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# Clara Shortridge Foltz: Constitution-Maker

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# Clara Shortridge Foltz: Constitution-Maker

BARBARA ALLEN BABCOCK\*

## INTRODUCTION: THE PERSONAL IS HISTORICAL

"Each life helps to make up the sum of all history . . ."

J.J. Ayers, Delegate to the California Constitutional Convention of 1879

In 1971, I left my District of Columbia public defender's job once a week and flew to New Haven to teach a seminar called "Women and the Law." The switch in cities seemed minor compared to the shift in causes. Perhaps the sharp transition helped fix memory, because, twenty years later, I recall that on one of those short flights I read *Sail'er Inn v. Kirby* when it was a bold new case. An early triumph of the renewed women's rights movement, the decision struck down a law that prohibited most women from bartending. The California Supreme Court called for heightened scrutiny of gender classifications under the federal equal protection clause. But it relied as well on a provision from the 1879 California Constitution:

No person shall on account of sex be disqualified from entering upon or pursuing any lawful business, vocation, or profession.<sup>2</sup>

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A bequest from the Dorothy Redwine Estate made possible research assistance from an extraordinary group of Stanford students over the past four years. I thank them not only for their creativity and thoroughness, but for their countless hours of reading microfilmed 19th century newspapers. We would never have found the secret of the sex-discrimination clauses without this demanding labor: Judith Carrithers, Lucy Carter, Mary Erickson, Ilana Hollenberg, Linden Joesting, Lisa Lindalef, Catherine Ruckelshaus, Frances Scibelli, Paula Solario and Michael Subit.

Other kinds of equally immeasurable contributions for which I am deeply grateful: Barbara Adams organized and computerized the newspaper files, while keeping the rest of my academic life in order; Jill Knuth uncovered many hidden trails through genealogical research. The staff of the Stanford Law Library offered help beyond my most extravagant requests. The Stanford Biographer's Seminar continues to support and inspire and offered valuable comments on the introduction to this piece.

I gave versions of the introduction and overview to the American Society for Legal History in October 1988, to the Law and Society Meeting in June 1989, and at a Hastings symposium entitled "From Gold Dust to Silicon Chips: The California Constitution in Transition" in March 1989, and received useful suggestions on each occasion.

Thanks, finally, to Philip Ethington for his help in understanding this era in California history and his interest in exploring women's roles—and to Thomas Grey for keeping me honest.

[Eds. note—A note on documentation for this article appears on page 911; endnotes begin on page 913.]

I remember that the presence of the old clause in the new case irritated me because it made the ground-breaking equal protection discussion largely superfluous. And, as I told my class, the clause itself was no doubt a sport, not likely to be replicated in other state constitutions.

Within a year of *Sail'er Inn*, the women's movement swept me into full-time teaching as the first woman on the regular faculty at Stanford Law School. Upon arriving in California, I asked some of the people involved in the case about the old constitutional section, but they knew nothing of its origins.

Many years and cases passed: *Sail'er Inn* went from flagship to footnote case while our nascent field of "women and the law" evolved into sex discrimination, gender bias and feminist theory. More women than ever before came as students to law school (1970: 8.6%; 1990: 42%) necessitating the appointment of additional women to law faculties (1970: 3%; 1990: 24%). These changes relieved me, I felt, from front-line action, so while maintaining loyalty to the women's movement I turned to writing and teaching based in the criminal defense practice that had been my other cause back in 1971.<sup>3</sup>

Then, a few years ago, by chance or fate, I learned that it was a woman who had first conceived and promoted the idea of a public defender for indigents accused of crime. This was the "Portia of the Pacific," Clara Shortridge Foltz (1849-1934), who in 1878 had become the first woman lawyer in California and one of the first in the country. Over a long career, she had many causes; among these public defending was important and women's rights, central.

Drawn by this intersection of my own disparate interests with another life, I decided to write Clara Foltz's biography. But early on, I found that the biographer's chief instrument, the subject's own papers, had been lost or destroyed. One of the few surviving primary sources is a fragmentary memoir, entitled "Struggles and Triumphs of a Woman Lawyer," that appeared in a magazine Foltz published between 1916 and 1918. Reading through one of its installments, I was struck by a reference to the constitutional equal employment section I had first seen in *Sail'er Inn*: it was, she said, "Proposed by the writer"<sup>14</sup>

Initially this seemed a biographer's epiphany: the unsought answer to my long-forgotten question about how a modern women's rights section had appeared in the 1879 California Constitution. Like most biographers' epiphanies, though, this was more Delphic than revelatory. How did Clara Foltz "propose" the section? To whom? When? Why? There are no Foltz papers to supply the answers, nor has anyone else written on the subject. Setting yet another puzzle, Foltz also took credit for a section guaranteeing women access to education in all departments of the University of California, and called it a companion measure, though it appeared much earlier in the Constitution.<sup>5</sup>

The annotations to these two sections showed their slight use in what seemed small matters. *Sail'er Inn* was the only modern case of any significance. Yet,

as a biographer, I could not easily dismiss what Clara Foltz said: to her, the provisions were the "first streak of dawn" guiding woman into "larger fields of opportunity." I wondered whether their apparent insignificance in history might be one more instance of the failure to take women's claims seriously.<sup>6</sup>

Reflecting, I realized that the two sections were actually the first guarantee of equal rights for women in the public arena ever to appear in any American constitution. In this sense, they were indeed the milestones that Foltz thought them: woman's "relation to the body politic" had changed from the "very hour of their adoption." In today's idiom, she might say that, with the passage of these sections, gender took its place beside class and race, the other great national divisions, in the American constitutional discourse.<sup>7</sup>

Thus, having defined an historical mission which could fortify my biographer's curiosity, I turned to the context that produced the unprecedented constitutional sections: California in the 1870s. It was a decade of crop, bank and moral failures; of unemployed workingmen, despised Asians, silver kings and railroad barons all on the edge of class and race war, fueled by an unrestrained press and flamboyantly manipulative politicians. By the end of the decade even Karl Marx was moved to say of California: "nowhere else has the upheaval most shamelessly caused by capitalist concentration taken place with such speed."<sup>8</sup>

In a situation ideal for the rise of a demagogue, Denis Kearney, an Irish drayman, formed the Workingmen's Party of California ("WPC"). Kearney joined denunciations of corporate privilege with rabid rhetoric directed against the Chinese, who had been brought to the state in large numbers to build the railroads and remained as racially despised competition for low-paying jobs. On the sandlots in front of city hall, Kearney spoke to thousands of unemployed men and marched at their head to build bonfires before the mansions of San Francisco's Nob Hill.

In September 1877, the same month that Kearney founded the WPC, Californians voted to call a constitutional convention empowered to reform their organic law. With the election of Convention delegates approaching in June, the threat posed by Kearney's Workingmen drove the Democrats and Republicans into a coalition calling itself "the Non-Partisans." Despite this novel and desperate fusion of the major parties, the Workingmen still captured one-third of the delegates statewide and all of the seats from San Francisco.

In late September 1878, the Constitutional Convention assembled in Sacramento. There it would stew and wrangle for nearly half a year, debating every issue of the day and finally producing a document said at the time to be the world's longest written constitution. After a campaign that renewed the apocalyptic themes raised in the delegate election, the new constitution was ratified by a narrow margin.

If women appear at all in the historian's usual version of the years 1877 to 1879, they are mentioned as the objects of peripheral Convention debates about enfranchising them. Yet through my lens as Clara Foltz's biographer,

women surface as major actors in the constitutional drama, launching their own significant movement in California politics, bringing the Convention within ten votes of a suffrage provision in 1879, and winning the unprecedented anti-discrimination sections on employment and education. In these same two years, Clara Foltz progressed from obscure housewife to famous lady lawyer.

The convergence of her story and California's constitution-making is the subject of this article—the end of a journey I started, unsuspectingly, when I wondered so many years ago about the old clause that showed up in the new case. Let me summarize here, as a guide through the narrative, the events of Foltz's life that directly bear on the passage of the women's sections.

In 1877, the year Denis Kearney started speaking on the sandlots and the people voted to call a constitutional convention, Clara Foltz lived in San Jose with her husband and five children under the age of eleven. She had eloped at 15, spent harsh years on an Iowa farm, and then followed Jeremiah Foltz west, arriving just in time for the "terrible seventies." Even with Clara Foltz's contributions from sewing and taking in boarders, the family was hard-pressed. Driven as much by economic necessity as by ideology, Clara Foltz acted on a long-deferred dream and determined to become a lawyer.

The first obstacle was a California statute providing that only white males could join the profession. Foltz drafted the Woman Lawyer's Bill and spent days at the capital lobbying the legislature. In Sacramento, she joined with Laura DeForce Gordon, a sister-suffragist and newspaper publisher also planning to be a lawyer. After a struggle I have detailed elsewhere, the bill passed and the governor signed it in the waning hours of the session.<sup>9</sup>

Back in San Jose, Foltz read law, and in early September 1878 joined the bar—an event attended by nationwide publicity. Later that month, the Constitutional Convention opened in the Assembly chamber so familiar to the women from their lobbying efforts. The same legislature that had passed the Woman Lawyer's Bill and the Convention-Enabling Act had also accepted a gift from Serranus Clinton Hastings to establish a law school as part of the University of California. Clara Foltz thought that the state's first woman lawyer should have formal legal training at the state's first law school. With Laura Gordon (soon to become California's second woman lawyer), she registered and attended a few lectures before receiving an official rejection.

After trying unsuccessfully to negotiate their admission, Foltz and Gordon, representing themselves, turned to the courts. The suit pitted two women without wealth, social connections, education or political power against the pillars of the San Francisco Bar who made up the Hastings Board of Directors and served as its counsel. Following every move in the case was an aggressive and alert press which sided with the underdogs.

Foltz filed her suit on February 10. It was set for hearing five days later, but at the appointed hour, as reported by one paper, "an aged masculine attorney" asked for a continuance. February 15 was a Friday. On the following

Monday, the Constitutional Convention adopted, without amendment or debate, Section 18 of Article 20:

No person shall, on account of sex, be disqualified from entering upon or pursuing any lawful business, vocation or profession.<sup>10</sup>

The case was finally argued on February 24; the judge took it under advisement without promising a decision date. Many newspapers carried lengthy stories about the “Battle of Hastings” on the next day. On February 26, the Constitutional Convention passed this clause:

No person should be debarred admission to any of the collegiate departments of the university on account of sex.

One member objected that the University was already co-educational, but the section’s sponsor responded:

The gentleman intimates that there is no necessity for it. I think recent history points to the fact that there is a necessity for it.

He was referring, of course, to the “recent history” in the previous day’s newspapers.<sup>11</sup>

In ruling for the women in early March, the judge relied partly on the constitutional clauses, as well as on the Woman Lawyer’s Bill. The Hastings Board decided to appeal the decision, and by the time the case was argued and decided in the California Supreme Court, the constitution had been ratified. *Foltz v. Hoge et al., Directors of the Hastings College of the Law*, was the first case decided under the access-to-employment section. As plaintiff’s lawyer, Clara Foltz won that case.<sup>12</sup>

The biographer’s perspective thus reveals the historic anti-discrimination sections as, at least in part, a side-effect of the Hastings case. Other connections also appear from a focus on Foltz’s experience. The influence of the woman suffragists on the constitutional proceedings, for instance, is apparent for the first time. “There were many splendid women in those days” wrote Clara Foltz, “the peers of the men at the convention.” Male allies, idealistic and instrumental, also emerge as characters central to the passage of the constitutional sections.<sup>13</sup>

As I search for Clara Foltz, *constitution-maker*, I know the biases a biographer brings to history, and the dangers of exaggerating a subject’s role. Foltz herself warned against putting “dimmers on fourflushers, and mak[ing] minnows talk like whales.” (For her own chronicler, though, she suggested no restraints: “Let wreaths of triumph my temples twine.”)<sup>14</sup>

Clara Foltz’s cautionary exhortation forces her biographer to recognize that the tale is not the unadulterated triumph that she (and I) might have wished. The biographer’s method—making the subject the main historical witness—also reveals the ignoble side of her success. The political support that gave Foltz and her colleagues their chance from 1877 to 1879 drew on an anti-Chinese racism of such virulence that the women’s complicity in it is impossible

to ignore. No rhetoric of historical relativism can justify their failure to recognize the common humanity they shared with the Chinese immigrants. The complicated part that pervasive racism played in the relationships among the Workingmen, the women and the former Copperhead Democrats at the Convention is a major part of the story. It, too, has not been told previously.

The late 1870s in California is an under-chronicled period even though its events provide a remarkable preview of the race, class and gender politics that have since dominated the history of American constitutionalism. The Workingmen's agitation did arouse nationwide, even worldwide, interest. Yet the few contemporary accounts of its constitutional impact were tendentious, most of them bent on stifling its significance. And in the twentieth century, not many historians have responded to Carl Swisher's 1930 effort to open a dialogue on *Motivation and Technique in the California Constitutional Convention*. The constitution's centennial year passed quietly.<sup>15</sup>

Among the possible explanations for this inattention are the eastern and national bias of the American historical profession, the unpromising sprawl of the actual text of the 1879 Constitution, and the disregard until very recently of the politics of nineteenth-century state constitution-making. Kearney has quite naturally been judged a mere demagogue; the WPC does not fit neatly into the established categories of labor history; the open racism of the California Workingmen renders them inept heroic precursors for later populist movements.<sup>16</sup>

The process of historical denial, which began very soon after the events of 1877 to 1879, has made the story difficult to unearth, further contributing to its neglect. In 1881, James Bryce journeyed to California especially to investigate Kearneyism and its relation to the new constitution as part of the research for his celebrated book, *The American Commonwealth*. He found the educated and established San Franciscans to whom he spoke both dismissive and evasive concerning their famous radicals.<sup>17</sup>

Bryce's informants said, for instance, that he could learn what really happened ("the facts in detail") only by laboriously reading three years worth of newspaper backfiles. Not surprisingly, Bryce relied instead on what he could "pick up in conversation" and on Henry George's essay, "The Kearney Agitation in California." George's essay was insightful, but as we shall see, he was a player in the events and not entirely objective. None of Bryce's sources seem to have drawn his attention to the women's constitutional sections, or to have put the Workingmen's Party in any favorable light.<sup>18</sup>

Foltz once promised to "place in conspicuous honor the names of those noble and gallant Californians who long years before suffrage for women had been won, voted to extend many privileges." She never got around to it—nor has anyone else until now documented the passage of the employment and education sections, or the near-achievement of woman suffrage. Neglect of California constitution-formation and inattention to women's history are not the only reasons. It would be hard for a general political historian to proceed

from the few clues in the constitutional text and debates to the women's unprecedented victories. Yet for a biographer travelling in the opposite direction—from Foltz toward the events of her time—the story of the women's sections and their full significance emerge plainly.<sup>19</sup>

Consider, for just one example, this little newspaper item tucked away among stories unrelated to the Convention:

Those who have charge of the law school at the University may be ungenerous and narrow enough in their views to wish to limit the sphere of women, but a majority of the members of the Constitutional Convention are not. An amendment offered yesterday by Delegate Ayers to a section of the educational article providing that no person shall be debarred from any of the collegiate departments of the University on account of sex was adopted by a vote of 103 to 20.

The story does not even mention Foltz or her case against Hastings. There was no need—contemporary newspaper readers already knew the connection. Since her bar admission in September, Clara Foltz had been before the public. (“My name was on every tongue; the daily papers . . . filled with flattering mention of my exploits,” she recalled later.) Only the day before, most newspapers carried the Hastings argument as front page news. Once that biographical fact is recognized, the little press item fills an important gap in the narrative.<sup>20</sup>

One of the main lessons a biographer learns is to follow the thread of chronology. In the order of events lie most of the answers to the questions that Clara Foltz's fragmentary memoir first posed for me: why, how, and to whom did she propose the women's rights clauses more than a hundred years ago? This article's contents, as summarized below, follow the temporal order of events; a more detailed chronology of the Convention itself appears at the head of Part IV.



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## I. FEARFUL TIMES

"The times are fearful; never so hard in California within the memory of the oldest inhabitant. If it were not for the financial stress, I think it would be comparatively easy to arouse the sleeping sentiment in favor of equal rights."

Clara Foltz, 1877<sup>21</sup>

A. *The 1870s in Allegory and Rhetoric*

Diners in a splendid hall consume a sumptuous feast while in the streets below people starve; newspaper columns first framed this allegory for the 1870s when accounts of Nob Hill dinner parties appeared next to the latest crop failures in the San Joaquin valley. But the California novelist, Frank Norris, took the comparison to its limits when he juxtaposed descriptions of a railroad baron's banquet with the last famished hours of a fictional "Mrs. Hooven," widowed and homeless because of the railroad's rapacity. Following the "Londonberry pheasants, escallops of duck, and rissolettes a la pompadour," as well as the asparagus for which the train made a special stop, the scene shifts: "Mrs. Hooven fell. Luckily she was leading Hilda by the hand and the little girl was not hurt." After "the dessert of alternate layers of biscuit glaces, ice cream, and candied chestnuts," Hilda "repeatedly tried to raise the inert eyelids with the point of her finger." Finally a glass of the finest Madeira is raised in the mansion, and the doctor bending over Mrs. Hooven pronounces her "dead . . . from exhaustion and starvation."<sup>22</sup>

J.J. Ayers, a newspaper publisher, told of experiencing a real life version of the allegory one night in the fall of 1877, when he dined with Leland Stanford, who showed him the rare and costly works of art in "the India room, the Pompeii room, etc." The tour concluded with "an immense Sèvres vase that stood under a great illuminated candelabra"—a bargain Stanford boasted at \$100,000. Ayers related that he had just read the vase's gold inscription *De Marie Antoinette au dernier Marquis de Villette* when "a great howl went up in the street nearby. To my look of inquiry, [Stanford] answered: 'Oh, that's nothing unusual. It is Kearney and his crowd, [giving us] a taste of their peculiar oratory.'<sup>23</sup>

Impressed by such coolness, Ayers nevertheless wondered whether "the mutterings that reached us" portended a bloody class war, "the legitimate offspring of the abuse of power." Well he might have thought so. The mob outside were unemployed workers, who numbered in the thousands in San Francisco. Denis Kearney was a drayman who had risen to their leadership within a few months through his inflammatory speeches on the sandlots in front of city hall. Denouncing the "shoddy aristocrats" and "bloated bondholders," Kearney demanded justice from "Judge Lynch" to which the crowd roared in refrain: "Hemp, Hemp, Hemp."<sup>24</sup>

But the outcome was not to be a new-world reign of terror with the gallows replacing the guillotine. Rather, agents of the mob in the street assembled with representatives of the mansion owners, and others (including James J. Ayers himself) in a convention which wrote a new constitution for the state. Enabling this uniquely American resolution of class struggle was a unifying surrogate for the social ills of the terrible seventies: the Other, the Chinese immigrant, the "indispensable enemy"<sup>25</sup>

As the climax of every speech, Kearney shouted not: "Off with the Capitalists," but "The Chinese Must Go." The Chinese, even more than their importers and employers, became the organizing focus for the Workingmen's Party. The tactic of blaming "the yellow peril" for all of California's ills was one both regular parties had used throughout the decade. But Kearney turned up the volume and the vituperation.<sup>26</sup>

The attacks sounded ostensibly in economics: in the effects on labor markets of the uncontrolled importation of workers accustomed to a low living standard. Some Chinese arrived under contract in a system of indentured labor, and all were denied the chance to become naturalized citizens. Thus, they looked toward returning home and lived in great privation while here. "They have no families, build no houses; live on rats . . . and even transport their bones to the celestial empire for burial," cried Denis Kearney in a passage whose denigration of the Chinese for conditions imposed on them is typical of the twisted racism that lurked just below the arguable economic case.<sup>27</sup>

Henry George, whose historic persona is one of gentle reformer, provides another example of how economics and racism combined for Californians of all stripes on the issue of Chinese immigration. In 1869, when the completion of the transcontinental railroad released ten thousand Chinese laborers into the market, George wrote of the impending takeover of all American industry by these "servile and debased workers." Their "inexhaustible supply," he said, would drive wages down and in the process replace American values with "cruelty and cowardliness" and other "unnameable vices."<sup>28</sup>

George predicted that the rich and their alien "serfs" together would "crush" the white working class. Later rhetoricians abandoned any attempted economic analysis and simply spoke in the same breath of the Chinese and "the smug highbrows, men and women, who terrorized the State with their lavish, vulgar show of wealth." These last in fact are the words of Clara Foltz, who summarized the history of the period as a background to her own story in the March 1917 installment of *Struggles and Triumphs of a Woman Lawyer*. Although written many years after the events, Foltz's words track the rhetoric of the 1870s; she wrote in the same language as the newspaperman J.J. Ayers, the reformer Henry George and the Workingman Denis Kearney when she recalled the "terrorizing" effects of great wealth in a context where "Chinese were everywhere fattening upon our soil, consuming our industries, while American labor went hungry"<sup>29</sup>

The rhetoric of the 1870s insisted as well on the contrast between fair California and the foul deeds done there. Like her contemporaries, Foltz found things worse because California deserved better. She infused the landscape with moral qualities—it was an “Eden of loveliness”—and extolled “the cosmopolitan character of the people . . . the incomparable variety of its climate, the marvelous products of its soil, . . . exceeding in beauty the far-famed valley of the Nile!”—all defiled by “corruption in high places, malfeasance in office, immorality everywhere.”

Looking back, Clara Foltz blamed the hard times on local villains: swindlers, land grabbers, the vulgar rich and their Chinese slaves. She omitted the nationwide aspects of the depression, which had started in the East in 1873 and moved west by mid-decade bringing bank failures and unemployed workers in its wake. Neglected as well in her later explanations were the ruinous gambling in silver mining stocks and natural causes like drought and crop failure. But sketchy as her causal theories were, her life experience of the hard times was thoroughly frightening.<sup>30</sup>

### B. *The 1870s in Clara Foltz's Experience*

When Clara Foltz described the times as “fearful,” she was twenty-eight years old and no novice to hardship. Since her marriage thirteen years earlier she had borne five children and helped her unreliable husband support them, mostly through demanding physical labor on a farm. The last relatively carefree days she had known were as a young girl in Mt. Pleasant, Iowa, where the Shortridges had settled from 1860 to 1863.

Elias Shortridge was a charismatic preacher of the Campbellite (Disciples of Christ) sect. For this brief period, he had stopped travelling circuit and ministered to an established church. He sent his only daughter to Howe's Academy, a progressive school whose founder believed in coeducation (with the same rigorous curriculum for both sexes), in women's rights, and in the abolition of slavery. “Carrie” Shortridge thrived in this setting, and her teachers remembered her many years later as a “bright, ambitious, hard-toiling” girl. She loved learning partly because it afforded her first chance to excel. In later years, she would often tell how she had mastered the first *two* books of Latin by the age of twelve.<sup>31</sup>

Elias Shortridge lost the Mt. Pleasant post because of his doctrinal unorthodoxy. The demotion meant the family's departure from the area; Elias returned to the circuit, and Clara became, at fourteen, a teacher in Keithsburg, Illinois, and the next year a wife and mother.<sup>32</sup>

She taught for only one term before she eloped with Jeremiah Foltz, a handsome Union soldier. They settled on an Iowa farm where she bore her first three children and helped to plant and plow, developing strongly muscled hands that later no silk fringe or lace cuff could quite conceal. In the early 1870s Jeremiah Foltz left for Oregon and his wife soon followed, crossing the

Rockies in the winter with the three children and a baby of nine weeks. She found her husband working at starvation wages, and immediately she began taking in sewing and boarders so the family could live. Several years later, they moved to San Jose, California, where Jeremiah found work as a sales clerk, and Clara bore a fifth child. But the fresh start did not take; Jeremiah returned frequently to Oregon and a certain Katie, destined to become his second wife.<sup>33</sup>

Realizing that she must soon support herself and her five children alone, Clara Foltz reached back to Mt. Pleasant times, when her dreams had been of "oratory, fame, political recognition." In those days, her father had often said that only her sex prevented her from becoming "a great lawyer." To which her mother rejoined: "Elias, you should not tell that girl that . . . for [someday] she will take it into her head to study law, and if she does, nobody on earth can stop her." Driven now by sharpest necessity, Clara Foltz took it into her head to read law and attempt to join the bar. At the same time she resolved to try public lecturing for money.<sup>34</sup>

Even to the desperately courageous, the obstacles looked insuperable. "[W]ithout education or learning, burdened with the cares of a large family, and against the prejudice of sex," Foltz attempted "to step from cradleside into the ranks of one of the profoundest professions," so a contemporary described the difficulties she faced. Yet Clara Shortridge Foltz brought great resources to the task.<sup>35</sup>

Physically she was strong, energetic and good-looking. Tall, and still graceful after five full-term pregnancies, she had beautiful skin and hair. Mentally, she was exceptionally quick and free from neurotic blocks to the use of what she knew. She also had immense charm and capacity for friendship and fun—all driven by ebullient optimism that, even when unjustified, was still overpowering.

The Shortridge family was another important asset as she stepped into the public sphere. Although her parents disapproved her precipitate marriage, they were never estranged from her. In fact, Elias and Talitha, along with Clara's four brothers, moved first from the Midwest, and then from Oregon to San Jose in tandem with the Foltzes.

The Shortridges vaunted the "mental and physical vigor" of the lawyers, judges and preachers from whom they descended, and drew upon a connection with Daniel Boone to confirm their "heroic stock." They believed, moreover, that they inherited a special oratorical genius—which must have comforted Clara Foltz when she first stepped forth on a public platform. She had seen her father preach many times and had observed the power of his oratory in numbers baptized on the spot. Elias Shortridge had also been an exceptional political speaker, twice stumping Illinois and Indiana for Abraham Lincoln. He raised his children on the Biblical and Shakespearean diet that fed his oratory, and passed on to his daughter his own passion for reading.<sup>36</sup>

In addition to her own extraordinary person and family, Clara Foltz brought to public life the consciousness of a great cause. Woman suffrage provided the text for her lectures and the framework for her experience. Spiritually, Foltz found inspiration in the sense of acting from motives grander than personal necessity. Practically, her suffrage friends helped support her children and fill her lecture halls. Later they sent her cases; always they gave purpose to her life.

### *C. A Speaker for Woman Suffrage*

Foltz came early to the movement. As a girl, she heard Lucy Stone speak on woman suffrage; in school, she learned that women's oppression and negro slavery were political and moral evils. By the time she moved west, she was a "ready advocate for suffrage" and in both Oregon and California soon made connections with others of like mind.<sup>37</sup>

In San Jose some of the leading citizens were woman suffragists, including the editor of the main newspaper and Sarah Knox (later Knox-Goodrich), a wealthy widow who admired Foltz and aided her early career. Among the disinterested majority, there was at least good will and tolerance—something not always true in San Francisco, where the press particularly was hostile to suffrage. In many other towns, notably Sacramento, it would take the ferment of the Constitutional Convention to start the women's movement.<sup>38</sup>

Foltz opened her public lecturing career in San Jose where she could find an audience of family, friends and suffrage supporters. For her maiden lecture, she spoke on "The Political Emancipation of Women." Over the next two years in dozens of California and Oregon towns, Foltz honed her reasoning and heightened her rhetoric. The words she wrote, emended, polished and memorized, appeared in lectures she delivered under many titles. She used the same words in petitions and pamphlets, arguing and lobbying not only for suffrage, but also for the right to practice law. The carry-over was easy because the arguments on the other side were always essentially the same.<sup>39</sup>

At the outset, she faced the issue of constituency. Ideally, she spoke for all women when, echoing images of slavery, she cried: "We are weary of sitting in the cellar of the temple of liberty and listening to the . . . feet of our brothers overhead." Yet she faced the response that most women did not see themselves as shackled in some basement, but rather as the inhabitants of a higher sphere. To these Foltz responded in words "hard as rocks." Those who cared more for privileges than rights were labelled "daughters of fashion and frivolity," outside the body of "earnest, thinking men and women" who could hear the appeal of the suffrage movement.<sup>40</sup>

Beyond the thinking minority, she pleaded for "the toiling millions of working women who cannot and dare not speak for themselves." "It is said," she continued, "that men support women and women's sphere is the home. We claim that nine-tenths of women support themselves." Speaking from

within a shared assumption that armed with the ballot women would change their lives, Foltz specified no social platform, but referred to women as a "purifying power" and the "great reformatory force of every age," and left her audience to fill in the blanks. For self-supporting women, a better life would mean employment in a wider field and in better paying occupations, the same wage as a man for the same work, earning enough to live in a clean place and send the children to school. For all, Foltz proclaimed the good day coming when "men and women meet upon the level and part upon the square."<sup>41</sup>

#### *D. Denis Kearney and the Suffrage*

Clara Foltz was not the only California orator urging the efficacy of the ballot in 1877 Denis Kearney's Manifesto was built on this peroration:

What then is left to us? Our votes! We can vote our friends into all the offices of the state. We can send our representatives to Washington We call upon our fellow workmen to show their hands, to cast their ballots aright, and to elect the men of their choice.

Now it is true that Kearney went on to say that if ballots failed, the dispossessed must turn to bullets. (It is also true that "ballots" sounds like "bullets" just as "mud" is similar to "blood"—facts assuming significance in Kearney's trial for making incendiary remarks.) Nevertheless, Kearney's overriding message was that votes were the preferred instrument for revolution.<sup>42</sup>

Denis Kearney first delivered his Manifesto in September 1877, on the sandlots in front of city hall, a peculiarly appropriate space for agitation because public construction on a grand design was mired in bribe-taking and boodling. The previous summer had seen the rough plaza become a public forum, often with speakers from the radical socialist Workingmen's Party of the United States ("WPUS"). But in late July the great national labor strike led by the WPUS degenerated in San Francisco into anti-Chinese rioting. When the WPUS urged its followers to "direct their struggles against the ruling class, *not against* their victims, the Chinese," its days were numbered as a viable organization on the sandlots.<sup>43</sup>

By the time of the Workingmen's visitation to Nob Hill in October 1877 (when J.J. Ayers wrote that he visited Leland Stanford), Kearney had ousted the socialists from the sandlots, and ensconced instead his own Workingmen's Party of California ("WPC"), also known as Kearneyites and Sandlotters. The WPC took some of the pro-labor rhetoric of its predecessor and added calls for destroying land monopoly, taxing the rich out of existence and using the money to provide decently for the poor and unfortunate. But most of all, the WPC proposed to "rid the country of cheap Chinese labor," as its first official platform put it in phrasing more decorous than Kearney used on the sandlots.<sup>44</sup>

Very soon, Kearney's message reached beyond the unemployed on the sandlots. By early 1878 the WPC had expanded its platform into ward clubs and lecture halls where "Judge Lynch" was seldom mentioned. Rather, the incitement was to elect "their friends" who would, in the increasingly broad-based formulations, control corporations, regulate railroads, guarantee the eight-hour day, provide free public education, as well as drive the Chinese from California. White-collar and skilled blue-collar workingmen, lawyers, teachers and doctors joined the party. At an organizational meeting for the WPC in San Jose, a former Campbellite minister, Elias Shortridge, was on the platform with Denis Kearney<sup>45</sup>

Clara Foltz, in her description of the period, remembered Denis Kearney as the "[s]elf-appointed, intrepid representative of the weak as against the mighty," who within months had brought about "a new order" and prevented "a result most awful to contemplate [that] would certainly have transpired." Writing in 1917, Foltz surely knew history's verdict on Denis Kearney: guilty of demagoguery; guilty of brutish racism; guilty of failure. Yet she made no effort to balance her portrait, which may show how certainly she experienced the events at the time in the way she later portrayed them.<sup>46</sup>

Denis Kearney and Clara Foltz began public speaking in the same year, driven by fearful times, drawn to the same solution—the ballot. Foltz had no rhetorical or analytical problem in urging the vote as the very source of power and respect for women. Kearney, on the other hand, faced the dilemma of disproportion between means and ends. He worked the crowd into a revolutionary frenzy and then told them "to cast their ballots aright"—obviously an inadequate response to a system half as corrupt as the one he excoriated. Votes were, as everyone knew, bought and sold, both before elections, and after. But in 1877, social unrest was so widespread that a revolution through the ballot box seemed possible. In September 1877, as Kearney began his sandlot agitation, the people by referendum voted to call a constitutional convention. There was to be a momentous statewide election in which Workingmen *could* use their votes to reconstitute California.<sup>47</sup>

### E. Citizens for a New Constitution

The Workingmen's Party did not originate the call for a new constitution, yet many of the same impulses supported the referendum vote and the rise of the WPC. First was resentment of the rich, who in a decade of hard times flaunted their wealth in what Foltz called "vulgar, lavish shows." Moreover, as Bryce observed, California millionaires "excited irritation" because (even more than elsewhere) their wealth did not seem to flow from unusual talents, nor did they tend to give thanks for their good luck by bestowing largesse on "useful public objects." Feeding the prevalent unrest was a peculiarly Californian sense of loss—of grand objects grown dim—that gave the move for



a new constitution the tone of a moral crusade. Reform was not enough; the people wanted rebirth.

Lord Bryce summarized the classic American arguments for a constitutional convention as the voice of direct democracy: Delegates “go straight from the election to their work, have not time to forget or to devise means of evading their pledges, are less liable to be ‘got at’ by the capitalists . . . The rarity and importance of the occasion fixes public attention.” He also wrote that “good citizens” had failed to see “the danger of framing a new Constitution at a time of such excitement.” But in this, unlike his other observations, Bryce was mistaken.<sup>48</sup>

Good citizens were part of the excitement, joining in the call for a “new departure.” Added to the “decent working people” (whose existence Bryce acknowledged, distinguishing them from the Kearneyites), were good citizens among the farmers some organized in the Grange, who also saw constitution-making as a means to restrain (or “cunch”) capital and the railroads. Democrat good citizens, including some who had supported the Confederacy, cheered the Constitutional Convention as a potential path back to the power they had lost when California backed the Union.

Suffragists, whose case ultimately rested on women’s claims to good citizenship, sensed a main chance in the Constitutional Convention. Almost a decade had passed since the fifteenth amendment guaranteed the vote to “citizens”—not “men,” or “male citizens”—without regard to “race, color, or previous condition of servitude.” In California, the force of women’s just claims as citizens was joined to the fear that the amendment’s wording might also someday enfranchise races other than blacks—as it already had a few Chinese born in America. White women’s votes could be needed as an offset.<sup>49</sup>

Many forces of mixed moral and political complexions were rising in 1877—the Workingmen, the women suffragists and other social reformers, the Grangers, the resurgent Democrats. Before they converged for more than 150 days of constitution-making, the last legislature met under the 1849 Constitution. This session passed the enabling legislation for the Convention. It also set the scene for the women’s constitutional sections by enacting the Woman Lawyer’s Bill, which provided that any person of good character could practice law

Clara Foltz was in Sacramento often during the session, and there met an older suffragist, Laura Gordon; the two joined in the struggle to enable men and women to “meet upon the level and part upon the square” in the body politic and in the legal profession.

## II. THE 1878 LEGISLATURE

“A great deal of intemperate abuse has been heaped upon the legislature this winter and much of it has been undeserved. Many bad bills have been introduced but most have failed and important measures were enacted.”

*Sacramento Union*, April 1878

“[W]hile [Mrs. Foltz was] in attendance as a lobbyist upon the Legislature, neither home nor children were at all neglected.”

*New York World*, September 1878

As the last legislature under California's original constitution, the 120 men assembled in December 1877 may have felt the weight of history. They certainly were pressed by the lobbyists who came to Sacramento to reach the levers of power while they still knew the location. Whatever the cause, the 1878 legislature was the busiest in history with over 1,500 bills introduced by adjournment at the end of March.<sup>50</sup>

Among the lobbyists was a little band of determined women who had been there seeking suffrage for the last few sessions. Their only palpable success so far had been passage of a bill in 1874 that allowed women to serve on elected school boards. For the 1878 session Clara Foltz joined them seeking another kind of office: admission to the bar. This extension was a natural one because access to the professions was an early goal of the women's movement, and the arguments for opening the vote and the practice of law were often congruent.<sup>51</sup>

Foltz added a sense of personal urgency to the women's pleas for recognition. The California Code provided that only white males could be lawyers and because of the intervening Constitutional Convention, the legislature would not meet again until 1880. Unless there was action at this session, she would have to give her children to others to raise; they could not continue to live as a family on her lecture fees and the charity of friends and relatives.

She drafted a Woman Lawyer's Bill and persuaded her local Senator to introduce it. But Foltz feared leaving its passage to his kindly intentions. Travelling to Sacramento more than once “in the caboose of a cattle train, without a dollar in her pocket,” she watched over the bill “with maternal solicitude.” In later years, Foltz sounded incredulous herself when she spoke of the “toil, hardship, poverty, and even hunger” involved in the struggle.<sup>52</sup>

She had behind her the support of the suffragists. Among them was Laura DeForce Gordon, who Foltz referred to alternatively as “the noblest Roman of them all” and “my beloved friend.” In 1871, Gordon had been the first woman to appear in Sacramento on behalf of suffrage, and at this session she was also a newspaper correspondent, with a desk assigned in the Assembly chamber.<sup>53</sup>

### A. *The Foltz-Gordon Team*

Laura Gordon provided Clara Foltz a model in the art of lobbying, and later of political oratory. But her greatest gift was near perfect understanding, enhanced by the extraordinary events that joined their lives. There were few women anywhere like these two, while they were very like each other. Without

fully appreciating their good fortune in meeting, they became friends immediately.

Both wanted to be lawyers. In the mid-seventies, Gordon had been the publisher of a newspaper and had enjoyed local celebrity as the first "female newspaper editor in the world." But she had found the business a constant "hassle for money," and believed that the legal profession would offer a better living, a freer schedule and a more impressive platform from which to urge women's rights, and perhaps even to run for elective office.<sup>54</sup>

Both were talented orators. Gordon initiated her lecturing career on the Spiritualist circuit in the East, especially Pennsylvania which was her home. But since moving west in 1865, she had taken woman suffrage as her life's work. In 1868, she delivered the first public lecture in California on the subject.<sup>55</sup>

Both had recently failed marriages and were seeking to support themselves and their dependents. Gordon had no children, but was devoted to her parents whom she maintained at her farm in Lodi, where her sister and other family members also lived. She had divorced her husband, after twenty years of marriage, on the grounds of adultery, "realizing what anguish the heart can endure from the loss of those nearer and dearer than life."<sup>56</sup>

Partly because they were unprotected women, heads of their households, Clara Foltz and Laura Gordon were ambiguously connected to that ideal world of nurturance and tender feeling that nineteenth-century women were supposed to inhabit. Thus, although both tried to display the virtues associated with hearth and home, their male audience often treated them as pretenders to the domestic sphere:

No women these such as our hearts enfold,  
 Held of all men desirable and sweet  
 Rather such are meet  
 To herd with them whose love is bought and sold,  
 Whose passionless pulses to no purpose beat:  
 For these have hearts as empty and as cold,  
 And all their lives are like them; incomplete,  
 Unfruitful and unbeautiful and bold.

Except for its verse form, this was a quite standard denunciation of women activists—those who tell a "shallow tale of fancied wrongs." The poem appeared in a popular magazine at the moment that Foltz and Gordon were in Sacramento seeking admission to the bar and access to the ballot box.<sup>57</sup>

"Bold," whose meanings shade from brave through brazen, is the operative, final, most telling indictment. By any definition, it was bold to propose that women be lawyers and thus necessarily associate with men in an unprecedented way. Clara Foltz always tried to smooth the boldness over by arguing that knowledge of the law would enable women to be "the helpmeets of men," to meet on "a plane of common sympathy and thought," and would in fact make them "better wives and better mothers."<sup>58</sup>

In the 1870s, especially among women, she had few converts. Most hastened to dissociate themselves from a charge of boldness. "Everyone in those days seemed to 'hate a woman with a career,'" Foltz wrote, adding wistfully: "I wanted to be loved by women—and men too for that matter. At least, I craved their approval."<sup>59</sup>

The social disapproval Foltz and Gordon experienced was partly founded in class prejudice. Generally, it was still unusual to find suffragists among the cultured and well-educated women, or the wives of professional men, and certainly there were none among the rich ladies of fashion, the "smug highbrows" against whom Clara Foltz railed. Nor did these two women, in particular, have the connections to counter snobbery. Neither had married well. Gordon's husband practiced medicine but without much success, and in his later years there was a constant rumor that he was a quack. She was, moreover, from a working class family, one of nine children, and had attended only a few years of public school.<sup>60</sup>

Foltz wrote that her career caused her to be ostracized despite the fact that her "father's family had always moved with the best people." But this was back in Indiana, where Shortridges are prominent to this day. In 1878, the clan was not established in California. Her desire for social standing partially accounts for one of Clara Foltz's most characteristic statements:

They called me the "lady lawyer", a pretty soubriquet which did much for me, for . . . I was bound to maintain a dainty manner as I browbeat my way through the marshes of ignorance and prejudice . . .

Daintily browbeating her way was Clara Foltz's *modus operandi*.<sup>61</sup>

Laura Gordon more closely united men and method. She was earnest and relentless, and spoke in a mode others found "Websterian." The comparison may have meant only that Gordon was impressive, rather than unusually plain and powerful in style. But no one described Foltz in similar terms. Her manner was decidedly not that of any man. Rather, reviewers stressed her feminine public persona, her warmth, her profound womanliness. One even declared, "there is nothing of the strong-minded woman about her." Foltz cloaked her force and ambition beneath graceful and disarming gestures.<sup>62</sup>

One revealing instance—in 1877, she tried to join a legal club for aspiring practitioners. Several members objected and she sat in the back, humiliated, while the men debated women's capacities and limitations. At the end she felt "actually afraid of those law students who had contemptuously ignored me." She contemplated slipping away, but instead stepped forward and congratulated an elected leader of the club, presenting him with a bouquet of roses she wore at her waist. Others then gathered around, and thus she conquered "their prejudices by pleasing compliment and tact."<sup>63</sup>

At the 1878 legislature, Foltz applied the full force of her personal magnetism to the countless individual appeals that lobbying involved. "I never knew," wrote one legislator, "how . . . a woman could plead for the privilege of making the battle of life . . . [so] gently and eloquently." The gentle Clara

gave no inkling at the time of how outrageous she found the need for such persuasion: "Think of it! I had to beg to be allowed to earn a living—had to beg it as a privilege."<sup>64</sup>

In *Lawyers*, one of her most popular later lectures, Foltz ridiculed her opponents:

Narrow-gauge statesmen grew as red as turkey gobblers staid old grangers delivered themselves of maiden speeches pregnant with eloquent nonsense. . . Home and mother and prattling babes, and cooing doves and women's sphere were dished up as arguments against the rights of women!<sup>65</sup>

Appearing *for* women's rights was the team of Clara Foltz and Laura Gordon, who though no longer young, brought to the field youth's eagerness, idealism and righteousness.

### *B. Passage of the Woman Lawyer's Bill*

Given that Foltz and Gordon were in no sense representative of many women burning to be lawyers, why was there enormous opposition to the bill? Why in this legislature especially, so hard pressed by the times and the approach of the Constitutional Convention, were precious hours spent debating whether these two odd women should have a chance to practice law?

Today's reader might think that the opposition sprang from the wording of Foltz's bill, which simply replaced "white male" with "person" in the existing legislation, thus allowing Blacks, Mexicans and even Chinese to join the bar if they met the other qualifications of character, citizenship and residency. But in 1878 this was apparently not a realistic threat to the status quo. The debates referred only to the "Woman Lawyer's Bill."<sup>66</sup>

It was not a multi-racial bar that the legislators feared, but women's full participation in public life for which bar admission was a potent symbol and toward which it seemed a certain first step. Thus, in the foreground of the debate over the Woman Lawyer's Bill were the arguments against women voting, sometimes invoked regardless of fit. For instance, a powerful anti-suffrage image was the unwilling woman voter: most good women did not want to vote, but as exemplary citizens would feel compelled to do so.

Obviously, the unwilling woman voter has no counterpart reluctant woman lawyer. Yet Foltz reported that legislators made much "of the great wrong to the women of California who did not desire to enter upon the law as a profession to thrust such a duty upon them." How many times did Clara Foltz explain to Captain M. or Colonel S. that his wife or daughter, so handsomely provided for, would not *have* to be a lawyer?<sup>67</sup>

On the other side, the best arguments for suffrage—those based on simple justice, such as no taxation without representation, and the entitlement of citizens—did not resonate so clearly as reasons for admitting women to law practice. Similarly unavailable to Foltz and Gordon was the promise that

allowing women to be lawyers would gain added votes for farsighted legislators.

But in larger terms, the two debates covered the same terrain and converged on the question of spheres. Here is where the "cooing doves" that so aggravated Foltz played their part among the "preconceived ideas of the male superiority . . . beginning with the barnyard and from there to the forests and the wild beasts therein, all, all." Though Foltz wrote these lines thirty-two years after she won the right to practice law, they still echo her irritation at the rote, stylized quality of anti-women's rights polemic.<sup>68</sup>

As applied to the practicing of law, the discourse of spheres sounded like this in the California legislature of 1878:

*Pro:* Some women never marry or lose their husbands (impliedly to death rather than to divorce; Foltz and Gordon both called themselves widows). They should be allowed to work in a noble, well-paying profession.

*Anti:* These are peculiar, unnatural women. We should not legislate for or encourage their types. True women, even if unmarried, would not even want to leave the higher and finer sphere they by nature inhabit.

*Pro:* God alone designates women's sphere and God surely intended that they be more than "hewers of wood and drawers of water." (This Biblical reference to slaves, often cropped up to demonstrate that women's sphere included hard labor.) In a free country women should be able to do whatever they have the God-given talents to do.

*Anti:* The lawyer must be bold and aggressive and often deals with sordid human dramas and life's basest motivations. Women would be un-sexed by practicing law.

*Pro:* Women are the experts on life and death, naturally equipped to deal with the harshest realities. The fact is that some women will be better suited than some men to the profession. It is unmanly to oppose women because of fear of competition.

The Woman Lawyer's Bill passed the Senate easily, but in the Assembly it won only when five votes shifted upon a motion for reconsideration. But the reconsideration came at the end of the session, and bills more important to the men who passed them vied for the governor's signature. Foltz and Gordon made dramatic last-minute appeals, and according to suffragist lore, it was only in the closing moments of this historic legislature that women were empowered to practice law.<sup>69</sup>

Today the Woman Lawyer's Bill stands as a landmark in the history of women's professional progress. As one of the earliest statutes of its kind, and probably the first to emerge entirely from the legislative process (rather than being a response to a court refusal of bar admission), the California bill arguably involved a liberal recognition of women's capabilities.<sup>70</sup>

On the other hand, most of the impetus for its passage was a simple human response to the supplications of two earnest women and their allies: an uncomplicated act of courtesy, rising perhaps to "gallantry" as one newspaper put the motive for Senate passage. Yet within a year this personal triumph

would gain constitutional dimensions. An unbroken chain of events stretched from the passage of the Woman Lawyer's Bill to the enactment of the sections guaranteeing women access to education and employment. The strongest of its links is the friendship forged between Clara Foltz and Laura Gordon at the 1878 legislature.

### III. CHOOSING DELEGATES

"A political campaign in this luminous age without the dipping of an oar  
by the women would be a very uninteresting affair "

Clara Foltz, July 1878<sup>71</sup>

Despite arguments that the times were too agitated for creating organic law, that his own Democratic party would suffer against the Kearneyites in any election, and that only the federal government could set Chinese immigration policy, the Governor approved the bill implementing a constitutional convention. He waited until March 30, the very end of the historic 1878 legislature. The election of delegates was set for mid-June. "I tell you the good God, Majority, means mischief," warned the state's chief curmudgeon Ambrose Bierce; it was an irresistible moment for anyone with political hopes.<sup>72</sup>

#### A. *The Women*

From San Jose, Clara Foltz wrote in early May to Laura Gordon in phrases bristling with ungrammatical optimism and energy:

I am confident we can get some action in the Convention. You  
and my humble self will make a good team If the Cal Suffragists  
will give us money enough and let you and I stump the state we will carry  
the question beyond the possibility of a defeat.<sup>73</sup>

Several weeks later she wrote to her suffrage friends in Oregon that the Convention was a great opportunity, if only women and "liberal minded men" would "see and improve it." One of her plans was a speaking tour after the election to impress the delegates as they left for Sacramento; already letters were out to "raise means to stump the state."<sup>74</sup>

Before there had been any real response to the fund-raising pleas, Laura Gordon had a different idea for promoting the cause. With about ten days left before the election, she decided to run for Convention delegate from San Joaquin County. No woman could vote for her, but no law explicitly prevented Gordon from standing for or serving in the office.<sup>75</sup>

She telegraphed for help to Clara Foltz, who took the next morning's train for "the scene of the conflict." Alacrity aside, Foltz had not envisioned actual campaigning when she talked of "stump speaking." She had seen her father canvass for Abraham Lincoln and knew the peculiar intensity of political crowds when votes were at stake. It both attracted and unnerved her.<sup>76</sup>

Her fears quickly faded, however, and after the election (but before the returns were in), she wrote again to her Oregon friends. Reporting triumphantly that Gordon and she had met “large,” “delighted” and “respectful” audiences throughout the county, she concluded that “great good and no harm has been done in the agitation of woman’s inherent right to assist in framing the organic law . . . . [W]e will not despar, *even should we be defeated.*” With her perpetual optimism fed by large attentive audiences, Foltz treated the certain defeat hypothetically. But victory had never been an incentive; they set out, as Gordon said from the first, to “scare the politicians and have some fun.” And Clara Foltz added “we have admirably succeeded in both.”<sup>77</sup>

In a somewhat anxious tone, Foltz maintained throughout the letter that they had done no harm to the cause and repeatedly intimated that the campaign had been dignified. Yet in the public eye it was not just dignity, but virtue that was at stake when women stepped into the “filthy pool” of politics. Opponents argued that active participation in public life—such as campaigning for their own election or even voting—would corrupt and unsex women.

Over time, Foltz had developed a number of stock answers to the “filthy pool” argument in her lectures. She often contended that women would purify politics, rather than politics defiling women, and sometimes she added with a hint of mockery that if men were unfit for women’s companionship in the political domain, they were unfit elsewhere also. But even the best-crafted arguments could not reach the visceral objections to women campaigning. These were based in the special relation between speaker and audience—in the politician’s supplications and manipulations. Many people found this kind of speech simply improper for women; others feared that women would be so naturally good at it that they would corrupt the process.<sup>78</sup>

But Gordon’s late entry into this special election did not allow time for such animosity to gather. Instead of fostering objections, the irregularity of the whole process only added to its novelty and interest, which held through the brief campaign. Audiences already primed by weeks of political oratory were ready for variety, and often crowds would walk over to hear the ladies after, and even before, the others were done.

Clara Foltz described just such a scene at that highest hour of any campaign—election eve. The women had filled Mozart Hall in Stockton “to its utmost,” and “notwithstanding the bonfires and immense excitement” at the other rallies, “the crowd adjourned and came over to hear the constitutional issues discussed from a woman’s standpoint.” Foltz related that the “politicians and office seekers” followed their audiences to attend the women (and incidentally “the sweet music discoursed by Professor Hausman’s Silver Cornet Band”).<sup>79</sup>

Among the candidates campaigning that night in Stockton was David Terry, personal friend to Laura Gordon. He was elected on the Non-Partisan ticket and became, according to Foltz, the “gallant knight . . . who championed [the women’s constitutional sections] in his incomparable manner.” As matters



fell out, next best to pleading their own cause in the Convention was having David Terry there as friend and gallant knight.<sup>80</sup>

### *B. The Non-Partisans*

The Non-Partisan Party was the oxymoronic name of the establishment coalition organized to defeat the Workingmen. Its stereotypical candidate was a conservative corporate lawyer. Yet the nature of California in the 1870s was such that many Non-Partisan delegates would be unconventional men. Among these was David Terry, an able lawyer and a Southerner of violent temperament whose life was a series of outlandish events, ending with his shooting by a bodyguard to a United States Supreme Court Justice.<sup>81</sup>

As a young man, Terry served the Texas Rangers in the Mexican War, read law in his uncle's office and joined the Gold Rush to California, arriving in 1849. Soon, he abandoned mining for practicing law in Stockton, and in 1855 at the age of thirty-three was elected to the California Supreme Court. Terry became the Chief Justice two years later; while in that office, he stabbed a member of the San Francisco Vigilance Committee, which imprisoned Terry until the victim recovered. In 1859, he resigned from the court to duel with David Broderick, the United States Senator from California, and killed him. It was widely believed that they clashed over Broderick's opposition to slavery.

In the aftermath of the duel, Terry left California for ten years, first briefly joining the silver rush to Nevada, then fighting for the Confederacy, and finally ranching in Mexico. He returned in the early 1870s to Stockton and by the time of the Convention had overcome his disabling political past sufficiently to be elected as a Non-Partisan delegate.

Terry was a "Chivalry" or Copperhead Democrat—a supporter of the Confederacy during the Civil War. Most of the other "Chivs" ran on the ticket of the Workingmen's Party, which generally drew mostly from the Democrats. Terry could have been a Workingman in his attitudes toward the Chinese, unequal taxation and greedy corporations. At the Convention he often joined and eventually came to lead the Workingmen delegates; for a striking example, Terry pushed through a section forbidding corporations to employ Chinese, vouching for its constitutionality. What he accomplished for the women, he also did through his natural bonds with the Workingmen's Party.<sup>82</sup>

Although Terry was far from the only unorthodox Non-Partisan, its representative type was the conservative San Francisco lawyer, Samuel Wilson. Counselor to banks and railroads, self-made and immensely rich, a bar association founder and Director of Hastings College of the Law, Wilson held it his duty at the Convention to prevent any real revision. Dryly correct, tenacious and thorough, he could exhaust the most ardent reformer.<sup>83</sup>

In his opposition to constitution-making, as in everything, Wilson was consistent. Two years earlier he had engineered the defeat of a proposed

convention; at the end of this one, he refused to sign the document and campaigned against its ratification. Many people believed Wilson's railroad clients paid well for his consistency and purchased the resistance of other Non-Partisans, particularly lawyers, as well. Noting sarcastically that he would much "prefer to deal with principals rather than agents," one Workingman nominated railroad baron Leland Stanford for a vacant place at the Convention.<sup>84</sup>

That men as different as Samuel Wilson and David Terry campaigned under the same banner is one measure of the fear the Workingmen's Party struck in the political establishment of California in 1878. While some candidates ran as Democrats, Republicans or Independents, most of the regulars from both parties, and many of the renegades as well, joined the Non-Partisans with their single-issue platform: Kearneyism must go.

### C. *The Workingmen*

Just as their opponents came together under election pressure, the Workingmen's Party split into pro- and anti-Kearney factions. Frank Roney, a genuine Irish revolutionary, led the opposition. Though he was not a sandlot orator, Roney was a compelling organizer and as a skilled iron moulder had wage-labor credentials that Kearney, an employing drayman, or teamster, lacked. Ideologically much closer to the socialist Workingmen's Party of the United States, Roney had nevertheless joined the Kearneyites after they drove the WPUS from the sandlots in 1877.<sup>85</sup>

The inevitable competition between the two forceful men erupted over the election of delegates to the Convention. Roney wanted to serve and thought that other experienced leaders should be candidates as well. Kearney declared that no WPC officers should run, thus barring both himself and Roney. The reasons for Kearney's decree have never been clear. Explanations range from his own feelings of inadequacy to concern that the delegates be accountable to the mass of workingmen. The results were, however, all negative for the party: an alternative slate of Workingmen ran in a critical electoral unit; there was general confusion and lost solidarity; and the schism contributed to the historical judgment that the Kearneyites were unstable political fumbleers.<sup>86</sup>

According to the standard story, the Kearney delegates were "utterly ignorant and inexperienced." Henry George wrote the words; James Bryce echoed them in his chapter on "Kearneyism in California"; subsequent generations have largely and uncritically accepted the characterization. The only contemporary challenge came from the eponymous leader himself. After *The American Commonwealth* was published in 1888, Kearney wrote to Bryce protesting: "Our delegates were equally divided among intelligent [sic] farmers, mechanics, merchants and lawyers." He added that George was prejudiced because he had unsuccessfully sought the Workingmen's nomination for delegate.<sup>87</sup>

But Henry George was hardly alone in reviling the Workingmen delegates. The mildest charge was that they paid no taxes (true of those who owned no property). More typically abusive was a cartoon in a popular magazine showing the Workingmen as grotesque illiterates. They were pictured also as violent hoodlums (a word coined in San Francisco at this time); comparisons were drawn to the Paris Commune of 1871. The historian Hubert Howe Bancroft called the Workingmen "more fit to clean legislative halls than to sit in them." "Vicious, idle foreign rogues" was a casual appellation from the weekly *Argonaut*.<sup>88</sup>

Twenty-three of the fifty-one Workingmen delegates were indeed immigrants from other countries (compared to just five of the remaining 152 delegates). But the charge of being foreign had less to do with birthplace than with harboring un-American ideas, and in this respect, it was misplaced. The foreign-born were often the most earnest in their individualistic Americanism. For instance, Alphonse Vacquerel returning to his native Paris in 1857 found the government so "averse to his Americanized feelings" that he quickly re-immigrated to California "where he could express himself freely." At the Convention, he did exactly that—most cogently on the issue of suffrage for women.<sup>89</sup>

Among the Workingmen who fought for woman suffrage, there were none who actually fit the cruel stereotypes current in 1878. Even at the time, a few critics acknowledged some talent in the WPC ranks, but usually they focused on the eight lawyers, or on the delegates from outside San Francisco. Yet it was not one of these, but a clerk in the city's delegation without former political experience, whose "skillful diplomacy" the women suffragists would finally credit for the passage of the employment clause.<sup>90</sup>

Charles Ringgold liked to say he came from Maryland "colonial stock." Before joining the Workingmen's Party "at its inception," he had been a Chivalry Democrat. In education and attainments he was no match for the Non-Partisan corporate lawyers, yet as we shall see, he bested them at a point critical for the women's cause, and he was generally an active and constructive Convention member.<sup>91</sup>

Although their platform was unpolished and its impressiveness undermined by anti-Chinese rant, the actual proposals on which the WPC candidates ran included: the regulation of banks and railroads; the equalization of taxes; the eight-hour day; compulsory free public education; the direct election of United States Senators; equal pay to women for work of equal value. While reformist these were hardly revolutionary and certainly not communistic propositions; Henry George huffed that there was no real questioning of property rights. In the delegate election, as in Kearney's original Manifesto, the Workingmen's program was entirely traditional: Vote our honest candidates into office and all else will follow.<sup>92</sup>

But their concrete message was often lost as people heard only the threat of a "new order of things," and saw, in Foltz's description, the "forbidding

presence of thousands of men" marching in the streets and meeting on the sandlots. Democrats and Republicans alike were scared, their anxiety fanned by press warnings of avenues full of blood—probably theirs—if the Workingmen prevailed. Only primal fear could have united extreme partisan politicians as they were united against the Workingmen.

On the other side, the Workingmen also apprehended annihilation—political rather than personal—from defeat. They feared that their opponents in the Convention would impose a substantial property qualification on suffrage, stripping the party of its only legal weapon. Thus, amid millennial rhetoric on both sides, the Workingmen and the Non-Partisans met in the Convention delegate election on the third Wednesday in June 1878.<sup>93</sup>

#### D. The Election

The first returns were from San Francisco where the Kearneyites took all thirty places. With his usual blend of legalism and terrorism, Kearney proclaimed that the Workingmen would cinch capital, frame a constitution "and shove it down their throats." But in the rest of the state the Workingmen gained only twenty-one more delegates. The Non-Partisans elected seventy-seven, the Republicans eleven, the Democrats ten and the Independents three. When the regular party members voted with their Non-Partisan colleagues, the Workingmen would stand no chance at the Convention.<sup>94</sup>

The clincher was the thirty-two at-large delegates elected from the state's four congressional districts. Not one Workingman was elected from these more broadly drawn units, where election required more than local reputation. Defeat of the Workingmen had presumably been the legislature's purpose in adding the at-large delegates to an already unwieldy body of 120 locally elected members.<sup>95</sup>

Yet even in these at-large elections, the Workingmen lost by only a fraction of the votes cast. In the at-large district embracing San Francisco, the Workingmen's schism may have thrown this victory to the Non-Partisans; it was here that Roney's slate ran. Seven of the eight Non-Partisans elected at large from San Francisco were conservative lawyers, including Samuel Wilson. Altogether there were 57 lawyers among the 152 delegates. Farmers (39) were next most represented, followed by merchants (8), carpenters (5), physicians (5), miners (4), journalists (3), plumbers (2) and clerks (2).<sup>96</sup>

It was thus a convention of lawyers with two-thirds of the delegates calling themselves Non-Partisans and more than half the state's population—women, Chinese, Spanish, Mexicans and Indians—totally absent. Nevertheless, the Convention delegates were more representative than most legislative bodies of the time. Spurred by the Workingmen's rise and reaction, the white male California citizens chose a group more diverse politically and personally than any previously elected assembly. Even among the Non-Partisans were many delegates militantly set on change. An astute observer said of the *majority* of

Non-Partisans: "If you would place these instinctive radicals alone on a mountain to produce a constitution they would astound the sandlots."<sup>97</sup>

James Joseph Ayers, last seen musing about abuses of power as the Workingmen roared outside Leland Stanford's window, was one such instinctive radical among the Non-Partisans. A newspaperman who had followed the common route from printer to publisher, Ayers was the editor of the *Los Angeles Express*, a journal he described as having "weight and character and of almost metropolitan influence." In its pages, Ayers attacked the railroads so harshly that they withdrew advertising. At the same time, he virulently inveighed against Chinese immigration.<sup>98</sup>

Running at large, Ayers narrowly defeated a Workingman candidate from whom he likely differed little in views and in lack of elective experience. Yet as a Non-Partisan, Ayers was able to obtain a hearing unavailable to most Workingmen; he also showed a natural bent for oratory and parliamentary maneuvering. Women became the beneficiaries of both talents as Ayers led the major floor fight for suffrage, and played a leading role in the adoption of the women's education and employment sections.<sup>99</sup>

### *E. Foltz and Gordon in the Post-Election Period*

Woman suffrage had been a serious issue only in Gordon's canvass; thus the women could not guess from the election campaigns or the returns that they would find support from the likes of Non-Partisan Ayers or Workingman Vacquerel. But they had a few known friends among those elected and they planned to make others by extensive personal lobbying.

Clara Foltz wanted to do more: stump the state over the summer; mount a mass petition drive; call a great suffrage meeting during the opening days of the Convention. Her goal was to counter—by the numbers who turned out and signed up—the common argument that only a few strong-minded women actually wanted suffrage. But these plans trickled out and, except for an occasional local speech, Foltz dropped from public view for two months. She was concentrating on bar preparation, but a quarrel with Gordon undoubtedly contributed to the break in the action.

Laura Gordon yearned to attend the July meeting of the National Woman Suffrage Association in the East. She and Clara Foltz sought support from their suffrage friends to go together. Finding herself unable to leave, Foltz wrote that she could raise no more funds, adding gratuitously: "I asked several of my friends who said they were not acquainted with Mrs. Gordon, etc. no doubt your own friends would talk the same were they asked to give me money to travel on."<sup>100</sup>

Offended, Gordon wrote at bitter length to Sarah Knox returning money contributed for the trip. From "the tenor of Mrs. F.s letter," Gordon inferred that the contributors thought they had been asked for "money for me to travel on, as tho I was going East on a regular junketing trip or merry making

instead of sacrificing my own comfort, time and money.” Soothingly, Knox rejoined that the eastern summer heat might have left Gordon “unable to do as much at the Constitutional Convention as you will now.” Knox was not alone in focusing on the importance of the Convention. Earlier when Gordon had appealed to suffrage friends in Santa Barbara, they too had responded that the concentration must be on laying the “claims of women before the members of the constitutional convention.”<sup>101</sup>

Surely these elder suffragists were right, Gordon and Foltz should save their energies for the Constitutional Convention. Yet the national suffrage meetings meant a great deal to women who often felt isolated and eccentric. Gordon gained many years’ worth of sustenance from standing next to Susan B. Anthony and gazing over a huge throng of brave and resolute women at one of the first such meetings. Foltz, who never went to one, always regretted the loss of “the sweet comradeship which must exist among so many earnest women united in a common purpose.”<sup>102</sup>

Although the hard feelings faded and by the time of the Constitutional Convention Foltz and Gordon were pulling together once more, this was not the last conflict they had, and not even the last over attending national suffrage meetings. They disagreed mostly on matters of personal precedence and national politics, however, and never on the ideology of women’s rights.

After a relatively quiet ten weeks, Clara Foltz emerged in early September to pass a court-administered examination and become California’s first woman lawyer. The date was September 4, 1878, and the publicity was nationwide. As she told an admiring reporter, Foltz had always wondered “whether my name would go down on the page of history for some personal achievement.” Now she knew it would.<sup>103</sup>

She rented offices from her suffrage friend in the “Knox Block” of San Jose and ordered fancy letterhead with a comma after “Clara Shortridge Foltz,” to carry the eye on to “Attorney at Law.” By the end of September when the Constitutional Convention assembled, she had handled her first cases.

Near the beginning of the Convention, the suffragists met in San Jose to urge “engrafting into the new State Constitution . . . the God-given right to self government.” They planned to petition and lobby the delegates who were convening in the same Assembly chamber where Foltz and Gordon had so lately won the right to practice law. The women’s rights advocates knew the way to Sacramento well enough, and they planned to use it now.<sup>104</sup>

*The Convention Chronology*

1878

- October 30 Laura Gordon and others appear before the Committee on Suffrage.
- November 13 Committee on Suffrage reports to Convention. Recommends future legislature may remove disabilities on account of sex (legislative empowerment).
- December 24 First suffrage debate on the floor. Led by Workingmen.

1879

- January 9-10 Foltz and Gordon attend classes at Hastings College of the Law.
- January 11 Women receive notice dated 1/10 that they are excluded on account of sex.
- January 13-15 Convention debates woman suffrage sitting as Committee of the Whole. Led by Workingmen; Steele and McFarland also prominent. Defeated.
- February 10 Foltz files suit against Hastings in San Francisco District Court.
- February 13 Renewed suffrage debates. Ayers supports re-instatement of legislative empowerment.
- February 14 Hastings successfully moves for a continuance. Legislative empowerment defeated 55 Ayes; 67 Noes.
- February 15 Saturday newspapers report continuance of Hastings case.
- February 17 Ringgold introduces employment clause.
- February 18 Sacramento women organize in favor of suffrage.
- February 20 Employment clause passes without debate by voice vote.
- February 24 Hastings case argued.
- February 25 Extensive newspaper accounts of Hastings arguments.
- February 26 Education clause passes without debate. 103 Ayes; 20 Noes.
- February 27 Last-ditch suffrage efforts on Convention floor. Debate cut off by a motion for the previous question.
- March 5 Women win Hastings case. Opinion cites Woman Lawyer's Bill and employment section of newly drafted constitution.

#### IV. THE CONVENTION: WOMEN LOSE SUFFRAGE AND GAIN ANTI-DISCRIMINATION CLAUSES

“Your section, presented by me, is preserved, thanks to the ignorance of many whom supported it not knowing the priveleges [sic] it extends.”

Charles Ringgold, Convention Delegate, 1879

“Someday I shall . . . place in conspicuous honor the names of those noble and gallant Californians who . . . voted to extend many privileges.”

Clara Foltz, 1916

##### *A. Initial Suffrage Skirmishes in Fall 1878: Lobbying; Petitioning; First Floor Debate*

On September 28, 1878, the delegates assembled in Sacramento. Among them were good friends, total strangers and more than a few sworn enemies; there were recent immigrants and Argonauts (forty-niners) and two men born in California. They met with a sense of mission in a time of intense societal stress. One-third were members of the Workingmen’s Party; many had never held public office of any sort. Also present were most of the leading lawyers of the state. Joseph Hoge, a conservative San Francisco attorney and partner to Samuel Wilson, was elected President of the Convention.<sup>105</sup>

##### 1. Petitions in October

The Convention was barely under way before the first resolutions and petitions for woman suffrage came to the floor. Their number and diverse sponsors presaged a real contest and hinted at the complexity of motivation on this issue. First on the floor with a suffrage resolution was a conservative Non-Partisan lawyer, Thomas Bard McFarland. Initially he proposed that only propertied women should vote, but five months later he led the last Convention effort to enfranchise all women. Another Non-Partisan lawyer (and former judge) who weighed in early for suffrage was James Shafter. This was out of character for an establishment Republican—unless he had been married to the late “Mrs. Judge Shafter,” one of California’s earliest suffragists.<sup>106</sup>

“Old father McComas” from Santa Clara, a Non-Partisan farmer, offered a resolution, partly from friendship to the local suffragists. Hard-pressed to support his own eight children, he was especially sympathetic to his neighbor and single mother of five, Clara Foltz. Eli Blackmer, a Workingmen’s delegate from San Diego, submitted a thousand signatures for the common phrasing of the issue: “no disfranchisement on account of sex.”<sup>107</sup>

Though sometimes standard in locution, these petitions bore traces of individuality. With their distinct signatures in many inks, some strong, others trembling, many men but most women, they offer mute testimony to nights like this in hamlets like Mayfield:



Last Saturday evening the gifted and eloquent Clara S. Foltz addressed a large and intelligent audience. Eighteen signatures were obtained to petition for the ballot.<sup>108</sup>

Added to the countless hours the women spent gathering signatures was the equally demanding task of lobbying delegates. Laura Gordon was in Sacramento throughout the fall of 1878. She was there in the first weeks when William Van Voorhies, a Non-Partisan lawyer, moved to strike the word "male" from the suffrage provision of the constitution. This male then virtually disappears until near the Convention's end when he burst out: "I have been told that the eyes of the people . . . were upon me. I wish they would take them off. [Laughter.]" Clearly not prone to offer resolutions, Van Voorhies was a Democrat from Oakland; Gordon had published her party organ there for two years.<sup>109</sup>

By definition, *lobbying* occurs outside the legislative hall and the public view—usually we can only infer its influence, as with Delegate Van Voorhies. But there are occasional glimpses of the work in progress. Early in November, one member wrote his constituents that "Mrs. Knox of San Jose has been in the lobby this week . . . Many of the delegates have been introduced to her." Then he portrays her approach to the "young and sprightly member from San Francisco, Mr. Stedman . . . [S]he appealed to his gallantry and future prospects but seemed quite set back when the young delegate informed her he was the father of two cherubs."<sup>110</sup>

Whatever the effect on his "prospects," John Stedman, a 27-year-old Workingmen's delegate, voted for woman suffrage at every critical stage and then for the education and employment sections. He probably knew Sarah Knox before this encounter; she was the richest woman in San Jose where he spent some time after college as a clerk in a grocery house.<sup>111</sup>

At the end of the month, we can again sight the women lobbying—this time in a letter from Foltz to Gordon informing her that Mrs. Knox was awaiting a "telegram from E.O. Smith which would instruct her to come" to Sacramento. Smith was a Non-Partisan Democrat, who with Rush McComas and D.W. Herrington (a Workingman lawyer) represented Santa Clara County, where San Jose is located. Sarah Knox, Clara Foltz and the other suffragists pressed these three from election day forward and all three voted steadily in women's favor at the Convention.<sup>112</sup>

## 2. The Committee on Suffrage: November

The Committee on Suffrage was chaired by a notably fair Non-Partisan lawyer, John Eagon of Amador, and was politically balanced among Non-Partisan Republicans, Democrats and Workingmen. Only one member entered with a fixed position in opposition to woman suffrage. The threshold question for the undecided, a burning one throughout the Convention, was whether

most women (or perhaps most "good and intelligent women") really wanted to vote.<sup>113</sup>

In order to demonstrate their desires, the women led by Laura Gordon appeared before the Committee on Suffrage one evening in late October. The cavernous chamber where the whole Convention regularly assembled was filled, "more than half the audience being ladies." They came to confirm that women wanted the vote and their speakers sought "justice, not favor." After this session, the Committee, which had expected to focus on proposals for retreating from universal male suffrage, found itself occupied instead with the question of extending the vote to women: "impartial suffrage."<sup>114</sup>

The press responded to the shift and awarded woman suffrage prominence if not plaudits over the next few weeks. In a cartooned version of a woman suffrage meeting, for instance, a group of angry and ugly women (two holding the umbrella—token of militant spinsterhood) surround a speaker whose clenched fist casts a menacing androgynous shadow on the wall. It is a group that requires reckoning and the picture is on the cover of the popular weekly, *The Wasp*.<sup>115</sup>

After much deliberation, the Committee on Suffrage put forth a proposal that would confine the suffrage to men, but would explicitly authorize the legislature to grant women suffrage in its discretion. This "legislative empowerment proviso" to the proposed male suffrage clause was a tribute in itself to the women's lobby. If enacted by the Convention, it would enable women to win impartial suffrage in the same way they had won the right to practice law only a few months earlier.<sup>116</sup>

But opponents quickly turned their success against the women charging their lobbying would become "a standing vexation and impediment to business." James Caples, the sole anti-proviso vote on the Committee, pictured "the future legislative hall [as] a beleaguered fortress" subject to "the attacks of crinoline and silk sophistry, and blandishments, smiles and tears." A Non-Partisan from Sacramento, Caples was the women's chief opponent in the floor debates as well, where he continued to warn against their "corrupting, degrading, demoralizing lobby."<sup>117</sup>

Why corrupting and degrading? Rather than explain, he implored each delegate to "bring it home . . . see what it looks like . . . Imagine . . . [y]our wife, a candidate for the Legislature, stumping the county; your daughter locked up in the jury box all night." Continuing his fantasy, Caples has the wife elected, the husband at home with the babies. "You come up here [and] see . . . a bevy of gallant gentlemen around your wife paying great attentions to her." This image—a politicized woman at the center of a male circle—was one the delegates had seen recently when suffragists worked the lobby.<sup>118</sup>

But what Caples viewed as demoralizing, a pro-suffrage delegate found uplifting. After describing how courageously women had breached the wall against their entering the professions, he proclaimed:

And now they come here to this Capitol, and lay siege to the very bulwarks of constitutional law; and [seek suffrage] by logical argument, by appeals to your reason, to your love of justice and humanity

The speaker was George Steele, a 54-year-old dairy farmer, near to farmer Caples in age and occupation. Neither man's conviction is fully traceable to its source, though in pre-Freudian California, Caples could without embarrassment describe woman suffrage as "a yawning chasm, deep, dark, impenetrable into which man may be precipitated."<sup>119</sup>

On November 13, the Suffrage Committee issued its proposed Article empowering the legislature to remove the gender disability without constitutional amendment. A few days later Caples circulated his minority report charging that: "This radical innovation [is demanded] by a few professional agitators and schismatic propagandists" One newspaper said he was only getting back at Laura DeForce Gordon for claiming before the Committee that women would elevate the politics men had degraded. But the reference to radicals and agitators might reveal as well that Caples had identified woman suffrage with the Workingmen's Party, which he abhorred.<sup>120</sup>

### 3. Laura Gordon's Friends Offer Support

On November 20, David Terry wrote to Laura Gordon enclosing the "eloquent and *convincing*" Caples' report for her "delectation," and urging her to challenge its author to a public discussion of the contents. Terry informed Gordon that he had approached the fair-minded Eagon to urge that Gordon should have a chance to respond in public debate:

Eagon thought he [Caples] would accept and that you would get away with him [O]ther members of the convention will [then] have the opportunity of comparing the intellect of one of the *soft* sex with that of a "Lord of Creation"<sup>121</sup>

Terry advised Gordon to approach Caples "in an open letter through the papers," but warned: "Of course he is not to know I suggested this course." Since Terry was the most famous (or notorious) man at the Convention, his involvement would have made the debate more likely as well as assuring a large audience and more press coverage when it occurred.

But disclosure was not generally Terry's style. Further, in mid-November when he wrote to Gordon, the Convention was heading into the critical three weeks of the cathartic debate about regulating corporations. By the end of this battle that joined farmers, Workingmen and such Non-Partisan populists as J.J. Ayers against the conservative lawyers and other corporate supporters, David Terry had emerged as the unofficial leader of the Workingmen alliance. He was one of those "agrarians and communists" said the *Argonaut* "of a type more dangerous and less respectable than that of the sandlot leaders, whom they are anxiously endeavoring to replace." By the end of the year,

there was widespread conjecture that Terry was using the Workingmen's Party to advance his own return to the California Supreme Court.<sup>122</sup>

Whatever Terry's private purposes, they would not be fostered by open sponsorship of the suffrage confrontation. In debating Laura Gordon, James Caples was heading for a rout; indeed that was Terry's design: "I . . . would rather like to witness his defeat by a woman." But he could not openly arrange the humiliation of his fellow Democrat Non-Partisan (and vocal WPC opponent) without stoking the gossip about his own allegiances.

Even writing a letter which might later connect him not only to a Caples defeat but to woman suffrage violated Terry's usual *modus operandi* of extreme secrecy—and thus is an important index of his friendship with Gordon. Earlier letters from Terry in this period confirm their on-and-easy-going relation and most, like this one, are jocular. He was the lawyer for the purchase and sale of her newspaper; he gently conveyed news of her estranged husband. Later he referred clients to her.<sup>123</sup>

The debate never happened, and there is no further evidence of communication between Terry and Gordon on the subject. Through the next two months, Terry continued his support of the Workingmen on issues such as regulating stock speculation and railroads, and equalizing taxation. By early 1879, he had become their actual though unacknowledged leader. There was some paradox here; Senator Broderick, whom Terry had killed in a duel, rose from and represented the working class. But nineteenth-century Californians were not long on history. In many of his views and in his temperament (including his aura of potential violence), Terry was a natural lieutenant for men desperately seeking change. For the former Chivalry (or Copperhead) Democrats among the Workingmen, Terry had special appeal—the slain Broderick had after all opposed slavery.<sup>124</sup>

On the same day that David Terry sent Laura Gordon the Caples report, Clara Foltz also wrote her a letter of much-needed sympathy and support. For two months, except for occasional help in the lobby and with the Committee, Gordon had been alone in her efforts—alone in a milieu so intensely male that she must sometimes have felt like the earth's last woman as she circulated on the Capitol grounds, watched the proceedings from the balcony or sought an introduction in the lobby.

It was expensive as well as lonely for Gordon in Sacramento. Having sold her newspaper in May, she had no regular income and was trying to finish her studies so she could practice law. To be effective, she needed to maintain herself in Sacramento, which meant renting a room and probably a parlor where the delegates might come for tea and talk.

In mid-November Gordon had written to Sarah Knox complaining about the lack of financial backing for her efforts. Foltz responded:

I have just read a letter from you to Mrs. Knox . . . O how terribly awful it is that you are left alone in your good work and worse than all that not one dollar of your expenses are paid by the wealthy woman whose cause you so ably champion.

Foltz pleads “the expense of my great family of little ones” and asks Gordon what else she might do to help and then—impulsively:

I have a notion to promise you I will run up one day next week and remain two or three days providing you will let me sleep with you. Do you not think thus a brave proposition from a lawyer?<sup>125</sup>

Foltz’s last line, intended as a small joke about a male-dominated profession, might have been tactless. While Gordon had watched over the Convention, Foltz had captured forever the crown of being the state’s first woman lawyer. On the other hand, Gordon’s appearance before the Convention Committee would, if suffrage were won, make history. Neither could be blamed for enviously thinking the other had the better part.<sup>126</sup>

Though following on her offer, Foltz made the familiar run to Sacramento several times during the Convention, by mid-December the women had largely given up lobbying and petitioning until the new year. No one expected the Article on suffrage to come to the floor before January.

#### 4. Woman Suffrage on the Convention Floor in December

On the day before Christmas, the women suffragists were at home and so were many of their supporters. Barely a quorum was stirring at the Convention. After passing over several matters as too important for immediate action, the delegates (in an attempted anti-woman suffrage coup) took up the report of the Committee on Suffrage.<sup>127</sup>

The abbreviated Christmas Eve debate that followed was a microcosm of what occurred in January and February. Workingmen led the proponents against a strikingly silent opposition. Not one of the conservative lawyers spoke against impartial suffrage, either in December (when many were missing from the floor) or later when they voted overwhelmingly to defeat it.

The Workingmen for woman suffrage ranged from the most idealistic, who argued for simple justice, to the most instrumental, who urged that white women could cancel out the potential Chinese voters. In December, the prime mover was the premier idealist, Eli T. Blackmer from San Diego. As soon as the suffrage clause was read to the Convention, he took the initiative to the women’s side by proposing to eliminate altogether the word “male.”<sup>128</sup>

Massachusetts-born, thoughtful and against all political violence, Blackmer did not fit the disparaging stereotype of the Workingman. More: He was a shopowner, superintendent of schools and previously a Republican, clearly one of those “better sort of workingmen” that Lord Bryce later heard were the hidden strength of the WPC.<sup>129</sup>

But Blackmer identified himself as primarily a wage-earning music teacher and said his nomination by the Workingmen was a result of his advocacy (“*con spirito*” and in “no minor key”) of their claim to “respectful attention.” Like some other delegates, Blackmer was swept into this historical moment by the Workingmen and afterwards returned to ordinary and local times. He

differed from most of his fellows, though, in active, even agile, participation throughout the Convention.<sup>130</sup>

Though surprised by the attempt to debate suffrage on December 24, Blackmer was able to rattle off the basic arguments. He then spoke of his mother, "whose steps are fast approaching the entrance of that 'low green tent whose curtain never outward swings.'" She had borne her ten living "sons and daughters to positions of honor and trust" and was a school teacher as well. But, he said:

[I]n this convention gentlemen who . . . wanted to find a figure of speech that was more contemptible than anything else, have [said] "old woman" . . . or a "convention of old women." I wonder if such gentlemen [remember] . . . when they sneeringly talk about old women . . . that she who bore them is . . . a member of this despised class?<sup>131</sup>

A few others spoke, including John Eagon, the chair of the Suffrage Committee, urging the unfairness of taking up such an important question on Christmas Eve. Finally, Workingman Grace spluttered all the arguments from idealistic to instrumental in one long breath.

I believe that a woman who has to pay her taxes has as good a right to vote as a man. If we give negroes, and Chunamen, and everything else, a right to vote, and proclaim the universal brotherhood of man and fatherhood of God, why in the name of God don't you give them equal rights?<sup>132</sup>

The Convention passed the subject and adjourned.

### *B. Winter 1879: The Causes Converge*

On January 6, 1879 the Convention passed the 100 days for which the legislature had appropriated funds. But the delegates had determined to continue to completion three days earlier when a motion to adjourn until January 1880 won only five votes. Every session from then on—the 97th to the 157th day—had a quorum on the floor, though some delegates stopped attending regularly, and others returned home for good.<sup>133</sup>

The same legislature that had set 100 days for constitution-making had also established a new department of the University: Hastings College of the Law. It was to be, in the words of its founder: "a temple of the law, which shall extend its arms and draw within its portals all who shall be worthy to worship at its shrine." But scarcely had the law college opened before two white women and a Chinese man were rejected on grounds of sex and race.<sup>134</sup>

In the winter of 1879 the efforts of Foltz and Gordon to prove their worth converged with the Convention debate over the place of women in reconstituted California. Facilitating the joiner of these two stories was an active press corps. Initially attracted by Foltz's bar admission after her legislative victory, they now followed her every move in the attempt to attend Hastings.

Generally, the stories were favorable, if occasionally ironic. Foltz herself always spoke gratefully of the "free and generous press of San Francisco"

during the early years of her career. In late January, a reporter for the most widely circulated newspaper in California's largest city wrote a long story about Clara Foltz and Hastings. His conceit was a search for the heroine of "many paragraphic adventures" in the daily press; thus, he conveniently summarized all the coverage to date. The piece, moreover, reveals Foltz as a master of press management.<sup>135</sup>

The story opens by tracing the course of daily articles about Foltz telling of:

- her coming to the city;
- her application to the authorities of the Law College of the State University;
- the refusal of the Trustees;
- her application to the Fourth District Court for leave to practice on producing a license from the Twentieth District Court;
- the refusal of the Court;
- her request to have a Committee appointed by the Judge to examine her qualifications;
- her triumphant success in examination before the Committee;
- and the granting of a license by Judge Morrison thereupon.

Seeking the subject of so much news, the reporter relates how he climbed to the fourth floor of a building in the lawyer's block and in a small suite at the end of a corridor found the "victim of his fell pursuit." She was "a bright, fair-haired, rosy-featured, cheerful, matronly woman neatly attired in a dress of dark material over which was worn a most non-judicial checkered apron . . . Mrs. Foltz."<sup>136</sup>

The apron itself was a great stroke, but Mrs. Foltz further riveted the reporter, saying she was not interested in an interview, and added irresistibly: "Two other members of the city press have been up here to try it, and I sent them away." Modestly she let drop:

There is nothing to be said of me. I originated from the cradle, the washtub, the sewing machine, and the cooking stove. I am now trying to earn a living for myself and my little ones by practicing law, and I mean to succeed, and that's all there is to be said of me.

Three thousand words later, the reporter, who clearly thought himself the adept in the interview, concluded with this assurance:

There is nothing indicative of the typical strong-minded woman about her. Her bearing is that of a brave, cheerful, enthusiastic little woman, modest, dignified and self-reliant.

Foltz's and the reporter's disclaimers mark each end of the piece; in the body of the interview she explained why, when she had already been admitted to practice and had paying clients in San Jose, she had taken her older children, left her baby with her mother and moved her offices to San Francisco. This was because law involves "the interests and welfare of other people"; she thought "no one should practice without an ample knowledge of its

principles"—which her three years at Howe's Academy in Iowa had not afforded. Nor had she been able to drink deeply of legal principles while lecturing for money, lobbying her bill through the legislature, and attending to her children (not to mention her failing marriage, which she covered with the phrase "I have had troubles of which I do not like to speak.").

Thus, with Mrs. Gordon, she had registered at Hastings when the school opened for its second term on Tuesday, January 6 (also the 101st day of the Constitutional Convention). The women had attended lectures on Wednesday, Thursday and Friday; then, on January 11, Foltz had received a "Dear Madam" letter: The Board of Directors had "resolved not to admit women to the law school." This was the only formal explanation the women would ever receive for their exclusion.

Less formally, Judge Hastings revealed his view that their presence, particularly their rustling skirts, would distract the other scholars, who apparently were already irritated by their attendance. Once, said Foltz, "all the students drew up around the entrance and stared us so out of countenance that we retreated." Even after the rejection the women had continued to attend lectures while they lobbied the Board to reverse itself. But, Foltz said, they had missed several on account of "being called to Sacramento" in the suffrage cause. On January 13, the Convention turned again to the question of votes for women.

## 1. The Second Suffrage Debate

For a full day and a half, the delegates considered woman suffrage. Sixteen of the nineteen speakers offered some form of support. Of the three voices in opposition before the vote, only James Caples rumbled on at length in the face of the Convention's new ten minute limitation on speeches. Another Non-Partisan spoke briefly and one Workingman opposed suffrage. This was Jacob Lindow, a Prussian-born tailor who furnished the pattern for the unkind caricature of the San Francisco delegates. To sustained laughter, he delivered an imaginary dialogue between husband and wife after the enfranchisement of women: "She would say: 'I want to be what we call a Republican or Non-Partisan. What do you want?'" And he would respond: "'We vote with the workingmen.'" Then the wife takes a poker "and knocks his head off." "Then," said Lindow, "I want to see where is the gentleman that says that they cannot fight."<sup>137</sup>

In contrast, another Workingman, John Wickes, denied that woman suffrage would cause domestic strife: "[I]t would be a matter of pride for me when my wife could go to the polls and vote, and I should use no restraint upon her action." As they had in December, Workingmen generally led the support and talked largely in terms of simple justice. But the more extended debate in January showed other and darker strains behind their endorsement of the women's cause. Charles Ringgold of San Francisco argued from the Declaration of Independence for the consent of the governed and against taxation



without representation. He used the homey example of his landlady who paid over a thousand dollars in taxes on her house, while her boarders who owned nothing voted on matters affecting her property<sup>138</sup>

Yet Ringgold's earlier remarks at the Convention had shown that the taxation he resented most was that on Confederate soldiers disenfranchised unless they executed loyalty oaths to the Union. And it was clear that he loved the Declaration of Independence more because he loved the post-Civil War Constitution less. Early in the Convention he had protested a clause declaring it the "great charter of our liberties," partly because similar words had been forced on some Southern states during Reconstruction. "The Constitution of the United States," Ringgold declared, "is a political abortion. It exacts taxation from millions of citizens yet deprives them of the right of representation. It has ever been construed in the interest of capital."<sup>139</sup>

Ringgold spoke as the Chivalry (or Copperhead or pro-Confederacy) Democrat that he was at heart, despite his allegiance to the Workingmen's Party. The "great charter of our liberties" clause that he denounced was actually taken from his new party's platform; it was designed to demonstrate the party's loyalty and its rejection of socialism.<sup>140</sup>

Another less-than-utopian ground for woman suffrage was occupied by Workingman Alphonse Vacquerel. Women's votes could "save" the republic in the face of the risk that Chinese men might gain citizenship and hence enfranchisement under the fifteenth amendment. Urging women's votes as "a legal and constitutional way to prevent the Chinese power in this State," he challenged those who were "opposed to Chinese . . . in earnest" to prove it by voting for woman suffrage.<sup>141</sup>

Following Vacquerel's suggestive speech and successive strong justice appeals by Workingmen Grace, Ringgold and Wickes, a new voice was heard on woman suffrage. Volney Howard, a Democrat from Los Angeles, proposed giving women the vote if a majority of *women in the state* favored it at the first regular election after the 1880 census.

Like the Suffrage Committee's proposed legislative empowerment provision, Howard's plan made woman suffrage possible without constitutional amendment, but he avoided the supposed menace of women lobbying. Yet the proposal was untenable within the terms of a debate that treated voting as a loss of virginity; a woman could not try it only once. His solution was to treat nonvoting women as "No" votes.<sup>142</sup>

Howard's entry into the debate with an affirmative, if half-baked proposal, roused new interest in woman suffrage, partly because Howard was the sort other men admire. James J. Ayers wrote of him: "[H]e was by far the grandest man intellectually on the floor of the Convention. I sat at his feet as Paul sat at the feet of Gamaliel."<sup>143</sup>

Though a native of Maine, Howard after decades in Mississippi and Texas had made himself over into a kind of Southern statesman. Smoothly courteous, but forceful and determined, he sought the role of grand old man at the Convention and played it without reserve. Like his close friend David Terry,

Howard not only saw alliance with the Workingmen as the path to power but also was naturally drawn to the racist aspect of their program. Thus, he sided with Ringgold on thinking the state constitution should not declare the supremacy of the "great charter of our liberties." Chivalry Democrats like Howard, Terry and Ringgold easily moved from a general state's rights view to California's power to impose unbearable burdens on Chinese immigration. And to them, the Chinese in California were like the Africans in the South—another servile, degraded and unassimilable race.<sup>144</sup>

A major prompt for Howard's entry into the debate was surely the prospect of women's votes someday offsetting those of the Chinese. He may also have seen an opportunity to aid the Workingmen for his own advantage at no great cost. Nor need we assume that appeals to justice and to women's wishes were entirely lost on this Southern cavalier.

## 2. The Debate Shifts from Spheres to Choice

While offering a proposal that would enable women to achieve suffrage without a constitutional amendment, Howard nevertheless asserted: "My own impression is that nine tenths of the women in California are opposed to female suffrage." Clara Foltz and Laura Gordon were probably in the chamber as Volney Howard related how women he knew—presumably a genteel set—did not wish to vote. It was disorienting when an old man said he had "never in [his] life encountered a dozen ladies or women who wanted to vote." "Weird, phantasmal and unreal" wrote Clara Foltz of these times.<sup>145</sup>

Howard's actual words were disheartening to the ear yet offered much to the hope in their deference to women's desires. Instead of the usual indictment of unsexed females, destroyed homes and abandoned spheres, Howard invoked the woman who did not want to vote. Although the unwilling voter may seem merely the mirror image of the woman forced out of her sphere, the claim was at least an objective one, subject to refutation by signatures on petitions and other testimony

The new emphasis on women choosing for themselves also reinforced their professional ambitions—after all it was irrelevant that most women did not want to be attorneys. Thus, while Howard temporized on woman suffrage, he offered his complete support "for enlarging the employment of women." Coming toward the end of his remarks, this reference seemed as spontaneous as his initial entry into the debate. Yet it too had a larger context: the press coverage of the Foltz-Gordon attempt to attend Hastings.

In the end, all proposals for woman suffrage, including the legislative empowerment proviso and Howard's scheme, were defeated by the voice vote that usually followed first consideration of an issue when the Convention sat as Committee of the Whole. The suffrage clause sent forward for final Convention action enfranchised only white male citizens.

## 3. The Women Turn to Litigation

After the mid-January suffrage defeat in Sacramento, the women returned to the battle of Hastings. They intended to continue attending lectures while

trying to persuade the Board to reconsider. But a phalanx of glowering young men blocking the classroom door drove them instead to the courts.

Clara Foltz proudly told a reporter that David Terry ("the Chief Justice") was advising them on litigation strategy. She was entirely open about their plan: She would pass the examination for the California Supreme Court bar and argue her own case directly before that court. This would avoid the delay that would follow from an appeal if either side lost in the trial court. Foltz acutely needed a quick decision; every passing day of the term undermined all her sacrifices for learning.<sup>146</sup>

Instead of a joint suit in the California Supreme Court, however, the women brought actions simultaneously, Foltz in the trial court and Gordon in the high court. Because she was not a lawyer, Gordon could file *in propria persona*—as a layperson representing herself, and thus avoid being required to take the California Supreme Court bar examination. As soon as either obtained a hearing, the other woman would seek to join the lawsuit.<sup>147</sup>

Terry may have designed this sophisticated strategy. On February 6, Gordon wrote her parents: "I have arranged about my suit against the Hastings law school and expect Judge Terry will send my papers from Sacramento tomorrow so I can begin suit Sat. or Mon." Two days later she had her California Supreme Court petition notarized, and filed it on Monday, February 10, coincident with Foltz's district court filing.<sup>148</sup>

This suggests that David Terry had some part in their court pleadings, which were identically and admirably short and plain. The only variation between the two was a paragraph in Gordon's papers seeking immediate and final relief from the California Supreme Court in a matter of great public interest. Whether Terry drafted this paragraph or the whole pleading, or merely made suggestions on the women's draft, cannot be guessed from the public record. As usual, Terry's aid was covert and came from the wings.

Both courts acted quickly, as required with petitions for extraordinary writs. The California Supreme Court denied Laura Gordon's petition, stating simply that she must file first in the district court. But on the day Foltz filed, the district court ordered the Board either to admit her at once or to show cause why it should not. The writ of Alternative Mandamus preserved the antique forms: "greeting" the prestigious lawyers on the Hastings Board in the name of "The People of the State of California," and commanding them to appear and explain themselves. The date set was February 14. Laura Gordon wrote to her family in Lodi about the court date:

I want to be there with her      I shall come up on Saturday and but for  
Mrs. Foltz's case in court Friday would go to Sac. tomorrow to come  
down from there, but she is anxious to have me stay.

I have taken rooms at this house [the Commercial Hotel] but stay at  
Mrs. Foltz's office all day.<sup>149</sup>

Laura Gordon was torn about remaining in the city because a plan was afoot in Sacramento to revive the subject of woman suffrage when the man

clause, enfranchising only white male citizens, was reached. It appeared this would happen on Thursday, February 13. Yet, the two women had been together for days planning their tactics, and the Friday court date could be an important one, though Gordon thought that unlikely: "They intend to make us all the trouble and delay possible, but I really believe we shall win in the end." She was right in both predictions.<sup>150</sup>

#### 4. The Origins of the Women's Employment Section

For aid in their suit against Hastings, the women reached beyond the courts to the Convention. They wanted to place women's rights in the constitution itself, partly because they were shocked by how little legislation had availed them in their pleas for admission to law school. Gordon sent the following proposed language to Charles Ringgold:

No person shall, on account of sex, be disqualified from entering upon or pursuing any lawful business, vocation or profession.

"I heartily endorse your proposition," Ringgold responded on Convention letterhead dated January 30, and he promised to introduce it "at the earliest opportunity." The letter's tone is cordial, but formal, suggesting they had not met before, or at best, knew each other only slightly.<sup>151</sup>

Why did Gordon send their proposed clause to Ringgold, rather than to one of the women's other, older friends? Why not to Terry, or better, some relatively neutral Non-Partisan? The proposition was a natural for the Workingmen, supporters both of a larger sphere for women and of limiting and controlling that corrupt tool of capital: the state legislature. Dovetailing with these purposes was the women's argument that the constitutional clause was necessary to avert "the caprice of future legislatures" which might repeal the Woman Lawyer's Bill.<sup>152</sup>

Yet the ideological connection between the women and the Workingmen does not fully explain the origin of the section. Clara Foltz, writing years later, singled out not Charles Ringgold but David Terry as "the gallant knight of the convention" who "championed" the women's clauses "in his incomparable manner." Terry's helping hand is nowhere visible on the public record. He gave no interviews, made no speeches and was not even on the floor of the Convention at the important moments for women. But as we have seen in the case of his attempt to manipulate Caples into debate with Gordon, the hallmark of Terry's "incomparable manner" was secrecy.<sup>153</sup>

Foltz's assignment of a central role to Terry is understandable if it was he who brought the women together with Ringgold. Terry was by late January the unacknowledged leader of the Workingmen, and was especially close in outlook to the former Chivalry Democrat, Charles Ringgold. The text of Ringgold's January 30th letter supports, indirectly at least, the inference of a Terry connection. After heartily endorsing her proposition, Ringgold warns

Gordon: "Very few American ideas [i.e. those based on the Declaration of Independence] prevail in this convention." Then, linking his support for the women's efforts to the cause of which Terry was the *open* leader, he says: "I hope that American Chivalry which is so tardy is only lying latent—and may at an early day redeem its boasted claims." Here is the bizarre alliance virtually proclaimed—the defeated forces of pro-slavery Democracy and the long-suppressed women will somehow rise together.<sup>154</sup>

### C. *Triumph of the Women's Constitutional Sections*

In mid-February, the Convention reached its 129th day. Outside, California's early spring had turned the brown hills bright green and the acacia a startling yellow. The beautiful balmy weather, said one observer, was "softening brains" at the Convention. All the constitution-makers were tired, but most of them wanted a new constitution and were full of fears—only some paranoiac—about how failure might come instead. The Convention was too diverse and unwieldy and would finally unravel; they had tried to do too much and lost track of where they were; they had been infiltrated by traitors loading the document with crazed propositions that would prevent its ratification; enemies would turn off the light and heat in the chamber.<sup>155</sup>

Personal fears of appearing, or actually being, foolish helped fuel the will to completion. Also driving the majority was a growing sense of the Convention as an institution. Five months of meeting six days a week for many hours a day—with caucuses and committees at night—had changed them in their relation to each other. In the restrained diction of a classical scholar from Yale, Johnson of Sonoma summed their experience on the Convention's last day:

We came together as strangers with preconceived antagonistic notions. After the constant attrition to which our views have been subjected we entertain more respect for one another, and have abated some of the overweening confidence which we had in our formulas, and in our own peculiar opinions, as constituting the only safety of the State.<sup>156</sup>

Johnson's speech continued with a panegyric on California—and on the necessity of saving her from "the Mongolian." Not only loyalty and love of place, but also racism motivated the delegates to produce a new constitution for their fair state.

#### 1. The Last Suffrage Debate

The report of the Committee on Suffrage came to the floor for final consideration on Thursday, February 13. The proposed clause provided for universal male suffrage except that no native of China should ever vote. About women, it was silent; the proviso that would allow a future legislature to remove the disability on account of sex had been voted down in January.

Debate opened with a skirmish over a Workingmen's proposal to reduce required residence in the voting district from ninety to thirty days. The amendment passed 67-57. As a prelude, this vote showed that in these waning days the Workingmen could still effectively cohere, and that amendment from the floor remained possible.<sup>157</sup>

It was late afternoon when James J. Ayers rose to offer a floor amendment. He proposed to reinstate the original committee proposal—empowering the legislature to adopt woman suffrage. As the Convention strained toward conclusion, it took courage even to suggest an amendment to a final report. Ayers' speech in support of renewing the legislative empowerment was short and unadorned—yet moving even on the printed page. The *San Francisco Post* called it "one of the most compact and neatest yet delivered at the convention." In conclusion he said:

[A]ll [that] the friends of female emancipation ask [is] that the door shall not be entirely shut . . . It is not asking much; [to] concede less . . . [is], in my opinion, a wanton act of tyranny.<sup>158</sup>

Such passion seems odd given Ayers' previous silence on the subject. But he was an ardent friend of the new constitution and at this point was probably thinking, like a good newspaperman, of influencing public opinion toward its adoption. Legislative empowerment looked like a moderate compromise that would attract suffrage sympathizers' support, while not greatly antagonizing opponents.<sup>159</sup>

It was 5:20 when Ayers concluded, at which point the Convention adjourned. The next morning the delegates took up the legislative empowerment proviso at once and beat back, 76-45, an effort to close debate. Heartened, the woman suffrage supporters spoke once more but in a tone of renewed hope and with greater emphasis on the arguments of simple justice than they had in the January debate.<sup>160</sup>

Alphonse Vacquerel opened by saying that since a bill restricting Chinese immigration had recently passed Congress, his earlier pragmatic reasons for favoring woman suffrage had lost some force. Now, he based his support on the late nineteenth century's version of the Enlightenment—"positivist and materialist views of reality":

[B]etween man and woman there is no superiority, no inferiority . . . The first principle of republicanism is equality, and the first maxim is to accord to others the same privileges that you claim for yourselves.<sup>161</sup>

Shafter took up Vacquerel's previous, less elevated point, saying, "Who knows but that twenty years from now the Chinaman may vote. . . . We did not expect twenty years ago that the negroes would vote." But on the whole, Shafter, like the other supporters in this round, mainly took the high road. They all made ringing appeals to justice, equality, humanity and, most of all, progress.

The only person to speak in opposition was the old nemesis, James Caples, whose verbatim repetition of phrases from his previous speech moved the

Workingman J.P. West to recall that when Gerritt Smith and Wendell Phillips lectured against slavery

[t]here [were] these old whited sepulchers, asking us: "Do you want your daughter to marry a nigger?" . Now . these same fossilized ideas [are] presented to an intelligent audience. "Do you want your daughter locked up in a jury room? Ha, ha."

West closed with a plea to "leave the future to take care of itself, and . . . in God's name, in the name of right, in the name of humanity . . . Throw no blocks in the way of the car of progress."<sup>162</sup>

The debate continued for about an hour, then an opponent moved the previous question. The ayes and noes were demanded on the Ayers legislative empowerment amendment. The vote was 67-55 against the women. Thus, a handful of delegates "turned the scale and valiantly put the whole female sex to flight" said one commentator.<sup>163</sup>

Workingmen had led the debate, and supplied almost half the votes for the proviso. On the other hand, it would have passed had they all supported it. There were other "if only's" after the vote. Perhaps someone could have lobbied Volney Howard harder to convince him that women wanted the vote. Terry was not on the floor; one of the staunchest supporters, Blackmer, was ill. Ten other Workingmen were also away

Having come to the brink of potential female emancipation, the Convention quickly recovered and defeated an amendment to allow women to vote for school offices 73-42. After "this second defeat of women during the day," the *Post* writer commented: "I guess the delegates are mostly woman haters, and doubtless this peculiar affection is fully reciprocated."<sup>164</sup>

One delegate said, mourning Ayers' amendment: "We should have signaled this day—St. Valentines. It is a burning shame we did not." In San Francisco on the Saint's Day, Clara Foltz and Laura Gordon received a similar mock valentine in the form of a motion from the Hastings Board for a continuance. This meant that Hastings intended to fight on rather than accede to the proposition that women entitled to practice should be able to study at the law department of the University.<sup>165</sup>

## 2. The Convention Acts on the Women's Anti-Discrimination Sections

On Saturday, February 15, the papers reported the one-week continuance of Clara Foltz's case against Hastings. There was a lull in the Convention as well with a quiet Saturday devoted to municipal organization. But Monday brought a marked mood swing, perhaps occasioned because President Hoge, a stern parliamentarian, was away for the day. The scene, said one delegate later, was like school when the "master was absent . . . and the pupils proceeded in singing songs, throwing books and turning hand springs over the benches . . ." The business before the Convention was the aptly named

article on Miscellaneous Subjects, reported from the only committee that had a Workingmen majority. Herrington, from Santa Clara, set the tone by objecting on health grounds to Sacramento as the capital and calling the city "a boneyard . . . a place of interment for the distinguished brains of the State." This was the first section of the proposed Article.<sup>166</sup>

The rest of the eighteen sections ranged from enacting a mechanic's lien statute into organic law to setting the fiscal year's start at July 1. There was a lot of action and not much serious oratory as each clause was amended, eliminated or accepted, and so on to the next. A Workingman from El Dorado objected that the section stripping suffrage from any person who engaged in a duel cast "a stain" upon "the leading man of this Convention, . . . the ablest man upon this floor, the most independent, free from any rings, or cliques, or restraint." The remark confirms David Terry's standing with the Workingmen, but as Ayers pointed out, this section was not aimed at Terry, but was simply carried over from the 1849 Constitution.<sup>167</sup>

In an atmosphere that at times combined hilarity and hysteria, the day wore on through consideration of seventeen sections with some unpredictably rousing opposition and others gliding by. Late in the afternoon, section 18 was reached. Intended to prevent Chinese from acquiring property, its poor drafting made it virtually incomprehensible. In a dazzling double play by the women's two floor managers, Ayers moved to strike the clause and Ringgold stepped in to "offer a new section":

No person shall, on account of sex, be disqualified to enter upon and pursue any lawful business, avocation, or profession.

The new section passed without comment.<sup>168</sup>

"Ringgold caught Caples off his guard," observed the *Post* the next day and noted: "This is the one solitary victory for women." The comment captures the sense in which the easy passage of this novel section served as a sort of consolation prize for the failure of suffrage-empowerment. Some of the delegates also undoubtedly intended a good-natured boost for Foltz and Gordon in what promised, as of the Friday continuance in the San Francisco courtroom, to be a hard fight against Hastings.

But while commenting on the "solitary victory," the *Post* writer intimated that the new section might not be the last for women: "[T]he ladies are preparing for a war against the convention and if I am not mistaken, Ayers, Ringgold, Blackmer and Steele will yet lead them to victory." Another woman suffrage effort was indeed building and these four men were a potent combination. Ringgold and Blackmer stood for the range of Workingmen, from the voluble Kearneyites to the less alarming interior and southern California wage earners. Non-Partisan Steele was a fine example of the Granger-farmers who often held the balance of power at the Convention, and Ayers had by the Convention's end commanded a real following for his Non-Partisan populism.<sup>169</sup>



The friends of female suffrage had emerged from the last narrow defeat feeling that the whole debate had come down to whether they could convince as few as ten more delegates that respectable women really wanted to vote. To this end, the women of Sacramento (whose elected voices were James Caples, the main suffrage opponent, and Thomas McFarland, one of its most vocal advocates) moved toward speaking for themselves. They met on Tuesday, February 18, to discuss strategy and decided against direct lobbying at the Convention, and also against a proposed mass meeting in the Senate chamber where Foltz and Gordon could speak. Rather, they would work within their homes, and through personal outreach, beyond.<sup>170</sup>

Following this course, they gathered, within a week, over one thousand women's names on a suffrage petition. Introducing the signatures in batches, McFarland said, as he presented the first round of three hundred on February 21, that they were from women who had not before "taken any active public part in the movement . . . . They are the mothers, wives, sisters, daughters . . ." Making no secret of their plan, McFarland said once "the main argument . . . that women do not desire" suffrage was refuted, the friends of female emancipation would try once more to eliminate the word "male" from the entitlement section of the suffrage article. Meanwhile the Convention entered its final week.<sup>171</sup>

On February 20, the Miscellaneous Subjects article with its stowaway cargo, the women's employment clause, came to the floor. The Non-Partisans, including Caples, focused their opposition on the requirement of an eight-hour day for public works, also inserted from the floor on that giddy day spent on miscellany. By the time the women's section, disarmingly labeled "Disqualification," was read, there was hardly a stir. Ringgold cut off debate by moving the previous question and there was an affirmative vote without a call for recorded ayes and noes.<sup>172</sup>

The next day, Friday, the Hastings Board again moved in court for a continuance. Amid tears of frustration, Foltz objected. The semester was dwindling, and she had wasted another preparation of the argument which once fairly heard she felt sure to win. She knew it appeared petty to protest granting a few extra days to the busy Hastings counsel. Yet everywhere Clara Foltz looked she saw the same faces in opposition. Joseph Hoge, her first named defendant, was also the President of the Constitutional Convention, and had voted against the Ayers amendment on woman suffrage. Her judge was the former law partner of her opposing counsel. Another defendant was Samuel Wilson, the rich railroad lawyer who was one of the most conservative delegates at the Convention.

But the eminence of their opponents actually helped the women in the end. The disparity between the conservative, wealthy old men and the two women appearing unaided for themselves aroused great interest and attracted the press. Moreover, Workingmen and other delegates at the Convention no doubt noticed the overlap between their own and the women's enemies.

On Monday, February 24, the two unequal sides met in a crowded courtroom. After several hours of argument, Judge Morrison took the case under advisement without announcing a decision date. For the first time, Hastings' counsel stated their theory that the Board of Directors had total discretionary authority over the law school. They went on, however, to justify the exclusion of women on the ground that they were not capable and qualified to be lawyers.<sup>173</sup>

On Tuesday, the newspapers carried lengthy accounts of the arguments that played up the David and Goliath angle as well as the dignity and skill of the women with the slingshot. In a turn on the inequality of the two sides, the leading Sacramento newspaper editorialized on the theme that the male opponents were actually afraid of competition from charismatic women lawyers and jibed at the suggestion that women would have any trouble dealing with the "caliber of the men in practice." Finally, drawing on the mantle of progress, the paper proclaimed: "Ultimately in spite of opposition and prejudice, they will conquer freedom for themselves. This will happen because reason is on their side."<sup>174</sup>

Also on February 25 appeared an item on the front page of the *Sacramento Record-Union*—a letter from a Portland correspondent, who wrote of meeting Clara Foltz when she first came west and went on to praise her diligent support of her children and to suggest that she had the qualities of a good lawyer. The most skilled publicist could not have arranged a better-timed piece.

On the same day that these stories appeared in the papers, the issue on the Convention floor was the Education Article. Section nine, dealing with the University of California, had been a major battlefield with Workingmen and Grangers on one side opposing the conservative Non-Partisans on the other. Language promising political independence and designating the University a public trust had, somewhat irrationally, inflamed an ongoing debate about the University's accountability to all the people and its mission to educate the children of workers and to teach agriculture, as well as purveying the classics to the elite. Twice the Workingmen-farmer coalition had defeated section nine, succeeding each time in using the previous question to cut off debate.<sup>175</sup>

On February 26, as the Convention neared its close, the Non-Partisans maneuvered the section back on the floor. In an eloquent speech, the committee chair and University Regent Joseph Winans explained the need for the clause and pleaded for its acceptance without amendment. At once Ayers was on his feet, offering the women's education section:

No person shall be debarred admission to any of the collegiate departments of the University on account of sex.

Fearing that any tampering would jeopardize the whole clause, Winans soothingly responded that the University was already coeducational. To which Ayers shot back: "The gentleman intimates that there is no necessity for it. I think

recent history points to the fact that there is a necessity for it." He referred of course to the Hastings argument in San Francisco only the day before.<sup>176</sup>

Ayers' amendment was carried, 103-20, with the conservatives going along so as not to imperil the rest of section nine. And with the women's proviso added, the section picked up enough Workingmen votes to pass the Convention by the close vote 70-59. Some newspapers reported that the Convention "insisted" on the women's clause and the *Chronicle* drew the connection to the Hastings suit:

Those who have charge of the law school at the University may be ungenerous and narrow enough in their views to wish to limit the sphere of women, but a majority of the members of the Constitutional Convention are not.

One querulous delegate claimed that the women's section was not secured on its merits, but as a sop to the suffragists.<sup>177</sup>

With the widespread positive publicity on the Hastings suit and the auspicious vote on the education clause, the suffragists were on a roll. But the wrong number came up the next day at the Convention. Ayers planned to reopen the woman suffrage issue by citing the copious new evidence about women's desire for the ballot. Part of that evidence was in the galleries of the Assembly chamber, which were filled with Sacramento women, for many of whom attendance was the first civic action of their lives.

When Ayers rose, however, James Murphy, a Del Norte Non-Partisan, noting that woman suffrage had been "debated thoroughly," moved the previous question. His motion carried, 65-55. The clause bestowing suffrage on male citizens was then passed by all but 27 votes.<sup>178</sup>

Though closer than any earlier margin, this ten-vote defeat was more bitter because some Workingmen stalwarts voted for closure of debate. The *Post* explained this by saying they feared their own new section reducing the voting residence from ninety to thirty days would be lost if the suffrage clause were reopened.<sup>179</sup>

The *Record-Union* blasted Murphy for cutting off debate, designating it as "an act of brutal discourtesy":

The women of Sacramento had a right to be heard on the question. Their advocates ought to have been allowed full latitude. . . The Convention is placed in a very mean and contemptible attitude when it undertakes to bulldoze women <sup>180</sup>

Charles Ringgold, writing to Laura Gordon the next day, declared:

The agony is over—the child is born, but is a bastard. The friends of political equality were ready to do their best, but an American convention yielded to the motion of an irish [sic] fraud and choked debate.

So disgusted was Ringgold with the fact that some of the most prominent Workingmen had voted for the previous question, and most had joined in the male suffrage article, that he told Gordon he would "retire from any further

affiliation [with the party]. . . . It is too anti-American to harmonize with my views."<sup>181</sup>

But he also added the good news that the Miscellaneous Subjects had passed with the women's employment clause intact. In a fitting coda to the passage of both unprecedented anti-discrimination clauses, Ringgold concluded:

Your Section, presented by me, is preserved, thanks to the ignorance of many whom [sic] supported it not knowing the priveleges [sic] it extends.

## V. RATIFICATION

"There is hardly a man or woman in the State who has not during the past year . . . become so used to hearing new ideas advanced and studying them, that any question will receive attention."

*New Northwest*, September 25, 1879

### A. *The Hastings Victory*

Two days after the Convention closed, the women's employment section of the newly minted constitution had a fitting first use. In the Hastings case, Judge Morrison found the section's "intention . . . to put women on the same footing . . . as men" in the practice of law. By drily noting that among the Hastings defendants were the Convention President J.P. Hoge and Delegate S.M. Wilson, Morrison seemed to say: "You had your chance, do not ask the court to overturn the will of this elected body, as well as the legislature that passed the Woman Lawyer's Bill."<sup>182</sup>

Though granting unequivocal relief to Foltz and Gordon, the opinion's staccato list of observations contained none bearing directly on women's rights or capacities: "It is sufficient for the court that the Legislature authorizes women to practice law." He did not "believe in women lawyers," Clara Foltz later wrote, but he "did believe I was right in the law." One suffrage paper applauded the opinion's spare refusal to discuss the effects of women entering the law; such considerations are "presumptuous and visionary . . . . Justice not expediency should be the watchword." But in the end this no-frills approach—giving the women only what could not be denied—turned their personal triumph to pyrrhic ashes.<sup>183</sup>

Against the advice of founder Hastings himself, who also thought the women right in the law, the Directors appealed. The judge stayed his order, pending the appellate outcome. Inevitably, the Hastings term would be long over before the case could be briefed and argued in the California Supreme Court. Judge Morrison knew this, just as he knew the likely effect of delay when he initially refused to admit Clara Foltz to his court without a new examination, and when he twice gave the Hastings Directors continuances in the case. He might have done better by women lawyers if he had "believed" in them.<sup>184</sup>

With her scholarship from her friends exhausted and only three days of formal study for all her efforts, Clara Foltz prepared to return full-time to San Jose. She wrote to Laura Gordon in early May: "Well pard, I am all packed up ready to leave for home and away from the scene of so much storm and conflict." The letter has the tone of an era ending; from January to May the two women had spent most days together, litigating an unprecedented case, lobbying for suffrage and basking in frequent and favorable press coverage. It was a time when Foltz was somewhat freed from the cares of her family; Trella ("my darling first born [at thirteen] wise beyond her years") helped with the boys (eleven and nine) and made frequent supply runs to San Jose and Lodi for the women in the field. Foltz's mother cared for the two little girls in San Jose.<sup>185</sup>

"I have been very happy in your society—my own sweet friend and have formed pleasant acquaintances that will be life long pleasures," Foltz wrote about their congenial city life of the past months. But she added, "amid my sweet joy—I have had mingled the bitter dregs of heart-ache." Jeremiah Foltz had returned from a prolonged Oregon visit just as the Convention closed and Judge Morrison's opinion issued. What passed between the restless unfaithful husband and his newly famous wife is unclear, but according to the divorce papers she filed the following summer, when Jeremiah left San Jose after a few weeks, he declared his intention "to remove himself permanently" to Portland.<sup>186</sup>

The letter dated May 6, the day before the ratification vote, is the last extant between the two friends. Foltz wrote that she expected ratification and told Gordon of an anti-constitution assembly the previous night. After dinner with mutual friends ("at the same old place. We spoke of you darling many times and wished for your presence"), Foltz had gone over to Platts Hall for an opposition rally, advertised days in advance as a "Monster Demonstration For the Old Constitution." A huge crowd turned out to hear a corporation lawyer (none other than S.M. Wilson) and a prominent doctor extol the glories of the 1849 document: "[I]t passed before the giants of the nation, Webster, Calhoun, Clay, Douglas and Benton . . . and stood the test of their examination," proclaimed Wilson.<sup>187</sup>

Foltz was unimpressed: "I did not regard either of the speeches a success." Evidently referring sarcastically to an old slight, she added: "To tell the truth, 'Honey', we, you and I are not good judges of good speaking, 'cause we are not able to discriminate between a giant intellect and an ordinary or mediocre one." Sarcasm aside, the extreme and conflicting claims of the long ratification campaign taxed the faculties of even the most discriminating listeners.

### B. *The Constitution Before the People*

Six thousand people attended the opposition rally at Platts Hall. A few days earlier there were 25,000 at an open-air pro-ratification meeting in the city. The largest crowds were naturally in San Francisco, the population center, but everywhere unprecedented numbers turned out for debates, expositions and rallies. The degree of the people's involvement, as well as the close-fought nature of the campaign appear in two electoral statistics: ninety percent of the white male electorate voted; they ratified the constitution by less than 11,000 of 145,093 votes cast.<sup>188</sup>

Much of the public debate was complex and detailed; speakers delivered and newspapers printed veritable treatises on theories of taxation, regulatory policy and the symbolic meanings of constitutional law. In one of its last acts the Convention sent a copy of the document itself—all 223 sections—to every voter. J.J. Ayers later attributed ratification to this opportunity for “a close study” of the constitution.<sup>189</sup>

A number of the Convention delegates joined the fray, most in favor of ratification. Ayers was tireless in the campaign as were Volney Howard and J.P. West (a pro-suffrage, farmer Workingman) in southern California. For once, David Terry emerged from the wings and spoke many times from Stockton to San Diego in his own forceful voice. Denis Kearney stumped the state as well.<sup>190</sup>

A few Convention delegates appeared in opposition, notably Samuel Wilson. But most of the anti-ratification campaigners were the bankers and businessmen who had not previously been players: the “moneyed classes” in Henry George's term, “the monopolists” according to Ayers. The opposition was well-financed; some said they had \$700,000, others said \$2,000,000. Ayers reported on the “monopolists flooding the State with circulars, pamphlets and all kinds of documents . . . one falsely ascribed to the workingmen.” In another story, he told of a literary bureau established to supply “the rural press” with “ready-made articles” against the constitution. George wrote that “threats of the discharge of employees and withdrawal of patronage . . . were freely made” by the opponents. He went on to complain that “the fact that enormous sums were being spent to defeat the constitution subjected everyone who opposed it to the implication of being the hureling of anti-popular interests.”<sup>191</sup>

Though a few journals were avowedly neutral, most of the press was opposed—with the critical exception of the *San Francisco Chronicle*. It printed supporters' speeches verbatim and over the period of the campaign distributed seven advertisement-free extras at an estimated cost of \$30,000. David Terry's speech, “The Death Knell of Greedy Corporations,” in one such extra had a distribution of well over 100,000 copies. On the day before the election, Terry's speech appeared again, this time in German, Italian, French and Spanish for “our foreign friends” who might have or influence votes.<sup>192</sup>

### C. Courting the Women

Both sides believed that women could affect the outcome of the election. For some, this involved a small, but untroubling inconsistency, as the *Post* pointed out: "The *Chronicle* is opposed to women voting, but thinks their influence over the voters is so great that a mass meeting of women in favor of the new constitution would secure its adoption."<sup>193</sup>

Another theoretical difficulty for anti-suffragists was that courting women's support meant drawing them into the filth of politics. And any appeal made to the women activists could alienate the others. Ultimately, however, advocates of the new and the old constitutions pitched their pleas to the strong-minded, assuming perhaps that it was they who, lacking the vote, still had influence.

Without qualification, the *Sacramento Record-Union* advised that city's recently politicized women that the new constitution "extinguishes all their hopes and dooms them to inactivity" because it "withholds from the Legislature the authority to bestow the suffrage upon women." J.J. Ayers in the pages of the *Express* responded that the new constitution was far superior to the old in ease of amendment and there would be no difficulty in securing suffrage "when the popular sentiment is ripe for the change," which he predicted would be soon.<sup>194</sup>

The *Chronicle* was silent on suffrage, holding woman's influence of wider and deeper import than mere "political endowments." Rather, the paper urged that the new constitution "greatly enlarges her privileges . . . every good and true woman [should] . . . study this new constitution . . . to the end that indolent, careless, thoughtless husbands, sons, fathers, brothers, may, if need be, enlightened at second hand." Emphasizing the two women's sections, the article first pointed out that under the old constitution, women were "debarred from the law department of the university and are not quite secure as to their natural rights to enter other departments." It then identified the women's employment section as "an entirely new thing in California fundamental law . . . The female brain and the female hand, for all professions and trades, meets the male brain and male hand on a dead level of equal right before the law."<sup>195</sup>

Whether women actually influenced the ratification is impossible to measure. Nor can we assess the practical impact of Clara Foltz's claim that "from the very hour of [their] adoption," the employment and education sections furnished women "a higher regard," and a "first streak of dawn guiding her feet into larger opportunity." What is certain is that despite the disappointments of the Hastings appeal, and the failure of suffrage at the Convention, Foltz herself felt renewed by the year's events. In the last letter to Gordon, she wrote:

The future seems just now brighter than ever before and I cannot but believe that the good angels are shaping it all to suit themselves.

*D. The Interregnum Between Constitutions:  
May 1879 - January 1880*

Foltz also wrote Gordon of her plan to "go home to my nest of young ones and study for dear life" for admission and argument at the California Supreme Court Bar of the Hastings case. Given her nature, she did much more as well in the interregnum before the first legislature opened the decade under the new constitution.

On the crest of her victory over the "old fageyism" of Hastings, Foltz had many new clients and days in court made more exciting by the press notices that even accompanied her minor appearances. "Patient and kind she served all who applied for her services charging for them only what the [client] was able to pay," wrote a contemporary.<sup>196</sup>

That summer a reporter from the *St. Louis Gazette* was, like an earlier scribe, utterly charmed. First, he described her office: "neat little desk . . . photographs of her children . . . dainty ornaments . . . fragrant with rose or violet instead of tobacco smoke"; then her character: energetic, persevering, decided, individual. He concluded with this encomium on her professional relationships:

She mingles daily with scores of men, brother lawyers, receiving from all respectful courtesy and preserving . . . a pure, free, unsullied womanhood.<sup>197</sup>

Foltz herself said that she had found friends "among the very best legal talent. . . . And yet, everything is up-hill work for a woman. My children, five in number, not only hamper my progress, but by their very dependence spur me onward." Supporting a family of five by practicing law did not prevent Foltz from stepping into the leadership role in the suffrage movement that she had now earned. At a Woman Suffrage Association meeting attended by "leading citizens" and respectfully reported in the dailies, she was elected President and Laura Gordon was elected Vice-President for the coming year.<sup>198</sup>

Energetic Clara Foltz and her dynamic adopted state were well-suited for each other. Without missing a beat, California turned from ratification to an absorbing campaign for the offices under the new constitution. The election, held in early September, revealed a state still lacerated by factions whose only point of agreement was unity against the Chinese. At the election, a vote was taken for or against Chinese immigration. Only 900 of 150,000 votes were in favor.<sup>199</sup>

For the September election, Republicans, Democrats and Independents put aside their Non-Partisan coalition and set upon each other with full vigor. Though weakened by internal division, and by the loss of the ratification vote in its San Francisco stronghold, the Workingmen were still a force. They elected the mayor of San Francisco and about a third of the new legislature. Democrats allied at the Convention with the Workingmen hoped to form a coalition party, an effort inspired and supported by the *Chronicle*. But the



Workingmen refused, leaving David Terry, J.J. Ayers and others to run poorly for various posts on a New Constitution Party ticket. The division in the Democrat's usual constituency also caused the Republicans to sweep the state, taking the governorship and most legislative seats.<sup>200</sup>

The "good angels" conjured up by Clara Foltz's optimism continued to bless her efforts. Not only was an avid suffragist elected to the Assembly from Santa Clara, but she herself was appointed Clerk of the Judiciary Committee, a significant lawyer's job never before available to a woman. This meant she would be in Sacramento with an office from which she could lead the suffrage efforts in the reconstituted state.

The suffragists' plan was to argue for immediate legislation granting women the vote in school board elections, while at the same time pushing for a constitutional amendment granting impartial suffrage. School suffrage had special appeal because through earlier lobbying efforts, the women had earned the right to hold the very offices for which they still could not vote. On both points, they used the employment section of the new constitution: by opening all occupations to women, it was meant to include voting for and holding office.<sup>201</sup>

Declaring "no peace until we sit side by side with our brothers in the council chambers of the nation," Foltz planned the very lobbying assault upon the legislature that the Convention anti-suffragists had most feared. Mindful of the main argument against suffrage—that most women did not want it—she promoted a simple petition for the submission of a constitutional amendment to the voters, with separate columns for men and women. A woman's signature, she maintained, was the equivalent of a "vote that she demands her right as citizen." To persuade women to sign, she invoked an image of women irresistibly on the move:

No aristocracy of sex can check the swelling tide that must ere long drive back our opposers or swallow them up in its onward flow. We will work until victory unfurls her banner above our heads, and we feel the shackles loosen and give way—until they fall at our feet and we trample them in the dust <sup>202</sup>

Only two years had passed since Clara Foltz had first travelled to Sacramento to plead for the chance to earn a living as a lawyer.

## CONCLUSION: WOMEN AS CONSTITUTIONAL LAWYERS

"The final step will be taken when a woman, profoundly learned in the law, trained in its application, possessing the necessary energy, force of character and intellectual independence becomes a constitutional lawyer."

Clara Shortridge Foltz, 1922<sup>203</sup>

Diary entry: "I've decided to end the piece with her 1922 interview where she still yearns for something finer, more theoretical, on a higher plane. The phone rings, it's a t.v. host who wants me to come talk about the last Supreme Court term, mostly flag-burning. When I say it's not my field, he says he wants to be frank, it's very difficult to find women who are constitutional lawyers."

Barbara Allen Babcock, July 1989

For almost two years now, my study has been filled with books on California history, Stanford's fourth copy of the Convention debates (I want to record right now that it was falling apart when I took it out) and nineteenth-century newspapers in hundreds of copied and computerized bits. The time has not been lonely: Clara Foltz, Laura Gordon, Sarah Knox, David Terry, J.J. Ayers, Charles Ringgold and many others have been with me—and not only during the day. Here is a dream from July 16, 1990.

Near waking. I was playing poker with David Terry (without his beard but I recognized him). He told me that I must find Tippit (Tip-it). He was the key to how the women got the clauses in the constitution. "A friend of mine, of Sarah Knox-Goodrich and of Mrs. Foltz," he said.

Tippit, probably one of Terry's subterfuges, has not materialized and I have pieced together the tale without such a comprehensive witness. It is time now to move on to other parts of Foltz's story, leaving behind most of the characters from 1879. I will never write all the things I have learned and soon will not know them anymore.

Let me pause now to record what finally happened to a few of the players in the constitutional drama. After its 1880 election successes, the WPC began to fade and by 1882 had dissolved completely. (In that year, Congress agreed that "the Chinese must go," and violated treaty obligations as well as basic decency by passing a Chinese exclusion bill). Proclaiming that he had achieved his goal, Denis Kearney gave up politics and became a moderately successful businessman.<sup>204</sup>

Eli Blackmer, Charles Ringgold, J.P. West and most of the other Workmen supporters of woman suffrage dropped from the public record. One journal predicted as much at the end of the Convention, anticipating in particular the return of Delegate Vacquerel "with his paper cap and muslin apron . . . to his soups, pots and kitchen." The item added that all the "viler political reptiles that have crawled down into this small mud volcano [Kearneyism] will be relegated to their original social and political positions. Volney E. Howard and Judge Terry will carry back to their darker obscurity no added honors."<sup>205</sup>

After several electoral rejections, David Terry did withdraw to his law practice—but not to obscurity. In the mid-1880s he represented the beautiful Althea Hill in her “divorce” from one of California’s wealthiest men. The recently widowed Terry later married her himself, leading to a feud with United States Supreme Court Justice Stephen Field, who rendered a decision against the new Mrs. Terry while riding circuit in California. The matter ended with Field’s bodyguard killing Terry in 1889.<sup>206</sup>

J.J. Ayers became the California state printer and moved to Sacramento, which he had grown to like during the Convention. He retired in the 1890s to write his memoirs and became a popular lecturer on early California. The Convention’s lawyers returned to their routines; most did not again run for office. Samuel Wilson died at his desk after a full day’s work in 1892. In 1879, Sarah Knox married Levi Goodrich, a successful architect who also supported woman suffrage. She honored both her husbands with the hyphenated name “Knox-Goodrich,” and worked for the women’s cause in San Jose until her death in 1903.<sup>207</sup>

I will continue the story of Clara Foltz, and of Laura Gordon; they were to have many more struggles and triumphs, though I cannot quite leave this part of their story without a few words about the legislature of 1880. The momentum that the women’s cause had gathered in the Convention carried over to this historic first legislature under the new constitution. “[W]omen’s rights advocates continued their storming of the halls of legislation,” wrote one contemporary. “All the strong-minded ladies of the state were present,” said another. Sarah Knox-Goodrich reported to the *Woman’s Journal* on their efforts, noting that her own “delegation [was in Sacramento] two weeks laboring with our law-makers . . .”<sup>208</sup>

The women’s base of male support seemed broader in the 1880 legislature than ever before, and one man, J.L. York from Santa Clara, was even elected on a woman suffrage platform. The legislature contained about a third Workingmen, most of whom continued to support the women, though two vocal and effective suffrage opponents were WPC members. (Foltz later vowed that women would inscribe their names “on a black book in letters of light”). Many other men, without regard to party, earned places in the women’s gold book by voting to grant suffrage in all school matters. This was in the Assembly, where a constitutional amendment for full suffrage to be submitted to the people also gained a majority. But two-thirds was required to propose an amendment, and upon motion for reconsideration, school suffrage lost by three votes.<sup>209</sup>

Clara Foltz was in Sacramento for the entire session as Clerk to the Assembly Judiciary Committee. For her, certainly, the new constitution “furnished the first streak of dawn” illuminating “larger fields of opportunity” She was, moreover, no demure token presence; an artist’s portrayal of the historic legislature shows her with a whip over her shoulder and the legend, “Prepared for war.” Using her legal skills she

submitted a brief to the Committee arguing that the legislature could grant women suffrage without a constitutional amendment. It was an excellent brief, especially given the intrinsic difficulty of the point: legislative empowerment of suffrage had, after all, specifically failed at the Convention.<sup>210</sup>

On three evenings during the session, woman suffrage was debated in the huge Assembly chamber where the Convention had lately met. This time women spoke for themselves on the floor of the legislature to what some said was the largest audience ever assembled at the Capitol. Clara Foltz was a leading participant in the debate. The drama created by her performance and her person emerges in lines by Madge Morris, a popular poet, who was postmistress to the 1880 legislature:<sup>211</sup>

Thy voice has argued in debate,—  
 In scathing satire sharply fell  
 In forum and in hall of state  
 Held listening thousands with its spell.  
 Then dropped its tones to softest keep  
 And crooning sung a babe to sleep.

∴∴

Then Hail thee! priestess of the law—  
 Our fair-browed Portia of the West.

∴∴  
 And thou hast proved that woman can—  
 Who has the grace, and strength and, will—  
 Work in the wider field of man  
 And be a glorious woman, still.<sup>212</sup>

If this seems sentimentally overheated, remember that it addressed the same audience as the poetic condemnation of the woman activist—the one that made the rounds in 1878 when Foltz first lobbied for the Woman Lawyer's Bill:

Shame unto womanhood! The common scold  
 Stands railing foul-mouthed in the public street;  
 And in the mart and 'fore the justice seat  
 Her shallow tale of fancied wrongs is told.  
 No woman these such as our hearts enfold,  
 Mothers and wives are cast not in this mold.<sup>213</sup>

Against this widely shared view, Clara Foltz argued now as before, by precept and example, that a woman need not abandon her own domestic sphere to "work in the wider field of man." Rather, she urged, practicing law would make women "better mothers, better wives and better citizens." She also believed that these better women would be better lawyers—that they would bring women's special purity to their public lives. But even toward the end of her own career, she still found this aspiration unfulfilled. Women, she said in 1922, were not yet recognized as "constitutional lawyers."

What did she mean? I think it was that constitutional lawyers, like women under the separate spheres ideology, inhabit a finer and purer

world than their counterparts. Unlike commercial or criminal or corporate practitioners, constitutional lawyers concern themselves with the public good, with justice and virtue. As statesmen rather than politicians, they rise above brute compromise and strategic struggle. They achieve their eminence, according to Clara Foltz, by qualities of strong character, intellectual independence and profound learning. Foltz herself had sought eligibility as a constitutional lawyer by applying to Hastings. But the Directors (including some celebrated constitutional lawyers) had responded: you may hustle with the common herd in ordinary practice, but the higher realm of legal learning is not for you.

Yet Clara Foltz managed to defeat, in their own forums, the men who told her this, and we have seen the effect her victory had on the 1879 Convention. Not only did California nearly become the first state to recognize and provide constitutionally for the possibility of unfettered woman suffrage, but the unprecedented anti-discrimination sections carried much the same symbolic message as suffrage would have. Constitutional access to any business, vocation or profession and to education and to the ballot all challenged the "aristocracy of sex" the male monopoly of the public sphere and its discourses. The challenge was especially sharp when focused on the law—the paradigmatic public profession. In 1879 California, women placed the right to practice law in the state's fundamental charter<sup>214</sup>

At least on the surface, then, there is a puzzle in Foltz's wistful remark that women had yet to achieve the status of constitutional lawyers. It seems she should have assumed the title herself on the basis of the events of 1878 to 1879: the making of the constitution, which bore the "impress of my labors," and the case against Hastings, "the greatest in my more than half century at the bar." Let us look once again—finally—at these events, this time to see why they fell short in Clara Foltz's judgment of qualifying her for the ultimate accolade.<sup>215</sup>

The methods the women used in their constitutional struggles are text book illustrations of the interest group politics that typified nineteenth-century constitution-making. What was unusual was not the process, but the emergence of new actors on the constitutional scene: workingmen and women. These two outsider groups banded together against their common enemies (many of them constitutional lawyers), to fight for suffrage and educational and employment rights.<sup>216</sup>

One result of their alliance was that the employment section did more than enact the Woman Lawyer's Bill into organic law. It operated across class lines and opened all occupations to all women. While its first use was in Foltz's own case against Hastings, its second invocation in court saved one Maggie Brewer from conviction for working in a dance hall that sold liquor "This section was put in the constitution . . . for poor women by the Workingmen's party," said her lawyer.<sup>217</sup>

But the coalition politics of 1878 to 1879 had its tragic aspects as well—the women's alliance with the Workingmen meant complicity for them in

a peculiarly extreme version of anti-Chinese racism. It tied the women's unprecedented victory to a world view that failed to recognize either common oppressors or common humanity. Women claimed their own rights on the basis of citizenship and ignored the injustice of denying immigrant Chinese the opportunity to become Americans.

Lobbying as well as coalition building was a major feature of interest group politics that characterized the efforts of the women in 1879. Constitutional lawyers do not work the lobby on their own behalf. Neither should women, according to the standard morality of Clara Foltz's time. The specter of women lobbying successive legislatures had been one of the chief grounds of opposition to the legislative empowerment proposal for suffrage. Anti-suffragists had argued that enfranchised women would only continue their importuning for candidates and issues. One delegate cited a resident of Wyoming territory, where women could vote, as witness to this primal horror: "I remember seeing a lady, the wife of a candidate for office, standing at the counter of a beer saloon drinking beer with a parcel of colored men . . . she was so intensely interested in her husband's success." What might women do, he implicitly asked, when canvassing for themselves?<sup>218</sup>

The objections to women lobbying—that it would unsex and demoralize them—were essentially the same as those raised against allowing women to campaign or to argue to a jury. The best politicians and trial lawyers seek to persuade by achieving a special relation of familiarity and direct intimacy with their audience. Signifying the relation are the natural circle around the campaigner's stump and the enclosure of the courtroom pit. Master advocates in these settings extend themselves beyond rapport into a quest for love, adoration, commitment. "Do it for me," they plead. The prospect of women making such passionate personal appeals, especially to male audiences, lies just below the surface arguments about women somehow losing their sex and their morals.

When women lobbied—personally and directly solicited votes—they became, moreover, autonomous public actors defining their own interests; a woman lobbying is not seeking a man's opinion or advice. Elizabeth Cady Stanton, a great lobbyist for equal rights herself, exhorted that for a "woman to work for her own salvation . . . [s]he must not put her trust in man . . . [for] while regarded as his subject, his inferior, his slave their interests must be antagonistic." Rather than relying on a man to decide what is best, a lobbying woman seeks his vote for her own proposition—this is politics. But as one paper said during the Convention debates: the time has come to put aside "sentimental dodges about quenching women's glory in the filthy pool . . . . The suppressed sex needs the vote for their own protection."<sup>219</sup>

What Clara Foltz learned is that self-interested group promotion is the stuff of politics, not statesmanship. Even if women fighting for themselves manage to maintain the myth that they are specially fitted for a pure

world of nurturance and tender feeling, they will be denied access to the higher reaches of the public sphere. The very activities that set them on the path, prevent their entry into the city on the hill. Thus, it is no wonder that toward the end of a supremely political career, Clara Foltz gave an interview that bore this headline:

**WOMAN AS CONSTITUTIONAL LAWYER NEXT STEP:  
MRS. CLARA SHORTRIDGE FOLTZ HOPES FOR FUTURE**

## NOTE ON DOCUMENTATION

In his splendid study of Chinese immigration and labor in the West, *THE INDISPENSABLE ENEMY* (1971), Alexander Saxton noted that newspapers were necessarily his primary source. His labor movement subjects (like my women's movement subjects) were "extraordinarily articulate and expressed themselves at length in speech and print, but they kept few records." What records they did leave were often lost to fire, earthquake and a long period of inattention. My major sources are also, and for the same reasons, the "locally oriented periodicals and newspapers" that proliferated in the last quarter of the 19th century. A surprising number are available in university and public libraries as well as at the California State Library (which has an invaluable index to many of the newspapers).

Nineteenth-century California newspapers did not strive for objectivity. But usually they did not pretend to it either, so that it is often possible to identify and adjust for prejudices. In several instances, moreover, these prejudices bring facts to light. Thus, J.J. Owen, the editor of Clara Foltz's hometown *San Jose Mercury* and a woman suffragist, not only thoroughly reported women's organizational activities, but picked up items on Foltz from papers all over the state and later, the country. Women suffragists started their own publications as well, and Foltz chronicled much of her own early career through letters to one of these—Abigail Dunway's Oregon paper, the *New Northwest*.

Another important primary source is a collection of the papers of Laura DeForce Gordon at the Bancroft Library in Berkeley. They consist largely of letters she received during the 1870s and early 1880s, mostly from woman suffrage figures (including several from Susan B. Anthony). In 1878-79, Clara Foltz and Sarah Knox, David Terry and Charles Ringgold all wrote to Laura Gordon about events at the Constitutional Convention.

The *Debates and Proceedings of the Constitutional Convention* is, of course, a critical resource. Printed in 1880, the three over-sized volumes purport to be a *verbatim* transcript of what took place on the Convention floor. (Checking this by comparisons to daily newspaper reports at several critical points, I found only inconsequential variations.) Although the *Debates* have a serviceable index by subject matter and delegate name, much is lacking: for instance, delegates' party affiliations and committee assignments are not listed. Of great help on these and other points is D. WALDRON & T. VIVIAN, *BIOGRAPHICAL SKETCHES OF THE DELEGATES TO THE CONVENTION* (1878). This little volume has a largely self-authored description of each delegate (from which both parties and personalities emerge) and lists of standing committees and delegate occupations. Finally, I have traced many of the delegates through biographical indexes,



the papers of their contemporaries, newspaper articles and obituaries in my efforts to track down their reasons for supporting or opposing the women's cause.

The two most noted contemporary observations on the events of the late 1870s are James Bryce's chapter on Kearneyism in *THE AMERICAN COMMONWEALTH* (1888) and Henry George's magazine article entitled *The Kearney Agitation in California*, 17 *POPULAR SCI. MONTHLY* 433 (1880). In their treatment of the Workingmen's movement, Bryce and George omit the women's role, but are extremely useful for the atmosphere and temper of the times. On the other side of the coin, the California chapter in the third volume of the *HISTORY OF WOMAN SUFFRAGE* (E. Stanton, S. Anthony & M. Gage eds. 1881) provides many factual details about the women's activities, but with so little context that it sometimes seems one long list of disembodied names. Nevertheless, it offers a peerless supply of leads.

Among the secondary sources are three books that greatly illuminate the period. Saxton, mentioned above, gracefully recasts the results of truly impressive research. He gives appropriate credit to Ira Cross whose *HISTORY OF THE LABOR MOVEMENT IN CALIFORNIA* (1935) is a basic resource for understanding the contending forces within the Workingmen's Party. Finally, there is Carl Swisher's monograph, *MOTIVATION AND POLITICAL TECHNIQUE IN THE CALIFORNIA CONSTITUTIONAL CONVENTION, 1878-79* (1930), a concise monument of clarity and thorough research—though again, one that refers only briefly to the role of the women and their cause in the constitutional events.

Many other books and articles are cited in the endnotes and many that I have read with great profit are not cited. To any of these latter authors who may see their work in my interpretations, my apologies if I have not acknowledged your help explicitly. Finally, I should say a word about the form of the documentation. In a previous article on Foltz, I found the regular law review footnote practice an impediment to the narrative because of its constant invitation to check the bottom of the page. Footnoting each factual assertion is only a distraction when the references are obscure (*e.g.*, nineteenth-century newspapers). The endnote format, graciously embraced by the editors of the *Indiana Law Journal*, allows me to share some of the "out-takes" from my research as well as to complete quotations where the speaker's style contributes to the point.

## ENDNOTES

1. J. AYERS, *GOLD AND SUNSHINE* vi (1922) (published posthumously). The rest of the quote is also apt: "Each life helps to make up the sum of all history, and there is none so obscure or isolated but that it would, if properly written, throw a ray of light upon some latent event of value to the historian." *Id.*

2. *Sail'er Inn v. Kirby*, 5 Cal. 3d 1, 485 P.2d 529, 95 Cal. Rptr. 329 (1971); CAL. CONST. art. XX, § 18 (1879) (In 1970, the wording was changed without substantive effect to: "a person may not be disqualified because of sex, from entering or pursuing a lawful business, vocation or profession.").

3. B. CURRAN, *THE LAWYER STATISTICAL REPORT: A STATISTICAL PROFILE OF THE U.S. LEGAL PROFESSION IN THE 1980s* (1985), quoted in *Different Voices, Different Choices? The Impact of More Women Lawyers and Judges on the Justice System*, 74 JUDICATURE 138 (1990); see *Different Mix at Law Schools*, N.Y. Times, Apr. 5, 1991, at B12 (law teaching statistics).

4. Babcock, *Reconstructing the Person: The Case of Clara Shortridge Foltz*, in *REVEALING LIVES* 131-40 (1990) (description of method in writing a biography without the subject's papers).

Modern sources on Foltz include: Schwartz, Brandt & Milrod, *Clara Shortridge Foltz: Pioneer in the Law*, 27 HASTINGS L.J. 545 (1976) (This is the only modern law review article about Foltz, and it started me on the biography.); 1 *NOTABLE AMERICAN WOMEN 1610-1950*, at 641 (E. James, J. James & P. Boyer eds. 1971); 1 *THE NATIONAL CYCLOPEDIA OF AMERICAN BIOGRAPHY* (1930); Elwood-Akers, *Clara Shortridge Foltz: California's First Woman Lawyer*, 28 PAC. HISTORIAN 23 (1984); Polos, *San Diego's "Portia of the Pacific,"* J. SAN DIEGO HIST. 185 (Summer 1980).

Foltz's *Struggles and Triumphs of a Woman Lawyer* [hereinafter *Struggles*] appeared monthly in her magazine, *The New American Woman* (1916-1918). She described the constitutional period and took credit for "proposing" the two sections in March 1917.

5. *Struggles*, *supra* note 4, Mar. 1917 (reference to education section).

6. According to Foltz:

To the women of California this constitution—now amended beyond recognition of its framers—was a light bearer. It furnished to her the first streak of dawn, by which her awaried feet have been guided into larger fields of opportunity.

*Struggles*, *supra* note 4, Mar. 1917.

For Foltz, the passage of the clauses led directly to her appointment in 1880 as clerk of the Judiciary Committee of the Legislative Assembly—a lawyer's job never before held by a woman. In virtually every interview and biographical index over fifty years of public life, she claimed credit for the anti-discrimination sections of the California Constitution.

7. *Id.*

8. Letter from Karl Marx to Friedrich A. Sorge (Nov. 5, 1880), reprinted in K. MARX & F. ENGELS, *LETTERS TO AMERICANS, 1848-1895: A SELECTION* 126 (A. Trachtenberg ed., L. Mins trans. 1953).

A list of the books and articles I found most useful for the history and interpretation of the events surrounding the Constitutional Convention follows, starting with the early works. 7 H. BANCROFT, *HISTORY OF CALIFORNIA* (1890) [hereinafter H. BANCROFT, *HISTORY OF CALIFORNIA*]; 2 H. BANCROFT, *POPULAR TRIBUNALS* (1887) [hereinafter H. BANCROFT, *POPULAR TRIBUNALS*]; 3 J. BRYCE, *THE AMERICAN COMMONWEALTH* 223 (1888) (chapter entitled "Kearneyism in California"); George, *The Kearney Agitation in California*, 17 *POPULAR SCI. MONTHLY* 433 (1880); 4 T. HITTELL, *HISTORY OF CALIFORNIA* (1897); Hittell, *The Legislature of 1880*, 1 *BERKELEY Q.* 234 (1880); Sargent, *The California Constitutional Convention of 1878-9*, 6 *CALIF. L. REV.* 1 (1917); G. TINKHAM, *CALIFORNIA—MEN AND EVENTS* (1915); W. BEAN, *CALIFORNIA: AN INTERPRETIVE HISTORY* (1968); W. BEAN & J. RAWLS, *CALIFORNIA: AN INTERPRETIVE HISTORY* (1973); W. BULLOUGH, *THE BLIND BOSS AND HIS CITY* (1979); J. CAUGHEY, *CALIFORNIA* (2d ed. 1953); I. CROSS, *A HISTORY OF THE LABOR MOVEMENT IN CALIFORNIA* (1935); P. Ethington, *The Structures of Urban Political Life: Political Culture in San Francisco, 1850-1880* (1988) (unpublished Ph.D. dissertation, Stanford University); Ethington, *A Language of Politics in a Politics of Class: The Workingmen's Party of California and the Twilight of Republicanism* (1990) (unpublished manuscript); F. Fahey, *Denis Kearney, A Study in Demagoguery* (1956) (unpublished Ph.D. dissertation, Stanford University); W. HUTCHINSON, *CALIFORNIA* (1980); Kauer, *The Workingmen's Party of California*, 13 *PAC. HIST. REV.* 278 (1944); Kazin, *Prelude to Kearneyism: The "July Days" in San Francisco, 1877*, 3 *NEW LAB. REV.* 5 (1980) [hereinafter Kazin, *Kearneyism*]; Kazin, *The Great Exception*

*Revisited: Organized Labor and Politics in San Francisco and Los Angeles, 1870-1940*, 55 PAC. HIST. REV. 3 (1986); D. Moorhead, Sectionalism and the California Constitution of 1879 (1941) (unpublished Ph.D. dissertation, Stanford University) (a shorter work under the same title is published in 12 PAC. HIST. REV. 287 (1943)); A. ROLLE, CALIFORNIA: A HISTORY (3d ed. 1978); A. SAXTON, THE INDISPENSABLE ENEMY: LABOR AND THE ANTI-CHINESE MOVEMENT IN CALIFORNIA (1971); S. Sharp, Social Criticism in California During the Gilded Age (1979) (unpublished Ph.D. dissertation, University of California, San Diego); Shumsky, *San Francisco's Workingmen Respond to the Modern City*, 55 CAL. HIST. Q. 46 (1976); C. SWISHER, MOTIVATION AND POLITICAL TECHNIQUE IN THE CALIFORNIA CONSTITUTIONAL CONVENTION, 1878-79 (1930) (Swisher's slender book on the 1879 Constitution remains the basic work on the subject sixty years later. It is a masterly, thorough and reliable treatment of the issues it covers, which do not include the anti-discrimination sections or women's suffrage. One paragraph is devoted to the latter debate at page 96.).

By the end of the seventies decade, both the number of Chinese in the state and the state's total population had doubled. Over half the state's population was centered within 100 miles of San Francisco. D. Moorhead, *supra*, at 360-61.

9. Gertrude Atherton coined the "terrible seventies" phrase in CALIFORNIA: AN INTIMATE HISTORY (1927).

For biographical information and a detailed account of the passage of the Woman Lawyer's Bill and of the Hastings' suit, see Babcock, *Clara Shortridge Foltz: "First Woman,"* 30 ARIZ. L. REV. 673, 686-95 (1988).

10. *The Lady Lawyers*, San Francisco Chron., Feb. 15, 1879, at 2 ("aged masculine attorney"); DEBATES AND PROCEEDINGS OF THE [CALIFORNIA] CONSTITUTIONAL CONVENTION 1395 (1879) [hereinafter DEBATES].

11. CAL. CONST. art. IX, § 9 (1879); DEBATES, *supra* note 10, at 1476.

12. Foltz v. Hoge, 54 Cal. 28 (1879).

13. *Struggles*, *supra* note 4, Mar. 1917. The full passage reads: "There were many splendid women in California in those days—women who had thought deeply, and who were profoundly by nature and learning, the peers of most of the men who composed the convention."

The biographer's approach fits well with the newer hermeneutical approach to history:

Just as social historians have turned increasingly to the project of reconstructing the past as it was lived, so intellectual historians have tried to reconstruct ideas as they were thought, by trying to uncover what thinkers believed themselves to be doing. This hermeneutical approach to historical inquiry does not rule out the attempt to find larger patterns of change [but] merely requires that such interpretations be seen in terms of the meanings available in the past. These meanings are then examined critically in light of later developments, rather than through some lens designed to broaden or deepen perspectives in order to fit events to a preconceived pattern.

Kloppenber, *The Virtues of Liberalism: Christianity, Republicanism, and Ethics in Early American Political Discourse*, 74 J. AM. HIST. 9, 11 (1987).

Other articles on historical method that I found particularly useful are: Basch, *The Emerging Legal History of Women in the United States: Property, Divorce, and the Constitution*, 12 SIGNS 97 (1986); Kerber, *Separate Spheres, Female Worlds, Woman's Place: The Rhetoric of Women's History*, 75 J. AM. HIST. 9 (1988).

14. *Struggles*, *supra* note 4, Mar. 1917. Foltz spoke of the monthly column as "brief and hastily recorded reminiscences" and hoped that sometime "an inquisitive biographer may write the history of the progress of the first woman admitted to practice law on the Pacific Coast. Modesty should hardly prevent me from suggesting that my name must necessarily 'go over the top.' In the language of Pope, 'Let wreaths of triumph my temples twine.'" *Id.*, Mar. 1918.

In writing about Foltz, I have a sense of being on a rescue mission, which can pose peculiar problems for the feminist biographer. Bell Gale Chevigny wrote of the "feminist fallacy" that may result from too much projection of our own "actual, latent, or ideal experience onto the subject." She attributes the tendency to "the validating stress that feminist theory has laid on the personal, the confusions about the role of the personal in our theory, the urgency and the fervor associated with a movement to redress historical and current injustice." Chevigny, *Daughters Writing: Toward a Theory of Women's Biography*, in BETWEEN WOMEN 359 (1984).

Kathleen Barry, in a postscript to her important biography of Susan B. Anthony, writes of the possibilities of women's biography, "which can challenge the very structure and categories of the history men have jealously guarded as their own." She emphasizes discovering the

active subject and moving "from the phenomenology of daily life to the structure of history." K. BARRY, SUSAN B. ANTHONY: A BIOGRAPHY OF A SINGULAR FEMINIST 359, 360-61 (1988). In my search for Foltz as an actor in the constitutional period, I have followed Barry's injunction to show my subject in the process of "active social construction of herself in the world." *Id.* at 361.

On women writing about women, see also Bell & Yalom, *Introduction*, in REVEALING LIVES, *supra* note 4, at 1.

15. Scheiber, *Race, Radicalism, and Reform: Historical Perspective on the 1879 California Constitution*, 17 HASTINGS CONST. L.Q. 35, 52-57 (1989) (lamenting the lack of interest in the California Constitution at the centennial); Friedman, *State Constitutions in Historical Perspective*, 496 ANNALS 33 (1988). Typical of the dismissive treatment of Kearney and the work of the Convention as well are H. Bancroft and T. Hittell, see *supra* note 8, the two leading historians of the period.

16. Fritz, *More Than "Shreds and Patches": California's First Bill of Rights*, 17 HASTINGS CONST. L.Q. 13, 14-15 (1989) (quoting Keller, *The Politics of State Constitutional Revision, 1820-1930*, in THE CONSTITUTIONAL CONVENTION AS AN AMENDING DEVICE 68 (1981)) ("There has been a remarkable dearth of scholarly writing on nineteenth century constitution-making. As one scholar recently observed, '[F]ew themes in the history of American government have been less adequately studied.'"). For one of the few exceptions to the lack of scholarly writing on the subject, see G. BAKKEN, ROCKY MOUNTAIN CONSTITUTION MAKING, 1850-1912 (1987).

Revision of the starkly negative historic appraisal of the WPC seems unlikely, although there is some recognition of its role as a precursor to the Knights of Labor and other movements in the 1880s to oppose industrial capitalism with a more "republican" order. P. Ethington, *supra* note 8 (chapter of dissertation entitled "Under Construction: The Workingmen's Party of California in the Twilight of Republicanism").

17. 3 J. BRYCE, *supra* note 8, at 228 n.1 ("[P]eople were unwilling to talk about the Kearney agitation, feeling it seemed to me, rather ashamed of it, and annoyed that so much should have been made of it (more they declared than it deserved) in the Eastern States.").

James Bryce, a distinguished statesman and scholar, travelled in 1870, 1881 and 1883 to the United States to gather material for a book on the political character and behavior of Americans. On the last two trips, he came to the Pacific Coast. Published in 1888, the book was an instant classic.

Edmund Ions wrote that "Bryce was intrigued by the reports he had heard of [the Kearney] agitation. Was Kearney another John Bright, or merely a rabble rouser? Bryce talked with local newspaper editors and journalists. Almost all of them were opposed to Kearneyism." E. IONS, JAMES BRYCE AND AMERICAN DEMOCRACY 1870-1922, at 116 (1970).

In his concluding observations of the chapter on Kearneyism in California, Bryce advises readers that, "till corrected by my California friends," he had thought the Workingmen's "movement more serious than it really was." 3 J. BRYCE, *supra* note 8, at 246. Even with his reduced opinion of the movement's importance, however, Bryce printed the entire constitution as an appendix to the first edition of the book.

18. The George article appeared as *The Kearney Agitation in California*, 17 POPULAR SCI. MONTHLY 433 (1880). Bryce also mentioned Hittell, *The Legislature of 1880*, 1 BERKELEY Q. 234 (1880) as a source. He also talked to newspaper publishers and editors, E. IONS, *supra* note 17, and generally relied, he said, "on what I could pick up in conversation." 3 J. BRYCE, *supra* note 8, at 246.

One of Bryce's conversational sources was Bernard Moses, a young but already distinguished historian and professor at the University of California. See 13 DICTIONARY OF AMERICAN BIOGRAPHY 274 (1935-36) (Bernard Moses entry). In one of the few unfavorable contemporary reviews, the author takes Bryce to task for the nature of his sources: "Mr. Bryce sees America through the rim of a champagne glass to the strains of soft music, and in the smiles of fair women. He sees what America should be, but what it is not." L. Bryce, *Errors in Prof. Bryce's "Commonwealth"*, 148 N. AM. REV. 344, 354 (1889) (author not related to Prof. Bryce). More typical of the book's reception is E. Eggleston, *A Full-Length Portrait of the United States*, 38 CENTURY MAG. 789 (1889) (favorable comparison with De Tocqueville; no national portrait ever drawn with such "fidelity or felicity").

Bryce devoted two chapters to American women, whom he admired. 3 J. BRYCE, *supra* note 8, at 289 (chapter entitled "Women's Suffrage"); 3 *id.* at 504 (chapter entitled "The Position of Women"). But in the latter, he reveals that he learned nothing of the true story of the women's sections by asserting that several state constitutions "expressly provide that they shall

be equally admissible to all professions or employments." *Id.* at 506. In fact, no other state had anything like the anti-discrimination sections of the 1879 California Constitution.

Among the Bryce papers is an exchange of letters with Denis Kearney himself about the accuracy of the account; and Bryce slightly modified his descriptions of both Kearney and the WPC in response to the correspondence. The letters are reproduced in Nunis, *The Demagogue and the Demographer: Correspondence of Denis Kearney and Lord Bryce*, 36 PAC. HIST. REV. 269 (1967), and described also in Posner, *The Lord and the Drayman: James Bryce vs. Denis Kearney*, 50 CAL. HIST. SOC'Y Q. 277 (1971).

19. *Struggles*, *supra* note 4, July 1918. H.H. Bancroft, the period's best known historian, literally reduced the women's role to a footnote, and one that would be largely incomprehensible except to one who already knew the story. The footnote is appended to a cite to the women's education section:

There was in 1879 both curiosity and interest felt in the applications of Mrs. Clara S. Foltz [sic], who had studied law and been admitted to practise [sic] but who was refused admission by the directors of the Hastings law college.

Congress had just passed an act authorizing women to practise law, and a woman had been admitted to the U.S. sup. court [sic]. Under these circumstances, and knowing that the new constitution declared for equal educational and business rights, the directors submitted.

7 H. BANCROFT, *HISTORY OF CALIFORNIA*, *supra* note 8, at 393 n.32 (citing newspaper stories before the Hastings appeal from the decision).

George Tinkham has this line at the end of a chapter on the Convention: "[A]fter much labor, Clara Foltz and Mrs. Laura de Force Gordon succeeded in having introduced and passed a section that no person on account of sex should be disqualified from carrying on any lawful business, profession or vocation." G. TINKHAM, *supra* note 8, at 229; *see also* WOMEN OF THE WEST (Biwheim ed. 1928) (Foltz entry: Foltz the "author" of the employment section); Collver, *The American Woman's Battle for the Ballot*, San Francisco Call, July 4, 1901, at 5 (Foltz the author of the constitutional sections; "brave little body of 'fanatics' aiming at the skies").

Though a few standard texts now mention Clara Foltz and Laura Gordon as early women lawyers, they do not connect them or the other suffragists with the historic anti-discrimination sections. Compare W BEAN, *supra* note 8 with W BEAN & J. RAWLS, *CALIFORNIA: AN INTERPRETIVE HISTORY* 255 (5th ed. 1988) (The first does not mention Foltz and Gordon and has only two lines on woman suffrage; the recent edition has a page on suffrage and cites Foltz and Gordon as pioneer women lawyers.). No modern histories connect the anti-discrimination sections to Foltz and Gordon or the suffrage movement.

Some defense for this neglect lies in the difficulty, perhaps impossibility, of proceeding from the constitutional text to the women's story. There was no official legislative history at all for the women's sections, much less mention of Foltz or Gordon on the record.

20. San Francisco Chron., Feb. 27, 1879, at 2; *Struggles*, *supra* note 4, Aug. 1916 (name was on every tongue).

21. New Northwest, June 15, 1877, at 2 (letter from Clara Foltz).

22. F NORRIS, *THE OCTOPUS* 1058 (Library of Am. ed. 1901).

23. J. AYERS, *supra* note 1, at 281-83. The book was published posthumously without historical or editorial note about the time or circumstances in which it was written. But it is probably the memoir that Ayers retired to write a few years before his death. Los Angeles Times, Nov. 13, 1897, at 5 (obituary). A copy of the manuscript in Ayers' own handwriting is at the Huntington Library, San Merino, California.

The first and famous Nob Hill foray occurred on October 29, 1877. A. SAXTON, *supra* note 8, at 118 (quoting contemporary sources); I. CROSS, *supra* note 8, at 99-100. J.J. Ayers may have been using some artistic license when he told the story of being at Stanford's house and hearing the roar of the Workingmen. The Marie Antoinette vase seems almost too pat, given that one of the great fears the WPC roused was communism and Paris in 1871 was often cited. On the other hand, it is not at all unlikely that Ayers dined with Stanford at some point in his career.

24. For examples of Kearney's rhetoric, see 4 T. HITTELL, *supra* note 8, at 604, 608 (references to "hemp" and to Judge Lynch); and 2 H. BANCROFT, *POPULAR TRIBUNALS*, *supra* note 8, at 722. As to "shoddy aristocrats," "activists of the WPC used this term so much that they eventually conjured up a whole party of such beings, referred to simply as the 'shoddys', or the 'shoddyites.'" P. ETHINGTON, *supra* note 8, at 27. He also notes Kearney's preference for morally pejorative terms—citing the following: "monopoly robber," "blood

sucker" and "miserable felonious bank smashers." *Id.*, see also *infra* note 42; *Speeches of Dennis [sic] Kearney, Labor Champion* (1878) (pamphlet; Special Collections, Stanford University Library) (samples of Kearney's speeches on his Eastern tour in 1878).

25. A. SAXTON, *supra* note 8 (Saxton's thesis is that race hatred provided the cement to hold together the labor movement throughout its early years in California.); G. BARTH, *BITTER STRENGTH: A HISTORY OF THE CHINESE IN THE UNITED STATES 1850-1870* (1964); Scheiber, *supra* note 15, at 43 (The Chinese were railed against "with a savagery that transcended all limits of ordinary political discourse even in an age of harsh rhetoric.").

26. A. SAXTON, *supra* note 8, at 105-12. P. Ethington, *supra* note 8, at ch. 6 ("Workingmen's Gothic: The Meaning of the Workingmen's Party of California") details the use by the major parties of the issue of Chinese immigration and posits as one reason for Kearney's swift ascent the inability of the Democrats and Republicans to offer any answer for the racial fears they exacerbated.

27. A. SAXTON, *supra* note 8, at 259 *passim*; *Struggles*, *supra* note 4, Mar. 1917 (Foltz quoting Kearney). The near-universal race prejudice toward the Chinese is shocking to modern sensibilities, especially because the racists were people of widely variant background and education, many of whom were themselves subject to discrimination because they were immigrants. E. SANDMEYER, *THE ANTI-CHINESE MOVEMENT IN CALIFORNIA 62-63* (1973) (originally published in 1939 in *ILL. STUD. SOC. SCI.*), is still the best source for the buildup of tension and prejudice that culminated in the depressed seventies. In 1862, Leland Stanford in his inaugural address as governor spoke of discouraging Chinese immigration "by every legitimate means. Asia, with her numberless millions sends to our shores the dregs of her population." *Id.* at 43-44. In 1876, at an "anti-coolie" meeting in San Francisco, attended by as many as 25,000, people from all ranks of life harangued against Chinese immigration, including the governor of the state. *Id.* at 58-59. In the fall of 1876, a special U.S. Senate investigating committee came to San Francisco and listened to Californians of all kinds, including even the clergy, who opposed Chinese immigration on essentially racist grounds. *Report of the Joint Special Committee to Investigate Chinese Immigration*, S. REP. No. 689, 44th Cong., 2d Sess. (1877). The racial stereotypes involved in the testimony is explored in Spoehr, *Sambo and the Heathen Chinese: Californians' Racial Stereotypes in the Late 1870's*, 42 *PAC. HIST. REV.* 185, 190-97 (1973). One of the few friends to the Chinese to appear in California was Indiana Senator Oliver P. Morton, who headed the Senate investigating committee but died before the report was written. One San Francisco periodical lamented Morton's "unsound, unwise and unworthy" approach, noting that had Morton lived, he would have "come to the same conclusion as that to which all the more intelligent classes of the Pacific coast have now arrived." *Argonaut*, Dec. 19, 1877, at 4.

28. George, *The Chinese on the Pacific Coast*, N.Y. Tribune, May 1, 1869. Saxton says of the letter that it "constituted a classic statement of the economic argument against Chinese immigration as it has been developed during the preceding five years by antioolie clubs, trade unions, and the nascent Democratic party." A. SAXTON, *supra* note 8, at 100. Later George recognized that the Chinese were being used politically to divert attention from real and radical reforms. In fact, the recognition of this fact was part of the impetus for his *Popular Science Monthly* article on Kearneyism (see *supra* note 8). *Id.* at 155. But George never completely gave up his "ethnocentric exclusivism," the "dark side of his intellectual background." J. THOMAS, *ALTERNATIVE AMERICA: HENRY GEORGE, EDWARD BELLAMY, HENRY DEMAREST LLOYD AND THE ADVERSARY TRADITION* 62 (1983).

29. *Struggles*, *supra* note 4, Mar. 1917. J.J. Ayers, who was one of the founders of the *San Francisco Call* and who in the late seventies was publisher of the *Los Angeles Express*, issued blasts against the Chinese and the railroad monopolies with the same intensity. In a typical editorial in early 1878, Ayers heartily approves objections that go beyond the wage competition of the Chinese; they "belong to a non-assimilative race . . . who came not to escape oppression, but for the purpose of making money. Freedom of thought is nothing to a Chinaman. He has absolutely no conception of our society government institutions they are thus in every sense, aliens" *Los Angeles Express*, Jan. 4, 1878, at 2; see *infra* text accompanying notes 98-99, 159, 168, 176-77.

30. W. BEAN & J. RAWLS, *supra* note 8, at 164, has a good chapter and bibliography on "The Terrible Seventies." All standard histories cover the same ground as to causes and effects of the national and the Pacific Coast depression. In her account of the fearful times that produced the constitution, Foltz wrote: "If ever in the world's history there was a time when cause preceded effect, it was in California in 1879." *Struggles*, *supra* note 4, Mar. 1917.

31. Samuel Howe established his academy in 1844 in Mt. Pleasant, where it flourished until 1916. Pamphlets about the academy, its first printed catalog, which relates the school's history, and other materials are in the Archives, Iowa Wesleyan University. Howe himself was an ardent abolitionist, woman suffragist and death penalty opponent. HISTORY OF HENRY COUNTY (1879) (available at Iowa State Historical Library, Des Moines). Arabella Mansfield, the first woman admitted to the bar in the United States, also attended Howe's academy where "the liberal principles of Samuel L. Howe, abolitionist and suffragist—probably influenced her later career." 2 NOTABLE AMERICAN WOMEN 1610-1950, *supra* note 4, at 492 (Arabella Mansfield entry).

An article written by one of "Miss Clara's" former teachers, refers to the "eloquent adventist minister, Elias Shortridge." Mt. Pleasant Golden Age, *reprinted in* San Jose Daily Mercury, June 24, 1880, at 3.

"She was regarded by her teachers as possessing an extraordinary mind, having at the early age of twelve years finished the first two books of Latin, and stood at the head of her class in philosophy, history and rhetoric." AN ILLUSTRATED HISTORY OF SOUTHERN CALIFORNIA (1890) (Clara Foltz entry).

32. Church records show Elias Shortridge as an itinerant preacher throughout Indiana in the 1850s, then moving to Mt. Pleasant in late 1859. By the fall of 1863, he is again on the circuit, this time in Illinois. In Mt. Pleasant he "insisted on preaching" the doctrine of soul-sleeping, and since "he was a preacher of much more than ordinary ability numbers were carried away by this strange doctrine." The Christian Record, Pioneers of a Great Cause (unpublished manuscript; available at Disciples of Christ Historical Society, Nashville, Tennessee). Soul-sleeping as preached by Elias Shortridge involved a belief that the spirit does not immediately join the Eternal at the moment of death. For a lucid account of the Disciples of Christ orthodoxy, see G. WILLS, REAGAN'S AMERICA (1987) (Reagan's mother belonged to the Disciples of Christ). Thomas Barnes wrote that Foltz was "the daughter of a 'Campbellite,' a Church of Christ, minister of that extraordinarily evangelical sect that had the odor of inordinate enthusiasm about it and was considered heterodox by all mainline Protestant churches, preaching as it did the imminent Second Coming of Christ and rejecting all credal formulas." T. BARNES, HASTINGS COLLEGE OF THE LAW: THE FIRST CENTURY 47 (1978).

33. I describe Clara Foltz's marriage and divorce in Babcock, *supra* note 4, at 131. At the Hastings court argument, one reporter described her attire at length, including that her "wrists were ornamented with fringes of black silk, partially concealing hands not lacking in bone and muscle." San Francisco Chron., Feb. 25, 1879, at 1. Usually Foltz claimed that she was a widow, but in one of her early press interviews she said that Jeremiah had remarried only weeks after their divorce. The marriage certificate of Jeremiah Foltz and Kate M. McKerron records the marriage on June 26, 1880, which was a full year later.

34. In lectures and interviews, Foltz often told of her early dreams of "oratory, fame, or political recognition." See, e.g., San Jose Times Mercury, Aug. 20, 1882, at 5 (reprinted from the San Francisco Post, Aug. 12, 1882, at 2). The story of her mother's "prophetic words" is one she also repeated, here taken from the first chapter of *Struggles*, *supra* note 4, Apr. 1916.

35. The writer claimed it "was genius only that could [overcoming all obstacles] rise in six short years to the position of a first rate lawyer in a metropolitan city." San Jose Times Mercury, Jan. 1, 1885, at 1.

36. Entries for both Clara Foltz and her brother Samuel Shortridge in O. SHUCK, HISTORY OF THE BENCH AND BAR OF CALIFORNIA (1901) contain references to the Shortridge oratorical ability: "Her family has always been noted for mental and physical vigor and uncompromising virtue. Her father acquired distinction as an orator." *Id.* at 828. The Shortridge oratorical genealogy is more pronounced in Samuel's entry where Eli Shortridge of Alabama is invoked and described as a great spellbinder of jurors. *Id.* at 1079. In one of her jury arguments, Foltz proclaimed: "I am descended from the heroic stock of Daniel Boone, and never shrunk from contest nor knew a fear. I inherit no drop of craven blood." *Struggles*, *supra* note 4, Jan. 1918.

37. Sacramento Record-Union, Feb. 25, 1879, at 1 (letter from an unnamed Oregon correspondent commenting on Foltz's ready advocacy of suffrage); see Babcock, *supra* note 9, at 675-85 (describing Foltz's relationship to the suffrage movement).

38. Babcock, *supra* note 9, at 680-86 (Clara Foltz in San Jose from 1875 to 1878). On woman suffrage in Sacramento, see *infra* text accompanying note 171.

39. *In a New Field*, New Northwest, Feb. 22, 1877, at 2. The "lecture was a well written production, and was well delivered, frequently calling out protracted applause." *Id.* (quoting

the *San Jose Mercury*). Other titles were "Impartial Suffrage," "Impartial Citizenship," "Political Liberty," "Why Women Need the Ballot," "Women and Work" and "Equality of the Sexes."

40. The quote "hard as rocks" appeared in the *San Jose Weekly Mercury*, Oct. 18, 1877, at 1; the other quotes appeared in the *San Jose Weekly Mercury*, Mar. 15, 1877, at 3. She said of the suffragists like herself that they "considered it better to scatter broadcast one truth in the face of ridicule than to bask in the sunshine of senseless smiles." *Id.*

41. In her belief that the ballot was a source of power and respect in itself, and that until women voted they would not be able to accomplish any other social goals, Foltz followed the line of the National Woman Suffrage Association, led by Elizabeth Cady Stanton and Susan B. Anthony. In regard to working women particularly, the suffragists believed that they would never be able to achieve equality in the workplace until they had the vote. Speaking in California at the beginning of the 1870s decade, Anthony addressed working women especially when she pointed to "the changed condition and standing of negroes, produced by the ballot and insisted that it was not because colored people were more respected now than then, as a class, but because they had the power of the ballot, and could not be disrespected." *San Francisco Alta*, July 13, 1871. Anthony went on to suggest that, when empowered by the ballot, women would "inaugurate [sic] strikes, as men do, and obtain from their employers better wages and easier times." *Id.* For an excellent treatment of the relationship of the suffragists and working women, see E. DuBois, *FEMINISM AND SUFFRAGE: THE EMERGENCE OF AN INDEPENDENT WOMEN'S MOVEMENT IN AMERICA 1848-1869* (1978). For Foltz's relation to the National Woman Suffrage Association, see Babcock, *supra* note 9, at 677-80.

Two reports of Foltz's evolving suffrage speech containing these phrases appear in the *San Jose Weekly Mercury*, Mar. 15, 1877, at 3-4, and the *New Northwest*, Feb. 22, 1878, at 2. "Meet upon the level" was a favorite saying of Foltz's that she apparently first heard from an old woman who told her that she hoped to vote before she died. Letter from Clara Foltz to *New Northwest* (Sept. 17, 1875) (Foltz writing of her move from Oregon to California and of meeting "Auntie Brown").

42. Kearney's Manifesto was first published in the *San Francisco Chronicle* on October 16, 1877. This paper had the largest circulation in California, and was an early and central supporter of the WPC, though its relations with Denis Kearney himself later became complicated. I. Cross, *supra* note 8, at 97-98; A. Saxton, *supra* note 8, at 120; *infra* note 192.

"If the ballot fails, we are ready to use the bullet," was a typical Kearney formulation. See, e.g., *San Francisco Evening Bull.*, Dec. 12, 1877. At his trial in January 1878 for incendiarism, one charge was that Kearney had said that his followers would hold a Thanksgiving Day parade, "if they had to march 'up to their knees in blood,' but it was established in court that he had not said 'blood,' but 'mud.'" W. Bean & J. Rawls, *supra* note 8, at 180. Kearney's speeches were largely extemporaneous and newspaper accounts varied widely. As to his intent, one follower testified at Kearney's trial that the "little things" the WPC leader said "were only used as metaphors." *San Francisco Chron.*, Feb. 17, 1878.

43. Starting in July 1877 there occurred "one of the bitterest explosions of class warfare in American history—the Great strike of 1877." Beginning in the East and moving across the country, led by the Workingmen's Party of the United States, the strike was directed at the railroads—"symbols and creators of the new industrial order. Although in San Francisco the strike degenerated into anti-Chinese rioting, elsewhere it achieved remarkable solidarity . . ." E. Foner, *RECONSTRUCTION 583-84* (1988). In San Francisco, the WPUS meetings to support the strike were taken over by anti-coolie hooligans, calling forth a "citizen vigilante" response, and helping to lead to the demise of the WPUS. In a much-noted irony, Denis Kearney was among the vigilantes. I. Cross, *supra* note 8, at 88-95; A. Saxton, *supra* note 8, at 113-16.

For the history of the WPUS, see P. Foner, *THE WORKINGMEN'S PARTY OF THE UNITED STATES* (1984). The *Labor Standard*, the WPUS organ, attempted to quell anti-Chinese racism and rioting. *Id.* at 76-77 (the quote in the text is from the *Labor Standard*).

44. W. Davis, *HISTORY OF POLITICAL CONVENTIONS IN CALIFORNIA, 1849-1892*, at 366-67 (1893) (WPC platform and expulsion of WPUS); Kazin, *Kearneyism*, *supra* note 8, at 5.

45. Although woman suffrage was not included among the progressive reforms the WPC advocated, it required no great imaginative leap for Kearney's followers to see that when votes are the weapon of choice, the more on your side the better. More specifically, white women's votes might be needed as an offset should the Chinese someday be enfranchised. (There were many restrictions on the immigration of Chinese women and few came to the United States.) See *infra* text accompanying notes 141-42. Most WPC delegates voted for woman suffrage at



the Convention. Then, both as a consolation award for the failure of suffrage and because of benefits to working women, virtually all WPC delegates backed the clauses on access to education and employment. (The socialist Workingmen's Party of the United States did not officially back woman suffrage either, though they somewhat vaguely declared themselves for the "perfect equality of the rights of both sexes.") P FONER, *supra* note 43, at 35.

San Jose Weekly Mercury, Dec. 13, 1877, at 3 (Elias Shortridge on platform). On February 19, 1878, at 3, the *Chronicle* reported a "huge assembly" of Workingmen in San Jose, where the speakers included Elias Shortridge, again on a platform with Kearney. "The utmost good order prevailed and the meeting adjourned, fully confident that the Workingmen will be victorious at the polls tomorrow." San Jose did, in fact, elect a Workingman to the state assembly. In March, the WPC elected the mayor and city attorney of Sacramento, and the mayor, police judge, district attorney and justice of the peace in Oakland. I. CROSS, *supra* note 8, at 113. Earlier in the year the WPC had put in office a state senator from Alameda County. *Id.* at 111. These successes coincided with a decrease in the intensity of attacks on the Chinese and concentration instead on the abuses of land and railroad monopolies. *Id.* at 112.

On the composition of the WPC, Lord Bryce noted that the party could never have achieved electoral success without the support "from the better sort of working-men, clerks and small shopkeepers." 2 J. BRYCE, *supra* note 8, at 378; see P Ethington, *supra* note 8, at 309-12 (chapter entitled "Workingmen's Gothic: The Meaning of the Workingmen's Party of California") (containing a sophisticated analysis of meaning and composition of the WPC, arguing that it was essentially a political—rather than a labor—movement, and reached considerably beyond workingmen as such to include many middle-class occupations, as well as blue-collar workers in skilled occupations).

46. *Struggles*, *supra* note 4, Mar. 1917 Foltz quotes Kearney's racist rhetoric without comment or any attempt to distance herself beyond putting the slurs in quotation marks. Yet she was a great reader and had very likely read Lord Bryce's dismissive description of "Kearneyism in California," when *The American Commonwealth* was published in 1888. Bryce, moreover, had relied explicitly on Henry George's condemnation of Kearney as a run-of-the-mine politician. George, *supra* note 8, at 447.

47 On why he urged the ballot rather than the more usual weapons of labor, Kearney wrote Bryce:

I am opposed to strikes in a Republic where the ballot of a millionaire's [sic] gardener or coachman cancels that of their Master. A strike amid such conditions is a brutal way of settling a difficulty. Pitting an empty belly and no bank account against a belly full and Plethoric bank book brings it down to a question of "bellys" [sic]. I wanted to tell our people to strike at the "ballot box."

Nunis, *supra* note 18, at 278-79.

48. Other advantages of constitutional conventions over even the most reformatory legislatures were that "they constitute only one house [and are unconstrained by the governor's veto power]." 3 J. BRYCE, *supra* note 8, at 237.

49. Chinese were not allowed to become naturalized citizens, so only if they were born in the United States could they hope to vote. Since there were many restrictions on the immigration of Chinese women and few came, there were not many American-born Chinese. But Californians knew that someday the Chinese might be, as blacks had been, freely made citizens and thus enfranchised by the plain words of the fifteenth amendment. California voted against ratifying the fifteenth amendment precisely because it might some day enfranchise races other than blacks. P Ethington, *supra* note 8, at 295; E. FONER, *supra* note 43, at 447

E. DuBois, *supra* note 41, in her chapter on "The Fifteenth Amendment and the Emergence of Independent Suffragism," relates how the passage of the fifteenth amendment divided the women's movement from the abolitionists and radical Republicans, and set the women on an independent course. Stanton and Anthony actually opposed passage of the fifteenth amendment because it failed to recognize women. The enfranchisement of former slaves gave new fuel to the racist and elitist arguments used throughout the woman suffrage movement, comparing the ignorant and politically irresponsible men who could vote to the educated and refined women still denied. *Id.* at 178. In the same vein, Clara Foltz wrote to Abigail Dunway in 1875 about presenting a petition at the polling place signed by a number of the tax-paying ladies, but "not having yet been made citizens of the United States, their petition was rejected. Tim Wong, a Chinese resident of the town of Monterey, cast a Celestial vote on the same day. But then Tim was born and raised in the State speaks Spanish and

English fluently, and crowning virtue, is the masculine persuasion. This is the first case on record, and should be the last, while woman, clothed with wisdom and armed with justice, stands knocking at the doors " New Northwest, Sept. 17, 1875, at 2.

50. 4 T. HITTALL, *supra* note 8, at 588-91 (1878 legislature exceedingly busy and passed many important acts). The legislature was bicameral: the Senate with 40 members elected to four-year terms, one-half chosen every two years; the Assembly with 80 members elected to two-year terms. There were a total of 82 Democrats, 35 Republicans and 3 Independents in the legislature. In January, the Workingmen's Party in their first electoral victory sent a man named John Bones to the Assembly to fill a vacancy caused by death. He failed to be responsive to his constituency and became an added reason for the WPC to decry the possibility of working through the established system. C. SWISHER, *supra* note 8, at 14.

51. *The California Law*, Woman's Journal, Apr. 18, 1874, at 128, col. 3. The passage of the bill making women eligible for school offices was an important lesson in method for Foltz. Sarah Knox-Goodrich and others had travelled to Sacramento, "remaining there for weeks urging the measure." *Id.* Lobbying—personally entreating legislators—was still questionable behavior for a woman in 1878. So were efforts to persuade from the public platform and the ritual visit to the polls to attempt to cast a vote. The only really acceptable modes of political expression were gentle persuasiveness within the home and signing petitions. *See infra* notes 170-71 (experience of Sacramento women).

If the women's lobby had succeeded at the legislature, or at the Convention, California would have been the first state by more than a decade to endorse woman suffrage. In 1879, four states allowed women to vote on school matters and the sparsely populated territories of Wyoming and Utah allowed women full suffrage. *See infra* note 218.

52. *A Sketch of Clara Shortridge Foltz*, 13 W COAST MAGAZINE 42 (1912) ("caboose of cattle train"); O. SHUCK, *supra* note 36, at 831 ("maternal solicitude"); *Struggles*, *supra* note 4, June 1917 ("even hunger").

53. PEN PORTRAITS, *Autobiographies of State Officers, Legislators, Prominent Business and Professional Men of the Capital of the State of California, also of Newspaper Proprietors, Editors and Members of the Corps Repertorial* 105 (R.R. Parkinson 1878); *see* Babcock, *supra* note 9, at 678.

54. Main sources on Laura DeForce Gordon are: Papers of Laura DeForce Gordon [hereinafter Gordon Papers] (Stein Collection) (available at Bancroft Library, University of California at Berkeley); *Obituary*, Woman's Tribune, May 26, 1907, at 2-3; 11 NOTABLE AMERICAN WOMEN 1610-1950, *supra* note 4, at 68-69 (Gordon entry).

55. 3 HISTORY OF WOMAN SUFFRAGE 752 (1881) (Consists of six volumes covering the years 1848-1920. Volumes 1-3 were edited by E. Stanton, S. Anthony & M. Gage; volume 4 by S. Anthony & I. Harper; and volumes 5 and 6 by I. Harper.).

56. Letter from Laura Gordon to Laura (no last name) (Feb. 16, 1877), *contained in* Gordon Papers, *supra* note 54.

57. *Sonnet*, PUCK, Jan. 1878, at 8-9.

58. *Struggles*, *supra* note 4, Aug. 1916. In one of her most popular lectures, entitled simply "Lawyers," Foltz often made the point: "If you think of studying law and some old fossil should tell you that no one will marry you if you do, don't believe him. You will have plenty of offers and you will be happier if you marry. . . A knowledge of law will make women better wives and truer mothers."

59. *Struggles*, *supra* note 4, Aug. 1916.

60. Notable exceptions in California include: Ellen Sargent, the wife of Aaron Sargent, a U.S. Senator thought to be on the payroll of railroads but the first to introduce woman suffrage in Congress; Mrs. Jeanne Carr, wife of Professor Carr of the University of California; and Mrs. Knox-Goodrich, Foltz's friend in San Jose.

61. *Struggles*, *supra* note 4, Oct. 1916 ("lady lawyer").

As the dawn seems to falter at the boundaries of a dark sky, so I hesitate to lift from oblivion the memory of the hurts and wounds which women inflicted upon me as I struggled to overcome the opposition they manifested at every turn against women in the legal profession. I soon found myself and mine ostracized and ignored by the so-called 'best people' with whom my father's family had always moved.

*Id.*, June 1917.

62. On Gordon: "Short, stocky, always earnest, sometimes nervous, 'handsome' or 'comely,' with strong regular features, large eyes and dark hair done up on occasion in a mass of lustrous curls, Mrs. Gordon was a speaker 'Websterian in force and eloquence.'" 2 NOTABLE AMERICAN WOMEN 1610-1950, *supra* note 4, at 69 (Gordon entry). For a description of Daniel Webster's speaking style, see R. FERGUSON, LAW & LETTERS IN AMERICAN CULTURE 207-40 (1984).

On Foltz: Typical of early reviews are the following phrases: "speaks and acts like the good true and pure woman that she is"; "attitude and whole bearing" show that she was "speaking from the heart"; "wearing always the jewel of true womanhood." San Jose Weekly Mercury, Mar. 15, 1877, at 3. "There was something in the attitude and whole bearing of the speaker that impressed the audience at once with the fact that she was speaking from the heart—that her whole being was imbued with the righteousness of her position on the question of the equality of sex." San Jose Weekly Mercury, Oct. 18, 1877, at 1. "The greatest charm of her discourse consists in the fact that she speaks and acts like a woman who is thoroughly in earnest about what she is saying, like the good, true and pure woman that she is; the dutiful daughter, the faithful wife, the loving mother, and woman-hearted friend of humanity." New Northwest, Dec. 28, 1877 (quoted from the *Oakland Transcript*).

63. *Struggles*, *supra* note 4, Dec. 1916. The legal club incident in San Jose was important to Foltz, who devoted more space to it in her column than to the Woman Lawyer's Bill or the California Constitution. The bitterness of the dispute, the crudeness of the debate's terms and her unproved abilities as a lawyer all seem to have rendered her particularly vulnerable. Decades later she was still telling the story. See e.g., O. SHUCK, *supra* note 36, at 831.

One fellow law student argued that "women had no rights a white man was bound to expect." Another held that "women are smart in some things, but it is the smartness of the educated dog or monkey, without the originality to conceive and execute for themselves

" San Jose Weekly Mercury, Jan. 3, 1878, at 3; San Jose Weekly Mercury, Jan. 10, 1878, at 3; San Jose Weekly Mercury, Feb. 7, 1878, at 3; Babcock, *supra* note 9, at 701.

64. *Woman's Journal*, Apr. 20, 1878, at 124 (quoting letter from an unnamed California legislator); *Struggles*, *supra* note 4, Aug. 1916.

65. *Struggles*, *supra* note 4, Aug. 1916.

66. The *Sacramento Record-Union*, Jan. 11, 1878, was unusual in describing the bill as "permitting women and persons of color to practice law upon passing the requisite examination." Nothing else in the extensive newspaper accounts of the debates even hinted that the bill would apply to classes other than women. Babcock, *supra* note 9, at 686-95 (detailed coverage of the debate in the Assembly and Senate of the Woman Lawyer's Bill).

There is some argument that Foltz's choice of language was purposeful. She knew very well that the usual phrase for expanding rights was to prohibit their denial "on account of sex," as in the proposed sixteenth amendment to the U.S. Constitution (woman suffrage). Note also that the women's sections of the California Constitution also used this formulation. Perhaps she thought that people of color should be able to practice law, or perhaps she wanted to preserve the argument that former slaves and women should be treated alike. As it was in 1878, both women and former slaves could be citizens, but only black men could vote. Some of the asymmetry, which was one of the women's main appeals, would be lost if women but not blacks could practice law.

67. *Struggles*, *supra* note 4, Aug. 1916.

68. *Id.*

69. 3 HISTORY OF WOMAN SUFFRAGE, *supra* note 55, at 758; Babcock, *supra* note 9, at 694-95 (Foltz's account of her last-minute appeal to the governor).

70. The more usual route for women's entrance to the bar was initial denial by courts, followed by remedial legislation. This process meant that the legislative debate was often focused on the capacity of the one woman who had brought the case. Babcock, *supra* note 9, at 701-06 (discussing the best known cases at the time Foltz was seeking bar admission).

71. *Woman Suffrage in California*, New Northwest, July 5, 1878, at 2 (letter from Clara Foltz dated June 20, 1878).

72. C. McWILLIAMS, AMBROSE BIERCE 136 (1967).

73. Letter from Clara Foltz to Laura Gordon (May 2, 1878) (no year is given in the letter but internal evidence shows it to be 1878) (available in Gordon Papers, *supra* note 54).

74. New Northwest, May 17, 1878, at 2.

75. Laura Gordon had run for office once before: that of State Senator from San Joaquin in 1871 near the beginning of the suffrage movement in California. "Her eligibility to the

office was vehemently denied. The pulpit, press and stump speakers alternated in ridiculing the idea of a woman being allowed to take a seat in the Senate, even if elected "3 HISTORY OF WOMAN SUFFRAGE, *supra* note 55, at 756. This time, however, she did not face the problem because the enabling legislation for the election of Convention delegates did not include "the male-only requirement that prevailed for office holding in the legislature." Scheiber, *supra* note 15, at 45.

76. New Northwest, *supra* note 71.

77. *Id.* "[W]hen delegates to the constitutional convention were to be elected, Mrs. Gordon became an independent candidate only a week or two before the election. With Mrs. Foltz she made a very brief though brilliant canvass, attracting larger and more enthusiastic audiences than any other speaker. Mrs. Gordon received several hundred votes for the office, and felt compensated for the time and money spent by the great interest awakened in the subject of woman suffrage." 3 HISTORY OF WOMAN SUFFRAGE, *supra* note 55, at 759.

78. Foltz wrote: "We consider the argument that 'men will not respect women when they engage in politics' forever refuted so far as San Joaquin county is concerned." New Northwest, *supra* note 71. The arguments about women campaigning apply equally to women in the courtroom pit arguing to a jury—especially to the all-male jury of the 19th century. Commenting on the male lawyer fear of competition, one newspaper wrote about Foltz's and Gordon's efforts to attend Hastings:

It is not mere eloquence, nor melodious utterance, nor logical force, nor imaginative capacity that bring great forensic successes. For want of a better term it is commonly said that lawyers who have won difficult jury cases are endowed with a mysterious attribute called personal magnetism. Now it is precisely this mysterious attribute, already well established as an adjunct to men's success at the bar that is objected to when women are in question. [M]en are afraid of the competition. In truth this kind of objection is too much of a piece with the staple arguments against woman suffrage, to the effect that women would be soiled and degraded by mixing in the filthy pool of politics.

Sacramento Record-Union, Feb. 26, 1879.

79. New Northwest, *supra* note 71.

80. A. BUCHANAN, DAVID S. TERRY OF CALIFORNIA 171 (1956); *see also* New Northwest, *supra* note 71 (Terry campaigning in Stockton the same night as Foltz describes the office seekers adjourning to hear the women). On Terry's friendship with Gordon and his role at the Convention, *see infra* text accompanying notes 121-24. "Judge David S. Terry of the Broderick duel, was the gallant knight of the Convention. He championed in his incomparable manner the resolution adopting [the anti-discrimination sections], (both of which were proposed [by Foltz]) " *Struggles*, *supra* note 4, Mar. 1917.

81. Justice Stephen Field, who earlier had served on the California Supreme Court with Terry, was the Justice whose bodyguard, David Neagle, shot Terry. *See generally In re Neagle*, 135 U.S. 1 (1890). For an account of the events that led to Terry's death, *see* C. SWISHER, STEPHEN J. FIELD, CRAFTSMAN OF THE LAW 74, 328-61 (1930); *see infra* text accompanying notes 205-06.

Accounts of the life of Terry can be found in: A. BUCHANAN, *supra* note 80; O. SHUCK, *supra* note 36, at ch. 11; C. SWISHER, *supra* note 8, at 29; A. WAGSTAFF, THE LIFE OF DAVID S. TERRY (1892).

82. DEBATES, *supra* note 10, at 669 (Terry's introduction of section forbidding corporations to hire Chinese).

Volney Howard, a Non-Partisan from Los Angeles, and Charles Ringgold, a Workingman from San Francisco, were two other Chivalry Democrats who played important parts in this story. *See infra* text accompanying notes 91, 143-44.

83. O. SHUCK, *supra* note 36, at 566-679.

Mr. Wilson enjoyed an enormous revenue from his regular practice. He was attorney for a score of millionaires. He also frequently appeared for the Central Pacific Railroad Company. He was not strong in appealing to the feelings, the passions. . . [He had a] capacity for investigation. In court Mr. Wilson was of easy bearing, but not courtly. He talked forcibly, but not finely. He was cool, clear, eminently practical, concise, cogent, logical.

*Id.* at 566. Wilson died in 1892 at the age of 69: "He was in his office at work on the day before and attended a meeting of the Bar Association in the evening." *Id.* at 569; *see also* T. BARNES, *supra* note 32, at 44-47; *infra* text accompanying note 84.

84. C. SWISHER, *supra* note 8, at 17, 33 (story of how Wilson prevented the Convention in 1876-77); DEBATES, *supra* note 10, at 56.

85. I. CROSS, *supra* note 8, at 110-20; I. CROSS, FRANK RONEY, IRISH REBEL AND LABOR LEADER (1931); F. Fahey, *supra* note 8, at 194-201 (an excellent account of the split in the Workingmen's Party); A. SAXTON, *supra* note 8, at 39-45; R. Shaffer, Radicalism in California 1869-1929, at 18 (1962) (unpublished Ph.D. dissertation, University of California at Berkeley) (Roney was "the outstanding labor leader of California in the 19th century.").

86. By the Workingmen's Party official account, the reason Kearney decreed that officers and leaders should not run for delegate positions was his fear of men using the party to promote themselves, and not being accountable to the membership that elected them. J. STEDMAN & R. LEONARD, THE WORKINGMEN'S PARTY OF CALIFORNIA: AN EPITOME OF ITS RISE AND PROGRESS 78-86 (1878). A recent experience gave good reason for these fears. In a special election in 1878, the WPC had elected a state senator, J.W. Bones, in Alameda County who had turned on them once in office. I. CROSS, *supra* note 8, at 111, 113; A. SAXTON, *supra* note 8, at 121, 125.

Saxton gives an elegant delineation of the schism between Kearney and Roney:

Here in abstract terms was the controversy of Rousseau and John Locke. Yet for the American West it held a very concrete meaning. [L]arge segments of the western labor force were migratory, relatively unskilled, often unemployed. Suspicion of stabilized leadership would be immediate and extreme. Thus, the power struggle between Roney and Kearney became the opening round in a cycle of conflict which has characterized both radicalism and labor organization in the West. [T]rade unionists and socialists have generally repeated Roney's script while the anarchists, the Wobblies, and nearly always the leaders of the unskilled and unemployed have repeated Kearney's.

*Id.* at 126. Other, less ideological formulations of the conflict include Kearney's desire to control the Convention delegates from the outside, and "possibly also [Kearney's] shrewd realization that he was not equipped for successful participation in a convention of this kind." C. SWISHER, *supra* note 8, at 31.

87. 3 J. BRYCE, *supra* note 8, at 228 n.1 (Bryce acknowledged his debt to George's "brilliant" article); George, *supra* note 8, at 445; NUNIS, *supra* note 18, at 283 (letter from Kearney to Bryce). Roney was even more critical of the Workingmen who were elected: "The worst brand of stand-pat, corporation ridden politician would have made a better showing than this primitive band of fake reformers." I. CROSS, *supra* note 8, at 313. Only Saxton, noting that "both George and Roney had reason for bitterness against the Workingmen's party and their judgment was perhaps unfair," seriously questions the general evaluation of the Workingmen delegates as incompetent. Rather, he suggests that they were ineffective and unmotivated toward radical change, perhaps inevitably so. A. SAXTON, *supra* note 8, at 130-32; see also Shumsky, *San Francisco's Workingmen Respond to the Modern City*, 55 CAL. HIST. Q. 46, 55 (1976) (implying that their inexperience made the delegates representative of the movement that elected them).

Henry George ran as a Democrat for Convention delegate. He did seek the Workingmen's endorsement as well, but refused to take the oath they had devised in the wake of the party schism. George interpreted the oath as promising total subservience to the party; the Workingmen as only a guarantee of loyalty. H. GEORGE, JR., THE LIFE OF HENRY GEORGE 299-300 (1930). The oath included these promises: to "dissolve all affiliation with all other political parties"; to "work faithfully for the establishment and maintenance of good government through [the WPC]"; to "work and vote for the election to office of all persons of known honesty and integrity nominated by [the WPC]." J. STEDMAN & R. LEONARD, *supra* note 86, at 81.

88. WASP, Aug. 9, 1879, reprinted in *The Workingmen's Party of California, 1877-1882*, 55 CAL. HIST. Q. 58, 68 (1976) (collection of contemporary cartoons); 2 H. BANCROFT, POPULAR TRIBUNALS, *supra* note 8, at 742; Argonaut, Dec. 7, 1878, at 8 *passim*. References to the birthplaces of the Workingmen were common. See, e.g., Sacramento Record-Union, Sept. 28, 1878, at 4 ("raw immigrants or Americans who have been in our state only a year or two"); Alta, California, July 5, 1878 ("[t]rained bands of Hessians alien adventurers").

89. D. WALDRON & T. VIVIAN, BIOGRAPHICAL SKETCHES OF THE DELEGATES TO THE CONVENTION TO FRAME A NEW CONSTITUTION FOR THE STATE OF CALIFORNIA 1878, at 60-61; D. Moorhead, *supra* note 8, at 239-47 (including chart showing nativity of all delegates). Of the

28 foreign-born delegates, half had occupations that involved property, all were employed in gainful pursuits. None, according to Moorhead, was a "raw immigrant." All except for one German had been in the state for five years or more. The only two native-born Californians were also Workingmen. C. SWISHER, *supra* note 8, at 31. 4 T. HIRTELL, *supra* note 8, at 625, lists Vacquerel as one of the leaders among the supporters of woman suffrage. *See infra* text accompanying notes 141-42, 205. George referred to Vacquerel as the one real radical among the Workingmen delegates, a "Parisian communist but he exercised no influence." George, *supra* note 8, at 449.

90. Undoubtedly there were some Workingmen (and some other delegates as well), foreign and domestic, who simply did not have the wit or the experience to follow the proceedings, especially in their strategic dimensions. But the Workingmen held regular party caucuses and had active leadership to at least prevent anyone from being completely lost on the votes. C. SWISHER, *supra* note 8, at 32.

"The adoption of this clause [the employment section], so valuable to women, was mainly accomplished by the skillful diplomacy of Hon. Charles S. Ringgold, delegate from San Francisco, who introduced it in the convention and worked faithfully for its adoption." 3 HISTORY OF WOMAN SUFFRAGE, *supra* note 55, at 760.

91. Ringgold was one of those elected as a result of Kearney's decree forbidding leaders from running. "The Delegate considers his nomination due to making a successful effort, to prevent professional politicians from entering the Party. A representative man of the people, he will keep a strict watch on all important measures requiring his support, and endeavor to be honest and fair to all." D. WALDRON & T. VIVIAN, *supra* note 89, at 23; *see also* J. STEDMAN & R. LEONARD, *supra* note 86, at 80.

92. W. DAVIS, *supra* note 44, at 384-86; George, *supra* note 8, at 445-46. D. Moorhead, *supra* note 8, at 329, lists woman suffrage as a WPC demand. But though Workingmen were the major supporters of woman suffrage, I have not found any explicit reference to woman suffrage in any other party history. I. CROSS, *supra* note 8, at 115-16, compared the platform of the Roney faction to that of the Kearneyites, and found it "surprisingly radical. It declared that the increasing poverty of the workers resulted from monopoly of the soil; that hours of labor should be reduced as use of machinery increased; that wages should represent the product of labor; that acquisition of land should be limited; that taxation should be graded as to relieve the workers altogether; and that the principle of the referendum should be established."

93. San Francisco Chron., Jan. 24, 1878 (WPC leaders feared that if they lost the election the victors would impose property qualifications on suffrage greater than any could bear.). Josephine Wolcott wrote to Laura Gordon in July 1878 saying that the events of the last two years had made her abandon universal suffrage as a goal, and that she thought women would have a better chance for the vote if there were property, residence and educational qualifications. Letter from Josephine Wolcott to Laura Gordon (July 1878), *contained in* Gordon Papers, *supra* note 54.

There were parties other than the WPC and the Non-Partisans in the field, but the election was mainly between these two forces. Eleven Republicans, ten Democrats and three Independents were elected under the old party labels. C. SWISHER, *supra* note 8, at 28. The Roney faction also fielded a ticket for the First District At-Large seats, but won none. *See infra* text accompanying notes 95-96.

94. C. SWISHER, *supra* note 8, at 24-28 (breaks down elected delegates by party and occupation); W. DAVIS, *supra* note 44, at 390-93 (list of delegates and their party, former political affiliation and occupation); D. Moorhead, *supra* note 8, at 240-43, 244-47 (list of delegates by nativity, date of arrival in California and occupations; list of delegates by city, party, former party, age and years in state); J. STEDMAN & R. LEONARD, *supra* note 86, at 88 (Workingmen delegates divided by San Francisco and "the interior" of California).

95. C. SWISHER, *supra* note 8, at 17, 27. Writing in 1930, Swisher interviewed a delegate to the Convention, Byron Waters, who had been elected as a young man. Waters was a conservative Non-Partisan lawyer, active in the Convention, and had been a member of the 1878 legislature as well. There he had been a major opponent of the Woman Lawyer's Bill. At the Convention, he voted against all suffrage measures. Babcock, *supra* note 9, at 689 n.82. He told Swisher that the at-large delegates were provided because "they would be conservative in their outlook, and would oppose the radical element." C. SWISHER, *supra* note 8, at 120 n.37.

96. Moorhead shows how close the votes were in the at-large races and points out that had the WPC won these seats they would have had "83 delegates to the Non-Partisans 46." D. Moorhead, *supra* note 8; see also W. DAVIS, *supra* note 44, at 390-92.

In addition to the occupations listed in the text, there were many others, ranging from corporation president to tailor, that had a single delegate. C. SWISHER, *supra* note 8, at 24-28.

97. San Francisco Post, Nov. 11, 1878, at 2. The *Post's* Convention coverage was daily, and included more than a summary of the proceedings or even the detailed transcript of other journals. Under the name of "Vivat Respublica," the same writer described the off-floor lobbying, quarrels and alliances that helped make the Convention run. The paper was a Democratic organ and tended to be more anti-corporation and sympathetic to the aims of the WPC than most of the rest of the Northern California press.

Farmers, for instance, were elected as Democrats, Republicans and Independents (Independents were a farmer's party), Non-Partisans and even a few Workingmen from the interior of California. Swisher and most other histories credit the farmers with the balance of power at the Convention. In particular, the Workingmen carried the day when they had the farmer's vote.

98. C. SWISHER, *supra* note 8, at 48; D. WALDRON & T. VIVIAN, *supra* note 89, at 99 (Ayers entry). Ayers had earlier been one of the founders of the *Call* newspaper in San Francisco, and had moved to Los Angeles in 1872. *Id.*, see *supra* note 29 and accompanying text.

99. Ayers received 40,597 votes while his opponent received 37,279 votes. D. Moorhead, *supra* note 8, at 215.

100. Letter from Clara Foltz to Laura Gordon (July 1878), contained in Gordon Papers, *supra* note 54.

101. Letter from Laura Gordon to Sarah Knox (July 1878) (hastily scribbled on the back of a ballot that shows her and David Terry's candidacy for delegate); Letter from Sarah Knox to Laura Gordon (July 1878); Letter from A.H. Eddy to Laura Gordon (July 1878). These letters are contained in the Gordon Papers, *supra* note 54.

102. See *Obituary*, *supra* note 54, at 1, cols. 2-3; *Struggles*, *supra* note 4, June 1917.

103. *Woman at the Bar, The First Female Lawyer of the Pacific Coast*, San Francisco Chron., Jan. 30, 1879, at 3 [hereinafter *Woman at the Bar*].

104. San Jose Weekly Mercury, Oct. 3, 1878, at 1.

105. Joseph Hoge was a Democrat, elected as a Non-Partisan. Sixty-five years old at the time of the Convention, he was an accomplished parliamentarian and earned the respect of most of the men at the Convention—as the tribute to him, and gift of 100 great books bound in leather on the last day, shows. See DEBATES, *supra* note 10, at 1525. Ayers remembered him as "springy and elastic, at home with the exuberance of the younger members[,] [without] superior in parliamentary knowledge [and] thought by some to be 'czarish,' and disposed to crush those who had the temerity to question his rulings." J. AYERS, *supra* note 1, at 308. Hoge had immigrated from Illinois where he had twice served in Congress, and where he and Wilson had been partners. O. SHUCK, *supra* note 36, at 565-66. He was also the first President of the San Francisco Bar and a founding Director of Hastings College of the Law. T. BARNES, *supra* note 32, at 44-45. Barnes writes that though active at the Convention, both Hoge and Wilson were "intimately and continuously involved in Hastings' direction during its first academic year." *Id.* at 46. In the same passage that she proclaimed David Terry the "gallant knight of the Convention," Clara Foltz said of Hoge: "He was opposed to women in public life, opposed to women in any place except possibly in their homes—just as though every woman had a home then any more than she has now!" *Struggles*, *supra* note 4, Mar. 1917.

Hoge was elected by one vote. After the Workingmen failed to garner enough votes for their candidate, Henry Larkin, they threw their votes to W.J. Tinnen, a Non-Partisan, but not the corporation candidate: That was Hoge and he won 74-73. C. SWISHER, *supra* note 8, at 37

106. 3 HISTORY OF WOMAN SUFFRAGE, *supra* note 55, at 752 ("Mrs. Judge Shafter" was at one of the earliest meetings to organize a suffrage society in California.). One "Oscar" Shafter was a justice on the California Supreme Court from 1864 to 1867 and could have been the "Judge" in question, although this would leave unexplained James Shafter's ardent support of woman suffrage, at odds with his establishment positions on virtually every other issue at

the Convention. James Shafter had, moreover, been a judge and was called by this honorific though this was many years before. D. WALDRON & T. VIVIAN, *supra* note 89, at 111.

107. As a member of the Assembly, McComas had played a major part in the debates over the Woman Lawyer's Bill. Babcock, *supra* note 9, at 693. For examples of woman suffrage petitions and resolutions, see DEBATES, *supra* note 10, at 81 (McFarland); *id.* at 89 (Rolfe); *id.* at 96 (Evey); *id.* at 97 (Grace); *id.* at 104 (Van Voorhues); *id.* at 110 (Blackmer); *id.* at 152 (McComas proposing that suffrage be made co-extensive with citizenship); *id.* at 376 (Shafter). The second person to introduce a woman suffrage petition, with 100 signatures, was H.C. Rolfe, one of the leaders of the woman suffrage efforts. 4 T. HITTELL, *supra* note 8, at 625. Elected as a Republican, from southern California, Rolfe had no visible connections to any external reason that would make him a woman suffragist.

108. *Woman's Suffrage in Mayfield*, San Jose Weekly Mercury, Dec. 18, 1879, at 2. This speech was on the eve of the first legislature to convene under the new constitution and the petition addressed it praying "that women may be granted the full exercise of the ballot." See *infra* text accompanying note 202. Many of the original petitions presented at the Constitutional Convention are on file with the Secretary of State, California Archives, Sacramento.

109. DEBATES, *supra* note 10, at 104, 1442. Van Voorhues voted regularly, and on the critical February 13 suffrage vote was in the women's camp. See *infra* text accompanying notes 157-65.

110. San Jose Mercury, Nov. 6, 1878, at 2 (reprinting a letter from Hamlet Davis of Truckee, a Workingmen's delegate). Davis also complimented the women's "energy and skill" and described their task as "herculean." Stedman was a native-born San Franciscan and at the time of the Convention he was an accountant in partnership with R.A. Leonard. These two became the historians of the Workingmen's movement. See *supra* note 86. At 69, Davis was one of the oldest delegates, a merchant from the interior of the state, and Stedman one of the youngest, 27, from San Francisco. Both were elected as Workingmen.

111. The repartee between Sarah Knox and John Stedman, and the other efforts of the women to influence the delegates, were not the sort of lobbying that the Workingmen tried to abolish altogether in the Constitution. In ill-drafted provisions that almost passed, all personal solicitation of legislators would have been a crime, even when not involving "bribery, promise of reward, intimidation or other dishonest means." DEBATES, *supra* note 10, at 143 (proposed amendment introduced by O'Sullivan).

It is clear from the debates that even those with the broadest definitions of lobbying would not have included the women's activities, which they all saw as akin to petitioning. As Henry Larkin (Workingman from El Dorado) made explicit, the lobbying they were trying to eliminate was that done by the railroads particularly and the corporate interests generally. See DEBATES, *supra* note 10, at 1283 (Larkin); see also *id.* at 1281-84. See generally CAL. CONST. art. IV, § 35 (1879, repealed in 1966) (current version at CAL. CONST. art. IV, § 15) (inter alia, declaring lobbying a felony and defining lobbying as "seek[ing] to influence the vote of a member of the Legislature by bribery, promise of reward, intimidation, or any other dishonest means"). The first case decided under the old section was Foltz v. Cogswell, 86 Cal. 542 (1890), holding that a lawyer seeking favorable treatment for a client is not lobbying within the meaning of the constitution. The underlying action was Foltz's suit against a former client for a fee. *Id.*

112. Letter from Clara Foltz to Laura Gordon (Nov. 20, 1878), contained in Gordon Papers, *supra* note 54. Mrs. E.O. Smith was a suffragist. D.W. Herrington had been one of the three practitioners appointed by the court to examine Foltz's qualifications for the bar. Babcock, *supra* note 9, at 697.

113. The Committee on Right of Suffrage included the following members: J. Eagon, Non-Partisan, Lawyer; J. McCallum, Non-Partisan, Lawyer; J. Garvey, Democrat, Sheriff; J. Glascock, Non-Partisan, Farmer; W. Sweasey, Workingmen's Party, Farmer; E. Evey, Workingmen's Party, Farmer; J. Walker, Democrat, Physician; F.O. Townsend, Democrat, Farmer; N. Wyatt, Workingmen's Party, Lawyer; C. Cross, Workingmen's Party, Lawyer; and J. Caples, Non-Partisan, Farmer.

Typically, there were relatively few Workingmen on important committees like this one. Moreover, none of the Workingmen on this Committee were from the San Francisco delegation. See DEBATES, *supra* note 10, at 63; W. DAVIS, *supra* note 44, at 390-92 (listing delegates, their present and past party affiliation and their occupations); D. Moorhead, *supra* note 8 (breakdown of occupations and party affiliations). Evey was from Los Angeles and at 65 was one



of the older men in the Convention, and had been a member of the Illinois Constitutional Convention in 1848. Wyatt was from Monterey, a hard-working lawyer by his account. Cross, from Nevada City, was also a lawyer. The fourth Workingmen's representative on the Committee was Sweasey, a farmer from Humboldt County, and a strong woman suffragist. D. WALDRON & T. VIVIAN, *supra* note 89 (individual entries for Evey, Wyatt, Cross and Sweasey); Cornford, *The California Workingmen's Party in Humboldt County*, 66 CAL. HIST. Q. 131, 139 (1987) (containing an account of Sweasey's politics).

114. According to one newspaper account:

The most interesting meeting of the evening was that held by the Committee on Suffrage, in the Assembly Chamber, when a number of woman suffragists addressed the Committee. The Chamber was filled, more than half the audience being ladies. Mrs. Dr. Carr, Miss Kellogg and Laura DeForce Gordon spoke

All contended that women did desire the ballot, and if the Committee did not believe it, they [should] remove her disabilities and see how they would flock around the polls.

San Francisco Chron., Oct. 30, 1878, at 2; *see also* DEBATES, *supra* note 10, at 450 (reference made several days later to woman suffrage meetings being held in the Assembly hall as an unusual and striking occurrence); 3 HISTORY OF WOMAN SUFFRAGE, *supra* note 55, at 759 (Gordon's lobbying from outset of Convention).

115. WASP, Nov. 2, 1878 (group picture on cover). *The Wasp* was an illustrated weekly magazine, published from 1876 until 1941. Its heyday, when it had the best writers and cartoonists, was from 1876 to 1894. K. JOHNSON, *THE STING OF THE WASP* (1967). Most people to whom I showed the cartoon saw the women as grotesque and unwomanly. Some, myself included, think that although the women are lampooned, they appear decent and orderly, especially in a small inset where they vote while men watch. A line of men sneers as they watch the women vote, but again nothing untoward is happening. The misshapen appearance of some of the suffragists could result from actual people being caricatured.

The text inside treats the cover issue lightly by listing California's troubles of the last year, concluding: "Yet we never thought for one moment that the simplest remedy in the world would be to do simple justice and allow our female friends to vote at elections—for the best looking man." WASP, Nov. 2, 1878, at 2.

*The Wasp* continued to recognize women's issues as important to the Convention, while taking the general position that the whole Convention was misguided. *See, e.g.*, WASP, Feb. 15, 1878 (A two-page center spread showing "the constitutional pump" being worked by a man whose clothes are an amalgam of interest groups (Non-Partisans, WPC, Temperance Party, Republicans, Clergy and women suffragists). The pump is spewing forth measures including one labelled "Women's rights" in which the hook-nosed spinster-type hits a man over the head with an umbrella. The 1849 Constitution, depicted as a handsome woman, is being deluged and says "Help, I'm going down.").

116. At first the Committee voted to submit the issue of woman suffrage to the people at the same time as the ratification vote on the new constitution, but as a separate proposition. It then moved to the legislative proviso, which the *Chronicle* disapproved of saying the issue would "become a standing vexation" in the legislature.

We are of the opinion that a very large majority of the women of this State do not crave the right of suffrage and would vote against it if they had votes. But the minority is active, while the majority is a passive force.

San Francisco Chron., Nov. 10, 1878, at 4.

117. DEBATES, *supra* note 10, at 408 (Caples' minority report on suffrage).

118. *Id.* at 1007, 1367 (January and February debates respectively). Caught off-guard when woman suffrage arose again in February, Caples rather incoherently repeated many of his earlier examples. *See infra* text accompanying note 162.

119. *Id.* at 1009-10. Steele was elected as a Republican and Caples as a Non-Partisan Democrat. Steele's speech in which he answers all the objections to suffrage is a fine piece of rhetoric.

120. San Francisco Chron., Nov. 16, 1878, at 3; DEBATES, *supra* note 10, at 408 (Caples' report). Uniquely among the delegates, Caples had used the Convention handbook for an angry description of his "war a l'outrance" against the Kearneyites. D. WALDRON & T. VIVIAN, *supra* note 89, at 63.

121. Letter from David Terry to Laura Gordon (Nov. 20, 1878) (emphasis Terry's), *contained in Gordon Papers, supra* note 54. Terry had laid the groundwork for the debate by establishing that Caples intended to use his minority report on the Convention floor, where Gordon would have no opportunity to respond.

122. Argonaut, Dec. 7, 1878 (the day the corporations clause was passed). The corporations debate opened on November 13; on November 20, the date of Terry's letter to Gordon, Ayers had upped the ante by introducing a clause that strengthened the proposed railroad commission.

C. SWISHER, *supra* note 8, at ch. IV (chapter IV is entitled "Corralling Corporations"), explains the varying motivations and machinations in this central debate. He lists the leaders of the conservative group as including McFarland, Barnes, S.M. Wilson, Shafter, Edgerton and Belcher. *Id.* at 59.

"In opinions and temper Terry was a good deal like the Workingmen delegates, and having about ten times as much brains as the smartest among them, he soon became their actual though not their acknowledged leader." Oakland Enquirer, *reprinted in A. BUCHANAN, supra* note 80, at 187. On the relations between Terry and the Workingmen, see A. BUCHANAN, *supra* note 80, at 187-90; A. WAGSTAFF, *supra* note 81, at 254-55; see *infra* text accompanying notes 80-82.

123. On Terry's motives for writing the letter, no matter of principle was involved because Terry never felt strongly one way or the other about suffrage. (He found many other subjects more important.) He may have thought this a good chance to undermine Caples, or to support a Workingmen's objective without being identified with it. But as noted in the text, his main motivation was undoubtedly his friendship with Gordon. Letter from David Terry to Laura Gordon (Mar. 3, 1877), *contained in Gordon Papers, supra* note 54 (Terry sent Gordon news of her husband: "I had a good deal of talk with him about which I will tell you sometime.").

124. Apparently, Gordon issued one challenge; the newspapers mentioned it in December. See e.g., San Francisco Post, Dec. 9, 1878 ("Caples will stand a poor chance."). Tinkham relates that Terry became the leader of the "most rabid Chinese haters, anti-monopolists and anti-railroad men." As to Terry's motives, Tinkham said the best guess was his "hatred for corporations and his desire again to sit upon the supreme bench. As a leader on the working man's measures he believed he could command their votes." G. TINKHAM, *supra* note 8, at 228. A *Wasp* cartoon at the end of the Convention shows Terry and others being served up "offices" by a woman whose apron is labelled "the new constitution" while the Workingmen pound on the door that Volney Howard leans against solidly. *Workingmen's Party of California 1877-1882, supra* note 88, at 71 (cartoon collection).

125. Letter from Clara Foltz to Laura Gordon (Nov. 20, 1878), *contained in Gordon Papers, supra* note 54.

126. Though the Foltz-Gordon team had been apart over the last few months, their accomplishments continued in tandem. On the day the papers covered Gordon before the Committee, Clara Foltz appeared for the first time in the district court (her initial trials were in the lower Justice Courts). As with Gordon's performance, the audience was full and the reviews were complimentary. The *Chronicle*, for example, said of Foltz in court that she was "calm dignified clear not in the least out of place." San Francisco Chron., Oct. 31, 1878, at 4.

127. See DEBATES, *supra* note 10, at 832-33.

128. The symbolism of language was a general interest of Blackmer's. Earlier when the proposed Declaration of Rights came to the floor he argued that the first clause should read "all persons" (rather than "all men") are by nature free and independent. DEBATES, *supra* note 10, at 232 (emphasis added). Blackmer pointed out that "person" was used in other parts of the Declaration of Rights and denied that the change would have any connection with woman suffrage, but would simply be "expressing precisely what we mean." *Id.* Blackmer wanted to remove the "male" word from the suffrage clause as well and though he did not speak against the legislative empowerment proviso, he clearly had reservations about it. Aside from the delay it would cause for woman suffrage, the proviso also trespassed on Blackmer's turf. He was the chairman of the committee in charge of proposing new procedures for amending the constitution and naturally against some hybrid that stood apart from the normal amendatory process.

The issue for Blackmer was how the proposed proviso fit with the ordinary amendment process. It would allow a future legislature to remove disabilities in suffrage on account of sex; could yet another legislature, acting alone, renew them? In other words, would the

legislative action under the proviso have the force of an amendment to the constitution? Blackmer's Committee proposed a new method, which would allow proposals to go to the people if *two-thirds* of both legislative houses proposed the amendment. The 1849 Constitution required a majority vote of two separate legislatures in succeeding years for a constitutional amendment. CAL. CONST. of 1849, art. X, § 1.

As Chairman, Blackmer argued that his proposal made the constitution easier to amend and would reduce the reliance of reformers on reaching the legislature. DEBATES, *supra* note 10, at 1276. The pro-constitution forces argued during the ratification campaign that the new clause accomplished its goal and that women should support it because it would make suffrage ultimately easier to obtain. See Sargent, *supra* note 8, at 22; *infra* text accompanying note 194. In 1911, during California's Progressive era, the present system was instituted which allows a popular vote on any amendment proposed by petition from eight percent of the voters at the last election. See Note, *California's Constitutional Amendomania*, 1 STAN. L. REV. 279, 281-82 (1949).

Blackmer may have had yet another reason for objecting to the legislative proviso. It had originally been sent to the Committee on Future Amendments and he had referred it to the Committee on Suffrage. Had he guessed they might incorporate the proviso into their proposed clause, Blackmer might well have maintained it in his committee where he had on his side William P. Grace, another leading proponent of woman suffrage. See DEBATES, *supra* note 10, at 173.

129. Only seven of the 52 Workingmen delegates were previously Republican; only one of these (the lawyer Barbour) was among the San Francisco Workingmen's delegation. D. Moorhead, *supra* note 8; W. DAVIS, *supra* note 44, at 390-92; 3 J. BRYCE, *supra* note 8, at 378 (Bryce was speaking of the San Francisco support for the Workingmen's Party, though his reference to the "better sort" of Workingmen applies even more strongly to the delegates from outside of San Francisco.)

Blackmer had immigrated from Massachusetts to Chicago where he had sold musical instruments until the great fire wiped out his stock in 1871. He then moved to California in 1873 and taught music in San Diego, opened another store and spent several years as county superintendent of schools. For biographical sketches of Blackmer, see entries in ILLUSTRATED HISTORY OF SOUTHERN CALIFORNIA 271 (1890); ILLUSTRATED FRATERNAL DIRECTORY 218 (Smythe ed. 1889), reprinted in HISTORY OF SAN DIEGO 656 (1916) (pictured as Supreme Representative from California to the Supreme Lodge of the Knights of Pythias).

130. D. WALDRON & T. VIVIAN, *supra* note 89, at 121.

131. DEBATES, *supra* note 10, at 832. Though he lamented his lack of preparation, Blackmer's first speech for suffrage reads better than his later more detailed and mechanical effort. I have supplied quotation marks for "the low green tent" line from John Greenleaf Whittier's *Snowbound*.

132. DEBATES, *supra* note 10, at 883. William Peyton Grace was one of the stalwarts for suffrage among the Workingmen and was a member of the San Francisco delegation. He was a "carpenter and architectural draughtsman" by trade and said he had "never advocated any violent measures" and would not be found "among the ranks of the unreasonable here." D. WALDRON & T. VIVIAN, *supra* note 89, at 67.

133. DEBATES, *supra* note 10, at 880. C.O. Finney, a Workingman-farmer, presented the resolution charging that a "hostile" legislature "so framed the calling act as to render impossible the completion" of the work. After the 100 days passed, the delegates were paid in script, which was never ultimately redeemed. Johnson, *California's Constitution of 1879: An Unpaid Debt*, 49 CAL. HIST. SOC'Y Q. 135, 136-37 (1970).

134. T. BARNES, *supra* note 32, at 18 (Founder Hastings speaking at the University of California graduation, June 1878).

135. *Struggles*, *supra* note 4, June 1917 ("But once my success began to be heralded by the gallant knights of the free and generous press of San Francisco, doors swung open to me, plates were laid at every function").

136. San Francisco Chron., Jan. 30, 1879, at 3.

137. DEBATES, *supra* note 10, at 1012. Lindow's broken English made him a figure of ridicule at the Convention. He was probably the subject of one of the most snobbish footnotes in recorded history, when Lord Bryce noted that "[a]n eminent lawyer, leader of the California bar," was discussing the clause prohibiting any "law impairing the obligation of contracts." There was an objection, and the lawyer "recognized in the objector a little upholsterer who

used to do jobs about his house [who said] that he disapproved altogether of contracts because he thought work should be done by hiring workmen for the day." 3 J. BRYCE, *supra* note 8, at 238 n.1.

Despite his difficulties of expression, Lindow represented the attitudes of some Workingmen (but not a majority of WPC members at the Convention) about woman suffrage: that the proper aspirational model was one of a woman protected in the domestic sphere rather than forced out to work or to vote.

138. DEBATES, *supra* note 10, at 1011-12. Wickes was a schoolteacher, a Democrat elected by the Workingmen. Originally from Maryland, he had come to California in 1852 to mine for gold. He maintained that the girls in his class were the equal of the boys and named many famous women whose sphere was unlimited: "Who fixed the sphere of Rosa Bonheur to put the landscape upon the canvas?" *Id.* at 1011. Referring to the Senator from California, Aaron Sargent, Wickes said:

[M]any men have risen to prominence on account of the judgment and instruction of their wives. I know a distinguished United States Senator now whose wife assists him in the preparation of his best speeches, and he is proud of her. He is in favor of woman suffrage.

*Id.* at 1012.

Ringgold relied primarily on the Declaration of Independence by associating himself with the previous speech of William Grace, another Workingman. "[T]he whole human family" was created equal, and the "consent of the governed" did not mean the "consent of one half of mankind only." *Id.* at 1011; *see supra* note 132 (note on Grace).

139. DEBATES, *supra* note 10, at 242 (when "great charter of our liberties" language was under consideration).

140. For the Workingmen Party platform and discussion of inclusion of "great charter" language, *see* W DAVIS, *supra* note 44, at 396-401; DEBATES, *supra* note 10, at 242 (remarks of Workingmen Delegate Patrick Dowling); C. SWISHER, *supra* note 8, at 93; Scheiber, *supra* note 15, at 74-78. Entirely open about his motives in opposing the proposed section of the Rights clause, Ringgold asserted that "[t]he doctrine of State sovereignty might as well be announced here as anywhere else." DEBATES, *supra* note 10, at 242. Ringgold had not only been a Copperhead Democrat, but had been twice arrested because of what he termed "[a] too freely expressed belief in State rights." His biographical sketch says that he was arrested first as an accessory in the fitting out of the schooner J.M. Chapman and later as a secessionist and Confederate officer. Both charges were dropped as unsubstantiated, but only the second was designated as "fanciful." D. WALDRON & T. VIVIAN, *supra* note 89, at 22-23.

The saga of the schooner J.M. Chapman was this: It was purchased in 1863 with a letter of marque signed by Jefferson Davis and fitted with a cargo concealing a large quantity of weapons. The alleged plan was that it would privateer in the Pacific and collect gold and silver for the Confederacy. The J.M. Chapman was captured as it embarked on its maiden privateering voyage, and the capture and subsequent trials created a sensation in the state. R. CLELAND, A HISTORY OF CALIFORNIA: THE AMERICAN PERIOD 357 (1922); 4 Z. ELDRIDGE, HISTORY OF CALIFORNIA 214-15 (1915).

141. DEBATES, *supra* note 10, at 1010. Alphonse Vacquerel, the Parisian who sought true freedom of speech in America, *see supra* text accompanying note 89, also gave a distinctive class twist to the debate when he objected:

Now sir, it has been said that only low class women would vote. I want to know what is the meaning of such a word. Because a woman is poor is she low? I hope, gentlemen, that you do not think that poverty is a crime. When I hold for the right of suffrage for women, I hold it for all women, rich or poor, in whatever class of society they belong.

*Id.* After all other woman suffrage efforts had failed at the January debates, Vacquerel sought a last amendment that also failed: "[W]henver the Courts shall grant to Mongolians the right of citizenship, the Legislature shall remove all disabilities from exercising the elective franchise on account of sex." *Id.* at 1018.

At one point Vacquerel fell out with the WPC Convention caucus, but he continued to take WPC positions on the Convention floor, as in the woman suffrage debates. F Fahey, *supra* note 8, at 240.

142. DEBATES, *supra* note 10, at 1012.

143. J. AYERS, *supra* note 1, at 308-09 (Howard was always "eagerly poring over rare tomes, or storing his mind with fresh knowledge from books of modern science and literature. It may be well imagined that such a man commanded the respect and admiration of his colleagues."); *see also, e.g.*, 4 T. HITTELL, *supra* note 8, at 621 (another contemporary description of Howard: "a lawyer of ability and a man of intelligence and experience").

144. Howard had been a Southern statesman in fact, serving in the Texas Constitutional Convention and as U.S. Congressman from that state. D. WALDRON & T. VIVIAN, *supra* note 89, at 153. San Francisco Post, Nov. 26, 1878, printed a long admiring story of Howard—ending by complimenting him on "the manners of a lamb, the claws of a lion."

145. DEBATES, *supra* note 10, at 1012; *Struggles, supra* note 4, Mar. 1918.

146. *Woman at the Bar, supra* note 103. The "Chief Justice" reference could only be to Terry because the current holder of that office was on the Hastings Board and thus a defendant in the suit, and the only other former chief justice to whom they might have had access, W W Cope, was also on the Hastings Board. The first chief justice had been the Hastings founder himself, Serranus Clinton Hastings. In chronological order the others were Henry A. Lyons, Hugh C. Murray, David S. Terry, Stephen J. Field, Silas W Sanderson, John Currey, Lorenzo Sawyer, Augustus L. Rhodes, Toyal T. Sprague and William T. Wallace. J. JOHNSON, HISTORY OF THE SUPREME COURT JUSTICES OF CALIFORNIA, 1850-1900 (1963).

147. Foltz also signed her petition *in pro per* even though she had been admitted in Judge Morrison's court (after he had refused to accept her certificate of admission from the San Jose sister court). She may have been thinking ahead to the possibility of an appeal, and hoping to avoid taking the California Supreme Court bar examination. Ultimately, however, both Foltz and Gordon underwent the California Supreme Court examination; upon being admitted, Foltz then argued the Hastings appeal. Babcock, *supra* note 9, at 714.

148. The women sued the Hastings Board on which sat J.P. Hoge (President of the Board as well as the Constitutional Convention), Delos Lake (a former California Supreme Court Justice), J.R. Sharpstein (a future California Supreme Court Justice), and three others of the bar elite: Thomas Bishop, Thomas I. Bergin and O.P. Evans. *See* Babcock, *supra* note 9, at 709 & n.188.

Foltz's papers are part of the Transcript on Appeal, *Foltz v. Hoge*, 54 Cal. 28 (1879); Gordon's are on file in the California State Archives, Sacramento, California.

Letter from Laura Gordon to her parents (Feb. 6, 1879) (Gordon added: "be sure and send me some handkerchiefs and a change of underclothes by Trella [Foltz's oldest daughter, 13].").

149. Letter from Laura Gordon to her parents (Feb. 12, 1879). Other relevant parts of the letter for this story are:

My Darling Ma and Pa:

Little Trella [Foltz's oldest daughter, 13] came home last night and brought me your good letter was so glad to hear from you and get my clothes, I never needed clean clothes so much. You will see by the papers that my application for writ of mandamus has been denied by the Supreme Court, but Mrs. Foltz's application to the lower court was granted and the writ is returnable Friday a.m. I want to be there with her, tho it is not at all probable they will come to trial. They intend to make us all the trouble and delay possible but I really believe we shall win in the end.

*See* Letter from Laura Gordon to her parents (Feb. 6, 1879) (Gordon asked for clean clothes, a further indication that she had been staying in the city with Foltz for some time.).

150. Letter from Laura Gordon to her parents (Feb. 12, 1879).

151. Letter from Charles Ringgold to Laura Gordon (Jan. 30, 1879), *contained in* Gordon Papers, *supra* note 54. Ringgold writes in a beautiful hand, the effect only slightly marred by punctuation, spelling and grammar lapses. He closes: "Dear Madam I hope your success professionally and otherwise will keep pace with your corageous [sic] and meritorious efforts. Thanks for your kind invitation = [sic] I shall be pleased to call."

152. 3 HISTORY OF WOMAN SUFFRAGE, *supra* note 55, at 759-60 ("Remembering the hard struggle by which the right to practice law had been secured to women and the danger of leaving it to the caprice of future legislatures, Mrs. Gordon drafted a clause which protects women in all lawful vocations, and by persistent effort succeeded in getting it inserted in the new constitution."). The WPC and the Grangers at the Convention were similarly determined to protect their reforms from the "caprice of future legislatures." C. SWISHER, *supra* note 8, at 96. The Convention proceedings are filled with direct references by members of all parties

to the need to put specific provisions into organic law. Particularly interesting for our purposes are words delivered to great applause by David Terry. Referring to a clause to make corporation officers personally responsible for corporate fraud he said:

[T]he Constitution is the place to put it, where it cannot be amended or repealed at any time by a hasty Legislature. I propose to put it here as a safeguard to the people. I propose to put it here where it cannot be amended or repealed, and let it stand for all time

DEBATES, *supra* note 10, at 404. This desire to limit the realm of future legislative action by increasingly specific provisions was not unusual in 19th century constitutions, J. HURST, *THE GROWTH OF AMERICAN LAW: THE LAW MAKERS* (1950), though the effort in California produced Henry George's famous epigram denoting the 1879 Constitution a combination of "constitution, code, stump-speech, and mandamus." George, *supra* note 8, at 445-46.

153. *Struggles*, *supra* note 4, Mar. 1917; see *supra* text accompanying notes 121-22. Terry's *modus operandi* was generally one of great secrecy. He made a few powerful speeches, authored the resolution that would hold corporation directors personally responsible for fraud, and served responsibly on the judiciary committee, but otherwise Terry worked behind the scenes. See, e.g., DEBATES, *supra* note 10, at 396, 403-04, 808-09. By the end of January, he was seldom even on the Convention floor, though his name was often spoken by his Workingmen lieutenants. A. BUCHANAN, *supra* note 80, at 170-90; A. WAGSTAFF, *supra* note 81, at 242-79.

154. Letter from Charles Ringgold to Laura Gordon (Jan. 30, 1879), contained in Gordon Papers, *supra* note 54. The note's formal phrasing and its closing lines, "Allow me to subscribe myself/Yours truly/C.S. Ringgold," indicate the lack of familiarity between them. See *supra* note 151. Generally, but for their both being Democrats, there seems little in their lives before January 1879 that would have brought them together.

In his letter to Gordon, Ringgold also said of the Convention: "It is running on imported propositions with a tendency to destroy rather than build." This is a reference to clauses of which Ringgold complained earlier that were taken from some Southern states' reconstruction constitutions, acknowledging the supremacy of the U.S. Constitution. See *supra* note 140.

155. L.A. Express, Jan. 8, 1879 (fears about turning off light and heat). The desire of most of the members for a constitution shows best in that all but a few (15 of 152) signed the final product. See *infra* note 190.

156. DEBATES, *supra* note 10, at 1525. Johnson was a Non-Partisan, formerly a Democrat, originally from Maryland. He had graduated in classics from Yale, taught "dead languages" at a military academy in Kentucky, studied law at Indiana University and ended up in Santa Rosa, California. D. WALDRON & T. VIVIAN, *supra* note 89, at 65.

157. The 90-day residency requirement in the district changed the previous condition of 30 days only. John Eagon, committee chair, said it was done to prevent "colonization of voters." "The corporations" would move a group of voters into a district for 30 days and then vote their paid lackeys into office. A Workingman argued that while this might happen in the country, it was not likely in the cities and would operate to disenfranchise working men who often moved about within the city following the availability of work.

158. San Francisco Post, Feb. 15, 1879, DEBATES, *supra* note 10, at 1364.

159. Finally, Ayers was an anti-Chinese zealot and may have thought it well to preserve the possibility of quickly enfranchising women if necessary. Although, while the Convention sat, both houses of Congress had passed a bill restricting Chinese immigration, its outcome was still not certain in February, nor its impact if signed into law. All but two of the delegates had voted to send a memorial to Congress urging the passage of the bill. Only one man, Charles Stuart, spoke for the rights of Chinese immigrants. DEBATES, *supra* note 10, at 1238, 1385, 1403; 4 T. HITTLELL, *supra* note 8, at 622-24 (discussing Stuart's courage). The passage of the anti-Chinese legislation may have cooled the interest of some delegates in granting women suffrage.

160. DEBATES, *supra* note 10, at 1365. The effort to cut off debate took the form of a motion calling for the previous question. This motion was not debatable and called for a vote on the underlying issue to which an amendment was offered. Throughout the Convention, there were objections voiced to the use of this device, though all factions employed it at one time or another. The leading proponents of woman suffrage "demanded the ayes and noes" on the question: these were Ayers, O'Sullivan, Steele, Wickes and Grace. Once debate was assured, Vacquerel in his opening remarks said: "[C]ertain gentlemen on this floor are in the habit of moving the previous question whenever the question before the Convention does not

suit their views, although they will keep this body discussing for days when it is about their individuality or the interest of their little county " *Id.* The parliamentary device of moving the previous question was used finally to defeat woman suffrage. See *infra* text accompanying note 178.

161. DEBATES, *supra* note 10, at 1365-66.

162. *Id.* at 1367. O'Sullivan, a Workingman from the San Francisco delegation, not previously heard from on woman suffrage, also gave a stirring appeal to justice. *Id.* at 1366.

163. *Id.* at 1368 (ayes and noes demanded); San Francisco Post, Feb. 15, 1879 (remarks of commentator). The commentator noted that the women lost by only twelve votes. Another way to assess the closeness of the vote is to note that it may have come within ten votes of passage: Steele, one of the proponents, changed his vote to "no" in order to be eligible, according to parliamentary procedure, to move a reconsideration; Jacob Freud, a Workingman who personally favored woman suffrage but feared it would hurt the chances for ratification, did not vote. Ringgold tried to force him to take a stand under the Convention rules that required that those present vote. DEBATES, *supra* note 10, at 1368.

164. DEBATES, *supra* note 10, at 1370; San Francisco Post, Feb. 15, 1879.

165. DEBATES, *supra* note 10, at 1370; *The Lady Lawyers*, San Francisco Chron., Feb. 15, 1879, at 2. As the women had planned before, Laura Gordon sought to join the suit, which the judge allowed. The tone of the story about the continuance was a harbinger of the elaborate press coverage yet to come. Here is a sample:

Mrs. Foltz with yellow hair, crimped and plaited, and Mrs. Laura Deforce Gordon, with dark brown hair, in coke-upon-Lyttleton curls down her back, sat at the bar table, and the former evinced her knowledge of Court practice by answering "Ready." However, an aged masculine attorney asked the Court that the hearing of the motion go over till next Friday

*Id.*

166. DEBATES, *supra* note 10, at 1422 (later comment on Monday's proceedings: "this is but a faint outline of the scene"); *id.* at 1388-89 (Herrington's remarks and the response that Herrington had a grudge against the town because he had failed with the ladies there, on account of his ugliness).

167. *Id.* at 1389-90.

168. *Id.* at 1395. One of the sections that glided by, re-enacted from the 1849 Constitution, provided that the wife could keep her separate property. *Id.* at 1392. In the *History of Woman Suffrage*, Aaron Sargent, while deploring the 1879 Constitution generally and incorrectly ascribing the failure of suffrage to the abnormal times created by the "sand-lotters," described the liberality of the California Code on married women's property. 3 HISTORY OF WOMAN SUFFRAGE, *supra* note 55, at 760-61.

169. San Francisco Post, Feb. 18, 1879, at 2. Not only the Democratic and sometimes eccentric *Post*, but the staid *Sacramento Record-Union* thought the suffrage battle was not lost. It reported a series of meetings of the Sacramento women with a new respectful tone. "The promoters appear to think that it may yet be possible to induce the Convention to do justice to the suppressed sex in the new constitution " After noting the "absence of the too frequent rant and denunciation," the reporter said the meeting was "a dignified assemblage of citizens who earnestly and quietly expressed their intention of using all legitimate means to secure to themselves a voice in the government of the country." *Sacramento Record-Union*, Feb. 20, 1879, at 1.

170. *Sacramento Record-Union*, Feb. 19, 1879 (Mrs. Waterhouse hoped the next meeting would be in the Senate chamber and Mrs. Gordon and Mrs. Foltz asked to speak. Mrs. G.W. Towle said it would be "undignified" to go to the capitol in a body. "Now is the time for women to work within their homes."). As the week progressed, however, the women grew bolder about approaching delegates directly. See *infra* note 171.

The *Record-Union* was one of the most ably edited in the state, was generally conservative and was thought to be a Southern Pacific organ. But early on, it took a position for woman suffrage as a matter of simple justice. See, e.g., *Sacramento Record-Union*, Dec. 28, 1879, at 2 (First the writer says the Convention "seems afraid" of woman suffrage. "It is getting late in the day to laugh down the issue . . . It is also getting late for the sentimental dodge, which consists in asking whether you are prepared to have the sanctuary of the domestic circle polluted and the sacred sphere of woman invaded, and her glory quenched in the filthy pool of politics, and so forth and so on.").

Earlier the paper had supported the Woman Lawyer's Bill and was decidedly on the women's side in the Hastings suit. Babcock, *supra* note 9, at 689 n.83. When the Sacramento women lost, however, the *Record-Union* encouraged them to use their influence to defeat ratification. It is hard to believe, but possible, the editors were so machiavellian as to intend that the women lose, and then turn them to the anti-ratification effort. See *infra* text accompanying note 194.

171. DEBATES, *supra* note 10, at 1441 (debates of February 21, 1879). See generally *Sacramento Record-Union*, Feb. 21-23, 1879 (stories describing the canvass for signatures and the women's meeting). On February 21, a motion carried for the women to make "direct application" to the delegates who had voted against leaving equal suffrage optional with the legislature. Twenty-four ladies then arose and agreed personally to solicit delegates. The words of the petition modestly requested "such provision in the new Constitution as will tend to secure to the women of the land a voice in the government of the country, by affording them the opportunity to exercise the right of suffrage." DEBATES, *supra* note 10, at 1441.

172. DEBATES, *supra* note 10, at 1424.

173. For a detailed account of the arguments on both sides, see Babcock, *supra* note 9, at 708-12.

174. *San Francisco Chron.*, Feb. 25, 1879; *San Francisco Call*, Feb. 25, 1879; *Daily Alta*, Feb. 25, 1879, at 1. The *Sacramento Record-Union*, Feb. 26, 1879, had a lengthy editorial on the argument, and compared the opposition to women being lawyers to the arguments against suffrage as well as chiding the establishment bar on their fear of competition. The writer added: "What counsel meant by saying that women were unfitted for the rough and tumble of legal disputes is somewhat obscure. We should have supposed that wherever the law is practiced after civilized methods and by educated men, the amenities of life would be preserved."

175. V STADTMAN, *THE UNIVERSITY OF CALIFORNIA 1868-1968*, at 81-83 (1970) (details the battle and its genesis); DEBATES, *supra* note 10, at 1476-77.

176. DEBATES, *supra* note 10, at 1476. The connection between the Hastings suit and the education clause was clear to contemporaries. "The agitation of the question of the admission of women to the Law College, which began during the session of the convention, led that body to incorporate [the women's education section]." 3 *HISTORY OF WOMAN SUFFRAGE*, *supra* note 55, at 759.

177. DEBATES, *supra* note 10, at 1476. One index to the support of a measure at the Convention is the party of the delegates who demanded a record of the vote. On the women's education section, Workingmen, who had been the mainstays of the suffrage debate, were the ones who demanded the count of "ayes and noes." Walker, O'Sullivan, Grace, West and Herrington. Caples and another nemesis on woman suffrage, Byron Waters, were among the twenty who voted against the education amendment.

"The sentence [women's education section] nevertheless pleased the delegates who wanted to do something for the ladies. It also made it possible for a disgruntled delegate to say: 'The section is not viewed with much favor. Its adoption was secured not on its merits, but by an alliance between its supporters and the advocates of women's suffrage.'" V STADTMAN, *supra* note 175, at 83.

178. This was the same Murphy who the year before had been a man opponent in the Assembly of the Woman Lawyer's Bill. Babcock, *supra* note 9, at 692 n.103. He had been elected to the Convention as a Non-Partisan, formerly a "staunch Democrat." D. WALDRON & T. VIVIAN, *supra* note 89, at 110. Only 32 years old, Murphy was a lawyer, had been thrice elected district attorney of his county, and had served in the Assembly three times. He was known as a "forcible speaker" and an accomplished parliamentarian, and described as: "Tall," "robust," "florid complexion," "intelligent and gentlemanly," "rather jovial" and "ambitious as Caesar." MOHAN, CLOUGH & COSGROVE, *PEN PORTRAITS OF OUR REPRESENTATIVE MEN 69* (1880) [hereinafter *PEN PORTRAITS*].

179. *San Francisco Post*, Feb. 28, 1879. In the writer's opinion, the Workingmen "were quite right in entertaining those fears, for the anti-monopoly non-partisans have gone back upon the Workingmen whenever an opportunity is offered. I trust that the ladies will be content for the present. A thorough defeat is better than an empty compromise." *Id.*

180. *Sacramento Record-Union*, Feb. 28, 1879, at 2, reprinted in DEBATES, *supra* note 10, at 1494 (The editorial was reprinted in the Convention debates when Murphy rose to a point of personal privilege and sought ineffectually to refute it.). The paper had been quite bruising



about the way that Murphy treated the women, but it was an ugly scene to cut off debate when the women were there and had gathered more than 1,000 signatures on petitions in less than a week.

[C]ommon courtesy would have demanded a respectful hearing. This Murphy has distinguished himself by similar acts, during such part of the session as he has been present. Apparently incapable of originating an idea himself; neither a speaker, a thinker, nor a worker; an absentee during about half the session, and doing nothing useful when present, he has learned just enough to enable him to move the previous questions, and he has done this when to do it was little short of an outrage.

*Id.*

181. Letter from Charles Ringgold to Laura Gordon (Feb. 28, 1879), contained in Gordon Papers, *supra* note 54. He closes their partnership with these words: "My dear Madam hoping you will live to enjoy many years of political equality and social happiness, consider your correspondent ever your humble servant." He enclosed a page of the Convention proceedings showing the ayes and noes on debate closure and on the final male suffrage article.

182. San Francisco Chron., Mar. 6, 1879, at 3. Judge Morrison's opinion was issued on March 5. Morrison does not have the exact wording of the clause, but says: "The new State Constitution which is to be submitted to the people for ratification, contains a clause that no person on account of sex shall be disqualified from entering any profession or occupation."

183. *Struggles*, *supra* note 4, Nov. 1916; New Northwest, Mar. 20, 1879, at 2.

184. Judge Hastings spoke to a reporter from the *Chronicle* on the day the opinion came down: "He had first concluded to admit [the women], and then by advice of the Directors, had withdrawn permission. It was his opinion that under the law ladies could be admitted and that an appeal would not be sustained. San Francisco Chron., Mar. 6, 1879, at 3.

Robert Francis Morrison (1826-1887) was originally from Illinois, and had read law there, and attended several terms at Harvard Law School. He came to California around 1850, and had practiced alone and with Delos Lake and others until he was elected Judge of the Fourth District (San Francisco) in 1869. He was a Chivalry Democrat, having run on "the southern ticket" for the State Senate in 1859. At the elections held pursuant to the new constitution, Morrison was elected on the Democratic and Workingmen's Party ticket for Chief Justice of the California Supreme Court. In a final touch to the interconnections of this story, in 1886 David Terry instigated an investigation into the fitness of Morrison, who had suffered a stroke, and another Justice, also in ill health. Many leaders of the bar testified about their experience with Morrison, with only Terry and a few others maintaining his lack of fitness. 8 J. SENATE & ASSEMBLY app. (1887) (27th session); *Robert Francis Morrison*, 35 J. ST. B. CAL. 701 (1958); San Francisco Call, Mar. 4, 1887 (obituary of Morrison); San Francisco Post, Mar. 4, 1887 (obituary of Morrison).

185. Letter from Clara Foltz to Laura Gordon (May 6), contained in Gordon Papers, *supra* note 54 (no year is given on the letter but internal evidence suggests 1879); *Struggles*, *supra* note 4, May 1917 (Trella reference).

186. *Foltz v. Foltz* (1879) (unpublished case available in the Superior Court Archives, San Jose, California); Babcock, *supra* note 4, at 131-40 (Foltz's marriage and divorce examined).

187. San Francisco Examiner, May 5, 1879, at 1; San Francisco Call, May 4, 1879, at 1 (rally advertisement); San Francisco Examiner, May 3, 1879, at 1 (rally advertisement).

188. San Francisco Call, May 5, 1879, at 1 (6,000 persons at Platts Hall rally); Los Angeles Express, May 5, 1879, at 2 (25,000 persons at open-air meeting); W BEAN & J. RAWLS, *supra* note 8, at 183 (electoral statistics).

189. The provision for sending a copy to every registered voter in the state was included in Article XXII, a housekeeping provision of the document itself. DEBATES, *supra* note 10, at 1520; J. AYERS, *supra* note 1, at 307. The pamphlet with the constitution printed in full also contained an address to the people from the delegates urging ratification. Most newspapers printed both the text of the constitution and the address to the people.

190. Only fifteen delegates voted no on the new constitution, with two noes paired with ayes and 16 absent. None of the Workingmen, and very few of the older conservative lawyers, were among the noes. DEBATES, *supra* note 10, at 1521; C. SWISHER, *supra* note 8, at 100-13. Ayers' paper, the *Los Angeles Express*, ran, virtually daily, long stories about pro-ratification rallies, as well as articles and letters in support of the new constitution. See, e.g., Los Angeles

Express, Apr. 3, 1879, at 2 ("extraordinary" opposition due to article curbing corporations); Los Angeles Express, Apr. 19, 1879, at 2 (story of "an immense mass of people" assembled in Los Angeles "to hear Judge Terry expound the new Constitution"); Los Angeles Express, May 2, 1879, at 3 (rally of 2,000 persons at which Ayers spoke and ridiculed delegates who opposed the Constitution); Los Angeles Express, May 5, 1879, at 2 (very long account of rally at which J.P. West spoke; also tells of 25,000 persons at a San Francisco rally where Terry spoke).

191. Los Angeles Express, Apr. 7, 1879, at 2. Ayers maintained a continuous attack on the methods of the "monopolists." See, e.g., Los Angeles Express, Mar. 25, 1879; Los Angeles Express, Apr. 3, 1879, at 2 ("Men are attacked in their business and threatened in their credit if they dare show manhood and independence and even clerks and employees are bulldozed into seeming acquiescence."); George, *supra* note 8, at 446.

192. Hall, *The San Francisco Chronicle: Its Fight for the 1879 Constitution*, 46 JOURNALISM Q. 505 (1969); see San Francisco Chron., Apr. 13, 1879 (Terry's speech); San Francisco Chron., May 6, 1879 (Terry's speech rendered in other languages); C. SWISHER, *supra* note 8, at 18-19, 104-05. The *Chronicle* had been an early supporter of Kearney's. Contemporaries believed the swift rise of the WPC was due to the paper's coverage and support. George, *supra* note 8, at 439-40; 3 J. BRYCE, *supra* note 8, at 232; F. Fahey, *supra* note 8, at 94-111 (details Kearney's relationship with the *Chronicle* which was largely one of successful mutual manipulation).

193. San Francisco Post, Mar. 10, 1879, at 3. A few days earlier, the *Chronicle* had reported on "a movement at Sacramento for holding a mass meeting of women to protest against the adoption of the new constitution." San Francisco Chron., Mar. 8, 1879, at 3.

194. Los Angeles Express, Mar. 24, 1879, at 2 (article quotes verbatim from the *Sacramento Record-Union*). Whether the *Express* or the *Record-Union* was right on the ease of constitutional amendment is difficult to say. The new constitution would allow proposed amendments to go to the people if *two-thirds* of both legislative houses proposed them. The 1849 Constitution required a majority vote of two separate legislatures in succeeding years for a constitutional amendment. CAL. CONST. of 1849, art. X, § 1. Arguments could be made that either is a harder (or easier) process. The pro-constitution forces argued during the ratification campaign that the new clause was intended to make amendment easier, and therefore would make woman suffrage easier to accomplish. Sargent, *supra* note 8, at 22. In 1911, during California's Progressive era, the present system was instituted which allows a popular vote on any amendment proposed by petition from eight percent of the voters at the last election. See Note, *supra* note 128.

195. San Francisco Chron., Apr. 15, 1879, at 2. Under the headline, "A Constitution that Enlarges Their Privileges," the article assures women that "though not to the extent desired by the advance guard of the women's rights class," the new constitution gives women many advantages over the old. It concludes with a plea for all women to use their influence on behalf of their working sisters who are being driven out by the "dirty coolie slave, owned and hired out by a Chinese master, under secret, illegal, but unprovable contract." *Id.*

196. In one of her court appearances, "several of our most prominent attorneys warmly congratulated her upon the success of her late war against the old fageyism and narrow-mindedness of the Trustees of the Hastings Law School." San Jose Mercury, Mar. 8, 1879, at 3; see also THE BAY OF SAN FRANCISCO 670 (1892).

197. Quoted in New Northwest, Aug. 1, 1879, at 2.

198. *Letter from San Jose*, New Northwest, Sept. 4, 1879 (At this time Foltz had been admitted to the bar almost exactly one year.); San Francisco Call, Sept. 18, 1879; 3 HISTORY OF WOMAN SUFFRAGE, *supra* note 55, at 760 (Foltz & Gordon chief officers of Woman Suffrage Association).

199. E. SANDMEYER, *supra* note 27, at 62-63; 5 J. SENATE & ASSEMBLY app. (1880) (Documents 19 & 20). Sandmeyer says that friends of the Chinese claimed the vote was not a fair test because only "Against Chinese Immigration" actually appeared on the ballot. To vote "For," the elector had to scratch out one word and pen in the other. E. SANDMEYER, *supra* note 27, at 62-63.

200. They elected as well Robert Morrison, the judge in the Hastings case, to be the new chief of the California Supreme Court. See *supra* note 184.

201. San Jose Weekly Mercury, Sept. 11, 1879, at 2 ("It is a strange inconsistency that she should be permitted to hold an elective office and not be allowed [to be] an elector. Mrs.

Foltz is just the one to undertake advocacy of this kind "); New Northwest, Oct. 9, 1879, at 2 (Foltz is preparing a bill for the next legislature.).

202. *Woman's Journal*, Dec. 6, 1879, at 388 (reprinting petition addressed to the "Honorable Senate and Assembly of the State of California").

203. *Woman as Constitutional Lawyer Next Step: Mrs. Clara Shortridge Foltz Hopes for Future*, San Francisco Chron., Aug. 9, 1922.

204. During the Convention, Congress had enacted a bill which abrogated the Burlingame treaty giving the Chinese a right to free immigration. See *supra* note 159. President Hayes vetoed this measure, but in 1882, after some backing and filling, Congress again enacted a Chinese exclusion act, which was extended for many years. For the politics of the Chinese exclusion act, see A. SEXTON, *supra* note 8, at 178; and W. BEAN & J. RAWLS, *supra* note 8, at 184 ("it became clear that [California's] electoral votes, along with those of Washington and Oregon, could swing the presidency to the party that made the strongest promises to exclude the Chinese").

Denis Kearney wrote to James Bryce of the decline of the Workingmen's Party: "I stopped agitating after having shown the People their immense power and how it could be used. The Chinese question was also in a far way of being solved." Nunis, *supra* note 18, at 284 (quoting J. BRYCE, *THE AMERICAN COMMONWEALTH* 388 (rev. ed., New York, 1889)). "[The movement] stopped when I stopped, that was after accomplishing what we desired." *Id.* at 286.

205. Argonaut, Mar. 1, 1879, at 1.

206. When they married, Terry was 62 and Althea Hill almost 30 years younger. See *supra* note 81 (sources cited therein).

207. See *supra* text accompanying note 23 and sources cited *supra* note 98 (Ayers); *supra* note 83 and accompanying text (Wilson); *supra* text accompanying note 38 (Knox-Goodrich).

208. 4 T. HITTLL, *supra* note 8, at 678; San Francisco Examiner, Mar. 20, 1880, at 1; Sarah Knox-Goodrich, *Annual Meeting, American Women Suffrage Association: California Report*, Dec. 25, 1880, at 410, col. 5.

209. As the legislature elected to implement (or dismantle, depending on one's politics) the new constitution, the 1880 session is of great historical interest. Only extreme self-restraint has kept the account to a few paragraphs. As with the rest of the story, newspapers are the major source. The San Francisco papers, the *Alta*, *Call*, *Chronicle* and *Examiner* covered the woman suffrage debates fully. Another very helpful source on the participants is PEN PORTRAITS, *supra* note 178.

Foltz's remark about the black book of opponents, maintained "in case they ever come up for office again," was reported in the *San Francisco Chronicle*, Sept. 9, 1880, at 1 (reporting the annual meeting of the State Equal Suffrage Association).

A couple of the warmest advocates of the Woman Lawyer's Bill in 1878, William B. May and Grove L. Johnson, were re-elected to this legislature and logically extended their arguments to suffrage. See Babcock, *supra* note 9, at 689-94 (Johnson was re-elected to the Assembly in 1878 and to the Senate in 1880). May "cited the success of women in the medical profession as one reason for his support of the Bill." *Id.* at 692 n.99 (citation omitted).

The newspapers treated Assembly passage as the key to success, and assumed the Senate would follow its course. See, e.g., San Francisco *Alta*, Mar. 16, 1880, at 1.

210. Sketchbook of the 1880 California Legislature (available Bancroft Library, University of California at Berkeley). As another indication of Foltz's strong presence, the account of a speech by one opponent is followed by the observation: "The frowning gaze of Miss Gordon, and the dignified but cold, sarcastic glance of Mrs. Foltz will haunt him to his grave " San Francisco Examiner, Mar. 20, 1880, at 2.

Foltz submitted the same brief (with only minor editorial changes) to the legislature of 1883 (available at Huntington Library, San Marino, California (Pamphlets, v. 126, 1880 brief), California State Library, Sacramento, California (1883 brief)). The brief argues basically that the new constitution specifically lists those categories of persons who may not be voters (e.g., Chinese persons, insane and incompetent persons) thus leaving other classes of potential voters to legislative discretion. This is the same argument that won the right for women to practice law in Indiana. *In re Leach*, 134 Ind. 665, 670 (1893).

As the *Chronicle* pointed out, it was difficult to argue that woman suffrage, even limited to school matters, could be accomplished by the legislature alone, especially given the repetition three times in Article II (suffrage) of the word "male." San Francisco Chron., Jan. 20, 1880, at 2.

Another argument advanced (but not by Foltz in her brief at least) for suffrage was based on Section 21 of Article I (the Bill of Rights). It forbids the granting of privileges or immunities to any citizen or class of citizens, except on the same terms as all other citizens. San Francisco Alta, Mar. 20, 1880, at 1 (account of the debate of March 19 in which several proponents of woman suffrage made this argument); see also 3 HISTORY OF WOMAN SUFFRAGE, *supra* note 55, at 759 ("a section in the bill of rights, together with other provisions in the new constitution, renders it quite probable that the legislature has the right to enfranchise women").

Finally, some woman suffrage supporters tried to enlist section 18 of the Miscellaneous Subjects article to argue that the right to vote for office-holders followed from the right to hold office guaranteed against discrimination on account of sex. San Francisco Chron., Mar. 7, 1880 (reporting Equal Rights Party meeting).

211. The three evenings that woman suffrage was debated were March 11, 19 and 24 in 1880. The newspapers carried detailed stories of the debates on the following day. The women spoke on the first night. Of Madge Morris, who will appear again in Foltz's story, 3 HISTORY OF WOMAN SUFFRAGE, *supra* note 55, in 1881, it was said that she had made "a place for herself in light literature."

212. M. MORRIS, THE LURE OF THE DESERT AND OTHER POEMS 90 (1917) (poem entitled "To Clara Shortridge Foltz"). (From internal evidence in other stanzas about the age of her children, as well as the poem's quotation as early as 1883, it seems clearly to refer to the 1880 legislature.)

213. *Sonnet*, *supra* note 57.

214. E. DUBois, *supra* note 41, at 46-47, eloquently summarizes the larger messages of the women suffragists:

[W]oman suffrage constituted a serious challenge to the masculine monopoly of the public sphere. [T]he prospect of enfranchisement was uniquely able to touch all women, offering them a public role and a relation to the community unmediated by husband or children. [T]he suffrage demand carried its implications into the family as well and raised the specter of sexual equality there.

215. Zilfa Estcourt, *Ladies of the Law*, San Francisco Chron., July 2, 1939, at 5 (The writer described the women lawyers attending an American Bar Association meeting and recalled an interview with Foltz in 1933, a year before her death.)

216. See J. HURST, *supra* note 152 (After 1830, state constitutions filled with increasing amounts of specific legislation. Often these enactments were the products of interest-group conflicts.); Dodd, *The Function of a State Constitution*, 30 POL. SCI. Q. 201 (1915); M. Kellor, *The Politics of State Constitutional Revision, 1820-1930*, in THE CONSTITUTIONAL CONVENTION AS AN AMENDING DEVICE 67, 75-77 (K. Hall, H. Hyman, L. Sigal eds. 1981); Crain & Tollison, *Constitutional Change in an Interest-Group Perspective*, 8 J. LEGAL STUD. 165 (1979); Scheiber, Book Review, 23 STAN. L. REV. 1029 (1971) (Model of policy development portrays coalitional groups "organizing on the basis of collective self-interest, variously defined as regional or local, functional, ideological, or narrowly political.").

Documents formed under these group pressures tended less toward broad pronouncements and more toward specific, virtually legislative, responses—the women's anti-discrimination sections are a good example.

217. *A Test Case*, San Francisco Call, Feb. 19, 1880, at 1. The court recognized the question in Brewer's case as novel and convened all the trial court judges to hear it, noting that the women's employment section "exists in no other Constitution but that of California." Alexander Campbell, a delegate to the Convention, was called to explain the section's intent. He said it was to "place women on a perfect equality with men in all avocations in life." Campbell also noted that if dance houses and dives were unlawful, they should be prohibited to both men and women. If not, both sexes should be able to work there. Then the court turned to Laura Gordon, "a member of the bar who was present and the lady made an address that was applauded." She said the purpose of the new section was to guarantee women all rights possessed by men. The court held the dive ordinance unconstitutional. A year later, the California Supreme Court mirrored this opinion in the case of a barmaid. *In re Mary McGuire*, 57 Cal. 604 (1881).

218. DEBATES, *supra* note 10, at 1012 (Non-Partisan Filcher, a newspaperman from Placer County, quoting an extract from the *Indianapolis Journal* of the views of S.H. Winsor). He added that "this same lady and a school teacher in their buggies [drove] colored men and

women, and even known harlots to and from the polls." *Id.* The Wyoming experience was contested in the papers with suffragists offering evidence of great regularity and beneficial effect when women voted. *See, e.g., How Women Vote*, San Francisco Chron., Dec. 28, 1878, at 4 (Mrs. Matilda Hindman claims woman suffrage a success in Wyoming: "men do not spit on the sidewalk along which woman voters pass mothers trundle their baby carriages up to the polling places."). Steele (a proponent of woman suffrage) took up Hindman's testimony about Wyoming, *DEBATES, supra* note 10, at 1015-16, as Blackmer also did earlier. *Id.* at 1005.

When she first started lecturing on suffrage, Clara Foltz had written to the Chief Justice of the Wyoming Territory to inquire how it worked. He replied that the "experiment had been too brief" to say whether "we have elevated society to a higher plane," but added:

Our best and most prominent ladies go to the polls, and carry with them the elevating atmosphere and influence which surrounds them everywhere [Woman suffrage] is slowly lifting us to a better and purer condition of public morality. The great wrong and injustice of class legislation, of disfranchising one-half and clearly the best half of all the citizens, is no longer working out upon us its inevitable evils.

San Jose Weekly Mercury, Apr. 5, 1877, at 2. Eli Blackmer, in arguing for woman suffrage, also quoted from Chief Justice Kingman in an 1872 letter. *DEBATES, supra* note 10, at 1005.

219. 3 *HISTORY OF WOMAN SUFFRAGE, supra* note 55 (epigram of E. DuBois, *supra* note 41). (Stanton quote). Thomas McFarland, one of the main suffrage proponents at the Convention, said of Elizabeth Cady Stanton's lobbying:

Is there any right, or justice, or decency, in a law which gives the elective franchise to the most ignorant, debased, and brutal man in the land, whether born here or abroad, and denies it to Mrs. Stanton, a cultivated and intellectual woman, descended from revolutionary forefathers, and able to go before a committee of the United States Senate and make an argument on constitutional law that would have done credit to any gentleman on this floor or in this nation?

*DEBATES, supra* note 10, at 1004; Sacramento Record-Union, Feb. 26, 1879, at 2.