

Articles

A Father's Day Eulogy to William Darrah Kelley

Paul D. Carrington & Christopher Machera

SOMETIMES fathers matter, too. In the last four years, four mothers of distinguished lawyers have been singled out for honors on Mother's Day. It is time to celebrate a father and William Darrah Kelley is the man.

Kelley was born in Philadelphia in 1814, the son of a successful jeweler.¹ His father was financially ruined and then died while William was a child, so as a small lad he went to work to help his mother. At the age of eleven, he was a full-time copyreader for the *Philadelphia Inquirer* working fourteen hours a day at a job he later described as an "intellectual awakening." At thirteen, he apprenticed as a jeweler,

using his father's tools. While an apprentice, he organized a lending library that acquired thousands of books.

In 1834, he was a journeyman jeweler in Boston when he became deeply involved in Democratic politics as an advocate for the rights of workingmen and for the anti-slavery cause. He spent his evenings in lyceums and lecture halls, and became known as a powerful public speaker. In 1838, Colonel James Page of Philadelphia invited him to come back to that city to study law under his direction. By 1841, he was a leader among the bar. In 1842, the local newspaper referred to him as "the tribune

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¹ His story is told by L.P. BROCKETT, HONORABLE WILLIAM D. KELLEY, MEN OF OUR DAY 473 (Philadelphia 1868); Iva A. Brown, *William Kelley and Radical Reconstruction*, 85 PENN. MAGAZINE OF HISTORY 319 (1961); *Address of Mr. Holman of Indiana on the Life and Character of William D. Kelley*, 23 HOUSE MISCELLANEOUS DOCUMENTS, 1 Sess. 51st Cong. 24 (1889-1890); *Address of Mr. Mills of Texas*, id. 32; F. WILLIAM NICKLES, WILLIAM KELLEY: THE CONGRESSIONAL YEARS, 1861-1890 (1984) (Ph.D. dissertation, Northern Illinois University); *Address of O'Neil of Pennsylvania*, HOUSE DOCUMENTS, op. cit at 13; Silvana Siddali, AM. NAT. BIOGRAPHY ONLINE, Feb. 2000 at www.anb.org/articles/04/04-00592.html; *Political Portraits with Pen and Pencil: William Darrah Kelley*, 28 U.S. DEMOCRATIC REV. 156 (1851); *Obituary of William D. Kelley*, N.Y. TIMES, Jan. 10, 1890 at 5; and *Judge Kelley's Views*, SCIENTIFIC AMERICAN, Mar. 1, 1884 at 138.

of the people." In 1844, he became Deputy Attorney General of the Commonwealth, and married the niece of Colonel Page. In that role, he resisted the anti-Catholicism that was the popular sentiment of the day. In 1846, he left the Presbyterian faith to become a Unitarian. In 1848, he supported the Free Soil Party as it organized to resist slavery. In 1854, after passage of the Kansas-Nebraska Act, he joined Abraham Lincoln and many others in forming the anti-slavery Republican Party. For a time, he was a judge, but in 1856, he gave up that office to be his party's nominee to represent the fourth Congressional district of Pennsylvania. He lost the election, returned to law practice, but devoted much of his energy to the cause of abolition. By that time, he was a person known and respected nationally.

Kelley's first wife had died in childbirth in 1847. In 1854, he married Caroline Barstram Bonsall, a Quaker whose father had joined Benjamin Franklin in founding the American Philosophical Society. The Kelleys had eight children, but only three survived childhood. The youngest of these, Florence, was born in 1859.

In 1860, Kelley was at the Republican Convention in Chicago to support the nomination of Lincoln for the Presidency. He was himself elected to Congress and became a close friend and advisor of the President. He was described by a fellow Congressman as a man with "a bright and sagacious eye that seemed to see everything that was transpiring" and a "charming voice which men always stopped to hear."

In 1865, as the war ended, Kelley became one of the first voices for Negro suffrage. On that account, a Louisiana Congressman

stabbed him. He survived the wound to carry his message to the states being reconstructed. His speech in Mobile ended in gunfire, but he continued on tour in other Southern cities. He then played a leading role in the Reconstruction program pursued through the ensuing decade, in part as a leading advocate of the Fifteenth Amendment, which was ratified in 1870. In the 1870s, he became a primary voice in Congress for equal rights for women. In the 1880s, he advocated tariffs to protect the jobs of workers and thereby acquired the nickname "Pig Iron." He would remain in Congress until the day he died in 1890. Had anyone suggested in 1865 or in 1875 that his daughter's renown would exceed his, none of his contemporaries could have believed it.²

However, while he was engaged in his public career, he was also a special father to his children, perhaps especially Florence. In today's term, he and Caroline home-schooled their children. When Florence was seven, her mother wrote William that he could "have no idea how pleased she was at being told that she looked like you."³ Florence recalled that her father read many books to her, including one "terrible little book" depicting child labor in industrial England. When her mother asked him whether he should read such dark stories to his daughter, he explained that "life can never be right for all the children until the cherished boys and girls are taught to know the facts in the lives of their less fortunate contemporaries."

Florence, at ten, took a special interest in Kelley's involvement in railroads and his attendance in 1869 at the driving of the golden spike connecting the rail line to California. He shared his ample library with

² Florence Kelley is the subject of two biographies. KATHRYN SKLAR, FLORENCE KELLEY AND THE NATION'S WORK (New Haven 1995), and JOSEPHINE GOLDFMARK, IMPATIENT CRUSADER: FLORENCE KELLEY'S LIFE STORY (Urbana 1953). THE AUTOBIOGRAPHY OF FLORENCE KELLEY was published in 1986. Also consulted here was *Florence Kelley, Social Reformer*, in URBAN EXPERIENCE IN CHICAGO, available at www.uic.edu/jaddams/hull/urbanexp/kelleyflorence_bio.htm.

³ Quoted by SKLAR, note 2, at 29.

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her and discussed her reading. He also took her on numerous trips, always being careful to expose her to the realities of life for the people whom they observed. In England, they visited industrial workers to observe the conditions under which they labored.

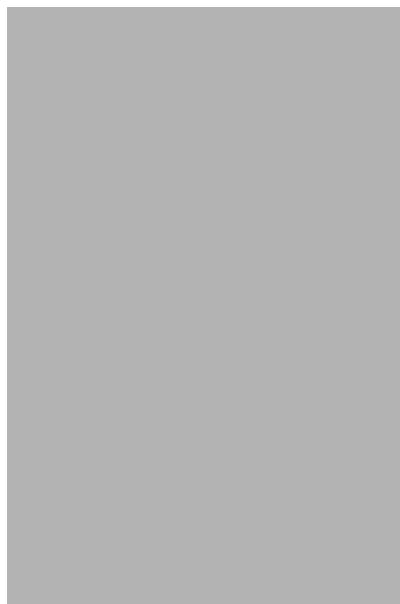
At sixteen, Florence was admitted to Cornell University on the basis of an admission test that she denounced as a "pure sham."⁴ There, she studied history and politics, and made lasting friends. Upon graduation, she set

York, where they had three children. His medical practice and their marriage both failed. Kelley moved to Chicago with the children and divorced him. In 1892, she joined Jane Addams at Hull House, the center of the emerging social work profession, and there she raised her children as a single parent.

In Chicago, Florence also devoted herself to the issue of child labor laws. She was of the opinion that the regulation of child labor could not be achieved merely as a protection



William Darrah Kelley



Florence Kelley

out to study law. Cornell did not then have a law school and the University of Pennsylvania turned her down because of her gender. The Kelleys financed an expedition to Europe, where Florence commenced the study of law at the university in Zurich.

There, Florence became smitten with socialism, and with a Polish doctor who was also a socialist. She translated Friedrich Engels' *The Condition of the Working Classes in England in 1844* into English and married the doctor. For five years, the couple lived in New

of children, however worthy that objective might be. She set about persuading Illinois Governor John Peter Altgeld that the employment of children depressed the wages of men who were expected to support their families. She also observed that the reason children were available for factory work was that their fathers were either maimed or killed in industrial accidents or were so poorly paid that they were unable to provide steady support to their families. To supplement her advocacy of child labor laws, she

⁴ AUTOBIOGRAPHY, note 2, at 46.

also began a crusade to cause the public schools in the city to enforce the compulsory attendance laws.

Florence was frustrated by her inability to secure the support and cooperation of public prosecutors. This led her to enroll in Harry Wigmore's Northwestern University Law School as a part-time student. Recognizing her as a special person, Wigmore gave her credit for her earlier reading of law with her father and in Zurich, so that she graduated from law school in 1894.

In 1895, Governor Altgeld signed legislation limiting hours of employment and prohibiting factory employment of children under fourteen, and creating a State Factory Inspection Department. He then appointed Florence the state's chief inspector. The conditions she found and her indignation can be sampled from her report on the Chicago Stockyards where she found:

boys who cut up the animals as soon as the hide is removed, little butchers working directly in the slaughter house. ... These children stand, ankle deep, in water used for flooding the floor for the purpose of carrying off the blood and refuse into the drains; they breathe air so sickening that a man not accustomed to it can stay in the place but a few minutes; and their work is the most brutalizing that can be devised. ... No criminal in the United States could be punished by an hour's imprisonment in such a place without a horrified protest ringing through the land.⁵

When the Supreme Court of Illinois invalidated the state's law limiting women and girls to an eight-hour workday,⁶ she exploded against the bovine ignorance of the court and publicly challenged the members of the court to join her in an inspection of the conditions in which women and girls were working in Illinois.

Florence Kelley would move on to the

national scene as an advocate of Progressive efforts to reform labor laws. In 1899, she returned to New York as Executive Secretary of a national movement, The New York Consumers' League. The League had been established in 1891 at the initiative of Alice Woodbridge, a "girl behind the counter" at a department store, and Josephine Shaw Lowell, a leader in charitable work in the city. By 1899, similar organizations existed in many cities and states.

Under her leadership, the League reached out to numerous and diverse other organizations, many of them organizations of women, to create a vast lobby for the improvement of working conditions for women, and for the elimination of child labor. She seems to have invented the Consumers' Union label to be attached to manufactured garments as confirmation that the manufacturer complied with the standards set by the League. It was certainly she who sold the idea, first to womens' groups across the continent whom she persuaded to boycott garments not containing the label, and then to manufacturers as good business.

The Consumers' Union label was not, to be sure, a complete remedy for the problems to which it was addressed. Legislation was also advocated, and many states responded by enacting laws of varying rigor that aimed to provide some protection for female workers and for children. The Oregon Union was especially successful in securing legislation, and the Oregon law that limited women to a ten-hour workday was upheld by the state Supreme Court. The task of organizing a legal defense of such laws when attacked in the U.S. Supreme Court fell to Florence's national organization. It was argued by employers that such laws violated the freedom of workers to contract for the sale of their services.

⁵ Quoted by GOLDMARK, note, 2 at 40.

⁶ *Ritchie v. People*, 40 N.E. 454 (Ill. 1895).

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In *Lochner v. New York*,⁷ the Supreme Court had famously held a New York law limiting the hours of bakers invalid on that ground. There had, however, been strong dissent, Justice Holmes dismissing the premise as mere Darwinian politics disguised as constitutional law. *Lochner* had become, perhaps erroneously, the symbolic zenith of the Court's use of the Fourteenth Amendment to protect industry from the claims of workers and consumers.

The Oregon law was presented to the Supreme Court in 1908 and a successful defense was mounted.⁸ Kelley recalled her rage in 1895 when the Supreme Court of Illinois had struck down such a law as a violation of due process, declaring that "[t]here is no reasonable ground

– at least none which has been made manifest to us in the arguments of counsel – for fixing upon eight hours in one day as the limit."⁹ She resolved that the Supreme Court would not be allowed so to dismiss the reasons for the legislation she had promoted. She recruited Louis Brandeis of Boston to make the argument, in part because she expected him to share her intention of providing the Court with a factual argument. She and her volunteer staff then assembled a mass of data, much of it drawn from the European literature on industrial hygiene, a subject almost unknown in

America. Brandeis organized and presented her data, and its force was acknowledged by Justice Brewer (otherwise a champion of laissez-faire), who summarized it in the opinion of the Court affirming the Oregon decision. Appellate practice in America would never again be quite the same after the submission of the Florence Kelley brief, a.k.a. the Brandeis brief. And Illinois promptly reenacted its 1893 legislation invalidated by its court in 1895.

The principal argument against legislation limiting hours of work was that the poor could not live on the amount of money they could earn with restricted hours. This led Florence Kelley to lead a campaign for the minimum wage. By 1913, her organization had

American textile worker, 1911.

secured legislation in a dozen states. But the constitutional status of the laws was unsettled. It was again an Oregon statute that was brought to the Court. In 1917, again informed by an elaborate "Brandeis brief," the Court unanimously upheld an Oregon law requiring time-and-a-half pay to persons working more than ten hours a day in mills or factories,¹⁰ but divided evenly on the power of Oregon to regulate minimum wages.¹¹ This left the Oregon law in force, but failed to resolve the issue, which was not laid to rest until 1937.¹²

Florence Kelley was also an early advocate

⁷ 198 U.S. 45 (1905).

⁸ *Muller v. Oregon*, 208 U.S. 412 (1908).

⁹ 40 N.E. at 459.

¹⁰ *Bunting v. Oregon*, 243 U.S. 426 (1917).

¹¹ *Stettler v. O'Hara*, 243 U.S. 629 (1917).

¹² *West Coast Hotel Co. v. Parrish*, 300 U.S. 379 (1937). In *Adkins v. Children's Hospital*, 261 U.S. 525 (1923), the Court affirmed a decision of the United States Court of Appeals invalidating a minimum wage

for women's rights. This initiative reflected her Quaker ancestry, and the zeal of several of her feminine relatives. While in Zurich as a young law student, she wrote Susan B. Anthony, affirming her purpose to advance the rights of working women "as my father has given himself to work for the best interests of the country."¹³ But she long remembered her father's "never failing, flowing interest in the misfortunes of defenseless women and children." She also wrote that "my father's daughter could never from early childhood be long unaware of the developing struggle for women's political rights."¹⁴

The influence was not all in one direction. Congressman Kelley respected his daughter's opinions. In June 1884, he read into the Congressional Record extensive quotations from a letter he had received from his daughter. It emphasized the growing rift, as she saw it, between the American worker and American

capitalism. After reading her letter, he remarked that he agreed "with the conclusions of this young but profound student of political science." In what must have garnered some furrowed brows from his colleagues, he also declared that if socialism meant the desire to achieve "the best possible conditions for our laborers ... I declare myself to be a socialist."¹⁵

Felix Frankfurter would describe Florence Kelley as a woman to whom the nation owes an "enduring debt for the continuing process she so largely helped to initiate, by which social legislation is promoted and eventually gets on the statute books."¹⁶ As she so frequently acknowledged, it was her father who impelled her in that direction. One need not be a socialist, or even an advocate of the rights of women and of workers, to approve of William Kelley's relationship with his daughter, and so we propose to toast his memory on Father's Day 2004.^{GB}

law enacted by Congress for the District of Columbia. This result was renewed in *Morehead v. New York ex rel. Tipaldo*, 298 U.S. 587 (1936). Both of these cases were overruled in *Parrish*.

¹³ Quoted by SKLAR, note 2, at 85.

¹⁴ AUTOBIOGRAPHY, note 2, at 61.

¹⁵ Quoted by SKLAR, note 2, at 89.

¹⁶ Quote in *Florence Kelley, Social Reformer*, note 2.