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THE ORIGINS OF CONSTITUTIONAL GENDER EQUALITY IN THE NINETEENTH-CENTURY WORK OF ELIZABETH CADY STANTON

*Tracy A. Thomas**

The fall colloquium of the Center for Constitutional Law at Akron highlighted the significant constitutional work of pioneering feminist Elizabeth Cady Stanton for equality in the political, domestic, and religious spheres. It also celebrated the conclusion of my ten-year intellectual odyssey of Stanton's instrumental work for the development of feminism and family law. This colloquium brought together what in my view is some of the best current thinking on Stanton's intellectual legacy. The *New York Times Book Review* often asks writers which famous authors they would most like to invite to dinner, thus reflecting the writer's admiration for those authors' work. Well these are my ideal guests. Writing outside of the box, immersed in careful research, and advancing the discourse on women's history, these women epitomize the excellence and depth of work emanating from the feminist scholarship tradition.

My role at the colloquium was to introduce Elizabeth Cady Stanton. For Stanton is not as well-known as she should be. She does now appear briefly in history text books, identified as the founder of the women's suffrage movement at Seneca Falls, New York, in July 1848. The Women's Rights National Historical Park at Seneca Falls commemorates this event.¹ Stanton's political partnership with Susan B. Anthony is somewhat familiar.² Stanton, though, was so much more. She was the leading feminist thinker and figurehead of the "woman's

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1. National Park Service, Women's Rights Nat'l Historical Park, <http://www.nps.gov/wori/index.htm>.

2. Ken Burns, *Not for Ourselves Alone: The Story of Elizabeth Cady Stanton and Susan B. Anthony*, video (PBS 1999).

rights” movement of the nineteenth century.³ Beginning with her written Declaration of Sentiments at Seneca Falls, she demanded wholesale reversal of women’s subordinate position in society and the concomitant restraints on their autonomy.⁴ She demanded the vote for women, equality in employment and education, equality in the family and parenting, reform of religious institutions, and the full eradication of “separate spheres” and the notion of women’s moral, physical, and intellectual inferiority.⁵

Married to abolitionist reformer Henry Stanton, who ignored her important work in pursuit of his own ambition, and burdened with the care of seven children, Stanton moved in and out of political circles until her children were grown.⁶ When able to be in action, she petitioned the New York Legislature for legal reform, including no-fault divorce, domestic violence protection, women’s ownership of marital property, and maternal custody of children.⁷ She led the National Woman’s Suffrage Association with Anthony, advocating a federal strategy for voting rights and a constitutional amendment. And she challenged the church with its foundational premises of women’s moral weakness and sinful nature, rewriting key Biblical passages from a feminist perspective and challenging the clergy’s omnipotent sexism.⁸

The essays in this colloquium explore each of these key sites Stanton identified as locations of women’s oppression: church, state, and home. Felice Batlan begins in *Domestic Disorders: Suffrage and New York’s Constitutional Convention of 1867* by detailing Stanton’s work for women’s suffrage at the state convention, revealing the charged political context in which questions of African American suffrage and fears of women’s loss of domesticity foreclosed her demands. Lisa Tetrault elaborates on Stanton’s demand for women’s political equality, revealing new insights about her views of political economy and the

3. See TRACY A. THOMAS, *THE FEMINIST FOUNDATIONS OF FAMILY LAW* (forthcoming 2016); ELIZABETH CADY STANTON: *FEMINIST AS THINKER* (Ellen Carol DuBois & Richard Candida Smith eds. 2007); Tracy A. Thomas, *The “Radical Conscience” of Nineteenth-Century Feminism* (chapter 1 of *Feminist Foundations* book), at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2675631.

4. Declaration of Sentiments, *Report of the Woman’s Rights Convention, Held at Seneca Falls, N.Y., July 19th and 20th, 1848*.

5. *Id.*

6. Thomas, *Radical Conscience*, *supra* note 3, at 4-6.

7. Thomas, *FEMINIST FOUNDATIONS*, *supra* note 3; Tracy A. Thomas, *Elizabeth Cady Stanton and the Federal Marriage Amendment: A Letter to the President*, 22 *CONSTL. COMM.* 137 (2005).

8. ELIZABETH CADY STANTON, *THE WOMAN’S BIBLE* (1895); see Thomas, *FEMINIST FOUNDATIONS*, *supra* note 3, chap. 6.

ways in which class inequality converged with women's rights. Lisa Hogan in *Sexual Exploitation in the Rhetoric of Elizabeth Cady Stanton* then picks up the trail about the fear of women's loss of domesticity in the home, discussing Stanton's critique of the sexualization of women in marriage and society. Completing the overview of Stanton's intellectual work, Kathi Kern taps into Stanton's ideas about religious liberty, and juxtaposes those against similar arguments of liberty made today in opposition to women's rights.

My own contribution to an intellectual history of Stanton's work focuses on her ideas and advocacy for equality in the family. In my forthcoming book, *Elizabeth Cady Stanton and the Feminist Foundations of Family Law*, I delve into her work in six areas of domestic relations: marital property, marriage, domestic violence, divorce, reproductive choice, and parenting.⁹ What I discovered was that Stanton advocated virtually every gender equality law reform that was later advanced and adopted after the 1970s divorce revolution. No fault divorce, joint marital property, marital partnerships, bodily autonomy, domestic violence protections, and maternal custody were all proposed by Stanton. These seem so non-controversial today because they have all become the status quo of the law. But in the nineteenth century, these ideas granting women social and sexual equality in the private sphere of the family clashed with Victorian ideals and the privilege of manhood embedded in legal doctrines of coverture. She had few supporters of these family equality ideas, despite large affiliations on the topic of women's suffrage. The family was considered off-limits, private, and the bastion of protected femininity. Contradicting this conventional wisdom, Stanton exposed the private domestic sphere as repressive, not protective, denying women legal rights, autonomy, and ultimately, freedom.

The context of the family was also where Stanton developed her insight as to the commonalities of women as a class.¹⁰ Using domestic relations as the prime example, Stanton illustrated how all women were treated the same by the law—denied economic, legal, and personal rights regardless of their individual circumstances, class, wealth, or abilities. Here, she proved, all women were treated the same because of their sex. It was this universality that Stanton used to draw women together in a social and legal movement, moving beyond their reluctance and

9. Thomas, FEMINIST FOUNDATIONS, *supra* note 3.

10. *Id.*; Tracy A. Thomas, *Elizabeth Cady Stanton and the Notions of a Legal Class of Gender*, in FEMINIST LEGAL HISTORY (Tracey Jean Boisseau & Tracy A. Thomas eds. 2011).

dismissals of “I have all the rights I want.” This notion of class-based commonality would become critical to constitutional challenge to sex discrimination, as developed by the Supreme Court in twentieth-century jurisprudence.¹¹

The work of writing feminist history continues as scholars in law, history, women’s studies, and all fields continue to recover the missing pieces of history. Until that recovery is fully integrated into the conventional narratives of a shared history, we have much left to do.

11. *Frontiero v. Richardson* 411 U.S. 677 (1973); *Reed v. Reed*, 404 U.S. 71 (1971).