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Chapter 3 - Religion, Rights and Difference in the Early Woman's Rights Movement (previously published article)

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CHAPTER THREE

RELIGION, RIGHTS, AND DIFFERENCE IN THE EARLY WOMAN'S RIGHTS MOVEMENT

*Elizabeth B. Clark**

The meeting of feminists at Seneca Falls in July of 1848 marked the nominal beginning of the movement which in the nineteenth century was labeled "woman's rights." For us that term has become commonly interchangeable with "suffrage," and we often assume that "woman's rights" describes a seventy-odd year campaign to gain civil and political power and protection from a government which—although it had perpetrated outrages against women and blacks—had an unquestioned legitimacy as the guarantor and enforcer of rights.

Historical interpretations of the woman's movement have reaffirmed this picture, stressing the republican origins of women's claims and their easy fit within the tradition of American constitutionalism. The movement's biographers have placed feminists' arguments well within the secular political tradition of the nineteenth century. They have treated "natural rights" as a form of "super-right"—more emphatic, an appeal to historical tradition, but not qualitatively different from constitutional claims—and natural law language as formulaic fist shaking.¹ Ellen DuBois, the foremost historian of the movement's early period, has stressed suffrage as the activists' most radical and most mature demand, and the highest evolution of women's political consciousness. For DuBois, the quest for the ballot reflected a rights consciousness rooted in the secular, enlightened, liberal tradition of the American Revolution. She labels suffrage as the primary goal from the beginning for the right-thinking portion of the movement as represented by Elizabeth Cady Stanton and the National Woman Suffrage Association (NWSA), and sees the more conservative Woman's Christian Temperance Union's endorsement of the vote in the 1880s as a measure of the NWSA's success in setting a liberal agenda for the woman's movement as a whole.²

Historians have overstated both the secular identity of antebellum feminism and the centrality of suffrage to that movement, emphasizing the roles of Elizabeth Cady Stanton and Susan B. Anthony to the exclusion of scores of other activists more representative of the movement's main-

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1. Aileen Kraditor takes this tack in *The Ideas of the Woman Suffrage Movement, 1890-1920* (1965).

2. See Ellen G. DuBois, *Feminism and Suffrage: The Emergence of an Independent Woman's Movement in America, 1848-1869* (1978); and *The Radicalism of Woman Suffrage: Notes Toward the Reconstruction of Nineteenth-Century Feminism*, *Feminist Studies*, vol. 3 no. 3 (1975), at 63-71.

stream. The rather abstract language of rights used by the Founding Fathers was common currency in America, and women drew on it for help in fashioning their arguments and in making public appeals. But feminists did not don the Founders' philosophy of rights as a perfectly fitting suit of mail. Many were initiated into organized feminism through the philosophies of liberal Protestantism so prevalent in antebellum reform thought. The content of their rights thinking was informed by a deeply religious sensibility which stressed the interconnections between rights and responsibilities, between civil and domestic relations, and between the workings of the state and of the home. Suffrage did not automatically take pride of place in the panoply of rights women sought in the period before the Civil War, but stood as one goal among many, and not the most important. Further, rights consciousness was originally rooted in domestic concerns for many women, who saw them as a means of achieving protection for themselves and their families while pursuing the ends of social justice. Such an understanding of rights was in full accord with the liberal Protestant imperative for the full development of the individual and his or her full participation in society. The demand for rights did not emerge theoretically full-blown from any woman's head, but was born the usual way, amid a welter of personal and familial concerns.

Finally, although "equality" was the watchword of the movement, in the antebellum period it referred largely to a negative proposition; the removal of the false and artificial restraints of woman's sphere, restraints which prevented her full entry into public life. "Equal" was not "like," and although feminists ideally hoped that the destruction of spheres could bring about the growth of common sympathies between men and women, their attitudes toward male culture were rooted in the genuine, material differences in men's and women's lives which existed in education, opportunity, political entitlement, and social expectation in nineteenth-century America. Although women demanded equality, they also predicated their entry into the political world on a moral sensibility which most saw as uniquely feminine, and which served as the basis for their political agenda and their theory of rights.

The Christian Understanding of Politics and Power

To understand what significance "law" and "rights" had for mid-nineteenth-century female activists, we must interpret their concepts of power and governance according to the Protestant ethos which informed their world vision. Within this Christian framework, the possession of power was construed in a peculiar way. Both evangelical revivalists and Garrisonian abolitionists—two groups which influenced budding feminist thought profoundly—were suspicious of power and of its potential for corruption in human hands, where it could so easily work against God's designs. The power of the husband, the father, the slaveowner, the legislator, the judge—all were potentially abusive, or abusive by the fact of their

existence, as intrusions between God and the individual.³ For many Christians, morality remained sharply antithetical to concepts of power or human governance, an attitude which in many respects early woman's rights advocates shared.⁴ Certainly in the 1850s the Christian ethos still shaped women's apprehension of power relationships, and of what kind of action they could most effectively undertake in the world.

Given the early woman's movement's understanding of power—apprehension over its direct exercise, fear and distrust of the institutions of government, seeing morality and official power as antithetical, belief in change worked from within rather than from without—it is difficult to interpret the demand for woman's rights strictly within the framework of secular liberal political theory. Most feminists were more pragmatic than the Garrisonians; they lacked the wild, intense piety which prepared that group to renounce all human organizations on the spot, including their own, in favor of some form of mutual self-government which their faith had not yet revealed. Still, a strain of anti-institutionalism was strong within feminism in the antebellum years. Women repeatedly resolved to "rely no longer on organizations of any kind—upon neither national or state, secret or public societies of any description . . . but to depend upon . . . (our) own energetic, determined, and individual effort for . . . the final triumph of our glorious principles"—hardly the stuff of legal positivism.⁵

The majority of feminists believed that legal and political change—changes in statutes, court rulings, the common law, interpretations of women's political rights—were symptomatic, and could only reflect deeper change on the level of public opinion worked by individuals coming to a real understanding of natural laws. Even Stanton, certainly one of the best versed of the feminists in legal matters and a fiery advocate of political measures, opined that "Public sentiment is higher than laws—laws in advance of the people are mere chaff."⁶ Most reformers

3. See Lewis Perry, *Radical Abolitionism: Anarchy and the Government of God in Anti-Slavery Thought* (1973), especially chapter 2.

4. One of the grievances in the original Declaration of Sentiments drawn up at Seneca Falls includes the claim, "He has usurped the prerogative of Jehovah himself, claiming it as his right to assign for her a sphere of action, when that belongs to her conscience and to her God." See *Report of the Woman's Rights Convention Held at Seneca Falls, New York, July 19th and 20th, 1848* (1848; reprint, 1969) (hereafter cited as *Seneca Falls*), at 7.

5. *Lily*, vol. 3 no. 3, at 21 (March 1851).

6. *Lily*, vol. 1 no. 11, at 86 (Nov. 1849); see also, vol. 2 no. 1, at 4 (Jan. 1850). At one national convention, Abby Kelly Foster and Ernestine Rose came into direct conflict over the question of whether laws shape people, or only follow public opinion, as reported in *Proceedings of the Woman's Rights Convention Held at Cleveland, Ohio . . . October 5th, 6th, and 7th, 1853* (1854) (hereafter cited as *Cleveland*), at 81-82. Foster urged strongly that law was a creature of public sentiment. Rose's counter-statement, and her stance within the movement, are fascinating. A Polish Jew who grew to intellectual maturity in the free-thinking circles of enlightened Europe, Rose was probably the only atheist among the early feminist leaders. Much closer to the secular, European tradition which

believed that reeducation of the moral sentiments was the way to bring public opinion around, and that old laws could not withstand new leanings: "The ballot box is not worth a straw, until woman is ready to use it . . . The moment that woman is ready to go to the ballot box, there is not a constitution that will stand in the country."⁷ Far from looking to government for remedies and favors, there was a strong emphasis on self-help and a belief that, by readying themselves and their neighbors, activists could bring about the desired transformation without seeking direct political change or soliciting governmental intervention.⁸ Women strove, not for new laws to reshape public life, but to promote moral sentiments and their adoption by the whole community. Majoritarian democracy was not the standard of judgment here. The appeal was rather to communal consensus, to the "honest judgment of every member of the community," and to that community's right to formulate and prosecute its own laws according to its own communal mores, and so defend itself from harm.⁹ Women judged progress, not by citizens' begrudging acceptance of a law eked out through determined assaults on the legislature, but by a re-orientation of each individual conscience toward God, and a consequent righting of public opinion.

This vision is at odds with the positivist view of law and government which plays an important part in our conceptualization of rights. Rights consciousness today implies at least a mediating state power to protect against encroachment, and usually looks to human government or a constitution as the source and guarantor of rights. Between 1848 and 1860, however, positive or positivist attitudes were not a major feature of women's legal repertoire, which held only a nascent recognition of the law's transformative potential. For the many who believed that divine and natural laws ruled the world in intimate detail, human legislation loomed small. Stanton spoke for many when she said admiringly of the New York abolitionist Gerrit Smith that he went to the Bible for his policies, and to Christ for his social, moral, and political creed, "over the heads of Popes, Cardinals and Bishops, Judges, Jurists . . . writers on law and jurisprudence . . . (and) over all laws, common and uncommon, codified and uncodified"—a fairly comprehensive listing.¹⁰ The determined belief in law as a constitutive or transformative force grew as women became politicized and moved outward from the revival-style convention to engagement with

produced feminists like Mary Wollstonecraft and Frances Wright, Rose alone consistently denied any connection between rights and duties or any particular feminine qualifications for the franchise. She had the earliest and most emphatic vision of law as a strong, positive force in shaping human thinking and behavior. On the differences between European and American feminism see Alice Rossi, *The Feminist Papers* (1974), part 2.

7. *Cleveland*, *supra* n.6, at 168.

8. Speech of Abby Kelly Foster in *Woman's Rights Commensurate with Her Capacities and Obligations: A Series of Tracts* (1853).

9. *Lily*, vol. 3 no. 3, at 21 (March 1851); vol. 1 no. 1, at 4 (January 1849); vol. 2 no. 1, at 5 (January 1850); vol. 1 no. 8, at 62 (August 1849).

10. *Lily*, vol. 4 no. 5, at 39-40 (May 1852).

state and national legislatures. But in the early years, the shared wisdom was that law was a creature of public sentiment, and any legal revision which did not derive from an underlying shift in the common mindset had a futile career ahead of it.

For most, a budding hope that law would provide them redress or protection was seriously compromised by the belief that the vision of law as external authority instead of as self-government *constituted* the problem, and that genuine reform would entail the erosion of government which sought to coerce human behavior. Feminists identified human law with the "might makes right" fallacy, as Hannah Tracy Cutler suggested in a letter to the *Una* in 1853.

Laws, among men, have been for the most part either the enactments of despots who have swayed by the physical force they commanded, or else the concessions which despots have reluctantly yielded to the counterbalancing physical force of their unwilling subjects. Hence it has been the exponent of what force would yield to force, rather than the free expression of the moral sentiments of a people . . . the old physical force law . . . still keeps women from an equal participation in its primary relations, even after the évangel of equal human rights has been proclaimed.¹¹

Women viewed the evolution of society as entailing the ascendance of moral and mental over physical might, and the consequent withering away of the state as an instrument of control. Divorced from law and legal processes as they were, and with their understanding of the corrupt nature of humanly held power, antebellum feminists were not simply seeking inclusion in the revolutionary settlement, or in the system as it stood. When it came to law and governance, their attitude is best expressed by the text they so frequently quoted—"Behold, I make all things new."

The Problem of Difference

The idea of a distinctive woman's politics or legal culture has not received much play in the scholarship. For some women's historians, the glory of the woman's suffrage movement lies in the assertion of equality, and in the "philosophical tenet that women were essentially human and only incidentally female" which helped women activists break down a sexual differentiation that was tantamount to inferiority and confinement.¹² For many contemporary feminists the acknowledgement of assertion of difference, then or now, is deeply illiberal. They can conceive of women having full rights only in a system which treats men and women as

11. *Una*, vol. 1 no. 1, at 14 (Feb. 1853). For biographical information about particular feminists mentioned here see James, Edward T.; James, Janet Wilson; and Boyer, Paul S., eds., *Notable American Women, 1607-1950: A Biographical Dictionary* (3 vols., 1971).

12. DuBois, *Feminism and Suffrage*, *supra* n.2, at 36.

strictly fungible civil and legal personalities. Ellen DuBois has raised the quest for suffrage and the claim of equality as the standard for the nineteenth-century woman's movement as a whole, and classifies anything else as a type of "domestic feminism," an inferior variety which mounted no challenge to the male hierarchy.

Surely the claim to the vote was eye-opening radical. But this rather simplistic assessment of the themes of equality and difference as they came into play in the movement requires dismissing a large part of what women said about their own campaign and about themselves. Many who agreed that they were "essentially human" did not consider themselves to be "only incidentally female," and entertained strong beliefs in equality, difference, and a womanly mission, simultaneously.¹³

The claim of equality between men and women, a staple of woman's rights rhetoric, contradicted deeply entrenched social thought on gender roles. Rarely has a society postulated such elemental differences between men and women as mid-nineteenth century American society did. Feminists' assertion that women had the same souls, same moral duties, same intellects and hopes as men opened the way to a more fully integrated public sphere than was ever possible before: we are still dining out on the capital of that ideal. The assertion of equality was a protest lodged against discrimination in both law and custom, against whatever rules or attitudes restrained women's natural energies or kept them in a dwarfed or crippled state. Women believed that, "possessing common natures, common rights, and a common destiny, society can never be harmoniously organized until the individuality and equality of each one is practically recognized."¹⁴

Equality was an ideal with political consequences, and feminists used it in an attempt to break down formal structures of restraint. In the early years they envisioned legal equality entailing the abolition of all laws which weighed disproportionately on women. After that, women's unobstructed energy would surely bring them into full parity. But while the ideal of equality held great meaning for women, it did not eradicate their understanding of their social and familial roles and their larger interests as being distinct from men's. In twentieth century society, where civil equality is held up as the highest stage of the citizen's development, justice is blind to individual characteristics, and the fungibility of the bearers is the measure of rights. This kind of equality—ignorant of gender, race, role, duty, station—was initially incomprehensible to most feminists. Instead, they argued in the name of equality for rights that would allow

13. Blanche Glassman Hersh says of Stanton, Susan B. Anthony, and Lucy Stone, "All three combined a belief in woman's special moral and domestic responsibilities with a vision of her obligations in the broader world." *The Slavery of Sex: Feminist-Abolitionists in America* (1978), at 80.

14. *Lily*, vol. 2 no. 10, at 73 (Oct. 1850); see also, vol. 3 no. 5, at 36 (May 1851); and *Proceedings of the Woman's Rights Convention Held at Syracuse, Sept. 8th, 9th, and 10th, 1852* (1852) (hereafter cited as *Syracuse*), at 31.

each to fulfill her role and attain her highest individual destiny decreed by God, whatever it might be. An important degree of difference was built into this idea of equality, which did not "mean either identity or likeness . . . of the two sexes, but equivalence of dignity, necessity, and use; admitting all differences and modifications which shall not affect a just claim to equal liberty in development and action."¹⁵

The apprehension of their own special interests and duties which imbued women's politics in the 1850s did create some friction in the elaboration of women's political empowerment. The popular cultural idealization of woman's superhuman goodness, her angelic nature, raised the hackles of those who suspected men of packing women off to heaven prematurely to limit their influence on earth. Feminists rejected the idea that they were "fine porcelain" to be laid on the shelf, and insisted on their right to "mingle with the rude stone jugs, mugs, and platters of humanized crockery."¹⁶ One writer even ventured the opinion that, far from moral superiority, woman's goodness resulted from a lack of opportunity, and that when they had money and power they would become competent swindlers and bribe-takers like everyone else.¹⁷

But although they were prickly and resistant to what they considered demeaning characterizations on the part of men, women reformers had their own ideas of their goodness and what role it would play in a reformed society. It would have been extraordinary if they hadn't. Revivalism, liberal Protestantism, romanticism, reform—all tended toward an identification of femininity with morality, spirituality, and self awareness as a potent political force capable of containing the male tyranny of corruption and greed. Women may have claimed that they were equal to men, but not that they were like; and likeness could not be established by assertion, but only by a different kind of living together, a recognition of "mutual dependence, and separate fountains of reciprocal life."¹⁸

The utopian dream was the eventual blending of natures, so that "there will be but one code of morals, and of taste. Women will acquire the energy and self reliance of man, and man will emulate the purity and religious sincerity of woman."¹⁹ In their vision of a "better Eden," men and women would grow more alike over time, taking on each other's qualities, thereby eradicating the oppressive imbalance which deformed contemporary government, and making communal self-government a reality.²⁰ The result would mean narrowing the gap between men and

15. Paulina Wright Davis, *On the Education of Females*, tract no. 3 in *Woman's Rights Commensurate with Her Capacities and Obligations*, *supra* n.8.

16. *Lily*, vol. 3 no. 6, at 46 (June 1851).

17. *Una*, vol. 1 no. 5, at 72 (June 1853); see also, *Una*, vol. 1 no. 1, at 11 (Feb. 1853); vol. 1 no. 4, at 72-73 (May 1853); *Lily* vol. 3, no. 6, at 46 (June 1851).

18. *Syracuse*, *supra* n.14, at 60.

19. *Cleveland*, *supra* n.6, at 52; see also Elizabeth Oakes Smith, *Woman and Her Needs* (1851; reprint, 1974), *passim*.

20. Hersh, *supra* n.13, at 139, suggests that the conception of interdependence is a tenet of Universalism.

women, allowing their like moral natures to eradicate the harmful differences of temperament and culture. Women often quoted a stanza of Tennyson to that effect: "The woman's cause is *man's*: they rise or sink/ Together, dwarfed or god-like, bond or free./ . . . The woman is not underdeveloped man/But diverse./Yet in the long years, *liker* they must grow;/The man be more or woman, she of man"²¹

Pleasant as this idyll was, in envisioning a political future women saw themselves endowing men with their own traits far more often than they saw themselves taking on the traits of men. In the years before the Civil War, woman's rights activists were inspired by a sense of equality; but they were also motivated by a discontent with the existing order which fell out along gender lines, and emphasized the differences, both natural and cultural, between the sexes. When arguments for women's rights came largely from abolitionism, equality was a natural focus. But as women, unlike slaves, developed their own well articulated positions, they began to enumerate their grievances with male management.²² The belief in woman's moral mission to clean up politics and society was not interjected into the woman's movement by the entrance of the Woman's Christian Temperance Union into the suffrage movement in the late 1870s and the 1880s, as Ellen DuBois has suggested.²³ Rather, it was a position to which many women openly or tacitly adhered from the movement's beginnings. Difference was both the agent of change in this scheme, and the problem to be overcome. Woman's rights workers expected the integration of masculine and feminine to bring particularly beneficial results in the public realm, often picturing themselves in the role of redeemer, as when a correspondent to the national convention in Cleveland suggested that "the eye of the law is diseased, and women must . . . make that eye pure and single sighted."²⁴ Even the egalitarian Stanton recommended the "feminine element in humanity" to "save man from the bondage of his animal nature—the slavery of his own low appetites."²⁵ Women had little doubt that they would perform the duties of office better than men, firmly opposing poverty, intemperance, and their social roots, and promoting "all just and beneficent purposes."²⁶

21. *Report of the Woman's Rights Meeting at Mercantile Hall, May 27, 1859* (1859) (hereafter cited as *Boston*), at 9.

22. Barbara L. Epstein, in *The Politics of Domesticity: Women, Evangelism, and Temperance in Nineteenth-Century America* (1981), sees women's religious culture as a vehicle for antagonism between the sexes, picturing religion more as a tool to express generalized gender antagonism than as a system of belief which interpreted and fostered political change.

23. DuBois, *The Radicalism of Woman Suffrage*, *supra* n.2, at 68-69.

24. *Cleveland*, *supra* n.6, at 8.

25. In *The Pleasures of Age: An Address Delivered by Elizabeth Cady Stanton on Her Seventieth Birthday* (1885); see also, *Lily*, vol. 4 no. 5, at 40 (May 1850); vol. 2 no. 4, at 29 (April 1850).

26. *Cleveland*, *supra* n.6, at 30; see also, *Cleveland*, at 91; *Syracuse*, *supra* n.14, at 63.

Nor does the movement's moral consciousness necessarily suggest that it was politically immature, insular, or domestic in its focus. If anything, it suggests broader concerns, a fuller life within the reform community, than was true of suffragism after the war, when narrower legal and political concerns took precedence. Many of the pacific dictates of liberal Christianity—"feminine submissiveness"—were known in another guise as politically oppositional stands taken by reformers convinced that problems like slavery and territorial aggression would diminish under their rule.²⁷ Calls to non-violence and reason in place of force were grounded in a Christian tradition, but served in the antebellum years as a potent charge against the government which perpetrated such crimes. By adding the feminine to the masculine element, women were rejecting the political sphere men were carving out for themselves, one seemingly cut loose from the constraints of traditional moral principles of governance. The absence of either element would bring "results fatal both to justice and morality. The civil and political departments are fair illustrations of these results."²⁸ Above all, women manifested a wish to substitute the principles of noncoercion, nonviolence, and consensual government for the Hobbesian arrangements of the day.

Politics and statesmanship, still resting so much upon the force of armament, must come under the jurisdiction of simple justice, give up the employment of physical force, and rise to a sphere of mind and feeling fit for woman's administration . . . the policy of government, now so intricate, so dark a contexture of fraud and force that the worst men are its best ministers, will be redeemed and reformed, so that the acknowledged excellence of feminine morality and woman's directness and clearness of intellect, will be the highest qualification for national government.²⁹

Women activists vigorously disputed their critics' charges that they were being unsexed through their political activities, and affirmed their own femininity and security in their roles as wives and mothers. No one rebutted those charges more effectively than Frances Gage when she complained, "They (men) cannot get up a picture of a woman's rights meeting . . . but they must put cigars and pipes in our mouths, make us sit cross-legged, or hoist our feet above their legitimate positions—making us behave as nearly as possible as disgustingly and unbecomingly as themselves They have . . . so long associated their vulgar thoughts and feelings with constitutional rights and privileges, that they seem to think them inseparable"³⁰ Gage in her pithy way put her finger on a thread which runs consistently through women's concerns in this period—resentment and dislike of male political culture, from which women

27. *Una*, vol. 1 no. 3, at 37, 41 (April 1853); *Cleveland*, *supra* n.6, at 92.

28. *Syracuse*, *supra* n.14, at 22; see also, *Proceedings of the Seventh National Woman's Rights Convention Held in New York City . . . Nov. 25th & 26th, 1856* (1856) (hereafter cited as *New York*), at 23.

29. *Una*, vol. 1 no. 3, at 41 (April 1853).

30. *Lily*, vol. 4 no. 2, at 14 (Feb. 1852).

were so excluded. Stanton, in a letter to the Syracuse Convention, castigates men who, "having separated themselves from women, in the business of like, and thus made their natures coarse by contact with their own sex exclusively, now demand separate pleasures too; and in lieu of the cheerful family circle . . . they congregate in clubs to discuss politics, to gamble, drink, etc. . . ."³¹ Stanton often spoke of a lyceum lecture she longed to write on "The Antagonism of the Sexes."³² Male opponents of the woman's franchise often argued that polling places were too rough for women; feminists deplored this self-confessed pollution of civic functions, finding man in his role as political animal repugnant, whether as lawyer, judge, voter, or clubman.³³

This attitude translated into often made claims that male legislators could not represent women adequately; not because they would not, but because the difference in their natures and interests meant that men were not capable of such representation. Ernestine Rose argued cleverly that, if man's nature was different, he could not understand woman's needs sufficiently to make laws for her; and if the same, there was no reason to exclude women from full political participation.³⁴ Cool argumentation aside, even Stanton clearly felt the outrage and slight when she asked, "Shall the most sacred relations of life be called up and rudely scanned by men who, by their own admission, are so coarse that women cannot meet them even at the polls without contamination? . . . How can man enter into the feelings of. . . (a) mother? Shall laws which come from the logical brains of man take cognizance of the violence done to the moral and affectional natures which predominate, as it is said, in woman?"³⁵

Antoinette Brown Blackwell tended toward essentialist rather than cultural explanations of men's and women's differences, but her conclusion was the same: "The law is wholly masculine: it is created by our type or class of man nature. The framers of all legal compacts are thus restricted to the . . . thoughts, feelings, biases of men . . . we can be represented only by our peers."³⁶ The insult of being bound by masculine law was compounded by "the shamefulness of trying intelligent, educated, well-bred native born American women by juries of men made up of the riffraff from the monarchies of the old world."³⁷ Women were sure that if they served on juries they would be very lenient with woman defendants,

31. *Syracuse*, *supra* n.14, at 32; *see also*, *Cleveland*, *supra* n.6, at 38.

32. *Lily*, vol. 3 no. 11, at 82 (Nov. 1851); *see also*, letters of Sept. 1, 1877, and Dec. 15, 1886, Stanton papers, Douglass College Library, Rutgers University.

33. *Syracuse*, *supra* n.14, at 73.

34. *Cleveland*, *supra* n.6, at 36; *see also*, *Lily*, vol. 2 no. 5, at 38 (May 1850).

35. Elizabeth Cady Stanton, *Address to the Legislature of New York, Adopted by the State Woman's Rights Convention, Held at Albany . . . Feb. 14 and 15, 1854* (1854), at 7.

36. *Syracuse*, *supra* n.14, at 20-21.

37. Stanton, letter to Susan B. Anthony and Matilda Joselyn Gage, 1873, in the Stanton Papers, Douglass College Library, Rutgers University. *See also*, *Lily*, vol. 2 no. 5, at 38 (May 1850).

perhaps under the tutelage of woman lawyers who would either suggest more liberal interpretations of the law, or a whole new code of laws to replace those that currently disgraced the statute books.³⁸

It was this dangerous isolation of the masculine from the feminine which feminists hoped to remedy, feeling that "so long as woman is required to take care of the morals of the community and men to take charge of the politics, having . . . separate interests in these two great matters, we shall have a strange and incongruous state of things."³⁹ Traditional networks of women's influence—local, personal, religious networks which operated through churches, voluntary organizations, and familial contacts—had been strong in pre-industrial America. Through these networks women had wielded social influence disproportionate to their formal standing. But the growing cult of electoral politics—male politics—and the shifting of power away from the local to more centralized levels, undermined women's leverage in the community.⁴⁰ The early feminist agenda is remarkable, not because it tried to vault women from the private into the public arena leaving the wall intact, as scholars have suggested, but because it sought to eradicate spheres entirely, and with them the growing and dangerous split between public governance and private morality. Such a distinction made little sense to women reformers. Rather, through the interdependence of the sexes they hoped to integrate public with private, legal with moral, in a common standard of universal governance. Women's denigration of male political life for its insularity and its brutishness betrays both resentment and understanding of the dangers which the isolation of politics posed for women, a politics conducted outside their scope of influence.

Law, Nature, and Rights

Feminism also evolved an articulate critique of the exclusive legal world, criticism informed by moral and religious concerns. Distaste for the profession of lawyering was rife in larger reform circles, as well; the Boston reformer Thomas Wentworth Higginson reported in *Cheerful Yesterdays* that, under the influence of "the Newness," there was a "wave of that desire for a freer and more ideal life which made (William Wetmore) Story turn aside from his father's profession to sculpture, and made (James Russell) Lowell forsake law after his first client." Higginson himself abdicated a legal course, emboldened by friends who characterized

38. Una, vol. 1 no. 4, at 63 (May 1853); *Syracuse*, *supra* n.14, at 77.

39. Una, vol. 1 no. 1, at 14 (Feb. 1853).

40. On this general topic, see Judith Wellman, *Women and Radical Reform in Upstate New York: A Profile of Grassroots Female Abolitionists*, in *Clio Was a Woman: Studies in the History of American Women*, ed. Mabel E. Deutrich and Virginia C. Purdy (1980); Nancy Hewitt, *Women's Activism and Social Change: Rochester, New York, 1822-1872* (1984); and Paula Baker, *The Domestication of Politics: Women and American Political Society, 1780-1920*, *American Historical Review*, vol. 89 no. 3 (1984), at 620-647.

law as a "system of formalized injustice" and a branch of "knowledge that cannot be carried into any other stage of existence."⁴¹ "The Newness" did not bring women the immediate privilege of renouncing a career in law in favor of one in sculpture. In fact, it was often urged at conventions and in periodicals that women take up the profession, both to protect their own interests and to reform the field. At the same time, the legal system came in for a constant barrage of criticism from feminists who occasionally took gratuitous swipes at other professions, but reserved their most biting criticisms for clerics and lawyers.

The *Lily*, in particular, hosted a string of female correspondents with a distinctly gender-based legal critique, an editorial policy which drew fire from some.⁴² Indeed, at times it seems in reading the *Lily* that each of its 6,000 subscribers had contributed her mite against the "chicken hearted ministers of justice."⁴³ As in most law reform movements, corruption was often alleged against lawmakers, but it was corruption of a particular kind. Bribery was occasionally charged in the *Lily*, and the economic interests of legislators involved in the sale or manufacture of liquor was seen as creating conflict of interest problems.⁴⁴ More often, though, women depicted lawyers and judges as morally and spiritually corrupt, "winebibbers" with "bullet heads and red faces," "vulgar, rum-drinking . . . tobacco chewing men, thick lipped voluptuaries, gourmands and licentiatees who disgrace our national councils with their grossness and profanity . . . who, instead of sound reason and strong argument, resort to fisticuffs and . . . duelling."⁴⁵ As they did with the church, women reformers castigated law as a human corruption of a divine institution. Law, however, represented a particularly egregious instance of *male* corruption. The drinking, swearing legislator who would rather resort to brute force than logic and reason was pictured as a throwback to a less advanced stage of civilization, and as the opposite of the "Christian Gentleman" who was many reformers' and evangelicals' manly ideal.⁴⁶ Wily, dissolute lawyers figured prominently in short pieces of fiction which also filled the pages of women's papers. Readers could hardly fail to see the moral in stories like that about the wife of a "half-educated Attorney at Law, a thorough-bred contemnor of the laws of God," who brings his family to an unhappy and impoverished end.⁴⁷

Women revealed the level of frustration and outrage they felt with male legislators in many ways, proclaiming "let man cease to persuade

41. Thomas Wentworth Higginson, *Cheerful Yesterdays* (1899; reprint, 1968), at 78, 87.

42. D.C. Bloomer, *Life and Writings of Amelia Bloomer* (1895; reprint, 1975), at 155.

43. *Lily*, vol. 1 no. 7, at 55 (July 1849).

44. *Lily*, vol. 3 no. 4, at 29 (April 1851).

45. *Lily*, vol. 4 no. 5, at 39 (May 1852); see also, vol. 2 no. 2, at 13 (Feb. 1850).

46. See Charles E. Rosenberg, *Sexuality, Class, and Role in Nineteenth-Century America*, *American Quarterly*, vol. 25 no. 2, at 131-153 (1973).

47. *Lily*, vol. 2 no. 6, at 44 (June 1850).

woman by his sophistry and logic, or compel her by his cruel and unnatural statutes to act in violation of her will and conscience"⁴⁸ Law had placed women in an intolerable position and created a catch-22 of tragic proportions by refusing the legal right of divorce, while refusing at the same time legal protection of maternal rights, property, and earnings for wives of drunkards and insolvents; "woman cannot obey nature's first law of self-preservation without violating man's (laws)," a fact which inspired "indignation and hatred of our laws and law-makers."⁴⁹ Elizabeth Cady Stanton was fond of saying that law gave women such protection as "the wolf the lamb, or the eagle the dove."⁵⁰

At least on paper, the *Lily* encouraged women in acts of self-help like the burning or trashing of their husbands' haunts, and congratulated one unusual woman on horsewhipping the barkeeper, citing it as a justifiable act of self-defense.⁵¹ Abolitionists' manifestoes on human rights and natural law had laid a strong groundwork for a critique of human laws like those enabling slavery and rumselling as counter to the laws of God and Nature.⁵² The *Lily's* correspondents boldly and repeatedly urged women to ignore the law's shabby cloak of legitimacy, and act according to higher right: "Resistance to tyranny is obedience to God . . . if the vampyres of the law will continue to suck the life blood of their fellow men and spread destruction and death all around them, then let women step boldly forward and take matters into their own hands."⁵³ The question of damage to taverns was dismissed with the argument that a tavern "ceases to be property when it is employed to destroy the people."⁵⁴

Again, in the antebellum years women were brought to this pitch not as much by high-minded notions of equality as by a vivid apprehension of their wrongs. Here the problem of alcohol took on great significance. In licensing the liquor trade legislators were acting, not just to withhold rights, but to commit clear wrongs, with grave consequences for women. Woman's righters were uniformly temperance advocates as well, and felt that it was in permitting the sale of alcohol that government truly showed itself to be morally deformed. They castigated the rumseller, and begged him to "stop your unholy work. Tell us not that you have a license, and certificate of good moral character (from the legislature) to justify your deeds What will your license avail you against the curse of your

48. *Lily*, vol. 4 no. 7, at 58 (June 1852).

49. *Lily*, vol. 1 no. 6, at 46 (June 1849); vol. 2 no. 2, at 13, 15 (Feb. 1850).

50. *Lily*, vol. 2 no. 10, at 73 (Oct. 1850).

51. *Lily*, vol. 4 no. 9, at 77 (Sept. 1852); vol. 1 no. 8, at 61-62 (July 1849).

52. For example, William Hosmer, *The Higher Law in Its Relations to Civil Government* (1852; reprint, 1969); and Elisha P. Hurlbut, *Essays on Human Rights and Their Political Guarantees* (1845). Feminists reproduced such arguments about the inefficacy of human laws against divine ones; see *Lily*, vol. 2 no. 4, at 30 (April 1850).

53. *Lily*, vol. 4 no. 9, at 77-78 (Sept. 1852).

54. *Lily*, vol. 4 no. 7, at 59 (July 1852).

God? Is man greater than his maker? Shall he set the laws of the Almighty at defiance? Your license cannot shield you from guilt."⁵⁵

Far guiltier than the rumseller, though, was the law, which "threw its arms around him who was causing the ruin . . . (with) *legalized* poison."⁵⁶ The pages of the *Lily* in these years entertained a lively debate over the comparative guilt of the legislator and the rumseller, who is described as the lawmaker's "agent"—a word used here with satanic rather than corporate overtones. For the misguided agent, some women initially entertained fond hope of reform—"Much rather would we take you by the hand, and greet you as friends and brothers, in the great cause of humanity."⁵⁷ But legislators received no quarter. In the best Protestant tradition the humble were guilty, but the "people . . . of wealth and standing in society" were guiltier still.⁵⁸ Women agitated for the repeal of licensing laws, not because they believed that *any* law could make the sale of liquor legal—it could not—but because removing that shield would publicly brand liquor traders for what they were, "immoral law breakers and law defyers."⁵⁹ Many of these writers felt that they should "challenge our legislators to an account of their stewardship," and they looked forward, not with sorrow, to the day when legislators must appear "at a greater tribunal . . . where they must answer for many crimes committed, for much blood shed, and for many lives destroyed."⁶⁰

Women reformers in this period judged what they perceived as male law by a higher standard, and found it wanting. They could see little difference between "the guilt of killing a man by arsenic or alcohol, or between stealing his property by first stealing his reason, or breaking into his house at midnight, and carrying it off when the owner is in peaceful slumber." As one woman declared, "God did not say, 'Thou shalt not kill with a pistol.'"⁶¹ In the one case, the law would punish the slayer; in the other it protected him, at the expense of the wives and children of drunkards. A great deal of time and energy went into redefining crimes, and comparing various statutory crimes to those of the rumseller. Was the highwayman who pulled the trigger guiltier than the one who held the horses? Were either more guilty than the man who sold drink to an alcoholic?⁶²

A deeply Christian conception of moral consequences underlay this assessment of man's law. Women saw that with liquor, legislators were concerned, not with preventing or punishing wrong, but with limiting lia-

55. *Lily*, vol. 1 no. 1, at 5 (Jan. 1849).

56. *Lily*, vol. 1 no. 7, at 61 (July 1849).

57. *Lily*, vol. 1 no. 1, at 5 (Jan. 1849); vol. 2 no. 1, at 4 (Jan. 1850).

58. *Lily*, vol. 1 no. 2, at 14 (Feb. 1849).

59. *Lily*, vol. 2 no. 6, at 45 (June 1850).

60. *Syracuse*, *supra* n.14, at 17; *Lily*, vol. 1 no. 9, at 70 (Sept. 1849).

61. *Lily*, vol. 2 no. 6, at 45 (June 1850); vol. 1 no. 11, at 85 (Nov. 1849).

62. *Lily*, vol. 2 no. 2, at 15 (Feb. 1850); vol. 1 no. 5, at 37-38 (May 1849); vol. 2 no. 6, at 45 (June 1850).

bility. They felt strongly that legal doctrines of causation and the treatment of the liquor trade as an issue of economic regulation only obscured the nature of the transaction. Moral consequences could not be rightly limited by legal doctrine. "We touch not a wire but vibrates in eternity . . . we see not in this life the end of human actions. The influence reverberates."⁶³ This was as true for evil as for good, and for the *Lily's* writers it was impossible not to see the misfortunes of many homeless, abused, hungry women and children pouring straight from the rumrunner's bottle in a chain of accountability which no legal sanction could interrupt. For "sin perpetuates itself forever. Like the ocean ripple, its influence is beyond all calculation . . ." No amount of legal hair-splitting could excuse men from their Christian duty, nor protect them on the day when "God will call upon them to answer, 'WHERE IS THY BROTHER?'"⁶⁴

This sense of woman's wrongs at the hands of the intemperate was extremely fertile ground for rights consciousness, as women felt an increasing duty to protect themselves, each other, and their children from man's depredations on their persons and property. Those who invoke "rights" usually endow them with transcendental qualities, but "rights" itself is not an ahistorical concept with constant meaning over time. Rather, it denotes a set of values or demands used in a particular political context which gives them meaning. Antebellum feminists seized the language of rights and transformed it with their own ideas and concerns. This does not mean that women rejected the republican ideals of the founding generation. Revolutionary rhetoric, the enlightenment vision of inalienable human rights, was a critical tool in helping women to envision a new status, and express their demands to a male public. But the language women spoke among themselves appealed to a larger sensibility.

A telling instance of this discrepancy occurred at a woman's rights meeting in Ohio which was held in 1850 for the purpose of influencing the work of that state's upcoming constitutional convention. The official "Memorial" written to be presented to the convention began, "(W)e believe the whole theory of the common law in relation to woman is unjust and degrading, tending to reduce her to a level with the slave, depriving her of political existence, and forming a positive exception to the great doctrine of equality as set forth in the Declaration of Independence." Citing the need for freedom and equality, for protection of maternal interests and property rights by the government, it is a businesslike appeal to republican sentiments, in which each mention of rights is specifically qualified as "political and legal"—protection of property, custodial privileges, and the vote. The "Memorial" contains no broad enumeration of personal or economic entitlements, and is devoid of any hint of rights as divinely derived, or any religious language.

By contrast, the corresponding "Address to the Women of Ohio"

63. *Lily*, vol. 1 no. 2, at 15 (Feb. 1849).

64. *Lily*, vol. 2 no. 7, at 51 (July 1850); vol. 1 no. 11, at 86 (Nov. 1849).

passed by the convention on the same issue opens with the sweeping assertion that "How the people be made wiser, better, and happier is one of the grand inquiries of the present age."⁶⁵ The "Address" exalts the role of God above that of the legislature in the creation and definition of rights. Dismissing the "cold sympathy and tardy efforts" of the "dough-faced serviles" in the legislature, the address is a paean to the "Rights of Humanity . . . What is their design? How do we know them? They are of God . . . their design is happiness." In the "Memorial" woman's entitlement is predicated on "the great doctrine of Equality as set forth in the Declaration of Independence," without elaboration. In the "Address" by contrast a broad range of rights are cast as directly contingent on the discharge of responsibilities, enabling individuals to "attain the end for which God the Father gave them existence." Ohio feminists urged women to seek not just political rights but education and occupation as well—"The full exercise of the heavenly graces . . ." The fact that the business of women's rights was carried out in two distinct languages signifies that women themselves identified their values and politics as in some way separate from men's.

This adjustment of language to audience crops up repeatedly, and illustrates women's complex relationship to the American rights tradition. Early documents addressed to legislators predictably plead in a secular language of rights based on equality and the revolutionary settlement, commonly citing principles like "no taxation without representation." Female lobbyists occasionally invoked their duties as mothers in favor of their cause, but by and large their arguments were couched in the familiar phrases of the revolutionary settlement. Women's writing to women proved a far richer admixture, not limited to claims for political and legal rights, but seeking a range of economic, domestic and personal entitlements and opportunities. Religious language and imagery permeates their discourse, while arguments from liberal theology undergird their vision of total reform.

Feminists stood both within and without the republican tradition. While genuine in their appeal to the revolutionary heritage, there was also a strong strategic element in their choice of words. As opponents of despotism, arbitrary power, orthodoxy and hierarchy in church and state, they honored the Founders and valued dearly the philosophy which had so effectively countered those evils. But the revolutionary settlement was incomplete and had unjustly excluded both women and slaves. Further, mid-century reformers constituted a political opposition, and remained highly skeptical that the current crop of statesmen and legislators possessed the requisite virtue to pursue the goal of liberty in their own policies.⁶⁶ Using the unadorned language of legal and political rights, femi-

65. Both of these documents are to be found in the *History of Woman Suffrage*, ed. Elizabeth Cady Stanton, Susan B. Anthony, and Matilda Joselyn Gage, vol. 1 (1881), at 105-110.

66. Stanton illustrates this attitude in a letter to Anthony of July 4, 1858 (Stanton

nists were appealing to a critical common tradition, in the language—meaningful both to themselves and within larger political circles—they thought would best make their case. At the same time, their appeal was not to the actual creations of the Founding Fathers, but to a normative ideal of natural rights to which feminists gave unique definition. Most women themselves seemed more at home with the spiritualized discourse which is the argot of private letters and diaries as well as women's newspapers and public proceedings.⁶⁷

For the ideology of woman's rights, unlike revolutionary rhetoric, was shaped in the fervor of millennial perfectionism. On closer scrutiny both the form and content of rights theories employed by feminists differed markedly from the traditional strain of republican rhetoric. Rights for women were definitely not conceived in the cool, secular dispassion of American constitutionalism. The end of the eighteenth century represented a low point in religious fervor and activity of all kinds: church attendance dropped precipitously; except in the West there was little by way of organized religious movement; and in the love feast of toleration which attended the church-state settlement, religious concerns receded formally and informally as a predominant force in the establishment of a public order. This tepid public piety did not fuel a fervent, God-centered view of natural law or natural rights. By the early federal period, natural rights was a concept which statesmen sought to contain, because of its volatile and potentially explosive reach. The exuberant rights language of early political documents was toned down, and the enumeration of precise and specific entitlements replaced the sweeping claims of the earlier period.⁶⁸

Feminists did not tread in this cautious path.⁶⁹ In common with laborers, abolitionists, and other dissident groups, women sought to reopen the great constitutional questions of inclusion and entitlement, wielding a theory of natural rights which went well beyond the meager portion allotted in the state constitutions. The onset of the first woman's movement came after the Second Great Awakening had stirred the country to new

Papers, Douglass College Library, Rutgers University). In it she defends some men as admirable against a friend's attack on the sex. "But alas! when we read the views of average men, their laws, their Bibles, . . . when we listen to their everyday talk, to their decisions in the Courtroom, and to their sermons in the pulpit . . . then we feel that they richly deserve all that she says." *See also*, *Lily* vol. 2 no. 2, at 13 (Feb. 1850).

67. Some leaders of the antebellum feminist movement, political sophisticates like Stanton and Anthony, subscribed to a spiritualized view of the scope of rights and the nature of social change, but needed no direct religious sanction for political action. Writings in the *Lily* suggest that perhaps they and others also used religious arguments strategically as those most likely to move their audience of female political uninitiates.

68. Daniel T. Rodgers, *Nation of Words* (forthcoming, 1987), chap. 2; and Benjamin Wright, *American Interpretations of Natural Law* (1931), at 179.

69. On the general question of feminists' use of natural rights theory, *see* Hurlbut, *supra* n.52, chap. 8; Kraditor, *supra* n.1, chaps. 3 and 4; Wright, *supra* n.68, at 176-179; and T.V. Smith, *The American Philosophy of Equality* (1927), chap. 3.

heights of millennial passion and transformed the public's understanding of social change. Nineteenth-century reformers did not share their forebears' utilitarian vision of power as something to be balanced and shared.⁷⁰ The emphasis on free will, the belief in the possibility of perfection and the newly benevolent designs of a well-disposed God—all worked to dispel the fear of unchecked liberty which dominated political debate in the constitution-making era. Women showed unbounded faith in the workings of an inner law: "emancipate from external bondage and the internal law written upon every heart makes itself audible."⁷¹ Such protean concepts as natural law and natural rights were plastic in the hands of feminists, who followed traditional rhetorical forms with conviction while giving them new meaning.

One innovation lay in feminists' perception of the relation of rights to natural laws. A concept of ancient lineage repeatedly refashioned by thinkers both within and without the church, natural laws in the revolutionary era diminished in importance while natural rights theory grew explosively.⁷² In America, natural rights became a largely secularized concept. Its proponents did not derive such rights from a divine source, but looked increasingly to human government and constitutional guarantees for their provenance, rendering a system of natural laws quaint and redundant.

Natural law regained its rule in the philosophy of the early woman's rights movement, where all rights were immediately derived from a divinely sanctioned order governed by the system of natural laws which was a pillar of reformers' faith. To claim human government as the source of rights was to confuse the cart and the horse—"It is God that gives our rights. *Government is the offspring of rights, not the parent.*"⁷³ Feminists, abolitionists, and other disaffected antebellum reformers frequently dismissed the Constitution as but another human law to be judged by God's standards.⁷⁴ Women saw rights as springing directly from the divinely ordained natural order, proclaiming that "the true rights of humanity are founded in the laws of nature, and consequently are natural rights."⁷⁵ Rights claims for antebellum feminists were not in the nature of strict bids for inclusion in a grant of powers and protections from human government. Rather, they expressed the terms on which individuals could best live out God's designs for human happiness. In the years before the Civil War the vote itself was repeatedly described by the valise theory of suffrage—as a way of obtaining the rights to domestic protection, prop-

70. Rodgers, *supra* n.68, chap. 2.

71. Elizabeth Oakes Smith, *supra* n.19, at 34.

72. Wright, *supra* n.68, at 173 ff.

73. *Proceedings of the Woman's Rights Convention Held at Akron, Ohio, May 28 and 29, 1851* (1851; reprint, 1973) (hereafter cited as *Akron*), at 41; see also, Hurlbut, *supra* n.52, at 27.

74. See Hosmer, *supra* n.52, at 46-47 and chap. 14; Hurlbut, *supra* n.52, at 33.

75. *Lily*, vol. 4 no. 2, at 11 (Feb. 1852).

erty, education, remunerative work, personal autonomy, and all the other entitlements which women so desired.⁷⁶ The specific rights women sought heralded not an alteration but a transformation of society.

"Nature" in early feminist thought became a powerful normative force, a measuring stick rather than a descriptive tool.⁷⁷ What was "natural"—and this was almost always defined by what contributed to the full realization of human potential—became the ideal state toward which to strive. At the same time, nature—spruced up into a civil order by the Founding Fathers—regained an earthiness in feminist thought rooted in the physical functions of life itself. For feminists and abolitionists both faced the problem of elaborating compelling grounds on which full rights should be extended to women and slaves—a difficult task since the constitutional guarantees of inalienability, freedom, and equality had produced such partial entitlement. Women's passionate arguments from moral equality partly filled the bill. But both women and slaves, suffering from a lack of education, were commonly stigmatized as mentally deficient and without the proper intellect or character to cultivate civic habits. In response to their opponents, reformers also fashioned arguments from the lowest common denominator of physical life—needs common to all. Abolitionist tracts elevated "the right to see, or to eat, or to walk" to stand beside life and liberty as "conditions of being. We have them from God when we have existence, and so long as existence remains those rights must remain, unless taken away by Him who gave them."⁷⁸ The pursuit of "happiness," always a somewhat vague component of revolutionary philosophy, took on a new specificity in claims to food, clothing, jobs, education—claims measured by needs and wants. "The Creator . . . has endowed man with certain innate desires, emotions, and faculties, the gratification and exercise of which are the means of his happiness. Here is the consummation of man's rights—the right to gratify his natural desires; to supply his natural wants; to exercise his natural functions, as the means of attaining happiness."⁷⁹

Such abolitionist writing—particularly Elisha Hurlbut's treatise on human rights—proved very influential for feminists, who agreed that natural rights "emanated from the nature and wants and emotions of mankind."⁸⁰ Women and slaves did not know Latin, but they could know hunger, and from the capacity for hunger sprang the entitlement to food—"that is to say, physical existence acknowledges a higher law,

76. *Una*, vol. 1 no. 4, at 59 (May 1853).

77. See Wright, *supra* n.68, at 3, 176-179; T.V. Smith, *supra* n.69, at 106 ff.

78. Hosmer, *supra* n.52, at 46-47.

79. Hurlbut, *supra* n.52, at 16.

80. Lily, vol. 2 no. 10, at 73 (Oct. 1850); see also, vol. 4 no. 2, at 11 (Feb. 1852); and History of Woman Suffrage, *supra* n.65, at 112-113. For references to Hurlbut, see History of Woman Suffrage, *supra* n.65, at 38; *Una*, vol. 1 no. 4, at 59 (May 1853); Lily, vol. 4 no. 7, at 59 (July 1852); and *Cleveland*, *supra* n.6, at 57. The Lily also printed extracts from Hosmer's work, vol. 3 no. 5, at 35 (May 1851); and from Hurlbut's work, vol. 4 no. 9, at 80 (Sept. 1852).

whether we intellectually and morally acknowledge it or not."⁸¹ It was this assertion of the essential, physical fact of humanity as granting status that was behind Sojourner Truth's cry, "Ain't I a woman?" And the right to provide for these wants was guaranteed by the God who created them, for it was a critical aspect of the new, benevolent deity that he would impart no hunger, no yearning, without granting a means of its satisfaction.⁸² This concept of rights as following physical function ordained by natural laws is at odds with the idea of inalienable rights as settled during the struggle for independence. But it provided far greater scope for claims to economic and social justice than the revolutionary model, which effectively limited feminists to claims to political rights.

Feminists' conception of rights can perhaps best be contrasted with revolutionary republican tradition by comparing the terms "underlying" and "overarching." For the Founding Fathers, natural rights were pulled down from the sky, a set of external restraints to limit the actions of human government. In the early reform movement, by contrast, much of the focus of natural rights shifted to the internal. In a return to an older tradition, natural rights were seen as emanating from natural laws discovered, not in anterior principles like "no taxation without representation" and "one man one vote," but in the ordinary patterns of everyday life. Women did not look to outside sources or rules to control human behavior, but sought to bring human behavior into harmony with an inner working which comprehended material and spiritual forces alike.

The belief that God gave no need and no capacity which he did not mean to be fulfilled was expanded on by woman's rights advocates, and became what was probably the most common argument of that group before the war. Frequently the rationale for the dismantling of "woman's sphere" and taking up rights and duties in the wide world was put in functionalist terms, rather than in the language of inalienable human rights. Lucy Stone in one convention offered her own definition of "natural": "when God made the human soul and gave it certain capacities, he meant that those capacities should be exercised. The wing of the bird indicates its right to fly; and the fin of the fish the right to swim. So in human beings, the existence of a power presupposes the right to its use, subject to the law of benevolence."⁸³ It was this functionalism that lay behind the recounting of the stories of reknowned and competent women popular in speeches and tracts. What *had* been done indicated an ability, and where there was an ability lay a God-given right to use it. This argument, of course, had certain dangerous implications, apparent to a few who feared a standard of duty or performance as a prerequisite to grants of civil or political rights. But early feminists exuded confidence in their untested

81. Hosmer, *supra* n.52, at 20.

82. Elizabeth Oakes Smith, *supra* n.19, at 116-118; Hurlbut, *supra* n.52, at 13, 16.

83. *New York*, *supra* n.28, at 42. This sentiment was so strongly felt that it had already been adopted into the resolutions at the Syracuse National Woman's Rights Convention in 1852; see *Syracuse*, *supra* n.14, at 76, and at 46, 48, 83.

powers and relied heavily on this definition of natural rights to break down the artificial limitations of sphere. Frances Gage described how she lost her woman's sphere, piece by piece: a chunk fell off when she learned to plough and was ploughed under; another disappeared during a medical emergency, several more while doing her chores around the farm.⁸⁴ More than in an ideological commitment to political rights, women first perceived of rights as originating in the capacities and talents handed out by God, which it was their duty as well as their pleasure to use fully.

Initially, power and rights were conceived in this context of self-development: "for what is power in the sense in which it is so often applied to women, but the liberty to employ one's facilities in one's own way unobstructed . . . ?"⁸⁵ The emphasis on individual calling, not determined by sex but by innate talent, of course meant practically that women should enter into whatever activity or profession she felt fitted to. As the Syracuse Convention resolved in 1852, "that in the great body politic, or in the great social body, each one, irrespective of sex, talent, or capability for a higher or lower function, fulfill the great ends of his or her being."⁸⁶ In the unfolding of their natural talents women saw no limit to their intellectual, moral, or social progress, developments which would make the woman's sphere obsolete. Indeed, the pulling down of these artificial boundaries was among the most articulate of women's demands.

Rights arguments were strongly addressed to the development of individual capacities in the context of the fulfillment of duties in the 1850s. No clear distinction was made in this period between rights stemming from concerns for family and social justice, and those which contributed to civic competence and personal development. Most often the two were pictured as mutually reinforcing, with woman's increased freedom enhancing her capacity to serve herself and others, including her family.⁸⁷ Stanton in a speech to the American Anti-Slavery Society in 1860 gave voice to a cherished reform belief that "rights never clash or interfere, and where no individual in a community is denied his rights, the mass are more perfectly protected in theirs."⁸⁸ Most feminists subscribed to the thesis that "A man has rights in order that he may do right."⁸⁹ The frequent pairing of "rights" and "duties" was not accidental. Women were sincere when they repeatedly argued that it was because of their equal moral accounta-

84. Lily, vol. 3 no. 3, at 20 (March 1851).

85. Una, vol. 1 no. 1, at 7 (Feb. 1853); Elizabeth Oakes Smith, *supra* n.19, at 116.

86. Syracuse, *supra* n.14, at 75.

87. Syracuse, *supra* n.14, at 62-63; Boston, *supra* n.21, at 8; Cleveland, *supra* n.6, at 8.

88. Elizabeth Cady Stanton, Susan B. Anthony: Correspondence, Writings, Speeches (1981), Ellen C. DuBois, ed., at 78. See also, Hurlbut, *supra* n.52, at 25-27, for the same argument based on the need to defend individual liberties from a tyrannical government.

89. Mark Hopkins, cited in Rodgers, *supra* n.68; see also, resolutions passed at the first convention, in Seneca Falls, *supra* n.4, at 4-5.

bility to God, and the resulting duties to themselves, their families, and society, that they deserved and needed rights.⁹⁰

Since women's duties were so much concerned with family, it should not be surprising that there was a significant domestic component in the developing ideal of woman's rights, and that natural rights were often pictured as concrete ways for women to protect or further the interests of their families. The *Lily* and the *Una* were published, not just for the several hundred pioneers of the movement, but also for many thousands who were still puzzling out their positions. Its letters and articles chronicle the conversion of many women to politics on the ground that it was woman's right and duty to assert her claims for protection.⁹¹ It was a common maxim among reformers that the main object of the law was to protect the weak from the tyranny of the strong, and in the *Lily*, one can trace the clear evolution of a doctrine of woman's rights through the arguments over temperance—"learning woman's rights by woman's wrongs."⁹² The archetypal tale is of "poverty, desertion, and tyranny on the part of . . . worthless and drunken husbands . . . taking away from their wives and children every possible means of support . . ." The number and intensity of these stories increase with the *Lily's* commitment to political solutions; one enlightened girl takes her flighty cousin for a walk through an impoverished neighborhood, pointing out women who are victims of intemperate husbands, low wages, and a lack of legal protection, and demands at last, "Has this woman had her rights?"⁹³

Nor was this elaboration of woman's rights confined to some conservative wing of the movement; in the antebellum years there was considerable harmony of position. Although Stanton and Anthony moved from organized temperance to woman's rights in the mid-1850s, they and other woman's righters remained advocates of the temperance cause, finding it a "hard matter to speak of the cruel wrongs inflicted on women by the liquor traffic, without at the same time saying that her rights have been trampled upon . . . (and) difficult to depict the woes of the drunkard's wife . . . without saying that her rights have been recklessly invaded, and wrongfully withheld."⁹⁴ Many women initially resistant to the assertion of rights became enthusiastic converts: their new ideals were rooted, not in higher political theory, but in concrete concern for the "sacred ties of family relations." Mothers turned to rights for the sake of their children, seeking assurance that they would be able to feed and clothe them, and

90. *Lily*, vol. 2 no. 10, at 73 (Oct. 1850); Clarina I. Howard Nichols, *On the Responsibilities of Woman*, tract no. 6 in *Woman's Rights Commensurate with Her Capacities and Obligations*, *supra* n.8. See also *Syracuse*, *supra* n.14, at 23, 34, 63.

91. *Lily*, vol. 1 no. 10, at 77 (Oct. 1849).

92. *New York*, *supra* n.28, at 4, 76.

93. *Lily*, vol. 3 no. 5, at 34 (May 1851); see also, vol. 3, no. 11, at 86 (Nov. 1851); and *Boston*, *supra* n.21, at 24.

94. *Lily*, vol. 4 no. 3, at 22 (March 1852).

keep them nearby.⁹⁵ Many women sought "equal rights for (women) *in the family*, in order that its highest uses and harmonies may be insured."⁹⁶

Nevertheless, this theoretical harmony between rights for the self and duties to others was not to survive the Civil War. Even before then the two strains had begun to be discernible. The broadest category of rights included "the general question of woman's Rights and Relations (which) comprehends such as: HER EDUCATION, *literary, scientific, and artistic* HER AVOCATIONS, *Industrial, Commercial, and Professional* — — HER INTERESTS, *Pecuniary, Civil, and Political* in a word, her RIGHTS as an *Individual*, and her FUNCTIONS as a *Citizen*."⁹⁷ Many middle class feminists stressed forcefully the incidents which contributed to personal freedom and development—the right of sexual autonomy within marriage, of education, work outside the home, independence—and were content to see economic parity rather vaguely as the inevitable consequence of women's personal and civil gains.⁹⁸ Stanton herself emphasized autonomy above suffrage, saying "When we talk of woman's rights, is not the right to her person, to her happiness, to her life, the first on the list? If you go to a southern plantation and speak to a slave of his right to property, to the elective franchise, to a thorough education, his response will be a vacant stare The great idea of his right to himself, to his personal dignity, must first take possession of his soul."⁹⁹

As the movement developed, those activists who weighted issues of autonomy and personal development more heavily tended increasingly to align themselves behind the vote, re-envisioning it, not just as a lever to achieve social ends, but as a measure of autonomy and individual freedom in itself. A few others, who saw women's impoverishment as the paramount issue, urged economic measures over the quest for legal or civil entitlement.¹⁰⁰ Still, antebellum activists understood their rights and duties as a seamless web. Only in Stanton's work do we see fully foreshadowed the conflict between individual women's rights and the interests of family and community which was to split the suffrage movement so bitterly in the last years of the century.¹⁰¹

95. Lily, vol. 4 no. 5, at 35 (May 1852); vol. 4 no. 6, at 51 (June 1852); Una, vol. 1 no. 1, at 14-15 (Feb. 1853).

96. Boston, *supra* n.21, at 8.

97. Syracuse, *supra* n.14, at iv.

98. Cleveland, *supra* n.6, at 10, 17, 41, 55-56; Una, vol. 1 no. 1, p. 10 (Feb. 1853); Lily, vol. 3 no. 5, at 35 (May 1851); Hersh, *supra* n.13, at 189.

99. Letter to Susan B. Anthony, July 20, 1857, Stanton Papers, Douglass College Library, Rutgers University.

100. History of Woman Suffrage, *supra* n.65, at 233; Syracuse, *supra* n.14, at 9; Clarina I. Howard Nichols, *supra* n.90.

101. Even in this early period Stanton is beginning to develop her notion of rights as based in the psychological needs of the autonomous personality, an individualism far more pronounced than the liberal Protestant ideal of self-development. Although Stanton scholars have generally viewed her late address *Solitude of Self* as representing an evolution of

To the extent that it is possible to isolate two different strands of rights thought here, the question arises of whether one is superior to the other, or more truly feminist in outlook. Most scholars of women's movements have explicitly valued political rights over any claim for right to livelihood or protection of the home. They see the "home values" of later temperance union suffragists as a second-class feminism, an expression of "woman-oriented moral conservatism."¹⁰² Ellen DuBois, Barbara Epstein, and others have denigrated the suffrage campaign of the Woman's Christian Temperance Union as instrumental because it sought the vote with clear public policy goals in view which addressed women's welfare as tied to the well being of the family under the wage labor system.¹⁰³ For DuBois the strength of the demand for suffrage is that it bypassed the private sphere altogether to focus on equality within the public sphere.¹⁰⁴ As a political feminist, she sees a relation between woman's oppression and her ideological association with the private sphere. By this standard, any claim other than the strict one for formal equality appears a manifestation of false consciousness, even though well intentioned. In fact, some of the temperance workers goals were highly repressive. This should not obscure the fact that the association of political power with social ends allows greater possibility for social change than viewing the vote as an abstract good.¹⁰⁵ Political rights, rightly considered, are not ends in themselves, but ways of allocating power and resources within the community. In a democratic society, at least theoretically, they are closely connected to maximizing benefits for all.

Even leaving aside contemporary debates, it is unclear that this standard can be usefully applied to nineteenth-century feminism. For one thing, what could "formal equality" mean to women in the absence of *any* federal or state regulatory mechanism to ensure it?¹⁰⁶ In the 1850s, the possibility of constitutional amendments like the fourteenth, fifteenth, or nineteenth, was remote. In many ways the woman's movement's political aspirations developed reciprocally with the growth of the government's capacity to administer equal protection standards. As we have seen, most

her thought, at least one unusual passage fully prefigures that address, though written forty years earlier; in it she says that woman is her own "self supporter, self defender and self protector, compelled to stand or fall, to live or die, alone." Lily, vol. 4 no. 5, at 40 (May 1852). *Solitude of Self* is reprinted in Elizabeth Cady Stanton, Susan B. Anthony: Correspondence, Speeches, Writings, *supra* n.88, at 246.

102. Epstein, *supra* n.22, at 6.

103. Even the sympathetic chronicler of the WCTU, Ruth Bordin, while vaunting the Union's effectiveness in engaging women in political activity, finds its agenda defective in emphasizing the uses and purposes of the woman's vote above absolute rights. See *Woman and Temperance: The Quest for Power and Liberty, 1873-1900* (1981).

104. DuBois, *The Radicalism of Woman Suffrage*, *supra* n.2, at 63.

105. I imagine this abstract good as the majestic, solitary figure of Elizabeth Cady Stanton sailing through the universe with a star in one hand and a ballot in the other.

106. In this I follow Michael Grossberg's line in *Governing the Hearth: Law and the Family in Nineteenth-Century America* (1985), that "rights" women were gaining in family law doctrine were actually privileges granted at the discretion of the court.

antebellum feminists were initially highly skeptical of the power of government to work change by law; Hannah Tracy Cutler once declared that she never saw the words "law reform" or "revised statutes" without thinking happily of a bonfire.¹⁰⁷

More important is the question of whether "domestic rights" really represented an inferior brand, and what consequences the repackaging of women's early broad vision into the demand for political rights had for the movement as a whole. One critic has charged that "The concept of 'rights' in general (is) a concept that is inherently static and abstracted from social conditions. Rights are by definition claims staked within a given order of things. They are demands for access for oneself, or for 'no admittance' for others; but they do not challenge the social structure, the social relations of production and reproduction."¹⁰⁸ While this may accurately diagnose a contemporary malaise, antebellum woman's rights claims spilled over legal categories: not limited to what governments could provide, they were the markers of a state of harmony with natural laws which mandated the satisfaction of all human wants. Their revolutionary character lay in representing, not claims to an established order, but new ways of reenvisioning social relations and the relations of power.

Nor did feminists see rights as any kind of absolute or unlimited entitlement. The linking of rights to responsibilities, and their firm placement within a system of natural laws, meant that rights were not seen as discrete, but as functioning within a larger context as a set of reciprocal obligations. Far from granting a power to be exercised against others, restraint was built in: "The great laws of our own beings demand justice to ourselves and justice to our neighbors. We cannot infringe either law without disorder and pain, and . . . the Infinite Creator looks benignly upon his creature who thus obeys the laws of his own nature, and reverences those appertaining to every other."¹⁰⁹ Yet such restraints were not galling. Perfect freedom still lay not in total autonomy but in acting out God's will, so that "the most free are the most bound."¹¹⁰ Rights were a precious new license for women to employ their talents for themselves and others, and women saw them, not only as individual entitlements, but as the context for a happier and more fulfilled life for all human beings. Rights were not static entitlements, but the conditions of a dynamic new freedom: "right . . . will galvanize women into civil liberty: (and) you will find her capable of being in it, and sustaining it."¹¹¹

107. Una, vol. 1 no. 3, at 41 (April 1853).

108. Rosalind P. Petchesky, *Abortion and Woman's Choice: The State, Sexuality, and Reproductive Freedom* (1984), at 7.

109. Elizabeth Oakes Smith, *supra* n.19, at 118.

110. *Syracuse*, *supra* n.14, at 81.

111. *Proceedings of the Woman's Rights Convention Held at . . . Rochester, New York, Aug. 2, 1848* (1870; reprint, 1969), at 7.

Conclusion

When the antebellum woman's movement took up the concept and language of rights, it was not a case of incorporating the meanings and usages of the Founding Fathers whole into women's vocabulary. Rights rhetoric evoked a political tradition meaningful to women as well as men, a set of promises for women as gender-blind as the assurances of the new God of liberal theology. But the genesis of rights, their meaning for women, lay initially in Christian-based concepts of social justice, the fulfillment of needs, and each person's development according to their divinely-ordained talents. In the early years the problem of power was itself a critical hurdle for women's activism. Understanding its corrupting nature, seeing the evidence all around them in the political arrangements of men, how could women justify their own accession to power? A good deal of argument within the broader movement was directed toward the idea, not of seizing or sharing power, but of its *dissolution*, on the theory that when men ceased their corrupt administration, the problem of power would resolve itself into a natural harmonious balance between the sexes. Much of the rest of the discussion was taken up by mutual assurances that, should women gain their political due, their natures would protect them from the misuse of power through corruption and greed.

Despite their hesitance about the assumption of power, the antebellum feminist campaign was a time of political maturation, overcoming scruples and fears about acting in the political world. Women reformers began to prepare themselves, not just to speak in the role of outcast-prophet, but to take up the tools of government for their own ends. In the spring of 1852 the *Lily* published separate short blurbs side by side on two cases at law successfully argued by women. In one, the woman is armed with nothing but her knowledge of right and faith in good justice; her appeal reaches past the minds and straight into the hearts of her listeners, who acknowledge that she has shown up their law as irrelevant and grant her the decision. In the second, the female advocate is beautifully prepared with a wealth of incisive arguments which dumfounded her opponents and lead to her uncontested victory on highly technical points of legal doctrine.

These two cases represent a progression: the woman's movement in the 1850s is a microcosm of political change, a moment of transition in individuals' basic attitudes toward government. Despite their initial disaffection with government, workers in combined woman's and temperance movements came to recognize that politics and law were increasingly becoming creatures of the central state, and were passing out of local control. The potential of national government to protect woman's due was only dimly realized, but the admission that "we are in an age when the wrongs of society are adjusted at the courts and at the ballot box" dictated a new approach.¹¹² Women saw that politics was increasingly a man's

112. History of Woman Suffrage, vol. 1, at 14. The History of Woman Suffrage,

game, one played away from home. They resented their own exclusion, and distrusted the ability of male legislators sitting at a distance to represent their interests, and to meet the diverse needs of the banker, the housewife, and the drunkard. The impartiality and anonymity of legislation in this period was seen not as a possible protection, but as a failure of government to care for the whole individual. Relying on the ancient maxim, "salus populi suprema lex,"¹¹³ women revealed their fears that in the brave new world of politics there was no place for the standard of moral accountability which pertained between relatives, friends, and neighbors, and that the law was not creating any new ethic whereby the bonds of community, loosely worn but still taut in times of need, could be maintained. The imperative for women's entry into politics became clearer and clearer to feminist reformers in the decade before the War.

Theirs was a romantic vision; its romanticism was partly redeemed and partly betrayed by the political maturation of its proponents, a process that started even before the war. In fact, the *Lily* illustrates that it was through the temperance activities of the 1850s that many women were brought around to the use of political means, including the ballot. The Maine liquor law of 1851 gave reformers a heady taste of the sweeping change which legislation could accomplish so much more effectively than the painful, uncertain process of personal conversion to abstinence which had been the temperance workers' model. The Maine law was the "philosopher's stone in the pocket," capable of effecting spiritual and behavioral regeneration instantly, and the *Lily* followed the progress of similar laws with intense interest.¹¹⁴ Under Amelia Bloomer's management, editorials, articles, and letters in almost every issue starting in 1850 exhorted women to take up political tools to accomplish their social ends.¹¹⁵

Not all those sympathetic to woman's rights were converted to political means on the spot. The leaders of the woman's movement, the politically sophisticated, the speakers, became convinced early on that, rotten or not, women had to enter man's political world to effect change. For a much larger group of women, sympathetic but unsure how far to go, the transformation into political beings was piecemeal and slow. Again, the *Lily* is valuable in that it exposes us not just to the thought of the leaders, but of the rank and file as well. For a time, Stanton and Anthony served as leaders of the state woman's temperance organization in New York, of which the *Lily* served as the unofficial organ. They and like-minded co-

although an invaluable and bottomless source, is not a fully objective account of the early years of the movement. Unlike the convention proceedings themselves, it was edited and issued thirty years after the movement's beginnings by three of the earliest and most vehement proponents of women's political activity; it consistently emphasizes political themes at the expense of spiritual and religious arguments.

113. *Lily*, vol. 2 no. 6, at 47.

114. *Lily*, vol. 5, nos. 1 or 2 (page and date undecipherable), speech of Antoinette Brown.

115. See, for example, *Lily*, vol. 2 no. 10, at 73-74 (Oct. 1850); vol. 3 no. 10, at 79 (Sept. 1851); vol. 4 no. 5, at 33, 35-36, 39-42 (May 1852); vol. 4 no. 6, at 53 (June 1852).

workers exercised a tremendous influence on the shape of women's reform through the newspaper, as well as through the blizzard of publications and the exhaustive cross-country lecture circuits many undertook. Under their tutelage many women came to believe they could best assure their own chances for self-development and thereby help to bring society back into a natural order through the means of the vote. Over the years of the *Lily's* publication (1849-1856) readers of all persuasions wrote in to attest to their conversion to political methods, at least to the combination of legal and moral suasion. A growing number found that moral suasion alone "will not do," was "worse than useless," and made little impression on the legislators who, corrupt or not, were calling the shots.¹¹⁶ Citing the inability of mothers to protect sons from the liquor "monster," one former anti-feminist found that "there came a complete change over my feelings on the subject." "A realizing sense of our weakness . . . (and) that we were warring with harmless weapons" brought many reform women to a more assertive political challenge to the supremacy of the male liquor cartel.¹¹⁷

The new philosophy of women's political power did not require women to jettison moral ideals, but it did require a transformation of the imagery of morality and power. Most importantly, it required the acknowledgement that the institutions of government were not inherently opposed to morality but with the right composition could act to improve social conditions. Many women urged the adoption of political tactics for the purpose of fulfilling obligations to others. One woman, deploring her lack of the vote, exhorted, "Arise, sisters, to your duty! Gird on the garment of love to your fellow creatures, and form the high resolve to crush the enemy which is stabbing them to the heart," a formulation which retains the rationale of social duty but endorses a different kind of action.¹¹⁸

After the Civil War the rights movement became a suffrage movement in earnest, with the ballot's earlier focus as a carrier of other rights downplayed. Because of the movement's fuller engagement with the political process, and the growing involvement of government in mediating and enunciating the rights of its citizens, women increasingly conceived of rights in legal terms. The emphasis on legal rights, narrowly conceived, diminished discussions of economic and social entitlement. Feminists like Antoinette Brown Blackwell found the movement's agenda narrowed after the war, too neglectful of issues like education and work.¹¹⁹ Although the untested antebellum vision was probably naive, and certainly immature, in its conviction that the wellbeing of the community lay simply in the perfection of individual rights, the shift in focus toward legal remedies represented both a gain and a loss. Women gained a basic political

116. *Lily*, vol. 4 no. 5, at 39 (May 1852); vol. 1 no. 8, at 61 (July 1849).

117. *Lily*, vol. 3 no. 10, at 77 (Oct. 1851).

118. *Lily*, vol. 1 no. 9, at 69 (Sept. 1849).

119. Elizabeth Cazden, *Antoinette Brown Blackwell: A Biography* (Old Westbury, New York, 1983), at 138.

agenda, which could be pursued to ultimate success, and limited their claims for transformative social change inherent in their early vision.

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