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From the Editor-in-Chief

Dear Members,

After 13 years, Henry M. Greenberg has ceded the editorship of the Historical Society's flagship publication *Judicial Notice* to me. The eleven editions edited by Hank have established our publication as a premier source of scholarly articles about New York's rich legal/judicial history.

Since 2017 marks the 100th anniversary of women's suffrage in New York State and the 200th anniversary of The Final Emancipation Act leading to the end of slavery in New York, this edition of *Judicial Notice* commemorates those milestones with articles on three trailblazing women, an article on the Married Women's Property Act of 1848, and an article on the 1817 Emancipation Act. This issue also contains a story about our first president from New York.

After participating in a successful program, which is available online at nycourts.gov/history, focusing upon exceptional women from upstate and western New York co-sponsored by the Historical Society, SUNY Buffalo Law School, and Phillips Lytle LLP, Hon. Erin M. Peradotto, Michelle Henry, and Michael B. Powers have contributed vignettes about three of those women. Justice Peradotto writes about the inspiring story of Belva Lockwood, born in 1830 in Niagara County, who fought for suffrage rights, became first woman to be admitted to practice before the United States Supreme Court, and ran for president on the Equal Rights Party ticket in 1888. Michelle Henry recounts the life of Kate Stoneman who was born in Chautauqua County in 1841, was also a suffragist, and became the first female graduate of Albany Law School in 1898. Michael Powers describes an outstanding lawyer of a later but still unenlightened generation, Charlotte Smallwood-Cook, who became the first woman District Attorney in New York in 1949, having been elected from Wyoming County.

Hon. Richard Dollinger discusses the male lawyers and judges, one of whom was the father of Elizabeth Cady Stanton, who were instrumental in removing the strictures that prevented married women from owning property until 1848. Craig Landy's article reminds us that New Yorkers were slaveholders well after the adoption of the United States Constitution and that it took the persistence of reformers to achieve abolition. While 1817 marks passage of the bill that ended slavery, it was not until July 4, 1827 that the remaining 3,000 to 12,000 enslaved persons achieved complete freedom.

Finally, I have written about Martin Van Buren, a leading lawyer and pivotal figure in New York State politics in the first part of the 19th century. An ardent Jeffersonian, he was an effective dealmaker in New York and nationally, and a slaveholder who voted for Emancipation in the New York legislature before becoming the first president to hail from our state.

The Board of Trustees of the Historical Society of the New York Courts joins the entire legal community in mourning the untimely loss of Court of Appeals Judge Sheila Abdus-Salaam.

We welcome Allison Morey as a new associate editor, are grateful to David Goodwin for his continued editorial service, and are delighted with the graphic design work of Nick Inverso, graphic designer with the NYS Unified Court System's Graphics Department.

- Helen E. Freedman

Suffragists marching in New York, 1913. Library of Congress, Prints & Photographs Division, LC-B201-3643-12

JUDICIAL INTERVENTION:

THE JUDGES WHO PAVED THE ROAD TO SENECA FALLS IN 1848

by Hon. Richard A. Dollinger

Hon. Richard A. Dollinger is a member of the New York Court of Claims and an acting Supreme Court Justice in Monroe County. The author wishes to thank Robert Emery of the Albany Law School library staff; Linda Marshall, the archivist at the Ogdensburg Public Library; Kate Balassie, Legislative Librarian at the New York State Legislative Library; and Vasiliki Economou, a third year student at the University of Buffalo Law School for their assistance in the preparation of this article.

The road to women's rights and equality ran through Seneca Falls, New York in July, 1848. But the bricks and mortar for that movement were laid in the previous decade by a courageous group of former and future judges. These New Yorkers, acting as advocates, challenged centuries of English common law to provide the legal foundation for new rights for women, in an environment almost unimaginable today: women had few rights, married women had almost none and no woman could vote.

In the decade before Seneca Falls, New York changed rapidly. The completion of the Erie Canal created a new economic powerhouse for western New York's agricultural regions. New rail lines, traversed by steam locomotives, opened up western New York, creating pockets of new wealth. New religious utopian societies, stirred by the Second Awakening and the revival talents of Charles Finney, ignited religious fervor. Slavery, outlawed in New York in 1827, kindled debates over property, freedom and equality in the parlors of newly-prosperous lawyers in the state. Rapidly spreading telegraph lines brought news of change to towns and villages in New York. Newly-invented rotary printing presses made printing less expensive and widespread literacy meant that families across New York could read the events of the day. Pamphlets on controversial topics multiplied. Newspaper circulation nationwide doubled between 1820 and 1840.

Despite these changes, the legal landscape of women's rights in New York prior to 1848 was governed by coverture, the centuries-old English common law rule that dictated that when a woman married, her husband acquired the right to all her property. The husband could pledge the property to creditors, sell it or otherwise dispose of it. A wife could not enter into a contract without her husband's consent.[1] A married woman had no control over the custody of her children.[2] As the authors of the Seneca Falls Declaration of Sentiments noted, under coverture, a married woman was "civilly dead."[3]

Two other legal rules enchained women. First, New York, starting in 1777, permitted divorce but only for adultery.[4] Divorces were few and far between: a married woman was virtually trapped in marriage forever.[5] Second, if a woman about to be married anticipated a large family bequest or gift, the couple could enter into a prenuptial settlement agreement, but

Judicial Intervention

her would-be husband had to approve it—he held a veto power—and the title to the transferred wealth had to be held by a trustee. Under this trust alternative, the wife's inheritance did not pass to the husband.

The New York equity courts simply implemented the English common law, which disfavored both divorce and a married women's rights to any property.[6] Most New Yorkers, however, viewed equity courts as fortresses of privilege for wealthy New York families who could afford the expense of such trust documents to protect property rights for their wives and married daughters. To redress this growing inequity—wealth transfers for the aristocrats and coverture for the less fortunate—the Legislature, starting in 1828, began to dismantle coverture by broadening some powers for women in trusts. But the changes were slow and protection for married women, via trusts administered by the courts, was minimal at best.[7]

In this uncertain milieu, two lawyers—one a longstanding judge and the other a soon-to-be judge—ignited the debate over the status of women. Thomas Herttell was a child of the American Revolution, born in 1771. He was eventually appointed as a judge of the New York Marine Court, the predecessor to the City Court of New York. A prolific pamphleteer, Herttell was inspired by his friend, Common Sense author Thomas Paine, whose pamphlets stoked the revolutionary passions of colonists.

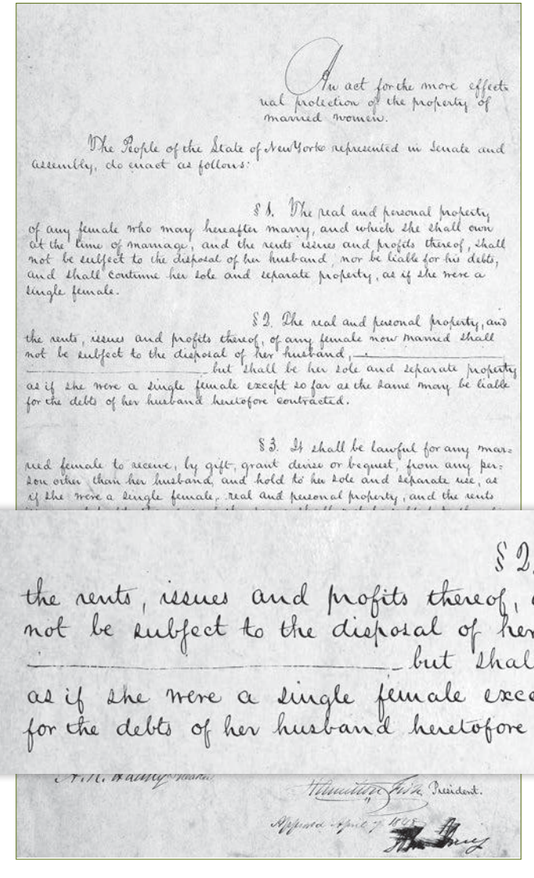
In 1836, Herttell was elected to the state Assembly.[8] A year later, Herttell introduced a bill providing that all property, both real and personal, owned by a woman at the time of marriage or acquired in her own name after marriage, would remain her own. He gave a fiery speech on the floor of the Assembly in favor of the bill. Later, adapting the text of the speech, he published *The Right of Married Women to hold and Control Property Sustained by the Constitution of the State of New York*. Curiously, given its support for the right of women to own and bequeath property, the pamphlet was financed by a bequest from his deceased wife's will.[9] Herttell channeled the passions of Thomas Paine to argue that the bill was needed to "rationalize the state's laws on equitable trusts." The common law trust concept was "inadequate to meet the needs for wives to have access to resources bequeathed to them by their father." Herttell denounced coverture as a "post-independence vestige" of the "dark ages" of "human vassalage." Herttell also waded into the passions of the growing abolition movement; coverture, he argued, was "uncomfortably close to Negro slavery," condemned by most New Yorkers and outlawed in New York in 1827. "Only her husband's inability to sell her outright saved her from the status of an unqualified slave," Herttell asserted. The new changes in his bill, Herttell noted, would subdue "superstitious mummery."[10]

Herttell acquired an unlikely ally. Ernestine Rose, a newly-arrived Polish Jewish immigrant, circulated a petition in the tenements of New York City seeking support of the Herttell bill. Rose, who achieved prominence in the suffragette movement during the remainder of the 19th Century, recalled that she had a "good deal of trouble" getting women to sign the petition. Only six women signed it. Rose later said, "Some of the ladies said the gentleman would laugh at them; others that they had rights enough and the men said the women had too many rights already."[11] Rose took the petition herself to Albany in 1838 and presented it to the Assembly. It was the first petition—but not the last—asking New York's legislature to give women equal rights.

Herttell's bill never emerged from the Assembly. But his bill—and his pamphlet—sparked the debate over women's rights. As one commentator aptly noted: although voiced before, these "arguments [by Herttell] acquired legitimacy in the hands of this respected legislator jurist."[12]

The fire for women's rights had another soon-to-be judicial advocate, although he considered himself a reluctant father of the movement. Daniel Cady, by personal experience as a father and lawyer, understood the impact of women's property rights laws: his three sons died before adulthood, leaving him with four daughters. Cady, whose career included cases with Alexander Hamilton, Aaron Burr and Abraham Lincoln, became one of the state's wealthiest men. He tutored law students who often teased his daughter about her powerlessness under the law. One student, according to Stanton's later account, told her that if he were her husband, the young girl's Christmas gift of a necklace would be his property and he could exchange the jewelry for cigars and she could "watch them evaporate in smoke."[13] The young daughter became the family firebrand and when she overheard a conver-

Victoria Claflin Woodhull reading an argument in favor of women's suffrage to the Judiciary Committee of the House of Representatives, 1871.
Library of Congress, Prints & Photographs Division, LC-USZ62-2023


An act for the more effectual protection of the property of married women.

The People of the State of New York represented in Senate and Assembly, do enact as follows:

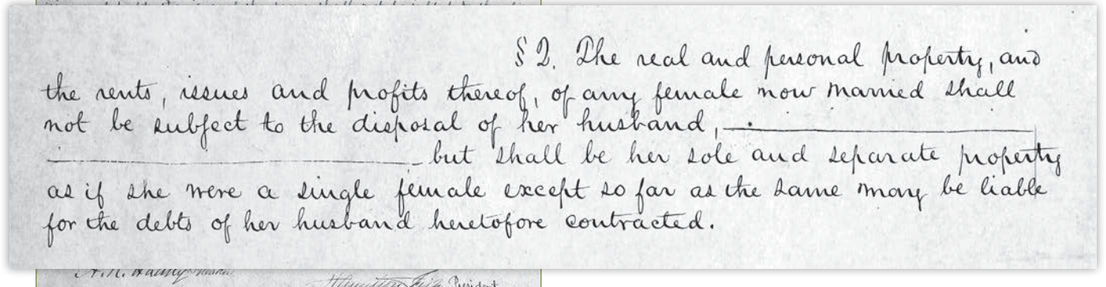
§ 1. The real and personal property of any female who may hereafter marry, and which she shall own at the time of marriage, and the rents issues and profits thereof, shall not be subject to the disposal of her husband, nor be liable for his debts, and shall continue her sole and separate property, as if she were a single female.

§ 2. The real and personal property, and the rents, issues and profits thereof, of any female now married shall not be subject to the disposal of her husband, but shall be her sole and separate property as if she were a single female except so far as the same may be liable for the debts of her husband heretofore contracted.

§ 3. It shall be lawful for any married female to receive, by gift, grant devise or bequest, from any person other than her husband, and hold to her sole and separate use, as if she were a single female, real and personal property, and the rents

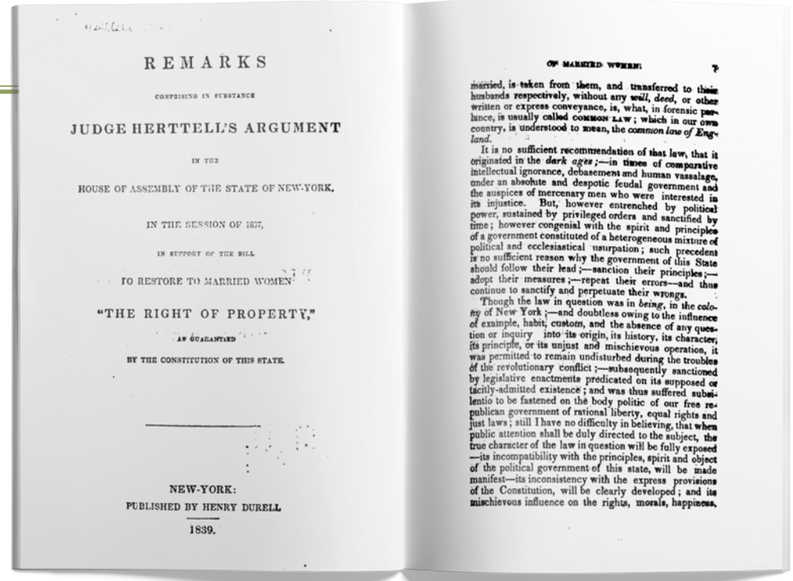
President.

Portrait of Ernestine Rose. Published in *History of Woman Suffrage*, eds. Elizabeth Cady Stanton, Susan B. Anthony, and Matilda Joslyn Gage


§ 2. The real and personal property, and the rents, issues and profits thereof, of any female now married shall not be subject to the disposal of her husband, but shall be her sole and separate property as if she were a single female except so far as the same may be liable for the debts of her husband heretofore contracted.

Laws of 1848, Chapter 200: married women can own property without it belonging to their husbands. New York State Archives, New York (State), Dept. of State, Bureau of Miscellaneous Records, Enrolled acts of the State Legislature, Series 13036-78, Laws of 1848, Chapter 200

It is no sufficient recommendation of thas law, that it originated in the dark ages;–in times of comparative intellectual ignorance, debasement and human vassalage…



REMARKS

COMPRISING IN SUBSTANCE

JUDGE HERTTELL'S ARGUMENT

IN THE

HOUSE OF ASSEMBLY OF THE STATE OF NEW-YORK,

IN THE SESSION OF 1837,

IN SUPPORT OF THE BILL

TO RESTORE TO MARRIED WOMEN

"THE RIGHT OF PROPERTY,"

AS GUARANTEED

BY THE CONSTITUTION OF THIS STATE.

NEW-YORK:
PUBLISHED BY HENRY DURELL.
1839.

OF MARRIED WOMEN. 7

married, is taken from them, and transferred to their husbands respectively, without any *writ, deed*, or other written or express conveyance, is, what, in forensic parlance, is usually called COMMON LAW; which in our own country, is understood to mean, the *common law of England*.

It is no sufficient recommendation of that law, that it originated in the *dark ages*;—in times of comparative intellectual ignorance, debasement and human vassalage, under an absolute and despotic feudal government and the auspices of mercenary men who were interested in its injustice. But, however entrenched by political power, sustained by privileged orders and sanctified by time; however congenial with the spirit and principles of a government constituted of a heterogeneous mixture of political and ecclesiastical usurpation; such precedens is no sufficient reason why the government of this State should follow their lead;—sanction their principles;—adopt their measures;—repeat their errors—and thus continue to sanctify and perpetuate their wrongs.

Though the law in question was in *being*, in the *colony* of New York;—and doubtless owing to the influence of example, habit, custom, and the absence of any question or inquiry into its origin, its history, its character, its principle, or its unjust and mischievous operation, it was permitted to remain undisturbed during the troubles of the revolutionary conflict;—subsequently sanctioned by legislative enactments predicated on its supposed or tacitly-admitted existence; and was thus suffered subsilentio to be fastened on the body politic of our free republican government of rational liberty, equal rights and just laws; still I have no difficulty in believing, that when public attention shall be duly directed to the subject, the true character of the law in question will be fully exposed —its incompatibility with the principles, spirit and object of the political government of this state, will be made manifest—its inconsistency with the express provisions of the Constitution, will be clearly developed; and its mischievous influence on the rights, morals, happiness,

The Right of Married Women to hold and Control Property Sustained by the Constitution of the State of New York by Thomas Herttell, 1837.
Courtesy of HathiTrust

sation between a married woman and her father, in which the lawyer advised his married client that she had no recourse under the common law for the profligate ways of her husband, Elizabeth vowed to destroy those laws by tearing the pages out of his law books. Alerted to his young daughter's intentions, Daniel Cady, presciently advised her:

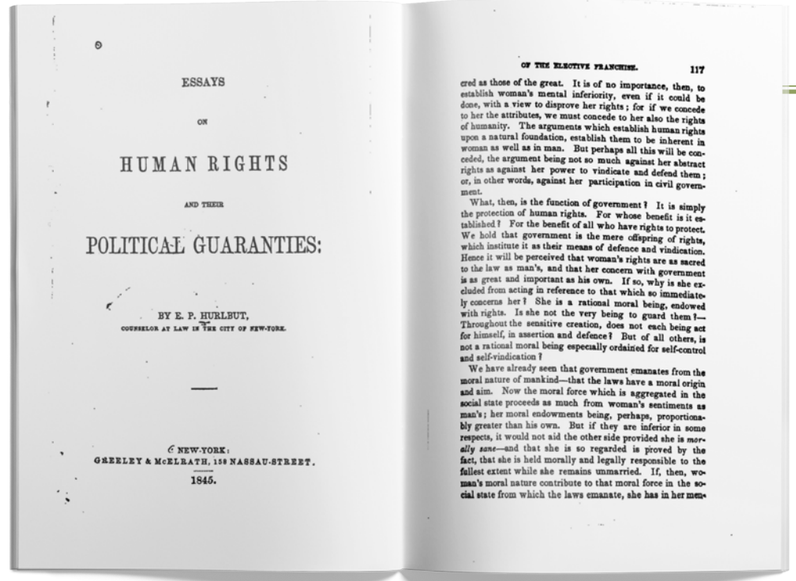
> *When you are grown up, and able to prepare a speech, you must go down to Albany and talk to the legislators; tell them all you have seen in the office—the sufferings of these Scotchwomen . . . if you can persuade them to pass new laws, these old ones will be a dead letter.*

Stanton described the laws as "abominable," and later wrote: "thus was the future object of my life foreshadowed and my duty plainly outlined."[14] Cady was eventually elected a justice of the state newly-formed Supreme Court in 1847 and served as an ex-officio member of the Court of Appeals.[15] While an indelible influence on his daughter, Cady never supported his daughter's activism: upon learning of her speech to the state Legislature in 1854, he threatened to disinherit her. Stanton, herself, described his reaction as a "terrible scourging."[16] But the lessons of women's inequality, overheard in the future judge's office, were stamped on his daughter's conscience.

In the 1840s, bills related to women's property rights flooded the legislature. But despite the public debate, the all-male legislature resisted the lobbying, even by Ms. Stanton and her allies. The Assembly Judiciary Committee declared in 1844: "laws and customs which have stood the test of time should not be changed without due consideration or for slight causes."[17] As one commentator noted, the Assembly's declaration at this time was a potent remainder that "any change would take away power and authority from the state's key stakeholders, married white males.[18]

The clarion call for women's rights echoed down the Hudson, catching the attention of a New York City lawyer Elisha P. Hurlbut, who authored a much publicized pamphlet in 1845. In his *Essays on Human Rights and Their Political Guaranties*, Hurlbut argued that "women's rights are as sacred to the law as men's" and "her concern with government is as great and important as his own."[19] Hurlbut noted that "women have suffered enough from the barbarous tyranny of the common law."[20] He added that marriage was uncertain bargain because a wife exchanged "her worldly estate for that most uncertain estate—a man."[21] Hurlbut became a friend of Daniel Cady and his family. At least one commentator noted that "spen[ding] sub-

"Hence it will be perceived that woman's rights are as sacred to the law as man's, and that her concern with government is as great and important as his own."



ESSAYS

ON

HUMAN RIGHTS

AND THEIR

POLITICAL GUARANTIES:

BY E. P. HURLBUT,
COUNSELLOR AT LAW IN THE CITY OF NEW-YORK.

NEW-YORK:
GREELEY & McELRATH, 159 NASSAU-STREET.
1845.

OF THE ELECTIVE FRANCHISE. 117

cred as those of the great. It is of no importance, then, to establish woman's mental inferiority, even if it could be done, with a view to disprove her rights; for if we concede to her the attributes, we must concede to her also the rights of humanity. The arguments which establish human rights upon a natural foundation, establish them to be inherent in woman as well as in man. But perhaps all this will be conceded, the argument being not so much against her abstract rights as against her power to vindicate and defend them; or, in other words, against her participation in civil government.

What, then, is the function of government? It is simply the protection of human rights. For whose benefit is it established? For the benefit of all who have rights to protect. We hold that government is the mere offspring of rights, which institute it as their means of defence and vindication. Hence it will be perceived that woman's rights are as sacred to the law as man's, and that her concern with government is as great and important as his own. If so, why is she excluded from acting in reference to that which so immediately concerns her? She is a rational moral being, endowed with rights. Is she not the very being to guard them?—Throughout the sensitive creation, does not each being act for himself, in assertion and defence? But of all others, is not a rational moral being especially ordained for self-control and self-vindication?

We have already seen that government emanates from the moral nature of mankind—that the laws have a moral origin and aim. Now the moral force which is aggregated in the social state proceeds as much from woman's sentiments as man's; her moral endowments being, perhaps, proportionably greater than his own. But if they are inferior in some respects, it would not aid the other side provided she is *morally sane*—and that she is so regarded is proved by the fact, that she is held morally and legally responsible to the fullest extent while she remains unmarried. If, then, woman's moral nature contribute to that moral force in the social state from which the laws emanate, she has in her men-

Elisha P. Hurlbut's pamphlet Essays on Human Rights and Their Political Guaranties, 1845.
Courtesy of The Internet Archive

stantial time with Hurlbut clearly affected [Stanton's] development as a leader in the women's rights movement."[22] Stanton later referred to Hurlbut's essay as "a profound work on human rights." The authors of the declaration of Sentiments at Seneca Falls in July 1848 "followed Hurlbut" in all their examples.[23] In 1847, he was elected to state Supreme Court along with Daniel Cady and eventually he sat as an ex-officio member of the Court of Appeals.

Meanwhile, the Legislature's failure to implement married women's property right left New Yorkers with one other choice: in 1845, the voters approved a constitutional convention. When the convention convened in 1846, the main advocate was another future judge. Ira Harris was a Whig and Albany lawyer who later founded Albany Law School. He advanced a married women's property proposal to the floor of the convention in language that parroted Herttell's 1837 bill. As a widower, Harris argued in favor of the bill "as a father, anxious to secure to his own [daughter] the little benefit that he might have."[24] Others argued that the bill would cure "many enormities that had been inflicted on females by their worthless husbands."[25] The proposal drew immediate fire; Charles O'Conor,[26] a bachelor Democratic lawyer from New York City, unsuccessfully pushed to delay the convention vote. On October 2, 1846, the convention approved the married women's property rights provision into the proposed state constitution by a vote of 58-44. The New York Evening Post said the new constitutional provision meant marriage would "no longer work a complete civil annihilation of women."[27]

Ultimately, the concept of married women's property rights as a constitutional right in New York would not prevail. Three days after its convention approval, O'Conor moved to reconsider the amendment. O'Conor invoked as an imminent threat the end of domestic tranquility, adding that a wife with a "separate estate might rival her husband in trade or become a partner for his rival." He said the proposal was "like the serpent's tale to the first woman." The amendment, enshrined in the constitution, would lead to the "subversion of the felicity of the marital state" and there was "no true American who desired to see the condition of marital relations changed."[28] Former New York City Mayor Robert Morris—who later became a Supreme Court judge—tried to rally support for the amendment, citing the cases where "females who had brought property to their husbands had been made beggars by the profligacy of the men whose duty it was to sustain and comfort them."[29] In response, one delegate described the amendment as "as strumpet provision that would justly alarm the country."[30] After a long debate, several delegates in

Elizabeth Cady Stanton and her daughter Harriot in 1856.
Library of Congress, Prints & Photographs Division, LC-USZ62-48965

the all-male convention switched their votes and the measure was defeated.[31]

Despite the convention defeat, the momentum women's property rights continued unabated. Ms. Stanton and her colleagues had circulated petitions for many years and she acknowledged she had other allies: leaders of the Dutch aristocracy who desired to see their lifelong accumulations descend to their daughters and grandchildren rather than pass into the hands of dissipated, thriftless sons-in-law.[32] In the 1847 state election, the Whigs, cobbling together a coalition of future Republicans, for the first time gained substantial majorities in both houses of the state legislature.[33] The prospect for women's rights was brighter and women began to pressure the Whigs to deliver.

In 1847, a widely-circulated pamphlet from Ogdensburg in northern New York breathed new fire into the married women's property rights movement. The author, John Fine, became St. Lawrence County's first judge in 1824, a position he held for more than 20 years. His 1847 pamphlet, *Lecture Delivered Before the Ogdensburg Lyceum on the Political Rights of Women*,[34] argued that women's rights were founded on the Declaration of Independence and "freedom's golden rule" that all are created free and equal. He added: "none should ever be allowed to restrict its universality." Women, as well as men, are entitled to its "full enjoyment of its practical blessings."[35]

John Fine ran against Daniel Cady in 1847 for a seat on the newly created state Supreme Court. Cady won.[36] In turn, Judge Fine ran for the state Senate and became Senator Fine in 1848. As his first and only major legislation, he introduced a bill in the Senate in January, 1848 for a married woman's property rights act. Fine's bill paralleled the proposal from the constitutional convention but addressed the need to end the oppression of coverture for already married women by mandating retroactive application of the statute to women who were already married. In essence, Fine's bill would have repealed common law coverture for the already married woman and restored their pre-marriage or inherited property to them. Like Judge Harris before him, Judge Fine had personal reasons for introducing such a bill. His wife had brought property of her own into the marriage and he had experienced great difficulty in trying to keep it separate from his own.[37]

With the bill introduced, women pressured the new legislature. In March 1848, forty-four "ladies" (married, as they were clear to assert) petitioned the legislature from the towns of Darien and Covington in Genesee and Wyoming counties, New York. Their petition argued, with potent sarcasm:

> *That your Declaration of Independence declares, that governments derive their just powers from the consent of the governed. And as women have never consented to, been represented in, or recognized by this government, it is evident that in justice no allegiance can be claimed from them.*

The women argued that the legislature should "abolish all laws which hold married women more accountable for their acts than infants, idiots and lunatics."[38] On February 23, 1848, Senator George Geddes submitted a petition from 300 voters (all male) in Syracuse supporting the bill. Geddes, like Harris and Fine before him, had a special interest in the bill: he had a young daughter and feared that he might die in middle age, leaving her without financial protection.

The measure was so radical and so extreme, noted Senator Geddes, that even "its friends had doubts; but the moment any important amendment was offered, up rose the whole question of women's proper place in society." Gender relationships as defined in New York State law seemed too big a question to tackle piecemeal, but Geddes and Fine saw no other alternative. "We meant to strike a hard blow," Geddes later confessed, "and if possible shake the old system of laws to their foundations and leave it to other times and wiser councils to perfect a new system."[39] The bill passed the Senate on March 29, 1848 by the margin of 28 to 1. In the Assembly, the bill passed virtually without debate by a large margin. Governor Young signed the bill into law on April 7, 1848.

Less than three months later during the Seneca Falls convention, Ms. Stanton acknowledged the impact of the newly-minted law. The new statute:

> *Encouraged action on the part of women, as the reflection naturally arose that if men who make the laws were ready for some onward step, surely the women themselves should express some interest in the legislation.*[40]

The high hopes of New York's women for an immediate change in their property rights were dashed by members of the same institution which brought it to life. State judges—and even one of its promoters in the constitutional convention—were less than receptive when the new law found its way into the courts. In May 1848, six weeks after passage of the law and before the Seneca Falls declaration, now-Justice Ira Harris, who carried the debate in the constitutional convention, heard a case in which a wife sought separation because of cruel and inhuman treatment. In her action, she claimed title to a house she owned prior to the marriage. Judge Harris declined to give the wife the property, holding that the statute did not affect property acquired by the husband under coverture and prior to the Act.[41] Later in 1848, a Supreme Court justice declared the act "unconstitutional" because it interfered with the husband's contract rights. The Judge wrote that the safeguards once considered essential to the viability of marriage were "crumbling and falling before the batteries of modern reformers."[42]

Eventually, the Court of Appeals reached the same conclusion, holding that the Act violated due process when applied to property interests vested in the husband before the statute was enacted.[43] The hidebound judicial antagonism to interference with property rights ebbed over time as the Legislature amended the statute and expanded the rights of married women.[44] But because the Legislature's attempt to make the statute retroactive failed in the courts, a full generation passed before its full effect would be felt.[45]

While the judiciary balked at making the law retroactive, new laws enacted within the next 20 years gave women the power to convey property, keep their own wages and abolished the trusts created under coverture. A married woman's right to property was eventually revised in the marriage reform acts of 1909, but its substance remained the same. Even though seldom cited, it still occupies Section 50 of the Domestic Relations Law.[46]

The 1848 law was a "death blow to the old Blackstone code" for married women.[47]

> *Clearly, the 1848 statute was crudely drafted and limited in scope and necessitated numerous amendments. But in some ways it was the Pandora's box that its opponents feared. It invited further scrutiny of the marriage equation which in turn cleared the way for the earnings act. But to women who went on to demand greater rights that summer of 1848 at Seneca Falls it was unquestionably good. It was the inspiration for organized and sustain policy agitation. From the passage of the statute in the spring of 1848, they envisioned a steady advance to nothing less than their complete equality.*[48]

The 1848 law (and its progeny) had one other important impact: more families bequeathed wealth to their daughters, now that such property was free from claims of husbands and their creditors.[49] Holding property rights, women now had a stronger claim to their ultimate goal: the right to vote for those who, through legislation, could control everyone's property rights in the expanding American economy. Women would wait 70 years for the 19th Amendment to the United States Constitution but the 1848 law in New York, which served as a model for other states, was the first big step in the right direction.

Judges, all males who sought to provide their daughters and grandchildren with economic security and who had the courage to challenge a millennium of common law, made it happen.

ENDNOTES

1. Research on bequests between 1800 and1850, after primogeniture had been abolished in colonial America, found that wills by both men and women favored women. *See generally* Richard H. Chused, *Married Women's Property Law: 1800–1850,* 71 Geo. L.J. 1359,1377 (1983).
2. Elisabeth Griffith, *In Her Own Right: The Life of Elizabeth Cady Stanton* 31 (1984).
3. *1848 Seneca Falls Declaration of Sentiments, reprinted in* Joan Hoff, *Law, Gender & Injustice: A Legal History of U.S. Women* 383 app. 2 (1991), *cited in* Claudia Zaher, *When A Woman's Marital Status Determined Her Legal Status: A Research Guide on the Common Law Doctrine of Coverture,* 94 L. Libr. J. 459, 460 n.5 (2002).
4. Marylynn Salmon, *Women and the Law of Property in Early America* 63 (1989). Cruel and inhuman treatment emerged as a basis for a divorce in 1813. *See* J. Herbie DiFonzo & Ruth C. Stern, *Addicted to Fault: Why Divorce Reform Has Lagged in New York,* 27 Pace L. Rev. 559, 564 (2007). But the courts frowned on granting these claims. *See Dietz v. Dietz,* N.Y. Times, Jan. 19, 1861 (uniform character of decisions, both in England and this country, have held that a divorce must be sustained by repeated and continuous acts of cruelty)
5. To make divorce as difficult as possible and therefore preserve the family unit, from 1787 until 1879 New York prohibited remarriage by the adulterous party in a divorce action. DiFonzo & Stern, *supra* note 4, at 564.
6. In *Rogers v. Rogers,* 4 Paige Ch. 516 (N.Y. Ch. 1834), the chancellor stated the governing rule:

   But it is impossible for a feme covert [married woman] to make any valid agreement with her husband to live separate from him, in violation of the marriage contract and of the duties which she owes to society, except under the sanction of the court, and in a case where the conduct of her husband has been such as to entitle her to a decree for a separation. The law of the land does not authorize or sanction a voluntary agreement for separation between husband and wife. It merely tolerates such agreements when made in such a manner that they can be enforced by or against a third person acting in behalf of the wife.

   Id at 517. The New York Chancery opinions are peppered with citations to English common law decisions, evidencing the reliance of the earlier New York courts on their English precedents.
7. Judith Wellman, *The Seneca Falls Women's Rights Convention: A Study of Social Networks,* 3 J. Women's Hist. 9, 19 (1991).
8. Lori D. Ginzberg, *Untidy Origins: A Story of Woman's Rights in Antebellum New York* 135 (2005).
9. Norma Basch, *Marriage and Domestic Relations, in The Cambridge History of Law in America Vol. II: The Long Nineteenth Century* (1789–1920) 245, 260 (Michael Grossberg & Christopher Tomlins eds., 2008).
10. Norma Basch, *In the Eyes of the Law: Women, Marriage and Property in Nineteenth-Century New York* 118 (1982).
11. Ernestine Rose, *On gathering signatures for the first petition for Married Women's Property Law, 1836,* in 1 *History of Woman Suffrage* 98, 99 (Elizabeth Cady Stanton, Susan B. Anthony, & Matilda Joslyn Gage eds., 1881), *cited in* Elizabeth Frost-Knappman & Kathryn Cullen-DuPont, *Women's Suffrage in America* 30 (2005).
12. Basch, *supra* note 10, at 119.
13. *Id*. at 32.
14. *Id*. at 31–32. Ms. Stanton was raised by her parents as a Scottish Presbyterian, which may explain her father's reference to "Scotswoman." *Id*. at 41; Penny Colman, *Elizabeth Cady Stanton & Susan B. Anthony: A Friendship that Changed the World* 10 (2011).
15. Cady was later described by his colleagues on the Court of Appeals as one "of the most distinguished counsel in the state." *Colton v. Beardsley,* 38 Barb. 29, 54 (N.Y. Gen. Term 1860).
16. Griffith, *supra* at n. 2, p. 84. In her own account, Stanton wrote that her father "deeply condemned the whole movement and was deeply grieved at the active part I had taken." E.C. Stanton, *Eighty Years and More: Reminiscences, 1815-1897,* Northeastern Univ. Press, 1993 at 188.
17. Assembly Documents (1844), vol. 3, No. 96 (Judiciary Committee's report).
18. John A. Ferejohn & William Eskridge, *A Republic of Statutes: The New American Constitution* 219 (2010).
19. Elisha P. Hurlbut, *Essays on Human Rights and Their Political Guaranties* (1848).
20. Ginzberg, *supra* note 8, at 149.
21. Nancy Isenberg, *Sex and Citizenship in Antebellum America* 179 (1998).
22. Jeffrey Dunnington, *A Study of the Journal of Elisha P. Hurlbut, American Social Reformer, 1858–1887,* at 14 (May 2014) (unpublished Master's thesis), *available at* http://scholarscompass.vcu.edu/etd/3325/.
23. *The Selected Papers of Elizabeth Cady Stanton and Susan B. Anthony Vol. I: In the School of Anti-Slavery, 1840–1866* (Ann D. Gordon ed., 1997), at 86.
24. *Remarks of Harris,* New York State Constitutional Convention, Oct. 2, 1848, at 794. His daughter, Clara, who ignited his passion of women's rights and was mentioned in the constitutional debate was later present at the most tragic moment in the 19th Century: she and her fiancé Major Rathbone were present in the presidential booth when President Lincoln was assassinated in 1865.
25. *Remarks of Kirkland,* New York State Constitutional Convention, Oct. 2, 1848, at 795.
26. O'Conor was a renegade in New York, who ran for lieutenant governor in 1848 and sympathized with the Southern states during the Civil War, including serving as lead counsel for Confederate president Jefferson Davis on his indictment for treason. Given these post-convention experiences, it seems fair to infer that he was bitterly opposed to changing women's rights in 1848.
27. Basch, *supra* note 10, at 153.
28. *Remarks of O'Conor,* New York State Constitutional Convention, Oct. 5, 1848, at 811.
29. *Remarks of Morris,* New York State Constitutional Convention, Oct. 5, 1848, at 812.
30. *Remarks of Simmons,* New York State Constitutional Convention, Oct. 5, 1848, at 812.
31. Harris, the Albany lawyer, wasn't finished in New York politics. He, too, was elected to the new Supreme Court and served as an ex-officio member of the Court of Appeals. Harris was eventually a United States Senator and friend of Abraham Lincoln.
32. Stanton, *Eighty Years and More, Reminiscences, 185-1897,* at 150.
33. In the state election of 1848, the Whigs, who had pioneered and approved the married women's property rights act, had even greater success. They gained huge, veto-proof majorities in both houses of the legislature, a seeming validation of their courage in enacting the statute and other changes.
34. John Fine, *"Lecture Delivered before the Ogdensburgh Lyceum, on the Political Rights of Women"* (Ogdensburgh, NY: Tyler and James, n.d.), 2–3, *cited in* Judith Wellman, *The Seneca Falls Convention: Setting the National Stage for Women's Suffrage,* History Now, J. Gilder Lehman Institute, n 2.

   https://www.gilderlehrman.org/history-by-era/first-age-reform/essays/seneca-falls-convention-setting-national-stage-for-women%E2%80%99s-su (last visited 1/26/2017).
35. Judith Wellman, *The Road to Seneca Falls Elizabeth Cady Stanton and the First Woman's Rights Convention* 152 (2004).
36. *Id*.
37. Ferejohn & Eskridge, *supra* note 17, at 219.
38. *Petition from 44 Ladies to the New York State Legislature, March 1848, quoted in* Wellman, *supra* note 34, at 34.
39. *Id*.
40. *Remarks of E.C. Stanton, quoted in* Wellman, *supra* note 34, at 154.
41. *Snyder v. Snyder,* 3 Barb. 621 (N.Y. Sup. Ct. 1848). The judge did award her alimony ($12/month) and attorney's fees.
42. *Holmes v. Holmes,* 4 Barb. 295 (N.Y. Sup. Ct. 1848).
43. *Westervelt v. Gregg,* 12 N.Y. 202 (1854).
44. The progress for women in the mid-19th Century was slow. In 1855, the Court of Appeals refused to allow a married woman to bequeath a charitable gift of money she owned prior to marriage. *Wadhams v. Am. Home Missionary Soc'y,* 12 N.Y. 415 (1855). In 1862, the Court of Appeals declined to permit a deceased woman to bequeath pre-marital property to a friend because the husband had acquired all title to it under coverture. *Ryder v. Hulse,* 24 N.Y. 372 (1862). The husband in that case had supported his wife during the marriage, most obviously manifested by his annual gift to her of a calf.
45. Carole Shammas, *Re-Assessing the Married Women's Property Acts,* 1994 J. Women's History, Vol. 6, No.1, p.20.
46. Although seldom cited, the statute remains a reminder of the limits of a husband's prerogatives. In *Matter of Eimer v. Board of Managers of 5316 14th Avenue Condominium,* 24 Misc. 3d 1232(A) (N.Y. Sup. Ct. 2009) (unpublished table disposition), the husband signed an arbitration agreement on behalf of his wife. The Court refused to enforce the agreement against the wife, noting:

   While a husband might be able to bind a wife in a rabbinical court, New York State has not allowed a husband to sign a contract for his wife for the past 161 years. At common law, a wife's separate legal interests merged into those of her husband when she married. Further, at common law a wife was under a complete disability to act as a legal person. Commencing with the "Married Women's Act," in 1848, and subsequent statutes, New York State abolished common law restrictions placed upon married women. Domestic Relations Law (DRL) § 50.

   In addition, the Court of Appeals, in 1954, held that the impact of the century-old Married Women's Acts allowed a husband, who stole from his wife, to be prosecuted. The Court said:

   Before the Married Women's Acts, the existing larceny laws were inapplicable to a husband's taking of his wife's chattels, but only because such chattels did not belong to 'another' but under the old fictions, belonged to the husband himself. So, when the wife became 'another', the larceny statutes without necessity of amendment covered her losses as well as those of any other lawful owner of property.

   People v. Morton, 308 N.Y. 96, 99–100 (1954).
47. Kathleen S. Sullivan, *Constitutional Context: Women and Rights Discourse in Nineteenth-Century America* 70 (2007).
48. Basch, *supra* note 10, at 161. Not all commentators see the Act as revolutionary, arguing that it was "no abrupt change in the law of marital status, but instead inaugurated an incremental and halting modification of the common law rule." Reva B. Siegel, *The Modernization of Marital Status Law: Adjudicating Wives' Rights to Earnings, 1860–1930,* 82 Geo. L.J. 2127, 2150 (1994).
49. In one study, the percentage of women named in wills rose from less than 10 per cent in 1790 to more than 38 per cent a century later. The amount of wealth passed to women from their parents increased even more from 7.5 per cent of the family wealth to 35.8 per cent. There was clearly an increased trend to name women as executrixes of estates and to give them more shares in those estates. Hoff, *supra* note 3, at 189.

Judicial Intervention

Katherine "Kate" Stoneman

Raising the Bar for Women

by Michelle Henry

Michelle Henry has served as Chautauqua County Historian/Records Management Coordinator since 2000. She earned a B.A. in Anthropology from Penn State, an M.A. in Anthropology and a Graduate Certificate in Museum Studies from Arizona State. Since implementing an archival records program for the County, Henry has managed numerous state and federal grants to preserve historical records and to make them more accessible. She is certified as a New York State Registered Historian, received the 2010 Wheeler B. Melius Award for outstanding service to records management in NYS, and the 2011 Julia Reinstein Historian Award for Excellence.

Very early in the women's rights movement, Susan B. Anthony helped organize a women's rights convention in the county courthouse at Mayville, Chautauqua County, NY (December 26–27, 1854). According to Anthony's diary "the courthouse was filled with an intelligent and attentive audience … there seemed an earnest seeking after the new Truth." She indicated that nine towns within the county were represented at the convention, despite the unfavorable weather.[1]

We don't have a complete record of who was in attendance at the convention or the subsequent lectures held in the county, but one local girl, Katherine "Kate" Stoneman, if not in attendance, undoubtedly read newspaper accounts of the convention and later became a leader in state suffrage activities. However, Kate Stoneman may be better known for her groundbreaking efforts in the field of law, earning the designation of "New York State's First Portia".

Stoneman was born in Busti, a rural community outside of Jamestown, NY, in April 1841. The seventh of eight children of George and Catherine Stoneman (two additional children died in infancy), Kate described her parents as "liberal minded" and supportive of her ambitions for education. Both had been school teachers, and although a farmer by trade, her entrepreneurial father had built a horse-powered catamaran for Chautauqua Lake. "Commodore Stoneman" was navigating the lake before there were steam-powered boats.

Growing up on a farm without access to many books, Kate found herself reading and rereading a musty law book in her family's possession, partly because it interested her and partly because there was little else to read. As a teenager of fourteen when Susan B. Anthony lectured in Chautauqua County, Kate certainly would have read newspaper accounts of Anthony's arguments for women's equality in the courts, education, and politics.

Kate's older siblings were well educated and well established in their professions by the time she finished her education at the local common school. In 1855, just after Susan B. Anthony's visit to the county, one of Kate's older brothers, John Thompson Stoneman, was admitted to the bar in Albany. He moved to McGregor, Iowa where he later (1881) was elected to serve on the Superior Court in Cedar Rapids. The oldest child

Portrait of Kate Stoneman. Courtesy of the Jamestown City Historian's Office
Albany Law School on State Street 1879-1926. Courtesy of Albany Law School

Above: **Postcard of "The Busti Mill."** Courtesy of Vincent Martonis in 2012, gift to Chautauqua County Historian's Office

Photograph of Stoneman's alma mater the State Normal College. Courtesy of The Internet Archive

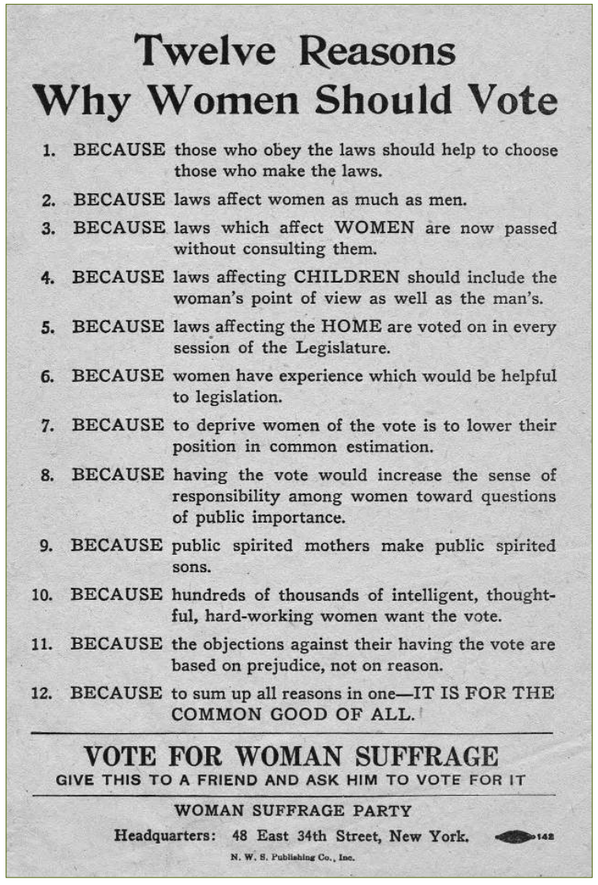
in the family, George Stoneman, Jr., had entered West Point in 1842, the year after Kate was born. His roommate was Stonewall Jackson and other classmates later formed the highest ranks of the Union and Confederate armies during the Civil War, including George McClelland, George Pickett, and A. P. Hill. As Chief of the Cavalry Corps, George's raids into North Carolina and Virginia inspired the song *The Night They Drove Old Dixie Down*. He retired to California where he was elected Governor in 1883.

In 1864, Kate Stoneman left Busti with a friend to attend the State Normal School at Albany (now the University of Albany). To support herself, she worked as a copyist for Joel Tiffany, court reporter for the Court of Appeals. Her earlier years spent reading the law book in her family's possession apparently made her proficient at her job, for which she was paid ten cents per page.

After graduating in 1866, Kate began her career in education, eventually returning to the Normal School to teach penmanship, drawing, and geography. At the time, these were the only subjects women were eligible to study or teach, others being considered too rigorous for a woman's delicate constitution. Many proponents believed that a university education (as opposed to the Normal School, which prepared women for careers as teachers) would so sap a woman's strength as to render her sterile. Women who rebelled against Victorian ideas of domesticity risked being declared insane and committed to an asylum. This was usually at a husband's or father's request, and a woman had no right to contest or appeal her commitment. The cornerstone of Victorian psychiatry claimed male dominance was therapeutic. A commonly prescribed treatment for an unmarried woman showing signs of hysteria (a female malady) was to find a husband.[2]

While teaching at the Normal School, Stoneman was named executrix of her Great Aunt's estate, which renewed Kate's interest in the law and legal research. With assistance from attorney Worthington W. Frothingham, an old friend of the Stoneman family, Kate settled the estate and was encouraged by Frothingham to further her interest in law. He offered her unlimited access to his extensive personal law library. In a 1916 interview with the *Albany Knickerbocker Press,* Kate said, "All the time I taught school, but during the summer and at night and over weekends, I read law."[3]

Kate was also heavily involved in Suffrage activities in Albany, working to highlight the legal disabilities of women and the unequal and unjust laws existing in the statute books. Suffragists argued that, as long as they had no voice in the law, they had no guarantee that privileges granted by one body of men would not be taken by another. Only with the right of suffrage would women have all the privileges and liberties that justly belong to a republican citizen.



Twelve Reasons
Why Women Should Vote

1. BECAUSE those who obey the laws should help to choose those who make the laws.
2. BECAUSE laws affect women as much as men.
3. BECAUSE laws which affect WOMEN are now passed without consulting them.
4. BECAUSE laws affecting CHILDREN should include the woman's point of view as well as the man's.
5. BECAUSE laws affecting the HOME are voted on in every session of the Legislature.
6. BECAUSE women have experience which would be helpful to legislation.
7. BECAUSE to deprive women of the vote is to lower their position in common estimation.
8. BECAUSE having the vote would increase the sense of responsibility among women toward questions of public importance.
9. BECAUSE public spirited mothers make public spirited sons.
10. BECAUSE hundreds of thousands of intelligent, thoughtful, hard-working women want the vote.
11. BECAUSE the objections against their having the vote are based on prejudice, not on reason.
12. BECAUSE to sum up all reasons in one—IT IS FOR THE COMMON GOOD OF ALL.

VOTE FOR WOMAN SUFFRAGE
GIVE THIS TO A FRIEND AND ASK HIM TO VOTE FOR IT
WOMAN SUFFRAGE PARTY
Headquarters: 48 East 34th Street, New York.
N. W. S. Publishing Co., Inc.

Women's Suffrage Party flyer.
Courtesy of Chicago History Museum Collection (ICHi-25533)

In 1880, while Kate was serving as Secretary of the Albany County Women's Suffrage Society, a bill providing for the participation of women in school elections was passed in the state legislature.[4] Kate considered this a milestone in the Suffrage movement, and she was the first woman in Albany to place her vote under the new law.

Once the bill was passed, the suffrage society in Albany began in earnest what today would be called lobbying. Stoneman recalled, "In those days it was the simplest thing to get inside the brass rail. We had the run of the two houses and were allowed to come and go as we pleased."[5] Stoneman was described as a "prime mover" and "the core and center of suffrage agitation" in Albany.

In 1883, Kate filed her certificate as a law student in the office of Walter D. Frothingham, who had a law practice at 69 State Street, Albany with his father, Worthington. Kate's friends encouraged her independent study of the law and her decision to take the bar exam. Stoneman took the exam in 1885, passing both the written and oral components. In the spring of 1886 she applied at the General Term of Supreme Court in Albany for admission to the bar. Reviewers praised her work and recommended she be admitted to practice. The Court declined, however, basing its decision on two factors: there was no precedent for a woman to practice law, and a statutory provision required that every applicant for admission shall be a "male citizen of the State."

The legislature was currently in session so Stoneman's suffragist friends used their influence to introduce a bill in the Assembly that removed all disabilities for women in regard to the practice of law. Mrs. Lillian Devereaux Blake, president of the state's suffrage association, led the effort, and John I. Baker of Dutchess County fathered the bill. It passed the Assembly but was rejected by the Senate and returned. It was re-introduced and the legislature passed the amendment on May 19, 1886.[6]

Governor David Hill signed the bill and an order was entered into the General Term admitting Stoneman to practice. The Supreme Court decision is dated May 22, 1886 (Supreme Court Reports HUN40). It reads, "in the matter of the application of Kate Stoneman for admission as attorney and counsel. Application denied. Opinion by Landon, J. The Code being thereafter amended the application was renewed and granted."[7] Kate Stoneman was 45 years old.

Mr. Hamilton Wilcox, champion of the suffrage movement in Albany and Washington, D.C., Miss Susan A. King, Mrs. Dr. Clemence S. Lozier, and Elizabeth Cady Stanton all sent telegrams to Governor Hill thanking him for signing the bill. (In several other states, women were already practicing law: Phoebe Cousins in Missouri; Louisa Goddell in Wisconsin; Myra Bradwell in Illinois; Clara Foltz in California; and Belva Lockwood of Washington D.C., who was the first woman to argue before the United States Supreme Court.)

News of Stoneman's admission to practice law was carried in newspapers around the country. One such paper, *The Daily Evening Bulletin* in Maysville, Kentucky on May 24, 1886 announced, "New York's Lady Lawyer: Miss Kate Stoneman admitted to the Empire Bar. The first woman to break down the barriers of prejudice – Interesting account of the contest – Sketch of the Plucky Lady's Career – Congratulations." The paper went on to state, "the woman suffragists of this city were greatly elated on receipt of the news, and Mrs. Lillian Deveraux Blake observed that it was 'the harbinger of still greater victories' and Mrs. Dr. Clemence S. Lozier was confident 'the dawn of a brighter day was at hand for poor, oppressed women.'"

However, Katherine did not devote all of her energy to establishing a new career in law. She continued to teach at the Normal School and maintained her involvement in the suffrage and temperance movements, and the establishment of a world peace organization. She also advocated for education for women. In 1887, she spoke to the senior class at Vassar College on the "High Education of Women."

Stoneman's passion for law and for advancing a place for women in the profession continued. Even though she had already passed the bar exam, Stoneman did not have a law degree. Perhaps to prove to herself (and others), that a woman could withstand the rigors of a law school education, in 1895, Stoneman entered Albany Law School. In 1898, twelve years after passing the bar exam, she became the school's first female graduate at the age of 57. Still, there is little evidence that she actively practiced law. She continued to teach, with a career in education that spanned 40 years. She became the first female president of the Normal School's alumni association, and later served as Vice-Principal.

Thoughtful Woman Voter campaign card, 1914.
Women earned the right to participate in school elections in 1880.
Collections of the Chautauqua County Archives, Mayville, NY

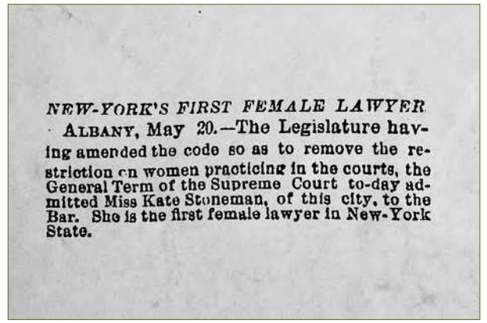
In the 1916 *Knickerbocker Press* interview, Murray wrote of Stoneman, "to have taken an active interest in the three greatest reforms within a century and to have seen them come to fruition is to have worked out a life history of more than ordinary significance."[8] Murray was referring to suffrage, temperance, and the world peace movement. Kate's accomplishments in opening the profession of law for women surely should be included as a fourth great reform!

Kate Stoneman wasn't the only woman from Chautauqua County have played a prominent roles in her gender's advancement in the fields of law and politics. In 1918, Ellen Yates Miller of Mayville became the first woman in the state to be elected County Clerk. She served eight terms, and at that time, held public office longer than any other woman in New York State. In 1920, Gertrude Williams from the small town of Poland became the state's first woman to be elected to the position of Town Justice. With the largest political equality club in New York, Chautauqua County and its residents (both male and female) seemed eager to embrace women in these new roles.

Stoneman lived to see passage of the Eighteenth Amendment prohibiting the sale and manufacture of alcohol, and the passage of the Nineteenth Amendment granting women the right to vote. She saw another of her life's passions realized with the birth of the League of Nations in 1919.

Katherine Stoneman died on May 19, 1925 in Albany and is buried in Albany Rural Cemetery. A bronze plaque at her gravesite details her accomplishment in opening the profession of law for women in New York State. In 1994 Albany Law School celebrated the first Kate Stoneman Day and in 2000 established a Kate Stoneman visiting professorship. In 2003 an historical marker honoring her was erected in her hometown of Busti, Chautauqua County, NY. In 2009, she was inducted into the National Women's Hall of Fame, in Seneca Falls, NY.

Kate's intelligence, her courage and tenacity, and what must have been boundless energy, paved the way for women to enter fields of study and to pursue careers that were previously unavailable to them. She was a champion of human rights and of education and equality for all.


NEW-YORK'S FIRST FEMALE LAWYER

ALBANY, May 20.—The Legislature having amended the code so as to remove the restriction on women practicing in the courts, the General Term of the Supreme Court to-day admitted Miss Kate Stoneman, of this city, to the Bar. She is the first female lawyer in New-York State.

The New York Times, May 21, 1886. Copyright The New York Times

ENDNOTES

1. *See generally The Selected Papers of Elizabeth Cady Stanton and Susan B. Anthony, Volume I: In the School of Anti-Slavery, 1840 to 1866* (Ann D. Gordon, ed., 1997).
2. ScienceMuseum, *Women and Psychiatry,* http://www.sciencemuseum.org.uk/broughttolife/themes/menalhealthandillness/womanandpsychiatry (last visited Jan 3, 2017).
3. *Knickerbocker Press,* Feb. 9, 1916.
4. "An Act to Declare Women Eligible to Serve as School Trustees," 1880 N.Y. Laws 10 (No person shall be deemed to be ineligible to serve as any school officer, or to vote at any school meeting, by reason of sex, who has the other qualifications now required by law. This act shall take effect immediately.").
5. *Id.*
6. "An Act to Amend Section Fifty-Six of the Code of Civil Procedure," 1886 N.Y. Laws 668 ("The race or sex of such person shall constitute no cause for refusing such person admission to practice in the courts of record of this State as an attorney and counselor.").
7. *In re Application of Stoneman*, 40 Hun 638 (App. Div. 1886) (unreported table decision).
8. *Knickerbocker Press,* Feb. 9, 1916.

Portrait of Belva Lockwood, seated, 1880-1890. Library of Congress, Prints & Photographs Division, Brady-Handy Collection LC-BH834-55

Belva A. Lockwood

BREAKING CONVENTION

by Hon. Erin M. Peradotto

Hon. Erin M. Peradotto is an Associate Justice of the New York State Supreme Court, Appellate Division, Fourth Department. Justice Peradotto gratefully acknowledges the valuable assistance of Appellate Division, Fourth Department court attorney, Jessica L. Harter, in the preparation of this article.

The symbolic and actual importance of arguing before the United States Supreme Court cannot be overstated. It is the ultimate forum. One of the true highlights on your day of admission to the United States Supreme Court is that you hear argument of the first case on the docket while seated in the first row. I remember watching the lawyers argue the day I was admitted and thinking how nervous they must be. Dial back 135 years and think about the pressure on Belva Lockwood, on the day she was the first woman ever to argue before the United States Supreme Court.

Belva Ann Lockwood (née Bennett) was born on a farm in Royalton, Niagara County, New York on October 24, 1830. Lockwood was a precocious child and, from a very early age, decided that she would not be bound by society's notions of what was appropriate for her gender. At the age of 14, Lockwood, who had excelled as a student, was offered a position as a teacher by the local school board, which she accepted.[1] Despite performing the same work, Lockwood received only half of the pay of her male counterparts. She later wrote of this inequality stating, "It was an indignity not to be tamely borne by one with so little discrimination of the merits and demerits of sex, and of course, impolitic as it might seem, I at once began to agitate this question, arguing that pay should be for work, and commensurate to it and not be based on sex."[2]

Lockwood, wanting more, longed to attend college, but her father, a poor farmer, believed that a higher education was inappropriate for a woman.[3] Although she did what was expected of her and, on November 8, 1848, married a young farmer from her neighborhood, marriage would not interfere with her aspirations.[4] Lockwood wrote that, although "marriage to the ordinary woman is the end of her personality, or of her individuality of thought and action," she did not "even note this phase of society." By contrast, Lockwood engaged in the "unwomanly habit" of pursuing her studies even after marriage by writing for literary gatherings and for the press.[5] In 1853, when Lockwood was only 22 years old, her husband died, leaving her alone to raise their three-year-old daughter, Lura.[6]

Belva A. Lockwood

For a time, the young widow cared for Lura while running her husband's farm and sawmill.[7] She decided, however, that her "outlook was gloomy" unless she could find employment paying her a wage sufficient to support her and her daughter.[8] She therefore attended a local academy and began teaching again, despite the protests of others—such as her father. Driven by her ambition and the need to support her daughter, Lockwood was not satisfied with teaching as her sole vocation and still yearned for a higher education. After learning that Genesee College (now Syracuse University) had accepted two women, she persuaded the administration to admit her.[9] She pursued a program in politics and science, and graduated with honors in 1857.[10]

Over the next six years, Lockwood worked as a preceptress and teacher at several schools in Western New York. Departing from more norms, she required the school's female students to participate in physical exercise programs and classes in public speaking, even though those activities were thought to be only for boys. It was during this period that she first met suffragist Susan B. Anthony, encountering her at a meeting of the New York Teachers Association.[11] Anthony advocated for the appointment of women on all association committees and encouraged the women members to speak and vote on all association matters.[12] Lockwood actively supported Anthony's efforts, but the male teachers allied with their conservative female colleagues to block almost all of those efforts.[13]

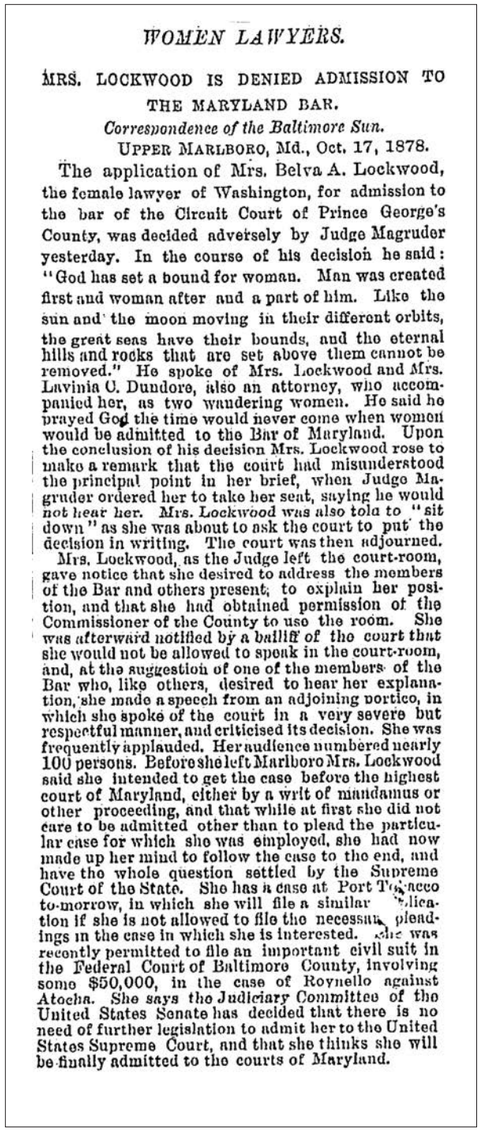
In 1863, Lockwood purchased a girls' school in Oswego, but she sold it three years later and moved to Washington, D.C. for, as she explained, "no other purpose than to see what was being done at this great political centre."[14] At the age of thirty-five, she opened a coeducational school, which was one of the first in Washington.[15] In her free time, Lockwood listened to the debates in Congress and arguments in the United States Supreme Court and developed what she described as a "mania for the law."[16] From an early age, she passionately read the biographies of "great men," and later discovered that, "in almost every instance[,] law had been the stepping stone to greatness." As her focus moved from education to the law, Lockwood acknowledged that she "had all of the ambitions of a man, forgetting the gulf between the rights and privileges of the sexes."[17] Spurned on by this inequity, Lockwood became active in social causes like women's suffrage, and was one of the founding members of the Universal Franchise Association (UFA), a local branch of the women's suffrage movement.[18]

In 1868, Lockwood married Dr. Ezekiel Lockwood, a progressive minister and practicing dentist, who shared her interest in social reform and women's rights and encouraged her to pursue her educational goals and legal career.[19] The following year, she applied to Columbian Law School but was refused admission on the ground that her presence "would be likely to distract the attention of the young men." Lockwood was "much chagrined by this slap in the face, and the inference to be drawn from it, that [her] rights and privileges were not to be considered a moment whenever they came in conflict with those of the opposite sex." The press received word of her rejection and, notwithstanding her husband's request that she remain silent, Lockwood could not resist reading them the letter from the law school president explaining the reasons for denying her admission.[20] Finding the matter to be of public interest, the press reported Lockwood's rejection in the local newspapers.[21]

With her legal aspirations delayed, Lockwood remained focused on her social causes and, in January 1870, attended the National Woman Suffrage Association (NWSA) convention in Washington, D.C., at which founders Elizabeth Cady Stanton and Susan B. Anthony spoke. After attending the convention, Lockwood gained new inspiration and, shortly thereafter, took over as the president of the UFA. As president, she focused on the women's vote within the District and on equal employment legislation for female government workers.[22] She also decided to apply again for law school. Her resolve paid off and, in 1871, National University Law School (now, National Law Center at The George Washington University) permitted her and fifteen other women to enroll.[23]

Despite the rigors of the law school curriculum, Lockwood continued to fight for women's equality. In January 1871, she presented a women's suffrage petition containing approximately 20,000 signatures to the Washington, D.C. legislature.[24] Three months later, and together with "the advanced guard of the female suffragists," Lockwood entered City Hall and brought attention to the issue of women's suffrage by

Cover of *Frank Leslie's Illustrated*, featuring suffragettes in New York City garnering signatures for petitions, 1894.
Library of Congress, Prints & Photographs Division, LC-USZC4-12521



WOMEN LAWYERS.

MRS. LOCKWOOD IS DENIED ADMISSION TO THE MARYLAND BAR.

Correspondence of the Baltimore Sun.

UPPER MARLBORO, Md., Oct. 17, 1878.

The application of Mrs. Belva A. Lockwood, the female lawyer of Washington, for admission to the bar of the Circuit Court of Prince George's County, was decided adversely by Judge Magruder yesterday. In the course of his decision he said: "God has set a bound for woman. Man was created first and woman after and a part of him. Like the sun and the moon moving in their different orbits, the great seas have their bounds, and the eternal hills and rocks that are set above them cannot be removed." He spoke of Mrs. Lockwood and Mrs. Lavinia U. Dundore, also an attorney, who accompanied her, as two wandering women. He said he prayed God the time would never come when women would be admitted to the Bar of Maryland. Upon the conclusion of his decision Mrs. Lockwood rose to make a remark that the court had misunderstood the principal point in her brief, when Judge Magruder ordered her to take her seat, saying he would not hear her. Mrs. Lockwood was also told to "sit down" as she was about to ask the court to put the decision in writing. The court was then adjourned.

Mrs. Lockwood, as the Judge left the court-room, gave notice that she desired to address the members of the Bar and others present, to explain her position, and that she had obtained permission of the Commissioner of the County to use the room. She was afterward notified by a bailiff of the court that she would not be allowed to speak in the court-room, and, at the suggestion of one of the members of the Bar who, like others, desired to hear her explanation, she made a speech from an adjoining portico, in which she spoke of the court in a very severe but respectful manner, and criticised its decision. She was frequently applauded. Her audience numbered nearly 100 persons. Before she left Marlboro Mrs. Lockwood said she intended to get the case before the highest court of Maryland, either by a writ of mandamus or other proceeding, and that while at first she did not care to be admitted other than to plead the particular case for which she was employed, she had now made up her mind to follow the case to the end, and have the whole question settled by the Supreme Court of the State. She has a case at Port Tobacco to-morrow, in which she will file a similar application if she is not allowed to file the necessary pleadings in the case in which she is interested. She was recently permitted to file an important civil suit in the Federal Court of Baltimore County, involving some $50,000, in the case of Roynello against Atocha. She says the Judiciary Committee of the United States Senate has decided that there is no need of further legislation to admit her to the United States Supreme Court, and that she thinks she will be finally admitted to the courts of Maryland.

The New York Times, October 19, 1878.

attempting to vote.[25] She later wrote that the would-be women voters declared "that they were residents of the district, citizens, and taxpayers, and that they came within the category of persons entitled to vote under the constitution; and if refused to bring suit against the judges of election," which a few later did.[26] In pursuit of her UFA goals, Lockwood also drafted and lobbied on behalf of a bill mandating equal pay for federal employees regardless of gender, which became federal law in 1872.[27]

By the time she completed her law school courses, only Lockwood and one other woman remained, and neither was granted a diploma because the male students objected to graduating with women.[28] Lockwood feared that, without a diploma, she would not be admitted to the bar. She nevertheless asked a male bar member to move for her admission to the District of Columbia Supreme Court bar, which he did in July 1872. The bar reluctantly formed an examination committee and performed a three-day examination of Lockwood, but failed to issue a report. After Lockwood complained to a judge regarding the lack of a report, the committee subjected Lockwood to another three-day examination, but again failed to issue a report. Lockwood wrote that, even with this impediment, she "had not the remotest idea of giving up." Instead, Lockwood changed tact and wrote to President Ulysses S. Grant, who happened to be the President ex officio of the National University Law School. In her letter of September 3, 1873, she informed President Grant that she had completed the law school curriculum of study and was not only entitled to, but demanded that she be granted, a diploma. Although she never received a reply from the President, the following week the Chancellor of the law school presented her with a diploma.[29]

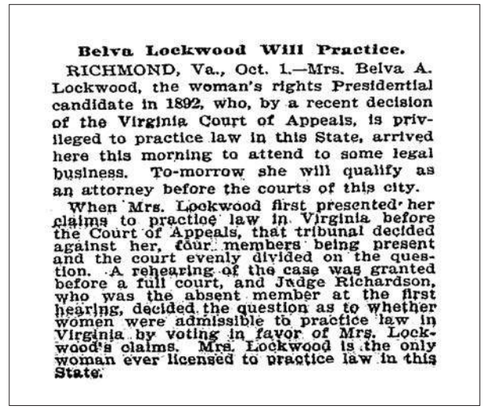
Lockwood was admitted to the D.C. bar shortly thereafter and became the second woman attorney in the capital.[30] This, however, did not prevent further obstacles to the practice of law for her. In the 19th century, the law most assuredly was a man's profession. After Lockwood's admission to the D.C. bar, one judge told her that she would be treated "like a man" and another stated, "Bring on as many women lawyers as you choose: I do not believe they will be a success."[31] Lockwood paid little mind to these comments because she already had a full case load and the confidence of

her friends. The publicity she received as a result of her recent battles served as free advertising and increased the demand for her services.[32]

Lockwood was also blocked from appearing before courts in other jurisdictions because of her gender, despite having gained admission to the D.C. bar.[33] The decisions of those courts were not surprising given that, in the previous year, the United States Supreme Court had held in *Bradwell v. Illinois* that it was not unconstitutional for a state to deny women the right to practice law. In his concurring opinion, Justice Bradley stated:

> *The claim that, under the fourteenth amendment of the Constitution, … the statute law of Illinois … can no longer be set up as a barrier against the right of females to pursue any lawful employment for a livelihood (the practice of law included), assumes that it is one of the privileges and immunities of women as citizens to engage in any and every profession, occupation, or employment in civil life. It certainly cannot be affirmed … that this has ever been established as one of the fundamental privileges and immunities of the sex … Man is, or should be, woman's protector and defender. The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life … The harmony, not to say identity, of interest and views which belong, or should belong, to the family institution is repugnant to the idea of a woman adopting a distinct and independent career from that of her husband.*[34]

When, a few years later, an important case was to be filed in the United States Court of Claims, Lockwood again asked a male colleague to move for



Belva Lockwood Will Practice.

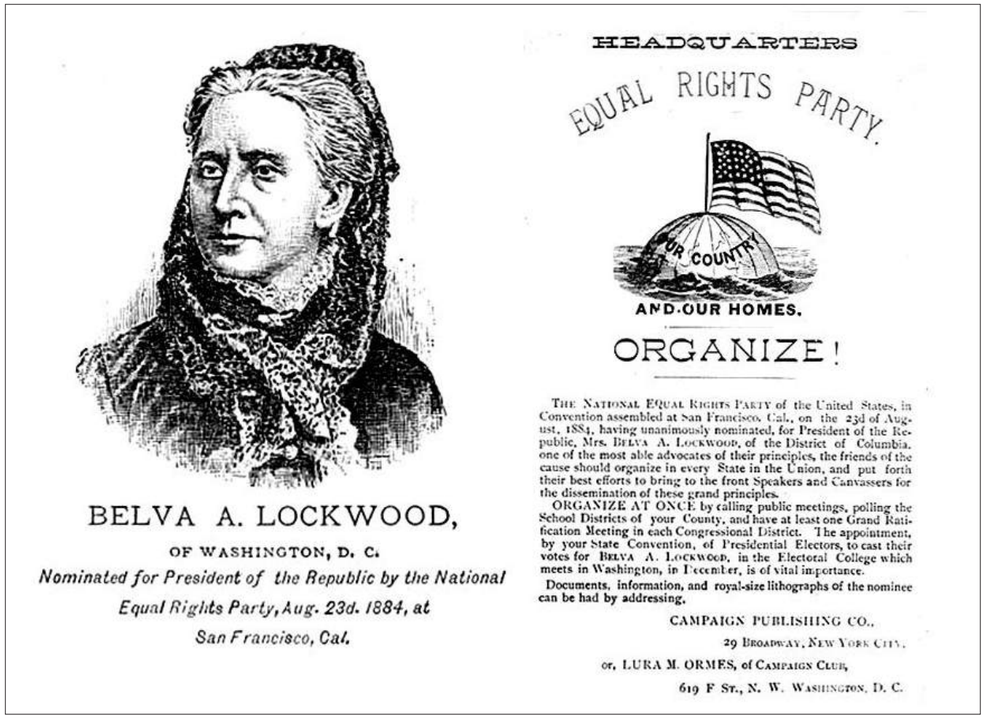
RICHMOND, Va., Oct. 1.—Mrs. Belva A. Lockwood, the woman's rights Presidential candidate in 1892, who, by a recent decision of the Virginia Court of Appeals, is privileged to practice law in this State, arrived here this morning to attend to some legal business. To-morrow she will qualify as an attorney before the courts of this city.

When Mrs. Lockwood first presented her claims to practice law in Virginia before the Court of Appeals, that tribunal decided against her, four members being present and the court evenly divided on the question. A rehearing of the case was granted before a full court, and Judge Richardson, who was the absent member at the first hearing, decided the question as to whether women were admissible to practice law in Virginia by voting in favor of Mrs. Lockwood's claims. Mrs. Lockwood is the only woman ever licensed to practice law in this State.

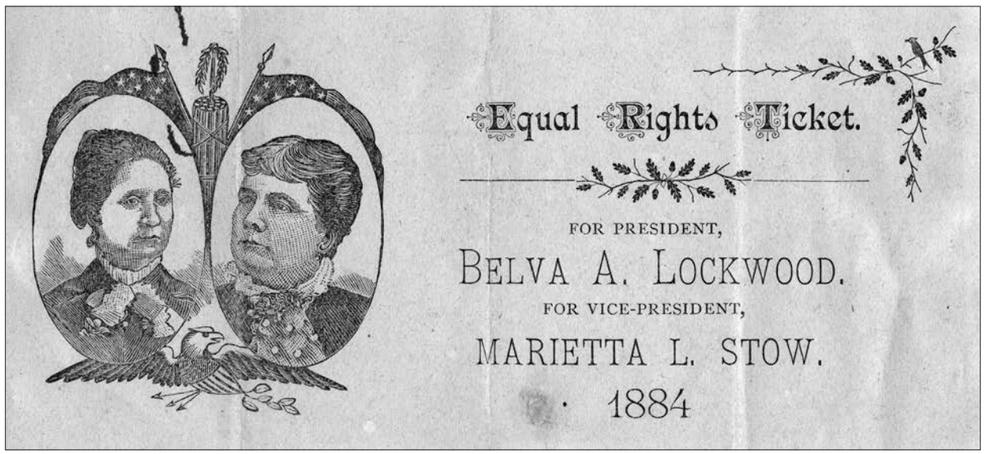
The New York Times, October 2, 1894.

her admission to the bar of that court notwithstanding this precedent. Her colleague agreed, but when he made the motion, the court stood silent until Justice Drake announced *"Mistress Lockwood, you are a woman."* Lockwood wrote that "[f]or the first time in my life I began to realize that it was a crime to be a woman; but it was too late to put in a denial, and I at once pleaded guilty to the charge of the court." The shocked court responded by entering a continuance for one week. Thereafter, Lockwood's male colleague abandoned her, and she appeared with her husband and several friends the following week. When her case was called and she stood to address the court, the chief justice exclaimed, "Mistress Lockwood, you are a *married woman*!" Although taken aback, Lockwood motioned toward her husband and informed the court that she was present with his consent. The court, however, again entered a continuance, and did not issue an opinion until after Lockwood had hired a male attorney to present her case.[35] In its opinion, the United States Court of Claims announced that, "under the laws and Constitution of the United States a court is without power to grant such an application, and that a woman is without legal capacity to take the office of attorney."[36]

Lockwood continued to work with clients on Court of Claims cases, but only to the extent of taking out-of-court testimony and preparing notices and motions that her clients filed. She was forced to hire a male attorney to represent one of her clients in a different Court of Claims case, who, as she explained, "occupied the court for three days in saying very badly what I could have said well in one hour." Her client lost the case, and Lockwood promptly filed an appeal with the United States Supreme Court.[37] Lockwood was not admitted to practice before that Court and thus had another obstacle to overcome.



Campaign Card for Belva Lockwood's presidential candidacy, 1884. Courtesy of Georgia College



Belva A. Lockwood, candidate in the Presidential election of 1884, featured on her party ticket.
Collection of Oakland Museum of California. Gift of Gertrude Smyth

In October, 1876, A.G. Riddle, a well-known Washington lawyer and women's rights supporter, appeared before the United States Supreme Court seeking Lockwood's nomination to the bar of that court.[38] The Supreme Court, in denying her application, stated that only male attorneys were permitted to practice before it and that it was not inclined to allow women attorneys that benefit until it was a more common practice in the State's high courts or until required by statute.[39] Choosing the more direct path, Lockwood set about to obtain such a statute. She enlisted the help of Representative Benjamin F. Butler to draft and submit a bill for the admission of women to the bar of the United States Supreme Court. The bill passed in the House Judiciary Committee, but failed after its third reading in the House. The second draft did not fare any better and died before reaching the floor.[40]

In 1877, the year her second husband died, Lockwood spoke at the NWSA meeting in Washington regarding her struggle to win admission to the bar of the United States Supreme Court. After hearing her speak, Elizabeth Cady Stanton stated that "[n]o more effective speech" on women's rights had ever been made and likened Lockwood to Shakespeare's Portia.[41] Supreme Court Justice Ruth Bader Ginsburg later expanded upon that comparison when she wrote,

> *Lockwood resembled Shakespeare's character in this respect: Both were individuals of impressive intelligence who demonstrated that women can hold their own as advocates for justice. Like Shakespeare's Portia, Lockwood used wit, ingenuity, and sheer force of will to unsettle society's conception of women as weak in body and mind. But Portia, to accomplish her mission, impersonated a man before revealing who she was. Lockwood, in contrast, used no disguise in tackling the prevailing notion that women and lawyering, no less politics, do not mix.*[42]

Lockwood gained publicity for her bill seeking women's admission to the Supreme Court Bar through appearances like those before the NWSA and by forging relationships with the press, male attorneys, and members of Congress.[43] In the glow of this attention, she prepared a third draft of the bill, which was presented to the House by Representative John M. Glover in December 1877.[44] On February 21, 1878, the House passed the bill, and it was thereafter placed before the Senate, the more reluctant body of Congress with respect to women's rights issues. Although it faced resistance by Senators who thought it could lead to women gaining the right to vote, the bill—one of the first federal laws supporting women's rights—finally was passed by the Senate on February 7, 1879.[45] The victory was celebrated by the women who flocked to the Senate's "ladies' galleries" to view the debate and, that evening, Lockwood visited First Lady Lucy Webb Hayes, presumably to gain some assurance that the President would sign the bill. The First Lady, an avid supporter of the bill, provided Lockwood "every assurance of her sympathy," and "cordially complimented her upon her achievement."[46] Several days later the bill was signed by President Rutherford B. Hayes.[47]

On March 3, 1879, Mr. Riddle again appeared before the United States Supreme Court to request Lockwood's admittance to the bar of that court. Before a large crowd of spectators, the Court granted the motion without objection, making Lockwood the first woman admitted to practice before the United States Supreme Court.[48] It was not long thereafter that the United States Court of Claims permitted Lockwood to appear before it. Lockwood's struggles for equal opportunity, however, were not over. She battled with the states, including New York, Maryland, and Virginia, to gain admission before their courts. Although eventually granting her admission, several states' courts, including New York's, took over a decade before doing so.[49]

Despite these successes, Lockwood did not perceive the battle as having been won. As Lockwood later wrote, she would never stop fighting because her "cause was the cause of thousands of women."[50] She did not limit her efforts to the equal rights of women, however. In 1880, Lockwood successfully moved for admission before the United States Supreme Court of Samuel R. Lowery, the first African American from the South to be bestowed with that honor.[51] The *Chicago Tribune* reported that "the most visionary prophets of the last decade would scarcely have ventured to predict that a negro, upon motion of a woman, who is a qualified counselor before that Court, would have

been enrolled among the counselors of the Supreme Court of the United States."[52]

In the same year, Lockwood spoke at the National Suffrage Convention in Washington in a speech entitled "Why Women Should Vote."[53] After quoting the phrase "We the people" from the Declaration of Independence, she asserted that she was unaware of a "people" consisting only of men and argued that, if the Constitution did not allow women to vote, it should be amended or abolished.[54]

While Lockwood fought for equal rights on the east coast, Marietta Stow, whose path would soon cross Lockwood's, fought for those rights on the west coast. In 1881, Stow, a proponent of women's involvement in politics, started a newspaper called the *Woman's Herald of Industry and Social Science Cooperator* seeking to generate discussion on various women's issues. Because of her belief that women should not only be granted the vote but should be considered for public office, Stow decided to set an example and to independently run for governor of California. Other feminists found Stow's proposed candidacy to be foolish, but Stow "felt that political theater could create positive momentum and that her completely legal bid for public office demonstrated the irony of *voteless* women candidates." In 1884, a presidential election year, Stow wrote an article expressing frustration that women were being deprived a voice at national presidential nominating conventions.[55] That frustration was shared by Lockwood, who had lobbied at those conventions for a women's suffrage plank, without success.[56] Lockwood was further dismayed by Stanton and Anthony for backing a nominee of a political party that still had not adopted a women's suffrage plank.[57] On August 16, 1884, the *St. Louis Post-Dispatch* reported that Lockwood was rebelling against the political leadership of Anthony and Stanton by backing the prohibitionists' candidate.[58]

At the same time, Stow wrote an article in the *Woman's Herald* espousing the value of having women run for office. Stow reasoned that "Women who are eminently qualified for rulers should not shrink from having their names conspicuously before the people, as candidates and nominees, in order to have the strangeness worn off when it becomes possible to elect them. Then the hue and cry, 'There was never such a thing heard of,' could not be raised."[59] This article struck a chord with Lockwood, who responded to Stow's article with a letter that Stow later published. Lockwood, who emphatically agreed with Stow, posed the questions, "Why not nominate women for important places? Is not Victoria Empress of India? Have we not among our country women persons of as much talent and ability? Is not history full of precedents of women rulers?" She went on to write that, even if women were denied the vote, there was nothing preventing them from receiving it, and argued that it was time for women to have their own party with their own nominees.[60]

Stow, who happened to be the chairwoman of the National Equal Rights Party, informed its members of Lockwood's ideas.[61] Having found a suitable match, the Equal Rights Party nominated Lockwood as their presidential candidate and eventually named Stow as her running mate. Lockwood was shocked by the nomination, but accepted the following week and promptly started drafting a platform.[62] The platform consisted of 15 points, which included the pledge to do justice to all citizens regardless of color, sex or nationality; the recommendation to the states to adopt laws granting women the right to vote; the strengthening of commercial relations with other countries; the discontinuance by legal means of the liquor trade; the termination of monopoly by men of all votes, public offices, and distribution of money; and the recommendation of a uniform system of laws for the states. The press quickly received word of Lockwood's nomination, and Lockwood's acceptance letter and platform were published in newspapers across the country.[63]

Lockwood's nomination created quite a stir even among the leading women's activists. Lockwood later wrote that Stanton and Anthony reported to the press that Lockwood's candidacy was "not regular" because they had not participated in the nomination.[64] Abigail Scott Duniway, a women's activist and editor of *The New Northwest* newspaper, took a more aggressive stance and argued that Lockwood's campaign was bringing contempt upon the women's suffrage movement.[65] These criticisms neither deterred nor appeared to surprise Lockwood who, when asked by a reporter whether she expected to receive the support of the women suffragists, replied "Certainly not … You must

Portrait of Belva Lockwood in cap and gown, 1915.
Library of Congress, Prints & Photographs Division, Harris & Ewing Collection LC-H261-6311

remember that the women are divided up into as many factions and parties as the men."[66]

Instead, Lockwood forged ahead with her campaign. On September 18, 1884, the Equal Rights Party held a meeting at a farm near Wilson's station in Maryland to ratify Lockwood's nomination. Several members of the press and about 100 party members attended. In her speech, Lockwood presented a lively discussion of the need for equality for women and the failure of the Democratic and Republican parties to raise new issues that would benefit either the laboring classes or women. Although relatively small, the event served to create more publicity for Lockwood's campaign.[67]

The news of Lockwood's candidacy reached even more Americans when the popular newspaper *Frank Leslie's Illustrated* published an article about her campaign. As a result of this publicity, Lockwood received numerous requests to speak. Lockwood, who lacked a campaign fund, was business savvy and used those requests as an opportunity to finance her campaign, offering to provide paid lectures at various events. Her plan succeeded and, after the election, she boasted that she finished the campaign with $125 to spare.[68]

In October, Lockwood traveled across the country with the money she earned from her lectures, and crowds as large as 1,000 people gathered to hear her speak.[69] On the day before the election, Lockwood returned to Washington and told reporters that they were welcome to visit her while she waited for news of the results.[70] When the results finally came in, it was determined that the Democratic candidate Grover Cleveland was the winner. Although it is unclear exactly how many votes Lockwood received, it has been reported that she received at least a few thousand votes, which, of course, were all from men.[71] Lockwood's only complaint was with respect to the final tally of her votes. She believed, rightly so, that her campaign was a great success that would go "down in history" and had "awakened the women of the country as nothing else has ever done."[72]

Lockwood ran for president on the Equal Rights Party ticket again in 1888. She received fewer votes, but increased awareness of women's rights and became in great demand as a lecturer.[73] After the 1888 election, Lockwood continued to practice law despite the fact that much of her time was devoted to lecturing. In 1906, at the age of 75, Lockwood made her last appearance before the United States Supreme Court, where she successfully defended a multimillion-dollar award in favor of the Cherokee Nation for being removed from their ancestral land without just compensation *(United States v. Cherokee Nation)*.[74] Lockwood died on May 19, 1917 after a 43-year legal career.[75] She was a true trailblazer, fearless and tenacious in her efforts to unsettle the public's perception of women and their proper place in society.

ENDNOTES

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4. Julia Hull Winner, *Belva A. Lockwood – That Extraordinary Woman,* 39 N.Y. Hist. 321, 325–26 (1958).
5. Lockwood, *supra* note 2, at 217.
6. Norgren, *supra* note 1, at 5.
7. Winner, *supra* note 4, at 326.
8. Lockwood, *supra* note 2, at 217.
9. *Id.* at 217–18; Norgren, *supra* note 1, at 5–6.
10. Norgren, *supra* note 1, at 6–7.
11. Diana Klebanow & Franklin L. Jonas, *People's Lawyers: Crusaders for Justice in American History* 9–10 (2003).
12. Lockwood, *supra* note 2, at 219.
13. Klebanow & Jonas, *supra* note 11, at 10–11.
14. Lockwood, *supra* note 2, at 221.
15. Winner, *supra* note 4, at 332.
16. Lockwood, *supra* note 2, at 222.
17. Ibid., 221.
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21. "Mrs. Dr. Lockwood Wants to Be a Lawyer," *The Nat'l Republican,* Oct. 26, 1869, at 4.
22. Norgren, *supra* note 1, at 30–35; "Woman Suffrage: The National Convention," *Evening Star,* Jan. 19, 1870, at 4.
23. Norgren, *supra* note 1, at 42–43, 243 n.16.

24. Klebanow & Jonas, *supra* note 11, at 14–15.
25. "Want to Vote," *Evening Star,* Apr. 14, 1871, at 4.
26. Robert M. McWade, "Mrs. Lockwood Tells of Suffrage Move's Growth," *Woman's Nat'l Daily,* Belva A. Lockwood Collection, New York State Library.
27. Belva A. Lockwood, "How I Ran for the Presidency," 17 *Nat'l Mag.* 728, 729 (1903).
28. Winner, *supra* note 5, at 332; Julia Davis, "A Feisty Schoolmarm Made the Lawyers Sit Up and Take Notice," *Smithsonian,* Mar. 1981, at 133, 137.
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30. Norgren, *supra* note 1, at 51.
31. Lockwood, *supra* note 2, at 224.
32. *Id.*
33. *Id.* at 225.
34. *Bradwell v. Illinois,* 83 U.S. (16 Wall.) 130, 140–41 (1872) (Bradley, J., concurring in the judgment).
35. Lockwood, *supra* note 3, at 225 (all quotations are from this page).
36. *Id.* at 226.
37. *Id.*
38. Klebanow & Jonas, *supra* note 11, at 17.
39. "Law Reports. United States Supreme Court: Women Excluded from Practice in the Court," *N.Y. Times,* Nov. 7, 1876, at 3.
40. Klebanow & Jonas, *supra* note 11, at 17; Lockwood, *supra* note 3, at 227; Davis, *supra* note 29, at 140.
41. Norgren, *supra* note 1, at 74–75.
42. Ruth Bader Ginsburg, *Remarks on the Life and Times of Belva Lockwood,* 37 Sw. U. L. Rev. 371, 372 (2008).
43. Norgren, *supra* note 1, at 75.
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50. "Belva Lockwood, Lawyer, Dies at 85," *N.Y. Times,* May 20, 1917, at 23.
51. Davis, *supra* note 28, at 141.
52. "Local Civil Service Reform," *The Brooklyn Daily Eagle,* Feb. 5, 1880, at 2 (quoting the *Chicago Tribune*).
53. Winner, *supra* note 5, at 334; "National Woman Suffrage Convention: The Opening Proceedings Today," *Evening Star,* Jan. 21, 1880, at 1.
54. Davis, *supra* note 28, at 141–42.
55. Norgren, *supra* note 1, at 124–27 (quotation appears on 127).
56. Davis, *supra* note 28, at 142; Klebanow & Jonas, *supra* note 12, at 23–24.
57. Lockwood, "Presidency," *supra* note 27, at 728.
58. "Three of a Kind: Lockwood, Anthony and Stanton Quarreling Over a Man," *St. Louis Post-Dispatch,* Aug. 16, 1884, at 1.
59. Editorial of Marietta Stow, *Woman's Herald of Industry,* Aug. 1884, at 1.
60. "Belva A. Lockwood: For the Herald," *Woman's Herald of Industry,* October 1884, at 4.
61. "Letter of Acceptance of Belva A. Lockwood: Nominee of the Woman's National 'Equal Rights Party'," *Woman's Herald of Industry,* October 1884, 1; Winner, *supra* note 4, at 335; Norgren, *supra* note 1, at 129.

    Of note, Jill Norgren wrote that the California-based lawyer and suffrage activist, Clara Foltz, who was one of the signatories to the letter informing Lockwood of her nomination, claimed, 34 years after the election, that the nomination had been a prank. According to Foltz, she and Stow had been surprised that the Associated Press had covered the story of the Equal Rights Party "convention." *See* Norgren, *supra* note 1, at 139; *see also* Klebanow & Jonas, *supra* note 11, at 24.
62. Lockwood, "Presidency," *supra* note 27, at 729.
63. *Id.* at 729– 32; "Letter of Acceptance of Belva A. Lockwood: Nominee of the Woman's National 'Equal Rights Party'," *Woman's Herald of Industry,* Oct. 1884, at 1.
64. Lockwood, "Presidency," *supra* note 27, at 732.
65. Klebanow & Jonas, *supra* note 11, at 26.
66. "Mrs. Lockwood Explains the Mystery of Woman Politics," *Evening Star,* Sept. 4, 1884, at 1.
67. "Belva is Ratified: The Equal Rights Party Makes a Public Demonstration," *Nat'l Republican,* Sept. 19, 1884, at 1; "Mrs. Lockwood's First Gun: The Opening of the Equal Rights Campaign at Wilson's Station - A Meeting at Mrs. Best's House," *Evening Star,* Sept. 19, 1884, at 4.
68. Norgren, *supra* note 1, at 134–35.
69. *Id.* at 136, 140; "A Woman Can be President: Mrs. Lockwood Defines the Position of the Equal Righters," *N.Y. Times*, Oct. 20, 1884, at 5.
70. Norgren, *supra* note 1, at 140.
71. *Id.* at 140–41; Lockwood, "Presidency," *supra* note 27, at 733; Davis, *supra* note 28, at 146; Berry, *supra* note19, at 24.
72. Lockwood, "Presidency," *supra* note 27, at 733.
73. Winner, *supra* note 5, at 337; Berry, *supra* note 19, at 24.
74. *United States v. Cherokee Nation,* 202 US 101 (1906).
75. Klebanow & Jonas, *supra* note 11, 32–34.

Photograph of Charlotte Smallwood-Cook. Photography by: Robert Buyer for Buffalo Evening News, provided by Ms. Smallwood-Cook.

Charlotte Smallwood-Cook

New York's First Woman Elected District Attorney

by Michael B. Powers

Judge Michael B. Powers received his Bachelor's degree from St. Bonaventure University in 1975, his Master's from Niagara University in 1979 and his law degree Summa Cum Laude from Western New England University School of Law in 1982. He served as Confidential Law Clerk to the Hon. Matthew J. Jasen of the New York Court of Appeals from 1982-83 and joined Phillips Lytle LLP in Buffalo NY in 1984 where he became partner in 1989. He was elected Clarence Town Justice in 2008 and continues to serve in that role. Judge Powers has tried cases in Federal Courts in San Francisco, New Orleans, Pittsburgh and Buffalo and in numerous state courts in New York. He retired as a partner at Phillips Lytle in 2016 and now serves as Counsel to the firm. Judge Powers lives with his partner Nancy in Clarence Center, NY and has two sons and a grandson. Jason Fleischer, a 2016 summer associate at Phillips Lytle LLP, assisted with the preparation of this article.

I had the pleasure of interviewing Charlotte Smallwood-Cook on August 23, 2011 for the Historical Society of the New York Courts' Oral History Project. Charlotte graciously invited me into her home and office, and to lunch at her favorite Warsaw, New York diner. Much of what follows are Charlotte's own recollections of the events that shaped and became her remarkable life. An outstanding lawyer, leader of the bar and the first woman to be elected District Attorney in New York, her wisdom and determination changed attitudes about women in the legal field and helped pave the way for those who followed. Although Charlotte described herself as just an ordinary person, she was anything but.

Early Life and Education

Charlotte Smallwood-Cook was born January 24th, 1923 to William and Alice Utter Licht in the Village of Union Springs N.Y., a small town on Cayuga lake.[1] Her father, a country doctor, encouraged Charlotte to expand her horizons and explore whatever careers she found interesting. His advice influenced her as a child, and in the courageous choices she made over the next eight decades. Her mother, on the other hand, insisted that Charlotte become a "proper lady." According to her mother, a nurse, Charlotte's career choices were limited to secretarial, clerical, nursing or teaching roles. As she later told Charlotte, "proper ladies" do not become attorneys.[2]

Charlotte remembers attending school for the first time at the age of three or four. Her school had a cloak room and one large classroom. Each grade sat in different rows, with the youngest students in front. Charlotte, however, was not told to learn only the lessons being taught to her grade, so she listened to the older students' lessons as well. When her parents heard Charlotte talking about "strange things" in her sleep, they inquired at the school and discovered that Charlotte was learning material above her grade level. Even at age four, Charlotte was demonstrating an independence and intellect beyond her years. To address her education "problem," Charlotte's parents removed her from school, thinking it unhealthy to be learning too much without an actual understanding of the subject matters.[3]

Above: Soldiers' Memorial Monument, Wyoming County Courthouse, Warsaw, NY.
Collection of the Historical Society of the New York Courts

Not surprisingly, Charlotte eventually returned to school where, in seventh or eighth grade, she had a brief encounter with an enlightened principal who greatly influenced her decision to become a lawyer. While discussing Charlotte's good grades, he casually inquired what she would like to do later in life and suggested she might make a good lawyer — the seed was planted.[4] Growing up in a small rural town, Charlotte had no idea what lawyers actually did, so she began asking her teachers and others. The only attorney with whom Charlotte was familiar at the time was, coincidentally, another woman, Portia, from Shakespeare's *The Merchant of Venice*. She was aware of one lawyer in town, but only knew that "he goes to Ithaca every day."[5] Dissatisfied with the answers she was receiving, Charlotte simply decided that she liked the idea of traveling to Ithaca daily and might like being a lawyer.[6]

Before choosing that path, however, Charlotte wanted to become an actress. Her mother, unsurprisingly, did not include actress on her "proper lady" list, explaining that actresses sold their bodies, took drugs and drank too much alcohol. Eventually, however, her parents relented and agreed that she could become an actress, but only if she did it properly by moving away to attend acting school. Unhappy with that plan, Charlotte informed her parents she would become a lawyer. Charlotte's mother was even less pleased and, to dissuade her, tried to introduce her to a noted woman lawyer who was coming to town and having tea at the church. Mrs. Licht searched for Charlotte, hoping to get her to the church to see this lawyer who "looked just like a man," wore men's clothes and had a masculine haircut.[7] Unfortunately for her mother, Charlotte did not make it to the church on time.

Charlotte attended high school in Trumansburg, New York, which was one of the first central schools in the state. She recalls asserting her independence in small and larger ways, so much so that Charlotte said she considered her brother to be an only child. For example, Charlotte's mother made her dress formally each day, which required her to wear long underwear—an embarrassing fashion statement Charlotte did not appreciate. She lived only a block from school and her mother watched her walk there each day, so Charlotte judged when her mother would stop watching, rolled up her long johns and proceeded to school.[8] On another occasion, while walking home from school with her ever-present books, some classmates teased her for studying outside of school. Charlotte responded, indignantly, that she brought books home "because I'm going to be a lawyer."[9] In another instance, Charlotte's high school orchestra teacher invited students who wanted to play in the orchestra to meet in the auditorium. Charlotte attended, equipped with her father's violin. The only problem was her inability to play. Undaunted, Charlotte mimicked the movements of the girl next to her without touching the strings. After the rehearsal, the instructor asked why she was there. Charlotte responded "you told everybody who wanted to be in the orchestra to report?—I want to be in the orchestra!" Charlotte began taking music lessons soon after.[10]

After graduating high school in 1940, Charlotte enrolled at Cornell University. She initially received a $500.00 scholarship but, based upon her high grades, later received a full ride.

During her second year at Cornell, Charlotte met her future husband, Edward "Ned" Smallwood. Ned was blind and had a seeing eye dog. Charlotte first noticed him at Willard Straight Hall, where students gathered to socialize. When she mentioned Ned's good looks, a friend replied that she would never marry a blind guy. Charlotte roundly disagreed, and said so. Later, she received a call from a stranger that Ned was debating that night for the University team. Charlotte rushed to the auditorium and caught Ned as he was packing up. She joined the debate team the next morning.[11] They began dating shortly afterwards and were engaged in 1941.[12] Concerned that Ned was one year ahead of her at Cornell, Charlotte double registered her last year to catch up while continuing to work part-time as a waitress.[13] She and Ned were married on May 22, 1943.[14]

Charlotte received her Bachelor's Degree in 1944 and enrolled in Cornell's law school at the same time.[15] She became the Book Review Editor of the Cornell Law Quarterly and published a comment on lie detector tests,[16] while Ned was Co-Editor in Chief.

Although Charlotte planned to have children before finishing law school, Ned persuaded her to complete her education first. Charlotte agreed and transferred to Columbia Law School to live with Ned in New York City, where he had his first job at

Illustrated by
LLOYD STAFFORD

Charlotte Smallwood Had the Faculty of Making People Like Her. It Also Helped Her Get Votes.

Mrs. District Attorney

Cooking, Cleaning and Looking After a Child and a Husband Couldn't Keep Her From Being the First Woman in New York State to Win Such an Office

By Irmis Johnson

THERE were four light-hearted Cornell students in the car, but Edward Smallwood sensed a special vivacity about the girl beside him. He believed she must be pretty although he couldn't see her face. He hadn't seen anyone's face since the day, in early childhood, when he accidentally destroyed his eyesight with a kitchen knife, while trying to unlace a football.

Charlotte Licht had been a stranger to the 20-year-old law student until a few moments ago, when the young people started on this trip together, but her voice sounded friendly and gay when she said:

"Well, we meet at last. I've seen you often around the campus."

"Ned" Smallwood and his seeing-eye dog, Gringo, were familiar figures to most students at Ithaca, N. Y.

The four Cornellians were on their way to Wells College, in near-by Aurora, where they were to represent Cornell in a debating contest.

Charlotte lost out in the preliminaries and offered to help Ned with the half-hour's research he was allowed for the finals. In spite of this he failed to win the debate.

But they talked about mutual hopes, not failures, on the way back to Ithaca. Both had scholarships that paid their college tuition.

Charlotte told how a summertime job as a waitress, and waiting on tables at her dormitory at Cornell had helped balance her budget so she could continue to work toward the law degree she was determined to have.

Her ambition was appealing to Ned, and she found him extremely attractive.

Early the next day Charlotte was called to the telephone and told that some flowers were waiting for her next door. They were from HDM—Ned Smallwood. He made the slight mistake of sending them to the place where a former girl friend lived, assuming that all university women must occupy the same quarters.

As the months went by Charlotte was able to give up her waitress job because she had been hired as a statistician in the School of Agriculture and had won another scholarship that paid for her room.

She and Ned plugged away at their studies but found time for enough dates to let them know that they were in love. They were married in May, 1943.

Charlotte shopped and cooked but she knew she could count on her husband to help with dishwashing and cleaning. She started her law course. Ned was made co-editor-in-chief of the Cornell Law Quarterly that year, and Charlotte was book review editor.

She did research for one of the professors, and read legal documents to Ned because few law books are written in Braille and he had to hire readers for much of his work.

June, 1944, was a wonderful month for the Smallwoods. Charlotte got her A.B. degree and Ned was graduated, cum laude, from the law school. July was even more important—that was when baby Chris was born.

Shortly after that Ned went job-hunting in New York City with Charlotte as guide. He convinced a leading law firm that being sightless was not an insurmountable handicap and the little family of three moved into a two-room apartment.

For a few months Charlotte worked with Ned in his office, for no salary, merely to get experience. Baby Chris was taken to a near-by nursery school in the mornings and his mother picked him up at three each afternoon.

In January, armed with another scholarship, Charlotte enrolled in the Columbia University Law School. She was back in the old routine of shopping, cooking and studying, attending lectures and shuttling back and forth between home and nursery school.

Again Ned helped her with the housework when he and Gringo reached home after battling the subway together in rush hours.

When Charlotte got her law degree, they moved upstate to Warsaw, county seat of Wyoming County. They had chosen Ned's old home town as the spot where they would open their first office together. The firm of Smallwood and Smallwood handled many cases, usually as partners, each handling part of the trial.

"Charlotte furnished the enthusiasm, and I had some of the sustaining power," Ned Smallwood said recently.

After practicing law four years, Charlotte decided to run for district attorney.

Professional politicians offered little encouragement and her opponents tried to belittle her.

A married woman, a housewife, a mother with a child to look after—how would she find time to perform the duties of district attorney? Or win votes, to begin with?

They were wrong on both counts.

If they had been familiar with the way Charlotte surmounted obstacles and fitted her life with varied activities, year after year, they'd have recognized her as a woman who always finds time to do whatever she sets out to do.

Studying, waiting on table, winning scholarships, doing research, compiling statistics, cooking, cleaning, looking after a child, taking a law degree, arguing cases in court, reading to her husband—sure, it took perseverance, planning, organization, understanding and boundless energy—and Charlotte had all of them.

Ned said she had something else, too: "the wonderful faculty of making people like her."

That was a big help in winning votes.

"When she made her house-to-house canvass for signers for the petition to name her a candidate," Ned said, "she talked to women about their babies, their gardens and their housework because she was truly interested."

Those women, and a lot of men, felt confidence in her—and they proved it at the polls.

Charlotte won the election and took office on Jan. 1, 1950.

At the age of 27, this charming housewife, mother and lawyer, became the first woman district attorney in the history of New York State.

She had a loyal husband to encourage her, but she really got there on her own two feet.

26 February 19, 1950

THE AMERICAN WEEKLY

"Mrs. District Attorney" Charlotte Smallwood in *The American Weekly*, February 19, 1950.
Collection of the Wyoming County Historian's Office

Donovan, Leisure, Newton, Lumbard & Irvine.[17] While in law school, Charlotte became pregnant with their first child, Edward. That experience made a lasting impression on Charlotte, who eventually wrote and published a book for her children, describing, among other things, the difficulties faced by a pregnant law student finding a place to live in New York City.[18]

At Columbia, Charlotte was required to choose a specialty. Unsure what area of law she wished to pursue, Charlotte was certain she wanted to help others and surround herself with people of character and integrity. She chose labor law[19] as her specialty and Constance Baker- Motley and Elaine Friedman as her closest friends. Ms. Friedman, who Charlotte described as unashamedly Jewish, went on to have a distinguished legal career in New York.[20] Ms. Baker-Motley too enjoyed a distinguished career, becoming, among other things, the first African American New York State Senator and Federal Judge.[21] Charlotte and "Connie" remained close friends for life.

Charlotte took summer classes at Columbia and graduated ahead of her class, receiving her LL.B. in 1946. After graduation, she and Ned moved to Warsaw, New York, Ned's hometown, because Ned preferred to work with individuals rather than corporate clients, and both felt they could make a greater impact there than in New York City. They established their family and a private practice in Warsaw where Charlotte assisted Ned until she passed the bar in January 1947. She then joined Smallwood & Smallwood.[22]

Charlotte's Next Crusade - Campaign for District Attorney

Charlotte and Ned had a diverse practice. One of Charlotte's first cases involved a husband charged with assaulting his wife. Her characteristically thorough investigation, including interviews of neighbors and friends, revealed an early case of "waterboarding" and that her client—the husband—was the real victim. Specifically, Charlotte learned that the wife would occasionally drag her husband out of the house to the pump and force cold water in his ear. Charlotte's client was acquitted.[23]

Charlotte's reputation grew and in 1949 the local sheriff, after seeing Charlotte try a case, told her that she would make a good District Attorney. Charlotte had no idea how one might become a District Attorney but, always curious, she investigated. She and Ned discovered that approval from James E. Nash, the Wyoming County Republican Chairman who had controlled local politics there for decades, was required before running for election in that county. Charlotte met with Mr. Nash who immediately informed her that District Attorney was not a proper job for a woman. He explained that she would have to prosecute rape cases and be exposed to "bad language." He offered instead to find her a different job that would pay more. Charlotte listened politely, thanked Chairman Nash for his time and replied, I guess that "we'll see whether we're sinking a battleship or launching one."[24]

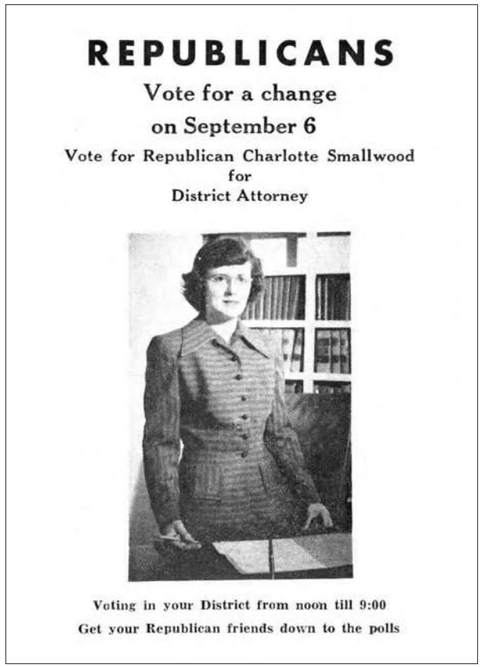
At the time, Charlotte was unaware that no woman had ever been elected District Attorney in New York[25]—and it's unlikely she would have cared. Charlotte was aware that she would need five hundred signatures to run in the Republican primary. Mr. Nash told her that would never happen. Charlotte was not convinced but quickly saw that many people would not talk to her on the street because they did not want to upset their neighbors and start political feuds.[26] Others were willing to listen, but only in their homes for private discussions. Charlotte persisted and eventually persuaded a few Republicans to collect signatures for her. She found going door to door with petitions boring and scary but, with Ned's encouragement, pressed on. She began in Varysburg where the first door was slammed in her face. At the next, she met a supportive woman and eventually found many more willing to sign her petitions. Charlotte even persuaded a few members of the Wyoming County Republican Committee to join her campaign—quite a feat in 1949, particularly in light of Chairman Nash's iron grip on his committee and the local political scene.

Charlotte secured her five hundred signatures and entered the Republican primary. Her opponent was the incumbent District Attorney, Glenn E. Charles. She recalled him as a nice man, but one who had so much difficulty speaking to a Grand Jury that the state police and sheriff presented most of their cases. The

Smallwood-Cook maintained a lifelong friendship with United States Judge Constance Baker Motley. Library of Congress, Prints & Photographs Division, NYWT&S Collection, LC-DIG-ds-00564

race was on, but more obstacles loomed. Several newspapers would not print Charlotte's political advertisements, fearing the loss of support and business of the Republican county government. Ads supporting Charlotte's opponent were, of course, routinely published.[27] Undeterred, Charlotte continued to campaign with whatever resources she could muster.

Charlotte eventually recruited, as a political ally and advisor, Grover C. Ahl, an enlightened ex-sheriff who was disenchanted with the state of politics in Wyoming County. Ahl introduced Charlotte around Wyoming County and informed her of social events she should attend. On primary day, he advised her to make phone calls to the voters of Attica. He explained it was critical to win a majority there because of its large population. Charlotte recalls making those calls from a phone book with Sheriff Ahl in an empty house in Attica. At the same time, unbeknownst to them, Harold C. Ostertag, a Republican New York State Assemblyman who was very influential at the Attica Correctional Facility, was instructing the guards to vote in public or they would be considered to have voted for Charlotte and face retaliation. Charlotte recalls that some guards were not intimidated and voted for her.[28] That night, Charlotte received a call from Sheriff Ahl, who excitedly told her that she had won a majority in Attica and, therefore, would win the Republican nomination.[29] The vote was a surprising landslide, 2,300 to 1,400.[30]



Campaign mailer for Charlotte Smallwood during the election for Wyoming County District Attorney. Collection of the Wyoming County Historian's Office

With that nomination, Charlotte began her general election campaign. Given the Republican split on her nomination, the Democrats were optimistic about securing their first County victory since 1912.[31] They nominated Francis Kelly, who Charlotte described as an outgoing and engaging Irishman, and a formidable candidate. Charlotte recalled one of Mr. Kelly's more clever tricks. To turn a large part of the electorate against her, Mr. Kelly and his supporters spread a rumor that Charlotte was a teetotaler intent on closing the bars and liquor stores in Wyoming County. Charlotte and Ned, however, turned the tables. Although she did not like beer, Charlotte began a crusade to visit as many bars as she could, buy a beer in each, take a few sips, and talk with the bartender for an hour. She recalls how bar patrons, who railed against "her plan," were corrected by their bartenders and told how Charlotte had recently been in their bars drinking beer.[32]

Ned and Charlotte Smallwood, with Ned's seeing eye dog Ginger, in an April 7, 1945 newspaper article. Collection of the Wyoming County Historian's Office

Charlotte also recalls, with characteristic good humor, the misogynistic attitudes she had to confront from others. For example, one Republican refused to vote for her in the primary, claiming that he would rather vote for a "yellow dog" Democrat than a woman. He became miraculously, albeit marginally, enlightened in the general election when he voted for Charlotte, who he placed just above a Democrat.[33] Charlotte encountered another voter on primary day who, unaware he was speaking with Charlotte the candidate, claimed he would never vote for the "old hag" running for District Attorney. Charlotte, an attractive twenty-six year old at the time, introduced herself, after which the man apologized, handed her an apple and left to vote—for her.[34]

Charlotte won the general election by another landslide - 8,160 to 4,491,[35] and was sworn in as the first woman in New York ever to hold the office of District Attorney.[36] Looking back, she remembers, "I didn't run as a woman — I ran as me."[37]

A Distinguished Career as District Attorney

Post-election stereotypes and bias persisted as Charlotte had to overcome widespread skepticism that a woman could serve competently as District Attorney. For example, a reporter from a London news agency called shortly after her election to say that the women of Great Britain wanted to know about Charlotte's hobbies. The reporter was surprised that Charlotte did not mention stitching or gardening, but instead replied that she focused most of her time raising her family and practicing law. Even Arthur Godfrey made an insulting remark on his radio show about Charlotte being both a mother and District Attorney.[38] She also recalls winning a briefcase at a District Attorney Association raffle, only to be told that she might want to exchange it for luggage. Charlotte graciously declined and carried that briefcase for decades.[39] On other occasions, Charlotte attempted to use the main entrances of the Buffalo Club and the Yale Club.[40] When stopped at the Yale Club and directed to the women's entrance, she exclaimed "I am not a woman; I am an attorney" and proceeded through the main entrance.[41]

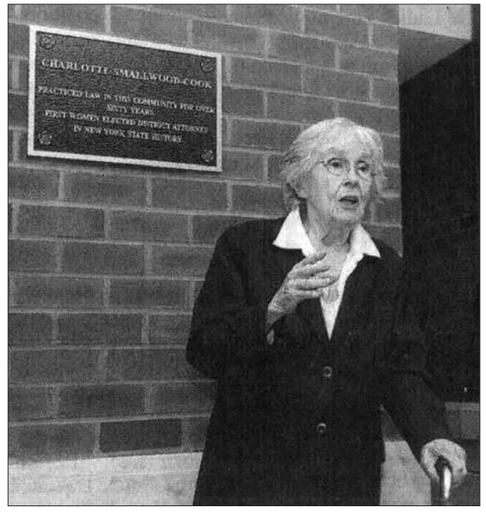
As District Attorney in rural Wyoming County, Charlotte was a one woman show; she had no other lawyers in her office. She also had a five-year-old son and became pregnant with her daughter shortly after the election. She remembers how her daughter Susan, affectionately referred to as "Suki," quickly became known as the "County's Baby."[42] Suki was born the day before one of Charlotte's manslaughter trials was to begin. Rather than enlist another prosecutor to fill in, Charlotte adjourned the trial and her other cases until she could return.[43]

Although a tough and competent prosecutor, Charlotte had a unique perspective on her job. She sincerely believed there were no "real crooks" in Wyoming County. In a letter to "Connie" Baker-Motley, Charlotte wrote, "You know, Wyoming County doesn't have any real crooks. The only crime we have here is stupidity crimes, and we have crimes of passion, which are also sort of stupid, but we don't have any real criminals."[44] Charlotte laughingly recalls discussing these views with Connie during a visit to Warsaw, when she received a call that a man had

raped his girlfriend because she refused to marry him. Shortly afterwards, the police reported that a man had been murdered in Covington and, later, that a drunk was driving in circles trying to run over police officers. In yet another report, she was told that a man had been murdered and dumped behind a shed in Perry; Charlotte recalled the widow telling her, "It's just like him to ruin my vacation."[45] The soon to be Federal Judge "Connie" Baker-Motley probably left Warsaw with some doubts about the dearth of "real crooks" in Wyoming County. She was also likely impressed that all of these cases were to be prosecuted by her friend, the one-woman dynamo District Attorney.

Among Charlotte's most vivid recollections as District Attorney was her prosecution in 1952 of the first capital murder case in Wyoming County in more than forty years. At 6:00 one morning, the sheriff called to advise Charlotte that there had been a murder in the town of Arcade. The sheriff drove her to the crime scene where she learned that Mr. Wojcik, a worker at Bethlehem Steel Corporation, had killed his wife and brother-in-law with a shotgun. Charlotte reconstructed the relevant events and instructed the sheriff to catalog the location of each piece of evidence. She recorded everything she discovered.[46] At trial, the defendant was represented by the highly regarded Charles J. McDonough, who invoked the insanity defense. Jury selection took a week and Charlotte admits she learned how to properly select a jury from Mr. McDonough. The trial lasted two weeks and ended in a conviction on the capital murder charge.[47] Although she had already left office, Charlotte eventually argued the appeal at the New York State Court of Appeals on December 3, 1952.[48] Charlotte recalls the judges being "interested" to see a female District Attorney argue a capital murder case. Mr. Wojcik's conviction was affirmed and he was executed. When asked how she felt about sending a man to his death, Charlotte was not conflicted. As she explained, "I had a feeling that no matter where he was, he was not safe for other people."[49] Charlotte later learned that Mr. Wojcik threatened to kill two fellow inmates with a straight razor.

Shortly after the execution, Charlotte was driving home when she noticed she was being followed. The car that had been tailgating her followed her into her driveway. Charlotte grabbed her gun, which she always carried but had never used, and remained in her car, afraid to get out. The car eventually drove off and Charlotte rushed into her house to call the police. Nobody was apprehended, but Charlotte suspected that Mr. Wojcik's son was her visitor.[50]



Charlotte Smallwood-Cook addresses a crowd of onlookers at a ceremony unveiling a plaque in her honor at the Wyoming County Courthouse. Collection of the Wyoming County Historian's Office

Charlotte did not see her most important role as District Attorney as indicting everyone arrested. She was careful to evaluate each case on its own merits and recalled one example as the man who had raped his fiancé after she refused to marry him. Charlotte learned that the couple had been going through a difficult time because their parents were of different religious faiths and did not approve of the marriage. Charlotte met with each and asked if they loved each other. When both said they did and that they wanted to marry, Charlotte suggested that getting married might resolve the criminal charges being pursued by her parents. Many years later, Charlotte was chatting with some strangers when she realized she was talking to the children of the happily married couple she had helped years before.[51]

Return to Private Practice

Ned died in 1952. Charlotte decided not to run for re-election so she could spend more time with her children and grow her private practice. Returning to private practice, she initially worked out of her house and a rented office in downtown Warsaw. She shared that office with another lawyer, Harry Brown. In the early 1960s, Charlotte bought the historic Augustus Frank house, which had been in the Frank family for three generations and, with the Frank family's approval, converted it to her permanent office.[52] Charlotte married her second husband Frederick Cook on July 26, 1970, and continued to expand her law practice.[53]

Charlotte gave up criminal work early in her career, and focused on civil matters.[54] She tried numerous cases, argued before the New York State Appellate Division,[55] the New York Court of Appeals, and the United States Court of Appeals for the Second Circuit.[56] As a respected labor attorney, Charlotte appeared frequently before the Workers' Compensation Board.[57]

Charlotte was also one of the first women admitted to the American College of Trial Lawyers, receiving a standing ovation at her induction ceremony. She served in the New York State Bar Association House of Delegates and was eventually appointed to the nominating committee. She also served on the committee investigating whether judges should be appointed or elected. In the face of fierce opposition from those favoring appointment, Charlotte advocated for election by the citizens whom judges are sworn to serve. She argued that judges should be accountable to the public and added that Western New York knows how to elect good judges.[58] Charlotte prevailed, leaving her mark on New York's judicial selection process to this day. Charlotte's failing eyesight and hearing forced her to give up trial work in the early 2000s, but she remained in private practice until 2012.[59]

Reflections of a Legal Pioneer

Charlotte was respected in the legal community as a capable lawyer and tough opponent. She felt no continuing animosity from those who had thought a woman should not be a District Attorney or even a lawyer. Judges were polite and, while she never sought them out as friends, she made many. Charlotte considered it a blessing to have the trust of so many people and always tried to honor their confidence in her.[60]

While insisting that family was an important responsibility, she also believed that everyone has to be true to themselves—"if you're true to yourself, you can't be false to anyone else."[61] She also wished for everyone to do something with their lives that they loved and at which they were good. Seeing a depth and background to each person of which others are often unaware, Charlotte hoped for everyone to respect each other.[62]

Far from the days of rolled-up long johns, a feigned violin performance, her abiding love for a blind law student, and her refusal to accept the archaic dictates of a political machine, Charlotte thought of herself as an ordinary person. Despite being the first woman to cross so many bridges in her fight for women's rights, Charlotte wished she had been more strong-minded.[63] She claims she was not intentionally trying to be a pioneer, but just doing what she wanted. When asked how she handled the many challenges in her life—the political campaign, her workload, the births of her children, the death of her husband, her remarriage and the trials of being the first woman District Attorney in New York State—Charlotte responded with characteristic humility, "It happened, it was there, and it was necessary ... that's what women do ... you just do it."[64]

A Legendary Woman Passes

On January 26, 2013, two days after her ninetieth birthday, Charlotte passed away in Batavia, New York.[65] In tribute to Charlotte and her service to women's rights and the legal community, the New York State Senate passed a resolution mourning her death and honoring her achievements.[66]

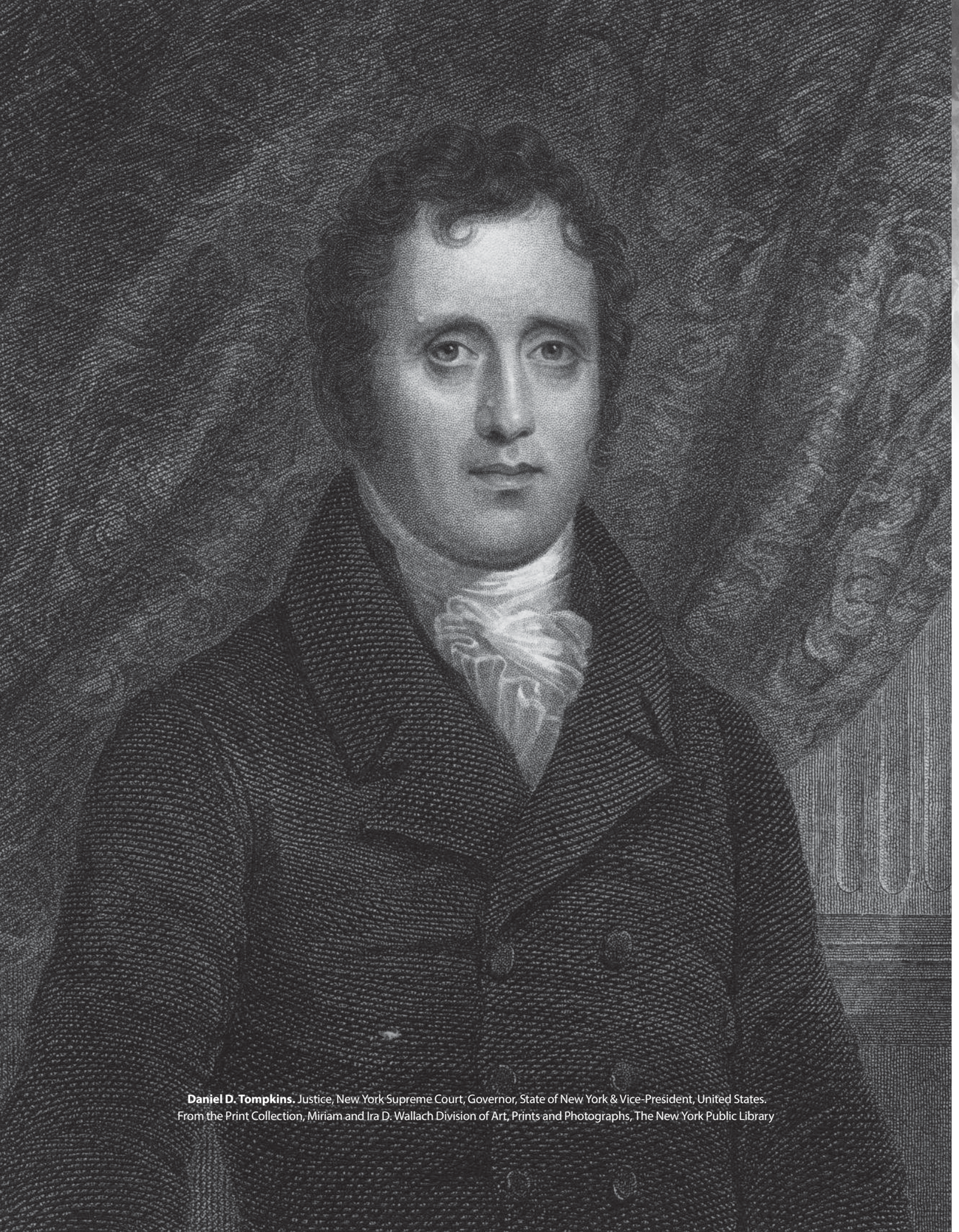
Charlotte Smallwood-Cook would be considered an extraordinary person by any standard, regardless of gender. That she accomplished so much in a male dominated profession, an unfriendly political environment and against such overwhelming odds, and did so with unfailing humility, dignity, integrity and good humor, makes her truly one of New York's most admired and respected legal pioneers and champion of women's rights.

EDITOR'S NOTE

Michael B. Powers, a Trustee of the Historical Society of the New York Courts, interviewed Charlotte Smallwood-Cook in Warsaw, New York in 2011, as part of the Society's Oral History Project. The session was filmed, and a transcript of the interview produced. To date, the Society's Oral History Project has collected over 20 interviews with high court judges and legal luminaries of the Bar like Charlotte Smallwood-Cook. The Society is in the process of making the transcripts of these interviews available on our website.

ENDNOTES

1. Bruce Weber, "Charlotte Smallwood-Cook, 90, a Pioneering District Attorney," N.Y. Times, Feb. 2, 2013, at A24.
2. DVD: Oral Biography of Charlotte Smallwood-Cook taken by Michael Powers, August 13, 2011 in Warsaw, N.Y., pt. 1 (Historical Society of the New York Courts 2011) (on file with author) [hereinafter *Video Biography*].
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.*
11. *Id.*
12. *Id.*
13. *Id.*
14. Charlotte Smallwood Cook, PRA Book, http://prabook.com/web/person-view.html?profileId=392452.
15. *Id.*
16. *Video Biography*, pt. 1.
17. "Election of Woman District Attorney Is Believed to Be the First in This State," N.Y. Times, Nov. 10, 1949.
18. Charlotte Smallwood-Cook, *No Vacancy* (2013).
19. *Video Biography*, pt. 1.
20. Elaine Florence Friedman, http://prabook.com/web/person-view.html?profile*Id*=393553.
21. Constance Baker Motley, *Equal Justice Under Law* 58 (1998).
22. *Video Biography*, pt. 1; "Woman District Attorney," *supra* note 17.
23. *Video Biography*, pt. 1.
24. *Id.*
25. *Id.*
26. *Id.*
27. *Id.*
28. *Id.*
29. *Video Biography*, pt. 2.
30. "Woman District Attorney," *supra* note 17.
31. *Id.*; *Video Biography*, pt. 2.
32. *Video Biography*, pt. 2.
33. *Id.*
34. *Video Biography*, pt. 1.
35. "Woman District Attorney," *supra* note 17.
36. *Id.*
37. Joseph P. Fried, "Following Up," N.Y. Times, Dec.16, 2001, at A41.
38. The comment as remembered by Charlotte was "I can just see the DA leaning over the little crib and saying, 'How is my little, itsy baby for a party of the first part?'"
39. Albert M. Rosenblatt, *The New York State District Attorneys Association: An Illustrated History* (1998).
40. *Video Biography*, pt. 2.
41. *Id.*
42. *Id.*
43. *Video Biography*, pt. 2.
44. *Id.*
45. *Video Biography*, pt. 1.
46. *Video Biography*, pt. 2.
47. *Id.*
48. *People v. Wojcik*, 305 N.Y. 551 (1953).
49. *Video Biography*, pt. 2.
50. *Id.*
51. *Video Biography*, pt. 3.
52. *Video Biography*, pt. 2.
53. Prabook, *supra* note 14.
54. *Video Biography*, pt. 2.
55. *See Peckham v. State*, 387 N.Y.S.2d 491 (1976).
56. *See Bailey v. Baltimore & Ohio R.R. Co.*, 227 F.2d 344 (2d Cir. 1955).
57. *See Wyoming Cty. Cmty. Hosp.*, W.C.B. 7970 9959, 2004 WL 329784 (N.Y. Work. Comp. Bd. Feb. 13, 2004); *Randy Boyd/AGWAY*, W.C.B. 7960 2614, 79708503, 2003 WL 22937621 (N.Y. Work. Comp. Bd. Dec. 8, 2003); *NYS Dep't of Corr.*, W.C.B. 7980 7880, 2003 WL 22708344 (N.Y. Work. Comp. Bd. Nov. 7, 2003); *B.R. Dewitt, Inc.*, W.C.B. 7830 8307, 1987 WL 67705 (N.Y. Work. Comp. Bd. June 15, 1987).
58. *Video Biography*, pt. 2.
59. "Charlotte Smallwood-Cook, the first woman to serve as a district attorney in New York," The Buffalo News, Feb. 8, 2013.
60. *Id.*
61. *Video Biography*, pt. 3.
62. *Id.*
63. *Id.*
64. Bruce Weber, "Charlotte Smallwood-Cook, 90, a Pioneering District Attorney," N.Y. Times, Feb. 2, 2013, at A24.
66. S. Leg. Res. J436, 2013 State Senate (N.Y. 2013).



Daniel D. Tompkins. Justice, New York Supreme Court, Governor, State of New York & Vice-President, United States. From the Print Collection, Miriam and Ira D. Wallach Division of Art, Prints and Photographs, The New York Public Library

"When Men Amongst Us, Shall Cease to be Slaves"

The Bicentennial of New York's 1817 Final Act of Emancipation

by Craig A. Landy

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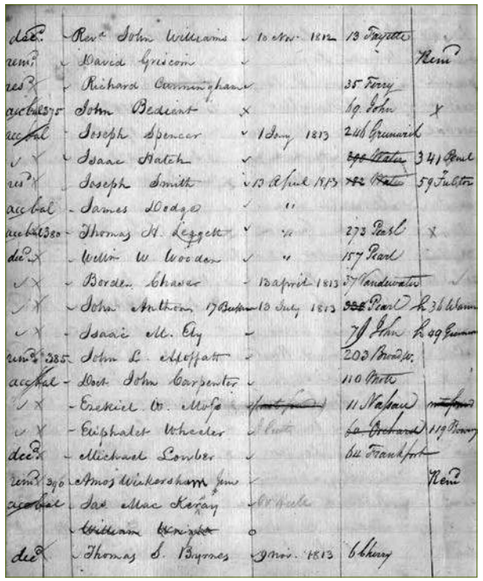
In honor of the 150th anniversary of the Emancipation Proclamation, President Barack Obama called upon all Americans to observe January 1, 2013 with appropriate ceremonies and activities to celebrate the proclamation and the timeless principles it upheld. Over the years, however, celebration of the Emancipation Proclamation has eclipsed another important milestone along the path to freedom: the final abolition of slavery in New York. The Final Emancipation Act in New York—March 31, 1817, when the New York State legislature voted to end two centuries of slavery within its borders—is well worth recalling on its bicentennial.[1]

Slavery existed in New York State from colonial times through the founding of the modern state. According to the 1790 U.S. Census, the state had 21,193 slaves, which ranked it first in number of slaves reported from the Northern states. Approximately 14% of New York families owned slaves, only slightly less than in Kentucky.[2] In 1799, a gradual abolition law was passed in New York which decreed that children born after July 4, 1799 to enslaved mothers would be born free, but were required to serve their mothers' masters, without compensation, until they reached the age of twenty-five (if female) or twenty-eight (if male).[3]

After passage of the 1799 law, the number of slaves in the state steadily declined at each census, until 10,088 enslaved persons were reported in 1820.[4] The marked decline over nearly two and one-half decades from the passage of the abolition law was due to several factors. For instance, with the end of slavery in New York on the horizon, many bound to their masters seized the initiative and negotiated with their owners for their liberty before the legally required date.[5] Further, slave importations into New York were illegal and no New Yorkers were born into slavery since July 4, 1799. In addition, some historians have hypothesized that many slaves were smuggled out of the state to the West Indies or Southern states, but quantifying the number of illegal sales has proven challenging.[6] Because the gradual abolition law applied only to those born after 1799, slavery continued for those enslaved born before July 4, 1799. It became clear to African-Americans, slave and free, and their



List of Members of the New York Manumission Society showing the date (April 13, 1813) Assemblyman Joseph Smith joined the Society. Digital Image, Courtesy Friends Historical Library of Swarthmore College SW09-10010661

allies, the New York abolitionists, that slavery might continue to exist in New York until the late nineteenth century unless the legislature intervened.

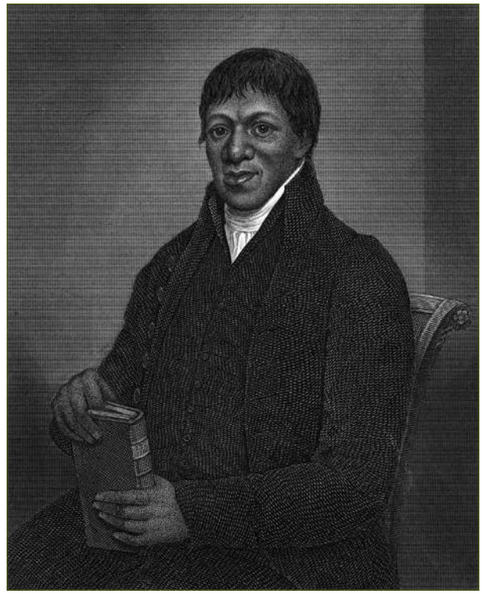
New York's leading antislavery society at the turn of the nineteenth century was the New York Manumission Society, whose founders included Alexander Hamilton and John Jay and whose primary objectives were the manumission of slaves, the protection of freed former slaves and the education of black children of all classes in the African Free Schools in New York City. While antislavery activists saw gradual emancipation as a step in the right direction, only minor changes in state's slave laws were made during the first decade of the 1800's. A final campaign for total abolition was still needed.

In 1811, the Manumission Society petitioned the New York legislature for an end to slavery. Governor Tompkins, a longtime member of the Society, called in his 1812 annual message to that body for the "gradual and ultimate extermination amongst us, of slavery, that reproach of a free people."[7]

Sojourner Truth
c. 1864, Library of Congress,
Prints & Photographs Division, LOT 14022, n.51

Leaders of the African-American community in New York City used the anniversary of the 1808 abolition of the slave trade in America to focus on the remaining struggle to end slavery. In one gathering at the African Methodist Episcopal Church on January 1, 1813, black abolitionist George Lawrence implored the Almighty to destroy slavery, with words equally intended for the legislature, proclaiming:

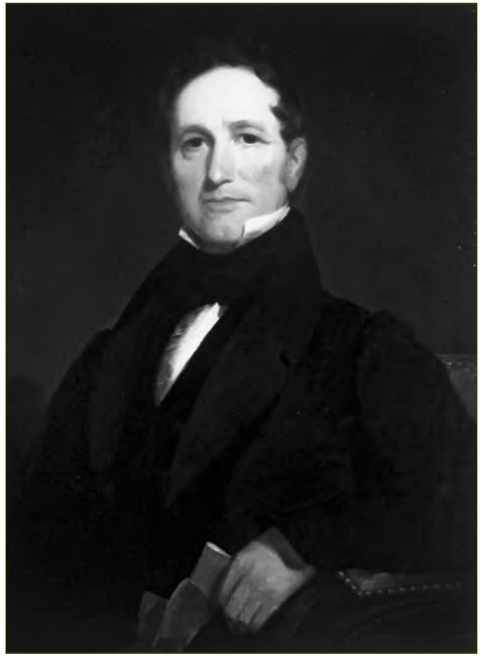
> *O! wilt thou crush that power that still holds thousands of our brethren in bondage, and let the sea of thy wisdom wash its very dust from off the face of the earth; let LIBERTY unfurl her banners, FREEDOM and JUSTICE reign triumphant in the world, universally.*[8]



Rev. Abraham Thompson. Founder and pastor of Zion African Methodist Episcopal Church in New York City offered a prayer at the beginning of the 1813 service commemorating the fifth anniversary of the abolition of the slave trade. Schomburg Center for Research in Black Culture, Photographs and Print Division, The New York Public Library

Despite these efforts, the legislature was hesitant to adopt total abolition and instead debated greater regulation of slavery in the state and the liberalization of the gradual abolition law. One bill proposed in 1814 would have released from service all those born after May 1, 1814 at twenty-one, instead of twenty-five or twenty-eight. Even that amendment fell victim to opposition in the senate. The committee that killed the measure observed:

> *[T]he bill contains principles which are too great an innovation on private rights, and too doubtful on the ground of public policy, to be acted upon without mature deliberation; they are of opinion that this bill has been sent to the Senate too late in the session to be acted upon…*[9]



Chief Justice John Savage
Chief Justice, New York Supreme Court (1823-1836)
New York Court of Appeals Collection

A close observer of the senate would have noted that the select committee which authored the report ultimately adopted by the senate consisted of Senators Lucas Elmendorf, Henry Yates, Jr. and Martin Van Buren, all from slaveholding families.[10]

The reformers were no more successful during the subsequent two legislative sessions. The assembly passed a modified gradual abolition law in 1815 and a revised slave bill in 1816, only to meet stiff resistance in the upper chamber. Upon receiving the assembly's 1816 bill, the senate ensured inaction by referring it to another unsympathetic select committee led by Senator Elmendorf, where the bill died when the session closed.[11]

In late 1816, the New York antislavery forces made one final push for universal emancipation. During that fall, a group of past presidents of the New-York Manumission Society lobbied the governor and legis-

lature to enact total abolition of slavery in New York State. Their efforts were later recounted before the national convention of abolitionists:

> *In the course of the last Autumn, several members who, from age and bodily infirmity, had been long excused from the active duties of the [Manumission] society, renewed their attendance, and urged to another effort, for the consummation of a leading object of their thirty years labour in the cause of humanity. Their countenance and wishes strengthened the sentiment already awakened in the society. An appeal to the citizens of the state, on the subject of final emancipation, was resolved on.*[12]

Samuel L. Mitchell, one of the past presidents of the Manumission Society, exhorted Governor Tompkins to lead the effort to end slavery in New York as a fitting and "dignified act" for the governor to "close h[is] political career as chief magistrate of this State," before Tompkins' assumption of the office of vice-president of the United States.[13]

By early January 1817, New York City's two Federalist-leaning newspapers published a direct appeal by Cadwallader D. Colden, president of the Manumission Society, urging the public to support "the final abolition of slavery in this state," and calling on the state legislature to "fix a period when men amongst us, shall cease to be slaves."[14] In his address, Colden summarized the history of Manumission Society's efforts to abolish slavery in New York and presented the humanitarian grounds for a law freeing all enslaved born before July 4, 1799, using the florid language of the early nineteenth century:

> *It is for these unfortunates, above the age of seventeen, (and their number is not very large) most of whom have brothers and sisters, or children, or grand-children, that are free; on whom the law now sheds no cheering ray of hope, and to whom time promises nothing in reversion, that we appeal to the philanthropy of the public and the justice of the legislature — of a public, whose various works of beneficence, have thrown into the shade, the charities of all former periods — and of a legislature, intended by that public, to be as well the almoners of its bounty, as the guardian of its right.*

* * *

> *This great work is not impracticable. It is not, as it might be in some sister states, hazardous. It is due to the consequence and self-respect of the state. It is demanded as an atonement for long injustice. Its mode, conditions, and the reputation of its accomplishment, we will cheerfully leave to the legislature; satisfied for ourselves, if the measure shall succeed, with the knowledge, that we have out-lived those hard and unchristian laws, which permitted no beam of hope to light upon the heads of an unfortunate race, except that which issued from beyond the grave.*[15]

A delegation from the Manumission Society was appointed to deliver a copy of the address to the state legislature and to lobby for passage of a total abolition bill.[16] On January 20, 1817, a copy of Colden's address was formally introduced to the state assembly by Joseph Smith, an assemblyman from New York City and member of the Manumission Society since 1813.[17]

The Albany Advertiser, the Federalist voice in upstate New York, rallied behind the Manumission Society's legislative initiative, appealing on religious grounds for support of complete abolition:

> *The attention of the christian world is so strongly excited on this subject [slavery], that we cannot in this country but be in some measure affected by it. We are a christian nation, we boast of our freedom – nay, we claim that we alone are free – and, yet, for the miserable consideration of a few years personal service, we suffer a foul blot to remain upon our character, both as christians, and as freemen.*[18]

On January 28, 1817, shortly before his departure to assume the office of vice-president of the United States, Governor Tompkins sent a special message to the legislature, which was read aloud in the assembly, calling on it to determine:

> *whether the dictates of humanity, the reputation of the state, and a just sense of gratitude to the Almighty for the many favors he has conferred on us as a nation, do not demand that the reproach of slavery be expunged from our statute book.*[19]

In his message, Tompkins downplayed the economic impact of full emancipation, pointing out that most persons of color born before July 4, 1799 "will have become of very little value to their owners," but total abolition would still be "consistent with the humanity and justice of a free and prosperous people." He recommended setting a date "not more remote than the fourth day of July, 1827 on which slavery shall cease within this state."[20]

On the following day, a memorial was submitted by the Religious Society of Friends (known as the Quakers) to the New York legislature seeking a law proclaiming "the extinction of slavery in this state."[21] On that same day, the governor's message was delivered to the senate and both the message and the Friends' memorial were referred to a joint senate/assembly committee.[22] Across the state, newspapers representing a broad political spectrum enthusiastically endorsed the governor's recommendation. The *Albany Argus,* the upstate voice of the Martin Van Buren faction of the Republican Party, called on the legislature to enact a law for "the entire abolition of slavery in this state," declaring:

> *Such a measure has long been devoutly desired by the patriots and philanthropists of our country; and its accomplishment will wipe out one of the greatest stains upon our character as freemen.*[23]

The *Albany Register,* the leading Albany outlet for those in the Republican Party who followed DeWitt Clinton, carried a letter signed by "Humanity," exhorting the legislature to adopt the governor's recommendation: "The period which his Excellency has set for the total abolition of slavery is so far distant, that it will be no infringement upon private rights to pass the law as recommended."[24]

However, ten days after the governor's address, it appeared that the legislature would allow another year to pass without ending slavery. The joint committee instead presented revisions to the existing slave code which would "accelerate the effect of that wise system of gradual emancipation." The joint committee then submitted a bill calling for a general revision of the state's slave laws to mirror the bills passed by the assembly in prior sessions, which the senate had successfully avoided.[25] The bill comprehensively reaffirmed and consolidated the existing state slave code, by shortening the length of uncompensated service for those affected by the 1799 statute; detailing the protocols for manumission of slaves; and freeing slaves imported into and exported out of the state, with limited exceptions. However, and as promised by Thomas S. Lester, the assemblyman from Suffolk County (a large slave holding county) when he introduced the joint committee's bill, it did not fix a date for general emancipation.

The abolitionists were not yet ready to abandon the fight. On March 12th, Assemblyman Joseph Smith introduced an amendment freeing all enslaved persons born before July 4, 1799, as of July 4, 1827. The rider read:

> *And be it further enacted, That every negro, mulatto or mustee, within this state, born before the fourth day of July, one thousand seven hundred and ninety-nine, shall, from and after the fourth day of July, one thousand eight hundred and twenty-seven, be free; but if such negro, mulatto or mustee, at the time above specified, be above the age of fifty-five years, he or she shall be provided for, as is provided for in and by the seventh section of this act.*[26]

The amendment was approved by the assembly by a vote of 62 to 23[27] and that house approved the amended bill by an even wider margin on March 17th.[28] When the senate considered the assembly bill, it added a further amendment relieving former masters of their obligation to support aged slaves emancipated by the legislation and then passed the whole bill by an overwhelming majority.[29] The assembly agreed to the senate's amendment and the total abolition bill became law on March 31, 1817.[30]

The road to freedom in New York was a long and collective effort, to be sure, but by taking that final step and ending legal slavery within its borders, "New York had become the first state to pass a law for the total abolition of slavery."[31] On Emancipation Day— July 4, 1827—the number of enslaved men and women born before July 4, 1799 who were freed was as many as 4,680, or 11.5% of the approximately 40,000 persons of color then living in New York State.[32]

The Fifteenth Amendment. Celebrated May 19, 1870.
Pub. By Thomas Kelly, New York, c. 1871, showing the grand celebratory parade in Baltimore. A similar parade in New York City on April 8, 1870 drew over 1,500 spectators and over 7,000 participants. Library of Congress, Prints & Photographs Division, LC-DIG-pga-01767

In the past few decades, historians have reported perplexingly different estimates of the number of enslaved men and women freed on July 4, 1827 – anywhere from 3,000 to 12,000.[33] However, it was widely believed at the time of emancipation among the New York African-American community that the number freed exceeded 10,000. Reverend Nathaniel Paul, the abolitionist pastor of the Albany African Baptist Church, put the number at 10,088[34] and *Freedom's Journal,* the first African-American edited and published newspaper in the United States, reported 12,000 to 15,000 freed.[35]

Even if the higher estimates of the number freed were somewhat inflated, they served to fuel the joyous public festivities that took place when Emancipation Day finally arrived. On both July 4th and 5th, jubilee celebrations, including parades, public dinners and religious gatherings, took place in African-American communities throughout New York City and beyond, marking the end of a shameful period in New York's history.[36]

Praise of Tompkins' initiative went so far as to predict that "his memory will be embalmed in the bosom of every human being who . . . duly appreciates the equal rights of man for the efficient part he took in behalf of the crushed slave."[37] Tompkins was honored by the black community when the Brooklyn African Tompkins Association, a mutual relief society dedicated to public charity founded in 1845, was named for him twenty years after his death.[38] While historians have criticized Tompkins' overall record on racial equality and lack of leadership on national slavery issues,[39] he has largely been remembered—down to the present—for initiating the total abolition law.[40]

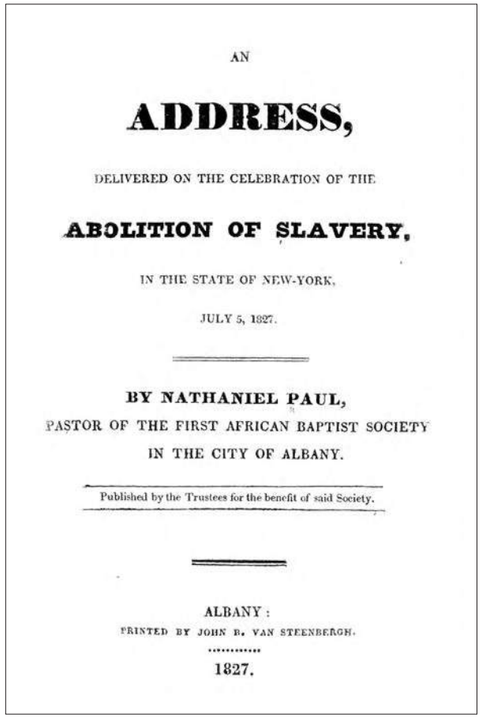
With passage of the 1817 act, news of the coming end of slavery spread throughout New York. Isabella, an enslaved woman owned by John Dumont in Ulster County, was keenly aware of the law and its path to freedom when, like many, she bartered with Dumont for her early freedom to take effect in 1826 – one year before the emancipation law required. When Dumont reneged, Isabella escaped to freedom with her infant daughter and, after a time, began her antislavery activism under the name Sojourner Truth.[41]

In *Griffin v. Potter,* the 1817 emancipation law was challenged by a slave owner as unconstitutional on the grounds that it was an uncompensated forfeiture by the state of vested rights. Chief Justice John Savage of the New York State Supreme Court upheld the validity of the act with strong language:

> *It is contended that the statute assuming to devest a vested right is unauthorized, and void* pro tanto. *It is a fundamental principle of our government that all men are born free and equal; that is, entitled by nature to equal freedom and equal rights. . . . The power of the Legislature over this subject is sufficiently ample to justify any act which can come in question in this case. When our government was first instituted, one portion of the population was in bondage to the other. Slavery existed by virtue of the laws which were in force previous to our political existence as a State. It could be justified only by necessity. It was at war with our principles; and . . . the Legislature was of opinion that there was no necessity for its continuance…*[42]

No sooner had slavery been abolished in New York than the political rights of persons of color came under bigoted attack, and a battle raged over the meaning of freedom beyond slavery's end. The New York Constitutional Convention of 1821, called to extend suffrage universally throughout the state, paradoxically extended the vote to all white men regardless of property ownership, while effectively disenfranchising the state's African-American male citizens, including those newly freed, by requiring black men to own $250 freehold property to vote. Factionalized state politics triumphed over the principles of equal rights as Van Buren and his Bucktail Republican colleagues set out to thwart any political advantage their rivals, the Federalists, might reap by universal emancipation among African-Americans who had in the past voted with the Federalist Party.[43]

With the adoption of the $250 freehold voting restriction for African-American men, New York had racialized suffrage standards. Major drives for equal suffrage were undertaken over the ensuing decades by both the black community and abolitionists, but those efforts fell sadly short. The franchise would not be granted to black men in New York until federal intervention with passage of the Fifteenth Amendment of the U.S. Constitution in 1870.[44]



AN

ADDRESS,

DELIVERED ON THE CELEBRATION OF THE

ABOLITION OF SLAVERY,

IN THE STATE OF NEW-YORK,

JULY 5, 1827.

BY NATHANIEL PAUL,

PASTOR OF THE FIRST AFRICAN BAPTIST SOCIETY

IN THE CITY OF ALBANY.

Published by the Trustees for the benefit of said Society.

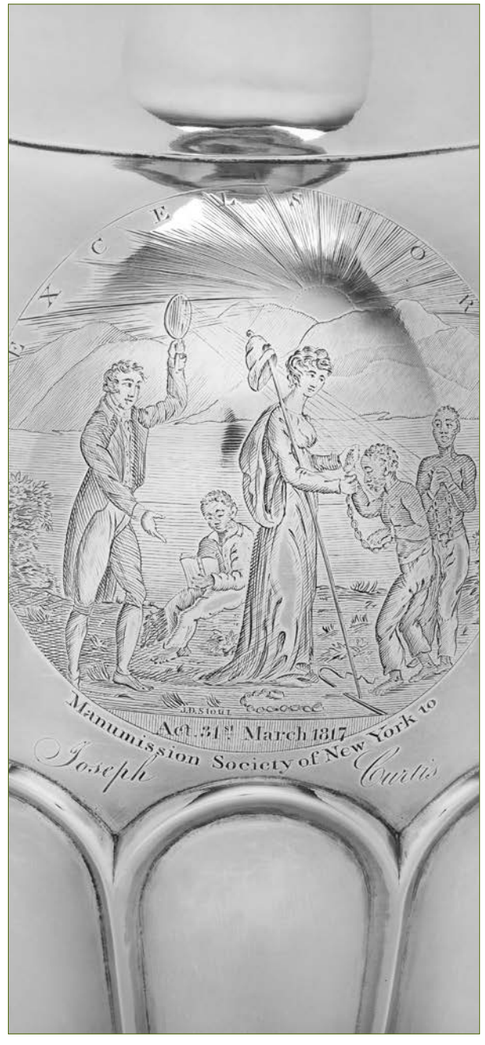
ALBANY:

PRINTED BY JOHN B. VAN STEENBERGH.

1827.

Reverend Nathaniel Paul, black abolitionist minister, hailed the end of slavery in New York in an address given in Albany on July 5, 1827 Courtesy Internet Archive

The bicentennial of New York's Final Emancipation Act is well worth remembering as an important chapter in the discourse of slavery and freedom in New York and the long road to be taken in pursuit of a just society. As it turned out, the struggle for equal voting rights in early New York served as a prequel to unjust voter identification laws and other obstacles African-Americans and others continue to suffer in some states. As Faulkner reminded us, "[t]he past is never dead. It's not even past."[45]

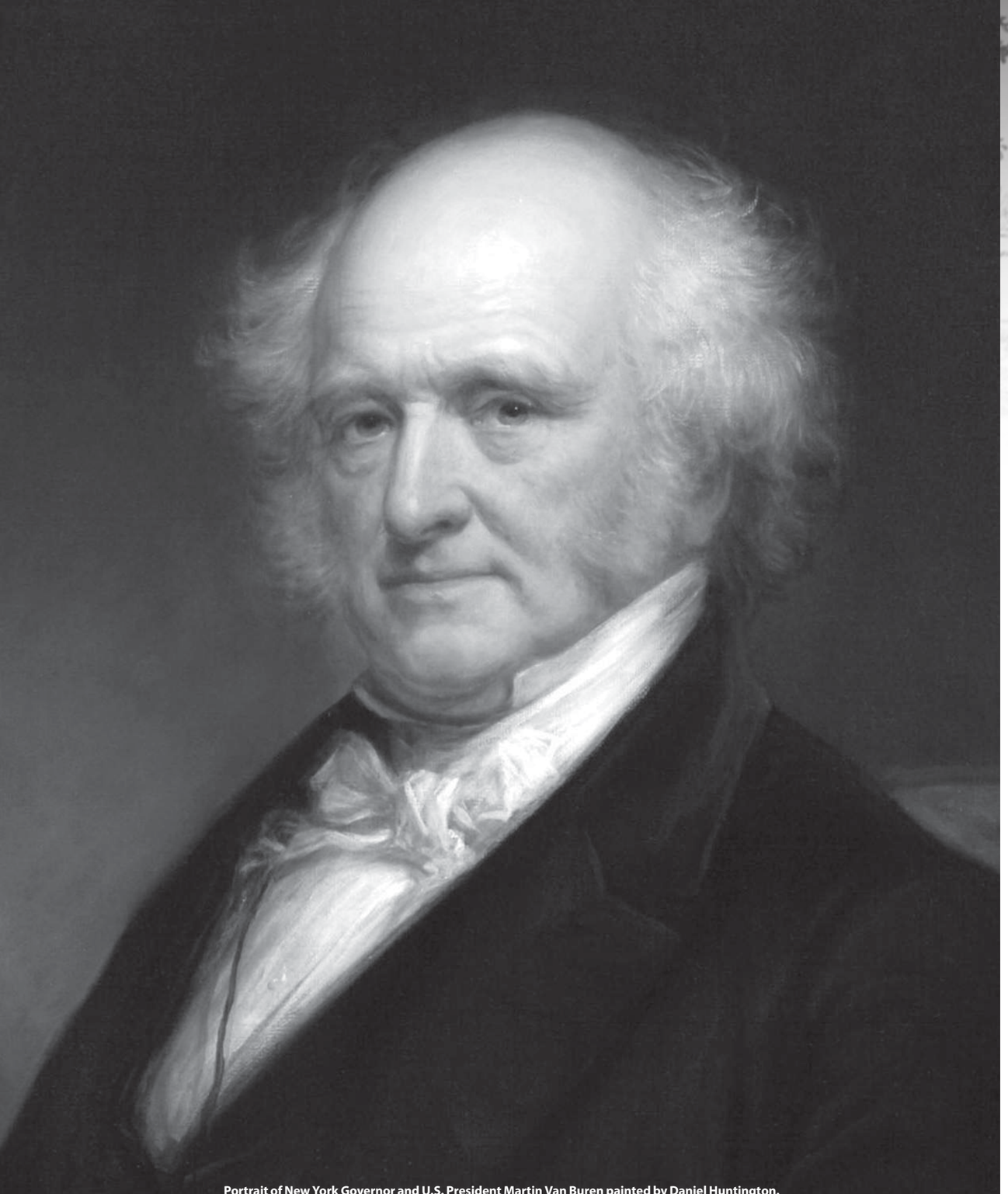


Detail of a silver pitcher depicting Liberty removing the shackles from two enslaved men, presented to Joseph Curtis by the New York Manumission Society in 1818 as a testimonial to Curtis' tireless efforts to persuade the New York legislature to pass the Final Emancipation Act. Curtis, together with fellow Society members John Murray and Thomas Addis Emmet, were also singled out by the black abolitionist William Hamilton on July 4, 1827 for securing the passage of the emancipation act. Collection of The New-York Historical Society, 1928:23b

ENDNOTES

1. An Act Relative to Slaves and Servants, 1817 N.Y. Laws 136–44.
2. U.S. Bureau of Census, *A Century of Population Growth: From the First Census of the United States to the Twelfth, 1790–1900*, at 133, 135 (1909). The closest Northern state was New Jersey with 11,423 slaves reported in 1790.
3. An Act for the Gradual Abolition of Slavery, 1799 N.Y. Laws 721-23. Similar laws were passed in Northern sister states.
4. U.S. Bureau of Census, *supra* note 2, at 133. A persuasive case has been made that the 1820 Census likely inflated the number of slaves in New York by its inclusion of roughly 5,500 free-born black children and young adults who were born after 1799 and thus owed service until adulthood to their mothers' masters under the gradual abolition law, but were not legally slaves. Vivienne L. Kruger, *Born to Run: The Slave Family in Early New York, 1626 to 1827*, at 813 n.127 (1985) (unpublished Ph.D. dissertation, Columbia University), *available at* http://newyorkslavery.blogspot.com/2007/08/chapter-twelve.html.
5. Ira Berlin, *The Long Emancipation: The Demise of Slavery in the United States* 69–71 (2015).
6. Claudia Goldin, *The Economics of Emancipation*, 33 J. Econ. Hist. 66, 70 (1973).
7. "Governor's Speech," N.Y. Herald, Feb. 1, 1812, at 3.
8. George Lawrence, *An Oration on the Abolition of the Slave Trade* 16 (1813). For a discussion of abolitionist oratory and addresses by black leaders in post-Revolutionary New York, especially through black churches and voluntary mutual relief associations, *see* Manisha Sinha, *The Slave's Cause, A History of Abolition* 141–44 (2016); Craig Steven Wilder, *In the Company of Black Men: The African Influence on African American Culture in New York City* 91–97 (2001).
9. *Journal of the Senate of the State of New York at their Thirty-Seventh Session* 231, 237 (1814).
10. *Id*. at 231.
11. Arthur Zilversmit, *The First Emancipation: The Abolition of Slavery in the North* 212–13 (1967); *Journal of the Assembly of the State of New York at their Thirty-Ninth Session* 382 (1816); *Journal of the Senate of the State of New York at their Thirty-Ninth Session* 229 (1816).
12. *Minutes of the Proceedings of the Fifteenth American Convention for Promoting the Abolition of Slavery* 5–6 (1817), *reprinted in* 2 *The American Convention of Abolition Societies, 1794–1829* (1969).
13. Letter of Samuel L. Mitchell to Governor Daniel D. Tompkins, undated, New York State Archives, A0084 Gubernatorial and Personal Records, Governor (1807–1817: Tompkins) Box 37, Folder 58.
14. Cadwallader D. Colden, "To the Citizens of the State of New-York," N.Y. Evening Post, Jan. 2, 1817, at 2; N.Y. Herald, Jan. 4, 1817, at 2. The address was reprinted in the Federalist-allied Albany Advertiser, Jan. 8, 1817, at 2.
15. *Id*.
16. Charles C. Andrews, *The History of the New-York African Free-Schools* 32–33 (1830).
17. *Journal of the Assembly of the State of New York at their Fortieth Session* 85 (1816-1817) [hereinafter *40th Assembly*]; 9 Records of the New-York Manumission Society, 1785–1849, MS 1465, New-York Historical Society 329, 334. For reasons unknown, Joseph Smith was sometimes referred to as "I. Smith" in the assembly's journal.
18. Albany Advertiser, Jan. 25, 1817, at 1.
19. *40th Assembly, supra* note 17, at 126. Tompkins (1774–1825), who had previously served as a Justice of the New York State Supreme Court, officially stepped down as governor on February 24, 1817.
20. *Id*.
21. *Id*. at 127; *Journal of the Senate of the State of New York at their Fortieth Session* 63 (1816-1817) [hereinafter *40th Senate*].
22. *40th Senate, supra* note 21, at 67–68. This joint committee contained none of the senators from the previous hostile senate select committees, perhaps due to the high public visibility the governor's message lent to the full emancipation initiative.
23. "Abolition of Slavery," Albany Argus, *reprinted in* Otsego Herald, Feb. 6, 1817, at 3.
24. "Abolition of Slavery and Imprisonment For Debt," Albany Register, Feb. 14, 1817, at 2.
25. *40th Assembly, supra* note 17, at 239.
26. *Id*. at 526.
27. *Id*. at 526–27.
28. *Id*. at 568–69 (the vote was 75-23).

29. *40th Senate, supra* note 21, at 251 (the vote was 20-3). Senators Elmendorf and Samuel G. Verbryck of the 1816 select committee cast two of the three votes in the senate against total abolition.
30. *40th Assembly, supra* note 17, at 700, 713; *40th Senate, supra* note 21, at 268. Under the 1817 act, children of either sex born to enslaved women between March 31, 1817 and July 4, 1827 owed twenty-one years of service, which made July 4, 1848 the latest possible date involuntary service would end in New York, except non-residents were permitted to enter New York with their slaves for up to nine months, until 1841 when New York became legally chattel slave-free.
31. Zilversmit, *supra* note 11, at 212–13; *see* Shane White, *Somewhat More Independent: The End of Slavery in New York City, 1770–1810*, at 53–55 (1991).
32. The 1825 New York State Census did not distinguish between free and enslaved persons of color, leaving the 1820 U.S. Census the closest official source of the number freed in 1827. New York State Census, 1825, as stated in Edwin Williams, *The New-York Annual Register* 45 (1832). The 1820 Census reported the number of slaves born before 1795 at 3,480. Adding another roughly 1,200 for those born between 1795 and July 4, 1799 would put the total number above the age of twenty-eight, and therefore freed on July 4, 1827 at about 4,680. Historical Census Browser (2004), retrieved August 3, 2016 from the University of Virginia, Geospatial and Statistical Data Center: http://mapserver.lib.virginia.edu/.
33. Eric Foner, *Gateway to Freedom: The Hidden History of the Underground Railroad* 44 (2015) (nearly 3,000); Zilversmit, *supra* note 11, at 213 (approximately 10,000); Paul J. Polgar, *"Whenever They Judge it Expedient": The Politics of Partisanship and Free Black Voting Rights in Early National New York*, 12 Am. 19th Century Hist. 1, 13 (2011) (10,368); Goldin, *supra* note 6, at 66, 70 (12,000).
34. Great Britain, House of Commons, Select Committee on the Extinction of Slavery Throughout the British Dominions, Report, 1833, at 215.
35. Freedom's Jl. (N.Y.), June 29, 1827, at 3, reprinting, Morning Chronicle, n.d.
36. For the details of these celebrations, see Shane White, *"It Was a Proud Day," African Americans, Festivals, and Parades in the North, 1741–1834*, 81 J. Am. Hist. 13, 38–41, 43–45 (1994).
37. Jabez D. Hammond, 1 *The History of Political Parties in the State of New York* 433 (1842).
38. Wilder, *supra* note 8, at 93.
39. Ray W. Irwin, *Daniel D. Tompkins: Governor of New York and Vice President of the United States* 211–12, 249–50 (1968); Polgar, *supra* note 33, at 16, 21 n.43.
40. Pete Hamill, *Downtown: My Manhattan* 210 (2004) (reminiscing on Tompkins Square Park in Manhattan named for the former governor); Irwin, *supra* note 39, at 311; "The Story of the State – The Era of Progress," *in* 3 *Representative Men of New York: A Record of their Achievements* 5, 6–7 (Jay Henry Mowbray ed., 1898).
41. Sojourner Truth, *Narrative of Sojourner Truth, a Northern Slave* 39–41 (1850).
42. *Griffin v. Potter*, 14 Wend. 209, 211–12 (N.Y. Sup. Ct. 1835).
43. The Bucktails achieved their goal by virtually eliminating black suffrage in the years following the 1821 Convention. For example, in the thirty years from 1825 to 1855, the number of black men eligible to vote in New York City was small. In 1825, only 68 were qualified to vote out of 12,559 black inhabitants in the city. In 1835, only 84 could meet the property requirement out of a black population of 15,061, while in 1845, 255 could vote out of a total of 12,913 black residents. Ten years later, of the 11,840 blacks living in New York City, a mere 100 could cast a ballot. George E. Walker, *The Afro-American in New York City, 1827–1860*, at 116 (1993).
44. For a full discussion of the disenfranchisement of black voters in New York at the 1821 Convention, see *Jim Crow New York: A Documentary History of Race and Citizenship, 1777–1877*, at 73–78, 102–42, 149, 174–88, 194–200 (David N. Gellman & David Quigley eds., 2003); Polgar, *supra* note 33, at 1–23. In 1846, 1860 and 1869, proposals to eliminate the property qualifications for men of color in New York were placed before the public in three statewide referenda, but all three were defeated. 1 Hanes Walton, Jr., Sherman C. Puckett & Donald R. Deskins, Jr., *The African American Electorate: A Statistical History* 151 (2012); Phyllis F. Field, *The Politics of Race in New York: The Struggle for Black Suffrage in the Civil War Era* 44–79, 114–46, 187–219 (1982).
45. William Faulkner, *Requiem for a Nun* 73 (Vintage Books 2011) (1951).



Portrait of New York Governor and U.S. President Martin Van Buren painted by Daniel Huntington.
Courtesy of the New York State Hall of Governors

Martin Van Buren

Accomplished New York Lawyer & Politician

by Hon. Helen E. Freedman

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Martin Van Buren was the first president born after the United States declared its independence from England and the only president whose first language was not English. When Van Buren was born in Kinderhook, New York on December 5, 1782, his family spoke Dutch at home and in the community. Although both sides of his family had been settled in upstate New York since the 1650s, Dutch was still the predominant language in that part of New York State.[1] Indeed, in February 1807 Van Buren married a distant cousin, Hannah Hoes who also spoke Dutch and was reputed to speak English with a heavy accent.

Despite his relatively humble beginnings, Van Buren gained a legendary reputation as one of New York's most skillful lawyers[2] and as a consummate politician[3] during the first half of the 19th century in New York. In those years, New York had not achieved the separation of powers among the three branches of government that we have today. Consequently, while still practicing law, Van Buren served simultaneously in the legislative, executive, and judicial branches, and left a distinctive mark in each of these areas.

Van Buren is widely credited as the architect of the two party political system in New York State. He built the best and most organized political party the country had ever seen[4] at the same time he was establishing his successful law practice. Almost until his death in 1862, he was a dominant political force in the entire state, which then comprised 1/7 of the population of the United States.[5]

This article will recount the impact on both New York and the United States of the first President to hail from the Empire State. Both his legal skill and political acumen contributed significantly to the leadership role that New York assumed in 19th century America.

Above: **The White House:** The White House during Martin Van Buren's presidency, 1840. Courtesy of White House Collection/White House Historical Collection

Van Buren as a New York Lawyer, Judge, and State Legislator

Law was a means of entry into upper class society for those "without the aid of powerful family connexions" at the end of the eighteenth century.[6] Van Buren's exposure to both law and politics began in his father's tavern, where early on he heard disputes between patriots and loyalists just after the American Revolution, and later arguments, occasionally ending in brawls, between Federalists and Republicans or Democrat-Republicans as they were known then. Among those who frequented the tavern were political and often legal rivals, Alexander Hamilton and Aaron Burr.[7] Young Martin's father was an ardent patriot and a Democrat-Republican. Other family members, including his wife's family, were loyalists and Federalists.[8]

Martin Van Buren knew he wanted to become a lawyer by the time he finished his formal schooling at age 14.[9] He had attended a village common school, then Kinderhook Academy, and then Washington Seminary in Claverack, all in Columbia County. In the decades that followed he had a rich and varied legal career in both the private and public sectors.

Van Buren began reading law in 1796 as a young teenager at the office of Peter Sylvester, a prominent Federalist attorney in Kinderhook. Sylvester and his son Francis impressed upon the homespun-attired Van Buren the importance of fashionable dressing and proper appearance; sartorial elegance later became his trademark.[10] He began taking responsibility for land dispute cases while clerking with the Sylvesters.[11] These cases were of extreme importance as will be discussed later.[12]

After six years with the Sylvesters, at the suggestion of a Democrat-Republican acquaintance, Van Buren spent the better part of a year in New York City studying in the law office of William P. Van Ness, affording him a more sympathetic political environment. Van Ness paid or advanced him the sum of $40.

It was during this time that Van Buren traveled back to Claverack to observe William P. Van Ness's pro bono advocacy in the famous Harry Croswell seditious libel trial. Croswell, editor of the Federalist paper the *Wasp*, had accused President Thomas Jefferson of undermining the Constitution and of paying another newspaper publisher to call "Washington a traitor, a robber, and a perjurer"; to call "Adams a hoary headed incendiary"; and to "grossly slander the private characters of men, who, he well knew were virtuous." Croswell was convicted under the prevailing sedition law. Alexander Hamilton, just weeks before his death at the hand of Aaron Burr, represented Croswell on appeal in Albany. Hamilton won a reversal in a decision written by James Kent, later to become the renowned Chancellor Kent, often deemed the father of New York jurisprudence. Hamilton argued, among other things, that truth could be a defense.[13] In 1805, the New York legislature enacted a bill to allow truth as a defense in libel cases.[14] As noted below, developing principles of libel became a significant part of Van Buren's practice, although we have no evidence that any of them survived.[15]

Van Buren returned to Columbia County in November 1803, passed the bar examination, and was admitted to practice eleven days before his twenty-first birthday. He went into practice in Kinderhook with his older half-brother James Van Alen (whose mother had been the widow of a member of another long established Kinderhook family before marrying Van Buren's father) and became involved in partisan electoral politics. Van Alen had been appointed Surrogate of Columbia County by the Federalist Governor Morgan Lewis in 1804 but ran unsuccessfully for the State Assembly in 1806. With Van Buren's help, Van Alen regained his footing and was elected to Congress in 1808. Van Buren then succeeded his half-brother as Surrogate of Columbia County, the first of his many appointive and elective offices.

Back in his law practice, Van Buren took on clients who were small landholders, seeking to vindicate property rights. For residents of Kinderhook, land rights were critical as they protected the freeholders from encroachment by the Van Rensselaers, the major landowning family (patroon) in northern Columbia County. In the southern part of the County, the Dutch and German tenant farmers sought to preserve rights against the Livingstons, the other major patroon family in Columbia County.

Van Buren became known for meticulous attention to detail about and close reading of boundaries inscribed in colonial patents.[16] He successfully represented many small landowners who disputed the Livingstons' claims to some of the manorial lands in Columbia County by diligently researching the origins of each claim. He also became legal advisor for a group of tenants who were challenging the Livingston family's claims. He advised the tenants that the Livingston patents were void because patroons had used "fraudulent misrepresentations" to acquire the land.[17] Robert Livingston, the family patriarch, had been granted two land patents in 1684 which were separated by 18 to 20 miles. However, in 1686 Livingston obtained a Confirmation of Patent which described the two parcels as adjacent to each other, thus appropriating land to which he was not entitled.[18]

Hannah Van Buren: Library of Congress, Prints & Photographs Division, LC-USZ62-25776

Van Buren's reputation was enhanced by skillful handling in Circuit Court in 1806 of a Kinderhook land claim, known as the Great Possession Cause, which was based on overlapping land grants dating back to the seventeenth century.[19] He also represented a few landlords seeking to eject farmers who had not paid rent from manor lands.[20] Fees charged by the Van Buren-Van Alen partnership varied from $3 to $60, but Van Buren grossed a sufficient amount so that he boasted that he would earn $129,000 by 1849.[21]

In 1807, having already accumulated significant wealth, the 24-year-old Van Buren married a distant cousin, Hannah Hoes. Sadly, she died of tuberculosis twelve years later in 1819, after giving birth to six children, of whom four sons, ranging in age from 2 to 11, survived.

Based on the reputation he gained in the short time following his admission to the bar, in 1807 Van Buren was admitted to the New York State Supreme Court as "Counsellor at Law." This enabled him to practice before the higher court of general jurisdiction, where he argued his first case in May 1808,[22] the same year he was appointed Surrogate of Columbia County. After his admission to the Supreme Court bar, Van Buren dissolved his Kinderhook partnership with his half-brother and moved to the Columbia County seat of Hudson. There he formed a partnership with Cornelius Miller, with whom he practiced for seven years.

Van Buren's main courtroom and political adversary was Elisha Williams, a prominent Federalist lawyer who was particularly skillful in persuading juries. Democrat Van Buren, on the other hand, demonstrated brilliance with his knowledge of fine points of law and his ability to analyze and arrange materials.[23] Williams may have succeeded before juries, but Van Buren often prevailed in oral argument.[24]

During his years in Hudson, Van Buren continued to represent tenants in land patent cases, which worked to his advantage in his burgeoning political career. He successfully represented John Collins, Jr. in a dispute with Jacob R. Van Rensselaer over ownership of the De Bruyn patent, a stretch of land in Kinderhook that had been in dispute for many years.[25] But not every case was a winner. He was unsuccessful, however, in *John Reynolds v. Mary Livingston*, in which the court rejected Reynolds' claim to ownership of the property and assessed back rent and charges.[26]

The Bank of Hudson retained Van Buren as its attorney shortly after his arrival in Hudson. Chancellor James Kent raised Van Buren to the positions of Solicitor in Chancery in 1810 and Counsellor in Chancery in 1814, enabling him to practice before the Court for the Correction of Errors. That tribunal was a Chancery Court which operated as a court of last resort, akin to the House of Lords in England.[27]

In 1811, Van Buren was one of three lawyers who represented John V.N. Yates in the landmark civil case of *Yates v. Lansing*, in which the Court for the Correction of Errors established the principle of judicial immunity that survives until today. In that case, Chancellor Lansing, believing that Yates instituted a lawsuit for which he had no authority, found Yates in

contempt and imprisoned him twice. The Court for the Correction of Errors ruled that the Chancellor had exceeded his powers by committing Yates to prison, and had remitted the matter to the Supreme Court to effect Yates' release from custody.[28] Yates then sued Lansing civilly, having both established that he was authorized to commence the lawsuit and that Lansing had exceeded his powers by having him imprisoned. In the civil lawsuit, the Court for the Correction of Errors held that a judge of a court of general jurisdiction (in this case Chancellor Lansing) cannot be called upon to answer in a civil action for an error of judgment in a matter within his jurisdiction.[29]

In 1812, Van Buren defeated Edward P. Livingston, a major Columbia County landowner, by 200 votes for election to the New York State Senate, where he served for eight years.[30] In 1814, while in the Senate, he was appointed by the United States Army to be Special Judge Advocate to prosecute the Court Martial of Brigadier General William Hull for surrendering Fort Detroit to the British during the War of 1812. The Court found the almost 60 year old General Hull guilty of neglect of duty and cowardice.[31] Van Buren was awarded a $2,000 fee, which he used to purchase a law library.[32]

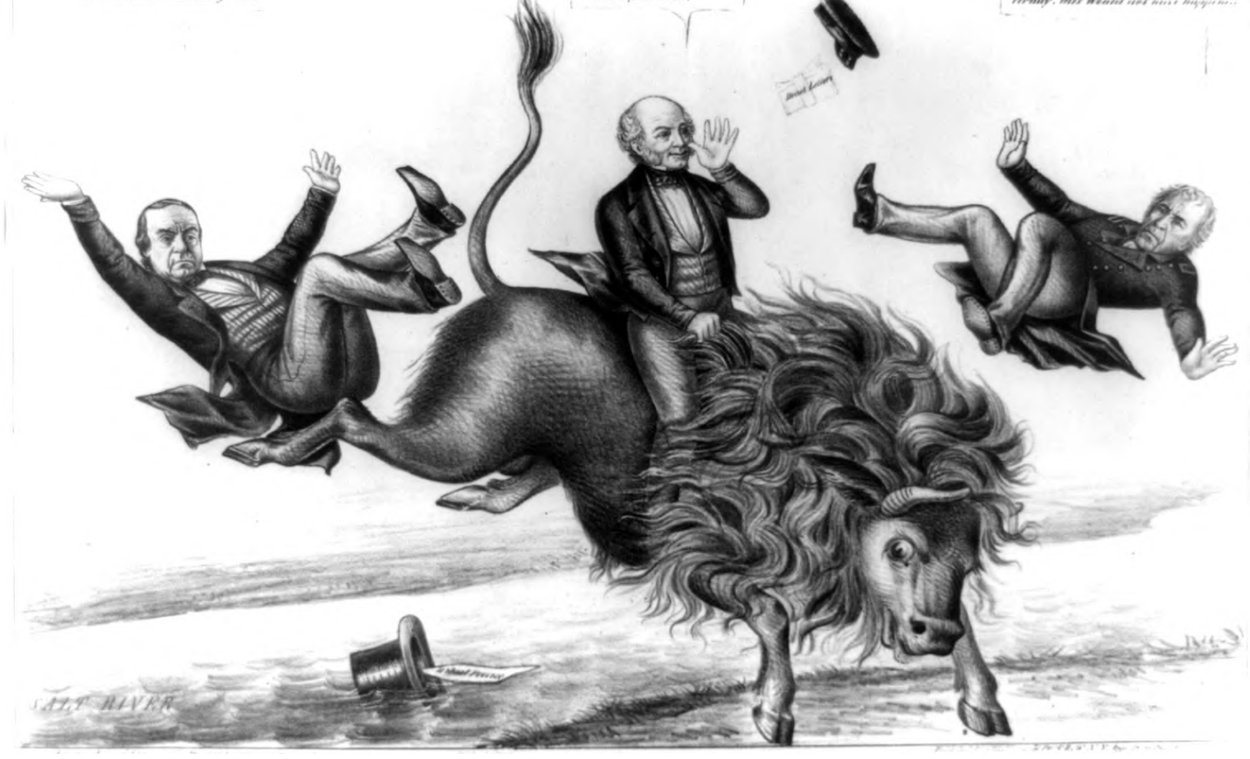
In 1815, at 32 years of age, Van Buren was appointed by the Senate and Governor Daniel Tompkins to be the Attorney General of New York State, a part-time position he held for the next four and a half years.[33] Although criminal cases were ordinarily prosecuted in local courts, the law allowed the governor or the Supreme Court to assign cases for prosecution to the Attorney General. As Attorney General, Van Buren increased his stature within the state by successfully prosecuting a number of high profile murder, rape, and forgery cases.[34] For his work as Attorney General he was paid $5.50 per day.[35]

Also in 1815, Van Buren moved his law practice to Albany and went into partnership with his former clerk, Benjamin Franklin Butler, who later served as Attorney General in President Van Buren's cabinet. In his civil litigation practice, Van Buren effectively advanced legal theories both in law and equity. He was particularly proficient in obtaining injunctive relief, setting forth theories of libel and expounding the historical basis for New York law.[36]

While a member of the State Senate and serving as Attorney General, Van Buren also served on the Court of Correction of Errors (as did many Senators), where he succeeded in persuading a majority to rule contrary to the position espoused by Chancellor Kent in a libel case.[37] Also, as a firm opponent of debtor's prison, Van Buren persuaded the majority of the Court to rule in favor of an impecunious debtor on a surety bond who had been released from prison on condition that he remain within a circumscribed area. When the debtor moved beyond the prescribed area in order to chase a wandering cow, the creditor reported the error. The lower court refused to pardon the transgression, but sitting together with two other judges, Van Buren ruled that the "stolen pleasures" of a few moments of liberty should not have been denied to the debtor. Chancellor Kent again disagreed.[38] Van Buren later sponsored bills, first in the New York State Senate and later in the United States Senate, to end imprisonment for debt. Neither bill succeeded.

Van Buren's career as Attorney General ended in 1819 when the De Witt Clinton branch of the Republican Party prevailed in the gubernatorial race as well as in the Senate. He continued serving in the State Senate and engaging in his private practice until he was elected to the United States Senate in 1821.

Although Van Buren reduced his practice after election to the United States Senate, he was involved in the highly publicized Medcef Eden litigation, arguing twice before the Court of Errors, in 1823 and 1828. The cases, *Anderson v. Jackson* and *Varick v. Jackson*,[39] concerned the will of one Eden. Eden left his property to his son Joseph, but if Joseph died without heirs, the will stated the property was to go to another relative, Medcef Eden. Joseph died without heirs, and the Bank of New York seized all of Joseph's property to pay his debts, depriving Medcef of the property Eden bequeathed to him. The Law of 1782 against entailing of property was invoked to defeat Medcef's claim. Alexander Hamilton, who had previously represented the creditors, had insisted that Joseph was the absolute owner of the property and that it could be used to satisfy his debts. Aaron Burr, Medcef's lawyer, asked for Van Buren's aid, fearing that his own reputation might get in the way of his client's cause. Van Buren succeeded in reclaiming the property for Medcef's family on the theory that there was a distinction



"The Buffalo Hunt," cartoon depicting the Free Soil Party's presidential nominee Martin Van Buren's prospects, 1848.
Library of Congress, Prints & Photographs Division, LC-USZ62-10355

between ownership of property in fee simple with a contingency attached (the case here) and fee-entail, which had been abolished by the law of 1782.[40]

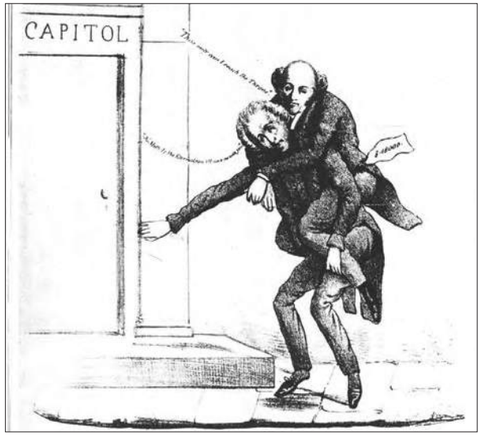
In 1829, Van Buren, at the age of 46, having acquired sufficient wealth both from his lucrative law practice and his property transactions including private mortgage holdings, closed his law practice to devote all of his energy to politics.[41]

Martin Van Buren as New York Politician and Statesman

As we have seen, Van Buren's political rise occurred at the same time his legal career prospered. His involvement started in 1806 with his half brother's unsuccessful assembly campaign followed by his successful congressional campaign two years later. Labeled the "Red Fox of Kinderhook", in part because of his reddish blond hair and in part because of his political acumen, or the "Little Magician" in that he was barely 5'6" tall, Van Buren was heavily involved with party politics, first in Columbia County and then statewide. By the time he was elected to the State Senate in 1812, he had mastered the ability to maneuver and obtain consensus when others sparred. His ability to speak carefully and persuasively and to marshal facts earned him the reputation of being a consensus builder and effective leader for most of his years in the State Senate.

Within a short period of his election, Van Buren became a leader of the State Senate. He associated with the "Bucktail"[42] branch of the Democrat-Republican Party which opposed Governors DeWitt Clinton and Ambrose Spencer, who were considered too close to or too willing to collude with Federalists. The Bucktail Democrats ultimately became the Albany "Regency." The Regency, in conjunction with Tammany Hall in New York City, controlled patronage statewide at least up until the time of the Civil War.

Politically, Van Buren was a true adherent to the Jeffersonian principles of minimal government intrusion into the affairs of men, but he was also extremely pragmatic. He at first opposed the construction of the Erie Canal, voting against it twice in the State Senate as too great an expenditure of public moneys. He then changed course and became an ardent and active supporter.[43] While this was a De Witt Clinton pet



Whig cartoon by Henry Anstice, illustrating President Andrew Jackson carrying Van Buren into office, 1832.
Courtesy of Wikimedia Commons

project—undoubtedly one of the reasons for his initial opposition—Van Buren came to understand the value of expanding state access to goods and materials, and has been credited with gaining the support needed to pass legislation for its construction and for the sale of state bonds to fund the construction.[44] He also supported the construction of state-funded public roads and schools, but believed that funds should be available before these projects got under way. He was an ardent supporter of the War of 1812, working to pass bills expanding the State Militia and increasing soldiers' pay.

During his years in the State Senate, Van Buren learned the advantage of a friendly press, and was able to secure a staunch ally in Albany: the *Argus*, described as an organ of the Regency.[45] "Without a paper managed by 'a sound, practicable, and above all discreet republican,' he stated with candor, 'we may hang our harps on the willows.'"[46] The *Globe* served a comparable purpose later in Washington.[47]

In 1821, Van Buren was elected as a delegate to the New York State Constitutional Convention of 1821—albeit as a delegate from Otsego County, as he would not have won had he run from Federalist strongholds of Columbia or Albany Counties. The Convention, the first since the adoption of New York State's original constitution in 1777, was proposed by and dominated by the Bucktails as an attempt to both streamline and democratize New York governance. Van Buren quickly became the dominant force at the convention even though Vice President Daniel Tompkins had been elected Chair.[48] While three quarters of the delegates were sympathetic to the Bucktails, Van Buren had some formidable Federalist adversaries, including Elisha Williams, Chancellor James Kent and former Governor Ambrose Spencer.

Using his consensus building ability, Van Buren achieved a number of the constitutional changes he sought. The Federalists vehemently opposed extending voting rights to anyone who did not own land. Van Buren, meanwhile, supported the expansion of voting rights, but not universal suffrage. He succeeded in extending suffrage to white males who paid taxes or who had served in the state militia during the War of 1812, and even to some laborers without freeholds worth $250. But he was unsuccessful in extending it to black males who paid taxes but did not own land. He succeeded in achieving two of his faction's goals of giving greater power to the Governor by abolishing both the Council of Appointments, which diluted gubernatorial power over judicial and other appointments, and the Council of Revision, which had shared veto power with the governor. Decreasing the governor's term of office from 3 to 2 years was part of the deal struck for increased gubernatorial power. That convention also revised New York's judicial system, establishing a new high court and circuit courts, but the Chancery Court remained until 1846. The new state Constitution was ratified by the voters in 1822.

Martin Van Buren takes his New York Experience to the National Scene

In 1821, Van Buren was elected to the United States Senate by the New York Assembly based on an anti-United States Bank platform. He had long opposed both the United States Bank and even state run banks, preferring private banks to state run institutions.

Van Buren, now a United States Senator, brought the wisdom he acquired in developing party loyalty in New York to the national scene. To quote him, "Without strong national political organizations, there would be nothing to moderate the prejudices between free and slaveholding states."[49] Van Buren continued his political role by building a strong Democratic Party throughout the country. He formed a close relationship with Senator William H. Crawford of Georgia and worked to foster ties between the Regency and its counterpart in Virginia, which was known as the Junto.[50] He spent several days with Thomas Jefferson in Monticello in 1824[51] and developed a web of communication of information and advice from New York to New Hampshire, Georgia, Maine, Ohio, Virginia, and Tennessee.[52]

Van Buren became chairman of the Judiciary Committee early in his Senate career, remaining in that position until December 20, 1828, when he resigned to become Governor of New York. He adopted what he perceived to be the Jeffersonian mantra that the less federal government becomes involved in state affairs, the better. However, in 1822, he supported using federal funds to repair the Cumberland Road in Kentucky, but then opposed further extension of that road. In 1824, he proposed a constitutional amendment to authorize internal improvements such as road repairs, because he took the position that nothing in the federal constitution authorized federal monies to be expended for roads or canals.[53] He is credited with later persuading President Jackson to veto the bill authorizing construction of a sixty-mile Maysville Road in Kentucky[54] on the ground that it was unconstitutional, as it intruded into state affairs. Similarly, he favored tariffs in 1824 and 1828, hoping to encourage the growth of woolen manufacturing in upstate New York, but later changed his mind, favoring imposition of tariffs for revenue purposes only.[55]

In 1823 and 1824, Rufus King, the other New York Senator and a Federalist, sponsored Van Buren for appointment to the United States Supreme Court. Senator King wrote to both Presidents Monroe and John Quincy Adams extolling Van Buren's legal acumen, but to no avail.[56] Meanwhile, Van Buren supported amendments to curtail the power of the Supreme Court. He was particularly incensed by its decision in *Gibbons v. Ogden*,[57] which reversed the injunction issued by the New York's Court of Errors against Gibbons, a steamboat operator. The Supreme Court ruled in favor of Gibbons on the ground that the Constitution gave the federal government the exclusive right to control commerce, which included licenses on navigable waters.

Cartoon satirizing Democratic efforts to re-elect Martin Van Buren in opposition to the Whig candidate William Henry Harrison, 1840.
Library of Congress, Prints & Photographs Division, LC-USZ62-89613

The one time Van Buren was unable to control the New York congressional delegation was in 1824, when he could not persuade the delegation to support William Crawford for President in the four way race that led to the election of John Quincy Adams by the House of Representatives. However, once Van Buren was reelected to the Senate in 1827 with a substantial majority, he decided the Regency should support Andrew Jackson, and gave the signal. The *Argus* proclaimed its support of Jackson and recommended that the Democrats (as they were now called) make his election their main goal.[58]

Van Buren Becomes Critical to Jackson's Success – and Runs for Governor of New York

Arthur M. Schlesinger, Jr. wrote

> *Van Buren's understanding of the new function of public opinion, as well as of Congress, furnished the practical mechanisms which transformed Jackson's extraordinary popularity into instruments of power… Without them the gains of Jacksonian democracy would have been impossible.*[59]

Van Buren was instrumental as one of Jackson's campaign managers, expanding the candidate's support throughout the nation in 1828. Many saw his support of tariffs on manufactured goods as a means of attracting northern Democrats, particularly New York merchants, to Jackson whose base was in the south. Van Buren traveled to Virginia, the Carolinas and Georgia to shore up southern support despite opposition to the tariffs in those states. Jackson, with John C. Calhoun as Vice President, defeated John Quincy Adams in 1828. At the same time, Van Buren was persuaded to run for governor of New York to maintain the Regency's control as its power was being challenged by Anti-Masons in Western New York. Jackson was a Mason, thus considered by Baptists to be "unchristian".

Van Buren's term as New York's governor lasted only two and a half months, but it was fairly productive all the same. For instance, he succeeded in having the Bank Safety Fund Law (a type of deposit insurance) enacted.

On March 5, 1829 President Jackson appointed Van Buren Secretary of State. Van Buren settled long-standing claims against France, and, in actions critical to his New York base, reached an agreement with the British to open trade with British West Indies colonies and gained access for American merchants to the Black Sea by means of a treaty with the Ottoman Empire. After he resigned as Secretary of State he was nominated but not confirmed as Ambassador to the Court of St. James. He then set about shoring up re-election support for Jackson in the 1932 election, leading Jackson to choose him for vice president.[60]

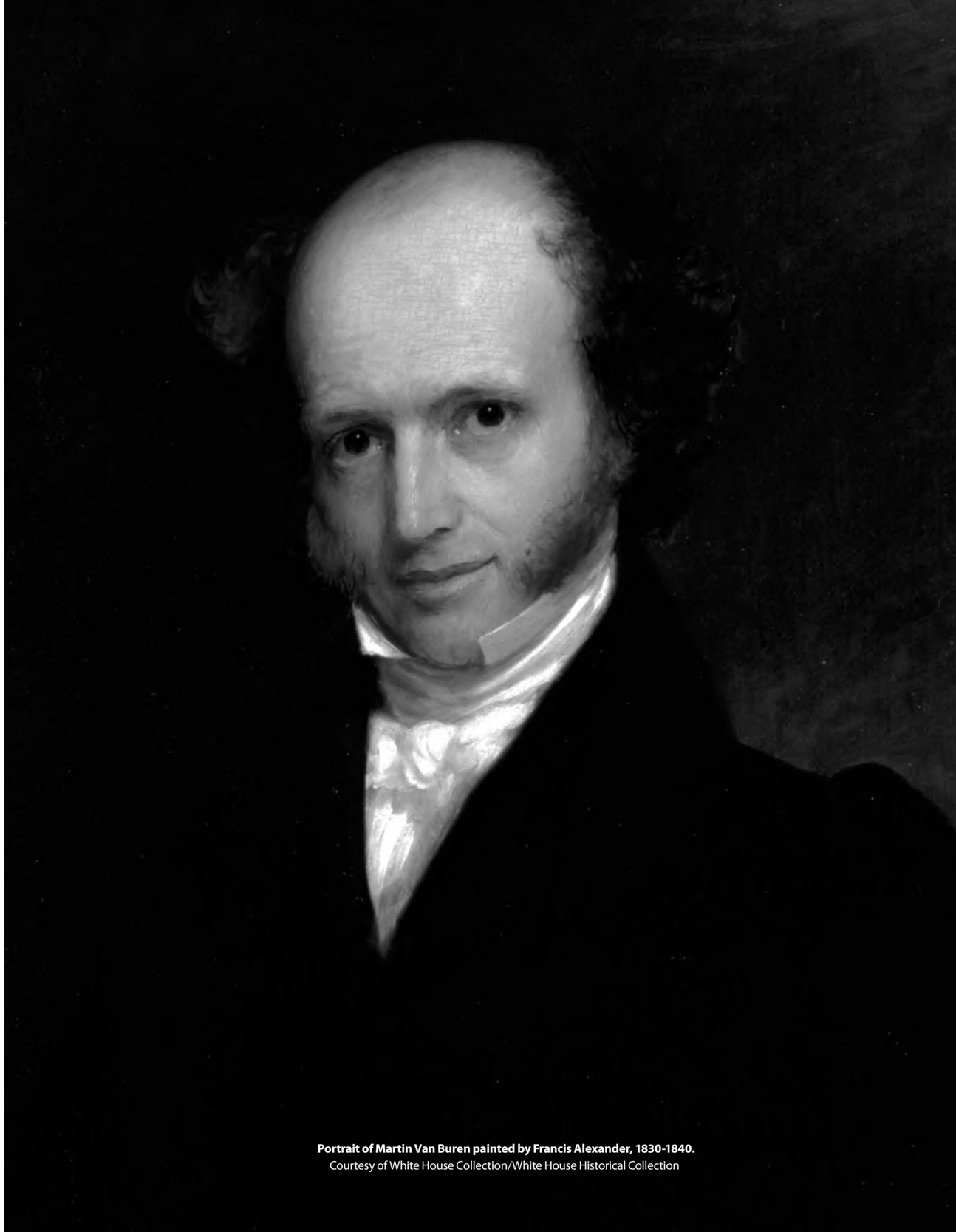
As Vice President, Van Buren presided over the Senate, successfully facing down his three main adversaries—Calhoun, Clay, and Webster—in their attempt to restore the National Bank. At the first national convention of the Democratic Party, held fully eighteen months before the election of 1836, Van Buren was nominated for President as Jackson's chosen successor. He would be the first of seven presidents from New York State and was distantly related to both Roosevelts. But he was not universally beloved at home. While Van Buren's supporters denominated the election as between the Jacksonian Democrats and the aristocrats, Senator William Seward of New York called Van Buren "a crawling reptile whose only claim was the he inveigled the confidence of a credulous, blind, dotard old man."[61]

Epilogue

Van Buren as President

In his inaugural address, Van Buren lauded the prosperity brought about by the great experiment in democracy enjoyed by Americans. Ironically, within ten weeks of his inauguration, the prosperity evaporated, and the Panic of 1837 began. Inflation was rampant and banks were unable to redeem notes. Many closed their doors. Speculators had taken advantage of easy money resulting from many of the notes issued by banks. The Whigs called for federal action.

Banking issues dominated Van Buren's presidency. Van Buren adopted a policy proposed by the radical faction of the New York City Democratic Party



Portrait of Martin Van Buren painted by Francis Alexander, 1830-1840.
Courtesy of White House Collection/White House Historical Collection

(known as the Locofocos) of putting federal money in local private banks rather than in state-chartered banks. He also supported establishment of an Independent Treasury into which all federal money would be placed and from which all federal obligations would be paid in specie or treasury notes. Bankers, National Bank adherents, and merchants opposed the measure and it failed. A second attempt to establish the Independent Treasury and adopt a hard money policy succeeded in 1840. The Independent Treasury was abolished by the Whigs when they came to power in 1841.

Although Van Buren's presidency was not successful, in part because of his reluctance to take strong action federal action in the face of the first major depression, the private banking structure that emerged has continued. Moreover, he established the 10 hour working day for mechanics and laborers employed by the federal government.[62]

President Van Buren avoided war with Mexico by rejecting Texas' request to become part of the United States. While supporting continuation of slavery in states where it existed, he opposed the extension of slavery and Texas was slave territory. Nevertheless, in 1840, Van Buren supported the Spanish government in its quest for return of the rebellious slaves of the "Amistad", the schooner carrying slaves to Cuba that ended up on Long Island. However, abolitionists sued successfully in federal court to free the slaves. Representative John Quincy Adams' magnificent four and a half hour defense of the slaves in the United States Supreme Court prevailed.[63] Van Buren also continued Jackson's policy of Indian removal, "resettling" the Seminole tribes from Florida to Oklahoma.[64]

Van Buren's "magic" failed in 1840. He was defeated for reelection by Whig candidate William Henry Harrison, losing by 150,000 popular votes and 174 electoral votes and losing six northern states he had carried in 1836. By this time, Van Buren's inability to deal with the newly emerging economy and his unwillingness to espouse a clear position on slavery alienated a sufficient number of northerners to cost him those states.[65]

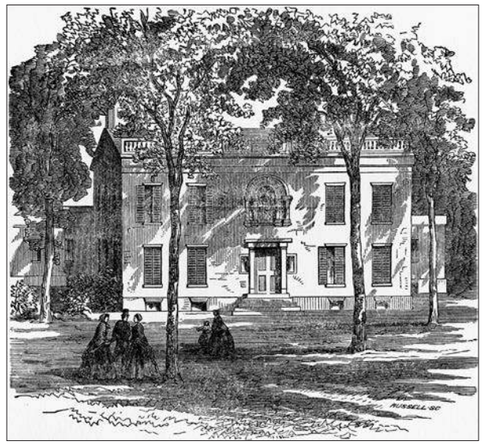


Illustration of Lindenwald, Martin Van Buren's home in Kinderhook, NY. Published in *Lives of the Presidents: A Graphic History of the United States,* by John S. C. Abbott and Russell H. Conwell

The Final Years in New York – and National Politics

After his defeat in 1840 and his failure to obtain the Democratic Party nomination against James Polk in 1844, Van Buren broke from the Democratic Party to run for President in 1848 as the first candidate of the newly formed Free Soil party, whose platform called for congressional enactment of legislation prohibiting the introduction of slavery into any territory. The Free Soil Party was composed of New York "Barnburner" Democrats who were hostile to corporate and bank power, anti-slavery Whigs from New England and Ohio, and the Liberty Party.[66] Whig candidate Zachary Taylor was elected, and Van Buren returned both to the Democratic Party and his Kinderhook home, vv (now a National Historic Site[67] administered by the National Park Service, and well worth a visit). There he devoted himself to his children and grandchildren, farming, the house, and following political and legislative matters but limiting himself to giving advice. Although he had not supported Abraham Lincoln in the 1860 election, Van Buren became an ardent supporter. He then died in August 1862 at the age of 79, just months before the Emancipation Proclamation issued.

ENDNOTES

1. Columbia County, where Kinderhook is located, was established in 1786. Before then, the area was part of Albany County.
2. Donald B. Cole, *Martin Van Buren and the American Political System* 24 (1984). Van Buren's skill in the courtroom and the scope of his practice was not matched by any President until Benjamin Harrison. *Id.* at 25.
3. Joseph G. Rayback, *Martin Van Buren* 10–11 (1st ed. 1982).
4. Gordon S. Wood, Federalists on Broadway, XIII New York Review of Books page 13 (January 14, 2016).
5. 1 *American Heritage Pictorial History of Presidents of the United States* 240 (1968).
6. Wood, *supra* note 4, at 13.
7. William A. DeGregorio, *The Complete Book of US Presidents* 125 (Barricade Books, Inc. 1994).
8. John C. Brooke, Columbia Rising, Civil Life on the Upper Hudson from the Revolution to the Age of Jackson, (University of North Carolina Press, 2010), at 36.
9. Cole, *supra* note, 2 at 24.
10. *Id.* at 431.
11. Brooke, *supra* note 8, at 285 et seq.
12. *Id.* at 36, 173–82.
13. *Id.* at 304; *People v. Croswell,* 3 Johns. Cas. 337 (N.Y. Sup. Ct. 1804).
14. Brooke, *supra* note 8, at 305.
15. Cole, *supra* note 2 at 42
16. Brooke, *supra* note 8, at 36.
17. Cole, *supra* note 2, at 28.
18. 2 Martin Van Buren, *The Autobiography of Martin Van Buren* 22–23 (1920).
19. Rayback, *supra* note 3, at 10.
20. *Id.*
21. Cole, *supra* note 2, at 18.
22. Rayback, *supra* note 3, at 10.
23. Phillip Stebbins, "The Legal Career of Martin Van Buren," *in Courts and Law in Early New York: Selected Essays* (Leo Hershkowitz and Milton M. Klein eds., 1978); Peyton F. Miller, *A Group of Great Lawyers of Columbia County, New York* (1904).
24. *Autobiography, supra* note 17, at 21.
25. Brooke, *supra* note 8, at 412.
26. *Id.*
27. Edward M. Shepard, *Martin Van Buren* 19 (1899).
28. 6 Johns. Rep. 337 (New York Court for the Correction of Errors 1810).
29. 9 Johns Rep. 394 (New York Court for the Correction of Errors 1811)
30. Cole, *supra* note 2, at 30.
31. James G. Forbes, *Report of the Trial of Brigadier General William Hull* (1814) (Digital Copy found on Google Books).
32. Rayback, *supra* note 3, at 10.
33. The position of New York State Attorney General did not become elective by the voters until 1847, after the adoption of the New York Constitution of 1846.
34. Rayback, *supra* note 3, at 11.
35. Cole, *supra* note 2, at 42.
36. *Id.* at 11.
37. Shepard, *supra* note 26, at 19.
38. *Barry v. Mandell,* 10 Johns. 563 (N.Y. 1813); *see also* Cole, *supra* note 2, at 42.
39. 2 Wend. 166 (N.Y. 1828); *see also Wilkes v. Lion,* 2 Cow. 333 (1823).
40. Rayback, *supra* note 3, at 11.
41. Cole, *supra* note 2, at 80.
42. Bucktails were emblems on hats worn by Tammany politicians. The term, at first an epithet that Clinton partisans used to smear opponents, was in turn adopted by them as their symbol. Van Buren never used the term as he considered it undignified. *See id.* at 54.
43. *See id.* at 50.
44. Brooke, *supra* note 8, at 424; Cole, *supra* note 2, at 46.
45. Cole, *supra* note 2 at 84.
46. American Heritage, *supra* note 5, at 240.
47. *Id.* at 240.
48. Cole, *supra* note 2, at 68; Wood, *supra* note 3, at 13.
49. Martin Van Buren, *The White House,* pages 103-114 (Bound document found in New York Historical Society Library).
50. Cole, *supra* note 2, at 120.
51. *Id.* at 96, 128.
52. Rayback, *supra* note 3, at 20.
53. *Id.* at 17.
54. *Id.* at 22.
55. *Id.* at 17.
56. Autobiography, *supra* note 17, at 141; *see also* www.loc.gov/collections/martin-van-buren-papers/articles-and essays/timeline/1822-to-1836/.
57. 22 U.S. 1 (1824); *see* Cole, *supra* note 2, at 113.
58. Rayback, *supra* note 3, at 18.
59. American Heritage, *supra* note 5, at 239.
60. First term Vice President John C. Calhoun had become frustrated with Jackson's support of tariffs, leading him to espouse the Nullification doctrine. When Jackson became aware that Calhoun had proposed that Jackson be disciplined for entering Florida during the Seminole war, Jackson ended his relationship with Calhoun. Rayback, *supra* note 3, at 22.
61. Brooke, *supra* note 8, at 243. It has been noted that Van Buren was the last sitting vice president to be elected president until George H.W. Bush's election in 1988.
62. Rayback, *supra* note 3, at 28.
63. Cole, *supra* note 2, at 363–64.
64. *Id.* at 362.
65. *Id.* at 372–74.
66. John Niven, *Martin Van Buren: The Romantic Age of American Politics* 568 (1983); Brooke, *supra* note 10, at 450.
67. www.nps.gov/mava.

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A Look Back

JUDITH S. KAYE FELLOWSHIP

Dr. Julia Rose Kraut, our first Judith S. Kaye Teaching Fellow, has reached the end of her fellowship. She developed *Civil Rights, Civil Liberties, and the Empire State,* which explored the way the law and our courts shape history and establish our freedoms and taught both high- and middle- schoolers.

JUDITH S. KAYE PROGRAM: CONVERSATIONS ON WOMEN AND THE LAW—CHIEF JUDGE JUDITH S. KAYE: A CLERK'S EYE VIEW

December 12, 2016 • New York City Bar Association

The former Chief Judge's law clerks, **Hon. Michael J. Garcia, Henry M. Greenberg, Roberta A. Kaplan,** and **Hon. Jennifer Schecter,** and her counsel, **Mary C. Mone,** reminisced about Judge Kaye's role as a jurist and a mentor. After a welcome by current **Chief Judge Janet DiFiore,** another Kaye law clerk, **Hon. Robert M. Mandelbaum,** moderated the panel.

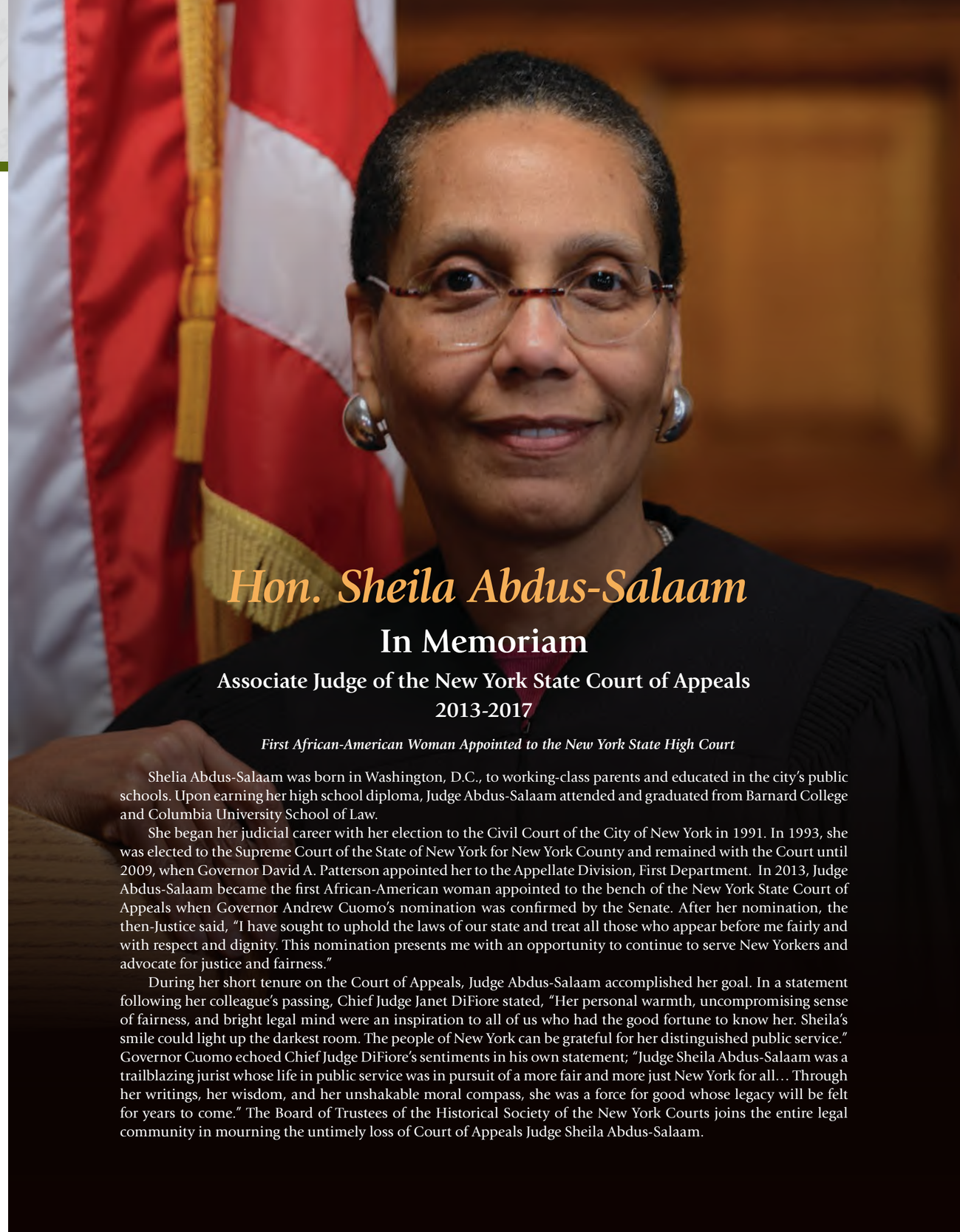
TEACHER'S WORKSHOP

This series of professional development workshops for teachers sponsored by the Society and Bard College Institute for Writing and Thinking provides educators with the tools necessary to incorporate legal concepts into their classes. These workshops revolve around questions of the nature of an independent judiciary and its role in promoting justice, democracy, and the Rule of Law.

KENT GRAVESTONE RESTORATION CEREMONY

October 30, 2016 • St. Luke's Episcopal Church, Beacon, New York

The Historical Society traveled to Beacon to celebrate the restoration of Chancellor James Kent's gravestone. After the Society reached out to Kent's descendants, the family members funded much of the restoration project, and the Society helped sponsor a ceremony which honored Chancellor Kent.



Hon. Sheila Abdus-Salaam

In Memoriam

Associate Judge of the New York State Court of Appeals
2013-2017

First African-American Woman Appointed to the New York State High Court

Shelia Abdus-Salaam was born in Washington, D.C., to working-class parents and educated in the city's public schools. Upon earning her high school diploma, Judge Abdus-Salaam attended and graduated from Barnard College and Columbia University School of Law.

She began her judicial career with her election to the Civil Court of the City of New York in 1991. In 1993, she was elected to the Supreme Court of the State of New York for New York County and remained with the Court until 2009, when Governor David A. Patterson appointed her to the Appellate Division, First Department. In 2013, Judge Abdus-Salaam became the first African-American woman appointed to the bench of the New York State Court of Appeals when Governor Andrew Cuomo's nomination was confirmed by the Senate. After her nomination, the then-Justice said, "I have sought to uphold the laws of our state and treat all those who appear before me fairly and with respect and dignity. This nomination presents me with an opportunity to continue to serve New Yorkers and advocate for justice and fairness."

During her short tenure on the Court of Appeals, Judge Abdus-Salaam accomplished her goal. In a statement following her colleague's passing, Chief Judge Janet DiFiore stated, "Her personal warmth, uncompromising sense of fairness, and bright legal mind were an inspiration to all of us who had the good fortune to know her. Sheila's smile could light up the darkest room. The people of New York can be grateful for her distinguished public service." Governor Cuomo echoed Chief Judge DiFiore's sentiments in his own statement; "Judge Sheila Abdus-Salaam was a trailblazing jurist whose life in public service was in pursuit of a more fair and more just New York for all… Through her writings, her wisdom, and her unshakable moral compass, she was a force for good whose legacy will be felt for years to come." The Board of Trustees of the Historical Society of the New York Courts joins the entire legal community in mourning the untimely loss of Court of Appeals Judge Sheila Abdus-Salaam.