Susan B. Anthony Cast Her Ballot For Ulysses S. Grant

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ARTICLE

Susan B. Anthony Cast Her Ballot For Ulysses S. Grant

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By Godfrey D. Lehman

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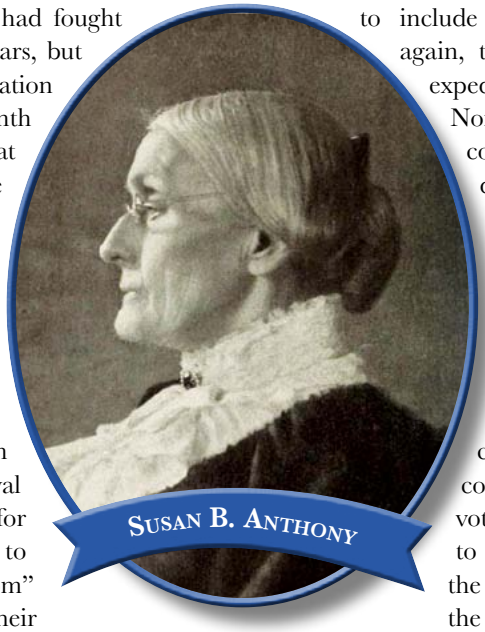
Shortly before the Republicans convened in Philadelphia in 1872 to renominate Ulysses S. Grant for President, Susan Brownell Anthony visited him at the White House. She told the President that her National Woman Suffrage Association (NWSA) wanted him to make votes for women a plank in his platform. Grant replied that he had "already done more for women than any other president." He recognized the "right of women to be postmasters," he said, and had named five thousand to the post, but he would make no promises about the party platform.

Anthony had never been comfortable playing the role of supplicant. The NWSA's mottoes avoided any pleading tone: "Men—their rights and nothing more. Women—their rights and nothing less"; "Principle, not Policy. Justice, not favors." But the suffragists believed that Republicans were their best bet in the upcoming election; Henry Wilson, who was to be Grant's vice-presidential running mate, was less equivocal about women's suffrage than Grant, while Horace Greeley, the probable Democratic candidate, was outspokenly against it.

Anthony had asked for Greeley's support five years earlier. "The bullet and the ballot go together, madam," he had replied. "If you vote, are you prepared to fight?" "Yes, Mr. Greeley. Just as you fought in the late war—at the point of a goose quill." The answer hardly endeared her cause to him, and Greeley had not changed his position in the intervening years; he had stated publicly that "the best women I know do not want to vote."

She knew better than to expect much progress, however, when she arrived in Philadelphia for the Republican convention on Friday, June 7. The NWSA delegation was met, as often before, with gallant words and the excuse of "party expediency." Anthony was told that the chief objective of the convention was to ensure full citizenship and voting rights for the "colored male citizen." Distractions would have to be postponed. Anthony had fought against slavery for years, but she rejected an application of the Thirteenth Amendment that left black and white women alike enslaved to male relatives.



In the end, Anthony's delegation had to accept a campaign plank that soothingly cited Republican "obligations to the loyal women of America for their noble devotion to the cause of freedom" and the hope for "their admission to wider fields of usefulness." Nevertheless, the plank ended with the statement, "The honest demands of any class of citizens for equal rights should be treated with respectful consideration." No national party had said even that much before.

Having decided to throw her organization's support to the Republicans, Anthony started a speaking tour on September 20. She was convinced "without a particle of doubt" that, in fact, the Constitution already guaranteed women's right to vote. The new Fourteenth and Fifteenth Amendments assured it. The Fourteenth, just four years old, decreed that "all persons born or naturalized in the United States…are citizens" and "no State shall make or enforce any law which shall abridge the privileges or immunities of citizens." The Fifteenth, added in 1870, prohibited any state from withholding the right to vote from any citizen "on account of race, color, or previous condition of servitude." The suffragists had lobbied to include the word sex, but again, the excuse of "party expediency" had prevailed. Nonetheless there could be no justifiable doubt because the Fourteenth also included the caveat that no state could deny "to any person… the equal protection of the laws." Totally convinced of women's constitutional right to vote, Anthony decided to present herself to the board of registry on the designated date; on Election Day, she would cast her ballot.

Two territories had already recognized women's voting rights: Wyoming in 1869 and Utah in 1870. Nor would Anthony be the first woman to attempt to vote in one of the states. Marilla M. Ricker of Dover, New Hampshire, had been rebuffed in 1870, but in April of 1871 Nanette B. Gardner voted in Detroit and got away with it. That same month seventy-two women had tried to register in the District of Columbia but had been denied. When they had appealed to the supreme court of the district, the judges proclaimed that the granting of citizenship did not necessarily confer the right to vote, thereby ignoring several law dictionaries that defined citizenship as including the "right to vote… for public

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officers." The United States Supreme Court saw no reason to overturn the lower court's decision.

Several other voting attempts had been frustrated at one level or another, but Mrs. L. D. Mansfield and "three other ladies" had registered and succeeded in voting in Nyack, New York, in 1871. "No evil results followed," The New York Times concluded in an editorial.

Anthony sought substantiation for her decision to vote from lawyers in her hometown of Rochester, New York, but none was interested until she called upon Henry R. Selden, a former judge of the New York Court of Appeals and of the state supreme court. Like the others, Selden had never considered the issue, but he agreed to review it. After doing so, he told Anthony the amendments did guarantee voting rights to women. He promised to support her claim.

Anthony was pleased, but she had already decided to proceed whatever his opinion. On Friday, November 1, when the Rochester Democrat and Chronicle urged all citizens to "Register NOW," Anthony gathered fifteen other women, including her three sisters, and appeared that very day before a startled board of registry in a barbershop in Rochester's Eighth Ward.

Two members of the three-man board, Beverly Jones and Edwin F. Marsh, were Republicans; the third was a Democrat named William B. Hall. Anthony offered her credentials, and Jones, chief of the board, sought the advice of his superiors. Two U.S. supervisors of elections had been appointed to oversee things in the Eighth Ward, but one left the barbershop as soon as the women entered. The other could see no way to get around placing the names in the register; he asked if Jones knew the penalty for refusing to register an eligible voter.

This convinced Jones and Marsh, but Hall resisted. The 2 to 1 majority prevailed, however, and all the women were registered. When the Rochester newspapers published the story the next day, some thirty-five other women came to register in other wards. Their action was denounced by the Rochester Union and Advertiser , which demanded the prosecution of any election official who accepted their ballots. The paper published the essential features of an enforcement act of the Fourteenth Amendment: "Any person… who shall vote without having a legal right to vote; or do any unlawful act to secure… an opportunity to vote for himself or any other person… shall be deemed guilty of a crime," punishable by a fine of five hundred dollars and/or imprisonment up to three years. This warning was so intimidating that on Election Day, November 5, no official in any ward except the Eighth permitted women to vote.

> I prefer to be arrested like anybody else," Anthony told the embarrassed deputy marshal who appeared at her door. "You may handcuff me as soon as I get my coat and hat."

The sixteen registered women of the Eighth Ward arrived as the polls opened at seven o'clock: they found the same three men there, now serving as inspectors of election. The women asked for ballots, they received them, and they all voted. Most of the ballots were returned to Jones or Marsh, but even Hall accepted some. The women went home, the ballots were counted, and the story was telegraphed across the nation.

On Thanksgiving Day, Thursday, November 28, an imposingly tall, impeccably attired, and very fidgety gentleman presented himself at the Anthony family's front door. After a few nervous comments about the weather he began hesitantly, "Miss Anthony," but could not continue.

"Won't you sit down?" she said pleasantly.

"No thank you. You see, Miss Anthony …," he stammered. "I am here on a most uncomfortable errand." He hesitated again. "The fact is, Miss Anthony … I have come to arrest you."

The unhappy deputy marshal, E. J. Keeney, seemed about to collapse, but he pressed on. "If you will oblige me by coming as soon as possible to the District Attorney's office, no escort will be necessary."

"Is this the usual manner of serving a warrant?"

Keeney blushed and drew the warrant from his pocket. It said she had violated an act of Congress.

The possibility of arrest had never occurred to Anthony, but she kept her composure. "I prefer to be arrested like anybody else. You may handcuff me as soon as I get my coat and hat." Keeney refused.

The marshal then served warrants on her three sisters; in other parts of the city, deputies were calling on the twelve other women. The sixteen were brought into a bleak, dirty courtroom where only a few years before runaway slaves had been held awaiting trial. No one acknowledged their presence until early evening, when

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the commissioner of elections arrived to inform them that the district attorney had failed to appear; they could go home and return the following morning.

On Friday Anthony was subjected to an inquisition:

"Would you have made the same efforts to vote that you did, if you had not consulted with Judge Selden?"

"Yes, sir," she replied.

"Were you influenced in the matter by his advice at all?"

"No, sir."

"You went into this matter for the purpose of testing the question?"

"Yes, sir; I had been resolved for three years to vote at the first election when I had been at home for thirty days before."

The hearing had aroused so much interest that crowds of women came to witness it, and the proceedings were moved to a larger, cleaner room. One local newspaper described "these lawbreakers" as "elderly, matronly-looking women, with thoughtful faces, just the sort one would like to see in charge of one's sick room, considerate, patient, kindly." Actually Anthony was fifty-two, and many of the others were younger; all but three were married. They pleaded not guilty and, placed under bail of five hundred dollars each, were ordered to appear before a grand jury in Albany on January 22. On that date the twenty grand jurors swore that "the said Susan B. Anthony, being then and there a person of the female sex [which] she well knew… on the 5th day of November, 1872 … did knowingly and unlawfully vote," which she "well knew" was unlawful. The indictment was signed by Richard Crowley, United States attorney.

Members of the National Woman Suffrage Association.

The three inspectors were indicted for registering and later accepting the ballots, although William B. Hall, a Democrat, protested vainly he had been against it and should be excluded. Anthony asked Judge Selden to represent her, and he did without fee; he was joined by the attorney John Van Voorhis. A vindictive district judge, Nathan Hall, set Anthony's bail at an abnormally high one thousand dollars. (At that time a family could live a whole year on a thousand dollars.) She refused to pay, electing jail, but Selden, unwilling to see his client go to prison, put up the money.

After she left the courtroom, Van Voorhis informed her that because she did not go to jail she had just lost the right to appeal to the U.S. Supreme Court. Anthony rushed back into the courtroom and asked Selden to withdraw the bail, but it was too late. The bail had been recorded. A jury trial was set for June 17, 1873, in Rochester. The government decided to prosecute her alone as representative of the sixteen. And all three inspectors were ordered to trial on June 18, over William B. Hall's protests.

Anthony now took her case directly to the people of Rochester's Monroe County—her prospective jurors. In those pre-telephone days the district post offices were important gathering places where newspapers from other cities arrived first, where people came to gossip and exchange news, and where speakers could almost always find a crowd eager to hear their messages. Between her indictment and late May, Anthony appeared at all twenty-nine post offices in the county, sending posters on ahead to advertise each lecture. She told her audiences that "I not only committed no crime, but instead simply exercised my citizen's right, guaranteed to me and all United States citizens by the National Constitution, beyond the power of any state to deny." Those "grand documents" —the Declaration of Independence and the United States Constitution—do not delegate to government the "power to create or confer rights" but "propose to protect the people in the exercise of their God-given rights." The constitutions of every one of the then existing thirty-six states are "all alike" in that "not one of them pretends to bestow rights." There is "no shadow of governmental authority over rights, nor exclusion of any class from their full and equal enjoyment." She drew from the Declaration the phrase that rights are "unalienable" and that governments were formed only "to secure these rights," not to grant what was inherent.

It was contrary to true constitutionalism, she asserted, that one-half of the people should be subjugated to the other half through a "hateful oligarchy of sex." Women were compelled to pay taxes without representation; were brought to trial "without a jury of their peers," imprisoned, and even hanged; were robbed in marriage

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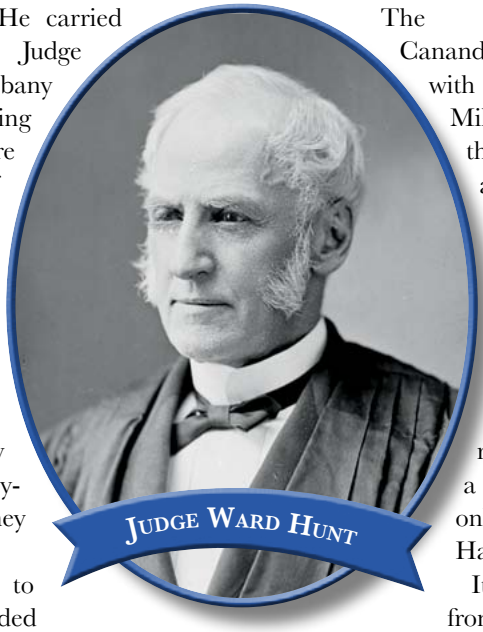
of the custody of their own wages, their own children, their own persons. "We, the people" did not mean "We, the white male citizens" or even "We, the male citizens" but "We, the whole people," and it "is a downright mockery to talk to women of their enjoyment of the blessings of liberty" while they are denied the ballot.

Anthony covered the county so well that, by May, Prosecutor Crowley was worried that no Monroe County jury would convict her. He carried this complaint to Judge Nathan Hall in Albany and requested moving the trial to the more remote town of Canandaigua. Hall readily complied, and only twenty-two days before the trial date he imposed additional costs and burdens on the defendants by requiring the twenty-eight-mile journey from Rochester.


Judge Ward Hunt

Nothing seems to have been recorded about whether Anthony or the inspectors remained in Canandaigua throughout the period or commuted. In any case, Anthony made twenty-one appearances before the trial speaking on the subject "Is It a Crime for a United States Citizen to Vote?" Her friend Matilda Joslyn Gage traveled with her and gave her speech, "The United States on Trial, Not Susan B. Anthony," sixteen times. The two women appeared together on the evening of June 16. The next day, Susan B. Anthony went on trial.

At 2:30 P.M. a jury was impaneled "without difficulty," The New York Times reported. The government used one peremptory challenge, and the defense three. Nothing else is recorded about this jury, although an enormous issue was to rest with them. Although every other participant in the trial is identified, no record survives of how the basic venire was chosen. But since New York jurors had to be "male inhabitants" between twenty-one and sixty who owned personal property assessed at $250 or greater or a "freehold estate" belonging to them or their wives valued at $150, it is safe to assume that Anthony's jury was composed of fairly wealthy, well-established men.

The courtroom in Canandaigua was crowded, with former President Millard Fillmore among the spectators. Selden asked Judge Nathan Hall to sit together with the presiding judge, despite his prejudice, because he believed it would be impossible to make an appeal on reversible error to a higher court with only a single judge. Hall refused.

It was evident almost from the first "Hear ye, hear ye" of the bailiff that Judge Ward Hunt, a Supreme Court justice and former mayor of Utica, had allied himself with Crowley. Early in the trial Hunt refused to permit Anthony to be a witness in her own behalf, ruling she was "incompetent." But he did allow Assistant U.S. District Attorney John E. Pound to offer hearsay evidence concerning testimony she had given at pretrial hearings. Judge Selden protested: this would be "the version which the United States office took of her evidence," and if Anthony was given no chance to reply, it should be excluded. At this objection Hunt delivered a two-word directive to Pound: "Go on."

But Hunt did permit Selden to offer himself as a witness. Selden told the jury of his background of some dozen years as a judge, and how, after scholarly research, he had informed Anthony that she had a constitutionally guaranteed right to vote. He still believed it beyond any doubt, he said, and Anthony's acting on it indicated she was only following in good faith a constitutional mandate; therefore, she could not possibly have "knowingly" voted "unlawfully."

Crowley, for the prosecution, addressed the jury at some length. There was no law permitting women to vote, Crowley said, and not knowing this was no excuse. A "good faith" defense was "abhorrent," even though Crowley himself had written the word knowingly into the indictment.

Selden knew he faced heavy odds. His closing argument consumed nearly three hours. He put three propositions to the jury:

1. Was the defendant legally entitled to vote at the election in question?

2. If she were not entitled to vote, but believed that she was, and voted in good faith in that belief, did such voting constitute a crime under the statute before referred to?

3. Did the defendant vote in good faith and belief?

Selden argued that all just government rests upon the principles that "every citizen has a right to take part upon equal terms with every other citizen" and that inherent in citizenship is the right to vote. He quoted from the dictionaries that the court of the District of Columbia had shunned the previous year.

Since women were citizens, having been born or naturalized within the meaning of the Fourteenth Amendment, it followed they had the right to vote. Otherwise, they would be held in "absolute political bondage"—in short, "slavery." One of the chief arguments in the senatorial debates on the Fourteenth Amendment four years earlier, was that the amendment would "protect every citizen, black or white, male

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or female."

At the very worst, Selden continued, if he had been mistaken and there were no right, Anthony had acted in good faith, and so the charge that she "knowingly" violated the Constitution must be void. "It is incumbent on the prosecution to show affirmatively that she voted knowing she had no right to vote. The essence of the offense is that it is done with a knowledge that it is without right.

"Knowingly was inserted," Judge Selden went on, "to furnish security against the inability of stupid or prejudiced judges or jurors to distinguish between wilful wrong and innocent mistake. An innocent mistake is not a crime. An innocent mistake, whether of law or fact, can never constitute a crime." Judge Hunt tolerated all this because he had the last say. He read a "brief statement" he had written before the trial had started—before any evidence, before Selden had presented any defense, any arguments, or points of law: "The question before the jury is wholly a question or questions of law [and] under the 14th Amendment… Miss Anthony was not protected in a right to vote. And I have decided also that her belief and the advice which she took does not protect her in the act she committed. If I am right in this, the result must be a verdict on your part of 'guilty,' and therefore I direct that you find a verdict of 'guilty.' "

The people in the courtroom gasped. Selden jumped to his feet. "That is a direction no court has the power to make in a criminal case," he said incredulously.

Ignoring him, Hunt turned to the clerk. "Take the verdict, Mr. Clerk."

The clerk addressed the jury: "Hearken to your verdict as the court has recorded it. You say you find the defendant guilty of the offense whereof she stands indicted, and so say you all?"

Not a juror responded.

Selden demanded the jury be polled, but Hunt shut him off, saying, "No, gentlemen of the jury, you are discharged," and he adjourned the court. The finale was acted out so quickly that it seemed rehearsed.

The twelve jurors sat stunned and confused in the box. During the entire proceedings they had uttered not a word, but now, quizzed by the defense and the press, they voiced frustration and outrage. Many complained this was not their verdict at all; they had not responded to the clerk simply because they didn't know they could. It was clear that the sentiment of the panel was to acquit.

> Judge Hunt's apparent compassion in not imprisoning Susan Anthony was misleading. He thereby avoided criticism for "reversible errors" and blocked her chance for appeal.

Hunt's arbitrary action altered the entire character of the trial. No longer was the issue women suffrage alone; it was now the question of the fundamental right to trial by an impartial jury. Many newspapers across the country that would not support the women's cause condemned Hunt. They would have far preferred a decision they disagreed with to a judicially forced verdict and the dangers that implied. The Rochester Democrat and Chronicle called it a "grand over-reaching assumption of authority" by a man who believed "he is scarcely lower than the angels so far as personal power goes."

The New York Sun attacked Hunt for violating "one of the most important provisions of the Constitution. The right to trial by jury includes the right to a free and impartial verdict." Otherwise the jury would be "twelve wooden automatons, moved by a string pulled by the hand of the judge." The Utica Observer approved Hunt's interpretation of the Fourteenth Amendment but nonetheless condemned his seizure of jury power, with which he had "outraged the rights of Susan B. Anthony." The Legal News of Chicago charged Hunt with committing a worse offense against the Constitution than Anthony had by "voting illegally," for "he had sworn to support the Constitution and she had not." The Canandaigua Times editorialized that despite Anthony's "crime," there is "serious question" of the propriety of a proceeding in which the proper functions of the jury are dispensed with. "If this may be done in one instance, why may it not in all?"

On the morning of the day after the verdict, Selden appealed for a retrial, describing the "jealous care [with which] the right of trial by jury has been guarded by every English speaking people from the days of King John, indeed from the days of King Alfred." He cited a recent New York murder trial which had continued and ended with a conviction even after a juror had become ill. The court of appeals had returned the case for retrial, as "even by a showing of consent" by the defendant, it was not a proper jury. There could never be fewer than twelve people on a true constitutional jury.

Hunt now asked if "the prisoner has

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anything to say why sentence shall not be pronounced." She replied she had many things to say and began by accusing him of "trampling underfoot every vital principle of our government. I am degraded from the status of citizen to that of a subject [as] all of my sex are by your honor's verdict, doomed to political subjugation under this so-called form of government."

Hunt tried to stop her, but she persisted for some time. Finally, Hunt said, "The court cannot allow the prisoner to go on… the prisoner must sit down… the court must insist." Anthony sat down after complaining she had "failed, even to get a trial by jury not of my peers. I ask not leniency at your hands, but rather the full rigors of the law."

Hunt then fined her one hundred dollars and costs, but she defied him by announcing she would "never pay a dollar of your unjust penalty" but would continue to "rebel against your manmade, unjust, unconstitutional forms of law that tax, fine, imprison and hang women while they deny them the right of representation in the government."

"Madam," Hunt responded, "the court will not order you committed until the fine is paid." His apparent compassion was misleading. By not pressing for payment or imprisoning her, he had avoided criticism for "reversible errors" from higher courts. He had blocked her chance of appeal.

The judge was ready to commit more legal offenses in the trial of the three inspectors that afternoon. It was a different jury—again not identified in the record—and Hunt had arranged that they sit through the morning sessions so as to witness his methods.

When the defense attorney John Van Voorhis called one of the supervisors of elections to testify to the advice he had given the inspectors, Hunt ruled the man "incompetent." He did permit Chief Inspector Beverly Jones to testify to the presence of the supervisors Silas J. Wagner, Republican, and Daniel J. Warner, Democrat. Jones went on to report that while Anthony "was reading the Fourteenth Amendment and discussing different points, Mr. Warner said…"

Prosecutor Crowley jumped in. "I submit to the court that it is entirely immaterial what either Warner or Wagner said."

Hunt sustained him, stating, "I don't see that that is competent in any view of the case."

Later Van Voorhis asked Jones to "state what occurred." Again Jones began: "Mr. Warner said…," and again Crowley objected.

Hunt repeated, "I don't think that is competent what Warner said."

"The district attorney has gone into what occurred at that time. I ask to be permitted to show all that occurred."

"I don't think that is competent."

Van Voorhis persisted, demanding that the testimony include what the supervisor said.

"I exclude it."

"Does that exclude all conversations that occurred there with any persons?"

"It excludes anything of that character on the subject of advising them. Your case is just as good without it as with it."

Jones was followed on the stand by his fellow Republican election board member Edwin F. Marsh and other witnesses. One of them was Susan B. Anthony herself, but with all of Crowley's objections sustained by Hunt, she was effectively silenced.

In his summation Van Voorhis stressed the same theme that Selden had in Anthony's defense: malice was essential to crime. "Here is a total absence of any pretense of malice. The defendants acted honestly and according to their best judgment. They are not lawyers, nor skilled in law. They had presented to them a legal question which, to say the least, has puzzled some of the ablest legal minds of the nation."

When he concluded, Crowley rose, but Hunt restrained him. "I don't think it is necessary for you to spend time in argument, Mr. Crowley," he said, and then directed the jury: "Under no circumstance is a woman entitled to vote… and by the adjudication which was made this morning upon this subject, there is no discretion…. In that view of the case, is there anything to go to the jury?"

Fearing what would come, Van Voorhis jumped up to demand that the "whole case" go to the jury because trial by jury is inviolate and "the court had no power to take it from the jury."

Members of the National Woman Suffrage Association.

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"I am going to submit it to the jury," said Hunt.

"I claim the right to address the jury," said Van Voorhis.

"I don't think there is anything upon which you can legitimately address the jury," Hunt said, and then proceeded to address them himself, stating that the women had no right to offer their votes, nor the inspectors to receive them, but "instead of doing as I did in the case this morning—directing a verdict—I submit the case to you with these instructions, and you can decide it here or go out."

Van Voorhis tried again. "I ask your honor to instruct the jury that if they find these inspectors acted honestly, in accordance with their best judgments, they should be acquitted."

"I have expressly ruled to the contrary of that, gentlemen." Again Hunt charged the jury: "There is sufficient evidence to sustain the indictment upon this point." Van Voorhis asked sarcastically, "Then why should it go to the jury?"

"As a matter of form." Again Hunt tried to force the verdict right there in court. The jurors chose to go out. They returned soon afterward hung, eleven to one for the prosecution. An annoyed Hunt threatened the lone juror: "You may retire again, gentlemen," adding that, unless they agreed within a few minutes, he would adjourn the court until the morning. He did not suggest any food or overnight accommodations for the jurors.

Under this pressure the hesitating juror capitulated, and the panel returned within ten minutes with guilty verdicts for all three defendants. This jury was also quizzed, and again it was clear that it was not the verdict of free choice. Van Voorhis's plea for retrial was dismissed.

Hunt fined the inspectors twenty-five dollars each, but like Anthony they refused to pay, choosing instead to "allow process to be served." Sen. Benjamin Butler of Massachusetts, who had been following the case with great interest, believed that President Grant himself would "remit the fine if they are pressed too far."

And indeed, they were pressed too far. On February 26, 1874, Hunt had the inspectors seized and imprisoned. Anthony rushed to the jail, urged the men to hold out, and promised to work for their early release. She barely rested for five days, lecturing, going to the newspapers, preparing an appeal to Grant for a pardon. On March 2 she returned to the jail with sixty-two dollars for bail and succeeded in having them released.

> "I direct you to find a verdict of guilty," Judge Hunt told the jury. Selden protested incredulously, "That is a direction no court has the power to make in a criminal case."

That same day she received a telegram from Butler saying that Grant had arranged for a pardon and remission of the fines. During their five days in prison the inspectors received hundreds of callers and were served bountiful meals by the women whose votes they had accepted. Upon their release they were widely feted, and when they ran for inspectors at the next election, they were returned to office by a large majority—of male voters.

Anthony was never pardoned because she was never jailed. Judge Selden did appeal to both houses of Congress for remission of her fine, basing his claim on the precedent of publisher Matthew Lyon, who had been imprisoned and fined one thousand dollars after being denied trial by jury under the Alien and Sedition Acts of 1798. That fine was refunded with interest to his heirs. But the reviewing committees in both the Senate and the House rejected the Anthony appeal by narrow margins without considering the chief basis for the claim.

In 1897 Van Voorhis remembered the case this way: "There was a pre-arranged determination to convict [Susan B. Anthony]. A jury trial was dangerous, and so the Constitution was openly and deliberately violated.

"The Constitution makes the jury, in criminal cases, the judges of the law and of the facts. The mandate of the Constitution is that no matter how clear or how strong the case may appear to the judge, it must be submitted to the jury," and if the judge controls the jury, "he himself is guilty of a crime for which impeachment is the remedy."

This had been precisely the policy of the Supreme Court since 1794. The first chief justice, John Jay, had written that it is the obligation of the jury to disregard an inequitable law and nullify it. "The jury has a right to judge both law as well as fact in a controversy." The voting trial jurors were, of course, not informed of this.

"If Miss Anthony had won her case on its merits" in the first place, Van Voorhis commented a quarter century after her trial, "it would have revolutionized the suffrage of the country, and enfranchised every woman in the United States." ★

DOCUMENT

Susan B. Anthony Cast Her Ballot For Ulysses S. Grant

Rochester Evening Express, Editorial

Women's Suffrage in the Legislatures

http://www.fjc.gov/history/home.nsf/page/tu_anthony_doc_12.html

The Trial of Susan B. Anthony
Historical Documents Related to the Trial of Susan B. Anthony

Rochester Evening Express, Editorial, November 27, 1872

Writing in the days between Susan B. Anthony's arrest and her examination by the commissioner, this Rochester editor steered away from the topic of the legality of Anthony's vote and directed his readers to the larger context of her mission, to a national debate among ministers, intellectuals, and politicians about women's right to vote. Within that context, he described her actions as a legitimate attempt to test the question of her rights in court. Further, he accepted the possibility that a fair reading of the Fourteenth and Fifteenth Amendments might admit women to the political rights accorded men.

Woman Suffrage in the Legislatures

The activity of the advocates of female suffrage is in no degree abating, but rather on the increase. It is probable that very few comprehend the measure of this activity, and the broad fields on which it is being displayed. Not only the ignorant and vulgar, but many comparatively well informed people probably suppose that the advocacy of woman's claim to the suffrage is confined to a few able but erratic women, who are agitating the subject to acquire notoriety. Whether friendly or averse to the movement, the quicker one disabuses his mind of that notion the better for his side of the case. Not only do many of our most influential divines and literary men rank among the friends of the movement, but, also, what gives promise to its advocates of speedy success, many of our legislators and politicians. The subject has been brought to the attention of nearly every Northern Legislature in the Union. . . . Some of the Legislatures have only given a hearing and taken no action. Others have referred the matter to special committees to report, some of which have reported favorably. In Iowa a constitutional amendment, giving women the right to vote, passed one House of the Legislature, and failed in the other House by only a few votes. In this State, even, a suffrage bill was referred to a committee, and the committee reported in its favor, but no action was taken on their report. It will thus be seen that while some, as Miss Anthony and others, are claiming the ballot on the broad ground of Constitutional right, they with associates of both sexes are at the same time urging, and in some places have the prospect of securing, specific legislation giving the right to vote to women.

The cases of alleged illegal voting on the part of women in this city, afford an opportunity which the leaders of the movement very much desired, to test the constitutionality and legality of their cause in the courts.

It is not probable that the framers of the Constitutional Amendments, under which the ladies claim authority to vote, dreamed of the loop hole they left for the admission of this novel claim, but their work is done, perfectly or imperfectly, as we may choose to regard it, and there appears to many eminent legal minds a door in these amendments wide enough to admit woman in full dress, to both the passive and potent rights of citizenship.

Of the consequences of this admission we have nothing to say. Arguing the case abstractly with a keen advocate of the movement, there is no chance for the negative. In such a discussion Miss Anthony could courteously close the mouth of the sharpest lawyer in Rochester in ten minutes. What the results may be is another matter. ✯

DOCUMENT

Susan B. Anthony Cast Her Ballot For Ulysses S. Grant

Trenton State Sentinel and Capital, Editorial
Miss Anthony's Case

http://www.fjc.gov/history/home.nsf/page/tu_anthony_doc_15.html

The Trial of Susan B. Anthony
Historical Documents Related to the Trial of Susan B. Anthony

Trenton State Sentinel and Capital, Editorial, June 21, 1873

On June 18, 1873, Justice Ward Hunt pronounced Susan B. Anthony guilty of illegal voting, and the next day he set her fine. Hunt's opinion on the question of women's right to vote was overshadowed by his decision to render a verdict without consulting the jury. In this editorial from a newspaper in Trenton, New Jersey, Justice Hunt's actions are compared to those of a New York state judge, Noah Davis, in a case involving George Francis Train in the spring of 1873. Many editors made the comparison, but in fact Judge Davis directed the verdict of not guilty.

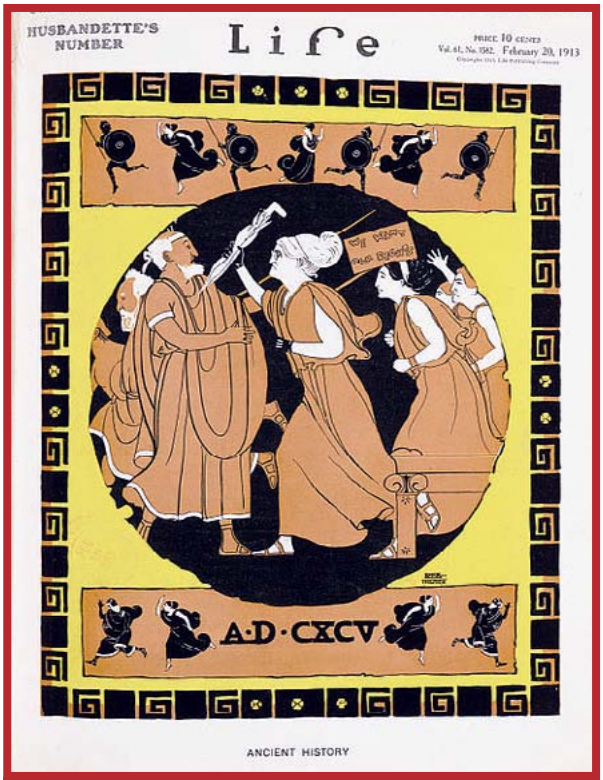
"Miss Anthony's Case"

Miss Susan B. Anthony, who has been on trial for some days past in the U.S. Court, at Canandaigua, N.Y., for voting, was, on Wednesday, pronounced guilty by the Judge—not by the Jury—and on Thursday sentenced to pay a fine of $100 and the cost of the prosecution.

Before sentence was passed Judge Selden [Anthony's attorney] made a motion for a new trial upon the ground of a misdirection of the Judge in ordering a verdict of guilty without submitting the case to the jury. He argued the right of every person charged with crime to have the question of guilt or innocence passed upon by a constitutional jury, and that there was no power in this court to deprive her of it. The District Attorney replied, and the Court denied the motion.

Is it not possible, yea, certain, that in this view of the case Judge Selden was right and Judge Hunt was wrong? Why have juries at all, if Judges can find verdicts—or direct them to be found, and then refuse to poll the jury, which amounts to just the same—without any reference whatever to the jury? The case is very similar to that of Judge Davis, of New York, in the Train trial, where the Judge ignored the jury, and for which not only was Judge Davis' action set aside by another Judge, but the press of the whole country condemned the act so pointedly and almost universally that it was expected no other Judge would ever be guilty of a like offence.

Whether female suffrage is right or wrong, legal or illegal, it is not our intention now to discuss; but we do say now, and expect ever to say, that action so arbitrary and unjust as that of Judge Hunt in this case, and that of Judge Davis in the Train case, should meet with condemnation from all lovers of fair-play. ✭



Cover of Life Magazine 02-20-1913.

Susan B. Anthony Cast Her Ballot For Ulysses S. Grant

Remarks by Susan B. Anthony in the Circuit Court of the United States

http://ecssba.rutgers.edu/docs/sbatrial.html

Remarks by Susan B. Anthony in the Circuit Court of the United States for the Northern District of New York

19 June 1873
Editorial Note:

On 19 June 1873, a day after Justice Ward Hunt found Susan B. Anthony guilty of the federal crime of voting without the right to vote, the judge denied her lawyer's motion for a new trial. Then before pronouncing sentence, Hunt asked Anthony a routine legal question. Her reply has become one of the best-known texts in the history of woman suffrage. Three different reports of her remarks survive, and in the absence of a transcript of the trial, their authenticity cannot be determined. All three reports are included here. The first one, embedded in the Associated Press's dispatch of 19 June from Canandaigua, appeared in scores of newspapers across the country. A day later, Matilda Gage recorded a more elaborate exchange in an extensive analysis of the trial that she wrote for the Kansas Leavenworth Times. The longest and most familiar report appeared first in the Account of her trial prepared by Anthony late in 1873.

Account No.1

The court made the usual inquiry of Miss Anthony if she had anything to say why sentence should not be pronounced. Miss Anthony answered she had a great many things to say, and declared that in her trial every principle of justice had been violated; that every right had been denied; that she had had no trial by her peers; that the court and jurors were her political superiors and not her peers, and announced her determination to continue her labors until equality was obtained and was proceeding to discuss the questions involved in the case when she was interrupted by the court with the remark that these questions could not be reviewed. Miss Anthony replied she wished it fully understood that she asked no clemency from the court, that she desired and demanded the full rigor of the law. Judge Hunt then said: "The judgment of the court is that you pay a fine of one hundred dollars and the costs of the prosecution," and immediately added, "there is no order that you stand committed until the fine is paid."

Account No.2

As a matter of outward form the defendant was asked if she had anything to say why the sentence of the court should not be pronounced upon her.

"Yes, your honor," replied Miss Anthony, "I have many things to say. My every right, constitutional, civil, political and judicial has been tramped upon. I have not only had no jury of my peers, but I have had no jury at all."

Court—"Sit down Miss Anthony. I cannot allow you to argue the question."

Miss Anthony—"I shall not sit down. I will not lose my only chance to speak."

Court—"You have been tried, Miss Anthony, by the forms of law, and my decision has been rendered by law."

Miss Anthony—"Yes, but laws made by men, under a government of men, interpreted by men and for the benefit of men. The only chance women have for justice in this country is to violate the law, as I have done, and as I shall continue to do," and she struck her hand heavily on the table in emphasis of what she said. "Does your honor suppose that we obeyed the infamous fugitive slave law which forbade to give a cup of cold water to a slave fleeing from his master? I tell you we did not obey it; we fed him and clothed him, and sent him on his way to Canada. So shall we trample all unjust laws under foot. I do not ask the clemency of the court. I came into it to get justice, having failed in this, I demand the full rigors of the law."

Court—"The sentence of the court is $100 fine and the costs of the prosecution."

Miss Anthony—"I have no money to pay with, but am $10,000 in debt."

Court—"You are not ordered to stand committed till it is paid."

Account No.3

Judge Hunt—(Ordering the defendant to stand up), Has the prisoner anything to say why sentence shall not be pronounced?

Miss Anthony—Yes, your honor, I have many things to say; for in your ordered verdict of guilty, you have trampled under foot every vital principle of our government. My natural rights, my civil rights, my political rights, my judicial rights, are all alike ignored. Robbed of the fundamental privilege of citizenship, I am degraded from the status of a citizen to that of a subject; and not only myself individually, but all of my sex, are, by your honor's verdict, doomed to political subjection under this, so-called, form of government.

Judge Hunt—The Court cannot listen to a rehearsal of arguments the prisoner's counsel has already consumed three hours in presenting.

Miss Anthony—May it please your honor, I am not arguing the question, but simply stating the reasons why sentence cannot, in justice, be pronounced against me. Your denial of my citizen's right to vote, is the

Susan B. Anthony Cast Her Ballot For Ulysses S. Grant

– CONTINUED –

Courthouse at Canandaigua, N. Y.

denial of my right of consent as one of the governed, the denial of my right of representation as one of the taxed, the denial of my right to a trial by a jury of my peers as an offender against law, therefore, the denial of my sacred rights to life, liberty, property and

Judge Hunt—The Court cannot allow the prisoner to go on.

Miss Anthony—But your honor will not deny me this one and only poor privilege of protest against this high-handed outrage upon my citizen's rights. May it please the Court to remember that since the day of my arrest last November, this is the first time that either myself or any person of my disfranchised class has been allowed a word of defense before judge or jury

Judge Hunt—The prisoner must sit down the Court cannot allow it.

Miss Anthony—All of my prosecutors, from the 8th ward corner grocery politician, who entered the complaint, to the United States Marshal, Commissioner, District Attorney, District Judge, your honor on the bench, not one is my peer, but each and all are my political sovereigns; and had your honor submitted my case to the jury, as was clearly your duty, even then I should have had just cause of protest for not one of those men was my peer; but, native or foreign born, white or black, rich or poor, educated or ignorant, awake or asleep, sober or drunk, each and every man of them was my political superior; hence, in no sense, my peer. Even, under such circumstances, a commoner of England, tried before a jury of Lords, would have far less cause to complain than should I, a woman, tried before a jury of men. Even my counsel, the Hon. Henry R. Selden, who has argued my cause so ably, so earnestly, so unanswerably before your honor, is my political sovereign. Precisely as no disfranchised person is entitled to sit upon a jury, and no woman is entitled to the franchise, so, none but a regularly admitted lawyer is allowed to practice in the courts, and no woman can gain admission to the bar hence, jury, judge, counsel, must all be of the superior class.

Judge Hunt—The Court must insist the prisoner has been tried according to the established forms of law.

Miss Anthony—Yes, your honor, but by forms of law all made by men, interpreted by men, administered by men, in favor of men, and against women; and hence, your honor's ordered verdict of guilty, against a United States citizen for the exercise of "that citizen's right to vote," simply because that citizen was a woman and not a man. But, yesterday, the same man-made forms of law, declared it a crime punishable with $1,000 fine and six months' imprisonment, for you, or me, or any of us, to give a cup of cold water, a crust of bread, or a night's shelter to a panting fugitive as he was tracking his way to Canada. And every man or woman in whose veins coursed a drop of human sympathy violated that wicked law, reckless of consequences, and was justified in so doing. As then, the slaves who got their freedom must take it over, or under, or through the unjust forms of law, precisely so, now, must women, to get their right to a voice in this government, take it; and I have taken mine, and mean to take it at every possible opportunity.

Judge Hunt—The Court orders the prisoner to sit down. It will not allow another word.

Miss Anthony—When I was brought before your honor for trial, I hoped for a broad and liberal interpretation of the Constitution and its recent amendments, that should declare all United States citizens under its protecting aegis that should declare equality of rights the national guarantee to all persons born or naturalized in the United States. But failing to get this justice—failing, even, to get a trial by a jury not of my peers—I ask not leniency at your hands—but rather the full rigors of the law.

Judge Hunt—The Court must insist

(Here the prisoner sat down.)

Judge Hunt—The prisoner will stand up.

(Here Miss Anthony arose again.)

The sentence of the Court is that you pay a fine of one hundred dollars and the costs of the prosecution.

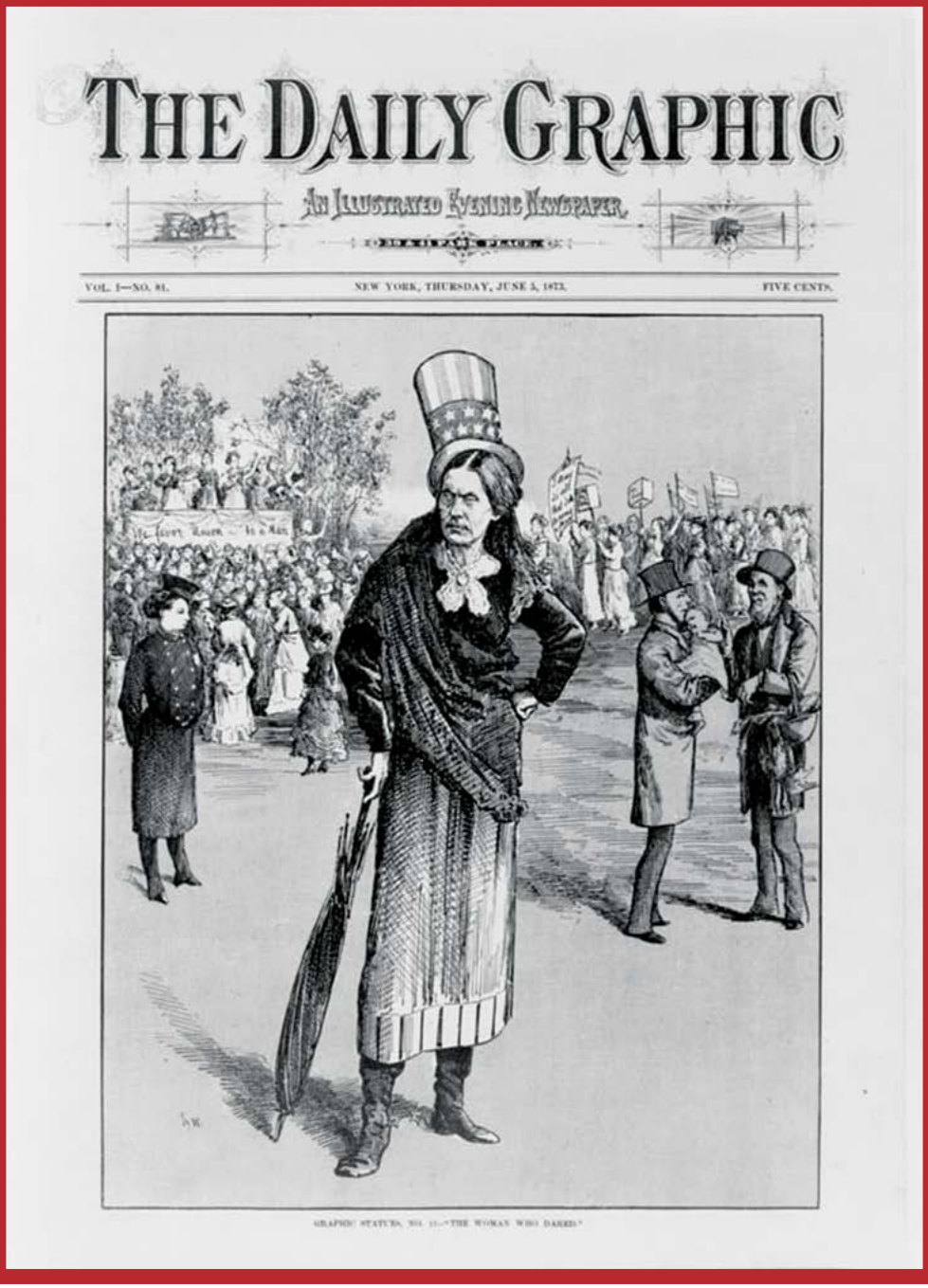
Miss Anthony—May it please your honor, I shall never pay a dollar of your unjust penalty. All the stock in trade I possess is a $10,000 debt, incurred by publishing my paper—The Revolution—four years ago, the sole object of which was to educate all women to do precisely as I have done, rebel against your man-made, unjust, unconstitutional forms of law, that tax, fine, imprison and hang women, while they deny them the right of representation in the government; and I shall work on with might and main to pay every dollar of that honest debt, but not a penny shall go to this unjust claim. And I shall earnestly and persistently continue to urge all women to the practical recognition of the old revolutionary maxim, that "Resistance to tyranny is obedience to God."

Judge Hunt—Madam, the Court will not order you committed until the fine is paid. ✭

Susan B. Anthony Cast Her Ballot For Ulysses S. Grant

The Woman Who Dared by Thomas Wust

http://www.visitthecapitol.gov/exhibition-hall/archives/images/1773

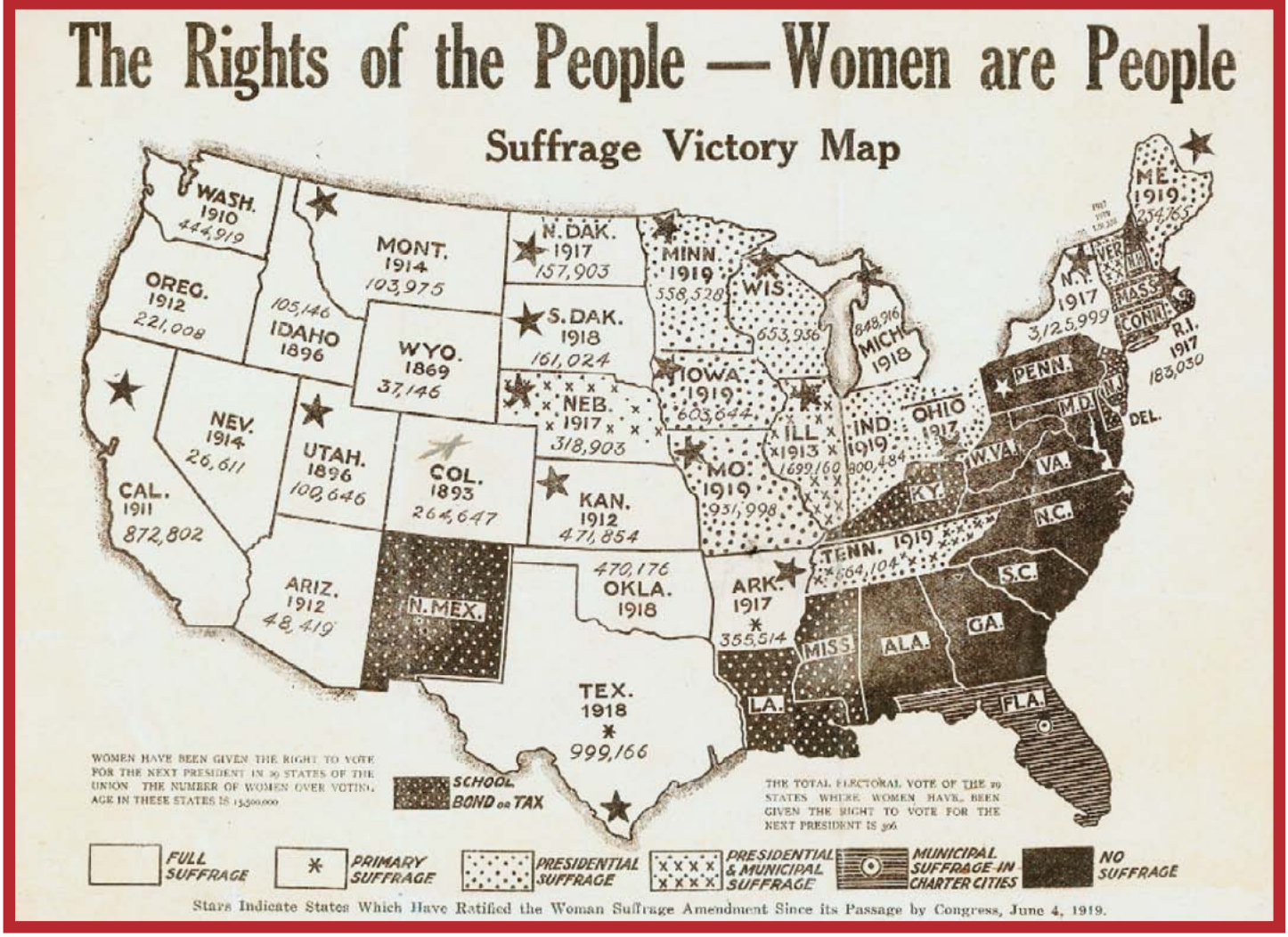


"The Woman Who Dared" cover illustration by Thomas Wust
(of Susan B. Anthony) for The Daily Graphic, June 5, 1873
This satirical portrait of Susan B. Anthony reveals fears about changing gender roles: she wears Uncle Sam's hat, men do the childcare, and women rally for their rights.
Prints and Photographs Division, Library of Congress

Susan B. Anthony Cast Her Ballot For Ulysses S. Grant

Virginia Memory: Shaping The Rights of the People– Women are People. Suffrage Victory Map, 1920

http://www.virginiamemory.com/online_classroom/shaping_the_constitution/doc/suffrage_map



The Rights of the People–Women are People. Suffrage Victory Map, 1920.
"The Rights of the People—Women are People. Suffrage Victory Map." 1920. Broadside.
Equal Suffrage League of Virginia Papers, Acc. 22002.Library of Virginia, Richmond, Virginia.
This map records the level of voting rights achieved by women in different states
before the passage of the Nineteenth Amendment.

DOCUMENT

Susan B. Anthony Cast Her Ballot For Ulysses S. Grant

The Oberlin Women's Suffrage Debate-1870

http://www.oberlin.edu/external/EOG/womenshist/suffragecrisis.htm

Despite Oberlin's progressive tradition, not all reforms received the full support of the community. In particular, the women's suffrage question generated heated debate. In March of 1870, one hundred and forty married women of Lorain County petitioned the state legislature, protesting efforts to grant women suffrage. Among the notable signers was Mrs. Marianne Parker Dascomb, Principal of the Female Department at the College.

The petition read:

We acknowledge no inferiority to men. We claim to have no less ability (?) to perform the duties which God has imposed upon us, than they to perform those imposed upon them.

We believe that God has wisely and well adapted each sex to the higher performance of the duties of each.

We believe our trusts to be as important and sacred as any that exist on earth.

We feel our present duties fill the whole measure of our time and abilities; and that they are such as none but ourselves can perform.

Their importance requires us to protest against all efforts to compel us to assume those obligations which can not be separated from suffrage: but which can not be performed by us without the sacrifice of the highest interests of our families and of society.

It is our fathers, brothers, husbands and sons who represent us at the ballot box. Our husbands are our [unreadable] and one with us. Our sons are what we make them.

We are content that they represent us in the corn field, the battlefield, and at the ballot box, and we them in the school room, at the fireside, and at the cradle; believing our representation even at the ballot box, to be thus more full and impartial than it could possibly be were all women allowed to vote.

We do therefore respectfully protest against any legislation to establish "woman's suffrage" in our land, or in any part of it.

(Lorain County News, March 17, 1870)

Community leaders offered cautious, measured responses to the petition. College President James Fairchild urged women to recognize the social importance of traditional roles and duties. He also acknowledged a growing dissatisfaction among women and asked the community to consider calmly their complaints. Richard Butler, editor and publisher of the Lorain County News, refused to endorse or reject women's suffrage. Rather, he questioned women's true commitment and asked that they prove their mettle:

Our principal object is saying all this is to find out whether the women of our land are really anxious to have the rights and privileges which some of them claim. It seems to us that this mighty clamor about "man's oppression of women" comes not from the mass of American females. The most of them seem to be contented with the lot they hold. And if they are not, we trust that every editor in the country will take the grounds we occupy in urging them, from the least to the greatest, to step forward and speak for themselves, if it be but only one word; and when they have spoken we trust that every editor will use his influence to help their cause. Is that fair?

(Lorain County News. April 14, 1870) ✯

The Oberlin College campus in 1909.

DOCUMENT

Susan B. Anthony Cast Her Ballot For Ulysses S. Grant

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(Lorain County News. April 14, 1870)

Soon after, one hundred and fifty Oberlin citizens organized a "Women's Suffrage Association." The group met at First Church on April 29, 1870. Members were asked to pay twenty-five cents. Invited speaker Mary Ashton Rice Livermore called Oberlin's attitude towards women's suffrage behind-the-times.