

# MORE THAN THE VOTE: THE NINETEENTH AMENDMENT AS PROXY FOR GENDER EQUALITY

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## INTRODUCTION

Elizabeth Cady Stanton, pioneering leader of the women’s rights movement in the nineteenth century, famously declared the right of women to vote in 1848 at a convention in Seneca Falls, New York.<sup>1</sup> She alone initially appreciated the importance of the vote both for women’s political power and participation in the governance of the country, as well as its symbolic meaning for women’s full citizenship.<sup>2</sup> Her abolitionist and religious colleagues, however, were suspicious and a bit outraged by the suffrage demand, as these moralistic reformers were opposed to politics, which they viewed as fundamentally corrupt due to bribery,

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1. Report of the Woman’s Rights Convention, Held at Seneca Falls (July 19-20, 1848), in 1 THE SELECTED PAPERS OF ELIZABETH CADY STANTON AND SUSAN B. ANTHONY 75, 76-79 (Ann D. Gordon ed., 1998).

2. See SUE DAVIS, THE POLITICAL THOUGHT OF ELIZABETH CADY STANTON: WOMEN’S RIGHTS AND THE AMERICAN POLITICAL TRADITIONS 90 (2008); JUDITH WELLMAN, THE ROAD TO SENECA FALLS: ELIZABETH CADY STANTON AND THE FIRST WOMAN’S RIGHTS CONVENTION 193 (2004).

patronage, and abuse of power.<sup>3</sup> Stanton's friend and co-organizer Lucretia Mott was worried the demand would make the meeting "look ridiculous" and Stanton's husband, Henry, dismissed the suffrage claim as a "farce."<sup>4</sup>

Nevertheless, they persisted. For seventy-two more years, women activists would fight for the right to vote by organizing annual conventions, creating associations, petitioning legislatures and constitutional conventions, writing editorials, delivering speeches, and campaigning door-to-door for what would become the Nineteenth Amendment to the U.S. Constitution.<sup>5</sup>

This nearly century-long movement for suffrage, however, was never just about the vote.<sup>6</sup> It originated as part of a comprehensive plan for women's equality as proclaimed at Seneca Falls in the women's *Declaration of Sentiments*.<sup>7</sup> Stanton, the intellectual driver of the first women's rights movement, conceptualized the vote as only one of the needed rights of women to access the political process.<sup>8</sup> The elective franchise was a key piece of reform to provide women access to the right to make the laws that governed them, but it was never the sole goal. Rather, Stanton's first-wave movement envisioned a full-scale reform of law and society to bring about women's freedom and equal opportunity. Change was needed, she argued, in four venues: the state, family, industry, and church.<sup>9</sup> She described women's oppression as "a fourfold bondage" with "many cords tightly twisted together, strong for one purpose" of woman's subordination.<sup>10</sup>

Despite these broad equality efforts targeting multiple systems, the vote

3. DAVIS, *supra* note 2, at 66; Ellen Carol DuBois, *Outgrowing the Compact of the Fathers: Equal Rights, Woman Suffrage, and the United States Constitution, 1820-1878*, 74 J. AM. HIST. 836, 840-41 (1987).

4. ELISABETH GRIFFITH, *IN HER OWN RIGHT: THE LIFE OF ELIZABETH CADY STANTON* 54-55 (1984).

5. AILEEN S. KRADITOR, *THE IDEAS OF THE WOMAN SUFFRAGE MOVEMENT, 1890-1920*, at 5 (1965) (reporting that suffrage women conducted 480 state legislative campaigns, 277 state convention campaigns, 19 campaigns to Congress, and 41 state amendment campaigns); Marjorie Spruill Wheeler, *Introduction: A Short History of the Woman Suffrage Movement in America*, in *ONE WOMAN, ONE VOTE: REDISCOVERING THE WOMAN SUFFRAGE MOVEMENT* 9, 9-18 (Marjorie Spruill Wheeler ed., 1995); *see also* ELAINE WEISS, *THE WOMAN'S HOUR: THE GREAT FIGHT TO WIN THE VOTE* 3 (2018); ELEANOR FLEXNER & ELLEN FITZPATRICK, *CENTURY OF STRUGGLE: THE WOMAN'S RIGHTS MOVEMENT IN THE UNITED STATES* vi-xi (3d ed. 1996).

6. W. William Hodes, *Women and the Constitution: Some Legal History and a New Approach to the Nineteenth Amendment*, 25 RUTGERS L. REV. 26, 49 (1970) ("[I]t is clear that much more than the right to vote was at stake—a whole new way of life was being established for women."); *see also* JOAN HOFF, *LAW, GENDER, & INJUSTICE: A LEGAL HISTORY OF U.S. WOMEN* 135 (1991); Elizabeth B. Clark, *Religion, Rights, and Difference in the Early Woman's Rights Movement*, 3 WIS. WOMEN'S L.J. 29, 29 (1987) (arguing that "[h]istorians have overstated . . . the centrality of suffrage" to the early women's rights movement).

7. *See infra* Part II.

8. KRADITOR, *supra* note 5, at 77; *see also infra* Part II.

9. *See infra* Part II.

10. Elizabeth Cady Stanton, *The Degradation of Disfranchisement: Address by ECS to the National-American Woman Suffrage Association* (Feb. 26, 1891), in 5 *THE SELECTED PAPERS OF ELIZABETH CADY STANTON AND SUSAN B. ANTHONY* 360, 366 (Ann D. Gordon ed., 2009).

emerged as the primary demand for women's rights. The Civil War "effectively killed the initial collectivity behind the broadly based humanitarian goals of the Seneca Falls Convention."<sup>11</sup> After the war, Reconstruction and the Civil Rights Amendments focused the national conversation on federal constitutional change, and particularly on the power of the vote prioritized in the Fifteenth Amendment.<sup>12</sup> The Fourteenth Amendment also highlighted the issue of the vote for women by explicitly inserting gender into the Constitution for the first time, enforcing the right to vote guaranteed to "male inhabitants" and "male citizens."<sup>13</sup> Women's rights advocates were drawn into this constitutional debate, forced to narrow their focus and react to the national dialogue on suffrage.<sup>14</sup> They also challenged the systemic dichotomy established by these amendments setting race in opposition to gender and creating what Stanton called an "aristocracy of sex" subordinating women to an inferior class of citizenship.<sup>15</sup>

Women then called for a federal constitutional amendment of their own.<sup>16</sup> Their supporter, Representative George W. Julian of Indiana, introduced the first proposed Sixteenth Amendment to guarantee the right of suffrage "without any distinction of discrimination . . . founded on sex" in March 1869.<sup>17</sup> Betrayed by male and abolitionist allies who abandoned efforts at universal suffrage regardless of race or gender, Stanton and Susan B. Anthony formed their own National Woman Suffrage Association (NWSA) with the nominal goal of the vote, but retaining a comprehensive agenda for four-system reform.<sup>18</sup> Lucy Stone and her

11. HOFF, *supra* note 6, at 143.

12. DuBois, *supra* note 3, at 844.

13. ELLEN CAROL DUBOIS, *FEMINISM & SUFFRAGE: THE EMERGENCE OF AN INDEPENDENT WOMEN'S MOVEMENT IN AMERICA, 1848-1869*, at 60 (1978); DAVIS, *supra* note 2, at 131. Section 2 of the Fourteenth Amendment provides:

But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives of Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the *male* inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such *male* citizens shall bear to the whole number of *male* citizens twenty-one years of age in such State.

U.S. CONST. AMEND. XIV, § 2 (emphasis added).

14. DUBOIS, *supra* note 13, at 162.

15. *Id.* at 60, 68-69; Ann D. Gordon, *Introduction*, in 2 *THE SELECTED PAPERS OF ELIZABETH CADY STANTON AND SUSAN B. ANTHONY* xxi, xxii-xxiii (Ann D. Gordon ed., 2000); Letter from Elizabeth Cady Stanton to Wendell Phillips (May 25, 1865), *microformed on The Papers of Elizabeth Cady Stanton and Susan B. Anthony* (Patricia G. Holland & Ann D. Gordon eds., 1991) (Scholarly Res. Inc.) [hereinafter *Stanton Papers, Microfilm Collection*].

16. Reva B. Siegel, *She the People: The Nineteenth Amendment, Sex Equality, Federalism, and the Family*, 115 *HARV. L. REV.* 947, 970 (2002); 2 *HISTORY OF WOMAN SUFFRAGE* 91-92 (Elizabeth Cady Stanton, Susan B. Anthony & Matilda Joslyn Gage eds., 1887) [hereinafter *HWS*].

17. Siegel, *supra* note 16, at 970 n.61.

18. DUBOIS, *supra* note 13, at 189-98; LISA TETRAULT, *THE MYTH OF SENECA FALLS: MEMORY AND THE WOMEN'S SUFFRAGE MOVEMENT, 1848-1898*, at 31-33 (2014).

husband Henry Blackwell founded a second organization, the more conservative American Association of Woman's Suffrage, which focused its efforts on the vote—first for Negro suffrage, and then women's suffrage—while also supporting some family and economic reforms.<sup>19</sup>

Pulled into this national constitutional movement, women's rights activists utilized the demand for the vote as a proxy for a 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 early movement.<sup>20</sup> Her advocacy for the vote thus came to represent full citizenship rights, defined as full equality in civil rights and emancipation from oppressive social and religious norms. As Stanton argued, “in spite of all the efforts of the most politic adherents to keep the question of suffrage distinct,” it was important to “admit that suffrage for woman does mean political, religious, industrial, and social freedom—a new and higher civilization.”<sup>21</sup>

Continuing this push for women's full citizenship rights, Stanton and her supporters adopted a second constitutional strategy after ratification of the Fourteenth Amendment in 1868, arguing that women had the right to vote under its provision granting all citizens “privileges and immunities” under the law.<sup>22</sup> On this basis, NWSA adopted a “New Departure” strategy, departing from their focus on constitutional amendment, and calling militantly on women to demand these rights through direct action at the polls.<sup>23</sup> Anthony successfully voted under this strategy in 1872, but was later arrested and criminally tried, with the trial court rejecting the constitutional argument and procedural oddities preventing her appeal.<sup>24</sup> The New Departure strategy was soon halted by the U.S. Supreme Court's decision in *Minor v. Happersett*.<sup>25</sup> The Court held that while women were national citizens, entitled to the protection of the privileges and immunities clause, voting was not a right of federal citizenship, but rather was a right of state

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19. DUBOIS, *supra* note 13, at 198-200; TETRAULT, *supra* note 18, at 34; *see also* Andrea Moore Kerr, *White Women's Rights, Black Men's Wrongs, Free Love, Blackmail, and the Formation of the American Woman Suffrage Association*, in *ONE WOMAN, ONE VOTE: REDISCOVERING THE WOMAN SUFFRAGE MOVEMENT* 61, 61-78 (Marjorie Spruill Wheeler ed., 1995).

20. Elizabeth Cady Stanton, *A Private Letter*, *REVOLUTION*, Nov. 10, 1870.

21. STANTON, *supra* note 10, at 367.

22. Siegel, *supra* note 16, at 971-72. They relied on the 1823 U.S. Supreme Court case of *Corfield v. Coryell*, which found the elective franchise to be one of the privileges and immunities protected by Article IV of the Constitution. DuBois, *supra* note 3, at 852; HWS, *supra* note 16, at 407-11.

23. Siegel, *supra* note 16, at 971; DuBois, *supra* note 3, at 853.

24. *See* RICHARD CHUSED & WENDY WILLIAMS, *GENDERED LAW IN AMERICAN HISTORY* 872-78 (2016); DuBois, *supra* note 3, at 853, 859-60.

25. 88 U.S. 162 (1874). A few lower courts had similarly rejected the privileges and immunities theory, following the lead of an 1871 House Judiciary Report by Fourteenth Amendment drafter John Bingham, that argued the amendment was not intended to grant women suffrage. DuBois, *supra* note 3, at 857; HWS, *supra* note 16, at 597-99.

citizenship determined by each individual state.<sup>26</sup>

After the defeat in *Minor*, women's rights advocates renewed their efforts for a federal constitutional amendment enfranchising women.<sup>27</sup> They also pursued the one avenue left open by *Minor* for state rights, continuing decades of grassroots efforts to secure suffrage state by state. The first state to grant women suffrage was Wyoming in 1869, followed by the western territory of Utah in 1870, and then Colorado (1893) and Idaho (1896); those were the only states, however, to enfranchise women in the nineteenth century.<sup>28</sup> By the late 1880s, new allegiances of suffrage advocates with the socially conservative Woman'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 like women's moral compass and home protection role.<sup>29</sup> The woman's suffrage movement entered what has been called the "doldrums": 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.<sup>30</sup>

It would take the next generation of activists under the leadership of Alice Paul and her more radical and sensationalist politics for the women's suffrage amendment to be passed.<sup>31</sup> 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.<sup>32</sup> She and her White House protest group were arrested and

26. 88 U.S. at 165, 170-71.

27. Siegel, *supra* note 16, at 974.

28. KRADITOR, *supra* note 5, at 4; Beverly Beeton, *How the West Was Won for Woman Suffrage*, in ONE WOMAN, ONE VOTE: REDISCOVERING THE WOMAN SUFFRAGE MOVEMENT 99, 100 (Marjorie Spruill Wheeler ed., 1995). The next states to grant women's suffrage were Washington (1910), California (1911), Oregon (1912), Kansas (1912), and Arizona (1912).

29. Carolyn DeSwarte Gifford, *Frances Willard and the Woman's Christian Temperance Union's Conversion to Woman Suffrage*, in ONE WOMAN, ONE VOTE: REDISCOVERING THE WOMAN SUFFRAGE MOVEMENT 117, 117 (Marjorie Spruill Wheeler ed., 1995); KRADITOR, *supra* note 5, at 67; TETRAULT, *supra* note 18, at 87-89.

30. FLEXNER & FITZPATRICK, *supra* note 5, at 255; KRADITOR, *supra* note 5, at 4, 6, 9. School board suffrage was granted by Kentucky in 1838, Kansas in 1861, Michigan and Minnesota in 1875, and thirteen other states and territories by 1890. KRADITOR, *supra* note 5, at 4. Municipal suffrage for women was granted by Kansas in 1887, but both municipal and school board suffrage based on women's caretaking role proved to be obstacles to further extension of women's right to vote. *Id.* at 6. Illinois granted women the right to vote for presidential electors in 1913. *Id.* NAWSA would not adopt a policy focusing on the federal amendment until 1916. *Id.* at 9.

31. See Lynda Dodd, *Sisterhood of Struggle: Leadership and Strategy in the Campaign for the Nineteenth Amendment*, in FEMINIST LEGAL HISTORY: ESSAYS ON WOMEN AND LAW 189, 190-95 (Tracy A. Thomas & Tracey Jean Boisseau eds., 2011); Linda G. Ford, *Alice Paul and the Triumph of Militancy*, in ONE WOMAN, ONE VOTE: REDISCOVERING THE WOMAN SUFFRAGE MOVEMENT 277, 284 (Marjorie Spruill Wheeler ed., 1995).

32. Dodd, *supra* note 31, at 190-95; see also TINA CASSIDY, MR. PRESIDENT, HOW LONG MUST WE WAIT?: ALICE PAUL, WOODROW WILSON, AND THE FIGHT FOR THE RIGHT TO VOTE 40, 170 (2019).

inhumanely imprisoned and force fed; this resistance created the much-needed public pressure to reinforce the longstanding lobbying efforts of the National American Woman Suffrage Association (NAWSA) president Carrie Chapman Catt and lead diplomat, Helen Hamilton Gardner, forcing President Wilson to endorse women's suffrage.<sup>33</sup> Congress passed what had become the Nineteenth Amendment in June 1919 on the eve of World War I. It was ratified by the states 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.<sup>34</sup>

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.<sup>35</sup> Thus, soon after the grant of suffrage, Alice Paul and her National Women's Party immediately proposed the Equal Rights Amendment to enshrine women's full equality in the Constitution.<sup>36</sup> The original comprehensive agenda for women's rights in all venues of society was now embodied in this new constitutional proposal, and its advancement continued by advocacy for the ERA. The ERA, however, met with opposition, first from labor groups and organizations like the American Civil Liberties Union (ACLU), which were concerned about workplace protection laws, and later from socially conservative women's and religious groups that were concerned about the impact of gender equality on the family. This opposition to the ERA, continuing to the present time, 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.<sup>37</sup> 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.<sup>38</sup> Finally, it connects the suffrage activism with demands for an equal rights amendment to realize the full civil rights of equality envisioned by and for

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33. Dodd, *supra* note 31, at 198; KIMBERLY A. HAMLIN, *FREE THINKER: SEX, SUFFRAGE, AND THE EXTRAORDINARY LIFE OF HELEN HAMILTON GARDNER* 222-37 (2020).

34. WEISS, *supra* note 5, at 305-07.

35. Tracey Jean Boisseau & Tracy A. Thomas, *After Suffrage Comes Equal Rights? ERA as the Next Logical Step, in 100 YEARS OF THE NINETEENTH AMENDMENT: AN APPRAISAL OF WOMEN'S POLITICAL ACTIVISM* 227, 230, 233 (Holly J. McCammon & Lee Ann Banaszak eds., 2018).

36. *Id.* at 230.

37. *See infra* Part I.

38. *See infra* Part II.

women.<sup>39</sup> This long view of women's rights shows it was never only about the vote; rather, the vote stood as a shorthand for a complete revolution of the interlocking systems supporting women's oppression and denying women equal rights.

### I. DECLARING WOMEN'S SENTIMENTS

The first political demand for women's right to vote is often cited as the Woman's Rights Convention held in Seneca Falls, New York on July 19 and 20, 1848.<sup>40</sup> There, Elizabeth Cady Stanton presented her draft of the *Declaration of Sentiments* declaring men's wrongs against women and demanding eighteen specific reforms.<sup>41</sup> A few women had previously advocated women's right to vote.<sup>42</sup> Women in colonial New Jersey also briefly exercised the right to vote from 1787 to 1807.<sup>43</sup> Seneca Falls, however, brought the demand for the vote into the public, with political and mainstream newspapers reporting, and criticizing, the demand.<sup>44</sup>

Stanton's written declaration arose out of her own dissatisfaction with her limited rights and role as a wife and homemaker.<sup>45</sup> A brilliant mind, Stanton was educated more than most women; she attended a female seminary but was denied a college education.<sup>46</sup> Her father, Daniel Cady, a noted lawyer, legislator, and jurist in New York, had a close relationship with his daughter. Left without a son, Cady shared his legal work with his daughter.<sup>47</sup> Elizabeth sat in his office while he handled client matters.<sup>48</sup> She observed him in court and debated the apprentices he routinely trained in their home around the dinner table. As a young adult, Elizabeth served as a legal clerk to her father during the year he rode circuit, and she "read law" with her brother-in-law in her early twenties.<sup>49</sup> She had a mind trained in legal analysis and debate beyond that of many lawyers of the

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39. See *infra* Part III.

40. TETRAULT, *supra* note 18, at 4-5 (describing how Seneca Falls was later mythologized as the origins story of the women's rights movement).

41. Report of the Woman's Rights Convention, *supra* note 1, at 78; WELLMAN, *supra* note 2, at 192.

42. Jacob Katz Cogan & Lori D. Ginzberg, *1846 Petition for Woman's Suffrage, New York State Constitutional Convention*, 22 SIGNS 427, 429 (1997) (describing women's petitions to the state constitutional convention for the right to vote); Gerda Lerner, *The Meanings of Seneca Falls, 1848-1998*, DISSENT, Fall 1998, at 35, 38 (1998) (stating that abolitionists Sarah and Angelina Grimke advocated women's rights to vote and hold office in 1838, and feminist theorist Frances Wright did so in the 1830s).

43. CHUSED & WILLIAMS, *supra* note 24, at 37-43; HOFF, *supra* note 6, at 98-102.

44. WELLMAN, *supra* note 2, at 209-10.

45. *Id.* at 188.

46. GRIFFITH, *supra* note 4, at 17.

47. *Id.* at 9-13.

48. *Id.* at 11.

49. TRACY A. THOMAS, *ELIZABETH CADY STANTON AND THE FEMINIST FOUNDATIONS OF FAMILY LAW* 4-5 (2016).

time.<sup>50</sup> This training attuned her to the role of law as an institution and as a mechanism of both oppression and reform.<sup>51</sup> It also trained her to “think like a lawyer,” citing legal authority in the code and case law, criticizing the reasons and implicit bias for a rule, and crafting arguments to address the strengths of the opposition.<sup>52</sup>

After her marriage to abolitionist and infrequent lawyer Henry Stanton, Elizabeth grew even more dissatisfied with the restrictions on her mind and opportunities due to her gender.<sup>53</sup> Relocated from the literary and political Boston to the mill town of Seneca Falls for her husband’s attempted political career, Elizabeth was frustrated with her daily role as housekeeper and caregiver for, at the time, three young boys.<sup>54</sup> Ultimately, Stanton would have seven children and would be delayed in her most active work until her fifties when the children grew up.<sup>55</sup> By 1848, Elizabeth resented Henry’s freedom to engage in political activism, think and work on deep, important issues, and spend most of his time traveling away from home.<sup>56</sup>

This frustration led thirty-two-year-old Elizabeth to meet with her mentor, Lucretia Mott, when Mott was visiting her sister in a neighboring town.<sup>57</sup> Stanton was introduced to the older abolitionist Mott when both attended the 1840 World Anti-Slavery Convention in London, Stanton accompanying her husband on their honeymoon and for his participation in the convention.<sup>58</sup> Women at the convention were denied the right to speak on the floor and were confined to the upper balcony, which triggered a connection between the two women and a resolve for future action on women’s rights.<sup>59</sup> Eight years later, Mott and Stanton connected again on the issue. Pouring out her personal frustrations over tea with five Quaker women, Stanton’s resolve intensified, and the women decided to take action.<sup>60</sup> They issued a call for a convention one week later to discuss “The Social, Civil, and Religious Condition of Woman,” at the Wesleyan Chapel there in Seneca Falls.<sup>61</sup> About three hundred people attended, including notable reformer Frederick Douglass.<sup>62</sup>

On the first day of the convention, resolutions were presented establishing

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50. *Id.*

51. *Id.* at 5, 22-23.

52. *Id.*

53. WELLMAN, *supra* note 2, at 169-70, 177, 188-89.

54. GRIFFITH, *supra* note 4, at 48-50; LORI D. GINZBERG, ELIZABETH CADY STANTON: AN AMERICAN LIFE 49-52 (2009).

55. DAVIS, *supra* note 2, at 63.

56. WELLMAN, *supra* note 2, at 168-70.

57. GRIFFITH, *supra* note 4, at 51.

58. GINZBERG, *supra* note 54, at 34-41.

59. *Id.* at 37-41.

60. GRIFFITH, *supra* note 4, at 51; ELIZABETH CADY STANTON, EIGHTY YEARS AND MORE: REMINISCENCES 1815-1897, at 147-48 (Humanities Press 2002) (1898); WELLMAN, *supra* note 2, at 177, 188.

61. Report of the Woman’s Rights Convention, *supra* note 1, at 75.

62. GINZBURG, *supra* note 54, at 57; WELLMAN, *supra* note 2, at 197.



the general equality of women.<sup>63</sup> “Stanton applied eighteenth-century natural rights doctrine to nineteenth-century sexual inequality,” following prevailing legal and political theory and focusing on individual freedom.<sup>64</sup> One resolution stated that “the equality of human rights results necessarily from the fact of the identity of the race in capabilities and responsibilities.”<sup>65</sup> It was resolved that laws that “conflict, in any way, with the true and substantial happiness of woman, are contrary to the great precept of nature, and of no validity; for this is superior in obligation to any other.”<sup>66</sup> For this proposition, the resolution cited Blackstone’s Commentaries for the authority that the “law of Nature being coeval with mankind, and dictated by God himself, is of course superior in obligation to any other.”<sup>67</sup> 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.”<sup>68</sup> Further resolutions stated that “woman is man’s equal—was intended to be so by the Creator,”<sup>69</sup> and that women had a right to address a public audience, a right that had been denied at the London Anti-Slavery Convention.<sup>70</sup> 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.”<sup>71</sup>

On the second day, the convention debated the key operative document, the *Declaration of Sentiments*, prepared by Stanton.<sup>72</sup> 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.”<sup>73</sup> Stanton’s *Declaration of Sentiments* itemized eighteen specific civil rights women were denied in violation of their happiness and equality.<sup>74</sup>

The *Declaration* was organized in four parts, highlighting the four institutional arenas of needed reform: state, family, industry, and church.<sup>75</sup> First, in the

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63. Report of the Woman’s Rights Convention, *supra* note 1, at 76-77.

64. GRIFFITH, *supra* note 4, at 54; *see also* KRADITOR, *supra* note 5, at 44-45.

65. Report of the Woman’s Rights Convention, *supra* note 1, at 77.

66. *Id.* at 76.

67. *Id.*

68. *Id.* at 76-77.

69. *Id.* at 77.

70. *Id.*; GRIFFITH, *supra* note 4, at 36, 39.

71. Report of the Woman’s Rights Convention, *supra* note 1, at 77.

72. GRIFFITH, *supra* note 4, at 53.

73. *Id.*; Report of the Woman’s Rights Convention, *supra* note 1, at 79.

74. Report of the Woman’s Rights Convention, *supra* note 1, at 79-80.

75. *See id.* at 79.

political sphere, Stanton challenged that women had not been permitted “to exercise her inalienable right to the elective franchise.”<sup>76</sup> She criticized this denial of “the first right of a citizen” that compelled women to “submit to laws, in the formation of which she had no voice,” and which left her “without representation in the halls of legislation” thus leading to women’s oppression.<sup>77</sup> Second, as to the domestic sphere, Stanton issued a general challenge against the common law that made a married woman “in the eye of the law, civilly dead.”<sup>78</sup> She decried the loss of the right in property, loss of wages, to moral responsibility, to a husband’s right of domestic chastisement.<sup>79</sup> She challenged the laws of divorce and the guardianship of children as “to be wholly regardless of the happiness of women—the law, in all cases, going upon the false supposition of the supremacy of man, and giving all power into his hands.”<sup>80</sup>

Third, in the sphere of industry, Stanton challenged the right for women to work in the “profitable employments,” decried the “scant remuneration” women received for work, and criticized the lack of colleges for women.<sup>81</sup> In the fourth part, Stanton challenged the subjugation of women in the church sphere, attacking women’s exclusion from ministry, exclusion from public in church affairs, establishment of a domestic sphere of action, and creation of a “false public sentiment, by giving to the world a different code of morals for men and women.”<sup>82</sup> In conclusion, the *Declaration* asserted: “[I]n view of this entire disenfranchisement of one-half the people of this country, their social and religious degradation,—in view of the unjust laws above mentioned, and because women do feel themselves aggrieved, oppressed, and fraudulently deprived of their most sacred rights, we insist that they have immediate admission to all the rights and privileges which belong to them as citizens of these United States.”<sup>83</sup> Thus, the first women’s rights convention was about the vote, but it was also about *all* the rights and privileges of citizenship.

This overall approach establishing philosophical parameters and concrete demands drew on existing thought on women’s rights.<sup>84</sup> Stanton was familiar with these early feminist theories of Margaret Fuller, Sarah Grimke, and Mary Wollstonecraft.<sup>85</sup> Yet Stanton was the first “to devote her considerable intellect

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76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.* at 79-80.

81. *Id.* at 80.

82. *Id.*

83. *Id.*

84. THOMAS, *supra* note 49, at 19-20; Lerner, *supra* note 42, at 37-38.

85. While living in Boston in 1843, Stanton participated in transcendentalist writer Margaret Fuller’s small-group conversations when Fuller wrote the “The Great Lawsuit” and its expanded book form, *Woman in the Nineteenth Century* and Stanton launched similar groups in Seneca Falls. MEGAN MARSHALL, MARGARET FULLER: A NEW AMERICAN LIFE 132-34, 216-19 (2013); Phyllis Cole, *Stanton, Fuller, and the Grammar of Romanticism*, 73 NEW ENG. Q.

solely to developing the philosophy and promoting the cause of woman's rights. She essentially invented and embodied what we might term stand-alone feminism, devoting her life to challenging the ways that ideas about gender shaped women's place in society, politics, law, and marriage."<sup>86</sup>

Stanton's application of these ideals in the *Declaration of Sentiments* has been described as a "female legal document" of "ideological radicalism" and "collective feminist consciousness" that has "yet to be duplicated."<sup>87</sup> It was a broad equality text seeking women's rights of political and legal status as well as an emancipatory text proclaiming freedom from oppressive religious and social customs and restraints.<sup>88</sup>

## II. A HOLISTIC PLAN FOR EQUALITY

The genius of the early women's rights movement, historians have concluded, was its comprehensiveness in "linking rights to all the personal and political issues that affected women in the family, the church, and the state."<sup>89</sup> The driving concerns for many of the early participants in the movement were economic, stemming from injustices in laws, marriage, property, and labor.<sup>90</sup> In the *Declaration of Sentiments*, Stanton explained how the institutions of government, church, family, and industry were connected, four cords of oppression so

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533, 553-54 (2000). Fuller argued that each human soul should be allowed to achieve "fulness of being [sic]," which for women required the removal of male dominance, reform of marriage, and self-sufficiency in education and occupation. Stanton also met and corresponded with abolitionist Sarah Grimké and her sister Angelina who together ignited "the woman question" as the first women to speak to public audiences on slavery. Stanton dissected and circulated Sarah's out-of-print 1837 feminist work, *Letters on the Equality of the Sexes*, challenging women's assumed biblical inferiority and legal disability. WELLMAN, *supra* note 2, at 160; Letter from Elizabeth Cady Stanton to Elizabeth J. Neall (Nov. 26, 1841), *microformed on Stanton Papers*, Microfilm Collection, *supra* note 15; Letter from Elizabeth Cady Stanton to Elizabeth Pease (Feb. 12, 1842), *microformed on Stanton Papers*, Microfilm Collection, *supra* note 15; Letter from Sarah Grimké to Elizabeth Cady Stanton (Dec. 31, 1842), *microformed on Stanton Papers*, Microfilm Collection, *supra* note 15. Stanton read British writer Mary Wollstonecraft's *A Vindication of the Rights of Woman* (1792) and its assertions of women's equal abilities and equal education. Charles J. Reid, Jr., *The Journey to Seneca Falls: Mary Wollstonecraft, Elizabeth Cady Stanton and the Legal Emancipation of Women*, 10 U. ST. THOMAS L.J. 1123, 1180, 1182 (2013).

86. GINZBERG, *supra* note 54, at 11; THOMAS, *supra* note 49, at 19-25; see GRIFFITH, *supra* note 4, at xiv ("Stanton was the first person to enumerate every major advance achieved for women in the last century and many of the reforms still on the agenda in this century.").

87. HOFF, *supra* note 6, at 136-41.

88. Lerner, *supra* note 42, at 39-40; see also THE SALEM, OHIO 1850 WOMEN'S RIGHTS CONVENTION PROCEEDINGS 17 (Robert W. Audretsch ed., 1976) (describing a demand for "equality of rights").

89. NANCY ISENBERG, *SEX AND CITIZENSHIP IN ANTEBELLUM AMERICA* xviii (1998); see Reva B. Siegel, *Home as Work: The First Woman's Rights Claims Concerning Wives' Household Labor, 1850-1880*, 103 YALE L.J. 1073, 1158 (1994); Clark, *supra* note 6, at 29.

90. HOFF, *supra* note 6, at 134; Clark, *supra* note 6, at 30; DuBois, *supra* note 3, at 837-38.

tightly intertwined that “attempt to undo one is to loosen all.”<sup>91</sup> 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.”<sup>92</sup> 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.<sup>93</sup> “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.”<sup>94</sup> Embracing both women’s rights—civil legal rights to vote, property, education, and employment—and women’s emancipation from gender-based stereotypes and oppression, the first woman’s movement sought a transformative change of the status quo.<sup>95</sup>

#### A. The State

The *Declaration*’s first and most radical demand was for the vote.<sup>96</sup> It was the most radical of the claims advanced at Seneca Falls because “it challenged the assumption of male authority over women and raised the prospect of female autonomy.”<sup>97</sup> Stanton declared the right to exercise the elective franchise an “inalienable right” and stated that it was the “duty” of women in the country to secure that “sacred right.”<sup>98</sup> The *Declaration* stated that the denial of the right to vote resulted in compelling women to submit to laws in which they had no voice in formation, and denied women “representation in the halls of legislation.”

The emphasis on political action was uniquely Stanton’s.<sup>99</sup> “She was convinced that social problems required political solutions” and “believed in using government to create legal remedies.”<sup>100</sup> This was at odds with Quaker thought and many abolitionists who viewed politics as corrupt and chose moral suasion over political action.<sup>101</sup> As Stanton later recalled, “even good Lucretia Mott said

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91. STANTON, *supra* note 10, at 366-67; see also Elizabeth Cady Stanton, *The Degradation of Disfranchisement*, BOSTON INV., Apr. 20, 1901, *microformed on Stanton Papers*, Microfilm Collection, *supra* note 15.

92. STANTON, *supra* note 10, at 367.

93. *Id.*

94. *Id.*; see also Stanton, *supra* note 91; Clark, *supra* note 6, at 29-30, 50.

95. Lerner, *supra* note 42, at 39. Women’s emancipation is “freedom from oppressive restrictions imposed by reason of sex” such as biological restrictions like maternity or socially imposed ones like caregiving, and results in self-determination and autonomy. *Id.*

96. DAVIS, *supra* note 2, at 56, 65; DUBOIS, *supra* note 13, at 40.

97. DAVIS, *supra* note 2, at 56 (quoting DUBOIS, *supra* note 13, at 46).

98. Report of the Woman’s Rights Convention, *supra* note 1, at 77.

99. DAVIS, *supra* note 2, at 90; WELLMAN, *supra* note 2, at 193; GRIFFITH, *supra* note 4, at 54.

100. GRIFFITH, *supra* note 4, at 54.

101. DuBois, *supra* note 3, at 840.

it was an extravagant demand that would make our whole movement ridiculous.”<sup>102</sup> Stanton, however, appreciated the process of politics as well as the significance of women’s shared power in that governance.

The right to vote represented more than just the opportunity for women to cast their individual opinion. Voters were part of the political power, giving women access to and accountability from lawmakers.<sup>103</sup> The vote also carried with it correlative political rights of public citizenship, such as the rights 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, emphasized political wrongs in “direct opposition to the principles of just government,” including denial of suffrage, trial by jury, taxation without representation, and abuse of judicial authority.<sup>104</sup> Ensuring women’s participation in lawmaking was part of Stanton’s wider lens of feminist power, as she appreciated the instrumentality of the law and its role in creating systems of power.<sup>105</sup>

For Stanton, the vote was both the enforcement mechanism and the entry point for all women’s rights.<sup>106</sup> Writing to the Ohio convention in 1850, she highlighted the importance of the right to vote, and “nothing short of this.”<sup>107</sup> “The grant to you of this right,” she argued, “will secure all others, and the granting of every other right, whilst this is denied, is a mockery.”<sup>108</sup> She went further, arguing not only that the franchise could bring more legal rights to women, but it could also bring an end to women’s subordination in all realms of life.<sup>109</sup> Along with the vote, she asserted, “comes equality in Church and State, in the family circle, and in all our social relations.”<sup>110</sup> With suffrage, women expected the vote to “lead to a total transformation of their lives.”<sup>111</sup>

## B. The Family

The second cord of oppression the first woman’s rights movement identified was the family.<sup>112</sup> The so-called private sphere was not in fact segregated from

102. Stanton, *supra* note 20; *see also* GINZBERG, *supra* note 54, at 61.

103. DAVIS, *supra* note 2, at 64-66; DUBOIS, *supra* note 13, at 42-46; KRADITOR, *supra* note 5, at 115.

104. Declaration of Rights of the Women of the United States (July 4, 1876), in 3 THE SELECTED PAPERS OF ELIZABETH CADY STANTON AND SUSAN B. ANTHONY 234, 234-38 (Ann D. Gordon ed., 2003); *see* HOFF, *supra* note 6, at 178-80, 388-92.

105. THOMAS, *supra* note 49, at 5, 22-23; DAVIS, *supra* note 2, at 63-65.

106. DAVIS, *supra* note 2, at 64.

107. *Id.*; ECS to Mary Ann White Johnson and the Ohio Women’s Convention, in 1 THE SELECTED PAPERS OF ELIZABETH CADY STANTON AND SUSAN B. ANTHONY, *supra* note 1, at 164 [hereinafter Stanton to Ohio Women’s Convention].

108. Stanton to Ohio Women’s Convention, *supra* note 107, at 164.

109. DAVIS, *supra* note 2, at 64.

110. Stanton to Ohio Women’s Convention, *supra* note 107, at 166.

111. DUBOIS, *supra* note 13, at 15; KRADITOR, *supra* note 5, at xiv.

112. *See* Report of the Woman’s Rights Convention, *supra* note 1, at 79-80; THOMAS,

women's political demands, "but instead was intertwined with the other institutional strands strangling equality."<sup>113</sup> As Stanton explained, "[t]he family, too, is based on the idea of woman's subordination, and man has no interest, as far as he sees, in emancipating her from that despotism, by which his narrow, selfish interests are maintained under the law and religion of the country."

Practically, marriage was the primary social institution where most women found themselves, and it was in marriage that they experienced gender subordination. The family, governed by patriarchal laws and sentimental gender norms, created and perpetuated women's inferiority. Under the common law of "coverture," a married woman's legal existence was covered by that of her husband. Thus, she had no legal right to own property, earn wages, accrue debt, testify in court, or parent children. Single and widowed women retained some rights to property and devise, but were also swept within the larger umbrella of restricted rights. Stanton explained that "[a]s woman is the greatest sufferer, her chief happiness being in the home and with her children, and seldom having resources of her own, prevented by family cares from doing business in her own name and enjoying the dignity of independence by self-support, she is even more interested than man can possibly be as to the laws affecting family life."<sup>114</sup>

Stanton used the law of domestic relations to unify women as a collective group, which was necessary to establish women's appreciation of their own oppression and to advocate for universal, systemic change.<sup>115</sup> Women had been led to view themselves as isolated in the private sphere of the family, segregated by class, privilege, and race into a dismal mantra that Stanton labelled "I have all the rights I want."<sup>116</sup> Seeking to awaken women to their own discrimination and appreciation of the discriminatory effect of gender, Stanton used the laws of marriage and the family to demonstrate how women were classified together, regardless of other barriers of race or class.<sup>117</sup> This commonality of gender then allowed for the collective demand for reform of gender-oppressive laws and systems.<sup>118</sup>

As modern historians have explained:

The whole system of attribution and meaning that we call *gender* relies on and to a great extent derives from the structuring provided by marriage. Turning men and women into husbands and wives, marriage has designated the ways both sexes act in the world and the reciprocal relation between them. It has done so probably more emphatically than any other single institution or social

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*supra* note 49, at 29-35; DAVIS, *supra* note 2, at 70; see also Elizabeth B. Clark, *Matrimonial Bonds: Slavery and Divorce in Nineteenth-Century America*, 8 L. & HIST. REV. 25, 25 (1990).

113. THOMAS, *supra* note 49, at 3.

114. Elizabeth Cady Stanton, *National Law for Divorce*, Nov. 15, 1899, *microformed on Stanton Papers*, Microfilm Collection, *supra* note 15.

115. THOMAS, *supra* note 49, at 26; Tracy A. Thomas, *Elizabeth Cady Stanton and the Notion of a Legal Class of Gender*, in FEMINIST LEGAL HISTORY 139 (Tracy A. Thomas & Tracey Jean Boisseau eds., 2011).

116. Thomas, *supra* note 115, at 144.

117. *Id.* at 146-47.

118. *Id.* at 140.

force.<sup>119</sup>

Stanton's manifesto and the early woman's rights movement therefore included a broad theoretical attack on the structure of coverture. They challenged coverture systemically, arguing that man had made woman "if married, in the eye of the law, civilly dead." The *Declaration* addressed the issue of marital property and wages. It challenged women's immunity from civil prosecution and the power of the husband to punish his wife by physical chastisement and restriction of liberty.<sup>120</sup> The feminist platform included a challenge to the unequal laws of divorce and the denial of guardianship to mothers. It made the political connection between property ownership, taxation, and citizenship that had ignited the American Revolution, noting that "[a]fter depriving her of all rights as a married woman, if single and the owner of property, he has taxed her to support a government which recognizes her only when her property can be made profitable to it."<sup>121</sup>

These concerns with economic power triggered the women's rights movement and garnered more acceptance by both conservative and radical women at the time than the more subversive claim for suffrage. As chronicled in Stanton's *History of Woman Suffrage*, the grassroots women's organizations that popped up after Seneca Falls in states like Ohio, Massachusetts, and Vermont focused their lobbying and recruitment on issues of property rights. Loss of the family home and personal property, the disabilities of dower in a widow's one-third share of her husband's property at his death, lack of ownership of wages earned, and creditor issues filled the pages of the women's grievances. When feminists pointed out how the law made wives financial dependents, "they made concrete the injury of disfranchisement in a way that abstract appeals to rights could not."<sup>122</sup> Property issues were thus able to recruit new members to the cause of women's rights and to the more debatable demand for suffrage.

The focus on family reform continued to be part of Stanton's advocacy for the women's movement in the decades after Seneca Falls.<sup>123</sup> Her 1854 speech to the New York legislature, nominally about marital property reform, took the occasion to demand broader gender justice, seeking family equality in coverture, marriage, property, dower, and child custody, connecting these private rights with the political rights of the vote and jury and casting them as all intertwined with "what women want"—full emancipation, the same as men.<sup>124</sup> At the Tenth National Woman's Rights Convention in 1860, Stanton elevated her concerns over equality in marriage and divorce, using the platform to emphasize divorce

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119. NANCY F. COTT, *PUBLIC VOWS: A HISTORY OF MARRIAGE AND THE NATION* 3 (2000).

120. Report of the Woman's Rights Convention, *supra* note 1, at 79.

121. *Id.* at 80; see THOMAS, *supra* note 49, at 65-66.

122. Siegel, *supra* note 89, at 1152.

123. THOMAS, *supra* note 49, at 25-29.

124. Elizabeth Cady Stanton, Address to the Legislature of New York (Feb. 14, 1854), *microformed on Stanton Papers*, Microfilm Collection, *supra* note 15, at 17-18.

reform as well as suffrage.<sup>125</sup> From 1861 to 1872, Stanton featured family law reform on her lyceum circuit tour, traveling the country for most of the year and lecturing to public audiences across the nation.<sup>126</sup> There, she focused on critiques of “man-marriage,” feminist parenting, and women’s equality in the home. Again in 1876, the symbolic *Declaration of Rights* featured criticism of women’s inequality in coverture, child custody, sexual mores, work, and education, even as it demanded political rights.<sup>127</sup> For this early movement, the private sphere of the family was integral to social justice reform for women, even as it was tightly connected to the public and religious spheres.

### C. Industry

The nineteenth-century women’s rights movement, beginning with the *Declaration of Sentiments*, also focused on industry and employment as a venue of discrimination and needed change.<sup>128</sup> In the resolutions of the Seneca Falls convention, it declared: “That the speedy success of our cause depends upon the zealous and untiring efforts of both men and women, for the overthrow of the monopoly of the pulpit, and for the securing to woman an equal participation with men in the various trades, professions and commerce.”<sup>129</sup> Specifically, in articulating the wrongs of man towards woman, Stanton’s *Declaration* noted that “[h]e has monopolized nearly all the profitable employments, and from those she is permitted to follow, she receives but a scanty remuneration.”<sup>130</sup> She observed that “[h]e closes against her all the avenues to wealth and distinction, which he considers most honorable to himself. As a teacher of theology, medicine, or law, she is not known.”<sup>131</sup> And, she noted, “[h]e has denied her the facilities for obtaining a thorough education—all colleges being closed against her.”<sup>132</sup> Her use of the term “monopoly” signaled a systemic misuse of market power, an abuse of economic power by men who improperly excluded legitimate competition from women in employment.

“Stanton’s proposal for women’s paid work thus clashed with engrained norms of the male provider. Man was defined by his public work, woman defined

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125. Elizabeth Cady Stanton, Address at the Tenth National Woman’s Rights Convention (May 11, 1860), *microformed on Stanton Papers*, Microfilm Collection, *supra* note 15, at 65, 71.

126. THOMAS, *supra* note 49, at 13-14, 186.

127. Declaration of Rights of the Women of the United States, *supra* note 104, at 236-37.

128. GRIFFITH, *supra* note 4, at 53.

129. Report of the Woman’s Rights Convention, *supra* note 1, at 83.

130. *Id.* at 80.

131. *Id.*

132. *Id.*



by her work and protection in the home. Stanton's proposal shattered this accepted gender ideology."<sup>133</sup> She understood that work was important on both the individual and systemic level, operating institutionally to integrate women into social and economic power.<sup>134</sup> At the individual level, pecuniary independence, what Stanton called "a purse of their own," was critical for self-support and autonomy.<sup>135</sup> For "a right over my *subsistence*," she explained, "is a power over all my thoughts and actions."<sup>136</sup> "The coming girl," of the next generation, she said, must be educated and engaged in market work. "There must be a money value upon her time."<sup>137</sup> As she advised her college-aged daughter, "[f]it yourself to be a good teacher or professor so that you can have money of your own and not be obliged to depend on any man for every breath you draw."<sup>138</sup> For the reality, she repeatedly argued, was that most women would be called to rely on themselves.

Parents, she argued, must "teach their daughters trades and professions, and thus have them prepared to battle successfully for themselves, than to leave them dependent."<sup>139</sup> Women should be trained as store clerks, postal workers, printers, railroad conductors, steamship captains, photographers, telegraph operators, and carriage drivers.<sup>140</sup> When legislatures tried to limit women's wages by restricting them from certain industries on protectionist grounds, Stanton objected to this "crusade by men as a piece of arrant hypocrisy." She argued that none of these industries were "more trying to health and womanly refinement than standing at the wash tub, the ironing board or over the cooking stove all day" or scrubbing floors, or washing clothes in the depth of winter, and that protectionist laws operated only to impose "lower wages than she could earn in the popular industries side by side with man in the world of work."<sup>141</sup>

Stanton's goal was not just for women to work, but to work in positions of

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133. THOMAS, *supra* note 49, at 211.

134. *Id.* at 210-12.

135. *Id.* at 206-07; *see also* Elizabeth Cady Stanton, Address at the Twenty-Fourth Convention of the National American Woman Suffrage Association: The Solitude of Self (Jan. 18, 1892), in WOMAN'S TRIB., Jan. 23, 1892, *microformed on* Stanton Papers, Microfilm Collection, *supra* note 15.

136. Elizabeth Cady Stanton, *How to Make Woman Independent*, UNA, Sept. 1855; Address of Elizabeth Cady Stanton at the First Anniversary of the American Equal Rights Association (May 9, 1867), *microformed on* Stanton Papers, Microfilm Collection, *supra* note 15, at 11-12; Elizabeth Cady Stanton, *The Disability of Sex and Marriage*, REVOLUTION, Mar. 3, 1870; Elizabeth Cady Stanton, *A Short Discussion on the Modern Marriage Problem*, N.Y. AM. & J., July 13, 1902.

137. Elizabeth Cady Stanton, *The Girls*, MILWAUKEE SENTINEL, Apr. 18, 1877.

138. Letter from Elizabeth Cady Stanton to Margaret Stanton (Dec. 1, 1872), *microformed on* Stanton Papers, Microfilm Collection, *supra* note 15.

139. Elizabeth Cady Stanton, *Our Young Girls*, DAILY MO. REPUBLICAN, Dec. 29, 1869.

140. *The Anniversaries: Proceedings of the "Women's Rights" Convention in Cheever's Church*, WORLD (N.Y.), May 11, 1866, *microformed on* Stanton Papers, Microfilm Collection, *supra* note 15; Letter of Elizabeth Cady Stanton to the Second Convention at Worcester (Nov. 7, 1851), *microformed on* Stanton Papers, Microfilm Collection, *supra* note 15.

141. *Thirty-First Convention, Feb. 10, 1900*, WOMAN'S TRIB., Mar. 10, 1900.

power. “Money is power,” she said. “Now, man will not, of course, help along a cause that he blindly supposes hostile to his own interests. So, what money we have, we must make.”<sup>142</sup> The way to do this, she said, was by a “by a change of employments.” “The mass of women in this country support themselves, and although they work a lifelong, and, as a general thing, sixteen hours out of the twenty-four, but very few have, by their own industry, amassed fortunes. . . . Because the employments they have chosen are unprofitable, slavish, and destructive.” Instead, she commanded women to take “what belongs to us” and “take possession of all those profitable posts, where the duties are light, which have heretofore been monopolized by man.”<sup>143</sup> She specifically encouraged women to go into law, medicine, theology, and academia as the preferred professions of power and not to enter the professions as men “merely to follow in their footsteps and echo their opinions.”<sup>144</sup>

Stanton’s attack on “scanty remuneration” focused not only on the individual harm to women being denied adequate work and equal pay, but also on the systemic effect of devaluing women’s work.<sup>145</sup> The case of teachers illustrated the problem, as the profession evolved from all-male to predominantly female. “What is the reason,” Stanton asked, “that to-day 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-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, by her cheap labor, has driven man out and degraded that profession.”<sup>146</sup>

Stanton’s solution to these employment problems, in part, was to educate the next generation into equality for the workplace.<sup>147</sup> The idea was to ensure equal educational opportunity, a goal which Stanton thought would have lasting implications in both private and public spheres. Her plan began with gender-neutral social and academic education at home; teaching girls science and Greek, and teaching boys music, art, and poetry. Parents should inculcate gender neutral morals and activities in their children, allowing girls to climb trees and play sports. In her popular speeches “Our Girls” and “Our Boys” given on the traveling lyceum circuit, Stanton emphasized the importance of raising up the next generation without the limitations of gender.<sup>148</sup>

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142. Letter of Elizabeth Cady Stanton to the Second Convention at Worcester, *supra* note 140.

143. *Id.*

144. Elizabeth Cady Stanton, *The Strong-Minded Women of the Bible*, *REVOLUTION*, Feb. 26, 1868; Elizabeth Cady Stanton, *Why We Need Women as Physicians*, 52 *PHRENOLOGICAL J. & LIFE ILLUSTRATED* 347, 347 (1871).

145. Elizabeth Cady Stanton, *The Degradation of Woman*, *REVOLUTION*, Jan. 15, 1868.

146. *Id.*

147. THOMAS, *supra* note 49, at 197.

148. See Lecture by ECS: Our Girls, in 3 *THE SELECTED PAPERS OF ELIZABETH CADY STANTON AND SUSAN B. ANTHONY* 484, 484 (Ann D. Gordon ed., 2003); Elizabeth Cady Stan-

Co-education at the high school and college levels was then the next key to educating the sexes to work together in the public and market spheres. Girls had not yet been admitted to co-educational colleges because of claims that women did not have sufficient strength of mind and body, that they would lower the grade of scholarship and morals, that the sexes would be constantly flirting, and that women would make boys less manly. Conversely, Stanton argued that coeducation would have the opposite effect, allowing men and women to get used to each other as colleagues rather than paramours, and that it would avoid perpetuating the double sexual standard of tolerating men's indiscretions. But medical experts, including the President of Harvard College, warned that collegiate education, especially math and science, endangered women's reproductive health and that their nervous systems would be disturbed by the impossible "effort to cram mathematics into the female mind" and women's demonstrably smaller brains.<sup>149</sup>

Ultimately, these economic demands for education and employment were the most practical of Stanton's demands, even as she understood the systemic connections between public and private spheres. At the broad level, for example, NAWSA reiterated at its 1894 convention "[t]hat woman's disfranchisement is largely responsible for her industrial inequality and therefore for the degradation of many women, and we advocate the just principle of 'Equal Pay for Equal Work.'"<sup>150</sup> At the more specific level, Stanton understood the realities of economic deprivation and restriction that initially brought many women to the women's rights movement, and how those daily concerns of survival and sustenance often trumped all other concerns.<sup>151</sup> Her solution was a practical one—to train women to support themselves—even as she advocated systemic changes like coeducation and equal pay to strike at the barriers to this self-sufficiency.<sup>152</sup>

#### D. The Church

The *Declaration of Sentiments* included demands for both equality and emancipation—equality of legal right and opportunity, and emancipation or freedom from oppression.<sup>153</sup> Such oppression from social norms and conventions of women's inferiority was rooted in religious teachings and practices.<sup>154</sup> The participation of Quaker women as the Seneca Falls organizers and participants

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ton, *Our Girls*, IND. SENTINEL, Jan. 19, 1879, *microformed on* Stanton Papers, Microfilm Collection, *supra* note 15; Elizabeth Cady Stanton, *Address: Our Boys* (1875), *microformed on* Stanton Papers, Microfilm Collection, *supra* note 15; *Our Boys: Lecture by Mrs. Elizabeth Cady Stanton*, CHI. DAILY TRIB., Feb. 15, 1875.

149. Elizabeth Cady Stanton, *The Co-education of the Sexes* 39-51 (Oct. 17, 1873), *microformed on* Stanton Papers, Microfilm Collection, *supra* note 15.

150. KRADITOR, *supra* note 5, at 62.

151. THOMAS, *supra* note 49, at 52-54.

152. *Id.* at 209-12.

153. Lerner, *supra* note 42, at 39-40.

154. THOMAS, *supra* note 49, at 216, 220.

helped bring these concerns to the forefront, and these concerns were more familiar to the reform audience than the other political and legal demands.<sup>155</sup> At the time, the so-called “woman question” in anti-slavery circles had arisen about women abolitionists’ right to speak publicly, which Mott and Stanton had experienced firsthand at the London Anti-Slavery convention.<sup>156</sup> These women were attuned to the role of the church in silencing women’s voices in the larger society and how such religious restrictions were supporting other social and legal discriminations.

At Seneca Falls, the resolutions and declarations challenged men’s usurpation of “the prerogative of Jehovah himself” in limiting women’s sphere of action.<sup>157</sup> They noted that “woman has too long rested satisfied in the circumscribed limits which corrupt customs and a perverted application of the Scriptures have marked out for her, and that it is time she should move in the enlarged sphere which her great Creator has assigned her.”<sup>158</sup> It cut to the moralistic double standard, “giving the world a different code of morals to men and women” but then despite that claim of women’s moral superiority, denied her the right to teach and lead religious assemblies. Applying these general principles, the *Declaration* challenged the exclusion of women from ministry, participation in church affairs, and the right to speak in public.

These early feminist criticisms acknowledged the large role of the church in creating norms of women’s inferiority. In the church, women were viewed as morally weak, responsible through Eve for succumbing to the serpent and bringing original sin into the world and tempting man, Adam, in the same downfall.<sup>159</sup> Pain in maternity was deemed a curse from God for the transgression, and domination of men was held to be the dictate to protect against such transgression.<sup>160</sup> This view of women’s moral weakness and need for protection drove laws and social norms restricting women’s ability to maneuver in the world and control their own autonomy.

Stanton returned to this focus on the church and its systemic impact, and she “explicitly drew the connection between religion and social and legal inequality for women.”<sup>161</sup> She became convinced of the fundamental role of the church in planting the deep roots that created and perpetuated the resistant subjugation of women in all forums.<sup>162</sup>

As Stanton wrote in *The Woman’s Bible*: “With such lessons taught in the Bible and echoed and re-echoed on each returning Sabbath day in every pulpit in

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155. Clark, *supra* note 6, at 29-30; THOMAS, *supra* note 49, at 216.

156. WEISS, *supra* note 5, at 45.

157. Report of the Woman’s Rights Convention, *supra* note 1, at 80.

158. *Id.* at 77.

159. THOMAS, *supra* note 49, at 217-18.

160. *Id.* at 217.

161. *Id.* at 216, 220; DAVIS, *supra* note 2, at 179-80; KATHI KERN, MRS. STANTON’S BIBLE 8-10 (2001).

162. THOMAS, *supra* note 49, at 216-17.

the land, how can woman escape the feeling that the injustice and oppression she suffers are of divine ordination?" Moreover, "[f]rom the inauguration of the movement for woman's emancipation the Bible has been used to hold her in the 'divinely ordained sphere.'"<sup>163</sup> Whenever, she argued "during the struggle of the last forty years we have demanded a new liberty these triune powers [state, church, and home] have rallied in opposition," citing "God's law and divine ordination."<sup>164</sup> Therefore, she concluded, "it is just here that our chief work for woman lies to-day, to free her from the theological bondage that is crippling all her powers."<sup>165</sup>

But even as "Stanton broadened her agenda," returning to "the deep-seeded causes of beliefs in women's inferiority in religion," the women's suffrage organizations by 1900 had grown more conservative and "narrowed in on the single issue of suffrage."<sup>166</sup> Stanton's anticlerical views and attacks on the church went too far for the suffrage organization, leading to outrage and Stanton's ostracization from her own movement.<sup>167</sup> Fifty years after Seneca Falls, the women's movement had forgotten its origins in religious criticism and abandoned that challenge in favor of the clear consensus over the vote.

#### E. Narrowing in on the Vote

Thus, from the beginning of the American woman's rights movement, the vote was only a piece of the larger holistic agenda for reform. The vote was one operative part of the action needed, but it was only a political proxy for the other needed reforms in all venues of life.<sup>168</sup> It was the enforcement mechanism envisioned by Stanton as the right by which women would demand access to and accountability from lawmaking bodies. With eighteen demands in four venues, the *Declaration of Sentiments* tried to address all spheres of life and achieve revolutionary reform. It reached gender subjugation on every level, seeking the eradication of unequal laws, the granting of specific rights to women, the change in philosophical and religious beliefs, and the restructuring of social institutions of the church, family, and lawmaking bodies.

Given this broad equality mission, why did the vote emerge as the main civil right demanded by women? One reason was the dominance of the vote in the parallel discourse on racial equality and the development of the Civil Rights Amendments after the Civil War. The Fifteenth Amendment isolated the vote as

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163. ELIZABETH CADY STANTON, *THE WOMAN'S BIBLE* 7 (Ne. Univ. Press 1993) (1895).

164. THOMAS, *supra* note 49, at 220-21; Elizabeth Cady Stanton, *Has Christianity Benefitted Woman?*, 140 N. AM. REV. 389, 395 (1885) [hereinafter Stanton, *Christianity*]; Elizabeth Cady Stanton, *Woman's Position in the Christian Church*, BOS. INVESTIGATIONS, May 18, 1901 [hereinafter Stanton, *Woman's Position*].

165. Stanton, *Christianity*, *supra* note 164; Stanton, *Woman's Position*, *supra* note 164.

166. THOMAS, *supra* note 49, at 216.

167. KERN, *supra* note 161, at 10.

168. Hodes, *supra* note 6, at 49.-

a citizenship right.<sup>169</sup> The Fourteenth Amendment inserted a gender-based distinction into the Constitution by specifying that congressional representation would be determined by the number of “male citizens,” and thus the amendment drew challenge from women for what Stanton decried as the establishment as an “aristocracy of sex.”<sup>170</sup> The national dialogue shifted to the federal constitution as the source of civil rights and highlighted the vote as the preeminent right, thereby elevating that piece of the women’s rights roadmap for equality.

A second reason for the prioritization of the vote was that marriage reform was adamantly opposed by men and elite anti-suffrage women. A main argument and fear of opponents of women’s suffrage was that the vote would destroy the marital harmony of the home.<sup>171</sup> In addition, by the late nineteenth century, the suffrage movement had partnered with socially conservative women from the WCTU.<sup>172</sup> While supporting women’s right to vote as a moral imperative, WCTU members rejected calls for reforms of marriage and the family; to the contrary, the WCTU advocated a strengthening of patriarchal norms of male headship and a 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,” she warned. 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.”<sup>173</sup>

Even with increasing numbers, the movement would be several more decades wandering in the wilderness. A few more states passed suffrage. But women’s suffrage overall was blocked by anti-prohibition efforts, which were concerned that the moralistic women associated with the WCTU and the suffrage movement 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

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169. See DUBOIS, *supra* note 13, at 162-63.

170. Gordon, *supra* note 15, at xxiii-xxv.

171. KRADITOR, *supra* note 5, at 15; Siegel, *supra* note 16, at 996; Hodes, *supra* note 6, at 47-48; THOMAS, *supra* note 49, at 34-35.

172. TETRAULT, *supra* note 17, at 87-89, 156.

173. Elizabeth Cady Stanton, Address at the Thirty-First Annual Convention of the National American Woman Suffrage Association (Feb. 10, 1890), *microformed on Stanton Papers*, Microfilm Collection, *supra* note 15.

the same, tired campaign strategies advancing both state and federal action focused narrowly on the vote.<sup>174</sup> Alice Paul would break through this ineffective status quo, incorporating her radical demonstrative politics first as the Congressional Committee of NAWSA and then in her own National Woman's Party (NWP).<sup>175</sup> 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."<sup>176</sup> But the question remained as to whether the vote actually accomplished any meaningful change for women.

### III. FROM THE VOTE TO EQUALITY

After ratification of the Nineteenth Amendment in 1920, the question for the woman's rights movement was the logical next step to ensure women's rights. The women's suffrage organizations had achieved their goal and now sought a new purpose. Many suffrage women formed the nonpartisan League of Women Voters, a politically neutral group that worked to enroll women voters and promote women as candidates for elected office, which quickly evolved into a "good government" organization rather than a feminist one.<sup>177</sup> Other suffrage women and social feminists detoured into protective labor politics, advocating for unions and workplace protections for women like minimum wage and maximum hours.<sup>178</sup> Alice Paul's National Woman's Party gravitated to redressing sex equality across the board.<sup>179</sup> "The work of the 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."<sup>180</sup> 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."<sup>181</sup> The committee's purpose "was to expose legal inequalities between men and women that were embedded in all facets of law [and] . . . proposing new legislation to counteract such inequalities."<sup>182</sup> Paul also proposed the

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174. THE CONCISE HISTORY OF WOMAN SUFFRAGE 414 (Mari Jo Buhle & Paul Buhle eds., 2005).

175. Dodd, *supra* note 31, at 189-91.

176. THE CONCISE HISTORY OF WOMAN SUFFRAGE, *supra* note 174, at 25, 282.

177. Boisseau & Thomas, *supra* note 35, at 231; Nancy F. Cott, *Across the Great Divide: Women in Politics Before and After 1920*, in ONE WOMAN, ONE VOTE: REDISCOVERING THE WOMAN SUFFRAGE MOVEMENT 353, 360-61 (Marjorie Spruill Wheeler ed., 1995).

178. Boisseau & Thomas, *supra* note 35, at 230; Cott, *Across the Great Divide*, *supra* note 177, at 354, 362.

179. Boisseau & Thomas, *supra* note 35, at 229-30.

180. *Id.* at 227.

181. *Id.* at 232.

182. *Id.* After a decade, the NWP identified three hundred state laws that had been changed from its efforts out of the six hundred the committee had identified. Amelia Fry, *Alice*

first constitutional Equal Rights Amendment, and thus the “sunset of the women’s suffrage movement” became the “dawn of the first ERA.”<sup>183</sup>

The National Woman’s Party worked early on to secure women’s equality in the courts, as “there were signs that the courts—including the United States Supreme Court—interpreted ratification of the Nineteenth Amendment as changing the foundational understandings of the American legal system. . . . [and] as a constitutional amendment with normative implications for diverse bodies of law.”<sup>184</sup> Two years after ratification, the Supreme Court held in *Adkins v. Children’s Hospital of the District of Columbia* that the amendment represented a structural overturning of coverture laws restricting women’s political and civil rights.<sup>185</sup> This contextual and historical understanding of the Nineteenth Amendment, however, was quickly abandoned, battered against judicial and political opposition by labor women and unions supporting women-only protective laws.<sup>186</sup>

In *Adkins*, the Court struck down a minimum wage law for women.<sup>187</sup> The decision was written by the newly appointed Justice George Sutherland, who as an attorney had counseled Alice Paul on suffrage and her draft of an Equal Rights Amendment.<sup>188</sup> Paul and her NWP privately provided materials and expertise to the lawyers for the defendant, helping them to frame a challenge to the wage law in terms of women’s formal equality.<sup>189</sup> Sutherland wrote:

[T]he ancient inequality of the sexes, otherwise than physical . . . has continued “with diminishing intensity.” In view of the great—not to say revolutionary—changes which have taken place since that utterance, in the contractual, political and civil status of women, culminating in the Nineteenth Amendment, it is not unreasonable to say that these differences have now come almost, if not quite, to the vanishing point.<sup>190</sup>

Although “physical differences,” the Court held, “must be recognized in appropriate cases, . . . we cannot accept the doctrine that women of mature age, sui juris, require or may be subjected to restrictions upon their liberty of contract

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*Paul and the ERA*, in RIGHTS OF PASSAGE: THE PAST AND FUTURE OF THE ERA 8-24 (Joan Hoff-Wilson ed., 1986).

183. Boisseau & Thomas, *supra* note 35, at 229.

184. Siegel, *supra* note 16, at 1012.

185. 261 U.S. 525, 553 (1923).

186. Siegel, *supra* note 16, at 1012.

187. *Adkins*, 261 U.S. at 543, 562.

188. Joan G. Zimmerman, *The Jurisprudence of Equality: The Women’s Minimum Wage, the First Equal Rights Amendment, and Adkins v. Children’s Hospital, 1905-1923*, 78 J. AM. HIST. 188, 212-13, 219-20 (1991). Sutherland was also known as one of the “Four Horsemen,” four conservative Supreme Court justices who rode to work together in consultation and who opposed the liberal New Deal legislation of Franklin D. Roosevelt. See David E. Bernstein, *The Feminist “Horseman”*, 10 GREEN BAG 379, 379 (2007).

189. NANCY WOLOCH, *A CLASS BY HERSELF: PROTECTIVE LAWS FOR WOMEN WORKERS, 1890S-1990S*, at 114-15 (2015); Zimmerman, *supra* note 188, at 220.

190. *Adkins*, 261 U.S. at 553.



which could not lawfully be imposed in the case of men under similar circumstances.”<sup>191</sup> A contrary holding, the Court stated:

[W]ould be to ignore all the implications to be drawn from the present day trend of legislation, as well as that of common thought and usage, by which woman is accorded emancipation from the old doctrine that she must be given special protection or be subjected to special restraint in her contractual and civil relationships.<sup>192</sup>

Thus, the Court interpreted the Nineteenth Amendment in light of its historical context as an emancipatory change eradicating the system of coverture and thereby granting women comprehensive political and civil rights.<sup>193</sup>

“In the immediate aftermath of ratification,” some courts then “understood the Nineteenth Amendment to redefine citizenship for women in ways that broke with the marital status traditions of the common law.” Other federal and state courts read the Nineteenth Amendment as “embodying a sex equality norm that had implications for practices other than voting,” such as criminal liability, marital domicile, and contract.<sup>194</sup> That equality norm did not survive in the Supreme Court, as fourteen years later its broader point was rejected in favor of women’s need for protection.<sup>195</sup> Early applications of the Nineteenth Amendment’s anti-discrimination guarantee to other political rights like office holding and jury service also ultimately failed.<sup>196</sup> The transformative potential of *Adkins*’ “emancipatory” understanding of the Nineteenth Amendment as a declaration of women’s broader constitutional equality was soon lost, and the narrow understanding of the amendment as a rule only about the vote emerged as the dominant understanding.<sup>197</sup>

Women’s advocates, however, were working on other fronts to achieve their comprehensive agenda for equality. The same year *Adkins* was decided, Alice

191. *Id.*

192. *Id.*

193. Siegel, *supra* note 16, at 1015.

194. *Id.* at 1016; *see* *United States v. Hinson*, 3 F.2d 200, 200 (S.D. Fla. 1925) (criminal liability); *McCormick v. United States*, T.D. 43804, 57 *Treas. Dec. Int. Rev.* 117, 125-26 (1930) (Cline, J., concurring) (domicile for taxation); *Hollander v. Abrams*, 132 A. 224, 229 (N.J. Ch. 1926) (capacity to contract for property); *Commonwealth v. Rutherford*, 169 S.E. 909, 913 (Va. 1933) (domicile for taxation).

195. *West Coast Hotel v. Parrish*, 300 U.S. 379, 401 (1937) (Sutherland, J., dissenting); *see also* *Radice v. New York*, 264 U.S. 292, 298 (1923) (upholding women-protective night work ban). *But see* *Morehead v. New York*, 298 U.S. 587, 618 (1936) (voiding New York minimum wage law for women and children).

196. Paula A. Monopoli, *The Constitutional Development of the Nineteenth Amendment in the Decade Following Ratification*, 11 *CONLAWNOW* 61, 67-68 (2019); Siegel, *supra* note 15, at 1020-21; Jennifer K. Brown, Note, *The Nineteenth Amendment and Women’s Equality*, 102 *YALE L.J.* 2175, 2198 (1993).

197. Monopoli, *supra* note 196, at 63; Siegel, *supra* note 16, at 1020-21; Brown, *supra* note 196, at 2202; *see* Reva B. Siegel, Essay, *The Nineteenth Amendment and the Democratization of the Family*, 129 *YALE L.J. FORUM* 450, 451 (2020) (arguing for a broader synthetic reading of the Nineteenth Amendment in conjunction with the Reconstruction Amendments).

Paul introduced a constitutional amendment for equal rights to Congress and the public.<sup>198</sup> Alice Paul “formally kicked off a campaign for an equal rights amendment on July 21, 1923, in Seneca Falls, New York.”<sup>199</sup> Known “for her flair for political theater and use of historical flourish, Paul chose her date and venue carefully. The occasion was a commemorative celebration of the Woman’s Rights Convention held there seventy-five years prior on July 19-20, 1848, out of which had come the *Declaration of Sentiments*.”<sup>200</sup> Paul named her proposed equality amendment after Lucretia Mott. It read, “[m]en and women shall have equal rights throughout the United States and every place subject to its jurisdiction,” and it included a congressional enforcement provision.<sup>201</sup> Continuing the symbolic theatrics, Paul then arranged to have her proposal introduced to the 68th Congress in December 1923 by a representative who was the nephew of suffragist Susan B. Anthony.<sup>202</sup>

There was immediate objection and disagreement, however, among women’s rights activists over the merits of pursuing an equality amendment. Opposition came from the League of Women Voters, who were primarily concerned “with safeguarding the rights of women as enfranchised citizens whose full participation in an electoral system was still being widely questioned and even openly challenged by lawsuits such as *Leser v. Garnett*.”<sup>203</sup> The Supreme Court in *Leser* had quickly rejected challenges to the Nineteenth Amendment’s ratification, but the suit “put former suffragists on their guard against large and small challenges to women as voters.”<sup>204</sup>

Another line of opposition to a broad equality agenda came from social reformers in the labor movement.<sup>205</sup> They feared formal legal equality would threaten gains made in the labor protectionist movement such as maximum hours, minimum wage, and occupational safety.<sup>206</sup> These advantages turned initially on establishing women workers’ need for protection in the workplace, citing women’s fragility and weaker constitution.<sup>207</sup> The Supreme Court had unanimously endorsed such gender-specific laws in 1908 in *Muller v. Oregon*<sup>208</sup> when it upheld a maximum-hour law for women, limiting their work in factories and laundries to ten hours per day, though it had rejected such a law for men a few years earlier in *Lochner v. New York*.<sup>209</sup> The Court distinguished women from

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198. Boisseau & Thomas, *supra* note 35, at 236.

199. *Id.* at 230.

200. *Id.*

201. *Id.*

202. *Id.*

203. *Id.* at 231; *see also* *Leser v. Garnett*, 258 U.S. 130, 135-36 (1922).

204. Boisseau & Thomas, *supra* note 35, at 231.

205. *Id.* at 231, 234; WOLOCH, *supra* note 189, at 160.

206. Boisseau & Thomas, *supra* note 35, at 234.

207. *Id.* at 235.

208. 208 U.S. 412 (1908).

209. *See* 208 U.S. at 422-23; *see also* *Bosley v. McLaughlin*, 236 U.S. 385, 394-96

men in the need for protection in “woman’s physical structure and the performance of maternal functions,” including smaller physical size, maternity and menstruation, and housework demands.<sup>210</sup> “Differentiated by these matters from the other sex, [woman] is properly placed in a class by herself, and legislation designed for her protection may be sustained, even when like legislation is not necessary for men, and could not be sustained.”<sup>211</sup> Congress ultimately extended workplace protections to all workers when it passed the Fair Labor Standards Act of 1938 (FLSA), ending concerns over labor protection laws but not the debate over the ERA.<sup>212</sup>

The debate inside and outside feminist circles continued as a class-based opposition. Labor, unions, and working class groups opposed the ERA, while professionals and businesses endorsed it.<sup>213</sup> However, by 1944, both Democratic and Republican national platforms supported a revised ERA providing that “Equality of Rights under the law shall not be denied or abridged by the United States or by any state on account of sex.”<sup>214</sup> Ongoing resistance from labor groups, organizations like the American Civil Liberties Union (ACLU), and administrators in the Department of Labor continued to stall its enactment because of continued suspicion of support for the ERA from pro-business interests, even after passage of the Fair Labor Standards Act extended workplace protection laws to all workers.<sup>215</sup> After the civil rights era realigned advocates away from a 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.<sup>216</sup>

Congress passed the ERA in 1972, and while it first appeared that ratification would be swift, Congress had to extend the original deadline until 1982 to try to garner sufficient support.<sup>217</sup> The amendment stalled after *Roe v. Wade* amid fears of “abortion on demand,” unisex bathrooms, women in combat, and gay marriage.<sup>218</sup> Like concerns echoed by the conservative WCTU in the prior century,

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(1915) (upholding maximum-hour law for female hospital workers); *Miller v. Wilson*, 236 U.S. 373, 383-84 (1915) (upholding eight-hour law for female hotel maids); *Riley v. Massachusetts*, 232 U.S. 671, 680-81 (1914) (upholding similar law).

210. *Muller*, 208 U.S. at 421.

211. *Id.* at 422.

212. *United States v. Darby*, 312 U.S. 100, 122-23 (1941) (upholding FLSA).

213. Boisseau & Thomas, *supra* note 35, at 237-40; Serena Mayeri, *Constitutional Choices: Legal Feminism and the Historical Dynamics of Change*, 92 CAL. L. REV. 755, 784 (2004).

214. Boisseau & Thomas, *supra* note 35, at 237-39; Nancy F. Cott, *Historical Perspectives: The Equal Rights Amendment Conflict in the 1920s*, in CONFLICTS IN FEMINISM 44, 55 (Marianne Hirsch & Evelyn Fox Keller eds., 1990).

215. Boisseau & Thomas, *supra* note 35, at 241; Linda Greenhouse, *Who Killed the ERA?*, N.Y. REV. BOOKS, Oct. 12, 2017, at 3-4.

216. Boisseau & Thomas, *supra* note 35, at 242-43; Mayeri, *supra* note 213, at 757.

217. Boisseau & Thomas, *supra* note 35, at 243.

218. *Id.* at 243; Greenhouse, *supra* note 215. These changes have happened without the ERA. Susan Chira, *Do American Women Still Need an Equal Rights Amendment?*, N.Y. TIMES, Feb. 16, 2019.

these reflected a desire to return to the domesticity of the home where women heads of household were protected within that homemaking.<sup>219</sup> The modern equality movement, like its predecessor in the nineteenth-century's comprehensive women's rights movement, was worn down by politics and infighting, as well as material opposition from women themselves.<sup>220</sup>

Gender equality came about through the courts rather than by constitutional amendment.<sup>221</sup> Women's rights activists developed a dual strategy of simultaneously pursuing constitutional amendment and judicial reinterpretation of the Fourteenth Amendment.<sup>222</sup> The judicial strategy was successful, and in 1976 it resulted in the U.S. Supreme Court conclusively giving heightened scrutiny to gender-based laws under equal protection doctrine.<sup>223</sup> This level of judicial scrutiny is likely less than it would be with an ERA, but it has operated for the most part to eradicate formal gender distinctions based on stereotype.<sup>224</sup>

There is a renewed political movement, however, to pass the ERA.<sup>225</sup> Supporters argue that sustainable guarantees are needed for gender equality that cannot be undermined by changes in laws or interpretations of the courts.<sup>226</sup> Enshrining gender in the constitution would give it the same status and scrutiny as race and symbolically would establish a constitutional commitment to gender equality.<sup>227</sup> Proponents argue that the deadline for passage of the ERA was not mandatory, or alternatively that Congress may waive it now, and thus ratification of the amendment by Nevada in 2018, Illinois in 2019, and Virginia in 2020 has successfully achieved the thirty-eight states required for constitutional amendment.<sup>228</sup> For these reasons, the House of Representatives voted on February 13,

219. See TETRAULT, *supra* note 18, at 87-89.

220. See generally JANE J. MANSBRIDGE, *WHY WE LOST THE ERA* (1986) (discussing the reasons for the ERA's defeat).

221. Boisseau & Thomas, *supra* note 35, at 241, 245; Mayeri, *supra* note 213, at 757.

222. Boisseau & Thomas, *supra* note 35, at 241; Mayeri, *supra* note 213, at 757.

223. Boisseau & Thomas, *supra* note 35, at 245; see *Craig v. Boren*, 429 U.S. 190, 197 (1976) (holding that "classifications by gender must serve important governmental objectives and must be substantially related to achievement of those objectives").

224. See *Sessions v. Morales-Santana*, 137 S. Ct. 1678, 1689-90 (2017) (tracing history and results of equal protection cases).

225. Boisseau & Thomas, *supra* note 35, at 246; see generally JESSICA NEUWIRTH, *EQUAL MEANS EQUAL: WHY THE TIME FOR AN EQUAL RIGHTS AMENDMENT IS NOW* (2015) (discussing modern advocacy for the ratification of the ERA).

226. *E.g.*, *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 736 (2014) (holding that employer's religious liberty may outweigh women's right to healthcare and birth control).

227. Boisseau & Thomas, *supra* note 35, at 247-48.

228. The argument is that constitutional amendment deadlines are not required, that the ratification deadline was contained in the preface rather than the substantive text of the ERA making it even less mandatory, and that Congress may determine issues of timeliness after ratification by the required number of states. See *Virginia Just Ratified the Equal Rights Amendment—What Does That Mean?*, WIS. PUB. RADIO (Jan. 21, 2020), <https://perma.cc/L5LP-8L9F>; Tracy Thomas, *Virginia Senate's Ratification of Equal Rights Amendment Brings Three-State Strategy Within Reach*, GENDER & L. PROF BLOG (Jan. 18,

2020, to remove the ratification deadline for the ERA, thus reviving the amendment.<sup>229</sup>

#### CONCLUSION

The ultimate 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 religion 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.<sup>230</sup> 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 the demonstrative politics of their foremothers, Olympic-like runners carried the flame of women's equality from Seneca Falls to Houston, and the poet Maya

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2019), <https://perma.cc/P9KF-X4CG>; cf. *Coleman v. Miller*, 307 U.S. 433, 454 (1939) (holding Congress retains the ability to consider the validity of state ratification of Child Labor Amendment and timeliness of amendment). Support for this argument comes from the precedent of the Twenty-Seventh Amendment, regarding non-retroactivity of Congressional salary increases, which was passed by Congress in 1789 but not ratified until almost two hundred years later. Allison L. Held, Sheryl L. Herndon & Danielle M. Stager, Note, *The Equal Rights Amendment: Why the ERA Remains Legally Viable and Properly Before the States*, 3 WM. & MARY J. WOMEN & L. 113, 115 (1997).

229. Danielle Kurtzleben, *House Votes to Revive Equal Rights Amendment, Removing Ratification Deadline*, NAT'L PUB. RADIO (Feb. 13, 2020), <https://perma.cc/8XFH-BG93>. Two lawsuits have been filed by state attorney generals, one seeking certification of the ERA, *Virginia v. Ferriero*, No. 1:20-cv-00242 (D.D.C. filed Jan. 30, 2020), and one seeking to block its enactment, *Alabama v. Ferriero*, No. 7:19-cv-02032 (N.D. Ala. filed Dec. 16, 2019).

230. Gillian Thomas, Book Review, "*Four Days That Changed the World*": *Unintended Consequences of a Women's Rights Conference*, N.Y. TIMES, Mar. 6, 2017. "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* note 215, at 3. 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 thousand delegates and 20,000 observers attended the conference, with a similar number gathered across town in a conservative counter-convention organized by Phyllis Schlafly which would ignite the anti-ERA movement that would ultimately defeat the amendment. Greenhouse, *supra* note 215; see also MARJORIE J. SPRULL, *DIVIDED WE STAND: THE BATTLE OVER WOMEN'S RIGHTS AND FAMILY VALUES THAT POLARIZED AMERICAN POLITICS* 2-10 (2017).

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.<sup>231</sup> 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.<sup>232</sup> These resolutions were presented in a report to President Carter; they produced few concrete results, but they served as a roadmap for future grassroots reform.<sup>233</sup>

This long view of women's constitutional history and its comprehensive agenda leads to deeper understanding of women's equality demands today. For neither the intent nor the context of the Nineteenth Amendment was meant to produce an "irrelevant" amendment, as some have concluded.<sup>234</sup> First, the vote was part of a holistic plan for "women's rights" that has always been a multi-issue, multi-system platform, even as certain issues like suffrage or abortion have come to dominate the public discourse—often because of opponents of gender equality. Second, the context and constitutional history of the Nineteenth Amendment support a more robust understanding of constitutional guarantees of gender equality today, such as interpreting "equal protection" under the Fourteenth Amendment to include both public and private spheres and reaching so-called personal rights of maternity leave, sexual harassment, and assertions of religious liberty.<sup>235</sup> Finally, understanding this longer history, "women's rights" means not just formal, equal rights, but also the removal of oppressive norms of society and religion that construct barriers against meaningful change. The modern debate has embodied itself in judicial attacks through equal protection doctrine and constitutional demands for the ERA, but it asks nothing different than what women have been asking for one hundred and seventy years.

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231. SPRUILL, *supra* note 230, at 4; Gloria Steinem, *Introduction to CAROLINE BIRD, WHAT WOMEN WANT: FROM THE OFFICIAL REPORT TO THE PRESIDENT, THE CONGRESS AND THE PEOPLE OF THE UNITED STATES* 10, 13-14, 55 (1979).

232. SPRUILL, *supra* note 230, at 6-7. The measures were later bundled as a "National Plan of Action" and presented to President Jimmy Carter in a report entitled "The Spirit of Houston." *See generally* CAROLINE BIRD ET AL., *THE SPIRIT OF HOUSTON: THE FIRST NATIONAL WOMEN'S CONFERENCE* (1978).

233. SPRUILL, *supra* note 230, at 8-10.

234. David A. Strauss, *The Irrelevance of Constitutional Amendments*, 114 HARV. L. REV. 1457, 1500 (2001) (concluding that there is "less to the Nineteenth Amendment than meets the eye"); *see also* KRADITOR, *supra* note 5, at 63 (concluding that "the suffragists overestimated what they could accomplish with the vote").

235. Siegel, *supra* note 16, at 949, 951; *see* Hodes, *supra* note 6, at 46-47 (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"); *see also* Brown, *supra* note 196, at 2175.