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# WESTERN RECONSTRUCTION AND WOMAN SUFFRAGE

Lorianne Updike Toler\*

## INTRODUCTION

The normal narrative of woman suffrage in the United States begins in Seneca Falls, New York, and steadily marches along through the lives and papers of the most noteworthy national suffragettes—Elizabeth Cady Stanton, Susan B. Anthony, Lucy Stone, and a handful of other women until the hard-fought passage of the Nineteenth Amendment. The six-volume *History of Woman Suffrage* tomes tells just such a story.<sup>1</sup>

Yet the dominant narrative “overgeneralizes the experiences of the national, largely eastern leadership” and “generally neglect[s] the West, or fail[s] to evaluate its significance within the national movement.”<sup>2</sup> Although the American Woman Suffrage Association was organized to promote legislation in the states in 1869, its leaders, including Elizabeth Cady Stanton and Susan B. Anthony, did not travel west where suffrage was first won—indeed they had only minimal contact until 1871, after Wyoming adopted the franchise in December 1869 and to Utah in February 1870.<sup>3</sup> Although there were certainly eastern rumblings whose aftershocks were felt on the frontier, the national narrative is notable here only for its lack.

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<sup>1</sup> See generally HISTORY OF WOMAN SUFFRAGE (Elizabeth Cady Stanton et al. eds., 1881).

<sup>2</sup> REBECCA J. MEAD, HOW THE VOTE WAS WON: WOMAN SUFFRAGE IN THE WESTERN UNITED STATES, 1868–1914, at 4, 5 (2004); see also THE CONCISE HISTORY OF WOMAN SUFFRAGE 25 (Mari Jo Buhle & Paul Buhle eds., 1978) (attributing victories in Wyoming and Utah to “local conditions”); ALAN P. GRIMES, THE PURITAN ETHIC AND WOMAN SUFFRAGE, at xii–xiii (1967) (recognizing that suffrage in the Western region has “been most neglected” in scholarly literature).

<sup>3</sup> Utah women won the vote twice, the second time in 1895. In 1887, Congress punished The Church of Jesus Christ of Latter-day Saints for polygamy by, among other things, stripping polygamous men and *all* women of the right to vote in the Edmunds-Tucker Act. 5 THE SELECTED PAPERS OF ELIZABETH CADY STANTON & SUSAN B. ANTHONY 248 n.4 (Ann D. Gordon ed., 2009) [hereinafter SELECTED PAPERS]. It was regained and enshrined in the 1895 state constitution prior to statehood in 1896. *Id.* at 729 n.22.

Instead, when looking at relative influence, at least in the beginning, the West had a much greater impact on the East. In fact, it may be said that American Woman's Suffrage began not in Seneca Falls, but in Cheyenne and Salt Lake City. Not only were these capitals the first loci of equal suffrage, but the nation learned from these "quieter" equality states what it meant for women to vote in ballot and jury boxes and serve in public office.<sup>4</sup> In short, understanding how the vote was won in the West "helps explain the ultimate success of" the national movement.<sup>5</sup>

If the national narrative and its eastern influence have been overlaid, what then explains why suffrage was first extended in the West? As Akhil Amar and others have convincingly demonstrated, suffrage was extended first in frontier situations globally and domestically where women were found in lower numbers, preempting any political threat they might otherwise pose.<sup>6</sup>

That women were in rare supply should not come as a surprise: the adventure of frontier life drew in greater proportions of men.<sup>7</sup> As a novelty item, woman's currency skyrocketed. The sight of the young, "good looking" suffragist Miss Anna Dickinson in Cheyenne drew an unwanted crowd of male admirers, pressed up to the glass of her train car, imposing on her privacy.<sup>8</sup> The average age of the territorial Wyoming legislator was thirty-two, with only half of them married.<sup>9</sup> Extending the vote to women may have been interpreted as the western bachelors' collective mating call—a ploy to woo the gentler sex to their states' altars.<sup>10</sup> The exception to this disparity

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<sup>4</sup> AKHIL REED AMAR, *AMERICA'S CONSTITUTION: A BIOGRAPHY* 422 (2005) ("[M]ore quiet examples [in the West] succeeded in spreading woman suffrage to neighboring Western states. From this broad and expanding base the movement began to successfully colonize the East. In effect, Western egalitarians aimed to even up the continental balance of trade: the East had sent bodies to the West, but the idea of woman suffrage would migrate in the other direction—reprising the American Revolution itself, in which colonial children had sought to teach Mother England the true meaning of liberty.").

<sup>5</sup> MEAD, *supra* note 2, at 1.

<sup>6</sup> *Id.* at 13–14 (demonstrating a trend in the United States frontier and that of Australia and New Zealand); see also T.A. LARSON, *WYOMING: A BICENTENNIAL HISTORY* 90 (1968) [hereinafter LARSON, *BICENTENNIAL*] ("The 1870 census reported six men over 21 for every woman over 21; and only 243 single women over 21, including widowed grandmothers."); T.A. Larson, *Petticoats at the Polls: Woman Suffrage in Territorial Wyoming* 44 *THE PAC. NW. Q.* 74 (1953) [hereinafter Larson, *Petticoats*] ("There was little chance that the 1,049 women in the territorial population would seize the reins of power from the 6,107 men."); Michael A. Massie, *Reform is Where You Find It*, 62 *ANNALS WYO.* 5 (1990) ("By 1870, several women and ethnic minorities inhabited [Wyoming's] mining towns, particularly South Pass City, but White males still dominated the population base. For example, 24 percent of South Pass City's citizens were females, 2 percent of Mexican descent, 2 percent Chinese, and 3 percent Black.").

<sup>7</sup> See T.A. LARSON, *HISTORY OF WYOMING* 80 (2d ed. 1978).

<sup>8</sup> *Id.* at 82 (citation omitted).

<sup>9</sup> Based on 1870 U.S. Census data available for sixteen of the legislature's twenty-two members. See also LARSON, *BICENTENNIAL*, *supra* note 6, at 82.

<sup>10</sup> AMAR, *supra* note 4, at 419 ("Under the laws of supply and demand, where women were exceptionally scarce, men had to work that much harder to attract and keep them. By

is Utah, wherein the number of women was roughly equal to the number of men, due to the emphasis on settlement by families.<sup>11</sup>

As Utah's exceptionalism emphasizes, the lack of women and collective wooing there provide only the *necessary* condition in the suffrage calculus. Low numbers of women lessened resistance by removing the main obstacle of voting against men's interest (assuming women would vote as a block against men), but it does not explain why any one man would be motivated to propose such a bill, especially a happily married man such as William T. Bright, sponsor of the suffrage bill in Wyoming.<sup>12</sup> To correctly identify the *sufficient* variable, one must look to local history. In the first western extensions of the franchise, local histories show that politics, race, and religion motivated men to give women the vote.<sup>13</sup> Such factors were the sufficient explanatory variables to the necessary condition of low proportions of women.<sup>14</sup>

Moreover, the conditions of early western suffrage show that it was not only an important part of the larger suffrage story, but, crucially, of the Reconstruction story—albeit of a western, rather than southern flavor. As the leading western suffrage historian writes: “There is a tendency to dismiss the early enfranchisement of women in Wyoming (1869) and Utah (1870) as isolated western anomalies, but these events acquire greater significance when examined within the context of Reconstruction, territorial, and state politics.”<sup>15</sup> The West at this time had much in common with the South: politically, both were inferior to the Northeast in terms of status, privilege, and power.<sup>16</sup> The Northeast used that status, privilege, and power to reconstruct the social, civil, and political lives of the citizens in both regions.<sup>17</sup> The implications and reasoning were different, but the tactics were roughly the same.<sup>18</sup> The lives of one region were re-ordered via constitutional amendments, the other by mere statutes.<sup>19</sup> Territories, like southern states, responded to this heavy-handedness in similar fashion, pushing back

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letting women vote with their hands, perhaps Western men hoped that women would vote with their feet—and head West.”)

<sup>11</sup> GRIMES, *supra* note 2, at 30 (“[I]n Utah the family pattern of migration kept the balance between the sexes essentially equal.”).

<sup>12</sup> See LARSON, BICENTENNIAL, *supra* note 6, at 79–80 (“Neither Lee nor Bright needed the attract-population argument to convince themselves of the wisdom of adopting woman suffrage, but did need it to persuade some of the legislators who paid little attention to justice arguments. Without the public relations angle, Wyoming’s first legislature almost certainly would not have approved the suffrage bill.”).

<sup>13</sup> MEAD, *supra* note 2, at 5 (“[T]he development of *many* rationales for suffrage, including those tailored to specific interests, was a crucial element in the success of modern campaigns.”). Mead later notes that race played a part in universal suffrage in Australia and New Zealand: as in Wyoming, men preferred white women voting to men of minority races. *Id.* at 13.

<sup>14</sup> See *id.* at 13, 16; see also AMAR, *supra* note 4, at 419.

<sup>15</sup> MEAD, *supra* note 2, at 35.

<sup>16</sup> See HEATHER COX RICHARDSON, *WEST FROM APPOMATTOX* 2, 5 (2007).

<sup>17</sup> See *id.* at 5.

<sup>18</sup> MEAD, *supra* note 2, at 35–36.

<sup>19</sup> *Id.*

as far as they could.<sup>20</sup> Especially in the case of Utah, the Northeast broke it like it did the South, first waging war upon it and then forcing it through legal sanctions to ultimately discontinue polygamy as the South had been forced to discontinue slavery.<sup>21</sup>

The West's response to its own Reconstruction provides a gloss on the Reconstruction Amendments themselves. While the Fifteenth Amendment was in the process of being ratified, it was already being implemented in federal territories.<sup>22</sup> Wyoming Council President William T. Bright proposed woman suffrage in Wyoming because "[h]e sincerely believed that women should have the vote before Negroes, and Negroes had been given the vote."<sup>23</sup> Utah's extension of suffrage was accomplished almost contemporaneous to ratification of the Fifteenth Amendment.<sup>24</sup> Employing Amar's powerful "enactment argument" modality of interpretation,<sup>25</sup> these first grants of universal suffrage, read narrowly, can be understood as amendments to the Fifteenth Amendment. At a higher level of abstraction, this enactment history ties together the Nineteenth Amendment—seen as the ultimate consummation of the amendments proposed decades earlier in the West—to that of the Fifteenth Amendment and the Reconstruction Amendments generally.<sup>26</sup> At an even greater level of abstraction, Western Reconstruction supplies a gloss on how "equality" and "liberty" as used in the Fourteenth Amendment were understood by some of its most progressive pioneers, tethering them firmly to women's rights.<sup>27</sup> All of this serves to bolster the arguments made by Akhil and Vikram Amar that the Nineteenth Amendment incorporates all political rights of the Fifteenth Amendment, and Steven Calabresi's argument that the Nineteenth Amendment affected the equality guarantees of the Fourteenth.<sup>28</sup>

This Article will focus on the granular Reconstruction histories of the first franchise extensions in the United States—Wyoming and Utah—in identifying some of the sufficient conditions that propelled men to introduce suffrage bills. In addressing

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<sup>20</sup> See *id.* at 36.

<sup>21</sup> RICHARD VAN WAGONER, *MORMON POLYGAMY: A HISTORY* 85–87 (1986).

<sup>22</sup> See Massie, *supra* note 6, at 7.

<sup>23</sup> Larson, *Petticoats*, *supra* note 6, at 75.

<sup>24</sup> See MEAD, *supra* note 2, at 15.

<sup>25</sup> Amar defines the enactment argument as "a subspecies of historical argument, but a particularly interesting subspecies, partaking of some of the strengths more typically associated with arguments based on the Constitution's specific text and overall structure" and "panoramic" arguments, "drawing our attention to how the entire Constitution came into being. In this sense, an enactment argument is the ultimate structural argument, with a historical twist." AKHIL REED AMAR, *AMERICA'S UNWRITTEN CONSTITUTION: THE PRECEDENTS AND PRINCIPLES WE LIVE BY* 54, 56 (2012).

<sup>26</sup> See MEAD, *supra* note 2, at 36–37.

<sup>27</sup> *Id.*

<sup>28</sup> AKHIL REED AMAR, *THE BILL OF RIGHTS: CREATION AND RECONSTRUCTION* 274 (1998) [hereinafter AMAR, *BILL OF RIGHTS*]; see also AMAR, *supra* note 4, at 421, 426; Vikram David Amar, *Jury Service as Political Participation Akin to Voting*, 80 *CORNELL L. REV.* 203, 206 (1995) [hereinafter Amar, *Jury Service*]. See generally Steven G. Calabresi & Julia T. Rickert, *Originalism and Sex Discrimination*, 90 *UNIV. TEX. L. REV.* 1, 12 (2011).

these local histories, we see national personalities play only supporting roles in leading men and women in each state. Once we have narrowed the investigation to the appropriate cast of characters, their motivations—the sufficient variable in a larger analysis—will more clearly come into view. As will be seen, territorial politics, race, and religion provided sufficient motivation for men (against the backdrop of non-threatening proportions of women) to extend the franchise. These sufficient conditions provide richer context for understanding the Reconstruction Era and Amendments, their relationship to the Nineteenth Amendment, and the concepts of constitutional liberty and equality.

### I. WYOMING

Four attempts were made before Wyoming's successful grant of universal suffrage in 1869.<sup>29</sup> On December 8, 1868, within six months of the Fourteenth Amendment's ratification and before black suffrage was proposed, George W. Julian from Indiana proposed a universal suffrage amendment that failed to be included in the Congressional Globe.<sup>30</sup> He thereafter attempted more targeted bills giving women the franchise in the territories, or, alternatively, in Utah as a method for ending polygamy.<sup>31</sup> The latter failed (as did all other attempts), but an observer of a congressional hearing on the bill opined that extending the vote on the frontier would serve to balance the excess of Eastern females with their scarcity in the West.<sup>32</sup> This novel argument was circulated in metropolitan papers and, according to Wyoming historian T.A. Larson, picked up by freshly appointed Wyoming Territorial Secretary Edward M. Lee.<sup>33</sup> Lee, a 32-year-old bachelor, had failed as a member of the Connecticut legislature to extend the franchise there in 1867.<sup>34</sup> Other attempts were made in Nebraska in 1856 and in Dakota, where suffrage failed in January of 1869 by a single vote.<sup>35</sup> Roughly a month after female suffrage failed in Dakota, black

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<sup>29</sup> The attempts detailed here do not include the five suffrage petitions from women in 1866, some of which were presented on the Senate floor but never endorsed. AMAR, BILL OF RIGHTS, *supra* note 28, at 240.

<sup>30</sup> GEORGE W. JULIAN, POLITICAL RECOLLECTIONS, 1840–1872, at 324 (1884), <https://archive.org/details/politicalrecollesc00juli/page/n8> [<https://perma.cc/YQ6R-8XQ5>] (last visited Oct. 16, 2019).

<sup>31</sup> See THE FIRST FIFTY YEARS OF RELIEF SOCIETY: KEY DOCUMENTS IN LATTER DAY SAINT WOMEN'S HISTORY pt. 3 (Jill Mulvay Derr et al. eds., 2016), <https://www.churchhistorianspress.org/the-first-fifty-years-of-relief-society/part-3/3-14?lang=eng> [<https://perma.cc/95GU-USEK>] (last visited Oct. 16, 2019) [hereinafter THE FIRST FIFTY YEARS]; *infra* notes 116–17 and accompanying text.

<sup>32</sup> LARSON, BICENTENNIAL, *supra* note 6, at 79.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> LARSON, *supra* note 7, at 80.

suffrage was proposed in Congress on February 26, 1869.<sup>36</sup> Apparently, if at first you don't succeed, try, move to Wyoming, and try again.

Both Wyoming and Utah, prior to 1869 and 1870, respectively, had very little contact with the national movement.<sup>37</sup> The transcontinental railroad was completed through Wyoming by May 10, 1869 (depleting Wyoming's population from 16,000 to 8,014),<sup>38</sup> and it carried through the state two lesser-known suffragettes on their way to California for paid speaking engagements. Anna Dickinson, "well formed" and young, spoke to 250 people in Cheyenne on September 24, 1869.<sup>39</sup> Later, Redelia Bates spoke on November 5, 1869, to a small crowd in the House of Representatives' hall.<sup>40</sup> Neither suffragette lobbied for passage of woman suffrage in the territory.<sup>41</sup> Despite Bates's speaking a week before the suffrage bill was introduced, the bill's sponsor, William H. Bright, disavowed being influenced by or even hearing the speech.<sup>42</sup> He is reported to have said in an interview published in suffragist national newspaper, *The Revolution*:

I have never . . . been converted by a woman's lecture or newspaper, for I never heard a woman speak from the rostrum and never read THE REVOLUTION. I knew that it was a new issue, and a live one, and with a strong feeling that it was just, I determined to use all influence in my power to have the bill passed.<sup>43</sup>

Other than the two speeches cited above (and truly just one, as the legislature was not in session until October), there appears to be no reliable evidence that the vote was brought about in Wyoming due to any organized suffragist lobbying, national or local.<sup>44</sup> The only woman by whom Bright was likely influenced was his

<sup>36</sup> Sopan Joshi, *The Presidential Role in the Constitutional Amendment Process*, 107Nw. U. L. REV. 963, 972 (2012).

<sup>37</sup> See Larson, *Petticoats*, *supra* note 6, at 74–75. "No one was more surprised than the women of Wyoming Territory when they were given the vote and the right to hold office, unless it be Eastern women's rights advocates who had not imagined that the breakthrough would come in the West where they had done virtually nothing." *Id.*

<sup>38</sup> LARSON, BICENTENNIAL, *supra* note 6, at 78.

<sup>39</sup> LARSON, *supra* note 7, at 82 (quoting the *Cheyenne Leader*).

<sup>40</sup> *Id.* Larson notes that Dickinson has a biography written about her, while Bates fails to be mentioned in the six-volume history of women's suffrage. *Id.* at 84 n.13. Dickinson was also an intimate of Susan B. Anthony, while Bates was unknown. Letter from Susan B. Anthony to Anna E. Dickinson (Feb. 22, 1870), in 2 SELECTED PAPERS, *supra* note 3, at 304–05 (2000).

<sup>41</sup> Massie, *supra* note 6, at 7–8.

<sup>42</sup> See R.C.M., *Wyoming and Woman*, THE REVOLUTION, Jan. 13, 1870.

<sup>43</sup> *Id.*

<sup>44</sup> There are spurious claims that Esther Morris hosted a tea party wherein she extracted a promise from Bright to sponsor a bill, yet these claims seem to have been generated post hoc. LARSON, BICENTENNIAL, *supra* note 6, at 92; Larson, *Petticoats*, *supra* note 6, at 75.



young and intelligent pro-suffragist wife, Julia.<sup>45</sup> One historian hypothesized that Bates's speech prompted Julia to encourage her husband to act on his earlier promise to propose a bill.<sup>46</sup> Bright also relied upon Lee, who is the probable author of the bill and served to promote it through the Wyoming paper he ran (and funded) with his brother-in-law.<sup>47</sup> Additionally, as the secretary of the territory, Lee was responsible for providing sources and reference works, and was thus in daily contact with legislators who, as members of the opposing party, respected him as a matter of public record.<sup>48</sup> It was Lee who culled statutes from sister territories and states for Wyoming to copy and edit to meet local needs, and likely used his influence to help Bright shepherd the bill through passage.<sup>49</sup>

It was thus Bright and Lee, and possibly Julia, who are to be credited with spearheading woman's suffrage in Wyoming. Something has been said of Lee, but what of the Brights? Who were this pioneering man and woman, and what motivated them to extend the franchise?

William Bright was a native of Alexandria, Virginia (then part of D.C. proper), and a Union colonel in the Civil War.<sup>50</sup> He married Julia, twenty-one years his junior, also a native of Washington, D.C.<sup>51</sup> Bright adored his young, intelligent wife and showed deference to her more advanced levels of education.<sup>52</sup> In 1867, they moved to Utah Territory for William's federal job as postal inspector.<sup>53</sup> A party of prospectors found gold in South Pass City, Wyoming, just outside the territorial bounds of Utah.<sup>54</sup> Bright joined a party of thirty men from Salt Lake City traveling to Altorus

<sup>45</sup> LARSON, *supra* note 7, at 93.

Contemporaries said that [Julia Bright] was a firm believer in woman suffrage and that the Colonel adored her. In his old age, Been Sheeks, who had been a member of the 1869 legislature, wrote Miss Hebard that "Mrs. Bright was a very womanly suffragist and I always understood and still believe, that it was through her influence that the bill was introduced. I know that I supposed at the time that she was the author of the bill. What reason, if any, I had for thinking so I do not remember. Possibly it was only that she seemed intellectually and in education superior to Mr. Bright."

*Id.* (quoting Miss Hebard's "Woman Suffrage" file in the University of Wyoming Library).

<sup>46</sup> Massie, *supra* note 6, at 8.

<sup>47</sup> LARSON, BICENTENNIAL, *supra* note 6, at 79.

<sup>48</sup> *Id.* at 82.

<sup>49</sup> *See id.* at 80–81.

<sup>50</sup> Tom Rea, *Right Choice, Wrong Reasons: Wyoming Women Win the Right to Vote*, WYOHISTORY (Nov. 8, 2014), <https://www.wyohistory.org/encyclopedia/right-choice-wrong-reasons-wyoming-women-win-right-vote> [<https://perma.cc/TW5S-7QJP>].

<sup>51</sup> UNITED STATES CENSUS (1870), <https://familysearch.org/ark:/61903/1:1:MC67-VXD> [<https://perma.cc/86BB-JVNM>] (last visited Oct. 16, 2019).

<sup>52</sup> LARSON, *supra* note 7, at 93.

<sup>53</sup> LARSON, BICENTENNIAL, *supra* note 6, at 77.

<sup>54</sup> *See* I.S. BARTLETT, 1 HISTORY OF WYOMING 162 (1918).



City in July 1867 and busied himself upon arrival, staking and mining claims before more miners arrived.<sup>55</sup> He returned to Salt Lake City for the birth of his son, William Jr., and brought Julia and the baby back to settle in a cabin overlooking the northern end of South Pass City,<sup>56</sup> opening a saloon at the crossroads of the town's two busiest streets.<sup>57</sup> In September 1869, he ran for one of the three council positions allotted to Carter County (later Lancaster, then Fremont) and, as the oldest council member (and second-oldest legislator),<sup>58</sup> he was elected president of the nine-member council.<sup>59</sup>

While both Lee and Bright were influenced by the justice of equal suffrage, Bright was also clearly influenced by racism.<sup>60</sup> According to Section 2 of the Fourteenth Amendment, a condition of Reconstruction was equal suffrage for black men.<sup>61</sup> If states did not comply, their representation would be diminished accordingly.<sup>62</sup> Even before passage of the Fifteenth Amendment in February of 1870, this provision was implemented during Reconstruction in Wyoming Territory as it was in the South, even though Wyoming did not yet enjoy voting representation in Congress.<sup>63</sup> In Bright's city of South Pass, the U.S. Marshall made a special trip to escort several black men to the polls in order to protect them from drunk men "armed with revolvers" surrounding the polls who had vowed "to prevent the town's Blacks from voting."<sup>64</sup> Though having served the Union in the Civil War, Bright was a committed Democrat who, before being swept into an all-Democratic inaugural territorial legislature, was elected as a delegate to the Democratic National Convention.<sup>65</sup> With his fellow Democrats, he resented black votes.<sup>66</sup> The united animus of the first legislature is reflected in the passage (and gubernatorial override) of an act that declared "[m]arriage of a White with another who was more than one-eighth Negro or Mongolian . . . null and void."<sup>67</sup> Accordingly, Bright "sincerely believed" that women like his wife and mother should have the vote before black men.<sup>68</sup> Thus, his bill was designed, at least in part,

<sup>55</sup> *Id.*; Massie, *supra* note 6, at 5.

<sup>56</sup> Massie, *supra* note 6, at 6.

<sup>57</sup> *Id.*

<sup>58</sup> UNITED STATES CENSUS (1870), *supra* note 51.

<sup>59</sup> Massie, *supra* note 6, at 6, 8.

<sup>60</sup> See Larson, *Petticoats*, *supra* note 6, at 75.

<sup>61</sup> "But when the right to vote at any election . . . is denied to any of the male inhabitants of such State, being twenty-one years of age . . . the basis of representation therein shall be reduced . . ." U.S. CONST. amend. XIV, § 2.

<sup>62</sup> See *id.*

<sup>63</sup> Massie, *supra* note 6, at 7.

<sup>64</sup> *Id.*

<sup>65</sup> See Rea, *supra* note 50.

<sup>66</sup> See *id.*

<sup>67</sup> Roy A. Jordan, *Wyoming: A New Centennial Reflection*, 62 ANNALS WYO. 114, 121 (1990); see also LARSON, *supra* note 7, at 76.

<sup>68</sup> Larson, *Petticoats*, *supra* note 6, at 75.

to strengthen white hegemony.<sup>69</sup> It was also a clear reaction to Western Reconstruction and the Fifteenth Amendment, ratified in Bright's home state of Virginia one month before he announced his bill for "woman's rights" in the Wyoming Council.<sup>70</sup>

Frontier realities and politics also played a part in Western and Wyoming Reconstruction. The harshness of fighting back the wilderness necessitated bringing women out of cloistered Victorian Eastern domesticity into the arid desert air to work side by side with men in meeting the basic needs of life.<sup>71</sup> There was a rustic, organic quality to this kind of equality. Such a state of nature adopted a political brand that was largely Democratic in Wyoming (as it was in Utah), and the rank-and-file Democrats clashed with the handful of Republican-appointed territorial officers, including the governor, secretary, three judges on the supreme court, surveyor general, land office receivers and registers, a U.S. Marshall, district attorney, and postmasters.<sup>72</sup> Territorial legislation in the Republican Reconstruction Congress, though somewhat sparse, was no less absolute and naturally resented.<sup>73</sup> In fact, many ascribed the passage of woman's suffrage to an all-Democrat territorial legislature's desire to embarrass Republican Governor Campbell.<sup>74</sup> Passage based on such petty grounds was made easier because the territorial legislature was small (twenty-two), which made collective bargaining easier as only a few votes were needed in each house to assure passage.<sup>75</sup>

Although it played a much larger role in Utah, the theology of The Church of Jesus Christ Latter-day Saints (LDS) (called Mormons by detractors) also likely played some part in the Wyoming suffrage saga. As the major historian on Western suffrage has written, successes in the region "were connected to Reconstruction and territorial politics, as well as to Mormon influence."<sup>76</sup> Although it will be discussed in more detail below, the LDS theology made women central players in the pursuit of heaven, and provided women a vote in ecclesiastical matters from its Eastern beginnings in 1830.<sup>77</sup> As the two major Wyoming historians have emphasized, the Church played an outsized role in the founding of Wyoming.<sup>78</sup> Latter-day Saint influence on Wyoming's founding occurred in three phases: (1) it served as a corridor for 70,000 pioneers passing through beginning in 1847;<sup>79</sup> (2) those same pioneers

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<sup>69</sup> *See id.*

<sup>70</sup> The Fifteenth Amendment was ratified in Virginia on October 8, 1869. *The Fifteenth Amendment to the United States Constitution*, LIBRARY OF VIRGINIA, [http://edu.lva.virginia.gov/online\\_classroom/shaping\\_the\\_constitution/unit/7](http://edu.lva.virginia.gov/online_classroom/shaping_the_constitution/unit/7) [<https://perma.cc/VVR9-L3KR>].

<sup>71</sup> *See* MEAD, *supra* note 2, at 18.

<sup>72</sup> *See* LEWIS L. GOULD, *WYOMING: A POLITICAL HISTORY, 1868–1896*, at 18 (1968).

<sup>73</sup> *See id.* at 17–18.

<sup>74</sup> *See* LARSON, *BICENTENNIAL*, *supra* note 6, at 81; Massie, *supra* note 6, at 9.

<sup>75</sup> *See* Rea, *supra* note 50.

<sup>76</sup> MEAD, *supra* note 2, at 2.

<sup>77</sup> *See infra* note 115.

<sup>78</sup> BARTLETT, *supra* note 54, at 124.

<sup>79</sup> *Id.* at 124, 127 (claiming that some Mormon pioneers stayed and settled). *But see*

established the first settlements at Fort Supply in 1853,<sup>80</sup> as well as in Salt Lake Valley and the Big Horn Valley in the 1880s;<sup>81</sup> and (3) thirty argonauts from Utah plus Bright and others settled South Pass City and surrounding mining towns in 1867.<sup>82</sup> While Church records can be found for eleven of the original twenty-two legislators, it is unclear how many were baptized while living.<sup>83</sup> It is probable that at least some of the territorial legislators were Latter-day Saints.<sup>84</sup>

While LDS influence on those who voted for or against woman's suffrage is uncertain, William and especially Julia Bright spent enough time in the milieu of Latter-day Saint culture and politics to have appreciated, if not partaken in, some of its substance. Through William's position as postal inspector, the family would have been familiar with LDS neighbors (and postal customers) who ran the town.<sup>85</sup> Pregnant Julia was alone in Salt Lake City while her husband established himself in South Pass City from July–November 1867,<sup>86</sup> and would almost definitely have been assisted in the delivery of their son, William Jr., by a Latter-day Saint midwife. Alone and without the assistance of female family members to help her adjust to motherhood,

LARSON, *supra* note 7, at 10 (“[T]ravelers spent less than thirty days in Wyoming and left little behind besides ruts, names and dates on trailside cliffs, a few place names, and some graves.”).

<sup>80</sup> BARTLETT, *supra* note 54, at 161. It should be noted that Fort Supply was abandoned and the settlers dispersed during the conflicts associated with the “Mormon War” in 1857, *id.*, but did not leave the area. LARSON, *supra* note 7, at 164.

<sup>81</sup> *Mormon Settlers Helped to Make Wyoming a State*, DESERET NEWS (May 26, 1990), <https://www.deseretnews.com/article/104035/MORMON-SETTLERS-HELPE-D-TO-MAKE-WYOMING-A-STATE.html> [<https://perma.cc/ED2J-8NLN>].

<sup>82</sup> BARTLETT, *supra* note 54, at 162.

<sup>83</sup> Church of Jesus Christ of Latter-day Saints records were found for James R. Whitehead, William H. Bright, George Wardman, Herman Haas, Howard Sebee, John H. Douglas, William Herrick, Louis Miller, James W. Menefee, and Benjamin Sheeks, <http://www.FamilySearch.org> (last visited Oct. 16, 2019) (individual URLs available from the author upon request, but excised here due to space). Based on multiple interviews with FamilySearch genealogists, records departments in Salt Lake City and Hartford, Connecticut temples, as well as Church Historians, some of these individuals may have been baptized while alive, yet not have had access to a temple for further saving ordinances (washings and anointings, endowments, and sealing to spouse and parents). As temples began to proliferate, but before genealogy work became more professionalized, the entire set of ordinances (baptisms through sealings) may have been performed “vicariously” in temples for deceased individuals who were members during their lifetimes, including those listed here. Whether these individuals or others in the first territorial legislature were baptized while living is an open research question being pursued by this author and LDS Church Historians.

<sup>84</sup> However, of the three most likely candidates—William Rockwell of the Rockwell lode in South Pass City and possibly one of the LDS Rockwell family found in the Wyoming Census in 1870; J.M. Freeman, the only legislator from the heavily Latter-day Saint-settled area in present-day Uintah County (formerly part of Utah Territory); and John Holbrook, one of the argonautic party from Salt Lake City in 1867—none voted for suffrage. UNITED STATES CENSUS (1870), *supra* note 51; BARTLETT, *supra* note 54, at 162; Massie, *supra* note 6, at 6.

<sup>85</sup> See LARSON, BICENTENNIAL, *supra* note 6, at 77.

<sup>86</sup> Massie, *supra* note 6, at 5–6.

breast-feeding, and the care of a newborn, it is easy to imagine that Julia would have had significant contact after the birth with her presumably LDS midwife and other neighbors. Even if Julia and William were not familiar with the deep-rooted theology that, for instance, taught of a Heavenly Mother,<sup>87</sup> they would likely know of the practice of equal voting in church settings, met proto-suffragist female professionals,<sup>88</sup> and perhaps knew of Brigham Young's encouragement for women to attain requisite education and participate in the professions, including law.<sup>89</sup> More importantly, Julia would certainly have known about the Reconstruction Congress's punitive actions against Mormon polygamy and its impact on the political organization of, and call for the vote by Utah women, to which we now turn.<sup>90</sup>

## II. UTAH

In 1867, the Brights arrived in Utah Territory on the eve of women-led protests against Utah Reconstruction and, specifically, polygamy.<sup>91</sup> The ecclesiastical reorganization of Latter-day Saint women that same year made possible their political organization and, ultimately, their first grant of equal suffrage.<sup>92</sup>

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<sup>87</sup> THE FIRST FIFTY YEARS, *supra* note 31, at pt. 1.14 (discussing Eliza R. Snow's My Father in Heaven poem). Eliza's poem was later set to music and can still be found in LDS hymnals. *See id.*

<sup>88</sup> KATE B. CARTER, 4 TREASURES OF PIONEER HISTORY 280 (1955). Public support for women entering the professions tracked the reorganization of the Relief Society. *See infra* note 113 and accompanying text.

<sup>89</sup> Brigham Young, Speech to the Saints in the Tabernacle: Obeying the Gospel-Recreation-Individual Development (July 18, 1869), in 13 JOURNAL OF DISCOURSES 61 (Liverpool, Horace S. Eldredge 1871) ("We wish, in our Sunday and day schools, that they who are inclined to any particular branch of study may have the privilege to study it. As I have often told my sisters in the Female Relief Societies, we have sisters here who, if they had the privilege of studying, would make just as good mathematicians or accountants as any man; and we think they ought to have the privilege to study these branches of knowledge that they may develop the powers with which they are endowed. We believe that women are useful, not only to sweep houses, wash dishes, make beds, and raise babies, but that they should stand behind the counter, study law or physic, or become good book-keepers and be able to do the business in any counting house, and all this to enlarge their sphere of usefulness for the benefit of society at large. In following these things they but answer the design of their creation. These, and many more things of equal utility are incorporated in our religion, and we believe in and try to practice them."). Young practiced what he preached, and installed women on the boards of Brigham Young University in Provo and Brigham Young College in Logan in 1874. 6 THE HISTORY OF WOMAN SUFFRAGE 648 (Ida Husted Harper ed., 1922).

<sup>90</sup> *See infra* Part II.

<sup>91</sup> LARSON, BICENTENNIAL, *supra* note 6, at 77; LOLA VAN WAGENEN, SISTER WIVES AND SUFFRAGISTS: POLYGAMY AND THE POLITICS OF WOMAN SUFFRAGE, 1870–1896, at 5–9 (1994).

<sup>92</sup> VAN WAGENEN, *supra* note 91. Polygamist male suffrage and suffrage for *all* Utah women was revoked with the Edmunds-Tucker Act in 1887. Edmunds-Tucker Act, 48 U.S.C. § 1461 (1887) (repealed 1978). Female suffrage was regained with the passage of the Utah

After Joseph Smith was martyred in 1844, his successor, Brigham Young, led the first Latter-day Saints pioneer train from Nauvoo, Illinois, through the plains and mountains of Wyoming, arriving on July 24, 1847 to the Salt Lake Valley, a part of Mexico at the time.<sup>93</sup> Almost immediately after Utah was made a territory in 1850,<sup>94</sup> polygamy became a national issue.<sup>95</sup> Though it was a poorly kept secret from the beginning (practiced privately by Smith in 1831 for a brief stint then shared within trusted circles in the 1840s),<sup>96</sup> it was not publicly announced from the pulpit until August 1852 by Apostle Orson Pratt during a church-wide conference in the tabernacle.<sup>97</sup>

Earlier that same year, it seems a decision was made by church leadership that the previous practice of racial equality enjoyed by black Saints in Nauvoo and early Utah years would be discontinued.<sup>98</sup> In the nascent decades of the church, blacks had been baptized, lived among the Saints, were ordained to the priesthood, and enjoyed access to temple rites and ordinances.<sup>99</sup> Brigham Young evidenced mixed racist feelings,<sup>100</sup> but in 1852 during intense national debate regarding expanding slavery into the territories, he announced as territorial governor to a joint session of the legislature in no uncertain terms that blacks would no longer receive the priesthood.<sup>101</sup> Whether the announcement instituting official racism and the announcement making

Constitution in 1895 preliminary to statehood in 1896. 5 SELECTED PAPERS, *supra* note 3, at 248 n.4 (2009).

<sup>93</sup> *Mormons Settle Salt Lake Valley*, HISTORY (July 21, 2010), <https://www.history.com/this-day-in-history/mormons-settle-salt-lake-valley> [<https://perma.cc/D5BT-827H>]. After helping the United States win the Mexican War in 1848, California, including what became Utah and the American Southwest, was purchased for \$15 million. *U.S. Territorial Acquisitions*, UNITED STATES HISTORY, <https://www.u-s-history.com/pages/h1049.html> [<https://perma.cc/KQ76-W5DC>] (last visited Oct. 16, 2019).

<sup>94</sup> UTAH DEP. OF CMTY. AND CULTURE, *Utah Becomes a State*, I LOVE HISTORY, <https://ilovehistory.utah.gov/topics/statehood/index.html> [<https://perma.cc/NHX6-QJEZ>] (last visited Oct. 16, 2019). Utah Territory included all of what later became the state of Utah (1896), Nevada (1861 territory, 1864 statehood) and parts of Wyoming (1868 territory, 1890 statehood) and Colorado (1861 territory, 1876 statehood). *States by Order of Entry Into the Union*, INFOPLEASE, <https://infoplease.com/us/states/states-by-order-of-entry-into-the-union> [<https://perma.cc/NJ5C-WMPM>] (last visited Oct. 16, 2019).

<sup>95</sup> See VAN WAGONER, *supra* note 21, at 81–82.

<sup>96</sup> RICHARD BUSHMAN, *JOSEPH SMITH: ROUGH STONE ROLLING* 437, 440 (Alfred A. Knopf ed., 2005).

<sup>97</sup> VAN WAGONER, *supra* note 21, at 83–84.

<sup>98</sup> *Race and the Priesthood*, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, <https://www.churchofjesuschrist.org/study/manual/gospel-topics-essays/race-and-the-priesthood?lang=eng> [<https://perma.cc/4L97-R3N5>].

<sup>99</sup> *Id.*

<sup>100</sup> *Id.*

<sup>101</sup> Brigham Young, Speech to Joint Session of the Legislature (Feb. 5, 1852); see also Wilford Woodruff, Address Delivered in the Tabernacle, Great Salt Lake City (Oct. 6, 1856), in 4 JOURNAL OF DISCOURSES, *supra* note 89, at 94–100.

polygamy public were intentionally linked, they were practically tied together: the Church disavowed one politically contentious practice, and that allowed them to publically adopt another. After a slow retraction from a position of true racial equality in 1852 under Joseph Smith in Nauvoo, Young cleared the LDS political agenda, opening up bandwidth for an equally contentious stance on polygamy.<sup>102</sup> And what a battle it would become—one that, not unlike the antebellum South, almost proved their undoing as a people and as a church.

Slavery and polygamy were linked by the Republican Party platform in 1856 as the “twin relics of barbarism.”<sup>103</sup> During the height of the Civil War, the Republican Congress delivered on its campaign promise by passing the Morrill Anti-Bigamy Act in 1862.<sup>104</sup> Yet it was not until the war had ended and Reconstruction begun that Republicans in Congress were able to turn their attention to reconstructing the “social, economic, and political makeup” of Democratic Utah and fund and enforce the Morrill Act.<sup>105</sup> In 1866, the year the Reconstruction Congress was able to override Johnson’s veto of the Civil Rights Act, the Wade Bill was proposed (but not passed) to enforce the Morrill Act.<sup>106</sup> Two more bills—the Cragin Bill in 1867 and the Cullom Bill in 1870—made similar attempts, each more punitive than its predecessor.<sup>107</sup> As the Reconstruction Congress increased the penalties for the South continuing *de facto* slavery, Republican members made similar attempts to increase penalties for Latter-day Saints continuing to defy the Morrill Act’s prohibition of the other “relic of barbarism,” polygamy.<sup>108</sup>

At the same time, LDS women were organizing on a grand scale.<sup>109</sup> In 1842, Joseph Smith instituted an all-female “Relief Society” in parallel to priesthood councils and with priesthood-like “keys,” led by his (first) wife, Emma.<sup>110</sup> After Joseph Smith’s death in 1844 and Emma’s subsequent insurrection, Brigham Young “stayed” proceedings of the Society in 1845,<sup>111</sup> reinstating it on a church-wide scale at the beginning of 1867 from the Salt Lake Valley under the new direction of Eliza R. Snow, then one of his wives.<sup>112</sup> As ever, it was a charitable society, and *The New*

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<sup>102</sup> See *supra* text accompanying notes 98–101.

<sup>103</sup> *Republican Party Platform of 1856*, USHISTORY.ORG, [http://www.ushistory.org/gop/convention\\_1856republicanplatform.htm](http://www.ushistory.org/gop/convention_1856republicanplatform.htm) [<https://perma.cc/YG4D-7Y9S>] (last visited Oct. 16, 2019).

<sup>104</sup> THE FIRST FIFTY YEARS, *supra* note 31, at pt. 3.

<sup>105</sup> *Id.*

<sup>106</sup> S. 404, 39th Cong. (1st Sess. 1866).

<sup>107</sup> H.R. 696, 41st Cong. (2d Sess. 1870); H.R. 1089, 41st Cong. (2d Sess. 1870); S. 24, 40th Cong. (1st Sess. 1867); VAN WAGONER, *supra* note 21, at 108–09.

<sup>108</sup> See THE FIRST FIFTY YEARS, *supra* note 31, at pt. 3.

<sup>109</sup> *Id.*

<sup>110</sup> *Id.* at pts. 1.3, 3.6 (discussing news articles related to an all-female “Relief Society”).

<sup>111</sup> *Id.* at pt. 1.13 (discussing a statement by Brigham Young on March 9, 1845).

<sup>112</sup> *Id.* at pt. 3.6. In the interim, local congregations in Utah began their own Societies with varying degrees of success. *Id.* at pt. 2.



*York Times* reported the newly reorganized sisters “making considerable exertions and arrangements to feed the poor and to provide other necessaries and comforts for them” in January of 1868.<sup>113</sup>

Relief Society also provided an opportunity for sisters to organize politically and “contributed to their growing assertiveness.”<sup>114</sup> The Cragin Bill introduced in 1867 intended to penalize men for plural marriage by creating a host of new crimes (entering into, solemnizing, or witnessing plural marriage) and presumably liberate women by allowing plural wives to sue husbands for labor and “services” regardless of received support.<sup>115</sup> Yet Latter-day Saint women were incensed, and a group of “first wives” and others wrote an editorial in the *Deseret News* condemning it within a week of its publication:

We, the “Mormon” ladies of Utah, would offer an expression of indignation towards Senator Cragin and his despicable Bill, did we not consider those subjects too preposterously degrading to merit our contempt. We would merely say of the Bill (and even this we feel to be a great stoop of condescension) that it is what, in the language of Dr. Holland, “*Contempt would honor over much.*” And of its author, we would say, in the language of Byron, “E’en satan’s self, with thee would dread to dwell [a]nd in thy skull discern a deeper hell.”<sup>116</sup>

About this same time, the editors of *The New York Times* suggested that woman suffrage “might perhaps be tried with novel effect” in Utah Territory, as a means of

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<sup>113</sup> *The Mormon Press on the Congressional Anti-Polygamy Bill*, N.Y. TIMES, Jan. 26, 1868, at 3.

<sup>114</sup> VAN WAGENEN, *supra* note 91, at 6. As the editors of the recently released Relief Society documentary history write, “During [the late 1860s] . . . Latter-day Saint women collectively entered the public sphere and gradually increased their ecclesiastical, economic, and political presence. They represented themselves in new ways, both within the church organization and within the broader public debate regarding the church.” THE FIRST FIFTY YEARS, *supra* note 31, at pt. 3. This time period saw Brigham Young encouraging women to enter higher education and participate in the professions, including accounting and law. Young, *supra* note 89. Two such women, Phoebe Couzins and Georgia Snow, took him at his word and were sworn into the Utah Bar in 1872. Karen Tokarz, *A Tribute to the Nation’s First Women Law Students*, 68 WASH. U. L. REV. 89, 96 (1990). *But see* VAN WAGONER, *supra* note 21, at 89–90 (“[P]olygamous wives lived lives similar to those of other frontier women. Despite several notable exceptions who attained success in business, mercantile, literary, and medical careers, most Mormon women remained in the domestic sphere . . .”).

<sup>115</sup> S. 24, 40th Cong. (1st Sess. 1867).

<sup>116</sup> *Cragin and His Bill*, DESERET NEWS, Jan. 15, 1868, at 5. Though Cragin’s bill was introduced in the Senate in March of 1867, it was not published in Utah until January 8, 1868. *Mr. Cragin’s Bill Again*, DESERET NEWS, Jan. 8, 1868, at 4.



liberating women and “casting out polygamy.”<sup>117</sup> The church-owned Utah press responded favorably to the suggestion:

The people of Utah are not afraid of the consequences of giving the women of the Territory the right to vote. In an ecclesiastical capacity they have, from the first organization of the Church of Jesus Christ of Latter-day Saints, had the right. . . . In this manner women have for years exercised the right of suffrage in this Territory.<sup>118</sup>

Giving Utah women the vote was also welcomed by suffragist, radical Reconstruction Republican, and Illinois Congressman George Julian.<sup>119</sup> In one of his many failed attempts,<sup>120</sup> Julian proposed equal suffrage for Utah on March 15, 1869, “[t]o discourage polygamy in Utah.”<sup>121</sup> If Congress could not achieve a national political majority to reconstruct Utah’s polygamous marriages, he would attempt to empower Latter-day Saint women to do it themselves.<sup>122</sup>

This confluence of events resulted in the first wide-scale political protest by Latter-day Saint women that directly precipitated their receiving the right to vote by an all-male legislature.<sup>123</sup> Having found their voice and their cause, Relief Society sisters staged a series of mass protests against the Cragin and Cullom Bills, the latter of which would have made it possible to compel women to testify against their husbands and convict them of “concubinage,” punishable by a \$1,000 fine and up to five years in prison.<sup>124</sup> “A Great Indignation Meeting” on January 13, 1870, in which roughly 3,000 women participated in the Salt Lake Tabernacle, was the first of some fifty protests throughout the territory in which an estimated 25,000 women participated.<sup>125</sup> *The New York Herald* was effusive in their praise: “In logic and in

<sup>117</sup> *Minor Topics*, N.Y. TIMES, Dec. 17, 1867, at 4. From this time, wrote Latter-day Saint woman suffrage historian Lola Van Wagenen, “suffrage and polygamy were permanently linked.” VAN WAGENEN, *supra* note 91, at 6.

<sup>118</sup> *The Female Suffrage Question*, DESERET NEWS, Jan. 15, 1868, at 4; *see also Female Suffrage*, DESERET NEWS, Dec. 9, 1868, at 4. George Q. Cannon, apostle and member of the First Presidency, was the editor of the paper. *Salutory*, DESERET NEWS, Nov. 20, 1867, at 4.

<sup>119</sup> JULIAN, *supra* note 30, at 324.

<sup>120</sup> *See* H.R. 1531, 40th Cong. (3d Sess. 1868); H.R. 1530, 40th Cong. (3d Sess. 1868); *see also* JULIAN, *supra* note 30, at 324 (recalling his constitutional amendment for universal suffrage).

<sup>121</sup> CONG. GLOBE, 41st Cong., 1st Sess. 72 (1869).

<sup>122</sup> *See id.*

<sup>123</sup> VAN WAGENEN, *supra* note 91, at 17–18.

<sup>124</sup> *Id.* at 18.

<sup>125</sup> THE FIRST FIFTY YEARS, *supra* note 31, at pt. 3.13 (discussing Minutes of a Ladies Mass Meeting Jan. 6, 1870); VAN WAGENEN, *supra* note 91, at 20.

rhetoric, the so-called degraded ladies of Mormondom are quite equal to the women's rights women of the East."<sup>126</sup>

Speaking out in favor of polygamy was linked to women gaining the vote.<sup>127</sup> In the planning meeting for the Great Indignation Meeting held on January 6, 1870, leading lady Bathsheba Smith moved at the end "that we demand of the Gov. the right of franchise."<sup>128</sup> The vote carried.<sup>129</sup> Thereafter, Eliza R. Snow and Sarah Kimball, instrumental in organizing the Relief Society in 1842 and again in 1866–67, were voted as representatives for the cause of LDS women in Washington.<sup>130</sup>

This provocative turn of events garnered no press.<sup>131</sup> Leading expert on Latter-day Saint suffrage, Lola Van Wagenen, explains this surprising restraint by positing that the sisters likely prioritized effectiveness over attracting attention.<sup>132</sup> And they certainly were effective: within less than a month of the mass meeting, on February 10, 1870, a unanimous legislature, virtually all of them "high-priests" in polygamous marriages,<sup>133</sup> voted to enfranchise the women of the territory.<sup>134</sup> A reluctant federally appointed Republican governor signed it into law two days later.<sup>135</sup> Though second to be given the franchise, Utah women were actually the first to exercise it and have considerable political influence, as there were five times as many women in Utah than Wyoming.<sup>136</sup> They voted in local elections on February 12, 1870, and congressional elections in August before Wyoming women first cast their ballots.<sup>137</sup>

There was no evidence of discussion on the suffrage proposition within the Utah legislature,<sup>138</sup> and priesthood council records—wherein the Relief Society's suffrage proposal was surely discussed—remain sealed.<sup>139</sup> One of our most important clues

<sup>126</sup> THE FIRST FIFTY YEARS, *supra* note 31, at pt. 3.

<sup>127</sup> See *infra* text accompanying notes 133–34.

<sup>128</sup> THE FIRST FIFTY YEARS, *supra* note 31, at pt. 3.12. Bathsheba would later become the fourth general Relief Society president and wife to George Albert Smith, eighth president of the church. LaRene Porter Gaunt, *Bathsheba W. Smith: Witness to History*, THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, <https://www.lds.org/study/ensign/2005/07/bathsheba-w-ssmith-witness-to-history?lang=eng> [<https://perma.cc/83QD-8K8H>].

<sup>129</sup> See THE FIRST FIFTY YEARS, *supra* note 31, at pt. 3.12.

<sup>130</sup> *Id.*

<sup>131</sup> VAN WAGENEN, *supra* note 91, at 19.

<sup>132</sup> *Id.* at 19–20.

<sup>133</sup> GRIMES, *supra* note 2, at 34.

<sup>134</sup> Jean Bickmore White, *Women's Suffrage in Utah*, UTAH HIST. ENCYCLOPEDIA, <https://historytogo.utah.gov/womens-suffrage-utah/> [<https://perma.cc/M6YA-JK7D>] (last visited Oct. 16, 2019). It should be noted that the legislature was exceptional for its being comprised entirely of polygamous men, as only six–twenty-five% of all Latter-day Saint men practiced polygamy at the time, and usually with only one additional wife. VAN WAGONER, *supra* note 21, at 91.

<sup>135</sup> White, *supra* note 134.

<sup>136</sup> *Id.*

<sup>137</sup> THE HISTORY OF WOMAN SUFFRAGE, *supra* note 89, at 644.

<sup>138</sup> See GRIMES, *supra* note 2, at 33.

<sup>139</sup> See *id.* at 33–34.

as to its origination lay in the overall Reconstruction context. Nationally, suffrage for people of color was ratified exactly one week previous to the Utah vote in the last of the Reconstruction Amendments.<sup>140</sup> Western Reconstruction was ongoing, virulent, and absolute.<sup>141</sup> Though the Congress had not yet succeeded in passing anti-polygamy legislation, they seemed primed to do so, with the Cullom Bill discussed on the floor of the House the very week suffrage passed.<sup>142</sup> Extending suffrage, as can be seen from the “Indignation” planning meeting, was a direct response to these measures.<sup>143</sup> As western suffrage historian Alan P. Grimes noted, the adoption of suffrage in Utah “by the territorial legislature would appear to have been a calculated move on the part of the Mormon hierarchy to forestall federal [Reconstruction] legislation on polygamy.”<sup>144</sup>

Yet there remains one more clue to the Utah suffrage puzzle. It is found perhaps most obviously (and therefore surprisingly) in the theology that underscored polygamy. As a starting basis, and as noted in the *Deseret News* article quoted above, women were allowed to vote in church settings from the faith’s founding in 1830.<sup>145</sup> The revelation on polygamy (later reinterpreted as also applying to monogamous marriages) elevated motherhood and women’s work in the home, making it the focal point and training ground for Godhood.<sup>146</sup> Further revelation juxtaposed immediately before the revelation on “eternal marriage” made clear that men could not enter the highest degree of heaven without a woman by their side.<sup>147</sup> All of this served, as leading LDS historian Richard Bushman posits, to dramatically shift women’s domestic sphere to the center of the quest for salvation.<sup>148</sup> Woman elevated man, and man, so elevated, returned the favor with the franchise.<sup>149</sup>

It was not until after they were bequeathed the franchise that Utah women, initially operating through the auspices of the Relief Society,<sup>150</sup> had any major contact with national suffragists. Susan B. Anthony and Elizabeth Cady Stanton visited in 1871 as part of their grand western tour, and spoke to Utah’s two leading political

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<sup>140</sup> U.S. CONST. amend. XV.

<sup>141</sup> Thirty-nine bills were proposed to regulate the territories by the House in the 40th Congress, and thirty bills were proposed by the Senate. See GOULD, *supra* note 72, at 18.

<sup>142</sup> GRIMES, *supra* note 2, at 33.

<sup>143</sup> See VAN WAGENEN, *supra* note 91, at 20.

<sup>144</sup> GRIMES, *supra* note 2, at 33. Grimes further writes: “On March 23, 1870, the Cullom bill passed the House by the overwhelming vote of 94 to 32; the Senate failed to act on it. However, it was the harbinger of congressional legislation against polygamy, which culminated in the Edmunds-Tucker Act of 1887.” *Id.* at 34.

<sup>145</sup> See *supra* note 116 and accompanying text.

<sup>146</sup> See Doctrine & Covenants 132.

<sup>147</sup> See *id.* at 131:1–4.

<sup>148</sup> BUSHMAN, *supra* note 96, at 444–45. LDS men still cannot be elevated to a calling within the priesthood to a bishop or anything higher without being married. See O. Pratt, *Celestial Marriage*, 1 THE SEER 30 (Feb. 1853).

<sup>149</sup> See BUSHMAN, *supra* note 96, at 444.

<sup>150</sup> VAN WAGENEN, *supra* note 91, at 16.

factions.<sup>151</sup> Friendships were formed that would endure lifetimes despite later divisions within the movement and pressures over polygamy, particularly in resisting the passage of the Edmunds-Tucker Bill in 1887 that disenfranchised all Utah women (and men in polygamous marriages).<sup>152</sup> Though it took different forms over several decades, beginning in 1899, Utah women represented a perpetually healthy local chapter of the National Woman Suffrage Association.<sup>153</sup> Even after Utah suffrage was regained through the passage of the pre-statehood constitution in 1895, Utah women supported sister suffragettes in other states, submitting 40,000 names for the “monster petition” to Congress in 1909–1910 and responding “liberally” to calls for financial assistance.<sup>154</sup> Leadership passed four times between 1870–1920: (1) from Eliza Snow to (2) Sarah Kimball, both general Relief Society presidents, to (3) Emmeline Wells, not a general president, but prominent in the state and nationally, and thence to (4) Emily S. Richards.<sup>155</sup> All maintained active correspondence with national figures and published the longest-running women’s newspaper,<sup>156</sup> *The Exponent*, edited by Emmeline Wells for forty years.<sup>157</sup> She first met Stanton and Anthony as the fourth wife of the Salt Lake City mayor who hosted the pair in 1871, traveled to national conventions, hosted others in national leadership, and remained active in the cause until she was ninety-two, when she presided over Utah’s celebrations of the Nineteenth

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<sup>151</sup> For a first-hand account of the journey, see Interview with Susan B. Anthony in Rochester (Jan. 26, 1903), in 6 SELECTED PAPERS, *supra* note 3, at 463 (2013).

<sup>152</sup> *Id.* (“Miss Anthony has an intimate knowledge of matters in Utah as they are conducted to-day. The reporter having recently spent a year in Salt Lake City and vicinity referred to prominent Mormons of the hour, and there were few of whom she had not some knowledge. She recalled the father of the present Governor, Heber Wells, and is intimately acquainted with Mrs. Susie Young Gates, daughter of the famous and much wived Brigham, through co-laborers in the field of suffrage.”); *see id.* at 555 n.3 (noting that the members of the National Woman Suffrage Association were, in 1887, familiar with many of the most accomplished women in Utah); *see also* THE FIRST FIFTY YEARS, *supra* note 31, at 245 (noting the longevity of the working relationships between national women’s leaders and Utah counterparts); 5 SELECTED PAPERS, *supra* note 3, at 246–47 (2009) (referencing the “magnificent delegation” of Utah women at the 1890 annual National Woman Suffrage Association). For the controversy over polygamy, see Susan B. Anthony, Speech to the House Committee on Elections (Jan. 2, 1899), in 6 SELECTED PAPERS, *supra* note 3, at 259–60 (2013) (recommending that Utah Congressman-elect Brigham Roberts not be seated for polygamous crimes). Lucy Stone regarded Anthony and Stanton’s welcome of polygamous LDS women “reprehensible” and a reason for her refusal to join the National Council for Women. 5 SELECTED PAPERS, *supra* note 3, at 248 n.4 (2009). For the National Woman’s Suffrage Convention advocating against the Edmunds-Tucker Act’s disenfranchisement of Utah women, see Telegram from Eliza Roxey Snow et al. to Susan B. Anthony (after Jan. 28, 1887), in 4 SELECTED PAPERS, *supra* note 3, at 554–55 (2006). For a statement generally supportive of this summary, see MEAD, *supra* note 2, at 44.

<sup>153</sup> THE HISTORY OF WOMAN SUFFRAGE, *supra* note 89, at 644–45.

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

<sup>156</sup> MEAD, *supra* note 2, at 33.

<sup>157</sup> *Id.* at 19. Wells took over in 1877. *Id.* at 33.

Amendment's ratification.<sup>158</sup> While Anthony, Stanton, and Stone gained notoriety for universal suffrage nationwide, Utah suffragettes were effective in gaining the vote—not once, but twice.<sup>159</sup> Moreover, as Wyoming had no female suffrage heroines other than Julia Bright, Utah suffragettes were the true women pioneers of universal suffrage.<sup>160</sup>

As can be seen, several motivating factors cross-pollinated to bear equal suffrage fruit in Utah Territory. First, the necessary factor of lower percentages of women voters was present, but just barely.<sup>161</sup> The sufficient factors that brought women's suffrage over the finish line roughly track those found in Wyoming, but in different proportions. Race played an agenda-setting function, as Brigham Young chose to put political weight behind preserving the institution of polygamy rather than continuing efforts toward racial equality, which was expedient at the time.<sup>162</sup> Territorial politics also featured prominently, as both male politicians and female activists asserted their autonomy and equality in efforts to counteract the Reconstruction Congress's efforts to abolish polygamy.<sup>163</sup> Paradoxically, they felt that the expression of the religious freedom to choose polygamous marriage as a theological "principle" heightened a woman's status rather than degraded it.<sup>164</sup> In all, Utah's message came through loud and clear: they would not be bullied by an absolutist Reconstruction Congress's attempt to beat them into submission. The women of Utah were not in bondage; they chose polygamy and would choose it at altars and in ballot boxes.<sup>165</sup> Giving them the vote was an assertion of gender equality as well as an assertion of religious equality—a demand to be able to express religious sentiments through word and deed.

### III. WESTERN GLOSS ON FOURTEENTH, FIFTEENTH, AND NINETEENTH AMENDMENTS

All factors involved in Wyoming and Utah's local suffrage calculus—race, politics, and religion—can be generally understood as a reaction to Reconstruction. Western

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<sup>158</sup> THE HISTORY OF WOMAN SUFFRAGE, *supra* note 89, at 650 ("The most impressive figure on the platform [of the Suffrage celebration in Salt Lake City] was President Emmeline B. Wells, 92 years old, who had voted since 1870 and who had labored all these years for this glorious achievement. What those dim eyes had seen of history in the making, what those old ears had heard and what that clear brain had conceived and carried out only her close associates knew. She was the incarnate figure of tender, delicate, eternally determined womanhood, arrived and triumphant."); 6 SELECTED PAPERS, *supra* note 3, at 249 n.1 (2013) ("Emmeline . . . had been active in the National and National-American suffrage associations for two decades.").

<sup>159</sup> See THE HISTORY OF WOMAN SUFFRAGE, *supra* note 89, at 650.

<sup>160</sup> See Massie, *supra* note 6, at 8.

<sup>161</sup> See AMAR, *supra* note 4, at 420.

<sup>162</sup> *Id.*

<sup>163</sup> *Id.*

<sup>164</sup> See *id.* at 420–22.

<sup>165</sup> See *id.*

Reconstruction partook more of political and social restructuring, but there were elements of racial Reconstruction as in Wyoming's territorial elections.<sup>166</sup> Early Western suffragists were also reacting to the contemporaneous ratification of the Reconstruction Amendments, and specifically the Fifteenth Amendment.<sup>167</sup> With William Bright, they were essentially proposing an amendment to the Fifteenth Amendment: if blacks were given the franchise, women should be given it, too.<sup>168</sup> This amendment to an amendment did not find expression for another fifty years until passage of the Nineteenth Amendment, but through the efforts that initiated woman's suffrage during, and as a reaction to Reconstruction, it can be directly tied as an enactment argument to the Fifteenth Amendment.

The importance of this enactment argument is that the Nineteenth Amendment can be read as granting all political rights to women accorded colored men by the Fourteenth Amendment. This reading strengthens Akhil Amar's claim (building off of Vikram Amar's synthesized theory of voting rights amendments) that modern Supreme Court case law supports a reading of the Nineteenth Amendment that incorporates all of the political rights given to colored men via the Fifteenth Amendment, including "an equal right to stand for election and to sit on juries."<sup>169</sup> As Akhil Amar writes, "[T]he Woman Suffrage Amendment was plainly pegged to the Black Suffrage Amendment."<sup>170</sup> In Wyoming, this was the response to black suffrage: even though the suffrage act discussed only voting, women also sat on juries and filled public office almost immediately.<sup>171</sup> In Utah, women could not stand for office in 1870,<sup>172</sup> but they drafted petitions, campaigned for statehood with draft state constitutions containing equal suffrage, served on juries, were sworn into the bar, and soon were elected to various offices once suffrage was regained in 1895.<sup>173</sup> There, we also find a physical tie, in addition to a logical tie between Fifteenth and Nineteenth Amendments: Emmeline Wells. Through her perseverance (and good health), she helped produce both early Reconstruction suffrage in Utah and Nineteenth Amendment suffrage nationally.<sup>174</sup> Her efforts strengthened the multigenerational synthesis, wherein the hearts of ultimately successful suffragist daughters turned towards their

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<sup>166</sup> *See id.*

<sup>167</sup> *See id.* at 421.

<sup>168</sup> *See Rea, supra* note 50.

<sup>169</sup> AMAR, *supra* note 4, at 84–87; Amar, *Jury Service, supra* note 28, at 241.

<sup>170</sup> AMAR, *supra* note 4, at 426.

<sup>171</sup> LARSON, BICENTENNIAL, *supra* note 6, at 84–87. However, jury duty was retracted by newly appointed judges who, in 1871, "decreed that jury duty was not a necessary adjunct of suffrage." *Id.* at 86.

<sup>172</sup> White, *supra* note 134.

<sup>173</sup> *See, e.g.,* THE HISTORY OF WOMAN SUFFRAGE, *supra* note 89, at 646. In 1896, the first year Utah women were able to stand for office (and vote again), a Dr. Martha Hughes Cannon, was elected the first woman to a state senate seat in the United States. She was joined by several women elected to Utah's lower house that year. *Id.*

<sup>174</sup> *See id.* at 650.



suffragist mothers (and fathers) in grateful appreciation for the work they began during Reconstruction.<sup>175</sup>

Some may feel compelled to respond that territories must be discounted (if counted at all) as evidence of original understanding of Reconstruction and the Nineteenth Amendment. After all, territories did not participate per se in ratifying amendments. Yet they did post hoc via their state constitutions which were proposed to Congress as part of their statehood application. Both the Utah (1895) and Wyoming (1889) Constitutions recognized the supremacy of the federal document as a matter of law, including all amendments.<sup>176</sup> Especially with regards to that Ratification history in which they lived and participated, the territories intimately understood the supremacy to which they were ascribing themselves.<sup>177</sup> As if to reaffirm their gloss on the Ratification Amendments, Utah women regained suffrage through the process of creating their constitution.<sup>178</sup> Additionally, while territories may not have been equal to other states, citizens were citizens based on birth within the United States “and subject to the jurisdiction thereof . . . .”<sup>179</sup> Surely the “United States” here referred to all land within the territorial borders of the country and not to individual states, and as westerners knew full well, they were subjected to the jurisdiction of the omnipotent federal government.<sup>180</sup> Just as citizens enjoyed all privileges and immunities equally with all other citizens, regardless of locale, territorial citizens’ viewpoints for purposes of enactment or Ratification arguments should also be given equal weight.<sup>181</sup> Wyoming and Utah’s answer to Reconstruction was universal suffrage, and this gloss synthesizes the Nineteenth and Fifteenth Amendments.<sup>182</sup> As Amar says of enactment arguments generally, this historical gloss helps to pan out from a clause-bound analysis and instead considers the Constitution’s overall structure as it came into being over multiple generations (or even just one, as in the case of Emmeline Wells).<sup>183</sup>

It also helps to synthesize the Nineteenth Amendment with the Reconstruction Amendments as a whole. Indeed, a broader reading of this enactment history provides shape and texture to the Fourteenth as well as the Fifteenth Amendments. As Steve Calabresi writes, political rights as granted by the Fifteenth Amendment reside at the top of rights’ hierarchy, and incorporate all lesser rights, including civil and social rights as bequeathed to all citizens by the Fourteenth Amendment.<sup>184</sup> Thus the Nineteenth’s grant of political rights necessarily incorporated the Fourteenth Amendment’s

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<sup>175</sup> *Id.*

<sup>176</sup> UTAH CONST. art. I, § 3; WYOM. CONST. art. I, § 37.

<sup>177</sup> *See* AMAR, *supra* note 4, at 426–27.

<sup>178</sup> *See* UTAH CONST. art. IV, § 1.

<sup>179</sup> U.S. CONST. amend. XIV, § 1.

<sup>180</sup> *See* AMAR, *supra* note 4, at 426–27.

<sup>181</sup> *See id.*

<sup>182</sup> *See id.*

<sup>183</sup> *See* Akhil Amar, *Intratextualism*, 112 HARV. L. REV. 747, 789 (1999).

<sup>184</sup> *See* Calabresi & Rickert, *supra* note 28, at 67.



guarantees as respecting civil rights.<sup>185</sup> Read as a whole,<sup>186</sup> the Nineteenth, Fifteenth, and Fourteenth Amendments extend political and civil rights to those of any color or gender. More specifically, Calabresi claims that one of those civil rights is equal protection of the law.<sup>187</sup> This equality applies to sex discrimination as it does to race.<sup>188</sup> Early Western Reconstruction suffrage is directly on point in this regard. The territorial legislature that extended suffrage to women in Wyoming also protected the property of married women, required equal pay for schoolteachers with no discrimination “on account of sex when the persons are equally qualified,” and likewise required husband and wife to be treated equally in the division of an intestate’s property.<sup>189</sup> In 1869, months before the territorial legislature voted unanimously for woman suffrage, Brigham Young, toward whom those legislators looked to for guidance, preached much the same thing.<sup>190</sup> In support of Calabresi’s arguments, the Western reaction to Reconstruction provides contemporary understanding for what equality and liberty meant to ordinary people even as these concepts were constitutionally enshrined as part of the Fourteenth Amendment. Equality and liberty did not depend on one’s gender, nor did it depend on one’s ascribed religion.<sup>191</sup> Equal meant equal—for black and white, bond and free, male and female, Jew and Gentile.<sup>192</sup>

The arguments from local Reconstruction enactment history run in parallel to and complement the response of the national suffragists. Women, with their petitions and pens, had helped to bring about and win the Civil War just as much as men with muskets and muscles, and thus, those women argued, they should be granted the vote.<sup>193</sup> In 1866, when Section 2 of the proposed Fourteenth Amendment inserted the word “male” into the Constitution for the first time in conjunction with suffrage,<sup>194</sup>

<sup>185</sup> See generally *id.*

<sup>186</sup> See Amar, *supra* note 183, at 748 (articulating the basis of this holistic method of interpretation).

<sup>187</sup> See generally Calabresi & Rickert, *supra* note 28.

<sup>188</sup> *Id.*

<sup>189</sup> LARSON, *supra* note 7, at 78.

<sup>190</sup> Young, *supra* note 89, at 61. The professed equality of the sexes in the professions in Wyoming and Utah is underscored by statistics for the West, wherein “15.2 percent [of women] were engaged in professional occupations, compared to 8.1 percent nationally.” MEAD, *supra* note 2, at 18.

<sup>191</sup> See generally Calabresi & Rickert, *supra* note 28.

<sup>192</sup> For an apt and fascinating word study comparison, see AMAR, *supra* note 4, at 381 (“[E]veryone born under the American flag—black or white, rich or poor, male or female, Jew or Gentile—was a free and equal citizen.”) and THE BOOK OF MORMON, 2 *Nephi* 26:33 (“[A]nd he denieth none that come unto him, black and white, bond and free, male and female; and he remembereth the heathen; and all are alike unto God, both Jew and Gentile.”).

<sup>193</sup> AMAR, *supra* note 4, at 394–95.

<sup>194</sup> U.S. CONST. amend. XIV, § 2 (“But when the right to vote . . . is denied to any of the male inhabitants . . . the basis of representation therein 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.”).

“thousands of women flooded Congress with petitions for woman suffrage.”<sup>195</sup> In January and February of 1866 alone, this onslaught yielded at least five petitions for universal suffrage.<sup>196</sup> Despite being incensed by Section 2 and thereafter being excluded from the extension of suffrage to blacks with the Fifteenth Amendment, national suffragists believed that Section 1 of the Fourteenth Amendment crucially conferred on women equal civil rights.<sup>197</sup> National women’s rights advocates (which at this time excluded women from Wyoming and Utah) had similar reactions to those of their Western sisters (and brothers), bringing suffrage proposals almost contemporaneously in response to Reconstruction and its amendments, yet their responses differed in important ways. The most obvious difference was found in the venue for political action—Congress versus territorial legislatures.<sup>198</sup> Another is sequencing. The national movement antedated Reconstruction, whereas the efforts in Wyoming and Utah began in its cradle.<sup>199</sup> A final difference was that territorial petitions and proposals were consummated during Reconstruction, whereas the national petitions remained impotent for another half century.<sup>200</sup> This crucial difference transformed the movement, for from that time, national suffragists and sister territories began in earnest to focus on expanding the Western franchise, ultimately gaining enough momentum for national universal suffrage.<sup>201</sup> Reconstruction was the but-for causation simplifying the causal chain and distilling the suffragists’ response: equality was not equality until it expanded in all directions.<sup>202</sup> Reconstruction was not complete until it crowned women with the vote.

#### CONCLUSION

Race, religion, and territorial politics were the necessary factors which, when added to the sufficient factor of low numbers of women, help to explain Wyoming and Utah’s early grant of universal suffrage. Analysis of these granular Reconstruction histories of the first franchise extensions provide richer context for understanding the Reconstruction Era and Amendments, their relationship to the Nineteenth Amendment, and the concepts of constitutional liberty and equality. Akhil Amar has called for a reading of the Nineteenth Amendment that incorporates all of the political rights given to colored men via the Fifteenth Amendment,<sup>203</sup> and Steve Calabresi has

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<sup>195</sup> AMAR, *supra* note 4, at 395.

<sup>196</sup> AMAR, BILL OF RIGHTS, *supra* note 28, at 240.

<sup>197</sup> AMAR, *supra* note 4, at 394.

<sup>198</sup> It was not until 1869 that the national movement began focusing expanding on suffrage in the states and territories. Yet even then, they did not have the contacts to effectuate this mission until Elizabeth Cady Stanton and Susan B. Anthony’s 1871 Western Tour, after suffrage was already won in Wyoming and Utah.

<sup>199</sup> See AMAR, *supra* note 4, at 394–95.

<sup>200</sup> See *id.*

<sup>201</sup> See *id.* at 418–27.

<sup>202</sup> See generally *id.*

<sup>203</sup> AMAR, *supra* note 4, at 394–95.

argued that the Nineteenth Amendment's grant of political rights necessarily incorporated the Fourteenth Amendment's guarantees as respecting civil rights, including equal protection.<sup>204</sup> The accounts analyzed here both support and broaden the historical gloss needed to better understand the relationships among these constitutional provisions—an understanding that takes into account often-excluded Western histories.

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<sup>204</sup> See generally Calabresi & Rickert, *supra* note 28.