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SEX V. RACE, AGAIN

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The struggle between Hillary Clinton and Barack Obama to make history as either the first woman or first African-American president resurrects the unfortunate historic battle between sex and race.¹ The current debate presents striking parallels to the battle for voting rights after the Civil War when infighting between abolitionists over race and sex created deep separatism that pitted allies against each other and diluted their political strength. The potential fallout from this false dichotomy today threatens political credibility and social justice and demands a rethinking of the alleged opposition.

In the late nineteenth century, the debate over the constitutional right to vote became a clash of race versus sex. Women's rights leaders, most notably Elizabeth Cady Stanton and Susan B. Anthony, battled black men for the right to vote.

Rather than unifying against the shared concern of the white male monopolization of political power and legal rights, the representatives of the disenfranchised classes fought each other to obtain rights first.

It began with the Fourteenth Amendment to the U.S. Constitution, ratified in 1868, which precluded the rights of women voters by expressly penalizing states that improperly excluded *male* citizens from voting.² This subordination of women's rights continued in the debate over the Fifteenth Amendment when civil rights leaders abandoned the universal suffrage platform of voting rights for all citizens, temporarily advanced in 1866 by the combined forces of feminists and abolitionists, in favor of prioritized rights for black men. Frederick Douglass, previously one of the staunchest supporters of women's suffrage, rejected the women's issues as less urgent and asserted that the failure to grant strategic priority to

black male suffrage was a major betrayal of the former slave and constituted outright racism.³ Douglass insisted:

I must say I do not see how any one can pretend that there is the same urgency in giving the ballot to woman as to the negro. With us, the matter is a question of life and death, at least, in fifteen States of the Union. When women, because they are women, are hunted down through the cities of New York and New Orleans; when they are dragged from their houses and hung upon lamp-posts; when their children are torn from their arms, and their brains dashed out upon the pavement; when they are objects of outrage and insult at every turn; . . . then they will have an urgency to obtain the ballot equal to our own.⁴

Douglass acknowledged that the same persecution was true for a black woman, "but not because she is a woman, but because she is black."⁵

Stanton had earlier taken up the cause of black women when abolitionists began narrowing their focus on the rights of black men: "May I ask just one question based upon the apparent opposition in which you place the negro and the woman? Do you believe the African race is composed entirely of males?"⁶ The women's rights leaders tried to highlight the plight of black women to expose the erroneous opposition of race and gender. A

similar point was made one hundred years later by author and black activist bell hooks, who argued that the forced opposition between black power and women's liberation ignored the reality of black women and unfairly narrowed the social and political debate.⁷

Women in the nineteenth century lost the battle for universal suffrage, and were told that it was the "Negro's hour" and that they must wait patiently for their time to come (which would be fifty years later). Some women's rights leaders, like Lucy Stone, eventually acquiesced, and split from the national organization for women's rights. Others, like Stanton, refused to support a law that discriminated against women and granted preferential power to black men. As Phoebe Couzins, a law student and associate of Stanton's proclaimed, "I repudiate the Fifteenth Amendment, because it asks me to acquiesce in an

assertion to which I utterly refuse to assent, i.e., the inferiority of women."⁸

Stanton's entrenchment with women's rights at the expense of racial equality, however, shows that being too zealous about a cause can condemn one's place in history. This leading light of women's rights at the national level for over half a century has been ostracized from history as modern interest faded following allegations of her racist remarks.⁹ Stanton's use of racist and classist metaphors in her political rhetoric triggered strong condemnation in the hindsight of history.¹⁰ Historians have revealed documents demonstrating that Stanton resorted to vitriolic rhetoric in opposing the Fifteenth Amendment and what she called its "aristocracy of sex" as she sought to shock people into appreciating the consequences of excluding women from the vote.¹¹ A frustrated Stanton strove to expose the depths of gender prejudice held by men, but

increasingly relied upon racist stereotypes to accomplish her purpose. She argued: "Think of Patrick and Sambo and Hans and Yung Tung who do not know the difference between a Monarchy and a Republic, who never read the Declaration of Independence . . . making laws for Lydia Maria Child, Lucretia Mott, or Fanny Kemble."¹² She stated: "For our part, we prefer Bridget and Dinah at the ballot-box to Patrick and Sambo, though, . . . we believe in equal rights to all, irrespective of sex or color."¹³ Stanton reacted strongly to the position of anti-slavery leaders like Wendell Phillips that this was "the Negro's hour" and that women's suffrage would have to wait:

The black man is still, in a political point of view, far above the educated white women in this country. The representative women of the nation have done their uttermost for the last thirty years to secure freedom for the negro, and so long as he was lowest in the scale of being we were willing to press *his* claims; but now, as the celestial gate to civil rights is slowly moving on its hinges, it becomes a serious question whether we had better stand aside and see "Sambo" walk into the kingdom first. . . . If the two millions of Southern black women are not to be secured in their rights of person, property, wages, and children, their emancipation is but another form of slavery. In fact, it is better to be the slave of an

educated white man, than of a degraded, ignorant black one.¹⁴

This quote by Stanton appears on Obama's campaign website blogs today alongside former vice-presidential candidate Geraldine Ferraro's remarks against Obama suggesting a feminist position against African-American rights.¹⁵

The campaign between Obama and Clinton for the Democratic presidential nomination thus continues the false dichotomy between race and sex, forcing the candidates and their supporters into the box of choosing whether race or gender is more important.¹⁶ Gloria Steinem, in explaining her support of Clinton, said that "[g]ender is probably the most restricting force in American life."¹⁷ Stephanie Tubbs Jones, an African-American representative from Ohio and national co-chair of the Clinton campaign, has defended her support of Clinton against pressure for all black leaders to support Obama.¹⁸ Other influential supporters, however, have chosen race as the more

definitive force. Oprah Winfrey has given her powerful backing to the Obama campaign. Feminist novelist Toni Morrison has endorsed Obama, despite her perceived support of the Clintons in the past.¹⁹

This choice, however, is nothing new. The U.S. Supreme Court has waged the same debate for years, pondering whether gender discrimination rises to the level of mistreatment on the basis of race.²⁰ The Justices (with the notable exception of Justice Ginsburg) have generally found gender to be less problematic than race. Accordingly, the Court has adopted a lower standard of scrutiny for gender-based laws, which has created a legal hierarchy of minority status with race at the top.²¹

If history replays itself, opponents forced into this box will begin to resort to racist and sexist tropes. Stanton turned to racist stereotypes like the iconic Sambo in an attempt

to shock people out of their complacency and opposition to women's rights. Advocates for African-American rights, seeking to avoid political interference with civil rights advancements, portrayed women as fragile, emotional beings, decidedly out of place in the public arena. Such claims are not so far from those being hurled today. We hear Clinton is too emotional as she cries on the eve of the New Hampshire primary, and not tough enough to handle military crises.²² Onlookers shout sexist comments at Clinton on the campaign trail, such as "Iron my shirts."²³ Of Obama, we hear of his Muslim-sounding name, his teenage drug experiences, and his connection with black power movements.²⁴ The candidates themselves have slipped into stereotypical rhetoric. Obama has acknowledged his "habit" of calling female reporters and supporters "sweetie."²⁵ Clinton made her Martin Luther King-Lyndon Johnson remark suggesting that black men lacked the power and authority to effectuate

meaningful political change.²⁶ Once again, it seems our politicking is heading down the wrong path, ignoring the lessons to be learned from Stanton's problematic rhetoric and lost legacy. Perhaps a kinder, gentler approach is warranted today. Perhaps it is time for Michelle Obama to take the stage, or maybe Clinton-Obama together (or is that Obama-Clinton?).

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1. Mark Leibovich, *Rights vs. Rights: An Improbable Collision Course*, N.Y. TIMES, Jan. 13, 2008, (Week in Review) at

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2.U.S. CONST. amend. XIV, § 2. Section 2 states:

Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the *male* inhabitants of such State, 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 therein shall be reduced in the proportion which the number of such *male* citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Id. (emphasis added).

3. ELLEN CAROL DUBOIS, FEMINISM & SUFFRAGE: THE EMERGENCE OF AN INDEPENDENT WOMEN'S MOVEMENT IN AMERICA, 1848-1869, 187 (1978).

4. *Debates of the American Equal Rights Association*

Meeting, May 12-14, 1869, in THE CONCISE HISTORY OF WOMAN SUFFRAGE:

SELECTIONS FROM THE CLASSIC WORK OF STANTON, ANTHONY, GAGE, AND HARPER 258

(Mari Jo Buhle & Paul Buhle, eds. 1978.)

5. *Id.*

6. DuBois, *supra* note 3, at 60 (quoting Letter from

Elizabeth Cady Stanton to Wendell Phillips, May 25, 1865).

7. *See generally* BELL HOOKS, AIN'T I A WOMAN: BLACK WOMEN AND

FEMINISM (1981).

8. DuBois, *supra* note 3, at 175-76 (quoting Speech of

Phoebe Couzins, REVOLUTION, July 9, 1869, at 12-13).

9. Recent scholarship, including my own, shows some

renewed interest in Stanton's work. *See, e.g.,* SUE DAVIS, THE

POLITICAL THOUGHT OF ELIZABETH CADY STANTON (2008); TRACY A. THOMAS,

ELIZABETH CADY STANTON AND THE FEMINIST FOUNDATIONS OF FAMILY LAW

(forthcoming N.Y.U. Press); JUDITH WELLMAN, *THE ROAD TO SENECA FALLS:*

ELIZABETH CADY STANTON AND THE FIRST WOMAN'S RIGHTS CONVENTION (2004); Tracy

A. Thomas, *Elizabeth Cady Stanton on the Federal Marriage*

Amendment: A Letter to the President, 22 CONST. COMMENT. 137

(2006).

10. It has also been suggested that Stanton may have had some internalized racial bias stemming from her upbringing, as her father, a New York jurist and lawyer, may have owned a slave, an African-American man named Peter Teabout who was the caregiver for Stanton and her sisters. KATHI KERN, *MRS. STANTON'S BIBLE* 22-23 (2001).

11. See ANGELA DAVIS, *WOMEN, RACE & CLASS* 70-72 (1981); Michele Mitchell, *"Lower Orders," Racial Hierarchies, and Rights Rhetoric: Evolutionary Echoes in Elizabeth Cady Stanton's Thought during the Late 1860s*, in ELIZABETH CADY STANTON: FEMINIST AS

THINKER 128 (Ellen Carol DuBois & Richard Candida Smith eds., 2007).

12. Elizabeth Cady Stanton, *Manhood Suffrage*, REVOLUTION, Dec. 24, 1868, *reprinted in* 2 THE SELECTED PAPERS OF ELIZABETH CADY STANTON AND SUSAN B. ANTHONY: AGAINST AN ARISTOCRACY OF SEX 196 (Ann D. Gordon ed., 1998); *see* 2 HISTORY OF WOMAN SUFFRAGE 348-55 (Elizabeth Cady Stanton, Susan B. Anthony & Matilda Joselyn Gage eds., 1970 (1881)); Elizabeth Cady Stanton, *Correction: Is There an Antagonism between Woman and the Colored Man?*, REVOLUTION, Mar. 18, 1869, at 169; Elizabeth Cady Stanton, *The Sixteenth Amendment*, REVOLUTION, Apr. 29, 1869, at 266; Elizabeth Cady Stanton, *Anniversary of the American Equal Rights Association: Address of Elizabeth Cady Stanton*, REVOLUTION, May 13, 1869, at 289-92; Elizabeth Cady Stanton, *The Fifteenth Amendment: The Tables Turned*, REVOLUTION, July 29, 1869, at 56; *see also*

Elizabeth Cady Stanton, Address to the Legislature of New York (Feb. 14 & 15, 1854), *reprinted in* 1 HISTORY OF WOMAN SUFFRAGE 595-605 (Elizabeth Cady Stanton, Susan B. Anthony, & Matilda Joslyn Gage eds., 1970) (1881) ("[Y]ou place the negro, so unjustly degraded by you, in a superior position to your own wives and mothers. . . .").

13. Elizabeth Cady Stanton, *Equal Rights to All!*, REVOLUTION, Feb. 26, 1868, at 120-21.

14. Elizabeth Cady Stanton, Letter to the Editor, *This is the Negro's Hour*, NAT'L ANTI-SLAVERY STANDARD, Dec. 26, 1865, *reprinted in* 1 THE SELECTED PAPERS OF ELIZABETH CADY STANTON AND SUSAN B. ANTHONY: IN THE SCHOOL OF ANTI-SLAVERY 564-65 (Ann D. Gordon ed., 1997).

15. Community Blogs, Leslye J. Allen, *From Cady-Stanton to Geraldine Ferraro?*, Mar. 12, 2008, <http://my.barackobama.com/page/community/blog/LeslyeJAllen>.

16. See Maureen Dowd, *Duel of Historical Guilts*, N.Y. TIMES, Mar. 5, 2008, at A23 ("People will have to choose which of America's sins are greater, and which stain will have to be removed first. Is misogyny worse than racism, or is racism worse than misogyny?").

17. Gloria Steinem, *Women Are Never Front-Runners*, N.Y. TIMES, Jan. 8, 2008, at A23.

18. *CBC members put their necks on the line for Clinton*, Mar. 4, 2008, <http://thedailyvoice.com/voice/2008/03/cbc-members-put-their-necks-on-000290.php>; Mark Naymik, *Tubbs Jones campaigns hard in S.C. for Clinton*, PLAIN DEALER, Jan. 21, 2008, at A1.

19. Tom McGeeveran, *Toni Morrison's Letter to Barack*

Obama, N.Y. OBSERVER, Jan. 28, 2008, available at

<http://www.observer.com/2008/toni-morrison-letters-barack-obama>.

20. See, e.g., *Personnel Adm'r of Mass. v. Feeney*, 442

U.S. 256, 272-73 (1979) (stating in case upholding veterans'

employment preference that "[r]ace is the paradigm" and gender

classifications are "not unlike those based upon race," but

nonetheless are subject to a lesser standard of intermediate

judicial scrutiny); *Caban v. Mohammad*, 441 U.S. 380, 398 (1979)

(Stewart, J., dissenting) ("Gender, like race, is a highly

visible and immutable characteristic that has historically been

the touchstone for pervasive but often subtle discrimination.

Although the analogy to race is not perfect and the

constitutional inquiry therefore somewhat different, . . .");

Frontiero v. Richardson, 411 U.S. 677, 688 (1973) (plurality

opinion) (finding that sex is an immutable trait the same as race and thus applying strict scrutiny to invalidate a military rule restricting husbands of female soldiers from qualifying for dependent medical and housing benefits).

21. See *Feeney*, 422 U.S. at 273; *Craig v. Boren*, 429 U.S. 190, 197 (1976); but see *United States v. Virginia*, 518 U.S. 515, 531-35 (1996) (Ginsburg, J., majority opinion) (applying “exceedingly persuasive justification” language of strict scrutiny test to strike down Virginia’s exclusion of women from military education).

22. Maureen Dowd, *Can Hillary Cry Her Way Back to the White House?*, N.Y. TIMES, Jan. 9, 2008, at A19; Jodi Kantor, *Gender Issue Lives On as Clinton’s Hopes Dim*, N.Y. TIMES, May 19, 2008, at A1.

23. Stephanie Coontz, *Sexism, Racism and Why Neither Should Matter in the Clinton-Obama Race*, HUFFINGTON POST, Apr. 23, 2008, http://www.huffingtonpost.com/stephanie-coontz/sexism-racism-and-why-nei_b_98050.html (raising the question of what would have happened if hecklers shouted to Obama, "Shine my shoes.").

24. Katha Pollitt, *Debate Over Race, Gender Could Hurt Dems*, CBS NEWS, Jan. 19, 2008, <http://www.cbsnews.com/stories/2008/01/18/opinion/main3729739.shtml>.

²⁵ Dan Harris, *Obama's "Sweetie": Spontaneous or Sexist?*, ABC NEWS, May 16, 2008, <http://www.abcnews.go.com/GMA/Vote2008/story?id=4870599>.

²⁶ Senator Clinton said in an interview on Fox News, "Dr. King's dream began to be realized when President Lyndon Johnson passed

the Civil Rights Act. It took a president to get it done."

Anne E. Kornblut & Perry Bacon Jr., *Clinton's King Comment "Ill-Advised," Obama Says*, WASH. POST, Jan. 14, 2008, at A1.