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1989

## Chapter 4 - Self-Ownership and the Political Theory of Elizabeth Cady Stanton (previously published article)

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### Recommended Citation

Elizabeth B. Clark, *Self-Ownership and the Political Theory of Elizabeth Cady Stanton*, 21 Conn. L. Rev. 905 (1989), reprinted in *Women, Church, and State: Religion and the Culture of Individual Rights in Nineteenth-Century America* (Hendrik Hartog & Thomas A. Green, eds.), [https://scholarship.law.bu.edu/clark\\_book/5/](https://scholarship.law.bu.edu/clark_book/5/).

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## **CHAPTER FOUR**

# SELF-OWNERSHIP AND THE POLITICAL THEORY OF ELIZABETH CADY STANTON

· by *Elizabeth B. Clark\**

The emphasis on freedom or enslavement of the body, and the issues that sprang from that focus, were feminists' contribution to nineteenth-century American liberalism, as well as their link to radical thought. Elizabeth Cady Stanton drew arguments from the realm of political liberty and religious tolerance to make the case for choice in private life. But the vision of individual autonomy in sexual and domestic matters served also as the basis for her definition of citizenship and as a paradigm for relations among citizens and between citizens and the state. Self-ownership was the unifying theme that ran through Stanton's political development; it described for her the only appropriate relationship between any individual and her family, community, government, or God.

The nineteenth century saw the transformation of liberalism by feminism and by women's entry into the public sphere. Liberal women's claims to liberty, equality, and natural rights employed the language of the Founding Fathers, but their content was quite different.<sup>1</sup> Women's formulations of their own rights were not echoes of the eighteenth century; their definition of liberty was more personal than that of the Founders. Liberal women supported civil rights, but the feminist positions that roused the most passion tended to be the claims for bodily control, which drew upon, but did not always acknowledge, the radical utopian and free love agenda. Challenges to the double standard, age of consent laws, and the husband's right to administer

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Please note: An asterisk after a source indicates that the *Connecticut Law Review* was unable to check the source.

1. See E. DUBOIS, *FEMINISM AND SUFFRAGE: THE EMERGENCE OF AN INDEPENDENT WOMEN'S MOVEMENT IN AMERICA, 1848-1869* (1978); A. KRADITOR, *THE IDEAS OF THE WOMAN SUFFRAGE MOVEMENT, 1890-1920* (1965). Both take the approach that feminist claims were essentially replications of revolutionary republican rhetoric.

corporal punishment, as well as the advocacy of the right to voluntary motherhood, freedom in conjugal relations, divorce, custody of children, and writs of habeas corpus for married women against their husbands—all of these issues became incorporated into public political debate and significantly expanded the limits of potential liberal personhood. With the exception of divorce, liberal women agreed on these claims, and they became a part of the feminist agenda early on.

This is not to say that liberal feminists rejected classic liberalism. National Woman Suffrage Association (the "NWSA") members in the post-war period espoused traditional liberal positions on free trade, currency, the primacy of contract, and freedom of religious thought. Members generally supported deregulatory positions while emphasizing individual liberties.<sup>2</sup> The campaign for married women's property reform fit easily into the liberal mold as well, creating a liberal legal personality who expressed herself through the control of and the contracting for goods and services, turning a "femme covert into a living, breathing woman—a wife into a property-holder, who can make contracts, buy and sell."<sup>3</sup> Claims for employment and equal pay, although not pursued in the post-war period with the vigor of other issues, sprang out of the growing equality rhetoric that stressed the right to support oneself as a part of the liberal scheme. The franchise itself was the mark of a liberal individual.

But feminism's contribution to liberalism was to reinforce and greatly expand the individual's zone of privacy—to widen the definition of rights beyond the rights of the individual in his civil status to include the rights of the individual in her private capacity. The intellectual genesis of these positions is most easily traced in the writings of Elizabeth Cady Stanton.<sup>4</sup>

Stanton cast the traditional family, the church, and the state as

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2. A good representative sample of this writing can be found in the newspaper the *Revolution* in the years Stanton and Anthony edited it (1868-1870).

3. Letter from Elizabeth C. Stanton to Gerrit Smith (n.d.), collected in Stanton Papers (two-reel set of letters and essays available at Douglass College of Rutgers University).

4. See, e.g., ELIZABETH CADY STANTON, SUSAN B. ANTHONY: CORRESPONDENCE, WRITINGS, SPEECHES (E. DuBois ed. 1981) [hereinafter STANTON & ANTHONY].

This focus raises the problem of Stanton's representativeness within the movement. I am writing here about Stanton, but have tried at the same time to make clear that, although her ideas were always more developed and usually more radical than her co-workers in the NWSA, there were large areas of agreement, and Stanton's opinions in their own right were highly influential even where there was disagreement. Stanton did serve repeatedly as president and officer of the NWSA; her views were not so far outside the mainstream as to alienate large numbers of the group's voting constituency, at least as long as the NWSA remained a separate organization.

the three interrelated structures that kept women in the position of bond-servants and prevented their growth and development outside stultifying traditional roles. The Founding Fathers took a definite step in the right direction by abolishing the power of monarchy in favor of government by the people. But they left intact two intermediate structures of authority, the hierarchies of family and church, and so "fastened their broken chains on all they considered inferior to themselves and incapable of resistance."<sup>5</sup> Antebellum "government by the people" brought self-government to representatives of groups rather than to individuals; Stanton argued that, "[t]o build a true republic, the church and the home must undergo the same upheavings we now see in the State."<sup>6</sup> For Stanton, the move she made in the 1870s away from political analysis and toward exploring inequity in the home and later in the church was a move toward understanding and destroying the deep structure of political inequality.<sup>7</sup>

To do so, Stanton set out to undermine traditional sources of communal and familial authority. A letter from a reader of the *Revolution* asked if the family didn't *need* a ruling head to prevent anarchy.<sup>8</sup> Stanton's reply lumped fathers with kings and with popes, as despots to be overturned by the emerging individual in the full exercise of her rights. The representative theory of the family—whereby women were to be represented in the public arena by their husbands and fathers—worked no better for Stanton than the representative theory of government had worked for eighteenth-century revolutionaries. She explicitly denied that the family was a sub-unit or "governing power" in the state, charging governments instead to deal with individuals directly: "The law takes cognizance of family relations only as they are brought to its notice."<sup>9</sup> The patriarch was to be stripped of his power in the home, and adult individuals were to return to full autonomy, thereby perfectly fulfilling the promise of the American Revolution and bringing personal liberty back to the most immediate level.

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5. Stanton, *Self-Government* 7-8 (ca. 1874), collected in Stanton Papers (Reel 4) (five-reel set of speeches, articles, notes, and correspondence available at the Library of Congress).

6. 2 HISTORY OF WOMAN SUFFRAGE 152 (E.C. Stanton, S.B. Anthony & M.J. Gage eds. 1882).

7. Within the movement she succeeded to a remarkable extent in fusing the issues; the theoretical question was often conceived as "Woman in the Home, the Church, and the State," the title of a talk given by Laura Cuppy Smith through the American Literary Bureau, as advertised in 3 Woodhull & Claflin's Weekly 14 (Oct. 14, 1871) (Issue 22).

8. 5 Revolution 152 (Mar. 10, 1870) (Issue 10).

9. *Id.*



This agenda created a strong tension between public and private, which has dogged the women's movement ever since. As issues of domestic governance moved outside the "privacy" of the home—often a euphemism for unchecked abuse of male authority<sup>10</sup>—they necessarily became "public" in the broadest sense; these issues were talked, written, and read about in the dominant forums of the day. In the process of women's integration into the political realm—a *fait accompli* well before the nineteenth amendment—women firmly nailed such formerly "private" areas as family law jurisdiction, separation and divorce, bodily autonomy, and the abolition of the sexual double standard to the platform of liberalism. Not everyone who styled themselves "liberal" agreed on the details, but there was a growing consensus that such issues were appropriately handled in the realm of politics, rather than by private authority.<sup>11</sup>

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10. On receiving complaints that the *Revolution* was using newsgirls to sell their papers to the public, Stanton replied that they were better off in the public street than in the "sacred privacy of the home" where they were at the mercy of any drunken brute. 2 *Revolution* 37 (July 23, 1868) (Issue 3).

11. Stanton's sense, dating from the antebellum years, that private authority (church and patriarchy) was responsible for the regulation of sexual and family life may have been at odds with the history of local governance, although this does not make it any less real a force in her thinking. William E. Nelson suggests in *THE AMERICANIZATION OF THE COMMON LAW: THE IMPACT OF LEGAL CHANGE ON MASSACHUSETTS SOCIETY, 1760-1830* (1975) that, at least in the North, the discovery and punishment of moral crimes was the primary responsibility of the judicial system until the time of the Revolution; then the focus on morality gave way to concern for crimes against property. However, the close identification in revolutionary New England between church and state justifies Stanton's assumptions. Also, moral crimes usually involved acts outside marriage; even in colonial New England, Stanton is correct that intrafamily disputes were often left to the discretion of the father. She sought to have this paternal power voided, thereby destroying the distinction between the married and the unmarried, which for purposes of jurisdiction is still very important in family law today, as is the distinction between acts done within the context of an ongoing family relationship and acts done outside of, or at the end of, an ongoing family relationship.

In addition, Stanton was deeply concerned with the separation of the two branches of authority, church and state, and was committed to describing a neutral central authority that could take over from the church.

It is questionable whether either patriarchy or the church ruled as forcefully by Stanton's day as she suggests, or whether she was beating a dead horse. I think she was beating a sick horse. Both pure patriarchy and pure Calvinism were already well in decline by the mid-nineteenth century, with Stanton enthusiastically preparing to pound in the coffin nails. See A. DOUGLAS, *THE FEMINIZATION OF AMERICAN CULTURE* (1977); J. FLIEGELMAN, *PRODIGALS AND PILGRIMS: THE AMERICAN REVOLUTION AGAINST PATRIARCHAL AUTHORITY, 1750-1800* (1982); M. GROSSBERG, *GOVERNING THE HEARTH: LAW AND THE FAMILY IN NINETEENTH CENTURY AMERICA* (1985); cf. Weisbrod, *Family, Church and State: An Essay on Constitutionalism and Religious Authority*, 26 J. FAM. L. 741 (1988) (on the continuing vitality of religious authority). Stanton certainly understood the dangers and possible costs of enhancing judicial or legislative jurisdiction over private behavior, even to spite the church. In fact, probably in large part because of the weakening

At the same time, feminists sought to bring these issues to the attention of the public and within the legal jurisdiction of a liberal state. Their explicit purpose was to assert that decisions about marital and domestic matters were highly personal and subject only to individual jurisdiction.<sup>12</sup> The *Revolution* reader was right in marking that the father's fall as head of household left a vacuum of authority. Stanton's work sought to put the individual into the position of ultimate authority, a configuration that made it difficult for her to develop any coherent model of the state, or any notion of the public interest.

### I. SELF-OWNERSHIP WITHIN THE FAMILY

The right to control one's body was the preeminent personal and political right for Stanton from a very early age. In her autobiographical writings, she portrays herself as a rebel from birth. Even accounting for the later gloss on the facts, she seems to have been a strong-willed girl, confident in her opinions, traits she retained all her life.<sup>13</sup> Her account of her childhood is one of ongoing resistance to a strictly orthodox upbringing designed to intimidate with godly fear. She was frequently punished for tantrums, which, with hindsight, she characterized as "justifiable acts of rebellion against the tyranny of those in authority."<sup>14</sup>

Stanton despised the morbid Presbyterian regime that she grew up

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of "private" authorities, government intervention in the family seemed to be on the rise in the nineteenth century, despite the new characterization of the family as "private," a result Stanton would have hated. See Teitelbaum, *Family History and Family Law*, 1985 WIS. L. REV. 1135, 1146. Thanks to Dirk Hartog for talking this over with me.

12. I don't mean to suggest that this interpretation—individual sovereignty over issues of family governance—became the dominant one. Michael Grossberg's *Governing the Hearth* is convincingly devoted to showing the development of a "judicial patriarchy" composed of judges who substituted their own decisions on family disputes for those of the father and clearly felt it their business to do so. See M. GROSSBERG, *supra* note 11. Liberal feminists themselves were more likely to admit judicial or state intervention when the dispute involved the custody of children than when it concerned regulating the status of married adults. See Letter from Elizabeth C. Stanton to E.L. Godkin (Jan. 1, 1898), collected in Stanton Papers, *supra* note 3. The tone of this letter is quite uncharacteristic of Stanton; she softened in her attitude toward the state in the last years of her life.

13. As she reports in her autobiography, "I was always courageous in saying what I saw to be true, for the single reason that I never dreamed of opposition. What seemed to me to be right I thought must be equally plain to all other rational beings." E. STANTON, *EIGHTY YEARS AND MORE: REMINISCENCES 1815-1897*, at 216 (1898 & reprint 1971).

14. *Id.* at 12. *Eighty Years* contains the most complete autobiographical account. See also E. GRIFFITH, *IN HER OWN RIGHT: THE LIFE OF ELIZABETH CADY STANTON* (1984). On Stanton's rebelliousness, see also Gail Parker's introduction to E. STANTON, *supra* note 13, at xviii-xx (reprint 1971).

under, which tried to keep children "embalmed as mummies."<sup>15</sup> She instinctively disliked Calvinism's strict and gloomy passivity, and soon bolstered her dislike with intellectual arguments. While at school in her teens, Stanton sat under the preaching of Charles Finney,<sup>16</sup> and temporarily fell prey to the sleeplessness and morbid terrors of the fearful unconverted. After a bad bout of nerves, she was rescued by her brother-in-law, who whisked her off to a spa for a spell of reading in liberal theology. Its "rational ideas based on scientific facts" helped to set her free from "the old bondage of fear of the visible and the invisible . . . and, no longer subject to absolute authority, [she] rejoiced in the dawn of a new day of freedom in thought and action."<sup>17</sup> This episode fueled Stanton's dislike of religious orthodoxy and impressed on her the need to fight enslavement in all of its guises, although despite her vehement anti-clericalism she never entirely erased the idea of God from her mind.

With seven children, an absentee husband, and sporadic household help, Stanton spent a great deal of time being a mother. Unlike the evangelical feminists, she made little attempt to use motherhood as a platform for political participation. Her views on the parent's role and the nature of child-raising, nonetheless, shed light on her notion of relations between citizens and the state.

Stanton's carefully constructed character as a mother seems a little too large for life.<sup>18</sup> As with all she undertook, Stanton threw herself into domestic life, and, at least early on, took a great deal of pleasure in developing her own domestic skills and running her own household. Pride in her competence and skills moved her to master domestic arts not perhaps of much intrinsic interest to her; and child-bearing and raising offered a splendid opportunity to pit her wits against male professionals. Refusing to trust doctors' advice (which she said was as "confusing and unsatisfactory as the longer and shorter catechisms and the Thirty-nine Articles")<sup>19</sup> or the accepted wisdom of the day on the care of infants, she substituted her own judgment and instituted a re-

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15. E. STANTON, *supra* note 13, at 12.

16. Charles Finney (1792-1875) was a theologian and revivalist who helped spark the Second Great Awakening in the first decades of the nineteenth century; his theology rejected predetermination of will and stressed instead "means" or individual efforts to seek moral perfection.

17. E. STANTON, *supra* note 13, at 44-45.

18. Elisabeth Griffith arrives at this conclusion as well in *In Her Own Right*. See E. GRIFFITH, *supra* note 14, at xvii, xix. She cites one of Stanton's contemporaries who charged that Stanton had "secured much immunity by a comfortable look of motherliness." *Id.* at 196.

19. E. STANTON, *supra* note 13, at 114.



gime for her children based on her most dearly held principles. Swaddling, bandaging, binding, closed windows, any kind of restrictive practices were out; her children were unbound, thrust into the fresh air, allowed to eat and sleep as they demanded. "Show me a child that is snubbed, cribbed, crippled, thwarted in every way and I will show you incapacity, weakness, disease, misery."<sup>20</sup> Stanton took enormous pride in her self-taught expertise and, in later years, claimed that, on her many cross-country trips, she "was of great use to the traveling public."<sup>21</sup> Seizing bundled and crying children from startled mothers, Stanton would rip off their wraps and hang them out the window, expounding on the virtues of free movement and fresh air; many babies, she suggested, were "emancipated" through her ministries.<sup>22</sup>

At the same time, the role of the mother as idealized in the dominant culture, as well as the resulting loss of autonomy motherhood necessarily entails, troubled Stanton. Few nineteenth-century American women could have been as wonderfully unsentimental as Stanton; in quoting Matilda Gage's favorite motto, she dismissed in one master stroke all of the favorite sentimental symbols of the day—"[t]here is a word sweeter than Mother, Home, or Heaven—that word is Liberty."<sup>23</sup> Unlike the home as it functioned for evangelical feminists, the house in Stanton's ideology was not a sanctuary surrounded by protective maternal love; such an image confirmed most of the things she hated about the traditional family.<sup>24</sup> Stanton herself—again, unlike many of the evangelicals—was not strongly mother-identified, and, in fact, seems to have gotten on rather poorly with her own mother for most of her life.<sup>25</sup>

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20. Stanton, *supra* note 5, at 24-25. So convinced was Stanton in her own powers that the lesson she drew from childrearing was to trust "neither men nor books absolutely after this, either in regard to the heavens above or the earth beneath, but [she] continue[d] to use [her] 'mother's instinct,' if 'reason' is too dignified a term to apply to woman's thoughts." E. STANTON, *supra* note 13, at 120.

21. E. STANTON, *supra* note 13, at 271.

22. *Id.* at 112, 271-72.

23. *Id.* at 328-29.

24. A part of her vehement feeling about cloying family life clearly came from her own domestic frustrations. She laments that "I pace up and down these two chambers of mine like a caged lioness, longing to bring to a close nursing and housekeeping cares." Letter from Elizabeth C. Stanton to Susan B. Anthony (June 10, 1856), in 2 E. STANTON, ELIZABETH CADY STANTON AS REVEALED IN HER LETTERS, DIARY, AND REMINISCENCES 66 (T. Stanton & H.S. Blatch eds. 1922) [hereinafter LETTERS]; STANTON & ANTHONY, *supra* note 4, at 63; see also E. GRIFFITH, *supra* note 14, at 79, 88.

25. In many ways, Stanton was not strongly woman-identified, either. Despite membership in suffrage organizations, she hated the meetings, much preferring to be on her own lecturing in the West. For Stanton, women in groups smacked of the neurotic, not the safe and loving. See E.

Whatever her personal feelings about motherhood—and they were almost certainly mixed—maternity presented a troubling political problem for the women's movement. For men and women alike, motherhood remained the best argument against suffrage, political participation, and work outside the home. Stanton saw biological determinism—or maternal fatalism—as an off-shoot of the Protestant church's teachings on sex roles; in her articles and lectures, she struggled to convince women that they were not doomed to a miserable maternity "through that one fatal interview in the Garden of Eden."<sup>26</sup> Stanton refuted the "insulting assertion that a woman's physical sex constitutes her womanhood."<sup>27</sup> She considered motherhood simply an incident in the life of an individual whose own conscience and moral faculties were paramount.

The obsessive, hovering, maternal style in fashion in the dominant culture was anathema to Stanton as well; she did not equate beneficent authority, or even good care, with protectiveness. The ideal childhood should be, as she believed her own had been, "one long struggle against arbitrary power; one continual protest in favor of self-government."<sup>28</sup>

According to Stanton, rebellion against authority was the state of nature.

Even children at the earliest age are always in a chronic condition of rebellion against the control of nurses, older brothers and sisters, parents and teachers, ever showing a decided preference to have their own way, in other words to govern themselves. Boys in schools and colleges find their chief happiness in disobeying rules, circumventing and defying teachers and professors with their youthful pranks; so many declarations of independence affording one of the most pleasing topics of conversation in after life. The general unrest of the people under kings, emperors and czars, in secret plottings or open defiance against self constituted authority, shows the settled hatred of all subjects, to any form of government to which they have never consented.<sup>29</sup>

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STANTON, *supra* note 13, at 40-41.

26. Stanton, *Religion for Women and Children*, collected in *Stanton Papers*, *supra* note 5 (Reel 2) (The Index 436 (Mar. 11, 1886)).

27. 1 *Revolution* 229 (Apr. 16, 1868) (Issue 15); *see also* 3 *Revolution* 148 (Mar. 11, 1869) (Issue 10).

28. Stanton, *supra* note 5, at 24.

29. Stanton, *Self-Government the Best Means of Self Development*, in *NATIONAL WOMAN*

Even the power to consent to a form of government did not satisfy Stanton; she believed it her own prerogative, and any other child's or adult's, to exercise a line item veto over any act of authority that stunted or confined.

The fundamental governing principle of the liberal household remained that for any one person to rule over any other person constituted despotism. Conservative defenders of the family often labeled its gender roles "natural" or God-ordained. Echoing the abolitionist anarchists from the pre-war period, Stanton and others labeled such prescriptions a usurpation of God's direct authority over the individual, and demanded that the "self-constituted deputies of God Almighty . . . either . . . relinquish their claims to divine authority, or . . . produc[e] credentials from headquarters to that effect."<sup>30</sup> God alone could dictate the parts men and women played, and he employed no intermediaries.<sup>31</sup> But how can one distinguish good authority from bad authority in this context, particularly for children, where the case for authority of some kind is the most compelling? The best regime, for children and citizens both, was not absolute authority: no tyranny in the home or in the state. Stanton finds that the training that is most likely to produce the good citizen—which is after all the goal of schooling—is the rule that forces the students to rule themselves and that presents both right and wrong to the student and "demands . . . an act of judgment, a decision between the two."<sup>32</sup> Absolute authority, Stanton admits, is more likely to produce order; but order is not the goal. Rather, the goal is to teach children, not domination over others, but

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SUFFRAGE ASS'N, REPORT OF THE 16TH ANNUAL WASHINGTON CONVENTION . . . 1884, at 62 (1884). There can be little doubt that Stanton practiced what she preached in raising her own children; they were infamously ill-behaved, and Stanton seemed to get a great deal of pleasure out of their scrapes once it became apparent that no one had actually been killed.

30. 1 Woodhull & Claflin's Weekly (Sept. 3, 1870) (Issue 17); see also Woodhull, *A Speech on the Principles of Social Freedom* . . . November 20, 1871, in THE VICTORIA WOODHULL READER (M.B. Stern ed. 1974).

31. For the most part in Stanton's thinking this includes Christ as well. While approving of his teachings as representing the true and uncorrupted Christianity, she never gives any indication that she sees him as a deity, or a conduit to God. Unlike the evangelicals, for whom the suffering and atonement of Christ played a critical role, Stanton seems to reject the idea of Christ as an intermediary and to subscribe tacitly to a Quaker-influenced sense of the inner light. (At least she is convinced of her own direct connection to God.) On the other hand, one doubts her full appreciation of the Quaker experience after reading her account of a meeting of Friends she attended with a female doctor: "I was moved to speak, the doctor was not, though I urged her to be." Letter from Elizabeth C. Stanton to Susan B. Anthony (Aug. 20, 1883), collected in Stanton Papers, *supra* note 3.

32. Stanton, *supra* note 29, at 63.

the more difficult mastery over themselves; only in a society of self-governing people can the principles of individual growth be fully realized.

## II. STANTON AND THE LIBERAL INDIVIDUAL

The love of freedom was more than a child's attribute; unfolding first in childhood, it persisted as long as life itself. As evidenced by her view of childhood, Stanton defined liberty as the state of nature. To one critic who attributed a naturally passive role to women, Stanton responded bitterly that it had taken centuries of persecution, with "the whole power of the civil and canon law . . . under all forms of religious fanaticism, culminating in witch-craft"<sup>33</sup> prosecutions, to control and subdue women. Her sex had, nonetheless, "shown her love of individual freedom, her desire for self-government, while her achievements in practical affairs and her courage in the great emergencies of life have vindicated her capacity to exercise this right."<sup>34</sup>

The premium Stanton placed on individual freedom was the theme of *Solitude of Self*, the address that Stanton gave before the congressional Judiciary Committee in 1892 and later before the annual suffrage meeting.<sup>35</sup> It is often acclaimed as her greatest speech, and its beauty is piercing. At the same time, it is a bleak statement of social relations, one almost without hope.<sup>36</sup> In it Stanton denies the possibility of human contact or communication in any but the most superficial sense. Common pleasures are fleeting; "even our friendship and love we never fully share with another; there is something of every passion in every situation we conceal."<sup>37</sup> The critical moments of each life are those—however brief—when isolation is total. In bereavement, imprisonment, poverty, war, abandonment, and old age—"[a]like mid the greatest triumphs and darkest tragedies of life we walk alone."<sup>38</sup> Stanton denied the idea of community that sparked so many women's

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33. *Id.* at 62-63.

34. *Id.* at 63.

35. Address by Elizabeth Cady Stanton, Hearing of the Woman Suffrage Association Before the Committee on the Judiciary (Jan. 18, 1892) [hereinafter *Solitude of Self*, the speech's common name]. There is a lightly edited version of *Solitude of Self* reprinted in STANTON & ANTHONY, *supra* note 4, at 246.

36. DuBois points out that it anticipates "the existentialist philosophy associated with the rebirth of feminism in our own time, and modern feminism's concern with the 'personal' elements of women's experience." STANTON & ANTHONY, *supra* note 4, at 246.

37. *Solitude of Self*, *supra* note 35, at 2.

38. *Id.*

groups in their associational efforts; the woman who joined groups to discuss questions of health and sanitation, foreign policy, education, or other social functions, could only make her own solitude "respectable" and provide work—if futile work—for her hands.<sup>39</sup>

Even the human Christ never rose above such mortal limits. Stanton proclaimed his command "Bear ye one another's burdens" to be beyond the individual's scope. The idea of the atonement, the shifting of weight onto stronger shoulders, had never appealed to the individualist in Stanton. "In fitting out an army we give each soldier his own knapsack, arms, powder, his blanket, cup, knife, fork and spoon. We provide alike for all their individual necessities, then each man bears his own burden."<sup>40</sup> Her summary of Christ's life was selective, a litany of failures; neglecting triumphal entries, righteous wrath, and even the Resurrection, she concentrated instead on moments of abandonment and betrayal. Christ's experience on earth was most fully realized, not in the Crucifixion, but in the more bitter moments of despair alone in the garden at Gethsemane.<sup>41</sup>

For Stanton, the individual's life did not lack a purpose; but its purpose was not to establish any particular set of relations among human beings. The social gospel movement and socially oriented feminists championed a kind of counter-Reformation in their rejection of the emphasis on faith over works; in the context of an industrializing America, the need for works was great and rendered the contemplative life and the dead theological intricacies of salvation selfish and outmoded. Far from criticizing the Reformation, Stanton invoked it constantly, interpreting it as a movement in support of "individual rights, individual conscience and judgment . . . the basic principles of our republican government and Protestant religion."<sup>42</sup> Critical as she was of the male-dominated church hierarchy and the tyranny of superstition, the great Protestant principle of freedom of conscience represented for her the core of truth at the heart of a rotten institutional body—approximately the same way she looked on the principle of liberty in the Constitution.<sup>43</sup> Stanton had no time for the creeds and codes of the church fathers. But the state of the individual soul was still

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39. *Id.* at 3.

40. *Id.* at 2.

41. *Id.* at 4.

42. Stanton, *Suffrage a Natural Right* 2 (1894). See also 2 HISTORY OF WOMAN SUFFRAGE, *supra* note 6, at 437, for a NWSA resolution to that effect.

43. 2 Revolution 324 (Nov. 26, 1868) (Issue 21).

paramount for her; as a thorough-going antinomian, she consistently denied that any outside authority could dictate, judge, or influence the state of her soul. As compared to social feminists Stanton was a great spiritualist, emphasizing the progress of the soul over charitable deeds, even while moving farther away from orthodox religion.<sup>44</sup>

The most compelling metaphor for human life in Stanton's vocabulary is that of the "solitary voyage": "No matter how much women prefer to lean . . . they must make the voyage of life alone, [relying on] their own skill and judgment in the hour of danger, and, if not equal to the occasion, [man and woman] alike they perish."<sup>45</sup> The voyage metaphor allows for nothing of the social, nothing of the rooted or familial. The "solitary voyager" is not with mess mates, but "'upon the deck of the ship at midnight . . . [with a] feeling . . . of utter desolation and loneliness; a little speck of life shut in by a tremendous darkness . . . .'"<sup>46</sup> The voyage is not aimless. Carrying over from antebellum feminist rhetoric her belief in a liberal Protestant mandate for the full development of God-given capacities, Stanton is insistent that woman's goal is the achievement of "the highest development of which they are capable."<sup>47</sup> For the end of human life is the growth of the individual, and the individual has the duty to resist whatever restricts growth.<sup>48</sup>

The duty to resist often pitted the individual against others.<sup>49</sup> Particularly toward the end of her life, Stanton's arguments for woman suffrage take on a foreboding air; women will need the ballot in emergencies, as solitary marooned voyagers, as a woman trapped in a burning house needs self-reliance.<sup>50</sup> It is tempting to attribute this sourness and sense of danger and isolation to old age and exclusion from the mainstream of the woman's movement after the NWSA's reunion with

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44. Aileen Kraditor in *Ideas of the Woman Suffrage Movement* describes *Solitude of Self* as an elegy for "a solitary human soul in the Protestant tradition responsible for its own destiny." A. KRADITOR, *supra* note 1, at 48.

45. *Solitude of Self*, *supra* note 35, at 1-2.

46. *Id.* at 5.

47. Stanton, *supra* note 29, at 67. In *Solitude of Self*, Stanton suggests that the rights and duties of women are "individual happiness and development." *Solitude of Self*, *supra* note 35, at 1.

48. 1 *Revolution* 361 (June 11, 1868) (Issue 23).

49. One particularly stirring speech on this subject was Stanton's on the famous McFarland-Richardson murder trial. See STANTON & ANTHONY, *supra* note 4, at 125-30; see also E. PLECK, *DOMESTIC TYRANNY: THE MAKING OF SOCIAL POLICY AGAINST FAMILY VIOLENCE FROM COLONIAL TIMES TO THE PRESENT* (1987).

50. See *Solitude of Self*, *supra* note 35; Stanton, *supra* note 29; Stanton, *supra* note 42.



the more conservative American Woman Suffrage Association in 1890. But, in an article in the *Lily* of 1852, Stanton fully anticipated her later message that woman is her own "self-supporter, self defender, and self protector, compelled to stand or fall, live or die, alone."<sup>51</sup> Time probably increased her isolation; but her original perception that woman is "an imaginary Robinson Crusoe with her woman Friday on a solitary island" didn't change—and Stanton was often happier to do without Friday.<sup>52</sup>

Throughout her career Stanton, as well as other liberal feminists, showed an overriding concern for corporeal integrity and a vivid apprehension of the possibilities of violence to the person. Nineteenth-century feminists across the ideological spectrum shared a belief in voluntary motherhood and sexual choice for women, especially condemning drunken male aggression against women and children. But the evangelicals, despite their focus on intemperance, devoted significantly less time to the issue of male violence against women and were far less willing to condemn orthodox marriage itself as a breeder of violence. Liberals, far more than the evangelicals, dwelt in detail on the potential for male violence against women, recounting each new horror and indignity almost with relish, as though justifying their world view. Their constant litany of physical crimes against women both made public an important source of "private" oppression and reenforced liberal feminism's special fearfulness about physical violations and infringements.

Human beings' natural state was not only constant rebellion against illegitimate authority, but also constant peril. In her defense of political rights for the individual, Stanton often pictured the polity as a dangerous place for the liberal individual. Suffrage in particular served the adult as a weapon of self-defense against abusive authority when "youthful pranks" no longer sufficed. In her 1894 speech, *Suffrage a Natural Right*, she drove home the analogy between the ballot and the bow and arrow with which early man "exercised his natural right of self protection."<sup>53</sup> Stanton characterized the ballot as the "substitute in civilisation" for the "rude weapons of savage life," proclaiming it tyranny to take away the means by which the individual defended person and property.<sup>54</sup> Not impressed by any social compact that had made so few provisions for women, she declared that, in compacting for the es-

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51. 4 *Lily* 40 (May 1852) (Issue 5).

52. *Solitude of Self*, *supra* note 35, at 1.

53. Stanton, *supra* note 42, at 2-3.

54. *Id.*

tablishment of government and mutual protection, no one gave up a "natural right to protect themselves and their property by laws of their own making, they simply substituted the ballot for the bow and arrow."<sup>55</sup>

Only individual ownership and individual control gave protection in Stanton's world. Protection when provided by one for another was always a paternalist trap; no two individuals disparate in power could form a protective relationship without fatal harm to the liberty of the protected, in the same way that no class can legislate for or represent another class. In classic liberal style, she saw the individual constituted and protected through the ownership of property, including rights in that category as things owned by the classic possessive liberal individual.<sup>56</sup> Children again illustrated the "natural" human response: "[w]hoever touches their playthings without their consent arouses their angry resistance, showing the natural desire to own property."<sup>57</sup> Property is one of the ways in which the vulnerable individual protects herself in a cold world; like physical assault, "to deny the rights of property [is] like cutting off the hands," disabling the body completely.<sup>58</sup>

### III. FEMINISM, FOURIER, AND FREE LOVE

Stanton's endorsement of free love philosophy was a position that followed naturally from her earlier intellectual leanings. The legacy of slavery helped form Stanton's strong antipathy to physical and legal restraints. The metaphor of slavery never lost its power for her, leaving her hypersensitive to the potential for abuse in any human relationship, particularly where there was a disparity in the parties' power. Much of Stanton's respect for, and attention to, the laws of nature resulted from her discovery that they confirmed her belief that humans thrived in freedom and solitude. She often used the metaphor of planetary orbits to describe optimal social arrangements in which individuals whirled around each other at a safe, orderly distance—planets rarely leaving their orbits to attack or enslave other planets.<sup>59</sup> Stanton endorsed bloomers, physical exercise, and fresh air, and the general removal of all

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55. *Id.*; see also Stanton, *supra* note 29, at 64.

56. See *supra* note 3.

57. Stanton, *supra* note 42, at 7. It is interesting to note that in pre-Lockean terminology "childlike" is a derogatory epithet, while for Stanton descriptions of children's behavior are used as evidence of a natural order.

58. *Solitude of Self*, *supra* note 35, at 2.

59. See Stanton, *supra* note 29, at 67.

physical badges of female servitude, stressing the freedom of the body from all burdens and entanglements imposed from without. The *Revolution* in 1869 even endorsed a health reformer's position that no one should regularly sleep with another person, adding that there "is a great physical law that all would do well to obey. Every man, woman and child should have a bed to him or herself."<sup>60</sup>

For Stanton, as for Stephen Pearl Andrews, the physical subjugation of women was a prime indicator of America's diseased state; the indissoluble marriage relation was a carnal horror from "those dark periods when marriage was held by the greatest doctors and priests of the church to be a work of the flesh only."<sup>61</sup> Voluntary motherhood and the right to full and free divorce provided release from an unwanted and often brutal physical bondage. The enlightened nineteenth-century attitude toward the body sought to release it, particularly women's bodies, from the corrosive hold of superiors in "feudal" relations of slavery and orthodox Christian marriage.<sup>62</sup>

It was in this context that Stanton endorsed the doctrine of free love—a concept that meant many things to many people. Ellen DuBois suggests that her 1870 speech on marriage and divorce clearly established Stanton as a partisan of free love.<sup>63</sup> Certainly the works of radicals like Robert Dale Owen and Frances Wright, and later Victoria Woodhull and Annie Besant, influenced her profoundly.<sup>64</sup> She agreed with many of their positions and, above all, learned from them even when she didn't agree. Along with George Sand and Mme de Staël, they were in the small group of nineteenth-century figures who could out-radical her, and she admired their intelligence and daring.

60. 3 *Revolution* 379 (June 17, 1869) (Issue 24). Stanton's thought here coincides with the growth of new religions—Christian Science, spiritualism, faith healing—also centered around physical health and culture. See Clark, *Women and Religion in America, 1870-1920*, in 2 *CHURCH AND STATE IN AMERICA 1870-1920*, at 375-79 (J.F. Wilson ed. 1987).

61. 1 *HISTORY OF WOMAN SUFFRAGE*, *supra* note 6, at 716-17 (1881).

62. See W. LEACH, *TRUE LOVE AND PERFECT UNION: THE FEMINIST REFORM OF SEX AND SOCIETY passim* (1980).

63. *On Labor and Free Love: Two Unpublished Speeches of Elizabeth Cady Stanton*, in 1 *SIGNS* 257, 263 (E. DuBois ed. 1975) [hereinafter *On Labor and Free Love*]. DuBois points out Stanton's commitment to monogamy as well.

64. For references, see *LETTERS*, *supra* note 24, at 61 (On reading Thomas Paine and Frances Wright, she comments, "I am quite surprised to find them such rational and beautiful writers."). See E. STANTON, *supra* note 13, at 353 (on Annie Besant); 3 *Revolution* 212 (Apr. 8, 1869) (Issue 14) (agrees with Robert Dale Owen on the marriage question in his debate with Horace Greeley); Letter from Elizabeth C. Stanton to Lucretia Mott (April 1, 1872), collected in *Stanton Papers*, *supra* note 3 (supporting Victoria Woodhull); see also W. LEACH, *supra* note 62; B. TAYLOR, *EVE AND THE NEW JERUSALEM: SOCIALISM AND FEMINISM IN THE NINETEENTH CENTURY* (1983).

At the same time, her philosophical agreement with the free love position had more to do with setting limits than with exploring sensual experience. In an 1880 letter to her cousin and confidante, Elizabeth Smith Miller, she expressed her private view that she could not support free love where it was equated with promiscuity, but did support it where it meant woman's right to give or withhold her body, bear children or not, and be her own absolute sovereign.<sup>65</sup> In the same letter, she declared her continuing belief in monogamy: for "everything short of this make[s] a mongrel, sensual, discordant progeny . . . [s]oul union should precede and exalt physical union."<sup>66</sup>

Stanton was certainly no prude, and there is evidence that she found women's sexual appetites to be as healthy and appropriate as men's.<sup>67</sup> Nevertheless, she might more accurately be described as a partisan of self-ownership than of free love in its full erotic sense. Her chief expressed interest in championing free love was to limit the powers of the state to intervene in sexual relations, as in other aspects of individuals' lives.<sup>68</sup> Her belief that "we are one and all free lovers at heart" posited a conviction—one she believed many others shared—that, in "a good time coming," men and women would be "a law unto themselves," and the police court, the state legislature, and bureaucrats like "Recorder Hackett" would no longer interfere in relations of the heart; whatever resulted from the liberty to choose would be free love.<sup>69</sup> Stanton drove home the point that "freedom is one and indivisible,"<sup>70</sup> whether intellectual, sexual, religious, or political. Of course, freedom could always be misused, but Stanton felt that the misuse of sexual freedom, like a misuse of economic freedom such as a bad investment, was simply "the unavoidable friction of the machinery."<sup>71</sup>

Despite her reluctance to see free love as sexual license, Stanton was influenced by Victoria Woodhull and was in thorough agreement with her that the question of women's political equality was moot with-

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65. Letter from Elizabeth Stanton to Elizabeth S. Miller (Aug. 11, 1880), collected in Stanton Papers, *supra* note 3.

66. *Id.*

67. E. GRIFFITH, *supra* note 14, at 96-97; STANTON & ANTHONY, *supra* note 4, at 94-98.

68. Other partisans of free love were much more explicit in celebrating erotic pleasure; in *A Speech on the Garden of Eden: Or, Paradise Lost and Found* (1875), Victoria Woodhull imagines an Eden that would have profoundly shaken Biblical scholars. V.C. WOODHULL & T.C. CLAFLIN, *THE HUMAN BODY THE TEMPLE OF GOD* (1890); see also S. DITZION, *MARRIAGE, MORALS, AND SEX IN AMERICA: A HISTORY OF IDEAS* (1953); W. LEACH, *supra* note 62.

69. *On Labor and Free Love*, *supra* note 63, at 266.

70. *Id.* at 267.

71. *Id.*

out similar gains in sexual equality. For both Stanton and Woodhull social and sexual rights, though they might define them differently, were the key to political rights, and civil rights alone could not challenge women's subordination.

Woodhull herself was strongly influenced—some say ghost-written—by Stephen Pearl Andrews, who was himself for many years immersed in Fourierism and the communitarian movement. To describe a chain linking Stanton at one end to Fourier at the other would be misleading. At the same time, communitarianism was an important source of radical thinking during Stanton's formative years and was certainly a part of the universe of ideas out of which she constructed her own theories. What American communitarians culled from Fourier and what feminists picked and chose from communitarian thought, is revealing both about the cultural conditions for the American reception of Fourier and about where liberal feminists' hearts lay on the spectrum of social reform.

Charles Fourier's social philosophy rested on a vision of gratified desire. At a time when most of the civilized world was retreating only slowly from a belief in human nature's native state of sin, Fourier's sympathy for the depth and mutability of human passions—for work, love, and everything in between—produced one of the most bizarre and humane utopian blueprints ever committed to paper. Fourier's critique of existing institutions was damningly thorough, as reflected in his list of the 144 permanent vices, including slavery, the wage labor system, and hurricanes; his solutions were equally detailed, and equally grandiose.<sup>72</sup> Not a Lockean liberal, Fourier believed that individuals were neither malleable nor rational—no *tabula rasa*—but were moved by fundamental instinctual drives or passions.<sup>73</sup> No forerunner of Freud, either, he sought to liberate rather than to repress the passions, to provide an environment in which each could be gratified in its turn.

Fourier attacked existing institutions on two main fronts: work and love. Harshly critical of the tedium of the new "wage slavery," his idea of "Attractive Labor" was at bottom a repudiation of the work-curse placed on Adam. Fourier reasoned that, if humankind was given an appetite for the fruits of labor, it must have been given an appetite for production, as well, and he employed a variety of techniques in his pro-

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72. J. BEECHER, *CHARLES FOURIER: THE VISIONARY AND HIS WORLD* 197 (1986). This is the most comprehensive work on Fourier that will ever be written and is wonderfully readable. See also *THE UTOPIAN VISION OF CHARLES FOURIER* (J. Beecher & R. Bienvenu eds. 1971).

73. J. BEECHER, *supra* note 72, at 220.

posed utopian community, the phalanx, to make labor varied and pleasurable for everyone.<sup>74</sup>

The other main prong of Fourier's attack, the one that most concerns us here, was the assault on the isolated nuclear family. Fourier took the enlightened stance that "the extension of the privileges of women is the fundamental cause of all social progress."<sup>75</sup> Since he saw sexual passion as a quantity to be let loose rather than restrained, Christian marriage seemed a form of "conjugal slavery," one of the repressive authoritarian forms that warped human experience. Marriage laws imposed a false constraint and permanency that ran counter to the human inclination to spontaneity and diversity; like commerce they produced deceitful and inefficient practices.<sup>76</sup> Fourier saw women as the primary victims of the existing social system—"a piece of merchandise to be put up for sale to the highest bidder."<sup>77</sup> He suggested that only the combination of economic and sexual independence—what he called the economic and sexual minimums—which were guaranteed in the *Phalanx*, would restore women's dignity and status and the integrity of sexual relations in general.<sup>78</sup> The isolated household proved an indignity in labor terms as well; according to the communitarian critique, the work of a single household sentenced woman to domestic drudgery, an inefficient, piecemeal approach that could be improved through communalizing domestic labor.

In tune with popular economic principles of his day, Fourier believed that energies became distorted and destructive when regulated and repressed; but, when allowed to run their course, they worked in beneficial harmony for both the individual and society. In fact, "the man who devotes himself most ardently to pleasure becomes eminently useful for the happiness of all."<sup>79</sup> Although Fourier shared with Adam Smith and others a common belief in the invisible hand and the inefficacy of human regulation, his system went far beyond economic liberalism, toward the creation of a new religious philosophy. In reaction against religious orthodoxy, Fourier wholly rejected the notion of origi-

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74. R. BRISBANE, ALBERT BRISBANE: A MENTAL BIOGRAPHY 180 (1893).

75. J. BEECHER, *supra* note 72, at 118.

76. *See id.* ch. 11, at 220-40 & ch. 15, at 297-317.

77. *Id.* at 206.

78. *Id.* at 206-08. Fourier's fascination with the corruption of sexual norms under capitalism led him to muse, for example, on the 49 varieties in the "Hierarchy of Cuckoldom," which included the "Warlike or Swaggering Cuckold," "the Supportive or Straw Man Cuckold," and "the Trumpeter Cuckold." THE UTOPIAN VISION OF CHARLES FOURIER, *supra* note 72, at 183-88.

79. THE UTOPIAN VISION OF CHARLES FOURIER, *supra* note 72, at 43.



nal sin, celebrating a capacity for human happiness and a liberation from long-faced Calvinism, which owed much to Enlightenment thought.<sup>80</sup> But there was a God in Fourier's universe, one who had created humans with a capacity for joy and who had their best interests at heart. It was this God's divine plan Fourier saw behind the working social harmonies he envisioned. In this way, religion and economic liberalism were fused into an optimistic belief in the God-given power of individuals to produce, create, desire, and enjoy—a much more potent mix in a world still tied to religious forms than a theory of economic deregulation standing on its own.<sup>81</sup>

In Fourier's utopia, the communalization of work and love were inextricable, critical elements of human liberation; in fact, Fourier at times hinted that the question of free love was actually "the most important branch of the theory of attraction."<sup>82</sup> Many American students of Fourier, most notably Albert Brisbane, his translator, largely ignored the call for sexual liberation, concentrating instead on the doctrine of Attractive Labor and the promise of a revolution in the wage labor system.<sup>83</sup> Brisbane's patron was Stanton's opponent Horace Greeley, who opened the front page of his newspaper to Brisbane for a daily column on utopian associationism, and who actively rejected Fourier's vision of deregulated marriage. The Greeley-Brisbane associationists were bound to traditional forms of moral authority within the family. Brisbane suggested that, while the nuclear household was badly organized, marriage itself was an eternal type, for it and the family "exist in the moral nature of man."<sup>84</sup> Marriage, like commerce and religion, would be preserved in its true form once institutional distortions were removed, although individualized labor, and not monogamy itself, was the distortion in question for both Brisbane and Greeley.

Brisbane, no fan of organized religion, still hungered for a spiritual system to replace the one lost and felt that the invisible hand was sure to have a god attached to it somewhere. His quest for a comprehensive

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80. *Id.*

81. See J. BEECHER, *supra* note 72, at 224-25.

82. *Id.* at 120.

83. *Id.* at 297 & introduction. Brisbane's writings from the 1840s, the high water mark of Fourierism in the United States, dismiss the "Social or affective Passions" as too "vast and abstruse" a terrain to cover. *Translation from Fourier's Work, Entitled: Théorie des Quatre Mouvemens*, 2 PHALANX 11, 25-26 (Nov. 4, 1843) (two parts) [hereinafter *Translation from Fourier's Work*]. He also admits that, in speaking publicly, he never broached Fourier's critique of traditional marriage. R. BRISBANE, *supra* note 74, at 210.

84. A. BRISBANE, *A CONCISE EXPOSITION OF THE DOCTRINE OF ASSOCIATION* (8th ed. New York 1844)\*.

social system was millennial in its belief that "[t]he kingdom of Heaven' was to come to us in this *terrestrial world* by the establishment of a true Social Order."<sup>85</sup> A perpetual tension between the individual and the group plagued American associationists. But, in Brisbane's vision, it was held in check by the idea that selfless Christian love was the basis of the spiritual attraction that led to association, love that "leads them [associationists] to identify other's interests with their own—to bear one another's burdens—to feel the wrongs of others as their wrongs, and the sufferings of others as their sufferings—and to seek the good of others as they seek their own good."<sup>86</sup>

By contrast Stephen Pearl Andrews, although he was also engaged in a search for the underlying harmonious principle, refused to look to Christianity as a model. His major treatise, *The Science of Society*, proclaimed itself as dealing "in no vague aspirations after 'the good time coming'. . . [it] will propound definite principles which demand to be regarded as having all the validity of scientific truths."<sup>87</sup> Andrews's theology also renounced the Calvinist assumption of sinful human nature, but celebrated free love over monogamy, private property over communal property, and individualism over groupness, in sharp contrast to Brisbane. One commentator calls Andrews's theories "The Theology of Man."<sup>88</sup>

Andrews was torn throughout his life between his attraction to Fourier's system and to the more individualistic associational principles of Josiah Warren, sometimes called the chief architect of libertarianism.<sup>89</sup> Warren's creed was marked by an intense dedication to the rights of the individual. Though an associationist—he and Andrews co-founded a utopian community, Modern Times, on Long Island—Warren believed fervently in private property and in the right of

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85. *Exposition of Views and Principles, Industry, Religion*, 1 PHALANX 4, 8-9 (Oct. 5, 1843) (Issue 1). Some reader of the *Concise Exposition* agreed with Brisbane and left a marginal note in a nineteenth-century hand reading "all this can be realized only in the coming Kingdom of God same is not of this age over which Satan has a Principality." (A. BRISBANE, *supra* note 84, at 19 (of the copy in Firestone Library's Rare Book Room, Princeton University).)

86. *Translation from Fourier's Work*, *supra* note 83, at 14.

87. S.P. ANDREWS, *THE SCIENCE OF SOCIETY* 6 (1851 & reprint 1970) (2 parts).

88. C. Shively, *The Thought of Stephen Pearl Andrews (1812-1886)*, (1960) (unpublished manuscript) (University of Wisconsin, M.A. thesis).

89. Writers on Andrews conflict over whether he made a straight-line progression from Fourier's thought to Warren's, or wavered back and forth. *See id.*; *see also* J. MARTIN, *MEN AGAINST THE STATE: THE EXPOSITORS OF INDIVIDUALIST ANARCHISM IN AMERICA* (3d ed. 1970) (1st ed. 1953).

the individual to be free of any compulsion whatever.<sup>90</sup> Although Warren saw the principle of association as a way of addressing inequalities, the right to dissociate was as important to him as the right to associate.<sup>91</sup> Warren's community was built on the complete separation and autonomy of each individual—"each being 'the law unto himself.'"<sup>92</sup>

Andrews enthusiastically adopted the doctrine of individual sovereignty, interpreting the thrust of Fourier's doctrine of the affections as a guarantee that each could choose his own destiny and, therefore, "be a law unto himself."<sup>93</sup> For Andrews, the freedom of the individual was the logical result of the three great movements in history: the Protestant Reformation, which made the individual conscience paramount; the American Revolution, which established the individual's political sovereignty; and his own movement, "socialism," which would ensure personal sovereignty as well.<sup>94</sup> In its most extreme formulation, Andrews declared, "[t]he essential condition of freedom is disconnection—individualization—disintegration of interests."<sup>95</sup> Ultimately, only the individual can be the judge of his or her own actions, in the political as in the personal sphere:

"I claim individually to be my own nation, I take this opportunity to declare my National Independence, and to notify all other potentates, that they may respect my Sovereignty. I may have to fight to establish my claim, but . . . sooner or later I will come to the recognition of it."<sup>96</sup>

But here, too, Andrews's vision followed Fourier's. Although the individual was the highest unit of social and political life, Andrews did not see public life as millions of "monads" in conflict, but as monads working together in the harmony produced when each obeyed the law

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90. W. REICHERT, *PARTISANS OF FREEDOM: A STUDY OF AMERICAN ANARCHISM* 64-99 (1976).

91. J. MARTIN, *supra* note 89, at 38.

92. Shively, *supra* note 88, at 3 (Andrews' thought cited by J. WARREN, *EQUITABLE COMMERCE* 18 (1849)). Stanton had a strong affinity for this phrase, as well.

93. S.P. ANDREWS, *supra* note 87, at 9-11.

94. See Shively, *supra* note 88, at 13-14; S.P. ANDREWS, *supra* note 87, at 9-10. Note the similarity to Stanton's thought here, although her trinity would probably have been composed of the Reformation, the Revolution, and the woman's movement.

95. C. Shively, *supra* note 88, at 47 (quoting S.P. ANDREWS, *supra* note 87, at 47).

96. *Id.* at 44 (quoting LOVE, MARRIAGE, AND DIVORCE, AND THE SOVEREIGNTY OF THE INDIVIDUAL 62 (S.P. Andrews ed. 1853)). Andrews was not completely without concern for consequences; he claimed that each individual was sovereign as long as he could assume the consequences of his actions—which Andrews labels "costs"—by himself and not turn them into moral or economic externalities, the burden to be born by others. S.P. ANDREWS, *supra* note 87, at 36.

of its own attractions. "Objects bound together contrary to their nature must and will seek to rectify themselves by breaking the bonds that confine them, while those which come together by their own affinities remain quiescent and content."<sup>97</sup> Andrews, then, did not jettison the good of the group entirely; he supported "cooperation" rather than "combination" or "amalgamation," defining cooperation as when "each, in pursuing his own pleasure or benefit, contributes incidentally to the pleasure or benefit of others."<sup>98</sup>

Andrews admits the paradox of "socialism"—that the individual in exercising his own sovereignty may throw the burden of his actions on others—and that the attempt to function as a community may infringe on the individual as well. Sometimes self-sacrifice and the compromise of individual rights is necessary; for this reason, communities may need governments as an interim measure.<sup>99</sup> But still protesting that "dependence and close connections" are the roots of despotism, as disconnection is the root of freedom, he condemned communities like the Shakers and the Rappites as based on "religious submission . . . to despotic rule."<sup>100</sup> Andrews was ultimately willing to abandon society in favor of the individual, on the theory that socialism itself can become a form of tyranny; its form, he admitted, might be antagonistic to the ends of human freedom.<sup>101</sup> This commitment to individualism raised a thorny internal contradiction within Andrew's communitarian scheme and proved a bone of contention between him and more traditional associationists like Brisbane and Greeley.<sup>102</sup>

Despite disagreement over the liberating power of individualism and sexuality in restructuring human relations, Fourier, Warren, Brisbane, and Andrews shared an enthusiastic support for woman's rights and a critique of the isolated household as a work unit. An article in the *Phalanx* in 1843 included "Domestic Service" in the list of "Servitudes To Be Abolished," labeling it a branch of the system of hired labor, which created its own class, one composed largely of house-

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97. S.P. ANDREWS, *supra* note 87, at 15; see also W. REICHERT, *supra* note 90.

98. C. Shively, *supra* note 88, at 49 (quoting S.P. ANDREWS, *supra* note 87, at 48).

99. S.P. ANDREWS, *supra* note 87, at 37-39.

100. *Id.* at 11.

101. *Id.* Andrews does distinguish between the "natural" connection between the mother and child, which is not destructive, and the artificial connections of adults, which are. *Id.* at 37.

102. American socialism in the second half of the nineteenth century was in general more anarchistic, more oriented toward the individual than its European counterpart, which tended more toward a state socialism. Charles Fourier himself attacked the liberal conception of "personal freedom" as it evolved in America as empty and formalistic without the surrounding communitarian structure. J. MARTIN, *supra* note 89, at 3-4.

wives.<sup>103</sup> Thus, these male utopian socialists recognized early that the gendered division of labor characteristic of industrial society created a sex-class—what Brisbane called a “low sphere of action.”<sup>104</sup> Brisbane in his later writing was increasingly explicit about the need to turn households into cooperative arrangements, collectivizing both domestic labor and child care. These arrangements would leave the monogamous family intact and would allow women a large measure of autonomy over their own households, particularly in child-rearing, where mothers could exercise as much or as little direct supervision as they chose, leaving the rest to nurses called “collective mothers.”<sup>105</sup> He believed that only when isolated drudgery was abolished—and similar suggestions were made by the other associationists—would women be able to elevate themselves from a condition of “domestic servitude.”<sup>106</sup> In the minds of communitarians, conditions of material inequality far outstripped conditions of civil equality in importance; Andrews states categorically that, while “woman herself is confiscated,” her right to own property or vote would be of minimal value.<sup>107</sup>

Despite associationists' support for woman's rights and their shared core of reform and feminist sympathies with suffragists, many in the woman's movement viewed the associationists with suspicion and hostility. Associationist ideas only percolated through feminist theory in a partial and roundabout way. Perhaps understandably, when so few in organized suffragism worked at industrial jobs, the issue of “attractive labor” did not draw a crowd; to the extent that women reformers were concerned in this period with labor issues the concern was with working women and expressed itself more in immediate concern over wages, hours, and working conditions. The suffrage literature gave little or no space to labor reforms proposed by Brisbane, Warren, or Andrews.

In addition, the utopian community offered women a mixed bag of restraints and opportunities.<sup>108</sup> Housework collectivities and the

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103. *Dangers Which Threaten the Future*, 2 PHALANX 17 (Nov. 4, 1843) (Issue 2).

104. A. BRISBANE, *THE THEORY OF THE FUNCTIONS OF THE HUMAN PASSIONS* 141 ff. (New York 1856).

105. *Id.* at 142.

106. *Id.* at 143.

107. Andrews, *Love, Marriage, and the Condition of Woman*, in *LOVE, MARRIAGE, AND DIVORCE, AND THE SOVEREIGNTY OF THE INDIVIDUAL* 11, 34 ff. (C. Shively ed. 1975) [hereinafter *LOVE, MARRIAGE, AND DIVORCE*].

108. P. Johnson & S. Wilentz, *The Kingdom of Matthias: Sex and Salvation in Jacksonian New York*, Paper delivered at the Charles Warren Center, Harvard University, (Nov. 1983); Clark, *supra* note 60, at 374-76.

destruction of gendered work categories found in communities like Oneida appealed to many women seeking to escape from the rigid separation of domestic and public work. The first generation of liberal feminists did not glorify domestic work as more home-centered women did, and often complained of the toll such drudgery took on women's health. Stanton, again in the forefront, lashed out at the "immense amount of sentimental nonsense talked about the isolated home . . . for a poor farmer with wife and child in the solitude of a prairie home, a co-operative household with society would be inestimable blessing. Woman's work can never be properly organized in the isolated home."<sup>109</sup> Stanton on several occasions voiced admiration for Fourier's arrangement of communalized domestic chores.<sup>110</sup>

Despite the attractions of communalism, rule over the home was still an important type of power, one exaggerated and idealized by the culture, and was difficult for many women to resist. The destruction of the nuclear household was never an articulated goal of the woman's movement (although Stanton occasionally hinted darkly that it would be changed beyond recognition), and relatively few women in the immediate post-Civil War period even broached the subject of household collectives.<sup>111</sup> Feminists well understood the problem of the isolated household, but did not accept the communitarian solutions that perhaps gave up too much.<sup>112</sup>

In addition, communitarians were tarred with the "free love" brush. Liberalization of divorce laws remained controversial in the suffrage movement until the next century, in part because of the (realistic) fear that association with radical social positions could taint the suffrage cause. Free love posed this problem in spades, and genuinely shocked many ladies' sensibilities to boot. Although careful to distance

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109. LETTERS, *supra* note 24, at 346.

110. See, e.g., E. STANTON, *supra* note 13, at 147. Reversing the worst fears of 1960s parents, Victoria Woodhull suggests that sexual freedom will ultimately lead to cooperative households. Woodhull, *Tried as By Fire; Or, the True and the False, Socially* . . . (1874), in THE VICTORIA WOODHULL READER, *supra* note 30, at 44.

111. On the general subject of domestic collectivization, see D. HAYDEN, THE GRAND DOMESTIC REVOLUTION: A HISTORY OF FEMINIST DESIGNS FOR AMERICAN HOMES, NEIGHBORHOODS, AND CITIES (1981).

112. The second generation in the Oneida community saw a revolt by women pressing for a return of many functions of domestic work and child rearing to the nuclear family as a way of strengthening their power base. See Kern, *Ideology and Reality: Sexuality and Women's Status in the Oneida Community*, 20 RADICAL HIST. REV. 180 (1979). Other than her distaste for housework, it's not clear that Stanton ever felt any strongly communitarian urges; evidence in fact points in the other direction.



themselves from the free lovers, the NWSA platform reflected a willingness to link issues of personal and political freedom together and a commitment to women's autonomy in their personal lives that took much—in part through Stanton's mediation—from the utopian socialist commitment to bodily autonomy.<sup>113</sup> Self-ownership was a hard nut for the rank and file of the NWSA to crack at first, harder for many than suffrage. By the mid-1870s, though, the issues of prostitution, the double standard, marital abuse, and voluntary motherhood were openly discussed and added to the organization's agenda.<sup>114</sup> In no small part due to the influence of Elizabeth Cady Stanton, woman's "natural right" to her body had become a pillar of mainstream liberal feminist thought.

#### IV. THE NATURAL ROOTS OF NATURAL RIGHTS

In a tract published in 1894, Stanton most clearly spelled out her philosophy of natural rights.

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113. The disagreement on that score came from the Boston-based AWSA whom *Woodhull and Claflin's Weekly* accused of deliberately ignoring women's social wrongs to pursue the limited ends of the ballot and financial equality. As the *Weekly* said, "[T]axation without representation" has a very hollow, sepulchral sound." Woodhull's position as an outlier—and reputation as a loose cannon—allowed her to express herself more freely on the subject of the "Boston ladies" than Stanton was able to do in politic fashion, but it is easy to imagine Stanton savoring Woodhull's charge that the Stone-Blackwell group heaped scorn on free lovers and others "who choose to walk in their own way rather than to be led by even the immaculate Athenians." The Bostonians, Woodhull suspected, found "all the acts necessary to reproduction . . . constitutionally and inherently disgusting." Woodhull (this article is unattributed, but I believe she wrote it) goes on to suggest helpfully that perhaps the Boston ladies do not trust themselves and need to have a code of laws restraining "any lustful sheep's-eye glances . . . toward their friends of the masculine gender." 3 *Woodhull & Claflin's Weekly* 10 (Nov. 4, 1871) (Issue 25).

Woodhull's broadside was perhaps a response to a resolution from an earlier meeting of the American Equal Rights Association—or at least to the attitude behind it—repudiating the free love movement, introduced by Henry Blackwell and supported by Mary Livermore and Lucy Stone, all key members of the Boston AWSA. See 2 *HISTORY OF WOMAN SUFFRAGE*, *supra* note 6, at 389. Victoria Woodhull's fitful relations with the NWSA are recounted in E. GRIFFITH, *supra* note 14; J. JOHNSTON, *MRS. SATAN* (1967); STANTON & ANTHONY, *supra* note 4. Woodhull was briefly a hero of the movement following her successful 1871 speech to Congress, and many people adopted the strategy she outlined there. When Woodhull's part in publicizing Henry Ward Beecher's affair with a parishioner and the resulting scandal became known, however, even her partisans felt some pressing need to get in line with the rest of the immaculate Athenians, and she was dropped from the NWSA roster. Woodhull's presence on the platform never signalled any acceptance of her free love views by the rank and file; her "new departure" strategy was largely free of such rhetoric, although the strategy itself—that women already *had* the vote as a matter of prior right and constitutional entitlement through the fourteenth and fifteenth amendments—was grounded in the same theory of natural rights as her philosophy of sexual freedom. See STANTON & ANTHONY, *supra* note 4, at 101-07.

114. W. LEACH, *supra* note 62, at 85 ff; STANTON & ANTHONY, *supra* note 4, at 97.

We argue the rights of persons from their necessities. To breathe, sleep, walk, eat, and drink, are natural rights, necessary to physical development. So the right to think, express one's opinion, mould public sentiment, to choose one's conditions and environments, are necessities for psychical development . . . in the study of human beings, we see their wants and needs, their capacities and powers and from their manifestations, we argue their natural rights.<sup>115</sup>

Commentators have long pinpointed natural rights as a cornerstone of liberal feminist philosophy, using the phrase as shorthand for the set of claims and principles adopted by the Founding Fathers, equality foremost among them.<sup>116</sup> In fact—as the quotation from *Suffrage a Natural Right* shows quite clearly—liberal feminists' expression of natural rights philosophy departs sharply from the male eighteenth-century, revolutionary tradition, although it employs the same vocabulary. Unlike the Founding Fathers, Stanton saw freedom of physical movement, autonomy, as the root natural right. Revolutionary philosophy did not denigrate self-ownership; on the contrary, it was in many ways a given since rights were being sought for white men of clearly independent position, whose status as self-owning was not challenged and not at issue. Given the lack of any significant group of unfree white laborers, even the issue of universal male suffrage in the early nineteenth century did not raise the question of self-ownership in the same way it was raised by later efforts to enfranchise women and black Americans.

The philosophy of universal male suffrage laid down few requirements for citizenship. Nonetheless, a vestigial notion of "citizen" still centered around attributes commonly associated with citizenship that in practice most women and blacks could not share—autonomy, ownership of property, education, participation in the public sphere. In fact, across the spectrum of potential voters from the ex-field slave to the lady Athenians of Boston, common humanity lay in tenantry a human body, and it was around this common chord that much of Stanton's natural rights argument was built.

Women stressed rights as rooted in physical autonomy from the earliest days of the movement, as shown by a comparison of the grievances enumerated in the Declaration of Independence and those in the Declaration of Sentiments penned at the first woman's rights meeting

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115. Stanton, *supra* note 42, at 6-7.

116. See E. DUBOIS, *supra* note 1; A. KRADITOR, *supra* note 1.

at Seneca Falls and modeled on the earlier document.<sup>117</sup> Eighteenth-century American revolutionaries protested "slavery," but it was not the slavery of physical abuse, marital rape, or forced labor.<sup>118</sup> Many of the original Declaration's eighteen counts against George III complained of the colonists' inability to participate in government and public life, or the imposition of harsh measures without participation or representation. Their natural rights tradition posited an overarching set of principles guaranteeing rights that could largely be described as civil rights, insuring consent to government on issues such as representation and taxation, and protection from arbitrary legal and political power. The rights of individuals were indeed paramount; but the personality constructed was largely a civil personality, the needs largely civil needs.

Rights for Stanton did not originate in some conception of the civic individual, but in the inviolate body. The Declaration of Sentiments, in which Stanton played the part of Thomas Jefferson, laid out eighteen grievances of its own; many were directed at the procurement of women's civil rights, such as the right to vote and own property. But others explicitly attacked men's "absolute tyranny," which made woman the slave of her husband and allowed him to imprison and chastise her; which formulated the double standard of sexual conduct so denigrating to women; and which framed the laws of divorce so as to deny effectively women's escape from a bad or violent marriage. Yet another area of discontent, unthinkable in the eighteenth-century original, was that man "has usurped the power of Jehovah himself" in assigning woman a sphere of action, deliberately stunting her education and full development.

Not content simply to rectify woman's place in the public sphere, the founding mothers aimed to reconstruct woman's view of herself and her most intimate relations as a necessary preliminary to revamping her public personality. From Seneca Falls onward, feminist natural rights theory looked to human behavior and needs and the physical patterns of life, to determine what "natural" or God-ordained laws were.<sup>119</sup> It became commonplace in the movement to refer to human

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117. 1 HISTORY OF WOMAN SUFFRAGE, *supra* note 6, at 70-71 (1881).

118. For the claims of American revolutionaries, see B. BAILYN, IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION (1967).

119. The fact that women modeled the Declaration of Sentiments so closely on the Declaration of Independence—its language is virtually identical except for the specifics of the charges themselves—is often cited as evidence that women followed closely in the founding traditions. Imitation is the sincerest form of flattery, etc., but to indict men in exactly the same terms in which they indicted the tyrant George III seems a back-handed compliment, as well as an ac-

rights as based on "natural necessity."<sup>120</sup> Early on Stanton refuted altogether the positivist school of rights thinking when she complained that "Mr. Higginson belongs to the Jeremy Bentham school, that law makes right. I am a disciple of the new philosophy that man's wants make his rights."<sup>121</sup> Natural rights philosophy as she constructed it did indeed spring from, and was closely identified with, physical needs. Although as such it resulted in meaningful claims for civil rights, Stanton defined even civil rights as serving ultimately to protect the individual's safety, as well.

In Stanton's view, all rights sprang from self-ownership. She was convinced that, for both the woman and the slave, civil rights such as the rights to vote and to own property would be worthless until "the great idea of his right to himself, of his personal dignity . . . take[s] possession of his soul."<sup>122</sup> As Woodhull claimed, "[A] statement of woman's rights which ignores the right of self-ownership as the first of all rights is insufficient to meet the demand."<sup>123</sup> The rights of the individual and the citizen had the same origin, and their public and private interests demanded the same protection—"Individual freedom and self-government, citizenship and suffrage, are synonymous."<sup>124</sup> Stanton fused the personal and the political in a way that expanded the concept and scope of citizenship considerably, at the same time stressing personal growth and freedom as the basis and end of those rights. The Founders would have agreed with her that the rights of governments flow from the rights of individuals, but would not have gone on to add that the individual has the duty to resist whatever restricts his personal growth in preference to all "constitutions, customs, creeds, and

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knowledge of the power of the argument.

120. Lockwood, *The Right of Women to Vote, Guaranteed by the Constitution* (1871), reprinted in 2 Woodhull & Claflin's Weekly 1 (Feb. 25, 1871) (Issue 15). For similar language, see also address by Stanton in *Proceedings of the First Anniversary of the American Equal Rights Association* 8 (New York 1867) [hereinafter *Proceedings*] (suffrage as necessary to protection of person and property "as are air and motion to life"; women and blacks are not "outside all human laws and necessities").

121. Letter from Elizabeth C. Stanton to Susan B. Anthony (July 4, 1858), collected in Stanton Papers, *supra* note 3.

122. Letter from Elizabeth C. Stanton to Susan B. Anthony (July 20, 1857), collected in Stanton Papers, *supra* note 3; Letter from Elizabeth C. Stanton to Lucy Stone (Nov. 24, 1856), collected in Stanton Papers, *supra* note 3.

123. Resolutions from suffrage meeting of 1871, cited in Woodhull, *A Speech on the Principles of Social Freedom . . . November 20, 1871*, in THE VICTORIA WOODHULL READER 5 (M.B. Stern ed. 1974). It was also resolved that "the woman's movement means no less the complete social as well as the political enfranchisement of mankind." *Id.*

124. Stanton, *supra* note 42, at 8.

codes."<sup>125</sup>

At the same time, predicating rights on the most elemental needs also posits a kind of equitable allotment, or at least heads off substantial inequity. In her address to the constitutional convention of New York in 1867, Stanton claims for each individual the "right to everything on earth and air, on land and sea . . . to all that is needful for body and soul, and there is no limit to the exercise of your rights but in the infringement of the rights of another."<sup>126</sup> Here, and throughout her work, Stanton shows the influence of liberal thought in her belief that the widest scope of freedom to consume, act, and enjoy was possible for all individuals and that no conflicts between the needs of individuals would arise.<sup>127</sup> "Infringement" in Stanton's terms was the classic legal punch in the nose and could not come about through the simple fact of needing; shaped by the early liberal optimism that unfettered human energy could produce limitless goods, the problem of redistribution, or the conflict of rights between individuals, rarely arose in Stanton's thinking.

This definition of natural rights as rooted in the safety and well-being of the body makes sense of the idea of civil rights as defensive weapons. The ballot signified "bread, education, self-protection, self-reliance and self-respect; to the wife it means the control of her own person, property, and earnings."<sup>128</sup> Such a definition also theoretically did away with the idea of qualified suffrage, life itself and the instinct of self-preservation being the only qualifications. Isabella Beecher Hooker, in a speech to Congress, eloquently claimed her right to vote: "I may have been born with less capacity than the least among you, with small chance of growing to your mental stature, or reaching your standard of moral elevation; but I have a perfect right to sit in your midst, pigmy that I may be . . ."<sup>129</sup> Women demanded that "the

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125. Stanton, 1 *Revolution* 361 (June 11, 1868) (Issue 23).

126. Stanton, *Address in Favor of Universal Suffrage* 13 (Albany 1867)\*.

127. For example, see E. STANTON, *supra* note 13, at 231; STANTON & ANTHONY, *supra* note 4, at 129.

128. Resolution passed, recorded in *Proceedings*, *supra* note 120, at 52.

129. *Memorial of Elizabeth Cady Stanton . . . to the Congress of the United States* (1872)\*. Although this position represented the moral high ground, in practice liberals were wishy-washy on suffrage qualifications. Women often reiterated the argument, a staple of Sumner's theory, that unacceptable qualifications could be distinguished by their immutability; i.e., youth and insanity could be overcome, but sex and race never could be, leaving the door open to some restrictions. In fact, Stanton went back and forth on the question of educational qualifications for suffrage and often expressed her feelings about ignorant foreign-born rabble by supporting such a conditional suffrage. See *Educated Suffrage*, *The Independent* (Feb. 14, 1895), collected in *Stanton Papers*,

qualifications which a State may require of electors must be such as can be acquired by all persons by the same means."<sup>130</sup>

The nineteenth-century, liberal, feminist, natural rights tradition transfigured its eighteenth-century parent. The earlier tradition rooted its theory of natural rights in the civil self; focusing political demands on the right to vote, represent, legislate—to be independent in the political sphere—automatically defined rights in such a way as to exclude women who did not inhabit that world. In feminist eyes, natural rights derived from natural laws and from the physical conditions of life common to pygmies and giants alike.<sup>131</sup> Those who could claim to own nothing but their souls were rich in natural rights.

#### V. THE ANTINOMIAN STATE

Elizabeth Cady Stanton's extreme individualist orientation made it very difficult for her at any stage in her career to develop a substantive theory of the state, or a theory of class action within the state. Her religious and political antinomianism were inseparable, as expressed by one of her favorite phrases, "a law unto herself." Both depended on the ideal of the individual consulting his or her own conscience in rigorous Protestant, republican fashion for the final ruling on the law.<sup>132</sup> Stanton was hostile to law within the family setting, but concern for the individual's privacy was only one part of her disaffection with legal means. Stanton felt strongly that, in any setting, public or private, the imposition of external norms was doomed to fail, a belief she shared with Fourier and his followers.

One commentator, writing in the *Revolution* about marriage, suggests that "the morality which consists in doing no harm . . . can be enforced by external restraints, [but] is essentially different from the morality which consists in loving God, and which is acquired by faith

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*supra* note 5 (Reel 2). On the basis of Stanton's original claims to self-ownership, however, it is difficult to make the argument that *any* sentient being of any age or condition can be denied the vote; and, in fact, the basis of the regulatory authority over children and other dependents have sometimes proven difficult or impossible for courts to uphold in the years since.

130. Woodhull, *A Lecture on Constitutional Equality*, in THE VICTORIA WOODHULL READER, *supra* note 30, at 23 (given in New York in 1871).

131. The revolutionary natural rights tradition itself was a departure from the medieval natural laws tradition as taught by Thomas Aquinas and others, which looked to the habits of physical life to determine natural laws.

132. Stanton used the term *republican* often and approvingly; republican as she defined it had nothing to do with common good, but was synonymous with "self-governing." As such, she felt she was moving the country in the direction of a true republic by endorsing individualism and would have been horrified at the recent academic construction of republicanism.



and prayer alone."<sup>133</sup> These two categories approximated Stanton's division of tasks performed by the state and by the individual; the state could be entrusted to do a small number of things in a limited way under strict scrutiny, usually negative rather than positive action, while all that was creative, vital, loving, constructive could only be undertaken through the free will of the individual. Ultimately, the state (as represented by the pedestrian bureaucrat, Recorder Hackett) would wither away, and humans would be fully self-regulating.<sup>134</sup>

Such skepticism about positive law's capacity had several sources, and it was particularly acute in liberal reform circles. Divine authority still always trumped human authority. Conservatives like Greeley were willing to dishonor human law if it conflicted with the overriding authority of God's laws on the permanence of marriage, while Stanton argued divine jurisdiction to refute the legislature's authority to enact restrictive marriage laws. A variation on the theme of divine over human authority was the ease with which reformers, particularly those influenced by abolitionism, interpreted the exercise of human authority as illegitimate and corrupt.<sup>135</sup> Finally, the influence of Fourierism, bolstered with arguments from liberal economic theory, combined with liberal Protestantism's continuing strong belief in natural laws of divine origin to create a widespread confidence in an all-encompassing system, not the invention of mankind, but "deduced from and based upon universal Principles, [which] is the application to the social relations of Mankind of the laws of Order and Unity, which govern the Universe."<sup>136</sup> Stanton was a true believer in a universal set of laws, "immutable in the moral as in the material world" that governed individuals by themselves and also in their social relations; one infringement could "breed disorder and confusion in the whole social system."<sup>137</sup> One of the most important tenets of the day, with implications for public attitudes toward the legal system, was that the activation of this self-regu-

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133. 3 *Revolution* 117 (Feb. 25, 1869) (Issue 8).

134. *On Labor and Free Love*, *supra* note 63, at 266.

135. For the antebellum roots of this attitude in abolitionism, see L. PERRY, *RADICAL ABOLITIONISM: ANARCHY AND THE GOVERNMENT OF GOD IN ANTI SLAVERY THOUGHT* (1973).

136. A. BRISBANE, *supra* note 84, at 3; see also Bestor, *Albert Brisbane: Propagandist for Socialism in the 1840s*, 28 *N. Y. HIST.* 128 (1949). Shively, *Introduction to LOVE, MARRIAGE, AND DIVORCE*, *supra* note 107. Victoria Woodhull urges faith in the "self-regulating efficacy of freedom." Woodhull, *Principles of Social Freedom*, in *THE VICTORIA WOODHULL READER*, *supra* note 30, at 40.

137. Stanton, *The Pleasures of Age: An Address Delivered by Elizabeth Cady Stanton on Her Seventieth Birthday* (n.p., n.d.)\*; Stanton, *supra* note 126, at 13. Needless to say, Recorder Hackett was not the author of these laws.

lating system "proceeded by the liberation of inner resources rather than the imposition of external form."<sup>138</sup> In their universal belief in a grand social order regulated by natural laws lately come from the presence of God, most reformers repudiated the idea that human laws, acting from without, could mold or coerce human behavior. Andrews spoke for many in his assertion that marriage is a "contrivance [ ] to regulate nature instead of studying her laws," and that "order, combining with freedom and ultimating in harmony, is to be the work of science, and not of arbitrary legislation and criminal codes."<sup>139</sup> Stanton stressed that the task was not to rule others, but the much more difficult one of ruling oneself, and that it was the duty of women to own and control *themselves* through government, not others.<sup>140</sup>

Such attitudes toward regulation proved a shifting foundation on which to build any theory of the state. In their dislike of the state, liberal feminists had many plans for hobbling it. Its limited functions were defined primarily as the protection of the weak and the protection of personal rights; they were emphatic that any enacted law that contradicted those purposes was not binding and was unconstitutional as well.<sup>141</sup>

Paradoxically, though, the NWSA had based its agenda on a program of national suffrage, rather than on a state by state basis. Stanton's fear and dislike of the state were greater than most of her colleagues in the NWSA. Perhaps the more common attitude toward the state was represented by Matilda Gage, who believed that the centralization of government in the United States had marked an increase, rather than a decrease in liberty, and found the idea that states had jurisdiction to define the individual's natural rights to be dangerous.<sup>142</sup>

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138. H. FEINSTEIN, *BECOMING WILLIAM JAMES* 83 (1984).

139. LOVE, MARRIAGE, AND DIVORCE, *supra* note 107, at 49. Many of these attitudes sound more like pre-Civil War anti-institutionalism of the kind George Fredrickson writes about in *THE INNER CIVIL WAR: NORTHERN INTELLECTUALS AND THE CRISIS OF THE UNION* (1968) than like his description of post-war life. The generation of reformers I am concerned with here came of intellectual age in antebellum America and never lost the turn of mind they acquired then.

140. Stanton, *supra* note 5; see also 1 Revolution 69 (Feb. 5, 1868) (Issue 5).

141. Woodhull, *supra* note 30, at 8; see also 2 Revolution 169 (Sept. 17, 1868) (Issue 11) (suggesting that the proper role of government is not to protect the weak, but to provide them with the means whereby they can protect themselves). In 1894, Stanton made a strong push for leaving family regulation to the state, so that "we can judge of the working of different laws under varying circumstances, and thus learn their comparative merits." Actually it was an attempt to stave off a proposed national anti-divorce bill then riding a wave of popularity. E. STANTON, *supra* note 13, at 228.

142. M. GAGE, *ARGUMENTS ON BEHALF OF . . . A SIXTEENTH AMENDMENT . . . 1880*, at 10 (n.d.)\*. Gage suggests here that questions such as placement of cemeteries and bridges should be

Theory aside, Stanton and Gage had a political movement to run and operated on the strategic hope that centralized government could protect women's rights. Both women see-sawed between anti-statism and hope for a woman suffrage amendment, Stanton coming down more often on the anti-statist side.

One area where Stanton fought in a sense to augment the jurisdiction of the state was family relations. In destroying the basis of private authority, Stanton thrust sexual and family matters into the public sphere, one which included both men and women. She was emphatic that cases of infanticide and sexual misconduct brought against women should be tried by a jury of female peers, and that abuse within the family should be brought out from behind the shield of the single-family household and into open court. Dwelling on the details of one pathetic infanticide—seduction, unwed pregnancy, desertion, prolonged puerperal fever—Stanton over and over presented the details of women's physical lives to public forums, as she also did repeatedly with her lyceum lectures on marriage, divorce, and on motherhood as well.<sup>143</sup> Oppression flourished within an atmosphere of secrecy, privacy, and closed doors; the body itself and all its workings must be revealed and removed from the confining influences of the church and family.<sup>144</sup>

At the same time, Stanton mapped out the sphere of personal life in public, only to label it private, and sought to enforce privacy rights for individual behavior while destroying the privacy of the home. Self-ownership's essential characteristic was that the individual served as the sole judge of his own needs—a "man's wants make his rights."<sup>145</sup> Clearly rights based on such a criterion—one that exalts the subjective judgment of the wanter over any external decision making process—sets a standard that is unreviewable by any outsider or institutional authority. Because so much of politics for Stanton consisted of issues of individual autonomy, huge areas of decisionmaking fell into the preserve of individual sovereignty. Stanton sought to label much behavior "private" or "personal" in a way that defined it as outside the regulatory sphere and only within the competence of the individual.

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left solely to local powers; in such matters, women "believe in the diffusion of the power of government" and seek a return of control to local institutions. *Id.*

143. 2 *Revolution* 393 (Dec. 24, 1868) (Issue 25); 2 *Revolution* 358, 360 (Dec. 10, 1868) (Issue 23).

144. See W. LEACH, *supra* note 62; see also J. COWAN, *SCIENCE OF A NEW LIFE* (1874 & reprint 1970).

145. Letter from Elizabeth C. Stanton to Susan B. Anthony (July 14, 1858), collected in *Stanton Papers*, *supra* note 3.

Such a subjective standard—literally “my body, my right”—is open to unilateral change at any time, with no basis for discussion or dispute.<sup>146</sup>

The dualism of radical associationism stayed with Stanton all her life—no half measures, one was white or black, slave or free, a slave of government or an individual sovereign. Because her final question was always whether the individual was paramount, it was very difficult for Stanton to develop any workable theory of a public interest or any positive theory of the state.<sup>147</sup> Stanton may not have fully foreseen the consequences of her theory of the dwarf state, nor have adequately considered the question of whether in fact a central government was a necessary partner in ensuring women's equality.

The vision of citizenship and suffrage Stanton put forward was impoverished in the same way as her view of the state. Stanton's articulated definition of the ballot was extremely narrow, almost never going beyond its protective function. “[T]he right to protect one's person and property; to govern one's self; to have a voice in the law and rulers; to enjoy all the advantages and opportunities of which one is capable. This is citizenship in a republic. The natural right to life, liberty, and happiness.”<sup>148</sup> This position is in many ways a retreat from antebellum feminism, which fully subscribed to political rights as enhancing the development of the individual, but tied them also to the performance of duties and the provision of goods and services for all. The vote for antebellum feminists was tied into a web of relationships often described in the phrase “rights and duties.” Stanton categorically rejected conditioning one's rights on one's duties, or on anything but self-ownership. She was not without a broader vision of the potential for human development; in fact, this was her creed and her religion. But her individualistic stance left little room for a positive view of government or for its

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146. In the arguments in front of the Supreme Court in the *Webster* abortion-rights case in April 1989, the attorney for the plaintiffs was quoted as saying, “[T]he conclusion . . . is when you have an issue so divisive and so emotional and so personal and so intimate, that it must be left as a fundamental right to an individual to make that choice.” N.Y. Times, Apr. 27, 1989, at 1, col. 6. This conclusion is striking both because it is such a complete reversal of eighteenth-century thought, where a decision “so emotional and so personal” would have been described as “so moral and so religious” and, exactly for that reason, subject to regulation of some kind; and because it seems a direct descendant of the argument Stanton set up initially, that sexual and family matters were “personal” and not moral, and therefore impervious to public scrutiny.

147. Stanton calls the idea that the interests of society are paramount to those of the individual the “Roman idea, the Pagan idea, that the individual was made for the State.” E. STANTON, *supra* note 13, at 231.

148. Stanton, *Women Do Not Wish to Vote*, 2 NAT'L BULL. (Apr. 1894) (Issue 3), collected in Stanton Papers, *supra* note 5 (Reel 2).

potential to act as a force for good in people's lives—or for politics as an institution in which people come together to govern themselves jointly.

Nor did it allow for any real theory of economic class, or class action within the state.<sup>149</sup> Far more than her peers, Stanton understood women as a sex-class, joined in oppression, but any real sense of economic class eluded her; her sympathy for slaves and workers was always strained.<sup>150</sup> All her life, Stanton retained a conviction formed in the America of the Second Great Awakening, that civil perfection is gained in the perfection of individuals and their rights; denying arguments from "the rights of races," she demanded an "end to all this talk of class legislation, bury the negro in the citizen."<sup>151</sup> The identification of a common interest perhaps necessary for class consciousness was lacking in Stanton, who believed that "[n]o mortal has ever been, no mortal will ever be like the soul just launched on the sea of life."<sup>152</sup> The liberal Protestant notion of the individual, the primacy of individual conscience, worked against the possibility of mutual interests as well. Indeed, class could be an oppressive structure, one that blurred the outlines of personhood in the group, or dictated wants and needs. Stanton's class theory failed in part because she had no conception of potential conflict between the individual and the state. Fourier's universal harmonies worked to assure that the highest good of society and the individual always lay in the same direction: that if you "take care of individual rights the nation will take care of itself."<sup>153</sup> Perhaps in this

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149. Toward the very end of her life, Stanton began to come to terms with some of the limitations of her philosophy, to appreciate the possibilities of some type of socialism, and to speak more realistically about the reality of class conflict in an industrial society. See, e.g., Stanton, *supra* note 42, at 3-4. In another letter, undated but written from Basingstoke, England, sometime in the 1890s, she writes in an uncharacteristic moment of doubt, "My mind is not clear yet on the subject of paternal government, whether we have too much or too little." Letter from Elizabeth C. Stanton to Elizabeth S. Miller (n.d.), collected in Stanton Papers, *supra* note 3.

150. Gail Parker, in the *Introduction* to E. STANTON, *supra* note 13, at xviii (reprint 1971), says

I cannot help but wish that she had manifested a less invidious sisterly love for her sex and that her championship of the slaves, and later of the working classes, had been marked by a genuine feeling of involvement with their fate, instead of a vicarious pleasure in being able to share in their rebellious feelings. Elizabeth Stanton was never going to be caught depending on someone else's revolution.

*Id.*

151. For the influence of revivalism on Stanton, see A. ROSSI, *Introduction* to THE FEMINIST PAPERS pt. II (1974); 3 *Revolution* 25 (Jan. 14, 1869) (Issue 2).

152. *Solitude of Self*, *supra* note 35, at 2.

153. *On Labor and Free Love*, *supra* note 63, at 2; STANTON & ANTHONY, *supra* note 4, at 129; E. STANTON, *supra* note 13, at 231.

seeming harmony the chance to transform the idea of natural rights as rooted in physical being into economic rights was lost.

### CONCLUSION

Stanton's political philosophy and view of natural rights had a great influence on feminism. And feminism, as well as women's entry into the public sphere, helped to transform liberalism. In the eighteenth century, the liberal individual (male) was defined by owning property, voting, participating in the public sphere. By the end of the nineteenth, there was a consensus, if not on the details, at least on the fact that the liberal individual, male or female, was autonomous in personal life, as well and that rights extended to privacy of the body, freedom from physical coercion.<sup>154</sup> Commentators on Stanton have suggested that, over the span of her career, she moved away from an early interest in legal and political reform, switching in the late 1860s and 1870s to more intimate concerns of marriage, sexuality, maternity, and finally, in her last twenty years, to religion and the church.<sup>155</sup> Although her interest in all these questions was lifelong, her focus on sexual and family concerns certainly intensified during the 1870s. At the core of her transitions, though, is continuity and not change. In mainstream political debate the explicit natural rights language of bodily ownership peaked in the 1870s, losing its force after the end of Reconstruction.

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154. Of course the causal question, which I have begged here, is how much liberalism changed as a result of any of the campaigns of organized feminism, or as a result of the entry of women into the political sphere, an established fact by the later nineteenth century, E. STANTON, *supra* note 13, at 265, or as a result of the other great movement for freedom of the body, anti-slavery and Reconstruction; or as a result of gendered division of labor whereby women needed rights in order to fulfill sole duties within the home (although this seems not to explain the emphasis on bodily autonomy). But see M. GROSSBERG, *supra* note 11 (or as a result of the body, anti-slavery and Reconstruction); S. LEBSECK, *THE FREE WOMEN OF PETERSBURG: STATUS AND CULTURE IN A SOUTHERN TOWN, 1784-1860* (1984); Chused, *Married Women's Property Law, 1800-1850*, 71 GEO. L.J. 1359 (1983). Rejecting monocausal history, I think all were important and am not focusing on liberal political theory to suggest that other developments were not. At the same time I do think, unlike some commentators, that organized liberal feminism was highly visible and influential in defining the questions in post-Civil War America; the tremendous publicity given to them in newspapers, their incessant lecture tours, their constant stream of publications, all helped to redefine the liberal individual.

155. See M. Fitzgerald, *Religion in the Life and Thought of Elizabeth Cady Stanton* chs. 4 & 5 (1985) (unpublished manuscript) (University of Wisconsin, M.A. thesis); STANTON & ANTHONY, *supra* note 4, at 94; see also W. LEACH, *supra* note 62, at 143 (who also suggests that after the Civil War Stanton's preoccupation with individualism gave way to an attempt to "combine individualism with structure, organization, and centralization"). Stanton does indicate that she knows these possibilities exist in her last years, but I question the extent to which she ever effectively moved away from individualism in her political theory.

But the language of autonomy lived on in Stanton's work, and lay at the core both of her work on the domestic question and the religion question. For the whole of her career from first to last, the concept of self-ownership was at the root of Stanton's political thought; its protection the ultimate goal of any form of government or social arrangement.

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