

SUSAN B. ANTHONY, "IS IT A CRIME FOR A U.S. CITIZEN TO VOTE?"  
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Abstract: Anthony's 1873 speech, "Is It a Crime for a U.S. Citizen to Vote?" asserted that woman suffrage was the fulfillment—rather than a violation—of U.S. law. This address, which Anthony delivered while she was under indictment for voting, asked citizens to conserve democracy by allowing all Americans to participate in self-government. This essay examines how Anthony's address called upon legal texts, public values, and democratic principles to justify a radical change in political practice.

Key Words: Susan B. Anthony, New Departure, forensic rhetoric, Reconstruction Amendments, woman suffrage

With the advent of the Civil War, the national organized movement for woman suffrage set aside its appeals for political rights to demonstrate loyalty to the Union, to devote resources to the war effort, and to champion the abolition of slavery. The Northern victory and subsequent talk of reconstruction engendered expectations that Congress would enact legislation enfranchising women as well as African American men. Instead, when Congress produced the Fourteenth Amendment, it included a section that appeared to define legal voters as "male inhabitants of such State, being twenty-one years of age and citizens of the United States."<sup>1</sup> With this passage, the word *male* was inserted into the U.S. Constitution for the first time, and the late 1860s found woman's rights activists reeling from the possibility that female suffrage could be explicitly excluded from constitutional privileges and immunities by the same amendment that would guarantee political rights for fellow reformers.

Support for or opposition to the Reconstruction Amendments fractured the national organized movement for woman's rights, splitting it into two factions: the American Woman Suffrage Association (AWSA) and the National Woman Suffrage Association (NWSA). The AWSA accepted the deferral of woman suffrage and endorsed the Reconstruction Amendments as written; the NWSA contested the omission of women from the Fourteenth and Fifteenth Amendments. Although they differed on several issues, the AWSA and the NWSA shared an important characteristic: amid the chaotic politics of Reconstruction, both organizations sought new, politically expedient strategies for securing woman suffrage.<sup>2</sup>

Following the ratification of the Fourteenth and Fifteenth Amendments, an innovative strategy for woman's rights emerged. In 1869, a few suffragists argued that women had a constitutional right to vote, and ought to claim this right by going to the

polls and taking legal action in the event that their votes were contested. Susan B. Anthony was among the activists who pursued this strategy, which was called the New Departure. Shortly after she successfully cast a ballot in the national election of 1872, Anthony was arrested, charged with illegal voting, and scheduled to stand trial. Following her indictment, Anthony delivered a public address in her defense before audiences in fifty districts of New York. This dramatic speech, "Is It a Crime for a U.S. Citizen to Vote?" emerged as a rhetorical hallmark of the New Departure.<sup>3</sup>

In view of the importance of Anthony's address, this essay explores how her rhetorical performance helped transform existing precedents, social values, and traditional democratic principles into compelling justifications for progressive reform. I find that Anthony's speech characterized audience members as political participants who could preserve American democracy—and protect their own interests—by endorsing woman suffrage as constitutional. Her performance expanded the rhetorical force of the legal arguments of the New Departure, to engage citizens in the process of legal interpretation and to appeal to them on a personal level. The first section of this essay synthesizes the origins and major arguments of the New Departure, locating Anthony's rhetoric in its historical context. After describing the specific circumstances of Anthony's vote, arrest, and trial, the second section of this essay explicates key elements of Anthony's landmark address, "Is It a Crime for a U.S. Citizen to Vote?" The conclusion of the essay considers the rhetorical and political significance of Anthony's performance.

*The New Departure: Claiming Constitutional Rights  
on Behalf of Female Citizens*

Anthony's rhetoric both emerged from and innovated within the organized movement for U.S. woman's rights. "Is It a Crime for a U.S. Citizen to Vote?" rearticulated arguments that originated with other suffragists, yet it also expanded such claims, to make a powerful public appeal on behalf of Anthony and all women. Anthony's action may be understood as a part of a larger collective effort to assert woman's right to vote, as well as an important case in its own right. This section traces the development of woman's rights activism in the nineteenth-century United States, to situate Anthony's 1873 address in the context of the equal suffrage movement, Anthony's reform career, and Reconstruction politics.

The organized movement for U.S. woman's rights began in 1848, when more than one hundred citizens including Elizabeth Cady Stanton, Lucretia Coffin Mott, and Frederick Douglass endorsed the "Declaration of Sentiments" at the Seneca Falls convention.<sup>4</sup> Between 1848 and 1861, Americans held conventions, delivered public speeches, appealed to legislators, and petitioned state and federal governments to recognize women as full citizens. When the Civil War broke out in 1861, women activists suspended organized efforts to promote gender equality and devoted their resources to supporting the Union and to abolishing slavery. In order to secure "the freedom of the slave and the salvation of the Union," women founded and ran organizations including the Sanitary League, Freedman's Bureau, and Women's Loyal

National League.<sup>5</sup> Through these and other wartime organizations—as well as their individual efforts—women made invaluable contributions to the Union and the abolition cause. Many activists expected that, given women's contributions and loyalty to the Union in an era of national crisis, the U.S government would recognize women—together with African-American men—as full citizens following the Civil War.<sup>6</sup>

At the end of the war, Susan B. Anthony was a well-known advocate of abolition and woman's rights. She was also among those who expressed hope that the reconstructed federal government would extend equal rights to women and African-American men. Like many champions of woman suffrage, Anthony began her reform career by working for temperance and abolition, and through her experiences became convinced of the need for woman's rights. Shortly after she joined the Daughters of Temperance in 1848, Anthony found that her participation in reform conventions was restricted because she was a woman; such experiences and friendship with Elizabeth Cady Stanton fostered Anthony's commitment to the issue of woman's rights.<sup>7</sup> After attending her first woman's rights convention in 1852, Anthony became an integral part of the movement to improve the political status of U.S. women. In 1854, Anthony organized a series of petition drives for woman's rights; in time, she became known as a brilliant organizer, talented political strategist, and a leading reformer.<sup>8</sup>

Even as her commitment to woman's rights grew, Anthony maintained her efforts to abolish slavery. From 1856 until the Civil War, she was a principal agent in New York for the American Anti-Slavery Society. When the Civil War began, Anthony and Stanton devoted their time, energy, and leadership to the Union cause. In 1863, they organized the Women's Loyal National League, which sought to end the war by achieving an amendment to the U.S. Constitution that would abolish slavery. As a leader of this organization, Anthony directed a petition drive that secured nearly 400,000 signatures for abolition.<sup>9</sup> After the Thirteenth Amendment outlawed slavery in the United States, in 1865, the League disbanded. Anthony and others celebrated the achievement of abolition; however, subsequent Reconstruction Amendments became a source of concern to Anthony inasmuch as they appeared to deny women the privileges and immunities of citizenship and thus hindered the "cause of equal rights to all" (38).<sup>10</sup>

Subsequently, Anthony and Stanton concentrated their efforts on the issue of woman's rights. Over the next four decades, Anthony and Stanton worked on multiple fronts to cultivate national attention and support for woman's rights, and they led some of the most significant efforts to achieve equal suffrage. In 1868, Anthony and Stanton began publishing the *Revolution*, a newspaper that championed women's suffrage, education, labor rights, and the liberalization of divorce laws. The following year, they formed the National Woman Suffrage Association; Anthony served as a member of the executive committee while Stanton assumed the NWSA presidency. As a leading advocate of woman's rights, Anthony crisscrossed the country—traveling from the Atlantic to the Pacific Coast—to build relationships with local activists, deliver public lectures, and speak with state legislators. In the season following the Civil War, Anthony expanded her efforts on behalf of woman suffrage, while expressing concern

about the potential of the Reconstruction Amendments to impede the rights of U.S. women.<sup>11</sup>

In this context of concern, an innovative new strategy for achieving woman suffrage emerged. Amid the turmoil of Reconstruction politics and activist conflict, Francis and Virginia Minor presented six resolutions to the first convention of the Missouri Woman Suffrage Association, asserting that the recently amended U.S. Constitution already enfranchised women. These resolutions promised that the amendment that seemed to be an instrument of women's oppression could become, when read correctly, a medium for political freedom. Specifically, the Minors claimed that since section 1 of the Fourteenth Amendment defined U.S. citizens as "all persons born or naturalized in the United States, and subject to the jurisdiction thereof," then citizenship was "national in character" and extended fully to all born or naturalized Americans. Moreover, they asserted, suffrage was the essential privilege and immunity of citizenship, and the effect of the Fourteenth and Fifteenth Amendments was to endorse the significance of the franchise, not to categorically exclude Americans from voting on the basis of gender.<sup>12</sup>

The Minors interpreted the term "male," where it appeared in the Fourteenth Amendment and elsewhere in U.S. law, as an inclusive pronoun that referred to all citizens, regardless of gender. Asserting that women, as "'citizens of the United States,' were protected by the broad language of the Amendment," the Minors held that the use of the word "male" in a clause about proportional representation no more excluded women from fundamental citizenship rights than the use of the word "male" in tax and criminal codes excluded women from the civic responsibilities of paying taxes and abiding by the law of the land.<sup>13</sup> In their later argument before the U.S. Supreme Court, the Minors elaborated this point, asserting: "There can be no *half-way* citizenship. Woman, as a citizen of the United States, is entitled to *all* the benefits of that position, and liable to all its obligations, *or to none*."<sup>14</sup> Insisting that the definition of citizenship required that its privileges be applied equally and fully, the Minors resolved that women ought to lay claim to their constitutional right to vote by going to the polls, and by filing legal suits in the event that their ballots were rejected.

Susan B. Anthony was in attendance when the Minors introduced their strategy for seizing the right to vote through legal means. Anthony and Elizabeth Cady Stanton widely publicized the Resolutions in the *Revolution*, celebrating the Minors' arguments as "something new" that revealed the possibility that women could assert an existing "constitutional right to vote."<sup>15</sup> National circulation of the Minor Resolutions stimulated a new era of suffrage activism, marked by forceful rhetoric and by efforts of hundreds of women throughout the country to vote. This collective national effort to aggressively assert women's citizenship rights represented a remarkable shift from preceding suffrage strategies such as the petitioning that characterized many pre-war efforts and the supplication enacted during the war; as such, it became known as the New Departure.

Two forms of action characterized the New Departure. First, women who enacted this strategy engaged in legal interpretation and argument. They expounded the Fourteenth and Fifteenth Amendments and reasoned that the federal Constitution

entitled women, as U.S. citizens, to vote. This kind of speech differed from earlier forms of suffrage activism; rather than continuing to *ask* legislators to grant them the franchise, women *asserted* that they already possessed the right to vote. Second, women who participated in the New Departure acted on their legal claims by going to the polls and attempting to vote. In the years immediately following the Minor's introduction of this new strategy for seizing the right to vote, women throughout the country engaged in this remarkable form of activism. Between the late 1860s and the mid-1870s, Angela G. Ray and Cindy Koenig Richards note, "from Connecticut to California, Ohio to Oregon, Maine to Missouri, New Hampshire to North Carolina, women applied to register or to vote. They included Abigail Scott Duniway in Portland, Oregon; Sojourner Truth in Battle Creek, Michigan; Isabella Beecher Hooker in Hartford, Connecticut; and Susan B. Anthony in Rochester, New York."<sup>16</sup> Some women successfully registered and voted; many more were rebuffed at registration offices and the polls.

On November 1, 1872, Anthony entered a registry office that was located in a barber's shop in her hometown of Rochester, New York. When the three election officials present hesitated to register Anthony as a voter, she "expounded to them the XIV Amendment."<sup>17</sup> Subsequently, two of the inspectors recorded Anthony's name and the names of a number of other local women. Although some Rochester newspapers noted Anthony's registration without editorial comment, two local papers insisted, "If the votes of these women were received the inspectors should be prosecuted to the full extent of the law."<sup>18</sup> Nonetheless, on Election Day, inspectors in the eighth ward recognized Anthony and fourteen other women as registered voters and provided them with ballots. While her companions cast their votes on the morning of November 5, Anthony completed her ballot, swore it in, and deposited it in the polling box.<sup>19</sup> Shortly thereafter, Anthony wrote to Stanton, "Well I have been & gone & done it!!—positively voted the Republican ticket—strait—this A.M. at 7 O'clock ... I hope you voted too."<sup>20</sup>

In late November, weeks after casting a ballot, Anthony was arrested in her home and charged with illegal voting.<sup>21</sup> Although the fourteen women who voted alongside Anthony in Rochester were also arrested and indicted, Anthony alone was scheduled to stand trial.<sup>22</sup> Within the Rochester community and in the United States, Anthony was thus a representative case and a unique case: like many other women, she adopted the strategy of direct action by going to the polls and engaging in legal argument. Yet, unlike others, she would make a case for woman suffrage as a defendant.<sup>23</sup> Anthony's legal position differed from those who pursued New Departure cases as plaintiffs, such as Virginia and Francis Minor, who sued Missouri registrar Reece Happersett for rejecting Virginia Minor's effort to register and to vote.<sup>24</sup> In contrast to those who acted as plaintiffs, Anthony was put in the unprecedented position of defending women's participation in an ordinary ritual of citizenship—the act of voting—from federal criminal charges.<sup>25</sup>

Although one can imagine that Anthony might have preferred to assert the legality of woman suffrage by casting an unchallenged ballot, rather than being arrested and charged with a crime, Anthony maximized rhetorically her position as a

defendant. Her public address, "Is It a Crime for a U.S. Citizen to Vote?" presented her case as a defense of American law and the citizen's right to engage in democratic activities. Anthony's discourse asserted that legal precedent, common social values, and traditional democratic principles supported the practice of woman suffrage. As she argued that the Constitution and Declaration of Independence protected her right to vote, Anthony characterized her position as that of a citizen wrongly assailed by the government, rather than that of a woman seeking to amend existing law.

Anthony's address also posited a powerful connection between the rights of women and the rights of all citizens. Her rhetoric transformed the particular, abstract legal questions of her trial into a civic issue that appeared to be germane to all. By conveying her case for woman suffrage as a defense not merely of her individual interests, but also of fundamental American principles and the rights of all citizens, Anthony's discourse synthesized her position with a shared vision of what American democracy should be. In the process, she asserted that any regime willing to incriminate a woman citizen for participating in self-government violated the social contract and must be corrected, lest it trample the rights of all citizens. Facing criminal charges for voting, Anthony underscored her fidelity to a government, of, by and for the people, as she went public with the question, "Is It a Crime for a U.S. Citizen to Vote?" By analyzing the text of Anthony's speech, the following section of this essay illuminates how her rhetoric characterized audience members as political participants who could preserve American democracy—and protect their own interests—by endorsing woman suffrage.

*Suffrage, Self-Government, and the Supreme Law of the Land:  
Anthony in Defense of All*

At the National Woman Suffrage Association meeting in Washington, DC on 16 January 1873, Anthony debuted a public address in which she asserted that she had committed no crime by voting. The speech, entitled "Is It a Crime for a U.S. Citizen to Vote?" argued that citizens of both genders were enfranchised under the terms of the Reconstruction Amendments. Anthony's address well received by the activists gathered in Washington, DC, who passed resolutions in support of her case, including one that declared, "the criminal prosecution of Susan B. Anthony by the United States, for the alleged crime of exercising the citizen's right of suffrage, is an act of arbitrary and unconstitutional authority and a blow at the liberties of every citizen of this nation."<sup>26</sup> Upon her return to New York, Anthony spent the spring delivering this speech to audiences throughout two counties of New York.<sup>27</sup> Between her indictment and the trial in June of 1873, Anthony canvassed Monroe, the county in which she was scheduled to be tried, and spoke before at least twenty-nine local audiences. Anthony's dramatic public speech attracted large local audiences and aroused public support for her case, leading the district attorney to obtain a change of venue on the ground that a fair trial could no longer be had in Monroe.<sup>28</sup>

Following the change in venue, Anthony delivered her speech to more than twenty audiences in Ontario County, in the twenty-two days prior to her trial there.

Citizens in Ontario, like audiences in Monroe, responded favorably to the address; in several instances, they "unanimously indorsed" resolutions in support of Anthony and woman suffrage.<sup>29</sup> By the time Anthony's case went to trial, some believed "the men of Ontario to be too generally enlightened on the subject to find any twelve who could be trusted to bring in a verdict of guilty against women for voting."<sup>30</sup> In addition to winning some local support for her cause, the speech that Anthony's delivered prior to her trial captured the attention of citizens throughout the United States, and garnered considerable publicity for woman suffrage and the New Departure.<sup>31</sup>

Anthony's address extended the rhetorical strategies of the Minors to make a compelling case that women, as citizens of the United States, were enfranchised under the Constitution. Like the Minors, Anthony asserted that voting was inherent to citizenship, and that state laws restricting the right of women to vote were inconsistent with the federal Constitution and therefore null and void.<sup>32</sup> Anthony—like other New Departure activists—made arguments from legal priority, arguments from consistency, arguments from authority or legal precedent, and arguments from logical entailment.<sup>33</sup> She quoted and interpreted the law, using it as a warrant for woman's right to vote. These kinds of arguments, which were insistently deductive and legally derived, echoed the Minor Resolutions. Moreover, Anthony's explicit and detailed analogy between women and black men—an analogy Anthony offered in support of the idea that regardless of their sex and race, American citizens were guaranteed rights under the terms of the amended Constitution—reiterated claims made by the Minors.<sup>34</sup>

Yet Anthony's public address also differed from the appeals articulated by the Minors in ways that extended the rhetorical force of the New Departure. As she spoke in her own defense, Anthony fused her interpretation of the law with a powerful public vision of American democracy. If they understood the law as she did, Anthony argued, citizens could realize the promise of a government of, by, and for the people. Her address offered more than legal arguments for woman suffrage; it characterized its audience as citizens with the capacity to make the law consistent with public values, and gave them compelling reasons to do so. In the remainder of this section, I analyze how Anthony's address called on citizens to unify American political practice, precepts, and law—and to achieve this end by endorsing woman's right to vote.

In her public address, Anthony spoke in a way that characterized audience members as active participants in her trial and in the U.S. government. As Anthony argued her case in public forums throughout Monroe and Ontario counties, she did not simply adapt her speaking style to the lay audiences she addressed in public forums. Through a series of rhetorical choices, Anthony cast those who heard her speak in the role of jurors and molded her speaking situation in the image of a legal courtroom.<sup>35</sup> "I will prove to you," she said in the style of an attorney addressing a jury, "that the class of citizens for which I now plead, and to which I belong, may be and are [enfranchised] by the principles of our government" (67). Anthony's forensic address constructed audience members as citizens who possessed the information and characteristics necessary to render a legal decision.<sup>36</sup> After querying, "*Is the right to vote one of the privileges and immunities of citizenship?*" Anthony provided audiences with citations from the relevant written law, judicial opinions, legal interpretations, and historical

precedents, and asked them to judge (43).<sup>37</sup> As she called upon citizens to "*protect* each other in the enjoyment ... of their unalienable rights," Anthony characterized her audience as something greater than a collection of individuals who would decide for themselves whether a woman voter was a criminal. Her rhetoric invoked them as "we, the people" whose will is the basis of American law and democracy (1).

As she spoke to her peers as if they were the arbiters of her case, Anthony imparted a theory of democracy that was consistent with her argument that women citizens had the right to vote. The style and substance of her rhetoric emphasized that American citizens were authorized—and obligated—to "participate in making and executing the laws" (1). Under a government that derives its "powers from the consent of the governed," citizens had not only a right to vote, but also a responsibility to resist any attempt to abridge the franchise (3).<sup>38</sup> Anthony's address conveyed that, in addition to making law, citizens had the capacity to determine—collectively—the proper meaning and application of existing law. Anthony recognized other citizens as the source of political authority; in accordance with this democratic precept, she addressed the central question in her case directly to local women and men, asking them, "Is It a Crime for a U.S. Citizen to Vote?"

Anthony did not characterize her rhetoric as an effort simply to appeal to the state or national government through public pressure; instead she took her case to the people and directed them to adjudicate it. "We no longer petition legislature nor congress to give us the right to vote," Anthony declared (89). She continued: "We appeal to the inspectors of elections everywhere to receive the votes of all United States citizens as it is their duty to do," and "we ask the juries to fail to return a verdict of 'guilty' against honest, law-abiding, tax paying United States citizens for offering their votes, at our elections" (91).<sup>39</sup> At a pragmatic level, the rhetorical choice to call on audience members reflected that Anthony expected to be tried by a jury of her fellow New Yorkers. On another level, this choice to appeal to the people—not only to statesmen—emphasized Anthony's central claim that democratic power and rights ultimately inhere in citizens.<sup>40</sup>

In her appeal to citizens, Anthony emphasized that public action in support of woman suffrage represented the enforcement of American law rather than rebellion against it. Although Anthony's 1872 vote was an unconventional and contested act, her forensic address made the case that woman suffrage was anything but contrary to the "spirit and letter" of American law (4). Anthony appealed to fellow citizens to *protect* the citizens' constitutional right to vote, not to nullify the law in order to enfranchise women.<sup>41</sup> Speaking to local audiences prior to her trial, Anthony insisted, "I not only committed no crime, but, instead, simply exercised my citizen's right, guaranteed to me and all United States citizens, beyond the power of any state to deny."<sup>42</sup> Thus at the foundation of Anthony's appeal was the claim that the law in its existing form already enfranchised women, and that citizen-jurors needed only to *uphold* the federal Constitution as written—over and above conflicting state statutes and harmful interpretations—to validate woman's suffrage and protect natural rights. This position of innocence before the law rendered Anthony's speech, legal interpretation, and act



of voting consistent, as all three worked together to assert that a woman suffrage could not be a criminal act in a nation established to protect self-government.

Anthony's rhetoric asserted that any rule that would disfranchise an entire class of citizens would conflict with existing U.S. law and the tenets of American democracy and was therefore illegitimate. "The Declaration of Independence, the United States Constitution, the constitutions of the several states, and the organic laws of the territories, all alike, propose to *protect* the people in the exercise of their God-given rights," Anthony declared (2). Making an argument from legal priority, Anthony maintained that no valid statute could contradict the principles of democracy, as expressed in founding texts such as the U.S. Constitution.<sup>43</sup> She concluded, "for any state to make *sex* a qualification that must ever result in the disenfranchisement of an entire half of the people [is] a violation of the *supreme* law of the land" (26). In other words, Anthony held that no law could claim to disfranchise women citizens, without being in conflict with the Constitution of the United States.

Rather than merely claiming that the Constitution guaranteed the right to vote, Anthony offered an interpretive framework for understanding and applying the founding document; she insisted that the Constitution must be consistent with and accountable to the fundamental principle of self-government. Like other New Departure advocates, Anthony held that any right not surrendered in the Constitution is retained by citizens; moreover, Anthony insisted that voting, as an inherent right, may be regulated but could not be abridged by a democratic government. Prohibiting women from voting would conflict with the central principles of American democracy, rendering the U.S. government an institution in conflict with its very reasoning for existence. Emphasizing her position that the categorical disfranchisement of women citizens was illegal, Anthony insisted that wherever such a practice is carried out, the "government has *no just powers* derived from the consent of the governed. To women this government is not a democracy; it is not a republic...and this in the face of sec. 4 of article 4th, which says, 'The United States shall guarantee to every state in this Union a republican form of government'" (26).

In view of this tension between the United States' practice of denying the franchise to women and its natural rights principles, Anthony provided audiences with a simple way to align the law as it is written with the American pledge to secure government of, by, and for the people. U.S. citizens could endorse woman suffrage and realize democracy, Anthony suggested, if they interpreted and applied the law according to two principles of consistency. Specifically, Anthony called for the consistent interpretation of pronouns in the law, and unanimity between natural rights principles and the meaning of the law. Anthony's address modeled this consistent approach to the law, as she advanced four points about the Reconstruction Amendments.

First, Anthony read the first section of the Fourteenth Amendment as an affirmation that women are among the citizens whose natural rights the United States pledged to protect. "Whatever room there was for a doubt under the old regime," Anthony contended, "the adoption of the fourteenth amendment settled the question forever in its first sentence: 'All *persons* born or naturalized in the United States, and

subject to the jurisdiction thereof, *are citizens* of the United States, and of the state wherein they reside" (40). Women were certainly persons, Anthony pointed out, and as such, women were recognized as citizens and guaranteed by the Constitution every according right and responsibility.

Second, Anthony read the second section of the Fourteenth Amendment as a gender-neutral articulation of the penalties for denying a class of citizens their right to the franchise. She submitted "that in view of the explicit assertions of *the right for the whole people*, both in the preamble and previous article of the constitution, *this omission* of the adjective '*female*' in the 2d, should *not* be construed into a *denial*; but instead, counted as of *no effect*, in view of the direct prohibition, 'No member of this state shall be disfranchised, unless by the *law of the land*, or the judgment of his peers.'" (20). The Fourteenth Amendment, Anthony maintained, did not disfranchise women citizens—it stipulated consequences for failure to uphold the citizen's right to vote. Like the Minors, Anthony interpreted the term "male" as it appeared in the law as an inclusive pronoun that functioned to enfranchise all citizens, regardless of gender.

Third, Anthony argued that the meaning of the pronoun "male" in legal statutes and constitutional law must be interpreted consistently. Citing case law, Anthony stipulated, "in all the penalties and burdens of government (except the military) women are reckoned as citizens equally with men," and that the "question of the masculine pronouns—yes, and nouns too—has been settled by the United States Supreme Court" (36-38). In other words, Anthony argued that inasmuch as the law held women accountable to criminal, civil, and tax statutes that employed the pronoun "male," it also imparted to women the privileges and immunities expressly guaranteed to "male" citizens. Read consistently, Anthony pointed out that the law either excluded women from all legal responsibilities and rights, or recognized women as equal to men. Rejecting popular counterarguments regarding the meaning of the term "male" in the Fourteenth Amendment, Anthony concluded: "But, it is urged, the use of the masculine pronouns, he his, and him, in all the constitutions is proof that *only men were meant* to be included in their provisions. If you insist on *this* version of the letter of the law, we shall insist that you be consistent and accept the other horn of the dilemma, and exempt women from taxation for the support of the government and from the penalties for the violation of laws" (28).

Fourth, Anthony interpreted the Fifteenth Amendment as a gender-neutral endorsement of citizen's voting rights. Some claimed that section one of the Fifteenth Amendment was evidence that the guarantees of the Reconstruction Amendments did not apply to women. In contrast, Anthony argued that this section, which states, "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude," protected the voting rights of female and male citizens alike. In response to those who invoked the Fifteenth Amendment against woman's rights, Anthony remarked, "if you will insist that this emphatic interdiction against robbing United States citizens of their right to vote ... is a right to rob citizens of that right for any or all other reasons, I will prove to you that the class of citizens for which I now plead, and to which I belong, may be and are, by all the principles of government, and many of the

laws of the states, *included* under the term of 'previous condition of servitude'" (67). Anthony cited several definitions of slavery by founding fathers, statesmen, and judges, to make the point that women—who had long been subject to laws that were not of their own making—qualified for the protections of the Fifteenth Amendment. Her speech quoted Benjamin Franklin's founding assertion that "to be enslaved is to have governors whom other men have set over us, and to be subject to laws made by the representatives of others" and described the particular characteristics of American women's political enslavement, in order to emphasize that the Fifteenth Amendment protected women as well as freedmen in their right to vote (79).<sup>44</sup>

In sum, Anthony offered an interpretation of the Fourteenth and Fifteenth Amendments that made them gender-neutral endorsements of privileges and immunities of citizenship, which included the vote. Like others who participated in the New Departure, Anthony "demonstrated that 'the law' was not a monolith but rather a versatile resource in a rhetorical culture characterized by constitutional struggle."<sup>45</sup> Anthony's interpretation showed how the amended Constitution could be judged as consistent with natural rights principles and the practice of woman suffrage. Through this rhetorical framework, Anthony characterized public validation of woman's rights in general—and Anthony's action in particular—as the conservation, rather than the alteration, of the letter and spirit of American law.

The rhetorical and political advantages of conveying one's position as a conservative—rather than a radical—one in relationship to American law are many. In Anthony's address, appeals to consistency and tradition situated progressive assertions upon stable political ground. Anthony's rhetorical position asserted that presumption was in her favor; her claim that existing law affirmed woman suffrage implied that Anthony need only vindicate the status quo, rather than provide warrant for change. In addition to lowering the burden of proof, Anthony's rhetoric associated woman suffrage with celebrated statesmen, texts, and precepts.<sup>46</sup> As it called upon ideas and symbols that were revered in American public culture, Anthony's speech in defense of herself made both rational and emotional appeals for woman suffrage.

Additionally, Anthony extended the rhetoric of the New Departure to emphasize the importance of validating constitutional rights for all American citizens by making her case of pragmatic, personal significance to her audience. In contrast to the legal arguments for woman suffrage articulated by the Minors and Virginia Woodhull, which relied upon abstract principles like justice and equality, Anthony also appealed forthrightly to the self-interest of her fellow citizens, stressing that their political rights were linked with hers. If the United States government did not uphold the legal principle of universal suffrage, she claimed, the "government is not a democracy; it is not a republic; it is an odious aristocracy—a hateful oligarchy of sex" (26). Such a government, Anthony warned, embitters and disappoints citizens as it promotes national confusion, discord, and disruption, "and thereby endangers the safety of the whole people" (65).

In order to protect their own political rights, Anthony charged, citizens had to resist "the false principle that United States citizenship does not carry with it the right to vote in every state in the Union," lest they fall victim to the "petty freaks and

cunning devices that will be resorted to [in order] to exclude one and another class of citizens from the right of suffrage" (64). The clear and immediate way for Anthony's peers to guarantee their own rights, thus, was to recognize her guiltlessness before the law, thereby validating the "one safe principle of government—equal rights to all citizens" (65). By asserting that woman suffrage was inextricably tied to the rights of Americans of every class and gender, Anthony extended the legal arguments characteristic of the New Departure to emphasize citizenship as a shared identity and to transform an abstract legal question into a pragmatic public issue.

Anthony's address, "Is It a Crime for a U.S. Citizen to Vote?" represented legal arguments characteristic of the New Departure to assert that woman suffrage was not criminal. Her address characterized Anthony as a citizen with unalienable rights, portrayed citizens as jurors with the capacity to conserve fundamental American law, and framed the endorsement of woman suffrage as a way to bring existing law into alignment with natural rights principles. By articulating these claims on behalf of herself, Anthony enacted a defining strategy of the New Departure: she asserted her right to vote, rather than pleading for it. This rhetorical performance also extended New Departure arguments to synthesize a popular vision of American democracy with Anthony and her interpretation of existing law. Moreover, Anthony's choice to appeal directly to her audiences to adjudicate the law emphasized her claim that citizenship was a category to which all Americans belonged, and a participatory role through which self-government was enacted. As she directed audiences to conserve fundamental federal law and their own right to self-government by acknowledging her constitutional right to vote, Anthony's appeals provided additional support for—and an emotional dimension to—the central claims of the New Departure.

*"Failure is impossible": The Rhetorical Significance of Anthony's Defense*

The history of the Anthony trial suggests that her forensic address was compelling, both legally and publicly. Anthony drew large crowds and many favorable responses as she defended her vote to audiences throughout Monroe and Ontario counties. Suffrage activists articulated hopes that Anthony's case would result in a district court decision affirming woman's constitutional right to vote, or a strong appeal to the U.S. Supreme Court. Judges William Storrs and Nathan Hall, who presided over Anthony's case at the district court level, gave early rulings in her favor. Specifically, Judge Hall released the women—except for Anthony—who had been indicted for voting in Rochester, and issued a writ of habeas corpus for Anthony, which was perceived as a means for Anthony to appeal the legality of her arrest to the U.S. Supreme Court.<sup>47</sup>

However, before Hall could rule on Anthony's case, prosecuting District Attorney Richard Crowley successfully requested that the trial be moved from Judge Hall's district court to the U.S. Circuit Court. As a consequence, U.S. Supreme Court Justice Ward Hunt, rather than Judge Hall, presided over Anthony's appeal and her subsequent trial. Justice Hunt was known for his staunch opposition to woman suffrage, and his presence on the bench rendered the Anthony case more difficult to

defend, as he narrowed the scope of admissible defense arguments and witnesses. Hunt refused to allow Anthony's attorney to address the question of whether Anthony had cast her ballot in good faith because of her perceived right to vote, and he rejected Anthony's petition to speak in her own behalf as a defense witness. Moreover, following the presentation of arguments in the case, Justice Hunt directed the jury of twelve men not to discuss or render a verdict, on the grounds that Hunt himself had determined that there was no question for the jury to consider in her case.<sup>48</sup>

Hunt thus took the unusual—and unconstitutional—step of silencing the jury, in spite of the objections of attorneys present, and delivering a written opinion in the case immediately following the conclusion of closing arguments.<sup>49</sup> Citing two recent Supreme Court decisions that narrowly defined the rights of U.S. citizenship, Hunt declared that the right to vote was not among the privileges and immunities protected by the Fourteenth Amendment.<sup>50</sup> States retained their full rights to bar citizens from voting, he said, with the exception of barriers based on race, color, or previous condition of servitude, as set forth in the Fifteenth Amendment. Hunt dismissed Anthony's argument that women, as citizens of the United States, were enfranchised under the terms of the Fourteenth Amendment and disregarded her claim that women, having been categorically subject to involuntary servitude, qualified for the protections of the Fifteenth Amendment. Because Anthony knew that New York enfranchised only males, Hunt claimed, she knew that she lacked the right to vote and thus acted knowingly to violate the law. Hunt concluded that there was no question for the jury to decide and directed it to return a verdict of guilty. After refusing the request of Anthony's attorney to conduct a straw poll of the jury regarding Anthony's guilt or innocence, Justice Hunt recorded a guilty verdict in the case.<sup>51</sup>

Following his ruling, Justice Hunt, perhaps expecting an apology from the defendant, asked Anthony whether she had anything to say. Anthony replied, "Yes, I have many things to say, for in your ordered verdict of guilty, you have trampled under foot every vital principle of our government."<sup>52</sup> Anthony went on to question the validity of a trial determined not by a jury of her peers, but by an agent of the state. As she articulated an incisive challenge to the Court's verdict, Anthony was repeatedly interrupted and ordered to be silent by Hunt, who continued to insist that Anthony, as a woman, was incompetent to speak in her behalf on a legal issue. Hunt sentenced her to pay a fine of \$100 plus the costs of her prosecution, which Anthony in turn declared was an unjust dictate to which she would never submit.<sup>53</sup> True to her word, Anthony never paid the fine; instead, she attempted to vote again in November 1873 but was denied registration by the men at the polls.<sup>54</sup>

Although the Anthony case did not result in an expedient recognition of woman's legal and natural right to the elective franchise, her speech dramatized the tension between laws that would criminalize a voting citizen, and the essential principles of democratic government. Anthony's claims on behalf of herself gave public meaning to abstract legal questions and challenged audiences to recognize a voting woman as a model citizen, capable of interpreting the law, embodying civic republicanism, and appealing to democratic government on its own terms. Moreover, Anthony's defense provided a rationale by which the public could—and reasons why

they should—validate woman suffrage in order to protect their own rights, and bring existing law into alignment with guiding democratic principles.

Anthony's legacy is far too long and significant to summarize in the conclusion of a brief essay examining a single speech. In sum, however, her extraordinary reform career demonstrated Anthony's brilliant political mind, remarkable ability to organize activists, and profound commitment to the challenging work of disabusing prejudice and promoting progress. That one of the greatest achievements of the woman's rights movement—the Nineteenth Amendment—bears her name is a testament to the significance of Anthony's work. In addition to making history through her activism, Anthony also wrote an indispensable history. With Elizabeth Cady Stanton, Matilda Joslyn Gage, and Ida Husted Harper, Anthony edited four of the six volumes of *History of Woman Suffrage*. These texts, which give a detailed account of the national movement from 1848 to 1920, continue to offer Americans insight into the dynamics of U.S. history, politics, rhetoric, and the national movement for woman's rights.

Yet, of all of her contributions, "Is It a Crime for a U.S. Citizen to Vote?" remains one of Anthony's most famous and remarkable endeavors. It is possible to observe a few of the most significant implications of Anthony's 1872 vote, speech in defense of her right to the ballot, and trial. Although Anthony's case was technically a legal failure, as it did not result in an immediate recognition of her right to the franchise, her rhetorical performance influenced both the direction of the suffrage movement and public awareness regarding woman suffrage. New Departure arguments may have failed in court, but they invigorated efforts for woman suffrage during Reconstruction and offered a new public vision of the relationship between women, citizenship, and the law.<sup>55</sup> As Anthony's widely publicized address engaged the public in her case for woman suffrage, it opened possibilities for integrating the issue of gender into the mainstream of constitutional consciousness and public debate.<sup>56</sup>

Anthony herself described the New Departure as an effort that changed the issue of woman suffrage from one of "vague complainings to a question of Constitutional law."<sup>57</sup> In addition to refocusing the organized woman's rights movement in the United States amid the politics of Reconstruction, cases such as Anthony's forced courts to address the issue of woman suffrage in serious forensic terms, rather than derisive discourse. As Ray notes, "women's appropriation of the rituals of voting challenged unmarked assumptions about who could be a citizen and how political power was enacted."<sup>58</sup> Opposition to suffrage thus began to evolve from oblique, unwritten social mores into discrete arguments articulated in the legal sphere. As such, anti-suffrage positions became increasingly vulnerable to the logic of democracy together with thoughtful efforts to establish legal rights for women citizens.

Finally, the New Departure in general and Anthony's address in particular did much to enhance public awareness of the issue of woman suffrage, and of arguments for enfranchising women citizens. In addition to encouraging and providing a model for other women, Anthony's compelling defense of her successful effort to vote refuted several common arguments against woman suffrage—including the assumption that women did not want to vote—and promoted public discussion of the issue. In this cultural milieu, Anthony's defense of a citizen's right to vote was a remarkable public

performance that that not only called into question cultural assumptions that worked against women's rights, but also synthesized foundational political principles with a specific reform agenda. Her rhetoric allied the ballot of an individual woman with the privileges and immunities of the entire American citizenry.

More than a century later, there remains much that students of rhetoric, history, and democratic practice can gain from Anthony's defense of equal rights under the law. As Americans today debate issues such as immigration and gay rights, they consider questions once deliberated by Anthony: What does it mean to be a U.S. citizen? To whom does the law, as written, extend the rights of citizenship? Does our Constitution—and our political practice—protect the inherent rights of all, or of only some people? For whom is participation in ordinary rituals of democracy a crime? Anthony's speech, "Is It a Crime for a U.S. Citizen to Vote?" offered an instructive response to questions about citizenship and equality that remain relevant today. It rooted a progressive vision of American politics in traditional democratic principles and existing law—and emphasized citizenship as a universal category—in order to assert an equal place for women in American politics. Anthony's landmark rhetorical performance illustrated enduring principles for articulating American political relationships and applying historical resources, in a manner that expands the present bond between—and assures the inalienable rights of—individual women and men.

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Cindy Koenig Richards is a doctoral candidate at Northwestern University. She wishes to thank David Zarefsky, Shawn Parry-Giles, and Lisa Hogan for thoughtful responses to earlier versions of this essay, and Angela G. Ray for stimulating conversations about the subjects of this essay.

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#### Notes

1 Section 2 of the Fourteenth Amendment reads: "Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of Electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State."

2 For an account of the political differences that led to the divide between the AWSA and the NWSA see, for instance, Elizabeth Cady Stanton, Susan B. Anthony, and Matilda Joslyn Gage, eds., *History of Woman Suffrage*, vol. 2, 1861–1876 (Rochester, NY: Susan B. Anthony, 1881): 400–401, 756–66 (hereafter *HWS 2*). See also Ellen Carol

DuBois, "Taking the Law into Our Own Hands: *Bradwell, Minor*, and Suffrage Militance in the 1870s," in *Visible Women: New Essays on American Activism*, ed. Nancy A. Hewitt and Susanne Lebsack (Urbana: University of Illinois Press, 1992), 20.

3 Specifically, Anthony spoke "in twenty-nine of the post-office districts of Monroe, and twenty-one of Ontario, in her canvass of those counties, prior to her trial" (*HWS* 2:630). See also Ida Husted Harper, *The Life and Work of Susan B. Anthony*, vol. 1, (New York: Arno Press, 1969), 435.

4 See Elizabeth Cady Stanton, Susan B. Anthony, and Matilda Joselyn Gage, eds., *History of Woman Suffrage*, vol. 1, 1848-1861 (Rochester, NY: Susan B. Anthony, 1889), 63-75; and Karlyn Kohrs Campbell, *Man Cannot Speak for Her: A Critical Study of Early Feminist Rhetoric*, Vol. 1 (New York: Praeger, 1989), 52.

5 Harper, *The Life and Work of Susan B. Anthony*, 239.

6 See Eleanor Flexner, *Century of Struggle: The Woman's Rights Movement in the United States* (New York: Atheneum, 1974), 105-112, 142-155; and Campbell, *Man Cannot Speak For Her*, 105.

7 At the Sons of Temperance Meeting in Rochester in 1852, for instance, Anthony was informed that female delegates like herself "were not invited there to speak but to listen and learn." In response, Anthony and several other women left the hall. See Harper, *The Life and Work of Susan B. Anthony*, 65. See also Campbell, *Man Cannot Speak For Her*, 117.

8 Anthony attended her first woman's rights convention on 8 September 1852, in Syracuse, New York. See Harper, *The Life and Work of Susan B. Anthony*, 72.

Regarding Anthony's work organizing petition drives, see Harper, *The Life and Work of Susan B. Anthony*, 107-110.

9 Harper, *The Life and Work of Susan B. Anthony*, 225-240.

10 All of the remaining passages for Anthony's "Is it a Crime for a U.S. Citizen to Vote?" are cited with reference to paragraph numbers in the speech that accompanies this essay.

11 For example, in 1871 Anthony spoke about the Reconstruction Amendments and woman's rights before public audiences—and during meetings with judges—in Oregon. Drawing on New Departure arguments, Anthony called upon Oregonians to interpret the Fourteenth and Fifteenth Amendments as protective of male and female citizens' right to vote. For an account of Anthony's presentation of New Departure arguments in Oregon, see G. Thomas Edwards, *Sowing Good Seeds: The Northwest Suffrage Campaigns of Susan B. Anthony* (Portland: Oregon Historical Society Press, 1990), 43-47.

12 "The St. Louis Resolutions," *Revolution*, October 28, 1869, 259; see also "St. Louis Convention," *Revolution*, October 21, 1869, 250; and Ray and Richards, "Inventing Citizens, Imagining Gender Justice."

13 *HWS* 2:729.

14 "Mrs. Francis Minor," *Revolution*, 28 October 1869, 259; U.S. Supreme Court, *Virginia L. Minor and Francis Minor, Her Husband, Plaintiffs in Error, vs. Reese Happersett*, Transcript of Record, no. 182, filed August 16, 1873, 13.



15 "The St. Louis Convention," *Revolution*, 12 October 1869, 250. Here, the resolutions drafted by Francis Minor and adopted by the Missouri Woman Suffrage Association at its convention held in St. Louis in October 1869 were published in full, alongside commentary by Anthony and Stanton. The Minors' early arguments can be traced in the pages of the *Revolution*: "Woman's Suffrage Convention in St. Louis— Ideas to be Fought, Not Men," 14 October 1869, 235; "St. Louis," 14 October 1869, 236; "Principles, Not Policy," 21 October 1869, 250-251; "Mrs. Francis Minor," 28 October 1869, 258-259; "A Good Determination," 23 December 1869, 395; Francis Minor, "Fundamental Rights," 20 January 1870, 38-39. The Minors' interpretation of the Reconstruction Amendments and their arguments for claiming woman suffrage through legal channels are explicated in Angela G. Ray and Cindy Koenig Richards, "Inventing Citizens, Imagining Gender Justice: The Suffrage Rhetoric of Virginia and Francis Minor," *Quarterly Journal of Speech* 93 (2007): forthcoming.

16 Ray and Richards, "Inventing Citizens, Imagining Gender Justice," forthcoming. A list of known efforts by women to vote appears in Ann D. Gordon, ed., *The Selected Papers of Elizabeth Cady Stanton and Susan B. Anthony*, vol. 2, *Against an Aristocracy of Sex, 1866 to 1873* (New Brunswick, NJ: Rutgers University Press, 2000), 645-654. Regarding Anthony, see Gordon, *Selected Papers* 2:524-527; *An Account of the Proceedings on the Trial of Susan B. Anthony, on the Charge of Illegal Voting, at the Presidential Election in Nov., 1872, and on the Trial of Beverly W. Jones, Edwin T. Marsh and William B. Hall, the Inspectors of Election by Whom Her Vote Was Received* (Rochester, NY: Daily Democrat and Chronicle Book Print, 1874).

17 HWS 2:626-28. Anthony registered to vote on 1 November 1872; inspectors Beverly W. Jones and Edwin F. Marsh entered Anthony's name, to the objection of inspector William B. Hall. See also *An Account of the Proceedings on the Trial of Susan B. Anthony*, 11; Harper, *The Life and Work of Susan B. Anthony*, 423-424; Angela G. Ray, "The Rhetorical Ritual of Citizenship: Women's Voting as Public Performance, 1868-1875," *Quarterly Journal of Speech* 93:1 (February 2007), 13.

18 The Rochester *Union and Advertiser*, quoted in Harper, *The Life and Work of Susan B. Anthony*, 424.

19 HWS 2:628. According to HWS, Anthony and the following women voted in Rochester on November 5, 1873: "Mrs. Hannah Anthony Mosher, Mrs. Mary S. Hebard, Mrs. Nancy M. Chapman, Mrs. Jane M. Cogswell, Mrs. Martha N. French, Mrs. Maragret Leyden, Mrs. Lottie Bolles Anthony, Mrs. Hannah Chatfield, Mrs. Susan M. Hough, Mrs. Sarah Truesdale, Mrs. Mary Pulver, Mrs. Rhoda De Garmo, Mrs. Guelma Anthony McLean, Miss Mary S. Anthony, Miss Ellen T. Baker. The following ladies registered but were not allowed to vote: Mrs. Amy Post, Mrs. Mary Fish Curtis, Mrs. Dr. Dutton, Mrs. Charlotte Wilbur Griffing, Mrs. Dr. Wheeler, Mrs. Allen, Mrs. Lathrop" (647). See also Harper, *The Life and Work of Susan B. Anthony*, 427.

20 Gordon, *Selected Papers* 2:524-5.

21 HWS 2:628-29; Harper, *The Life and Work of Susan B. Anthony*, 426. HWS states that Anthony was arrested on Thanksgiving day; Harper states that the arrest occurred on November 18. Karlyn Kohrs Campbell notes that Anthony was "arrested

and indicted on the criminal charge of violating the federal law passed in 1870 to prevent formal rebels from voting," not a New York state law regarding the legality of woman suffrage. Specifically, Anthony was charged with voting for members of the U.S. House of Representatives without having a lawful right to vote, in violation of section 19 of the Enforcement Act of 1870. See Campbell, "Contemporary Rhetorical Criticism: Genres, Analogs, and Susan B. Anthony," in *The Jensen Lectures: Contemporary Communication Studies*, ed. John I. Sisco (Tampa: University of South Florida, 1982), 123.

22 *Account of the Proceedings on the Trial of Susan B. Anthony*, p. v. A *nolle prosequi* (a prosecutor's application to discontinue criminal charges) was entered upon the indictments of the thirteen women who voted alongside Anthony in Rochester.

23 See Ray, "The Rhetorical Ritual of Citizenship," 6; *HWS* 2:626-28.

24 See *Minor v. Happersett*; Ray and Richards, "Inventing Citizens, Imagining Gender Justice."

25 Regarding the significance of Anthony's status as a defendant and its relationship to nineteenth-century norms of femininity, see Campbell, *Man Cannot Speak for Her*, 115-116.

26 Harper, *The Life and Work of Susan B. Anthony*, 432. Harper recalls that the other resolution passed in response to Anthony's speech asserted, "that states may regulate all local questions of property, taxation, etc., but the inalienable personal rights of citizenship must be declared by the Constitution, interpreted by the Supreme Court, protected by Congress, and enforced by the arm of the Executive" (431-432).

27 This essay analyzes a text of "Is It a Crime for a U.S. Citizen to Vote?" that is based on printed records of the remarks Anthony delivered in Washington, DC on 16 January, and in Rochester on 3 April 1873. Susan B. Anthony, "Is It a Crime for a U.S. Citizen to Vote?" in *Selected Papers of Susan B. Anthony and Elizabeth Cady Stanton: Against an Aristocracy of Sex, 1866-1873*, edited by Ann D. Gordon (New Brunswick, NJ: Rutgers University Press, 2000), 554-583. The sources for this text are *Washington Woman's Campaign*, January 1873, at State Historical Society of Wisconsin, Madison, Wisconsin, and SBA scrapbook 7, Rare Books Division, Library of Congress, Washington, DC; *Rochester Democrat and Chronicle*, 4 April 1873.

28 Harper, *The Life and Work of Susan B. Anthony*, 435.

29 *HWS* 2:630; Harper, *The Life and Work of Susan B. Anthony*, 436.

30 *HWS* 2:630.

31 In addition to suffrage newspapers and Rochester media, news of Anthony's vote and of her trial was circulated nationally by mainstream periodicals such as *Harper's Weekly*. See, for instance, "Susan B. Anthony's Vote." *Harper's Weekly*, 5 July 1873, 581. Regarding widespread publicity for Anthony's address, see also Ray, "The Rhetorical Ritual of Citizenship," 6.

32 Anthony, "Is It a Crime for a U.S. Citizen to Vote?" 41.

33 Campbell, *Man Cannot Speak For Her*, 109. In full, Campbell states that Anthony made "(1) arguments from legal priority, for example, that laws granting woman citizenship and its privileges took precedence over laws limiting the vote to

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males; (2) arguments from consistency or noncontradiction, that is, laws which required women to assume the obligations of citizenship ought to extend them the privileges as well; (3) arguments from authority or legal precedent, for example a Supreme Court decision which treated male pronouns as generic and inclusive of women; and (4) arguments from logical entailment, namely that given natural rights principles, the franchise is entailed in the very concept of citizenship."

34 Regarding the analogy between women and black men that was made in New Departure arguments such as those advanced by Anthony and by the Minors, see Ray and Richards, "Inventing Citizens, Imagining Gender Justice."

35 See Campbell, *Man Cannot Speak For Her*, 108.

36 Campbell characterized Anthony's address as a persuasive masterpiece that must be understood as an example of forensic rhetoric; a forensic speech "characteristically is addressed to an audience of jurors, concerns past events, develops via accusation and defense, involves refutation, and pivots on the issue of justice" (*Man Cannot Speak For Her*, 108).

37 Anthony provides legal interpretations and cites written law, judicial opinions, speeches by members of Congress, and historical precedents in paragraphs 1-3, 5-14, 16-18, 20, 22-25, 32-35, 37-49, 52-61, 66-78, 80-86.

38 Here, Anthony quotes the Declaration of Independence.

39 In addition to calling on male citizens (who occupied the positions of jurors, inspectors, commissioners, and marshals) to endorse woman suffrage, Anthony also called women to direct action, asking them to "assume their too long neglected 'citizen's right to vote'" (89). Gordon notes that Anthony rewrote the conclusion of her 18 January address to NWSA, before delivering the speech to citizens in Rochester on 3 April 1873. The text of the conclusion of the speech she delivered on 18 January appears in footnote 72 of the accompanying speech text. See Anthony, "Is It a Crime for a U.S. Citizen to Vote?" 583.

40 Here, I paraphrase Anthony, "Is It a Crime for a U.S. Citizen to Vote," 86-87.

41 In her analysis of Anthony's speech, Campbell suggests, "Anthony appealed to her audiences to transcend their role ... to reach a verdict that would make new law. Like Antigone, Anthony was in a situation where the law as written made her a criminal." Thus, Campbell concludes, "she asked her audiences of potential jurors to make new law, to act as legislators to give women the vote because that would be consistent with true justice." Although it is clear that Anthony attributed to her audience the capacity to adjudicate the meaning of the law and the outcome of her case, I disagree with Campbell's claim that Anthony's address directed citizens to make *new* law. Instead, she directed them to interpret existing law in a way that affirmed woman suffrage. This difference is significant, as Anthony's insistence on her innocence rendered her position before the law consistent with her constitutional argument and appeal to citizen-jurors to uphold the law. See Campbell, *Man Cannot Speak For Her*, 113-114.

42 *An Account of the Proceedings on the Trial of Susan B. Anthony*, 151. See also Anthony, "Is It a Crime for a U.S. Citizen to Vote?" Endnote 1. This specific passage does

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not appear in the version of Anthony's speech that was printed in the *Rochester Democrat and Chronicle* on 4 April 1873; however, it does appear in the version of the speech that Anthony herself published. This version of the speech (that Anthony delivered to citizens of New York prior to her trial) appeared in *An Account of the Trial of Susan B. Anthony*, together with the indictments, the trial transcripts, the judge's rulings, and the attorney's arguments and motions in her case.

43 See Anthony, "Is It a Crime for a U.S. Citizen to Vote?" 20, 92.

44 See Anthony, "Is It a Crime for a U.S. Citizen to Vote?" 63-83; here, Anthony detailed U.S. women's qualifications for the protections of the Fifteenth Amendment.

45 Ray and Richards, "Inventing Citizens, Imagining Gender Justice." The focus here is on nineteenth-century U.S. Supreme Court cases such as *Minor* in which those who sought inclusion for themselves or for others in political, legal, and civil systems of the time offered unconventional interpretations of the Constitution in support of their claims.

46 Anthony's address also appealed to some public assumptions about gender, suggesting that the act of voting could also be consistent with conventional notions of femininity. For instance, in the late nineteenth century, many assumed that women ought to demonstrate an interest in preserving tradition and advocate the general good, over and above self-interest. Anthony's address appealed to this idea of femininity, suggesting that—by voting—women could preserve traditional democratic principles, and champion the rights of all. On the subject of the relationship between Anthony's speech and norms of femininity, see also Campbell, *Man Cannot Speak For Her*, 116.

47 See *HWS* 2:629; Harper, *The Life and Work of Susan B. Anthony*, 432-433. Harper recorded that on 21 January 1873, U.S. District Judge S.K. Hall denied the writ of habeas corpus and increased Anthony's bail to \$1,000. Anthony refused to provide bail, insisting that she would prefer to go to jail. However, one of her attorneys paid the bond, explaining that he "could not see a lady I respected in jail." To the displeasure of Anthony and her other attorney, this action cost Anthony the opportunity to appeal to the U.S. Supreme Court by writ of habeas corpus.

48 *An Account of the Proceedings on the Trial of Susan B. Anthony*, 66; *HWS* 2:679-682. See also DuBois, "Taking the Law into Our Own Hands," 32.

49 *An Account of the Proceedings on the Trial of Susan B. Anthony*, 66-67; Harper, *The Life and Work of Susan B. Anthony*, 438-439; DuBois, "Taking the Law into Our Own Hands," 31-32. *HWS* noted sarcastically of Judge Hunt, "This was the first criminal case he had been called on to try since his appointment [to the U.S. Supreme Court], and with remarkable forethought, he had penned his decision before hearing it" (2:647).

50 See *An Account of the Proceedings on the Trial of Susan B. Anthony*, 60-64. Specifically, Hunt cited the Slaughterhouse cases and *Myra Bradwell v. Illinois*, which were decided by the U.S. Supreme Court in April 1873. The Court rulings in these cases severely limited the scope of the Fourteenth Amendment, as they held that privileges

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and immunities set forth by the Reconstruction Amendments could in fact be significantly restricted by state law, and withheld entirely from female citizens.

51 See *An Account of the Proceedings on the Trial of Susan B. Anthony*, 68; *HWS* 2:679-682; Harper, *The Life and Work of Susan B. Anthony*, 438-440; DuBois, "Taking the Law into Our Own Hands," 32. DuBois observes that the practice of directing a guilty verdict from the bench, as Hunt did, was later found unconstitutional.

52 *An Account of the Proceedings on the Trial of Susan B. Anthony*, 82.

53 *An Account of the Proceedings on the Trial of Susan B. Anthony*, 82-84. Under the federal law that Anthony was convicted of violating, she could have been fined up to \$500 and sentenced to 3 years in jail. Instead, she was assigned the relatively meager sentence of a \$100 fine. Anthony refused to pay this, and publicly challenged the government to collect it from her, hoping to appeal the verdict and its penalty. The state never attempted to collect the fine from Anthony, and refused her appeal of Justice Hunt's verdict, maintaining that her case had been decided fairly and according to the norms of due process. Thus, *Minor v. Happersett*, rather *United States v. Anthony*, became the first case for woman suffrage to be heard before the U.S. Supreme Court.

54 Jane M. Friedman, *America's First Woman Lawyer: The Biography of Myra Bradwell* (Buffalo, NY: Prometheus Books, 1993), 184. Election inspectors in the eighth ward who were present when Anthony registered to vote (William B. Hall, Beverly W. Jones, and Edwin T. Marsh) were convicted "for knowingly and willfully receiving the vote of any person not entitled to vote or refusing to receive the vote of any person entitled to vote" (*An Account of the Proceedings of Trial of Susan B. Anthony*, vi). One can imagine that these convictions had a chilling effect on the willingness of other election inspectors to receive Anthony's vote.

55 See Ray and Richards, "Inventing Citizens, Imagining Gender Justice."

56 See Norma Basch, *The Constitutional Bases of Political and Social Change in the United States*, edited by Shlomo Slonim (New York: Praeger, 1990), 174. Basch discusses the history and significance of New Departure arguments generally, giving particular attention to arguments that originated with the Minors. Regarding publicity for Anthony's address, see also Ray, "The Rhetorical Ritual of Citizenship," 6.

57 Susan B. Anthony, "Woman's Rights," in *Johnson's New Universal Cyclopaedia: A Scientific and Popular Treasury of Useful Knowledge*, edited by Frederick A. P. Barnard and Arnold Guyot, vol. 4 (New York: Alvin J. Johnson and Son, 1877), 1479. See also Harper, *The Life and Work of Susan B. Anthony*, 441.

58 Ray, "The Rhetorical Ritual of Citizenship," 16.