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What Becomes a Legendary Constitutional Campaign Most? Marking the Nineteenth Amendment at One Hundred

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WHAT BECOMES A LEGENDARY CONSTITUTIONAL CAMPAIGN MOST? MARKING THE NINETEENTH AMENDMENT AT ONE HUNDRED

LINDA C. McCLAIN*

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* Robert Kent Professor of Law, Boston University School of Law. I am grateful to Virginia Sapiro, with whom I organized the conference out of which this Symposium grew: "The Centenary of the Nineteenth Amendment: New Reflections on the History and Future of Gender, Representation, and Citizenship Rights," held as a BU Law webinar on September 25, 2020. Thanks also to Elizabeth Clancey and Sarah Hebert for their cooperative work with me on planning the webinar. Many thanks to Kimberley Bishop and Chase Shelton of the *Boston University Law Review* for their enthusiastic support of the conference and Symposium. Thanks to all the participants in the webinar and, in particular, I am grateful to those who contributed to this written Symposium for the opportunity to engage with and learn from their work: Nadia Brown, Danielle Lemi, Lolita Buckner Inniss, Kelly Dittmar, Paula Monopoli, Virginia Sapiro, and Katharine Silbaugh. I am grateful to Kaela Dunn for helpful research and careful editing of this commentary.

INTRODUCTION: OF LEGENDS AND LANDMARK ANNIVERSARIES

What becomes a landmark anniversary in a legendary campaign most?¹ What is the best way to mark the legendary campaign by women (and some men) for woman suffrage that, in 1920, led to Congress's ratifying the Nineteenth Amendment to the U.S. Constitution, which provides that "[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex" and that "Congress shall have the power to enforce this article by appropriate legislation"?² The abundance of invocations of "the Nineteenth" in the buildup to 2020 and in the commemoration itself suggests multiple answers to these questions, as is evident in the pages of this Symposium inspired by the centenary of the Amendment.³ Some answers look back in time: we should reflect critically on what we do and do not really know about the campaign for woman suffrage; a deeper, warts-and-all examination teaches sobering but necessary lessons about inclusion and exclusion and the challenges of coalition building.⁴ This critical examination also yields valuable role models of agency and action—"protagonists"—to inspire action in present-day struggles for women's rights.⁵ Other answers focus on the present day and unfinished business: the next hundred years should bring a renewed commitment to "advancing women's political power in the next century."⁶ In particular, such political empowerment should focus on Black women, who stand out for their "high levels" of "political participation" (including as "conscientious" voters), yet who have not received sufficient party encouragement and resources as candidates for office.⁷ Modern-day actors working to advance these goals include nonprofit organizations, such as The 19th* and She the People, both of which aim to empower women—especially underrepresented women—to

¹ The allusion is to the famous advertising slogan, "What becomes a legend most?," used by Blackglama in a decades-long advertising campaign featuring famous women wearing a Blackglama mink coat. *See infra* text accompanying notes 20-21 (elaborating on this allusion).

² U.S. CONST. amend. XIX.

³ The title of the Symposium is: The Centenary of the Nineteenth Amendment: New Reflections on the History and Future of Gender, Representation, and Citizenship Rights.

⁴ *See generally* Virginia Sapiro, *The Power and Fragility of Social Movement Coalitions: The Woman Suffrage Movement to 1870*, 100 B.U. L. REV. 1557 (2020); *see also* Serena Mayeri, *After Suffrage: The Unfinished Business of Feminist Legal Advocacy*, 129 YALE L.J. F. 512, 515-20 (2020).

⁵ *See generally* Lolita Buckner Inniss, *While the Water Is Stirring: Sojourner Truth as Proto-Agonist in the Fight for (Black) Women's Rights*, 100 B.U. L. REV. 1637 (2020).

⁶ *See generally* Kelly Dittmar, *Advancing Women's Political Power in the Next Century*, 100 B.U. L. REV. 1665 (2020).

⁷ *See generally* Nadia E. Brown & Danielle C. Lemi, "Life for Me Ain't Been No Crystal Stair": Black Women Candidates and the Democratic Party, 100 B.U. L. REV. 1611 (2020).

participate equally in our democracy.⁸ Another forward-looking answer urges attention to how gendered models of who should be a political leader work against women's full participation in governance.⁹

In this Essay, I comment on the answers offered by the contributors to this Symposium. In asking "what becomes a legendary constitutional campaign most?" I mean, first, to invoke the dual meanings of *legendary*: "of, relating to, or characteristic of legend" and "well-known, [or] famous."¹⁰ The campaign for woman suffrage is the stuff of legend, in both senses. Consider the fascinating sketch of Sojourner Truth provided in Professor Lolita Buckner Inniss's contribution to this Symposium, "While the Water Is Stirring: Sojourner Truth as Proto-Agonist in the Fight for (Black) Women's Rights."¹¹ Truth is deservedly famous and renowned for her role as "a towering figure among black women social reformers"¹² and "lauded as a symbol of the abolition movement."¹³ She also stood out among such reformers "as perhaps the most outspoken when it came to the rights of black women," including the right to vote.¹⁴ But, as Buckner Inniss details, Truth's life was also the stuff of legend: an 1850 account of Truth's "narrative"—as told to and by a white amanuensis and friend of Truth's, Olive Gilbert—"set the stage for an almost mythopoetic account of Truth's beginnings."¹⁵ Notably, one of Truth's most famous speeches, "Ain't I a Woman"—a canonical text in accounts of nineteenth-century feminism and of the role of Black women in the fight for woman suffrage—"may have been misquoted or largely fabricated by white abolitionist and suffragist Frances Dana Barker Gage."¹⁶ Buckner Inniss argues that one cause of this blurring of fact and myth was the tendency by sympathetic white abolitionists to treat enslaved and formerly enslaved Black people as "proto-agonists," or "marginalized, long suffering forerunners . . . of racial and gender rights battles," rather than as "protagonists," or "highly regarded main characters," in such a journey.¹⁷ Even so, Truth asserted herself as a protagonist

⁸ See *About Us: This Is Our Time*, SHE THE PEOPLE, <https://www.shethepeople.org/about> [<https://perma.cc/MBV8-AKLC>] (last visited Sept. 14, 2020); *Welcome*, 19TH*, <https://19thnews.org/about/> [<https://perma.cc/64AD-LJXH>] (last visited Sept. 14, 2020).

⁹ See generally Paula A. Monopoli, *Women, Democracy, and the Nineteenth Amendment*, 100 B.U. L. REV. 1727 (2020).

¹⁰ *Legendary*, MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY (10th ed. 1994).

¹¹ Buckner Inniss, *supra* note 5.

¹² *Id.* at 1640.

¹³ *Id.* at 1641.

¹⁴ *Id.* at 1642.

¹⁵ *Id.* at 1644 (citing NELL IRVIN PAINTER, *SOJOURNER TRUTH: A LIFE, A SYMBOL* 11 (paperback ed. 1997)).

¹⁶ *Id.* at 1647. Separating the truth from myth about Truth's life, Professor Buckner Inniss explains, is difficult in part because Truth was illiterate, leading biographers to rely on oral communications about her life and on misunderstandings of some of those communications. *Id.*

¹⁷ *Id.* at 1646.

and had a hand in fashioning her own legend. Depicted as a rustic, unsophisticated, illiterate woman, “Truth was, in actuality, a creative and savvy entrepreneur who used the law and her image to advance her activism on multiple fronts and to support herself.”¹⁸ As discussed below, that activism included insisting on the prerogative to engage in political speech advocating that the rights of Black women deserve protection as much as the rights of Black men and white women.¹⁹

The complexity of representing Truth and her place in the campaign for woman suffrage bears on another reason for my use of “legendary”: its allusion to the famous Blackglama advertising slogan, “What becomes a legend most?”²⁰ The advertising campaign, which began in 1968, featured a famous and admired woman—usually an actress, musician, or other entertainer—wearing a Blackglama mink coat (often with some of her own skin revealed) with the caption: “What becomes a legend most?”²¹ The Blackglama campaign invited the questions: what makes a woman a legend, and which women belong in such a campaign? Spanning more than four decades, the campaign featured scores of famous women and eventually some men. Many of the women were white, but the campaign also featured some Black women.²²

While this invocation of the *Mad Men*-esque Blackglama campaign²³ may seem irreverent or trivializing, it aims to highlight similar questions about marking the one-hundredth anniversary of the ratification of the Nineteenth Amendment: Who is in the cast of characters featured in celebration or commemorations? Which legendary suffragists are included? Who is left out?

¹⁸ *Id.* at 1641 (footnote omitted).

¹⁹ See *infra* text accompanying notes 54-56 for discussion.

²⁰ See *The Archive*, BLACKGLAMA, <http://www.blackglama.com/campaign-archive> [<https://perma.cc/HZB6-76TF>] (last visited Sept. 14, 2020); see also *Blackglama Ads, History, and Trivia About the Enduring Brand*, IF IT'S HIP, IT'S HERE [hereinafter *Blackglama Ads*], <https://www.ifitshipitshere.com/blackglama-ads-history-and-trivia/> (last visited Sept. 14, 2020). The advertising campaign was created by ad copy writer Jane Trahey for the Great Lakes Mink Association (“GMLA”). *The Backstory*, BLACKGLAMA, <http://www.blackglama.com/the-backstory> [<https://perma.cc/LS9D-G8QZ>].

²¹ *Blackglama Ads*, *supra* note 20. The first year of the campaign included women such as Barbra Streisand, Judy Garland, and Bette Davis. *The Backstory*, *supra* note 20. Richard Avedon was the photographer for the first five years of the campaign. *Id.*

²² For example, in 1972, the campaign featured actress and singer Pearl Bailey and, in 1973, singer Diana Ross, both photographed by Avedon. See *The Archive*, *supra* note 20. Later ads featured Naomi Campbell in 2007 and Janet Jackson in 2010 and 2011. *Blackglama Ads*, *supra* note 20.

²³ The campaign in *Mad Men*, however, did not focus on legendary women. Season 7, Episode 8 opens with Don Draper auditioning a young female model standing in front of mirror wearing a fur: “Look at yourself . . . [y]ou like what you see.” See MATT ZOLLER SEITZ, *MAD MEN CAROUSEL* 386 (2017) (internal quotation marks omitted). Of course, Don Draper was discovered by his later partner Roger Sterling while Don was selling fur coats. *Id.* at 386 n.1.

What role do legends play in the commemoration? These questions featured vividly in media stories leading up to the centenary as some journalists—echoing historians—expressed concern about what story would be told: Would the narrative highlight only the most famous, white suffragists, such as Susan B. Anthony and Elizabeth Cady Stanton, and exclude the vital contribution by Black women, such as Mary Church Terrell and Frances Ellen Watkins Harper?²⁴ Or would the commemoration seize the opportunity to offer a “more inclusive portrait,” drawing on the growing body of scholarship by historians that had “rescu[ed] black suffragists from anonymity”?²⁵ Would the commemoration perpetuate the historical whitewashing of the movement by ignoring its racism?²⁶ Or would it acknowledge how such icons as Anthony and Stanton turned to racist rhetoric and allies in their angry opposition to a Fifteenth Amendment that prohibited abridging the right to vote based on race but not on sex?²⁷

In August 2019, as the Library of Congress, the National Archives, and the National Portrait Gallery opened their respective exhibitions on the centenary (all curated by women), commentators observed that the exhibitions “offer a lesson in the messiness, complexities and compromises involved in any movement for social change—and the fraught politics of historical memory itself.”²⁸ For example, in its aim “to tell a more inclusive story,” the National Portrait Gallery assembled nearly sixty portraits of women’s rights activists, one-third of whom were women of color.²⁹ This required going outside “its own collections, which are disproportionately white and male.”³⁰ Thus, the portraits included the expected, iconic figures like Anthony, Stanton, and Truth, along with less well-known but significant activists, such as the Black poet Frances Ellen Watkins Harper.³¹

The initial design of the Women’s Rights Pioneers Monument, which was to commemorate the one-hundredth anniversary of the Nineteenth Amendment, however, left out the iconic Sojourner Truth.³² Instead, it displayed Anthony and

²⁴ See, e.g., Brent Staples, Opinion, *When the Suffrage Movement Sold Out*, N.Y. TIMES, Feb. 3, 2019, at SR1; see also Dittmar, *supra* note 6, at 1668 (citing Tammy L. Brown, *Celebrate Women’s Suffrage, but Don’t Whitewash the Movement’s Racism*, ACLU (Aug. 24, 2018, 5:45 PM), <https://www.aclu.org/blog/womens-rights/celebrate-womens-suffrage-dont-whitewash-movements-racism> [<https://perma.cc/QM45-QAEZ>]).

²⁵ Staples, *supra* note 24.

²⁶ Dittmar, *supra* note 6, at 1668 (citing Brown, *supra* note 24).

²⁷ For a discussion of Professor Sapiro’s contribution to this symposium, which addresses this issue, see *infra* text accompanying notes 72-105.

²⁸ Jennifer Schuessler, *Nevertheless, They Persisted*, N.Y. TIMES, Aug. 16, 2019, at C13.

²⁹ *Id.* The exhibit was called “Votes for Women: A Portrait of Persistence.” *Id.*

³⁰ *Id.*

³¹ *Id.*

³² Alisha Haridasani Gupta, *For Three Suffragists, a Monument Well Past Due*, N.Y. TIMES (Aug. 19, 2020), <https://www.nytimes.com/2020/08/06/arts/design/suffragist-19th->

Stanton working together at a desk. While the laudable impulse was to “show women working together . . . trying to change the world,”³³ the choice to depict *only* these two women at work would neatly foster the myth—or legend—perpetuated by Anthony and Stanton that they and their organization “*were* the woman suffrage movement.”³⁴ To be sure, the initial plan was to “honor the memory of others, besides Stanton and Anthony, who helped advance the cause of woman suffrage over the 72-year battle”³⁵ through a long scroll cascading from Anthony’s and Stanton’s work desk with “quotations from more than twenty other suffragists.”³⁶ These quotes were to include statements from eleven Black women, among them Ida B. Wells and Anna Julia Cooper. After the city’s Public Design Commission rejected the scroll and commentators strongly criticized the piece “for placing only white women on the pedestal” and thereby erasing the contribution of Black women, the new design added Sojourner Truth, giving her a literal seat at the table.³⁷ This example of the politics of public monuments and of who is excluded suggests the problematic role of legends and legendary figures in attempts to craft historical memory about a complex and significant social movement. It further bears mention that women are frequently absent in public monuments: unveiled on August 26, 2020, to mark the Nineteenth Amendment’s one-hundredth anniversary,³⁸ the sculpture is the first in the 167-year history of New York City’s Central Park to depict actual historical women, rather than “fictional or mythical” ones, such as Alice in Wonderland.³⁹

amendment-central-park.html. The group Monumental Women commissioned and funded the sculpture. *Id.*

³³ *Id.* Much of the article quotes Meredith Bergmann, the artist who created the monument. Bergmann also created the Boston Women’s Memorial, which depicts Abigail Adams, Lucy Stone, and Phillis Wheatley, a poet who began writing poetry while enslaved. *Id.*

³⁴ Sapiro, *supra* note 4, at 1606. For discussion, see *infra* text accompanying note 102.

³⁵ Gupta, *supra* note 32 (quoting The Elizabeth Cady Stanton and Susan B. Anthony Statue Fund Inc., The Elizabeth Cady Stanton and Susan B. Anthony Woman Suffrage Movement Monument 3 (2017), https://monumentalwomen.org/wp-content/uploads/2019/02/statue_fund_rfq_rfp_2018.pdf [<https://perma.cc/S8RW-HFCU>]).

³⁶ *Id.*

³⁷ *Id.* (citing Ginia Bellafante, *A Suffrage Movement Fails Black Women*, N.Y. TIMES, Jan. 20, 2019, at 3).

³⁸ August 26, 1920 is the date that the Secretary of State certified the ratification of the Nineteenth Amendment. *Historical Highlights: The 19th Amendment*, U.S. HOUSE REPRESENTATIVES HIST. ART & ARCHIVES, <https://history.house.gov/Historical-Highlights/1901-1950/The-19th-Amendment/> [<https://perma.cc/B7T7-UYDZ>] (last visited Sept. 14, 2020).

³⁹ Gupta, *supra* note 32. On the unveiling, see Emily Sowa, *Women’s Rights Pioneers Monument: First Statue of Real-Life Women Unveiled in Central Park*, ABC7 (Aug. 26, 2020), <https://abc7ny.com/womens-rights-pioneers-monument-meredith-bergmann-michael-central-park/5974524/> [<https://perma.cc/HLM4-ZYJC>].

Another concern about how to mark the centenary was whether commemorations would grapple with the painful truth that, even as white suffragists celebrated, the Nineteenth Amendment did not guarantee the vote to all women. As Serena Mayeri observes, “[p]oll taxes, literacy tests, white primaries, and the threat of economic reprisals and violence kept African American women and men from vindicating their constitutional right to vote.”⁴⁰ As a result, the Nineteenth Amendment left much “unfinished business” with respect to Black women’s right to vote,⁴¹ some of which was not addressed until forty-five years later with the Voting Rights Act of 1965.⁴² In this Symposium, Kelly Dittmar similarly cautions against telling a “single” or “incomplete” story about the Amendment that fails to recognize that it was “just a step toward gender equality” and “yielded disparate results for women,” with the “full enfranchisement” of Black and Indigenous women “delayed for decades.”⁴³

Dr. Robyn Muncy, who cocurated the National Archives exhibition, explained the exhibit’s resistance to the portrayal of the Nineteenth Amendment as a culminating triumph rather than a landmark in an ongoing struggle for access to the vote and equality: “Today, there are actions both to expand and to limit the franchise at the state level everywhere, [and t]hat is part of the story of women’s suffrage too.”⁴⁴

I. TELLING A BETTER STORY: GRAPPLING WITH THE COMPLEX POLITICS OF RACE AND GENDER IN THE STRUGGLE FOR WOMAN SUFFRAGE

These deliberations about how to mark the centenary of the Nineteenth Amendment suggest the need to tell a less whitewashed story⁴⁵ about suffrage and, instead, to offer a more accurate story that acknowledges the racism of some white suffragists and the critical role of Black suffragists. In this Part, I bring the articles by Professors Buckner Inniss and Sapiro into conversation with each other to show how each offers constructive guidance on how to tell the story. These articles complement each other because Buckner Inniss’s method is to zoom in and center Sojourner Truth to gain a better understanding of her significant role in championing the rights of women (particularly Black women) and to offer her work as an inspiring model for a fully inclusive approach to women’s rights that addresses both race and gender.⁴⁶ By comparison, Sapiro’s method is to look at a larger canvas; she draws on social movement theory to

⁴⁰ Mayeri, *supra* note 4, at 512.

⁴¹ *Id.* at 520.

⁴² Pub. L. No. 89-110, 79 Stat. 437 (codified in scattered sections of 52 U.S.C.).

⁴³ Dittmar, *supra* note 6, at 1666.

⁴⁴ Schuessler, *supra* note 28 (internal quotation marks omitted). The National Archives show was called “Rightfully Hers: American Women and the Vote.” *Rightfully Hers: American Women and the Vote*, NAT’L ARCHIVES MUSEUM, <https://museum.archives.gov/rightfully-hers> [https://perma.cc/3N22-LHTK] (last visited Sept. 14, 2020).

⁴⁵ Staples, *supra* note 24.

⁴⁶ Buckner Inniss, *supra* note 5, at 1643, 1662-63.

offer a reinterpretation of the extensive historical literature about the period from the 1830s to 1870, highlighting the emergence of “women’s political gender consciousness,” particularly in the context of women’s antislavery activism,⁴⁷ and the birth of an independent women’s movement that was splintered nearly from the beginning due to debate over the Fifteenth Amendment.⁴⁸

Sapiro argues that there is also a risk of reducing the “vexed question of intersectionality and the woman suffrage movement” into a story about “racist white women in the woman suffrage movement,”⁴⁹ such that “it was a straightforward matter of Stanton and Anthony’s racism and everyone else’s devotion to equal citizenship for Black people.”⁵⁰ Sapiro does not excuse the racist rhetoric by Stanton and Anthony; rather, she argues that “[t]he virulent racism exhibited by some prominent members of the woman suffrage movement” that “has widely been singled out for attention in recent years . . . is crucial to understand as central to the story.”⁵¹ But there are other central parts of the story, such as “[t]he rejection of the idea that political rights are as important for women as for men owing to the normal order of things in which men represent and protect women.”⁵² Some white and Black women who advocated for woman suffrage—including Sojourner Truth, as Buckner Inniss details⁵³—rejected both this hierarchy and the idea that women could or should rely on men for protection.

A. *Stepping into the Pool of Politics to Stir the Water for Black Women’s Rights*

Buckner Inniss’s essay makes the case for the ongoing and generative power of Sojourner Truth’s statement that, because Truth wanted Black women to get their rights along with Black men, “while the water is stirring I will step into the pool.”⁵⁴ This beautifully evocative image of water stirring, Buckner Inniss argues, “shows us how to advance contemporary black women’s—and all women’s—‘step into the pool’ of stirring water” through “greater inclusion in contemporary and future legal, political, and economic programs.”⁵⁵

Truth spoke of her determination to “step into the pool” during a speech delivered in support of Black women’s rights in 1867, at the First Annual

⁴⁷ Sapiro, *supra* note 4, at 1607.

⁴⁸ *Id.* at 1602-03.

⁴⁹ *Id.* at 1559.

⁵⁰ *Id.* at 1602.

⁵¹ *Id.* at 1607.

⁵² *Id.*

⁵³ See *infra* text accompanying notes 57-58.

⁵⁴ Buckner Inniss, *supra* note 5, at 1642 (quoting Sojourner Truth, Address, in PROCEEDINGS OF THE FIRST ANNIVERSARY OF THE AMERICAN EQUAL RIGHTS ASSOCIATION: HELD AT THE CHURCH OF THE PURITANS, NEW YORK, MAY 9 AND 10, at 20, 63 (1867)).

⁵⁵ *Id.* at 1643.

Meeting of the American Equal Rights Association (“AERA”).⁵⁶ Truth referred to there being “a great *stir* about colored men getting their rights, but not a word about the colored women.”⁵⁷ Truth warned those assembled that “if colored men get their rights, and not colored women theirs, you see the colored men will be masters over the women, and it will be just as bad as it was before.”⁵⁸ Truth was prepared to agitate the water, recognizing the need to “keep the thing stirring, now that the ice is cracked.”⁵⁹ As Buckner Inniss argues, when Truth spoke in 1867, “just two years after the Civil War had ended,” she “well understood that the United States had many rifts to heal” but still “noted that the water must be kept stirring in order to reach racial and gender equity.”⁶⁰

Reading Truth’s call to “keep the thing stirring” once the water is troubled may bring to mind the words of the late Congressman John Lewis about the need to engage in “good trouble, necessary trouble” in order to fight for justice and civil rights.⁶¹ That association seems apt given that the source of Truth’s water image “was very likely biblical,”⁶² like much of her rhetoric, and that her arguments about suffrage often drew on John 5:4, in which “an angel went down at a certain season into the pool, and troubled the water: whosoever then first after the troubling of the water stepped in was made whole of whatsoever disease he had.”⁶³

Buckner Inniss unpacks multiple layers of this image. First, Truth spoke of this Bible verse about the healing power of water when “compar[ing] the effort to obtain white women’s and black men’s suffrage.”⁶⁴ By insisting on going into the healing pool to stir the water further, Truth insisted that the healing should extend to Black women so that the stirring pool could “make the politically excluded into whole citizens.”⁶⁵

Second, while the biblical verse attributes the agency of stirring the waters and healing to an angel, Truth’s imagery of stepping into the pool makes her an agent—in Buckner Inniss’s terms, a “protagonist”—ready to speak out on behalf of Black women and bring about their inclusion. One metaphor for civic and political life, Buckner Inniss explains, was that of a “muddy pool”; while men of stature had a duty to enter into the “muddy” or “dirty” pool of politics, that “muddy pool”—the very image of the “insalubrious nature and general opacity” of muddy waters—was deemed an inappropriate place for women, who might

⁵⁶ *Id.* at 1642.

⁵⁷ *Id.* (emphasis added) (quoting Truth, *supra* note 54, at 63).

⁵⁸ *Id.* (quoting Truth, *supra* note 54, at 63).

⁵⁹ *Id.* at 1657.

⁶⁰ *Id.*

⁶¹ John Lewis (@repjohnlewis), TWITTER (Jul. 16, 2019, 11:44 AM), <https://twitter.com/repjohnlewis/status/1151155571757867011>.

⁶² Buckner Inniss, *supra* note 5, at 1653.

⁶³ *Id.* at 1656 n.92 (quoting *John* 5:4 (King James)).

⁶⁴ *Id.* at 1656.

⁶⁵ *Id.*

“contaminate” themselves by entering into it.⁶⁶ As Buckner Inniss illuminates, opponents of woman suffrage enlisted the muddy pool image; in response, some supporters reminded their critics of the biblical “angel [who] had to go in and trouble the waters before the sick could be healed.”⁶⁷

In a similar vein, “Truth pushed back against those who would bar women in general, and black women in particular, from the pool, whether the pool were of the pernicious muddy variety or the angelic healing variety.”⁶⁸ This “black women in particular” qualifier is crucial. Buckner Inniss argues that Truth made manifest and then helped to fill an important gap in arguments for women’s rights: “[e]ven among white women who supported general black rights, there was rarely any explicit articulation of the need for black women’s rights.”⁶⁹ Indeed, in her 1867 speech, Truth reflected that the unfinished business that kept her, then “above eighty years old,” from “break[ing] the chain” and leaving her life was such advocacy: “I suppose I am about the only colored woman that goes about to speak for the rights of the colored women.”⁷⁰

B. *Racism, Sexism, and the Splintering of the Woman Suffrage Movement: The Contribution of Social Movement Theory*

In the 1867 speech quoted by Buckner Inniss, Truth warned that focusing on Black men’s rights and not on those of Black women would lead to the result that “the colored men will be masters over the women, and it will be just as bad as it was before.”⁷¹ Sapiro also quotes Truth’s speech, including this warning.⁷² She situates Truth’s insistence upon the rights of Black women in the context of the rejection of the common argument against woman suffrage that men, as heads of households, could protect women’s interests and that extending the franchise to Black men would therefore suffice to protect Black women.⁷³ This, Sapiro argues, reflected “the logic of familial gender roles.”⁷⁴ By comparison, “[w]oman suffragists . . . saw the ballot as a means for self-protection.”⁷⁵ The acceptance of the self-protection argument in the case of the franchise for Black men but not for women (white or Black) also suggested too narrow a view of violence and its forms. Thus, when Frederick Douglass argued for the imperative of supporting the Fifteenth Amendment “even if it excluded women,” he urged

⁶⁶ *Id.* at 1656-57.

⁶⁷ *Id.* at 1657 n.95 (quoting Clarina I. Howard Nichols, *Reminiscences by Clarina I. Howard Nichols*, in 1 HISTORY OF WOMAN SUFFRAGE: 1848-1861, at 171, 191 (Elizabeth Cady Stanton, Susan B. Anthony & Matilda Joslyn Gage eds., 1887)).

⁶⁸ *Id.* at 1657.

⁶⁹ *Id.* at 1662.

⁷⁰ *Id.* at 1657 (quoting Nichols, *supra* note 67, at 194).

⁷¹ *Id.* at 1642 (quoting Truth, *supra* note 54, at 63).

⁷² Sapiro, *supra* note 4, at 1597.

⁷³ *Id.* at 1595.

⁷⁴ *Id.*

⁷⁵ *Id.*

that “[w]ith us the matter is a question of life and death.”⁷⁶ When asked if the same were not true for Black women, he answered, “[y]es, yes, it is true of the black woman but not because she is a woman but because she is black.”⁷⁷ Sapiro observes that Douglass’s answer “ignored the fact that the Fifteenth Amendment would deny Black women protections as Americans” and that it also failed to “recognize that the racism and race-based violence Black people experienced was also gendered,” and that both Black and white women were subject to “forms of gender-based violence . . . because they were women.”⁷⁸

In pivotal and contentious meetings of the American Anti-Slavery Society (“AASS”) and the AERA in the late 1860s, as Sapiro recounts, woman suffrage advocates—both white and Black women—urged (as Frances Ellen Watkins Harper expressed it) “that the rights of black men, black women, and white women were all ‘bound up together’” and that the organizations should not prioritize one over the other.⁷⁹ However, even some staunch proponents of woman suffrage, such as Wendell Phillips, urged a segmented approach; while he “hope[d] in time to be as bold as Stuart Mill” and add “sex” to the Fourteenth Amendment, Phillips believed that there must be “[o]ne question at a time” and that “[t]his hour belongs to the negro”—i.e., Black men.⁸⁰

One reason for this prioritization of the franchise for Black men over both Black and white women, Sapiro suggests, was the gendering of citizenship and the related conception of voting as an aspect of manhood.⁸¹ At the same time, Southern and Democratic white men viewed this very link of manhood to citizenship and to the franchise as a reason to oppose extending the franchise to Black men: “They claimed that if all the rights of white manhood were extended to African American men, then the right to control, access, and rule white women would have to be extended to them as well.”⁸²

It is probably difficult for present-day readers to appreciate that, as Sapiro explains, “[f]or most people the idea of women voting—of any race—was far-fetched and too radical to bother contemplating or discussing.”⁸³ Further, it defied public norms for women to speak in public, to participate visibly in

⁷⁶ *Id.* at 1596 (alteration in original) (quoting ELLEN CAROL DUBOIS, *FEMINISM AND SUFFRAGE: THE EMERGENCE OF AN INDEPENDENT WOMEN’S MOVEMENT IN AMERICA 1848-1869*, at 187 (1999)).

⁷⁷ *Id.* (quoting FAYE E. DUDDEN, *FIGHTING CHANCE: THE STRUGGLE OVER WOMAN SUFFRAGE AND BLACK SUFFRAGE IN RECONSTRUCTION AMERICA 178* (2011)).

⁷⁸ *Id.*

⁷⁹ *Id.* at 1597 (quoting LISA TETRAULT, *THE MYTH OF SENECA FALLS: MEMORY AND THE WOMEN’S SUFFRAGE MOVEMENT, 1848-1898*, at 22 (2014)).

⁸⁰ *Id.* at 1592 (quoting SUE DAVIS, *THE POLITICAL THOUGHT OF ELIZABETH CADY STANTON 131* (2008)).

⁸¹ *Id.* at 1595.

⁸² *Id.* at 1596 (quoting LAURA E. FREE, *SUFFRAGE RECONSTRUCTED: GENDER, RACE AND VOTING RIGHTS IN THE CIVIL WAR ERA 80* (2015)).

⁸³ *Id.* at 1587.

“mixed-sex and mixed-race activities,”⁸⁴ or (to return to Buckner Inniss) to step into the “muddy water” of politics. Thus, while some formerly zealous advocates of such an idea (like Wendell Phillips) took the tack of urging women to wait their turn, “it was just not a serious enough question for many people to bother arguing against.”⁸⁵

Thus, woman suffrage proponents with a vision of a “grand coalition to fight for universal adult suffrage[and]emancipation on the basis of race and gender” suffered disappointment, and turmoil ensued.⁸⁶ Some advocates of woman suffrage made pragmatic and prudential decisions to support a Fifteenth Amendment that included Black men but not Black or white women, putting off woman suffrage for a later time.⁸⁷ Others would not make such a compromise.⁸⁸ “[T]he result,” Sapiro observes, “was explosive.”⁸⁹ She recaps some of the rhetoric at the “contentious and angry” meetings in the late 1860s over whether to advocate for an “inclusive” Fifteenth Amendment or to “pursue the vote sequentially.”⁹⁰ “Anger,” Sapiro notes, “is often an essential ingredient to political engagement,” as it took women’s anger and frustration for them “to rise up and claim political emancipation for themselves.”⁹¹ At the same time, “anger engenders conflict, and in a social movement, that anger can provoke conflict along social group lines that is destructive.”⁹²

Undeniably, as Stanton’s frustration grew over opposition to woman suffrage, she “increasingly relied on racist stereotypes to support her argument for woman suffrage” and against “universal manhood suffrage.”⁹³ She stressed (white) women’s supposed greater qualification to vote based on intelligence and education that she claimed exceeded that of many white men, immigrants from various countries, and Black men.⁹⁴ Sapiro does not exonerate Stanton, but she observes that “conceits about sexism, nativism, ethno-nationalism, and class were normal parts of American discourse at the time,” and “[r]espectability” formed part of this discourse.⁹⁵ In characterizing those who voted against Black male suffrage, “[e]ven Frederick Douglass,” Sapiro recounts, referred to the “drunken Irishmen and ignorant Dutchmen, . . . the tools of the negro-hating

⁸⁴ *Id.* at 1578.

⁸⁵ *Id.* at 1587.

⁸⁶ *Id.* at 1607.

⁸⁷ *Id.* at 1600.

⁸⁸ *Id.* at 1602-03.

⁸⁹ *Id.* at 1607.

⁹⁰ *Id.* at 1603.

⁹¹ *Id.* at 1609 (citing REBECCA TRAISTER, *GOOD AND MAD: THE REVOLUTIONARY POWER OF WOMEN’S ANGER* 2018)).

⁹² *Id.*

⁹³ *Id.* at 1603-04.

⁹⁴ *Id.* at 1604.

⁹⁵ *Id.*

Democracy of this city, many of whom would sell their votes for a glass of whiskey.”⁹⁶

Sapiro’s article insists upon the importance of putting the turmoil over woman suffrage raised by what stance to take toward the Fifteenth Amendment in the broader context of “the larger culture of profound sexism and racism that existed at the time.”⁹⁷ Both of these elements “created significant challenges of added fragility” to the woman suffrage “movements’ sustainability, success, and even reputation.”⁹⁸ By 1869, Stanton and Anthony, disillusioned with the Republican Party and willing to partner with Democratic allies (among them racists), had founded the National Woman Suffrage Association (“NWSA”), with the aim of either a Fifteenth Amendment creating “universal adult suffrage” or a Sixteenth Amendment extending the franchise to women.⁹⁹ Several months later, woman suffragists “more tied to the Republican party” and also “committed to the ratification of the Fifteenth Amendment as written” founded a different organization, the American Woman Suffrage Association, which would focus on woman suffrage through state-by-state campaigns rather than through a constitutional amendment.¹⁰⁰ Even so, as Sapiro observes, “[n]o clean lines on these issues divided race and gender”; further, some major figures, such as Douglass and Truth, participated in both organizations.¹⁰¹

Ultimately, training the lens of social movement theory onto this historical period highlights the problem of the dual meanings of legendary and the question of who is a legend. Enlisting the work of Professor Lisa Tetrault, Sapiro cautions against accepting the “myth” (or legend) created by Stanton and Anthony that they and their organization (the NWSA) “were the woman suffrage movement.”¹⁰² But Sapiro also cautions against a reductive story that “an independent woman suffrage movement emerged” because of “the role of racist white women in the woman suffrage movement.”¹⁰³ Social movement theory teaches that no one organization constitutes a social movement, even if it takes leading roles,¹⁰⁴ just as no one legendary figure alone—or even several—equates to a social movement. What becomes a legend most, then, is appreciation of the “rich range and diversity of groups and organizations across the country devoted to woman suffrage in the final decades,” which included efforts by “women of color, working-class women, rural women, and many others.”¹⁰⁵

⁹⁶ *Id.* (second alteration in original) (quoting DUDDEN, *supra* note 77, at 42).

⁹⁷ *Id.* at 1560.

⁹⁸ *Id.*

⁹⁹ *Id.* at 1605.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 1605-06.

¹⁰² *Id.* at 1606.

¹⁰³ *Id.* at 1559.

¹⁰⁴ *Id.* at 1606.

¹⁰⁵ *Id.*

II. THE PRESENT AND FUTURE: INCREASING WOMEN'S POLITICAL REPRESENTATION

Turning briefly to the present and future, what becomes a legendary anniversary most with respect to the unfinished business of the Nineteenth Amendment? The essays by Dittmar, Brown and Lemi, and Monopoli provide instructive answers. First, one critical message is to resist the myth that the Nineteenth Amendment was *only* about the vote, rather than full participation in political life. As Monopoli argues, suffragists sought not only the right to vote but also “to elevate women as citizens and create a space for them in the public,” where they could be “makers of law and policy on a par with men.”¹⁰⁶ Yet, one hundred years later, there is not gender parity with respect to who has a seat at the table.¹⁰⁷ As Dittmar details, “while women outnumber and outvote men at the ballot box, they remain underrepresented on ballots and in elected offices.”¹⁰⁸ Second, and related to this gap, “translat[ing] the power of the vote into political representation and the power of [women’s] activism into seats at tables of political decision-making” requires “a truly intersectional approach” to understanding and addressing “persistent gender and racial disparities in political representation.”¹⁰⁹ This requires rejecting a “single story” and instead attending to “diversity *among* women in their access and approach to power and their influence on political and policy outcomes.”¹¹⁰

The need for an intersectional approach is also a theme of Brown and Lemi’s instructive essay about Black women’s electoral success—compared with Black men and white women—despite their perception of the lack of adequate support by the Democratic Party.¹¹¹ The authors draw a provocative analogy between white suffragists’ lack of support of Black women and today’s Democratic Party’s similar lack of support, even though Black women have been the “backbone of the Democratic Party” and—more than white women—the reason for the gender gap between the Democratic and Republican Parties.¹¹² Brown and Lemi suggest that Black women’s success despite this lack of Party support may be due in part to their “ability to engage and empathize with multiple communities of voters,” their sense of responsibility once elected “to represent

¹⁰⁶ Monopoli, *supra* note 9, at 1729. In this Symposium, in arguing that the campaign to allow 16-year-olds to vote fails to consider the broad consequences of such a change, Professor Katharine Silbaugh persuasively observes that the history of the campaign for the Nineteenth Amendment teaches that voting is not only about the ballot but about full civic and political equality. See Katharine Silbaugh, *More Than the Vote: 16-Year-Old Voting and the Risks of Legal Adulthood*, 100 B.U. L. REV. 1689 (2020).

¹⁰⁷ See generally KELLY DITTMAR, KIRA SANBONMATSU & SUSAN J. CARROLL, *A SEAT AT THE TABLE: CONGRESSWOMEN’S PERSPECTIVES ON WHY THEIR PRESENCE MATTERS* (2018).

¹⁰⁸ Dittmar, *supra* note 6, at 1666 (footnote omitted).

¹⁰⁹ *Id.* at 1667.

¹¹⁰ *Id.*

¹¹¹ See generally Brown & Lemi, *supra* note 7.

¹¹² *Id.* at 1613-14, 1619.

multiple constituencies,” and their support of progressive policies “in line with a Democratic base.”¹¹³ Despite these successes, Brown and Lemi find that the Black women political elite that they studied reported encountering the view that they were not “viable” or “electable.”¹¹⁴

That perception is a fitting segue to a third answer to my question of what becomes a legendary anniversary most: considering how (as Monopoli puts it) “ancient gender schemas” about who is a political leader¹¹⁵ have lingering effects and perpetuate our “monosexual democracy,” in which there has never been a female president.¹¹⁶ To return to the dual meanings of legendary: How do ideas about the gender and race of political leadership shape who may be a political legend today or tomorrow? What qualities make for legendary leadership? As Dittmar explains, “[f]or most of American history, ‘doing gender’ in politics meant that candidates and officeholders who aligned with stereotypically masculine conceptions of leadership were viewed as legitimate and appropriate contenders.”¹¹⁷ On one hand, women might succeed if they could “prov[e] their masculine credentials,” but on the other, these women also “risk[ed] backlash” because they violated “gender expectations.”¹¹⁸ Think of the classic bind that women can be either competent or likeable, but not both!¹¹⁹

The constraining influence of gendered ideas of leadership seems all the more urgent as the anniversary of the Nineteenth Amendment falls both in a presidential election year and during a pandemic in which evident failures of the current executive to manage the crisis have led to diagnoses of a toxic masculinity (or “mask-ulinity”) at work.¹²⁰ As Monopoli points out, the pandemic and the racial justice crisis are highlighting the limits of the “agentic, populist” style of leadership that consists of a unitary executive with few checks and balances and are highlighting the need for more collaborative, consensus-

¹¹³ *Id.* at 1621.

¹¹⁴ *Id.* at 1628-30.

¹¹⁵ Monopoli, *supra* note 9, at 1734.

¹¹⁶ *Id.* at 1729.

¹¹⁷ Dittmar, *supra* note 6, at 1677.

¹¹⁸ *Id.* at 1678.

¹¹⁹ For an overview of this research that predates the current election cycle, see Marianne Cooper, *For Women Leaders, Likeability and Success Hardly Go Hand-in-Hand*, HARV. BUS. REV. (Apr. 30, 2013), <https://hbr.org/2013/04/for-women-leaders-likability-a>.

¹²⁰ I use the term here to connote both an exaggerated emphasis on toughness and risk-taking, including “reopening” the economy without sufficient regard to how to do so safely with respect to protecting workers and public health, as well as an absence or suppression of empathy or caring about the staggering human toll of the pandemic. See Naomi R. Cahn & Linda C. McClain, *Gendered Complications of Covid-19: Towards a Feminist Recovery Plan*, 22 GEO. J. GENDER & L. (forthcoming 2021); see also Matt Lewis, *Trump Minions Go Crazy for His Toxic ‘Mask-ulinity,’* DAILY BEAST (May 16, 2020, 4:20 PM), <https://www.thedailybeast.com/trump-minions-go-crazy-for-his-toxic-mask-ulinity> [https://perma.cc/9R9E-AM62].

building, and empathic leadership.¹²¹ Interestingly, as Monopoli observes, these needed characteristics are traditionally gendered female.¹²²

In the same vein, Dittmar observes that women *have* offered “alternative credentials” for political leadership, and this may “change what voters demand and expect in candidates and officeholders.”¹²³ Women have the power to *disrupt* expectations, as, in recent elections, they “have embraced their experiences and perspectives *as women*—and *as women of color*—as an electoral asset instead of treating their gender or race, and the intersection of both, as a hurdle to overcome on the campaign trail.”¹²⁴ The unprecedented number of women elected to Congress in 2018 is one inspiring example.¹²⁵

A related prescription is that men—who are the “majority of candidates and officeholders”—must also take up the work of “disrupting gender power dynamics in American politics,” building “more equitable political institutions,” and increasing women’s political power.¹²⁶ In his highly publicized and extensive search for his vice presidential running mate, Democratic nominee and former Vice President Joe Biden modeled this work: he announced that he would pick a woman, and he also included many Black women in the candidate pool. Biden stated he had two criteria: that the person be younger than he is and that “they [be] ready on Day 1 to be president of the United States of America.”¹²⁷ An additional, if implicit, criterion is who could help him win. Thus, Biden’s historic pick of Senator Kamala Harris, the first Black woman and the first woman of Indian descent to be nominated by a major political party for the job, powerfully communicates the view that a woman—and particularly a woman of color—is electable and qualified to govern.¹²⁸

CONCLUSION

What role should legends play in marking a landmark anniversary? In her speech accepting the vice presidential nomination, Senator Kamala Harris

¹²¹ Monopoli, *supra* note 9, at 1741.

¹²² *Id.*

¹²³ Dittmar, *supra* note 6, at 1679.

¹²⁴ *Id.*

¹²⁵ See, e.g., Karen Zraick, *Congress to Governor’s Mansions, a Night of Historic Wins*, N.Y. TIMES, Nov. 8, 2018, at F19.

¹²⁶ Dittmar, *supra* note 6, at 1681. So, too, the Blackglama campaign was not women only.

¹²⁷ Asma Khalid, *Biden’s Vice Presidential Choice May Be Swayed by History, Including His Own*, NPR (May 6, 2020, 5:01 AM), <https://www.npr.org/2020/05/06/850928572/bidens-vice-presidential-choice-may-be-swayed-by-history-including-his-own> [https://perma.cc/BCF8-CP4D].

¹²⁸ Sharon Austin, *Before Kamala Harris Became Biden’s Running Mate, Shirley Chisholm and Other Black Women Aimed for the White House*, CONVERSATION (Aug. 12, 2020, 2:37 PM), <https://theconversation.com/before-kamala-harris-became-bidens-running-mate-shirley-chisholm-and-other-black-women-aimed-for-the-white-house-143655> [https://perma.cc/BLV9-2WZE].

modeled the importance of telling an inclusive story about the Nineteenth Amendment on its landmark one-hundredth anniversary. She referred to the many Black women who “helped secure that victory” yet were “still prohibited from voting, long after its ratification.”¹²⁹ Such women (including suffragist Mary Church Terrell and civil rights activist Fannie Lou Hamer) were “undeterred” and continued to fight, “not just for their vote, but for a seat at the table.”¹³⁰ One inspirational woman that Harris named was Representative Shirley Chisholm, the first Black woman elected to Congress and the first Black woman to run for the Democratic presidential nomination.¹³¹ It is fitting to end this commentary by considering the paradoxical status of Chisholm, viewed both as a legendary figure because of her astonishing political career¹³²—and as “an icon and a trailblazer” who has been neglected by history, including the Democratic Party’s own history.¹³³ Happily, Harris’s nomination brought renewed attention to Chisholm (in part because of their shared Caribbean roots).¹³⁴ Chisholm experienced both racism and sexism in her career and presidential campaign, saw the connection among all forms of discrimination, and pledged, if elected, to represent all Americans.¹³⁵ Chisholm once quipped, “If they don’t give you a seat at the table, bring a folding chair.”¹³⁶ In announcing her candidacy, which she viewed as symbolically important, she stated: “I stand before you today, to repudiate the ridiculous notion that the American people will not vote for qualified candidates, simply because he is not white or because she is not a male”¹³⁷ In 2020, may the American people be closer to proving this legendary political pioneer correct.

¹²⁹ Matt Stevens, *Kamala Harris Accepts Vice-Presidential Nomination: Full Transcript*, N.Y. Times (Aug. 19, 2020), <https://www.nytimes.com/2020/08/19/us/politics/kamala-harris-dnc-speech.html>.

¹³⁰ *Id.*

¹³¹ *Id.*; see also Austin, *supra* note 128.

¹³² *Who Was Shirley Chisholm?*, SHIRLEY CHISHOLM PROJECT, <http://chisholmproject.com/who-was-shirley-chisholm> [<https://perma.cc/SWX7-TF83>] (last visited Sept. 14, 2020) (“When Shirley Chisholm passed away in 2005, she had already become a legend.”).

¹³³ Andrew O’Hehir, *Shirley Chisholm, the Democrats’ Forgotten Hero*, SALON (Sept. 9, 2012, 11:00 PM), https://www.salon.com/2012/09/09/shirley_chisholm_the_democrats_forgotten_hero/ [<https://perma.cc/E2J8-D34G>] (describing Chisholm as “a nearly forgotten figure in American political history, but one who casts a long and complicated shadow”); Rajini Vaidyanathan, *Before Hillary Clinton, There Was Shirley Chisholm*, BBC NEWS (Jan. 26, 2016), <https://www.bbc.com/news/magazine-35057641> [<https://perma.cc/3H9Z-QQH7>].

¹³⁴ The *Mrs. America* miniseries on Hulu also sparked new attention to Chisholm. See Marc Malkin, *Listen: Uzo Aduba on Playing Political Pioneer Shirley Chisholm in ‘Mrs. America,’* VARIETY (July 7, 2020, 7:38 AM), <https://variety.com/2020/tv/podcasts/uzo-aduba-mrs-america-shirley-chisholm-fx-1234699165/>.

¹³⁵ Vaidyanathan, *supra* note 133.

¹³⁶ *Id.*

¹³⁷ *Id.*