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The Woman Who Dared to

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The Woman Who Dared to Vote

LANDMARK LAW CASES



AMERICAN SOCIETY

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TO ALL THE WOMEN, AND MEN, WHO DEDICATED
THEMSELVES TO THE WOMEN'S MOVEMENT, WHOSE
SACRIFICES WE MAY HAVE FORGOTTEN AND WHOSE
ACHIEVEMENTS WE TOO OFTEN TAKE FOR GRANTED

EDITORS' PREFACE

The Woman Who Dared to Vote is the first single volume to document fully the trial of woman's rights advocate Susan B. Anthony for daring to vote in a federal election. It seems an obvious topic for an inexpensive and easily accessible book, bringing together as it does important topics in post-Civil War Republican politics, the first feminist movement, and the Fourteenth Amendment's impact on constitutional law. The cast of characters—Anthony, Elizabeth Cady Stanton, Lucy Stone, Victoria Woodhull, U.S. Supreme Court Justice Ward Hunt, and Charles Sumner, to name but a few of the remarkable women and men who grace the following pages—in itself merits a recounting of the trial. It catapulted Anthony into the very front rank of the movement, and renewed the promise of full citizenship for women.

There is no shortage of primary sources to tell this story. Ann D. Gordon and the other editors of the multivolume *Selected Papers of Susan B. Anthony and Elizabeth Cady Stanton* spent over thirty years bringing together and annotating much of the primary sources. Anthony was a diarist and, like many in the movement for woman suffrage, a busy speaker and correspondent. Newspapers covered her travels and her trial extensively. She even arranged for publication of the transcript of the trial. Over the course of the late fall of 1872 and through 1873 the pretrial and trial proceedings were front page news.

Hull brings to the task of telling this story a noteworthy combination of teaching and scholarly credentials. She is a law teacher and historian who taught women's studies courses, legal history courses, and hard law courses during a long career as a classroom instructor, scholar, and practicing attorney. Her special training allows her to see in the records the tactics of counsel, the irregularities of the pretrial and trial process, and the political motives of all the parties to the trial, and thereby make a uniquely dramatic story an equally instructional one. For those in power that the woman's movement thought were friends turned out to be quite the opposite.

It is this complexity—legal, political, personal—that has made the trial of Susan B. Anthony a landmark case. Hull roots her unrav-

eling of that complexity in the personalities and careers of the registrars, commissioners, prosecutors, and defense counsel. She has recreated the heady days before Anthony went to the polls and the worrisome weeks that followed. She has untangled every legal thread.

A concluding chapter relates the Anthony trial, from which there was no appeal, to the Supreme Court case of *Minor v. Happersett* (1875). Then the issues that Anthony tried to raise were resolved for a time. Women had no federal constitutional right to vote. State laws alone conferred that right. A postscript continues the story to the Twenty-first Amendment, suitably named the Susan B. Anthony Amendment.

This is a deeply moving story, told with great sympathy and verve. It is a story of courage and despair, of sisterhood and rivalry, of high purpose and low politics. It is a story we need to know.

ACKNOWLEDGMENTS

More than thirty years ago Michal Belknap asked me to write a chapter on the Susan B. Anthony trial for a book he was editing on *American Political Trials*. The subject intrigued me, but I was much too busy revising my Ph.D. dissertation, coauthoring a book on infanticide with my husband, and raising my first-born son to undertake the chapter for Mike's book. This book is the culmination, therefore, of decades of thought, and I thank Mike for planting the seed.

Though his childcare was one of the reasons I had to delay working on this project, William James Hull Hoffer grew up to become my valuable "study buddy" on this project. For three summers (an imbecilic time to leave New Jersey for Georgia), as he toiled on his own book about the *Plessy v. Ferguson* case in the upstairs office of our townhouse in Athens, I worked downstairs on my mini-laptop. We met for breakfast, coffee breaks, and lunch and reinforced each other's work through our meaningful discussions. He was my go-to guy for help with the Civil War and Reconstruction eras of U.S. history.

My legal history seminar in the eventful political spring of 2008 focused on "Woman Suffrage." Thanks to all the women in the class who inspired me with their enthusiasm: Nicole Curio, Mojisola Dabney, Lynda Hinkle, Jamie Hutchinson, Hope Jamison, Katie Kepner, Erica Roby, and Mary-Elizabeth Sampsel. Most of all, to Lynda Yamamoto, whose paper on Alice Paul's Quaker feminism, enlightened me about the tenets of the Quakers and how those might translate to the story of Susan B. Anthony's own Quaker-inspired commitment to the cause of woman suffrage, I'm grateful.

Nancy Martin, the John M. and Barbara Keil University archivist and Rochester Collections librarian, Department of Rare Books and Special Collections, Rush Rhees Library, University of Rochester, was extremely helpful in getting me photocopies of Susan B. Anthony's scrapbooks. Dean Rayman Solomon generously supported my writing of this book with time off from teaching duties and arranging my teaching schedule to give me an additional semester off after my sabbatical. My colleague Rand Rosenblatt arranged for me

to present the book at a Rutgers Law School Faculty Workshop and, as usual, the Camden law school community, in particular Donald Joseph, came through with extremely helpful corrections, comments, and criticisms. I would like to thank Ann Delasandro, head librarian at the law school (and a dear friend), who has permitted me to deposit a version of this book with footnotes for the benefit of interested scholars, and the UGA Library for its marvelous collections and its extremely helpful interlibrary loan department.

I am grateful to Ann Gordon and the other editors of the multi-volume edition of the *Selected Papers of Elizabeth Cady Stanton and Susan B. Anthony*. Its carefully selected and annotated primary sources proved invaluable and provided an easily accessible print alternative to the microfilm of the originals. Confirming that such edited collections are often the backbone of scholarly works, I made copious use of the documents and here acknowledge that debt with gratitude.

Thanks also to the wonderful team at Kansas, including director Fred Woodward and associate director Susan Schott, and especially editor in chief Mike Briggs, who have been so encouraging and patient.

And, as always, my debt is profound to my editor Peter Charles Hoffer. Not only did he edit the manuscript in his capacity as coeditor of this book series, he also acted as a sounding board at every stage of its development, pushed me every day to get my work done, and sometimes even acted as a research assistant.

Why the Trial of Susan B. Anthony Matters

Susan B. Anthony is generally accounted the foremost, and most effective, advocate for woman suffrage in nineteenth-century America. Or so she appears in public prints, history textbooks, and mass media. Certainly there is much truth in that description, but even these encomia obscure the importance of the trial. For, until her trial for violating a federal election law designed to prevent ex-Confederates from voting illegally, Anthony, despite her vigorous nationwide campaign for a woman's right to vote, always stood in the shadow of Elizabeth Cady Stanton. The trial brought Anthony the attention she wanted and deserved.

Stanton was one of the founding mothers of woman's rights in the United States. She and Lucretia Mott had called the first woman's rights convention at Seneca Falls in 1848, and there Stanton had added a plank for woman suffrage to the Declaration the convention approved. Stanton was far better educated and more articulate than Anthony, and until the trial Stanton was more respected in the movement. Whenever Stanton and Anthony appeared on a platform together, everyone in the audience—supporters and press alike—paid more attention to the older and more matronly Stanton. After one particularly galling episode for Anthony, when the two women appeared before an audience together in San Francisco at which Stanton garnered cheers and Anthony jeers, Anthony wrote to her mother: “whoever goes into a parlor or before an audience with that woman [Stanton] does it at the cost of a fearful overshadowing, a price which I have paid for the last ten years.”

As 1872 opened, Anthony had gathered a loyal coterie of supporters of her own, but she was far from the icon or face of woman suffrage. What was more, the movement itself had split into two separate and antagonistic suffrage associations. Attempts to unify

them in which Anthony had taken a prominent role had failed; the movement for a woman suffrage constitutional amendment Anthony had endorsed had stalled; and the charismatic and controversial Victoria Woodhull had captured the attention of Congress and the public as the new voice for woman suffrage. Anthony at first allied and then dramatically divorced herself from Woodhull, causing a strain on Anthony's relationship with Stanton and many other allies. By the time the election of 1872 rolled around, Anthony was on the verge of relative irrelevance, and the woman suffrage movement she had devoted nearly twenty-five years of her life to was almost at dead stop.

When Anthony voted in the 1872 election she did so along with many other women; indeed, she was not the first woman to claim to successfully cast a ballot in an election. In the early post-Revolutionary era the state of New Jersey had allowed and then disallowed women the vote. In 1869 the ladies of Vineland, New Jersey, had the honor of successfully casting their ballots despite the law that restricted the franchise to men, followed by Nannette B. Gardner in Detroit, who in March 1871 succeeded in registering to vote under the claim that she derived the right under the Fourteenth Amendment. But Susan B. Anthony was the only woman to be tried in a federal court for the crime of voting. The uproar generated by the trial captured the attention of the press and the general public. Disheartened women in the suffrage movement used it as a rallying cry.

If federal authorities had intended her trial to suppress the woman suffrage movement, it backfired. But if their goal was to avert a massive civil disobedience movement of women appearing at the polls to vote, which for a time the leaders of the woman suffrage organization led by Anthony and Stanton had advocated, the Anthony trial and the subsequent U.S. Supreme Court decision in the *Minor v. Happersett* case forced the woman suffrage movement to rethink its strategy. After the intense reaction to the trial quieted, the battle for woman suffrage inched forward, through state-by-state legislative changes and the slow build-up toward passage of a federal constitutional amendment.

Henceforth, there was no question who stood as the champion of the woman suffrage movement. The case, and media coverage of the case, had anointed Anthony as the avatar of the movement,

more than Stanton or Lucy Stone or even the venerable Lucretia Mott. Without the trial the Nineteenth Amendment would not have been called the Susan B. Anthony Amendment. What was more, the case revived Anthony's energy and ensured that the cause she made her life's work survived its post-Civil War tribulations. The trial of Susan B. Anthony was a turning point in the story of the woman suffrage movement, American legal history, and women's history.

The following book is not a history of woman suffrage. My focus is the trial of Susan B. Anthony. The constraints of the series format and limits on word length meant I had to create a coherent narrative that captured the sense of what took place but could not be comprehensive. Many events and incidents that took place in the years I covered were, of necessity, only touched upon or omitted altogether. In the prologue I introduce Susan B. Anthony and explore how she and her close circle of associates came to the woman's rights and suffrage movement. The first two chapters of the book provide the reader with background on the woman suffrage movement in the critical post-Civil War era, its betrayal by former allies in the abolitionist movement, and how it had devolved into dissension before the Anthony trial. The third chapter tells the story of Anthony's vote, arrest, and the preliminary hearings. Chapter 4 relates the legal and public relations maneuvering in the six-month run-up to the trial. The following two chapters narrate the story of the two-day trial, with all the drama created by Anthony, her attorneys, the politically ambitious prosecutor, and the recently appointed Supreme Court Justice Ward Hunt, who presided over the trial. Chapter 7 discusses the aftermath of the Anthony trial as well as the civil suit challenging the state of Missouri's law limiting suffrage to men instituted by Anthony's ally, Virginia Minor, and husband, Francis, a suit that reached the U.S. Supreme Court. The postscript follows the major players in the case through the passage of the Nineteenth Amendment, the happy culmination of Anthony and millions of women's dreams dating back to 1848.

“Is Not This a Wonderful Time— [An] Era Long to Be Remembered”

According to later histories and autobiographies (no documentation contemporary to the event exists), Susan B. Anthony met her future collaborator and dear friend Elizabeth Cady Stanton on a street corner in Seneca Falls, New York, in May 1851. Stanton, thirty-five years old at the time, lived in Seneca Falls with her lawyer husband and four small sons, the youngest born only three months earlier. Though a small village in the middle of the nineteenth century, Seneca Falls was at the center of a “burned over region” of reform movements, most notably the abolition of slavery, women’s rights, and temperance. It was probably Anthony and Stanton’s temperance activities rather than women’s rights issues that prompted their introduction by Amelia Bloomer, the editor of the *Lily*, a temperance journal to which both Stanton and Anthony contributed articles. Stanton, in her memoirs published thirty years later, claimed to clearly remember the event. She described “Miss Anthony on the corner of the street, waiting to greet us.”

According to Stanton, Anthony had come to Seneca Falls to hear the fiery British abolitionist George Thompson, touring the States at the time. Anthony may very well have stopped in town while on her circuit of upstate cities and villages stumping for temperance. Stanton continued her recollection: “There she stood, with her good, earnest face and genial smile, dressed in gray delaine, hat and all the same color, relieved with pale blue ribbons, the perfection of neatness and sobriety.” Thirty years after the fact Stanton recalled, I “liked her thoroughly.”

In 1851 Anthony was thirty-one years old, the second oldest of seven children. She remained close to her remarkably long-lived siblings (she lived eighty-six years herself). Her parents were members of the Society of Friends, and she remained a Quaker in many

ways throughout her life. Much of her oratory was in the nature of Quaker witness, speaking without fear of reprisal, moved by her inner light. She testified, just as the first Quakers did in England and Ireland, though the wrath of the established church and the Crown's courts fell on their covered heads.

A precocious child, her formal education was interrupted by her father's bankruptcy during the Panic of 1837, and she never resumed formal schooling. Nor did she ever marry. She taught for a time, attended Unitarian religious services in Rochester, New York, to which her family had moved from Massachusetts, and found her way into the circle of women reformers. Her father was an early abolitionist, and other members of her family engaged in the social reform ferment of antebellum upstate New York. It was this region of the country that gave birth to the women's reform movement, the Oneida Community, the Church of Jesus Christ of Latter Day Saints, the Seventh Day Adventists, and a haven to runaway slave-abolitionists like Frederick Douglass.

In 1848, in the very town in which Anthony and Stanton later met, "A Convention to Discuss the Social, Civil, and Religious Condition and Rights of Woman" was held in the Wesleyan Chapel of Seneca Falls. For two days in the summer of 1848 a company of women and men listened to speeches and debated questions of the inequality of women in nineteenth-century law and society. A small coterie of friends who had met through their work in the abolitionist movement organized the event. In 1840 Stanton and Lucretia Mott had been irked by the refusal of the London World Anti-Slavery Conference to recognize formally the American women delegates, forcing them to observe the proceedings from the balcony of the hall. Their abolition work, and Stanton's domestic demands (she was a new bride on her honeymoon when she met Mott in London), postponed their response, but they did not forget, or forgive, the slight. In 1848 the New York State legislature was debating a Married Women's Property Act, a reform proposal to expand a woman's right to her own property. (A married woman's property belonged to her husband.) The time seemed propitious to address all the oppression that women faced.

Over the next few months, the women organized the meeting, arranged for the venue, and devised a list of resolutions that con-

veyed to the public the legal and social reforms they advocated. They framed a “Declaration of Sentiments” roughly modeled on the “Declaration of Independence” issued by the Revolutionaries of 1776. Among the nineteen resolutions presented in Seneca Falls over those two summer days were a proposal to repeal all laws in “conflict, in any way, with the true and substantial happiness of woman.” Another proclaimed “that woman is man’s equal—was intended to be so by the Creator.” Still another required that women be allowed to speak publicly at “all religious assemblies,” and a later resolution extended the right of women to speak whenever “she addresses a public audience.” The basic thrust of all the resolutions was that women should be treated as equal to men in every public endeavor. Among these pronouncements was the following: “Resolved, That it is the duty of the women of this country to secure to themselves their sacred right to the elective franchise.” When the “Declaration of Sentiments” was presented for a vote on the second day of the convention, the suffrage resolution was the most controversial. It was the centerpiece of the women’s complaints against the “tyranny” mankind had established over them throughout history: “He has never permitted her to exercise her inalienable right to the elective franchise.” The men approved the Declaration by acclamation, save the suffrage “sentiment.” It won by a bare majority.

Perhaps with the omen of the near failure of the franchise resolution fresh in their minds, Anthony and Stanton’s attention that day in 1851 was focused on temperance. Stanton knew she had a potent ally. She recalled that Anthony’s feminism first emerged at state teacher’s conventions. There she “fought, almost single-handed, the battle for equality” and had “compelled conservatism to yield its ground so far as to permit women to participate in all debates, deliver essays, vote, and hold honored positions as officers.” Anthony was a formidable force for moral improvement, and the condescension and discrimination toward her only stirred her to greater effort. Having won her battle within her professional organization, Anthony turned her attention to the temperance issue for which “she labored as sincerely.” Indeed, Anthony’s very first public address to any audience was a speech she delivered to the Daughters of Temperance at Canajoharie, New York, in 1849. She earnestly traveled the state speaking to groups and raising money for the cause.

For Anthony, Stanton, and many of their eventual colleagues in the woman suffrage movement, temperance was a woman's issue. Married women and their children were the victims of physical and economic abuse and neglect by drunken husbands and fathers. With the severe limitations on their ability to divorce, women were trapped in marriages with abusive alcoholic husbands. The temperance movement in the first half of the nineteenth century relied on the conscience and grassroots organizing of middle class women sensitive to their less fortunate sisters (though middle and upper class men could be just as besotted and abusive).

But the leadership of the temperance movement, like almost every reform movement at the time (and well into the twentieth century) was in the hands of men. Thus over and over again the women reformers ran into sexist attitudes among their male colleagues. Recalcitrant male legislators listened more closely to the farmers who raised the grain, and to the distillers who transformed the grain into spirits, than to the women who lobbied for restrictions on the manufacture of beer and hard liquor. It was, in fact, in the wake of their failure to command legislators' respect for their petitions on the temperance issue "that woman's moral power amounted to little as a civil agent," that Anthony, Stanton, and their close circle were convinced that they could effect no real change "until backed by [the] ballot."

Though these early feminists (a term they did not use) kept one eye on the entire woman's rights agenda throughout the decade of the 1850s, temperance and, to a lesser extent, abolition claimed the majority of their time and energy. It was also these concerns, as well as woman suffrage, that forged the alliances and friendships creating a sisterhood of women who would champion these issues for decades to come. The letters exchanged among these women documented this evolving network. Lucy Stone, Abby Kelley Foster, Martha Coffin Wright, Amy Post, and Paulina Kellogg Wright all initiated a correspondence with the brilliant and energetic Stanton. At first, Susan B. Anthony was only one of their number, but as the decade progressed and women's issues increasingly dominated their attention, the special relationship between Anthony and Stanton intensified, though the inequality or imbalance between them was reflected by the fact that in their letters Anthony always addressed the

older woman as “Mrs. Stanton,” while the latter always called Anthony “Susan.”

The women continued to face problems and discrimination with regard to their public efforts. At the New York State temperance meeting in June 1852, conservative clergymen protested the women’s participation, one arguing that “when a woman goes out of her sphere . . . to make speeches . . . I say she unsexes herself.” This aggravated the women and they often scheduled women’s rights meetings after temperance gatherings. In 1852 and 1853 these women’s rights conventions began to claim more of their attention as their temperance efforts were dismissed out of hand by male legislators, though temperance continued to dominate their efforts.

The turning point that seemed to shift their attention from temperance to woman suffrage came sometime between 1852 and 1854. Anthony, Stanton, and the sisterhood had vigorously lobbied for a bill in the New York State legislature that would replicate the so-called Maine law prohibiting the manufacture and distribution of alcoholic beverages within the state. Stanton complained loudly about their frustration in petitioning male legislators. “Let woman never again be guilty,” she proclaimed in an appeal to women temperance supporters, “of the folly of asking wine and beer-drinkers to put down the liquor traffic.” She foresaw a much greater role for women in New York politics: “Our position is every year assuming greater importance.” Though rebuffed by the state legislature on the temperance bill, she optimistically predicted that within ten years, under the new married woman’s property law, women would own a majority of the property in the state and that “money is power, and Women will see the necessity then, if not before, of protecting their property by vote.” At a meeting of the Women’s New York State Temperance Society in October 1852, at which Lucy Stone offered the principal address and the group endorsed the Maine law for New York, Anthony also addressed the assemblage. She exhorted her audience that “woman must carry these temperance principles into politics. If we cannot vote we can influence voters. If man assumes to vote for us, it is time we instruct him how we want voting done.”

Stanton missed the meeting because she delivered her fifth child only a few days later. After four sons, she was overjoyed to finally give birth to a twelve-pound, healthy baby girl. She was ecstatic