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“Who can find a virtuous woman? For her price is above rubies.” Surely Anita Whitney fit this description. Born into privilege and wealth, she worked for the betterment of the downtrodden. In a time of reaction, she championed reform. Never physically imposing, she withstood the weight of unfair accusations and partial justice. Indicted for the crime of speaking truth to power, she lost her law cases but not her cause.

Now almost forgotten, Whitney’s role in the campaign for a robust First Amendment has found a worthy champion. Philippa Strum, a senior scholar at the Woodrow Wilson International Center for Scholars, brings to *Whitney v. California* the well-honed skills of a legal historian and the insight of a biographer. Mining biographical materials, trial records, newspaper accounts, and legal papers, Strum follows the triumphs and travails of the Whitney case through the Progressive Era, into the I.W.W., California politics, and the state and federal courts. The result is a moving and brilliant essay.

If there is a hero in the story to match Whitney’s heroism, it is Louis D. Brandeis. To some extent his career and beliefs followed hers, although paths to power were open to him that long-held prejudices denied to her. He understood the importance of her free speech claims and penned the language that would make them part of American law. Strum has written about Brandeis in a variety of contexts. Here she brings him into the tale in just the right place and reveals his part in it.

*Speaking Freely* is Philippa Strum’s third book in the Landmark Law Cases and American Society series. Along with her *When the Nazis Came to Skokie* and *Mendez v. Westminster* it sparkles with her commitment to the highest aspirations of the law and the finest standards of historical craft. No one will come away from *Speaking Freely* unmoved by Whitney’s courage, Brandeis’s idealism, and Strum’s narrative.
ACKNOWLEDGMENTS

Anita Whitney was a committed communist, so she would be the first to acknowledge that most undertakings are communal in one way or another. That certainly is true of a book. My heartfelt thanks go to the many people who made this one possible, with the usual disclaimer that I, not they, am responsible for the final product and whatever flaws it may have.

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The Woodrow Wilson International Center for Scholars has been my scholarly home since 2001. It provides the best venue I can imagine for any scholar: physical space, the amazing librarians and research assistants mentioned earlier, an endlessly helpful IT staff, and a community of colleagues. What is perhaps best of all, as any academic will understand, there are no committee meetings and no exams to grade. I could not be more grateful for my inclusion in that community.

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This book is dedicated to Alexa Lauren Weiss, my granddaughter, who at an early age is already making full use of her speech rights. I trust she will continue to do so when she is old enough to participate in the political process beyond helping her father indicate his favored candidates in the voting booth. It is dedicated as well to her parents, David Strum Weiss and Terra Weiss, for their nonstop encouragement while I worked on the book. I’m not sure they will ever see what they insist should be the movie version of the *Whitney* story, but I hope that in the meantime they, and other readers, will enjoy this one.
Speaking Freely
Americans take the right to speech for granted. The Internet, airwaves, auditoriums, college campuses, and many other venues are filled with political commentary, much of it far from laudatory. Officeholders and the government itself are criticized as frequently as they are praised, sometimes without much basis in fact and in language that is anything but restrained. And yet no one is put on trial for the kind of speech that would lead to arrest in many other nations.

Most Americans do not realize that this was not always true. In the early twentieth century, both Congress and almost half of the nation’s states enacted laws that severely circumscribed Americans’ right to speak. Thousands of Americans were prosecuted for speech that was critical of the government, and many were jailed.

One of them was a California woman named Charlotte Anita Whitney. In 1920 the state of California put her on trial, and in 1927 the United States Supreme Court upheld her conviction for helping to organize a political party that called for sweeping changes in the American political and economic systems. Yet the opinion that Justice Louis Dembitz Brandeis wrote in the case of Whitney v. California soon led to the United States’ uniquely permissive approach to speech. That was somewhat surprising, as Brandeis had earlier voted repeatedly to uphold laws restricting speech.

The discussion of Whitney v. California that follows is therefore an exploration not only of how American speech law became what it is today but of why the United States gives such free rein to speech. It is also a study of the way law and society interact and of the impact that institutions and personalities have on one another.
CHAPTER ONE

From Silver Spoon to Socialism

When Charlotte Anita Whitney became a Communist in 1919, she thought she was following in the footsteps of the Puritans who had helped create the United States. The state of California saw it a bit differently, and put her in jail.

Whitney v. California is the story of an American aristocrat who developed into both a twentieth-century radical and a flashpoint for the creation of modern American speech jurisprudence, which remains more liberal than that of any other nation in the world. It is a tale that brings together early-twentieth-century settlement houses in the teeming immigrant neighborhoods of the eastern United States, the turbulent strikes of the Industrial Workers of the World in both the East and the West, the American approach to domestic security during World War I, and a son of immigrants who became one of the nation’s most influential Supreme Court justices.

We may think of law as a matter of courts and judges and doctrines, but it begins as the story of human beings and their attempts to make sense of and organize their world. Whitney’s journey from a cosseted descendant of Pilgrims to a convicted criminal reflects her effort to understand why justice had not been achieved in an industrializing society, and to do something about it. It resulted in a landmark opinion in the 1927 case of Whitney v. California and a dramatic alteration of the United States’ definition of free speech—one that is repeated in courtrooms throughout the country to this day.

Whitney was sent to jail in the twentieth century, but her story begins in the nineteenth century and even, in a sense, in the seventeenth. By the time Anita Whitney, as she was usually known, was born in 1867, her
ancestors had been in the New World for more than 200 years. Five of her father’s forebears reportedly arrived on the Mayflower in 1620; others, only a few years later. One of them was Thomas Dudley, the second governor of the Massachusetts Bay Colony and a founder of Harvard College (later Harvard University). His son Joseph followed in his father’s footsteps by becoming governor of Massachusetts and New Hampshire. Harvard’s Dudley House is named for the family. The family of Mary Field Whitney, Anita Whitney’s mother, arrived in Maryland in 1640. Whitneys and Fields were officers in George Washington’s army during the American Revolution. Their descendants continued on distinguished paths as the next centuries unfolded. Cyrus W. Field, another ancestor, was responsible for creating the first transatlantic telegraph cable, in 1858; Whitney’s cousin Dudley Field Malone would become an assistant secretary of state under Woodrow Wilson and a lawyer for suffragists. One of her aunts was married to Supreme Court Justice Stephen Field, appointed to the bench by Abraham Lincoln. Anita spent much of her childhood, her college Christmas vacations, and two of her early teen years with Justice Field and his wife in Washington. She was such a favorite that the childless Field left one-third of his estate to her. Anita’s father, George Edwin Whitney, had moved to California from New England before she was born and became Alameda County’s representative in the state senate. Hers was a family that read the Declaration of Independence out loud on every Fourth of July. To them, the Declaration was not simply part of the American story; it was a piece of their own family history.

Anita, the second of seven children, was born in Oakland, California, just two years after the end of the Civil War. During her childhood the South was going through the Reconstruction Era, and the industrialization of the North was just beginning. It was a tumultuous time for the nation, and both the emphasis on African Americans’ rights and the results of industrialization would become important to Whitney. But that came later; in her early years, like any other child, she was focused on family and the education she got in California schools. After Whitney finished high school her parents sent her east to Wellesley College, in the state her father’s ancestors had helped create. He wanted her to appreciate the part of the country that had forged both its government and its literature. Arriving at Wellesley in 1885, Whitney became one of
the less than 2 percent of all American women who went on to higher education in the 1880s. The majority of them were, like Whitney, from privileged homes. She would always remember Wellesley, where the students were required to attend chapel every day, as a place of welcome spirituality. On school holidays she was an enthusiastic visitor to American revolutionary sites in Boston, Concord, and Lexington. She read Ralph Waldo Emerson, James Russell Lowell, and Henry David Thoreau, all of whom celebrated quintessentially American values. She wrote that she gloried in being “American clear through to my very marrow . . . I was glad of my colonial ancestry and proud that the roots of my family were planted deep in American soil.” Whitney never lost the sense that she was one of the torchbearers of the original flame of American principles.

She graduated from Wellesley in 1889, and then departed on the months-long tour of Europe that was frequently bestowed on wealthy college graduates by their indulgent parents.

After that Whitney floundered. She briefly taught Sunday school in Oakland—her family was solidly Episcopalian as well as Republican—and participated in college alumnae activities. None of that satisfied her. “I was always more or less conscious of a feeling of boredom,” she would say later, “coupled with a dread of being thought different.” She was, however, about to become very different.

In 1893, Whitney went to a class reunion at Wellesley. Curious about what some of her classmates had told her they were doing, she followed them to New York City to see the College Settlement House where they were working. It was Whitney’s first glimpse of immigrants, and of poverty.

The settlement house movement in the United States dated from at least as early as 1889, when Jane Addams and some friends opened Hull House in Chicago. Settlement houses, staffed primarily by young unmarried women college graduates, soon appeared elsewhere in the overflowing neighborhoods populated by new arrivals in the United States. The urban tenement dwellers, trapped in low-paying jobs for ten- and twelve-hour days or at home with ill-clad children who lacked access to adequate food and even rudimentary health services, could expect little or nothing from government in the way of help. Settlement houses, where the volunteers lived and worked, tried to fill at least some of the gap.
That was the mission of the College Settlement House, which occupied an old renovated building in a crowded immigrant neighborhood on Manhattan’s Lower East Side. The college-educated women who lived and worked in it sought out people from the neighborhood, organized activities for and with them, and took what comfort they could offer into the immigrants’ impoverished homes. Other privileged New York women occasionally volunteered at the settlement house. A young Eleanor Roosevelt was one of them, taking the streetcar from the elegant Upper East Side in order to teach children calisthenics and dancing, and occasionally bringing her cousin Franklin Delano Roosevelt to see her work.

There were nonetheless never enough volunteers for all the work that needed to be done, so Whitney began helping out during what was planned as a one-week stay. Her ventures into tenements during her week’s visit terrified her because of what she described as their “sickeningly odorous” dampness, rickety staircases, and poor ventilation. The tenements were filled with “the fumes of the accumulated life of so many people,” Whitney would write, and the cockroaches seemed as much at home there as the impoverished humans. Nonetheless, at the end of the week, she accepted an invitation to join the staff. “The revelation of the conditions under which a really good worker had to live in New York hit me with sickening force,” she reported. She was appalled that “some cog in our social system had slipped. . . . I wanted to help change it. Here at last was something vital to be done.” She helped in the library, took soup to the sick, and visited the elderly. She also taught sewing and cooking, going to a cooking school herself in the mornings so she could learn what to teach her club of girls in the evening.

Whitney stayed at College Settlement House for only a few months, however, before being called home to Oakland. Her father was terminally ill. After his death Whitney moved in with her widowed mother and began to work as a teacher in private schools while she read what she could find about poverty and tenements. “If everyone knows about these things, why do they go on?” she would recall wondering. “Is human life then so cheap?” She was shocked to read that some of what she called “the oldest and vilest New York tenements” were profitably owned by the Trinity Church. That led her to ponder the relationship between respected American institutions and the kind of poverty she had seen
in New York. Eager to do what she could, she organized a club for boys and girls in a slum district of West Oakland, and joined the council of the Associated Charities of Alameda County.

In 1901, when she was 34 years old, Whitney left teaching to become the Associated Charities’ secretary. Her salary was $85 a month, and a colleague remembered Whitney economizing by eating little while she gave away what money she had to people in need. Speaking of those she helped, she later said, “I loved my people. I entered into human relationships I had not known before.” She was particularly concerned about juvenile delinquents, certain that with the proper help they could be turned away from crime, and she lobbied for the creation of juvenile courts and housing for juvenile delinquents separate from that of adults.

When California created a juvenile court system in 1903, Whitney became the first—unpaid—juvenile probation officer in Alameda County, and was frequently given temporary custody of children in trouble. The position became a paid one later on, and at that point Whitney was replaced by a man.

By the time that happened, Whitney had begun to wonder whether it was possible that “no real solution [to poverty] lay along the route of organized charities.” Thinking that perhaps her dissatisfaction with the limited impact of charities meant that she just wasn’t going about charitable work the right way, she gave up her job with Associated Charities in 1907 and went to New York and Boston to work with more experienced social workers. Her goal was to see if they were making a real difference. The journey left her disenchanted. Horrified as she was by New York tenements, she was even more distressed by the rampant and seemingly intractable alcoholism she found in the slums of East Boston. “What impressed me most during those days,” she recalled, “was the indifference of the well to do. It seemed almost incredible that people who had everything can be absolutely so unresponsible [sic] to the needs of others.” Her growing sense of futility confused her. She returned to California but “abandoned the profession that I had hoped was to be my life work” in 1911, finding herself “left adrift again with more questions to be answered.”

A period of depression followed, as Whitney tried to rethink the direction of her life. For a while, reacting to her experiences in Boston, she
became involved with the prohibition movement. Soon, however, she found a new cause. It was woman suffrage.

She joined California’s Woman Suffrage Party, the Club-Women’s Franchise League, and the Equal Suffrage League of San Francisco. Working tirelessly, as seemed to have been her wont in any cause she espoused, she became president of the College Equal Suffrage League of California. The movement of which it was a part succeeded: in October 1911 an amendment to the California constitution giving women the vote was ratified. Whitney promptly took her suffrage work onto a national stage, becoming second vice president of the National American Woman Suffrage Association (Jane Addams was its first vice president) and journeying to Oregon and Nevada between 1911 and 1914 to work in those states’ suffrage efforts. Returning to California, Whitney helped the College Equal Suffrage League reorganize itself as the California Civic League and became its president. She joined the board of the new Society for Abolition of the Death Penalty in California and organized a San Francisco branch of Travelers Aid to ensure the safety of young women arriving to seek work during the 1915 world’s fair, formally the Panama Pacific International Exposition. All the while, she lobbied in Sacramento, California’s capital, for women’s right to sit on juries—a fight that was won in 1917—and for minimum wages for women and children, pasteurization of milk, the elimination of red-light districts, and mandatory physical education in public schools.

At that point, Whitney was following the path of a good Progressive. Her activities reflected the Progressives’ belief that the federal and state governments as constituted could alleviate the plight of disadvantaged Americans and make life better for all the nation’s people. Unlike most Progressives, however, Whitney was inching toward the labor movement in a way that would ultimately lead her to adopt a much more radical ideology.

Back in 1906, when a huge earthquake and fire ravaged San Francisco, the efficient Whitney had helped organize camps in San Francisco and Oakland for displaced residents. She noticed that labor unions were particularly useful in finding employment for refugees from the city. She had already encountered unionists of the Women’s Trade Union Label League and the Wage Earners League—as well as Socialists, and
that would become important later on—while working for suffrage and lobbying in Sacramento. She heard and was impressed by Eugene Victor Debs, the Socialist candidate for president, while she was doing suffrage work in Oregon. When thousands of textile workers struck for better working conditions in Lawrence, Massachusetts, in 1912 and Paterson, New Jersey, in 1913, some of their leaders spoke in California, and Whitney listened carefully to their insistence that only unions could better the lives of laborers.

The union leaders she heard, however, were not mainstream labor organizers. The nation’s largest workers’ organization was the American Federation of Labor (AFL), which sought to bring together skilled workers in one particular specialization—carpenters, for example, or blast furnace workers or garment cutters—in a craft union. It focused on fighting for better wages and working conditions within the existing economic system. That was not the approach of the speakers from Lawrence and Paterson, like Elizabeth Gurley Flynn, Arturo Giovannitti, and William (“Big Bill”) Haywood, who excited Whitney. They came instead from the Industrial Workers of the World (I.W.W.), and in not too many years Anita Whitney would in effect be jailed for sympathizing with them.

The I.W.W., familiarly known as the Wobblies, was organized in Chicago in 1905. Its goal was first to bring all workers in a workplace and an industry—skilled, unskilled, men, women—into a union, and then to merge all the workers across the country into what it called the One Big Union. Eventually, the I.W.W. believed, the unified laborers would go out on a nationwide general strike that would force the capitalists to turn industry over to the workers. The Wobblies scorned the American Federation of Labor for its exclusion of the racial minorities, noncitizen immigrants, and unskilled laborers who made up an increasing share of the wage-earning population. They envisioned a society without child labor, unemployment, or inequality of the sexes—as well as without a government, which they thought could in some unspecified fashion be replaced by groups of experts.

They rejected the AFL’s emphasis on craft unions, believing that such unions isolated workers within a workplace when what was needed
was unity across specializations. They disagreed as well with the traditional unions’ assumption that labor could achieve power and a decent standard of living under the capitalist system. Where the AFL would, for example, organize carpenters, electricians, and bricklayers into separate trade unions, the Wobblies would bring them together into an overall union of construction workers. They would fight for decent wages and working conditions as a temporary palliative, but their vision of the future was one without capitalism. Drawing on Marxist rhetoric, the Wobblies envisioned workers as cohering because they were members of a class that was inexorably opposed to the other, “capitalist” class. “The working class and the employing class have nothing in common,” the I.W.W. constitution proclaimed.

Between these two classes a struggle must go on until the workers of the world organize as a class, take possession of the means of production, abolish the wage system, and live in harmony with the Earth. . . . It is the historic mission of the working class to do away with capitalism. The army of production must be organized, not only for everyday struggle with capitalists, but also to carry on production when capitalism shall have been overthrown. By organizing industrially we are forming the structure of the new society within the shell of the old.

Many of the Wobblies were migratory workers who moved, variously, among farms, construction sites, coal mines, and timber camps. They formed an industrial underclass of societally disinherited people who viewed the existing social and economic structure as promising nothing at all for them beyond lives of overly long labor, starvation wages, and subhuman working conditions. They were precisely the kinds of people Karl Marx could have had in mind when he wrote that workers who rebelled had nothing to lose but their chains, and they acted accordingly. The I.W.W. declared itself to be “revolutionary,” and from the time of its first convention its radical rhetoric could not have been better designed to frighten both employers and the average American citizen. According to the minutes of the founding convention, the delegates cheered labor firebrand Big Bill Haywood when he declared, “The aims and objects of this organization should be to put the working class in possession of the economic power, the means of life, in con-
trol of the machinery of production and distribution, without regard to capitalist masters.”

The Wobblies soon produced a *Little Red Song Book* that contained lyrics such as “Come on, you fellows, get in line; we’ll fill the boss with fears; Red’s the color of our flag, it’s stained with blood and tears . . . when we hit their pocketbooks we’ll spoil their smiles of mirth—We’ll stop their dirty dividends and drive them from the earth with One Big Industrial Union!” Another song called for sabotage:

I had a job once threshing wheat, worked sixteen hours with hands and feet . . .
One moonlight night, I hate to tell, I “accidentally” slipped and fell,
My pitchfork went right in between some cog wheels on that thresh machine . . .
Next day that stingy rube did say . . .
“You grease my wagon up, you mutt, and don’t forget to screw the nut.”
I greased his wagon all right, but I plumb forgot to screw the nut,
And when he started on that trip, the wheels slipped off and broke his hip.

The songs would be introduced as evidence when the state of California put Anita Whitney on trial. So would I.W. publications that declared, “Direct action, sabotage, passive resistance, intermittent and irritation strikes are some of the tactics of the revolutionary Industrial Workers of the World. . . . These skirmishes are the prelude to the social general strike that will end the rule of the capitalist and abolish economic classes from human society.” Although the Wobblies frequently emphasized nonviolence and passive resistance, much of their language was far less restrained than the actions some of them actually took, and at times they sent mixed messages, making it understandable that the average citizen heard only the rhetoric of violent revolution. Big Bill Haywood could declaim both that “I, for one, have turned my back on violence. . . . We have a new kind of violence—the havoc we raise with money by laying down our tools” and “I despise the law and I am not a law-abiding citizen.”

The Wobblies did not merely sing and write, of course; their rhetoric
and action went hand in hand. They organized workers in mines, factories, and lumber camps, and backed them up during strikes. One of their great successes came during the Lawrence strike mentioned earlier—a strike that epitomized the conditions that led Whitney to give up on capitalism and the American economy as it was constituted in the first decades of the twentieth century. “The Lawrence and Paterson strikes stirred me to the depths,” she wrote. To make sense of the journey Whitney made from a life of privilege to a California jail, it is therefore necessary to understand the negative effects industrialization had on many American workers. The problems were exemplified by life in Lawrence, Massachusetts.

Lawrence was a city of 86,000 people, with some 60,000 of its residents dependent on the textile mills that dominated its economy. The largest mills were owned by the American Woolen Company, a textile trust with mills all across New England. Its workers were primarily immigrants or the children of immigrants: Italians, Poles, Belgians, Eastern European Jews, Russians, Lithuanians, Syrians, Turks. Ray Stannard Baker, the crusading journalist who covered the strike for The American magazine and would later become President Woodrow Wilson’s press secretary at Versailles, reported that forty-four different languages and dialects were spoken by the workers in Lawrence.

Their working and living conditions were abominable. Baker told his readers that “some of the tenements of Lawrence are the worst I ever saw” and that the workers and their families suffered from “having too little to eat and far too little to wear.” According to the U.S. Department of Labor, the cost of food for “an average workingman’s family” per year was $422 in 1911; a year later, according to the New York Times, it was $466 in states such as Massachusetts. Skilled workers in the Lawrence mills earned between $6 and $10.50 a week; unskilled workers were paid $6 or $7. The rents they were forced to pay were nonetheless as high as those in the far better-off city of New York, Baker wrote, and the food prices were even higher. An unskilled worker earning $7 a week—$364 a year—would not take home enough money to pay for his or her family’s food, much less housing, heating, clothing, or medical care. One hundred and seventy-two infants out of every 1,000 born in Lawrence
died before their first birthday. Adults also died too young, many of them from the tuberculosis and pneumonia that ran rampant through the tenements. The men, women, and children who survived worked in the mills, and in fact the majority of the workers were women and children—although women and children, thanks to a Massachusetts law, were prohibited from working for more than fifty-six hours a week.

In 1911, the Massachusetts legislature, adopting the mildest of Progressive reforms, voted to reduce the number of hours women and children could work each week to fifty-four. The law took effect at the beginning of 1912, and the reaction of the mill owners to the shortened work week was to cut wages. When workers received their first pay envelopes of the new year on January 11, 1912, they realized that they were being paid less than usual, which they had not anticipated. The difference for the poorly paid workers was the equivalent of several loaves of bread a week, and they walked out on a spontaneous strike. Some of them belonged to the small I.W.W. Lawrence Local 20, but the local’s leaders, faced with an uprising they had not planned, quickly realized that they alone could not manage the strike. They sent for help, and I.W.W. leaders such as Joseph Ettor, Big Bill Haywood, and Elizabeth Gurley Flynn rushed to Lawrence.

The local government sympathized with the mill owners, and in response, at Ettor’s urging, a crowd of workers marched to the city hall. The mayor called out the police and the militia to deal with the demonstrators and then to patrol the mill district, and what had been a largely peaceful strike turned violent. Fire hoses were turned on strikers picketing the mills; police battled strikers, and a woman died of a bullet wound. Violence was not the strikers’ only enemy, however. It was a bitterly cold winter, and even though the I.W.W. organized strike relief, there was not enough food or fuel. The answer was to send some of the strikers’ children to New York City, where they could be cared for by sympathetic families until the strike was over. A committee was created to oversee the evacuation. It was directed by Elizabeth Gurley Flynn and Margaret Sanger, the chairman of the Socialist Party’s women’s committee, who later became famous as a result of her advocacy for birth control. The children were sent by train to Grand Central Station. The journalists covering their arrival told readers about their shock at
the sight of the malnourished children, and both the media and angry
citizens demanded an investigation.

All the attention led the publicity-conscious mill owners and public
officials of Lawrence to declare that no more children could leave the city.
When another contingent of children nonetheless arrived at the Law-
rence train station to be transported to families in Philadelphia, the po-
lice, sent to stop them, waded into the crowd, clubbing mothers and
children and throwing them onto military trucks. The horrified journal-
ists were there, too, covering the melee for their readers, and a federal
congressional investigation was soon convened.

In March, the mill owners capitulated, raising wages by 5 to 20 per-
cent. The I.W.W. called the strike a success and celebrated its victory.
Yet, as Ray Stannard Baker wrote, the settlement meant only that the
head of a family who had been earning $6 or $7 a week might get some
10 percent more: “He and his family can live 60 or 70 cents a week bet-
ter—but consider if you will, how very little 60 or 70 cents a week really
means in bread, in rent, in clothing, in fuel, for a family of children.”
And so, Baker asked, “is not the conclusion forced upon us that changes
have got to be different and deeper?”

Anita Whitney was rapidly reaching exactly that conclusion. Her
sense that systemic change was needed was heightened when, the fol-
lowing year, the I.W.W. lost a strike in the silk mills of Paterson, New
Jersey. There, skilled workers were earning an average of $11.69 a week;
unskilled men, $6 or $7; women, an average of $7.17; girls under 16, $1.85.
The mill owners managed to crush the strike through a combination of
beating and clubbing strikers, arresting hundreds and jailing them in
disgusting conditions, closing every hall in Paterson to them, breaking
up strike meetings wherever they were held, and confiscating strike lit-
erature. Those tactics, along with hunger and the willingness of the elite
cadre of skilled workers to sign a separate deal with the mill owners,
drove the strikers back to work.

There were also Wobblies much closer to Whitney’s home, and the
incendiary coverage they were given by California newspapers ensured
that she knew about their activities. The I.W.W. had a heavy West Coast
component when it was organized and, even before the two East Coast
textile strikes, had continued to put much of its energy into the west-
ern states. There it became notable for a different kind of action: “free-speech fights.”

Like any other union organizers, the Wobblies faced the problem of getting their message out to possible recruits. They were clearly not welcome in the workplaces where their target audience was to be found. They turned instead to speech on the streets, standing on downtown corners or in front of employment offices and telling the passing workers about the failures of American capitalism. The tactic was frequently successful, and the I.W.W. watched its membership grow. Its successes, unsurprisingly, led to its being viewed as a threat by big businesses and their allies in public office. In 1909 and 1910 local governments in Spokane, Washington, and Fresno, California, seeking to end the proselytizing, closed the streets to Wobblies. After well-publicized “free speech fights” in those cities, during which Wobblies were jailed but kept turning out for more street speeches, the two localities gave in.

The San Diego, California, city council nonetheless decided in December 1911 to close a downtown area that had been used for street meetings by the Wobblies and a wide variety of other speakers. The I.W.W. and other groups, including Socialists, single-taxers, and the local branch of the American Federation of Labor, promptly created a Free Speech League. Its purpose was to keep speech alive on the formally closed streets. Some 2,500 people paraded in San Diego in protest on the day the regulation took effect, and Wobblies began flouting the law by speaking in the forbidden zone. The Wobblies gradually assumed leadership of the struggle, for which they were attacked with fire hoses and arrested and brutally beaten, sometimes until they lost consciousness. The police killed one I.W.W. speaker; a local mob tarred another. At one point a mob of armed vigilantes rounded up everyone they suspected of Wobbly affiliation, marched them to a suburb, forced them to kiss the American flag and sing the “Star Spangled Banner,” and made them run a gauntlet of clubs and whips. Whitney was outraged. Others were not: the San Diego Tribune suggested that all the demonstrators, whom it called “excrement,” should be killed.

The Wobblies were victims of state-supported violence, but they were scarcely angelic themselves. Their free speech fights seemed to be
designed less to protect speech than to taunt authorities into filling the jails with Wobblies, so that they could be seen as martyrs and gain the resultant publicity. As Anita Whitney’s trial would document, individual Wobblies frequently took the law into their own hands. During the San Diego free speech fight some slashed automobile tires and turned downtown San Diego into such an unpleasant place that merchants complained that their customers were avoiding the area. Wobbly rhetoric during the fight was frightening to many in the city and elsewhere. “We are opposed to the existing order; we are against it from bottom up,” a Wobbly speaker proclaimed to members of San Diego’s First Baptist Church as the violence raged. “We do not respect the laws or flag of the United States. It is a symbol of oppression. . . . We propose to overthrow the whole system and give every man a chance. We do not believe in a God. The preaching of the gospel of Jesus Christ has been the greatest curse in the world because it preaches submission to the present order.”

The violence became so bad that California governor Hiram Johnson called for a report by a special investigator. It corroborated all the claims of mistreatment that the Wobblies had made, concluding that their protest had consisted of peaceful if noxious speech but that it had been met with “excessive brutality.” San Diego officials countered by asking for help from the U.S. Department of Justice, charging that the Wobblies were conspiring to overthrow the government. The department investigated but, in spite of President William Howard Taft weighing in and declaring that “we ought to take decided action” against the Wobblies, found no evidence of a conspiracy. The fight gradually petered out, but the free speech fights made the Wobblies front-page news throughout the West and elsewhere in the nation. The publicity was not positive; the I.W.W. was increasingly coming to be seen as a threat to civilized society.

To Whitney, the opposition to the free speech fight was a denial of Thomas Jefferson’s belief in the importance of speech. “Free speech is free speech,” she wrote in the San Francisco Daily News in 1926, referring back to those fights. “You either stand for it or you do not. I took it seriously.” She took equally seriously the words of I.W.W. and Socialist leaders who went to San Diego to help. The fight made her realize that “the only struggle worthwhile” if men and women were to be free was “the industrial struggle,” which would give people “the independence to choose their path in life, and to control the conditions under which they
work and live, and . . . this required owning the tools of production.” But she did not yet know “how it was to come about.”

Californians’ perception of threat from the left was exacerbated when, in the spring of 1911, the Los Angeles Times building was dynamited. Los Angeles trade unions were engaged in a general strike, aimed at enforcing a closed shop—a system requiring workers in a company to join the workplace union—and the Times had been leading a citywide fight against the effort. Twenty-one people were killed in the blast. The police investigation resulted in the arrest of three members of the Structural Iron Workers and Typographical Union and the highly publicized trial of two of them. The I.W.W. called for a general strike to demand their release and blasted the legal system for anti-worker bias. Attorney Clarence Darrow, famed for his courtroom advocacy, was brought in by the unions and got the men to plead guilty in order to avoid the death penalty, although it was unclear whether or not they were actually guilty.

The earlier antiunion feeling in California was strengthened by Californians horrified at the event. A journalist would comment a century later in the Los Angeles Times that “in its day, the Times bombing was equivalent to the 2001 destruction of the World Trade Center.” Although the police found no evidence of I.W.W. involvement, it was viewed as the most radical of the groups, and its press became particularly bad. “Probably no organization in America was so feared and hated . . . as the I.W.W. before and during the first World War,” labor historian Philip Foner noted—or, in Melvyn Dubofsky’s words, “The hobo Wobbly had replaced the bearded, bomb-carrying anarchist as a bogeyman in the middle-class American’s fevered imagination.” Karl Marx and Friedrich Engels had proclaimed in the preamble to The Communist Manifesto, a work that the Wobbly leadership knew well, that “A spectre is haunting Europe—the spectre of Communism.” That might have been paraphrased in the early decades of the twentieth century as “A specter is haunting the American West—the specter of the Wobblies.”

Anita Whitney saw it differently. She supported the I.W.W. because her view was closer to the one reflected in an Atlantic Monthly article of 1917: “The American I.W.W. is a neglected and lonely hobo worker, usually malnourished and in need of medical care.” To Whitney, the I.W.W.
was a symptom of an industrial society that had run amok, rejecting the humanitarian values she considered to be the underpinnings of the country for which her ancestors had fought. The urban slums she had worked in, the factory conditions she heard and read about: all put her into direct disagreement with the more sanguine view of industrialization held by the majority of Americans in general and of Californians in particular. Whitney was becoming more and more sympathetic to the Wobblies at precisely the moment when popular feeling was turning in the opposite direction. That would be crucial when, only a few years later, she was put on trial.

Her view and the popular image of the I.W.W. came into sharp conflict during the August 1913 Wheatland Hops Riot. The riot took place north of Sacramento, on the Wheatland Ranch run by George Durst, the state’s largest agricultural employer. Needing 1,500 workers for the summer harvest, Durst had deliberately advertised for 2,800 and promised high wages. Once 2,800 migrant workers of thirty nationalities appeared, Durst lowered the promised wages to 75 cents a day and occasionally, as the season went on, even less. Two to three hundred of the workers were children. Most of them and their families slept in the open fields, although a few workers were able to rent a tent from Durst for $2.75 a week. The temperature soared to 110 degrees, and there was no water available in the fields. Instead, a Durst cousin sold lemonade for five cents a glass. There were eight fetid outdoor toilets for 2,800 people. Typhoid, dysentery, and diarrhea ran rampant.

There was a nucleus of thirty Wobblies among the workers, and they began a successful drive to organize the others. At the beginning of August a committee was elected to ask Durst for improvements such as better wages, drinking water to be given to the workers in the fields twice a day, and separate toilets for men and women. Durst refused and fired the committee’s leaders. A day later, the Wobblies called a camp meeting that drew 2,000 people. While it was still in progress, a frightened Durst, not knowing what would happen next, sent for help. The Yuba County sheriff arrived with a posse that included the local district attorney, who was also Durst’s lawyer. Instead of a mob, they found workers and their families singing Wobbly songs. The men nonetheless began elbowing their way through the workers so as to arrest Richard Ford, the chief Wobbly organizer, but had a hard time moving through the angry crowd.
One worried deputy fired a shot in the air, setting off a riot. It resulted in the death of two workers, a deputy, and the district attorney, and in scores of wounded.

The governor responded by sending the National Guard to patrol the ranch for the remainder of the season. Vigilantes raced across California farmlands, terrorizing anyone suspected of sympathizing with the Wobblies, while sheriff’s deputies arrested dozens of others all over the state. California newspapers depicted the Wobblies as saboteurs and murderers. Two Wobblies, including one who was not at the meeting, were later convicted of second degree murder and sentenced to life imprisonment. The authorities acknowledged that the men were not physically responsible for the deaths but claimed they had caused the deaths by organizing and using violent language.

A horrified Whitney threw herself into the fight for the men’s release, speaking at public meetings and raising money for the I.W.W. defense committee. She joined groups of labor leaders and liberals who pled unsuccessfully with the governor for a pardon. Then, feeling that none of that made any difference to a political and economic system that was hopelessly flawed, Whitney joined the Socialist Party.