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"We are kings and queens"

Introduction

> Our national ideal is the nation of kings, a royal people, every man of us a king, every woman of us a queen. Now a king has his . . . proprietary rights . . . , not for his selfish pleasure but for the good of society. His days . . . are spent for the general welfare.
>
> – Justice Roger Sherman Greene (1886)

> Every man here was born of a woman and man, and every woman here was born of a man and a woman, and we inherit equally from each. . . . [W]e are each . . . co-heirs, we are kings and queens – not kings with a queen-consort walking behind, but fellow sovereigns – Williams and Marys, Ferdinands and Isabellas!
>
> – Mary Johnston (1912)[1]

Some years ago, I stumbled across a little-known decision of the Washington Supreme Court in the 1912 case of *Henrietta Somerville* v. *State of Washington*.[2] With her husband, Somerville owned and managed a paper-box factory in Seattle, where Henrietta employed and directly supervised a large number of mostly self-supporting women. With the encouragement of employees, she had filed suit in King County contending, as had male bakers in *Lochner* v. *New York* (1905), that women ought to be able to strike up their own bargains, particularly when the job and workplace were safe and pleasant. At issue was a maximum-hour law that state legislators had adopted a year earlier – the same kind of protective legislation that had been affirmed in the U.S. Supreme Court's better-known *Muller* v. *Oregon* ruling in 1908.[3]

[1] Mary Johnston, "Address," December 1912, in Marjorie Spruill Wheeler, *Votes for Women: The Woman Suffrage Movement* (Knoxville, TN, 1995), p. 160. Johnston was a novelist and suffragist. See also "Judge Greene's Charge, Seattle, August 30," in *SDPI*, August 31, 1886.

[2] *State of Washington* v. *Henrietta Somerville*, 67 Wash Rpts 638 (1912).

[3] *Lochner* v. *New York*, 198 U.S. 45 (1905); *Muller* v. *Oregon*, 208 U.S. 412 (1908).

In Washington, as elsewhere, an augmented state presence in the workplace formed part of a stereotypically Progressive drive to secure the health and welfare of consumers and workers in an age of rapid industrial and urban growth – particularly underage, non-unionized, endangered, or non-voting workers. In coastal cities, women's groups and laborites zealously pursued hour limitations for municipal workers engaged in physically taxing labor, but also for children and women employed by private firms. In *Muller*, the justices approved limitations on workdays for the women employed at Kurt Muller's laundry essentially by permitting an exception in the case of women to the general ban, rooted in Fourteenth-Amendment jurisprudence, on legislative interference with the terms of employment. As with legislation elsewhere, Washington's statute required "mechanized firms" not engaged in seasonal work to send women home after eight hours – a reform that effectively ruled out the possibility that men and women might realize economic parity.[4] But many self-providing women (aided by an odd mixture of social feminists, unions, and entrepreneurs) argued that liberty of contract attached as readily to women as to men. Why not rely on *Lochner* and kindred decisions in which courts had affirmed workers' right to sign contracts and assume workplace risk without public superintendence, especially in non-hazardous settings?

Ordinarily, *Somerville* might have elicited little more than a passing glance. Well before 1908, states routinely enacted sex- and age-specific hour laws; after 1908, and notwithstanding the occasional victory for *laissez-faireism*, federal courts generally followed the rules set out in *Muller* and *Lochner*. Nor was the idea of an hour ceiling foreign to Washingtonians: Into the 1880s, labor organizations, several political societies, and even some businesses had either advocated or adopted a daily limit on work for municipal employees, workers in hazardous industries, and young workers, albeit with provision for overtime pay, often as part of the so-called eight-hour movement. In 1883, one reformer urged the imposition of ten-hour workdays on farms to encourage young boys to continue in agriculture.[5] Because the facts and legal issues in *Muller* and *Somerville* seemed to be analogous and women's inadequacies a matter of what the court called "common knowledge," the box maker lost. Somerville's lawyers had presented ample evidence of factual differences between the two cases, which the state conceded. But, in the end, speaking for a unanimous bench and appropriating portions of *Muller*, Justice Herman Crow pronounced the law a reasonable exception to the rule against state intervention; Washington's interest in protecting vulnerable classes, notably children and other "minors," amply justified regulation. When Somerville's counsel

[4] Session Laws, State of Washington, Ch. 37, 1911, Act to Regulate the Hours of Work in Canneries and Other Mechanical Firms, p. 131.

[5] See, e.g., "Victoria Carpenters," *TDL*, March 19, 1884 (a new union of public workers seeking nine-hour days). For a firm's decision to adopt a ten-hour rule for men, see "Ten Hour Movement," *SDPI*, November 12, 1886 ("8 of the ten mills" ran ten hours to pre-empt unions and "the red flag"). See also "Ten Hours a Day's Work on Farms," *WWU*, September 21, 1883.

demanded and got a re-hearing – the women, they insisted, were men's political and civil equals and fully capable of assuming workplace risk – they lost again. In the Court's estimation, the *Muller* precedent, while not a perfect fit, bore at least a family resemblance.

Somerville's fascination, then, lies not with state imposition of sex-specific hours legislation, but rather with the court's juvenalization of *enfranchised, propertied* employees. Washington's women had been granted civil, marital, and political equality after 1879; and, while the suffrage had been lost in 1889, women had been re-enfranchised by constitutional amendment in 1910. In what sense were fully enfranchised, propertied adults legal "minors," incapable of assumptions of workplace risk? Even more intriguing, constructions of female laborers in *Somerville* were largely unchanged from those deployed in 1902, when women had not yet been readmitted to polling places. In *State* v. *A. G. Buchanan*, the court had affirmed the constitutionality of Washington's 1901 maximum-hours law, the 1911 statute's antecedent, which forbade companies from employing women for more than ten hours a day.[6]

Had women's enfranchisement and agency within marital estates made no difference? *Somerville* jarred badly against federal judges' willingness to distinguish between enfranchised and non-enfranchised citizens when evaluating the merits of state protection. If ballots were citizens' main weapon against tyrannical or custodial government, as courts regularly claimed, how did limitations happen? And what about economic agency? Some years before *Muller*, counsel for Buchanan had demanded an explanation for legislative meddling with propertied adults; in *Muller*, justices to some extent had permitted state protection of adult women because they lacked constitutional standing sufficient to defend their interests at the polls. Some years later, when federal justices invalidated a sex-specific minimum-wage law in *Adkins* v. *Children's Hospital*, they pointed (if somewhat disingenuously) to the new Nineteenth Amendment as proof that female worker-citizens were capable of self-defense.[7]

The opinions rendered in *Somerville* and, in slightly different ways, in *Buchanan* thus engage modern readers because of the apparent ease with which justices demoted a large segment of the electorate to a bizarre semi-sovereignty. To be sure, wage-earning women throughout the nation had been subjected to hours limitations, and justices' job was to apply relevant doctrine to cases at bar. But Washington's bench had witnessed, and often participated in, a protracted struggle for sex equality immediately before statehood; the women in *Somerville* and *Muller* were not similarly situated.[8] In *Muller* and *Adkins*, actual or prospective enfranchisement arose as a fact that

[6] *State of Washington* v. *Buchanan*, 29 Wash Rpts 602 (1902). See also Chapter 6.

[7] *Adkins* v. *Children's Hospital*, 261 U.S. Rpts 525 (1923).

[8] In this book, sex refers to biological differences; gender refers to the social process[es] by which sex is transmitted or translated into social practice.

could alter outcomes. In territorial Washington, women had claimed co-equality and co-sovereignty within marriage, owned businesses and farms, claimed custody of children at divorce, amassed considerable experience as voters in general elections, had served as jurors, and begun to occupy elective offices. In 1912, women could vote as a matter of constitutional right. Kurt Muller's employees could not claim analogous investitures as members of the constituent power. Yet, despite women's political and economic agency, Justice Crow failed to chart a new course by distinguishing the case from *Muller*.

CONTINGENCIES

As with every story worth telling, this one begins with the land and its people. Nowadays, Americans think of the well-populated Seattle-Tacoma metropolis as a cultural and economic magnet. But, in the 1870s, would-be settlers conceived of Washington Territory as remote and empty – a blank cultural slate somewhere to the north of better-known settlements like Portland and San Francisco. As white homesteading advanced, isolation and disorganization powerfully challenged prevailing views of self-rule in republics. What would the community tolerate as citizens began to push the boundaries of civic possibility? What exactly would the rules of the game look like, and who would decide?

Originally part of Oregon Territory, Washington became a separate entity on March 2, 1853, with Congressional adoption of an organic act.[9] Within the geographically complex territory – a patchwork of forests, rugged and heavily glaciated mountains, lush farmland, seacoast, and high tundra – information and people moved slowly, particularly before railroaders breached the Cascades, regularizing and hastening the mails. Few elements of western life mattered more than the fact of partial or postponed rail lines and financial controversies related to railroaders. In 1889, six years after the driving of a golden spike in Montana and coincident with statehood, the Northern Pacific Railroad arrived in Tacoma. Before then, Seattle and Tacoma were outposts along a rail spur leading north from Portland. Spokane Falls and coastal towns communicated sporadically and seasonally. As Susan B. Anthony learned when her train stalled for days behind a broken plow, mountain roadways disrupted the movement of goods and people.[10]

Development included a number of seemingly disparate pieces. Telegrams, ground travel, and ocean-going vessels were expensive and (in the case of the telegraph) maddeningly cryptic – all of which not only limited public information but also drove up consumer prices. Imported nails and tableware

[9] An Act to Establish the Territorial Government of Washington, Statutes at Large, 32nd Congress, 2nd Session, Ch. XC, pp. 172–9, approved March 2, 1853.

[10] "Completion of the Northern Pacific Railroad," *SDPI*, September 9, 1883. On the breaking of a plow, see Susan B. Anthony Diary, January 5, 1872, in Ann Gordon, ed., *Selected Papers of Susan B. Anthony and Elizabeth Cady Stanton*, Vol. 2 (New Brunswick, NJ, 2000), p. 267.

cost more than citizens could afford. Newspaper editors regularly solicited capital investment on behalf of Washington's growing towns, where residents clamored for work and a wider range of commodities – among them, vegetables, books, bread, machinery, matches, dairy products, clothing, and potable beer. As a Seattle writer put it in an 1882 plea for industrial investment, "Railroads will bring people into the country, but if there is nothing for them to do they will go away again."[11]

As in other relatively healthy borderlands, demographic changes shaped development. Between 1880 and 1890 alone, the territory's population grew by about 375 percent, from 75,116 (well beyond the 60,000 required for statehood) to slightly more than 357,000. Urbanization also proceeded apace, from an official zero percent in 1880 to 28.5 percent at statehood. In 1890, Seattle claimed 42,837 residents; Tacoma had 36,066; and Spokane Falls, barely a village in 1880, boasted 19,922. The number of women stubbornly remained stuck between 37 and 38 percent of the total population in 1870, 1880, and 1890; most of them were white.[12] Before 1900, moreover, black populations were modest and largely male. Black residents in Seattle grew from near zero in the late 1850s to 406 in 1900, when populations began to expand and to include a greater number of skilled workers. In 1880, census workers reported about 14,800 Indians; a decade later, the number rose to 20,375, then dropped in 1900 and 1910 to slightly more than 19,000.[13]

Mining or lumbering outposts, when not beset by walkouts and mercenaries, suffered from the kinds of social disarray that afflict heavily male societies without decent roads, jails, families, and religious societies. Roughneck workforces and drunkenness proliferated. Miners and sawyers witnessed hundreds of injuries and deaths each year; employers ignored fines and other, unenforced sanctions.[14] Seacoast residents struggled against underemployment, gambling rings, prostitution, and dank saloons. Chinese settlers – probably no more at any time than 1 percent of urban populations – provided inexpensive labor in occupations that white men eschewed, but also triggered violence. The Chinese Exclusion Act, after all, did not address settled Asian communities. In

[11] "Factories Needed," *SDPI*, August 24, 1882.

[12] Thomas W. Riddle, *The Old Radicalism: John R. Rogers and the Populist Movement in Washington* (New York, 1991), esp. pp. 74–6; United States Census, 1870, 1880, 1890. Undercounting is likely with Chinese and Indians, transient miners or lumbermen, fisherman, and waterfront roughnecks.

[13] Quintard Taylor, *The Forging of a Black Community: Seattle's Central District from 1870 through the Civil Rights Era* (Seattle, WA, 1994), p. ix; U.S. Census, 1880, Indian Census by State and Territory. See also Carlos Arnaldo Schwantes, *The Pacific Northwest: An Interpretive History* (Lincoln, NE, 1996, rev. ed.), p. 229. It is unclear whether the 1880 number (from the census) includes the 6,239 Indians that Schwantes reports as Indians not living on reservations. These numbers are unreliable, given the poor quality of territorial censuses. See also "Population of the Territory," *WS*, October 21, 1887. Numbers for Kanakas, half-breeds, blacks, mulattoes, and the Chinese appear separately, and, with whites added (137,800), do not total 144,009; 59,328 were said to be female.

[14] Washington State, *Annual Report of the Labor Department* (Olympia, WA, 1904), p. 13.

the mid-1880s, when Washington probably contained no more than 2,575 Asians, anti-Chinese rioting in Seattle and Tacoma stained the territory's reputation and fueled skepticism in Congress and elsewhere about its readiness for statehood.[15]

Social and political organization came slowly. The Women's Christian Temperance Union, the Knights of Labor, the People's Party, and other instruments of civic mobilization languished until the early 1880s. In 1882, a journalist could say accurately that "party lines have not been closely drawn . . . , and voters have been influenced by their friendships or enmities." The Democratic and Republican parties were major forces by the late 1880s, but even at mid-decade, organizations touting the words "people" or "independent" attracted many voters. The Knights peaked in about 1886, though influence persisted.[16] Republicanism finally emerged as the dominant party into the 1920s; the occasional Democratic victory often reflected sympathy with Populism and a diffuse anti-monopolism.

Within party circles, moreover, wealth production and statehood trumped almost everything. In 1878, just as delegates concluded work on a proposed state constitution, Democrats and Republicans held pre-election conventions, responding in unison to concerns about labor unrest in mining and lumbering, the Chinese question, Indian-white tensions, and chronic delays in railroad completion. Neither party addressed suffrage. Both denounced attempts to pit labor against capital, demanded an end to Indian reservations and "evil" Chinese migrants, and castigated railroaders' flagrant abuse of the public trust.[17]

While gradual formalization also characterized women's societies, informal mobilization of women and their male allies often turned political or legal tides. Women periodically massed in courtrooms and legislative hallways in support of female lawyers, women accused of crime by all-male juries, and men prepared to defend women's interests. The women's club movement finally crystallized in the mid-1880s, coincident with territorial adoption of equal suffrage; in Tacoma, women met to discuss "great questions" affecting "society and the world."[18] Mixed-sex reformism similarly achieved critical mass only by 1883–85. Men and women alike opposed endemic drunkenness; firm links between women and anti-saloonism had not yet crystallized. In 1883, only in part to attract female voters, the Republican physician-governor William Newell condemned the pandemic use of a substance "with no redeeming or compensating influences for good" and pledged support for temperance legislation.[19]

[15] For rare praise of the Chinese, see "A Chinese Junk Village," *PSWC*, October 6, 1882.
[16] "The Election," *PSWC*, November 10, 1882.
[17] "Democratic Platform," *SDPI*, September 11, 1878; "Republican Platform," ibid., October 25, 1878.
[18] "Tacoma Woman's Club," *TDL*, March 20, 1884.
[19] Address of Governor William Newell (1883), in Charles M. Gates, ed., *Messages of the Governors of the Territory of Washington to the Legislative Assembly, 1854–1889* (Seattle, WA, 1940), pp. 242–3. Speeches were widely circulated; e.g., "Governor's Message," *SDPI*, October 4, 1883.

Nevertheless, by the late 1880s, isolation and disorganization yielded with speed and finality to many of the sweeping transformations associated with the nineteenth century. In the east and Midwest, finance capitalism, industrialization, urbanization, galloping state paternalism, and a mass democracy all had emerged in modern dress well before the twentieth century. Gilded-Age Americans witnessed the re-nationalization of political parties and partisan realignment by 1896, global marketing, advances in transportation and communication, agrarian radicalism, unionism, and glimmerings of Progressive reform. In places like Kentucky or Michigan, balanced sex ratios and economic self-sufficiency appeared before the Civil War; decades before Seattle and Tacoma opened post offices, the transportation revolution had lowered production costs and altered perceptions of time and space. In the New Northwest, settlers labored to cut roads through mountains with brute force, attract workers, and supply midwives, doctors, and seamstresses with sewing needles; elsewhere, Americans erected sprawling factories, worried about frontier *closings*, and mounted a World's Fair to celebrate technological prowess.

Washingtonians thus witnessed the convergence of multiple developmental processes that other regions had been able to absorb gradually. As a result, the territory's economy and society were fractured, imperfectly modern, and inherently unstable. Allison Parker and Stephanie Cole point to "key moments in American history when the state was being defined and redefined"; Benedict Anderson once identified a tangled "skein of journeys" that state- and nation-building entail.[20] However characterized, Washington's pre-statehood circumstances generated social strain and numerous examples of carts before horses. Rapid population growth, first-generation farming, and helplessness in the face of avalanches, fires, and earthquakes co-existed with industrialization, labor unrest, and trans-Pacific as well as regional commerce. In November, 1883, journalists decried the loss by fire of a new brewery, malthouse, and county building in Seattle; the city had modern fire equipment but lacked water, the "first essential," and adequate water pressure.[21] Six years later, a wave of fires in several mostly wooden cities revealed an appalling lack of attention to public safety in frantic building campaigns. Rude lumbering camps bore scant resemblance to elegant hotels and opera houses, yet they were only a few miles apart.

Into the 1880s, as capitalists elsewhere orchestrated merger movements, bubbles, and union-busting on an unprecedented scale, Washingtonians labored to construct factories and canneries, the main engines of a modernizing society. In 1879, a Seattle editor boasted that the number of people employed in western factories had tripled since 1870. Average income

[20] Allison Parker and Stephanie Cole, eds., *Women and the Unstable State in Nineteenth-Century America* (College Station, TX, 2000), p. ix; Benedict Anderson, *Imagined Communities* (Brooklyn, NY, 2006), p. 115.

[21] Editorial, *WS*, November 16, 1883.

for a laborer was $913, as compared to $787 in New England; annual savings in Washington and New England were $117 and $231, respectively. This supposedly gave "indisputable evidence of the adaptation of the West" for industry. Yet, at the same moment, settlers complained of Indian raids and sought help with land clearance. Crooks mingled with and sometimes dogged upstanding citizens: In December, 1879, a lawyer with a thriving city practice offered land for sale, sternly admonishing "land grabbers" to stay away.[22]

Isolation encouraged legal hybridization – that is, the intermingling and merger of common-law rules of practice, continental doctrines (particularly in domestic-relations and property law), and evolving social and gender practices – some inherited, others a response to new circumstances. By the late 1870s, these accumulated legalities had softened, complicated, or replaced doctrines prevailing in older communities; as Pierre Bourdieu reminds us, with time and popular acquiescence, a people's "history becomes nature."[23] The republic's *ancien regime* – including surviving elements of the law of coverture, itself substantially weakened and hybridized over the course of the century – no longer mirrored the self-constructions of Washingtonians accustomed to mutuality, if only to survive in ramshackle hamlets and camps where the only certainty was perpetual uncertainty.

It is here, not in Progressive America, that we encounter the underpinnings of Hattie Somerville's lawsuit and her attorneys' oddly futile defense. Settlers first organized campaigns for sex equality, aided occasionally by prominent suffragists from Oregon and elsewhere, in 1871–73. Territorial legislators refused to universalize the suffrage, but augmented married women's economic freedom steadily until, in 1879, they abruptly passed a comprehensive, sex-neutral community-property statute and remarkable civil-rights law. By 1880, women claimed autonomy in the marketplace and within marriage, including equal rights to custody of children, with the important exception of husbands' exclusive right to sexual services and their ability to act alone as administrators in many community-related transactions. Lawmakers had granted women and men co-equal investiture in property – associations that Americans had long associated with constitutional sovereignty. Experiences of freedom broadened: In 1883, largely in response to the unanswerable fact of co-sovereignty, assemblymen enfranchised loyal adult white women. Ancillary rights and duties traditionally bundled with the ballot attached automatically to new voters, no less than they had attached to white men without property at the moment of their investiture in Jacksonian

[22] "Western Manufactures," *SDPI*, November 22, 1879; untitled advertisement, ibid., December 27, 1880 (for land sale).

[23] Pierre Bourdieu, *Outline of a Theory of Practice* (Cambridge, UK, 1977, 2005 ed.), p. 78. As used here, the term "legalities" refers to a contingent bundle of informal and formal rules of conduct that members of a community take to be binding and limiting. See also Christopher Tomlins and Bruce Mann, eds., *The Many Legalities of Colonial America* (Chapel Hill, NC, 2000), esp. pp. 1–24, 272–92.

America, or to black men during Reconstruction, when nobody yet realized how thoroughly new federal amendments would be ransacked. Among them were the jury-service obligation as well as rights to hold public office, claim a nationality, and practice law. In Washington, clerks selected jurors from tax censuses or poll books; co-tenancy of marital estates qualified women for jury duty whether they had voted or not. To sit on petit juries, women had to be resident, tax-paying citizens; legislators added a "householder" requirement for grand juries.[24] Again west of the Cascades, courtrooms boasted large numbers of female jurors and bailiffs. By about 1885, it was newsworthy but not horrifying for women to hold minor public offices. Excluded were military service, roadwork obligations, and wives' right to claim separate nationalities and domiciles. But Washingtonians could not imagine, much less abide, women in militias; mixed-sex juries and county commissions were sufficiently heart-stopping.

Only by 1886–88 did Washingtonians confront the extent to which their legalities departed from practices elsewhere; amid social unrest on all sides, women who had voted and complied with hand-delivered calls to jury duty stood accused of gender betrayal. Critics increasingly complained that they behaved in polling places, and even more certainly in courtrooms, as sexualized, subjective *women* rather than as objective, representative *citizens*. Because they had invaded masculine citadels *as women*, they sabotaged neighborhood justice, subjected private knowledge to public scrutiny, and imperiled statehood. Opponents seized on women's ambivalence about (and periodic denunciations of) jury service, dalliances with "cranks," and participation in anti-vice campaigns to condemn equal suffrage. These disputes, in turn, triggered pitched warfare. Boundaries around a white male electorate hardened, as did cultural and psychological barriers around courthouses. Women (and men unable to perform white manhood) stood accused of destabilizing the polity, discouraging investment, and delaying or sabotaging statehood.

By 1888–89, women had been driven from sites of public judgment. Resurgent common-law doctrines and related social practices, the latter functioning as a customary constitution, had prevailed. No longer did co-equality and co-sovereignty protect women from charges of sex-driven incapacity, subjectivity, and weak-mindedness. Washington achieved statehood with a white-male electorate. A few women practiced law; many others farmed or owned businesses and jointly occupied marital estates. Only in 1910, after years of decorous lobbying and parading, did legislators re-institute universal suffrage by constitutional amendment.[25] By then, however, women's

[24] E.g., An Act in Relation to Qualification of Grand and Petit Jurors, Laws of Washington Territory, 1862, Section 1, p. 33. Clerks of court selected grand jurors from county lists of "all qualified electors and householders" and petit jurors from county lists of "all qualified electors."

[25] For a brief discussion, see Rebecca Edwards, "Pioneers at the Polls," in Jean Baker, ed., *Votes for Women: The Struggle for Suffrage Revisited* (New York, 2002), esp. pp. 98–9.

equal membership in the constituent power had been compromised, common-law rules of practice had reappeared in domestic-relations litigation, and the traditional bundle of rights and obligations associated with political equality had unraveled. In 1911, women were relieved automatically of jury duty "by reason of sex" unless they asked to serve – an exemption that many women welcomed. In effect, Washingtonians had constitutionalized the home vote.

The fully constituted, wholly self-governing citizen who survived these trials was manly and white, but, within important limits, willing to share space with well-deported, capable women, whose sovereignty in a formal legal sense had been partitioned, in keeping with social theory. Such men typically did not object to woman suffrage; only women could defend home interests. They did intend, however, to prevent "gender chaos" and to control courtrooms, statehouses, and the terms of labor contracts; in Kevin Murphy's words, they were "red bloods," not "mollycoddles." By 1912, women claimed civil rights, custodial rights, an eroded but still robust claim to marital equality, and the right to vote. But the clouding of women's equal title to constitutional sovereignty – a cloud affirmed by judicial decision – placed access to citizens' obligations out of reach for much of the twentieth century.[26]

PROBLEMATICS

How and why, as Washingtonians moved from the tumultuous 1880s to 1912, did hierarchical, gender-laden views of citizenship supplant egalitarian views and practices? Did uneasy women object to the equality principle itself or to specific experiences during the performance of obligations? To what extent had the statehood ritual and economic modernization shaped these judgments? More broadly, what do these developments tell us about the nature of resistance to equal suffrage and the decision in most jurisdictions to disallow mixed jury service or permit it only on request? What can New Northwestern conversations and choices reveal about Americans' evolving conceptions of citizenship and ongoing eastern resistance to equal suffrage? And why do the losses of legal and constitutional ground that women experienced in Gilded-Age Washington so closely resemble the trajectories that Cornelia Dayton and Laura Edwards identified, respectively, in early Connecticut and in the antebellum south?[27]

Responses form a chapter not only in accounts of the Northwest's developing legal-cultural fabric, but also in understandings of public life

[26] Kevin Murphy, *Political Manhood: Red Bloods, Mollycoddles, and the Politics of Progressive Era Reform* (New York, 2010). For gender chaos, see Carol Pateman, *The Disorder of Women: Democracy, Feminism, and Political Theory* (Stanford, CA, 1990), and Lori Ginsburg's use of the concept, "Pernicious Heresies . . . ," in Parker and Cole, *Women and the Unstable State in Nineteenth-Century America*, op cit., pp. 139–61.

[27] *Women Before the Bar: Gender, Law, and Society in Connecticut, 1639–1789* (Chapel Hill, NC, 1995); Laura F. Edwards, *The People and Their Peace: Legal Culture and the Transformation of Inequality in the Post-Revolutionary South* (Chapel Hill, NC, 2010).

before World War I. Most obviously, *Gender Remade* provides a detailed account of Washington's slide from formal sex neutrality toward the sex-specific inequalities embraced in *Somerville*. But, more experimentally, it aims to pry open the doors and windows of constitutional history: The findings of historians of gender typically find their way into the master narrative only when they affect federal developments – the long career of ERA, the decision against "sex" in the Fourteenth Amendment, or the abolition of polygamy. Nor have the new western and environmental histories appreciably altered frames of reference. Idaho, Oregon, or Washington still seem foreign and separate – places with local histories that join the national saga abstractly, as when developments illustrate "slavery and the territories" or "economic nationalism," or when federal judicial decisions drown out volatile, site-specific understandings of constructs like sovereignty, federalism, dependency, protectionism, or fundamental law. Yet nineteenth-century eyes and ears were trained much more closely to the ground than our own; to view westerners as clients of a continental, totalizing constitutional culture before 1918 is to misunderstand and homogenize the categories within which much – perhaps most – of the citizenry made sense of their world.

On the other hand, while historians of women have attended to important parts of the western story, including the enfranchisement of women, accounts usually emphasize ballots and women's political agency in securing the vote – i.e., the politics of suffragism. Examinations of women's self-actualization have transformed male-centric accounts, within which the state inscribed freedom on passive women, into woman-centered or universalized accounts. But the fact that jury service and office holding traditionally accompanied the suffrage often escapes notice, as does the possibility that jury service might have been more controversial than balloting. As a result, the plight of the female juror – her appearance in 1884 and catastrophic disappearance during the passage to statehood in 1888–89 – has yet to be closely examined.

Gender Remade shows that territorial battles to secure universal suffrage and equal civil or marital rights were far more complex than scholars have been able to see, given preoccupations with federalization of the suffrage and then with the supposedly decisive suffrage-temperance connection. In Washington, the furor over mixed-sex juries antedated and then developed alongside mixed-sex, anti-vice campaigns. The spectacle of women sitting in jury boxes initially persuaded opponents of suffrage to think of political *equality* (that is, universal investiture with political rights and obligations) as a degenerate, unwelcome, and harmful departure from customary practice. Many citizens believed, too, that a weighty load of obligations in addition to those borne at home fostered *inequality* and *injustice*. Finally, critics condemned outrageous, quasi-pornographic anteroom exposures of women's bodies and bodily or maternal functions ordinarily sequestered at home; by comparison, talk about the bodies of female voters had been formulaic ("unsexed") and mild. As controversy and social violence mounted, strange bedfellows gathered to reconsider and

eliminate the taproot – that is, egalitarian suffrage and domestic relations law, and beneath those constellations, the bedrock question of whether citizenship ought to be predicated on perfect equality. All citizens occupied houses but perhaps did not require the same number of rooms. In short order and despite fierce protest, officials introduced new legalities and a gender hierarchy taken to be compatible with "national manhood"[28] and with practices in other states – the seats, notwithstanding the Civil War, of citizenship and domestic practices.

The lack of scholarly interest in the jury-service obligation is puzzling. There ought to be more to read than a handful of articles and books, scattered paragraphs, and a chapter in Linda Kerber's landmark *No Constitutional Right to be Ladies*. Indeed, if the question is how Americans conceived of political equality in particular locations, female lawyers' pioneering accounts of how men and women interacted in mixed-sex courtrooms remain the most useful in print. Joanna Grossman and Gretchen Ritter constructively disagree about the relationship between suffrage and jury duty, mobilizing impressive evidence to say, on Grossman's side, that jury duty was linked to political freedom – a position that this book supports – and on the other side, that jury duty has been a civil rather than political right. But scholarship does not explain why men continued to command jury boxes after 1920, except to suggest that men always reserved sites of power for themselves, sought to preserve female delicacy, or took women to be suited by nature to domesticity, as if past behavior and chivalry offer sufficient explanations.[29] Historians of labor and Progressivism describe Seattle's post-statehood tumult but largely omit the jury crisis as well as the deeply gendered statehood battle. Indeed, classic studies of citizenship and the suffrage typically omit jury service altogether or give it passing notice. But Americans, and the English before them, had long associated voting rights with commensurate obligations, which together encouraged (as modern scholarship shows) such admirable traits as empathy and altruism. Surely Susan B. Anthony thought that enfranchisement imposed obligations – as in 1867, when she told hostile New Yorkers that suffrage led directly to the seating of all citizens "indiscriminately . . . upon juries."[30]

How, then, did Americans decide to sever political obligations from ballots in the case of sex? With the exception of the right to a nationality, we simply do not know, beyond the commentary surrounding leading twentieth-century

[28] Dana D. Nelson, *National Manhood: Capitalist Citizenship and the Imagined Fraternity of White Men* (Durham, NC, 1998).

[29] Johanna Grossman, "Women's Jury Service: Right of Citizenship or Privilege of Difference?" *Stanford Law Review*, Vol. 46 (1993–94), pp. 1115–60, as at p. 1137 (" . . . in Washington, as elsewhere, the all-male jury tradition continued"); Gretchen Ritter, "Jury Service and Women's Citizenship before and after the Nineteenth Amendment," *Law and History Review*, Vol. 20, No. 3 (Autumn 2002), pp. 479–515, locating jury duty within the tradition of representative government.

[30] "Hearing before the Committee on Suffrage, New York Constitutional Convention, in Albany," June 27, 1867, in Ann Gordon, ed., *The Selected Papers of Elizabeth Cady Stanton and Susan B. Anthony, Vol. II: Against an Aristocracy of Sex, 1866–1873* (New Brunswick, NJ, 1997), p. 75.

judicial cases. Exclusion of women continued into the modern civil rights era: Only in 1975, when a rapist in Louisiana contended that an all-male jury did not represent a fair cross-section of the population, did the U.S. Supreme Court finally declare that men and women had an equal obligation to sit on juries as well as equal opportunity as individuals to seek exemption. Sweeping, gender-based relief from citizenship obligations was unconstitutional. But the Court in *Taylor* v. *Louisiana* located women's right to occupy jury boxes, not in the Nineteenth Amendment, but in the Fourteenth; only later did justices re-associate jury duty with the right to vote, thus underscoring the mystery of the divorce of political rights from duties in the first place.[31]

A better understanding of how women came to be shut out of courthouses requires the excavation of layers of culture. Constitutional historians have been slow to embrace the problem of how ordinary citizens have lived or understood organic law, and have treated legal equality and sovereignty as more or less fixed constellations of rights and powers, handed over to particular groups at intervals in the march toward 1920 and then the 1960s. Equally problematic has been a tendency, in the absence of war or riot, to assume the framing power and universal application of formal legal instruments. When citizens have been denied citizenship rights, the presumption often has been, not that membership in the constituent power was just as contingent on culture formation as any other legal fiction, but that impediments to equality have been aberrational and fleeting – as with the Ku Klux Klan's interference with black voting, or the U.S. Supreme Court's denial of Susan B. Anthony's right to cast ballots in federal elections. But the maldistribution of public goods, if not 'natural,' has been naturalized in America, as elsewhere; the idea that men and women might occupy the same sovereign ground was profoundly radical and discontinuous into modern times. More has been at issue, in other words, than the multiplication of rights or the razing of temporary, mechanical barriers to equality.

Fortunately, the center of gravity is shifting, away from introverted studies of public law's formal structure and framing power toward an appreciation of interactions between disparate legalities and of the ways in which citizens internalize and experience constitutionalism. Increasingly, the goal has been to limn "the way of life and thought that we construct, negotiate, institutionalize, and finally (after it is all settled) end up calling 'reality.'"[32] But thorny questions about translation and transmission persist: How exactly

[31] Kerber, *No Constitutional Right to be Ladies*, pp. 124–220, esp. pp. 110–11. For affirmation of old rules, see *Hoyt* v. *Florida*, 368 U.S. 57 (1961); for reversal, *Taylor* v. *Louisiana*, 419 U.S. 522 (1975). For one brief notice of this odd disassociation, see Akhil Reed Amar, *America's Unwritten Constitution: The Precedents and Principles We Live By* (New York, 2012), pp. 287–8.

[32] Jerome Bruner, quoted in Clifford Geertz, *Available Light: Anthropological Reflections on Philosophical Topics* (Princeton, NJ, 2000), p. 192. See also Robert Baker, *The Rescue of Joshua Glover* (Athens, OH, 2006), pp. 179, 188, on public dialogue and law's failure to achieve social peace.

do ideas about rights, sovereignty, and legitimacy find their way into practice? Under what conditions do embedded social practices yield to or defeat innovative legalities? Challenges often are methodological: How might scholars capture what Robert Baker calls the "dialogue" between people and governments about the merits of particular rules or practices? How and when have constitutional precepts influenced behavior? Participants don't always explain themselves. Occasionally, social practices dictate silence, as with talk about rape or women's bodily functions. Governmental archives threaten to overwhelm informal testimony. Yet day-to-day talk imparts social meaning to otherwise disembodied, purely forensic constructs; in public and private conversations – not to mention poems, cartoons, and nasty letters to the editor – we can see more clearly how boundaries come to be erected or razed around individuals and groups. Equally important, we can begin to assess where constitutional idealism begins to fray or buckle in contests with industrial capitalism, nationalism, and other powerful forces.[33]

Where might we look for evidence of constitutional practice in a social sense? In Washington, public-policy statements form one part of an evidentiary universe. Law's stories, deposited in hundreds of case files and newspapers, provide another, humanizing window into citizens' habits of mind and legal fluency. For all of their pomp and circumstance, justices propose boundaries that mean little without popular acquiescence, however grudging, much as embedded social practices depend for life on social utility and agreement. Gilded-Age Americans, moreover, expressed their citizenship in multifarious ways far beyond the polls: Literate citizens wrote revealing letters and mailed them to editors or politicians. They often functioned as third parties to civil or criminal disputes, affirming membership in the constituent power through writing, reading, or gathering in power-laden spaces. Public prints (Washington boasted at least a hundred before statehood) were another primary site of legal-cultural reformation. Newspapers also preserved information about governmental activities lost in natural disasters, as with urban fires in 1889. The sheer quantity of talk was exhilarating. It could also be overwhelming. In crisis times especially, as these chapters readily attest, Washingtonians generated astonishing volumes of speech, reasoning together as if in a community-wide trial or colloquium.[34]

Regional differences figure large in this story and in other, untold or half-told stories. Although westerners have been largely absent in the constitutional scholar's master narrative, they have always been there – not passively or abstractly, but as agents shaping their own society and influencing other Americans. Indeed, as we will see, Washington's territorial disasters probably reinforced a wall of anti-suffragism erected at the Mississippi River. The West

[33] On the centrality of western newspapers, see Patricia Nelson Limerick, "Making the Most of Words," in William Cronon et al., eds., *Under an Open Sky: Rethinking America's Western Past* (New York, 1992), esp. pp. 178–80.

[34] For a list of more than a hundred prints, see "Washington State Press," *SPT*, June 2, 1893.

and Midwest have been more than shapeless borderlands to citizens who thought of themselves as dynamic parts of national life, and sometimes as loyal adults denied their birthright; as if to illustrate the point, Washington's male leadership finally refused to be treated as marginalized dependents – i.e., as wives or children – within a national household. This would not entirely surprise historian Richard Slotkin, who finds an overbearing brotherhood of industrial "commanders" in the place once occupied by the likes of George Custer. But Slotkin and others miss interplay between the restoration of male headship in government and the territory's close brush with male–female co-sovereignty.[35]

Local contingencies cannot be overestimated. In Washington, isolation and rude circumstances initially fostered introversion and a keen sense of the *sui generis* quality of self-created spaces, which served as crucibles for experimentation. Washington's growing citizenry included a number of individuals whose conceptions of citizenship, sovereignty, equality, and constitutionalism itself had been shaped by personal experiences of civil war. Yet, while Washingtonians inhabited post-war discourses alongside other Americans, other influences shared and often dominated the stage. After 1870, citizens at some remove from national developments were preoccupied with construction as well as Reconstruction. The night-terrors that lumberjacks experienced in the territory's dense forests had to do, not with the terms of black emancipation or presidential patronage, but with the possibility of lopping off arms and legs. Thus, the historians' received categories ("Reconstruction," "The Gilded Age") are at least temporarily inapt and unhelpful. Only in the early 1880s did the emancipatory possibilities embedded in Civil War amendments and Radical Republican idealism finally gain traction beyond a handful of nationally affiliated reformers, only to collide head-on with several other forces of equal or greater influence.

FROM NEAR-EQUALITY TO DEPENDENCE

It would be tempting to conclude, given the tsunami-like arrival of industrial capitalism and its critics, that Progressivism caused or shaped the *Somerville* opinion and its social context – as if the label explains itself and subsumes everything around it. That, however, would be a mistake. The word "progressive" and its derivatives appear regularly in public prints and elsewhere. But meanings shifted over space and time. Only with the appearance of industrial squalor and exploitation, Theodore Roosevelt's party, and a wave of urban reformism in Washington's coastal cities do we find capitalization of the term and meaningful shifts in habits of mind. When they finally appeared, moreover, Fourteenth-Amendment arguments in judicial

[35] Richard Slotkin, *The Fatal Environment: The Myth of the Frontier in the Age of Industrialization, 1800–1890* (Norman, OK, 1998), esp. Ch. 20.

footnotes, or the term "progressive" (or "Progressive") to indicate paternal government, referred to strategic choices from within the languages available to lawyers or reformers. Those choices were not immediately apparent or available. Only when new stockpiles of forensic weaponry, law reports, and Thomas Cooley's *Constitutional Limitations* had made their way to law offices in remote territories; when jurists had absorbed the post–Civil War outpouring of new ideas; and when Washingtonians had moved decisively toward economic and political integration could they be wielded effectively against, say, prohibitionist attempts to deprive saloon owners of property rights or legislative regulation of wages and hours. To make matters more complex, a taste for state paternalism settled over the landscape unevenly and sprang from different sources: Seattle (the location often taken to be synonymous with "Progressive" Washington) was not Spokane Falls, nor did it resemble vice-ridden Tacoma or renegade towns like Walla Walla and Bellingham.

Not surprisingly, law-minded Washingtonians determined to maximize wealth production and restore or reconfigure paternal control of public life reverted to the time-honored language of coverture, reinforced by contemporary flirtations with biological determinism. The law of coverture had been a formative influence in shaping social practices carried into the territory after 1853 – practices that changed slowly and that could function as an informal, pre-emptive constitution. By 1889–90, women and men no longer occupied quite the same rung on the civic ladder. Yet this powerful revival is curiously absent in accounts of resistance to sex equality. Elements of coverture typically appear in scholarship as old chestnuts, falling by the wayside one by one in the march toward modernity. After 1888, however, doctrines and practices long implicated in women's incapacitation resurged, weakening claims to co-sovereignty beyond marital estates, where formal authority as self-governors came to be severed from the political realm – that is, partitioned and domesticated – even as the right to cast a vote on behalf of home was constitutionalized.

Modifications of citizens' formal relationships to public power supported broader goals. When combined with hyper-nationalism (expressed as statehood fever) and industrialization, they dramatically supported campaigns for statehood and installations of an entrepreneurial fraternity at the head of the public table. This is not to say that autonomous market forces – or, for that matter, autonomous rules of law – single-handedly shaped public culture, or to deny human agency in mapping social norms and boundaries. Rather, it is to say that a fragile experiment in self-rule, undertaken at a late stage in national development and against the grain of customary practices, could not withstand the imperatives of political and industrial integration. Neither Progressivism nor the common law *per se* inspired Washingtonians to eliminate mixed-sex practices and re-masculinize citadels of public power; rather, change expressed the deeply ironic "modern" – the seeming need, as officials sued for statehood and flexed economic muscle, to abandon political experimentation, embrace state

paternalism, and produce wealth. Law makers set about regulating markets (including the labor market) and nipping at the heels of equal-rights legislation when it competed with common-law norms, not to be villainous, but to merge with other Americans and embed modern views of women's class interests in public policy. To be modern was to escape primitivism, vassalage, and emasculation, but also to experience what Max Weber called "disenchantment" – in this case, the collapse of sanctified republican constitutionalism in contests with markets, social science, and *real politic*.[36]

In all of this, the interventions of brave or ruthless individuals mattered more than usually. One or two such agents can leave deep imprints on small-scale societies, particularly when settlers lack long-term experience with the place itself. In Washington, Abigail Duniway, Zerelda McCoy, May Arkwright Hutton, and a number of other women's-rights activists repeatedly altered the course of territorial development. Associate Justice George Turner masterminded campaigns to deprive women of political equality; his chief opponent, Chief Justice Roger Sherman Greene, had set the stage for gender chaos more or less single-handedly. Greene's developing ideas about the co-sovereignty of human beings (i.e., "kingliness" and "queenliness") combined with a countervailing faith in women as *sui generis* repositories of virtue, particularly when seated on juries, both aided and crippled the sex's prospects well into the new century.

INEQUALITY AND DISENCHANTMENT

In the end, *Gender Remade* is about ancillary rights, especially mixed-sex service on grand and petit juries, the constitutional sovereignty that compelled women to serve, and decisions against egalitarian practices. In modern America, jury service typically calls to mind, not the polity, but a criminal-justice system divorced from politics; for the most part, we have lost nineteenth-century understandings of the jury as an integral component of representative government. Women's struggle to participate in (or gain exemption from) systems of public judgment thus seems apart from and secondary to the battle for suffrage. But Greene and others conceived of jurors' votes as "judicial ballots" analogous to electoral ballots,[37] and members of juries as community delegates no less important than legislators – indeed, as exemplars of what J. R. Pole has called the citizens' "moral agency."[38] Certainly scholars nowadays think mainly of ballots when they encounter terms like "universal suffrage" or "political freedom." Elements of the bundle of

[36] For the original Weberian idea, see H. H. Gerth and C. Wright Mills, eds., *From Max Weber, Essays in Sociology* (New York, 1958), p. 350 and passim.

[37] Roger S. Greene, "Charge to the Grand Jury . . . ," *NN*, September 1, 1884 (widely reprinted).

[38] J. R. Pole, *Contract and Consent: Representation and the Jury in Anglo-American Legal History* (Charlottesville, VA, 2010), pp. 96–7. (The jury's "moral agency" and distance from interest-group politics distinguishes it from other representative institutions; impartiality depended on mobilizing a "substantial admixture of relevant elements," not by exclusion.)

political rights and obligations no longer seem to be inseparable, perhaps because lawmakers no longer conceive of them as aspects of a single constitutional problem. Alexander Keyssar – arguably the nation's leading historian of the suffrage – has nothing to say about juries. Given virtual eradication in modern times of the idea that jurors render decisions analogous to those reached at the polls or in legislatures, it is easy enough to ignore talk about the corruption of neighborhood-based panels, the jury's relationship to self-rule, the grand jury's role in civic education and public peace, or the need to empanel juries as representative of society as, say, town meetings or elections. Washingtonians knew better. As Governor Eugene Semple put it in 1887, the grand jury was "a popular body, . . . always fresh from the people, and on account of the method of its selection and its . . . changing constituents, . . . the most difficult body to control that is known to the law."[39]

Why, then, did Washingtonians dispense with mixed juries, and how was that development linked to Justice Crow's decision to characterize fully enfranchised, propertied women as wards? Again, Benedict Anderson provides part of the answer: In his view, the whole point of losing oneself in the nation is to join an entity that both transcends and affirms individual interests; in the process, citizens can remake the past and justify the sacrifice of whatever stands in the way – as with the suspension of a woman's right to vote in advance of national practice, which not coincidentally ended women's service on juries.[40] The uproar surrounding jury service – related as suffrage never had been to women's bodies and strangers' access to private knowledge – had shattered social peace. In Washington, jury service and the threat of mixed-sex office holding, not suffrage *per se*, had been an insult to social practice, or, as one Washingtonian put it, the community's "fundamental constitution." Lawmakers therefore severed old links between suffrage and the traditional bundle of ancillary rights and obligations. If mixed-sex juries could not function as credible repositories of local morality and as interpreters of fact, and especially if many women preferred not to serve, then they had to be excluded, less because they were not "householders" in a legal sense (though lawyers made exactly that case) than because they disrupted and fouled masculine culture. At the polls, women might plausibly cast the 'home vote' while representing property; as jurors, they could never hope to impersonate men or fully embody the citizenry.

Historian Peggy Cooper Davis once said that "cultures become richer and evolve in directions of social equity and human freedom when they attend to their neglected stories – to those people, ideas, and events that its members were once somehow predisposed to neglect."[41] Into the twentieth century, many

[39] Governor Eugene Semple to the Eleventh Biennial Session of the Legislative Assembly, October 9, 1887, in Gates, ed., *Messages of the Governors of the Territory of Washington*, p. 270.

[40] Anderson, *Imagined Communities*, p. 144 and passim.

[41] Peggy Cooper Davis, *Neglected Stories: The Constitution and Family Values* (New York, 1997), p. 251.

Washingtonians forgot or disowned the radically democratic elements of their own narrative; instead, many – perhaps a large majority – reimagined the territorial era as a primitive dress rehearsal for a better integrated, more grown-up, less magical world. Strangeness, including the terrors (or thrills) of sex equality, had been eclipsed by a less frightening but modern conformity. Women were re-admitted to spaces beyond home on the state's terms; community property, the foundation of political equality, was squeezed to the breaking point; and lawmakers inserted a custodial state between "minors" and employers.

It was perhaps heartening that, in 1911, the Washington Supreme Court ruled in a case involving an elderly woman that neither "eccentricity in the matter of dress" nor her activities as an "ardent woman suffragist" proved mental incapacity.[42] But women's sovereignty had been compromised, and, with it, the possibility of demanding roughly equal access to citizens' rights and obligations. Between 1898 and 1912, suffragists rarely spoke of ancillary rights; suffrage was the main political duty for which women contended and home the realm for which they spoke. When finally granted access to the ballot box, women moved into the new century as the disabled, adult minors described in *Buchanan* and again in *Somerville*. No longer did Washingtonians 'speak' at the polls as equally authoritative members of the sovereignty. Neither scholars nor activists have been wrong to think that rights mattered: The ability to make a binding contract empowered more than one wife in dealing with neighbors, bankers, and conniving children. It was no small thing for a woman to be able to demand the arrest of an inveterate drunk or protest commitment to an asylum. Nor was it chimeric for suffragists to believe that casting a ballot alongside men gradually delegitimized atavistic social practices, including economic dependency. But in Washington and as Elizabeth Cady Stanton saw clearly, erosions of sovereign authority facilitated the loss of rights, especially ancillary political rights and obligations. Without sovereignty, grants of right were little more than promissory notes or leaseholds, to be renewed or revoked at the pleasure of the fully sovereign. Once "woman citizens" had lost standing as constitutional equals, subsequent multiplications of rights could only fall short. For men and women alike, the loss was enduring and catastrophic.

Throughout, I have tried to heed Mary Beard's warnings about portrayals of women as passive slates upon which the liberal state periodically inscribes rights and privileges. Social historians rightly complain about the way in which historians of public life have constructed formal governments as gigantic engines responsible for every advance in civil-rights history. But, as Sara Evans noted some time ago, it is no answer to ignore state power, as if women lived entirely beyond the bounds of legal discourses or had never dined at

[42] *Mrs. O. I. Converse* v. *W. A. Mix*, 63 Wash Rpts 318 (1911), 318, 322.

cultural tables.[43] In Washington, I should add, both sexes defied stereotypes: Men often shared the reformist stage. Women participated in government, sharing responsibility for the fruits of state action. Many women, no less certainly than men, were seduced by law's promises, only to find themselves, as Hattie Somerville's workers soon learned, robbed of property in rights or differently constrained. This mixture of valor and dishonor gives pause – as when a woman, Nevada Bloomer, conspired to smash equal suffrage, or when a Democrat, Governor Eugene Semple, sacrificed business and political prospects to oppose Bloomer's well-placed supporters.

The book progresses chronologically. Early chapters sketch the emergence of a rights regime rooted in sex-neutral agency with property theoretically capable of vesting men and women with near-equality. They also track the emergence of instability, resistance, and political mobilization as women moved into citadels of public power. Chapter 4 explores gender chaos, violence, the humiliation of would-be female jurors, and the resurgence of social practices, functioning as a customary constitution, as courtroom integration continued. Chapter 5 explores pitched battles between the territory's political departments over citizens' obligations; a related struggle between territorial citizens and Congress over the terms of statehood; and the elimination of both woman suffrage and mixed-sex jury service in two decisions of the territorial supreme court. Final chapters describe statehood settlements, re-articulations of gender and racial hierarchies, revisions of community-property law, and women's re-enfranchisement without co-sovereignty or the jury obligation. Washingtonians had renounced parts of their own past and remade gender; as of 1912, with memories of egalitarianism steadily dimming, the citizenry inhabited (in sociologist Robert Bellah's words) "the description of a place and not . . . the place itself."[44]

[43] Sara M. Evans, "Women's History and Political Theory: Toward a Feminist Approach to Public Life," in Nancy Hewitt and Suzanne Lebsock, eds., *Visible Women: New Essays on American Activism* (Champaign-Urbana, IL, 1993), pp. 119–39.

[44] Robert N. Bellah, "American Civil Religion in the 1970s," *Anglican Theological Review* (July 1973), p. 9, quoting Wallace Stevens. The late Kermit Hall generously shared this article with me.