

Elizabeth Cady Stanton And The Feminist Foundations Of Family Law

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Recommended Citation

Block, Mary (2017) "Elizabeth Cady Stanton And The Feminist Foundations Of Family Law," *Civil War Book Review*. Vol. 19 : Iss. 3 .

DOI: 10.31390/cwbr.19.3.18

Available at: <https://repository.lsu.edu/cwbr/vol19/iss3/13>

Review

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Summer 2017

Thomas, Tracy A *Elizabeth Cady Stanton and the Feminist Foundations of Family Law*. NYU Press, \$55.00 ISBN 9780814783047

Family Law's Radical Origins

Elizabeth Cady Stanton was a woman far ahead of her time with regard to her advocacy for women's rights within the family. Tracy A. Thomas, Professor of family law and a feminist legal historian, argues that Stanton believed a radical challenge to family law was vital to the woman's rights agenda. Stanton asserted that four institutions: government, church, family, and industry acted symbiotically to keep women in a subordinate status. The public and private spheres were not separate, but intertwined and they operated in myriad ways to discriminate and hinder women and stifle equality. Thomas states that Stanton and many other nineteenth-century women's rights advocates had a fluid notion of feminism, one that embraced both the sameness and differences between men and women. Women were equal not inferior to men, but women were different because they could procreate while men could not so in addition to the vote, Stanton also promoted rights that extended to women as mothers. The greatest hurdle to achieving equal rights for women was that too many people confounded differences with inferiority. The rest of the populace was apathetic. The solution to the problem of women's inequality was complete formal legal equality. The question was how best to achieve it.

Thomas agrees with those scholars who claim the effort to pass the married women's property laws rather than the campaign to abolish slavery was the start of the women's rights movement. Stanton herself began her activism in the movement advocating for married women's property rights in New York. As a propertied married woman herself, Stanton lobbied the New York legislature to pass a law to protect married women's rights to their own property. New York got the law in 1848, but Stanton criticized its neglect to include earnings protection and its failure to recognize jointly owned property. She also insisted

that propertied married women deserved the right to vote. Later, Stanton severely criticized judges who narrowly construed the law and who tended to favor traditional doctrines instead.

Scholars have long demeaned Stanton and many of her associates in the early women's rights movement as racist and class biased. Thomas acknowledges that Stanton did universalize her claims for all women, but she notes that Stanton would counter that the laws that discriminated against women universalized them as well. The legal and political significance of universalizing women in the fight to eliminate or reform discriminatory laws was to mitigate their destructive effects on all women. All women suffered under the same social, political, legal, and religious disabilities and all women would reap the rewards from the utter obliteration of deleterious systems and institutions. Further, Thomas observed that Stanton supported her long-time friend Frederick Douglass's marriage to Helen Pitts, a white woman. It was not the first time Stanton had encouraged interracial marriage. She had attended legislative hearings in Boston to support the repeal of miscegenation laws.

Stanton faced criticism for her positions regarding the family from anti-feminists and conservative feminists in her own day. Reforming the family's patriarchal structure and the laws that controlled it in Stanton's mind began with the complete elimination of coverture, a feudal remnant of the common law, that she saw as the primary mechanism of married women's oppression. In its place, Stanton offered a contractual theory of marriage that included what today is called "no-fault" divorce and that saw men and women as equal partners in the union. Women should not be defined by their place in a family but by their unique individuality, intellect, and capacity for work. Stanton failed to achieve this new kind of marriage as most people opted for the more traditional structure, a failure she blamed on men's efforts to keep women in a subordinate status. Stanton herself never divorced her husband even though she was in a loveless marriage to a man who neither supported his wife's activism nor financially, or emotionally, supported his own family. Indeed, she often used the fact that she had been married for several decades to highlight her familiarity with the institution of marriage and its discriminations. She continued to attack coverture for the rest of her life and even called upon the Supreme Court to declare marriage laws in violation of the Thirteenth Amendment.

Stanton's feminist attack on the oppressive structures of marriage was radical in that she framed women's inequality as systemic victimization.

Marriage laws sexualized women and created a sanctuary for male lust through protection of the husband's marital right, a vestige of coverture that shielded men who raped their wives. At the Tenth Annual Convention, Stanton said marriage was legalized prostitution, a claim intended to shock her audience. Women give up everything when they wed while men gave up nothing. Marriage was analogous to slavery in many ways. Man was the master and woman had to obey him. Upon marriage woman's identity became submerged into that of her husband and she literally no longer existed in the eyes of the law. Stanton lauded Lucy Stone who kept her maiden name after she wed Henry Blackwell. Stanton herself demanded she be called Elizabeth Cady Stanton rather than Mrs. Henry Stanton to express her independent identity. This was less radical than Stone, but still radical for her time.

Stanton held many of the same positions as those in the "free love" movement, though she denied being an adherent. She did overtly advocate for voluntary motherhood because she believed women had a legal right to refuse sex with her husband. She used the furor over Mormon polygyny to further criticize the institution of marriage. Stanton was a staunch supporter of maternal rights to children. Lauding the new doctrines of "best interest of the child" and "tender years," which gave some custody rights to some mothers, she at the same time, criticized them for relying on gender stereotypes. Her personal views on birth control are not clear. She mentioned abortion only once in all her extant writings. In a letter to the Seventh Annual Convention in 1856, Stanton claimed it was the consequence of sexual violence and involuntary motherhood. She did not campaign with physicians who sought to criminalize abortion and she expressed opposition to any and all laws that denied women sovereignty over themselves.

At the end of the nineteenth century, a group of young, conservative women's suffragists took control of the movement and kicked Stanton out. Undaunted, Stanton took to the lecture circuit where she got paid to speak to large groups of people who were interested in her radicalism. She did well on tour and earned enough money to put all her children through college. In many of her talks Stanton called for education reform. She wanted girls trained to be independent and boys socialized without male privilege. Educating children at an early age to express their intelligence, creativity, and independence was the path to radically reforming society.

By the end of Stanton's life, family law had changed, but not as radically as Stanton had desired. It would not be until the last quarter of the twentieth century and the second women's rights movement that nearly all of her recommendations came to fruition. She truly was a woman far ahead of her time. Tracy Thomas has thoroughly documented Stanton's radicalism on matters of marriage and the family and has shown just how significantly one woman's feminism affected family law for the betterment of women.

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