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Breaking the Mold of Citizenship: The "Natural" Person as Citizen in Nineteenth-Century America (A Fragment)

Elizabeth B. Clark

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Mary Wollstonecraft once said, probably with a sigh, "I do earnestly wish to see the distinction of sex confounded in society, unless where love animates the behavior." Two centuries later, many groups in American political life are still caught in the same dilemma: hoping that a just society will take account of an essential characteristic—race and sex spring to mind—in ways that will benefit the group, while eschewing the potentially harmful characterizations that lie just on the flip side of the coin.

Group identities were already an important part of the political structure well before nineteenth-century reform movements brought into play the interests of people who were not traditional political
actors; their entrance into the formal political arena only brought the question of groups to public notice. The introduction of new groups to political power fragmented the structure of representative citizenship on which the American system, like other Western systems, was based. This essay looks broadly at the destruction and reconstruction of group identities in the period from abolitionism to the Nineteenth Amendment, with an eye to implications for our own time.

I would like to focus here on three ways in which nineteenth-century liberal reform movements worked to challenge the legal order and to fragment older, monolithic models of citizenship in order to provide a more inclusive model, and on some of the consequences of those campaigns.

First, reformers challenged the legitimacy of the uniformity of law, not on the basis of the fact that it discriminated against groups (although that was one outcome), but because they argued that no uniform structure could take account of individual difference. This argument was influenced both by romantic notions of the depth and diversity of individual experience and by strongly Protestant notions of the supremacy of individual conscience over traditional authorities.

Second, I will talk about the new characteristics that qualified the person as a rights-bearing individual, qualities rooted in a natural view of personhood that brought to the fore "private" experiences like bodily pain and family and sexual relationships that had formerly been completely excluded from the persona of the citizen.

Third, I will talk about ways in which the women's movement in particular sought to destabilize ingrained oppressive patterns of law and custom by bringing the private world of family and domestic relations into the public sphere, for purposes of creating a rights regime that would reflect women's experiences.

Finally, I will address the ways in which this reform rhetoric paved the way for multiple claims and challenges to the neutrality and uniformity of law and rights regimes today, and some of the strengths and weaknesses of the antecedents on which we rely. In the nineteenth century, the highly politicized and fluid arena of rights consciousness offered an open forum for the struggle over importing an individual's subjective claims into law. The forms of claims for rights of the person developed in that arena have shaped our history ever since.

How did law accommodate the conflicting claims of disparately situated persons or groups in the period before the political upheavals of
the mid-nineteenth century? The problem posed by the uniformity of formal laws under traditional citizenship models was muted or papered over by what nineteenth-century legal doctrine still labeled as the “law of persons,” or the body of blended formal and customary regulations that governed status relationships like marriage, slavery, and apprenticeship. The bulk of formal law, although expressed as universal commands, was actually designed to enable, or in some cases restrain, the dominant partners in those relationships. The first chapter of Blackstone’s *Commentaries on the Laws of England*, “Of the Absolute Rights of Individuals,” for example, defines the right of personal security as “a person’s legal and uninterrupted enjoyment of his life, his limbs, his body, his health, and his reputation.” But everyone knew that these guarantees were not given freely to all comers. Such security at law clearly did not exist for dependent wives and slaves under the discipline or cover of husbands and masters; instead, subordinate groups were largely governed by the private powers of their superiors, a discretionary authority supported by both law and custom.

Some formal law did apply directly to dependents, of course; wives, servants, slaves, and children were all subject to moral and criminal sanctions from magistrates. But protections and entitlements were scarce and only triggered by extreme cases; even married women’s property was largely protected by equitable devices rather than law until mid-century. Investing quasi-official figures with vast disciplinary powers over their subordinates, and to a great extent removing those subordinates from the direct application of the laws, created a large pocket of discretion in the governing order. The legal regime thus finessed the problem of writing uniform laws for individuals with disparate identities and stations by excluding large groups of dependents from its direct jurisdiction for many purposes.

Formal or positive law, then, addressed its benefits largely to the politically enfranchised, a group that was well defined by a set of salient common characteristics. Although no master document of the eighteenth century spelled out the components of citizenship in full formal detail, citizens had traditionally been male, white, heads of households, and property owners and were assumed to have some level of education. The category of “citizen” for most purposes, then, functioned as a unitary category; its most important constituent characteristics were by definition common to all holders of the title and did not need to be spelled out. Citizenship was in turn embedded in the status system. While the role of the citizen was formally uninflected by direct
power over others, citizenship in fact carried with it status, control, responsibility, and obligations by virtue of the fact that the citizen was usually a husband, father, employer, or master as well. In fact, for both the dominant and subordinate classes, the richer and more textured identity was described, not through a political label, but through the subpolitical status relationships of husband–wife, parent–child, master–servant, or master–slave that encompassed such a large part of the population.

Even older notions of citizenship, then, carried one group of personal markers or identities with it, designations based on race, sex, and class. This did not make it easier in the long run, however, to expand the laundry list of personal attributes befitting a citizen. For one thing, to the extent that personal identities or characteristics determined power in the older model of citizenship, their acceptance was tacit. It was the mute social hierarchies of status systems like slavery and the family that did the work of supporting the power inhering in those identities, not the formal claims of liberal citizenship as committed to paper by the Founders.

The status structures that supported traditional citizenship were not to survive the nineteenth century intact; no system was more clearly marked for destruction by social reformers. Eighteenth-century reform was characterized by political philosophies and institutions that would limit the autocratic power of the state. Nineteenth-century reform, at least in America, made its mark by extending that same criticism of irresponsible power to the quasi-private status relationships in an attempt to bring them down. Both abolitionists and women’s rights activists elaborated Jefferson’s eloquent point that no man was by nature booted and spurred to ride another, firmly rejecting the idea that law or custom could invest any human being with authority over any other; and in fact, by the late nineteenth century, the sphere of private powers that constituted the world of status relationships had measurably shrunk. With them went the system of private governance that had kept order in a world where the state commanded only rudimentary force, having little police power and no regulatory agencies. As patriarchal structures deteriorated—slavery becoming illegal, family rule softened by a new egalitarian and humanitarian ethos—the quasi-official layer of intermediate authority that had stood between dependent classes and direct state power gave way as well.
The decline of status relationships and the enfranchisement of new groups undermined the context for an exclusive and unitary citizenship. In the antebellum years, though, finding a rationale for expanding citizenship status to include former subordinates was not easy for proponents of reform, in large part because the traditional unarticulated template of citizenship and its association with privileged identities were so strong. The disfranchised were short on whiteness and male­ness; and slaves in particular had little status, property, or education to commend them. Again, abolitionists in particular had little reason to love arguments from group characteristics, or expect their success, and publicly rejected them at every turn. The tack they did take, however, opened a channel through which future claimants—women in particular—might begin to fashion arguments for group rights.

Articulating claims to privilege or legal recourse based on essential characteristics was a novel and dicey approach. It was an approach, however, that antebellum reformers had to take. Precisely to avoid the problem of their lack of traditional qualifications, abolitionists began to argue for political privileges or protection for African Americans as “natural” persons, because they felt pain and pleasure and had immortal souls, rather than because they possessed status or attributes that set them off from the rest of humanity. In reform discourse, and subsequently in political discourse, universal concepts of dignity, autonomy, and personhood began to replace elite categories of honor and status as the foundation for political participation. Reformers rushed to claim the mantle of citizenship for the legal benefits it would bring the disfranchised. At the same time they put forward theories of the “rights” of natural persons under which the most common human ordinances and activities—marriage, work, the needs of the body and soul—became dignified as worthy of political attention, and as the source of the “rights” that would protect those natural functions. In this way, the state was forced to take account of “private” experiences such as physical pain or family and sexual relationships that previously had been excluded from the persona of the citizen.

Thus, although the category of “citizen” formally survived as simply an expanded version of its former self, the standing and function of the citizen changed dramatically. No longer defined by the inherent cohesion of exclusivity or common attributes, and no longer automatically carrying with it the delegation of power over other individuals,
citizenship claims came to depend on the qualities of the natural person in a way that provided a point of entry for personal characteristics into the political sphere.

Just as it was the common characteristics of humanity—the possession of a body and soul—that gave political entitlement in this argument, those same characteristics also gave rise to rights and protections. Subordinating the citizen to the person, abolitionists insisted that, important as the civic rights fought for by the Founders and enumerated in the Constitution were, the rights-bearing individual needed protection, not just in the public square, but in more private pursuits as well.

Antebellum reformers, not content with half measures, mounted a two-pronged attack on traditional sources of law and custom, savaging both the customary rule of status relationships and the formal rule of positive law. But while strategy might have dictated a turn to law to contain the dominion of petty domestic tyrants newly dispossessed, the group of radical Unitarians, Garrisonian abolitionists, and liberal women's activists I am concerned with here attacked positive law with just as much ferocity as they opposed private power. Down the road, reformers would have to grapple with the expanded powers of the post-Reconstruction government, and with the paradox that equality at home often meant "calling in the giant" of the state. But the antebellum movements that helped give rise to a flourishing new rhetoric of individual rights were unrelenting in their critique of the unitary categories of personhood that uniform regulations necessarily supposed, seeing them as gross impositions on the individuality of the person.

The tender regard that reformers showed for the individuality of the person went hand in hand with a new heuristic style that emphasized more personal or subjective forms of authority. Both the sources for and applications of the new respect for personal experiences and ideas as morally authoritative were legion in antebellum America. One source was German romanticism, which, in reaction against Enlightenment rationalism's assumptions of the uniformity of persons and the corresponding universality of laws, stressed subjectivity, originality, and diversity, as well as the roles of intuition and experience in revealing the right and the true. Certainly Kant's efforts to relocate morality in the individual were attractive to radical Unitarians and Transcendentalists, insofar as they understood him. But for most, whose tastes ran more to the British romantics, Coleridge in particular helped to
popularize German romantic philosophy secondhand. In addition, the Scottish Common Sense scholars, whose teachings were pervasive in American institutions and influenced evangelicals and liberals alike, reintroduced certain forms of intuitionism into American moral philosophy, particularly the belief that each individual possessed a potentially complete innate moral sense, whose evidence was more trustworthy than authoritative sermons or didactic treatises. As Ronald Walters suggests, by the 1830s “there existed in America and in Europe a greater suspicion of intellect and a higher faith in emotions; the moral sense, as a result, gained stature from being identified with sentiment and feeling.”

On the literary front, two popular nineteenth-century movements, romanticism and sentimentalism, both broke with classical and Enlightenment epistemological modes, abandoning models of uniformity for ones that stressed the depth and diversity of human experience, and emphasizing imagination, intuition, and empathy over reason and knowledge. Transcendentalism, too, was a homegrown intuitionist philosophy inspired by romanticism that manifested itself through its widely read literary productions. An outgrowth rather than the antithesis of Unitarianism, the Transcendental movement shared some members and strong intellectual sympathies with antinomian abolitionists. Emerson staked out his ground against the mainstream Unitarian religion of reason in his infamous “Divinity School Address” delivered at Harvard in 1837, declaring that truth “is an intuition. It cannot be received at second hand.” The answer to moral dilemmas, he suggested, cannot be found in bibles, constitutions, laws, or churches: “The Devil nestles comfortably into them all. There is no help but in the head and heart and hamstrings of a man.” Abandoning the possibility of the comforts and safeguards of the external law internalized, Emerson cast the individual onto his own resources, with “no church for him but his believing prayer; no Constitution but his dealing well and justly with his neighbors.” This same confidence in humans’ innate and God-given moral nature as a reliable guide to right and wrong proved a strong point of agreement for a wide variety of antebellum reformers.

In the political arena, the intuitive moral faculty was known by its other name, conscience. The appeal to conscience as a superior form of truth seeking had a venerable history going back to the Protestant Reformation’s elevation of private judgment, or the “Christian Liberty” of uncoerced belief. Lockean liberalism, grounded as much or more in
the individual’s material interests and experiences rather than in the inner life of the spirit, defended the citizen’s right to hold any set of beliefs, but downplayed the function of conscience as a way of knowing, a method of inquiry, or a dynamic component of communication between individuals engaged in a common moral quest. Sheldon Wolin has described Locke’s distrust of conscience’s role as an effort to limit it to “an internalized expression of external rules rather than the externalized expression of internal convictions.” By 1830 the Lockean demotion of private judgment did not sit well with liberal reformers in matters spiritual or political: the innate ideas which Locke had so convincingly dismissed reappeared in religious reform thought. Post-Revolutionary movements concerned with reasserting the moral authority of innate knowledge and the inner life reestablished conscience as a subjective and highly individualized function. Although there was some disagreement about its limitations, conscience, associated as it had traditionally been with piety and a heart open to God’s will, commanded respect from a broad spectrum of antebellum Protestants from liberals to moderate evangelicals. For reformers, individual conscience became the highest expression of individual morality, which itself became the highest expression of right. Thomas Wentworth Higginson told the story from the East, popular again today, of the elephant resting on a stack of tortoises. But when asked what the last one rested on, Higginson—constitutionally unable to utter the response “another tortoise”—answered that it rested on “conscience and Reason, and if these are not infallible, nothing else is.”

Perhaps most important for the development of an individual rights philosophy in this period, in radical reform thought conscience was a dynamic process, rather than a possessed attribute or a set of beliefs. The conscience that fed on “formal precedents and rules, the low expediency of the states, the hollow maxims of the schools” was a frozen, insipid affair. It was William Ellery Channing’s work—tremendously influential for radical Unitarians, Transcendentalists, Garrisonian abolitionists, and women’s rights advocates alike—that best laid out its parameters. Spiritual freedom required perpetual vigilance; it was “moral energy . . . put forth against the world, and thus liberating the intellect, conscience, and will. . . . That mind alone is free which . . . in obedience to [God’s will], governs itself, revere[s] itself, exerts faithfully its best powers, and unfolds itself by well doing.” The free mind resists “passive or hereditary faith,” habit, and public opinion in favor
of constant, vigorous moral scrutiny and interrogations of authority. Conscience in reform thought had a critical role in public life, as a check on power and authority. But, like rights themselves, it was an attribute of the natural person, not controlled by or a gift of the state. Each individual soul was endowed by God with a conscience, whatever his or her station. The high functionalism of liberal Protestantism dictated that no faculty or talent was given that was not meant to be used; the right to exercise conscience was “guarantied . . . by the same principle that ensures us the use of our hands and feet, our eyes and ears,” and was as dynamic and individual as those capacities.

The antebellum emphasis on the conscience’s intuitive and immediate grasp of truth, “as the flower turns to the sun,” and on the process of examining the legislator within for moral guidance, described a relation between the Christian and the law that departed from classic notions of sovereignty. Obedience to law for the “good man” became, not automatic compliance with sovereign commands, but an interactive process between two lawgivers, the public and the private. James Freeman Clarke sought to downplay the danger of anarchy by suggesting that in most cases the private lawmaker—conscience—sanctioned righteous public rules. While the Christian conscience might nullify the law, Clarke asserted, few had consciences so morally developed: “good men obey the law mainly from conscience, bad men mainly from fear, and the majority of men from self-interest.” But at every juncture the good man, the moral role model, engaged in a complex assessment of right and wrong. Human rights, the particular province of the Christian conscience, required an especially careful evaluation: “rights do not admit of very precise definition, for the spiritual cannot be weighed and measured like the material.” The Unitarian reformer Theodore Parker described Christianity not as a system of doctrines but as a method of moral scrutiny. In the liberal Protestant scheme that so influenced the growth of reform thought, the individual’s role as law-finder was paramount.

The opposite side of the coin of individual conscience was liberal reformers’ intense antilegalism, their antipathy to what they called “external” law, whether it was religious or secular. The Bible was toppled from its preeminent place as the infallible source of God’s word and, while still recognized as a sacred text, subjected to the indignities of interpretation and critical examination. Thomas Wentworth Higginson labeled the Old Testament merely an “arbitrary collection of the
best early Hebrew literature." Far from an infallible word, he argued, the Scriptures offered multiple interpretive possibilities, chosen by each reader according to "his own temperament, education, and circumstances"—a faithful echo of the revered Dr. Channing. American reformers didn't need European critical theory to clue them in to the problem of scriptural indeterminacy; pro- and antislavery forces often waged war in scriptural terms, each side wielding shards of divine writ to good effect. Reformers across a wide spectrum argued that the Bible, like "all books . . . require[s] in the reader or hearer the constant exercise of reason." The provocative Henry Clark Wright argued ad absurdum that the Bible was no more authoritative a script than Mother Goose.

The rejection of legalism served as a leitmotif in reformers' struggle against the slave-tolerating civil state as well. Bronson Alcott declared, "Church and State are responsible to me; not I to them . . . They cease to deserve our veneration from the moment they violate our consciences. . . . Why would I employ a church to write my creed or a state to govern me? Why not write my own creed? Why not govern myself?" The rigid formalism of law characterized the loveless reign of orthodox theology, as well as the corrupt rule of the slave-tolerating civil state. The letter of the law was literally killing; only its spirit gave life. Even antislavery conventions' own formal procedures came in for mockery: a group of adherents, adrift overnight in a small boat without provisions, passed resolutions asserting that they had had both rest and a repast, in parody of abolitionists' endless enthusiasm for platform measures. In fact, abolitionists assessed law's ability to effect change as on a par with that of the Indiana legislature, which in this century passed a bill setting the value of pi at an even three. Injustice and delusion did not change their spots because they were cloaked in statutory authority. As one abolitionist asked rhetorically, "When the French Assembly voted there was no God, was there, therefore, no God?"

In assessing the efficacy of human law, reformers drew on liberal Protestantism's new model of human life, both physical and spiritual, as naturally good and reflecting God's highest designs. The naturalist conventions of liberal religion in this period saw the entire physical world as harmoniously attuned to the same divine order and thus reflecting divine will more fully than older forms of authority such as revelation or miracles. Human law, then, should be judged by its con-
formity to the natural order of human life, rather than be seen as constituting that order. Critics often turned to the stock of human experience to illustrate law’s impotence; they were fond of pointing out that any law that contravened human moral nature—a law sanctioning adultery or forbidding parental love, for example—was a dead letter regardless of its sovereign imprint. For better and worse, positive law was only good insofar as it conformed to the dictates of God and human nature. Rejecting any notion of law or rights as drawn from anterior sources, reformers instead used the patterns of human life as the measure of positive law.

Statutory law came in for particular criticism; it most fully represented the benighted attempt to capture the dynamic process of conscience-based moral inquiry in a frozen form, rather than appealing “from statute to justice . . . from the state to the soul . . . from dead words to living spirit.” William Lloyd Garrison vowed never to consult “any other statute book than the bible,” since government was too fallible and insensitive an instrument to be entrusted with the enactment of rules. Reformers criticized the gall of legislators who understood their job as constructing rather than discovering laws, “which they can no more do than they can manufacture the laws of gravitation and motion.” The abolitionist William Goodell argued that, rather than searching for rulers, the people must realize that “the law is already made to their hands, (the law of their social nature as well as of their physical constitutions) that all they have to do is learn to obey and apply it.”

Reformers sought to hold the state as well as positive law to a standard of accountability modeled on the moral individual. They insisted that groups “moving in a body and called the state” be held morally accountable under exactly the same rules as the individual: each individual “carries with him into the service of the community, the same binding law of morality and religion which ought to control his conduct in private life.” No combination of individuals could get together to change the moral character of an act, nor escape moral accountability by acting at the behest of a group. Garrison made a sweeping dismissal of all forms of human lawmaking power in 1854, when at a Fourth of July celebration he burned in rapid succession a copy of the Fugitive Slave Law, a judicial decision, and the Constitution, to the wild cheers of his audience.

For its opponents, higher-law methods of consulting conscience or
intuitive moral reasoning represented the antithesis of political truths "publicly arrived at and publicly demonstrable." When higher law challenged positive law on its own turf, notably in the fugitive slave cases, it was a flop. But the intuitive model of truth-seeking using human nature as a guide to divine laws was of paramount importance in another area: it provided reformers with a new method for discerning the “rights” of the individual and substantively shifted the focus from the rights of citizens in their public lives to the rights of persons in both their physical and spiritual lives. So closely was the abolitionist notion of rights tied to embodied personhood that arguments analogizing natural rights to bodily attributes were introduced as the most compelling. The right to liberty, William Hosmer argued, was no more within the control of government than the rights to see, to eat, or to walk; such “conditions of being” fall solely under God’s jurisdiction. Conscience, the arbiter of rights, was a faculty so elemental it was as “man’s . . . eyes, or his hands, or his feet—that is, a part of himself—made by the Creator.” Relying on their Northern audiences’ own conviction of self-ownership, abolitionists stressed that natural rights belong to the slave as “inalienably as the blood in his veins, or the breath in his lungs” (although in fact both were in doubt); to be deprived of rights would be the equivalent of “dismemberment.” Humans’ rights were made “unmistakably plain” by scrutinizing their natural constitutions; to mistake the needs and capacities that gave rise to rights would be about as likely as attempting “to walk on the hands instead of the feet, or to hear with the eyes instead of the ears.”

The paradox here of course was that, on the one hand, Channing, Parker, and others argued vehemently for the immutability and universality of individual rights in order to establish their independence of the state, declaring that the notion that rights were “uncertain, mutable, and conceded by society, shows a lamentable ignorance of human nature.” On the other hand, rights as they envisioned them were in fact as individual and open-ended as the vista for each body and soul. The Christian notion of rights carried with it a notion of universal entitlement, that “each child as a birthright has a code of laws engraven on its nature.” But because God’s design was most fully revealed not in the written word but in the natural world, the laws “written on body and soul” were also as distinctive as each body and each soul. Christian universalism was crossed with romantic individualism to create an unstable hybrid formulation. Recognizing both the body’s and the soul’s
claims to individuality, Gerrit Smith had proclaimed, "Fifty or a hun-
dred people in Peterboro or Cazenovia, however much alike in their
views and spirit, should no more be required to adopt a common reli-
gious creed than to shorten or stretch out their bodies to a common
length." Rights, William Goodell similarly claimed,

must grow out of [man's] essential nature, capacities, relations,
duties, and destiny. To the idea of these must the idea of his rights
be conformed, and by these must those rights be defined. To
understand what man is, what his Creator requires him to be and
to do, and what he is destined to become, is to understand man's
essential and inherent rights, and the tenure by which they are
held.

Subordinating the citizen to the person, abolitionists insisted that,
important as the civic rights fought for by the Founders and enumer-
ated in the Constitution were, the rights-bearing individual needed
protection, not just in the public square, but in more private pursuits as
well. In the early years, abolitionists disagreed over whether emanci-
pated slaves should be granted political rights, in particular the right to
to vote. Many also rejected or downplayed the notion of social rights lest
it raise the controversial specter of intermarriage or social mingling,
potentially detrimental to the cause. Much less contentious was the
notion that all slaves should be protected by such civil rights as would
allow them the equal protection of the laws of property, contract, and
crime.

But the entitlement that abolitionists claimed passionately for
slaves, and the one developed most fully in Garrisonian abolitionism,
was to human or natural rights, the rights of slaves as "intelligent crea-
tures of God, formed with susceptibilities of happiness and entitled to
its pursuit." The natural person's laundry list of rights was expansive
and open-ended; one particularly full definition comes from William
Goodell's *The Democracy of Christianity*, which enumerates

the right to be what his Creator made him, to do what he requires
of him, to become what he designs him to become; the right to
exercise freely and to expand fully his own faculties, unrestrained,
except by the law of rectitude and the corresponding rights of
those by whom he is surrounded; the right to obey God rather than
man; the right to do right, and to refuse wrong; the consequent right to investigate, to know, to utter, to argue freely, according to the dictates of conscience . . . the right to worship God in accordance with his own convictions; the right to provide for his own wants, and the wants of those naturally dependent upon him; the right to himself, to his own muscles, intellect, affections, and volitions; the right to the avails of products of his own industry, and to the free sale and interchange of them; the right to his equal share of the elements of nature, the earth, the air, and the ocean; to a dwelling place and a habitation on the earth which God has made and given to the children of men. In a word, the right to life, to liberty, to the pursuit of happiness, the pursuit of moral excellency, or immortal blessedness.

This strain of natural rights discourse represents a substantial departure from the standard menu of constitutional rights put in place by the revolutionary settlement. Going well beyond the vague formulations of "life, liberty, and happiness," abolitionists focused in a way earlier theorists had not on the physical wants and needs of the body on its daily rounds, whose deprivations slavery made so obvious. Rights claims that came under this heading included those to self-ownership; freedom of movement; freedom from physical abuse; the right to marry and establish domestic relations; to refuse nonconsensual sexual relations; to work and keep one's earnings; and to engage in social relations with others in their community. Giving new content to old forms, abolitionists claimed that these attributes gave rise to rights that were "natural," not in the sense of being anterior or uniform, but in the sense of being subjective and personal, deriving from the needs, habits, and intimate relations of the person.

In the early federal period, natural rights arguments, the common coin of revolutionary rhetoric, had been subordinated to the project of re-creating a system of institutions, including a positivist jurisprudence that would bind the whole. But natural law regained its rule in the philosophies of antebellum abolitionism and women's rights movements. And like their revolutionary ancestors, these reformers gave another half-twist to their theory. Under the English constitution, early rights declarations laid claim to concessions from those in power and served to frame a new relationship between the citizen and the state. Eighteenth-century American revolutionaries denied the state as the
font of rights, but their rights claims largely sounded in the tradition of regulating the relationship between citizen and state in the public sphere. The antebellum reform tradition both denied that rights were from the state and also denied that they were about the state, or solely about the role of the citizen in his public capacity. Rather, this group of reformers cast rights in broader, aspirational terms; rights language expressed the terms on which individuals could best live out God’s designs for human happiness. What was “natural,” they claimed, was whatever contributed to the full realization of human potential.

At the same time, nature—spruced up into a nice civil order by the Founders—regained a worldly quality rooted in the intellectual, spiritual, and physical functions of everyday life. The pursuit of happiness, always a somewhat vague component in the revolutionary era, took on new specificity in claims to food, clothing, jobs, education, family relations, bodily integrity, and the rights to satisfy those claims. As Elisha Hurlbut wrote in his influential *Essays on Human Rights and their Political Guaranties*, “Wherever Nature has ordained desire, she has spread before it the means of gratification.—From this we infer the right to its indulgence—and hence, also, the rights of man.” Many echoed Hurlbut, arguing fervently that natural rights “emanated from the nature and wants and emotions of mankind.” Natural rights, they agreed, could not be pulled down from the sky, but could only be discerned by observing closely the mundane welter of human life. Reformers expanded on the belief that God gave no need or desire that he did not mean to be fulfilled, and no capacity that was not to be used. They made functionalist rights claims reflecting this belief in the congruence between capacity and right: “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.”

These and similar arguments circulated through large, interconnected reform circles and were repeated in writings, lectures, and literature for public consumption; they did yeoman’s service for abolitionists and women’s rights advocates alike. (One man testified to the interchangeable nature of philosophies across a wide spectrum of reform movements when he refused a health nut’s offer of a piece of Graham bread, saying that he had noted that when you began with Graham bread, you ended with infidelity.) In a broad sense, the natural person’s claims paved the way for bringing the attributes of the private person into political discourse for the first time as a basis of entitlement;
in fact, the particular deprivations and abuses of slavery made it impos­
sible to avoid that move. Clearly, deriving rights from a common
human nature was good strategy; the need to establish a new founda­
tion for political participation required the elevation of elemental
human traits like the possession of a body, mind, and soul and the
appetites that went with them into an argument for political privilege.
There was no other basis on which to establish a political platform wide
enough to accommodate those seeking access.

Such rights claims should be confused neither with a full-blown or
authentic individualism nor with a strong group rights theory. In the
years before the Civil War, abolitionist claims, as well as a large part of
women’s public demands, were based in strong universalist arguments
about the common needs and talents of individuals in the brotherhood
of man, and looked to broad entitlements based on patterns of social
behavior generalized across racial groups and genders. In fact the argu­
ment for physical, intellectual, and spiritual sameness was critical to
the enterprise of admitting slaves to political power; arguments from
difference were shunned. Legal claims in particular gained power from
asserting the likeness of the dispossessed to those with entitlements;
rights by analogy, the most comfortable mode of legal reasoning, work
best when the claim “I am like that rights-bearing person” is met with
an answering embrace from the rights-bearing public. Here again the
physical nature of humankind played a newly prominent role in the
assertion of rights, as abolitionists and slave narrators relied heavily on
graphic accounts of the pain experienced by slaves during punishment,
not only to incite the compassion of the audience but also to make the
point that slaves’ experience of abuse was identical to what the reader
would experience under similar circumstances. The portrayal of the
slaves’ pain proved the likeness of the human body across racial lines;
as an abolitionist Miss Smith wrote of seeing a slave beaten by a mob,
“I am ready to testify that it was orthodox blood. I should not have
known it from my own.” This same political agenda also precluded
asserting strong racial group identity claims; in the public political dis­
course, race was a physical feature to be erased in the interest of com­
passionate identification, rather than a culture-constituting attribute.

As both abolitionism and women’s rights matured, it became
apparent that each had somewhat different mandates and constraints
in their quest to redefine citizenship and the rights-bearing person. The
ideology of the early women’s movement was very heavily influenced
by the radical Quakers and more particularly the Unitarians who, by contrast with a more corporate Catholicism, stressed the private nature of religious experience and the supremacy of the individual conscience. It was this sensibility, expressed in Gerrit Smith's caveat that Christian creeds could not be any more uniform than bodies, that gave rise to the rejection of the monolithic and unvaried character of regulation by positive law. It remained for the most liberal wing of the postwar nineteenth-century women's movement to continue on a two-track path that diverged from abolitionism's strategy; by detailing the patterns of life experience of women as a group as distinct from men as a basis for the rights of the natural person, in this case the natural woman; and at the same time by claiming for women a sphere of bodily autonomy that allowed for individual experience like the personal spiritual experience of liberal Protestantism.

First, the attempts of women's rights advocates to diagnose their wrongs by describing ill treatment meted out to women as a group differed from antislavery workers' similar attempts in an important way: unlike slaves, women confidently expected that, even after the reforms they were seeking to rectify their situation were enacted, they would not lose their former identity and blend into the whole, but would continue in society as a definable group with characteristics that for some purposes set them permanently apart from male citizens. Rejecting an equality that was ignorant of gender, role, or duty, women argued for the rights that would enable them to act their parts as wives and mothers. Keeping their gendered domain in mind, they echoed reform concerns about the gross instrument of uniform positive law, calling it "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." Arguments of this sort made claims, not just for reform of particular laws, but that law recognize and accommodate as citizens a group defined by shared permanent attributes and interests not common to all citizens, not as a temporary measure until the discrepancy was corrected but as a new model of legal response to a permanent subgrouping. They stressed that law must vary its touch on different persons and groups to allow the full self-realization of all citizens; as the Lily proclaimed, "let man cease to . . . compel [woman] by his cruel and unnatural statutes to act in violation of her will and conscience."

This was not the only mode of portraying women's entitlement;
throughout the nineteenth century, equality and difference arguments went side by side in women's rights rhetoric. For the most part, though, those arguments were not randomly mixed; it is possible to discern two separate women's rights discourses coming out of the ante-bellum period. The first, usually associated with claims to traditional civic rights like the vote and property ownership, tracked both Revolutionary rhetoric and abolitionist discourse in stressing the commonality of human nature and the equality of inalienable rights, making its case with businesslike appeals to republican sentiments on the basis of "the great doctrine of equality as set forth in the Declaration of Independence." Like abolition, this argument made no effort to delineate women as a separate group with distinct common characteristics; sensibly enough, since the goal here was inclusion in an established rights paradigm.

But in addition, largely under the influence of Elizabeth Cady Stanton, woman suffrage's more radical members began to speak of domestic wrongs—wife abuse, unavailability of divorce, and loss of custody rights in particular—as situations that should give rise to rights; without them, women's physical and moral sensibilities were outraged without redress. In describing the model family, noncoercion rather than equality was the watchword. Instead of relying on the public political language of equality when outlining particular wrongs women suffered in the context of domestic relationships, reformers relied more heavily on language of personal fulfillment and the natural model of family life; on women's natural rights, similar to those claimed for slaves, to be happy wives and mothers. Again, while criticism of slavery was designed to bring the institution down, nineteenth-century criticism of the stringent anti-woman bias of family law was designed to reform the family, but not to destroy either monogamous, heterosexual marriage or the parent-child relationship. Women envisioned an ongoing rights regime—the maternal preference in custody cases is the best example—that would recognize and foster their best natures, again as a permanent subgroup of the citizenry as a whole.

Women's diagnoses of their wrongs were conveyed in archetypal tales of husbands' abuse, coercion, and desertion that made clear that the injustice worked by men's social and legal privilege touched every class of women. At the very least, early feminism made a compelling case for a group wrong of a sort that could not be dealt with by temporary expedients, but only by restructuring the law to accommodate its
citizens’ distinct gender identities. It also significantly furthered the natural rights agenda by advancing the interests of the private person/woman in marriage, sexual relations, reproduction, and parenting as appropriate claims in the public sphere. This agenda both forced various agents of state power to take cognizance of the differential needs of citizens and helped over the course of subsequent decades to expand the definition of the liberal citizen as one who was constituted by substantial rights in the private sphere, as well as by the traditional ability to exercise civic rights like property ownership and the political franchise. While these claims of the “private” individual did not make their way into constitutional jurisprudence until the later twentieth century, they were recognized to some degree by state and local courts and legislatures. By the Gilded Age, divorce was easier, married women were more secure in their property, the maternal preference in custody cases was well on its way to becoming the norm, and domestic abuse had at least been made a contested issue. In part, though there were certainly other driving forces, these developments had come about in response to the effective delineation of women’s wrongs, specifically the wrongs of the woman in her private domestic role.

Whether the earliest of the founding mothers made effective claims to group rights, as opposed to group wrongs, is a more difficult question. Activist women often denied that they were seeking any kind of class or group right, arguing that it was exactly the treatment of people in groups or classes that had created the feudal politics of status relationships. At the level of theory, the Stantonites denied that women could or should be helped as a group. As good liberals should, they denied that protectionist measures could do anything but create dependence.

Rather, like abolitionists in the immediate aftermath of the war, they put their faith in their formal freedom, asking “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?” The freed woman, like the freed slave, should be able to compete and flourish without seeking favor from the government.

Stanton elaborated on individual women’s freedom and bodily autonomy by analogizing the domestic sphere to the market and arguing for women’s “right” to be left alone to make their own decisions about marriage, divorce, and sexual behavior. Liberal feminists, relying on religious and abolitionist antecedents, argued for the elevation
of a new decision maker, the individual, in questions involving inti­
mate relationships; only the individual could make the subjective judg­
ment whether to pursue an intimate association or to cut ties because
the relationship proved offensive or coercive. In some respects this was
a retrenchment from the early aspirational rights language of abolition­
ism, which sought to identify as rights positive needs including basic
staples like clothing, shelter, and education—rights that, had they been
recognized, would have required affirmative remedies from govern­
ment. Rather, liberal women’s rights language in its classic theoretical
form sought to limit government’s intrusion into the lives of citizens, a
familiar form of rights claim, although here it applied to new domestic
situations.

But indulging in this argument, whatever its political appeal, pre­
vented liberal feminists from recognizing that their own rhetoric and
political designs were often inconsistent with the simple libertarian
notion “my body, my right.” Even in the early years of the movement,
some of the relief measures women sought in fact involved not limiting
the power of the state but “calling in the giant” to redress wrongs
imposed by other citizens—in this case largely husbands. Seeking
relief in cases of custody disputes and wife abuse, for example, could
not be characterized as a limitation on state power, but only as empow­
ering the state to play the decision maker in what had formerly been
privately decided matters.

In fact, whatever the strength of this limited form of rights claim in
the 1870S, by the 1880s and 1890s the individualist formulation had lost
much of its appeal; the liberal wing of the women’s movement lan­
guished accordingly, while the evangelical suffrage and temperance
organization, the Woman’s Christian Temperance Union, gained ten
times as many adherents as the National Women’s Suffrage Associa­
tion. From a different generation and a different persuasion, the
WCTU eschewed the notions of privacy and individual autonomy that
liberal feminists had taken from Protestant abolitionism, stressing a
more communitarian approach. But they did continue to bring domes­
tic matters into the political arena, in most respects much more suc­
cessfully than liberal women had. Nor were they afraid to address the
problems of women and families as problems of groups. Using a
strong normative model of the family derived from middle-class evan­
gelical Protestant culture, they pushed for a progressive array of relief
programs, including nutritional programs, the eight-hour workday, and the living wage, at the same time as they pursued a theocratic agenda that sought to censor a variety of recreational habits, including reading "bad" literature and drinking, while seeking to install public prayer and Bible reading in the schools. (Little tattlers and liars)

In all of their endeavors, this group was among the earliest of the women's groups to seek relief, not through individual rights rhetoric (although they did not discard it entirely), but through group claims that returned more to the "need" language of early abolitionism. In addition, through their work in nascent public health and educational posts, they were instrumental in helping to establish the social framework of voluntarism that became the bedrock of the bureaucratic welfare state. Like a good mother, the "maternal state," as WCTU president Frances Willard called it, recognized the intimate needs of its citizens. But, circumventing the individually tailored remedies of rights litigation, they relied more on corporate forms of relief, more on protections than rights. In their politics they captured the concern for the needs of the natural person that had eluded the liberal feminists in their postwar stress on autonomy; but at the price of forsaking a healthy skepticism about the capacity of a uniform or universal form of regulation to administer the needs of individual citizens.

By the end of the nineteenth century, as I pointed out in the beginning, it was clear that citizenship was no longer equated with the private power of status relationships (and this despite the fact that women's franchise was not yet secured). But what of the abolitionists' attempts to integrate the notion of the citizen with the natural person, or to create a state that was truly responsive to the needs of citizens whose identities were now disparate, and whose needs were highly individual? In the nineteenth century, at least, the women's movement was the site of some of the most heated debate on this subject; but, by the end, the story is of two opponents, each of whom had given away one-half of the store. In theory (and with some exaggeration), liberal feminists posited an autonomous individual, whose new rights in the private sphere would consist in a skimpy government turning a blind eye to women's choices in the domestic setting. Evangelical feminists, on the other hand, made the personal into the political, but at the expense of respect for individual needs.
Selected Bibliography of Relevant Works by
Elizabeth Battelle Clark


