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## The 1870s Tax Resistance of Julia and Abby Smith: from Natural Rights to Expediency in the Shadow of Separate Spheres

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**THE 1870S TAX RESISTANCE OF JULIA AND ABBY  
SMITH: FROM NATURAL RIGHTS TO EXPEDIENCY IN  
THE SHADOW OF SEPARATE SPHERES**

**Jessica Hynes**

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Glastonbury, Connecticut, a rural New England town located seven miles downriver from Hartford, had just three thousand inhabitants when Julia and Abby Smith became the most widely publicized tax protesters of the women’s rights movement. By the end of the 1870s, the names Julia and Abby Smith were inextricably linked to the missive “no taxation without representation,” borrowed by women suffragists from American Revolution tax resisters.<sup>1</sup> The

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<sup>1</sup> JULIA E. SMITH, *ABBY SMITH AND HER COWS WITH A REPORT OF THE LAW CASE DECIDED CONTRARY TO LAW* (Arno Press 1972) (1877). This volume is a compilation of letters and newspaper articles gathered by Julia Smith, housed at the Connecticut Historical Society, and reprinted by Arno Press in 1972. By her own words in the book’s introduction, Julia Smith notes that the pamphlet she compiled contained not even half of the newspaper articles that were sent to the sisters from all over the country. Women’s rights activists had long linked the privilege of voting with the obligation to pay taxes. The Declaration of Sentiments, adopted at the Seneca Falls convention in 1848, called for woman suffrage and stated that, “[a]fter depriving her of all her rights as a married woman, if single, and the owner of property, he has taxed her to support a government which recognizes her only when her property can be made profitable to it.” *Report of Women’s Rights Convention held at Seneca Falls, N.Y., July 19 & 20, 1848*, in *WOMEN’S RIGHTS CONVENTIONS, SENECA FALLS AND ROCHESTER*, (Arno Press 1969) (1848). The Smiths were by no means the

elderly sisters' story provides a useful lens through which to consider the role of the tax resistance movement in the wider suffragist movement, both because the sisters' fight was the most widely covered protest, and because their status as wealthy, white, unmarried women property owners gave them access to white male voters as well as some degree of legal standing to advance their arguments. The sisters' nearly decade-long protest employed constitutional legal theory, natural rights justification, religious references, metaphoric strategy, public relations tactics, and a bit of literary drama,<sup>2</sup> all in the shadow of the separate gendered spheres that predominated society during the Smiths' lives.<sup>3</sup>

The Smiths and other tax resisters attempted to address two frequently invoked antisuffrage justifications: (1) that women did not need the vote because they were virtually represented in the political sphere by male heads of household and (2) that providing women a role in electoral politics would violate gender norms and have a detrimental impact on marriage and the family.<sup>4</sup> The Smiths, as

only women to protest taxation without representation, although they, as discussed in this article, were for many reasons the most well known. As early as 1859, Mary Harrington of Claremont, New Hampshire, had her property seized after refusing to pay her taxes. ELIZABETH CADY STANTON ET AL., *HISTORY OF WOMAN SUFFRAGE* 373-74 (Ayer Co. 1985) (1882). During the 1860s, the *Woman's Journal*, a prominent suffragist newspaper, chronicled the experiences of several other suffragist tax resisters, most prominently a group in Worcester including Stephen and Abby Kelley Foster, and prominent suffragists Lucy Stone and Mary Harrington. Mary Harrington, *Letter from Mary Harrington*, 5 *WOMAN'S J.* 37 (1874); Stephen S. Foster, *Stephen S. Foster's Rejoinder*, 7 *WOMAN'S J.* 145 (1876); Abby K. Foster, *Mrs. Foster Despoiled*, 7 *WOMAN'S J.* 137 (1876). On the anniversary of the Boston Tea Party, the *Woman's Journal* called to "the women of New England who believe that 'TAXATION WITHOUT REPRESENTATION IS TYRANNY' and that our forefathers were justified in resisting despotic power by throwing the tea into Boston Harbor," to gather at Faneuil Hall for an historic event. *New England Women's Tea Party*, 4 *WOMAN'S J.* 396 (1873). Similar events were held in New York and New Haven, Connecticut.

<sup>2</sup> Carolyn Jones explores how women suffragists used taxation as a metaphor for the other disadvantages and oppressions that women experienced in their interactions with the government, the marketplace, and within their own male-dominated households. Carolyn C. Jones, *Dollars and Selves: Women's Tax Resistance in the 1870s*, 1994 U. ILL. L. REV. 265 (1994).

<sup>3</sup> See *infra* Section II.A.

<sup>4</sup> For a general discussion of these antisuffragist arguments see Reva B. Siegel, *She the People: The Nineteenth Amendment, Sex Equality, Federalism, and the Family*, 115 *HARV. L. REV.* 974 (2002). Linda Kerber outlines the historical foundation of the notion of separate gendered spheres in Linda K. Kerber, *Separate Spheres, Female Worlds, Woman's Place: The Rhetoric of Women's History*, 75 *J. AM. HIST.* 9 (1988).

wealthy, respectable, unmarried women with no living male relatives were particularly well suited to challenge these notions. In challenging these foundational arguments, the Smiths' position reflected the evolution of the larger suffragist movement from a demand for political equality based on the inalienable, natural rights of citizens, to "expediency" justification—ways in which women's differences supported suffrage.<sup>5</sup> The expediency argument responded to new legal and social realities for women, arguing first, that women needed the vote for self-protection, and later, that granting women the vote would in fact benefit society by introducing into government some of the more "virtuous feminine qualities" such as temperance, religion, and morality.<sup>6</sup>

The Smiths' campaign did not fit neatly into one of the two camps of suffragist arguments in that they continued to advance natural rights and equity arguments that challenged the notion of separate gendered spheres, while increasingly relying on expediency justifications. Like the leaders of the national suffragist movement, such as Elizabeth Cady Stanton and Susan B. Anthony, the Smiths argued for full citizenship and access to the public sphere, without attempting to dismantle or otherwise alter their exclusive role in the private, domestic sphere.<sup>7</sup> Moreover, the Smiths' own development into political activists, in the last decade of their lives, largely followed the path of the greater suffragist movement: beginning with the temperance movement as an outgrowth of their religious and moral concerns, moving into the advocacy of women's rights in general, and finally shifting to suffrage as the means by which women could gain full social and political equality.

This article traces the Smith sisters' tax resistance as an example of how the tax resistance arguments and movement advanced the greater suffrage cause and reflected the evolution of the suffrage movement from natural rights to expediency rhetoric. Section I introduces the Smiths and discusses the foundations for their own tax resistance. Section II examines the concept of separate spheres,

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<sup>5</sup> AILEEN KRADITOR, *THE IDEAS OF THE WOMAN SUFFRAGE MOVEMENT, 1890-1920* 43-74 (1965) (explaining the ideological shift of the women suffrage movement from using justice to claim political equality to using expediency).

<sup>6</sup> *Id.* Women had already successfully argued that allowing women to vote in certain local and school elections would permit women to have a vote in the areas of particular interest to wives and mothers.

<sup>7</sup> See ELLEN CAROL DUBOIS, *WOMAN SUFFRAGE & WOMEN'S RIGHTS* 30-34 (1998), for a full discussion of how the notion of separate spheres limited the suffragist movement and an explanation of suffragists' inability to fully challenge such notions.

beginning by analyzing the historical foundations of this socially constructed concept and then considering its role in women's entry first into abolition and ultimately into the suffrage movement. This part further shows how separate-sphere ideology impacted suffragists, particularly tax resisters, and influenced how suffrage rhetoric developed over the almost eighty-year history of the movement. Finally, Section III looks at the Smiths' tax resistance to help one understand that tax resistance was not an isolated argument limited in scope to taxpayer-only suffrage, but instead was both a metaphoric and a literal ideological argument that reflected the growth and development of the larger suffrage movement.

#### I. THE SMITHS AND THE BIRTH OF TAX RESISTANCE

Abby and Julia Smith were the only two of the five daughters born to Zephaniah Hollister Smith and Hannah Hickok Smith surviving when their fight against "taxation without representation" gained them fame in the early 1870s. The sisters had been raised in a household where their father, a Congregational minister-turned-town attorney and state legislator, provided an atmosphere of heightened awareness of legal justice<sup>8</sup> and their mother, a member of the Hartford Anti-Slavery Society, engaged her daughters in abolitionist and temperance causes.<sup>9</sup> Hannah and Zephaniah, both intellectuals,

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<sup>8</sup> Julia Smith especially followed her father's legal career, noting in her diary information about his court cases, some of which were argued right in the Smith home, giving the sisters a more direct experience with the legal system than most women of their generation. Julia's diaries always noted election days, the start and finish of her father's legislative and court sessions, and her own review of several newspapers a day. She also made frequent note of her father's schedule for hearing court cases and often accompanied him to Hartford on days when he would be in court. Julia kept a detailed diary from 1810 to 1842, written in French. The diary has been translated into English by a member of the Glastonbury Historical Society, Olivia Rhines, up until 1825. Mary Helen Kidder has translated short sections of the remaining diary entries. *See generally* *Diary of Julia Smith (1810-1842)* (on file with the Glastonbury Historical Society) [hereinafter *Julia Smith Diary*].

<sup>9</sup> Hannah Hickok Smith's diary and letters are contained in the collection of the Connecticut Historical Society, Hartford, Connecticut. In addition to both Hannah and Julia's diaries, much of the biographical information about the Smiths comes from KATHLEEN L. HOUSLEY, *THE LETTER KILLS BUT THE SPIRIT GIVES LIFE: THE SMITHS - ABOLITIONISTS, SUFFRAGISTS, BIBLE TRANSLATORS* (1993). All of the five Smith sisters were extraordinarily educated and accomplished for women of their time. Hancy Zephina (1787-1871) was mechanically inclined and built her own boat, which she sailed on the Connecticut River, and invented a device for shoeing cattle that was used by local blacksmiths. Cyrinthia Sacretia (1788-1864) was skilled in needlework and was a talented horticulturalist. She raised fruit trees,

approached the education of their daughters much in the way they would have educated sons: with a focus on academic subjects such as French, Latin, Greek, history, and mathematics.<sup>10</sup> The Smith girls each spent some time in female academies of higher learning and studied with private tutors in Glastonbury whenever one was available.<sup>11</sup> As was common for educated, unmarried women of their day, both Laurilla and Julia spent time teaching.<sup>12</sup> They both taught at Emma Willard's leading school for women, The Troy Female Academy, in Troy, New York.<sup>13</sup> What is more unique about the Smith sisters, however, is the sisters' avid self-study of a variety of complicated, highly intellectually challenging subjects.<sup>14</sup> The sisters devoured books given to them by their father and borrowed from the libraries of others, completing memorizations and translations, and often studying five to six hours per day on the subject of their current

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grapes, and strawberries, developed her own varieties, and grafted her own apple trees. Laurilla Aleroyia (1785-1857) was an artist. A Victorian cottage was built across the street from the Smith home to serve as her art studio. She painted decorative items and paintings, which hung in the Smith home, some of which still exist and can be seen at the Glastonbury Historical Society's Museum. Laurilla taught French at Emma Willard's boarding school for girls in Troy, New York, and later taught at Catherine Beecher's Hartford Female Academy. Julia Evelina (1792-1886), who was a scholar of Greek, Latin, and Hebrew, also taught briefly at the Emma Willard School. Julia completed at least three separate translations of the Bible from Hebrew, Latin, and Greek. In the 1870s, she published her translation of the bible, at her own expense, perhaps to support her suffrage position and to prove the intellectual capacity of women. Julia took great interest in her father's profession, reading Blackstone and assisting neighbors with legal issues and advising them on complicated points of law. Abby Hadassah (1797-1878), was the youngest and considered the quietest of the sisters until she became a famous spokesperson for taxation without representation late in her life. *See generally Id.*

<sup>10</sup> Letters from Hannah Smith to Abigail Mitchell (her mother) (March 1, 1804 & March 16, 1816) (on file with the Connecticut Historical Society, Hartford, Conn).

<sup>11</sup> Letters from Hannah Smith to Abigail Mitchell (August 2, 1800 & June 5, 1800); Letter from Julia Smith to Abigail Mitchell (October 7, 1811); Letter from Abby Smith to Abigail Mitchell (July, 1815), (on file with the Connecticut Historical Society, Hartford, Conn). Zephaniah spent time at a school in Norwich in 1800, Cyrinthia and Laurilla attended the Litchfield Female Academy in 1802, and both Julia and Abby spent some time between 1811 and 1815 attending schools in New Haven. HOUSLEY, *supra* note 9, at chs. 3-7.

<sup>12</sup> *Julia Smith Diary*, *supra* note 8.

<sup>13</sup> Mary Kidder, *The Smith Sisters of Glastonbury: Intellectual Rebels and Cranks* 6-7 (Mar. 3, 1936) (paper read before the Connecticut Historical Society, transcript available in the Connecticut Historical Society Library).

<sup>14</sup> *See generally Julia Smith Diary*, *supra* note 8. These pursuits are detailed throughout Julia's diary, written entirely in French, which she kept for thirty-two years.

interest.<sup>15</sup> Their extensive study must have placed them among some of the most educated citizens in Glastonbury, and perhaps in Connecticut. But despite being intellectual women, set apart in many ways from most of the women in their direct social circle, they were still socially active and were impacted by the limitations on women's entry into the public sphere. Julia's diaries, particularly in the early years, note many occasions where the sisters attended dances and balls, played games and sang songs with others, visited the homes of other women and families for quilting and social visiting, and engaged in extensive charity work, as was the norm for women of their social class.<sup>16</sup> She also discusses all manner of domestic work including cleaning, cooking, ironing, mending, and canning, although her distaste for such work was clear.<sup>17</sup> The sisters were not, therefore, removed from the predominate notion of separate gendered spheres, although their unique situation as a household of women left them in a position to cross those boundaries in ways that married women often could not.<sup>18</sup> This was particularly the case after the death of their father.

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<sup>15</sup> *Id.* Julia's diaries list frequent trips to libraries, often private libraries of male family friends, to borrow books. Her choices for reading and study were highly intellectual in nature. Several examples, from her many literary references, include her mention of reading and studying "Erasmus" (May 20, 1812); "History of England" (July 10, 1812); "Shakespeare" (Aug. 22, 1812); "arithmetic almost all day" (Feb. 10, 1813); "the Greek Testament almost all day" (Mar. 25, 1813 through Mar. 27, 1813); "Dufief's Grammar" (Apr. 21, 1814); "Legitimate Prejudices against Papism and in the Benign Leader" (Mar. 31, 1815); "law, two French papers, and a few chapters in the Bible" (Oct. 24, 1815); "History of Portugal" (Jan. 31, 1816); a book on "Greek Grammar" (Feb. 22 1816); "a book on chemistry" (July 18, 1816); and "History of Rome" (Oct. 8, 1817). *Id.*

<sup>16</sup> *Id.* The diaries mention very frequent social visits to neighbors and friends as well as overnight visits to friends in Hartford, New York, and other parts of New England. In addition, the sisters often visited sick and injured neighbors, went to see new mothers and their babies, and attended funerals of Glastonbury citizens. As was noted in a Chicago Tribune article reporting on the sisters' tax resistance, "the mother and daughters were not unlike other ladies, unless, perhaps, in the fact of their possessing superior and uncommon literary attainments. These ladies have always been the most respectable and honorable of the people in the town. They are correct in manners and morals, and there is nothing strange or peculiar about them, unless high-minded goodness and Christian charity are rather strange." *The Smith Sisters of Glastonbury*, CHI. TRIB., Feb. 14, 1874, as reprinted in SMITH, *supra* note 1, at 37.

<sup>17</sup> *Julia Smith Diary, supra* note 8.

<sup>18</sup> Julia's diaries show clearly that the sisters and their mother divided household and domestic chores in an orderly fashion, rotating certain chores such as cooking, cleaning, ironing, and mending on a weekly basis. This division of labor allowed the sisters large periods each week for reading and studying, as well as frequent trips with their father into Hartford for political and intellectual pursuits. *See generally Id.*

The Smith sisters' socially conscious parents most certainly influenced them as well as did the unique environment in which they were raised. Zephaniah Hollister Smith, who had been born in Glastonbury, studied for the ministry at Yale College and practiced as a Congregational minister for several years before his interest in and study of Sandemanianism led him to question the role of clergy.<sup>19</sup> Although it does not appear that Zephaniah adopted all of the practices of Sandemanianism, his wife and daughters continued to have an interest in the sect and Julia separated from the Congregational church in the 1820s and is said to have considered herself a Sandemanian. After leaving the ministry, Zephaniah briefly worked as a merchant but then began studying to become a lawyer under the direction of Jonathan Brace, a well-respected lawyer and member of the Connecticut General Assembly.<sup>20</sup> It was from Jonathan Brace that Zephaniah bought the Glastonbury property that would later be the subject of his daughters' tax protest. Zephaniah went on to practice law into his seventies, to represent Glastonbury in nine sessions of the State Legislature, and to serve as Justice of the Peace.<sup>21</sup>

As her daughters would later be, Hannah Hickok Smith was unusual in her intelligence and education for a woman of her generation.<sup>22</sup> An only child, Hannah was showered with attention and provided with an education that normally would have been reserved for sons. Her father taught her to build and repair clocks, trained her in astronomy, teaching her the names of constellations and planets and the mathematics involved in calculating eclipses, and taught her how to speak several languages. She was also a poet, and in 1881, years after her mother's death, Julia published a book of her mother's poetry.<sup>23</sup>

The Smith family moved to the Glastonbury farm that was to become the focus of so much attention during the tax protest years in

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<sup>19</sup> FRANKLIN BOWDITCH DEXTER, *BIOGRAPHICAL SKETCHES OF THE GRADUATES OF YALE COLLEGE* 236-37 (1907). Sandemanianism was based on the teachings of Robert Sandeman, a Scottish theologian who belonged to a sect called Glasites, which separated from the Church of Scotland under the leadership of John Glas, and preached that salvation was "nothing more than mental persuasion of the truth of the Gospel." Michael D. Makidon, *From Perth to Pennsylvania: The Legacy of Robert Sandeman*, 15 *J. GRACE EVANGELICAL SOC'Y* 75, 91 (2002).

<sup>20</sup> LINDA K. KERBER, *NO CONSTITUTIONAL RIGHT TO BE LADIES: WOMEN AND THE OBLIGATIONS OF CITIZENSHIP* 83 (1999).

<sup>21</sup> HOUSLEY, *supra* note 9, at 18, 23-26, 32-37; Pamela Cartledge, *Seven Cows on the Auction Block: Abby and Julia Smith's Fight for Enfranchisement of Women*, 52 *CONN. HIST. SOC'Y BULL.* 15, 16-17 (1987); DEXTER, *supra* note 19, at 236-37.

<sup>22</sup> See DEXTER, *supra* note 19, at 237.

<sup>23</sup> HOUSLEY, *supra* note 9, at 14-17; Kidder, *supra* note 13, at 22.



1793.<sup>24</sup> The five sisters continued to live together with their parents in the Glastonbury home sharing domestic duties and engaging in intellectual, religious, musical, charitable, and social pursuits consistent with single women of their class throughout their lives.<sup>25</sup> It is unclear why none of the five sisters married other than Julia's brief marriage in her eighties. Historian Kathleen Housley proposed that, in addition to their "coming of age during the first two decades of the nineteenth century when a great exodus to the western part of New York state and Ohio took place from Connecticut, leaving an imbalance in the ratio of males to females," the sisters were all better educated than most of the males of their day, likely making them suspect to potential suitors.<sup>26</sup> Even more likely, their superior education and intellect made them hesitant to enter into a marriage that would rob them of most of their rights and consign them to a narrow, domestic sphere. Indeed, in an interview of Julia and Abby in 1874, when asked why they had not married, they admitted that their father had "imbibed a prejudice against marriage laws and a distrust of man's chivalry, while discharging his duties as a lawyer."<sup>27</sup> Julia's detailed diary, kept over a period of many years, mentions the sisters' interaction with men in any sort of romantic nature only insofar as their accompanying men to organized social events such as balls.<sup>28</sup> She never once mentions male suitors visiting any of the sisters at their home or indicates that any of the sisters had a romantic relationship with a man. Her primary interest in men seems to have been their ability to provide her with books and access to their libraries.<sup>29</sup>

Regardless of the reason, the sisters' lifelong spinsterhood surely had a significant influence both on how they were viewed by their community and on their experience as women in the nineteenth century. While most women of their class were entering marriage and motherhood, thus living their lives within a fairly rigidly proscribed gendered sphere, the Smiths were able to share their domestic duties among themselves, and their wealth and spinsterhood freed them of many of the duties and expectations for women.<sup>30</sup> They were therefore not only permitted but were indeed encouraged to engage in intellectual, social, and political pursuits.

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<sup>24</sup> HOUSLEY, *supra* note 9, at 14-17.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*; SMITH, *supra* note 1, at Introduction.

<sup>27</sup> HOUSLEY, *supra* note 9, at 63 (referencing Interview by Dr. C.C. Dills with Julia and Abby Smith, (Jan. 21, 1874)).

<sup>28</sup> *Julia Smith Diary*, *supra* note 8.

<sup>29</sup> *Id.*

<sup>30</sup> See Jones, *supra* note 2, at 276.

Julia Smith recounted the story of how she and her sister were drawn into the tax protest in her introduction to *Abby Smith and Her Cows*, a volume containing a compilation of letters and news articles chronicling the sisters' campaign.<sup>31</sup> The Smiths first began to challenge their local property tax in 1869 when the town tax collector paid a second "yearly" visit to the sisters and extracted a second property tax on the sisters' property.<sup>32</sup> The collector had come to the sisters in June to collect a tax of about eighteen dollars that was not due until the following fall. The town needed the money early, he explained, to pay the highway laborers, and none of the men would pay it.<sup>33</sup> The sisters agreed to pay the tax early, but the following October, they received another highway tax bill in the same amount.<sup>34</sup> The collector, a Republican who blamed the Democrats in power, explained that the town needed to collect a second tax in order to cover the outstanding town expenses, including an expense of more than seven hundred dollars for registering men's names.<sup>35</sup> He explained that in order to prevent men from voting twice, the town, at the taxpayers' expense, hired a man to write out the names of the taxpayers to use at the polls.<sup>36</sup> When asked if she could have her name recorded, Julia was told, "oh no! It is the voter's [sic] names."<sup>37</sup> Outraged, Julia responded:

[A]nd then make women pay for it? If they are going on at this rate, I must go to that suffrage meeting in Hartford and see if we cannot do better, for I have no doubt that one woman would write down every name in town for half that money.<sup>38</sup>

Julia and Abby then attend the suffrage meeting held in Hartford on October 28 and 29, 1869.<sup>39</sup> Isabella Beecher Hooker,

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<sup>31</sup> See generally SMITH, *supra* note 1.

<sup>32</sup> See Jones, *supra* note 2, at 276

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> SMITH, *supra* note 1, at 11.

<sup>39</sup> The meeting, held in Robert's Opera House in Hartford, was the first of the Connecticut Woman Suffrage Association (CWSA). Called to order by the Honorable John Hooker, the meeting included local leaders in the Connecticut suffrage movement, such as Isabella Beecher Hooker, Frances Ellen Burr, Catharine E. Beecher, and Harriet Beecher Stowe, as well as national leaders including the Reverend Henry Ward Beecher, Elizabeth Cady Stanton, Susan B. Anthony, Julia

Harriet Beecher Stowe's sister, organized the meeting. The two-day meeting, attended by over 175 people, included speeches by Elizabeth Cady Stanton, Susan B. Anthony, Julia Ward Howe, and William Lloyd Garrison.<sup>40</sup> Only Garrison mentioned the taxation of women, stating, "[w]hile women are taxed they ought to be represented. When they are held as criminals, they ought to have a part in making criminal law. When men say women shall not be taxed or punished they will be consistent."<sup>41</sup> At this first meeting, the CWSA determined to hold annual conventions and convened an executive committee to carry out the work of the organization. Abby Smith served on this committee from 1873-1875 and again in 1877.<sup>42</sup> Although the Smiths did not leave the meeting yet determined to resist paying their taxes, they were drawn to the cause and explained that they came away believing that "women had truth on their side."<sup>43</sup>

Following their attendance at the suffrage meeting, in 1871, Julia and Abby suffered the death of their eldest sister, Hancy Zephina, referred to by Julia as the life of the house, who had a keen sense of justice. It was thus not until the following year, 1872, when the sisters reengaged in the cause, and their tax resistance began. That year, the tax collector again called on the Smiths, and this time he informed them that their house and homestead had been reassessed by one hundred dollars.<sup>44</sup> When they asked for an explanation, the collector explained that the assessor had the right to add to the citizens' tax as he pleased.<sup>45</sup> He also confirmed what the sisters suspected: that while their tax had been increased, as had the tax of two local widows, not a single man had had his tax raised.<sup>46</sup> At the time, the Smiths were some of the wealthiest people in Glastonbury; they were certainly the

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Ward Howe, and William Lloyd Garrison. The complete records of the Association, which remained active until shortly after accomplishing its goal of Connecticut's ratification of the Nineteenth Amendment to the United States Constitution on September 14, 1920, are housed at the Connecticut State Library. In an earlier women's rights convention held in Connecticut, Elizabeth Cady Stanton stated, "[i]t is plain that if a man is not free to govern himself, and to have a voice in the taxation of his own property, he is not really free in any enlightened sense." STANTON ET AL., *supra* note 1, at 317.

<sup>40</sup> Record of the Connecticut Woman Suffrage Association (1869-1894) (on file at the Connecticut State Library).

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> *A Letter From Abby H. Smith and Sister*, THE HARTFORD COURANT, Nov. 29, 1873, as reprinted in SMITH, *supra* note 1 at 11.

<sup>45</sup> *Id.*

<sup>46</sup> *Id.* at 12.

wealthiest unmarried women with an estate estimated at \$10,139.<sup>47</sup> They likely seemed like easy targets with the means to pay higher taxes, given that they had no political power and no male head of household to promote their interests at town meetings. Although the reassessment actually raised the Smiths' tax by little, Julia noted, "[W]hat is unjust in least is unjust in much."<sup>48</sup> She thought the abuse by the tax collector to be particularly unfair because women did not have the same strength and means as men to labor on their property to earn the money for the taxes.<sup>49</sup> The tax collector agreed to bring the Smiths' concerns to the Selectmen and call again. The collector did call again, this time with peremptory orders to collect the tax. Although the sisters paid their \$200 tax bill that year, the stage had been set for the sisters' 1873 tax resistance.<sup>50</sup> Abby declared she would not again pay taxes until she had a voice in how the money was spent.<sup>51</sup>

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<sup>47</sup> Glastonbury Tax Records, 1872 (on file with the Connecticut State Library). The newspapers reporting on the Smiths' story often reported that the Smiths owned more property than any other citizen in Glastonbury. That appears to have been inaccurate. As explained by the sisters in a letter to Lucy Stone on April 19, 1874, "[w]e have been misrepresented in the papers as having more property and paying higher taxes than anyone else in town. It is not so. Many have more property, but we pay more money into the treasury than any voter, because they work out their taxes or have office, and get orders upon the town, and the money comes principally from women, who are obliged to earn it hardly enough." Letter from the Smith Sisters to Mrs. L.H. Stone Apr. 19, 1874, *as reprinted in SMITH, supra* note 1, at 39.

<sup>48</sup> Letter from the Smith Sisters to Mrs. L.H. Stone Apr. 19, 1874, *as reprinted in, SMITH, supra* note 1, at 39.

<sup>49</sup> Of course, it was not just men's superior physical power that the Smiths mentioned. As Abby noted more than once in her correspondence with newspapers and speeches given, men's superior political power came into play as well. The men of Glastonbury had the opportunity to "work out" their taxes in labor. However, this right was often abused. At one point, the town needed a new schoolhouse. A contractor put in a bid to build one for the same price that he had done one a few miles down the road. The voters rejected that bid opting instead to let the men of the town work off their taxes and build it themselves, "which they did, and more too, charging what they pleased to the district," making the cost to the town for that portion of the job almost as much as the contractor would have charged for the whole job." *A Letter From Abby H. Smith and Sister*, THE HARTFORD COURANT, Nov. 29, 1873, *as reprinted in SMITH, supra* note 1, at 12.

<sup>50</sup> *Id.*

<sup>51</sup> Arguably, the tax resisters' argument for suffrage had limitations in that, in its literal form, it held little promise for universal, rather than taxpayer-only suffrage. More important, however, is to look at tax resistance both as a metaphor, challenging the larger subordination of women (as does Carolyn Jones in Jones, *supra* note 2) and as a reflection of the larger ideological underpinnings of the suffrage movement: natural rights, the rights and obligations of citizenship, capacity for independent thought and action as a key criterion for suffrage, and finally expediency rationales.

## II. THE IMPACT OF SEPARATE SPHERES ON WOMEN'S LIVES

### A. *History of Separate Spheres*

Neither the United States Constitution, signed in 1787 by thirty-nine of the most prominent men of the nation, nor the Bill of Rights passed four years later, explicitly excluded women from voting.<sup>52</sup> Instead, “in permitting each state to determine the qualifications of voters for Congress, the Constitution implicitly endorsed laws, then existing in virtually every state that prohibited women from voting. . . . [Thus] it seems fair to say that the Framers envisioned no role for women in the new American government.”<sup>53</sup> The presumption was so clear that explicit exclusion was unnecessary. In the eighteenth century, the family was the unit around which community roles were organized. Men, who were the “freeholders,” were considered heads of the family unit, and were thus citizens of the state who held the primary position in church and government organizations. Women, by contrast, held an inferior role in the family and were thus excluded from participating in such community and social activities.<sup>54</sup> Woman’s role in the family defined her very

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Such a view is consistent with that taken by suffrage historian Ellen Carol Dubois of suffrage not as “an isolated institutional reform” but rather as “a social movement, reflecting women’s aspirations for and progress toward radical changes in their lives.” ELLEN CAROL DUBOIS, *FEMINISM AND SUFFRAGE: THE EMERGENCE OF AN INDEPENDENT WOMEN’S MOVEMENT IN AMERICA, 1848-1869* 17 (1978). Notably, the Smiths’ suffrage aspirations did not seem to be limited to taxpayer suffrage. When one tax collector revealed to Abby Smith that he agreed that women who owned property should be permitted to vote, she responded, “[T]hose that had none needed it more.” *A Letter From Abby H. Smith and Sister*, *THE HARTFORD COURANT*, Nov. 29, 1873, as reprinted in SMITH, *supra* note 1, at 11.

<sup>52</sup> See U.S. CONST. amends. I-X

<sup>53</sup> Sandra Day O’Connor, *The History of the Women’s Suffrage Movement*, 49 *VAND. L. REV.* 657, 658 (1996). It is noteworthy however, that not every state prohibited women from voting. In 1778, only two years after the adoption of the Declaration of Independence, in response to a note from his sister, Hannah Lee Corbin, that women not be taxed unless they could vote, General Richard Henry Lee wrote that “‘women were already possessed of that right,’ thus recognizing the fact of woman’s enfranchisement as one of the results of the new government. It is on record that women in Virginia did at an early day exercise the right of voting.” *Id.* New Jersey also afforded women the right to vote, which they did for more than thirty years before losing the right by state law. STANTON ET AL., *supra* note 1, at 33.

<sup>54</sup> DUBOIS, *supra* note 7, at 31-33.

limited role in social and community structures.<sup>55</sup> By the nineteenth century, social and community life was moving away from the family as the participating unit, and the relationship between the “individual” and society began to predominate. This change, however, did not impact women’s citizenship. While men enjoyed participation in the public sphere, women were confined almost exclusively to the private sphere, giving rise to the nineteenth-century concept of separate gendered spheres.<sup>56</sup> Although the Constitution used the word “persons” when defining citizenship, “the exclusion of women from participation in political life in the early nineteenth century was so absolute and unchallenged that it did not require explicit prescription. It was simply assumed that political ‘persons’ were male.”<sup>57</sup>

The concept of separate spheres was unchallenged by males and females alike. There seemed to have been an implicit understanding that the continued survival of the nation depended upon women ensuring that the home remained a functioning and nurturing environment, and that the next generation of citizens, particularly males, were prepared to become active, contributing members of political society.<sup>58</sup> Coined “republican motherhood” by historian Linda Kerber, women, particularly married women, were seen as occupying a morally superior status that kept her exclusively in the private, family sphere.<sup>59</sup> Kerber notes that Tocqueville’s 1840 account

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<sup>55</sup> *Id.* at 32 (citing Gerda Lerner, *The Lady and the Mill Girl: Changes in the Status of Women in the Age of Jackson*, 10 MID-CONTINENT AM. STUD. J. 6 (1969)).

<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 33. Historian Linda Kerber notes that Tocqueville’s account of American society in *Democracy in America*, published in 1840, provided one of the earliest critiques of the situation of women in America, and provided the foundation for the use of the metaphor of separate “spheres” for men and women that permeated both suffrage and antisuffrage doctrine years later. Kerber noted that the metaphor of “‘sphere’ was the figure of speech ....on which historians came to rely when they described women’s part in American culture.” It can also be seen as a socially constructed divide between the public and the private life. Looking back a hundred years later, historians noted that,

[T]he separation of spheres seemed everywhere underfoot, from crocheted pillows reading Woman’s Place is Home to justifications for the exclusion of women from higher education, to arguments against birth control and abortion. Women were said to live in a distinct ‘world,’ engaged in nurturant activities, focused on children, husbands, and family dependents.

KERBER, *supra* note 4, at 10 (citing ALEXIS DE TOCQUEVILLE, *DEMOCRACY IN AMERICA* (Harvey C. Mansfield and Delba Winthrop eds., 2000)).

<sup>59</sup> See generally LINDA K. KERBER, *WOMEN OF THE REPUBLIC: INTELLECT AND IDEOLOGY IN REVOLUTIONARY AMERICA* (1980).

of American society in *Democracy in America* provided one of the earliest critiques of the situation of women in America and provided the foundation for the use of the metaphor of separate “spheres” for men and women that permeated both suffrage and antisuffrage doctrine years later.<sup>60</sup> Indeed “[t]he idealization of the separate spheres of influence and activity defining men’s and women’s existence struck him as unique.”<sup>61</sup> Tocqueville further noted the extreme limitations that marriage placed on women’s freedoms and stated that while “young American women [had] a high degree of independence . . . when one of these same young women married . . . ‘the inexorable opinion of the public carefully circumscribe[d] [her] within the narrow circle of domestic interests and duties and forbid [ ] her to step beyond it.’”<sup>62</sup> He concluded, “[A] woman forfeits her independence forever when she embraces matrimony.”<sup>63</sup>

### B. *Abolition and Women’s Entry into Public Life*

Indeed, consistent with the predominate notion of separate gendered spheres for men and women, men occupying the public and women the private or family sphere, women played no significant role in politics and governance until the mid-1800s when women’s entry into the abolitionist movement afforded them experience in public organization, petitioning, fund raising, and oration. The first volume of the *History of Woman Suffrage* details the extensive role that women took in the early anti-slavery struggle, noting the roles taken by future suffragist leaders such as Sarah and Angelina Grimke, Abby Kelley, Lydia Marie Child, Lucretia Mott, and Elizabeth Cady Stanton.<sup>64</sup> Because of their moral and religious objections to slavery,

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<sup>60</sup> KERBER, *supra* note 4, at 10; *see also* SALLY G. MCMILLEN, *SENECA FALLS AND THE ORIGINS OF THE WOMAN’S RIGHTS MOVEMENT* 15 (2008); DE TOCQUEVILLE, *supra* note 57.

<sup>61</sup> MCMILLEN, *supra* note 60, at 15.

<sup>62</sup> KERBER, *supra* note 4, at 9-11; *see generally* TOCQUEVILLE *supra* note 57.

<sup>63</sup> *See generally* TOCQUEVILLE, *supra* note 57.

<sup>64</sup> *Id.* 657-58. Women took part in the antislavery struggle from the very beginning. As early as 1828, Sarah and Angelina Grimke emancipated their slaves and traveled north from South Carolina to lecture on the evils of slavery. Abby Kelley, “the most untiring and the most persecuted of all women who labored throughout the Anti-Slavery struggle,” “traveled up and down, alike in winter’s cold and summer’s heat, with scorn, ridicule, violence, and mobs accompanying her, suffering all kinds of persecutions, still speaking whenever and wherever she gained an audience.” Stanton et al., *supra* note 1, at 1:39 “By the 1850s, women constituted a majority of Northern antislavery societies and were the leading organizers of abolitionist petition drives.” *Id.* This first foray into the public sphere subjected women reformers to

female abolitionists believed that women had a special role in combating this “threat to the moral character of American society.”<sup>65</sup> In fact, “[i]n the early Anti-Slavery conventions, the broad principles of human rights were so exhaustively discussed, justice, liberty, and equality, so clearly taught, that the women who crowded to listen, readily learned the lesson of freedom for themselves . . . .”<sup>66</sup> It is clear that women had considered and even discussed their discontent with their dependent and isolated position within society prior to this time, but the anti-slavery movement, with its history as an outgrowth of evangelical Protestantism, gave them entry into the public domain in a way that was at least on the surface consistent with their other “benevolent religious efforts such as urban missionary activities,” which were an accepted part of women’s domain.<sup>67</sup> The women who built the women’s rights movement understood “the limited domestic sphere prescribed for them, their increasing isolation from the major economic and political developments of their society, and above all their mounting discontent with their situation.”<sup>68</sup> Borrowing abolitionist ideas and methods, early suffragists “raised this discontent to a self-conscious level and channeled it into activities intended to transform women’s position. They were able to do this because of their experience in the anti-slavery movement, to which they were led, in part, by that very dissatisfaction with exclusively domestic life.”<sup>69</sup> As the movement became secularized, women’s continued role provided them newfound access to the political and public realm.<sup>70</sup>

Like others in the suffrage movement, Julia and Abby Smith began their activism in the abolition and temperance movements and

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great criticism and attack, particularly for their willingness to speak publicly in mixed groups of men and women about political subjects generally considered the exclusive province of men. *Id.*

<sup>65</sup> THE ELIZABETH CADY STANTON-SUSAN B. ANTHONY READER 7 (Ellen Carol DuBois, ed., 1992).

<sup>66</sup> STANTON ET AL., *supra* note 1, at 52.

<sup>67</sup> DUBOIS, *supra* note 51, at 32.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.* at 22. DuBois notes that historians had often mistakenly credited women’s experience in the antislavery movement with awakening them to their own oppression. While the abolition undoubtedly provided women with a vocabulary through which to describe the legal, historical, and political underpinnings of their oppression, and provided a useful metaphor by which to describe their situation, “women’s discontent with their position was as much cause as effect of their involvement with the antislavery movement. What American women learned from the abolitionists was less that they were oppressed and more what to do with that perception, how to turn it into a political movement.” *Id.* at 32.

<sup>70</sup> *Id.*



were initially led to these movements by religious concerns.<sup>71</sup> Julia's diary explained how the sisters taught Sunday school to the Negro men, women, and children, and this "led to the realization that blacks needed to learn how to read so that they could obtain an understanding of God on their own."<sup>72</sup> In one of their own anti-slavery petitions, the Smiths stated that "to withhold from them the means of acquiring a knowledge of the scriptures is a gross violation of the principles of the gospel."<sup>73</sup> The Smiths' charity activities first brought them in closer contact with the poor black families in their community. Julia's diaries include references to teaching religion and reading to groups that included Negroes, visiting and bringing food and supplies to Negroes in their community who were ill, and employing negro workers in their home and property at various times for a variety of jobs. It is also through their charity work that the Smiths came to recognize the injustice that helped create the Negroes' need for charity.<sup>74</sup>

By sometime in the 1830s, the Smiths' interest in abolition had led them to become members of the Hartford County Anti-Slavery Society. They appeared to become more active in the movement, periodically holding Society meetings in their home; distributing the anti-slavery newspaper called *The Charter Oak* to factory workers in South Glastonbury; socializing with abolition leaders and attending state and local anti-slavery meetings; writing anti-slavery articles for the local newspapers; and drafting and circulating numerous resolutions and petitions, at least one of which appears to have made its way to the hands of John Quincy Adams and been presented at the United States Congress.<sup>75</sup> In all of the petitions and resolutions drafted by the Smiths, the influence of legal training and knowledge is

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<sup>71</sup> In a letter to an unknown recipient, Zephaniah pronounced his own antislavery stance. "Our duty is easily decided to do all in our power as moral beings to abolish an institution that is a violation of God's law, a system of cruelty such as was scarcely practiced in the barbarous ages, a system of adultery and fornication most degrading and of the most brutal outrage, parting families and selling them like cattle." Letter from Zephaniah Smith to unknown recipient (on file with Glastonbury Historical Society).

<sup>72</sup> HOUSLEY, *supra* note 9, at 102-03. Julia's diary contains other references to charity work for poor blacks in Glastonbury, including bringing food to a Negro man who was ill and sewing clothes Negro families. See e.g., *Julia Smith Diary* (Jan. 4 and 6, 1822), *supra* note 8.

<sup>73</sup> Undated drafts of the Smiths' antislavery petitions (Glastonbury Historical Society, Glastonbury, Conn.).

<sup>74</sup> See generally *Julia Smith Diary*, *supra* note 8. Their recognition that the husband and father's alcoholism often exacerbated the plight of poor families led them also to support the temperance movement.

<sup>75</sup> HOUSLEY, *supra* note 9, at 108-12; Kidder, *supra* note 13, at 9-10.

apparent. Julia had read Blackstone extensively and perhaps she and her sisters also studied some law under their father.<sup>76</sup> Julia's diaries discuss the process that she and her mother and sisters went through to obtain the signatures of several hundred Glastonbury women. She noted that "[t]he women were apparently a bit shy about signing their names to any document which had such a masculine appearance."<sup>77</sup> However, the Smiths did manage to round up large support for their petitions and traveled to Hartford themselves to present the petitions to the state legislature.<sup>78</sup> Notably, the Smiths' petitions went beyond advocating for the freedom of slaves and argued instead against the oppression of blacks in general. They appeared then to join William Lloyd Garrison in the thought that the abolition of slavery was just the first step towards a society free from oppression.<sup>79</sup> It was not a great stretch then, for the Smiths, like other female abolitionists, to extend their cries for freedom and equality to the treatment of women.

### C. *Separate Spheres and Suffrage*

It was at the World Anti-Slavery Convention in London in the summer of 1840 that the early women's rights leaders first felt the pull to organize the movement for greater rights for women. The United States delegation, which included future leaders of the suffragist movement such as Lucretia Mott and Elizabeth Cady Stanton, was denied the right to seat its female members, who were instead forced to sit in the galleries and take on no official role in the meeting.<sup>80</sup> Reflecting on that time many years later, Elizabeth Cady Stanton wrote:

My experiences at the World Anti-Slavery Convention, all I had read of the legal status of women, and the oppression I saw everywhere, together swept across my soul, intensified now by many personal experiences. It

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<sup>76</sup> HOUSLEY, *supra* note 9, at 116; Kidder, *supra* note 13, at 9-10. Julia also settled estates for local residents who could not afford to pay someone to do it for them. *A Visit to the Misses Smith and Their Cows*, THE NANTUCKET INQUIRER & MIRROR Apr. 4, 1874, as reprinted in SMITH, *supra* note 1, at 37.

<sup>77</sup> Kidder, *supra* note 13, at 10; *Julia Smith Diary*, *supra* note 8.

<sup>78</sup> See, e.g., *Julia Smith Diary* *supra* note 8 Apr. 27, 1839 and Sept. 22, 1839.

<sup>79</sup> Undated drafts of the Smiths' antislavery petitions *supra* note 73. The Smiths, well versed on international issues, also argued against the foreign slave trade. They wrote a resolution arguing that not enough was being done to prevent the importation of foreign slaves, a practice that was supposed to have been banned in 1806.

<sup>80</sup> ELIZABETH CADY STANTON, *EIGHTY YEARS AND MORE: REMINISCENCES, 1815-1897* 147-48 (Schocken Books 1971) (1898).

seemed as if all the elements had conspired to impel me to some onward step. I could not see what to do or where to begin – my only thought was a public meeting for protest and discussion.<sup>81</sup>

Following this experience at the convention was the first women’s rights convention in Seneca Falls, New York in 1848, and then subsequent annual conventions beginning in 1850.<sup>82</sup> Suffrage was not the only issue discussed at these meetings, although it was important in its implication that women could play a formal role in society outside of her role in the home. Women expressed dissatisfaction with many of the limitations their status as women imposed on them including limited educational and employment opportunities, their inability to control their own property, their subordination in the marriage contract, and their lack of legal personhood in the larger sense.<sup>83</sup> Of course, the inability to vote to change these laws or to otherwise exert political pressure in any formal way was of paramount importance and thus, was a constant theme in women’s rights discussions. The importance of the vote cannot be understated. As legal historian JoEllen Lind noted, “[E]lector politics affords us the theoretical ability to assert our status as full citizens, to participate in political discourse, to obtain legislation capable of changing the private relations of individuals and groups in the civil society, and to mobilize the public around issues of importance.”<sup>84</sup> Understanding this, Elizabeth Cady Stanton wrote of the demand for the vote: “Depend upon it, this is the point to attack . . . the stronghold of the fortress—the one woman will find the most difficult to take, the one man will most reluctantly give up.”<sup>85</sup>

From the first convention issued a “Declaration of Sentiments,” mirroring in form the Declaration of Independence, which included among injuries on the part of man towards women that “if single, and the owner of property, he has taxed her to support a government which recognizes her only when her property can be made profitable to it.”<sup>86</sup>

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<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

<sup>83</sup> O’Connor, *supra* note 53, at 660; *See generally* STANTON ET AL., *supra* note 1.

<sup>84</sup> JoEllen Lind, DOMINANCE AND DEMOCRACY: THE LEGACY OF WOMAN SUFFRAGE FOR THE VOTING RIGHT, 5 *UCLA WOMEN’S L.J.* 103, 105 (1994). In her article, Lind explores how the Supreme Court maintained and reinforced traditional patterns of dominance by the controlling group by upholding laws that denied women the right to vote.

<sup>85</sup> Letter from Elizabeth Cady Stanton to the Salem, Ohio, Convention, Apr. 7, 1850, STANTON ET AL., *supra* note 1, at 1:810-12.

<sup>86</sup> *Id.* at 1:71.

In fact, the “taxation without representation” argument appears from the very beginning of the movement and is included in virtually every document and notable speech made by leaders of the movement throughout the eighty-year struggle.<sup>87</sup> The taxation argument provided a powerful metaphor for woman’s oppression in general and brought into clear light the limitations on woman’s citizenship.<sup>88</sup>

Although the Smith’s unique domestic situation as well as their financial prosperity shielded them from some of the domestic burdens

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<sup>87</sup> See generally STANTON ET AL., *supra* note 1, at vols. 1-4. One of the earliest notable cases of tax resistance took place beginning in around 1852 when Dr. Harriot K. Hunt, a physician and property-owning resident of Boston, began annually protesting being compelled to pay taxes without having a voice in the expenditure of those monies. In doing so she noted that “[t]he only class of male persons required to pay taxes and not at the same time allowed the privilege of voting, are aliens and minors. . . . Even drunkards, felons, idiots, and lunatics, if men, may still enjoy that right of voting to which no woman, however large the amount of taxes she pays, however respectable her character, or useful her life, can ever attain.” *Id.* at 1:259. Similarly, in 1858, Lucy Stone returned her tax bill without payment in protest enclosing a note to the tax collector indicating that for year’s women had been paying their taxes under protest with no results so the only recourse left was to refuse payment until women were granted the vote. *Id.* at 1:450. In urging other women to engage in tax resistance Lucy Stone said “[i]t is the duty of woman to resist taxation as long as she is not represented. It may involve the loss of friends as it surely will the loss of property. But let them go; friends, house, garden spot and all. The principle at issue requires the sacrifice. Resist, let the case be tried in the courts; be your own lawyers; base your cause on the admitted self-evident truth, that taxation and representation are inseparable.” *Id.* at 1:527.

<sup>88</sup> In her book, *Sex & Citizenship in Antebellum America*, historian Nancy Isenberg noted the influence of Lysander Spooner, a creative antebellum constitutional theorist, on Elizabeth Cady Stanton, the Declaration’s author. NANCY ISENBERG, *SEX & CITIZENSHIP IN ANTEBELLUM AMERICA*, 7 (The University of North Carolina Press 1998). In *The Unconstitutionality of Slavery*, Spooner argued that the federal Constitution guaranteed the rights of citizenship to every human being born on United States soil. He looked to natural rights as the only true test of the constitutionality of limitations put on citizenship. Lysander Spooner, *The Unconstitutionality of Slavery*, in CHARLES SHIVELY, *COLLECTED WORKS OF LYSANDER SPOONER*, 4:36-37 (Weston, Mass.: M&S Press 1971). In keeping with this principle, Stanton included Blackstone’s definition of natural law in the Declaration’s preamble: “The law of Nature, being coeval with mankind, and dictated by God himself, is of course superior to obligations to any other. It is binding over all the globe, in all countries, and at all times; no human laws are of any validity if contrary to this, and such of them as are valid, derive all their force, and validity, and their authority, mediately and immediately from this original.” Report of Women’s Rights Convention, held at Seneca Falls, N.Y., July 19 & 20, 1848, *reprinted in Women’s Rights Conventions, Seneca Falls and Rochester, 1848* (New York: Arno Press 1969). According to Spooner, rules for exclusion from rights of citizenship, including the right to vote, required a constitutional justification that complied with the force of natural law.

that predominated the lives of many women of their era, they were still clearly cognizant of and concerned with their own political powerlessness. Much of the Smiths' abolitionist activities revolved around their drafting and circulating petitions, resolutions, and letters. Reflected in many of these writings is the Smiths' devotion to the Constitutional right to free speech. "We claim no power save that guaranteed us by the Constitution, that is the power of speech, the liberty of the press, to petition, and peaceably to assemble, and to express our abhorrence of the heinousness of the sin of American slavery."<sup>89</sup> The Smiths were also, despite their unique living situation, impacted greatly by the reality of separate gendered spheres, a concept that played a significant role in the suffrage movement.

The concept of separate gendered spheres exists throughout the historical documentation of the suffragist movement, discussed liberally by both antisuffragists and suffragists themselves. For antisuffragists, opposition to woman suffrage was grounded heavily in the preservation of both gender roles and of traditional family arrangements.<sup>90</sup> Antisuffragists fought hard to maintain separate spheres, and invoked separate sphere ideology to argue that while women were uniquely suited for maintenance of the home and the family, they were ill suited for the demands of political discourse, and that involving women in the public debate would violate gender roles and distract women from their calling as wives and mothers.<sup>91</sup> Separate sphere arguments relied on theology, biology, and sociology, and were so central to the presuppositions of nineteenth century thinking, that women as well as men relied on it to explain the experience of women and their role in society.<sup>92</sup>

Theologically, antisuffragists argued that God had ordained women and men to occupy separate spheres and take on different roles in society, relying both on bold pronouncement, clear to all true believers, and by selectively quoting the Bible, primarily Genesis and St. Paul.<sup>93</sup> Biologically, the antisuffragists argued that women were

<sup>89</sup>Undated drafts of the Smiths' antislavery petitions, *supra* note 73.

<sup>90</sup>Siegel, *supra* note 4, at 977.

<sup>91</sup>*Id.*

<sup>92</sup>"When they used the metaphor or separate spheres, historians referred, often interchangeably, to an ideology *imposed on* women, a culture *created by* women, a set of boundaries *expected to be observed* by women." KERBER, *supra* note 4, at 17.

<sup>93</sup>KRADITOR, *supra* note 5, at 15-17. In an article published in the *Ladies' Home Journal* in 1905, then former President Grover Cleveland wrote that: "Those who . . . [seek] to protect the old and natural order or things as they relate to women reverently appeal to the division of Divine purpose clearly shown when Adam was put in the Garden of Eden to dress it and keep it, and Eve was given to him as a helpmeet and because it was not good that man should be alone . . . and . . . they . . .

physically, intellectually, and emotionally incapable of taking on various, masculine duties necessary to suffrage. First, antisuffragists identified different feminine and masculine traits noting, “[t]he masculine represents *judgment*, the practicable, the expedient, the possible, while the feminine represents *emotion*, what ought to be, the dream of excellence, the vision of complete beauty . . . . The predominance of sentiment in woman renders her essentially an idealist. . . .”<sup>94</sup> “ A woman’s brain evolves emotion rather than intellect; and whilst this feature fits her admirably as a creature burdened with the preservation and happiness of the human species, it painfully disqualifies her for the sterner duties to be performed by the intellectual faculties.”<sup>95</sup> Accordingly, woman’s lack of capacity for rational thought rendered her unfit to exercise the vote in a well-reasoned, non-emotional manner, presumably making a voting woman a danger to a free, democratic society. Antisuffragists next argued that voting would also pose a danger to woman herself, proposing that woman was physically unable to withstand the rigors and vulgarities of active political participation, noting that woman’s nervous nature and proneness to excitability and fainting would be exacerbated by the strains of politics.<sup>96</sup>

Finally, from a sociological stance, antisuffragists argued that the welfare of the family, children, indeed society as a whole depended upon the maintenance of separate gendered spheres, or more accurately, on women remaining in their sphere: in the home, raising children, and out of the public, political arena.<sup>97</sup> To antisuffragists, voting meant much more than the physical act of arriving at the polls and placing a ballot in a box; it meant that women would have to engage in political thought, discuss political issues with their husbands and others outside of their homes, potentially organize and engage in active political activities, perhaps even run for office, and thus

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fortify their position by referring to the fact that, as part of the punishment visited upon their first parents for their disobedience, it was decreed that in the sweat of his face should man eat bread, and in sorrow should the woman bring forth children.” Grover Cleveland, *Woman’s Mission and Woman’s Clubs*, LADIES HOME JOURNAL, 3 (May 1905). The relevant passages from St. Paul were those in which the apostle urged women to be obedient to their husbands. KRADITOR, *supra* note 5, at 17.

<sup>94</sup> Frothingham, *The Real Case of the ‘Remonstrants’ against Woman Suffrage*, 210 ARENA, 176, 179 (July 1890) *cited in* KRADITOR, *supra* note 5, at 43-74.

<sup>95</sup> Walsh, *Protest Against Woman Suffrage*, Address Delivered at a Mass Meeting Called by the Anti-Woman Suffrage Association of Albany, N.Y. (reprinted as a pamphlet and bound in 1896 with a number of others) *cited in* KRADITOR, *supra* note 4, at 20.

<sup>96</sup> KRADITOR, *supra* note 5, at 20.

<sup>97</sup> *Id.* at 22.

fundamentally change the societal role of women and of men as head of the household.<sup>98</sup> Woman suffrage would thus lead to neglect of children, increased juvenile delinquency, arguments between husbands and wives, and an overall denigration of the family unit, on which social stability depended.<sup>99</sup> Antisuffrage articles written by women were published in mainstream women's magazines and newspapers throughout the lengthy suffrage struggle. One group of New Hampshire women noted, "[W]ith the demands of society, the calls of charity, the church, and philanthropy constantly increasing, we feel that to add the distracting forces of political campaigns would wreck our constitutions and destroy our homes."<sup>100</sup>

An additional antisuffrage argument was that of virtual representation.<sup>101</sup> This argument, much like the last, relies heavily on the notion of separate gendered spheres. Implicit to the virtual representation argument was the notion of the family as a single unit, led by the male head of household, whose job it was to provide the link between the family and the public sphere and to represent the family as a whole in the political arena. Thus, the male vote was purported to be that of the entire family, premised on the notion that the family was a single, homogenous entity, rather than a group of individuals with independent thought.<sup>102</sup> That American colonists had challenged this idea of virtual representation seemed not to have

<sup>98</sup> *Id.* at 23-25.

<sup>99</sup> *Id.* at 24. Suffragists often noted the inconsistency in the antisuffragist's arguments, both insisting that women's nature and constitution were so unique and ingrained that they could not participate in political governance and that women's natural role as mothers and nurturers was so fragile that political participation would draw women out of their roles and change them so completely that family life and society as a whole would be fundamentally harmed. *Id.*

<sup>100</sup> *Id.* at 20, citing, "Memorial" from 205 women of Newport, New Hampshire, inserted by Rep. Dallinger in *Cong. Rec.*, 63d Cong., 1<sup>st</sup> Sess. (1913), p. 6011.

<sup>101</sup> The History of Woman Suffrage volumes are peppered with amusing stories of women's attempts to ensure representation through male representatives. One single woman property owner noted that in order to run her farm she was obliged to hire several male laborers. In doing so, she inquired not only of their capacity to perform the necessary labor but also as to their politics. When asked if she was sure that the men voted as they promised her she explained, "I trust nothing to their discretion. I take them in my carriage within sight of the polls, put them in charge of some Republican who can be trusted. I see they have the right tickets, then I feel sure I am faithfully represented, and I know I am right in doing so. I have neither husband, father, nor son; am responsible for my own taxes; am amenable to all the laws of the State; must pay the penalty of my own crimes if I commit any; hence I have the right, according to our principals of our government, to representation, and so long as I am not permitted to vote in person, I have the right to do so by proxy, hence I hire men to vote my principals." STANTON ET AL., *supra* note 1, at 1:463.

<sup>102</sup> KRADITOR, *supra* note 5, at 24-25.

bothered the antisuffragists, who insisted that unlike the colonists, “woman was not a class apart but a part of every class. Since she was adequately represented by her menfolk, why should two do what one could do at least as well?”<sup>103</sup>

Suffragists themselves struggled with the concept of separate spheres. Early suffragists focused most heavily on gaining access to the public sphere, specifically by gaining full citizenship, and “bypassed woman’s oppression within the family, or private sphere.”<sup>104</sup> Thus, even the most radical of suffragists accepted women’s exclusive role and responsibilities in the private, family sphere, and did not suggest a reorganization of the division of labors within the home.<sup>105</sup> The Smiths, like others in the movement, stopped short of challenging the basic notion of a separate, domestic sphere and instead promoted a place for women in the public sphere. Tax resisters like the Smiths, whose very homes were threatened, effectively revealed the vulnerability of the public private distinction, and the ability of the government to intrude upon the woman’s sphere, without her consent. The Smiths were ideal spokespersons to challenge both aspects of the separate spheres antisuffrage argument, and to use the separate spheres ideology affirmatively to promote their own suffrage arguments. Their domestic duties, as spinsters, were less taxing, and were shared between them, and they were highly educated, robust women, into their eighties, who were well versed in the legal, political, and historical underpinnings of suffrage. They were also wealthy property owners who had no living male relative to “virtually represent” them in the political arena.<sup>106</sup> They paid taxes, indeed the highest in their town, and had both the education and finances to support a challenge to the system. Finally, they were respectable, well-liked women, who possessed many of the virtuous female qualities, social, religious, and charitable, that shielded them from many of the personal character attacks that other prominent women in

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<sup>103</sup> *Id.* at 37. From Senator Sumner’s great speech on equal rights in the First Session of the thirty-ninth Congress, quoting from James Otis, “[n]o such phrase as virtual representation was known in law or constitution. It is altogether a subtlety and illusion, wholly unfounded and absurd.” STANTON ET AL., *supra* note 1, at 2:274.

<sup>104</sup> DUBOIS, *supra* note 7, at 31.

<sup>105</sup> *Id.* at 34.

<sup>106</sup> See Robert J. Steinfeld, *Property and Suffrage in the Early American Republic*, 41 STAN. L. REV. 335 (1989) (discussing property and suffrage and particularly, the historic connection of property ownership to the ability to exercise one’s own independent judgment).



the movement suffered, and even from allegations that their refusals to pay taxes were financially motivated.<sup>107</sup>

### III. TAX RESISTANCE: ITS ROLE AND LEGACY

After paying their increased tax of \$200 in 1872, the Smith sisters joined another local suffragist, Rosella Buckingham, in the spring of 1873, in unsuccessfully demanding that the Glastonbury town registrars list them as voters. Their stand was part of a national movement to challenge the reaches of the Fourteenth Amendment, which, when passed in July 1868, had first introduced the word “male” into the Constitution.<sup>108</sup> The women appealed their rejection to the town selectmen, but were once again refused. The Smiths again attended a suffrage meeting, this time held by the American Women Suffrage Association (AWSA) in New York on October 13, 1873.<sup>109</sup> The following month, the sisters refused to pay their property tax, which was now at over two hundred dollars. Julia and Abby were aged seventy-six and eighty-one respectively when they refused to pay what amounted to the highest property tax assessed on any of Glastonbury’s three thousand residents. Activism over the taxation of disenfranchised women was beginning to appear on the national level. Suffrage leaders were calling for women to engage in tax resistance and petitions to the Connecticut legislature to enfranchise women or

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<sup>107</sup> The movement, for these very reasons, embraced the Smiths. As was reported in the Boston Daily Advertiser regarding the Smiths’ case: “the case on the part of the women is about as strong as it could be. They are confessedly intelligent, industrious and capable of managing their own affairs. They own in their own right the property which is taxed, and manage it independently. They are freer than most male voters from the encumbrance of domestic bonds, nor can it be said that they are represented by anyone else whose interests and sympathies are identical to theirs.” *Glastonbury Affairs*, BOS. DAILY ADVERTISER Jan. 13, 1874, as reprinted in SMITH, *supra* note 1, at 15-16.

<sup>108</sup> Relying on the opening section of the Fourteenth Amendment which stated that “all persons born or naturalized in the United States are citizens of the United States and the State wherein they reside,” and are thus entitled to all of “the privileges and immunities of citizenship,” suffragists insisted that the right to vote was a privilege of citizenship that they, citizens, could not be denied. As part of this national movement, Susan B. Anthony and about fifty other women successfully registered to vote in Rochester, New York. When several of the women did indeed vote, including Anthony, Anthony was charged with voting fraud. Her trial ultimately was appealed to the United States Supreme Court, where she lost. For a full discussion of this movement, see STANTON ET AL., *supra* note 1, at 2:627-98, 715-55.

<sup>109</sup> *Taxation Without Representation*, HARTFORD COURANT (Nov. 10, 1873).

exempt them from taxation were received annually.<sup>110</sup> Noting that women had nowhere to take their grievances, not even the courts, which, for fear of offending male voters, often decided contrary to law and justice, the Smiths took their appeal to the voters of Glastonbury. They told the tax collector “our paying the tax depended entirely upon the encouragement we received about voting after addressing the meeting.”<sup>111</sup>

Abby Smith addressed the men of the town at a meeting on November 5, 1873.<sup>112</sup> In her speech, an eloquent blend of legal, political, and religious justifications, she called upon the men to acknowledge the injustice of denying women taxpayers any voice in the disposition of their own money, and to grant such women the vote. The taxation without representation argument has been linked to Revolutionary era justice and equity arguments, supporting woman suffrage as a natural right.<sup>113</sup> Early suffragists relied quite heavily on the natural rights justifications that had been successful for pre-war abolitionists.<sup>114</sup> The Smiths and other suffragists drew on arguments grounded in the Declaration of Independence and Lockean liberalism to support their assertion that women possessed the right of suffrage inherently. Natural rights justifications had provided the foundation for suffragist rhetoric from the beginning of the movement. At the first organized meeting of women, suffragists the Declaration of Sentiments called for women to “have immediate admission to all the rights and privileges which belong to them as citizens of the United States.”<sup>115</sup> “The superiority of man, however, does not enter into the demand for suffrage, for in this country all men vote; and as the lower orders of men are not superior, either by nature or grace, to the higher orders of women, they must hold and exercise the right of self government on some other ground than superiority to women.”<sup>116</sup>

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<sup>110</sup> Cartledge, *supra* note 21, at 23, citing, Journal of the House of Representatives of the State of Connecticut, May Session, 1872, 173 (New Haven: Benham & Williams 1872).

<sup>111</sup> *A Letter from Abby H. Smith and Sister*, HARTFORD COURANT (Nov. 29, 1873), reprinted in SMITH, *supra* note 1, at 11,

<sup>112</sup> Throughout their tax resistance, the Smiths attended and spoke at numerous town meetings, although their attendance is not even once noted in the town records. HOUSLEY, *supra* note 9, at 144.

<sup>113</sup> KRADITOR, *supra* note 5, at 42-43.

<sup>114</sup> Adam Winkler, *A Revolution Too Soon: Woman Suffragists and The “Living Constitution,”* 76 N.Y.U.L. REV. 1456, 1473 (2001).

<sup>115</sup> *Report of the Women’s Rights Convention, held at Seneca Falls, N.Y., Jul. 19 & 20, 1848, Rochester, N.Y., reprinted in WOMEN’S RIGHTS CONVENTIONS, SENECA FALLS AND ROCHESTER, 1848* *supra* note 1.

<sup>116</sup> STANTON ET AL., *supra* note 1, at 18-19.

That ground, argued suffragists, was natural law and the rights that all national citizens possessed.

Like others before her, Abby Smith argued natural rights and justice. She noted, “The motto of our government is ‘Proclaim liberty to all the inhabitants of the land,’ and here where liberty is so highly extolled and gloried by every man in it, one-half the inhabitants are not put under her laws, but are ruled over by the other half, who can by their own laws, not hers, take from the other half all they possess. How is Liberty pleased with such worship?” She also questioned the men of her town “Is it any more just to take a woman’s property without her consent, than it is to take a man’s property without his consent?” Again in an address before the Legislative Committee on Woman Suffrage, Abby Smith condemned men for ruling over women by physical strength and “allowing her no participation in what he calls his God given rights, which he has inherited from ‘Nature and Nature’s God,’” all the while “not seeing that she had inherited the same rights from the same source.”<sup>117</sup>

All the while, Abby Smith also argued expediency: that men and women would bring unique skills and perspectives to the political debate, consistent with the more modern suffragist rhetoric.<sup>118</sup> In doing so, Abby Smith, like other suffragists, embraced the concept of separate spheres to some degree, arguing for an increased role for women in the public arena, based on their moral superiority and their exclusive role in the private, family sphere, “The Smiths [and other tax resisters] chose to occupy the territory of religious and patriotic martyrdom. It was a concept particularly well suited to women.”<sup>119</sup> In a letter to *The Hartford Courant*, written several weeks after her address at the town meeting, Abby Smith argued that if women had the vote, “they could have the power to vote against grog shops, their drunken husbands would never dare to abuse them . . . and the town would never have been so in debt.”<sup>120</sup> She noted, “[I]t is very hard for [women] to earn their money, and they are more careful whom they trust, and would never have employed those men who have brought in such enormous bills against the town.”<sup>121</sup> Later, in a speech before the Connecticut Legislature, Abby Smith claimed: “The women are more

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<sup>117</sup>*Hearing Before the Committee on Woman Suffrage, Abby Smith’s Address*, THE NEW HAVEN EVENING UNION June 3, 1874, as reprinted in SMITH, *supra* note 1, at 41-42.

<sup>118</sup> *Id.*

<sup>119</sup> *Id.*

<sup>120</sup> *A Letter From Abby H. Smith and Sister*, THE HARTFORD COURANT, Nov. 29, 1873, as reprinted in SMITH, *supra* note 1 at 11.

<sup>121</sup> *Id.*

honest than the men. They are moral, better citizens. They are never seen around the grogshops, and therefore make the state very little trouble and expense in comparison to men.”<sup>122</sup> As one historian noted, “[i]mplicit in this policy argument was the notion that women would exercise the franchise differently than men did. They would not be just another class of voters, but voters with particular points of view and political preferences - oriented towards caregiving and support of others – arising from the traditional feminine roles of mother and wife.”<sup>123</sup>

Suffragists’ decisions to appeal to the prevalent values of the society are not surprising. One problem early suffragists faced was the processes by which citizens had historically asserted their rights: petitioning the government, public speech-making, and rallying public support – were considered unwomanly.<sup>124</sup> If women suffragists departed too drastically from their proper place in society, they opened themselves up to criticisms that often overshadowed their political message. Thus, the Smiths and other suffragists advanced arguments that developed with the legal and social realities of their changing society. The sisters recognized that their cause would be better served if they paid attention to the prevailing societal norms of separate spheres for men and women.<sup>125</sup> They often argued for political

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<sup>122</sup> *The Sisters Smith Before the Connecticut Legislature*, 5 WOMAN’S JOURNAL 188 (1874). Henry Selden advanced similar arguments in *United States v. Anthony*, 24 F. Cas. 829 (C.C.N.D.N.Y. 1873). Selden pointed to a host of evils that would be eliminated by the enfranchisement of women: “Schools, alms-houses, hospitals, drinking saloons, and those worse dens which are destroying the morals and constitutions of so many of the young of both sexes, will feel [women’s] influence to an extent now little dreamed of.” STANTON, *supra* note 1, at 659.

<sup>123</sup> Winkler, *supra* note 114, at 1510.

<sup>124</sup> See e.g., STANTON ET AL., *supra* note 1, at 1:556. “We saw, in broad daylight, in a public hall in the city of New York, a gathering of unsexed women – unsexed in the mind all of them, and many in habiliments – publicly propounding the doctrine that they should be allowed to step out of their appropriate sphere, and mingle in the busy walks of every-day life, to the neglect of those duties which both human and divine law have assigned to them.

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It is almost needless for us to say that these women are entirely devoid of personal attractions. They are generally thin maiden ladies, or women who perhaps have been disappointed in their endeavors to appropriate the breeches and the rights of their unlucky lords....”

<sup>125</sup> Female suffragists were willing, when facing critics’ concerns that suffragists flouted domestic norms, to embrace their domestic role. “We encourage these domestic duties most fully and amply. There is not a woman here who is not proud to claim them. Of all the women who have stood or spoken on this platform since this Convention began, there is only one who is not a married woman; there are very few who are not mothers; and among them all there is not one who does not give, by

equality without contending that men and women were the same.<sup>126</sup> As one legal historian noted, women tax protesters “provided a sharp illustration of the artificiality of a separate, protected ‘women’s’ sphere,” as they were clearly subject to the government’s tax laws, while exploiting the ultimate vulnerability of the women’s sphere- the home- to governmental intrusion.”<sup>127</sup>

Perhaps no statement more clearly reflected the use of separate spheres ideology and the concept of “Republican Motherhood” in support of women taxpayer suffrage than the 1876 Declaration of Rights for Women<sup>128</sup> that provided in part:

Taxation without representation . . . is one of the grievous wrongs the women of this country have suffered during the century. Deploring war, with all the demoralization that follows in its train, we have been taxed to support standing armies, with their waste of life and wealth. Believing in temperance, we have been taxed to support the vice, crime and pauperism of the liquor traffic. While we suffer its wrongs and abuses infinitely more than man, we have no power to protect our sons against this giant evil. During the temperance crusade, mothers were arrested, fined, imprisoned, for even praying and singing in the streets, while men blockade the sidewalks with impunity, even on Sunday, with their military parades and political processions. Believing in honesty, we are taxed to support a dangerous army of civilians, buying and selling the offices of government and sacrificing the best interest of the people. And, moreover, we are taxed to support the very legislatures and judges who make laws, and render decision adverse to women. And for refusing to pay such unjust taxation, the houses, lands, bonds, and stock of women have been seized and sold within the present year . . . .<sup>129</sup>

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the nobleness of her domestic life, a proof of the consistency of that with the rest of the claims she makes for her sex.” *Id.* at 1:660.

<sup>126</sup>*Speech of Abby Smith before the Town Meeting of Glastonbury, reprinted in THE HARTFORD COURANT*, Nov. 5, 1873, as reprinted in SMITH, *supra* note 1, at 9.

<sup>127</sup>Jones, *supra* note 2, at 282-83.

<sup>128</sup>STANTON ET AL., *supra* note 1, at 3:31-34.

<sup>129</sup>*Id.* at 3:32.

By conceding that gender differences existed, suffragists were also able to deconstruct the historically grounded notion of virtual representation. During the nineteenth century, the legal and political status of all women was assessed by the standard applicable to married women. Under the laws of coverture, married women did not own property or control their wages. They had no legal personhood and their rights and obligations were merged into those of their husbands. As Linda Kerber stated, in *No Constitutional Right to be Ladies*, “[a]s long as women conceded that their own civic identity was absorbed by husbands and fathers, they simultaneously conceded that husbands and fathers virtually represented their interests in the civic sphere.”<sup>130</sup> Antebellum theorists thus argued that by exercising their legal right and consenting to marriage, women agreed to give up their rights to property, legal standing, and political voice.<sup>131</sup> Thus, the theory went, women consented to their own disenfranchisement and exclusion from the social and political contract.

The same rationales for disenfranchisement of married women were applied to adult single women, with and without living fathers, although many of them in fact owned property, paid taxes, and had an unrepresented interest in politics and society.<sup>132</sup> Kerber explained that in order for these rationales to make sense, unmarried women would have to concede, “[T]hey were in effect non-civil beings, neither sheltered by men who enacted their similar interests nor claiming the right to speak on their own, [thus] they too were virtually represented by male members of the community.”<sup>133</sup> However, without the legitimacy of the marriage contract, the argument as applied to single women was less convincing. Single women had not exercised any act of free will to consent to their disenfranchisement and correspondingly, men had not consented to represent them. As Susan B. Anthony argued in a speech that she delivered repeatedly over two decades beginning in the 1860s:

“I suppose [men] will guard their own wives and daughters and mother and sisters, but is every man as careful to guard another man’s wife, daughter, mother

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<sup>130</sup> KERBER, *supra* note 20, at 112.

<sup>131</sup> ISENBERG, *supra* note 88, at 27.

<sup>132</sup> KERBER, *supra* note 130, at 7. Some states did permit single women to vote. For instance, in New Jersey, single, propertied women were granted the right to vote from 1776 to 1807. In 1809, in *Kempe’s Lessee v. Kennedy et al.*, the Supreme Court noted, “Single women have been allowed to vote, because the law supposes them to have wills of their own.” 9 U.S. 173, 178 (1809).

<sup>133</sup> KERBER, *supra* note 130, at 112.

and sister? It is not a question of safety to women in general. It is simply 'Is she *my* property' . . . You women who have kind brothers and husbands and sons, I ask you to join with us in this movement so that woman can protect herself."<sup>134</sup>

The Smiths were particularly well suited to challenge the virtual representation concept. The spinster sisters had been left their property by their father, and as property owners in their own right, they had more than a theoretical interest in the matter. This practical interest gave them a degree of legitimacy and standing in the law and in the court of public opinion. Moreover, as unmarried women without a living father or brother, they had no male representative to speak for them in the political sphere. They could thus challenge the notion of virtual representation and escape the common warning that women's entry into the public sphere would have a deleterious impact on marriage and the family. At least one observer to the Smiths' stand said of the sisters, "[s]ome women who own property in their own right are 'constructively' represented . . . by a male relative. . . . But these women are not even 'constructively' represented; their disenfranchisement has been complete and absolute."<sup>135</sup> Abby Smith herself in an address to the Legislative Committee on Woman Suffrage challenged the notion of virtual representation and men's challenge to why women needed rights when they "would take care of the women and provide all things necessary for them."<sup>136</sup> She stated, "This is the slaveholder's logic, also the state of Connecticut. Women have no rights that the men are bound to respect."<sup>137</sup>

As the Smiths' tax resistance waged on, it became apparent that even women property owners such as the Smiths, were viewed from within the culture of separate spheres. Much of the public coverage of the Smiths' story characteristically stressed the feminine qualities of the women and played on the public's sympathy for the two elderly sisters. After another visit from the tax collector, during which the sisters refused to pay and challenged the collector to confiscate their property, the collector showed up on New Year's Day, 1874, with an

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<sup>134</sup> DUBOIS, *supra* note 51, at 139, 145.

<sup>135</sup> *The Exact Issue at Glastonbury*, THE SPRINGFIELD REPUBLICAN, Jan. 15, 1874, as reprinted in SMITH, *supra* note 1, at 16.

<sup>136</sup> *Hearing Before the Committee on Woman Suffrage, Abby Smith's Address*, THE NEW HAVEN EVENING UNION, June 3, 1874, as reprinted in SMITH, *supra* note 1, at 42.

<sup>137</sup> *Id.* at 41-42.

attachment to be executed that day.<sup>138</sup> The Smiths pleaded with the collector to allow them time to petition the men of the town once again to grant them the right to vote, at which time they would willingly pay their taxes. The collector refused and confiscated all but one of the sisters' eight Alderney cows. While they were kept in a small shed until they could be auctioned off, the lone cow that remained cried all night for the others and those who were taken from their home refused to milk until their mistress stood by.<sup>139</sup> As was noted in the *Boston Daily Advertiser*, "Cows are not commonly so sentimental, but these were a woman's cows."<sup>140</sup> The cows were kept in the small tobacco shed for seven days and nights. The milk from the cows was given to the Smiths' tenant, "for the sensitive young wife of the tobacco-shed owner declared that a drop of that milk should never come into her house, for it seemed to her as if it was stolen."<sup>141</sup> After seven days, the cows were led, in a funeral-like procession, to auction, where about 40 men gathered to buy the cows at so far below value that four cows had to be sold to cover the \$101.39 tax debt.<sup>142</sup> The story of the abduction of the prized cows was dramatized in the papers for months and became the subject of songs and poems adorning suffrage literature.<sup>143</sup> *The Boston Herald* claimed, "Abby Smith's cows are bound to take their place in history with Caligula's horse, the goose that by its cackling saved Rome, the wolf that sucked Romulus and Remus, and the ass that spoke for Balaam."<sup>144</sup>

The women's suffrage movement rallied support behind the Smiths, whom the activists felt well represented their interests. In a

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<sup>138</sup> The Smiths were not given the option that was afforded to the large number of other delinquent taxpayers to remain unpaid by paying 12 percent interest. *Glastonbury Affairs*, BOS. DAILY ADVERTISER, Jan. 13, 1874, as reprinted in SMITH, *supra* note 1, at 14-15

<sup>139</sup> *Abby Smith Letter to the Editor*, SPRINGFIELD REPUBLICAN, Jan. 6, 1874, as reprinted in SMITH, *supra* note 1, at 13.

<sup>140</sup> *Glastonbury Affairs*, BOS. DAILY ADVERTISER, Jan. 13, 1874, as reprinted in SMITH, *supra* note 1, at 15.

<sup>141</sup> *Abby Smith Describes the Sale of Her Cows*, SPRINGFIELD REPUBLICAN, Jan. 8, 1874, as reprinted in SMITH, *supra* note 1, at 14.

<sup>142</sup> *Id.* In fact, their tenant placed the highest bid on behalf of the Smiths and the cows were returned home. *A Visit to the Misses Smith and Their Cows*, THE NANTUCKET INQUIRER AND MIRROR, Apr. 4, 1874, as reprinted in SMITH, *supra* note 1, at 36.

<sup>143</sup> *Id.*

<sup>144</sup> THE BOSTON POST, Jan. 22, 1874, as reprinted in SMITH, *supra* note 1, at 25. The Hartford Times reported of a bouquet made from the hair of the cows' tails being sold in the Union Bazar tied together with black ribbons with gilt letters "Taxation without Representation" and a personal note from Abby Smith. SMITH, *supra* note 1, at 42.



letter to the editor of *The Springfield Republican*, a suffragist implored like-minded readers to subscribe to the Abby Smith Defense Fund. The author of the letter urged men and women alike to read Abby Smith's story published in the same paper relaying the New Year's Day visit from the tax collector. She noted that the story was worth reading if nothing else for its "quaint simplicity of the style."<sup>145</sup> The author commented on the strength of the sisters' case owing in no small part to their intelligence and capability. Several articles chronicling the case described in fine detail the women's attractive and orderly home,<sup>146</sup> and the sisters themselves were presented as demonstrating the laudable qualities of "quiet, old-fashioned Yankee grit."<sup>147</sup> In describing the sisters, one author stated, "They are not demonstrative or declamatory. They don't shriek, wring their hands, or make a fuss of any sort. They are good-nature itself. But they are also logic itself, and resolution itself, and pluck itself."<sup>148</sup> The Smiths thus gained credibility not by showing that they could argue as convincingly and forcefully as men, but rather, by showing that they could advance their position while remaining women of respect and virtue. Like the sisters, who undertook a somewhat radical stand while remaining at least partially inside of their socially prescribed sphere, the suffrage movement may have embraced the Smiths precisely because they possessed the very qualities that kept women inside that sphere.<sup>149</sup> As tax resisters, the Smiths' case was particularly well positioned to shed light on the injustice of taxation without representation. As the *Springfield Republican* noted of the Smiths' story, "It brings into sharper relief the injustice of denying women the right to vote than any number of speeches on woman suffrage in the abstract."<sup>150</sup>

The next tax payment was due in March. The sisters were concerned that the collector would next take their personal property, such as furniture, artwork, and rugs, and feared especially that their sister Laurilla's paintings would be taken. They once again attended a

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<sup>145</sup> *Abby Smith Letter to the Editor*, THE SPRINGFIELD REPUBLICAN, Jan. 6, 187, as reprinted in *Id.* at 13.

<sup>146</sup> See THE BOSTON POST, Jan. 22, 1874, as reprinted in SMITH, *supra* note 1, at 25.

<sup>147</sup> *Glastonbury Again*, THE SPRINGFIELD REPUBLICAN, Jan. 12, 1874, as reprinted in SMITH, *supra* note 1, at 14.

<sup>148</sup> *Id.*

<sup>149</sup> Professor Carolyn Jones argues that women using the taxation without representation metaphor did not advocate for universal suffrage, but instead, by emphasizing property taxes, argued for suffrage for the middle and upper classes. Jones, *supra* note 2, at 301.

<sup>150</sup> *The Woman and the Tax-Payer Again*, SPRINGFIELD REPUBLICAN, Jan. 6, 1874, as reprinted in SMITH, *supra* note 1, at 12.

town meeting on April 6, 1874. The women requested that the moderator (a Republican who was “perhaps most in favor of taxation without representation”) let them speak briefly to the men assembled to vote. When they were refused, Abby instead mounted an old wagon aside the building and read a prepared speech to those gathered outside the hall. In her speech, Abby Smith compared the management of town affairs to those of a family, and in response to the virtual representation concept, she reminded listeners that it was the very men whom should be their protectors who had confiscated their cows and sold them to the highest bidder. After the speech, the sisters defended a question and answer session for a quarter of an hour, at which “[a]ll the old claims of the opponents of woman suffrage were brought up.” To the argument that “there weren’t half-a-dozen women in town that wanted to vote,” Abby replied, “Well, let those half-dozen vote, and the rest stay away, if they want to.”<sup>151</sup>

Just five days later, the tax collector returned to the Smith’s home, initially asking them to surrender personal property but ultimately telling them that their land would be attached and nine weeks after publication, would be sold at auction.<sup>152</sup> No doubt, the tax collector had sought to avoid the spectacle of emptying the furniture and personal belongings from the home of the now famous elderly residents. During the nine-week period, the Smiths consulted lawyers in Hartford who informed them that, according to Connecticut law, personal property must be seized first before any real property (land) could be taken.<sup>153</sup> When the sisters arrived at the auction of their property at the appointed time, confident in their legal rights, the tax collector informed them that the land had already been sold, to their adjoining neighbor, with whom the Smiths had not had a good relationship for years.<sup>154</sup> Eleven acres of the Smith’s meadowland, which, according to a letter to the editor of the *New Haven Union* from Abby Smith, was ordinarily worth \$150-\$200 an acre, sold for \$78.35.<sup>155</sup>

Immediately after the seizure of the land, the Smiths traveled to Hartford to speak with their lawyer, who was too busy to see them and

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<sup>151</sup> *Abby Smith Again*, SPRINGFIELD REPUBLICAN, Apr. 6, 1874, as reprinted in SMITH, *supra* note 1, at 32-33.

<sup>152</sup> *Letter to the Editor from Abby Smith and Sister*, NEW HAVEN UNION, June 20, 1874, as reprinted in SMITH, *supra* note 1, at 43.

<sup>153</sup> *Id.*

<sup>154</sup> *Id.*

<sup>155</sup> *Id.*

asked them to wait a couple of weeks to come back.<sup>156</sup> The Smiths did return and several more times, but each time their lawyer put them off. He finally told the sisters that he had spoken with the tax collector (a member of the state Legislature) who claimed that the sisters had told him that they had no personal property.<sup>157</sup> He discouraged the sisters from continuing with their case and urged them to pay their taxes or get another lawyer.<sup>158</sup> The Smiths did get another lawyer and challenged the sale in a case heard by the local Justice of the Peace, just about a mile south of the Smith farm. The Smiths won the case, and were awarded ten dollars in damages and an additional \$18.52 in costs.<sup>159</sup> The town immediately appealed the case to the Court of Common Pleas in Hartford, where Judge George G. Sumner replaced the regular judge. Judge Sumner was employed in the lobby in business in a case involving the town of Glastonbury.<sup>160</sup> Julia and Abby reported to the *Woman's Journal* that there was no question but that the Judge had been "put on the bench as a contrived plan, as he would not dare to give the case against the town in favor of two defenseless women who had no vote."<sup>161</sup> The Smiths dutifully travelled back and forth in bad weather to Hartford to attend the three-day hearing. After the hearing was complete, the Judge delayed his opinion by two weeks, presumably to reach the end of the term and prevent the appeal of the decision during the Court of Errors's March session.<sup>162</sup> He ultimately ruled against the sisters. He held that there was no personal property to be seized, and the seizure of the land was appropriate.<sup>163</sup> The Smith's lawyer immediately appealed the case to the Court of Equity, naming the town, the tax collector, and the neighbor who had purchased the improperly seized land in the suit.<sup>164</sup> In the year and half period before the appeal was heard, the town continued to seek payment from the Smiths. The town kept resizing their cows and auctioning off some seized stock, which was not advertised as belonging to the famous sisters until the sisters wrote

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<sup>156</sup> *Persecution of the Sisters Smith*, WOMAN'S JOURNAL, Sept. 5, 1874, as reprinted in SMITH, *supra* note 1, at 47-48.

<sup>157</sup> *Id.*

<sup>158</sup> *Id.*

<sup>159</sup> *Id.*

<sup>160</sup> *No Laws for Connecticut Women*, WOMAN'S JOURNAL, Apr. 3, 1876, as reprinted in SMITH, *supra* note 1, at 68.

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> *Id.* More of the transcript of the case is reprinted at SMITH, *supra* note 1, at 77-94.

<sup>164</sup> *Id.*

into the papers giving notice of that fact.<sup>165</sup> The town also attempted to get an *ex post facto* law passed by the legislature called the “General Healing Act” which would allow the seizure of land for the collection of back taxes.<sup>166</sup> The Smiths themselves were very busy during this time; they were traveling all over the country to speak at suffrage meetings, drafting petitions and resolutions, and answering hundreds of letters from all over the country. Never losing their clever wit, Julia, when speaking at a reception during the eighth annual convention of the National Woman Suffrage Association in Washington D.C. stated:

There are but two cows left at present, Taxey and Votey. It is something a little peculiar that Taxey is very obtrusive; why I can scarcely step out of doors without being confronted by her, while Votey is quiet and shy, but she is growing more docile and domesticated every day, and it is my opinion that in a very short time, wherever you find Taxey there Votey will be also.<sup>167</sup>

The Smiths’ appeal to the Supreme Court in an equity hearing was finally heard in November 1876.<sup>168</sup> Pieces of this lawsuit remained in the court through eleven continuances and finally, in 1880, the court ruled in the Smiths’ favor and the town chose not to appeal the case any further.<sup>169</sup> Although the sisters raised the taxation without representation issue at the appellate hearings, the court ultimately decided the issue on the collector’s procedural violation of seizing the real property before the personal property and avoided altogether comment on the representation issue for which the Smiths had waged their seven-year battle.<sup>170</sup> They won neither reprieve from paying their taxes nor the vote. The Smiths continued their activism until Abby Smith died on July 23, 1878, two years before the final disposition of her lawsuit.<sup>171</sup> The following year, Julia Smith married

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<sup>165</sup> Letters to THE HARTFORD DAILY TIMES and THE HARTFORD COURANT, as reprinted in SMITH, *supra* note 1, at 68.

<sup>166</sup> *Id.*

<sup>167</sup> STANTON ET AL., *supra* note 1, at 3:98.

<sup>168</sup> An account of the trial in the Court of Common Pleas was published in *Woman’s Journal*, November 18, 1876, and is reprinted in SMITH, *supra* note 1, at 77. *Julia E. Smith v. George C. Andrews*, the case and accompanying documents are housed at the Connecticut State Law Library.

<sup>169</sup> *Id.*

<sup>170</sup> *Id.*

<sup>171</sup> HOUSLEY, *supra* note 9, at 177

an elderly lawyer from New Hampshire named Amos Parker, whom many suspected was interested more in her property than in the marriage.<sup>172</sup> He moved into the house on Main Street and paid the taxes. It was rumored that she reimbursed him from her own money.<sup>173</sup> It appears to have been a not happy marriage. Julia became estranged from some family members and long-time friends. Much of her personal property was auctioned off at her husband's initiation.<sup>174</sup> When Julia died seven years after her marriage, she left a note in her Bible requesting to be buried next to her sisters and directing that only her maiden name be placed on her gravestone.<sup>175</sup>

Although the tax resisters did not immediately prevail in gaining suffrage, the taxation without representation rhetoric provided a powerful metaphor for gender oppression as well as a legitimate legal and equitable argument that women were entitled to the vote. Suffragist tax resisters used the prevailing separate spheres ideology both as a tool of construction and as a means of deconstruction. In 1912, Harriet Burton Laidlaw summed up the subject of separate spheres by stating that insofar as women were the same as men, they were entitled to the same rights, and "insofar as they were different, only they could represent themselves."<sup>176</sup> Nineteenth-century suffragists seemed to understand that they lived in a period of transition. The reconstruction amendments had opened the door to what would become a sustained dialog over the rights of citizenship. Expanding legal rights for women, coupled with increased governmental intrusion into home and the family, set the stage for women to call into question the rights and privileges of their own citizenship. Tax protests were a powerful way in which to draw attention to the disenfranchisement of women in the face of changing conceptions of the roles of women, families, and government. Tax protesters' reliance on both natural rights and expediency arguments likely reflected women's fundamental belief that woman suffrage was that last step in the natural progression of a true democracy where government was premised on the consent of the governed, a realization that fundamental changes had occurred to women's role in society, and a political climate of rights consciousness and social reform that was ripe for a reexamination of women's citizenship. Whether the Smiths considered the greater implications of their tax resistance not clear. What is clear, however, is that they believed that their position, so

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<sup>172</sup> *Id.*

<sup>173</sup> *Id.*

<sup>174</sup> *Id.*

<sup>175</sup> *Id.*

<sup>176</sup> See KRADITOR, *supra* note 9, at 111.

clearly right, would ultimately succeed. In Abby's own words: "Of course it's right, and it MUST succeed when people come to look at all sides of it."<sup>177</sup>

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<sup>177</sup>*The Glastonbury War*, BOSTON POST, Jan. 22, 1874, as reprinted in SMITH, *supra* note 1, at 27.