

The people, in their sovereignty, had and have the right to prescribe qualifications for electors and the elected.

They have done this in the Constitution of the United States, and of the State of New York.

...

Under the Constitution of the State of New York, the defendant clearly had no right to vote. Nothing in the Constitution of the United States, except the Fifteenth Amendment, takes from the respective States the right to prescribe the qualifications of its voters.

...

The Fifteenth Amendment, takes from the United States and the respective States, the right to prescribe qualifications in regard to voting, only “on account of race, color, or previous condition of servitude”—leaving them untrammelled as to sex, and other qualifications.

From the principle applied in the construction of statutes, to ascertain the meaning of Legislatures, it must be held that the adoption of the Fourteenth Amendment did not in any respect take from the States the power to regulate the qualifications of voters, so far as sex is concerned, if at all.

Susan B. Anthony’s speech before the circuit court

On June 19, after he denied a defense motion for a new trial, Justice Ward Hunt posed a routine question of Susan B. Anthony, asked of any criminal before the pronouncement of a sentence. He offered a golden opportunity to a person who had been denied the chance to testify in her own trial and whose indignation had grown as she watched the judge direct a verdict of guilty and refuse her attorney’s motion. Anthony delivered a speech that gained instant fame. She would repeat it herself as part of many lectures in the years to come. A popular entertainer, Helen Potter, noted for her imitations, added the speech to her repertoire. She studied Anthony’s patterns of speech and stage manner, dressed herself to look like Anthony, and performed the speech across the country years after the trial. Three reports of what Anthony said survive, and none of them comes from the stenographer’s transcript of the trial. This, the longest version, is what she chose to publish herself.

[Document Source: Ann D. Gordon, ed., *Against an Aristocracy of Sex, 1866 to 1873*, vol. 2 of *Selected Papers of Elizabeth Cady Stanton and Susan B. Anthony* (New Brunswick, N.J.: Rutgers University Press, 2000), 613–16.]

Judge Hunt—(Ordering the defendant to stand up), Has the prisoner anything to say why sentence shall not be pronounced?

Miss Anthony—Yes, your honor, I have many things to say; for in your ordered

verdict of guilty, you have trampled under foot every vital principle of our government. My natural rights, my civil rights, my political rights, my judicial rights, are all alike ignored. Robbed of the fundamental privilege of citizenship, I am degraded from the status of a citizen to that of a subject; and not only myself individually, but all of my sex, are, by your honor's verdict, doomed to political subjection under this, so-called, form of government.

Judge Hunt—The Court cannot listen to a rehearsal of arguments the prisoner's counsel has already consumed three hours in presenting.

Miss Anthony—May it please your honor, I am not arguing the question, but simply stating the reasons why sentence cannot, in justice, be pronounced against me. Your denial of my citizen's right to vote, is the denial of my right of consent as one of the governed, the denial of my right of representation as one of the taxed, the denial of my right to a trial by a jury of my peers as an offender against law, therefore, the denial of my sacred rights to life, liberty, property and—

Judge Hunt—The Court cannot allow the prisoner to go on.

Miss Anthony—But your honor will not deny me this one and only poor privilege of protest against this high-handed outrage upon my citizen's rights. May it please the Court to remember that since the day of my arrest last November, this is the first time that either myself or any person of my disfranchised class has been allowed a word of defense before judge or jury—

Judge Hunt—The prisoner must sit down—the Court cannot allow it.

Miss Anthony—All of my prosecutors, from the 8th ward corner grocery politician, who entered the complaint, to the United States Marshal, Commissioner, District Attorney, District Judge, your honor on the bench, not one is my peer, but each and all are my political sovereigns; and had your honor submitted my case to the jury, as was clearly your duty, even then I should have had just cause of protest for not one of those men was my peer; but, native or foreign born, white or black, rich or poor, educated or ignorant, awake or asleep, sober or drunk, each and every man of them was my political superior; hence, in no sense, my peer. Even, under such circumstances, a commoner of England, tried before a jury of Lords, would have far less cause to complain than should I, a woman, tried before a jury of men. Even my counsel, the Hon. Henry R. Selden, who has argued my cause so ably, so earnestly, so unanswerably before your honor, is my political sovereign. Precisely as no disfranchised person is entitled to sit upon a jury, and no woman is entitled to the franchise, so, none but a regularly admitted lawyer is allowed to practice in the courts, and no woman can gain admission to the bar—hence, jury, judge, counsel, must all be of the superior class.

Judge Hunt—The Court must insist—the prisoner has been tried according to the established forms of law.

Miss Anthony—Yes, your honor, but by forms of law all made by men, interpreted by men, administered by men, in favor of men, and against women; and hence, your

honor's ordered verdict of guilty, against a United States citizen for the exercise of "that citizen's right to vote," simply because that citizen was a woman and not a man. But, yesterday, the same man-made forms of law, declared it a crime punishable with \$1,000 fine and six months' imprisonment, for you, or me, or any of us, to give a cup of cold water, a crust of bread, or a night's shelter to a panting fugitive as he was tracking his way to Canada. And every man or woman in whose veins coursed a drop of human sympathy violated that wicked law, reckless of consequences, and was justified in so doing. As then, the slaves who got their freedom must take it over, or under, or through the unjust forms of law, precisely so, now, must women, to get their right to a voice in this government, take it; and I have taken mine, and mean to take it at every possible opportunity.

Judge Hunt—The Court orders the prisoner to sit down. It will not allow another word.

Miss Anthony—When I was brought before your honor for trial, I hoped for a broad and liberal interpretation of the Constitution and its recent amendments, that should declare all United States citizens under its protecting aegis—that should declare equality of rights the national guarantee to all persons born or naturalized in the United States. But failing to get this justice—failing, even, to get a trial by a jury not of my peers—I ask not leniency at your hands—but rather the full rigors of the law.

Judge Hunt—The Court must insist—
(Here the prisoner sat down.)

Judge Hunt—The prisoner will stand up.
(Here Miss Anthony arose again.)

The sentence of the Court is that you pay a fine of one hundred dollars and the costs of the prosecution.

Miss Anthony—May it please your honor, I shall never pay a dollar of your unjust penalty. All the stock in trade I possess is a \$10,000 debt, incurred by publishing my paper—*The Revolution*—four years ago, the sole object of which was to educate all women to do precisely as I have done, rebel against your man-made, unjust, unconstitutional forms of law, that tax, fine, imprison and hang women, while they deny them the right of representation in the government; and I shall work on with might and main to pay every dollar of that honest debt, but not a penny shall go to this unjust claim. And I shall earnestly and persistently continue to urge all women to the practical recognition of the old revolutionary maxim, that "Resistance to tyranny is obedience to God."

Judge Hunt—Madam, the Court will not order you committed until the fine is paid.

Justice Ward Hunt's decision

Justice Ward Hunt ruled that Susan B. Anthony violated federal law when she voted in 1872 because the state of New York, where Anthony voted, limited the right to vote to males. Except in those few categories designated by the Constitution, New York had undisputed authority to set the rules for voting, and Anthony violated those rules. Hunt conceded that the Fourteenth Amendment established U.S. citizenship and that women were citizens. However, he dismissed Anthony's claim that the establishment of U.S. citizenship in the Fourteenth Amendment extended the right to vote to women or indeed to anyone else. Hunt's ruling began with the facts of the case and his own history of the Thirteenth, Fourteenth, and Fifteenth Amendments. Drawing on the Supreme Court's decision in the Slaughter-House cases, he distinguished citizenship of the United States from citizenship of a state and reiterated the Court's opinion that the Fourteenth Amendment protected only rights associated with U.S. citizenship. He then proceeded to discuss voting rights.

[Document Source: *United States v. Susan B. Anthony*, 24 Fed. Cases 829–33.]

The right of voting, or the privilege of voting, is a right or privilege arising under the constitution of the state, and not under the constitution of the United States. The qualifications are different in the different states. Citizenship, age, sex, residence, are variously required in the different states, or may be so. If the right belongs to any particular person, it is because such a person is entitled to it by the laws of the state where he offers to exercise it, and not because of citizenship of the United States. If the state of New York should provide that no person should vote until he had reached the age of thirty years, or after he had reached the age of fifty, or that no person having gray hair, or who had not the use of all his limbs, should be entitled to vote, I do not see how it could be held to be a violation of any right derived or held under the constitution of the United States. We might say that such regulations were unjust, tyrannical, unfit for the regulation of an intelligent state; but, if rights of a citizen are thereby violated, they are of that fundamental class, derived from his position as a citizen of the state, and not those limited rights belonging to him as a citizen of the United States; and such was the decision in *Corfield v. Coryell*.

The United States rights appertaining to this subject are those, first, under article 1, § 2, subd. 1, of the United States constitution, which provides, that electors of representatives in congress shall have the qualifications requisite for electors of the most numerous branch of the state legislature; and second, under the fifteenth amendment, which provides, that “the right of citizens of the United States to vote shall not be denied or abridged by the United States, or by any state, on account of race, color, or previous condition of servitude.” If the legislature of the state of New York should require a higher qualification in a voter for a representative in congress

than is required for a voter for a member of the house of assembly of the state, this would, I conceive, be a violation of a right belonging to a person as a citizen of the United States. That right is in relation to a federal subject or interest, and is guaranteed by the federal constitution. The inability of a state to abridge the right of voting on account of race, color, or previous condition of servitude, arises from a federal guaranty. Its violation would be the denial of a federal right—that is, a right belonging to the claimant as a citizen of the United States. This right, however, exists by virtue of the fifteenth amendment. If the fifteenth amendment had contained the word “sex,” the argument of the defendant would have been potent. She would have said, that an attempt by a state to deny the right to vote because one is of a particular sex is expressly prohibited by that amendment. The amendment, however, does not contain that word. It is limited to race, color, or previous condition of servitude. The legislature of the state of New York has seen fit to say, that the franchise of voting shall be limited to the male sex. In saying this, there is, in my judgment, no violation of the letter, or of the spirit, of the fourteenth or of the fifteenth amendment.

This view is assumed in the second section of the fourteenth amendment, which enacts, that, if the right to vote for federal officers is denied by any state to any of the male inhabitants of such state, except for crime, the basis of representation of such state shall be reduced in a proportion specified. Not only does this section assume that the right of male inhabitants to vote was the especial object of its protection, but it assumes and admits the right of a state, notwithstanding the existence of that clause under which the defendant claims to the contrary, to deny to classes or portions of the male inhabitants the right to vote which is allowed to other male inhabitants. The regulation of the suffrage is thereby conceded to the states as a state’s right.

The case of *Bradwell v. State*, 16 Wall. [83 U.S.] 130, decided at the recent term of the supreme court, sustains both of the positions above put forth, viz., first, that the rights referred to in the fourteenth amendment are those belonging to a person as a citizen of the United States and not as a citizen of a state; and second, that a right of the character here involved is not one connected with citizenship of the United States. Mrs. Bradwell made application to be admitted to practice as an attorney and counsellor at law in the courts of Illinois. Her application was denied, and, upon a writ of error, it was held by the supreme court, that, to give jurisdiction under the fourteenth amendment, the claim must be of a right pertaining to citizenship of the United States, and that the claim made by her did not come within that class of cases. Justices Bradley, Swayne, and Field held that a woman was not entitled to a license to practice law. It does not appear that the other judges passed upon that question. The fourteenth amendment gives no right to a woman to vote, and the voting by Miss Anthony was in violation of law.

If she believed she had a right to vote, and voted in reliance upon that belief, does that relieve her from the penalty? It is argued, that the knowledge referred to in the act relates to her knowledge of the illegality of the act, and not to the act of

voting; for, it is said, that she must know that she voted. Two principles apply here: First, ignorance of the law excuses no one; second, every person is presumed to understand and to intend the necessary effects of his own acts. Miss Anthony knew that she was a woman, and that the constitution of this state prohibits her from voting. She intended to violate that provision—intended to test it, perhaps, but, certainly, intended to violate it. The necessary effect of her act was to violate it, and this she is presumed to have intended. There was no ignorance of any fact, but, all the facts being known, she undertook to settle a principle in her own person. She takes the risk, and she can not escape the consequences. It is said, and authorities are cited to sustain the position, that there can be no crime unless there is a culpable intent, and that, to render one criminally responsible a vicious will must be present. A. commits a trespass on the land of B., and B., thinking and believing that he has a right to shoot an intruder upon his premises, kills A. on the spot. Does B.'s misapprehension of his rights justify his act? Would a judge be justified in charging the jury, that, if satisfied that B. supposed he had a right to shoot A., he was justified, and they should find a verdict of not guilty? No judge would make such a charge. To constitute a crime, it is true that there must be a criminal intent, but it is equally true that knowledge of the facts of the case is always held to supply this intent. An intentional killing bears with it evidence of malice in law. Whoever, without justifiable cause, intentionally kills his neighbor, is guilty of a crime. The principle is the same in the case before us, and in all criminal cases. The precise question now before me has been several times decided, viz., that one illegally voting was bound and was assumed to know the law, and that a belief that he had a right to vote gave no defence, if there was no mistake of fact. [Here Hunt cited five cases from courts in various states.] No system of criminal jurisprudence can be sustained upon any other principle. Assuming that Miss Anthony believed she had a right to vote, that fact constitutes no defence, if, in truth, she had not the right. She voluntarily gave a vote that was illegal, and thus is subject to the penalty of the law.

The Fourteenth and Fifteenth Amendments (excerpts)

No advocates of woman suffrage in the 1870s argued that Congress intentionally enfranchised women with the Fourteenth and Fifteenth Amendments to the Constitution of the United States. Indeed, they knew that Congress added the word "male" to the Fourteenth Amendment to protect the congressional representation of all the states that counted women in their population but would not allow them to vote. Instead, woman suffragists relied on the words themselves and raised the question, had Congress done so despite itself? At issue were sections one and two of the Fourteenth Amendment and section one of the Fifteenth Amendment. In United States v. Susan B. Anthony, Henry R. Selden joined an ongoing debate about the amendments' meaning and reminded the court that "very able men have expressed contrary opinions on