

Western New England University

## Digital Commons @ Western New England University

---

Faculty Scholarship

School of Law Faculty Scholarship

---

2020

### Foreword

Sudha Setty

*Western New England University School of Law, ssetty@law.wne.edu*

Follow this and additional works at: <https://digitalcommons.law.wne.edu/facschol>



Part of the [Election Law Commons](#), and the [Law and Gender Commons](#)

---

#### Recommended Citation

Sudha Setty, Foreword, 42 W. NEW ENG. L. REV. 333 (2020).

This Article is brought to you for free and open access by the School of Law Faculty Scholarship at Digital Commons @ Western New England University. It has been accepted for inclusion in Faculty Scholarship by an authorized administrator of Digital Commons @ Western New England University.

## WESTERN NEW ENGLAND LAW REVIEW

---

Volume 42

2020

Issue 3

---

### FOREWORD

SUDHA SETTY\*

As dean of Western New England University School of Law, I thank the editors and staff of Volume 42 of the Western New England Law Review for inviting me to contribute the foreword to this symposium issue on woman suffrage and the broader contextual conversations about gender and politics, as well as the trajectory of social justice movements more generally. The Law Review held its symposium in November 2019, after the centennial of the date in 1919 when Congress passed the 19<sup>th</sup> amendment guaranteeing the right to vote for women (June 4, 1919), but well before the centennial of the date when the 19<sup>th</sup> amendment was finally ratified by the 38 states needed to bring it into force (August 18, 1920). I write this foreword in August 2020, with the benefit of reflecting on the articles in this symposium, and in the midst of a global pandemic that has claimed the lives of over 180,000 people in the United States, a divisive and hard-fought presidential election campaign, and a months-long national and international reckoning about racial justice. Notably, in 1919, the country was, as it is today, dealing with a global pandemic, seeing various social justice movements gaining traction, and living with deeply divided political discourse across the country. In the context of such turmoil, it stands as a remarkable achievement that the activists and radicals who had dedicated themselves to the cause of suffrage for so long finally secured their goal of passage and ratification of the 19<sup>th</sup> amendment.

These symposium articles ask us to look deeply and critically at history to see what factors enabled path-breaking activists to secure the right to vote in a time of immense national turmoil. They also ask us to weigh how history should assess the strategic decisions that ultimately gained political rights for some women, but deliberately excluded Black

---

\* Dean and Professor of Law, Western New England University School of Law.

women and other activists pushing for a broader and more inclusive view of suffrage as part of the political calculus made by white suffragists to gain broader political support across segregationist parts of the nation. These critical and thoughtful historical accounts help us consider, a century later, how the right to vote is faring, particularly after a series of cases in which the U.S. Supreme Court has enabled a profound movement toward disenfranchisement through invalidating key sections of the Voting Rights Act of 1965,<sup>1</sup> allowing requirements for state-issued voter identification that serve to prevent voting,<sup>2</sup> enabling extraordinary gerrymandering,<sup>3</sup> allowing for the purging of voters from the registration rolls,<sup>4</sup> and making it harder for people to vote absentee even during a pandemic.<sup>5</sup> They also take up issues regarding gender, race, class, status in gaining rights and political representation; how the environment surrounding voting rights has experienced and continues to experience great challenges; and how, although we can see radical threats to those rights in a profound and obvious manner in today's politics, those threats are simply current versions of a long-standing issue in U.S. politics and in politics around the world.

In bringing together these conversations, this symposium issue touches upon something fundamental: in a liberal democracy, the right to vote, the right to be represented, and the right to be a representative are profound exercises of power. The willingness of a municipality, state, or nation to allow for universal suffrage and to empower people hailing from all different backgrounds to hold office is a barometer of that jurisdiction's willingness to uphold the rule of law and live by the norms that democracy demands, but also a barometer of the willingness of long-standing hierarchies to share power and potentially to lose power. The potential loss of power and the fear and insecurity that comes with it informs many of the historical and ongoing challenges that the scholars in this symposium consider. As Frederick Douglass famously opined with regard to the struggle for freedom, liberty, and equality in 1857: "Power concedes nothing without a demand. It never did and it never will. Find

---

1. *Shelby County v. Holder*, 570 U.S. 529 (2013).

2. *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008).

3. *Rucho v. Common Cause*, 139 S.Ct. 2484 (2019).

4. *Husted v. A. Philip Randolph Institute*, 138 S.Ct. 1833 (2018).

5. E.g., *Democratic National Committee v. Republican National Committee*, *Republican National Committee v. Democratic National Committee*, 140 S.Ct. 1205 (2020); *Merrill v. People First of Alabama*, No. 19A1063, 2020 WL 3604049 (U.S. July 2, 2020); *Texas Democratic Party v. Abbott*, 961 F.3d 389 (2020), *motion to vacate denied* 140 S. Ct. 215 (2020) (Mem.).

out just what any people will quietly submit to and you have found out the exact measure of injustice and wrong which will be imposed upon them, and these will continue till they are resisted with either words or blows, or with both. The limits of tyrants are prescribed by the endurance of those whom they oppress.”<sup>6</sup> Likewise, movements fighting for political rights and human rights are sometimes powerful and effective in challenging oppressive authority. To do so, they must consider gender, race, class, status, and the tension between individual rights and neoliberal priorities and norms, particularly if they look to build a coalition across numerous groups to ensure that the rights they gain are to be secured and built upon in the future.

The keynote speaker of the symposium, Barbara Berenson, shared from her illuminating and compelling monograph, *Massachusetts in the Woman Suffrage Movement: Revolutionary Reformers*.<sup>7</sup> In her contribution to the symposium, Berenson highlights the key role that Massachusetts activists and women lawyers played in the fight for suffrage. She also draws our attention to the complicated task of coalition building: she notes the work undertaken by college women who overcame significant social resistance to suffrage among their peers, the work of working women to encourage solidarity on suffrage and labor rights, and the rejection of coalition building with African-American women who championed the suffrage of women from all backgrounds. Berenson relied on detailed and critical historical analysis to highlight larger lessons for social movements in any era: namely the need for persistence over many years, and in the face of any number of setbacks and indignities, to secure equal rights. Berenson’s article offers important and needed perspective when considering the successes and setbacks of prior social justice movements, and how that can inform our thinking about the movements of this moment.

Professor Bandana Purkayastha, in her contribution, *From Suffrage to Substantive Human Rights: The Continuing Journey for Racially Marginalized Women*, asks us to both acknowledge the accomplishment of gaining of political rights through suffrage, and broaden our conceptual frame to consider how political rights undergird substantive civil and human rights that have been, for many women and particularly women of color, difficult to achieve. In particular, Purkayastha focuses us on the

---

6. Frederick Douglass, West India Emancipation, Speech delivered at Canandaigua, N.Y. (Aug. 4, 1857), in *TWO SPEECHES*, BY FREDERICK DOUGLAS 22 (1957).

7. Barbara Berenson, *MASSACHUSETTS IN THE WOMAN SUFFRAGE MOVEMENT: REVOLUTIONARY REFORMERS* (2018).

ways in which the intersectional identities of immigrants of color have led to the U.S. government preventing them from gaining political rights throughout the 19<sup>th</sup>, 20<sup>th</sup> and now 21<sup>st</sup> centuries, which necessarily led to struggles to gain labor rights, education, health care, housing, and other human and civil rights. Purkayastha notes how the othering of these women by white-oriented social justice movements contributed to persistent difficulties in achieving these rights, and draws on historical examples from other contexts, particularly highlighting the experience of Indian women under British colonial rule, to demonstrate the parallels that exist for racially marginalized women around the world when it comes to securing both the basic right to vote and substantive civil and human rights beyond that. Purkayastha provides a potent reminder that the struggles for political and substantive rights are not new, and they are not limited to the context of U.S. law and politics—in doing so, she encourages us to retain perspective on how entrenched some of the obstacles to achieving civil and human rights are, but also reminds us that we are not alone in navigating these struggles.

Joya Misra, in her symposium contribution, *Women, Politics, and Gender Inequality*, explores the many barriers to women in elected politics over the century since the 19<sup>th</sup> amendment was ratified and that persist today. Misra offers tremendously useful data about the disparate rates of women getting involved in politics, the United States lagging behind many countries in terms of the percentage of women elected representatives at the national level, and the structural barriers to political representation that exist in this country. She also offers specific measures that have been used with significant success in other countries that ought to be considered in the United States, if women being represented in political office is a priority toward which this country is willing to commit resources and effort. Among those measures are quotas being set by political parties and/or governments; the establishment of a cabinet-level department whose work is dedicated to gender equity; mainstreaming women's rights as an expectation across all cabinet-level departments, regardless of the substantive area in which that department works; collaborating with non-governmental agencies dedicated to women's rights; and specifically including those individuals and organizations that deal with intersectional identities of women across race, religion, class, and other markers. Misra argues that only a combination of these significant commitments to gender equality will lay the foundation for significant and lasting changes toward gender equity in government and beyond. Although many of these ideas may be new to U.S. government and politics, their success in other countries and polities should give hope

that we need not reinvent the wheel to make progress toward gender equity—we only need to be willing to take the wheel for ourselves.

Joan Marie Johnson's contribution, "*Not as a Favor, Not as a Privilege, But as a Right*": *Woman Suffragists, Race, Rights, and the Nineteenth Amendment*, offers a powerful historical account of suffrage. She begins with the baseline premise to which the title of her article alludes—that the movement toward suffrage was successful to the extent it was predicated on the fundamental belief that it was, like the post-Civil War amendments, a matter of human and civil rights, and not one of bestowing a favor or privilege upon half of the U.S. population. In this sense, Johnson links suffrage to the very nature of democracy and what it means to operate with a government that is elected by the whole of the polity. In her historical analysis, Johnson also highlights a key point that history is only as accurate as the writers of that account make it. Johnson notes that famous suffragists, including Elizabeth Cady Stanton and Susan B. Anthony, controlled the narrative of the suffrage movement because they literally wrote the story of it. Johnson notes the importance of historians excavating competing and conflicting narratives that often complexify the story of suffrage, but offer a more accurate telling. Specifically, Johnson considers the racial rifts within the suffrage movement that disempowered Black women and led to their extraordinarily low rates of voting, even decades after the 19<sup>th</sup> amendment was ratified. Johnson argues that this history of disenfranchisement, seen again in the treatment of Chinese-American women, Native Americans, Puerto Ricans, people of color generally, and women of color in particular, echoes in our contemporary voting rights discourse, in which voter suppression and disenfranchisement have led to the erosion of constitutional and legal protections of the fundamental right (not privilege) to vote.

John Baick, in "*Nasty*" *Woman* and "*Very Happy Young Girl*": *The Political Culture of Women in Donald Trump's America*, examines the rhetorical cabining of women into diminished, disenfranchised, and stereotyped roles by U.S. politicians throughout history, with a particular focus on the way in which President Donald Trump deploys epithets and demeaning labels to diminish the political engagement of women with whom he disagrees. Baick reminds us that the rhetorical demonization and dehumanization of political adversaries has a long history in U.S. politics and political culture, and that the efficacy of these techniques help explain why they persist, and why they are a popular tactic with President Trump. Baick points out that President Trump has many women—including his eldest daughter and close advisors—whom he clearly

admires and respects, but when women express political, cultural, or social views that differ from his own, he uses rhetorical weapons to attempt to undercut their effectiveness. Baick argues that this pattern of rhetorical attack is put to use by President Trump in other ways—to denigrate racial minorities and immigrants, to offer inaccurate information about domestic and foreign policy, and to engage in misleading self-aggrandizement at the expense of others. In doing so, Baick illustrates the ways in which such rhetoric—although not new to U.S. politics—has led to a deeply underinformed electorate and loss of standing for the U.S. government on both the domestic and international stage.

Timothy Vercellotti, in *The Long Road to Power for Women in Politics*, considers the question of disparities in the political representation of women in U.S. politics at the state and federal levels, noting that while much progress has been made, these disparities remain profound. He considers the question of the pipeline of candidates for office, observing societal obstacles in women perceiving themselves as qualified to run for office, a lack of active recruiting of female candidates by male party leaders, and the disproportionate amount of unpaid labor that women perform to care for family members, which makes the prospect of running for political office less realistic for some women. Vercellotti notes that although those three dynamics often work in conjunction to diminish the possibility of women running for office, research is made more complex by understanding different dynamics among white, Black, and Latinx women who are prospective candidates. Vercellotti argues cogently that more research and advocacy work is needed to better understand the complex dynamics of encouraging women to run for office, such that the long-term benefits to democracy of more women candidates can be realized: more women in office, greater attention paid to issues that resonate with women voters, and an increase in the number of women who vote based on who they see running for office.

The Law Review's November 2019 symposium brought together an interdisciplinary mix of scholars, practitioners, and activists for a thoughtful, rigorous, interdisciplinary examination of history, political science, sociology, and law. They tackled some of the thorniest issues surrounding suffrage, including how the passage and ratification of the 19<sup>th</sup> amendment came at the steep price of discounting and excluding the voices and rights of Black suffragists and women of color. Several scholars—both at the symposium and in these articles—consider this part of suffrage history to reflect on both the scope and value of political rights, but also on 20<sup>th</sup> and early 21<sup>st</sup> century movements, both in the United States and abroad, toward substantive rights. Authors in this issue also

confront the question of gender representation in politics, both historically and contemporaneously: the United States currently has record-breaking numbers of women and people of color in elected office, yet these numbers still fall well short of reflecting the U.S. population. It is noteworthy that Senator Kamala Harris was recently nominated for the vice presidency of the United States, and to simultaneously consider the fact that no woman has ever held that office (nor that of the president). Harris is only the third woman in U.S. history to be nominated for the vice presidency by a major political party, and she is the first person of color, Black person, and Indian-American person to be so nominated. We must ask ourselves how much progress has been made in the vein of political rights, substantive rights, and political representation in the 100 years since ratification of the 19<sup>th</sup> amendment—the answer, no doubt, includes key milestones of progress, but must acknowledge the enormous obstacles that have yet to be overcome.