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How To Change The Narrative Of The Women's Suffrage Movement – And Why It Matters

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HOW TO CHANGE THE NARRATIVE OF THE WOMEN'S SUFFRAGE MOVEMENT—AND WHY IT MATTERS¹

Professor Andrea Schneider, Director, Institute for Women's Leadership, Marquette University, Marquette University Law School

Hi, my name is Andrea Kupfer Schneider, Professor of Law and Director of the Institute for Women's Leadership at Marquette University. In honor of the one hundredth anniversary of the Nineteenth Amendment and in recognition of how important women are in this current election, we are delighted to bring you our virtual conference on Women's Suffrage and Innovation. Thank you for joining us.

Professor Kristen Foster, Marquette University

Thank you. Welcome everyone and thank you so much for joining us for our final day of Marquette University's Institute for Women's Leadership conference on Women's Suffrage and Innovation. You can find all of our panels, if you have not seen them yet, on our Conference Webpage, in honor of the centennial of the Nineteenth Amendment,² today's first panel, *Suffrage: Changing the Narrative and Why It Matters*, offers an opportunity for us to think in new ways about how we might teach and tell the story of the women's suffrage movement, our own centennial reassessment.

We will open the panel for questions towards the end, but please feel free to put any questions that you have in the Q&A while we are talking for the first 40 or so minutes.

I am Kristen Foster, Associate Professor of History here at Marquette University, and I am delighted to introduce first, Dr. Lisa Tetrault, from Carnegie Mellon University.

1. [Editor's note: The *Marquette Intellectual Property and Innovation Law Review* is proud to present the panel discussions from the October 2020 virtual conference held by the Institute for Women's Leadership at Marquette University on Women's Suffrage and Innovation. This transcript has been edited for clarity.]

2. Institute for Women's Leadership, *How to Change the Narrative of the Women's Suffrage Movement—And Why It Matters*, SUFFRAGE & INNOVATION 2020 CONFERENCE, <https://suffrageandinnovation2020.com/>.

Professor Sarah Wadsworth, Marquette University

I am Sarah Wadsworth, an English Professor at Marquette University, and I am delighted to introduce our speaker Atiba Ellis, Professor of Law at the Marquette University Law School.

Professor Kristen Foster

First, we are going to offer ways to think about re-designing the narrative of the women's suffrage movement by discussing the diversity of the movement itself. The suffrage movement has developed into a rather fixed narrative, generally starting with Lucretia Mott and Elizabeth Cady Stanton at Seneca Falls, New York in 1848.³ It moves through the split in this suffrage movement over the Fifteenth Amendment⁴ and then onward towards the ratification of the Nineteenth Amendment in 1920.⁵

Lisa, your work challenges the origin story of Seneca Falls, and we are seeing that as well in some new books that offer exciting scholarship about rethinking the single movement and instead really imagining many movements doing the work for women's suffrage. These works are challenging this narrative. What channels do they develop and deploy on behalf of change? We can also certainly engage in the discussion of why including these women matters at this point.

Professor Lisa Tetrault, Carnegie Mellon University

Hello everyone.

I think that the focus is both diversifying who we look at, but also, as you say, diversifying not just the who but the what. Because the movement no longer really holds together as a singular story anymore—and when we do hold the movement together as a singular story, it is really a white women's story—and that has, in a way, distracted from all of the ways in which disenfranchisement continues as a practice all the way through until today.

When we tell it as a 1848-1920 story, it is largely a white story. It is largely a story of democratic triumph that is isolated from all of the democratic suppression going on at exactly the same time, and not a story of the democratic suppression that goes on after 1920. If we're going to be equipped to understand

3. Institute for Women's Leadership, *Women Explain Their Grievances in The Declaration of Sentiments, Seneca Falls, New York 1848*, SUFFRAGE & INNOVATION 2020 CONFERENCE, <https://drive.google.com/file/d/12W0TfrTONjti7UQZsDJR85YTqkuXg5nO/view>.

4. Institute for Women's Leadership, *Fourteenth and Fifteenth Amendments to the United States Constitution (1868 and 1870)*, SUFFRAGE & INNOVATION 2020 CONFERENCE, <https://drive.google.com/file/d/1kTQqT-Tpk5-beBGq8zxXGXChzVLZgS2I/view>.

5. Institute for Women's Leadership, *The Nineteenth Amendment Is Ratified! (August 26, 1920)*, SUFFRAGE & INNOVATION 2020 CONFERENCE, <https://drive.google.com/file/d/1gfsNcY3Hmk8BIXOmgvKWmBBNFjKYga7E/view>.

voting rights in the present, we must diversify the story of the past in order to understand the world we live in now.

Which is not one where all women are guaranteed a right to vote, as one would often claim about the Nineteenth Amendment,⁶ and as we saw claimed many times throughout. If you do a Google search, you will be bombarded by it. If you do the traditional centennial celebration, you will be bombarded by it as well. But as Professor Ellis's own work on disenfranchisement underscores, there are all kinds of ways in which women are disenfranchised today.⁷

I think that we must move beyond this idea of something called the suffrage movement, and think more broadly as many scholars like Martha Jones, Cathleen Cahill, and plenty of others have. Katherine Marino and others are arguing that really what we have to look at is women and voting; and that the suffrage movement is really only one chapter of that much larger story. So that would move us to looking at the ways in which Black women have positioned their activism and Native women have positioned their activism, often completely outside of and defined very differently than white women's organizing. Because to even call—and that is the last thing I will say—but to even call yourself a woman suffragist is a position of tremendous racial privilege. Because to isolate yourself as just a woman and to isolate yourself as interested in just one question—suffrage—is something that most women did not have the luxury of doing. That does not mean that they were not interested in voting. They were keenly interested in voting, but they understood it as part of a much broader project. And so often we have not seen those women, because they did not identify themselves in the way that we have gone looking for them, the way they are organized in the archive.

There have been all kinds of new work coming out. Martha Jones just wrote a book trying to trace this story just jettisoning the 1848 to 1920 narrative and considering what would it look like if we found Black women where they are. What would that narrative look like? She tells a story extending from 1820 to 2020.⁸ Cathleen Cahill wrote a book where she talks about Indigenous women, Latina women, and Chinese-American women whose fight extended well beyond 1848-1920.⁹ Then, Katherine Marino's work, *Feminism for the*

6. U.S. CONST. amend. XIX.

7. Atiba R. Ellis, *The Cost of the Vote: Poll Taxes, Voter Identification Laws, and the Price of Democracy*, 86 DEN. L. REV. 1023 (2009); Atiba R. Ellis, *The Meme of Voter Fraud*, 63 CATH. U. L. REV. 879 (2014); Atiba R. Ellis, *A Price Too High: Efficiencies, Voter Suppression, and the Redefining of Citizenship*, 43 SW. U. L. REV. 101 (2014); Atiba R. Ellis, *Tiered Personhood and the Excluded Voter*, 90 CHI.-KENT L. REV. 463 (2015).

8. MARTHA S. JONES, *VANGUARD: HOW BLACK WOMEN BROKE BARRIERS, WON THE VOTE, AND INSISTED ON EQUALITY FOR ALL* (2020).

9. CATHLEEN D. CAHILL, *RECASTING THE VOTE: HOW WOMEN OF COLOR TRANSFORMED THE SUFFRAGE MOVEMENT* (2020).

Americas, was not even contained inside national boundaries.¹⁰ In all of those ways, the movement is exploding, not just by finding new people inside of it, but getting rid of the “it,” or at least diversifying it.

Professor Kristen Foster

Maybe saying that different women had different ways of approaching it.

Lisa Tetrault

Absolutely. They would define the price very differently than white women did.

Professor Atiba Ellis, Marquette University Law School

So, I want to pick up on this theme and take it from the perspective of where I sit in terms of teaching the right to vote and thinking about the theory of what it means to pass the Nineteenth Amendment itself.¹¹

But first of all, I want to join my colleagues’ commentary here: I think it is absolutely right to recognize, in a sense, the kind of identity politics silos that come up when we encapsulate the movement for women’s suffrage as just a movement.

And certainly implicit in all of this is all of the soiling and contestation within the efforts to gain those rights that happened, especially with the split around the Fifteenth Amendment¹² and what ended up being Black male enfranchisement, and the fact that [black male] enfranchisement only lasted half a generation and ended with the reassertion of political tyranny that came through Jim Crow.¹³ What I want to speak to is the orientation of thinking about this as claiming rights and as developing a right to vote.

There is a mythos of universal suffrage, that it is on an inevitable trajectory. And oftentimes, the conventional narratives around this, in terms of historians, political scientists, and legal scholars analyzing this in a siloed way, end up just treating this as a stopping place in terms of the long, and dare I say inevitable, march to universal suffrage right.

But in terms of the conversation that I focus on in my constitutional scholarship, in terms of the dialogue between the courts and the people claiming rights, and the infrastructure that seeks to retain its power, certainly there is pushback. That pushback gets lost if the narrative simply focuses on, well there was a gain, and that gain is in and of itself static, and therefore, we can treat it

10. KATHERINE M. MARINO, *FEMINISM FOR THE AMERICAS: THE MAKING OF AN INTERNATIONAL HUMAN RIGHTS MOVEMENT* (2019).

11. U.S. CONST. amend. XIX.

12. U.S. CONST. amend. XV.

13. See Gabriel J. Chin & Randy Wagner, *The Tyranny of the Minority: Jim Crow and the Counter-Majoritarian Difficulty*, 43 HARV. C.R.-C.L. L. REV. 65, 99 (2008) (“Disenfranchising African Americans allowed a minority to take over the state governments and thereby to impose Jim Crow.”)

that way. As if one goes up one more step up a ladder without realizing that one can slide back down.

In essence, the stakes are not about women, but they are also about women situated in a particular political community that was constructed about around race and gender and the types of identity politics—positioning politics that are continually flowing and dynamic in this context. So, in that sense, the whole notion of what rights were created when the Nineteenth Amendment was ratified¹⁴ gets watered down. Certainly, within my field, Reva Siegel has been amplifying the actual sort of revolutionary work of equality building that happens when we think more richly and with a broader imagination about what work the Nineteenth Amendment¹⁵ did in effect. It then becomes a story of recognizing that the rights implicit in the text of the amendment are quite expansive.

Rick Hasen and Leah Litman have also written a paper that compares thin and thick conceptions of the Nineteenth Amendment.¹⁶ The ultimate arc of this argument is that with the Nineteenth Amendment, like the Fifteenth Amendment that came before and the constitutional amendments that came after—if we took a more expansive view of those amendments—the disputes that we are worried about today concerning voter suppression and the primacy of the power of the federal government and the federal Constitution to remedy things as basic as where drop boxes are placed to collect absentee ballots and these sorts of questions, there is a stronger federal constitutional conception around these things and that it should be pursued as such.

But part of the counternarrative, in this sense, is the fact that our reading of the rights created gets watered down. Our imagination around the right to vote gets impoverished when we think of it as a lockstep progression. By doing the more inclusive and richer thinking about the political history around the amendment and thinking more broadly about its ramifications, we can expand the right to vote for everyone but for women.

Professor Lisa Tetrault

I appreciate you raising the Amendment itself because I feel like that it gets very lost in the centennial, which really, we are not celebrating the centennial of women's suffrage. We are really celebrating the centennial of the Nineteenth Amendment.¹⁷ They are two very different things. Women are voting and

14. U.S. CONST. amend. XIX.

15. Reva B. Siegel, *She the People: The Nineteenth Amendment, Sex Equality, Federalism, and the Family*, 115 HARV. L. REV. 945 (2002).

16. Richard L. Hasen & Leah M. Litman, *Thin and Thick Conceptions of the Nineteenth Amendment Right to Vote and Congress's Power to Enforce It*, 19 GEO. L.J. 27 (2020).

17. U.S. CONST. amend. XIX.

millions of women are voting before 1920. Millions of women start voting in 1920, and millions of women still are not voting after the 1920s. It is a story of the Nineteenth Amendment.

Reva Siegel's work¹⁸ and all of the rest I admire greatly, and absolutely, there are both new ways of reading who was in the movement and what the movement was. But also, I think, what Professor Ellis points us to is new ways of reading the Nineteenth Amendment, in the work of many legal scholars, like Reva Siegel and others. But I think that there is also a huge way in which I've been trying to narrow our understanding of the menu while taking your point that it also needs to be broadened in a way.

The narrowing is that many people talk about the Nineteenth Amendment as though it gave women the right to vote. The thing that it does *not* do, much like the Fifteenth Amendment,¹⁹ is create a right to vote. There is no right to vote in the Constitution, and this stuns people.

Professor Atiba Ellis

It is the first thing I say in my Election Law class.

Professor Lisa Tetrault

Everyone assumes that there is a right to vote inside the constitution that is guaranteed to a citizen, that what the Fifteenth and Nineteenth Amendments achieved is to allow African American men to vote and then let women into that right.

That is not what those amendments did. What those amendments do is speak to the states. They do not even speak to the voters themselves. So, what they do is they speak to the states, and they say to the states who gets to draw up the list of who gets to vote.

The right to vote is not in the Constitution, and today citizens still have no right to vote. It is the states that get to draw up a list of criteria, which you must meet, to be a voter, and many of those states in the 1820s and the 30s all had the words white and the words male, so you had to clear both of those words. You had to clear being male, and you had clear being white. Then, the Fifteenth Amendment breaks down race so white gets struck down, but it does not enfranchise Black women because Black women are still barred by sex.²⁰

Then, the Nineteenth Amendment strikes down male, strikes down sex.²¹ What it says to the states is that on those two very narrow grounds, you may not bar voting. But what it leaves open is that the states can declare any other

18. Reva B. Siegel, *She the People: The Nineteenth Amendment, Sex Equality, Federalism, and the Family*, 115 HARV. L. REV. 945 (2002).

19. U.S. CONST. amend. XV.

20. U.S. CONST. amend. XV.

21. U.S. CONST. amend. XIX.

grounds for barring voting. They just cannot do it on those two specific grounds.

So, what they do is say, okay fine, we will pop up poll taxes, we will pop up literacy tests, and as they do that, those ensnared are the racially targeted without explicitly mentioning race. Women are all helped by the Nineteenth Amendment because the word male is struck down, but it is not sufficient because it does not invest women with a right to vote. It just says you cannot use sex to discriminate, but you can still use poll taxes. You can still use literacy tests. Those won't be struck down.²² Until the 1960s, what we have is this misunderstanding of constitutional governance around voting that handicaps our ability to see the complexity and the diversity of the story.

Professor Atiba Ellis

What is really interesting about this interstitial gap is that what the Constitution, the original Constitution, says about voting is explicitly within the context of federal elections, which implies that states are sovereign in and of themselves, as they run state elections.²³

The Constitution has this Republican Form of Government clause that assumes that some form of a democratic republic will exist in each state, which in and of itself is a contested notion at least at the very early end of the republic.²⁴ But aside from that, the Elections Clause says when it comes to federal elections, states get to determine who the electors, i.e. the voters, are for the election for the House of Representatives.²⁵ This is in Article One of the Constitution, and so states are seen as the arbiter, and the original Constitution basically says, we'll go along with whatever state law says.²⁶ Not until these questions of should women be admitted, and should African Americans be admitted, does that consensus start to get shaken. Plus, the fact that when you read those opinions where the Supreme Court ends up saying well, we are going to enforce the striking down of race, as you put it, striking down race only addresses the most egregious form of racism.

I am thinking of *Guinn v. United States*, which addresses the [grandfather clauses in Oklahoma], and when you read the opinion, it is very reluctant to say, well, this is race explicit in a grandfather clause.²⁷ In other words, if your grandfather was eligible to fight in the Civil War, then you could be exempted

22. *Id.*

23. U.S. CONST. amend. X.

24. U.S. CONST. art. IV, § 4.

25. U.S. CONST. art. I, § 4, cl. 1.

26. *Id.*

27. *Guinn & Beal v. United States*, 238 U.S. 347 (1915).

from other voter qualifications.²⁸ That was basically targeting white men whose grandfathers fought for the Confederacy in the Civil War, so this technical reading of what race meant, as opposed to a far expansive reading of what race really means in terms of socioeconomic status, prevailed.²⁹ White supremacy and the Court's long legacy is saying, well, the Federal Constitution has nothing to say about those concerns, or when it is presented, we're going to read that in the narrowest of terms. We miss all of that dynamic when we fixate on the idealized notion, this is a success for the right to vote, and we don't have to think about anything else. Unfortunately, that dynamic is repeating itself today.

Professor Lisa Tetrault

Yes, and when we attend not just to the who and what in terms of movements, but also to the legality of voting, which is where you are pointing us, Professor Ellis.

What we are talking about now also connects the story to a much broader story of the unfolding of an American democracy, not just in the way that silos the question of gender but links it to the idea of how we are going to regulate and how are we going to govern voting. Because that is something that we do not spend enough time as Americans thinking through. Because we just assume we know what the right to vote means, and as Professor Ellis is pointing out, it has all of these great nuances. It is denied in all kinds of ways, and the Supreme Court will consistently say Americans have no right to vote—there is no such thing. This attention to legality of voting reminds us is that this fight is ongoing and unfinished.

What is the fight we are fighting for? We should interrogate this idea of the right to vote and not assume we know what it means because we do not.

Professor Kristen Foster

It also takes me back to Mary Kelley's Keynote Address³⁰ and an earlier conversation we had about the importance of education. People must be educated if we have these big structural issues that are really a larger question for our discussion about suffrage.

That conversation we had about women's education being central to civic engagement, extends to having to understand how the Constitution works and having to understand where State Governments have authority and where the Federal Government does. So, it seems to me, in terms of bringing in voices,

28. *See Id.*

29. *Id.*

30. Mary C. Kelley, Keynote Address: Achieving Suffrage, Suffrage and Innovation 2020—an IWL Conference (Sept. 14, 2020), <https://www.youtube.com/watch?v=RGcll7-ZC3E>.

we are finding that education also becomes an important step in the process of voting and civic engagement as well.

Professor Sarah Wadsworth

Richly, and with a broader imagination as Dr. Ellis suggested, I would also like to suggest that we think not just about the what and the who, but also the how and the different channels that women were using to talk about suffrage.

One of them that does not get a lot of attention—but as an English Professor I am going to tell you about—is literary activism and the way that many activists at the time who were primarily activists wrote novels, because it had been used for a century as a really effective platform for engaging the imaginations of millions of readers.

Similarly, many women who were primarily writers were very active in different suffrage organizations and other kinds of progressive movements. But I also want to take this chance to turn the conversation slightly in our process of enriching and changing the historical narrative of the suffrage movement. As we move away from a white and top-down narrative alone, we might also have to look beyond voting laws to understand what non-white women and communities had to address. It was not really just about the vote. It was some of the other issues that these women brought to light as they became involved in the suffrage movement.

Professor Lisa Tetrault

Yes, that is exactly right. One of the effects that I have talked about in my book, *The Myth of Seneca Falls*, and that I have talked about in my work since, is this mythology of 1848 to 1920.³¹ It is a mythology that misleads us in all kinds of ways, and one is the way in which it unhelpfully bounds a much broader campaign, a much broader set of activisms, and a much broader set of activists.

A second way that it unhelpfully frames this story is to make the vote equivalent with women's rights. We really have to uncouple the idea that voting rights was at the fore, was the leading edge, was a necessary companion, was the real marker—or whatever else it might be—of women's rights.

In the nineteenth century it was not, but the mythology of Seneca Falls and others have tried to elevate it.³² As Stanton and Anthony created it after the American Civil War, well after the event itself, it was to try to elevate the vote, in a very contested terrain where many women were saying that voting is not our first priority.³³ Not only is it not our only priority, for many women the

31. LISA TETRAULT, *THE MYTH OF SENECA FALLS: MEMORY AND THE WOMEN'S SUFFRAGE MOVEMENT, 1848-1898* (2017).

32. *Id.*

33. *See Id.*

vote just simply did not elevate itself to the most important issue or the only issue that they needed to be working on. I think it is less that we have to understand what else along with the vote was important, and instead quit letting the vote stand in for women's rights—just start telling that as like, there's the vote, and then there's this whole story of women's rights. These are Venn diagrams that overlap in some places, and do not overlap in other places.

There were so many women in the nineteenth century who were arguing for all kinds of things, including sex radicals who were arguing that men ought to be responsible for birth control, that women ought to have a right to a free and express sexuality, and women ought to be able to change their partners, divorce their husbands, and take lovers as they wished. This was scandalous in the nineteenth century.

Some women argued that sovereignty over their body was essential, and it was much more important than having a kind of political fetish, as Emma Goldman and others might call it. Other people would argue that ending racism in the United States was a broad-based and necessary move before anybody's voting rights could even count in a meaningful way, ending slavery. There are so many things that were women's rights agendas.

Having a voice inside your own community was often an important agenda. Often, civil rights activism got defined in very male way, and so sometimes, a women's rights agenda would be to find a voice within that activism. So yes, we could spend the next several hours inventorying all of the women's rights of this era. I do not necessarily want to go down that path, so much as just to underscore that we must stop using these things synonymously – they are not synonymous.

Professor Atiba Ellis

I hear this, and I am hearing that the conversation about women's rights is a conversation about who belongs in the political community and what empowerment do the people within the community get to have. To me, this is the story of America. Early in some of my own work, I wrote about what I have called borrowing from others' political personhood,³⁴ defining personhood as the sort of ongoing work that courts have been doing. One way of framing this broad narrative is that who gets personhood, in essence, is a matter of being tiered.³⁵ There are some levels, and one can go up a level, down a level, and what you have to me is the trajectory here in terms of opening up this myriad of rights.

34. Atiba R. Ellis, *Citizens United and Tiered Personhood*, 44 J. MARSHALL L. REV. 717, 725 (2010) (defining "political personhood").

35. *Id.*

The conversations are about opening up the question of who gets to decide what rights one gets to have—and not in the doctrinaire sense but in the broader sense. Do I get my autonomy? Do I get my choices as to who I get to interrelate with? All of these things are foundational to conversations that I think, for many of us today, are taken as a given, or are in our heads resolved and in a sense, this is part of the deception of thinking about the Nineteenth Amendment³⁶ in such an impoverished way. Thinking about the struggle for women’s suffrage as such a mythic beginning, middle, and end is to think that well, that’s resolved, and there is nothing else to talk about. The whole problem of nothing else to talk about, I think, persists in a lot of ways, not only in terms of women’s equality and thinking about the scope and the evolution of feminism, but in all the other places where membership in political community is contested.

Professor Kristen Foster

Just coming off that, I think that even as people are thinking about political communities, that almost forces us post-Nineteenth Amendment to engage with ways that women are not included. Professor Tetrault suggested earlier, as did you, that that includes people on the margins of political inclusion, such as issues of Indigenous sovereignty. The way the Nineteenth Amendment does not enfranchise Native women, citizenship is used as another way of excluding women from the vote. Asian Americans do not get the protections of citizenship until 1943 and 1952, and of course this is only at the federal level. Before that, the state’s disenfranchise with Jim Crow laws and polls taxes.³⁷

The federal government has these ways of keeping people from becoming citizens or keeping Indigenous people from being recognized as citizens well after the Nineteenth Amendment. But if we want to talk about the Voting Rights Act, even in 1965, becoming this piece of legislation that brings more people into that voting community,³⁸ I think that is a moment that brings along these people who were left out of that Nineteenth Amendment in 1920.

Professor Lisa Tetrault

I think we do have to be careful because I think another thing that the myth of 1920 does is make voting seem on its face desirable. And for many people, that political personhood and that kind of talisman of state recognition is something they have no interest in. That is not where they want to find rights. When we are talking about the people on the margin, the goal often is not to get that talisman of political personhood. There is a way in which we normalize

36. U.S. CONST. amend. XIX.

37. Edited by Author for clarity.

38. Voting Rights Act of 1965.

and mainstream the system when we see voting as the main goal, as definitely freedom and emancipation.

There were a bunch of people on the margins who argued that is not freedom, and is not emancipation, and they did not want it. And for many Indigenous Americans, that was absolutely the argument because there was the experience of colonization. They wanted sovereignty. They did not want to be led into 1920. Because that meant they were going to lose tribal sovereignty, and so, this was a debate inside Indigenous communities about whether or not seeking the vote was even a revolutionary or empowering act.

In many ways, getting voting rights, which in a white normative world is a good for many people, was not necessarily good if we colonized Hawaii. For many people, they are like, oh, you gave us the right to vote, while you took away our entire way of life, it is like, oh gee, thanks.

We have to be very careful that we do not buy into the idea that [the right to vote] is just automatically on the face it of a desirable and good thing. Because there were lots of people who were deprived of nationhood and rejected voting within the system as not sufficiently representative of a kind of revisionist and emancipatory and liberation politics.

That was not where they wanted to place their eggs in the system. Looking at a mainstream example of that, Emma Goldman,³⁹ who was an anarchist, labor radicalist, sex radicalist, and Russian Jewish immigrant to the United States, who basically says if voting had the kind of transformative, incredible power that people say it did, then working-class men would not be in the horrible shape they are in right now. Voting is nothing but a co-optive tool to give you a sense of power, while leaving you without actual power. And so, it is seductive in that sense because it redirects you from pursuing things that are actually transformative.

You may or may not reject that, but I am just saying there were people out there who basically said the democratic system's idea that the vote is the be-all and end-all, many people rejected that idea outright. We have to remember those people too. Voting was not always something people sought, and the conferral of voting rights could be quite conservative and oppressive, in the sense of Indigenous communities losing sovereignty and the ways in which it practices colonization on people.

So, I find Emma Goldman to be completely captivating. I just have to push back that if the vote was not at all invested with power, then I wouldn't think

39. See 9 EMMA GOLDMAN, *MOTHER EARTH*, No. 12 (1915); see also Cesar Cuauthemoc Garcia Hernandez, *Ready or Not, the Veloruthion Had Arrived: Critical Mass – An Exercise in Democracy*, 8 LOY. J. PUB. INT. L. 133, 139 (2007) (discussing Emma Goldman's work as an anarchist magazine that "challenge[s] existing social, political, and economic institutions.").

that the United States would have spent most of its history trying to disenfranchise people. I do think there is a power in voting, but I think that voting has to coexist with social activism and social movements. I think that is the way in which we bring together the power of the two. In fact, we are in the midst of the most massive wave of voter disenfranchisement right now since before the Voting Rights Act of 1965. That would not constantly be a theme in American history if the vote did not matter.

Professor Kristen Foster

Yes, I was thinking of Zitkala-Ša: I think she moved through some of what you're talking about, but she did get to the point where she, in her mind, understood that to protect Indigenous sovereignty, Native people needed the vote. That was her argument by the early twentieth century.

Professor Lisa Tetrault

But her view is not held by all native people right now. A lot of people disagreed with her; that was a fight inside Indigenous communities about what's the best way to empower themselves given the circumstances in which they lived. Zitkala-Ša, who Cathleen Cahill writes about in *Recasting the Vote*,⁴⁰ certainly came to that conclusion, but that was not a universally shared opinion inside Indigenous communities.

Professor Kristen Foster

Right.

Professor Atiba Ellis

So, what is interesting here is this. I mean, I find all of this interesting. But I want to point to different communities in relation to white colonialist male subordination that probably had different responses given that these communities and these individuals wanted the kind of autonomy and involvement that they got to choose on their terms. Being involved in the American project is challenging given its origins, and I think historians have dealt with colonialism in a way that law professors have not. This is a newer conversation, and in fact, I have been thinking about it for my own work going forward.

Professor Tetrault's observation that native communities actually felt like being incorporated into the political community of voting creates a danger, raises a spark in my head.

One of the themes of this panel is innovation. I am jumping ahead to theme three of what to teach the next generation, but I think that's something to put a pin in right now, that this sort of voting and incorporation into the political community of the United States is dangerous to certain communities.

40. CAHILL, *supra* note 9, at Part III.

Also, another theme that I think builds on this and offers lessons that we can learn is if we think of the conventional narrative of the Civil Rights Movement. *Brown vs. Board of Education*⁴¹ happened. Martin King leads marches. Then we have a Civil Rights Act, a Voting Rights Act, which is all its own kind of siloed and finite and impoverished vision of social movements.

One point to make right here is that by expanding our lens concerning women's suffrage and the creation of the Nineteenth Amendment, we not only enlighten the limits of the Fifteenth Amendment and race and voting, but we also start having this conversation about the Voting Rights Act and how it is touted by scholars, like Guy-Uriel Charles and Luis Fuentes-Rohwer, as the most effective civil rights legislation ever passed in American history.⁴² That success story is based on the notion that we want to give more teeth to the commandment towards political equality on race than what America had done in the century prior to 1965.

That said, when talking about this I'd like to think about what the civil rights movement of the 1950s and 60s was after. It was not only echoed in Martin Luther King's first famous speech, which was called, "Give Us The Ballot," which is this meditation on how a fully empowered African American vote would actually work⁴³ to transform segregation without any other moves, so long as the Federal Government came in and enforced the civil rights of African Americans. But I'm also thinking about Fannie Lou Hamer, and I'm thinking about African American women activists who showed up and started to take whatever opening was provided, and to run for office, and to politic for more stringent voting rights.

Professor Lisa Tetrault

We often tell that civil rights narrative, like you say, in a silent way, but also, it is a very masculine story. What you are pointing out is there are all kinds of women inside this movement agitating for voting rights, and so the passage of the 1965 Voting Rights Act is, in many ways, the culmination of a women's fight for voting with Fannie Lou Hamer and Septima Clark and Amelia Boynton, and it goes on and on and on.

Professor Atiba Ellis

As well as the internal politics within the movement.

41. See *Brown v. Bd. of Educ.*, 344 U.S. 1 (1952).

42. Guy-Uriel E. Charles & Luis Fuentes-Rohwer, *The Voting Rights Act in Winter: The Death of a Superstatute*, 100 IOWA L. REV. 1389 (2015).

43. Martin Luther King Jr., "Give Us the Ballot," *Address Delivered at the Prayer Pilgrimage for Freedom*, THE MARTIN LUTHER KING JR. PAPERS PROJECT (May 17, 1957), http://okra.stanford.edu/transcription/document_images/Vol04Scans/208_17-May-1957_Give%20Us%20the%20Ballot.pdf.

Professor Lisa Tetrault

Yes.

Professor Atiba Ellis

The Civil Rights Movement is dedicated to racial equality but has contested notions of women's equality within it, and I think that this is all part and parcel of what gets opened up when we tell this story in a far more comprehensive way, thinking more broadly about the lenses and the fact that when I say political community, I should have said political *communities*. Because I think communities and empowerment and different communities overlapping, as my colleague has mentioned, is the more effective way to read this narrative. It then becomes a more effective way, from my perspective, to think about what intervention the law is being asked to do when we read the Nineteenth Amendment. Together with fulfilling the promise of the Fifteenth Amendment through the Voting Rights Act, and the building thereafter, part of what I think about is how from the point of view of the courts there was this revolutionary period.

Another name to elevate is Annie Harper, who is the lead plaintiff in this case called *Harper v. Virginia State Board of Elections*.⁴⁴ Annie Harper was a poor Black woman from Virginia who could not afford the \$1.50 poll tax Virginia charged each year, and so she led the fight supported by the ACLU and others to eliminate the poll tax, and the Supreme Court ultimately did it.⁴⁵ But when you read *Harper v. Virginia*, you are left with this impression that this is about class and neutral notions of the Equal Protection Clause are empowering this. In other words, the court puts broad language out there about what happens once states extend the right to vote, and think back to what we said at the very beginning about states being the nucleus of defining the right to vote. But once states extend the right to vote, they cannot arbitrarily then qualify the right to vote, and *Harper* is revolutionary for stating this, and my class gets bored at me talking about *Harper* at length.

However, it is a fundamental shift, but even then, just from the point of view of voting rights, a certain amount of the narrative says, well, we fixed this, we've made this pronouncement about class and voting—i.e., poll taxes and having to pay for the ability to cast the ballot. But even there, there is a difference between a direct payment, having to pay a tax in exchange for getting the vote, and all the indirect costs that get imposed on voting. So, fast forward to thinking about voter identification laws and voter purges and having to wait eleven hours in line in order to cast your vote. Having to exchange for your

44. *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663 (1966).

45. *Harper v. Virginia State Bd. of Elections*, 240 F. Supp. 270 (E.D. Va. 1964), *rev'd*, 383 U.S. 663 (1966).

vote the day of work that you could have spent, all of these things reveal this underlying structure that gets lost if we don't think expansively about the narrative and the people involved in it and the reasons why they fought.

Professor Kristen Foster

You have nicely moved us, Professor Ellis, to our third theme, thinking about and helping our audience today think about how we would change that narrative. So if we are teaching it, can we come up with some suggestions for folks for how to re-teach that suffrage narrative, whether maybe we want to broaden it away from just women's suffrage and really teach more of a suffrage movement? Or are there ways that we can still continue to teach a woman's suffrage movement and enrich it with some of the things you both have talked about today?

Professor Lisa Tetrault

We are still figuring out that question but I can offer a couple of things I do now in my classroom. That is, I teach the woman suffrage movement, which really was a kind of a campaign for the Nineteenth Amendment. I teach all of the limitations of the Nineteenth Amendment, and I talk about how women and voting is a much broader story.

Then, depending on which class I am in, I also try to link the story of women and voting to the broader story of American democracy. Because the thing is, one of the other things the 1848-1920 story wants us to do is think that gender is an isolated variable. But in this story, and this relates to much of what Professor Ellis and I have been talking about, gender is not an isolated variable. It is connected to all kinds of other things, and so you cannot just say, there is gender or there is not gender. Because for many people, these things are all bound up in all kinds of different ways.

One of the other things I try to do is get them to think about how this story is not just about gender and also teach them that there is no right to vote. That's not what women want. So, I think, when you teach that there is no right to vote, what they won was that the states may not use this one word: male. Then you realize there are lots of people involved, and they can be women who can get caught up in other ways that the voting gets denied, which is where we are right now. So, social movements effectively won even though we always talk about having won the right to vote.

What social movements have won, really, is the elimination of specific state restrictions, striking down those specific state restrictions, in the case of the Fifteenth Amendment for race, in the case of the Nineteenth Amendment for sex, or the Twenty-Fourth Amendment for the poll tax, if we talk about that. I do not think we have talked enough about Annie Harper, frankly. What we haven't won is stopping the states from having the ability to just dream up a

whole bunch of new restrictions, which they're completely free to do and which is exactly what they've done historically. We have had this push-and-pull dynamic whereby social movements come along, strike down a couple things, and we call that the right to vote. But it's not. It is just the elimination of a state restriction, not that it's not significant, but it doesn't invest anyone with a right to vote. What we get then is the state just popping up some more restrictions. We have this game of whack-a-mole going on at the state level whereby we stop them from doing one thing, and then the states just do something else to strike people down from voting. Which is what they're doing right now with these hidden poll taxes, partisan gerrymandering, closing polling locations, and faulty equipment.

There are so many voter disenfranchisement techniques going on. It is estimated that over twenty million people have been thrown off the voting rolls in the last couple of years.⁴⁶ Over twenty million people, and these are people who were eligible to vote not too long ago. That does not even count all of the people that should be eligible to vote, if we want to go down the path of telling the story of the formerly incarcerated or other people. So, what I am trying to point out to you is that in the year that people supposedly won the right to vote, women, as if they're even an isolated category, are not being disfranchised anymore on the grounds of sex, but they're being just disenfranchised on all kinds of other grounds, by the tens of millions.⁴⁷

I think that is an effective way to teach it too, is just to think about how voting rights have played out over U.S. history legally. Then we can see how women fit in this narrative in all kinds of different ways, because they do not fit just according to one variable of sex; they fit according to many variables, and as somebody typed in the chat, it feels like a game of whack-a-mole.

That is exactly how I have been describing it in talks I've been giving, is that essentially the pursuit of voting rights has been like a game of whack-a-mole, and it has swung between the whacking down of state restrictions and the rising of state restrictions. Right now, we are in the middle of a rising era of state restrictions disenfranchising people, particularly since the Voting Rights Act was struck down in 2013 in *Shelby County v. Holder*.⁴⁸

Professor Sarah Wadsworth

Voting looks so different this year for a variety of reasons. What benefits might we see by making voting day a holiday so that people could vote without

46. Rebecca Solnit, *20 Million Missing People Could Save America: On Life in the Dark Timeline, and the Moral Cause of Our Moment*, Literary Hub (Jan. 18, 2018), <https://lithub.com/rebecca-solnit-20-million-missing-people-could-save-america/>.

47. *Id.*

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

choosing between their jobs and voting? What about making voting a couple of days instead of just one? I am thinking about the barriers, the everyday barrier of people who have jobs who have to work. Maybe people who do not have driver's licenses because they take a bus. So, I am thinking about how in this historical moment the possibility of more expansive ways to vote might help us think about those everyday obstacles that are as much legal barriers as practical ones.

Professor Lisa Tetrault

This is another way in which the 1848 to 1920 narrative feeds into a triumphalist kind of understanding of American democracy. What you are pointing to, Sarah, is the way our system is structured, not just in an ordinary way, and not even with state restrictions, but in the way we do not have a national holiday for voting, which deeply depresses turnout, is that voter disenfranchisement. We do not have automatic voter registration uniformly across the country, is that voter repression. There are so many things we could do in just a simple way that would not even really upset voting governance, that would make voting more accessible and would increase the robust health of our democracy.

But one of the things that I am struck by and I have been really struck by in this anniversary era and in this class I am teaching right now in voting, is just how long the United States has had a much more robust history of not wanting to encourage voting over this idea that we embrace democracy, this kind of triumphalist narrative that now we support women voting. The narrative hides the ways in which the United States is busy suppressing the vote all the time.

Professor Atiba Ellis

I really want to chime in right here and say something really quick, but I think it exposes this problem, which is that oftentimes you see what I would categorize as nonsense about people saying, well, this is a republic, not a democracy.

This claim does not seek to wreck democracy per se, but this then becomes a way of excusing wanting to tamp down the excesses of democracy—i.e., people on the margins who want to participate—and then excusing the structures that make it more difficult for them to participate. This rationalization of being a democracy that can be just the right amount of anti-democratic is the through-line of history around voting in America, and that line gets moved. I do not want to dismiss the tangible successes, but when this gets glossed with triumphalism, then we start missing the point. That provides cover for the disenfranchisers to do what they want to do, which is to get their voters to vote, but exclude the others who will not vote for them.

Professor Kristen Foster

Why haven't we or somebody asked about a movement? Have there been any movements for a national voting law or maybe an amendment to the Constitution? Could you talk a little bit about that?

Professor Lisa Tetrault

Actually, it has been introduced many times, and a movement exists right now. I think it might have even been introduced in 2019. It just never goes anywhere for all kinds of complicated reasons. There has not been a robust movement for it, in some ways, for a whole bunch of reasons. It's not monocausal, but one is that most people are unaware that we need one; you can't first fight for something you think you already have.

Professor Atiba Ellis

The federal Constitution contains a right to vote.

Professor Lisa Tetrault

People talk about it all the time, my constitutional right to vote. I am a citizen. I have the right to vote, and it is like well, those two things are not synonymous. I also wanted to point out that if you want to know more about the ways in which African American women pressed for voting in the aftermath of 1920, which we often talk about as well, that enfranchise white women, but Black women are just impressed, like you have the work of Martha Jones⁴⁹ and Leigh Chapman's⁵⁰ work, who I just want to give a shout out to. [Jones] is looking specifically at what Black women did on the ground after 1920, and they were raising Cain, let me tell you.

Professor Sarah Wadsworth

I want to thank both of our panelists, Atiba Ellis and Lisa Tetrault, for joining us for this conversation: How to Change the Narrative on Women's Suffrage, and invite everyone to join us for the four o'clock session on Innovating Activism and Women's Suffrage.

Professor Kristen Foster

Thank you all.

49. See Martha S. Jones, *Biography*, <http://marthasjones.com/biography/> (last visited July 13, 2021) (Martha Jones, a writer and historian, "focuses [her work] on law, culture, and inequality", often combining race, gender, law, and history).

50. See #BlackWomenVote, Leigh Chapman, <https://blackwomenvote.com/who-we-are/leigh-chapman/> (last visited January 19, 2022) ("Leigh M. Chapman is the director of the voting rights program, overseeing projects that advocate voting protections for marginalized people." See also Leigh M. Chapman, *Statement of Leigh M. Chapman, Voting Rights Program Director, The Leadership Conference on Civil and Human Rights U.S. House Committee on Oversight and Reform Subcommittee on Civil Rights and Civil Liberties Hearing on "Protecting the Right to Vote: Best and Worst Practices,"* The Leadership Conference on Human Rights (May 1, 2019) (<https://docs.house.gov/meetings/GO/GO02/20190501/109375/HHRG-116-GO02-Wstate-ChapmanL-20190501.pdf>).

Professor Sarah Wadsworth

Thank you.

Professor Atiba Ellis

Thank you.

Professor Lisa Tetrault

Thanks.

Professor Andrea Schneider

On behalf of the entire Planning Committee, I would like to thank you for joining us today. We would love to hear from you in a variety of mediums. And of course, remember to vote.