US Women's History as the History of Human Rights

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1I began to think of writing this essay a year or two ago, when I noticed that at my university enrollments were shrinking in courses in U.S. women's history while enrollments were growing in courses that were part of our program in the study of Human Rights. When progressive young people described the causes for which they volunteered, they were less likely to talk about feminism and more likely to talk about human rights. And I found myself suspecting that young women had concluded – in a way they could barely articulate – that a concern for feminism was somehow selfish, focusing only on the specific interests of a single group of which they were a part, while a concern for human rights was generous and wide ranging.

2Yet it is obvious that virtually all of the public issues which feminists have embraced in the last half century are matters of human rights. The legal tradition in the United States has been permeated by laws that purport to protect women's interests but serve to limit their autonomy and membership in the constitutional community by naturalizing their exclusion from civil rights and liberties. In this way, the absence of adult women from the enjoyment of what we understand to be human rights came to be seen as part of the natural order of things. To challenge their exclusion disrupted a regime that men had persuaded themselves was universally ethical; women's claims to rights were easily taken to be subversive or destructive. It was left to women to name the harms they experienced and to develop philosophical grounding for their claims for equitable treatment and for equality. No Marx did this for them, although they would find their theorists in Elizabeth Cady Stanton and, to some extent, in John Stuart Mill.

3The laws that defined women's position had their origin in the British legal regime that antedated the American Revolution and continued long after it. The common law practice of *coverture* understood wives to be "covered" by the civil identity of their husbands in much the same way as children were subject to their parents. (Article 6 of the UDHR – "Everyone has the right to recognition everywhere as a person before the law" – indicates that the opposite principle is now taken to be the common sense of the matter.) Husbands were authorized to exercise expansive arbitrary power over their wives' bodies and their property. They also exercised expansive power over their legitimate children, determining, for example, whether and to whom the child would be apprenticed, even against the mother's wishes. For much of US history, such laws were supported by cultural beliefs about women's nature and abilities, and in turn the laws helped to preserve those stereotypes. Many, perhaps most men have had a deep interest in maintaining a regime from which they benefit; some women have been lucky enough not to have endured the regime's harshest constraints, and so treasured it as the world that they had always known.

4In our own lifetimes, U.S. women have had a different legal relationship to property and to power than have their brothers, and women of different races and ethnicities have had distinctive experiences of citizenship. As they went about their lives, developed skills, claimed an education, fell in love, became parents, earned a livelihood, experienced illness and aging, women have made their choices in a social and political setting which has had different meanings for them than it had for men.. Even holding class, race and ethnicity constant, being an American has meant something quite different to women than to men. In short, women have come to democracy in America by different paths than men. The double failure in the 1970s to ground reproductive rights in equal protection (rather than in claims of privacy) and to pass the Equal Rights Amendment to the U.S. Constitution, which would have required that discrimination on the basis of sex be subjected to the same high degree of skeptical scrutiny as is discrimination on the basis of race, has meant that asymmetry still persists between men's and women's relationship to the law, and that women's rights have been less deeply anchored in history and tradition than have rights claimed by men.

5In the latter half of the twentieth century, those cultural beliefs have eroded substantially, and laws based on them have come to be understood as discriminatory. But in the era of the American Revolution, the law of "Baron and Feme" – what we would now call the law of domestic relations – provided that at marriage, the husband gained virtually unlimited access to the body of his wife (there was no concept of marital rape until feminists put it into US law in the 1970s). It seemed to follow logically that since he had such power over her, he also gained authority over the property she brought into the marriage and earned during it. And since her husband could easily intimidate her into voting as he determined, to allow a married woman to vote would in effect give two votes to married men. It did not occur to the founders to limit the power of husbands. Because a married woman lacked a civil identity distinct from her husband's, she was barred from acting as an independent legal agent: barred from owning property, making contracts, voting, holding office, serving on juries. Often accompanied by the assertion that women are too vulnerable to their husbands' coercion, and too emotional and irrational for civic responsibility, coverture was justified as protective of women, shielding them from the stresses of public life and the burdens of civic obligation for which they were thought to be ill-suited.

6From this system of domestic relations, much followed that we would now understand to be a denial of human rights as described in the Universal Declaration of Human Rights (1948). For example:

7Article 13 of UDHR provides that "Everyone has the right to freedom of movement and residence within the borders of each state. Yet the law of most states typically gave husbands the right to determine where the family would live: as the Oklahoma statute put it in 1893, "The husband is the head of the family. He may choose any reasonable place or mode of living and the wife *must* conform thereto." [1][1]The Statutes of Oklahoma, 1893 (Guthrie, OK: State Printing… The statute was not repealed until 1988. If a husband chose to move their domicile, the wife had no avenue for refusal short of divorce. Thus sometime in the 1870s an Iowa farmer went into town one day and returned to tell his wife Maria that he had sold their farm. "I've often thought," Maria Brown later told her daughter-in-law, "that a considerable part of that $10,000 belonged to me. All our married life I was just saving, saving. We shouldn't have had anything if I hadn't been saving…. We received $10,000 for a farm that had cost us only $3,500. But it had cost us, in addition, fourteen years of our lives and most exhausting labor….Those fourteen years seemed a long time to me, a big price to pay." [2][2]Harriet Connor Brown, Grandmother Brown's Hundred Years…

8Article 17 of the UDHR provides that "Everyone has the right to own property alone as well as in association with others." But Grandmother Brown had no right in the family property that her husband had sold except that at his death she could claim one-third of the moveable property and the use of one-third of the real estate of which he died possessed. Although she had worked as hard as he to develop their farm, he did not have to consult her when he sold it. (In some states she would have been required to consent if he sold the property that was supposed to be reserved for her widow's portion, but that provision was rarely effectively enforced.)

9Until well into the twentieth century, it remained the conventional wisdom of legislatures and courts that the expansive powers of fathers and husbands was not due to their desire to claim authority but rather because women are too weak to act autonomously; that they need protection from the perils of public life; that women's need for protection justifies limitations on their control of their bodies and their lives; and that women's obligations as wives and mothers trump both their desire for autonomy and their obligations as citizens. Article 21 of UDHR provides: "The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures." But in the era of the American Revolution, property requirements for voting excluded poor men and all married women (who had given up control of the property that might have made them eligible for the vote). It was assumed that married women, who had no independent control of property, had no independent will of their own. And single women with property – widows, never-married adult women – were treated as though they had married or were otherwise under the control of fathers or brothers. Only in the state of New Jersey were the original voting laws written in terms of "persons"; in 1807, when the vote of propertied single women was thought to have changed the outcome of an election, the legislature changed the law to exclude women. [3][3]The most detailed treatment of this topic remains Judith Apter… Occasionally elite women complained – there is evidence that in some towns in Massachusetts and some counties in New York propertied widows actually voted before the Revolution, but they lost

their vote when state-wide voting laws were established after the Constitution was ratified in 1789. The long struggle for universal and equal suffrage lay in the future, and it would proceed throughout US (and international) history, from the age of the democratic revolutions to our own.

10The struggle for women's rights has taken its own particular shape in the U.S. because of the relationship between state and national government established by the federal constitution. The Constitution specifies the powers that the three branches of government – President, Congress, the federal courts – may wield, reserving other powers to the states. Since the federal constitution of 1787 was silent on voting rights, states were free to authorize women to vote. Reformers' energies were divided between efforts to persuade legislatures to establish women's suffrage in each state, and by efforts to amend the Constitution and thus accomplish suffrage in a single moment. In the end, both strategies were necessary; not until there were a substantial number of members of Congress who owed their seats to women who voted in their home states were there enough votes to pass what became the 19th Amendment to the U.S. Constitution. (Even then, the battle to ratify it in the states would be difficult.) After the Civil War, the Constitution was amended to guarantee "equal protection of the laws" to all persons, but for nearly a century courts rarely recognized that different treatment of men and women was likely to mean unequal protection. Women's rights had to be claimed by persuading legislatures, state by state. Some state courts, notably California's, began to reason differently in the 1960s; not until the early 1970s did the U.S. Supreme Court regard discrimination on the basis of sex as a denial of the equal protection guarantee of the Fourteenth Amendment.

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12After the preamble and the preliminary articles, the second substantive article of the UDHR is #4: "No one shall be held in slavery or servitude." But at the time of the founding of the U.S., slavery was central to the economic order, and characterized the political economy in the North as well as the South. Sojourner Truth, who would gain national fame as a voice for the enslaved in the mid-nineteenth century, was born into slavery just north of New York City; her first language was Dutch, the language of her masters. She achieved her own freedom shortly before New York's gradual emancipation law went into effect, but her five children, born after 1799, remained enslaved – the boys until they reached the age of 28; her daughters until they reached the age of 25. [4][4]Nell Irvin Painter, Sojourner Truth: A Life, A Symbol (New… One of the first petitions to the newly independent legislature of Masschachusetts came from an an elderly woman we know only as Belinda. She had been enslaved virtually all her long life to the breathtakingly wealthy loyalist Isaac Royall, Jr. who fled his home on the outskirts of Boston when the war broke out. When Royall died in England in 1781, his will established the first professorship in law at Harvard; his heirs subsequently endowed Harvard Law School. But there was nothing in the will to sustain those – at least 63 are known by name – whom the family had enslaved. Royall offered freedom to Belinda, but only if "she get security she shall not be a charge to the town of Medford." How in the world could she do that? Belinda knew how hard she had worked and she knew who had benefitted from her exertions. We have the eloquent petition she submitted to the Massachusetts legislature in 1783:

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…fifty years her faithful hands have been compelled to ignoble Servitude for the benefit of an Isaac Royall, untill, as if Nations must be agitated, and the world convulsed, for the preservation of that freedom, which the almighty father intended for *all* the human Race, the present war Commenced. The face of your Petitioner, is now marked with the furrows of time, and her frame feebly bending under the oppression of years, while she, by the Laws of the Land, is denied the enjoyment of one morsel of that immense wealth, a part whereof hath been accumulated by her own industry, and the whole augmented by her servitude…

14Belinda asked, not for a gift, but for an "allowance" that she had earned, to be paid out of the profits the state had made when it confiscated Royall's property. At first it looked like the post-revolutionary state was prepared to stand on its principles; Governor John Hancock quickly authorized an annual pension for Belinda and "her more infirm daughter" of L15 12 pence. But only the first year's payment was actually made; Belinda fades from our records. [5][5]Roy E. Finkbine, "Belinda's Petition: Reparations for Slavery…

15By giving fathers responsibility for children born within marriage (that's why fathers in the early republic had custody of children in case of divorce, which was rare), but leaving to mothers the responsibility for children born outside marriage, the old law of domestic relations excused all fathers from serious responsibility for children born out of wedlock–a principle that was largely unquestioned in American law until the twentieth century. It also ensured that children born to a free father and an enslaved mother followed the condition of the mother into slavery, not only binding enslaved men and women to labor but also making them permanently vulnerable to the sexual appetites of their masters. Thomas Jefferson's slave Sally Hemings inherited her slave status from her mother. By contrast, her father's other daughter, Martha Wayles, became Jefferson's wife. The children Jefferson fathered with his own sister-in-law grew to adulthood in slavery.

16Free white women had their own investment in the system of slavery. Their fathers generally assumed that they would live in their own husband's buildings on their husbands' lands. Rather than divide up property into ever smaller pieces, impractical for farming on a scale large enough to be profitable in the marketplace, fathers increasingly passed their l and only to their sons, and gave daughters their inheritance in moveables, which included slaves. "Market relations," writes one historian, "distanced people from the unpleasant consequences of their economic choices."

17*Query P2 notes that after the French Revolution it was forbidden to disinherit children and asks when such a law was established in the US. As far as I know it was never established and it remains possible to disinherit children.*

18By the 1830s and 1840s, white women in the United States would have some human rights issues around which to mobilize; the best known are their anti-slavery campaigns. But the inhumanity of slavery was already established in 1776, and, as we have seen, the legal practices of the new republic gave women much about which to be restive. Why did their anti-slavery movement not appear sooner?

19There is much merit to thinking of the era as an "age of the democratic revolution," and to melding the French and American upheavals into a single set of shared events on a transnational

scale. Lafayette's career alone may furnish all the proof we need of the merits of that approach. But there were also enormous differences between the political cultures of the two revolutions, a difference that is underscored by the sharp differences in women's behavior. French women were early to claim their political tongues, beginning with the cahiers of the flower sellers of Paris and proceeding through Olympe de Gouges' "Declaration of the Rights of Woman" and the activities of the Society of Revolutionary Republican Women. Ahtough some American women had signed petitions, boycotted imported tea and textiles, and bought government bonds to support the war, virtually the only mechanism the new American republic made available to women was the traditional technique of the individual peition, which forces deference and subservience on the claimant. When American women petitioned the Continental Congress (and they did) they petitioned alone. It is this absence of a collective dimension to most of their activities that marks the greatest difference between the experiences of American women and their male husbands and brothers, and between the female experience of the French and American Revolutions.

20In France, the Roman Catholic Church could provide a theatre for ritual behavior by otherwise secular women; Darline G. Levy and Harriet Applewhite have drawn attention to the women's processions to the Eglise St. Genevieve in Paris. Originally acts of supplication at a time of shortages of bread, the processions were gradually transformed during the summer of 1789 into the antecedents for the secular, political and violent women's march on Versailles. In Paris women's guilds or guild-like organizations provided an institutional tradition in which women shared a collective experience and collective responsibilities. [6][6]Harriet Applewhite and Darline Gay Levy, Women and Politics in… In America, there was no tradition of women's guilds. The Catholic Church was marginal. The only religious group that gave women space of their own and accustomed them to speaking in public and making institutional decisions was the Quakers, and as pacifists they were deeply disaffected during the war. Their patriotism was distrusted. It would be a full generation before Quakers restored their credibility, and one way they would do it would be by embracing abolition as committment to the highest standards of the Revolution, to the principle of "all men are created equal."

21When we encounter women of the American revolutionary generation articulating the conclusions they had drawn from that experience, we find them saying that what women needed was psychological independence, personal self-respect, a decent self-sufficiency, and a life over which they exercised some measure of control. The writer Judith Sargeant Murray called for "self-complacency"; for psychological and economic self-sufficiency. [7][7]Judith Sargent Murray, The Gleaner ([1798] Schenectady, NY:… These were precisely the grounds on which Tom Paine in 1776 had expressed patriot men's views of the common sense of the matter. [8][8]Tom Paine, Common Sense (Philadelphia, 1776).

22But men who developed the new republican formulations developed them out of extended negotiations and struggle with other men; they assumed that women's interests were the same as men's. For all the emphsis on the need of the independent citizen to control his own property, for example, it does not seem to have occurred to any male patriot to attack coverture. "Put it out of the power of our husbands to use us with impunity," wrote Abigail Adams, suggesting that domestic violence should be on the republican agenda, but John Adams did not place it there. [9][9]Abigail Adams to John Adams, March 31, 1776, Adams Family… Pensions were provided for retired military officers, but not for their widows.

23If women were to devise a republican ideology that provided for autonomy, they first would have to destabilize and then renegotiate their relationships with men. We can follow the course of this effort in the newly formulated understanding of courtship and marriage that appeared explicitly in fiction and advice literature and implicitly in demographic trends. Long before the technology of birth control devices were available, the number of pregnancies of white women, especially urban white women, as historian Susan Klepp has found, dropped sharply within a single generation, and continued to drop. As men's conversation about governance turned into attacks on the King and on patriarchal authority, women's version of appropriate rule was expressed as denigration of patriarchal authority within marriage. In letters, poems, commonplacebooks and novels, free white women advocated changes in spousal relations. They urged their daughters to have fewer children, and greeted news of new pregnancies with consolation. They spoke explicitly of the dangers and anguish of childbirth, of higher standards of childraising, and of their own personal need for education – masking that claim by promising that they would be better mothers for the republic. When their portraits were painted they chose to be shown reading books instead of accompanied by the traditional symbols of fecundity, like cornucopias of fruit.

24And they conveyed to their husbands that they expected that the self-determination and self-control about which men were talking in their political polemics would be carried into bedrooms. Klepp has developed an evocative measure of the transition:

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1776: the signers of Declaration of Independence came from families that averaged **7.3 children**
1787 the signers of the Federal Constitution, the members of President Washington's first cabinet, and the members of the US Supreme Court, made their own families, which averaged **under 5 children**

26We know that men of the founding generation interfered with virtually all aspects of women's lives, claiming unlimited access to married women's bodies; denying to married women access to property, to education, to political choice. But during the early republic, beginning in the northeast and spreading westward, white women changed the meanings of their own bodies. Their revolution began in their own bedrooms. [10][10]Susan E. Klepp, Revolutionary Conceptions: Women, Fertility,…

27The founding moment for the history of feminism as a social movement in the United States is often taken to be the Seneca Falls Convention of 1848 and the Declaration of Sentiments that was its manifesto. But it is wiser, I think, to think of the Seneca Falls Convention as the "end of the beginning" (as Winston Churchill famously described the victory at El Alamein in 1942). Without the vote, excluded from political parties, excluded from legislatures – before women could argue for human rights they had first to defend the propriety of speaking publicly at all. Throughout much of their work for reform is threaded arguments for the propriety of women's engagement in politics. The beginnings of feminism as a social movement can be found in collective expressions of discontent with the denial of access to human rights, notably the grassroots movement in which white and free black women mobilized themselves as critics of slavery, emphasizing its physical cruelty and the sexual vulnerabiility of women and girls. For the most part women reformers met

on planning boards composed of women only, and when they spoke to large gatherings the audience was usually composed of women. But a minority of radical women, fiercely devoted to abolishing slavery and sustained by their experience speaking publicly in Quaker meeting, resolutely spoke in what critics derided as "promiscuous assemblies," meaning public gatherings that included women and men.

28In the decades before the Civil War, activist women working together developed new strategies for making human rights claims. First, they mobilized consumers to avoid buying products made with slave labor. In that way they brought political sensitivity into the market and into daily private life; as one decided each morning what to wear, one needed to consider the conditions of manufacture. The consumer boycott continued to be a major device in the hands of activists for human rights – on behalf of labor unions throughout the twentieth century; against sweatshop labor in Asia in our own time. Second, in the 1830s, anti-slavery women presented the U.S. Congress with a radically innovative document: the large-scale collective petition. The traditional individual petition generally sank invisibily into a mass of bureaucratic paper. The mass petition made the petitioners visble. The person who circulated the petition, who walked house to house in her neighborhood or brought it to church or market, had to be an articulate debater, prepared to meet contempt with patience and reason. As historian Susan Zaske, who has studied these petitions in detail, observed, "When women affixed their signatures to petitions….they threw off the cover of their husbands or fathers and asserted their existence as political individuals." When Congress convened in 1837, so many anti-slavery petitions had arrived – each signed by hundreds of women, and some by both women and men – that reading them aloud would have absorbed months of Congressional time. Southern congressmen sneered at them as the work of unladylike women of questionable character, and passed a rule ("the gag rule") putting the petitions aside without debate, but not before John Quincy Adams – the only former president of the United States to have *had* a subsequent career in Congress – rose to defend women's right to have opinions on "every thing which relates to peace and relates to war, or to any other of the great interests of society." Throughout the next decades women continued to send massive abolition petitions to Congress, culminating with the massive petition campaign that was instrumental in the passage of the Thirteenth Amendment that formally ended slavery in 1865. [11][11]Susan Zaeske, Signatures of Citizenship: Petitioning,… The massive petition remains a useful device to those who seek change in our own time, now magnified by the speed and reach of the internet.

29Seeking political change was itself a politicizing experience. As abolitionist women were attacked for impropriety, they began by insisting that – as Angelina Grimke put it in 1836 – "God has made no distinction between men and women as moral beings….Whatsoever it is morally right for a man to do, it is morally right for a woman to do." Defending the human rights of slaves led inexorably to defending their own right, as women, to name immorality when they saw it, and in that way to criticize the way American law and custom defined gender relations. In the summer of 1848, five women friends came together in the town of Seneca Falls, New York, pouring out "the torrent" of their "long accumulating discontent" and deciding to call for a "Woman's Rights Convention." It was not accidental that they met at a time when the New York State legislature was debating major revisions to its constitution, among them proposals to revise property law so that married women could control the property they brought to the marriage. It was not accidental that they met in the year of the great European Revolutions of 1848, when renewed talk of the rights of man appeared regularly in the popular press. The "Declaration of Sentiments" that the

convention considered and revised was drafted by Elizabeth Cady Stanton, an abolitionist activist and young mother. Echoing the language of the 1776 Declaration of Independence, it began "When, in the course of human events…" and held "these truths to be self-evident: that all men and women are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness." The core of the 1776 Declaration had been a list of claims against the King of England; the core of the 1848 Declaration was a list of specific claims against men – sometimes they meant all men, sometimes they meant their fellow US citizens – who had made "a history of repeated injuries and usurpations….having in direct object the establishment of an absolute tyranny…." Virtually all of the Seneca Falls claims can be found in some form in the Universal Declaration of Human Rights, framed precisely a century later. *[I don't know how to answer the question that Laura places here, but see the rephrasing on page 20]*

30Lacking suffrage, women have been "compelled to submit to laws in the formation of which" they had no voice. If married, she is "in the eye of the law, civilly dead"; yet she is taxed "to support a govenment which recognizes her only when her property can be made profitable to it." She is denied access to education, excluded from the professions. And, well in advance of the UDHR, they identified dignity as a human right: men have "endeavored…to destroy her confidence in her own powers." They resolved "that the equality of human rights results necessarily from the fact of the identity of the race in capabilities and responsibilities."

31The Declaration was only the beginning. Out of their vision of a community of equals, out of their discomfort with a social environment that privileged men and undermined women, the men and women at Seneca Falls dedicated themselves to herculean political work. Women's Rights conventions modeled on Seneca Falls were held throughout the North; thousands attended the first in Worcester, Massachusetts in 1850. The activists had anticipated disruption and ridicule, and they received it from men who attended the conventions in order to disrupt, but they – women and their male allies – persevered. In 1864, when it seemed possible that an end to slavery might also mean universal equal citizenship, they sent petitions with 100,000 signatures to the Senate. In January 1865, before the Civil War was concluded, Congress and the states in the Union ratified the Thirteenth Amendment, putting an end to slavery and involuntary servitude. [12][12]Ellen DuBois, Feminism and Suffrage: The Emergence of an…

32The story of the U.S. Civil War is usually told as a narrative of men: it was men who filled the legislatures that debated slavery, men who voted for the presidents of the Union and the Confederacy, men, white and black, who filled the armies as soldiers and as officers, men who signed the treaties of peace. But the war absorbed all energies: women were mobilized by both sides to encourage their men to enlist; to sustain their households in men's absence, to raise money for support of armies, to nurse the wounded. Because women were less subject to suspicion, many women served their cause as spies, reporting on the behavior of the enemy. Enslaved women throughout the border states could be especially significant in this regard, as was the heroic Harriet Tubman, who had smuggled many out of slavery before the war and during the war served for three years as a scout for the Union Army in South Carolina and Florida. Sojourner Truth and other black abolitionists assisted black refugees to find housing and work. They established schools for former slaves who had seized their own freedom. As historian Nell Painter puts it, "They and their families saw their service as payment for freedom."

33The elimination of slavery meant that social relations in the post-war society would be sharply different from what they had been. In order to make the elimination of slavery meaningful, women's rights activists now argued, equality should be broadly understood. In the new constitutional climate, they claimed not simply suffrage for black men but universal suffrage: as Elizabeth Cady Stanton put it, the "constitutional door" had been opened, and women intended to "avail ourselves of the strong arm and blue uniform of the black soldier and walk in by his side."

34One of the most forthright provisions of the Universal Declaration of Human Rights is Article 15: (1) Everyone has the right to a nationality. (2) No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality." But enslaved people had no nationality; and therefore, as the U.S. Supreme Court had held in the Dred Scott decision of 1857, they had "no rights that the white man is bound to respect." The Fourteenth Amendment was devised to guarantee citizenship and civil liberties to the freedpeople against the vicious efforts of the states of the former Confederacy to undermine their independence and coerce them into forced labor (for example, forbidding African Americans to testify against whites in court, requiring the indenture of black children, treating as vagrants people who did not sign long term labor contracts). Throughout the South, violent intimidation of black men who had fought for the Union included savagely beating and raping their wives and daughters.

35The opening section of the Fourteenth Amendment is written in generic terms, embracing women as citizens and as persons:

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All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

37The original amendments to the U.S. Constitution (popularly known as the Bill of Rights) had protected civil liberties against the action of the federal government; the first Amendment began "*Congress shall make no law* respecting an establishment of religion, or prohibiting the free exercise thereof…" But this capacious wording had limited the options only of the federal Congress; for example, it remained possible for states to collect taxes to support churches. (It was several decades before these church taxes were fully eliminated.) Now the Fourteenth Amendment offered the protection of federal courts to all rights – the "privileges and immunities" – recognized by the Constitution and Bill of Rights against actions by state governments. Women's rights activists concluded that among the privileges and immunities of citizens was the right to vote; that the "equal protection of the laws" meant equal participation in framing the laws. If Section 1 had been the entire text of the Fourteenth Amendment they would have understood themselves to have triumphed.

38But the expansiveness of the guarantee of "the equal protection of the laws" stopped at the borderline of gender. Congress had reason to distrust the willingness of the former Confederacy to respect the first section of the Amendment, and invented a punishment: the second section

provided that if the right to vote was denied by a state to "any of the male inhabitants…being twenty-one years of age and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation shall be reduced…." In this way the word *male* was introduced into the Federal Constitution. The drafters of the Amendment understood themselves to be putting teeth into the Fourteenth Amendment, and thought that they were using the term *male* only because it described reality as they experienced it; in no state did women vote. But Stanton predicted "If that word "male" be inserted ….it will take us a century to get it out again." She underestimated how long it would take: universal suffrage would not be the law until 1920 (when women were included) and not truly practiced until 1965 (when the Voting Rights Act was passed). The Equal Rights Amendment to the Constitution would not be introduced until 1973; it has not been ratified.

39The Fifteenth Amendment, guaranteeing the right to vote, offered another opportunity to write universal suffrage into the Constitution. "Mind recognizes no sex," insisted New York women's rights activist Ernestine Rose, "therefore the term 'male' as applied…to citizens ought to be expunged from the constitution." But the wording permitted states to exclude women: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." It was 70 years before the Nineteenth Amendment added sex to the list.

40The promise of "equal protection of the laws" was rarely obvious to freedwomen. The basic principles of Article 23 – "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work" – were new principles after the Civil War; what counted as a fair day's work for fair pay had to be negotiated by each former slave with employers unaccustomed to recognizing them as free employees. Black women rarely found protection from the police; as historian Tera Hunter puts it, "Rape was a crime defined exclusively, in theory and in practice, as perceived or actual threats against white female virtue by black men….Any sexual relations that developed between black women and white men were considered consensual…." [13][13]Tera W. Hunter, To 'Joy My Freedom: Black Women's Lives and…

41Women repeatedly tested the Fourteenth Amendment's promise. In 1873, when Emma Coger, who was of mixed race, was denied a first class ticket on a steamboat crossing the Mississippi, and forcibly removed from the first class dining cabin, she sued the steamboat company and won. The Supreme Court of the state of Iowa ruled in her favor: the steamboat company "cannot refuse to transport all persons without distinctions….This decision is planted on the broad and just ground of the equality of all men before the law, which is not limited by color, nationality, religion or condition in life." [14][14]Coger v. The Northwestern Packet Company, 37 Iowa 145 (1873). But the United States Supreme Court was not so capacious in its reasoning. Virginia Minor of St. Louis, believing that the "privileges and immunities" of equal citizenship entitled her to vote, attempted to register to vote in the election of 1872. U.S. Supreme Court ruled against her on the grounds that the original Constitution had left it to the states to define the voter. When Myra Bradwell, who had passed the Illinois bar examination, asserted that one of the "privileges and immunities" of citizenship was to engage in a profession, she was denied on the grounds that as a married woman she was not a truly free agent. Again, the U.S. Supreme Court held that the right to practice law was not a nationally protected right but within the power of the individual state to authorize; one Justice added a concurring opinion to the effect that Illinois' decision was

reasonable because "nature herself has always recognized a wide difference in the respective spheres and destinies of man and woman." [15][15]Bradwell v. Illinois, 83 U.S. 130 (1873) These issues would have to *be* struggled over, state by state, for decades; in some cases, for a century. And when women lawyers defended their clients in trials, they always faced male judges and juries on which no woman could serve.

42At the national ceremonies honoring the hundredth anniversary of 1776 Elizabeth Cady Stanton wrote another Declaration, and Susan B. Anthony read it aloud. Demonstrating their formidable experience of the last 30 years, they no longer spoke of "sentiments" but rather announced "A Declaration of Rights, and framed "articles of impeachment" against legislators who had violated the "fundamental principles of our government": taxing women without representation, denying women juries of their peers, maintaining unequal moral codes for men and women (women fined and imprisoned for vagrancy and prostitution; men, "partners in their guilt," go free); in short, "undermin[ing] the liberties of the whole people."

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44A century after the Declaration of Sentiments – 1948 – its agenda was not outdated. Not until a century after the Centennial Oration, in the 1970s, could it be said that the women's agenda was popularly embraced. Even then, each item would be the subject of separate – though intertwined – struggles.

45Article 23 of the Universal Declaration of Human Rights asserts that "Everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment; everyone, without any discrimination, has the right to equal pay for equal work; everyone who works has the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity,…" Access to decent work and decent pay had been on women's agendas since the earliest strikes of mill workers in the 1830s; access to the professions since before 1848, when the Seneca Falls Declaration sneered at men's monopoly of "nearly all the profitable employments and …avenues to wealth and distinction." When workingmen's struggle for laws establishing maximium hours of work failed (in 1905 the U.S. Supreme Court ruled that such laws interfered with freedom of contract), women defended laws limiting hours for women on the grounds that their reproductive vulnerability made them proper objects of state attention. When they successfully made this argument in the case of *Muller v. Oregon* (1908), they drew heavily on European precedent, notably 10 hour laws for women established in Britain in 1844 and in France in 1848.

46Persuading male legislators in state after to state to suppport protective labor legislation was one of the major accomplishments of women's organizations, a project begun long before they had the right to vote and continued long after. Protective legislation for women had complex consequences. Obviously an 8-hour workday was vastly preferable to a longer one. But in the absence of a minimum wage, women living at the margin of subsistence found that limitations on the hours they could work cut their income or speeded up their piecework; some would not have chosen to trade time for money. Maximum hour legislation was often supplemented by restrictions against night work and "heavy" work (the latter often conveniently defined to include well-paying skilled work like iron molding) which further segregated women in the workplace and gave men

an advantage in the competition for jobs. Feminists split on this point. Seeking theoretical clarity and convinced that the advantages outweighed the disadvantages, the National Women's Party led by Alice Paul led a campaign to eliminate all forms of sex discrimination in law. Was protective legislation sex "discrimination"? Women labor activists feared that special labor legislation would be put at risk. Women activists also challenged child labor, lobbying with some for state legislation to set age limits and define some conditions of employment. After they won the vote in 1920 they lobbied fiercely, but unsuccessfully, for a constitutional amendment to ban child labor.

47Not until 1938 were an 8-hour day and minimum wage standards for women *and* men were finally included in the federal Fair Labor Standards Act of 1938, part of the reforms of Franklin D. Roosevelt's "New Deal." The FLSA also set minimum ages for employment. But the FLSA covered less than 20% of the labor force, and women continued to need the special protection of the state statutes for many decades. That need was a major reason why many women's rights advocates opposed an Equal Rights Amendment [ERA] to the U.S. Constitution, devised by Alice Paul and first introduced into Congress in 1923. By the late 1960s, after minimum wage and maximum hour legislation covered most workers, most women's advocacy organizations were convinced that the advantages of an ERA outweighed the disadvantages, and joined in a national campaign to establish one.

48As we have seen, the right to a nationality is a key human right. Many Americans are still surprised to discover that in the mid-nineteenth century, in keeping with the rules of coverture that the husband controlled the family's civil identity, and following on French law that dates to the Napoleonic Code, it became the practice in the US to erase the citizenship of an American-born woman should she marry a foreign man. (If an American man married a foreign woman, she instantly became an American citizen.) Even the daughter of Civil War hero and president Ulysses S. Grant, who had married an Englishman, had to petition Congress to restore her U.S. citizenship after she became a widow; Elizabeth Cady Stanton's daughter Harriot Stanton Blatch also lost her citizenship when she married an Englishman. The principle was upheld by the U.S. Supreme Court in 1915; marriage to a foreign man, it ruled, is "tantamount to expatriation." The repeal of this practice was high on the suffragists' agenda. Once they had the vote they pressed, successfully, for the Cable Act of 1922, which protected the right of women to retain their citizenship despite marriage to a foreigner – *unless* they married from men from nations whose subjects were not eligible for US citizenship, that is, China, Japan, Southeast Asia. The Cable Act was extended by amendments well into the 1930s, but some exclusions remained, and the improvements were generally not made retroactive. [16][16]Candace Lewis Bredbenner, A Nationality of Her Own: Women,… In 2001 the US Supreme Court upheld a practice of different rules for nonmarital children born abroad, despite the arguments that this denied unmarried fathers the equal protection of the laws. The child born to an unmarried citizen mother and a noncitizen man is a citizen at birth. The child born to an unmarried citizen father and a noncitizen woman can be a citizen only if the father formally legitimizes and financially supports the child be for the age of 18. [17][17]I have written about these matters in "The Stateless As the…

49As we have noted, Article 21 of the UDHR provides that everyone has the right to take part in the government of their country, through elections and through public service. The struggle for women's right to vote persisted for some 70 years; the Nineteenth Amendment to the Constitution was ratified in 1920. Women had to persuade male legislators to change their own constituencies;

men who had been elected by other men to state legislatures or to Congress could not predict what would happen to their jobs should women get the vote. It was not easy. By 1910, building on what they learned from the example of their British counterparts, American suffragists had become deft at organizing mass demonstrations. In 1910, some 400 women marched in New York City, observed by perhaps 10,000 people; by 1915, a week before a state referendum on women's suffrage, well over 25,000 women and 2,500 men marched. At least four times that many watched from the sidewalks. The referendum was defeated, but only narrowly.

50British suffragists invented a new political tool; American suffragists brought it to the U.S.: the silent witness. *Throughout* much of 1917, suffragists stood silently in front of the White House, carrying banners that highlighted the contrast between U.S. policies of criticizing Germany for denying democracy while denying the vote to half of the U.S. population. Angry male opponents threw harmful things at them. When suffragists marched in Washington DC they encountered vicious attacks from men who – dressed in suits – appeared to be otherwise respectable. When demonstrators were arrested they went on hunger strikes; like the British suffragists they were violently force-fed. The intensity of opposition to woman suffrage has never been fully understood, and it is largely excised from textbooks and from public memory.

51Even after the vote was achieved – women voted in the presidential election of 1920 – the other provisions of Article 21 – "to take part in the government," "to the right of equal access to public service" – did not automatically follow. In some states it required a special state constitutional amendment to permit women to hold office. This process was not complete in Iowa until 1929. In Oklahoma women could serve in the legislature but they were barred from holding statewide office (Governor, Attorney General) until 1942. In some states, the *achievement* of jury service followed painlessly on the heels of the Nineteenth Amendment. But in most states new statutes were required. "Getting the word 'male' out of jury statutes," one activist observed, "is requiring something very like a second suffrage campaign – laborious, costly and exasperating." Not until 1949 did Massachusetts permit women to serve on juries, and even then they could be excused from any trial in which the presiding judge had reason to believe they would "likely be embarrassed by hearing the testimony or by discussing [it] in the jury room." Not until 1975 did the U.S. Supreme Court rule that men and women must be eligible for all jury service on the same terms. Only in 1992, after the feminist lawyer Ruth Bader Ginsburg joined it, did the U.S. Supreme Court rule that peremptory challenges based on gender are impermissible. [18][18]I have written about women's jury service in chapter 4 of No…

52Resistance to women's jury service was driven by skepticism of women's ability to make responsible decisions; women's exclusion from juries was often justified by the fear that women might actually send a man to life imprisonment or even the death sentence. Even after women could serve as judges, few have been appointed. The history of most state legislatures after 1920 reveals extended periods of time during which no women served; today, it is the rare legislature that is comprised of at least 20 percent women. This legacy of coverture is simultaneously a denial of human rights.

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54The 1960s and 1970s are distinctive for a shift in the way U.S. law views women's rights and obligations. Pressed by increasing public impatience with the ascriptive dependence of adult women and with laws that disempowered women, legislatures and courts began to recognize that laws that embody gendered stereotypes harm not only women, but also men and society as a whole. Indeed, they recognized that it is possible (something not imagined in the coverture regime) for men to be dependent on women, and therefore that it could be in men's interest for women to be independent civic actors.

55Air Force Captain Sharron Frontiero had to press her argument all the way before she was authorized to draw a dependent's allowance for her husband in 1973. In a landmark decision, Justice William Brennan wrote in support of Frontiero: "Our nation," wrote Justice Brennan in supporting her, "has had a long and unfortunate history of sex discrimination….rationalized by an attitude of "romantic paternalism," which, in practical effect, put women, not on a pedestal but in a cage." In a now classic series of opinions issued in the 1970s, the U.S Supreme Court established the principle that laws based on gender stereotypes about the way men and women behave are unfair and unconstitutional. Ruth Bader Ginsberg, who now sits on the U.S. Supreme Court, dazzlingly argued these cases – including *Frontiero* – as an attorney for the Women's Rights Project of the American Civil Liberties Union. Even when stereotypes about women's or men's behavior might accurately predict what a majority of people will do, those individuals whose behavior does not conform to the stereotype ought not be penalized.

56Laws that were once viewed as protective of women are now viewed as discriminatory toward them, bringing U.S. law more closely into conformity with the principles of the Universal Declaration of Human Rights. It oftens startles people to learn that the Supreme Court did not regard discrimination on the basis of sex as a denial of the equal protection guarantee of the Fourteenth Amendment until 1971, and then very narrowly, in a case in which what was at stake was a teenager's cornet and a bank account worth $200. [19][19]Reed v. Reed, 404 U.S. 71 (1971). The divorced parents were… Other decisions followed in legislatures and in state and federal courts, reshaping the rules on which men and women make their daily life choices. (The federal system of American law means that individual state legislatures and state courts can establish practices that are not binding on other states: thus the distribution of birth control devices was legal in New York decades before they were legal in Massachusetts; at this writing, 7 states and the District of Columbia recognize same-sex marriage. Only after Congress establishes a law or the U.S. Supreme Court makes a constitutional ruling does the outcome affect the entire nation.) Discrimination on the basis of pregnancy can now be a denial of equal protection; sexual harrassment on the job can be a denial of equal protection, exclusion from jobs on the basis that they are too harsh or dangerous for women can be a denial of equal protection.

57It is now unreasonable to claim that women do not possess fully equal legal status, or that they lack the competence to make responsible choices. Nevertheless, while the legacy of coverture has been generally repudiated, it has not been completely eradicated. In 1972, Congress proposed an amendment to the U.S. Constitution – "Equality of rights under the law shall not be denied or abridged by the United States or any State on account of sex" – and sent it to the states for ratification. Had it passed, the inheritance of coverture would have been cancelled, and the Equal Protection clause of the Fourteenth Amendment would have clearly been expanded to cover sex discrimination. But facing severe attack from conservatives, the ERA it fell 3 states short of the

required 3/4 of the states required to approve. The failure to ratify the Equal Rights Amendment to the federal Constitution has meant that each claim of sex discrimination must be evaluated anew, not against the strict standard that it be narrowly tailored to further a compelling government interest, but only that the court is persuaded that it is substantially tailored to serve an important government interest. Distrust of women's claims to autonomy, cultural beliefs about the primacy of women's domestic obligations, and opinions about women's need to be protected from certain situations all reveal the lingering effects of coverture. Long established laws have proven ineffective to prosecute men who assault women, requiring new statutes in the form of the Violence Against Women Act, passed in 2000 and regularly renewed since.

58The UDHR does not speak specifically of reproductive rights; they must be claimed as implicit in protections for privacy (Article 12) or for liberty and security of person (Article 3) or for equal protection (Article 7) or for the special protections owed to motherhood (Article 25). In U.S. courts, too, reproductive rights – to birth control, to abortion – have generally been framed as matters of privacy rather than equality. [20][20]For the struggle to reform the law, see Linda Greehouse and… When the U.S. Supreme Court ruled that abortion can be legal, it framed it as a decision made by a woman *and* her physician, and placed the private decision within the first trimester of pregnancy, permitting the state a larger role in later periods. At this writing, women's ability to exercise the right recognized in *Roe v. Wade* (1973) is seriously imperiled. A remarkable number of new barriers for women seeking have suddenly been established in a number of states, supplemented by attacks on public insurance coverage for birth control devices. According to legislators who back these new restrictions, women will come to regret their decisions and therefore must be protected from making them. The belief that women are incapable of making responsible moral decisions about abortion suffuses the new statutes limiting access to it. Grounding access to abortion in a generalized idea of privacy rather than in equality, the heart of democratic practice, has had major consequences. For equality implies that the state respects, as Justice Ruth Bader Ginsburg put it in a recent dissent, "a woman's autonomy to determine her life's course, and thus to enjoy equal citizenship stature." [*Gonzales v. Carhart,* 127 S. Ct. 1610, 2007] Every debate about abortion is a debate about the meanings of equality.

59That much of the language of the Universal Declaration of Human Rights is gender-neutral is due to the insistence of the UN's Committee on the Status of Women. At the time of its founding, nearly one-third of UN member nations did not allow women to vote (French women could not vote until 1945, and women in French Algeria not until 1958, on the eve of their own independence. At this writing, women lack the right to vote in Saudi Arabia; neither men nor women can vote in the United Arab Emirates.) By 1979 the United Nations adopted a Convention on the Elimination of All Forms of Discrimination Against Women, which recognized women's rights in family life as well as in the public sector. The United States has refused to sign this convention. The United Nations has convened four major international conferences on women, beginning in 1975 in Mexico City. The most recent was held in 1995 in Beijing, where Hillary Clinton, wife of the then president of the United States and at this writing U.S. Secretary of State, offered the keynote address. "Although I had delivered thousands of speeches, I was nervous," Clinton wrote in her autobiography….If nothing came out of the conference, it would be viewed as another missed opportunity to galvanize global opinion on behalf of the cause of women's rights….I wanted the speech to be ….unambiguous in its message that women's rights are not separate from, or a subsidiary of, human rights." Its refrain, "human rights are women's rights and

women's rights are human rights" continues to offer a working agenda for our own time, and can also serve as a useful guide to women's political history.

Notes

- [1]

  The Statutes of Oklahoma, 1893 (Guthrie, OK: State Printing Company, 1893), p. 604.

- [2]

  Harriet Connor Brown, *Grandmother Brown's Hundred Years 1827-1927* (Boston, 1929), pp. 176-176.

- [3]

  The most detailed treatment of this topic remains Judith Apter Klinghoffer and Lois Elkis, "'The Petticoat Electors': Women's Suffrage in New Jersey, 1776-1807," *Journal of the Early Republic* vol. 12 (1992), pp. 159-193.

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  Nell Irvin Painter, *Sojourner Truth: A Life, A Symbol* (New York: W.W. Norton, 1996).

- [5]

  Roy E. Finkbine, "Belinda's Petition: Reparations for Slavery in Revolutionary Massachusetts," *William and Mary Quarterly,* 3d series, vol. 64, No. 1 (January, 2007), pp. 95-104.

- [6]

  Harriet Applewhite and Darline Gay Levy, *Women and Politics in the Age of the Democratic Revolution,* (Ann Arbor: University of Michigan Press, 1990).

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  Judith Sargent Murray, *The Gleaner* ([1798] Schenectady, NY: Union College Press, 1992).

- [8]

  Tom Paine, *Common Sense* (Philadelphia, 1776).

- [9]

Abigail Adams to John Adams, March 31, 1776, *Adams Family Correspondence,* vol. 1 (Cambridge, MA: Harvard University Press, 1963), p. 3xx.

- [10]

Susan E. Klepp, *Revolutionary Conceptions: Women, Fertility, and Family Limitation in America, 1760-1820*, (Chapel Hill: University of North Carolina Press, 2009).

- [11]

Susan Zaeske, *Signatures of Citizenship: Petitioning, Antislavery, and Women's Political Identity*, (Chapel Hill: University of North Carolina Press, 2003). Zaeske lists the petitions she has examined on pages 213-223; almost all are signed by women (e.g. "Memorial of 208 Women of Pennsylvania…" or "Ladies Petition of Orange County, New York," or "Memorial of Celia Manger and 153 Women of Wisconsin for the Abolition of Slavery…." But others are from men and women, such the "Petition of 37 Legal Voters and 40 Women of Columbia County…." or the "Petition of 1,193 Citizens of Abington, Mass., for Repeal of the Fugitive Slave Law…."

- [12]

Ellen DuBois, *Feminism and Suffrage: The Emergence of an Independent Women's Movement in America, 1848-1869,* (Ithaca, NY: Cornell University Press, 1978).

- [13]

Tera W. Hunter, *To 'Joy My Freedom: Black Women's Lives and Labors after the Civil War,* (Cambridge, MA: Harvard University Press, 1997), ch. 2.

- [14]

Coger v. The Northwestern Packet Company, 37 Iowa 145 (1873).

- [15]

Bradwell v. Illinois, 83 U.S. 130 (1873)

- [16]

Candace Lewis Bredbenner, *A Nationality of Her Own: Women, Marriage and the Law of Citizenship* (Berkeley: University of California Press, 1998).

- [17]

I have written about these matters in "The Stateless As the Citizen's Other: A View from the United States," *American Historical Review,* vol. 112, No. 1 (Feb. 2007) pp. 1-34, and

with Kristin Collins, in "Sex and Citizenship at the Court, Again," *Dissent Online*, July 2011,

- [18]

  I have written about women's jury service in chapter 4 of *No Constitutional Right to Be Ladies: Women and the Obligations of Citizenship,* (New York: Hill and Wang, 1998).

- [19]

  Reed v. Reed, 404 U.S. 71 (1971). The divorced parents were arguing over who was to be the executor of the estate of their only child, a teenaged son. Idaho law provided that fathers were automatically the executors of their children's estate; the Supreme Court ruled that the parent best suited to the task should be chosen.

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  For the struggle to reform the law, see Linda Greehouse and Reva B. Siegal, eds. *Before Roe v. Wade: Voices that Shaped the Abortion Debate Before the Supreme Court's Ruling,* (New York: Kaplan Publishing, 2010); Leslie J. Reagan, *When Abortion was a Crime : Women, Medicine, and Law in the United States, 1867-1973*, (Berkeley: University of California Press, 1997); James C. Mohr, *Abortion in America: The Origins and Evolution of National Policy,* (New York: Oxford University Press, 1978).

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