Outgrowing the Compact of the Fathers: Equal Rights, Woman Suffrage, and the United States Constitution, 1820-1878

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Outgrowing the Compact of the Fathers: Equal Rights, Woman Suffrage, and the United States Constitution, 1820–1878

Ellen Carol DuBois

One aim of this special symposium on the United States Constitution is to depict the Constitution as a historically contested arena. In particular, the history of constitutional demands by popular movements counters the Reagan administration's exclusive focus on the words and intents of the Framers. In the midst of the Constitution's bicentennial celebration, it is especially important for historians to recall the radical tradition of equal rights that flourished as a part of nineteenth-century republican thought. Women's rights demands were an important aspect of that popular nineteenth-century republicanism. From its inception to the present, the women's rights movement has pursued rights not explicitly mentioned in the Constitution and has sought to incorporate them into an expanded understanding of its meaning.

From one perspective, the conviction at the heart of radical republicanism, that an expansion of "rights" would help create a more egalitarian society, reached its peak with the enactment—and its nadir with the judicial disposition—of the Reconstruction amendments. However, from a women's rights perspective, the radical republican heritage extends much further. Not only did the struggle for political equality for women reach into the twentieth century, but the drive for the Equal Rights Amendment, as well as intense debate about a whole other realm of rights—sexual and reproductive—keeps the constitutional issue of women's rights alive today.

In this paper on the nineteenth-century movement for women's rights, I have two concerns. One is to integrate women's rights and the other equal rights politics of the nineteenth century—the abolition and black suffrage movements and labor reform—into a comprehensive history of radical republicanism. My other concern is to specify the place, and the possibilities, of the politics of equal rights in women's history. Concepts of rights, individualism, and equality have had a distinct impact

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on the way that women have understood themselves and have expressed their sense of their proper position in society.

The following overview of the nineteenth-century women's rights movement has three parts. The first part, which covers the antebellum period, establishes that women's rights ideas were linked to other radical equal rights traditions and were widely understood as alternatives to "separate spheres" notions of the subordinate place of women in the social order. With the passage of the Thirteenth Amendment, equal rights politics in general, and the women's rights movement in particular, entered a bolder phase that focused on constitutional change. That is the subject of the second part. During Reconstruction the demand for woman suffrage flourished because it was the most forceful way of expressing—and the most powerful tool for achieving—women's equality with men. At first, women's rights advocates demanded political rights for all without regard to sex or race. Once the Fourteenth and Fifteenth amendments were ratified without woman suffrage, however, they began to argue for the equality not of individuals but of sexes. Thus began a long process by which ideas about the fundamental differences between women and men began to be subsumed within a women's rights framework.

The termination of the constitutional amendment process in 1870 did not immediately signal the end of hopes for women's equal political rights but, instead, heightened struggle over the meaning of the Constitution as amended. That struggle is the subject of the third part. Determined to enforce their egalitarian vision of constitutional rights, women's rights women undertook direct political action. They also began to extend principles of equal rights into the whole realm of "personal rights," of rights over and to one's own body. Women's rights arguments figured significantly in important Supreme Court decisions about the meaning of the Reconstruction amendments. By the mid-1870s equal rights interpretations of the Constitution had been defeated, and the women's rights movement itself began to move in less democratic, more conservative directions. But the possibility of equal rights politics for transforming women's place had not been exhausted, only temporarily stalled.

The Demand for Women's Political Equality, 1820–1860

The term "women's rights"—meaning the equality of women with men—predates the call for woman suffrage by several decades. Women's rights demands, especially those directed against men's economic power over their wives, were nurtured in the British Owenite movement and brought to the United States by Frances Wright. Wright, a leader in the Jacksonian workingmen's movement, was the first public figure in United States history to advocate women's rights. Her lead was followed in this country by Ernestine Rose, a Jewish immigrant from Poland, and by Robert Dale Owen, son of the Owenite movement's leader, Robert Owen. During the 1830s and early 1840s, Rose and Owen advocated a program of women's economic and marital—though not political—rights. They and their comrades lobbied, often suc-

Frances Wright, Owenite socialist feminist. Elizabeth Cady Stanton, Susan B. Anthony, and Matilda J. Gage commissioned this etching for the frontispiece of the *History of Woman Suffrage* (vol. I, 1882), thus placing themselves in the political tradition begun in the United States by Wright.

cessfully, for legal reforms in married women's economic position and for liberalized grounds for divorce, especially for women.[1]

Their women's rights program, with its hostility to the family and its emphasis on women's economic independence, provided an alternative to the ideology of separate spheres that dominated thinking about women's place by 1830. In reaction, separate spheres ideology became more elaborate, more defensive, and more openly political. Catharine Beecher began her influential 1841 treatise on "woman's sphere" by addressing "those who are bewailing themselves over the fancied wrongs and injuries of women in this Nation." The thrust of her argument was to reconcile the general principles of democracy and equal rights with women's "subordinate station" in the family and with their lack of power "in making and administering laws." Beecher quoted Alexis de Tocqueville, who was concerned to refute the "clamor for the rights of woman" in the United States by contrasting it with American women's eager willingness to embrace the limitations of the married state.[2] Despite the in-

[1] Celia Morris Eckhardt, *Fanny Wright: Rebel in America* (Cambridge, Mass., 1984), 1–3, 282–83; Barbara Taylor, *Eve and the New Jerusalem: Socialism and Feminism in the Nineteenth Century* (New York, 1983), 1–18, 65–70.

[2] Catharine E. Beecher, *A Treatise on Domestic Economy, for the Use of Young Ladies at Home, and at School* (Boston, 1841), 4, 6–7, 9.

Ernestine Rose, freethinking feminist and Wright's protégé. This etching is the second illustration in the *History of Woman Suffrage* (vol. I, 1882).

tensified debate, however, the impact of the women's rights program during the 1830s and early 1840s was limited, above all because most of its advocates were men who had little faith in women's own capacity for reform activism. Without a way to bring women themselves into politics—in other words, without a program for political rights for women—the political force supporting women's rights had to come from other than women, and would therefore be limited.

The notion of political equality for women was so radical that for a long time it was virtually impossible even to imagine woman suffrage. Within the democratic political tradition, the emphasis on independence as a condition for possession of the suffrage worked to exclude women, who were dependent on men almost by definition. Women had an honored place in early republican thought, but they were never considered men's equals, nor was it regarded as appropriate to demand political rights for them. During the 1820s and 1830s, as popular political passions increased, so did the obstacles to the political inclusion of women.[3] Who besides

[3] Linda K. Kerber, *Women of the Republic: Intellect and Ideology in Revolutionary America* (Chapel Hill, 1980), 11–12; Ellen Carol DuBois, *Feminism and Suffrage: The Emergence of an Independent Women's Movement in America, 1848–1869* (Ithaca, 1978), 40–47; Ellen Carol DuBois, "Radicalism of the Woman Suffrage Movement: Notes toward the Reconstruction of American Feminism," *Feminist Studies*, 3 (Fall 1975), 63–71.

women could provide the "virtue" needed to protect the republic from the rampant but necessary self-interest of men?

The barrier to the proposition of equal political rights for women was broken within a movement that was not initially political, but within which female activism flourished—abolitionism. Whereas the labor reformers of the 1820s and 1830s advocated women's rights without having much faith in women's own activism, the evangelical movements of the 1830s depended on women's activism.[4] Of the moral reform movements, abolitionism was the most radical and contributed the most to the emerging sensibility of female self-assertion. The abolitionists' indictment of the absolute immorality of slaveholding established a much stronger political language than did workingmen's republicanism for describing the tyrannical abuse of power; women quickly put that language to good use in indicting men's tyranny over them.[5] As arguments against the institution of chattel slavery, abstract ideas about equality and individual rights gained real social meaning. In particular, abolitionists paid attention to the misuses of the slave's body, thus illuminating themes of sexual and marital abuse among free women as well.

In its first decade, radical abolitionism repudiated the political arena as fundamentally corrupt and the Constitution as inherently proslavery; that hostility to politics helped women's activism to flourish within the movement. But, as Eric Foner has made clear, abolitionism had eventually to reconcile itself with popular reverence for the Constitution, with the republican political tradition in its radical form. The rise of political abolitionism in the 1840s temporarily increased women's isolation from politics but eventually lessened it. When the American Anti-Slavery Society split in 1839, political abolitionists, largely male, were on one side, and women abolitionists, mostly Garrisonian, were on the other.[6]

Within a decade, however, that seeming impasse had generated the demand for woman suffrage. The woman who articulated the proposition that women should have the same political rights as men had equally strong links to female and to political abolitionism. She was Elizabeth Cady Stanton, protégé of Lucretia Mott, cousin of Gerrit Smith, and wife of Henry B. Stanton. She came to understand that a fundamental change in women's political status was the key to their comprehensive equal rights. Just as her husband was participating in the development of a political and constitutional approach to antislavery, she was inventing a political and constitutional approach to women's rights. In the summer of 1848, while Henry Stanton

[4] Sean Wilentz, *Chants Democratic: New York City & the Rise of the American Working Class, 1788–1850* (New York, 1984), 248; Mary P. Ryan, *Cradle of the Middle Class; The Family in Oneida County, New York, 1790–1865* (New York, 1981), 105–44; Carroll Smith Rosenberg, "Beauty, the Beast and the Militant Woman: A Case Study in Sex Roles and Social Stress in Jacksonian America," *American Quarterly*, 23 (Oct. 1971), 562–84; Nancy A. Hewitt, *Women's Activism and Social Change: Rochester, New York, 1822–1872* (Ithaca, 1984), 97–138.

[5] See especially the writings of Angelina Grimké and Sarah Grimké. Sarah, for example, repudiated the "flattering language of man since he laid aside the whip as a means to keep woman in subjection." Sarah M. Grimké, *Letters on the Equality of the Sexes and the Condition of Woman: Addressed to Mary S. Parker, President of the Boston Female Anti-Slavery Society* (Boston, 1838), 17.

[6] Eric Foner, *Free Soil, Free Labor, Free Men: The Ideology of the Republican Party before the Civil War* (New York, 1970), 73–102; Aileen S. Kraditor, *Means and Ends in American Abolitionism: Garrison and His Critics on Strategy and Tactics, 1834–1850* (New York, 1967), 39–77.

was organizing the Free Soil party in Buffalo, New York, Elizabeth Cady Stanton called together the first women's rights convention in Seneca Falls.

The Seneca Falls "Declaration of Sentiments and Resolutions"—an adaptation of the Declaration of Independence—had as its central idea protest against the denial to women of "this first right of a citizen, the elective franchise, thereby leaving her without representation in the halls of legislation, . . . oppressed on all sides." The declaration went on to enumerate the whole range of women's grievances, including women's civil death in marriage, their lack of rights to their own wages, their taxation without representation, and their treatment under divorce and guardianship laws that favored husbands over wives. Despite the comprehensive significance of women's disenfranchisement, which the declaration demonstrated, the convention's participants hesitated before resolving that "it is the duty of the women of this country to secure to themselves their sacred right to the elective franchise."[7] As women they were wary of such a clear-cut assertion of sexual equality, and as abolitionists they were suspicious of, and hostile to, politics. But the logic of women's rights led straight to political equality, and the woman suffrage resolution at Seneca Falls—the first formal assertion of the equal rights of women to the political franchise—prevailed.

The demand for political equality could inspire a women's rights movement among women from 1848 on because political democracy was simultaneously a widely held belief and a radical assertion when applied to women. Political equality for women rested on the popular republican tradition that insisted on equal rights for all, with the franchise the crowning jewel of individual freedom. Women's rights advocates could speak of their demands in terms of the "rights, for which our fathers fought, bled, and died," seeking only to claim women's place in the glorious American political experiment. They enjoyed the confidence of appealing to a virtually hegemonic republican tradition. "We do not feel called upon to assert or establish the equality of the sexes," declared a statement issued by the Second National Woman's Rights Convention in 1851 (though its authors believed fervently in that equality). "It is enough for our argument that natural and political justice . . . alike determine that rights and burdens—taxation and representation—should be coextensive; hence, women as individual citizens . . . liable to be . . . taxed in their labor and property for the support of government, have a self-evident and indisputable right, identically the same right that men have, to a direct voice in the enactment of those laws and the formation of that government." Made possible by the spread of women's reform activism, the demand for woman suffrage was strengthened by the increasing attraction that popular politics began to have for women, as well as for men, during the 1850s.[8] From then on, women's rights began to move into the American political mainstream.

[7] Declaration of Sentiments and Resolutions," in *The Concise History of Woman Suffrage*, ed. Mari Jo Buhle and Paul Buhle (Urbana, 1978), 94–98.

[8] "Syracuse National Convention, Syracuse, New York, September 8–10, 1852," in *Concise History of Woman Suffrage*, ed. Buhle and Buhle, 117; "Second National Convention, Worcester, Massachusetts, October 15–16, 1851," in *ibid.*, 112; Lori D. Ginzburg, "'Moral Suasion Is Moral Balderdash': Women, Politics, and Social Activism in the 1850s," *Journal of American History*, 73 (Dec. 1986), 601–22.

As the demand for woman suffrage became linked with a widely held republican faith, it also expressed the desire of some women for a radically different position in society than women's traditional one. Woman suffrage carried with it the unmistakable message of women's desire for independence, especially from men within the family. "The Right of Suffrage for Women is, in our opinion, the corner-stone of this enterprise," resolved the 1851 women's rights convention, "since we do not seek to protect woman, but rather to place her in a position to protect herself." A moderate version of the theme of independence emphasized the importance of individual self-development for women, much as Margaret Fuller had in her 1845 manifesto, *Woman in the Nineteenth Century*. The more radical arguments for women's political independence suggested that men's and women's interests were not only distinct but also antagonistic. Elizabeth Cady Stanton could always be counted on to ring that note. She believed that "the care and protection" that men give women was "such as the wolf gives the lamb, the eagle the hare he carries to the eyrie!!"[9]

Underlying both versions of the claim that women needed greater independence from men was the notion of women as individuals. "We believe that woman, as an accountable being, can not innocently merge her individuality in that of her brother, or accept from him the limitations of her sphere," explained Ann Preston at the 1852 Westchester Convention in Pennsylvania.[10] The notion that women's individuality, like men's, was a moral and political absolute ran counter to widely held ideas that women's selflessness, their service to others, was the ethical and emotional core of the family. Moreover, the emphasis on individuality implicitly undermined the first premise of separate spheres ideology: the idea of categorical sexual difference, that is, that all women differed from all men insofar as women were the same as each other. Because of its venerable republican heritage and because of its ability to express women's growing desire for independence and individuality, the demand for woman suffrage attracted many women—especially writers, physicians, and other pioneering professionals—who had never before identified themselves with women's rights.

The new focus on political equality did not narrow the scope of the women's rights movement but enlarged it, particularly to include the issue of wives' subordination to their husbands. Ideologically, the women's rights consensus that centered around woman suffrage emboldened egalitarians like Ernestine Rose and Stanton to elaborate the implications of individual rights principles for the family. Women's position in marriage was criticized, in language borrowed from abolitionism, as a violation of the most elementary individual right, the right to control the uses of one's body. Throughout the 1850s Lucy Stone spoke repeatedly against the common

[9] "Second National Convention," 112; Margaret Fuller Ossoli, *Woman in the Nineteenth Century and Kindred Papers Relating to the Sphere, Condition and Duties of Woman* (Boston, 1855), 96; Elizabeth Cady Stanton, "Address at Seneca Falls," in *Elizabeth Cady Stanton, Susan B. Anthony: Correspondence, Writings, Speeches*, ed. Ellen Carol DuBois (New York, 1981), 33.

[10] Elizabeth Cady Stanton, Susan B. Anthony, and Matilda Joslyn Gage, eds., *History of Woman Suffrage*, vol. I: *1848–1861* (Rochester, 1881), 364.

law of marriage because it "gives the 'custody' of the wife's person to her husband, so that he has a right to her even against herself." When contracting her own marriage, she protested against all manifestations of coverture by taking the unheard-of step of refusing her husband's name. During the decade legislative gains gave married women rights to their own earnings and property, rights that constituted a fundamental challenge to the economic inequalities of marriage.[11]

Finally, at the Tenth National Woman's Rights Convention in 1860, Stanton made equal rights criticisms of the marriage relation explicit by reintroducing the old Owenite demand for liberalization of divorce laws. What was important about Stanton's resolutions was not her vehement indictment of the miserable underside of women's married lives—previous women's movements had targeted domestic violence, and Stanton used those traditions in attacking the "legalized prostitution" of coerced marital intercourse and unwilling maternity. What was new was that Stanton based her indictment of women's position in marriage on the supremacy of individual rights, and on the systematic violation in marriage of "the inalienable right of all to be happy," and that she advocated divorce and remarriage, not resignation, as the solution to women's marital misery. The philosophical basis for her position was utilitarian and radically individualist. The relation of marriage had "force and authority," she argued, only to the degree that it made the individuals in it happy. In essence, she contended that marriage had no independent standing as an institution and certainly no moral supremacy over the rights and inclinations of the individuals who entered into it. Inasmuch as women's lives were so much more circumscribed by marriage than were men's, unhappy marriages were infinitely more destructive to wives than to husbands, and on that ground freedom to leave a bad marriage and to form a better one would benefit women more than men.[12]

Participants in the 1860 convention engaged in a heated debate over Stanton's resolutions. Antoinette Brown Blackwell, the first ordained woman minister in the United States, argued that marriage as an institution established the limits of the principles of individual rights—that it was a relation in which the participants incurred "obligations," not only to their children but also to each other, that they could not morally forfeit. As for divorce as a solution to women's marital misery, Blackwell believed that "the advantage, if this theory of marriage is adopted, will not be on the side of woman, but altogether on the side of man." The issue at the heart of the 1860 debate—the fact that women are equally at economic risk in and outside marriage—continues to plague feminists today.[13] But even in the mid-nineteenth century, Stanton's equal rights approach established basic principles

[11] "Syracuse National Convention," 123; "Second National Convention," 107; Henry B. Blackwell and Lucy Stone, "Protest," in *Concise History of Woman Suffrage*, ed. Buhle and Buhle, 151–52; Norma Basch, *In the Eyes of the Law: Women, Marriage, and Property in Nineteenth-Century New York* (Ithaca, 1982), 162–99.

[12] Smith Rosenberg, "Beauty, the Beast and the Militant Woman"; "Debates on Marriage and Divorce, Tenth National Woman's Rights Convention, May 10–11, 1860," in *Concise History of Woman Suffrage,* ed. Buhle and Buhle, 170–89.

[13] "Debates on Marriage and Divorce," 182. For a modern feminist study of the negative consequences of divorce law liberalization for women, see Leonore Weitzman, *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America* (New York, 1985), 357–401.

that Blackwell had to concede, in particular, the principle of a woman's right to self-determination over her own body.

The debate over divorce reached a stalemate in 1860, with all women's rights leaders agreeing that the issue of women's position in the family belonged on their platform but disagreeing about whether the principle of individual rights was the best guide to resolving it. The issue was not picked up again for over a decade, at which time the women's rights movement was simultaneously exploring the collective grievances of women and insisting, with unparalleled militancy, on equal rights as the only framework for addressing them. Meanwhile the events of the Civil War had given new meaning and possibility to the movement's foremost demand, political rights, from which the subtheme of personal rights was derived. Political equality had been the first principle of the women's rights movement for almost two decades, but it was the historical consequences of the Civil War that began to make it a political possibility.

Women's Rights and Universal Suffrage, 1863–1869

In the wake of the Civil War, equal rights was elevated to the level of constitutional principle. The radical politics of the period focused on constitutional change. Its exponents regarded natural rights in the most egalitarian light, considered the right to vote a natural right, and urged the mobilization of national power and sovereignty to enact and ensure the equal access of all to that right.[14] The faith in constitutional revision and interpretation among believers in equal rights during Reconstruction was virtually unlimited, for if amending the Constitution could abolish slavery, what could it not do? The women's rights movement, already committed to an egalitarian and political version of individual rights, shared deeply in that reverent, yet activist, attitude toward the Constitution. Much as debates over women's rights during the 1840s and 1850s had focused on the meaning of the Bible, in the 1860s and 1870s they focused on the Constitution as their fundamental text.

Thus in 1863 congressional radicals turned to the women's rights movement for support in passing the first of the Reconstruction amendments, the constitutional abolition of slavery. Women's rights leaders, enthusiastic advocates of "A NEW CONSTITUTION in which the guarantee of liberty and equality to every human being shall be so plainly and clearly written as never again to be called in question," were eager to help and organized a campaign of popular support, the first such effort on behalf of a proposed constitutional amendment. They collected over four hundred thousand signatures—Robert Dale Owen, now head of the American Freedmen's Inquiry Commission worked closely with them—and Sen. Charles

[14] David Montgomery, *Beyond Equality: Labor and the Radical Republicans, 1862–1872* (New York, 1967), 80–81; Judith Baer, *Equality under the Constitution: Reclaiming the Fourteenth Amendment* (Ithaca, 1983), 59.

Sumner gave them much of the credit for the ultimate passage of the Thirteenth Amendment.[15]

Once slavery was abolished, the political status of the former slaves became the crucial constitutional question. Black suffrage was the key, both to the freedmen's own future and to the fortunes of the Republican party. Women's rights leaders were determined to take advantage of the constitutional crisis that swirled around black suffrage. In their work on behalf of the Thirteenth Amendment, they took every opportunity to point out that the principle of unconditional emancipation led directly to that of universal enfranchisement. In Stanton's memorable metaphor, the black suffrage issue opened the "constitutional door," and women intended to "avail ourselves of the strong arm and blue uniform of the black soldier to walk in by his side."[16]

Reconstruction strengthened the belief that the right to vote was a natural right. The right to suffrage was either the supreme natural right, as Sumner argued, or the necessary protection of all other natural rights, as George William Curtis contended at the New York Constitutional Convention in 1867. In either case popular suffrage, as the sovereign power, was inherent, not bestowed. "For God gave [the right of suffrage] when he gave life and breath, passions, emotions, conscience, and will," declared Parker Pillsbury. "It was man's inalienable, irrepealable, inextinguishable right from the beginning." As Stanton consistently put it, the republican lesson of the war was that popular sovereignty, the equal political rights of all individuals, preceded and underlay governments and nations, constitutions and laws.[17]

The belief that the right to vote was the individual's natural right made the case for woman suffrage much stronger, more self-evident than it had ever been. "In considering the question of suffrage," Stanton declared in 1867, "there are two starting points: one, that this right is a gift of society, in which certain men, having inherited this privilege from some abstract body and abstract place, have now the right to secure it for themselves and their privileged order to the end of time. . . . Ignoring this point of view as untenable and anti-republican, and taking the opposite, that suffrage is a natural right—as necessary to man under government, for the protection of person and property, as are air and motion to life—we hold the talisman . . . to point out the tyranny of every qualification to the free exercise of this sacred right."[18]

Given those premises, it was only necessary to appeal to the natural rights women

[15] Elizabeth Cady Stanton, Susan B. Anthony, and Matilda Joslyn Gage, eds., *History of Woman Suffrage*, vol. II: *1861–1878* (Rochester, 1881), 85.

[16] Elizabeth Cady Stanton, "'This Is the Negro's Hour,'" in *Concise History of Woman Suffrage*, ed. Buhle and Buhle, 219. Elizabeth Cady Stanton used the same "door" metaphor, but with racist overtones, to ask whether "the representative women of the nation . . . had better stand aside and see 'Sambo' walk into the kingdom first." *Ibid.*

[17] "Woman's Rights Convention, New York City, May 10, 1866, including Address to Congress adopted by the Convention," in *Concise History of Woman Suffrage*, ed. Buhle and Buhle, 226; Stanton, Anthony, and Gage, eds., *History of Woman Suffrage*, II, 206, 281, 291.

[18] Stanton, Anthony, and Gage, eds., *History of Woman Suffrage*, II, 185.

held in common with all other persons. Rather than argue that women had a special need or capacity for the franchise, women's rights advocates regarded any mention of race or sex as suspect, as a reference to the inferiority of women and Negroes. "To discuss this question of suffrage for women and negroes, as women and negroes, and not as citizens of a republic," Stanton argued, "implies that there are some reasons for demanding this right for these classes that do not apply to 'white males.'" In the Reconstruction-era approach to women's enfranchisement, race and sex were, in Olympia Brown's words, "two accidents of the body" unworthy of constitutional recognition. "The terms 'male' and 'female' simply designate the physical or animal distinction between the sexes," explained Ernestine Rose, who had always insisted that the distinction of sex was the enemy of women's freedom. "Human beings are men and women, possessed of human faculties and understanding, which we call mind; and mind recognizes no sex, therefore the term 'male,' as applied to human beings—to citizens—ought to be expunged from the constitution and laws as a last remnant of barbarism."[19]

While the Republican party discussed the constitutional disposition of black suffrage, women's rights leaders insisted that the nation be reconstructed not on the basis of special cases designed for "anomalous beings" but on the fundamental principle of universal suffrage. "To bury the black man and the woman in the citizen," they organized the American Equal Rights Association with the goal of incorporating black suffrage and woman suffrage into the overarching demand for universal suffrage.[20]

The Reconstruction-era tendency to regard the difference of sex, and of race, as "incidental" simultaneously advanced and retarded the women's rights movement. Undoubtedly it lent a certain abstraction to the discussion of women's rights, which can be measured by the paucity of discussion of concrete grievances—sexual, economic, domestic—from women's rights platforms in those years. Yet, the emphasis on the equal rights of all individuals carried with it the militant confidence of absolute principle and the intention to abolish female subordination as totally as slavery.

One strength of the Reconstruction-era approach was that it focused more attention on black women than ever before—or after—in the long drive for woman suffrage. A framework that disregards race and sex in favor of our common humanity and individual rights ironically can include, even focus on, black women, whereas a discourse that separates out, and too often counterposes, blacks and women tends to obscure the existence of those persons who are both. No doubt some of the Reconstruction-era emphasis on black women was a way to introduce women's rights into a political dialogue that was largely about race, but it was not all so opportunistic. Sojourner Truth spoke frequently from the women's rights platform in the 1860s and, despite the terrific pressure not to delay the freedmen's enfranchisement, was in favor of holding out for universal suffrage. Frances Dana Gage, a white advocate of women's rights active in the Bureau of Refugees, Freedmen, and Abandoned

[19] *Ibid.*, 185, 241, 356.
[20] *Ibid.*, 174, 185.

Lands, appeared often at women's rights conventions where she argued for political rights for black women. Even Stanton, whose capacity for invidious racial distinctions would soon become clear, now directed her arguments to the condition of black women. A few Reconstruction-era women's rights activists began to explore what it might mean to put black, not white, women at the center of the movement's concerns. Women's capacity for resistance, not their weakness, could be emphasized. Thinking of the freedwomen she knew, Gage envisioned "the strength, the power, the energy, the force, the intellect, and the nerve, which the womanhood of this country will bring to bear" once enfranchised.[21]

Given the Republican party's determination to draw the line at black suffrage, however, the political claims of women and of freedmen were increasingly antagonistic. Within reform circles, former allies—Elizabeth Cady Stanton and Wendell Phillips, Susan B. Anthony and Frederick Douglass—divided bitterly over whether to base Reconstruction on black suffrage or on universal suffrage. Each faction staked its claim on different ground. The champions of black suffrage spoke in terms of freedmen's historically specific needs as a group and of the ballot as an instrument for their protection. Douglass's position was that when women were "dragged from their houses and hung upon lamp-posts"—he meant white women—their need for the ballot would be as great as that of the black man.[22]

By contrast the universal suffrage argument of the women's rights movement was more individualist and lacked the urgent power of contemporary crisis. Possession of the ballot, its proponents claimed, benefited the victims of race and sex discrimination alike by raising the individual out of degradation and dependence. Susan B. Anthony developed that line of argument, frequently linking enfranchisement with the liberating aspects of free wage labor. "I want to inquire whether granting woman the right of suffrage will change anything in respect to the nature of our sexes," Douglass asked her. "It will change the nature of one thing very much, and that is the dependent condition of woman," she answered. "It will place her where she can earn her own bread, so that she may go out into the world an equal competitor in the struggle for life." Anthony, the only self-supporting Reconstruction-era women's rights leader, revived and restated the 1830s artisan republican case for political rights in feminist terms, a tendency reinforced by the women's rights movement's tactical alliance with postwar Democrats.[23]

The failure of the universal suffrage campaign in the face of the political realities of Reconstruction can be read in the language of the Fourteenth Amendment. The amendment included the first reference in the Constitution to the distinction of sex and to the inferiority of women by specifying the number of "male citizens" as the basis of congressional representation. The comparison with the Constitution's three-fifths clause, written eighty years earlier, is obvious. Just as the founders were un-

[21] *Ibid.*, 193, 197, 211–13, 274.

[22] DuBois, *Feminism and Suffrage*, 53–104; "Debates at the American Equal Rights Association Meeting, New York City, May 12–14, 1869," in *Concise History of Woman Suffrage*, ed. Buhle and Buhle, 258.

[23] Ida Husted Harper, ed., *The Life and Work of Susan B. Anthony* (3 vols., Indianapolis, 1898–1908), I, 324; Stanton, Anthony, and Gage, eds., *History of Woman Suffrage*, II, 404.

willing to admit that the slave's status contradicted the general principles of natural rights, Reconstruction-era politicians were unwilling to acknowledge the strength of women's political claims. In both cases, language was introduced that insulated the subordinate group's status from constitutional interference. Senator Sumner told Stanton that he "wrote over nineteen pages of foolscap to get rid of the word 'male' and yet keep 'negro suffrage' as a party measure intact; but it could not be done." Women's rights leaders denounced the Fourteenth Amendment as a "desecration." "If that word 'male' be inserted as now proposed," Stanton predicted to her cousin Gerrit Smith, "it will take us a century at least to get it out again."[24]

The Fifteenth Amendment represented a more powerful defense of the freedmen's political rights, but that only underlined the Republicans' refusal to include discrimination by sex with that by race, color, and previous condition of servitude in the constitutional guarantee of political rights. Even Ernestine Rose, an especially strong advocate of equal rights, had to admit at this point that the universal suffrage approach had failed women and that they might do better to find new grounds for their claim for political rights. "Congress has enacted resolutions for the suffrage of men and brothers. They don't speak of the women and sisters," she declared. "I propose to call [our movement] Woman Suffrage; then we shall know what we mean." Women's rights leaders abandoned the American Equal Rights Association and formed a new organization, the National Woman Suffrage Association (NWSA), to assert a new version of their demand.[25]

The impact of the defeat of universal suffrage began to generate new kinds of arguments for women's political rights. Previously the case for suffrage had consistently been put in terms of the individual rights of all persons, regardless of their sex and race. Angered by their exclusion from the Fifteenth Amendment, women's rights advocates began to develop fundamentally different arguments for their cause. They claimed their right to the ballot not as individuals but as a sex. The distinction of sex, they argued, was not irrelevant but central to social organization; whereas earlier they had opposed its political recognition as a "desecration," now they called for it. The reason women should vote was not that they were the same as men but that they were different. That made for a rather thorough reversal of classic women's rights premises. In an 1869 speech by Stanton, described in the *History of Woman Suffrage* as "a fair statement of the hostile feelings of women toward the amendments," the shift from one kind of argument to the other is obvious. "The same arguments made in this country for extending suffrage from time to time, to white men, . . . and the same used by the great Republican party to enfranchise a million black men in the South, all these arguments we have to-day to offer for woman," Stanton contended, "and one, in addition, stronger than all besides, the difference in man and woman." Stanton had always ridiculed such arguments as "twaddle." Now even she based her case in the contrast between "masculine" and

[24] Elizabeth Cady Stanton, *Eighty Years and More: Reminiscences, 1815–1897* (New York, 1898), 242; Alma Lutz, *Created Equal: A Biography of Elizabeth Cady Stanton* (New York, 1940), 134.

[25] "Debates at the American Equal Rights Association Meeting," 273.

"feminine" elements. "There is sex in the spiritual as well as the physical and what we need to-day in government, in the world of morals and thought, is the recognition of the feminine element, as it is this alone that can hold the masculine in check," she asserted.[26]

The shift from arguments based on the common humanity of men and women to arguments based on fundamental differences between the sexes has had a parallel in virtually every feminist epoch. That makes it all the more important to identify the historically specific character, sources, and impact of such transitions when they occur. The various versions of "womanhood" that began to appear as the women's rights movement's demand shifted from universal suffrage to woman suffrage had their roots in Reconstruction politics as well as in contemporary intellectual trends.

The argument that women should be enfranchised to bring the "feminine element" into government had a decidedly nationalist edge, which reflected the Fifteenth Amendment's transfer of control over the right of suffrage from the state to the national level. Part of the argument for black suffrage was that enfranchising the freedmen would keep the Republican party in power, thus preserving the victories of the war and strengthening the nation. In arguing that the "feminine element" would elevate national life and "exalt purity, virtue, morality, true religion," woman suffrage partisans were trying to match that nationalist argument and go it one better. Enfranchising the freedmen only promised partisan advantage; enfranchising "woman" would uplift the nation at its very heart, the family. An 1869 woman suffrage convention resolved that the "extension of suffrage to woman is essential to the public safety and to the establishment and permanence of free institutions" because "as woman, in private life, in the partnership of marriage, is now the conservator of private morals, so woman in public life, in the partnership of a republican State, based upon Universal suffrage, will become the conservator of public morals." Here the tendency to see in women a fundamentally different social force than in men served a particularly nationalist ideological purpose. "With the black man you have no new force in government—it is manhood still," Stanton argued, "but with the enfranchisement of woman, you have a new and essential element of life and power." Led by Stanton and Anthony, the NWSA distinguished itself among suffrage organizations by its emphasis on national, as opposed to state, action to enfranchise women. Even though it sometimes worked to amend state constitutions, the NWSA's watchword was "national protection for national citizens."[27]

The new suffrage arguments also contained a strong theme of race antagonism, a reaction to the strategic antagonism between black suffrage and woman suffrage. Whereas the advocates of universal suffrage had claimed comradeship between men

[26] Elizabeth Cady Stanton, "Address to the National Woman Suffrage Convention, Washington, D.C., January 19, 1869," in *Concise History of Woman Suffrage,* ed. Buhle and Buhle, 249–56; William Leach, *True Love and Perfect Union: The Feminist Reform of Sex and Society* (New York, 1984), 147; Stanton, Anthony, and Gage, eds., *History of Woman Suffrage*, II, 318.

[27] Stanton, Anthony, and Gage, eds., *History of Woman Suffrage*, II, 384; "Resolutions and Debate, First Annual Meeting of the American Equal Rights Association, New York City, May 10, 1867," in *Concise History of Woman Suffrage*, ed. Buhle and Buhle, 240; Elizabeth Cady Stanton, Susan B. Anthony, and Matilda Joslyn Gage, eds., *History of Woman Suffrage*, vol. III: *1876–1885* (Rochester, 1886), 73–77.

Susan B. Anthony and Elizabeth Cady Stanton, c. 1870. The Fifteenth Amendment had just been ratified, and suffragists were about to inaugurate their New Departure.
Courtesy Schlesinger Library, Radcliffe College.

of the disfranchised and despised classes and all women, woman suffrage advocates now claimed that the enfranchisement of black men created "an aristocracy of sex" because it elevated all men over all women. Woman suffragists criticized the Fifteenth Amendment because "a *man's* government is worse than a *white* man's government" and because the amendment elevated the "lowest orders of manhood" over "the higher classes of women." The racism of such protests was expressed in hints of sexual violence, in the suggestion that women's disfranchisement would

mean their "degradation," "insult," and "humiliation."[28] Those overtly racist arguments reflected white women's special fury that men they considered their inferiors had been enfranchised before them.

Beginning in the early 1870s, new trends in social scientific thought also encouraged the move from equal rights arguments to essentialist ones. Of particular importance to women's rights partisans was the special role attributed to "woman" by positivists such as Auguste Comte, in the organicist solutions they proposed for social conflict. "The great questions now looming upon the political horizon can only find their peaceful solution by the infusion of the feminine element in the councils of the nation," declared an 1872 woman suffrage resolution. "Man, representing force, would continue . . . to settle all questions by war, but woman, representing affection, would, in her true development, harmonize intellect and action, and weld together all the interests of the human family.[29]

Such new intellectual currents, decidedly scientific and secular, merged with much older and more conservative ideas about sexual difference and female nature. Isabella Beecher Hooker, half-sister of the renowned advocate of female domesticity, Catharine Beecher, began to assume a leadership role among suffragists in 1870. She used the arguments her sister had developed in opposition to women's rights thirty years before to argue *for* political equality for women. She stressed the importance of political equality for mothers because it would permit them to better carry out their responsibilities to their children. "Mothers for the first time in history are able to assert . . . their right to be a protective and purifying power in the political society into which [their] children are to enter." Other suffrage leaders of the period made allied arguments. Phebe Hanaford, an ordained minister, called for woman suffrage on religious grounds, because of the "moral influence that the participation of women in government would have upon the world." Paulina Wright Davis, once a moral reform activist, urged woman suffrage as an antidote to men's corruption, sexual and political alike.[30] "Motherhood," "purity," Christian civilization, and women's duties—all were notions that had traditionally been posed against the demand for women's rights; now they were being assimilated into it.

By the end of the 1870s, such arguments would dominate woman suffrage ideology. The impact of that ideological change was complex. The demand for woman suffrage, in that it claimed the vote for women as women, permitted the cultivation of sex-consciousness far more than had the equal rights and universal suffrage approach. The call for woman suffrage, therefore, was much more effective in forging women into a group with a common status and with a common demand—a

[28] Stanton, "Address to the National Woman Suffrage Convention," 252; Stanton, Anthony, and Gage, eds., *History of Woman Suffrage*, II, 359, 387.

[29] Leach, *True Love and Perfect Union*, 292–322; Stanton, Anthony, and Gage, eds., *History of Woman Suffrage*, II, 493. See also Elizabeth Cady Stanton, "Proposal to Form a New Party, May, 1872," in *Elizabeth Cady Stanton, Susan B. Anthony*, ed. DuBois, 167.

[30] Isabella Beecher Hooker, Susan B. Anthony et al., *An Appeal to the Women of the United States by the National Woman Suffrage and Educational Committee* (Hartford, 1871); Stanton, Anthony, and Gage, eds., *History of Woman Suffrage*, II, 398, 436.

group that would form the popular basis for a women's rights movement. Yet the emphasis on sexual difference steered the women's rights movement away from its egalitarian origins; the movement would ultimately become more compatible with conservative ideas about social hierarchy.

Woman Suffrage and the Meaning of the Reconstruction Amendments, 1870–1878

By inscribing the freedmen's political rights firmly in the Constitution, the ratification of the Fifteenth Amendment threatened to bring the process of constitutional revision, and the strategic possibilities of winning women's political rights, to an end. When the amendment passed Congress in February 1869, it created what looked like a strategic dead end for woman suffrage. Then in October, a husband and wife team of Missouri suffragists, Francis Minor and Virginia Minor, came up with a different approach to the Reconstruction amendments: an activist strategy for winning woman suffrage that relied on what was already in the Constitution, rather than requiring an additional amendment.[31]

The Minors argued that the Constitution, properly understood, already provided for women's political rights; women were already enfranchised and had only to take the right that was theirs.[32] Their argument rested on the link in the pending Fifteenth Amendment between national supremacy and equal political rights. Although the first section of the Fourteenth Amendment had defined national citizenship, the second section had left suffrage under control of the individual states. The Fifteenth Amendment shifted that control to the national level, thus intensifying the nationalizing aspect of the Fourteenth Amendment and extending its scope to the franchise. Much of the subsequent woman suffrage case was based on that relationship between the two amendments.

The Minors believed that the initial premises of the Constitution, greatly strengthened by the Reconstruction amendments, supported their case. They cited the Constitution's preamble to substantiate their claim that popular sovereignty preceded and underlay constitutional authority. To establish the supremacy of national citizenship, they cited various provisions of Article I, the supremacy clause of Article VI, and the first section of the Fourteenth Amendment. The weakest point of their argument—but also its lynchpin—was the assertion that suffrage was a right of national citizenship. The Fifteenth Amendment was still pending, but they found an alternate constitutional basis in a frequently cited 1823 case, *Corfield v. Coryell*, which had found the elective franchise to be one of the "privileges and immunities" protected by Article IV.[33]

Although the Minors' constitutional argument was new, their underlying as-

[31] Stanton, Anthony, and Gage, eds., *History of Woman Suffrage*, II, 407–10.

[32] *Ibid.* For further discussion of the Minors' arguments, see Louise R. Noun, *Strong Minded Women: The Emergence of the Woman Suffrage Movement in Iowa* (Ames, 1969), 168–69.

[33] Stanton, Anthony, and Gage, eds., *History of Woman Suffrage*, II, 407–10; *Corfield v. Coryell*, 6 F. Cas. 546 (E.D. Pa. 1823) (No. 3, 230).

sumptions were consistent with the Reconstruction-era approach to women's rights. Their argument perfectly expressed the era's radical political philosophy that this article has been tracing: a combination of natural rights, popular democracy, national sovereignty, and extreme reverence for the Constitution. But the Minors provided a new, militant, activist stance for woman suffragists, a stance that rested on the premise that women had merely to take a right that was already theirs. That approach, which came to be called the "New Departure," became the strategic basis for suffragists' actions during most of the 1870s.[34] In many ways, the New Departure period was one of the most radical in the history of women's rights, both in its tactical militancy and in its larger vision of female emancipation. From the larger perspective of constitutional history, the New Departure became part of the conflict over the meaning of the Reconstruction amendments, a struggle that extended far beyond the courts, although that is where it was resolved.

The tactics that the Minors advocated were a combination of direct action and litigation. "I am often jeeringly asked," Virginia Minor explained, " 'If the Constitution gives you this right, why don't you take it?' " So she urged women to try to vote and, if they were stopped, to sue those officials who refused to register them. In fact, women in the spiritualist center of Vineland, New Jersey, had successfully voted as early as 1868; that they attempted to vote and were permitted to do so by election officials suggests how widespread, even popular, the assumptions that underlay the New Departure were. The passage of the Enforcement Act to strengthen the Fifteenth Amendment in May 1870 seems to have encouraged many more women—in California, New Hampshire, Michigan, and elsewhere—to regard the right to vote as already theirs. That year black women went to the polls in South Carolina, encouraged to do so by federal government agents.[35]

In early 1871, the NWSA drew up a resolution formally advising women of their "duty . . . to apply for registration at the proper times and places, and in all cases when they fail to secure it to see that suits be instituted in the courts having jurisdiction and that their right to the franchise shall secure general and judicial recognition." A group of women in the District of Columbia tried, but were not permitted, to register in 1871. Susan B. Anthony and fifteen of her friends in Rochester, New York, succeeded in voting in 1872, only to be arrested a few weeks later for violating the Enforcement Act, the very law that they believed protected their rights. As the number of women attempting to vote grew, their cases began to move through the judicial system.[36]

Then a second direction was opened up in the New Departure strategy. In January 1871 Victoria Woodhull, already a notorious figure and one heretofore not

[34] On the New Departure, see Stanton, Anthony, and Gage, eds., *History of Woman Suffrage*, II, 407–520, 586–755. See also Harper, ed., *Life and Work of Susan B. Anthony*, I, 409–48.

[35] Stanton, Anthony, and Gage, eds., *History of Woman Suffrage*, II, 410, III, 586; Paulina W. Davis, comp., *A History of the National Woman's Rights Movement for Twenty Years, . . . from 1850 to 1870* (New York, 1871), 23; Eleanor Flexner, *Century of Struggle: The Woman's Rights Movement in the United States* (Cambridge, Mass., 1975), 371.

[36] Harper, ed., *Life and Work of Susan B. Anthony*, I, 378, 409–65; Stanton, Anthony, and Gage, eds., *History of Woman Suffrage*, II, 407–520.

Victoria Woodhull, c. 1870, shortly before she argued before the House Judiciary Committee that women were already enfranchised under the Constitution. *Courtesy Sophia Smith Collection, Smith College.*

associated with the organized woman suffrage movement, appeared before the House Judiciary Committee to speak on behalf of political equality for women. Woodhull had been invited to address the committee by one of its members, Benjamin Butler, a Massachusetts Republican who was seeking to lead his party into the 1870s under the twin banners of labor reform and woman suffrage. Woodhull had her own links to the radical labor movement through her leadership in the International Workingmen's Association. Like the Minors, Woodhull argued that women were already enfranchised under the Constitution. But instead of calling for the courts to vindicate her constitutional interpretation, she proposed that Congress pass a declaratory act clarifying the constitutional right of all United States citizens, including women, to vote. In other words, she proposed a way to pursue the New Departure that was more overtly political than the Minors' tactics of direct action and litigation.[37]

[37] Stanton, Anthony, and Gage, eds., *History of Woman Suffrage*, II, 443–48; Dale Baum, "Woman Suffrage and the 'Chinese Question': The Limits of Radical Republicanism in Massachusetts, 1865–1876," *New England Quarterly*, 56 (March 1983), 60–77; Emanie Sachs, *"The Terrible Siren": Victoria Woodhull (1838–1927)* (New York, 1927), 146.

Woodhull's constitutional argument that the right to vote was inherent in national citizenship was even stronger than the Minors'. Woodhull asserted that the newly ratified Fifteenth Amendment established the "right of any citizen of the United States to vote," a right that could not be abridged by state law "neither on account of sex or otherwise." In a speech supporting the Woodhull memorial, Judge A. G. Riddle agreed that the Fifteenth Amendment must be understood to assume "the right of the citizen to vote as already existing, and it specifies classes, as persons of color, of certain race, and of previous servitude, as especially having the right to vote." He did not believe it should be read as authorizing the disfranchisement of classes not mentioned—that is, women. As a right of national citizenship, the suffrage was subject to the same protections as all other such rights.[38]

With other advocates of the New Departure, Woodhull believed that the relationship between the Fourteenth and Fifteenth amendments made voting a right of national citizenship. Her constitutional case had other elements to it, which bore the mark of her own distinctive thought. "Women, white and black, belong to races, although to different races," she explained, and "the right to vote can not be denied on account of color." Therefore, "all people included in the term color have the right to vote, unless otherwise prohibited." She also contended that "women, white and black, have from time immemorial groaned under what is properly termed in the Constitution 'previous condition of servitude.'" Thus, when the Thirteenth Amendment abolished slavery, it also abolished the subordinate condition of women.[39]

Inasmuch as she was cooperating with Butler, Woodhull's sudden emergence as an advocate of woman suffrage was a product of an intense struggle within the Republican party over its future now that the freedmen had been enfranchised and, what was essentially the same thing, over the meaning of the Reconstruction amendments. Some Republicans initially supported Woodhull's initiative. After her memorial, Republican leaders in the House gave suffragists a room in the Capitol from which to lobby, a move Anthony suspected was a "Republican dodge." However, the dominant Republican faction did not support Woodhull and used her memorial as an opportunity to voice its opposition to the New Departure to the courts, where various New Departure cases were pending. In response to the New Departure's expansive and egalitarian construction, the House Judiciary Committee's Majority Report, authored by John Bingham, argued that the Fourteenth Amendment neither elevated national over state citizenship nor added anything new to it but merely strengthened the federal government's ability to protect already existing "privileges and immunities." Moreover, the report disagreed with Wood-

[38] Stanton, Anthony, and Gage, eds., *History of Woman Suffrage*, II, 444, 448–58, esp. 455.

[39] *Ibid.*, 445. The argument that women, as part of races, have the rights of races, combines the powerful ring of common sense and tremendous naïveté for the legal niceties; thus it suggests that Victoria Woodhull had a role in writing her own argument and was not merely reading words written for her by Benjamin Butler or other male politicians and lawyers. That is the one of many common and unsubstantiated assertions made by historians about Woodhull. See, for example, Elisabeth Griffith, *In Her Own Right: The Life of Elizabeth Cady Stanton* (New York, 1984), 149.

hull's interpretation of the Fifteenth Amendment, that it implied a prohibition on any limitation to the suffrage other than those explicitly indicated.[40]

Woodhull is, of course, remembered more as a sexual radical than as a constitutional scholar of woman suffrage, but the two politics have the same philosophical roots. Her leadership in the women's rights movement during the 1870s reveals the link between women's political equality and the women's rights critique of women's subordination in marriage, a connection not openly made since the 1860 debate on divorce. Woodhull's "free love" ideas were based on the same philosophy of individual rights as her suffrage arguments. She asserted that individuals had the inalienable right to make and to dissolve sexual relations as they desired. The right of sexual self-determination was derived from what Woodhull characterized as "our theory of government, based upon the sovereignty of the individual." Her most famous declaration of "free love" was expressed in constitutional terms and infused with natural rights assumptions. "Yes, I am a Free Lover," she responded to a heckler at one of her speeches. "I have an *inalienable, constitutional* and *natural* right to love whom I may, . . . to *change* that love *every day* if I please, . . . and it is *your duty* not only to *accord* [my right], but, as a community, to see that I am protected in it."[41]

Applied to marriage, to sexuality and reproduction, "the sovereignty of the individual" began to take on a corporeal dimension, to become the right of the individual to determine the uses of her or his body. According to a controversial 1871 suffrage resolution that reflected Woodhull's influence, "the right of self ownership [is] the first of all rights." (Paulina Wright Davis delivered that resolution, and there was a great flap after the convention as to whether she "knew" what she had "said.")[42] The new emphasis on rights to one's "person" was an inevitable development of the individual rights tradition once it had been taken into a women's movement and women had brought it to bear on their deep discontent with their sexual and reproductive lives within marriage.

In Woodhull's writings and speeches, "self sovereignty" remained relatively abstract, but in Stanton's accomplished hands it turned into a much more concrete program for women's sexual rights. In addition to her advocacy of divorce law liberalization, Stanton came to imagine that women might have rights with respect to their maternity. To describe such rights—which in the 1870s had no name but which would later be called "birth control" and, even later, "reproductive rights"—Stanton used the term "self sovereignty." Beginning in 1871 she convened small groups of women—including one in Salt Lake City—to urge that wives "learn and practice the true laws of generation" in order to have fewer children. "We are to be the sovereigns of the world but woman must first understand her true position," Stanton ex-

[40] Harper, ed., *Life and Work of Susan B. Anthony*, I, 381; Stanton, Anthony, and Gage, eds., *History of Woman Suffrage*, II, 461–64.

[41] Victoria C. Woodhull, *A Speech on the Principles of Social Freedom, Delivered in New York City, November 20, 1871, and Boston, January 3, 1872* (London, 1894), 23–24.

[42] *Woodhull and Claflin's Weekly*, May 27, 1871, p. 3.

plained. "Woman must at all times be the sovereign of her own person." "Whenever we stay in a town two days I talk one afternoon to women alone," she wrote to a friend. "The new gospel of fewer children and a healthy, happy maternity is gladly received."[43]

The free love issue was raised first by Woodhull's opponents, notably in the *Christian Union*, which Henry Ward Beecher edited. Rather than take on her constitutional case for women's political equality, her critics attacked her personal life and claimed that, as a divorced and sexually active woman, she was too disreputable to speak for her sex. Stanton clearly understood the political functions of such attacks. Woodhull, she wrote, "has done a work for women that none of us could have done. She has faced and dared men to call her names that make women shudder. She has risked and realized the sort of ignominy that would have paralyzed any of us who have longer been called strong-minded." "We have had women enough sacrificed to this sentimental, hypocritical prating about purity," Stanton wrote to Lucretia Mott. "This is one of man's most effective engines for our division and subjugation."[44] The attacks did destroy Woodhull, and both her political credibility and her sanity were eventually ruined. On the eve of the 1872 presidential election, she was arrested by federal marshals for violating the just-passed Comstock law. Less than a month later, Susan B. Anthony was also arrested by federal marshals—for "criminal voting," an act based on the same ideas as those advocated by Woodhull. In retrospect, those events demonstrate what was not yet clear to the New Departure suffragists: federal power could as easily be the enemy as the protector of individual rights, depending on political forces.

Meanwhile, following the lead of the 1871 Bingham report of the House Judiciary Committee, Republican judges began to rule against cases brought by New Departure suffragists. The first major New Departure case to reach the courts was the suit brought by Sara Spencer and seventy other women against election officials in the District of Columbia for refusing to register their votes. In October 1871 Judge Cartter of the Washington, D.C., United States District Court found against the women. His ruling was based more on ideological grounds than on constitutional ones, and it indicated how the general fear of political democracy was working against woman suffrage and against the expansive and egalitarian interpretation of the Reconstruction amendments with which it had associated itself. "The claim, as we understand it," Cartter explained, "is, that [women] have an inherent right, resting in nature, and guaranteed by the Constitution, in such wise that it may not be defeated by legislation. . . . The right of all men to vote is as fully recognized in the population of our large centres and cities as can well be done. . . . The result

[43] "For Women Only," *Des Moines Daily Register*, July 29, 1871; Elizabeth Cady Stanton to Martha Coffin Wright, June 19, 1871, box 60, Garrison Family Collection (Sophia Smith Collection, Smith College, Northampton, Mass.).

[44] Paxton Hibben, *Henry Ward Beecher: An American Portrait* (New York, 1927), 235; "Lady Cook and Victoria Woodhull," *Chicago Daily Socialist*, March 21, 1911 (The author wishes to thank Mari Jo Buhle for the citation. For another version of the quotation, see Lutz, *Created Equal*, 228.); Stanton to Lucretia Mott, April 1, 1872, Elizabeth Cady Stanton Papers (Vassar College, Poughkeepsie, N.Y.).

The caption to Thomas Nast's cartoon attacking Woodhull reads: "Get Thee Behind Me (Mrs.) Satan!" and in smaller letters underneath, "Wife (with heavy burden) 'I'd rather travel the hardest path of matrimony than follow your footsteps.'" Reproduced from *Harper's Weekly*, Feb. 17, 1872, 140.

in these centres is political profligacy and violence verging upon anarchy. . . . The fact that the practical working of the assumed right would be destructive of civilization is decisive that the right does not exist."[45]

The next stage in the judicial history of the New Departure was *Bradwell v. State*

[45] Stanton, Anthony, and Gage, eds., *History of Woman Suffrage*, II, 597–99.

in which Myra Bradwell challenged the Illinois Bar's refusal to admit her to practice before it. The case was brought to the United States Supreme Court by Matthew Carpenter, Republican senator from Wisconsin. Carpenter argued for Bradwell's right to practice law just as suffragists were arguing for women's right to vote—on the grounds that the Fourteenth Amendment pledged the national government to protect women's rights equally with those of all other citizens. There was considerable historical irony in Carpenter's brief. Although he used the structure of New Departure arguments, Carpenter went to great lengths to distinguish Bradwell's right to practice law, which he argued was one of the rights protected under the Fourteenth Amendment, from women's right to vote, which he argued was not. He made the distinction in order "to quiet the fears of the timid and conservative."[46]

The Court's ruling on *Bradwell* came in conjunction with its first major interpretation of the Fourteenth Amendment, the famous *Slaughterhouse Cases*. In the *Slaughterhouse Cases*, the Court declared, by a bare five to four majority, that the amendment created no new national rights and did not establish national citizenship as supreme over state citizenship. Those were virtually the same arguments that Representative Bingham had made in the House Judiciary Committee's Majority Report rejecting Woodhull's petition. Then the Court moved on to the *Bradwell* case, and with only Chief Justice Salmon P. Chase dissenting, applied the same principle to reject the argument that Bradwell's right to be admitted to the bar was protected by the Fourteenth Amendment.[47]

A few months after the *Slaughterhouse* and *Bradwell* decisions, Anthony's case, *United States v. Anthony*, was heard before the United States Circuit Court in Canandaigua. (Anthony had so thoroughly canvased her home county of Monroe, explaining her case to potential jurors, that the venue of the trial had to be changed.) Judge Ward Hunt, a Roscoe Conkling appointee, earned himself a special place of infamy in the annals of women's rights by depriving Anthony of her constitutional rights and directing the jury to find her guilty. Hunt rejected Anthony's arguments that national citizenship was supreme over state citizenship and that voting was a right of national citizenship, and he cited the *Bradwell* and *Slaughterhouse* decisions to support his opinion. Regarding the Fifteenth Amendment, he argued that it applied only to disfranchisement on grounds it "expressly prohibited" and that it did not imply a prohibition of discrimination by sex. Anthony saw that the implications of such opinions reached beyond woman suffrage to the whole framework of political rights. She predicted with stunning accuracy that "if we once establish the false principle, that United States citizenship does not carry with it

[46] *Bradwell v. State*, 16 Wallace 130 (1873); quoted in Stanton, Anthony, and Gage, eds., *History of Woman Suffrage*, II, 615–22.

[47] *Slaughterhouse Cases*, 16 Wallace 36 (1873); William E. Forbath, "The Ambiguities of Free Labor: Labor and the Law in the Gilded Age," *Wisconsin Law Review* (no. 4, 1985), 767–89; Stanton, Anthony, and Gage, eds., *History of Woman Suffrage*, II, 622–26. While arguing for the relevance of the Fourteenth Amendment to the Bradwell case, Sen. Matthew Carpenter submitted a brief to the Court *against* the relevance of the amendment in the *Slaughterhouse Cases* because he opposed a construction so "broad that it would invalidate desirable government regulation." *Slaughterhouse Cases*, 21 U.S. Supreme Court Reports Lawyer's Edition, 399–401 (1873).

the right to vote in every state in this Union, there is no end to the petty freaks and cunning devices that will be resorted to, to exclude one and another class of citizens from the right of suffrage."[48]

Hunt kept Anthony's case from going to the Supreme Court. Appropriately, the case that allowed the Supreme Court to rule once and for all on the New Departure was Virginia Minor's suit against the Missouri election official who refused to accept her ballot. Since the claim that the Fourteenth Amendment created a national citizenship that superseded state citizenship had already been dismissed in the *Slaughterhouse* and *Bradwell* cases, *Minor v. Happersett* focused exclusively on voting as a right of citizenship. The suit treated that assertion as so obvious, so basic to the entire meaning of the Civil War and Reconstruction, as to be virtually unchallengeable: "We claim, and presume it will not be disputed, that the elective franchise is a privilege of citizenship within the meaning of the Constitution of the United States." Yet the Court was "unanimously of the opinion that the Constitution of the United States does not confer the right of suffrage upon any one."[49]

In 1875, much as Anthony had predicted, the Court began to undermine the voting rights of the freedmen along lines that reflected its dismissal of New Departure interpretations of the Fifteenth Amendment with respect to woman suffrage. In *United States v. Reese* and in *United States v. Cruikshank*, the Court deprived black men of their right to vote by narrowing the prohibitions of the Fifteenth Amendment, first to disfranchisement that was the direct result of state action, and then to racial disfranchisement only when the grounds were explicitly stated. The judicial fate of the woman suffrage New Departure had laid the legal groundwork for those decisions in several ways. The precedent of rejecting the constitutional arguments for woman suffrage by interpreting the Fifteenth Amendment as intended to forbid only disfranchisement by race made it much easier to disfranchise the freedmen on grounds, such as education, income, or residence, that were surrogates for race. Furthermore, the Court's decisions in the New Departure cases severed the Fourteenth and Fifteenth amendments—they separated the right to vote from federal powers of enforcement and from the affirmative statement of national citizenship in the Fourteenth Amendment. That left voting rights dependent solely on the Fifteenth Amendment and, therefore, much more vulnerable. In *Minor v. Happersett*, the Court ruled conclusively that the right of suffrage was not a necessary attribute of national citizenship, and from there it was a very short step to permitting the whole range of indirect devices for de facto disfranchisement of the freedmen.[50]

[48] *United States v. Anthony*, 24 F. Cas. (C.C.N.D.N.Y. 1873) (No. 14, 459); quoted in Stanton, Anthony, and Gage, eds., *History of Woman Suffrage*, II, 641, 675–79.

[49] *Minor v. Happersett*, 21 Wallace 162 (1875); quoted in Stanton, Anthony, and Gage, eds., *History of Woman Suffrage*, II, 717–42, esp. 719, 742. Chief Justice Salmon P. Chase, the lone dissenter in *Bradwell v. State*, had died and had been replaced by Chief Justice Morrison R. Waite.

[50] *United States v. Reese*, 92 U.S. 214 (1876); *United States v. Cruikshank*, 92 U.S. 542 (1876).

Afterword

In 1878, three years after the defeat of its New Departure strategy by the Court's decision in the *Minor* case, the NWSA began pursuing a different strategy for winning women's political rights: a constitutional amendment, patterned after the Fifteenth Amendment, exclusively to prohibit disfranchisement by sex. Earlier an amendment had been proposed that included both a general assertion that "the Right of Suffrage in the United States shall be based on citizenship, and shall be regulated by Congress" and the specific prohibition against "any distinction or discrimination whatever founded on sex." The 1878 amendment, which was eventually adopted as the Nineteenth Amendment, did not make any general assertions about the right to vote but simply prohibited disfranchisement by sex. The small difference of wording indicated a much larger difference of political atmosphere; it revealed the reformulation of the demand for woman suffrage to coincide with an age in which political democracy was contracting rather than expanding. Not only had many reformers, woman suffragists included, turned against black voters, seeing them as a source of ignorance and corruption, but white workers, angry over their own subordination, had also shown their capacity for violence and social disorder.[51] To what larger political propositions could woman suffrage be attached in such an era?

At the NWSA's 1878 Tenth Washington Convention, where the new woman suffrage amendment was introduced, Reconstruction-era assertions that all individuals deserved the vote, irrespective of sex or race, were mixed with categorical arguments about what women as women could be expected to do with the vote, both to protect themselves and to benefit the larger society. But it was the essentialist arguments that fit best with the new, antidemocratic spirit behind woman suffrage. That link was expressed by Elizabeth Boynton Harbert, a representative of the new generation of suffragists. Harbert emphasized two themes in her speech at the 1878 convention: that "the ballot in the hands of women would prove a help, not a hindrance" in lowering taxes and reasserting the power of property; and that women had a distinct "mother instinct for government" that was the best reason for trusting them with the vote. The two arguments were fundamentally linked inasmuch as women could be relied on to represent the forces of order and stability in government as in the family. Other suffragists of the late 1870s made similar connections. Characteristically, they based their arguments on woman's special capacity to halt the growing power of "vice," a concept that expressed the fear of working-class power by mixing it with the powerful spectre of unleashed sexuality.[52]

Harbert's speech contrasted with an impassioned speech, entitled "National Pro-

[51] Stanton, Anthony, and Gage, eds., *History of Woman Suffrage*, II, 333, III, 14, 25, 75. For comments on the railroad strikes of 1877, both for and against the strikers, see *ibid.*, III, 72–73.

[52] Stanton, Anthony, and Gage, eds., *History of Woman Suffrage*, III, 73–77. Steven M. Buechler, *The Transformation of the Woman Suffrage Movement: The Case of Illinois, 1850–1920* (New Brunswick, 1986), 108–17; Christine Stansell, *City of Women: Sex and Class in New York, 1789–1860* (New York, 1986), 203–9.

tection for National Citizens," that Stanton gave at the same convention. Although the convention was meant to inaugurate a grand campaign for the proposed woman suffrage amendment, Stanton delivered a stubborn defense of the New Departure, particularly of the principle of popular sovereignty, which held that political rights were inherent, not bestowed. To her what was at stake in the NWSA's rejection of the New Departure was not simply woman suffrage, but a larger egalitarian interpretation, both of the Constitution and of national purpose. Stanton's interpretation of the Constitution emphasized the power of the federal government, especially its power to enforce equal rights. Federal action could realize true equality because its impact was "uniform" and "homogeneous" on all citizens; it had the power to level. Against that egalitarian definition of national supremacy, Stanton contrasted the growing use of national power "to oppress the citizens of the several States in their most sacred rights," for instance by undermining the separation of church and state.[53]

Stanton certainly understood that her interpretation of the Constitution as a document that committed the nation to the protection of equal rights had been defeated. In the future, the Constitution would be used to defend the rights of property, not persons. But for that reason, the defeat of equal rights constitutionalism would necessarily be temporary. "A century of discussion has not yet made the constitution understood," Stanton asserted. "It has no settled interpretation. Being a series of compromises, it can be expounded in favor of many directly opposite principles." Above all, she took heart because "the numerous demands by the people for national protection in many rights not specified by the constitution, prove that the people have outgrown the compact that satisfied the fathers."[54]

[53] Stanton, Anthony, and Gage, eds., *History of Woman Suffrage*, III, 80–92.
[54] *Ibid.*, 87–88.