

The University of Akron

IdeaExchange@UAkron

Con Law Center Articles and Publications

Center for Constitutional Law

2016

The "Radical Conscience" of Nineteenth-Century Feminism

Tracy Thomas

University of Akron School of Law, thomast@uakron.edu

Follow this and additional works at: <https://ideaexchange.uakron.edu/conlawakronpubs>



Part of the [Constitutional Law Commons](#)

Please take a moment to share how this work helps you [through this survey](#). Your feedback will be important as we plan further development of our repository.

Recommended Citation

Tracy Thomas, Elizabeth Cady Stanton and the Feminist Foundations of Family Law, Chapter One, New York University Press (2016)

This Contribution to Book is brought to you for free and open access by Center for Constitutional Law at IdeaExchange@UAkron, the institutional repository of The University of Akron in Akron, Ohio, USA. It has been accepted for inclusion in Con Law Center Articles and Publications by an authorized administrator of IdeaExchange@UAkron. For more information, please contact mjon@uakron.edu, uapress@uakron.edu.

Excerpt: Tracy A. Thomas, *Elizabeth Cady Stanton and the Feminist Foundations of Family Law* (forthcoming NYU Press 2016)

Chapter 1: *The “Radical Conscience” of Nineteenth-Century Feminism*

*Mother. Author. Orator.
Women’s Suffrage Leader.*

*Elizabeth Cady Stanton Gravestone,
New York City*

Elizabeth Cady Stanton was the principal feminist thinker, leader, and “radical conscience” of the nineteenth-century woman’s rights movement. On her eightieth birthday in 1895, she was honored with a celebration of her fifty years as the figurehead of women’s rights. Stanton was a popular national figure who directed the movement by organizing conventions, delivering speeches, lobbying legislatures, writing for newspapers, and headlining lecture tours. She popularized the ideas of women’s rights to a general public enamored by her sharp wit, intellect, and maternal appearance. The pomp and pageantry of the birthday celebration, however, concealed Stanton’s place then on the outskirts of the movement, ostracized by an organization growing more conservative and shocked by her radicalism. Her challenge to the biblically-ordained inferiority of sex was the final straw, triggering sanction from her own organization. Stanton’s persistent demands for easy divorce, free marriage, and Biblical critique alienated fellow reformers gravitating more narrowly to the vote and the politics of domesticity. For Stanton, however, radical challenge to the family was critical to the women’s rights agenda.¹

Stanton initiated the women’s rights movement on July 19, 1848, in Seneca Falls, New York. The site is now the location of the National Women’s Rights Museum where a waterfall cascades over a stone wall engraved with Stanton’s words. There, Stanton issued her feminist manifesto, the “Declaration of Sentiments,” demanding women’s right to vote. This is generally all that history has remembered of Stanton. Her Declaration, however, demanded seventeen other rights for political, religious, social, and civil rights equality. These included the right to public office, marital property, divorce, education, employment, reproductive control, and religious autonomy. As Stanton explained, the institutions of government, church, family, and industrial work constituted “a fourfold bondage” of women, with “many cords tightly twisted together, strong for one purpose” of woman’s subordination. They were all intertwined, so that “to attempt to undo one is to loosen all.” As Stanton later explained, to break down this complexity required women to have “bravely untwisted all the strands of the fourfold cord that bound us and demanded equality in the whole round of the circle.” Holistic reform was required to break down the complex system of women’s oppression. Each right on the circle of life was at stake for woman’s equality, “happiness and development,” and comprehensive action “in all directions” was required. “We should sweep the whole board, demanding equality everywhere and the reconstruction of all institutions that do not in their present status admit of it.”²

The family then was one centerpiece of Stanton’s feminist agenda. “The family, too, is based on the idea of woman’s subordination, and man has no interest, as far as he sees, in

emancipating her from that despotism, by which his narrow, selfish interests are maintained under the law and religion of the country.” The family, governed by patriarchal laws and sentimental gender norms, created and perpetuated women’s inferiority. “If the present family life is necessarily based on man’s headship,” Stanton argued, “then we must build a new domestic altar, in which the mother shall have equal dignity, honor and power.” The private sphere of the family was not segregated from the public sphere, as both nineteenth-century suffrage reformers and twentieth-century feminists often argued, but instead was intertwined with the other institutional strands strangling equality. As a result, radical concrete change to the family institution was required in the forms of egalitarian partnerships, economic rights, free divorce, and maternal autonomy. Stanton’s commitment to women’s equality in marriage and the family was longstanding--from Seneca Falls to her last writings. As Stanton said, she “remained as radical on the marriage question at the age of eighty-six as [she] had been a half a century earlier.”³

Stanton’s family reforms seem less shocking today because most of them have become law. Her proposals to reconstruct marriage and the family, detailed in this book, are now mainstream. Women have separate and joint marital property rights. Spouses inherit equal shares of estates when one partner dies without a will. Common law marriage is prohibited in most states, and civil marriage requires procedural safeguards. Divorce is available for irreconcilable differences or for misconduct equally applicable to both spouses. The law supports domestic violence protections, reproductive choice, and maternal custody.

Recovering Stanton’s feminist thinking on the family reveals the longevity and persistence of women’s demands for family equality. Contrary to popular wisdom, these feminist ideas were not invented in the 1970s, but instead reach back more than a century earlier as part of the original conceptualization of women’s rights. This longer perspective bolsters the truth and credibility of such feminist demands, eschewing their characterization as a modern anomaly and demanding legitimization and consideration in the law. As these issues of family, marriage, work/life balance, pregnancy, and parenting continue to challenge the law and confound feminism, Stanton’s work adds historical evidence of important principles that should be part of the legal equation. Her work shows that feminism and the family have not been historically in opposition, as we usually think. To the contrary, feminists have existed not apart from the family, but within it. Thus, understanding Stanton’s views is critical to understanding both feminism and the family today.

The Personal is Political

Knowing Stanton’s story is the first step in understanding the depths and significance of her work, for that story shaped her thinking. As feminists in the twentieth century would say, “the personal is political.” By this, they meant that women’s private experiences are relevant and worthy of action in the legal and political sphere. Stanton’s own experiences as a de facto lawyer and frustrated wife and mother informed her sharp critiques of the social norms and the laws that endorsed them.

Biographical accounts describe Elizabeth Cady Stanton as having a gregarious and charming personality armed with sarcasm and a brilliant mind. She had an opinion on every issue of the day. She was for dress reform of the bloomer costume, bicycles for women, exercise in pregnancy, homeopathic medicine, and the Graham whole-wheat diet. She was against the

death penalty, war, closing the Chicago World's Fair on Sunday, railroad monopolies, and Lincoln's re-election. Stanton was well read on law, literature, religion, political theory, and the emerging social sciences like anthropology. She was the first woman to run for Congress in 1866 and the first woman to testify before Congress in 1869.⁴

Stanton stands out from other nineteenth-century feminists not only for her intellect and philosophy, but also for the extent to which law informed her advocacy. During a time when students trained for the law as apprentices to a practitioner, Elizabeth obtained essentially the same training, though informally under her father, Daniel Cady. Cady, "politically conservative and sternly Presbyterian," was a respected lawyer, federal and state legislator, and later state judge who practiced law in his home. Cady was described as a man with a "giant intellect," who "wielded a ponderous logic that ground adversaries to powder."⁵ Elizabeth, the favorite of his five surviving daughters, spent hours in her father's office reading law books, listening to clients, and watching her father work. She later described how she "studied three years in her father's office," and "read law" in her father's office. It was this legal experience that Stanton credited as the source of her feminist awakening, as she watched her father give legal advice to widows and wives revealing the "injustice and cruelty of the laws." Elizabeth observed her father's trials in the courthouse across the street, sparred with his apprentices at the nightly dinner table, and served as her father's law clerk and legal secretary. After time studying at Emma Willard's female seminary, Stanton returned home where in her early twenties she continued to read law with her brother-in-law, Edward Bayard. She remained surrounded by the law throughout her life as her husband, four brothers-in-law, and three sons all practiced law.⁶

After her death, a journalist commented that "if the intellect of Elizabeth Cady Stanton had been possessed by a man, he would have had a seat on the Supreme Bench or in the Senate of the United States, but our country has no rewards for its great women."⁷ Stanton was keenly aware of the glaring omission of women lawyers. "Where have they made any provision for her to learn the laws? Where is the Law School for our daughters?—where the law office, the bar, or the bench, now urging them to take part in the jurisprudence of the nation?"⁸ Her vicarious legal education taught her to think like a lawyer, evident in her later advocacy, evaluating both sides of an issue, detailing rationales for positions, and bolstering arguments with legal authority and citation. Most significantly, Stanton gained an understanding of the instrumentality of the law: its ability to create social inequality as well as its power to remedy that inequality.

Stanton attributed her additional motivation for feminist reform to her frustrations as a wife and mother. She found joy and meaning in motherhood, but rebelled against the social and legal norms that confined her to that domestic sphere. Elizabeth married abolitionist Henry B. Stanton, who was then at the height of his fame and career as an anti-slavery speaker, having abandoned his study in seminary.⁹ The short, plump Elizabeth and the tall, rangy and older Henry made an "odd couple" "though both were drawn to the other's intellect, wit, self-assurance, and commitment to higher principles." She married against her father's wishes, as Cady opposed the marriage because of Stanton's radical politics and his lack of income or future prospects. The Stantons honeymooned at the 1840 World's Anti-Slavery Convention in London. Henry traveled there as representative of a group defecting from William Lloyd Garrison's anti-slavery society, preferring political action to moral suasion, and seeking to avoid "the woman question" over the propriety of women speaking publicly as abolitionists. The London meeting became famous for its exclusion of female delegates and their banishment to

the upper gallery where Garrison joined them in boycott. Stanton spent her time taking it all in, and meeting new feminist mentor Lucretia Mott.¹⁰

Daniel Cady's predictions about his son-in-law proved true. Henry, an ambitious political operative and reluctant part-time lawyer, never achieved much financial or public success. After London, Henry studied law with Elizabeth's father. The Stantons moved to Boston where Henry passed the bar exam and established a legal practice, hoping for a prominent role in politics there.¹¹ Elizabeth enjoyed Boston, immersing herself in politics, transcendentalism, and housekeeping in a well-appointed home provided by her father. But after just a few years in Boston, Henry moved the family in 18__ to the mill town of Seneca Falls in Western New York, hoping for a good political district to launch his run for office. Again, Judge Cady provided the house, transferring to Elizabeth a run-down property he owned in Seneca Falls. Henry served as a New York state senator from 1849 to 1851. Always in search of political fame, Henry flitted from one party to the next—moving from the abolitionists to the Liberty Party, the Free Soil Party, the Democrats, and then to the Republicans hoping for his own candidacy or position. He traveled most of the year, giving speeches, attending political conventions, or occasionally on legal business to Albany or Washington, D.C. Only when desperate for money would Henry return temporarily to the practice of law. While he developed an expertise in patent law and had several lucrative clients, the law never retained his interest for long.¹² "Politics was Stanton's first love." But abolitionists thought he had sold out his moral convictions for the pursuit of power, "ruined by ambition, desire of office and applause."¹³

Elizabeth grew increasingly resentful of Henry's assertion of privilege in the family and its restrictions on her own desires.¹⁴ Henry had assumed they would have "a traditional middle-class marriage." "Mr. Stanton announced to me . . . that his business would occupy all his time, and that I must take entire charge of the housekeeping."¹⁵ Elizabeth quickly tired of this arrangement. In a veiled reference to Henry, who was then in the state house, she ranted, "No man should give up a profitable business, leave his wife and children month after month, and year after year, and make his home desolate for any false ideas of patriotism, for any vain love of display or ambition, for fame and distinction."¹⁶ While Henry played politics, Elizabeth was stuck at home, weighed down by the cares of single parenting and household management. She had seven children, with her last at age forty-three: Daniel (Neil) (1842), Henry (Kit) (1844), Gerrit (Gat) (1845), Theodore (1851), Margaret (1852), Harriot (1856), and Robert (Bob) (1859).¹⁷

In the midst of this chaotic family life, the thirty-two-year-old Stanton launched the women's rights movement from her hometown. The reason for her action, she said, was "the general discontent" she felt "with women's portion as wife, mother, housekeeper, physician, and spiritual guide, the chaotic conditions into which everything fell without her constant supervision, and the wearied, anxious look of the majority of women." To Stanton, women's haggard and limited reality was evidence of a need to take action "to remedy the wrongs of society in general, and of women in particular."¹⁸ Stanton met with Lucretia Mott and Mott's sister and fellow Quakers around a dinner table, voicing their complaints of legal and religious subordination and vowing to plan an organized convention for woman's rights.

The women held their convention the following week on July 19 and 20, 1848, at the Wesleyan Chapel in Seneca Falls. It was attended by more than two hundred people, including notable reformers like Frederick Douglass.¹⁹ Henry Stanton left town on the excuse of Free Soil business, but more likely to avoid any appearance of his political support for the woman

question. Stanton resented Henry's absence and preoccupation, commenting in a speech shortly after the convention that if women had a vote, might not "office holders and seekers propose some change in her condition? Might not 'woman's rights' become as great a question as 'free soil'?"²⁰

At the meeting, Stanton presented her Declaration of Sentiments attacking the political, civil, and religious wrongs of women. Seeking a dramatic impact emphasizing freedom and individual rights, Stanton modeled her founding document after the Declaration of Independence and borrowed its title from an American Anti-Slavery Society document. It enumerated the "long train of abuses and usurpations" and "history of repeated injuries" against women and demanded women's natural right to happiness and individual autonomy. Its outline of specific reforms mapped out what would become Stanton's feminist agenda including the family-specific reforms to marriage, divorce, domestic violence, and child custody. The Declaration also most famously included a demand for women's right to vote that was considered the most radical.²¹ As Stanton later recalled, "even good Lucretia Mott said it was an extravagant demand that would make our whole movement ridiculous." Mott thought it ridiculous not because it asked too much, as others feared, but because it contradicted her religious and abolitionist stance against political engagement and its corrupting moral influence.²² Suffrage though emerged as the primary demand of the women's rights movement by century's end. Stanton, though, reminded people that the Declaration was about much more, and that "the social wrongs of my sex occupied altogether the larger place" in the early movement.²³ As historians have shown, the early women's rights movement was a comprehensive movement, and its genius was "in linking rights to all the personal and political issues that affected women in the family, the church, and the state."²⁴

Seneca Falls spawned woman's rights conventions in Massachusetts, New York, Ohio, and Pennsylvania, but Stanton's public role in this movement was limited by family responsibilities.²⁵ These years were increasingly frustrating for Stanton as she struggled to actualize her political self, constrained by family and Henry's lack of support.

Men and angels give me patience! I am at the boiling point! If I do not find some day the use of my tongue on this question, I shall die of intellectual repression, a woman's rights convulsion! . . . How much I do long to be free from housekeeping and children, so as to have some time to read, and think, and write.²⁶

Instead, her new partner, schoolteacher Susan B. Anthony, went in her place. Stanton was introduced to Anthony in 1851 on a street corner in Seneca Falls by their mutual friend, Amelia Bloomer, the editor of the temperance newspaper, the *Lily*. A bronzed statute today marks this historic spot. The two developed a political partnership, with Stanton doing the writing and theorizing and Anthony delivering the speeches and lobbying. As Stanton described their partnership, "it has been said that I forged the thunderbolts and she fired them."²⁷

At age forty, Elizabeth considered traveling and lecturing for women's rights, but she was stymied by her family and constant pregnancies. She wrote to Anthony of her "struggle in deep waters." "I wish that I were as free as you But I am not." "The pressure on me just now is too great. Henry sides with my friends, who oppose me in all that is dearest to my heart. They are not willing that I should write even on the woman question. But I will both write and

speak.”²⁸ Stanton channeled her energy into writing, becoming a regular contributor to the *Lily*, the women’s rights paper the *Una*, and later sending articles to the *New York Tribune*.²⁹

It was not an easy compromise for her and she was frequently angry and frustrated. “I pace up and down these two chambers of mine like a caged lioness, longing to bring to a close nursing and housekeeping cares. I have other work on hand, too.” Sometimes the resentment overwhelmed her, as on one Fourth of July when Henry and the children went to the celebration and she was left alone at home to tend to baby Hattie. She sarcastically lamented that she, the mother, “as she who brought sin into the world and all our woe” was the one stuck “to perform all these duties, which no one else wishes to do.”³⁰ As she wrote to Anthony:

How rebellious it makes me feel when I see Henry going about where and how he pleases. He can walk at will through the whole wide world or shut himself up alone, if he pleases, within four walls. As I contrast his freedom with my bondage, and feel that, because of the false position of woman, I have been compelled to hold all my noblest aspirations in abeyance in order to be a wife, a mother, a nurse, a cook, a household drudge. I am fired anew and long to pour forth from my own experience the whole long story of woman’s wrongs.³¹

Several years later, she was offered a paid three-month European lecture tour on woman’s rights. She wrote to Anthony how she would easily leave her children with her as she had “more than once doubted the wisdom of sacrificing myself to them as I have done.” The logistics, however, were unworkable, and Stanton concluded “I fear the cup of bliss is not for me.”³²

Anthony was frustrated with her friend’s domestic limitations, but she understood the situation. As she wrote to another colleague: “Her husband, you know does not help or make it easy for her to engage in such work—and all her friends would throw mountains in her path—Mr. Stanton will be gone most of the Autumn—full of Political Air Castles-- . . . he was gone 7 months last winter—the whole burden of home and children, therefore falls to her, if she leaves the post—all is afloat.” Anthony was aggravated, “I only scold now that for a moment’s pleasure to herself or her husband, she should thus increase the load of cares under which she already groans.” Anthony vowed “I shall make a contract with the Father of my children to watch and care for them one half the time.”³³

Stanton returned to active duty in the women’s movement in early 1860, after her youngest child turned one. Her father’s death freed her from his controlling objection, endowed her with a \$50,000 inheritance to support her family and her reform expenses, and renewed her relationship with her mother who along with her sisters took over summer childcare for Stanton.³⁴ Stanton gave three public speeches in a short period of time: testifying before the New York legislature on marital property, speaking to Garrison’s American Anti-Slavery Society (from which her husband had defected), and delivering a speech on divorce reform to the Tenth National Woman’s Rights Convention in New York City. Stanton’s return though was short-lived, interrupted by the Civil War and the abeyance of women’s rights activity.

Stanton detoured to the war effort and abolition, founding the Woman’s National Loyal League. The League accomplished the unprecedented goal of obtaining 400,000 signatures, mostly from women, on petitions for a constitutional amendment banning slavery. In February 1864, the women’s organization dramatically delivered 6,000 petitions glued end to end and rolled into a trunk to the floor of the Senate and deposited on the desk of Charles Sumner. The

petitions supplemented Senate proposals for constitutional amendments and helped convince President Lincoln to abandon his state-by-state approach and fully outlaw slavery nationally beyond the Emancipation Proclamation freeing slaves in the occupied South.³⁵

Personally, the Stanton family encountered scandal arising out of Henry's new patronage job in New York City as deputy collector of the seaport custom house. His short tenure there ended when a congressional investigation revealed mismanagement and fraud in his department involving the waiver of shipping bonds for bribes given to his twenty-one-year old son, Neil. Henry was indicted for failing to report \$500 anonymously left in his office, earning \$3000 from drawing up legal papers and notarizing documents for shipping agents he then adjudicated, and hiring and failing to supervise his son. Forced to resign, Henry's political career was over, and he became a full-time journalist, working for the *Tribune* and then the *New York Sun* for the next twenty years as legal and political editor. Henry traded in a favor and secured Neil a patronage job in the Reconstruction government of Louisiana, where the ne'er-do-well son earned a small fortune. After the custom-house fiasco, Elizabeth and Henry separated even further, with Elizabeth purchasing her own separate country house in Tenafly, New Jersey, while Henry resided in the City.³⁶

After the war, Stanton, now age fifty, finally launched her public career for women's rights. She restarted the women's rights conventions and became the first woman to run for Congress, garnering twenty-four votes. She and Anthony went to Kansas in 1867 to campaign for woman's suffrage on behalf of the American Equal Rights Association.³⁷ The Kansas legislature had two petitions on the ballot, one to add "Negro" to suffrage and one to delete "male," thus allowing woman's suffrage. The two desperate women, faced with widespread political opposition by the dominant state Republicans, joined with the flamboyant, wealthy Democrat, and racist George Francis Train. In Train, they found a vocal supporter of woman's suffrage, but Stanton and Anthony's fellow reformers were appalled that they would affiliate with him under any circumstances. Train, however, offered them significant financial support, including the promise of a woman's rights newspaper. That triggered even further outrage from their colleagues, though Stanton retorted she "would take aid from the devil himself" if it would advance woman's rights.

Back in New York, they launched their newspaper, *The Revolution* that tackled all the radical issues of the day including women's rights, divorce, marriage reform, infanticide, and other current events.³⁸ It lasted though only three years until 1870 when financial problems forced it to fold, as Train's backing quickly disappeared after he was imprisoned in England and his assets confiscated for aiding Irish rebels. Many reformers refused to support the paper, criticizing even its name. Stanton dismissed her critics, saying that while others might prefer a name like "The Rosebud" (a slam on the *Lily*), there was "no name like the Revolution," as "the establishing of woman on her rightful throne is the greatest revolution the world has ever known or will know. To bring it about is no child's play."³⁹

The Train affiliation exacerbated tensions between radical and conservative suffrage reformers, already heightened by Stanton's strident opposition to the Fifteenth Amendment granting black men the vote. With the proposed Fifteenth Amendment, the American Equal Rights Association abandoned its prior commitment to universal suffrage for both blacks and women, focusing instead only on Negro suffrage. Stanton was outraged at the betrayal of long-time allies and the rejection of women's suffrage. She refused to support the segregated pursuit

of black suffrage and the directive that “this hour belongs to the Negro.” “Do you believe,” she retorted, “the African race is composed entirely of males?”⁴⁰

Reformers, most of them former abolitionists, were appalled by Stanton’s resort to vitriolic, racist language against the amendment. Stanton said “Think of Patrick and Sambo and Hans and Yung Tung who do not know the difference between a monarchy and a republic, who can not read the Declaration of Independence or Webster’s spelling-book, making laws” for revered women like Lucretia Mott.⁴¹ Though in an earlier exhortation, she added, “for our part, we prefer Bridget and Dinah at the ballot-box to Patrick and Sambo” as “we believe in equal rights to all, irrespective of sex or color.”⁴² She was offended that the “lower orders of men, natives and foreigners, Dutch, Irish, Chinese and African,” would be entitled to citizenship before white women.⁴³

Stanton defended her absolutist position against a hierarchy of “manhood suffrage,” arguing that extending voting rights to black men, alone, inscribed an “aristocracy of sex” further entrenching male privilege. The Fifteenth Amendment enfranchised only men. And the Fourteenth Amendment enforced its mandates by reducing congressional representation for states that denied the vote to “male inhabitants.” An incensed Stanton pointed out, this “inserted the word ‘male’ into the constitution for the first time” and would take “a century at least to get it out again.” Stanton’s commitment to women’s rights was unapologetically her primary allegiance. As she explained in her own defense, “they say we are injudicious oftentimes in word and deed, saying many things that should not be said, doing many things that should not be done; to all of which we plead guilty and ask, what man or woman who has done anything in this world must not honestly make the same confession.” Such was the price to pay for action, she suggested, as twenty years of dedicated work for women’s cause in which no one could show “one duty left undone, one deadly breach not filled, one point of attack not seen and met” inevitably resulted in some blunders “for blunders are human.”⁴⁴

The differences, however, proved too much and split the universal suffrage movement. Conservative women pulled away in a New England group. In 1869, Stanton and Anthony abandoned the equal rights association and privately formed their own political organization dedicated to women’s rights called the National Woman Suffrage Association (NWSA). Conservative women’s rights reformers went their own way, objecting to Stanton’s stance on the Fifteenth Amendment, her radical position on free divorce, prohibition of male organizational leaders, and later, pursuit of a federal rather than state suffrage strategy. Male reformers like Theodore Tilton tried to reunite the groups, proposing in May 1870 a new “Union Woman’s Suffrage Association” that would unite the splintered groups with a distinct focus on women’s rights. The Stanton rivals refused, and instead, led by Lucy Stone and her husband Henry Blackwell, issued a national call for a Cleveland Convention to establish the new American Woman Suffrage Association (AWSA) as the leading national voice of women’s suffrage. The American organization, based in Boston, started its own newspaper, the *Woman’s Journal*, to compete with Stanton’s *Revolution*. Twenty years later, the two women’s organizations would finally merge back, but not after the infighting and delay wasted resources and diluted their political effectiveness.⁴⁵

At this same time, in November 1869, Stanton joined the Lyceum Bureau and began a new phase of her career traveling the country eight months of the year for the next decade lecturing on women’s rights.⁴⁶ As Stanton recalled, “the Lyceum Bureau was, at one time, a great feature in American life.” The lyceum concept, founded by Josiah Holbrook in Massachusetts

in 1826, was initially conceived as a populist forum for adult education, intellectual stimulation and community improvement at the grassroots level. Since admission prices were low, one dollar for an entire season, “most people could afford to attend, and the popularity of the lyceum spread quickly.” After the Civil War, the lyceum was commercialized with the advent of highly-paid professional lecturers, and entertainment became the primary goal. Authors, spiritualists, phrenologists, and comedians joined social reformers in entertaining the audiences of “plain citizens,” including farmers, shopkeepers, and women. Stanton praised her own lecturing skills, saying “lyceum speaking, for which you are paid, involves a degree of popularity that calls for no end of miscellaneous eleemosynary eloquences, quite sufficient to exhaust the resources of an ordinary genius.”⁴⁷ She proved successful in adapting her message to a popular audience, as her deliberate motherly persona blunted an otherwise controversial feminist message on divorce, marriage, and parenting. Women in particular came to the lyceum to be educated and entertained, and Stanton often spoke to them in a separate lecture on maternity. Stanton boasted how she was “converting many women to the cause of women’s rights” and “stirring up the women generally to rebellion” on the lyceum circuit.⁴⁸

The travel in the “gauntlet of the Lyceum” and “the long, weary pilgrimages, from Maine to Texas” took their toll on Stanton, then in her late fifties and early sixties. The lyceum allowed Stanton to earn desperately needed money for her children’s college education, by some accounts more than \$100,000 per year in today’s dollars. But she was lonely, and missed her three children still at home, and hated the endless mishaps with weather, transportation, bad food, and “these detestable things called ‘comforters’” which she said were more like “tormentors” as they were so heavy and smothering.⁴⁹ In one letter from Iowa to a friend, Stanton bemoaned the weight gain from the constant travel. “I have one melancholy fact to state which I do so with sorrow and humiliation. I was weighed yesterday and brought the scales down at 240, just the speed of a trotting horse, and yet I cannot trot 100 feet without puffing.” She tried to be optimistic. “As soon as I reach Omaha I intend to commence dieting. Yet I am well; danced the Virginia reel at Marlborough with Bob. But alas! I am 240!”⁵⁰ Stanton finally quit the lecture circuit in 1879 when her youngest child finished college.⁵¹

Stanton then turned to the tedious process of writing the massive *History of Woman Suffrage*. The first three volumes edited by Stanton, Anthony, and Matilda Joslyn Gage, collected, sorted, and reviewed submissions from all the state and local women’s organizations that had collectively comprised the grassroots efforts of the national women’s movement. Their work mythologized the story of the origins of the women’s movement and provided the next generation of activists with a usable past and reinforced Stanton and Anthony’s leadership of the movement.⁵² During the 1880s, Stanton traveled abroad several times, visiting her son Theodore in France, where he had married and was active in woman’s rights work, and living with her daughter Harriot Stanton Blatch in England, where she had married and started a family. Stanton worked with the radical Quaker branch of the British woman’s rights movement to press for suffrage for married women, against the moderate movement advancing only single women’s suffrage, consistent with English law tying voting eligibility to property ownership. Building on her British connections, Stanton formed the International Council of Women, an innocuous European organization designed to exchange experiences among women’s rights advocates globally and to celebrate the fortieth anniversary of Seneca Falls. She was in England when Henry died in 1887, though the two had been apart for a long while.⁵³

Into her seventies and eighties, Stanton took on what she came to believe was the ultimate stumbling block for women's rights: the religious doctrine of women's inferiority. Seeking to tear down this foundational assumption undergirding all of law and society, Stanton devoted her last years to writing a feminist commentary of the Bible, the *Woman's Bible*. Stanton, with a supporting committee of women, took on "the chief block in the way of woman's advancement," the idea that women's inferiority was God-ordained.⁵⁴ This heresy of questioning the Bible further ostracized her from the women's movement.

By now, the American woman's suffrage movement was strongly conservative, influenced by affiliations with the Women's Christian Temperance Union (WCTU) and social purity reformers believing in the notion of women's moral superiority and the politics of domesticity. These groups embraced the ideology of wifely redemption by which women reform men, and thus save the family by restoring women's traditional and revered role in the family. In retrospect, this conservatism turned out to be detrimental to feminism at this time because it delayed and diverted the core feminist ideal promised by the early radical movement.⁵⁵ While the new conservative allegiances increased membership and support for the vote, it diluted the movement's broader feminist mission, as Stanton warned. As she passed the reins to the next generation in 1900, she said, "I would advise our coadjutors to beware of narrowing our platform." The success of a movement, she said, "does not depend on its numbers, but on the steadfast adherence to principle by its leaders." "We should not rest satisfied to sit on the doorstep of the great temple of human interests like Poe's raven simply singing 'suffrage evermore.'" "The ballot box," she said, "is but one of the outposts of progress, a victory that all orders of men can see and understand." But "only the few," Stanton said, "can grasp the metaphysics of this question, in all its social, religious, and political bearing."⁵⁶

Stanton died in her sleep at the age of eighty-six, living with her children Maggie and Bob in New York City. Just two weeks before her birthday, she and Anthony had made plans to celebrate together. Anthony wrote, "it is fifty-one years since first we met, and we have been busy through every one of them, stirring up the world to recognize the rights of women." She continued, "we, dear old friend, shall move on the next sphere of existence—higher and larger, we cannot fail to believe, and one where women will not be placed in an inferior position, but will be welcomed on a plane of perfect intellectual and spiritual equality."⁵⁷ Her gravestone monument shaped like a Queen's chess piece records her legacy as "Mother. Author. Orator. Women's Suffrage Leader." Stanton left her autobiography, *Eighty Years and More: Reminiscences, 1815-1897*, written more as feminist manifesto than memoir, in which she portrayed her personal life as political resistance to gender discrimination. Her feminist thought, however, remains scattered throughout her writings of speeches, addresses, and editorials responding to the specific issues of her day.

The controversy over Stanton did not end with her death. A new generation of younger, more conservative suffrage activists disavowed her anticlericalism and radical ideas, immediately rejecting her legacy. Stanton's children, Harriot and Theodore, struggled to redeem their mother's historical significance by publishing heavily edited and whitewashed papers of her life and work.⁵⁸ Woman's suffrage was not achieved until the Nineteenth Amendment to the Constitution was ratified in 1920, seventy-two years after Seneca Falls. A statue commemorating the founding mothers of suffrage, Stanton, Anthony, and Mott, was started and planned for the Capitol Rotunda, but was relegated to the congressional basement. Efforts to restore the partially finished monument, dubbed "three women in a tub" after the nursery rhyme met with

resistance from congressional Republicans, though it now stands in its intended place. Seneca Falls became part of our national heritage, though Stanton's home there is mostly empty of furnishings, memorabilia, or other insights into this original feminist.

Multiple Feminisms

Stanton's political and legal reform was driven by feminist ideals, although "people in the nineteenth century did not say *feminism*."⁵⁹ They spoke of "woman's rights" or "the advancement or cause of woman," using the singular "woman" to symbolize the unity of the female sex. The word feminism did not come into popular use in America until 1910.⁶⁰ Historians traced its first usage to 1882 and French suffrage leader Hubertine Auclert's feminist newspaper, *La Citoyenne* (The Citizen). Stanton knew of Auclert and her work, and may have been familiar with the word "feminist" even if she did not adopt it as her own. Stanton's son, Theodore, then living in France, wrote to his mother of Susan Anthony's visit to Paris and their attendance at a woman's rights meeting "at which the brave, farseeing" Auclert "was the leading spirit." Theodore Stanton and Auclert were the French representatives to Stanton's International Council of Women in 1883. Stanton mentioned Auclert and her newspaper in the *History of Woman Suffrage*, and an 1888 letter from Auclert to Anthony regarding the Council uses the term "feministe" throughout.⁶¹ Whether such terminology was officially utilized, the core ideals of its meaning of feminism were clearly present and dominant in Stanton's theories. The feminist label accurately describes her thinking and provides a useful analytical tool for understanding her work.⁶²

Stanton was an original feminist thinker, among the first to articulate feminist theories. She was familiar with the work of her few feminist predecessors and knew some of them in person. Stanton participated in transcendentalist writer Margaret Fuller's small-group conversations in Boston in 1843, when Fuller wrote the "The Great Lawsuit" and its expanded book form, *Woman in the Nineteenth Century*.⁶³ Fuller argued that each human soul should be allowed to achieve "fulness of being," which for women required the removal of male dominance, reform of marriage, and self-sufficiency in education and occupation. Stanton quoted Fuller's poem in concluding her first Address on Woman's Rights and launched similar small groups in Seneca Falls.⁶⁴ Stanton met and corresponded with abolitionist Sarah Grimké, sister-in-law to her husband Henry's close friend Theodore Weld, and her sister Angelina who together ignited "the woman question" as the first women to speak to public audiences on slavery. Stanton dissected and circulated Grimké's out-of-print feminist work, *Letters on the Equality of the Sexes* (1837) challenging women's assumed biblical inferiority and legal disability.⁶⁵ Stanton read British writer Mary Wollstonecraft's *A Vindication of the Rights of Woman* (1792) and its assertions of women's equal abilities and equal education, serializing the work in the *Revolution*.⁶⁶ And she paid homage to feminist utopian Frances Wright in speeches and the front page of *The History of Woman Suffrage*.⁶⁷ Stanton took these ideas, combined with her vast knowledge of political, scientific, and social science theories to create a complex and holistic feminist theory designed to reach all aspects of women's subordination. And then she put it into action.

Feminism generally is defined as a theory that opposes women's subordination to men and works to eliminate that hierarchy and injustice. It is characterized by methodologies that focus on gender as the primary category of analysis, validate and incorporate women's experiences, and evidence suspicion of seemingly-objective rules. Modern feminist legal theory

has divided into three main strands, emphasizing either women's sameness to men, difference from men, or dominance by men. Liberal feminist theory identifies the subordination as a failure to view women as identical to men, and seeks formal rules of neutrality granting women individual rights. Difference feminism identifies unjust subordination in the failure to value women's different biological, relational and/or cultural differences, such as mothering, moral reasoning, and caregiving. Radical or dominance feminism identifies the subordination in the victimization and sexualization of women by men resulting in harms like sexual harassment, pornography, and sexual assault and necessitating institutional restructuring.⁶⁸ Stanton's feminism embodies all of these multiple strands of feminist legal thought, though she is not often depicted that way.

Stanton is typically categorized as the "archetypical American equal-rights individualist" feminist focused simply on formal equality between women and men.⁶⁹ This categorization highlights Stanton's work to dismantle barriers to women's equality and give them the same rights as men. To modern feminists, this limits Stanton's relevance to ongoing feminist inquiry and advocacy. To non-feminists, this narrow depiction supports their misappropriation of Stanton for conservative causes like domesticity and anti-abortion. For example, Christina Hoff Sommers in her 1994 book, *Who Stole Feminism? How Women Have Betrayed Women* describes Stanton as an "Old Feminist" heroine who eliminated formal gender barriers to work and education, but then appropriately and deferentially stood by her man and her seven children at home. In another example, the anti-abortion group Feminists for Life features Stanton on posters and commemorative coffee mugs, misrepresenting her as someone who was "unapologetically and loudly pro-life" in her demand for equal rights for mothers.⁷⁰ These political co-optations, however, misunderstand the depth and complexity of Stanton's feminist theories.

Stanton's holistic feminism was unfettered by the modern demarcations that have circumscribed feminist theory. As historians have explained, early feminists understood feminism in a more fluid way, endorsing both sameness and difference in their appreciation of the nuances of women's subordination in different contexts.⁷¹ For Stanton, all of the strands of feminist thought were instructive in understanding and challenging women's subjugation. Stanton viewed women as equal to, and not inferior to men, but also differently situated with respect to their experiences bearing and raising children. She sought access to the rights men had, but also extended rights to support women's experiences as a mother. To this, Stanton added an understanding of dominance of women by male systems of law, patriarchy, and religion as at fault for their oppression of women, and that structural changes to the institutions of marriage, law, and the church were required.

Stanton's starting point was formal legal equality. She demanded women's rights "simply on the ground that the rights of every human being are the same and identical." She emphasized "that woman is man's equal—was intended to be so by the Creator, and the highest good of the race demands that she should be recognized as such." The foundational difficulty, Stanton said, was that lawmakers "cannot take in the idea that men and women are alike; and so long as the mass rest in this delusion, the public mind will not be so much startled by the revelations made of the injustice and degradation of woman's position."⁷² The prevailing gender norms portrayed women as morally inferior, weak, and easily tempted away from moral righteousness like Eve who brought sin into the world. Stanton targeted this false belief in her earliest speech, debunking each claim that man was superior to woman intellectually, morally, and physically.⁷³

Establishing the “identity of the race in capabilities and responsibilities,” Stanton assumed, logically and necessarily resulted in “the equality of human rights.” And this is all one asks for woman, the same advantages, opportunities, and code of laws man claims for himself, no discriminations on the ground of sex, no “protection.”⁷⁴

Formal equality though was only the first step. As Stanton explained, “I have wrought heretofore mainly in behalf of the equality of the sexes because it has seemed to me that the recognition of that equality was as I still think it is, the first requisite, the first step on the road to social emancipation and social happiness.” However, she explained, “I perceive more and more clearly every day that the recognition of the equality of woman with man in all the senses in which it is possible that they should be equal is not enough, that it is only a first step and nothing more.”⁷⁵ Stanton appreciated the feminist insight that “formal, legal equality is necessary but not sufficient to attain substantive equality. Substantive equality requires dismantling major structural impediments to women’s full participation in all spheres of civic life.”⁷⁶

Stanton’s feminist attack demanded structural changes and what she called “social revolution.” In terms now associated with radical feminism, Stanton framed the problem of women’s inequality as women’s systemic victimization. “We show by your statute books that your laws are unjust—that woman is the victim of avarice and power.” Man was the oppressor as his “subjection of woman . . . is rooted in selfishness and sensuality,” treating her as “the idol of his lust.” Patriarchy was to blame and its continued assertion of male privilege in the law. Stanton demanded that all institutions built on this patriarchy—marriage, property, law, and the church—be radically restructured to recognize women’s equal humanity and agency. Stanton applied this theory to deconstruct the marriage laws, emphasizing their victimizing role in sexualizing women, creating a haven for male licentiousness and perpetuating the husband’s sexual prerogative.⁷⁷

Stanton deconstructed the process by which law and social institutions enforced women’s subjugation. Adopting what are now identified as feminist methodologies, Stanton critically analyzed the law,⁷⁸ suspicious of the existing law and questioning the underlying motivations which then revealed male bias and protection of power. “Our ‘loyal defenders’ are all looking out for themselves; they legislate our property and wages into their own pockets.”⁷⁹ She saw clearly how the male privilege was perpetuated by statutes and legal training, where “beardless boys in your law offices, learning these ideas of one-sided justice—taking their first lessons in contempt for all womankind—being indoctrinated into the incapacities of their mothers, and the lordly, absolute rights of man over all women, children, and property, and to know that these are to be our future Presidents, Judges, Husbands, and Fathers.”⁸⁰ She complained that law students and lawyers “cannot escape the legal view, which by constant reading, has become familiarized to their minds . . . written on the brow of every woman they meet” of the law’s gendered language of femme covert, protection, female incapacities. Stanton criticized women’s exclusion from the legal process of legislatures, juries, and courts, calling out men for their reluctance to share power with a new class of women.⁸¹

Stanton’s feminism also integrated theories of women’s difference.⁸² “The advocates of woman’s rights do not deny a difference in sex, but on the contrary, base their strongest arguments for equal rights on this very principle, because of its mutually protecting, elevating, invigorating power over the sexes.”⁸³ In her first speech, she said that women’s rights advocates “have no objection to discuss the question of equality, for we feel that the weight of argument lies wholly with us.” However, “we wish the question of equality kept distinct from the question

of rights, for the proof of the one does not determine the truth of the other.”⁸⁴ The women’s movement pragmatically started out on the equality ground, she later explained, “because we thought, from that standpoint, we could draw the strongest arguments for woman’s enfranchisement. And there we stood firmly entrenched, until we saw that stronger arguments could be drawn from a difference in sex, in mind as well as body.”⁸⁵

The differences Stanton admitted were those of maternal and moral strength like the iconic loving mother or Mother Nature who calms male brute force obsessed with destruction, war, violence, and conquest.⁸⁶ These arguments were useful to Stanton in making alternative arguments for women’s suffrage, affiliating conservative suffrage women focusing on women’s superior morality, and justifying opposition to the Fifteenth Amendment and its “manhood suffrage.”⁸⁷ But beyond political pragmatism, Stanton fully and personally appreciated women’s distinct burdens of maternity from pregnancy and childcare, and she disavowed the patriarchal attempts to control it. Maternity was not a curse, as religious dogma proclaimed, but rather a power deserving of recognition and support. The logical legal consequence of this difference, for Stanton, was to privilege women’s maternal realities with positive, gender-specific rights like reproductive choice and maternal custody.⁸⁸ Her theory of maternal agency, however, contrasted sharply with the dominant ideology of maternalism in the nineteenth century.

The prevailing social ethic of “the cult of domesticity” reified women’s morality, piety, and domestic work of house and children and then protected that sacredness in the home under the control of a man, either a husband or father. By the 1830s, domesticity was entrenched as ministers, educators, novels, and popular magazines prescribed specific behavior for women of housekeeping, educating young children, heightened morality, and selflessly living for others. Women’s designated vocation and purpose of generating moral character through her presence in the home was thus identified as the essence of successful families. Home was the sanctuary where men sought refuge from the vexations and temptations of the business world. Thus, “the central convention of domesticity was the contrast between the home and the world.” As a result, social behavior was segregated into two separate spheres based on sex: the public sphere for the man in work and politics, and the private domestic sphere for the woman in the home.⁸⁹ Stanton soundly rejected this domesticity and its ideology of separate spheres as “nonsense.”⁹⁰ Domesticity did not describe woman’s true identity nor did the domestic sphere circumscribe woman’s actualization. While Stanton recognized, and appreciated, women’s unique burdens and capabilities as mothers, she did not view those domestic responsibilities as limitations on women’s autonomy or public role. Rather, Stanton converted religious and moralistic talk of the different feminine element into an argument for power, and a basis for infusing that essential feminine element into the public sphere and in reconstructing the state, church and home.⁹¹ Thus, “difference was both the agent of change, . . . and the problem to be overcome.”⁹²

The distinguishing feature of Stanton’s theory of difference was that it was not a basis for subordination, but rather for empowerment.⁹³ The problem was that society “confounds difference with inferiority.”⁹⁴ Stanton, in contrast, explained, “while admitting a difference, we claim that that difference gives man no superiority, no rights over woman that she has not over him.” Going a step further, she asserted “if a difference in sex involves superiority, then we claim it for woman; for as she is more complicated in her physical organization, fills more offices than man, she must be more exalted and varied in her mental capacities and endowments.” Yet, ultimately, for Stanton, the point was not whether women’s natures were the same or different from men. For she concluded, “the resemblances of sex are as great as their differences.” The

point was that “woman has the same right man has to choose her own place.” Balance was required and “the masculine and feminine elements in humanity must be in exact equilibrium.” The existing social problem lay in the skewed balance and “undue depression of the feminine element.”⁹⁵

These views together comprehensively formed Stanton’s feminism, designed to achieve women’s full “freedom and individual happiness” by ending men’s domination of women and actualizing women’s own agency. At its core, Stanton’s feminism, like that of “every mainstream legal feminist embraces antistatutoryism as its goal.”⁹⁶ She explained, “the lesson of inferiority is taught everywhere, and in these terrible tragedies of life we have the result of this universal degradation of women.”⁹⁷ Her ultimate objective was to dismantle all notions of women’s inferiority and second-class status incorporated in laws, stereotypical ideologies, social institutions, and religion. Stanton’s feminism first deconstructed law and social norms to expose and identify male dominance and its corollary, women’s subjugation. As a result, she demanded the end of statutes establishing legal barriers for women, separate spheres ideology of stereotypes of domesticity, marriages based on sexualization and victimization, and laws that devalued maternalism as inferior. Stanton then reconstructed these problematic institutions by offering substitutes of new frameworks for marriage, work, law and the family.⁹⁸ Her solutions included egalitarian marital partnerships, women’s economic self-dependency through education and employment, reproductive self-sovereignty, and women’s participation in the legal and political process. Stanton was less concerned with moral questions of woman’s true nature than with positive rights and tangible change to effectuate women’s equality.

I Have All the Rights I Want

Stanton’s feminism was pragmatic. She wanted not a theory, but reform. She activated her intellectual ideas in the context of many of the current events of the day, applying her ideas to identify the broader woman question in social, political, and religious issues. Stanton also used her feminism for political organizing power, using these ideas to bring women together to create the first social movement for women’s rights.

Stanton’s key insight was to treat women as a class—a group unified by common experiences and objectives. The cult of domesticity set up this social classification “by giving all women the same natural vocation” and by grouping them by gender all in the same domestic sphere.⁹⁹ Yet women, isolated in the home, uneducated, burden with domestic cares, and scattered across class, race, ethnicity, and religion, failed to appreciate their commonalities and ways in which laws and social norms targeted their shared characteristic of gender. Stanton’s goal was to bring women together, raising their consciousness and revealing shared realities that exposed institutional gender oppression while igniting a movement.¹⁰⁰

From the start until the end of the women’s movement, Stanton’s continued frustration was the apathy of women. Stanton said “the chief obstacle” to women’s rights was women themselves. She was exasperated by the constant refrain she heard from women, “I have all the rights I want.”¹⁰¹ Stanton criticized the “fashionable butterflies” too obsessed with frivolity and fashion to appreciate their own oppression. These “silly women” “lapped amidst luxuries” cared “more for their nodding plumes and velvet trains than for the statute laws by which their persons and properties are held—who blinded by custom and prejudice to the degraded position which they and their sisters occupy in the civil scale, haughtily claim they have all rights they

want.”¹⁰² She acknowledged the limitations of the “household drudges” too overburdened with daily cares to educate themselves on the law or to assert “the courage to compare their opinions with one another.” She compared women to horses, trapped in a burning stable but too frightened to come out. Stanton warned that eventually these women would appreciate the need for such rights when confronted with the realities of marriage, maternity, and widowhood.¹⁰³

Stanton emphasized this foundational truth of women’s agency in her famous address, *The Solitude of Self*. Speaking to a congressional judiciary committee and repeating her speech to a women’s suffrage convention, Stanton poetically predicted how each woman must take responsibility for her own life, to be the “arbiter of her own destiny,” like “an imaginary Robinson Crusoe with her woman Friday on a solitary Island.” Women must be prepared to weather the “fierce storms of life” on their own. “No matter how much women, prefer to lean, to be protected and supported, nor how much men desire to have them do so, they must make the voyage of life alone, and for safety in an emergency must know something of the laws of navigation.” She continued: “To guide our own craft, we must be captain, pilot, engineer; with chart and compass to stand at the wheel; to watch the wind and waves and know when to take in sail, and to read the signs in the firmament overall.”¹⁰⁴

Stanton’s objective was to awaken women to their own subordination. Much like the consciousness-raising efforts of the second-wave women’s liberation movement of the 1960s, it was important for women to hear each other’s stories, learn of injustices, and place their own individual circumstances within the context of the greater society. Stanton emphasized the common bond among women in order to sustain “united and vigorous action.” Speaking to an international suffrage group, Stanton called for women to set aside differences in religion and culture in the name of unity. “We do not feel you are strangers and foreigners, for the women of all nationalities, in the artificial distinctions of sex, have a universal sense of injustice, that forms a common bond of union between them.”¹⁰⁵

To accomplish this unity, Stanton’s strategy was to use the law as an organizing principle demonstrating women’s shared subordination. She frequently supplemented her speeches and articles with citations to statutes, treatises, and cases. She resolved in the Declaration of Sentiments “that the women of this country ought to be enlightened in regard to the laws under which they live, that they may no longer publish their degradation, by declaring themselves satisfied with their present position, nor their ignorance, by asserting that they have all the rights they want.”¹⁰⁶ Stanton noted that “the mass of the women of this nation know nothing about the laws, yet all their specially barbarous legislation is for woman.” More specifically, Stanton used the law of domestic relations to underscore women’s similar discriminatory treatment because of sex. She recited parable-like stories of women in family situations to help women connect with other women. She told stories of property, earnings, divorce, and domestic violence involving women who were wealthy, working-class, black, Mormon, Quaker, Irish, and Scottish to show that sex distinctions extended across class, race, and religion. Stanton’s goal was to convert women’s isolated experiences in the home into universal harms that would unify women behind group political action on behalf of “woman’s rights.” Sharing women’s stories was intended to “transform an individual’s experience of frustration, privation, or humiliation into consciousness of class-based disempowerment.”¹⁰⁷

Stanton’s universalizing of women has been criticized by modern feminist scholars.¹⁰⁸ They condemn Stanton for essentializing women by assuming all women’s interests to be the same and defining those interests as her own as a privileged, white woman. The concern is that

Stanton's feminism ignores relevant differences of identity and experience, and thus may "reinscribe privilege and social hierarchy," further perpetuating race or class discrimination.¹⁰⁹ This criticism stems from Stanton's racist remarks in opposition to the Fifteenth Amendment, her opposition to black suffrage, support for educated suffrage, and her failure to work more for abolition, black civil rights, and with black feminists.¹¹⁰ It's possible to debate these assumptions—acknowledging the prevalence of such racist notions at the time; looking to contrary evidence of Stanton's defense of black women, advocacy for the working class, friendship with leading black reformers like Robert Purvis and Sojourner Truth, and support for interracial marriage; or emphasizing her general pronouncements of equality regardless of race, religion or class.¹¹¹ Whatever the conclusion reached, however, an important point often missed in this debate, is the legal and political significance of universalizing women.

Collectivizing women as a group is important to formulating and pursuing a legal critique of the law. Stanton's classification of women as a singular group was instrumental because it provided the analytical mechanism by which to identify and challenge discrimination under the law. Identifying women as a class was an innovation necessary to legal reform. Modern sex discrimination and constitutional equality arguments depend upon the existence of an identifiable "suspect class" of sex to be legally actionable. The law compares classifications, grouping together those with an "immutable trait" of sex as an unchangeable, distinguishing characteristic used to stereotype and subordinate.¹¹²

Stanton worked to explain how the classifications based on sex were detrimental discrimination rather than beneficial protection. "This invidious classification of woman everywhere works a double wrong—it degrades her in her own estimation and in that of the man by her side." She emphasized the "stereotyped sneers" and "public sentiment of contempt" for women heard at every turn.¹¹³ Drawing on the civil rights challenges based on race, Stanton analogized sex and race discrimination. "The prejudice against color, of which we hear so much, is no stronger than that against sex. It is produced by the same cause, and manifested very much in the same way. The negro's skin and the woman's sex are both *prima facie* evidence that they were intended to be in subjection to the white Saxon man." She concluded, "the discriminations against color and sex in the United States are both . . . forms of this same hateful spirit of caste."¹¹⁴

Stanton's universalizing of women was also critical to formulating legal challenge because it exposed broader systemic and structural harms. As legal scholar Martha Fineman has convincingly explained, without universality, institutional and structural inequalities of the workplace, the family and the public sphere are obscured, leaving those wider systemic disadvantages unchallenged. When we deal with "law and the relationship between legal institutions and the structuring of power and authority, as well as their allocation among the individual, the state, and societal institutions, we employ a system dependent on the process of classification, generalization and universality." Universality allows for meaningful change on broad social justice issues that "transcend those fragmented identities" of multiple and enumerable individual differences among women.¹¹⁵ Stanton, operating at the beginning of the women's movement and legal challenges, particularly appreciated this importance of connecting women together to expose the systemic problems and support broad, revolutionary legal change.

Focus on the Family

Family has been the sticking point for feminism both legally and politically. Women's rights are often viewed as anti-family. Women and men have opposed women's rights over time fearing their threat to the destruction of the family. The family and women's rights are often juxtaposed, seemingly in direct opposition to each other. In the nineteenth century, Stanton noted that "one common objection to this movement is that if the principles of freedom and equality which we advocate were put to practise, it would destroy all harmony in the domestic circle."¹¹⁶ A century later in the women's liberation movement of the 1960s, critics similarly feared that change in women's social and legal status would devalue mothering and obliterate protections for women's important roles as mothers. Stanton was forthright in her view that such talk that women's political rights would destroy "domestic harmony is the sheerest humbug."¹¹⁷ The "only happy households," she asserted, were those in which spouses "share equally in counsel and government" without subordination.¹¹⁸ For Stanton, family was not a foil or opposition to women's rights: it was a central locality that demanded transformative change.

Stanton identified the family as an important institution for feminist reform for both practical and intellectual reasons. Practically, marriage is where most women then found themselves, and thus the common reality dictated how women experienced gender subordination. "As woman is the greatest sufferer, her chief happiness being in the home and with her children, and seldom having resources of her own, prevented by family cares from doing business in her own name and enjoying the dignity of independence by self-support, she is even more interested than man can possibly be as to the laws affecting family life."¹¹⁹ Intellectually, Stanton understood how marriage created and entrenched gendered social norms. As historian Nancy Cott explains: "The whole system of attribution and meaning that we call *gender* relies on and to a great extent derives from the structuring provided by marriage. Turning men and women into husbands and wives, marriage has designated the ways both sexes act in the world and the reciprocal relation between them. It has done so probably more emphatically than any other single institution or social force."¹²⁰ Thus, attacking the source of the gendered norms in the family had the potential for significant reverberating effects on all public and civil inequalities.

Stanton's comprehensive challenge to the law of the family attacked the entrenched law of coverture. "Coverture," inherited from English common law, dictated that the legal identity and rights of a woman were lost when she married, "covered" by her husband. As English treatise-writer William Blackstone described, "by marriage, the husband and wife are one person in law: that is, the very being or legal existence of the woman is suspended during the marriage, or at least incorporated and consolidated into that of the husband: under whose wing, protection, and *cover*, she performs every thing."¹²¹ Left over from feudal times, coverture was based on a patriarchal system in which the lord, the husband, "protected" the wife, just as the lord had protected the peasant.¹²² A married woman lost any right to own property, earn wages, draft a will, enter into a contract, testify in court, or sue or be sued. Her legal identity and her economic power were obliterated.¹²³ Even as a new specialized state law of "domestic relations" for husband/wife and master/servant developed in America in the 1830s, jurists and treatise writers held on to coverture, further embedding it in law.¹²⁴ That disabling of women's rights, Blackstone explained, was well intentioned, as the laws "are for the most part intended for her protection and benefit. So great a favourite is the female sex of the laws of England."

“Protection!” Stanton said sarcastically; the law protects women like “the wolf the lamb or the eagle the dove he carries to his eyrie.”¹²⁵

Stanton challenged the law of coverture both symbolically and concretely. “Every line in the old common law of England on which the American system of jurisprudence is based, touching the interests of woman, is, in a measure, responsible for the wrongs she suffers today.”¹²⁶ Normatively, she understood that coverture was a legal institution whose scope was as much a tool of ideology as law. It taught women that they were inferior by mandating their complete subordination to men through legal disability, denying them dignity and independence.¹²⁷ Practically, she also demanded the tangible rights denied women under coverture’s disabilities, seeking specific civil and social rights to property, contract, legal authority, and employment.¹²⁸ For coverture was intransigent, granting little meaningful relief in mid-century married women’s property acts, and operating to deny equal citizenship and profession as women demanded in the U.S. Supreme Court.¹²⁹

Coverture persisted despite the transformation of the legal concept of the family from patriarchy, to contract, to social institution. The patriarchal familial form inherited from English feudal times conceptualized marriage as rigid levels of hierarchy with the husband as head of the household as part of the community governance extending power by divine right down from the king to the governor to the master of the house.¹³⁰ Post-Revolution, this derivative right of kings was replaced by the republican family constructed based on the mutual consent of the parties free from governmental interference. Contract emerged as the dominant theory of law, politics, and commercialism, and it equally influenced the theory of the family. The contract theory still prioritized the husband’s power, granting the woman power to consent to the initial marriage, and then assuming continued consent to all conditions and strictly segregating her role into the domestic sphere. Her importance in this sphere elevated over time from “republican motherhood” tasked with educating virtuous male citizens to “true womanhood” responsible for all moral and family life, though always subordinated to the power of the husband.¹³¹

By the late nineteenth century, this private contract ideology with its prioritization of individualism and private welfare, at least of the husband, triggered backlash and “near moral panic” as it was blamed for the social and moral disintegration of the family. Threats to the family were seen in industrialization, immigration, Mormon polygamy, women’s rights, and prostitution. New social sciences of juvenile reform and social work emphasized the family as an important institutional protection for children. And this all led to a demand for a stronger government regulation of the family and morality, and a reassertion of the sacred role of women in the home.¹³²

Stanton fought against the dominant ideology at every stage, recognizing that women were victimized under all legal forms. “Men have tried all notions of marriage and family from monogamy to polygamy, and women the same under all, victims alike.” Under all forms of the family, men retained control and agency, and women were relegated to objects subject to that power. She objected to the continuing patriarchal ideas of the headship of the husband. “The same process of evolution that has given us a state without a king and a church without a Pope, will give us a family without ‘a divinely ordained head,’ in which the interests of father, mother, and child will be equally represented.”¹³³ She gravitated to the idea of the republican family with its precepts of individual rights, and used this legal language of contract to frame her concept of marital partnership with the free right to termination by divorce. Her contract theory,

however, radically altered the prior marriage contract, reconstructing it as a partnership of fully equal and autonomous partners rather than two different, complimentary gendered roles. Stanton rejected the sentimentalized, dominant ideology of “true womanhood” that depicted women as delicate and pious, appropriately relegated to submission, obedience, and domesticity under the control and protection of men.¹³⁴ Her ability to reframe the contractual notion of marriage, however, waned, as the public discourse rejected this private vision of marriage.

Stanton revolted against the family reformers’ notion of marriage as a social institution which demanded the sacrifice of the individual women. “We have so often heard the declaration that the individual must be sacrificed to society that we have come to think their interests be in different directions.” Instead, she argued, “whatever promotes the best interests of the individual promotes the best interests of society, and vice versa.” She saw protection of the family as a pretext keeping women down. The goal for Stanton was to create full freedoms of power, opportunity, and choice for women in the family, not suppress them under more government regulation under the guise of “saving the family.” Fundamentally, Stanton rejected defining women by their role in the family. These roles did not define women’s true individuality, capacity for work, or intellect, but were mere incidents--secondary to their core personhood. Moreover, these roles of “woman, wife, widow, and mother” were not limitations as constructed by the ideology of domesticity, but instead were instead meaningful capacities that demanded substantive legal rights.¹³⁵ “Out of marriage, woman asks nothing at this hour but the elective franchise. It is only in marriage that she must demand her rights to person, children, property, wages, life, liberty, and the pursuit of happiness.”¹³⁶

Stanton envisioned radical structural change in the family based on women’s full equality. “We are to-day in the midst of the greatest social revolution that the world has ever seen, because it goes down to the very foundation of society. This great idea of the equality of woman to man is knocking at the very doors of each of our homes.”¹³⁷ And this scared people. Family became the foil for women’s rights, juxtaposed as if in opposition. Proposals for suffrage or property rights met with opposition that such rights would cause the destruction of the family. “What will become of the family hearthstone,” U.S. Senator Thomas Bayard from Delaware questioned in response to a proposed amendment to extend women’s suffrage in the territories. “You will have a family with two heads—a ‘house divided against itself.’ You will no longer have that healthful and necessary subordination of wife to husband, and that unity of relationship which is required by a true and a real Christian marriage.”¹³⁸

At times, Stanton patiently appeased objectors, reassuring them that women’s rights would not change the family, or at most, would improve it. “When this great work has been accomplished in every home and each one shall be the happy possessor of a higher marriage vow, we shall still be the possessors of not only home and family, but a better and purer order of things will be established.”¹³⁹ And she dismissed the doomsayers who feared that “the advocates of Woman’s Rights will ultimately abolish all distinctions of sex, make woman man, that the marriage relation will be annulled, cradles annihilated, and the stockings mended by the state; as if conjugal and maternal love depended on the puny legislation of man.”¹⁴⁰ At other times, Stanton was less politic, boldly claiming that indeed, feminist reforms would upturn the existing oppressive family arrangements. “Fears are expressed that the ideas of Woman’s Rights will disturb the whole family arrangements. I am proud to say that this will be the case.”¹⁴¹ She emphasized the reform of marriage and the family for women’s equality was both radical and progress.

Conservatism cries out we are going to destroy the family. Timid reformers answer, the political equality of woman will not change it. They are both wrong. It will entirely revolutionize it. When woman is man's equal the marriage relation cannot stand on the basis it is on today. But this change will not destroy it. As human statutes and state constitutions did not create conjugal and maternal love, they cannot annul them. . . . Change is not death, neither is progress destruction.¹⁴²

By claiming that women's rights would "upset the family relation," Stanton said, man "acknowledges that her present condition of subjection is not of her own choosing, and that if she had the power the whole relation would be essentially changed."¹⁴³ Quoting British philosopher John Stuart Mill's *The Subjection of Women*, she said "the male sex cannot yet tolerate the idea of living with an equal at the fireside, and here is the secret of the opposition to woman's equality in the State and the Church: men are not ready to recognize it at home."¹⁴⁴

This book focuses on recovering and analyzing Stanton's feminist contributions to law of the family. It explores her work on marital property, marriage, divorce, domestic violence, reproductive choice, and mothering and the overarching feminist legal theory that drove her advocacy. It begins where Stanton did, with the issue of marital property rights, and then to Stanton's broader structural critique of the patriarchal nature of marriage and her proposed reconstruction of marriage as a substantively equal partnership. It details her advocacy of divorce as a protection for domestic violence and as an entitlement for women's individual happiness, and the division this radical position on divorce caused among women's rights advocates. The book then examines Stanton's demands for gender-specific rights of prioritized control to women in reproductive choice and maternal custody. It concludes by exploring the striking parallels between Stanton's work and modern reforms that eventually adopted almost all of her tangible proposals for gender equality in the family.

Together, these chapters show that Stanton's theories on marriage and the family were not an evolution of thought over fifty years as much as they were a persistent application of her theories that repeated even as they developed. Stanton poured out her ideas early in the movement, with all of her ideas on marriage, divorce, and maternity foreshadowed by the Declaration of Sentiments and other early writings. She then revisited each piece of this complex and radical social challenge as current events, public interest, and her own consternation provided. Stanton tailored her thoughts to the evolving social and political context, seeking public avenues for her radical views and taking pieces of new theories of politics, social science, and philosophy to bolster her arguments. Like an advocate, Stanton offered multiple arguments over the years in support of her ultimate position: the demand for women's full equality and agency within the family.

Writing Feminist Legal History

This is a work of feminist legal history. As history, it is focused on recovering the facts, filling in the knowledge gaps, and getting the story right. As legal, it situates Stanton's work in the context of the law, primarily concerned with understanding her advocacy in relation to domestic relations, sex equality, and access to justice. As feminist, this book "asks the woman question"

as contemporary feminist theorists do by inquiring as to how the laws affected women, reading women and their experiences into the law, and utilizing critical methodologies to deconstruct and analyze the law and social norms.

This feminist legal history approach produces overall impressions that differ from the conventional understandings. First, it alters thinking about Stanton herself. It shows Stanton as a legal as well as a political actor focused on a comprehensive feminism. Her broad agenda included all issues of women's political, social, civil, and religious experience and encompassed complex, and nuanced feminist thinking. She challenged the falsity of the public/private divide of separate spheres and identified the family as a key site of women's subjugation. Second, it revises oversimplified understandings of feminist legal history. A common description portrays the first-wave movement of the nineteenth century focused on the vote, a second-wave movement in the 1970s for employment and abortion, and a modern third-wave movement against reductionism to a few "women's" issues.¹⁴⁵ This work shows that early feminism as advanced by Stanton was a broad movement with a comprehensive agenda of political, economic, social, familial, civil, and religious justice. This comprehensive agenda, however, was not necessarily interchangeable, despite the historical tendency to lump all women's issues into one monolithic question, thereby shortchanging deep engagement. This work offers a counter approach of concentrating on one area of family rights. Third, the feminist legal history approach alters the view of the development of family and the relevant issues to that development. While family law was influenced by commercialization, codification, and industrialization, it was also challenged by feminist petition, even if legislators and judges resisted that challenge. Early feminists did challenge the private law of the family and the concrete and normative impact of designation women as inferior based on her segregation into the separate domestic sphere.

The goal of this work is to integrate its findings into the main narrative of law, salvaged from its second-class status on the sidelines. With visibility and acceptance, Stanton's work offers an applied legal history of evidence to contextualize continued debates over women's rights in the family.¹⁴⁶ As modern family law, for example, adopts objective economic formulas for alimony, Stanton's work calls us to question the underlying gendered assumptions of marital behavior. As subjective judicial standards of a child's "best interests" for custody operate on gendered assumptions of the "good mother" or overvalue unexpected paternal contributions, Stanton's work challenges these stereotypes and prioritizes rights based on the reality of which parent carries the burden of caregiving. And as reproductive choice faces religious preemption, Stanton's work calls us to question the religious interpretation and redirects us to understanding maternal power as a source of agency rather than incompetence. Ultimately, it's about recovering the rest of the story and letting it guide legal debates over women's rights as appropriate.

NOTES

¹ Ginzberg; Kern.

² Declaration of Sentiments, *Report of the Woman's Rights Convention, Held at Seneca Falls, N.Y., July 19th and 20th, 1848*; ECS, "The Degradation of Disfranchisement," *Boston Investigator*, Apr. 20, 1901; ECS, "The Degradation of Disfranchisement," Address to the NAWSA, Feb. 26, 1891; Clark, "Religion," 29-30, 50.

³ "Degradation"; ECS, "National Law," Nov. 15, 1899; Griffith, "Marriage," 233.

⁴ *Eighty Years*; Griffith; Gornick; Lutz; ECS, "Shall the World's Fair be Closed on Sunday," *Woman's Journal*, Feb. 25, 1893.

⁵ Griffith, "Marriage," 235; Edward Finch Bullard, "Daniel Cady," 9 *Green Bag* 95, Mar. 1897; *Random Recollections*, 139; H.B.S., "Daniel Cady, Biographical Sketch of the Late Judge Cady," *NY Times*, Jan. 25, 1855; "Obituary, Death of Hon. Daniel Cady," *NY Times*, Nov. 3, 1859.

⁶ *Eighty Years*, 13-14, 30-32, 46-50; "Our Girls," *Indianapolis Sentinel*, Jan. 19, 1879; ECS, Emma Willard Assoc., Alumnae Questionnaire [1898?], *Microfilm* 39:7; HBS to ECS, June 23, 1842; *Papers*, v.I, xxv; Griffith, "Marriage," 237; J.A. Fowler, "The Late Elizabeth Cady Stanton: A Phrenological Interview and Personal Reminiscences of the Great Pioneer Suffragist," *Phrenological Journal and Science of Health* 82 (Mar. 1903); *Random Recollections*, 147; Griffith, 8, 14-29; Wellman, 32; Author's Telephone Interview, Coline Jenkins (great-great granddaughter of ECS), July 2013; Stanton and Blatch, v.1, Forward, xiv; DuBois, *Thinker*; Lind, *Review* 1327, 1338.

⁷ Ida Husted Harper, "Elizabeth Cady Stanton," *American Monthly Review of Reviews* (Dec. 1902) in Griffith, xix, 173-75.

⁸ Address of Mrs. E.C. Stanton, Proceedings of the Tenth National Woman's Rights Convention, May 11, 1860, 65, 71.

⁹ Rice, 481, 483.

¹⁰ Ginzberg, 30-41; *Eighty Years*, 78-79; Rice, 132, 146, 198, 201, 211; Griffith, "Marriage," 234-36; Griffith, 26-37; *Papers*, v.I, xxix, 8; ECS to SBA, April 2, 1852.

¹¹ Advertisement "Henry B. Stanton, Attorney and Counselor," June 11, 1844.

¹² *Random Recollections*, 141-42; "Henry B. Stanton's Death," *NY Times*, Jan. 15, 1887; e.g., *Houston v. City Bank of New Orleans*, 47 U.S. 486 (Jan. Term 1848) (bankruptcy); *Parker v. Ferguson*, 1 Fish. Pat. Rep. 260, 18 F. Cas. 1126, 1 Blatchf. 407 (Cir. Ct. N.D. N.Y. 1849) (patent); *Foote v. Silsby*, 2 Blatchf. 260, 9 F. Cas. 385 (Cir. Ct. ND NY July 1851) (patent), aff'd *Silsby v. Foote*, 55 U.S. 218 (1852); *Erastus Corning and John F. Winslow v. Peter Burden*, 56 U.S. 252 (1853); "Hook-headed Spike," *NY Times*, Dec. 27, 1852; "The Hook-Headed Spike' Case Decided," *NY Times*, Apr. 17, 1869.

¹³ Rice, 318; Griffith, 89; Ginzberg, 30.

¹⁴ ECS to SBA, Apr. 2, 1852.

¹⁵ Griffith, "Marriage," 237; *Eighty Years*, 136.

¹⁶ ECS, Letter to the Woman's Rights Convention at Worcester, Oct. 23-24, 1850, 52.

¹⁷ Rice, 46, 230, 255; Griffith, 44, 48-49, 228; Griffith, "Marriage," 237. Stanton may have also miscarried in March 1849. Wellman, 169.

¹⁸ *Eighty Years*, 147-148; Griffith, "Marriage," 238.

¹⁹ Wellman, 197.

²⁰ Address of Mrs. Elizabeth Cady Stanton on Woman's Rights, Sept. 1848 (ms.), *Papers*, v. I, 94; Wellman, 4, 9, 193; *NY Daily Tribune*, July 19, 1848; HBS to ECS [Sept. 8, 1848].

²¹ Declaration, 3.

²² ECS, "A Private Letter," *Rev.*, Nov. 10, 1870; Ginzberg; Clark, "Religion."

²³ "Private Letter."

²⁴ Isenberg; Leach, 9; Siegel, "Home," 1073, 1158 (1994); Clark, "Religion," 29.

-
- ²⁵ Campbell, 51; DuBois, *Suffrage*, 24, 191; *HWS*, v.I, 124, 163, 215, 375, 517, 472; ECS to SBA, Apr. 2, 1852.
- ²⁷ *Eighty Years*, 165.
- ²⁸ ECS to SBA, Sept. 10, 1855; Griffith, 88; ECS to SBA, Jan. 24, 1856.
- ²⁹ Griffith, 87; ECS to SBA, Nov. 1, 1857.
- ³⁰ *Id.*
- ³¹ ECS to SBA, July 4, 1858.
- ³² Griffith, 106 (citing ECS to SBA, [1861]).
- ³³ Wellman, 221; *Eighty Years*, 165; SBA to Antoinette Brown Blackwell, Sept.4, 1858; SBA to ECS, Jan. 16, 1861.
- ³⁴ Griffith, 98-99.
- ³⁵ *HWS*, v.II, 50-89; Griffith, 112; Venet, 103; Eric Foner, *The Fiery Trial: Abraham Lincoln and American Slavery* 291-92 (2010).
- ³⁶ Rice, 428-62, 470; Testimony, Journal of the Committee on Public Expenditures, U.S. Congress, House of Reps., Report No. 111, 38th Cong. 1863-64 (Wash: Gov't Printing Office); Congressional Report, *NY Daily Tribune*, June 16, 1864, 4; HBS, "The New-York Custom-House," *NY Times*, Nov. 6, 1863; Griffith, 120, 127.
- ³⁷ Griffith, 125-30; DuBois, *Suffrage*, 79-104.
- ³⁸ Earlier women's rights newspapers included the *Lily* (1849-1853) and Pauline Wright Davis's *Una* (1853-1855). Rakow and Kramarae, 7.
- ³⁹ ECS to SBA, Dec. 28, 1869.
- ⁴⁰ ECS to Wendell Phillips, May 25, 1865; Address of ECS, in Proceedings of the First Anniversary of the AERA, May 9, 1867; Thomas, "Sex v. Race, Again," 33.
- ⁴¹ ECS, "Manhood Suffrage," *Rev.*, Dec. 24, 1868; ECS, Address to National Woman Suffrage Convention, Jan. 19, 1869; ECS, Address to Anniversary of the AERA, May 12, 1869; ECS, Anniversary of the NWSA, *Rev.*, May 19, 1870.
- ⁴² ECS, *Rev.*, Feb. 26, 1868.
- ⁴³ "Manhood Suffrage"; Mitchell, 128.
- ⁴⁴ Suffrage Address, Jan. 1869; *Eighty Years*, 241-43; ECS, "Letter to Editor," *Woodbull and Claflin's Weekly*, Mar. 4, 1871; ECS to Gerrit Smith, Jan. 1, 1866; *Papers*, v.II, xxii-xxiv; DuBois, *Thinker*, 3-4; DuBois, *Suffrage*, 61.
- ⁴⁵ ECS, "Hartford Convention," *Rev.*, Nov. 11, 1869; "Woman Suffrage," *NY Times*, May 12, 1870; SBA, Remarks to AWSA, Cleveland, Nov. 23, 1870; ECS, "Woman Suffrage Organizations," *Free Parliament*, Dec. 9, 1871; Griffith, 137-138; Rakow, 49; DuBois, *Suffrage*, 165, 190; Tetrault, 35-37.
- ⁴⁶ Lutz, 193; Ginzberg, 143; Griffith, 169.
- ⁴⁷ ECS, "Lyceum Experiences," *Topeka Daily Capital*, June 14, 1885.
- ⁴⁸ *Eighty Years*, 259-60; ECS to Gerrit Smith, Jan. 25, 1870; Griffith, 163; Hogan and Hogan, 415-19.
- ⁴⁹ ECS to Elizabeth Smith Miller, Mar. 1879; ECS to Margaret Stanton, 1872; ECS, "A Basket of Varieties," *Golden Age* (NY), Jan. 6, 1872.
- ⁵⁰ ECS to Elizabeth Smith Miller, Sept. 11, 1888.
- ⁵¹ Griffith, 144, 160-61; Ginzberg, 152.
- ⁵² Tetrault, 112-44.
- ⁵³ *Eighty Years*, 352-75; ECS Diary, Stanton and Blatch, v.2, 196-213, 235-236; ECS, "Address of Welcome," Formal Opening of the Council, Mar. 25, 1888; Holton, 1112, 1114, 1121-29; Ginzberg, 68.
- ⁵⁴ ECS, *The Woman's Bible* (1895); ECS, "Has Christianity Benefited Woman?," *North American Review* 389, 395 (May 1885); Kern, 100-02.
- ⁵⁵ Stansell, *Promise*, 112-17.
- ⁵⁶ Address by ECS, Thirty-first Annual Convention, Feb. 10, 1890; ECS, "The Subjection of Woman," Speech, May 1873, in *Papers*, v.II, 620.

-
- ⁵⁷ SBA to ECS, before Oct. 26, 1902.
- ⁵⁸ Stanton and Blatch.
- ⁵⁹ Cott, *Feminism* 3.
- ⁶⁰ *Id.* 3, 13-14; Offen, 119, 125.
- ⁶¹ Marie-Anne Hubertine Auclert to SBA, Feb. 27, 1888; *HWS*, v.III, 899, 952; *Papers*, v.IV, 299; “Report of the International Council,” 9; *Eighty Years*, 177.
- ⁶² Davis, 219-20; DuBois, *Thinker*, 2, 6, 19.
- ⁶³ Marshall, 132, 134, 216, 219; Wayne, 32.
- ⁶⁴ Cole, 553, 553-54; Fuller, 51, 96; Marshall, 224-30.
- ⁶⁵ Wellman, 160; ECS to Elizabeth J. Neall, Nov. 26, 1841; ECS to Elizabeth Pease, Feb. 12, 1842; Sarah Grimké to ECS, Dec. 31, 1842; Lerner, *Grimké Sisters*.
- ⁶⁶ Reid, 1123, 1179.
- ⁶⁷ *E.g.*, Mrs. Stanton’s Suffrage Convention Letter, *Washington Chronicle*, Jan. 28, 1883; *HWS*, v.I.
- ⁶⁸ Cott, *Feminism*, 4-5; Offen, 135-36; Chamallas, 12; Dowd, 9-11; Thomas and Boisseau, *FLH*, 8-11.
- ⁶⁹ Cott, “Comment,” 203-05; Siegel, “Home,” 105-06; Zillah R. Eisenstein, *The Radical Future of Liberal Feminism*, 1981.
- ⁷⁰ *But see* chapter 7.
- ⁷¹ Cott, *Feminism*, 19; Clark, “Religion,” 34; Offen, 136; Davis, 2.
- ⁷² ECS, Address to the Legislature of New-York, Feb. 14, 1854, at 17-18; Declaration, 5.
- ⁷³ Address on Woman’s Rights; Campbell, 52; Clark, “Religion,” 31-33.
- ⁷⁴ Declaration, 6; ECS, “Subjection of Women” (1875); ECS, Address to the New York State Legislature, Mar. 1860, repeated at Proceedings of the Tenth National Woman’s Rights Convention, May 10, 1860.
- ⁷⁵ ECS, Free Love Speech, [c.1871], in *Papers*, v.II 392.
- ⁷⁶ Miranda McGowan, “Gender Equality: Dimensions of Women’s Equal Citizenship.” 28 *Constitutional Commentary* 139, 145 (2012).
- ⁷⁷ 1854 NY Address, 17; Address on Woman’s Rights; “Subjection”; “Disenfranchisement”; ECS to SBA, Mar. 1, [1852].
- ⁷⁸ Chamallas, 173-219.
- ⁷⁹ ECS, “Rev. Joseph Thompson on Woman’s Suffrage,” *Rev.*, Apr. 22, 1869.
- ⁸⁰ 1854 NY Address, 17; “Subjection”; ECS, “The Degradation of Woman,” *Rev.*, Jan. 15, 1868; ECS, “The Christian Church and Woman,” *Index*, Oct. 3, Nov. 6, and Dec. 4, 1884.
- ⁸¹ 1854 NY Address, 17; “Rev. Thompson.”
- ⁸² ECS, “Miss Becker on The Difference in Sex,” *Rev.*, Sept. 24, 1868; “Subjection”; ECS, “The Other Side of the Woman Question,” 129 *North American Review* 432 (1879); Davis, 154; Hasday, 1373; Kern, 55; Offen, 135; DuBois, “Comment,” 95-96; Cott, “Comment,” 205.
- ⁸³ “Other Side,” 432.
- ⁸⁴ Address on Woman’s Rights.
- ⁸⁵ “Miss Becker.”
- ⁸⁶ Address on Woman’s Rights; “Manhood Suffrage”; AERA Anniversary Address; “Subjection.”
- ⁸⁷ 1854 NY Address; “Manhood Suffrage”; Address on Suffrage; Address of Mrs. Stanton, *Chicago Republican*, Feb. 12, 1869; Kern, 56.
- ⁸⁸ Hasday, 1377-78, 1384-85.
- ⁸⁹ Thomas and Boisseau, *FLH*, 4; Cott, *Bonds*, 1-2, 63-64, 71, 97; Welter, 1.
- ⁹⁰ ECS, “Wife,” *Lily*, Jan. 1852; Address on Woman’s Rights.
- ⁹¹ “Manhood Suffrage”; “Miss Becker”; ECS, “The Pleasures of Age,” 1885; S.F. [ECS], “Man Superior,” *Lily*, Apr. 1850; ECS, “Why Must Women Vote,” *Lily*, May 1850; ECS, “Rev. Henry Edgar,” *Rev.*, June 10, 1869; Kern, 55-57; Davis, 152-53; *Papers*, v. II, 183 n. 3.
- ⁹² Clark, “Religion,” 36.
- ⁹³ Kern, 55-57; Davis, 152-53.

-
- ⁹⁴ “Miss Becker”; Address on Woman’s Rights; ECS, “Progress of the American Woman,” 117 *No. Amer. Review* 904 (Dec. 1900).
- ⁹⁵ “Miss Becker”; “The Other Side,” 432-33; “Progress”; Clark, “Religion,” 35.
- ⁹⁶ Address on Woman’s Rights; “Miss Becker”; Joan Williams, 1267, 1282.
- ⁹⁷ ECS, “Social Vice,” *NY Sun*, Nov. 30, 1900.
- ⁹⁸ Joan Williams, 1266-72.
- ⁹⁹ Cott, *Bonds*, 99-100.
- ¹⁰⁰ “Degradation,” *Investigator*; Thomas, “Notion,” 139.
- ¹⁰¹ ECS, “Our Defeats and Our Triumphs,” Feb. 1898; ECS, “Teach Women to Think,” *National Citizen and Ballot Box*, Sept. 1880; Address on Woman’s Rights; ECS, “I Have All the Rights I Want,” 1859; ECS, “I Have All the Rights I Want,” *Rev.*, Apr. 1, 1869.
- ¹⁰² *HWS*, v.I, 13; 1854 NY Address, 7; 1860 NY Address.
- ¹⁰³ *HWS*, v.I, 15; 1860 NY Address; ECS, “Women Their Own Emancipator,” *Woman’s Journal*, Aug. 25, 1894.
- ¹⁰⁴ ECS, “The Solitude of Self” to NAWSA Twenty-fourth Convention, Jan. 18, 1892, *Woman’s Tribune*, Jan. 23, 1892; ECS, Address, Hearing Before the House Committee on the Judiciary, Jan. 18, 1892; ECS, “The Solitude of Self,” *Boston Investigator*, Jan. 12, 1901.
- ¹⁰⁵ “Mrs. Stanton to the Mothers’ Congress,” *Woman’s Journal*, May 26, 1900; Formal Opening.
- ¹⁰⁶ Tenth Convention; Declaration, 5.
- ¹⁰⁷ *HWS*, v.I, 721; Thomas, “Notion,” 146-50; Siegel, “Home,” 1158.
- ¹⁰⁸ Davis, 71; Harris, 581; Stansell, “Missed,” 32; Dowd, 5-6; Newman, 5, 56-64 (1999).
- ¹⁰⁹ DuBois, *Thinker*, 4.
- ¹¹⁰ Harris, 585-90; Stansell, “Missed,” 32-36; Mitchell, 128.
- ¹¹¹ Gordon, “On Account,” 111; Davis, 145-47; Thomas, “Sex v. Race, Again,” 33-40; *e.g.*, ECS to Phillips, May 25, 1865; ECS, Letter to the National Anti-Slavery Standard, Dec. 26, 1865; ECS, “Letter to the Editor, The Subjection of Woman,” *NY Times*, Mar. 9, 1873; SBA, Report of the International Council of Women, NWSA, Mar. 25-Apr. 1, 1888, 48; ECS, “The Worship of God in Man,” *Parliament Papers*, 1234 (Sept. 1893).
- ¹¹² *Frontiero v. Richardson*, 411 U.S. 677 (1973); Thomas, “Notion,” 140-42.
- ¹¹³ “Degradation.”
- ¹¹⁴ ECS, “Address at the Decade Meeting on Marriage and Divorce,” Oct. 20, 1870, 61; 1860 NY Address; Address on Woman’s Rights; “Disenfranchisement.”
- ¹¹⁵ Fineman, “Feminism,” 619-20; Fineman, “Identities,” 1713.
- ¹¹⁶ Address on Woman’s Rights.
- ¹¹⁷ Worcester Letter, 52.
- ¹¹⁸ Address on Woman’s Rights.
- ¹¹⁹ “National Law.”
- ¹²⁰ Cott, *Public Vows*, 3.
- ¹²¹ 1 William Blackstone, *Commentaries on the Laws of England*, 430 (1765) (1979 ed.); *see* 2 James Kent, *Commentaries on American Law* 74 (3d ed. 1836); Tapping Reeve, *The Law of Baron and Femme, Parent and Child, Guardian and Ward, Master and Servant* (2d ed. 1846).
- ¹²² Chused, 71.
- ¹²³ Basch, 17.
- ¹²⁴ Grossberg, ix, 12-16; Reid, 1167-71; Warbasse, 28; *e.g.*, Kent; Joel Bishop, *Commentaries on the Law of Marriage and Divorce* (1852 and 1882); James Schouler, *The Law of Domestic Relations* (1870). Joel Bishop apprenticed in Henry Stanton’s law office. *Papers*, v.I, 50 n. 4.
- ¹²⁵ ECS, An Address to the Women of the State of New York, in Proceedings of the Yearly Meeting of Congregational Friends Held at Waterloo, NY, June 3-5, 1850; ECS, “Should Women Vote,” *Lily*, July 1850.
- ¹²⁶ ECS, “The Christian Church and Woman,” *Free Thought Magazine*, Nov. 1896, 673, 681.

-
- ¹²⁷ Reid, 1126-28; ECS, "The Power of the State Legislature," Feb. 18, 1885, *Woman's Tribune*, Apr. 1, 1885.
- ¹²⁸ 1854 NY Address, 9.
- ¹²⁹ Thomas and Boisseau, *FLH*, 4-7; *Minor v. Happersett*, 88 U.S. 162 (1874); *Bradwell v. Illinois*, 83 U.S. (16 Wall.) 130 (1872); *Ex Parte Lockwood*, 154 U.S. 116 (1894).
- ¹³⁰ Norton, *Founding Mothers*, 96-137.
- ¹³¹ Thomas and Boisseau, *FLH*, 4; Kerber, *Republic*; Address on Woman's Rights.
- ¹³² Grossberg, 9-11; Iversen, 14, 100.
- ¹³³ ECS, "The Need of Liberal Divorce Laws," *No. Amer. Review*, Sept. 1884, 245.
- ¹³⁴ Welter, 152-57; "Wife."
- ¹³⁵ Declaration; 1854 NY Address; ECS, "How Shall We Solve the Divorce Problem?," *NY American J.*, Oct. 13, 1902.
- ¹³⁶ "Marriage and Divorce," *NY Tribune*, May 30, 1860; Address of Elizabeth Cady Stanton on the Divorce Bill, Before the Judiciary Committee of the New York Senate," Feb. 8, 1861; "Domestic Warfare," 563.
- ¹³⁷ "Free Love": Mrs. Stanton on Woman Suffrage and 'Free Love,'" *SF Chronicle*, July 15, 1871.
- ¹³⁸ *HWS*, v.II, 577.
- ¹³⁹ "Free Love," *SFC*; ECS, "Mrs. Stanton to Mr. Hooker," *Rev.*, Feb. 24, 1870.
- ¹⁴⁰ ECS, "Bible Marriage," *Rev.*, Apr. 2, 1868; "Miss Becker"; "Mrs. Stanton to Mr. Hooker."
- ¹⁴¹ "Free Love," *SFC*.
- ¹⁴² Decade Meeting Address, 61; "Marriage and Divorce," *SF Chronicle*, Aug. 19, 1871; "Free Love," *SFC*; "The Other Side"; "Bible Marriage."
- ¹⁴³ "Free Love," *SFC*; "Marriage and Divorce," *SFC*; "Editorial Notes," *Rev.*, Sept. 7, 1871.
- ¹⁴⁴ Decade Meeting Address, 60; "Marriage and Divorce," *Chicago Tribune*, Jan. 26, 1871; "Other Side."
- ¹⁴⁵ See Kathleen Kelly Janus, "Finding Common Feminist Ground: The Role of the Next Generation in Shaping Feminist Legal Theory," 20 *Duke J. Gender Law and Policy* 255 (2013).
- ¹⁴⁶ Alfred L. Brophy, "Introducing Applied Legal History," 31 *Law and History Review* 232 (2013).