

4-1996

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*United States Supreme Court*

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### Recommended Citation

Sandra D. O'Connor, The History of the Women's Suffrage Movement, 49 *Vanderbilt Law Review* 657 (1996)

Available at: <https://scholarship.law.vanderbilt.edu/vlr/vol49/iss3/2>

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# ESSAY

## The History of the Women's Suffrage Movement

*Sandra Day O'Connor\**

It is difficult to imagine that only seventy-five years ago, a woman's right to vote was not protected by our Constitution. It is hard to remember that a right I have taken for granted all my life is one that some of our grandmothers never enjoyed. But it is important to remember such things, to celebrate the amendment that extended to women one of the fundamental rights of citizen participation, and to reflect upon how far we have come.

In order to appreciate the tremendous progress made by American women in the last century, we should consider the point from which we started. The history of the suffrage movement is a colorful and entertaining one, and a tale from which we can draw many lessons.<sup>1</sup> It begins in the late eighteenth century, as this country's political, governmental, and social frameworks were only beginning to take shape. When the wife of future-President John Adams implored her husband in 1776 to "remember the ladies"<sup>2</sup> in drafting our new nation's charter, her plea fell on deaf ears. The American

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\* Associate Justice, United States Supreme Court. This Essay was originally delivered as a speech at a commemoration of the 75th anniversary of the ratification of the Nineteenth Amendment in Phoenix, Arizona on September 23, 1995. I would like to extend my appreciation to Julia Bunting Shelton and Simon Steel, who provided valuable assistance in the preparation of this Essay.

1. The material for the first part of this Essay is drawn largely from Olivia Coolidge, *Women's Rights: The Suffrage Movement in American, 1848-1920* (Dutton, 1966), and Eleanor Flexner, *Century of Struggle: The Woman's Rights Movement in the United States* (Harvard U., 1975).

2. Flexner, *Century of Struggle* at 15 (cited in note 1).

Constitution, signed in September 1787, was produced by fifty-five men for a nation in which men were to govern. Women were subject to its terms but "unacknowledged in its text, uninvited in its formulation, [and] unsolicited for its ratification."<sup>3</sup> In permitting each state to determine the qualifications of voters for Congress, the Constitution implicitly endorsed laws, then existing in virtually every state, that prohibited women from voting. Although neither the Constitution nor the Bill of Rights explicitly denied equal rights to women, it seems fair to say that the Framers envisioned no role for women in the new American government.

In the early nineteenth century, American men and women moved in strictly separated spheres. The commercial, political, and professional realms were dominated by men, while women were relegated to the domestic arena. The notion of gender-specific spheres had its roots in the belief that women were subordinate to men by nature, almost certainly less intelligent, and biologically less suited to the rigors of business and politics. Even at the turn of the century, the law still firmly enshrined the separate-spheres theory of gender relationships. Women generally could not serve on a jury, as a justice of the peace, or as a notary public. In many states, they could not hold elected office or practice law. A married woman could not enter contracts, hold or convey property, retain her own earnings, bring legal actions, or acquire a passport based on her own nationality. In the words of the English poet, Alfred, Lord Tennyson, a wife stood in relation to her husband as something just "better than his dog, a little dearer than his horse."<sup>4</sup>

The seeds of change were sown in the abolitionist movement of the mid-nineteenth century. As the nation struggled morally and intellectually with the continued existence of slavery, women entered the movement with enthusiasm. By 1850, women constituted a majority in Northern antislavery societies and were the leading organizers of abolitionist petition drives. It was in the abolition movement that women reformers sharpened their organizational skills and learned to hold public meetings and conduct petition campaigns. As abolitionists, women first won the right to speak in public. They then began to put these newly acquired skills to use in pressing for their own rights, particularly the right to vote.

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3. Deborah L. Rhode, *Justice and Gender: Sex Discrimination and the Law* 20 (Harvard U., 1989).

4. Alfred Tennyson, *Locksley Hall* 29 (Fields, Osgood, 1869).

The impetus for much-needed organization in the women's movement came in the summer of 1840. At the World Anti-Slavery Convention in London, the United States was represented by a delegation that included a number of women. Trouble began even before the convention opened. Despite strong objection by some of the American leaders, and following a heated debate on the floor of the convention, it was ruled that only the male delegates would be seated. Among the women forced to sit passively in the galleries were Lucretia Mott, an ardent abolitionist and founder of the first Female Anti-Slavery Society, and Elizabeth Cady Stanton, the young wife of an abolitionist leader. After the sessions, the two women talked of the irony of workers devoted to the antislavery cause being denied a voice in the convention simply because they were women. They recognized the need for concerted action.

Elizabeth Cady was the privileged daughter of a New York judge. She spent hours as a small child crouched in the corner of her father's office listening to people plead for help with legal problems. Many of those seeking Judge Cady's help were women who complained that their husbands and fathers had disposed of their property, spent their earnings on liquor, or had the sole right to guardianship of their children in the event of a separation. Judge Cady was forced to explain time and again that they had no legal redress, and young Elizabeth was forever marked by that lesson. Years later, she married Henry Stanton, an abolitionist leader, and moved to Seneca Falls, New York. Looking back, she wrote in 1898:

My experiences at the World Anti-Slavery Convention, all I had read of the legal status of women, and the oppression I saw everywhere, together swept across my soul, intensified now by many personal experiences. It seemed as if all the elements had conspired to impel me to some onward step. I could not see what to do or where to begin—my only thought was a public meeting for protest and discussion.<sup>5</sup>

During a visit to Seneca Falls, Lucretia Mott gathered with Elizabeth Cady Stanton and several other women. They decided to call a convention. The following day, an announcement appeared in the Seneca County Courier of a "woman's rights convention" to be held in July of 1848.

Elizabeth Cady Stanton shouldered much of the responsibility for organizing and animating the convention. As she prepared for the

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5. Elizabeth Cady Stanton, *Eighty Years and More: Reminiscences, 1815-1897* at 147-48 (T. Fisher Unwin, 1898) (quoted in Flexner, *Century of Struggle* at 73-74 (cited in note 1)).

upcoming meeting, Elizabeth read to her husband the draft of a proposed resolution demanding that women be given the right to vote. Henry, the passionate abolitionist, warned her that if she presented it to the convention, he would have nothing to do with it and would go so far as to leave town to avoid embarrassment. Well, she did present the resolution, and Henry did leave town. In fact, only Frederick Douglass, the black abolitionist leader, approved of Elizabeth's daring resolution and promised to support its introduction at the convention.

Despite the fact that only one issue of the Seneca Falls newspaper had carried the brief notice, some three hundred people came to the convention from a fifty-mile radius. But when the convention-goers arrived at the little Wesleyan chapel where the meeting was to be held, they found the door locked. Not to be discouraged, the crowd boosted one of Elizabeth's nephews through a window and the convention proceeded as planned. Eloquent speeches and lively discussion filled the days. Some of the liveliest discussion was inspired by Elizabeth Cady Stanton's reading of Resolution Nine: "Resolved, that it is the duty of the women of this country to secure to themselves their sacred right to the elective franchise."<sup>6</sup> Resolution Nine carried by a small margin. It was the only resolution not to pass unanimously. A young woman by the name of Charlotte Woodward was the only woman at the Seneca Falls Convention who lived to cast a vote in a national election. In 1920, at the age of ninety, she reportedly declared, "I am going to the polls if they have to carry me."<sup>7</sup>

The birth of the women's rights conventions followed, and the movement picked up steam. The first National Women's Rights Convention was held in 1850, and a similar convention followed every year for the next ten years. It gradually became clear that women agreed on their dissatisfaction with the current state of affairs but had yet to develop an ideology or a set of goals to guide their cries for change. Few felt as strongly as Elizabeth Cady Stanton about the importance of securing the vote. More pressing concerns included women's inability to control property and earnings, their limited opportunities for higher education and employment, and their lack of legal status. But one obstacle to correcting these problems soon became obvious: how could women bring about a change in the laws without the right to vote?

The Civil War and the emancipation of former slaves brought the suffrage question to the forefront. If newly freed blacks were to be

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6. Flexner, *Century of Struggle* at 77 (cited in note 1).

7. Coolidge, *Women's Rights* at 31 (cited in note 1).

guaranteed the same civil rights, including suffrage, as all other citizens, there was no reason that women should not also be swept up by the momentum and included in the resulting expansion of the right to vote. The reformers were in for quite a shock, however. The draft of the Fourteenth Amendment, introduced into Congress in 1866, sought to incorporate an unprecedented gender restriction into the Constitution. The draft declared that the right to vote should not be "denied to any of the *male* inhabitants" of a state.<sup>8</sup>

The reformers realized that if this proposal were adopted, yet another constitutional amendment would be required to give women the right to vote in federal elections. Elizabeth Cady Stanton recognized what a monumental task securing such an amendment would be. She believed that the women's suffrage movement would be set back a full century if the proposal were adopted. In fact, she was not far wrong: it took another sixty years. The Fourteenth Amendment, which includes the word "male" not once but three times, was ratified in July 1868. The Fifteenth Amendment, which followed less than two years later, also failed to provide the suffragists with any cause for optimism. It decreed that no citizen could be denied the right to vote because of "race, color or previous condition of servitude," but made no mention of gender. Taken together, the Fourteenth and Fifteenth Amendments caused women to wonder if they were indeed fully citizens of the United States.

Angered by the lack of progress, Elizabeth Cady Stanton decided to take matters into her own hands. In 1866 she declared herself the first female candidate for Congress. No one challenged her right to run, but she received only twenty-four of the 22,026 votes cast.<sup>9</sup> Following in Cady Stanton's footsteps, Victoria Woodhull obtained permission in 1871 to present a petition to the House Judiciary Committee, arguing that the recent constitutional amendments had secured the vote for women as well as blacks. She claimed that, under Section 1 of the Fourteenth Amendment, women are citizens of the United States and are thus guaranteed the same rights and privileges of citizenship as men, including the right to vote. The committee rejected the petition, and the Supreme Court in turn rejected the argument in 1875. The Court ruled that women had no right to vote under the United States Constitution.<sup>10</sup>

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8. Flexner, *Century of Struggle* at 146 (cited in note 1).

9. Elizabeth Frost and Kathryn Cullen-DuPont, *Women's Suffrage in America: An Eyewitness History* 172 (Facts on File, 1992).

10. *Minor v. Happersett*, 88 U.S. (21 Wallace) 162, 178 (1874).

Despite these setbacks, many women embraced Victoria Woodhull's claim that women were immediately entitled to exercise the right to vote. Susan B. Anthony resolved to dramatize the issue by voting in the presidential election of 1872. She did so and was joined by several other women, but their punishment was swift and sure. Within weeks, all were arrested. Susan B. Anthony planned to rely on the Fourteenth Amendment for her defense. She claimed that it had confirmed her right to cast a ballot. At her trial, however, the judge ruled that women were incompetent to testify in court. Anthony was therefore prohibited from speaking in her own defense. The judge concluded that as "a person of the female sex" her vote was per se against the peace of the United States of America and their dignity.<sup>11</sup> Since she did vote, she was admittedly guilty, and there remained no issue to be presented to the jury. The judge instructed the jurors (who were of course all male) to enter a verdict of guilty.

Yet in another respect, Susan B. Anthony was the clear victor. Her treatment at the hands of the judicial system won for her the sympathy even of those who had been opposed to her original act. Letters of support and funds for her defense poured in. The following year, one newspaper even called her "America's best-known woman."<sup>12</sup> Much like many of contemporary society's widely recognized figures—Cher, Roseanne, O.J., and even Newt, to name just a few—one had only to speak or print the name *Susan* and it was evident to whom one referred.

At the same time, change was taking place in the states. The first major victory for women's suffrage occurred in the Wyoming Territory where a bill to enfranchise women was signed into law in 1869. Contrary to predictions, the elections that followed did not result in disaster and dissolution of the existing order. Moreover, an interesting development occurred. Once women enrolled as voters, their names began to appear on lists of prospective jurors. Women's presence on Wyoming juries actually stirred up more excitement than their presence at the voting booths! A great many husbands were opposed to their wives' participation, but it appears that many Wyoming women welcomed the opportunity to serve. In Laramie City Court in the spring of 1870, the judge allowed prospective female jurors to decide for themselves whether they wished to be excused. Only one woman withdrew. The remaining women served out their term, and,

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11. Joan Hoff, *Law, Gender, and Injustice: A Legal History of U.S. Women* 157 (N.Y.U., 1991).

12. Coolidge, *Women's Rights* at 63 (cited in note 1).

legend has it, that particular jury "became such a terror to evil-doers that a stampede began among them, and very many left the state forever."<sup>13</sup>

When Wyoming sought statehood in 1890, pressure was applied from Washington to repeal women's suffrage in the territory. Indeed, the bill to admit Wyoming to the Union met tremendous resistance in both chambers of Congress. One senator even predicted that allowing women to vote would result in a disastrous reversal of traditional gender roles: women would "do military duty" and "work the roads" while men would be forced to "nurse the children" and "stay at home while the ladies go out and make stump speeches in canvasses."<sup>14</sup> Wyoming leaders replied that they would rather remain outside the Union than join without women as voters. The bill to admit Wyoming passed by a vote of twenty-eight to eighteen, and women enjoyed the right to vote in one state of the Union.

Following Wyoming's example, Utah enacted a law granting women the right to vote in 1870. The law was revoked in 1887, but women in Utah regained the right to vote when Utah was admitted to statehood in 1896 under a constitution that provided for women's suffrage. By that time, both Colorado and Idaho had joined the states that granted women the right to vote, and other Western states had granted limited suffrage rights on specific issues.

The suffragists next turned their attention to Arizona and Oklahoma, the two remaining territories, but they were not so successful. As Arizona prepared for statehood, the suffragists campaigned vigorously for a women's suffrage provision in the new state's constitution. Yet, once again, they met defeat. The fifty-two male delegates to the state constitutional convention rejected their pleas, at least in part for fear that President Taft would veto a statehood bill that provided for universal suffrage. Not to be discouraged, the Arizona suffragists turned to newly established weapons of democracy—the initiative and referendum. One newspaper, the *Arizona Gazette*, had predicted that the effort to include universal suffrage in the proposed constitution would fail, but that male voters would grant women the right to vote in a post-statehood election. This is precisely how events unfolded. Petitions for a referendum on women's suffrage were filed in Arizona in July 1912, and in the November election male voters approved the universal suffrage initiative by a margin of

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13. Flexner, *Century of Struggle* at 162 (cited in note 1).

14. 21 Cong. Rec. 6527 (June 26, 1889) (statement of Sen. Reagan, Oregon).



greater than two to one.<sup>15</sup> Just two years later, in 1914, Frances Willard Munds, who had been a vigorous lobbyist for a universal suffrage bill before the Arizona territorial legislature, became the second woman in America to be elected to a state senate. And just six short years later, Arizona would be one of the thirty-six states to ratify the Nineteenth Amendment.

The relatively enlightened views that permitted and even encouraged the enfranchisement of women in the Western states in the late 1800s were not sentiments universally shared. In 1874, the question of women's suffrage was presented to Michigan electors via a statewide referendum. As Susan B. Anthony stood beside a polling booth on election day encouraging voters to support the suffrage measure, an unkempt man carrying a ballot sheet approached her and asked, "What kind of a ticket is that?"

Susan B. Anthony replied, "Why, you can see for yourself," and pointed to his ballot sheet.

"But I can't read," he responded.

"What? Can't you read the ballot you have there in your hand—which you are about to vote?"

"No, I can't read at all," he answered.

"Well," she explained, "the ballot means that you are willing to let the women, as well as the men, vote."

The man shook his head. "Is that so? Then I don't want it. The women don't know enough to vote."<sup>16</sup>

Even as the turn of the century drew near, it was clear that the suffragists faced an uphill battle in generating support for a national suffrage amendment.

By the late 1800s, two formidable organizations were pressing for the enfranchisement of women: the National Woman Suffrage Association, which lobbied for a federal constitutional amendment, and the American Woman's Suffrage Association, which preferred to work at the state level to secure a woman's right to vote. In 1889, the two suffrage groups merged into a single association, which then turned its energies to state-level suffrage campaigns. Pressure on Congress to pass a national amendment thereby diminished. By 1900, however, concrete progress, measured by increases in the number of states granting women the right to vote, had slowed almost to a halt. In terms of access to education and opportunities for

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15. Carrie Chapman-Catt and Nettie Rogers Shuler, *Woman Suffrage and Politics: The Inner Story of the Suffrage Movement* 177 (U. Wash., 1969).

16. Coolidge, *Women's Rights* at 9 (cited in note 1).

profitable employment, the women's movement had much to celebrate and ample reason to continue the press for enfranchisement. It was only enthusiasm that was lacking.

The necessary jolt came from England, where the women's suffrage movement was marked by militancy, sensationalism, and calls for direct action. One English suffragette went so far as to throw herself in front of the King's horse as it was winning the derby, sacrificing her life to garner attention for the suffrage movement.<sup>17</sup> The American suffragists were quick to learn their lessons from the English. Under the leadership of Elizabeth Cady Stanton's daughter, Harriot Stanton Blatch, the movement resolved to draw in working women who stood to benefit most from enfranchisement. From these alliances, the Women's Political Union was born. The Union conducted open-air meetings, covered polls with propaganda, and held elaborate parades. On another front, the Woman Suffrage Party, led by Carrie Chapman-Catt, held suffrage bazaars and balls, sold suffrage calendars and buttons, and hung suffrage posters on every available surface. The pressure on non-suffrage states quickly intensified. But opposition to suffrage increased in tandem. Well-funded groups were dismayingly successful at killing suffrage motions or, if necessary, bribing or threatening state legislators to ensure defeat of the proposals. The time was coming once again to return the focus of the movement to a national pitch for a constitutional amendment.

But the suffragists met significant resistance at the national level as well. Even former President Grover Cleveland was anxious to place, and keep, women on a pedestal. In his 1905 contribution to the *Ladies' Home Journal* opposing women's suffrage, he explained the truth as he saw it:

Thoughtful and right-minded men . . . base their homage and consideration for woman upon an instinctive consciousness that her unmasculine qualities, whether called weaknesses, frailties, or what we will, are the sources of her characteristic and especial strength within the area of her legitimate endeavor. They know that if she is not gifted with the power of clear and logical reasoning she has a faculty of intuition which by a shorter route leads her to abstract moral truth; that if she deals mistakenly with practical problems it is because sympathy or sentiment clouds her perception of the relative value of the factors involved.<sup>18</sup>

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17. *Id.* at 99.

18. Grover Cleveland, *Would Woman Suffrage Be Unwise?*, *Ladies' Home J.* 7 (Oct. 1905).

It was apparent that a powerful effort was needed to bring about change at the national level.

In 1912, it had been sixteen years since either chamber of Congress had issued a report on a suffrage amendment. A small band of young, well-educated women descended on Washington, determined to be heard. By now, eight states had granted full suffrage to women, and these voters became a formidable force, pressuring their delegates to support a national amendment. What followed in the capitol were several years of lobbying, visits to President Wilson, picketing, parades, pilgrimages, and petitions. When the suffragists discovered that President Wilson's 1916 address to Congress made no reference to suffrage, they decided to bring the issue to the forefront on their own. Five women procured seats in the front of the gallery. One of the women concealed a large yellow banner under her skirt, which she unrolled and dropped over the balcony at a predetermined time. The banner demanded: "Mr. President, what will you do for woman suffrage?"<sup>19</sup> President Wilson's speech faltered for only a moment, but the damage was done. By the time a page on the floor was able to jump up, catch one corner of the banner, and tear it down, the women were already busy handing out mimeographed reports on the episode to the press.

In the ensuing months, suffragists were jailed repeatedly for picketing the White House. When the new Russian Republic extended the vote to women following its revolution, suffragists taunted President Wilson with the lack of similar progress in the United States. Meanwhile, the National-American Association had at last turned its sights once again to the need for a national amendment. And to its surprise, much of the opposition it had once faced was absent. Liquor interests, long hostile to the suffragists, were busy fending off the likelihood of a national prohibition amendment and could not be bothered with the women's suffrage movement. Progress, long overdue, came quickly. At its 1916 convention, the Republican Party recommended extension of suffrage to women, but decided that this ought to be accomplished by the states. The Democratic Party followed suit. In 1917, the House set a vote on the suffrage amendment. Meanwhile, the suffragists were busily lobbying behind the scenes in a well organized effort to bring pressure to bear on the congressmen who would be participating in the decisive vote. By the end of 1917, six state legislatures had granted women the right to vote in presidential elections. Even New

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19. Coolidge, *Women's Rights* at 122 (cited in note 1).

York, the most populous state in the Union, yielded to the demand for women's suffrage. States began sending resolutions to Congress calling for a federal amendment.

The vote on the national amendment was set for January 10, 1918. As the day drew near, however, suffragists believed that they were forty-five votes short of the two-thirds majority they needed. Their nerves were not eased by the fact that, on the day of the vote, several representatives who were believed to favor the federal amendment encountered an array of misfortunes, ranging from a train wreck to physical illnesses and injuries to the death of one representative's wife. On at least one occasion during the roll call, the opposition appeared to believe it had carried the day. But when the dust settled, the suffragists at long last had cause to celebrate. The amendment passed the House by just two votes more than the necessary two-thirds majority. That the vote was too close for comfort is highlighted by one hopelessly undecided representative's story. The representative told his brother that if the child his wife was expecting turned out to be a girl, he would vote in favor of women's suffrage. Well, his wife gave birth to a beautiful daughter, and the representative was recorded in favor of the amendment.

The suffragists faced their next hurdle with equal enthusiasm. It initially appeared that they lacked ten votes to reach the necessary two-thirds in the Senate. A whole variety of supporters of the amendment urged its passage. The Democratic and Republican National Committees, Theodore Roosevelt, members of the Cabinet, and a number of states that had granted suffrage all pleaded for a favorable vote. Even President Wilson made a personal plea to the Senate. The President's appeal did not in the end tip the scales in favor of passage, however, as the amendment fell one vote short in the Senate.

The suffragists geared up for a renewed battle in the Sixty-sixth Congress. In May 1919, the suffrage amendment once again passed in the House, this time by a vote of 304 to 90. A similar victory in the Senate was almost a foregone conclusion: the amendment passed with two votes more than necessary. Seventy-one years after the Seneca Falls Convention, the extension of the vote to women seemed, if not certain, at least probable. Only one hurdle remained—ratification in three-fourths of the states.

By June 1920, thirty-five states had ratified the proposed amendment, and suffragists began to hunt about for a final state. Both Connecticut and Vermont seemed likely prospects, but the governors in both states were opposed to women's suffrage. Thus the suf-

fragists turned to an unlikely setting for the last great battle of the suffrage movement—Tennessee.

The Governor of Tennessee, eager to be credited with passing the amendment, called an emergency session of the state legislature. Despite bribes, threats, and other machinations by opponents of suffrage, the measure passed the state senate. Opponents then turned their attention to the upcoming vote in the Statehouse. Once again, anti-suffragists engaged in a great deal of maneuvering in hopes of ensuring defeat. When the measure was brought to a vote in mid-August, however, opponents expected to prevail by only two votes. When one of their anticipated allies voted in favor, all attention turned to Harry Burn, a twenty-four-year-old representative of a rural district opposed to suffrage. Although his electors opposed the measure, Burn had only recently received a letter from his mother urging him in strong language to vote in favor of suffrage. Burn resolved that, if the measure required a single vote for passage, he would supply it. He did so, and the count in favor of suffrage stood at forty-nine to forty-seven. The speaker of the House quickly changed his vote to yes, hoping to take advantage of a parliamentary maneuver allowing reconsideration of the issue. When opponents failed to muster enough votes to defeat ratification on reconsideration in the days that followed, the suffragists attempted to request reconsideration themselves, planning to vote it down immediately. When they assembled, however, they found that they lacked a quorum: the antisuffragists had fled en masse across the Alabama border hoping to prevent reconsideration! The suffragists pressed ahead without them, and the governor notified Washington of the vote. On August 26, 1920, Secretary of State Bainbridge Colby signed the Nineteenth Amendment into law.

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This is a flavor, at least, of the seventy-year struggle for the women's right to vote. But what was it all for? Suffragists were jailed, attacked, harassed, and divorced in their quest for the American dream of full citizenship and civil rights. So it behooves us to consider what, seventy-five years on, we have made of their ideals. Are we making good use of the vote? Have we reached full and equal citizenship in other respects? And in what ways are the suffragists' concerns still pertinent to our world today?

Like most revolutionary changes, suffrage took some time to sink into the popular consciousness. Women got the vote too late to

have a significant impact on the 1920 elections; indeed, several states refused to reopen their rolls to allow women to register to vote in time. And, in 1924, barely one-third of eligible women voters turned out to vote in the national elections, leaving Calvin Coolidge the least supported President-elect of the twentieth century, with the votes of less than twenty-four percent of the eligible population.<sup>20</sup>

Gradually, however, the women of America discovered their long-suppressed will to vote. By the time of the 1952 elections, my own generation of women was at the polling booths. They had better access to higher education and employment opportunities than their predecessors and had grown up with the vote. In the presidential election that year, the female majority showed itself as an independent and decisive electoral force. Not only did the female vote finally catch up with the male vote—at thirty million each, a fifty percent national turnout—but the female vote also diverged from the male vote, giving the lie, for at least a substantial number of women, to the pre-war stereotype of women following their husbands or fathers, sheep-like, into the polling booth. In 1952, Dwight D. Eisenhower had a slim 1.7 million majority over Adlai Stevenson in terms of the male vote, but women voted for Eisenhower by a decisive margin of five million. Thus, in 1952, the women of America let both parties know that they would never again win an election unless they “remember[ed] the ladies.”

From 1952 until 1980, the self-reported turnout in presidential elections was typically about five percent less for women than for men, oscillating between fifty and seventy-five percent. Since 1984, however, when the female vote first exceeded the male vote in a national election, differences in turnout have been negligible. The suffragists would, I am sure, feel that there are still far too many women who are not exercising their hard-won right, but at least the right to vote is now exercised equally. The independence of women voters is also, one hopes, now beyond question. Indeed, the last fifteen to twenty years have seen the emergence of a sizable political-party gender gap in American politics. According to recent opinion polls, the Republicans enjoy a fifty-three to thirty-seven percent lead in support among white men, but the Democrats have the edge, forty-eight to forty-two percent, among white women. Seventy-five percent of black men support the Democrats, compared to an overwhelming eighty-eight percent of black American women. Unmarried women favor the Democrats particularly heavily, giving them a thirty-two

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20. M. Margaret Conway, *Political Participation in the United States* 9 (C.Q., 2d ed. 1991).

percent lead. But there is also a large divergence between married women and married men. While Republicans enjoy a fifty-five to thirty percent margin among married men, forty-eight percent of married women identify themselves as Democrats.<sup>21</sup> What the suffragists would have made of party politics, 1990s-style, I cannot speculate, but whichever party they would have supported, they would, I am sure, be pleased to know that modern women are voting as individuals, not as marital appendages nor as a monolithic block.

While the vote was the focal point for the suffragists, they wanted more for their daughters and granddaughters. Indeed, they realized that with the vote won, the hard work of empowering women in the public and private sectors had just begun. In 1919, one of the leaders of the suffrage movement, Anna Howard Shaw, told Emily Newell Blair, "I am sorry for you young women who have to carry on the work for the next ten years, for suffrage was a symbol, and now you have lost your symbol."<sup>22</sup> Her prediction of hard times ahead was not inaccurate, and a brief look at what the first post-amendment generation achieved prior to the Second World War can tell us a little about how far we have come, and the extent to which the concerns of the suffragists still frame our debates today.

Women had an early lobbying success in Washington, with the 1921 passage of the Sheppard-Towner Federal Maternity and Infancy Act, secured by the efforts of the Women's Joint Congressional Committee. That act required an annual appropriation of \$1.25 million in matching federal funds for maternity and pediatric clinics. The period from 1920 until 1932 also saw sixteen women elected to the House of Representatives, one to the Senate, and one, Florence Allen, to the Ohio Supreme Court, the first female supreme court justice in American history.

Women's progress, however, was fitful. The women's movement was divided over the National Women's Party's 1923 proposal for an equal rights amendment. One group, the Women's Trade Union League, opposed it on the grounds that it ignored relevant differences between men and women and would eliminate special legal protections provided to women in minimum wage and other laws. (It seems that few issues in current-day politics are truly new.) And with the onset of the Depression, the Sheppard-Towner Act was discarded as an unaffordable luxury, as were many women's jobs.

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21. Thomas B. Edsall, *Pollsters View Gender Gap As A Political Fixture*, Wash. Post A1, A11 (Aug. 15, 1995).

22. Quoted in Lois W. Banner, *Women in Modern America: A Brief History* 131 (Harcourt Brace Jovanovich, 1974).

Some idea of how far removed from the present day attitudes about women in the workplace remained at that time may be gleaned from a contemporary decision of the House of Lords in England, where women had gained suffrage one year before their American counterparts. Lord Atkinson held unlawful a local council's decision to raise its female employees' wages to the level of its male employees, explaining gravely that the council had "fail[ed] in their duty [by] allow[ing] themselves to be guided . . . by some eccentric principles of socialistic philanthropy, or by a feminist ambition to secure the equality of the sexes in the matter of wages in the world of labour."<sup>23</sup> On both sides of the Atlantic, women's rights still had quite a long way to go.

In contrast to John Adams and Grover Cleveland before him, President Franklin Roosevelt was the first American president to acknowledge publicly that women could constitute a vital political asset. In 1933, he appointed the first woman to the Cabinet, Secretary of Labor Frances Perkins. And in 1934, he appointed Ohio's Judge Allen to serve on the Sixth Circuit as the first female federal appeals court judge. Judge Allen, who had been active in the suffrage movement twenty years earlier, was also the subject of a campaign led by Molly Dewson to have her nominated to the United States Supreme Court.<sup>24</sup> But that idea was apparently forty-odd years before its time.

Despite these gains, a 1936 Gallup Poll found eighty percent of Americans—men *and* women—in agreement with the proposition that a wife should stay at home if her husband had a job.<sup>25</sup> President Roosevelt, a pragmatic rather than ardent supporter of female equality, included in his 1932 National Economy Act a prohibition on both members of a married couple working for the federal government, a facially neutral provision that rather predictably led to 1,600 women being dismissed from governmental service during its five-year life.<sup>26</sup> But by the end of the 1930s, female employment in the federal executive branch and independent agencies had risen back to nearly nineteen percent. Transforming voting rights into a broader equality was proving to be a slow, evolutionary process.

That process has continued, in fits and starts, to the present. It may take little short of another seventy-five years before we

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23. *Roberts v. Hopwood* (April 3, 1925), reprinted in G.F.L. Bridgman, ed., *The All England Law Reports Reprint* 24, 33 (Butterworth, 1959).

24. Susan Ware, *Beyond Suffrage: Women in the New Deal* 56, 120 (Harvard U., 1981).

25. George H. Gallup, *The Gallup Poll: Public Opinion, 1935-1971* at 39 (Random House, 1972).

26. *Id.* at 79



achieve full gender equality in this country. According to a recent United Nations study, women are 1.3 times as likely to be living in poverty in the United States as men.<sup>27</sup> And although we continue to progress toward economic parity, it is reported that women's salaries in the United States average only eighty-two percent of those of their male counterparts.<sup>28</sup>

But the progress that is still to be made should not be allowed to overshadow the fact that we have come an astoundingly long way since 1920. Let me give just a few examples of the progress that has been made in the states. In Arizona, Lorna Lockwood blazed the trail, first as a legislator, then as the first female trial judge in that state, and eventually as the first woman in the country to serve as chief justice of a state supreme court. Minnesota, in 1991, became the first state to have a majority of women on its supreme court.<sup>29</sup> And over the past few decades, the states have gradually consigned to the annals of history many of the old doctrines relating to marital property and family relations that kept women in positions of economic dependency and inferiority. At the same time, the states have created several new rights, such as pregnancy disability leave,<sup>30</sup> that have positively advanced the economic opportunities of women, and have taken a more active role in formerly neglected areas such as the protection of victims of domestic violence.

At the federal level, 1964 saw the passage of Title VII of the Civil Rights Act, entitling women to equal pay in the private as well as public sector. Subsequent congresses and administrations have strengthened its enforcement. In the early 1970s, thirty-one states ratified the Equal Rights Amendment. The amendment got no further, though, and was ultimately defeated in 1982. In the meantime, the Supreme Court ruled in 1971 that an Idaho law giving men an automatic preference as administrators of estates represented unconstitutional sex discrimination.<sup>31</sup> The Court followed *Reed v. Reed* with a succession of cases establishing that sex-based classifications are unconstitutional under the Equal Protection Clause unless shown to serve important governmental objectives and to be substantially re-

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27. *The World's Women 1995: Trends and Statistics* 129 (United Nations, 1995).

28. See Simon Caulkin, *Peking: Women Set Out On a Long March to Parity*, *Observer* 17 (Sept. 3, 1995).

29. See David Margolick, *Women's Milestone: Majority on Minnesota Court*, *N.Y. Times* B16 (Feb. 22, 1991).

30. See, for example, *California Federal Savings & Loan Assn. v. Guerra*, 479 U.S. 272, 289 (1987) (upholding California's pregnancy disability leave statute).

31. *Reed v. Reed*, 404 U.S. 71 (1971).

lated to the achievement of those objectives.<sup>32</sup> In one of these cases, Justice Brennan acknowledged our nation's "unfortunate history of sex discrimination." As he explained, "Traditionally, such discrimination was rationalized by an attitude of 'romantic paternalism' which, in practical effect, put women, not on a pedestal, but in a cage."<sup>33</sup>

The 1980s saw the appointment of the first woman to the Supreme Court. In 1994, I was delighted to be joined by a second woman, Ruth Bader Ginsburg. In 1986, the Court held that sexual harassment constitutes actionable sex discrimination under Title VII.<sup>34</sup> And in 1994, the Court concluded that state-authorized gender-based peremptory challenges to jurors are unconstitutional.<sup>35</sup>

It is perhaps the overall statistics, rather than individual cases and appointments, that best reflect the extent of progress. When I graduated from law school, the best job offer I received in the private sector was as a legal secretary. Today, almost thirty percent of the legal profession and over forty percent of law school graduates in the United States are women. And in the public sector, women now represent over seven percent of judges, twenty-five percent of United States attorneys, fourteen percent of state prosecutors, eighteen percent of state legislators, seventeen percent of state executives, nine percent of county governing boards, fourteen percent of mayors and city council members, six percent of members of Congress, twenty-two percent of United States supreme court justices, and one hundred percent of United States attorneys general.

Finally, American women are participating actively on the international level. The triumph of the suffrage movement has particular significance in that arena at this time. The recent United Nations Conference on Women held in China bore testament to the march of democracy and to the essential linkage between suffrage, women's economic rights, and the overall economic and political health of a society. Judge Patricia Wald recently spent time in Eastern Europe as part of an international effort to promote the rule of law and democracy. She summarized the rather gloomy prospects for women's political and economic participation there in a law review article:

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32. See, for example, *Craig v. Boren*, 429 U.S. 190 (1976).

33. *Frontiero v. Richardson*, 411 U.S. 677, 684 (1973).

34. *Meritor Savings Bank, FSB v. Vinson*, 477 U.S. 57 (1986).

35. *J.E.B. v. Alabama ex rel. T.B.*, 114 S. Ct. 1419, 128 L. Ed. 2d 89 (1994).

[The survey revealed] "a profound gender gap in attitudes toward democracy and the change to a market economy." More specifically, in [every] eastern [European] nation surveyed . . . women showed less support for democracy than men. The women consistently rated economic and social welfare needs above political freedoms. Their hopes of the future focused on personal happiness and fulfillment of basic needs rather than enhanced political freedoms. They idealized a marriage in which the husband would provide for the family and the wife would stay home. . . . In several countries, fewer women ran for office in the new democratic elections than had run in the old one-party Socialist elections. . . . [N]either men nor women believed that women's legal or social rights would significantly improve under the new regimes.<sup>36</sup>

The nineteenth and early-twentieth century suffragists, especially those who lived through the Depression, would, no doubt, sympathize with the despair that many Eastern European women now feel.

But they also set an example of how to overcome it. Spunk, wit, teamwork, and determination are the essential ingredients. When Clara Shortridge Foltz, the first woman deputy district attorney in America, was told by an opposing male counsel that she had better be at home raising children, she retorted, "A woman had better be in almost any business than raising such men as you."<sup>37</sup> And women on the international scene have shown similar mettle. One of the most inspiring books written about politics this century is Helen Suzman's *In No Uncertain Terms*. Suzman, for many years the lone voice against apartheid, and the lone woman within the white South African parliament, offered the following quotation as an example of the prejudice she had to contend with:

The Hon. Member . . . must stop chattering. She is in the habit of chattering continually. If my wife chattered like that Hon. Member, I would know what to do with her. There is nothing that works on my nerves more than a woman who continually interrupts me. She is like water dripping on a tin roof.<sup>38</sup>

That was in 1965, and the Honorable Member was "chattering" about the need to dismantle apartheid. Sometimes, the voices of democracy can do rather more than simply grate on the nerves, as the maker of that statement, former South African President P.W. Botha, was later

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36. Patricia M. Wald, *Some Unsolicited Advice to My Women Friends in Eastern Europe*, 46 S.M.U. L. Rev. 557, 557-58 (1992).

37. Nicholas C. Polos, *San Diego's "Portia of the Pacific:" California's First Woman Lawyer*, 2 J. San Diego Hist. 185, 189 (1980).

38. Helen Suzman, *In No Uncertain Terms: A South African Memoir* 83 (Knopf, 1993). Compare id. at 102 (quoting another National Party M.P.'s response to Suzman's criticism of an extension of the reviled pass laws: "When the Hon. Member gets up in the House, she reminds me of a cricket in a thorn tree when it is very dry in the bushveld. His chirping makes you deaf but the tune remains the same, year in and year out").

to learn. And that optimistic note is, perhaps, the key lesson of the suffrage movement that we celebrate today.

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Seventy-five years on, women have the vote, we hold positions of power, we enjoy at least some opportunities in all sectors of the economy, and we have the respect that citizens in a democracy deserve. No doubt the redoubtable women of the suffrage movement would tell us not to rest until full equality is achieved, and quite rightly so. But it is fitting, on the seventy-fifth anniversary of women's right to vote, that we pause to "remember the ladies" who secured our rights, and to celebrate the remarkable progress that the past seventy-five years have brought.

