App. D.C. 406, 410 (1918).
[119] Zhanise & Fry, supra n. 66 at 370 (noting that a New York Tribune reporter called for an impartial investigation related to the treatment).
[120] Stevens, supra n. 24 at 98.
[121] Zhanise & Fry, supra n. 66 at 288.

investigative report on prison conditions.[122] The committee visited three prisons rather than interview the prison officials, and the report ultimately bowed to political pressure, but the inquiry nonetheless brought a small amount of transparency to the prison that had theretofore been lacking.[123]

II. THE FIRST AMENDMENT AND PRISON

Solid walls do not form a barrier separating prison inmates from the protections of the Constitution.[124] However, prisoners do not retain "rights which are inconsistent with their status as prisoners or with the legitimate penological objectives of the corrections system."[125] The Supreme Court's decisions regarding the constitutional rights of prisoners (the Turner standard) is not meant to be tough. As one of the Court's conservative members has observed, courts sometimes render it so . . . regulations founded on flimsy rationales get upheld frequently enough, and the reasoning is often poor enough that there is cause for alarm.[126] Prisoners' rights advocates have objected that the Court's deferential approach to prison regulations has left prisoners, including those who are not their captors, exposed to retaliation for expressing opinions at odds with those of prison officials and deprived prisoners and free citizens alike of the opportunity to obtain, distribute, or even discuss anything objectionable faces grave impediments in pursuing his or her own intellectual star, however innocuous.[127] The plethora of prison regulations, designed to facilitate prison administration, impose [illegible] on a prisoner's [illegible].[128]

The standard governing a prisoner's First Amendment claims was announced in a 1987 Supreme Court decision called Turner v. Safley.[129] In this section, I explain and examine the Turner standard before turning to the well-documented criticisms of Turner's application since the decision was announced. Although many of the criticisms of Turner's application in the context of prison mail will be relevant to the example of the First Amendment rights of prisoners, focusing particularly on the importance of protecting

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prisoner protestand curbing some of the deference afforded prison officialsunde Turner.

A. Turner v. Safley
--story of Leonard Safley quest to marry his iprison sweetheart
provides moments of high drama and led teminal U.S Supreme Court decisionthat still governs the leading standard for evaluating prisoner´ First Amendment claims[130]
--reasonable relationship standard andwritten-in deference to prison officials
--how Turnernaturally flowed from decision inJonesv. North Carolina Prisoners¶Labor Union, Inc.[131] and whatJonesmeans for prisoner protest speech, specifically collective protests

B. Criticisms ofTurner
--highlight how Turnerhas become toothless and the inconsistent and rather arbitrary results in First Amendment prisoner cases

III. IMPORTANCE OFPROTECTINGPRISONERPROTEST

When the prison gates slam behind an inmate, he does not lose his human quality; his mind does not become closed to ideas; his intellectdoes cease to feed on a free and open interchange of opinions; his yearning forself-respect does not end; nor is his quest for self-realization concluded. If anything, the need for identity and self-respect are more compelling in the dehumanizing prisonvironment. Whether an O. Henry writing his short stories in a jail cell or a frightened young inmate writing his family, a prisoner needs a medium forself-expression. It is the role of the First Amendment and this Court to protect those precious personal rights by which we satisfy the basic yearnings of the human spirit.[132]

Despite the above flowery affirmation from the United States Supreme Court almost forty-five years ago, the federal courts, including the Supreme Court, have largely spent the following decades narrowing the First Amendment protections afforded to prisoners.[133] By refusing to afford prisoners robus

[130] David L. Hudson, Jr., Turner v. Safley: High Drama, Enduring Precedent, FREEDOM FORUM INSTITUTE, available at https://www.freedomforuminstitute.org/2008/05/01/turner-v-safley-high-drama enduringprecedent/
[131] 433 U.S. 119 (1977).
[132] Procunier v. Martinez, 416 U.S. 396, 427 (1974).
[133] See generallyShapiro,supran. 23 G H V F U L E L Q J K R Z W K H 6 X S U H P H & R decision inTurner v. Safleygave lip-service to the idea that prisoners are not

protections under the First Amendment, we are not only stripping prisoners of pieces of their identity, but we are ignoring two key values enshrined in the First Amendment: the ability of individual citizens to check the unadulterated power of their government and the promotion of democratic values through democratic participation. While prisoners, by virtue of their incarceration, are stripped of the most fundamental way to participate in democracy² the exercise of voting rights³ prisoners are not stripped of their citizenship. Therefore, as citizens, they should retain the right to protest the exercise of abusive power in the most opaque of institutions: the American prison. Yet modern First Amendment law as applied to prisoners fails to ensure the protection of these basic values.

This failure amplifies the societal harms caused by mass incarceration and the other abject miscarriages of justice that characterize our criminal justice system. Strengthening the First Amendment protections afforded to prisoners, I argue, will QRW RQO\ KDYH D QHW SRVLWLYH LPSDFW RQ ERWK W prisons and jail but will also help reduce recidivism rates. My arguments in this DUWLFOH DUH SUHPLVHG RQ WKH DVVXPSWLRQ WKDW [3] amendment was to guarantee the maintenance of an effective system of free H[SUHVVLRQ ´[134]

While scholars have grappled with why the freedoms enshrined in the First Amendment merit special protection throughout the life of the republic, it seems

The second justification Professor Delgado discusses is the idea of rivalry among ideas.[138] This purpose views the First Amendment as a means to help society steadily progress toward ethical and political truths.[139] In this era of criminal justice reform, as the nation struggles to determine how best to address the crisis of mass incarceration, it is critical that the voices of those most affected by the crisis are heard. Extending greater protection to prisoners' speech would further these ends.

Finally, the third justification discussed above is the American people's interest in the free flow of information.[140] This purpose views the First Amendment as a means to help society discover what is true.[141] By giving prisoners more opportunities to speak, we help society to hear their stories. By dehumanizing prisoners, we make it easier to ignore their plight. Therefore, by strengthening their ability to express themselves and demonstrate their own identities, we further this final First Amendment value.

As discussed above, the American prison has become [illegible]

³ 7 K H U K H W R U L F D O I U D P L Q J G X U L Q J W K H S L F N H W L
centered on very abstract but emotionally resonant ideals of democratic
legitimacy, self-determination, and L E H U W \ [147]

³ 6 R R Q D I W H U K H U U H O H D V H R Q 1 R Y H P E H U 3 D X
V W D W H P H Q W S U D L V L Q J W K H S L F N H W L Q J F D P S D L J Q
see our fight as part of the great American struggle for democracy, a
struggle since the days of the Pilgrims

weighing collective action–basic political behavior. That model was taken up first in Salem, Ohio, at a time when white men prepared to write a new constitution. Having recognized that a constitutional convention presented, in the words of the meeting's call, "a most favorable opportunity for the agitation of this subject," the organizers announced their goal, to discuss how "to secure to all persons the recognition of Equal Rights, and the extension of the privileges of Government without distinction of sex or color." When the women assembled in April 1850, they drew up a memorial to the constitutional convention requesting that in the new charter "women shall be secured, not only the right of suffrage, but all the political and legal rights that are guaranteed to men." Though whiteness and maleness survived the challenge in Ohio, the archetypal suffrage action had arrived.[5]

State campaigns to change electoral standards existed for as long as women pressed for their suffrage; consider victories in New York in 1917 or Michigan, Oklahoma, and South Dakota in 1918.[6] If we loosen the meaning of "state" to embrace territories, the women of Puerto Rico pursued their "state" campaign until 1935.[7] After the Civil War, state government ceased to be the only target for winning suffrage; when the door opened to possible federal pathways, the choice to focus on state action assumed various strategic and ideological meanings. A

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[5] Elizabeth Cady Stanton, Susan B. Anthony, and Matilda Joslyn Gage, History of Woman Suffrage, 2d ed. (Rochester, N.Y.: Charles Mann, 1889) 1:103-105.

[6] For list of territories and states granting woman suffrage before 19th Amendment, see https://constitutioncenter.org/timeline/html/cw08_12159.html

[7] Ida Husted Harper, History of Woman Suffrage (New York: National American Woman Suffrage Association, 1922) 6:722-724; Allison L. Sneider, Suffragists in an Imperial Age: U.S. Expansion and the Woman Question, 1870-1929 (New York: Oxford University Press, 2008), 117-134.

For the importance of the tactic, see Paul E. Fuller,

In 1869, Francis and Virginia Minor of St. Louis presented the legal argument for direct action. The Minors started with section 1 of the 14th Amendment and its clear indication that women were citizens of the United States as well as of a state. The privileges and immunities

[11] See Papers 2:274-75. See also Sneider, Suffragists in an Imperial Age, 30-32.

[12] CITATION NEEDED: Minor v. Happersett

[13]Congressional Record, 45th Cong., 2nd sess., 252; 45th Cong., 2nd sess., Resolution, S. Mis. Doc. No. 12, Serial 1785.

advocating that text thirty years later.

From 1878 through 1886, Senator Sargent's 16th Amendment could not get out of committee to the Senate floor for a vote, despite elaborate campaigns by women to prove that they wanted to vote and favorable committee reports. When the Senate finally brought it to a vote in January 1887, they crushed it–16 yeas, 34 nays.[16] It was a dark time. State campaigns still beckoned, but what could be done about any federal right? This became a more pressing question as the rival American and National suffrage associations began talks abou96 Tf -n0 (ce r)17 (g)30 (in8)

[16]Congressional Record, 49th Cong., 2nd sess., 978-1003.

[17]Francis Minor, "Woman's Legal Right to the Ballot," The Forum 2 (December 1886): 351-360. Quotations pp. 357, 358.

It was no wonder that the Minors returned to this question at this time. *Ex Parte Yarbrough* directly referenced the court's opinion in *Minor v. Happersett* and reached conclusions at variance with the earlier opinion. *Yarbrough* was, at its start, a case about violence against an African-American voter in Georgia. A group of men were convicted of federal crime and jailed. Their lawyers argued that the federal government had no authority to criminalize behavior in the matter of elections and cited the infamous phrase from *Minor*: "the Constitution of the United States does not confer the right of suffrage upon any one. Francis Minor noticed.

The Court ruled that Mr. Saunders was protected by federal law because "the function in which the party is engaged or the right which he is about to exercise is dependent on the laws of the United States."[18] At another point, "The office . . . is created by that Constitution and by that alone. It also declares how it shall be filled, namely, by election."[19] To rely on the qualifications that states imposed for their legislative elections was not at all the same thing as states controlling federal elections. In a well-crafted passage Justice Miller explained how federalism worked in this instance.

> The States in prescribing the qualifications of voters for the most numerous branch of their own legislatures, do not do this with reference to the election for members of Congress. Nor can they prescribe the qualification for those eo nomine. They define who are to vote for the popular branch of their own legislature, and the Constitution of the United States says the same persons shall vote for members of Congress in that State. It adopts the qualifications thus furnished as the qualification of its own electors for members

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[18]CITATION NEEDED: p. 662

[19]CITATION p. 663

constitution."[23] When a revision of the essay appeared in *The Arena* in December 1891, Minor had sharpened his aim in giving advice. He proposed "An Act To protect the right of citizens of the United States to register and to vote for members of the House of Representatives."[24] This would become a sustained element in the history of woman suffrage until 1920–woman suffrage attained via Article I, section 2, of the Constitution, sometimes in opposition to the 19th

[23] Francis Minor, *The Law of Federal Suffrage, An Argument in Support of It* (N.p., n.d., 1889). Quotations from p. 8.

[24] Francis Minor, "Citizenship and Suffrage: The Yarborough Decision," *The Arena* 5 (December 1891): 68-75. Quotation p. 73.

[25] "To All Friends of Liberty," *Woman's Tribune*, 23 April 1892.

introduced House Resolution 8369, modeled on Minor's text.[26]

*** Clara Colby set to work stirring up public opinion and gathering signatures in support of Clark's bill, using her weekly paper, the *Woman's Tribune*. Her committee's petition, in circulation by the end of April, read:

> Whereas, the right to vote for members of the House of Representatives is, by the Constitution of the United States, vested in the people of the United States without condition, limitation or restriction, and women are people, Therefore, we, citizens of the United States, especially request your honorable bodies to pass a bill enabling women citizens of the United States to vote for members of the House of Representatives.[27]

All federal suffrage bills proposed thereafter did not match Minor's text. There were variants. Why not presidential electors too? Direct election of Senators after the 17th Amendment expanded the list of federal offices for which women might be granted suffrage directly by Congress. But the idea that one might separate state and federal citizenship and along with each, separate state and federal suffrage, took hold.

As a tactical matter, this was an awkward ask: partial suffrage on a monster scale that would require states to separate their elections from federal elections. There is evidence that most of its advocates recognized the idea as a military maneuver, a way to bring down the enemy. In his 1891 article, Minor asserted that states would fold quickly, ridding their constitutions of "male" as a qualification.[28] Occasionally in the literature of activists who pursued Minor's

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[26] Congressional Record, 52nd Cong., 1st sess., 8369; *Woman's Tribune*, 16 April 1892.

[27] "Federal Suffrage for Women," *Woman's Tribune*, 30 April 1892.

[28] Minor, "Citizenship and Suffrage," 75.

[29]From Washington Herald, 5 June 1914, as quoted in Olympia Brown, Democratic Ideals. A Memorial Sketch of Clara B. Colby. (N.p. Federal Suffrage Association, 1917), 77.

[30]Brown, Democratic Ideals, 73.

[31]Minor, “Citizenship and Suffrage,” 70.

Brown’s speech “Foreign Rule,” delivered in 1889, was published in History of Woman

should come as no surprise that federal suffrage gained adherents in the South. Sallie Clay Bennett of Kentucky succeeded Clara Colby as chair of the Committee on Federal Suffrage and she kept bills flowing to Congress. Her sister Laura Clay, arguably the most powerful suffragist in the South, drew up her own federal suffrage bill in 1914. This was a compromise, in her mind, between letting the federal government dictate that women had rights to participate in federal elections and leaving the states in control of their qualifications. We'll let African Americans vote for members of Congress, but don't ask us to do the same at home, or so it sounds.

THE LEGAL AND CONSTITUTIONAL DEVELOPMENT OF THE NINETEENTH AMENDMENT IN THE DECADE FOLLOWING RATIFICATION

Paula A. Monopoli

As we celebrate the one hundredth anniversary of the tWhei c.09 T[nn (cee]0.002 ch(h)-4.09 T[ei)B2 (n)4 42 itac581 0 Tw rk cl 3458

animated much of the discourse around women voting—with some suffragists exploiting that fear and arguing that women's votes could cancel those of uneducated male immigrants—is still deployed for political purposes today. And women raising their

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always, race, gender and class have a significant impact on how law develops. The Nineteenth Amendment was no different, with race and the legacy of the Civil War playing a central role in its legal and constitutional development. Southern resistance to giving women the vote was, in large part, connected to fear of a "second Reconstruction" and the specter of enforcement legislation akin to that passed and implemented in the wake of ratification of the Fourteenth and Fifteenth Amendments. The book documents the minimal, at best, effort by suffrage organizations to support the passage of Congressional enforcement legislation, introduced pursuant to the second clause of the Nineteenth. Those groups also failed to support the efforts of African American suffrage leaders like Ida B. Wells-Barnett and Mary Church Terrell, the National Association of Colored Women (NACW), and the National Association for the Advancement of Colored People (NAACP) to respond to voter suppression in the South after ratification of the Nineteenth.

The leadership of the NWP and NAWSA included a number of experienced women lawyers like Florence Kelley, head of the National Consumers League (NCL), who had deep roots in strategic, test-case litigation, like Muller v. Oregon,[3] which upheld protective legislation for women workers. Both the NWP and NAWSA also had an extensiv (ead)-4 (er)pree8Tw [(p2 (ors)-)-2 (n)-10 (t)-2 (he) (e)4

provided a more solid constitutional foundation for equal civil, political and legal rights for women over the following one hundred years, one grounded in women's unique historical struggle.

While suffragist advocacy around the Nineteenth ceased after ratification, the cascade of legal and constitutional questions triggered by its ratification did not. The first of these questions was, as a matter of federalism, how much power did the national government have to dictate voter eligibility criteria? This issue was implicit in the pending Congressional enforcement legislation described above. It was also implicated in state cases that parsed the role of the federal government in traditionally state domains like the general taxing power.[5] Determining the precise boundary lines between federal and state sovereignty in the area was at the very heart of the state litigation around barriers to voting, like poll taxes, which followed ratification of the Nineteenth.

Federalism was also at the heart of cases which sought a determination of the impact of the Nineteenth on state laws around civil and political rights like jury service and holding public office. Federal constitutional amendments, constructed like the Nineteenth, were generally presumed to be "self-executing" as a legal matter and were seen as preemptive of contrary state legislation or constitutional prov pr1ad (een)-4 (t)-6]TJ 0 Tc 0 Tt t thengdevilasi t14
ccetci a (e)2wito voting.crhtstase ofca rie nteerae
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The second constitutional question raised by the Nineteenth was the scope of woman's citizenship under the federal Constitution. This question was inextricably intertwined with the question above about whether voting and jury service or voting and holding public office were coextensive. The same cases in which state judges parsed doctrines like the self-executing nature of constitutional amendments also demanded resolution of the question whether the Nineteenth went beyond simply voting and expanded women's civil and political rights, like the right to serve on a jury and the right to hold public office. In the realm of defining women's place in the constitutional order, judicial views about proper gender spheres undoubtedly drove some decisions about whether such rights were coextensive as a matter of statutory or constitutional interpretation. These decisions, in turn, often limited the expansion of women's civil [illegible] the twy, ihe than voting.

Third, ratification of the Nineteenth caused federal courts to grapple with the question of the scope of the "police power." Faced with protective labor legislation that treated women differently from men based solely on their sex, courts pondered whether the Constitution merely guaranteed a neutral or "formal" approach to equality, i.e., ensuring that women simply have the same opportunities as men. Alternatively, they considered whether it should be interpreted to ensure "substantive" equality, i.e., similar outcomes, taking into account differences between men and women. This debate was informed not only by gender, but by class in the first decades of the twentieth century. Professional and upper-class women tended to support formal equality, a

is a nondiscrimination rule governing voting that has no bearing on questions of equal citizenship for women outside the franchise."[6] Siegel goes on to describe the United States Supreme Court's approach to sex discrimination doctrine as one that ignores the constitutional history embodied in the debates leading up to ratification of the Nineteenth. She concludes that the Court's reliance on the Fourteenth Amendment alone signals a view that the source of constitutional law governing the scope of woman's citizenship is derived solely from an analogy to race.[7] Siegel concludes, "These assumptions have given rise to a body of sex discrimination doctrine that is limited in legitimacy and acuity by the ahistorical manner in which it was derived from the law of race discrimination."[8] My book offers an account of how those flawed assumptions arose—in large part because the suffragists who secured final passage and ratification of the Nineteenth Amendment turned too quickly away from it and from nurturing its potential and significance through legislation and litigation. As Vicki Schultz has pointed out in the context of Title VII, when activists stop advocating, at best, the law fails to develop and, at worst, it develops in a counterproductive way.[9] "In areas of law where activists did not exert early influence, or where they later took a less decisive or divided stance as the women's movement began to fade and fracture, the absence of visible, unified feminist

visibility, and strength over time, in shaping legal developments.[10] Thus, the book also explores the divisions within the suffrage movement and how those divisions shaped the legal and constitutional development of the Nineteenth in the decade after ratification. Since it seems unlikely that the equal rights amendment will become part of our Constitution in the near future, revisiting the jurisprudential potential of the Nineteenth Amendment can shed light on how we can better secure women's constitutional equality today.

[10] Id. Some scholars have argued that a similar lack of support from women's rights organizations for the private right of action under the Violence Against Women's Act (VAWA) was, in part, to blame for its eventual demise at the hands of the United States Supreme Court. See Caroline S. Schmidt, What Killed the Violence Against Women's Act Civil Rights Remedy Before the Supreme Court Did?, 101 VA. L. REV. 501, 530–33 (2015).

Prof. Ellen Carol DuBois, The Afterstory of the Nineteth Amendment

I. Women as voters 1920s
   a. Pundits declare woman suffrage a failure
   b. Initially approximately 1/3 of eligible women vote, Republican decline
   c. African American women show great eagerness to vote
   d. Southern white determination to suppress their vote

II. Women as office holders 1920s
   a. Parties largely closed to women office holders
   b. The rise and fall of Ruth Hanna McCormick
   c. Ida B. WellsBarnett attempt at ruing

III. 1932 realignment and women voters
   a. Women voters turn to Democrats
   b. First woman senator: Hattie Caraway
   c. Mary McCleod Bethune: African Americans in FDR Administration

IV.
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The 19th Amendment and the U.S. "Women's Emancipation" Policy in Post-World War II Occupied Japan: Going Beyond Suffrage

(Working Draft)

Cornelia Weiss

may bring to Japan a new concept of government directly subservient to the well being of

both by custom and legislation from any form of activity which would make them appear as equal of men.[20] At least one member of the Occupation contended that "There is no

The "head" owned the "family property," with the concurrent duty to "support needy members" of the house, as long as they were members of the house.[29] If a family member did not submit to the "head," the "head" had the power to expel the non-submitting member from the house. The duty of support extinguished as soon as an individual was no longer a member of the house – be it by divorce, death, or expulsion -- with dire results, to include homelessness and starvation. The Civil Code of 1898 may have created the "house" system for all of Japan.[30] Alfred Oppler, the Occupationaire in charge of the Occupation Legal Affairs Section during the drafting of the Civil Code, acknowledged: "Closely connected with this hierarchal system was the inferior role of women in Japanese society.[31]"

It appears during the Occupation, belief existed in the need to eradicate patriarchy.

- "SCAP seeks to eradicate a patriarchal system which has served to stifle liberalism and democracy, locally and nationally.[32]" (Occupationnaire Ladejinsky)
- "[T]he failure to achieve true democracy in Japan can be traced to this old feudalistic family system. Democracy will never become a reality, under a family system in which the rights and freedom of every member are not fully recognized.[33]" (Sunday Mainchi Magazine)
- "It is hardly necessary to say that the family is the unit and basis of all social relations. Unless it is democratized . . . one can never hope for the democratization of any social relationships, whatsoever, be it the educational system, labor relations, economics or government.[34]" (Sakae Wagatsuma)

3.0 SUFFRAGE

Women's suffrage, and demand for women's suffrage, existed in Japan before the Occupation. Marnie Anderson and Nancy Diggs Brown contend that in 1880, some Japanese women did have the right to vote at the local level and others fought for the

[29] OPPLER, 16.
[30] NAOKO TAKEMARU, 27.
[31] OPPLER, 16.
[32] William M. Gilmartin; W. I. Ladejinsky, The Promise of Agrarian Reform in Japan, 26 FOREIGN AFF. 312 (1948), at 319.

[33] GENERAL HEADUARTERS, SUPREME COMMANDER FOR THE ALLIED POWERS, ALLIED TRANSLATOR AND INTERPRETER SECTION, PRESS TRANSLATIONS, NO. 1395 POLITICAL SERIES: 349, ITEM 1 The General Election by ABE, Shinnosuke Magazine: Sunday Mainichi (Weekly) - 20 Jan Issue. Translator: T/E Ikemura & Sugasona (18 February 1946)

right to vote.[35] Sally Ann Hastings writes about the suffrage movement in Japan and states: "Even before the order from SCAP arrived, the Shidehara cabinet had already approved a decision to enfranchise women."[36] Sally Ann Hastings reports that "on 25 August 1945, Ichiwara Fusae, Yamataka Shigeri, and other women leaders of the pre-war suffrage movement formed a Women's Committee on Postwar Policy of 70 women" and that "[a]t a meeting on 24 September 1945, members of the Women's Committee passed a resolution addressed to the political parties demanding voting rights and political equality before the law."[37]

While General MacArthur issued his expectation on 3 October 1945 for women to possess suffrage, it was not until 26 November 1945 that the Diet convened for 18 days, principally to address the passage of a bill revising the law for the election of members to the House of Representatives.[38] The Ministry of Home Affairs "Bill for Revision of Law for the Election of the Members of the House of Representatives" was not as late as 30

'screen' prospective candidates [running for office; candidates who may have been ineligible for various reasons under purge rules]."[56] The reason for the postponement might have also been to provide a greater opportunity for women to become candidates running for office, empowering women to vote, and for women to be elected. In December, the SCAP reported that the "[p]ostponement of the election will give women more time to develop their plans"[57]

The election was "only seven months and seven days after the surrender."[58] General Whitney observed: "There was wide criticism in Allied capitals of MacArthur's decision to hold a general election so soon. But these critics obviously did not realize that most of the legislators with whom MacArthur would have to deal had been practically hand-picked at the height of . . . powers in 1942."[59] And thus, "[t]he earliest possible date for a general election was therefore all important."[60]

One of the concerns, given the pressing needs as a result of lack of food and housing, was whether women would be able to have time to vote.[61] The Japan under Occupation was devastated by war. As one author notes: "Extensive areas of the large cities were in ruins, many people still lived in air raid shelters, railway stations, and makeshift houses lacking even the elementary facilities for family life . . . the scarcity of food and widespread lack of employment."[62] In addition to time constraints due to lack of food, employment and housing, travel and voting constraints also were feared to limit women's voting. One newspaper writer stated: "The woman who is busy with the everyday affairs of life, despite the fact that she is interested in the election, will be inclined to abstain from voting because of the distance of the polling place or the complicated formalities of voting."[63] The writer's proposed solution: "To prevent this, I want to advocate a new measure. That is, a voting box, which is locked like a money savings box, would be taken from house to house by a member of the Neighborhood Association and every

[56] OCCUPATION OF JAPAN, POLICY AND PROGRESS, 20.
[57] SCAP REPORT DECEMBER 1945, 176, para 46.
[58] COURTNEY WHITNEY, MACARTHUR: HIS RENDEVOUZ WITH HISTORY, 243 (1956).
[59] Whitney, 244.
[60] Whitney, 244.
[61] GENERAL HEADQUARTERS, SUPREME COMMANDER FOR THE ALttt SUP SDQUAR57

Between the time that the suffrage bill passed and the first election in which women voted, two other changes occurred – the abolition of lawful enslavement of women and the drafting of the constitution.

fit to rebel against what some regarded as a form of slavery, the court always held in her favor." However, for an individual held in bondage to be able to access the courts would have required the ability to access the courts. As Williams acknowledged, "Such cases were rare."[86]

The next question was what was next for the freed women. Miss Yamamuro Tamiko, the Director of the Welfare Bureau of the Japan Christian Brotherhood, addressed the need to "establish . . . a women's home, where these girls can rest their exhausted bodies and souls as a shelter until they start a new life, an inquiry office for giving these girls a chance to find a decent job, and an organization to give them vocational guidance are necessary."[87] Mrs. Shimada Kiyo, Chief of the Women's Department of the Labor Union, urged: "We women want eagerly to emancipate these pitiful girls into a free world as soon as possible. We must give a warm welcome to those girls who have regained their freedom, give them a decent job, and lead then into a home-life upon their recovery from both mental and physical exhaustion or give them a stabilized livelihood."[88] To ensure employment of "freed" former licensed prostitutes, the Labor Division of one prefectural government recommend transforming brothels into hotels, with hotel jobs.[89] In contrast, the Metropolitan Police, believing that, "so long as the present social situation remains unimproved," licensed prostitution would simply convert itself into private prostitution.[90] Miss Yamamuro Tamiko opined: "As for the problems of private prostitutes it depends more on the self-respect of men than on that of women, I think."[91] The Metropolitan Police planned to address the crime through "limit(ing) the place of business for these private prostitutes to 5 districts . . . so as to put them under control."[92] Miss Yamamuro Tamiko also decried that the "men who transmit the diseases from woman to woman are not the objects of control," the "spreading of venereal diseases."[93][94] Police used the power to "control" women through charges of prostitution used against women to harass, shame, and detain. The U.S. military police (with Japanese police) would arrest women on the pretense of being "streetwalkers" (prostitutes), take them to police stations, and then test them for VD (venereal disease).

Aldous recounts an example of "650-750 innocent girls and women subjected to the humiliation of being displayed to the public as prostitutes, while being taken to the police station in the MP open jeep" and "further humiliated by being subjected to an exam for VD."[95] These women harassing police sweeps went to far as to detain a female Diet member.[96]

The outlawing of selling women and girls into prostitution did not make prostitution itself illegal. Prostitution was not made illegal until 1956, five years after the end of the Occupation. A film, Kenji Mizoguchi's Street of Shame (the "heartbreaking tale of a brothel full of women whose dreams are constantly shattered by their socioeconomic realities"[97]), may have brought the change. One current advertisement for the film contends that "when an anti-prostitution law was passed in Japan a few months after its release, some said the film had been a catalyst."[98]

5.0 CONSTITUTION

The Occupation saw the drafting and adoption of a new Constitution for Japan.[99] Japan's Constitution provides universal adult suffrage ("Universal adult suffrage is guaranteed with regard to the election of public officials." Article 15 of the Constitution of Japan). Japan's Constitution does not stop there. Going beyond the 14th Amendment of the U.S. Constitution, the Japanese constitutional reform resulted in articles of equal rights.[100] Unlike the U.S., which still does not have an equal rights amendment, Article 14 of the Constitution of Japan states: "All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin." Further, the Constitution of Japan provides: "With regard to choice of spouse, property rights, inheritance, choice of domicile, divorce and other matters pertaining to marriage and the family, laws shall be enacted from the standpoint of individual dignity and the essential equality of the sexes" (Article 24). In addition, the Constitution of Japan provides:

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Government Section until February 12, 1946 to draft a constitution.[110] The need for speed may be explained by wishing to have a constitution drafted before the Far East Commission had its meeting the end of February,[111] with the concern that otherwise the emperor would be declared a war criminal.[112] The content of the notes that MacArthur provided for guidance included: "1) safeguard of a dynastic but symbolic emperor representative of the people, 2) renunciation of war, and 3) dismantling of the feudal system."[113] On February 4, General Whitney sat down with his team and began the process of drafting a new constitution.[114] The team had nine days.[115] The writing of the constitution was in secret.

The sole woman on the Government Section charged with writing the constitution was Beate Sirota. She was 22 years old, was a graduate of Mills College, had grown up in Japan, and did not become an American citizen until 1945.[116] Sirota, in drafting her sections, in a decimated Tokyo, found and examined constitutions from around the world.[117]

One of the areas Sirota was responsible for drafting was on women's rights. Sirota sought to draft the "changes that would most benefit Japanese women."[118] She drafted provisions that included "equality in regard to property rights, inheritance, education, and employment; suffrage; public assistance for expectant and nursing mothers as needed (whether married or not); free hospital care; and marriage with a man of her choice."[119] Sirota draft provisions included the "rights of expecting and nursing mothers and full medical, dental, and optical treatment for school-aged children."[120] For example, a first draft of the Constitution stated: "Expectant and nursing mothers shall have the protection of the State, and such public assistance as they may need, whether married or not."[121] and "Women shall has the right of access to all professions and Occupations, including the right to hold office, and shall receive the same compensation as men for equal work."[122]

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welfare of its people is a new concept for Japan and demands constitutional approval to encourage its widespread acceptance, at present women are chattel here . . . and any peasant can sell his daughter if the rice crop is bad."[123] Dr. Wildes went even further arguing: "We have the responsibility to effect a social revolution in Japan, and the most expedient way of doing that is to force through a reversal of social patterns by means of the constitution."[124] Ye8.53t, in overrdiphect 3 (onn)4 (i)-v(c)-6 (u-11 (a)4 (phe)4 (r)3 (2 (,)-10 (I)-1

Yet, in overriding these concerns and in justifying excluding women's social guarantees, Colonel Rowell maintained: "It isn't the Government Section's job to establish a perfect system of guarantees. If we push hard for things like this, we could well encounter strong opposition. In fact, I think there is a danger the 3 (onp8a)-6 (pa)4 (he)4 (s)-1 (e)4 ( )-10 (g)10o (ve)

later."[131] Such beliefs ignored the reality that "social guarantees [were] common in the constitutions of many European countries."[132] The holders of these beliefs further ignored and failed to pay heed to Sirota's insight and forecast that "the bureaucrats who

MacArthur was trying to accomplish with an acceptable constitution. Colonel Rowell, who was part of drafting a new constitution, is quoted as stating: “You cannot impose a new mode of social thought on a country by law.”[152]

6.0 ELECTIONS

suggests that electing women to office is more financially rewarding for the voter than electing men to office. A 2015 CRS report finds “while controlling for numerous other factors including district-level characteristics, an empirical model demonstrates that women deliver approximately 9% more federal spending to their districts than men.”[158]

General Courtney Whitney reported that “nearly 50% of all women candidates were elected” as opposed to “only 15% of all men candidates.”[159] A SCAP analysis found “striking testimony of the independence with which the women went to the polls appears after anal found

of the eligible women cast their ballot.[166] In contrast, in the U.S., women made up 35-40% of the U.S. electorate on 2 November 1920.[167]

Japan adopted the balloting system for the 1946 elections at the urging of SCAP's POLAD (political advisor), George Atcheson.[168] Then, on 27 March 1947, Japan's Election Law Committee eliminated the 1946 system, in a 14-1 decision, that included a brawl between members.[169]

6.2 Balloting System of 1947

The 1947 balloting system reduced the voter to being only allowed to vote for one candidate,[170]

In 1947, under the new balloting system, there was a more than 50% drop in women elected to the House of Representatives (from over 30 in 1946 to 15 in 1947).[177] Furthermore, under the new balloting system, in the first elections for women for the House of Councillors, prefectural assemblies, city assemblies, and town and village assemblies, women won only 10; 22; 94 (including 16 in Tokyo); and 677 seats, respectively.[178] Women were 818 of the 232,864 officials elected to public office in April 1947;[179] that is, .35% of all seats went to women and over 99% of those elected were men.

In addition to an altered balloting system, the 1947 elections also had another re-

6.3 Anti-Women Politician Smear Campaigns

The U.S. State Department evaluation of the elections in Japan also failed to address the political psychological violence "smear campaigns" against women politicians. Campaigns to "smear" women politicians extended to at least one personal campaign to General MacArthur. General MacArthur recounts a call from "an extremely dignified . . . Japanese legislative leader," a Harvard Law School graduate.[185]

- Male Legislative Leader: "I regret to say that something terrible has happened. A prostitute, Your Excellency, has been elected to the House of Representatives."
- General MacArthur: "How many votes did she receive?"
- Male Legislative Leader: "25,000."
- General MacArthur: "Then I should say there must have been more than her dubious occupation involved."[186]

The April 1946 election resulted in "hundreds of unknowns . . . elected to replace the old order of the Diet, 80% of which had been handpicked by Tojo during World War II."[187] Whether the Harvard Law School graduate who was the male legislative leader making the personal appeal to General MacArthur was among those handpicked is unknown.

The campaigns to "smear" women politicians were not limited to personal appeals to General MacArthur, but publicly "smeared" women in the media. A reporter noted: "Shortly after the election of April 10, 1946 . . . a Tokyo suburban newspaper proclaimed to its readers that 30 of those women [elected] were former prostitutes and mistresses."[188] The response from the Occupation: "The WAC [Women's Army Corps] censorship officer who saw the startling announcement after publication called in the editor and made him publish an apology and print extensive biographies of the women to prove he had lied!"[189]

7.0 CIVIL CODE

The drafter of the women's rights provisions of the Constitution, Beate Sirota, in arguing that the "only safeguard" for women's rights "was to specify these rights in the constitution," believed that "the bureaucrats who would be assigned to write those statutes for the Civil Code would . . . be so conservative that they could not be relied upon to extend adequate rights to women."[190]

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[185] MacArthur, 305.
[186] MacArthur, 305; the SCAP election analysis indicates that the woman receiving the highest number of votes was Michiko Yamazaki, a Social Democrat, with an aggregate of 191, 293 votes. The male receiving the highest number of votes received 211,146 votes. 17A-2-1, Alfred Hussey Files, Library of Congress, 22 April 1946, Memo for the Supreme Commander, "Election Report."
[187] Courtney Whitney, 263.
[188] John La Cerda, 142.
[189] John La Cerda, 142.
[190] Sirota,Only Woman, 115.

Despite the usual practice of imposing U.S. will, Alfred Oppler, the U.S. Occupation lawyer who oversaw the revision of the Civil Code, maintained that while the "new constitutional principles" regarding equal rights necessitated implementing legislation, and that "[i]t was clear that the authoritative feature of the 'house' system were doomed to disappear," he stated "the Occupation was extremely reluctant to take initiative with regard to this legislation (the Civil Code)."[191] His reasoning: "[H]ow far the system as such could be continued in a modified form was a subtle and controversial question, the decision which appeared wise to leave to the Japanese themselves."[192] He determined: "This was one of the most important instances where the Occupation exercised self restraint."[193]

With an influential Occupation male "restraining" himself (arguably fulfilling Sirota's fear that those drafting women's rights legislation "could not be relied upon to extend adequate rights to women"), Japanese women exercised their power. After discussions "among the Japanese in planning committees, in the press, and in public hearings of the Diet,"[194] "the final decision reached was a complete abolition of the house system."[195] Oppler concedes: "This outcome was considerably influenced by the vigorous arguments of leading women."[196] He then explains, "It should be understood that the women are the largest group to benefit from such a radical change in the sphere of domestic life"[197]; explanation that explains the exercise of power and the consequences of having the ability to exercise power, or not. The Joint Press Conference of Civil Information and Education Section and Government Section, of 1 August 1947, proclaimed:

> Certainly of all the legislation which has been prepared to implement the guarantees of the New Constitution, this revision of the Civil Code has had the most penetrating and far reaching results. It has uprooted the legal "house" system under which for centuries junior members of families had been subjected to grave limitations of fundamental personal rights, and it has also recognized, as never before had been the case in Japanese law, the equality of husband and wife in all family matters, including inheritance.[198]

force as from the day of the enforcement of the Constitution of Japan."[199] The Constitution of Japan was not promulgated until November 3, 1946 and did not come into effect until May 3, 1947. The "temporary measures" were so temporary that the Bill

not be applied" (Article 7), and that "provisions of other statutes which are contrary to the provisions of this statute shall not apply" (Article 10).

The dismantling of the house further included that:

- An adult shall not be required to obtain parental consent for his or her marriage, divorce, adoption or dissolution of adoption. (Article 4)
- A husband and a wife shall live together at a place determined by their mutual agreement. The application of provisions concerning the regulation of the property of the husband and the wife which are contrary to the essential equality of the sexes shall be excluded. In cases where there are extremely unchaste acts on the part of either spouse, the other may bring an action for divorce on that ground. (Article 5)
- Parental power shall be exercised jointly by the father and the mother. If a father and a mother are divorced or if a father has acknowledged a child, the person who exercises parental power must be determined by the mutual agreement of the father and the mother. When mutual agreement is not reached or when it cannot be reached, the court shall make the determination. The court may change the person who exercises parental power in the interest of the child. (Article 6)

The Temporary Bill also addressed inheritance (Article 8 and 9).

Numerous issues required resolution for the post-interim Civil Code. I provide here three of numerous examples to illustrate issues requiring resolution. One was the existence and degree of obligations and duties to "render mutual assistance and support" among relatives, to include non-blood relatives such as a widowed wife.[205] A second was "The Capacity of an Illegitimate Child to Inherit." Disputes raged as to whether "an illegitimate child is entitled to one-half of the share in his (sic) father's estate which would go to a legitimate offspring," or "an illegitimate child should have no rights of inheritance," or "he (sic) should be subject to no discrimination and should inherit a full share in his ancestor's estate." A third was the "Effects of Marriage on Property," given that "the wife who normally does not hold in her own name the property acquired as a result of her participation in the family business."[206]

In 1947, the Civil Code[207] replaced the interim Code. Book I of Civil Code of Japan

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[205] SUPREME COMMANDER FOR THE ALLIED POWERS[PREPARATORY MATERIAL FOR THE REVISION OF JAPANESE CIVIL LAW: PREPARED IN THE HEADQUARTERS OF THE AMERICAN MILITARY GOVERNMENT FOR JAPAN].Revisions of Civil Code, Joint Press Conference of Civil Information and Education Section and Government Section, Statement Made at 1100 hours on 1 August 1947 [Press release] (1947).

[206] SUPREME COMMANDER FOR THE ALLIED POWERS[PREPARATORY MATERIAL FOR THE REVISION OF JAPANESE CIVIL LAW: PREPARED IN THE HEADQUARTERS OF THE AMERICAN MIL

addresses “General Provisions.” Article 2.1 states: “This Code shall be construed from the standpoint of the dignity of individuals and the essential equality of the sexes.” Howard Meyers contends: “The Civil Code revision made such important changes in the ‘Family System’ as depriving the head of a house of his power to prevent a marriage if the member of the family is of age; cancelling his right to determine where members of the house should reside, allowing his wife to hold property in her own name.“[208]

Yet Kurt Steiner, the Chief of the Civil Affairs and Civil Liberties Branch of the Legislative Justice Division of the SCAP Headquarters, illustrates in a 1950 legal review article how the Civil Code failed women, to include, but not limited to, “voluntary” forfeiture of inheritance, “adoption” child trafficking, and “marriages on probation.”[209] When preparing the post-interim Civil Code, one issue was whether there should exist a “Procedure for Obtaining a Consentual Divorce” to “ensure that a genuine desire for divorce is present in the minds of both parties, and that no undue or improper pressure has been applied.”[210] Consentual divorce, in “most of the cases in which the husband wanted a divorce,” were the result of “strong persuasion bordering on coercion.”[211] Oppler was “aware of the danger that [divorce by consent] would continue to work to the disadvantage of the wife due to her de facto subordinate position.”[212] Journalist La Co (r)3 sue .008 Tw 8

although he understood it harmed women.[215]"

A review of the 2016 CEDAW Committee's Observations on Japan highlights the gaps that harm women. For example, the 2016 CEDAW Committee decried the issues resulting from the absence of legislation that govern the distribution of property upon dissolution of marriage in the State party. The CEDAW Committee found that, as a result of this absence of legislation:

- Women are placed at a disadvantage because negotiations and agreements on property distribution happen outside legal regulation where power imbalances between women and men exist.[216]
- Most divorcing women lack the necessary information and means to demand disclosure of their husbands' financial situation, including

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Sirota did not. Her draft of the Constitution stated: "Women shall has the right of access to all professions and occupations, including the right to hold office, and shall receiv e the same compensation as men for equal work."[221] Yet by 25 June 1946, when the Diet received the draft Constitution, provisions providing right of access to all professions and occupations, the right to hold office, and the right to equal pay were eliminated. The only vestiges of this language were "Every person shall have the freedom to . . . choose his occupation to the extent that it does not interfere with the public welfare."[222]

In February 1946, a U.S. Advisory Committee on Labor, composed of all Government officials "who were labor experts in all phases of labor problems" and a representative of the AFL (the CIO representative "was unable to make the trip") visited Japan.[223] The U.S. Advisory Committee on Labor issued its report in April 1946.[224] The Committee was composed of twelve experts who studied Japan's labor situation for five mone(d o)-10 (f)3 .15

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By 1951, the Japanese Management Association recognized that "protective" measures served to advantage men and harm women. The Japanese Management Association stated: "In countries with a large labor population, cumbersome though well-meant intentions of protecting the weaker sex are apt to result in increasing difficulty for women to find employment, as is now the tendency in Japan."[233] The Japanese Management Association opined that "protective measures in the law are desirable and necessary;" however, the "current application of these provisions without due consideration of prevailing work conditions" as well as "the complicated procedures required by regulation in employing women have made it more advantageous to employ men in many cases even when the nature of the work is best suited for women."[234]

The Labor Standards Law expressly prohibited women (not men) from "dangerous" work,[235] night work,[236] overtime work,[237] and working in underground coal mines.[238] The Occupation further eliminated the ability of unions to negotiate for overtime work and pay for its women members.[239]

The Occupation endangered women's lives through these prohibitions against women workers. The Japan Management Association in 1951 found that "with the exception of a limited few cases, it is found generally impossible for Japanese industry to pay sufficiently high hourly wages enabling workers to earn a living within the restricted work day."[240] The government's prohibitions against women working resulted in women losing a bonus of 25% of base wages.[241]

Japanese women tried to fight back. In April 1948, the SCAP Summation No. 31 of Non-Military Activities in Japan reported on the "Niigata women stevedores, who must be released from their jobs 1 May as a result of the enforcement of the Labor Standards Law."[242] The women stevedores protested the loss of their jobs and sent delegates to the Minister of Labor and the Women's and Minors' Bureau to request "revision of the provisions on weight lifting."[243] Instead of protecting women by fighting for women to keep their jobs rather than losing them in the name of "protecting women," the Bureau stated that "the law must be upheld and that adjustments had been made in other ports."[244] In contrast, despite a law requiring equal pay for equal work, the government failed to uphold and enforce equal pay. The U.S. commission had found that the

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[233] KENZAI DOYU KAI (THE JAPAN MANAGEMENT ASSOCIATION), POSTWAR ECONOMY OF JAPAN UNDER THE ANTI-MONOPOLY LAW, TRADE ASSOCIATION LAW, AND LABOR STANDARDS LAW, 18 (1951).
[234] THE JAPAN MANAGEMENT ASSOCIATION, 18.
[235] Articles 63 and 49.
[236] Article 62, see also the International Labor Office 1948 Night Work (Women) Convention.
[237] Article 32.
[238] Article 64.
[239] Article 61.
[240] THE JAPAN MANAGEMENT ASSOCIATION, 15.
[241] Article 37.
[242] SCAP SUMMATION NO. 31 OF NON-MILITARY ACTIVITIES IN JAPAN, 218 (April 1948).
[243] SCAP SUMMATION NO. 31 OF NON-MILITARY ACTIVITIES IN JAPAN, 218 (April 1948).
[244] SCAP SUMMATION NO. 31 OF NON-MILITARY ACTIVITIES IN JAPAN, 218 (April 1948).

“custom” of unequal pay was “not only inconsistent with sound labor policy, but also

college professors, went on strikes when prefectural authorities rejected their demands for . . . elimination of pay differential by sex.[255]

and of psychological harassment, in the form of malevolent joking behavior, from their male colleagues[260] is and will remain the norm for both women and men. As we look in the century ahead, in 2120, will discrimination and violence against women continue to be normalized or will all States (including the U.S.) have not only ratified, but also implemented, the Convention on the Elimination Against All Forms of Discrimination Against Women (and its Optional Protocol)?

[260] OCCUPATION OF JAPAN: EDUCATION AND SOCIAL REFORM, 418.

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1. Premature Proclamations of Sex Equality Achieved

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UHWURVSHFW %XWWR LWHERJQLJRUWKDQWKHPWLFHV L
FRQILGHQWO\ DW WKH WLPH²D JRRGUUR2QGHU WR
HUD¶V VHOIFRQJUDWXODWRU\ PDWLRQV

:KHQ ZRPHQ ZHQW WR WKH 6XSUHPH &RXUW LQ W
VHHNLQJ VXSSRUW LQ WKHLU VWUXJJOHV IRU HTX
XQZDYHULQJ MXGLFLDO FRPPLWPHQWWRLQDO VXSU
Minor v. Happersett WKDW VWDWHV FRXOG SURKLELW
YRWLQJ 7KH &RXUWv. Kinsley G LQ Gre
Lockwood WKDW VWDWHV FRXOG EDU ZRPHQ IURP S
&RXUW DOVR WRRN IRU JUDQWHG WKH DWWRUQH OHJDO
ODZ SULQFLSOHV FRI GRYLHUG[UDUZHOHQD VHSD
LGHQWLW\ DQG SODFHG ZLYHV XQGHU WKH SURWH
HYHU\ -XVWLFH Barber v. Barber LQ WKDW D PDUULHG ZRPD
RUGLQDULO\ FRXOG WHRWOHKDYH UHVLGHQFH
PDWWHU ZKHUH VKH DFWXDOO\ OLYHG&LOHUWXU
KRPH ZDV WKHDQGHFKRVHE ERWK RI WKHP

-XVWLFH -RVHSK %UDGOH\²MRLQHG E\ WZR FR
FRQFXUUHGHOHW WR H[SODLQ ZK\ EDUULQJ ZRPHQ IURP
SURIHVVLRQ ILW VPRRWKO\ LQWR WKH FRQVWLWXW
FRPPRQ ODZ KDG ORQJ LQVLVWHG ³WKDW D ZRPDQ
VHSDUDWH IURP KHU KXVEDQG ZKR ZDV UHJDUG
UHSUHVHQWDWLYH´ WKH GRFWULQH WKDW ³P
VSHFLDO UXOHV RI ODZ ZKLFK PRGLI\ RU ZLWKGUDZ
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D G R S W L R Q L Q D Q G W K H & R X U W W D W H U V K D G H F L V L
G H Q L H G Z R P H Q H T X D O S U R W H F W L R Q 5 H V W U L F W L R
R S S R U W X Q L W L H V Z D W K L Q J H Q G H R X L Q W H G H V H U Y D V L Y H L
6 W D W H V F R Q W L Q X H G W R L P S R V H P \ U L Q F O X G R Q W U D L Q
O L P L W V R Q D Z L W W U D F W L J K R Z Q W R G F R Q U D Q V I H U S U R S H
E X V L Q H V V V H U Y H D V D J X D U D Q W R S D U Q G U H R P W K H U L V K
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VRFLHW\ EHJDQ WRPXQGKDUYHVWLQJ ZRT XDO GLJ

2. Self-Contradictory Decisions that Deny Women Equal Rights While Declaring the End of Sex Discrimination

)RU PRUH WKDQ D FHQWXU\ VRPH RI WKH 6XS
SURFODPDWLRQV DERXW ZRPHQ¶V SODFH QHYHU DS
ZRPHQ HTXDO ULJKWV 7KH -XVWLFHV¶ UHDVRQLQJ
WKDW ZRPHQ KDYH QRWKLQJ WR ZRUU\ DERXW
GHFODUDWLRQV RI VXFFHVV KHOS WKH &RXUW GHQ\
VXERUGLQDWLRQ EHKLQG

:RPHQ¶V ULJKWV FDVHV DUH QRW ¶WKHRQO\ RQHV
FRQWUDGLFWRU\ GHFLVLRQV ZKHUH
ZKLOH LQVLVWLQJ WKDW WKH\ KDYH
DSSHDOLQJ SURVSHFW &RXUWV GHQ\LQJ ZRP
ULJKWV KDYH ORQJ EHHQ UHJDUGHG FRQWUDG
SURQRXQFHPHQWV

Muller v. Oregon VXEMHFWHG ZRPHQ WR VH[SHFL
WKHLU FRQWUDFWXDO ULJKWV ZKLOH PDLQWDLQLQJ
HTXDO FRQWUDFW ULJKW WR

F R Q W U D F W X D O U L J K W V Z K H Q V H D P H Q V W K H D W

Goesaert v. Cleary D Q Q R X Q F H G ¶ W K D W D Z R P D Q
E H H Q W U D Q V I R U P H G Z K L O H O H D Y L Q J X Z H H Q ¶ V O H J D
X Q F K D Q J H G F D V H F H Q W H U H G R Q D 0 L F K L J D Q O D Z W K
I U R P Z R U N L Q J D V E D U W H Q G H U V L Q H F W R E Z L W K I L I
X Q O H V V W K H Z R P D Q Z D V ³ W K H Z L I H R U W K E X J K W H U R
E D U 7 K L V V W D W X W H Z D V O R Q H V R U E D Q L Q H V R Q Z R P
H P S O R \ P H Q W W K D W E H [W O X Y L U D E \ R U G H U Q R P L Q D Q V
W K H G H F L G H V D L W K U J D Q E D Q Q H G Z R P H Q I U R P E D U W H
D O O R Z L Q J Z R P H Q W R E H S H R E D O D Z P L W H G D E J H U R
R F F X S D W L R Q W K D Q S R X U L Q J G U L Q N V G H R P E H K L Q G D
I H P D O H E D U R Z Q H U V W K H U L J K W W R W H Q G W K H L U I
Z K L O H H Q D E O L Q J P D O H R Z Q H U V W R O D N Z D G Y D Q W D J
I H P D O H E D U R Z Q H U V D Q G W K H ¶ H P D O H
F R Q V W L W X W L R Q D O K L \ & R X U W V Z L I W O \ U H M H F W H G W K H
D V W K H & R X U W K D G S U H Y L R X V O \ U H E X W H G W K R V H
R Q I H P D O H H P S O R \ P H Q W Goesaert v. Cleary

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FRQWLQXHG REMHFWLRQV WR ZRPHQ¶V SDUWLFLSDWLRQ LQ V
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1. Declaring Equality Before the Nineteenth Amendment

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FHUWDLQO\ PDGH W3KUHWLGHUJXWH:RWRGURZ :LOVRQ XO
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3. Modern Sanitized Textbooks

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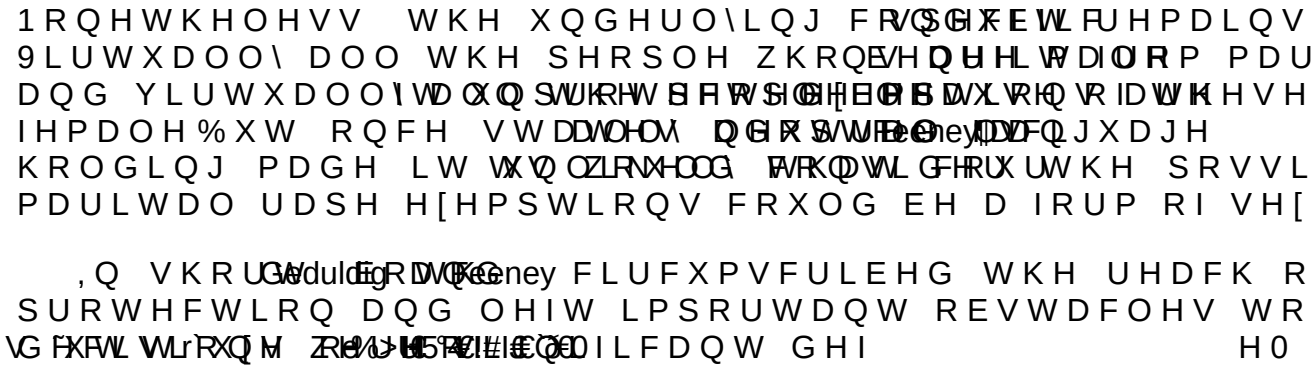

[3] P H G L H Y D O ´ F R Q F H S W O L Q N H G Z R P H Q ¶ V V X E R U G L Q D W K H I R X Q G L Q J R I W K H 8 Q L W H G 6 W D W H V

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&RQJUHVV UHOLHG RQ WKH VDPH PRGH RI DUJXP
GHFDGHV ODWHU LQVLVWLQJ LQ OXGLFKDWPHQWH JRYH
IURP UHJLVWUDWLRQ DQG FRQVFULSWDWLRQHVHFDXVH
ZHUH GRPHVWLF 2Q WKLV YLHZ DWQRZOHUHQ RVEKLJDW
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EHFDXVH KH GRHV QRW XQGHUWDNHWKLHGUWRRXV Z
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,QGHHG WKH SOXUDOLW\ UHOLHG RQXWKDQL]HU PLV
2QH RI WKH DUJXPHQWV WKH SOXUDWLWXWDQGY DQFHG
UDSH ODZ ZDV WKDW WKH &DOLIRUQLDHEJDQGDWXUH
UHMHFWHG SURSRVDOV´ WR UHZULWWKHWSHOXVDOLWX\W
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3RZHOO ZDV FRQILGHQW WKDW ODZHUV FRXOG NHHS .LQJ
SULQFLSOHV RI VHU[HTXDOLW\ +HG KRSHG WKH
PDGH E\ ODZ ILUPV LW LV QRZ ZLGHVSUHDG²
IDFW QHLWKHU UDFH QRU VH[LV UHOHYDQW ´

DQG SDWHUQDOXXQQUHJ00LDEDLQDLFWK\UHEQWRVWHLVF LQQG DQ
YLHZ ´ 7KH RSLQLRQ HPSKDVL]HG GLWKHUWHQWDWHG
JRYHUQLQJ SDUHQWDO UHVLGHQF\ UQLTWKUHHPHQWV ³
ODZERRNV RI RXU 1DWLRQ ZHUH ULDEZXWKWKYHUEUR
ZD\ PHQ DQG ZRPHQ DUH ´

$VVXPSWLRQV WKDW ZRPHQ DUH PRUH OLNHO\ W
QRQPDULWDO FKLOGUHQ GR KDYHDEKOLRQJLVWRU\ E
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$PHULFDQ VRFLHWXGLQG LOQDZWLKFO6XSUHPH &RXUW¶
GHFLVLRQPDNLQJ6QGHPLOPXOWDQHRXVO\ FRQWHQGH
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RI DQRWKHU VH[EDVHG UXOH JRYHUQLQJ WKH FL
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VXEMHFW WR GHSRUWDWLRQ EHFDXVH KH VGHDW WKHU
HVWDEOLVKLQJ SDWHUQLW\ XQWLO UHPDLQ1JX\HQ W
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7KH SDWHUQDO DFNQRZOHGJPHQW UHTXLUHPHQV

U H P D L Q V J R R G, Q D Z H H G Morales-Santana WR G L V F R X Q W W
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$ I W H Morales-Santana S D U H Q W D O U H V L G H Q F \ U H T X L U H P H Q
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See 3DXO supra QRWH Women Adopt Form for Equal Rights, supra QRWH DW

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Anthony, ’88–’89, ’91 ,&+$/80186

See, e.g. Equal Rights Amendment to the Constitution: Hearing Before the H. Comm.
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What’s Wrong with “Equal Rights” for Women? 3< //,6&+/$)/<5(3) HE

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FELONY DISENFRANCHISEMENT & THE NINETEENTH AMENDMENT

Michael Gentithes*

For the last decade, voting rights across America have contracted.[1] Using new legislation that "range[s] from strict photo ID requirements to early voting cutbacks to registration restrictions," fully half of the states have implemented restrictions on the franchise since 2010.[2] The trend was exacerbated when, in Shelby County v. Holder, the Supreme Court found the Voting Rights Act's coverage formula unconstitutional, thereby gutting the preclearance system that required states with a history of discriminatory voting laws to seek preapproval for voting rule changes that could affect minorities.[3] In Shelby's aftermath, several states previously subject to preclearance began aggressively purging names from their voter rolls.[4] And in the Supreme Court's recent finding that extreme partisan gerrymandering—with its effects on legislative stagnation and underrepresentation for citizens in packed and cracked voting districts—is a

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* Many thanks to the University of Akron School of Law for hosting this wonderful event, and to Professor Tracy Thomas, the John F. Seiberling Chair of Constitutional Law and Director of the Constitutional Law Center, for inviting me to participate.

[1] In the 2018 election, "voters in at least eight states [faced] more stringent voting laws than they did in the last federal election cycle in 2016. Voters in 23 states [faced] tougher restrictions than they did in 2010. The most common restrictions involved voter ID laws, but they also i.1 (s)(I)-55.1 .154 Tw -32..154 Tw -3-10.3 [d]

non-justiciable political question,[6] and the picture of voting rights in America seems quite bleak.

On the one hundredth anniversary of the Nineteenth Amendment's passage, and with the 2020 election looming, trends that contract voting rights must be combated wherever possible. This Article considers one particularly ripe opportunity: felony disenfranchisement laws. The Nineteenth Amendment and the history of the women's suffrage movement can offer a compelling argument against such laws. The exposure of flaws in the logic behind efforts to preclude classes of citizens from choosing our next political leaders can offer persuasive reasons to end felony disenfranchisement in America today.

Across the country, felony disenfranchisement laws leave some six million citizens unable to vote.[7] They do not simply restrict voting for those currently imprisoned; as of 2018, 4.7 million citizens could not vote because they lived in one of 34 states that prohibit the franchise for a mix of those on probation, parole, or even those who completed their sentences.[8] In twelve states that restrict voting rights for the latter category, citizens who were convicted but already served their time "make up over 50 percent of the entire disenfranchised population."[9] And because most felony disenfranchisement laws apply irrespective of offense type, many of these citizens lose the vote for committing crimes wholly unrelated to the political process—a sanction that can follow them for a lifetime outside the prison's walls.

Though felony disenfranchisement laws have an outsized effect on young minority men, they increasingly threaten a century of gains in female enfranchisement. In the last quarter century, rates of female incarceration have exploded. Since 1980, the growth rate for female imprisonment has more than doubled that of men, leading to a total increase of more than 750% by 2017.[10] Today, more than 225,000 women are behind bars in prisons and jails, representing approximately one-tenth of the total number of incarcerated Americans.[11] When those on probation or parole are included, women

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disenfranchisement laws in order to bar black male voters, targeting those offenses believed to be committed most frequently by the black population."[31]

Modern arguments in favor of felon disenfranchisement also take on a paternalistic tone. They offer an added avenue, aside from incarceration itself, through which lawmakers can prevent a selected group of individuals from harming society—though the alleged harm, the election of undesirable political leaders, is not itself an illegal result.[32] For example, such arguments featured prominently in the opposition to a 2002 Senate bill that would have secured federal voting rights for felons. Senator Mitch McConnell "warned of terrorists, rapists, and murderers voting, and of jailhouse blocs
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Claims like these suggest that a specific group of citizens—in this case, convicted felons—cannot be trusted to exercise the franchise responsibly. That group might, after all, elect political leaders that more closely resemble themselves than incumbent politicians. But voting poorly is not itself illegal. Thus, the argument also requires an accusation that convicted felons are somehow lesser—that they are something short of full-fledged citizens. While society might be prepared to tolerate the poor political choices of such full-fledged citizens, it cannot (and should not) withstand the political mistakes of convicted felons.

If this line of thinking sounds familiar, it should. The same strands of argument arose when opponents of the Nineteenth Amendment subtly denigrated female voters as incapable of voting responsibly, when anti-suffragists suggested that female citizens belong to a subordinate social class whose poor political choices would be an unnecessary headwind for society at large. These arguments similarly proceeded in two parts. First, they distinguished a group of citizens as lesser and likely to exercise the vote in irresponsible ways. Second, they maintained that those "poor" voting choices can and should be disregarded by the rest of society. Just as Anthony predicted during her trial, " 'if we once establish the false principle, that United States citizenship does not carry with it the right to vote in every state in this Union, there is no end to the petty freaks and cunning devices that will be resorted to, to exclude one and another class of citizens from the right of suffrage.' "w (nd a0.w TmID1)]T ss3.9 ( )-7 10 >>BDC 2

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That history provides two particularly powerful arguments against felony disenfranchisement. F

regimes that restrict voting rights for disfavored groups, including the millions of former felons across the country who have been wrongfully disenfranchised.

YOUTH SUFFRAGE IN THE UNITED STATES: MODERN MOVEMENT INTERSECTIONS, CONNECTIONS, AND THE CONSTITUTION (Working Title)

Mae C. Quinn,[1]
Caridad Dominguez,[2] *Chelsea Omega,*[3]
Abrafi Osei-Kofi,[4] *and Carlye Owens*[5]

What follows are excerpts from our draft work in progress:

The 100th anniversary of the Nineteenth Amendment to the United States Constitution is an appropriate moment to reflect on the history – and consider the future – of the right to vote in the United States.[6] Public schools and college classes cover the nation's suffrage story as a cornerstone of our country's heritage.

* * *

Youth as voters are left out of such categorical accounts,[11] regardless of their race or sex.[12] We seek to add to the literature surrounding suffrage in the United States, documenting two different youthful right to vote movements in the modern era. In doing so we add layers to the nation's legal history of enfranchisement and encourage rethinking the voting rights story in the days ahead. We analyze some of the intersections and connections among the different voting rights movements that have occurred in this country and offer more complex constitutional understandings of capacity for purposes of full political participation.

The first modern youth voting rights movement involved the development over several decades of the 26th Amendment, which was ratified in the 1970's, finally allowing young people between the age of 18 and 21 to cast their votes at the polls. The second modern youth voting rights movement is still very much evolving, with many American youth advocates now calling for suffrage to be extended to American citizens as young as sixteen years of age. Although decades apart, both movements challenge boundaries and seek to redefine important categories….

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I. FIRST MODERN U.S. YOUTHFUL VOTER RIGHTS MOVEMENT AND IMPLICATIONS

The story of how African-American men received the right to vote with the 1867 ratification of the 15th Amendment has been extensively analyzed in historical texts, legal scholarship, and popular media.[13] The same can be said about women's suffrage and the 19th Amendment of 1920.[14] As other have noted, the constitutional enfranchisement of youth has

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[11] To be sure, others are elided by this telling as well – including Native American women who were not given the right to vote following the passage of the 15th or 19th Amendments.

[12] *See id*.; Julia Rose Kraut, *An Introduction to Civil Rights and Civil Liberties Law and History*, HISTORICAL SOCIETY OF NEW YORK COURTS WEBSITE, http://www.nycourts.gov/history/academic

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1. [illegible]

As Wendell Cultice describes, English common law generally held that both men and women reached "full majority and discretion" once they turned 21 years of age.[20] Many claim this was tied to British customs around the required age for knighthood and serving the crown – and little else.[21] Yet it was used to establish the voting cut-off age for men in Great Britain.[22] And that practice was, by and large, continued in colonial America – where only white men could vote.[23] But as early as 1819, states began to consider the possibility of lowering the voting age to 18. Here again, the motivation seemed to be tied to official government service. In this instance it was the return of soldiers from the War of 1812.[24]

During the Civil War, only men age 20 or older were legally eligible for conscription.[25] Yet many teens fought on both sides of the war, which again generated discussion about giving younger men

Of course, one of the most significant adult voices was that of the president. During his 1954 State of the Union Address, former U.S. Army General

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Many accounts of the ratification of the 26th Amendment begin in the 1970s. Others simply jump from the 1950's to the late

generally, without mentioning the word race.[72] Obviously, however, the Voting Commission's work was also intended to help take on active intimidation and disenfranchisement of Black voters in the south – even if somewhat under cover.[73] But given its somewhat muted messages and seeming discomfort with directly addressing racism, the Kennedy administration was

These efforts also generated in youth themselves a greater understanding of the power of the ballot and their power as political agents.[88] SNCC's herculean efforts, leading