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the Notion of a Legal Class of Gender***

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Chapter 7

Elizabeth Cady Stanton and the Notion of a Legal Class of Gender

Tracy A. Thomas

In the mid-nineteenth century, Elizabeth Cady Stanton used narratives of women and their involvement with the law of domestic relations to collectivize women. This recognition of a gender class was the first step towards women's transformation of the law. Stanton's stories of working-class women, immigrants, Mormon polygamist wives, and privileged white women revealed common realities among women in an effort to form a collective conscious. The parable-like stories were designed to inspire a collective consciousness among women, one capable of arousing them to social and political action. For to Stanton's consternation, women showed a lack of appreciation of their own oppression. To shift the status quo, Stanton used stories of real women from different walks of life to develop women's own sense of outrage. In Stanton's stories, the law of domestic relations operated the same regardless of class or power, exemplifying the law's treatment of women as a class based on gender. Stanton's writings and public lectures drew upon the law of marriage, divorce, and parenting to demonstrate the gendered implications of coverture on all women. The goal was to first, facilitate women's own empowerment and then, second, to garner that collective power to challenge the law itself.

Stanton, as "the chief philosopher of feminism and women's rights in the nineteenth century" was the main theorist and orator leading the national awareness of "the woman question." She provided the substantive and theoretical basis upon which the specific claims for political and social rights were based, advocating for equal political rights, employment, education, marital rights of property, custody, and divorce, and religious reform. Widely read in

all fields, including religion, law, social science, and politics, Stanton took emerging theories of the day and used them to formulate feminist theory. Her de facto training in the law under the tutelage of her father, Judge Daniel Cady, and the legal apprentices he trained in his home, provided her with more legal education than most men of the day received. This understanding of the nuances and machinations of the law inspired Stanton to action and gave her the foundation to formulate a transformation of the law.¹

By creating a collective consciousness among women, Stanton identified the operative component important to the law of discrimination—the existence of a class. The recognition of this collective group was important to identity based politics of both the first and second-wave feminist movements and fundamental to modern notions of legal equality. Sex equality law today is premised on the existence of a group of “women” and individual association with the stereotypes and biases of that group. Stanton’s work to arouse women to their own subordination and to unite women as a group to reform the laws was the first step to women identifying collectively, and thus providing the social foundation for legal transformation.

The Legal Relevance of a Gender Class

Stanton’s insight that the law could be challenged by women as a class has become the foundation of modern sex discrimination law. The Supreme Court has extended heightened scrutiny to gender-based laws because it has identified women as a quasi “suspect class.” “A suspect class is a group of individuals whom the Court recognizes as deserving special protection from our majoritarian, political process because the group has a history of having been subjected to purposeful, unjustified discrimination, and a history of political powerlessness.” The general principle of equality in the Fourteenth Amendment’s guarantee of “equal protection” is that of

equal treatment—similar people should be treated similarly. The triggering mechanism and the object of legal inquiry is classification. The plaintiff’s association with a class is the key to scrutinizing legal regulations with any stringency, under either competing theory of equal protection. Earlier constitutional cases theorized equal protection as an anti-subordination principle preventing discrimination against certain disfavored social groups. Later cases articulated a more individualist theory of equal protection, prohibiting regulation on the basis of immutable traits associated with a suspect classification, on the principle that one should be judge as an individual rather than as a member of a group.²

Both of these strands of thought appear in the Supreme Court’s only detailed account of why sex is a type of suspect class. In the 1973 case of *Frontiero v. Richardson*, a plurality of the Court found sex to be a suspect class.³ It talked about group-based protections for women as a social group with little political power and systemic subordination. The Court noted the way in which sex-specific laws invidiously relegate the “entire class of females to inferior legal status.” This history of group-based prejudice against women was due in part, the Court said, to stereotypes of women’s inferior status. It noted, “Traditionally, such discrimination was rationalized by an attitude of ‘romantic paternalism’ which, in practical effect, put women, not on a pedestal, but in a cage.” The plurality cited the one-hundred-year old case of *Bradwell v. Illinois*, denying women admission to legal practice, as evidence of the tradition of discrimination.⁴ In *Bradwell*, the concurring Justice Bradley concluded that the “paramount destiny and mission of women are to fulfill the noble and benign offices of wife and mother.” He continued, stating: “The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life.” Certainly long after *Bradwell*, women were denied the right to vote, serve on juries, and work as bartenders.⁵

The *Frontiero* Court also reasoned that sex is a suspect classification because it is an immutable trait. Immutable traits, like sex and race, are characteristics “determined solely by accident of birth” that cannot be change, and are improper bases for regulation. Blending the ideas of group and individual-based protection, the Court identified the crux of the problem is that such discriminatory laws are made without regard to the actual capabilities of the individual members of the class. With respect to women, the Court noted that the “sex characteristic frequently bears no relation to ability to perform or contribute to society.”⁶

In recognizing sex as an identifiable and suspect class, the Court drew on its precedent regarding race. Feminist lawyers had hoped that the Court would embrace the analogy between race and sex to extend its precedent under the Fourteenth Amendment to reach women. Following this lead, the Court found that sex, like race, is a characteristic that has “high visibility.”

[I]ndeed, throughout much of the 19th century the position of women in our society was, in many respects, comparable to that of blacks under the pre-Civil War slave codes. Neither slaves nor women could hold office, serve on juries, or bring suit in their own names, and married women traditionally were denied the legal capacity to hold or convey property or to serve as legal guardians of their own children. . . . And although blacks were guaranteed the right to vote in 1870, women were denied even that right—which is itself “preservative of other basic civil and political rights”—until adoption of the Nineteenth Amendment half a century later.⁷

Stanton also drew comparisons between women and slaves. She described the condition of married women as slavery, with a woman being in bondage to her master, the husband, and denied her freedom and the interests of her labors.⁸ “It is just as impossible for men to understand the slavery of the women in their own households as it was for slaveholders to understand that of the African race on their plantations. . . .”⁹ Stanton expounded on this analogy in her public outcries to the decision in *Richardson v. McFarland*. This case of an ex-husband for murdering his wife’s lover dominated the national headlines in 1870. Abbey Sage Richardson, an aspiring actress, divorced her husband because of his alcoholism and abuse, and began a relationship with the prominent journalist, McFarland. Richardson walked into McFarland’s office and shot him point blank. A jury acquitted Richardson on grounds of temporary insanity. He went free, and obtained custody of one of his children. Sage was not been allowed to testify at trial on grounds of marital privilege. Stanton denounced his acquittal, calling the case the “Dred Scott decision for women” comparing the treatment of the wife to that of the freed slave, Dred Scott, in the Supreme Court case that returned him, as property, to his owner. Stanton declared, “I rejoice over every slave that escapes from a discordant marriage. . . . One would really suppose that a man owned his wife as the master the slave, and that this was simply an affair between Richardson and McFarland, fighting like two dogs over one bone.”¹⁰

Stanton was not the first feminist to draw this analogy: the slavery metaphor for women’s condition was used by Mary Wollstonecraft in 1799 *Vindication of the Rights of Woman*.¹¹ Stanton was familiar with Wollstonecraft, and reprinted excerpts of *Vindication* in her newspaper, *Revolution*. Nor was Stanton the last feminist to make the sex-race analogy. Pauli Murray, African-American activist lawyer and co-founder of NOW, made the analogies clear in her article, *Jane Crow and the Law: Sex Discrimination in Employment*.¹² Other feminist

lawyers of the 1970s as well intentionally chose this analogy of sex to race as strategy to convince judges and other legal decision makers that sex discriminatory laws, long seen as benign and protective, perpetuated inequality and were worthy of redress under existing laws of equal protection.¹³

Many commentators, both modern and past, have challenged the race analogy, vehemently resisting the attempt to equate women's experience with that of slavery.¹⁴ Frederick Douglass, initially a strong supporter of the woman's movement and a signatory to Stanton's *Declaration of Sentiments* in 1848, decried his friend's attempts to compare the situation of women to that of the slave.

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.¹⁵

Stanton understood the reluctance to equate the discrimination of slaves and white women:

When we contrast the condition of the most fortunate women at the North with the living death colored men endure everywhere, there seems to be a selfishness

in our present position. But remember we speak not for ourselves alone, but for all womankind, in poverty, ignorance and hopeless dependence, for the women of this oppressed race too, who in slavery, have known a depth of misery and degradation that no man can ever appreciate.¹⁶

She found the analogy apt: “In comparing the woman with the negro we but assert ourselves subjects of law. . . . The difference in the slavery of the negro and woman is that of the mouse in the cat’s paw, and the bird in a cage, equally hopeless for happiness. One perishes by violence, the other through repression.”¹⁷

The *Frontiero* Court acknowledged a difference between race and sex, but did not find that it negated the extension of equal protection guarantees to women. The Court stated that while “the prejudicial attitudes toward women in this country have not been identical to those held toward racial minorities,” it need not determine “whether women or racial minorities have suffered more.” Instead, the Court found it necessary only to acknowledge that “our Nation has had a long and unfortunate history of sex discrimination, a history which warrants the heightened scrutiny we afford all gender-based classifications today.”¹⁸ However, in the very next case of sex discrimination, in *Craig v. Boren*, the Court retreated from this suggestion of strict scrutiny for gender classifications, find that a lesser “intermediate” scrutiny would suffice. This ruling concluded that gender was a “quasi-suspect” class, meaning that the some gender-based regulation might be permissible.¹⁹

The Court in *Frontiero* concluded with the acknowledgement, that as a result of paternalistic notions of women, “our statute books gradually became laden with gross, stereotyped distinctions between the sexes.” This prevalence of sex-based laws was the starting point for Stanton. She began her collectivization with the reality that laws classified solely on the

basis of sex, and that legal reality was a commonality that should draw women together in support of their own cause. Her first hurdle was to awaken women to the reality of their own subordination.

Challenging Women's Indifference

Stanton was shocked by women's lack of interest in their own emancipation. She found that "the apathy and indifference of the women of this nation is as surprising as appalling."²⁰ Stanton was one of the "strong-minded women" trying to "rouse them from the lethargy of death."²¹ In trying to arouse women to action, found that most responded "I have all the rights I want." They did not align themselves with other women, nor appreciate the systemic control over their lives by virtue of their gender. Simone de Beauvoir made this same observation one hundred years later, writing in *The Second Sex* in 1949 that "women do not say we." In her view, the "proletarians" and the "Negroes" did, but women did not display the common consciousness of saying *we*. The lack of collective support from all women plagued Stanton throughout her 54 years of advocacy, and it was an issue to which she returned during her later years, finding that "[t]he cowardice and treachery of this class [women] has been the most pitiful phase of our movement."²²

Women's indifference was a sticking point in feminist reform efforts. The standard response from men and politicians presented with demands was that women did not themselves want the reforms that Stanton and other feminist leaders proposed. In a written address submitted to the New York State Legislature in 1854, Stanton challenged this claim that only a few, rogue women were demanding change: "You may say that the mass of the women of this state do not make the demand; it comes from a few sour, disappointed old maids and childless women. You are mistaken; the mass speak through us." Stanton described the plight of teachers, widows, and

women of the statue who supported themselves and their children, and asked “who are they that we do not now represent?” She dismissed the indifference of a few women of luxury who had not embraced the call for reform: “But a small class of fashionable butterflies, who through the short summer days, seek the sunshine and the flowers; but the cool breeze of autumn and the hoary frosts of winter will soon chase all these away; then, they too will need and seek protection, and through other lips demand, in their turn, justice and equity at your hands.”²³

Stanton took on the women of luxury many times, trying to goad them into awakening to the cause. She challenged privileged women in speeches and editorials in newspapers in an appeal called, “I Have All the Rights I Want.” Stanton attacked the “utter vacuity” of the lives of these women of wealth “clothed in purple and fine linen” living objectless lives with no fixed purpose. She did not understand how these women could see the injustices of society, and concluded that such a woman “must be selfish, ignorant and unthinking, who can wrap the mantle of complacency about her and say ‘I have all the rights I want.’” Stanton cringed at this phrase that she heard over and over again as a defense of the status quo. “We have allowed this saying from the mouth of women to pass quite long enough unrebuked, seeing that it is utterly and entirely false, and every woman who utters it knows in her own soul that it is so....”²⁴

Stanton also searched for explanations for the cause of the indifference of so many women. She found the church largely responsible for the prevalent views in society of women’s subordinate status. “We must remember the tremendous pressure brought to bear to hold women in bondage. Not only all powers of the earth—laws and constitutions—but the decrees of Heaven, the Scriptures and religious superstitions.”²⁵ Fifteen years earlier, she concluded the same thing: “I have traveled from Maine to Texas, trying by public lectures and private conversations ‘to teach women to think,’ but the chief obstacle in the way of success has

everywhere been their false theology, their religious superstitions, their low estimate of themselves as factors in human progress.”²⁶ Stanton attacked the views of the organized church in her work, *The Woman’s Bible* (1896), in which Stanton used her training in Greek to translate selected passages of the Bible and comment upon the most sexist passages in the Bible.

I have discovered that the large majority know very little of the Book, by whose authority they suppose all men are divinely ordained to rule over all women. They never ask who wrote that Book, how it was compiled, whether its parables and allegories are to be taken literally or figuratively. Whether our English translation is fair at all points, whether advice suited to women, centuries ago, has any significance in our day. . . . As the majority of women will not think and read for themselves, they believe in a masculine God, a masculine Bible, and masculine religion. . . . Having presumed to do some reading and thinking for myself I present another picture drawn from the Bible for our women to consider.²⁷

She thought her religious reform work important to attacking the underlying foundation of women’s subordination, finding it strange that women would “still be so oblivious to the machinations of her worst enemy”—the church. Stanton’s heresy in interpreting the Bible resulted in her ostracization from the women’s movement in her final years, harming her influence and historical legacy.²⁸ Yet, it was Stanton’s firm belief that changing the prevailing norms by going to the source of those beliefs was the crucial to the ultimate success of legal reforms and the full emancipation for women.

Stanton also appreciated the practical limitations of women's lives that contributed to their apathy.

The indifference of educated women to their political disabilities may be traced in large measure to their comfortable environments, and their fear of assuming new responsibilities. The indifference of the working classes is due to their imperative necessities which fully occupy their hands and thoughts. Thus as a class we are sacrificed to plenty on the one side and poverty on the other, the few only being roused to action by the vindication of a principle.²⁹

She understood that women have been "trained for centuries to obedience to the powers that be, submission to established usages."³⁰ She knew that radical change was needed to shock them out of their indifference. One strategy Stanton used to draw women together was the sharing of women's experiences to inspire a commonality of gendered realities as a basis for legal reform. She concentrated her stories around women's experiences in the family and the legal limitations and control of the husband. It was this collective power that drew women out of their isolation into the political realm.

First Wave Consciousness-Raising

Stanton drew on the law of domestic relations as the best way to illustrate the gender binary of the law. Stanton first realized that she needed to address women's own lack of understanding of their own subordination by highlighting their collective experiences. Such consciousness raising, popular in the 1970s second-wave feminist movement, aimed for women to share personal and

lived experiences in order to appreciate the connections and similarities that might otherwise be invisible. In the second-wave , the mantra was the “personal was political” as women told their stories and found shared realities and concerns that became the basis for political action.

Feminist legal theory, emerging later, picked up on these personal accounts, using experiential narratives as vehicles for using women’s experiences to critique and shape legal doctrine.³¹

These narratives of rape, childbirth, and harassment often had an element of emotion, departing from the detached, seemingly objective tone of traditional legal scholarship. The purpose was to incorporate women’s experiences into legal analysis and to connect women by these shared experiences.

Stanton focused much of her collectivizing efforts on the law of domestic relations, where the law governs the lives of many women in their roles as wives and mothers. The law of marriage and coverture affected the daily lives of women and had a practical connection with women’s lives. As recounted in Stanton’s edited work, *The History of Woman Suffrage*, women who attended grassroots organizing efforts across the name initially took interest in the women’s movement because of the limitations they suffered in marriage, property, and parenting. The law of the family, unlike the claim for political rights, was close to the women.

Stanton told parable-like stories of women’s experiences. In classic parable fashion, the stories often had fictitious elements and were intended to convey a moral or universal truth. In Stanton’s case, this was a truth about women’s subordination. Stanton’s narratives were derived from real women she met, but took on an element of hyperbole and symbolism. The stories emphasized the binary nature of the law based on gender. Stanton also used the stories to make connections among women, reaching out to include women of varying classes, races, and ethnicities in the rhetoric of the women’s movement.

Several of Stanton's stories centered on working class women. Some derived from her experiences with her Irish neighbors in Seneca Falls, New York, where she lived after her marriage with her seven children. Stanton served as a counselor to the families, mediating domestic violence and offering homeopathic medical care. She described how the arrangement began: "There was quite an Irish settlement at a short distance, and continual complaints were coming to me that my boys threw stones at their pigs, cows, and the roofs of their houses. This involved constant diplomatic relations in the settlement of various difficulties, in which I was so successful that, at length, they constituted me a kind of umpire in all their own quarrels." In particular, she consulted with women regarding their marital problems and domestic violence, and these stories fueled her interest in liberal divorce laws. "[W]ho can measure the mountains of sorry and suffering endured in unwelcome motherhood in the abodes of ignorance, poverty, and vice, where terror-stricken women and children are the victims of strong men frenzied with passion and intoxicating drink?"³²

Stanton also recalled stories of working class neighbors of her childhood home, in Johnstown, New York. In her autobiography, *Eighty Years and More: Reminiscences*, Stanton portrayed the injustice of Flora Campbell, the wife of a Scottish farmer and a former Cady servant. Flora sought the legal advice of Stanton's father when Elizabeth was ten years old. The young Elizabeth spent hours in her father's office, attached to the family house, listening to clients state their cases and talking with the law students Judge Cady apprenticed. Flora wanted to recover a farm that her father had left her that had been mortgaged by her husband. There was also another story of an "old Mrs. Brown" whose husband had willed her farm to her stepson, leaving her with no home. Judge Cady patiently explained to these women that the law gave ownership of a woman's property to her husband upon marriage, and thus, there was nothing the

lawyer could do. It was these stories that Elizabeth attributed her first awakening to the injustices of women. As a child, she threatened to cut all of the odious laws from the books; as an adult Stanton worked on behalf of the injustices of women across class.³³

Stanton also took up the cause of Hester Vaughan, an English immigrant and domestic servant who in 1868 in Philadelphia was sentenced to death for infanticide. In court, the prosecutor told a story of an unmarried woman giving birth in a boardinghouse, found by neighbors with her dead infant, with the baby's skull crushed and bludgeoned by a blunt instrument, as testified to by the coroner. Stanton's version of the sensational story she advanced in the press, was one of a poor, young girl abandoned by a supposed-fiancé who was already married, raped by her employer, and then thrown into the streets when she became pregnant. Living in a tenement house in a garret room with no heat and a blizzard wailing outside, Hester, malnourished and alone, gave birth to an infant. Dr. Clemence Lozier, a women's rights supporter, gave her medical opinion that Vaughn had puerperal mania causing Hester to be oblivious to the circumstances and likely that she lay on the baby, causing the injuries. In Stanton's hands, Hester's story became one of the violent oppression of women of the working class, and made this issue one for all women, stating [t]his case carries with it a lesson for the serious thought of every woman, . . . " She argued, "In the name of womanhood, we implore the mothers of that state to rescue that defenceless girl from her impending fate. Oh! make her case your own, suppose your young and beautiful daughter had been thus betrayed, . . . " ³⁴ Stanton used Vaughn's story as a morality play to illustrate the role of law in the perpetuation of injustice based on gender. Stanton emphasized the double standards of women's sole social responsibility for pregnancies out of wedlock, referring to Hawthorne's book, *The Scarlett Letter*, as an example of men's condemnation of women and failure to assume their own responsibility.

Stanton continued to retell her parable to unite and inspire women to action, despite Vaughn's own affidavits and actions that seemed to contradict Stanton's account of the facts. The case had assumed parable-like stature, operating as an illustrative fiction, disconnected from the reality. Hester Vaughn was eventually pardoned and she returned home to England.³⁵

Elizabeth Cady Stanton also developed narratives of Mormon women to portray the hypocrisy of marriage. Her point was that Mormon women were no different from other women, subjugated in marriage because of gender. "Though the Mormon, like all other women, stoutly defend their own religion, yet they are not more satisfied than any other sect. All women are dissatisfied with their position as inferiors, and their dissatisfaction increases in exact ratio with their intelligence and development." By this time anti-polygamist advocacy had become a "women's issue," taken up by social purity and Protestant activists who sought to end the enslavement of women. For Stanton, the patronizing views of political men and moralistic women seeking to "protect women" from the evils of polygamy failed to see the hypocrisy of women's subordination within their own, traditional monogamous marriages. In what Stanton called "man-marriage," monogamous marriage was created by and for men in patriarchal relationships that made men the head of women, as the master to the slave.³⁶ Stanton emphasized the patriarchy existed in all current forms of marriage, and that all women, including Mormon women, were unhappy in marriage. Stanton visited the Mormons in 1871 giving her standard lecture on marriage and maternity. Stanton's stories of Mormon women touted their practice of powerful motherhood, and independent women who were educated and entitled to vote. Mormons were the pariahs of the time, castigated and targeted nationally on social, religious, and political fronts. Stanton reached out to incorporate these women into the collective

of “women,” trumpeting the virtues of Mormon motherhood and inviting the Mormon women to share the organizational stage in the national fight for suffrage.³⁷

Finally, Stanton also created several fictional heroines from the experiences of wealthy friends and other “heiresses.” Stanton’s message in these stories of privileged women was that women, regardless of class or economic status, women were still subordinated under the law because of gender. Her point of using examples of wealthy women was to emphasize the powerful nature of the law even where money would have thought to change things; even the most powerful, those armed with money, education, and influential friends, cannot avoid the subordination of the law based solely on sex. One repeated story was that of a “dear friend” of Stanton’s, who Stanton served as a bridesmaid in her wedding. This character may be an elaboration of Stanton’s cousin, Cornelia Barclay, and her situation with an abusive and alcoholic husband.³⁸ Stanton recounted the story of a woman who was victimized by a patriarchal system that gave all property rights to the husband.

Think of a husband telling a young and trusting girl, but one short month his wife, the he married her for her money; that those letters, so precious to her, . . . were written by another; that their splendid home, of which on their wedding day, her father gave to him by deed, was already in the heads of his creditors; that she must give up the elegance and luxury that now surrounded her unless she can draw fresh supplies of money to meet their wants.³⁹

In another story, intended to teach by humor, Stanton tells the story of a Seneca Falls neighbor and her cook-stove. The neighbor, “pretty Louise,” a “refined, cultivated, beautiful woman”

desperately needed a new cook-stove. She would not buy the stove without her husband's consent and approval, but her husband was a member of Congress and away from home much of the time. Stanton talked Louise into getting the stove as a "personal declaration of independence." The husband, Stanton recalled, who was rich enough to afford stove, ranted and raved, but eventually the couple moved on, with Louise "taking up the reins of government in her own sphere." Later recounting the story at dinner party, Louise's husband said he liked her better that way. Stanton's goal here was to challenge the "generally accepted theory that 'woman's sphere' is home," by illustrating the continued ramifications of coverture.⁴⁰

These stories provide a unified vision of "woman's" identity. Stanton presents these experiences as shared values rather than essentialist truths. The stories worked to incorporate multiple experiences and perspectives into the debate over women's rights through sharing experiences and appreciating commonalities. The narratives, in what has become a hallmark of feminist legal theory, personalized the experience women and shared it, making it relevant and actionable in the ongoing debate. Towards the end of Stanton's fifty-year advocacy, she stated her vision of a "woman's" movement: "My idea of that platform is that every woman shall have a perfect right there; that she and her wrongs shall be represented in our conventions. . . . We want all types and classes to come. We want all races as well as all creeds and no creeds—including the Mormon, the Indian, and the black woman."⁴¹

Essentialism as an Avenue to Change

Feminists in the later twentieth century challenged this notion of women as a uniform group. They objected to the feminist attempts to essentialize all women and to assume that the experience of white, middle-class women represented them all. The classic "anti-essentialist"

theory critiques feminists for reflecting white privilege when they describe gender problems from their own perspective. These critics argue that it is important to take into account differences of race, religion, class, and sexual orientation in order to fully appreciate women's experiences. Anti-essentialist feminists have pushed away the notion of a commonality among women, insisting upon the inclusion of multiple identities in feminist theory.⁴²

These stories, however, show that Stanton did not essentialize her experience as an educated, middle-class, married, mother of seven as that of all women. Her work on women's behalf incorporated the experiences of women of different classes and religion. Her disavowing of the social butterflies eschews an elitism on her part. She strove to expose the binary and subordinate nature of gender that transcended class and privilege.⁴³ She tried desperately to expose the inferior precept of the Fifteenth Amendment, "making all men sovereigns, all women slaves."⁴⁴

The universalizing of women's experience is not based on a homogenous view of women. Instead, it has been the foundation that formed the power base for tangible legal and political reform. Universality allowed Stanton to speak on behalf of women—working women, Mormon women, and divorced women. She advocated for the rights of black women, invisible in the debate over suffrage for black men in the Fifteenth Amendment. She worked in the abolition movement and was involved in the Equal Rights Association seeking universal suffrage for all. Stanton was one of the few voices highlighting the exclusion of black women from the Fifteenth Amendment, asking "What about the slave woman? Is she not also in bondage? Not also entitled to the vote?" "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?"⁴⁵ Sojourner Truth shared these views and at a meeting of the American Equal

Rights Association in 1867, joined Stanton's opposition to the Fifteenth Amendment. Truth said she was fearful of putting more power into the hands of men that would add to the oppression of black women. "There is a great stir about colored men getting their rights, but not a word about the colored women . . . , and if colored men get their rights, but not colored women theirs, you see the colored men will be masters over the women, and it will be just as bad as before."

Some contemporary legal scholars have embraced the universality of women's experiences as a foundation for gendered reform. Joan Williams and Catherine MacKinnon resist the anti-essentialist pull because it immobilizes continued legal action for change. MacKinnon rejects the abstraction of the anti-essentialist theory that ignores the social realities of women's lives and impedes further legal and political action by weakening the universality among women. Williams moves away from anti-essentialism, recognizing that "today we find ourselves bumping up against its limitations." Williams argues for a new type of "reconstructive feminism" that instead of focusing on women and women's identities, focuses on the masculine norms and the gender dynamics that frame those identities. She explains: "The news that feminism is not responsible for describing women's identities should alleviate feminist angst about how to accomplish the task of taking into account all of the differences among women (antiessentialism)." The power in feminist legal change, in Williams' view, is located in the underlying gendered norms and the alteration of those norms." As Nancy Cott stated, "As much as feminism asserts the female individual—by challenging delimitation by sex and by opposing the self-abnegation on behalf of others historically expected of women—pure individualism negates feminism because it removes the basis for women's collective self-understanding or action."⁴⁶

Stanton worked in this vein, seeking to establish a basis for women's collective action against the gendered norms. Her outreach to different identities and perspectives was not intended to explore all experiences, but rather was intended to harness the collective power of women by illustrating the existence of overlapping commonalities of gender. Stanton, working at the birth of a movement, faced strong denial of gendered commonalities that threatened to leave existing gendered dynamics in place. Stanton's work brings feminism back to a focus on the norms that impact the group of women based on gender. The existing law of gender discrimination is based upon this core insight of some commonality among women due to gender. Focusing on the individualization of experience and the absence of commonality harkens back to Stanton's time when women were not politicized and failed to see the connections among their shared experiences. Stanton's recognition of the need for a collective group to politically and legally challenge women's subordinate status provides an example of the importance of feminist strategies of collectivization that are critical to continued legal change for women.

Notes

1. *Meetings in Washington Hall*, CHI. DAILY TRIB., May 17, 1893 (statement of Susan B. Anthony). All Stanton papers can be found in *THE PAPERS OF ELIZABETH CADY STANTON AND SUSAN B. ANTHONY* (Patricia G. Holland and Ann Gordon, eds. 1991) (microfilm); *see also* ELISABETH GRIFFITH, *IN HER OWN Right* (1983); LORI D. GINSBURG, *ELIZABETH CADY STANTON: AN AMERICAN LIFE* (2009). For Stanton's work on family law, *see* TRACY A. THOMAS, *THE FEMINIST FOUNDATIONS OF FAMILY LAW* (forthcoming NYU Press) and Tracy A. Thomas, *Elizabeth Cady Stanton on the Federal Marriage Amendment*, 22 CONST. COMMENT. 137 (2005); on religious reform, *see* KATHI KERN, *MRS. STANTON'S BIBLE* (2001), and on political advocacy, *see* SUE DAVIS, *THE POLITICAL THOUGHT OF ELIZABETH CADY STANTON* (2008).

2. *See* Mark Strasser, *Suspect Classes and Suspect Classifications: On Discriminating, Unwittingly or Otherwise*, 64 TEMPLE L. REV. 937, 938-40 (1991); Suzanna Sherry, *Selective Judicial Activism in the Equal*

Protection Context: Democracy, Distrust, and Deconstruction, 73 GEO. L.J. 89, 97 (1984); Owen M. Fiss, *Groups and the Equal Protection Clause*, 5 PHIL. & PUB. AFF. 107, 108, 128 (1976).

3. *Frontiero v. Richardson*, 411 U.S. 677, 687-92 (1973) (Brennan, J., plurality). Eight Justices in *Frontiero* agreed that the law denying dependent spousal benefits to female military officers was discriminatory, but only four Justices agreed that sex was a suspect classification, and three wanted to defer the question pending consideration of the Equal Rights Amendment. For more on the backstory of *Frontiero*, see FRED STREBEIGH, *EQUAL: WOMEN RESHAPE AMERICAN LAW* 48-61 (2009).

4. 83 U.S. (16 Wall.) 130, 141 (1873).

5. *Minor v. Happersett*, 88 U.S. (21 Wall.) 162 (1874); *Hoyt v. Florida*, 368 U.S. 57 (1961); *Goesaert v. Cleary*, 335 U.S. 464 (1948).

6. *Frontiero*, 411 U.S. at 687-92.

7. *Id.* at 685.

8. Elizabeth Cady Stanton, *The Degradation of Woman*, REV., Jan. 15, 1868; 1 ELIZABETH CADY STANTON, SUSAN B. ANTHONY, MATILDA JOSLYN GAGE, *HISTORY OF WOMAN SUFFRAGE* 27 (1870).

9. ECS, *A Private Letter*, REV., Nov. 10, 1870.

10. ECS, *Editorial Correspondence*, REV., Dec. 23, 1869; *see also* ECS to Victoria Woodhall, WOODHALL & CLAFFLIN'S WEEKLY, Mar. 11, 1871; ECS, *Side Issues*, REV., Oct. 6, 1870; ECS, Speech to the McFarland-Richardson Protest Meeting, May 1869; GEORGE COOPER, *LOST LOVE: A TRUE STORY OF PASSION, MURDER, AND JUSTICE IN OLD NEW YORK* (2003).

11. NANCY COTT, *PUBLIC VOWS: A HISTORY OF MARRIAGE AND THE NATION* 65 (2002); MARILYN YALOM, *A HISTORY OF THE WIFE* 194 (2002).

12. 34 GEO. WASH. L. REV. 232 (1964).

13. Serena Mayeri, *Reconstructing the Race-Sex Analogy*, 49 WM. & MARY L. REV. 1789, 1796 (2008); *see* Brief for Petitioner-Appellant at 15-16, *Reed v. Reed*, 404 U.S. 71 (1971).

14. *See, e.g.*, PAULA J. GIDDINGS, *WHEN AND WHERE I ENTER: THE IMPACT OF BLACK WOMEN ON RACE AND SEX IN AMERICA* 64-65 (1996); BELL HOOKS, *AIN'T I A WOMAN* 141 (1981); WILLIAM CHAFE, *WOMEN AND EQUALITY: CHANGING PATTERNS IN AMERICAN CULTURE*, 51-78 (1977).

15. *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).
16. ECS, *Editorial Correspondence*, REV., Jan. 22, 1869.
17. ECS, *Man the Usurper*, REV., Mar. 12, 1868.
18. JEB v. Alabama, 511 U.S. 127, 136 (1994) (citing *Frontiero*).
19. 429 U.S. 190 (1976).
20. ECS, *Letter to Editor of The Golden Age*, THE WASHINGTON CONVENTION, Jan. 10, 1874.
21. *Degradation*, 25.
22. ECS, *Women do not wish to vote*, THE NAT'L BULL., Apr. 1894.
23. ECS, Address to the Legislature of New-York, Feb. 14-15, 1854.
24. ECS, *I Have all the Rights I Want*, REV., Apr. 1, 1869; ECS, *I Have All the Rights I Want*, 1859.
25. ECS, *Women Their Own Emancipators*, WOMAN'S J., Aug. 25, 1894.
26. ECS, *Teach Women to Think*, NAT'L CITIZEN :& BALLOT BOX, Sept. 1880.
27. *Id.*
28. KERN, *supra*; see also Kathi Kern, "Free Woman Is a Divine Being, the Savior of Mankind": Stanton's Exploration of Religion and Gender, in ELIZABETH CADY STANTON: FEMINIST AS THINKER (Ellen Carol DuBois & Richard Candida Smith eds. 2007).
29. ECS, *The Indifference of Women Themselves: The Greatest Block in the Way of Emancipation*, BOSTON INVESTIGATOR, Aug. 25, 1900; accord ECS, *The Cause of Their Indifference*, COMMONWEALTH, Feb. 18, 1899.
30. *Women do not wish to vote*, *supra*.
31. Kathryn Abrams, *Legal Feminism and the Emotions: Three Movements in an Evolving Relationship*, 28 HARV. J. GENDER & L. 325, 327 (2005).
32. ECS, EIGHTY YEARS AND MORE 146-50 (1898); LOIS BANNER, ELIZABETH CADY STANTON 50 (1972).
33. EIGHTY YEARS, Chap. II; BANNER, 7-8; ALMA LUTZ, CREATED EQUAL: A BIOGRAPHY OF ELIZABETH CADY STANTON 3-4 (1940).
34. ECS, *Hester Vaughan*, REV., Nov. 19, 1868.

35. *Id.*; ECS, *Governor Geary and Hester Vaughan*, REV., Dec. 10, 1868; *The Case of Hester Vaughan*, REV., Dec. 10, 1868; ECS, *Hester Vaughan*, REV., Dec. 10, 1868; see Sarah Barringer Gordon, *Law and Everyday Death: Infanticide and the Backlash Against Women's Rights after the Civil War*, in LIVES IN THE LAW 55 (Austin Sarat, et. al., eds. 2002).

36. ECS, *The Man Marriage*, REV., Apr. 8, 1869; ECS, *Anniversary of the National Woman Suffrage Association*, REV., May 19, 1870, at 305.

37. ECS, *Reminiscences*, WOMAN'S TRIB., Sept. 13, 1890; ECS, *The Central Idea of Woman's Degradation*, Woman's Trib., Dec. 3, 1884; LUTZ, 271; *Mrs. Elizabeth Cady Stanton Discourses on Marriage and Maternity*, S.F. CHRONICLE, July 14, 1871.

38. Editor's Note, 1 THE SELECTED PAPERS OF ELIZABETH CADY STANTON AND SUSAN B. ANTHONY 429 (Ann D. Gordon, ed. 1997).

39. EIGHTY YEARS, 215-26; HWS v.1, *supra*; ECS, *Marriage and Divorce*, REV., Oct. 22, 1868; Address of Mrs. Elizabeth Cady Stanton, Proceedings of the Tenth National Woman's Rights Convention, May 10 & 11, 1860.

40. ECS, *A Story for Wives*, REV., Apr. 6, 1871.

41. *Mrs. Stanton's Remarks*, WOMAN'S TRIB., Mar. 8, 1890,

42. MARTHA CHAMMALLAS, INTRODUCTION TO FEMINIST LEGAL THEORY (2d. ed. 2003).

43. Scholars have revealed the racist and nativist rhetoric Stanton used in opposing the Fifteenth Amendment granting black men the right to vote. 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 FEMINIST AS THINKER, 128. A frustrated Stanton resorted to such political rhetoric in order to expose the depths of gender prejudice by shocking people into appreciating women's subordinate status below other disenfranchised men like blacks and immigrants. DAVIS, 2. For more on the historic juxtaposition of race and sex, see Tracy A. Thomas, *Sex v. Race, Again*, in FEMINISM IN THE OBAMA ELECTION (SUNY Press 2010).

44. Letter to Woodhall, *supra*.

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

46. Catharine A. Mackinnon, *Points Against Postmodernism*, 75 CHIC.-KENT L. REV. 687, 689, 692 (2000); Joan C. Williams, *Reconstructive Feminism: Changing the Way We Talk About Gender and Work Thirty Years After the PDA*, 21 YALE J. LAW & FEM. 79, 81 (2009); NANCY COTT, *THE GROUNDING OF MODERN FEMINISM* 6 (1987).