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# The Rights of Man and Woman in Post-Revolutionary America

Rosemarie Zagarri

ON July 4, 1804, a group of young men in Harrisburg, Pennsylvania, offered a series of toasts to commemorate the nation's Independence. Among their testimonials, they offered one to a cherished ideal: "[To] the rights of men, and the rights of women—. May the former never be infringed, nor the latter curtailed."<sup>1</sup> This apparently simple statement provides a tantalizing clue to the complex relationship between politics and gender in the early national era. In one sense, it points to an important change in women's status. The men acknowledged, even celebrated, an innovative and controversial idea: women along with men should be regarded as the bearers of rights. In the wake of the American Revolution and especially after the publication of Mary Wollstonecraft's *Vindication of the Rights of Woman* (1792), women gained a dignity and an esteem that had hitherto been denied them—though the exact nature of their rights was, as we shall see, a matter still to be determined.

The revelers, however, did something more. They made a pointed distinction between the rights of males and females, a distinction based on sex. The danger to men's rights came from an infringement on their liberties, especially their political liberties, whereas the threat to women's rights came from a curtailment of their privileges, which were nonpolitical in nature. Put simply, men's rights involved liberties that allowed choices, while women's rights consisted of benefits that imposed duties. Rather than an abstract, universal proposition, rights became a gendered variable.

The differentiation of rights on the basis of sex reveals a crucial, but previously overlooked, bifurcation in the evolution of natural rights ideology in the early years of the republic. At the same time Americans were debating the "rights of man," they conducted a parallel discussion about the "rights of woman." The latter debate, however, did not occur within official political institutions, nor was it principally concerned with political rights. To reconstruct this debate, we must broaden our understanding of politics and

Rosemarie Zagarri is professor of history at George Mason University. She would like to thank Ruth Bloch, Steve Bullock, Jack Censer, Laura Kalman, Jan Lewis, Michael McGerr, Michael McGiffert, April Masten, Mary Beth Norton, Jack Rakove, and David Waldstreicher for comments and suggestions on earlier versions of this article.

<sup>1</sup> "July 4th Toasts," *Carlisle [Pa.] Gazette*, July 20, 1804. Toasts to the "Rights of Women" were not uncommon in this period. See David Waldstreicher, *In the Midst of Perpetual Fetes: The Making of American Nationalism, 1776–1820* (Chapel Hill, 1997), 166–71, 232–41.

employ sources not usually considered in the writing of traditional political history. Ladies' magazines, literary periodicals, and prescriptive literature for women provide a glimpse into a world of ideas that had not yet surfaced in the formal political realm.<sup>2</sup>

In addition, scholarly disciplines outside of history can help shape our interpretative framework. In particular, the works of political theorists such as Richard Tuck, John Finnis, Knud Haakonssen, and Mary Ann Glendon provide insights into the assumptions behind theories of natural rights, the existence of various natural rights traditions, and the power of "rights talk" in American society.<sup>3</sup> Feminist theorists such as Carole Pateman, Joan B. Landes, and Nancy J. Hirschmann offer another point of departure. In a controversial set of writings, these scholars argue that the creation of the modern liberal state has necessarily presumed the subordination of women to men. In theory as well as practice, democratic nations from the time of John Locke through the French Revolution to the present have depended for their existence, they say, on a "structural sexism" that excludes women from full participation in the polity.<sup>4</sup>

The historical evidence on women's rights talk in the United States from 1792 to 1825 allows us to test these assertions. In the post-Revolutionary era, Americans attempted to reconcile two conflicting principles: the equality of the sexes and the subordination of women to men. In the process, they came to define the rights of women in contrast to the rights of men. Yet they did not attribute different rights to each sex arbitrarily, merely on the basis

<sup>2</sup> For other works that have pioneered the broader exploration of the role of women in politics see Paula Baker, "The Domestication of Politics: Women and American Political Society, 1780–1920," *American Historical Review*, 89 (1984), 620–47; Jan Lewis, "The Republican Wife: Virtue and Seduction in the Early Republic," *William and Mary Quarterly*, 3d Ser., 64 (1987), 689–721; Ruth H. Bloch, "The Gendered Meanings of Virtue in Revolutionary America," *Signs: Journal of Women in Culture and Society*, 13 (1987), 37–58; and Mary P. Ryan, *Women in Public: Between Banners and Ballots, 1825–1880* (Baltimore, 1990).

<sup>3</sup> Glendon, *Rights Talk: The Impoverishment of Political Discourse* (New York, 1991); Tuck, *Natural Rights Theories: Their Origin and Development* (Cambridge, 1979); Finnis, *Natural Law and Natural Rights* (Oxford, 1980); Haakonssen, "From Natural Law to the Rights of Man: A European Perspective on American Debates," in *A Culture of Rights: The Bill of Rights in Philosophy, Politics, and Law—1791 and 1991*, ed. Michael J. Lacey and Haakonssen (Cambridge, 1991), 19–61. Historians have also done important work on natural rights language, especially Daniel T. Rodgers, *Contested Truths: Keywords in American Politics since Independence* (New York, 1987); Jack N. Rakove, *Original Meanings: Politics and Ideas in the Making of the Constitution* (New York, 1996); and Thomas L. Haskell, "The Curious Persistence of Rights Talk in the 'Age of Interpretation,'" in *The Constitution and American Life*, ed. David Thelen (Ithaca, 1988), 324–52.

<sup>4</sup> Landes, *Women and the Public Sphere in the Age of the French Revolution* (Ithaca, 1988); Pateman, *The Disorder of Women: Democracy, Feminism, and Political Theory* (Stanford, Calif., 1989); Hirschmann, *Rethinking Obligation: A Feminist Method for Political Theory* (Ithaca, 1992), quotation on 12. For critiques of this approach see Keith Michael Baker, "Defining the Public Sphere in Eighteenth-Century France: Variations on a Theme by Habermas," in *Habermas and the Public Sphere*, ed. Craig Calhoun (Cambridge, Mass., 1994), esp. 198–208; Richard Sinopoli and Hirschmann, "[An Exchange on] Feminism and Liberal Theory," *American Political Science Review*, 85 (1991), 221–33; and Susan Moller Okin, "Afterward to the 1992 Edition," *Women in Western Political Thought* (Princeton, 1992; orig. pub. 1979), 309–40.

of whim or prejudice. Instead, they drew on two separate, preexisting traditions of natural rights, one inherited from Locke and the other from the Scottish Enlightenment. To men, writers applied a Lockean conception of rights that emphasized equality, individual autonomy, and the expansion of personal freedoms. By accentuating the importance of individual liberty, Lockean discourse endowed unfranchised white males with the moral authority to challenge their exclusion from the political process. To women, authors applied a Scottish theory that treated rights as benefits, conferred by God and expressed in the performance of duties to society. The stress on duty and obligation, rather than on liberty and choice, gave women's rights a fundamentally different character from those of men. Women's rights were to be nonpolitical in nature, confined to the traditional feminine role of wife and mother.

While these developments may appear to confirm the feminist interpretation, a close reading of the sources suggests otherwise. Efforts to constrict the meaning of women's rights did not succeed. What the feminist critique ignores is the ability of rights language, evident as early as the 1790s, to undermine the gendered limitations of political theory. Once women had attained the status of rights bearers, no formal theory, whether of Scottish or Lockean origins, could contain the radical power of rights talk. Soon after the Revolution, and long before the emergence of the first women's rights movement, rights discourse itself expanded the range of rights that women could and would claim.

Before the publication of *A Vindication of the Rights of Woman*, the concept of women's rights was virtually inconceivable in Anglo-America.<sup>5</sup> During the American Revolution, some individuals began to explore whether ideas of equality and natural rights applied to women as well as to men. In private letters and correspondence, Abigail Adams, Hannah Lee Corbin, Rachel Wells, Mary Willing Byrd, and others discussed the meaning of citizenship for women and objected to their exclusion from political power, yet they seldom made their ideas known publicly or expressed their concerns in print.<sup>6</sup> One of the few persons to make a public statement about women's rights was James Otis of Massachusetts. Attacking British tyranny in 1764, he openly broached the possibility of women voting, albeit in a way that was tangential to his main argument.<sup>7</sup> A few decades later, in 1790,

<sup>5</sup> Hilda L. Smith, *Reason's Disciples: Seventeenth-Century English Feminists* (Urbana, Ill., 1982); Katharine M. Rogers, *Feminism in Eighteenth-Century England* (Urbana, Ill., 1982); Vivien Jones, ed., *Women in the Eighteenth Century: Constructions of Femininity* (London, 1990), 98–112, 192–231.

<sup>6</sup> Mary Beth Norton, *Liberty's Daughters: The Revolutionary Experience of American Women, 1750–1800* (Boston, 1980), 155–94, 225–27; Linda K. Kerber, *Women of the Republic: Intellect and Ideology in Revolutionary America* (Chapel Hill, 1980), 73–113; Joan R. Gundersen, "Independence, Citizenship, and the American Revolution," *Signs*, 13 (1987), 59–77.

<sup>7</sup> Otis, "The Rights of the British Colonies Asserted and Proved" (1764), in *Pamphlets of the American Revolution, 1750–1776*, ed. Bernard Bailyn (Cambridge, Mass., 1965), 1:420–21.

Judith Sargent Murray, writing as "Constantia," published an essay "On the Equality of the Sexes" that exposed the injustice of social and political inequities between men and women.<sup>8</sup> Yet these isolated statements did not initiate a broader public discussion of women's rights.

In fact, historians have convincingly shown that the Revolution produced few concrete changes in the political status of American women. There was neither an organized movement for women's rights nor a systematic effort to alter their political condition.<sup>9</sup> Even in New Jersey, where they briefly enjoyed the right to vote, women apparently voiced no public protests when legislators revoked their franchise in 1807.<sup>10</sup> Even so, the paucity of legal and political changes does not necessarily mean that Americans ignored the effect of the Revolution on women. To the contrary, a vital ongoing discussion about the meaning of women's rights surfaced in the post-Revolutionary era. But where the Revolution raised the question of women's rights only by implication, *A Vindication of the Rights of Woman* raised the issue directly, in a way that people could not avoid.

Wollstonecraft's work gained initial popularity—and later notoriety—through a relatively new popular medium, the literary periodical. In the post-Revolutionary era, the number and quality of periodicals published in the United States skyrocketed. Beginning in 1784 with *The Gentleman and Lady's Town and Country Magazine*, American printers began to seek out middle-class readers, who were consciously fashioning themselves into proper ladies and gentlemen. Modeled on English prototypes, the new periodicals tended to have a cultural or literary bent, with a smattering of politics. Many were directed specifically to a female audience. More than one hundred periodicals geared toward women appeared in the United States between 1784 and 1860. Greater access to education had produced rapid increases in female literacy; by 1850, white women achieved parity in literacy with men.<sup>11</sup> To address the interests of this larger female constituency, mag-

<sup>8</sup> Murray [Constantia], "On the Equality of the Sexes," *Massachusetts Magazine*, 2 (Mar. 1790), 132–35, (Apr. 1790), 223–26. In the 1790s, Murray updated her ideas about women to take Wollstonecraft into account. See Murray, *The Gleaner*, ed. Nina Baym (Schenectady, N. Y., 1992; orig. pub. 1798), 703.

<sup>9</sup> Joan Hoff Wilson, "The Illusion of Change: Women and the American Revolution," in *The American Revolution: Explorations in the History of American Radicalism*, ed. Alfred F. Young (DeKalb, Ill., 1976), 383–445; Kerber, "'History Can Do It No Justice': Women and the Reinterpretation of the American Revolution," in *Women in the Age of the American Revolution*, ed. Ronald Hoffman and Peter J. Albert (Charlottesville, 1989), 3–42; Elaine F. Crane, "Dependence in the Era of Independence: The Role of Women in a Republican Society," in *The American Revolution: Its Character and Limits*, ed. Jack P. Greene (New York, 1987), 253–75.

<sup>10</sup> Judith Apter Klinghoffer and Lois Elkis, "The Petticoat Electors: Women's Suffrage in New Jersey, 1776–1807," *Journal of the Early Republic*, 12 (1992), 159–93; Edward Raymond Turner, "Women's Suffrage in New Jersey: 1790–1807," *Smith College Studies in History*, 1 (1916), 165–87.

<sup>11</sup> Bertha Monica Stearns, "Before Godey's," *American Literature*, 2 (1930), 248–55, and "Early Philadelphia Magazines for Ladies," *Pennsylvania Magazine of History and Biography*, 64 (1940), 479–91; Lewis, "Republican Wife," 689–721; Norton, *Liberty's Daughters*, 246–50. Though the magazines were often printed in urban centers, subscription lists indicate that they reached an extensive audience in other states or regions of the country and included men as well

azines began to carry features that discussed various aspects of women's role, attitudes, influence, and behavior. A Habermasian public sphere emerged that incorporated women into the discussion of political ideas.<sup>12</sup>

Wollstonecraft's tract represented the strongest and most reverberant statement of women's rights up to that time. First published in Britain in 1792, American editions appeared shortly thereafter.<sup>13</sup> The title echoed Thomas Paine's sensational work on the French Revolution, *The Rights of Man*, issued in 1791 and 1792. Although Paine framed his treatise in language that invoked the natural rights of all human beings to life, liberty, and property, the specific rights that he claimed—to own property, to vote, to participate in government—applied only to males.<sup>14</sup> Typically for his time, Paine did not even consider whether women had rights or what those rights might be.

*A Vindication of the Rights of Woman* exposed the gendered assumptions behind the term "rights of man." Like Paine, Wollstonecraft asserted the existence of universal human rights; unlike Paine, she explicitly applied the concept to women. "If the abstract rights of man will bear discussion and explanation, those of woman, by parity of reasoning, will not shrink from the same test."<sup>15</sup> Yet while only some men were denied rights, all women had been excluded from their possession, merely on the basis of their sex. "The rights of humanity," Wollstonecraft asserted, "have been . . . confined to the male line from Adam downwards," with the result that half of the population was kept from realizing its full human potential.<sup>16</sup> "The tyranny of man" and the perpetuation of a "male aristocracy" oppressed women in all aspects of their lives, retarding the development of their reason, hindering the growth of their virtue, and preventing them from making a full contribution to society.<sup>17</sup>

Wollstonecraft, like Paine, also called for a revolution—but hers was to be a "Revolution in Female Manners" that would open up greater educa-

as women. For examples of subscription lists see *The Parlour Companion* (Philadelphia), Dec. 6, 1817, 201–04, and *Ladies' Literary Museum, or Weekly Repository* (Philadelphia), list for 1817. Periodicals are available on microfilm in *American Periodicals, 1741–1900* (Ann Arbor, 1979).

<sup>12</sup> Richard D. Brown, *Knowledge Is Power: The Diffusion of Information in Early America, 1700–1865* (New York, 1989), 160–96; Mary Kelley, "Reading Women: Women Reading: The Making of Learned Women in Antebellum America," *Journal of American History*, 83 (1996), 401–24; Lawrence E. Klein, "Gender and the Public/Private Distinction in the Eighteenth Century: Some Questions about Evidence and Analytic Procedure," *Eighteenth-Century Studies*, 29 (1995), 97–109; Norton, *Liberty's Daughters*, 256–94; Kerber, *Women of the Republic*, 189–231.

<sup>13</sup> Wollstonecraft, *A Vindication of the Rights of Woman*, ed. Miriam Brody Kramnick (London, 1985; orig. pub. 1792). Wollstonecraft originally wrote *A Vindication of the Rights of Woman* in response to Talleyrand's proposal for national education in France, which ignored female education.

<sup>14</sup> Paine, *Rights of Man, Common Sense, and Other Political Writings* (Oxford, 1995; orig. pub. 1791–1792).

<sup>15</sup> Wollstonecraft, *Vindication*, 87. Useful interpretations of Wollstonecraft include Mary Poovey, *The Proper Lady and the Woman Writer: Ideology as Style in the Works of Mary Wollstonecraft, Mary Shelley, and Jane Austen* (Chicago, 1984); Virginia Sapiro, *A Vindication of Political Virtue: The Political Theory of Mary Wollstonecraft* (Chicago, 1992); and Gary Kelly, *Revolutionary Feminism: The Mind and Career of Mary Wollstonecraft* (New York, 1992).

<sup>16</sup> Wollstonecraft, *Vindication*, 188.

<sup>17</sup> *Ibid.*, 188, 326.

tional and professional opportunities to women.<sup>18</sup> Better education, she believed, would help single women and widows to support themselves. More important, it would enable married women to perform more capably as wives and mothers. "Contending for the rights of woman," she wrote, "my main argument is . . . that if [woman] be not prepared by education to become the companion of man, she will stop the progress of knowledge and virtue."<sup>19</sup> At only one point in her tract, and then only tentatively, did Wollstonecraft mention the subject of political rights for women. "I may excite laughter," she noted, "by dropping a hint, which I mean to pursue at some future time, for I really think that women ought to have representatives."<sup>20</sup> To the disappointment of some modern critics, Wollstonecraft never advocated a wholesale alteration in sex roles.<sup>21</sup>

Wollstonecraft's readers, however, understood that *A Vindication* implied something more than a confirmation of the gender status quo. Despite her vagueness in demanding specific rights, Wollstonecraft portrayed women in a radically new way. She constructed an image of woman as an independent rights bearer, as "having a voice . . . [and] participation in the natural rights of mankind."<sup>22</sup> Pressing her readers to apply the same principles and standards to women as to men, she in effect challenged the exclusion of women from a wide range of educational, professional, and political opportunities. If men refused to acknowledge that women had rights, she wrote, then "by the same rule, their duties vanish, for rights and duties are inseparable."<sup>23</sup> Like men, women could choose to do their duty or not. They were independent, autonomous beings who controlled their own destinies. Wollstonecraft's mere invocation of rights language, moreover, heightened the power of her claims. Bluestocking Hannah More paid her nemesis an inadvertent compliment. Wollstonecraft, she noted, had used "the imposing term of rights" in order "to sanctify the claims of our female pretenders."<sup>24</sup> That was precisely the point: by appropriating the language of rights, Wollstonecraft endowed women with the moral authority to criticize existing institutions and expand the universe of privileges women asserted as rights.

*A Vindication* quickly won a wide audience in the United States. Excerpts appeared as early as 1792 in the *Ladies Magazine*, published in Philadelphia, and the *Massachusetts Magazine*, published in Boston. By 1795, three American editions had been issued. A modern study finds that treatise in more private American libraries of the period than was Paine's *Rights of*

<sup>18</sup> *Ibid.*, 307.

<sup>19</sup> *Ibid.*, 86.

<sup>20</sup> *Ibid.*, 265.

<sup>21</sup> Landes, for example, sees the British author as "ceding final responsibility for social change to men rather than women," in *Women and the Public Sphere*, 129–38, quotation on 134.

<sup>22</sup> Wollstonecraft, *Vindication*, 88.

<sup>23</sup> *Ibid.*, 328.

<sup>24</sup> Quoted in Christopher Lasch, *Women and the Common Life: Love, Marriage, and Feminism* (New York, 1997), 71.

*Man*.<sup>25</sup> In America as in England, many of the first reviews were laudatory. The *New-York Magazine* noted that, "While thousands are shedding their blood in asserting the *Rights of Man*, a female has lately wielded her Pen, and we think with great success, in vindicating the *Rights of Woman*."<sup>26</sup> By the end of the decade, it is true, Wollstonecraft's apparent disdain for conventional norms of sexual behavior and the sanctity of marriage made her the object of vitriolic personal attacks.<sup>27</sup> Nonetheless, her intellectual influence persisted over time.

Wollstonecraft and her work became the enduring symbol and chief referent for the idea of women's rights in the early republic. American magazines brought the terminology of women's rights into widespread usage. Numerous contributions—poetry, fiction, humor, and prescriptive essays—bore the title "The Rights of Woman" (or "Women") or contained allusions to women's rights. The attitudes expressed ranged from highly positive to negative or hostile. Many were vague as to what precise rights women might possess. A 1795 poem called "Rights of Woman," published in both New York and Philadelphia, referred to Wollstonecraft as "a friend" and confidently maintained

Let Woman have a share, / Nor yield to slavish fear. / Her equal rights declare.<sup>28</sup>

An 1825 piece in the *Boston Monthly Magazine*, "The Natural Rights of Woman," affirmed Wollstonecraft's message by calling for a greater expan-

<sup>25</sup> Marcelle Thiébaux, "Mary Wollstonecraft in Federalist America: 1791–1802," in *The Evidence of the Imagination: Studies of Interactions between Life and Art in English Romantic Literature*, ed. Donald H. Reiman, Michael C. Jaye, and Betty T. Bennett (New York, 1978), 195–235; Janet Wilson James, *Changing Ideas about Women in the United States, 1776–1825* (New York, 1981; orig. pub. 1954); 100–05; David Lundberg and Henry F. May, "The Enlightened Reader in America," *American Quarterly*, 28 (1976), 262–71 and graphs following article. Lundberg and May estimate that 12% of the private libraries of the period contained a copy of Paine's *Rights of Man* and 18% had a copy of Wollstonecraft's *Vindication*.

<sup>26</sup> *The New-York Magazine, or Literary Repository* (Feb. 1793), 77–81, quotation on 77. For other early excerpts of *Vindication* see *Ladies Magazine* (Philadelphia), Sept. 1792, 189–98; *Massachusetts Magazine* (Boston), Oct. 1792, 598–99. On Wollstonecraft's initial approval in England see R. M. Janes, "On the Reception of Mary Wollstonecraft's *A Vindication of the Rights of Woman*," *Journal of the History of Ideas*, 39 (1978), 293–302.

<sup>27</sup> Wollstonecraft had several extramarital relationships and bore two children, one out-of-wedlock. After she died in 1797 in childbirth, her husband, the philosopher William Godwin, published a memoir of her life that scandalized many people who had previously admired her work. See William St. Clair, *The Godwins and the Shelleys: The Biography of a Family* (London, 1989), 179–88; Chandos Michael Brown, "Mary Wollstonecraft, or, The Female Illuminati: The Campaign against Women and 'Modern Philosophy' in the Early Republic," *J. Early Repub.*, 15 (1995), 389–424; Patricia Jewell McAlexander, "The Creation of the American Eve: The Cultural Dialogue on the Nature and Role of Women in Late Eighteenth-Century America," *Early American Literature*, 9 (1975), 262–64; and Thiébaux, "Mary Wollstonecraft in Federalist America," 206–28.

<sup>28</sup> "Rights of Woman," *Weekly Museum* (New York), Apr. 25, 1795; reprinted in *Philadelphia Minerva*, Oct. 1795. See notes 57, 99, and 101 for different poems bearing the same title.

sion of female educational opportunities.<sup>29</sup> Other pieces were more critical. An 1801 issue of the *Ladies' Monitor* explicitly invoked Wollstonecraft in an essay called "A Second Vindication of the Rights of Women," only to repudiate her central claims.<sup>30</sup> An 1818 poem featured a female character who proudly asserted, "We have *rights*, of which you know a draught . . . [were] sketch'd by one Miss Mary Wolstonecraft [sic]."<sup>31</sup> Quickly, however, a male adversary dashed these female pretensions. Likewise, an 1813 article sarcastically recounted the story of a woman, "a strong advocate for the *Rights of Women*," who dared to defend women's prowess on and off the battlefield.<sup>32</sup> Yet even Wollstonecraft-haters had to admit that her "ingenious vindication of the *Rights of Woman* [was] universally known."<sup>33</sup>

Both male and female authors participated in the discussion of women's rights, although contemporary literary conventions make it difficult to pinpoint the authorship of individual pieces. Books, orations, and pamphlets usually listed a particular author, whereas articles in periodicals tended to appear without attribution or pseudonymously. Many pieces were written in a male voice; others were signed with a female pseudonym or labeled "By a Lady." That printers included female identities, whether women actually wrote the items, suggests their sensitivity to audience on this subject. In addition, articles reprinted from British as well as American sources reveal the existence of a transatlantic dialogue on women's rights. The frequent publication of such pieces indicates a high level of reader interest in women's rights from the 1790s onward. The generation of reformers who came of age in the post-Revolutionary era thus encountered discussions of women's rights long before there was an organized movement to mobilize their sentiments.

In the highly charged political atmosphere of the early republic, when the rights of men were being contested daily, Wollstonecraft challenged the assumption that rights could be considered solely a male prerogative. Popular writers responded by expanding the range of discussion. "The Rights of Women are no longer strange sounds to an American ear," Elias Boudinot proclaimed in 1793. "They are now heard as familiar terms in every part of the United States."<sup>34</sup> Yet Wollstonecraft's tract did something more. Newspapers and magazines picked up her terminology and popularized a new language—the language of rights—by which Americans could understand, refer to, and analyze women. This language had radical implications. "Let the defenders of male despotism answer (if they can) the Rights of

<sup>29</sup> "The Natural Rights of Woman," *Boston Monthly Magazine*, 1 (Aug. 1825), 126–35.

<sup>30</sup> "Second Vindication of the Rights of Women," *Ladies' Monitor* (New York), Aug. 10, 15, 1801, 19–20.

<sup>31</sup> Thomas G. Fessenden, *The Ladies' Monitor, A Poem* (Bellows Falls, Vt., 1818), 58.

<sup>32</sup> *The Olio* (New York), Dec. 4, 1813, 368.

<sup>33</sup> Samuel Miller, *A Brief Retrospect of the Eighteenth Century* (New York, 1803), 2:284.

<sup>34</sup> Boudinot, *An Oration Delivered at Elizabeth-Town, New-Jersey, Agreeably to a Resolution of the State Society of Cincinnati on the Fourth of July MDCXCIII* (Elizabethtown, N. J., 1793), 24.

Woman, by Miss Wollstonecraft," declared the *National Magazine* in 1800.<sup>35</sup> Just as the rights of man took on new meanings over time—meanings the American Revolutionaries had not anticipated—so, too, did the rights of woman.

The new understanding of women's rights emerged at a time when Americans were working out the implications of Revolutionary ideology for white males. Their thinking drew not on a monolithic concept of natural rights, as is commonly supposed, but on at least two existing theoretical traditions. The more familiar tradition is John Locke's social contract theory, based on ideas of natural rights and equality in a state of nature. The other tradition, transmitted by thinkers of the Scottish Enlightenment, carried very different assumptions and implications.

In general, the language of natural rights came late to the British North American colonies. In the early eighteenth century, "rights" did not always refer to natural rights but could mean, among other things, the legal rights protected by British statute, the procedural and property rights embedded in the "ancient constitution," or the civil liberties guaranteed by the common law.<sup>36</sup> Although by the first decades of the century colonists knew of Locke's writings, disgruntled petitioners tended to base their claims against the crown or royal authorities on positive, constitutional, or statutory law rather than on references to natural rights. "It was," James Hutson notes, "as if the concept of [natural] rights had not yet entered popular consciousness."<sup>37</sup>

Not until the imperial struggles of the 1760s did natural rights discourse take center stage in American politics. Beginning in 1761 with the Writs of Assistance case, the colonists, led by James Otis, employed the language of natural rights more frequently in disputes with the crown. Natural rights, more than other kinds of rights, commanded assent because they were said to be inalienable, immutable, and transcendent—possessed by virtue of one's

<sup>35</sup> "An Essay On the Rights of Woman," *National Magazine; or, A Political, Historical, Biographical, and Literary Repository* (Washington, D. C., 1800), 2:206.

<sup>36</sup> The analysis of various rights traditions in Revolutionary America has only recently begun to receive adequate attention from historians. See Lois G. Schworer, "British Lineages, American Choices," in *The Bill of Rights: Government Proscribed*, ed. Hoffman and Albert (Charlottesville, 1997), 1–41; James H. Hutson, "The Emergence of the Modern Concept of Right in America: The Contribution of Michel Villey," *American Journal of Jurisprudence*, 39 (1994), 185–224; Orlando Patterson, "Freedom, Slavery, and the Modern Construction of Rights," in *Historical Change and Human Rights*, ed. Olwen Hufton (New York, 1995), 131–78; Rodgers, *Contested Truths*, 45–71. To the contrary, John Phillip Reid argues that in the Revolutionary era the colonists relied more on a positive, constitutional rights tradition rather than on a natural rights tradition, in *Constitutional History of the American Revolution: The Authority of Rights* (Madison, 1986).

<sup>37</sup> Hutson, "Emergence of the Modern Concept of Right," 210. Alfred F. Young notes, "The phrase, 'rights of man,' does not seem to have entered the American political vocabulary until the 1790s, a change which has eluded a generation of scholars preoccupied with the language of republicanism," in "'Common Sense' and the 'Rights of Man' in America: The Celebration and Damnation of Thomas Paine," *Science, Mind and Art: Essays on Science and the Humanistic Understanding . . . in Honor of Robert S. Cohen* (Dordrecht, Neth., 1995), 411–39, quotation on 426.

personhood rather than a result of one's citizenship, parentage, or property. As the colonists moved from resistance to revolution, natural rights language gave them an enormously powerful tool for expressing their grievances and justifying their claims against British authority.<sup>38</sup>

American Revolutionaries drew heavily on the natural rights philosophy of Locke. Although historians of the so-called Republican Synthesis have sought to diminish the extent of Locke's influence on Revolutionary thinking, few have completely negated his significance. Moreover, in recent years scholars have attempted to arrive at an interpretation that blends elements of Lockean liberalism and classical republicanism.<sup>39</sup> One point remains beyond dispute: the language of rights emerged from the liberal rather than from the civic humanist tradition. Classical republican thinkers expressed their vision in terms of virtue and corruption. "Virtue," J.G.A. Pocock notes, "was not reducible to right."<sup>40</sup> Natural rights philosophy, on the other hand, emerged from concepts of natural law and the state of nature. To study the origins and theory of rights talk, then, we must turn our attention to Locke and the Scots.

Locke's theory of natural rights provided the basis for his broader understanding of the relations among the individual, society, and polity. According to Locke, men, equals in a state of nature, voluntarily gathered together to form a social compact.<sup>41</sup> Under this agreement, they relinquished some personal freedom in exchange for the government's protection of life, liberty, and property. If the governing authority violated this contract, individuals could withdraw from the compact or renegotiate its terms. In theory, consent implied the performance of corresponding duties. Yet as

<sup>38</sup> T. H. Breen, "Ideology and Nationalism on the Eve of the American Revolution: Revisions *Once More* in Need of Revising," *JAH*, 84 (1997), 13–39; Rodgers, *Contested Truths*, 45–71.

<sup>39</sup> The starting point for the debate is Louis B. Hartz, *The Liberal Tradition in America: An Interpretation of American Political Thought since the Revolution* (New York, 1955), and J.G.A. Pocock, *The Machiavellian Moment: Florentine Political Thought and the Atlantic Republican Tradition* (Princeton, 1975). The debate is summarized in Robert E. Shalhope, "Toward a Republican Synthesis: The Emergence of an Understanding of Republicanism in American Historiography," *WMQ*, 3d Ser., 29 (1972), 49–80, and "Republicanism and Early American Historiography," *ibid.*, 39 (1982), 334–56; and Rodgers, "Republicanism: The Career of a Concept," *JAH*, 79 (1992), 11–38. A good synthesis is found in Isaac Kramnick, "The Great National Discussion: The Discourse of Politics in 1787," *WMQ*, 3d Ser., 45 (1988), 3–32.

<sup>40</sup> Pocock, "Virtues, Rights, and Manners: A Model for Historians of Political Thought," in *Virtue, Commerce, and History: Essays on Political Thought and History, Chiefly in the Eighteenth Century* (Cambridge, 1985), 37–50, quotation on 47; James T. Kloppenberg, "The Virtues of Liberalism: Christianity, Republicanism, and Ethics in Early American Political Discourse," *JAH*, 74 (1987), 9–33; Bloch, "Gendered Meanings of Virtue," 37–58.

<sup>41</sup> There is currently debate about whether the social contract should be seen as a protofeminist construct or a "fraternal social contract" that necessarily excludes women. See Melissa A. Butler, "Early Liberal Roots of Feminism: John Locke and the Attack on Patriarchy," *APSR*, 72 (1978), 135–50; Linda J. Nicholson, *Gender and History: The Limits of Social Theory in the Age of the Family* (New York, 1986), chap. 5; Smith, *Reason's Disciples*, 56–59; and Pateman, "The Fraternal Social Contract," *Disorder of Women*, 33–57. For my purpose here, however, the central issue revolves around Locke's understanding of the relationship between rights and duties.

Americans translated Locke's theory into practice, they tended to minimize the importance of duties and enhance the importance of personal autonomy and individual choice. Political liberty rather than the reciprocal performance of duties came to be the hallmark of Lockeanism in America.<sup>42</sup>

The thinkers of the "conservative" or Scottish Enlightenment offered a different framework for understanding natural rights. Francis Hutcheson, Thomas Reid, and Lord Kames, explicitly rejecting social contract theory, drew heavily on a Protestant natural law tradition descended from Hugo Grotius and Samuel Pufendorf. Their work emphasized duty over liberty and custom over contract. Moral obligation and the preservation of social harmony took precedence over individual autonomy.<sup>43</sup> Scottish moral philosophers assumed the existence of a hierarchical society made up of unequals. At the top, God was the ultimate "obligator"<sup>44</sup> who conferred benefits, known as rights, on individuals. These benefits imposed corresponding duties in a much more direct way than in Locke's construct. Rights were a moral power exercised over oneself and one's property; they were "not simply powers granted, but powers granted for a purpose; they have a right use, namely, that of contributing to an overall moral order."<sup>45</sup> In this schema, rights not only implied the existence of correlative duties, but, as Haakonssen notes, "basic rights [became] interchangeable with duties."<sup>46</sup> In practice, then, to assert one's rights meant to fulfill the duties of one's God-given station, role, or office. Scottish natural rights theory thus had very different implications from its Lockean counterpart. By defining rights in terms of duties, the Scots limited the possibility for the creation of new rights and affirmed the existing social and political order—deflating, in effect, the radical potential of natural rights discourse.<sup>47</sup>

By the early nineteenth century, Scottish moral philosophy had become the standard curriculum in institutions of higher learning throughout the United States. Educated men were schooled in Hutcheson, Reid, and Kames. President John Witherspoon of Princeton and Federalist lawyer James Wilson were well-known proponents of the Scottish theories. Private and circulating libraries frequently contained works by Scottish Enlightenment authors. Ladies' magazines and literary periodicals, as well as popular conduct books by John Gregory and James Fordyce, also acted as conduits. Thus a broad segment of the reading public encountered the Scottish theory of natural rights.<sup>48</sup>

<sup>42</sup> Nathan Tarcov, *Locke's Education for Liberty* (Chicago, 1984), 57–66; Glendon, *Rights Talk*, 12, 34, 47–48.

<sup>43</sup> May, *The Enlightenment in America* (New York, 1976), 346; Pocock, "The Mobility of Property and the Rise of Eighteenth-Century Sociology," in *Virtue, Commerce, and History*, 103–23; Haakonssen, "From Natural Law to the Rights of Man," 19–61; Patterson, "Freedom, Slavery, and the Modern Construction of Rights," 158–59.

<sup>44</sup> Haakonssen, "From Natural Law to the Rights of Man," 29.

<sup>45</sup> *Ibid.*, 36.

<sup>46</sup> *Ibid.*, 35, 48.

<sup>47</sup> Tuck, *Natural Rights Theories*, 5–6; Finniss, *Natural Law and Natural Rights*, 203–05.

<sup>48</sup> Gregory, *A Father's Legacy to His Daughters* (London, 1775); Fordyce, *Sermons to Young Women* (London, 1766); May, *Enlightenment in America*, 341–50; Haakonssen, "From Natural

From the Revolution into the 1790s, Americans witnessed the tremendous power of natural rights ideas to alter the political landscape. As many historians have shown, Jeffersonians invoked the rights of man in their campaigns to expand the franchise, eliminate property qualifications for holding office, and open social and economic opportunities to greater portions of the white male population. Propertyless men, artisans, and mechanics became full members of the political community.<sup>49</sup> Jeffersonians bypassed the Scottish theory of natural rights in favor of the Lockean conception. Articulating a social contract theory of government, they stressed the centrality of individual equality and personal autonomy in the pursuit of public and private aims. Yet quite apart from the Lockean theory of rights, Republican leaders also exploited the "subversive possibilities"<sup>50</sup> of rights language to advance their cause. The idea of natural rights, as Daniel T. Rodgers observes, "invited inquiry, not simply into the rights which human beings possessed but into those rights which, given their nature, they *ought* to possess."<sup>51</sup> The discourse itself tended to expand the range of privileges known as "rights," creating an impulse that could easily be harnessed by broader and broader segments of the population.

Unlike their adversaries, Federalists sought to contain rather than exploit the radical power of natural rights ideas. They preferred to maintain the hierarchical order of society, in which the lower sort deferred to their social and political betters.<sup>52</sup> To this end, Federalists openly attacked the credibility of Lockean social contract theory, questioned the existence of a state of nature, and cast doubt on the whole notion of "natural" rights. Building on David Hume's critique, they argued that the state of nature was illusory, unsubstantiated, and dangerous.<sup>53</sup> "It is the fashion with all modern philosophers," said the *Port Folio*, a Federalist organ, "to lay down, as the basis of their systems, *rights* which they assert to have existed in a state of nature, before any societies were formed amongst mankind." Such notions, Federalists warned, led to social unrest, moral upheaval, and political chaos. "Upon these natural rights they build their pretensions to annul the most revered establishments of past times, and to overthrow at pleasure, govern-

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Law to the Rights of Man," 35-47; Anna Haddow, *Political Science in American Colleges and Universities, 1636-1900* (New York, 1939), 44-49; Rosemarie Zagarrri, "Morals, Manners, and the Republican Mother," *AQ*, 44 (1992), 192-215.

<sup>49</sup> Rodgers, *Contested Truths*, 72-101; Hutson, "Modern Concept of a Right," 220-24; Joyce Appleby, *Capitalism and a New Social Order: The Republican Vision of the 1790s* (New York, 1984); Gordon S. Wood, *The Radicalism of the American Revolution* (New York, 1991), 271-305.

<sup>50</sup> Rodgers, *Contested Truths*, 46.

<sup>51</sup> *Ibid.*

<sup>52</sup> May, *Enlightenment in America*, 341-50; David Hackett Fischer, *The Revolution of American Conservatism: The Federalist Party in the Era of Jeffersonian Democracy* (New York, 1965), 1-28; Kerber, *Federalists in Dissent: Imagery and Ideology in Jeffersonian America* (Ithaca, 1970), 173-215; James M. Banner, *To the Hartford Convention: The Federalists and the Origins of Party Politics in Massachusetts, 1789-1815* (New York, 1970), 53-121.

<sup>53</sup> Hume, "Of the Original Contract" (1752), in *The Founders' Constitution*, ed. Philip B. Kurland and Ralph Lerner (Chicago, 1987), 1:49-52.

ments that have been the work of ages, whenever the people can be brought to think fit to exert the authority that is inherent in them.”<sup>54</sup> The *Port Folio* offered a different vision. “Good order is the foundation of all good things. . . . The body of the people must not find the principles of natural subordination by art rooted out of their minds. They must respect that property, of which they cannot partake.”<sup>55</sup>

In the same vein, Federalists also took aim at a related novelty, the rights of women. “The Rights of Man had already been tried with considerable success among the refuse of male society,” noted one sarcastic author. “The Rights of Woman, was sure of finding an audience equally numerous and select among [the] female sex.”<sup>56</sup> Federalists condemned Wollstonecraft along with William Godwin, universal male suffrage as well as rights for females. Yet the Federalists’ biggest misgiving concerned the radical potential of natural rights language rather than women’s rights per se. Natural rights, proclaimed a Boston paper, “directly or indirectly attack the institutions and maxims of a well-regulated society.”<sup>57</sup>

Because they so feared the “subversive possibilities” of natural rights, some Federalists eschewed rights language altogether. Others restricted rights language to the Scottish theory of rights. The Scots’ emphasis on duty, moral obligation, and the structural inequalities of society fit neatly with the Federalists’ conservative views on these subjects. Jurist James Wilson and educators such as Timothy Dwight and Samuel Stanhope Smith espoused a concept of natural rights that drew heavily on the Scots. As Federalist congressman Fisher Ames put it, “All our individual rights are to be exercised with due regard to the rights of others; they are tied fast by restrictions, and are to be exercised within certain reasonable limits.”<sup>58</sup> Although these ideas persisted well into the nineteenth century, over time their application to men became confined to the realm of abstract moral philosophy and formal jurisprudence.<sup>59</sup> Yet for many years Scottish natural rights theory offered a viable alternative to the hegemony of the Lockean tradition.

The political controversies of the early national era—the debate over the rights of man and the French Revolution, discussions of the franchise, and

<sup>54</sup> “Politics—Essay 1,” *Port Folio* (Philadelphia), Nov. 20, 1802, 364.

<sup>55</sup> “Miscellaneous Paragraphs,” *ibid.*, May 1, 1802, 134.

<sup>56</sup> “The Wanderer,” *Columbian Phenix and Boston Review*, 1 (Feb. 1800), 110–13, quotation on 112. Ironically, Federalists were more open than Jeffersonians to the informal participation of women in politics. See Zagari, “Gender and the First Party System,” in *Federalists Reconsidered*, ed. Barbara Oberg and Doron Ben-Atar (forthcoming, University Press of Virginia).

<sup>57</sup> “Observations on the Corruption of Literature,” *Mercury and New-England Palladium* (Boston), Feb. 17, 1801. For other Federalist attacks on natural rights, including women’s rights, see “The ‘Enlightened Eighteenth Century’; Or, the ‘Age of Reason,’” *Columbian Centinel and Massachusetts Federalist* (Boston), Jan. 14, 1801, and “Rights of Women,” *New-York Magazine; or Literary Repository*, 2 (Dec. 1791), 713–14, reprinted in *Philadelphia Monthly Magazine* (Feb. 1798), 82–83.

<sup>58</sup> Ames, “Equality IV” (1801), in *Works of Fisher Ames*, ed. Seth Ames (Indianapolis, Ind., 1983; orig. pub. 1854), 1:247.

<sup>59</sup> Haakonssen, “From Natural Law to the Rights of Man,” 19–21, 42–61.

attacks on deference—highlighted the divergence between Federalist and Republican views of natural rights. Jeffersonians exploited the subversive potential of Lockean social contract theory and natural rights language to expand the political and economic privileges of white males. By the early decades of the nineteenth century, natural rights discourse was, as Rodgers puts it, the most “powerful tool for the articulation of grievances [that] the political culture afforded.”<sup>60</sup> Federalists, on the other hand, resisted the radical implications of natural rights ideas. They either shied away from rights talk altogether or gravitated toward a duty-bound definition of rights derived from the Scots. Yet when the question of natural rights shifted from males to females, the gap between Federalist and Republican views narrowed. Members of both parties could agree: women’s rights differed fundamentally from those of men.

In the post-Revolutionary era, popular authors who wrote about women faced a dilemma: they were willing to admit women’s equality with men, but they also wanted to preserve the notion of inherent differences between the sexes. They wanted to reconcile a new notion—women’s rights—with a very old idea, women’s subordination to men. Applying natural rights language to women, however, represented a dangerous innovation. Rights discourse could spin out of control and present possibilities that were neither intended nor desired. Just as rights rhetoric had enabled white males to challenge social and political institutions, so, too, might the rhetoric of women’s rights undermine an even more basic structure, the gender status quo.

A New York author wandered presumably unawares into this minefield. Writing in the New York *Weekly Museum* in 1793, “A real friend to the fair sex” announced his “concern to see the papers so generally silent about the RIGHTS OF WOMEN.” To repair this problem, he (it is evident from the context that the writer is a “he”) wished to describe the rights of women and show how they made important contributions to “good, strong, energetic family government.” The author then attempted to equate the rights of women with the rights of men. He began by comparing the social compact to the marriage contract. Just as men sacrificed certain rights when they assented to the social contract, so women “by entering upon the marriage state, renounce some of their natural rights, (as men do, when they enter into civil society).” Pursuing the analogy further, the writer argued, “as the men, living under a free constitution of their own framing are entitled to the protection of laws—so likewise has a woman a right to be protected by the man of her own choice.” Women could choose or reject the marital compact. Furthermore, just as men could petition or protest against an unjust government, women, too, could express their grievances in a marriage. “In family broils,” he said, “the wife has a right to expostulate with temper.”<sup>61</sup>

Then the analogy falters. According to Lockean theory, if a government becomes tyrannical, the people can assert their ultimate right—the right to

<sup>60</sup> Rodgers, *Contested Truths*, 78.

<sup>61</sup> “For the Weekly Museum,” *Weekly Museum* (New York), Mar. 16, 1793.

revolution. This New Yorker, however, refused to acknowledge that a husband might become a tyrant. He envisioned family life strictly as a fair, constitutional regime. "If rebellion, insurrection, or any other opposition to a just, mild, and free political government, is odious," he said, "it is not less so to oppose good family administration." The writer also overlooked another flaw in the comparisons. Whereas citizens could deliberately alter the fundamental articles of agreement in a constitutional government, a wife had no such resort. She could not get a divorce (in most states) or afford the economic costs of ending the relationship. Submission remained her lot: "When entreaty is unavailing, it is her duty to submit to the controul of that government she has voluntarily chosen."<sup>62</sup> Though he did not seem to be aware of it, this author avoided the logical conclusion of his analogy. Instead of revealing an equivalence between the rights of man and woman, he exposed the real differences between the two. Natural rights talk led, seemingly inevitably, to disturbing questions about women's consent, obligation, and choice.

In the early national period, most Americans—women as well as men—could not tolerate the prospect of fundamental change in gender roles. The question of women's rights raised the specter of domestic discontent and rebellion. Discussions of "equality of right," "A Lady" worried, might "excit[e] an insurrection in the female world."<sup>63</sup> The discourse itself opened up new possibilities. If women construed natural rights as a warrant to claim privileges outside their existing station, they might abandon their domestic role or demand exactly the same treatment as men. "Frequent rebellions take place in domestic governments," a Philadelphian asserted in 1804, "and . . . the struggle for power is kept up at no little expence to the parties."<sup>64</sup> Such scenarios terrified writers and audiences alike. "If once a man raises his wife to an equality with himself," declared "Ignotus" in 1801, "it is all over, and he is doomed to become a subject for life to the most despotic of government[s]."<sup>65</sup> As a result, commentators came to realize that if they applied rights language to women, they must do so with care. Women's rights must be defined in such a way as to prevent women from exploiting the "subversive possibilities"<sup>66</sup> of rights talk.

One tactic was to focus on equality in the spiritual realm. From time immemorial, Woman had been blamed for the Fall of Man. By the late eigh-

<sup>62</sup> Ibid. For important analyses of the relationship between Revolutionary ideology and ideas about marriage in this period see Norma Basch, "From the Bonds of Empire to the Bonds of Matrimony," in *Devising Liberty: Preserving and Creating Freedom in the New American Republic*, ed. David Thomas Konig (Stanford, Calif., 1995), 217–42, and Lewis, "Republican Wife," 689–721.

<sup>63</sup> [By a Lady], "On Female Talent," *New-York Weekly Museum, or Polite Repository*, Mar. 2, 1816, 276.

<sup>64</sup> "Domestic Politics," *Literary Magazine and American Register* (Philadelphia), May 1804, 94.

<sup>65</sup> [Ignotus], "To 'A Friend to the Fair Sex,'" *Philadelphia Repository and Weekly Register*, Mar. 14, 1801, 5.

<sup>66</sup> Rodgers, *Contested Truths*, 46.

teenth century, however, critics were less inclined to focus on women's culpability. Christ's death, they claimed, had made amends for Eve's transgression and "restored woman to her proper station"; men and women were equal before God.<sup>67</sup> As one man saw it, women are "entitled to the same rights, capable of the same enjoyments, and expectants of the same immortality" as men.<sup>68</sup> Even so, spiritual equality carried with it no expectation of equal rights on earth.

Nor did equal rights in certain areas of life imply equal rights in all areas. For example, women and men were said to share a right to sociability, a freedom to be friends and companions with one another. Earlier societies had segregated women from men, but American society encouraged the mixing and interaction of the sexes.<sup>69</sup> "THE RIGHTS OF WOMEN, as well as OF MEN, are acknowledged," proclaimed the *American Spectator*, "and . . . [women] are caressed as the first and dearest friends of their partners."<sup>70</sup> This equality in no way compelled equal legal or political rights. John Cosens Ogden of New Hampshire expressed the matter succinctly: "Every man, by the constitution, is born with an equal right to be elected to the highest office. And every woman, is born with an equal right to be the wife of the most eminent man."<sup>71</sup>

Men and women also had no need to receive identical schooling. Females, it was said, had an "equal right" with men to education.<sup>72</sup> Yet "when women carry the idea of their equality with the other sex so far as to insist that there should be *no difference* in their education and pursuits," warned Samuel Miller in 1803, "they mistake both their character, their dignity, and their happiness."<sup>73</sup> The purpose of a woman's education differed fundamentally from a man's. "The proper object of female education," declared the *Mercury and New-England Palladium*, "is to make women rational companions, good wives and good mothers."<sup>74</sup> This sort of "equal rights"

<sup>67</sup> "For the Ariel," *Ariel, A Literary Gazette* (Philadelphia), Oct. 20, 1827, 104. For a discussion of the conservative implications of "biblical feminism" in the early 19th century see Catherine A. Brekus, "Restoring the Divine Order to the World: Religion and the Family in the Antebellum Woman's Rights Movement," in *Religion, Feminism, and the Family*, ed. Anne Carr and Mary Stewart Van Leeuwen (Louisville, Ky., 1996), 166–82.

<sup>68</sup> "Letter on female education to a woman in Kings County, Maryland," *Columbian Magazine*, Sept. 1787, 643; Lewis, "Republican Wife," 704–06.

<sup>69</sup> Zagari, "Manners, Morals, and the Republican Mother," 197–203; Sylvana Tomaselli, "The Enlightenment Debate on Women," *History Workshop*, 20 (Autumn 1985), 116–22.

<sup>70</sup> *American Spectator, or Marrimonial Preceptor* (Boston, 1797), vi.

<sup>71</sup> Ogden, *The Female Guide: or, Thoughts on the Educations of That Sex, Accommodated to the State of Society, Manners, and Government, in the United States* (Concord, N. H., 1793), 26.

<sup>72</sup> For women's "equal right" to education see, for example, *Sentimental and Literary Magazine* (New York), July 1797, 29; *Lady's Weekly Miscellany* (New York), Nov. 29, 1806; *Literary and Musical Magazine* (Philadelphia), July 12, 1819; and *Boston Monthly Magazine* (Aug. 1825), 126–35. For secondary sources see Kelley, "Vindicating the Equality of the Female Intellect: Women and Authority in the Early Republic," *Prospects: An Annual of American Cultural Studies*, ed. Jack Salzman, 17 (1992), 1–27; Kerber, *Women of the Republic*, 189–231; and Norton, *Liberty's Daughters*, 256–94.

<sup>73</sup> Miller, *Brief Retrospect of the Eighteenth Century*, 2:292.

<sup>74</sup> "The Restorator—No. VII. Female Education," *Mercury and New-England Palladium* (Boston), July 10, 1801.

did not open up new professional or political opportunities but simply prepared women for their traditional domestic role.

Other authors adopted a markedly different strategy with regard to women's rights. Rather than argue that men and women had equal rights, they maintained that the sexes had separate and distinctive rights. A Scottish theory of rights came to pertain to women, while a Lockean understanding became the province of men. The concept of rights, like the concept of virtue, increasingly became a gendered proposition.<sup>75</sup>

Lockean natural rights touched the heart of what it meant to be an independent citizen in a free state: to vote, to govern, to choose one's destiny. These were not considered desirable attributes for women. Popular authors made it clear that women who attempted to appropriate the rights of men would be subject to scorn, derision, and vituperation. "The Rights of Both Sexes" suggested that women would strip men of their distinctive role both in the home and outside it. Originally printed in the London *Monthly Visitor* and reprinted in New York and Boston, the verse taunted one Bridget Bearwell, who "improv'd on Miss Woolstonecroft's [sic] plan, / And projected some small revolution in man." Bearwell's scheme required that men and women assume exactly the same roles and positions, sharing the same "employments, amusements & cares." A woman could now study classics and mathematics, while the man would have to "dry-nurse" the baby and "wield the pot, kettle, and ladle."<sup>76</sup> The absurdity of the proposition seemed self-evident.

Some essays conveyed a sense of the threat women's rights posed to male authority. A Bostonian complained that his wife and children had "become fully skilled to comprehend, and perfectly ready to vindicate [their rights]." In the face of their protests, he concluded that "nothing was more dangerous to the rights of man, [than] when it took possession in the *home department*."<sup>77</sup> The rights of women undermined the rights of men. The message, however, went deeper. Altering the character of domestic gender roles was not only absurd but also immoral—an offense against the divine hierarchy established by God. "She who would invert the order of this system," argued a Philadelphia writer, "not only betrays a pitiable ignorance of her own weakness but a spirit of rebellion against the ordinance of heaven."<sup>78</sup> Such a rebellion would not go unpunished.

Authors thus denied certain kinds of rights to women on the basis of their sex. They condemned real women—such as Mary Wollstonecraft—and fictional caricatures who used rights language in the same way men had: to

<sup>75</sup> Bloch, "Gendered Meanings of Virtue."

<sup>76</sup> "The Rights of Both Sexes," *Lady's Monitor* (New York), Oct. 31, 1801, 88; reprinted in *Weekly Visitor, or, Ladies' Miscellany* (New York), Oct. 16, 1802, 12, and *Mercury and New-England Palladium* (Boston), Aug. 17, 1802.

<sup>77</sup> "Hyperion," *Mercury and New-England Palladium* (Boston), Aug. 18, 1801.

<sup>78</sup> "Husband and Wife," *Literary and Musical Magazine* (Philadelphia), May 3, 1819, 13. See also "Graces of the Female Character," *Weekly Visitor, and Ladies' Museum* (New York), Mar. 1, 1823, 280–81; "Woman," *Euterpeiad: Or, Musical Intelligencer, and Ladies' Gazette* (Boston), July 21, 1821, 71.

claim new legal or political powers.<sup>79</sup> Speaking to a group of Maine women in 1807, Jeremiah Perley insisted, "You will not consult a Wollstonecraft for a code of 'The Rights of Women.' Do not usurp the rights of man; they are essentially distinct."<sup>80</sup> Because political rights were considered masculine, women who voted, as they did briefly in New Jersey, or who aspired to political office would become like men. After the New Jersey congressional election of 1797, in which women played a prominent role, some versifiers direly predicted:

To Congress, lo! widows shall go, / like metamorphosed witches! /  
Cloath'd in the dignity of state, / and eke! in coat and breeches!<sup>81</sup>

Thomas Fessenden likewise depicted the fate of a woman who naively challenges the male monopoly on public roles and offices. If "you esteem our sex so good and great," Narcissa declares, why, then, can women not be "female warriors," "lady-legislators," or "hold offices in Church and State?" Mentor, the male character, supplied a succinct but devastating response:

Dame Nature tells us Mary's rights are wrong, / Her female freedom is a syren-song.<sup>82</sup>

Women as well as men often assented to the gendered division of rights. "Although [women's] powers of the mind may be equal to the task," commented Hannah Mather Crocker of Boston, "[it] is morally improper and physically very incorrect, for the female character to claim the statesman's berth, or ascend the rostrum to gain the loud applause of men."<sup>83</sup> Political rights threatened to violate women's essential nature and subvert their God-given social roles. Women thus could not and should not aspire to the same status as men.

Yet such observers did not absolutely reject the claim that women had rights. Instead, they asked what particular rights women possessed. Thomas Laqueur has shown that the emergence of universalist political principles in early modern western Europe led to a search for a justification for excluding women from political participation. Often the result was a turn to nature and to claims about the essentially different biological characters of men and women.<sup>84</sup> Americans, however, pursued a rather different course. They

<sup>79</sup> "Mrs. Mary Godwin," *Weekly Magazine* (New York), Apr. 13, 1799, 19–20; "Reflections on the Character of Mary Wollstonecraft Godwin," *Monthly Magazine, and American Review*, 1 (Aug. 1799), 330–35; "Biography—Mrs. Godwin," *The Hive* (Lancaster, Pa.), Nov. 30, 1803, 93–95; "Mary Wollstonecraft Godwin," *Lady's Monitor* (New York), Dec. 12, 1801.

<sup>80</sup> Perley, *An Anniversary Oration, Delivered before the Federal Republicans of Hallowell and Its Vicinity* (Augusta, Me., 1807), 23.

<sup>81</sup> "The Freedom of Election. A New Song," *Centinel of Freedom* (Newark, N. J.), Oct. 18, 1797.

<sup>82</sup> Fessenden, *Ladies' Monitor*, 58–59.

<sup>83</sup> Crocker, *Observations on the Real Rights of Women, with their Appropriate Duties, agreeable to Scripture, Reason and Common Sense* (Boston, 1818), 15–16.

<sup>84</sup> Laqueur, *Making Sex: Body and Gender from the Greeks to Freud* (Cambridge, Mass., 1990), 194–207.

accepted the universality of natural rights for both men and women but applied the concept differentially according to the sex of the rights bearer.

Pamphleteers and periodical writers defined women's rights in terms of duties and obligations, not political liberty and personal autonomy. An 1801 article with the evocative title "A Second Vindication of the Rights of Women" declared that women's and men's rights differed in basic ways. Fathers, wrote "A Lady," should "impress [their] daughters with a knowledge of the dignified sphere they were intended to move in, and the performances of such duties as naturally devolve on them."<sup>85</sup> This sphere was the domestic realm. Rather than follow Wollstonecraft's mistaken lead, American women should see that the true vindication of their rights arose out of the performance of their traditional feminine duties. Similarly, Hannah Crocker contrasted Wollstonecraft's specious depiction of women's rights with what she called women's "real rights"—namely, to nurture one's children and take care of one's husband. "It must be women's prerogative to shine in the domestic circle," she wrote, "and her appropriate duty to teach and regulate the opening mind of her little flock. . . . The surest foundation to secure the female's right, must be in family government."<sup>86</sup> "A real friend to the fair sex" elaborated on this notion. Listing twelve rights that belonged to women, he included a woman's "undoubted right to choose a husband"; "a right, in common with her husband, to instruct her children"; "a right to promote frugality, industry, and economy"; and "a right . . . to be neat and decent in her person and family."<sup>87</sup> Notably lacking is any mention of legal or political rights.

Because of its emphasis on the primacy of duties, the Scottish rights conception allowed authors to portray women's rights in a nonpejorative, even a positive, light. Rights were identified so closely with duties that the terms became virtually identical. "Let [girls] see that [their] very *duties* are the real source of all their pleasures, and the foundation of all their rights," urged the *Charleston Spectator* in 1806. "How engaging, how respectable are those rights! how sacred to the human heart, when a woman knows how *to assert them properly*."<sup>88</sup> By performing their God-given role, women laid claim to their appropriate rights; their appropriate rights became synonymous with their womanly duties. In this sense, women's rights could be celebrated, even by authors who were otherwise skeptical of women's claim on Lockean rights. Speaking to some women in New England, Gardner Child announced, "You are blessed with existence in a land of liberty, where the rights of women are understood and regarded. While the man protects, labors, and accumulates wealth, you have to preside over domestic affairs, to cultivate civilization, soften manners, and correct morals."<sup>89</sup> Part of

<sup>85</sup> "Second Vindication of the Rights of Women," *Ladies' Monitor* (New York), Aug. 10, 15, 1801, 19–20.

<sup>86</sup> Crocker, *Observations on the Real Rights of Women*, 20.

<sup>87</sup> "For the Weekly Museum," *Weekly Museum* (New York), Mar. 16, 1793.

<sup>88</sup> "On the education of females," *Charleston [S. C.] Spectator, and Ladies' Literary Port Folio*, Aug. 16, 1806 (emphasis added).

<sup>89</sup> Child, *An Oration, delivered at Richmond, Vermont, on the 31st Anniversary of American Independence* (Bennington, Vt., 1807), 44.

America's emerging greatness was the country's acknowledgment of the rights of women as well as men.

For some, it is true, the Scottish conception of rights may have represented an obfuscation, a way to give women the form but not the substance of rights. Discussing women's rights, for example, the *Columbian Phenix* noted patronizingly that "these, and a thousand other little rights, a good husband will feel pleasure in recognizing."<sup>90</sup> Yet as the author well knew, rights, understood in this fashion, were hardly rights at all. A husband could choose to acknowledge or to disparage his wife's rights; he would retain ultimate power to define their scope. Men could thus prevent women from claiming certain rights. "Morpheus" observed that women "have rights to tenderness, delicate treatment, and refined consideration. Men have no such rights." But, he also warned, "When women leave their character, and assume the character and rights, of men, they relinquish their own rights, and are to be regarded, and treated, as men."<sup>91</sup> Given these assumptions, women's rights would by definition be nonpolitical and noneconomic in nature.

This approach helped maintain the existing gender hierarchy. Where the Lockean conception of rights allowed white males to expand their political rights and challenge social privilege, the Scottish view tended to legitimate current social arrangements and justify existing power differentials. By conflating rights with duties, it privileged women's domestic role and precluded the possibility of women's direct participation in politics. It enabled Americans to adopt the language of rights for women at the same time it prevented (it was hoped) the expansion of women's rights into the public sphere. Scottish natural rights theory could thus serve conservative ends.<sup>92</sup>

Despite its conservative tenor, even the Scottish conception yielded unintended, beneficial consequences for women. As authors thought about the meaning of women's rights, they began to reexamine women's position in society, the limits of female political authority, and the relationship

<sup>90</sup> "The Gentleman at Large. No. III," *Columbian Phenix and Boston Review* (May 1800), 268.

<sup>91</sup> "Morpheus," *Mercury and New-England Palladium* (Boston), Mar. 2, 1802. To make a slightly different point, Lewis convincingly argues that, although women were denied political rights, such as the right to vote or to hold public office, they did possess "the fundamental civil rights of liberalism," including freedom of assembly, freedom to petition, freedom of religion, and the right to own oneself. These rights, she says, "are far from trivial, and the extension of them to women, even in the abstract, is of considerable significance"; Lewis, "'Of every age sex & condition': The Representation of Women in the Constitution," *J. Early Repub.*, 15 (1995), 359–87, quotation on 382 n.76. See also Kerber, "A Constitutional Right to Be Treated Like American Ladies: Women and the Obligations of Citizenship," in *U. S. History as Women's History: New Feminist Essays*, ed. Kerber, Alice Kessler-Harris, and Kathryn Kish Sklar (Chapel Hill, 1995), 17–35.

<sup>92</sup> Political theorists have expounded on the implications of various conceptions of rights. For example, they contrast the "benefit" or "passive" theory of natural rights with a "choice" or "active" theory of rights. The Scots as well as Jeremy Bentham promote the "passive" theory, as opposed to the "active" theory of Locke, a view that shapes their understanding of the individual, society, and government. See Tuck, *Natural Rights Theories*, 1–7; Finnis, *Natural Law and Natural Rights*, 199–205; and David Lyons, ed., *Rights* (Belmont, Calif., 1979), 1–13.

between the sexes. Some writers, for example, emphasized the importance of reciprocity between rights and duties. If women claimed certain rights, it was suggested, they also possessed certain duties. An 1801 issue of the *Lady's Magazine and Musical Repository* published an article with the intriguing title "On the Duties which we owe to Society."<sup>93</sup> Rights talk pushed women to exercise their duties—not only in the home but outside the domestic sphere as well. Rights talk further led to consideration of the mutual dependence of men's and women's rights. If women had rights and duties with respect to men, men also had rights and responsibilities toward women. Thomas Branagan's *Excellency of the Female Character Vindicated* lambasted males whose behavior "encroach[ed] on the natural rights of women." Men must act, he declared, to protect women; they must "inform the mind and establish the virtue of women; erect ramparts, in order to stop seduction in its mad, and too successful career . . . and shelter female innocence from the innovations of libertinism."<sup>94</sup> In his *Rights of Women Vindicated*, the Reverend John Hanning, M. D., insisted that men owed women "the respect due to the sex in general."<sup>95</sup> He specifically attacked husbands who failed in their duty to their wives by drinking, gambling, or adultery. Women's rights deserved protection from infringement or usurpation.

Even more important, some writers insisted that women's rights, like men's, should be regarded as inherent and unalienable. An 1802 "Plan for the Emancipation of the Fair Sex" discussed efforts to "re-establish" women "in their rights . . . [and] natural equality."<sup>96</sup> The key term is "re-establish." If women's rights were truly natural (that is, had existed in the state of nature), women were not gaining new rights; they were merely recovering rights they had lost. Although some analysts debated whether political rights should be included as natural rights, they still acknowledged women's unalterable claim to certain basic privileges.<sup>97</sup> William Loughton Smith told a female audience in 1796, "Tho' you are excluded from a participation in our political institutions, yet nature has also assigned to you valuable and salutary rights, which are beyond their [men's] control. To delight, to civilize, and to ameliorate mankind . . . *these are the precious rights of woman!*"<sup>98</sup> The idea of

<sup>93</sup> "On the Duties which we owe to Society," *Lady's Magazine and Musical Repository* (New York), Jan. 1801, 16–17.

<sup>94</sup> Branagan, *The Excellency of the Female Character Vindicated; being an investigation relative to the cause and effects of the Encroachments of Men upon the Rights of Women and the too frequent degradation and consequent misfortunes of the Fair Sex* (New York, 1807), ix, 139–40.

<sup>95</sup> Hanning, *Rights of Women Vindicated in the following Sermon*, 2d ed. (New York, 1807), 2.

<sup>96</sup> "Plan for Emancipation of the Fair Sex," *Lady's Magazine and Musical Repository* (New York), 3 (Jan.–June 1802), 43.

<sup>97</sup> St. George Tucker, for one, distinguished among natural, social, civil, and political rights. In his view, the possession of natural rights did not automatically lead to a claim on civil or political rights, in *Blackstone's Commentaries, with Notes of Reference to the Constitution and Laws of the Federal Government of the United States and of the Commonwealth of Virginia* (New York, 1969; orig. pub. 1803), 2:145.

<sup>98</sup> Smith, *An Oration, Delivered in St. Philip's Church, before the Inhabitants of Charleston, South-Carolina, on the Fourth of July, 1796, in commemoration of American Independence* (Charleston, S. C., 1796), 9.

natural rights implied the possession of privileges beyond human delegation or manipulation.

A duty-bound definition of rights was thus not simply or necessarily a diversion. Americans could have decided that women, like slaves, were sub-human or second-class human beings, unworthy to be the possessors of rights. But they did not. They granted women rights, albeit rights that were different from men's, derived from the Scottish rather than the Lockean natural rights tradition. In doing so, however, these writers conceded crucial ground: they acknowledged that women shared the same dignity and moral standing as men—both in the eyes of God, which Christianity had long taught, and because they were human beings whose rights were based in nature and guaranteed by nature's God. Having gained the status of rights bearers, women also acquired something more: the moral authority to claim specific or particular rights. The genie was out of the bottle.

Once women were acknowledged to have rights, whether of the Lockean or Scottish variety, it was hard to restrict the scope and meaning of those rights. Even the limited application of rights language to women raised troubling questions. Presenting herself as a "champion of the Rights of Woman," a "Miss M. Warner" recorded what she considered women's rights: to cook delicious meals, to share in her husband's grief, to nurse him when he was sick. Warner, however, sensed that her audience might see a contradiction in her terms:

These are our rights: those rights who dares dispute / Let him speak now. No answer, what all mute? / But soft, methinks some discontented fair / Cries, "These are duties, miss." Agreed, they are / But know ye not that Woman's proper sphere / Is the domestic walk? To interfere / With politics, divinity, or law, / A much deserv'd ridicule would draw / On Woman—. <sup>99</sup>

By conflating rights with duties, Warner cleverly defused the radical implications of rights language. While women who sought to claim men's rights in the realm of "politics, divinity, or law" were ridiculed, women who presided "in all domestic matters" were praised. Yet Warner's formulation did more than sanction a duty-bound version of rights: it acknowledged an important tension, verging on a contradiction, between rights and duties and, hence, between men's and women's rights. Once raised, this contradiction could not go unaddressed for long.

Many writers also found that their own language undermined their explicit intentions. A male author admitted in 1812 that women shared certain "rights" in common with men. At the same time, he affirmed women's traditional role: "It cannot be denied, that the intent of nature in creating women, has principally been to consecrate them to the employment of mothers." This reasoning led him to a startling conclusion: "Let us then be

<sup>99</sup> Warner, "Rights of Woman," *Boston Weekly Magazine*, Oct. 30, 1802, 2.

convinced of our errors respecting them. Who are those beings whom we thus oppress?"<sup>100</sup> "Rights of Women" (1801) appeared to confirm traditional gender roles and women's subordination to men: "That men should rule, and women should obey, / I grant their nature and their frailty such." Nonetheless, the poem ends not with an admonition that women remain dutiful but with a plea for expanded roles and possibilities:

Let us not force them back, with brow severe, / Within the pale of  
ignorance and fear, / Confin'd entirely by domestic arts: /  
Producing only children, pies and tarts.<sup>101</sup>

Rights language either enabled (if deliberate) or compelled (if inadvertent) authors to expose the limitations in women's social and legal position. Authors thus came to conclusions that did not always match their assumptions about gender roles: women oppressed, women confined, or women constrained from drawing on their full potentialities as human beings.

Writers often resorted to humor when discussing women's roles and women's rights. Ladies' magazines sometimes printed the purported proceedings of all-female legislatures or parliaments. Significantly, these fictional assemblies handled only feminine issues. In a piece reprinted several times, for example, a women's delegation met "to consider the ways and means to raise the necessary supplies of husbands throughout the United States."<sup>102</sup> Another article, on the "House of Ladies," debated the prevalence of female cursing, swearing, and bad spelling practices.<sup>103</sup> Yet another argued that women should be established "as a body corporate" so that they could "be the sole judges, as to the propriety, or impropriety, of their own dress and fashion. Let them be permitted to enact laws, for their own government, and to exact penalties and punishments of offenders."<sup>104</sup> Still others depicted a female legislature that passed resolutions remonstrating against recent trends in men's fashions.<sup>105</sup>

<sup>100</sup> "On Women," *New-York Weekly Museum*, Aug. 15, 1812. William Boyd's discussion of women's rights also led him to conclude that women were "oppressed" in *Woman: A Poem, delivered at a Public Exhibition, April 19, at Harvard University; in the College Chapel* (Boston, 1796), 13.

<sup>101</sup> "Rights of Women," *Weekly Museum* (New York), Feb. 28, 1801.

<sup>102</sup> "Proceedings of a Female Legislature. Matrimonial Budget," *The Hive* (Lancaster, Pa.), Feb. 15, 1804, 138.

<sup>103</sup> "Proceedings in a Female Parliament. House of Ladies," *The Key* (Frederick-Town, Md.), Mar. 31, 1798, 98–99. See also *Weekly Museum* (New York), July 24, 1802, and *New-York Weekly Museum*, May 13, 1815, 24. Some pieces referred to "Female Parliaments," others to "Female Legislatures." At times, the contents were identical, suggesting that some articles may have originated in Britain. For the long tradition of satirical "Parliaments of Women" in England see Lois G. Schwoerer, "Women's Public Political Voice in England: 1640–1740," in *Women Writers and the Early Modern British Political Tradition*, ed. Hilda Smith (forthcoming), 56–74.

<sup>104</sup> "To Samuel Saunter, Esq.," *Port Folio* (Philadelphia), Feb. 26, 1803, 65–66.

<sup>105</sup> "Congress of Fashion—Lower House," *Lady's Weekly Miscellany* (New York), Dec. 17, 1808, 124–25; *Lady's Miscellany; or, The Weekly Visitor* (Philadelphia), Feb. 22, 1812, 280–81.

Such pieces were meant to satirize, if not ridicule, women's growing aspirations. Yet these articles also raised serious questions. They admitted that women had rights, acknowledged women's capacity as citizens, and suggested that women were capable of governing themselves. They highlighted the exclusion of women from the governing bodies of the state and nation. The articles, in other words, betrayed the existence of deeper grievances and injustices.

These grievances indicated that women were dissatisfied with a political order that denigrated or excluded them—or that men feared such a possibility. The *Philadelphia Repository and Weekly Register*, for example, printed an account, presumably fictional, in which the “respectable Young Ladies of this City” assembled and voted to protest the “the false accusations” of “A Misogamist [Misogynist].” “It is the duty of our Sex,” these ladies resolved in 1803, “to support the reputation and sense of our utility to the community.”<sup>106</sup> Though meant to be humorous, the piece portrayed the women as active agents, defending their reputations to the outside world. In 1812, the “Female-Citizens of the state of Pennsylvania” took a further step, articulating their grievances in the language of rights. The women presented a petition, also presumably fictional, opposing efforts by the legislature “to deprive them of the indefeasible rights of dress”:

Your Petitioners humbly conceive, that the present Ordinances of Society, have more than sufficiently reduced them under the dominion of the other Sex; a fact which they think has been fully demonstrated by the ingenious defender of their rights, Mrs. Wolstonecroft [sic], who, had she lived to this period, must have been struck at such an attempt, which, should it succeed, must ultimately lead to the total prostration of our Rights and Privileges.<sup>107</sup>

Though they couched their plea as a jest, the women pressed for the “Rights and Privileges” that would free them from “the dominion of the other Sex.” Whether the authors knew it or not, joking complaints could easily turn into real ones.

Among the real complaints that soon emerged was the women's lack of political rights. Rights talk led to speculation about the possibility of women voting, holding office, or obtaining representation in their legislatures. As early as 1790, the New York *Daily Advertiser* published an anonymous column that declared, “It is certainly unjust to exclude from any share in government one half of those who, considered as equals of the males, are obliged to be subject to laws they have no share in making!”<sup>108</sup> The president of Harvard College, John Thornton Kirkland, admitted in 1798, “Had

<sup>106</sup> [Ann Lively], “For the Philadelphia Repository,” *Philadelphia Repository and Weekly Register*, June 25, 1803, 202.

<sup>107</sup> “Draught of a petition to be presented to the House of Representatives of the state of Pennsylvania,” *Lady's Miscellany; or, The Weekly Visitor* (Philadelphia), Feb. 22, 1812, 280.

<sup>108</sup> “The Ladies,” *Daily Advertiser* (New York), Jan. 19, 1790.

the new theory of the *Rights of Women* enlightened the world at the period of the formation of our constitution, it is possible that the framers, convinced of its arguments might have set aside the old system of exclusion, upon which the world has always proceeded till this reforming age, as illiberal, and tyrannical."<sup>109</sup> The very words "women's rights" conjured up the prospect of women's political participation.

Even before the feminist movement of the 1830s, some authors imagined the possibility of women holding office. Writing in 1816, "A Lady" commented on what she saw as an important flaw in her government. "It is a curious fact," she remarked, "that a republic which avows equality of right as its first principle, persists in an ungenerous exclusion of the female sex from its executive department."<sup>110</sup> The issue took on greater urgency when a woman, Elizabeth Bartlett, was nominated for the position of register of deeds in Middlesex County, Massachusetts, in 1822. Writing in the *Euterpeiad*, "Susan Thoughtful" pondered the outcome of her election. She wondered whether Bartlett, who was single, would be eligible to marry while holding office. If she did marry, would she be disqualified from making contracts on her own and thus be unable to discharge her public duties? Most important, the author mused about the long-term consequences of a woman's nomination to public office. "There is now but little difference," she said, "in the education of boys and girls, and as things go on, it seems there is to be but little difference in occupations, rights or duties of men and women." She clearly did not approve of the trend. "If a lady be eligible as a Register of Deeds, is she not also as a Governor, Senator, Representative, Overseer of the poor, or other public office? . . . I have some curiosity to know where we are to stop."<sup>111</sup> Long before women publicly agitated for their rights, people such as "Susan Thoughtful" understood—though they may not have liked—the implications of natural rights ideas for women.

The most serious discrepancy between men's and women's political rights came to notice as states debated the expansion of the white male franchise. With the elimination of property qualifications for men, it became clear that the main impediment to women's voting was their sex. As early as 1821, a "friend" of the ladies published a jocular petition on the subject to the New York state constitutional convention: "That ev'ry one must have a vote, / Who does not wear a petticoat, / Is generally admitted." While many states by then allowed all kinds of men, even those who had "forfeit[ed] all pretensions / To decency and common sense," into "the birthright of election," women, though "pure as Eden's queen," could "never to election

<sup>109</sup> Kirkland, *An Oration, Delivered at the Request of the Society of Phi Beta Kappa, in the Chapel of Harvard College, on the Day of their Anniversary, July 19, 1798* (Boston, 1798), 11.

<sup>110</sup> [By a Lady], "On Female Talent," *New-York Weekly Museum, or Polite Repository*, Mar. 2, 1816, 276.

<sup>111</sup> [Thoughtful], "Something New,—Or, what next?" *Euterpeiad*, Mar. 2, 1822. The issue of whether Bartlett could hold office was never put to the test. On Mar. 6, 1822, the *Columbian Centinel* announced Bartlett's withdrawal from the race, noting that the nomination "was made wholly without her knowledge or consent [and] . . . she utterly disclaims all pretensions to the office."

come." Women, it was clear, were excluded simply because they were women—not because they lacked sufficient property, education, or virtue. The author then asked New Yorkers to broaden the franchise beyond white males. "But why should women be denied, / And have their tongues completely tied, / For party broils well fitted."<sup>112</sup> The expansion of male suffrage caused a shift from a property-based to a gender-based prerogative, a shift that only highlighted the injustice of women's systematic exclusion from the political process.

In the post-Revolutionary era, many Americans anticipated the radical consequences of natural rights talk and rejected its implications for women. The denial of political rights to women, in particular, came to represent the defining outer limit of natural rights ideology in the early United States, the line that even the Jeffersonians would not cross in their advocacy of the universal rights of man. Whatever the intent, citizens could not contain the radicalism of rights language for long. The discussion of women's rights had already begun to expose the basic contradictions of an egalitarian polity that denied truly equal rights to women.

This discourse concerning women's rights provides a crucial intellectual link between the Revolutionary era and the first feminist movement of the 1830s and 1840s.<sup>113</sup> More explicitly than "Republican Motherhood,"<sup>114</sup> natural rights ideas defined women's relationship to the political community and forced Americans to specify precisely what that relationship should be. During the Revolution, some Americans had begun to explore, mostly in private, the meaning of equality and natural rights for women. Mary Wollstonecraft's *Vindication of the Rights of Woman* appropriated the idea of natural rights and applied it explicitly to women. American periodicals popularized the language of women's rights and raised the question of exactly what kind of rights women should have. This issue generated debate for many years. As early as the 1790s, it was on the table for discussion. Rather

<sup>112</sup> "Petition to the Convention in Behalf of the Ladies. By their friend and counsellor," *Euterpeiad*, Sept. 29, 1821, 112. While such discussions became more common in the 1830s, this represents a very early example of a plea for the female franchise. The Seneca Falls Declaration of 1848 later made the same point as this poem about the unjust exclusion of women from the franchise. My argument here (though not my evidence) owes a great deal to Baker, "Domestication of Politics," 625–32. For the later woman suffrage movement see Ellen Carol DuBois, "Outgrowing the Compact of the Fathers: Equal Rights, Woman Suffrage, and the United States Constitution, 1820–1878," in Thelen, ed., *Constitution and American Life*, 176–202.

<sup>113</sup> For the emergence of the first feminist movement see Sylvia D. Hoffert, *When Hens Crow: The Woman's Rights Movement in Antebellum America* (Bloomington, Ind., 1995); Suzanne M. Marilley, *Woman Suffrage and the Origins of Liberal Feminism in the United States, 1820–1920* (Cambridge, Mass., 1996); and DuBois, *Feminism and Suffrage: The Emergence of an Independent Women's Movement in America, 1848–1869* (Ithaca, 1978). For an alternative explanation for the emergence of rights language in the women's movement see Elizabeth B. Clark, "The Sacred Rights of the Weak: Pain, Sympathy, and the Culture of Individual Rights in Antebellum America," *JAH*, 82 (1995), 463–93.

<sup>114</sup> Kerber, *Women of the Republic*, 189–231; Kerber, "The Republican Mother: Women and the Enlightenment—An Historical Perspective," *AQ*, 28 (1976), 187–205.

than an unquestioned given, women's exclusion from politics now had to be rationalized and justified.

Such exclusion seems, on the face of it, to confirm the feminist critique of the liberal state. Theorists such as Carole Pateman, Nancy Hirschmann, and Joan Landes and historians such as Susan Juster have argued that, from the beginning, democratic states have been "masculinist" in character, depending for their existence on the political exclusion or social marginalization of women.<sup>115</sup> The primary features of a liberal polity—consent, obligation, and choice—have been understood, they argue, as referring exclusively to males and defined so as to preclude women's participation in the public sphere. "Civil individuals," Pateman notes, "have a fraternal bond because, *as men*, they share a common interest in upholding the contract which legitimizes their masculine patriarchal right and allows them to gain material and psychological benefit from women's subjection."<sup>116</sup> "Structural sexism"<sup>117</sup> represents a fundamental<sup>118</sup> or "enduring"<sup>119</sup> aspect of these states. Juster, looking at changing gender roles in evangelical religious sects, reaches a similar conclusion about the American Revolution. "The democratic revolution," she says, "was . . . constructed *against* not merely *without* women."<sup>120</sup>

The historical evidence adduced here suggests that women's exclusion was contingent rather than essential. From the Revolution onward, at least some Americans realized that the ideals of equality and natural rights could be applied to women as well as to men. In fact, they realized that, unless they could come up with a persuasive rationale to exclude women, the universalistic assumptions of natural rights ideology would compel women's inclusion. But a commitment to rights was at odds with a commitment to the gender hierarchy. As a result, Americans attempted to circumvent the radicalism of natural rights. Drawing selectively on Scottish and Lockean natural rights traditions, they defined men's and women's rights differently. Although women would have rights, they would, by virtue of their fundamental nature, be prevented from claiming the same rights as men. The

<sup>115</sup> "Yet the claim that the 'modernity' inaugurated in part by the French Revolution has 'not yet' exhausted its liberatory potential is equally suspect. . . . This claim can never be redeemed, for the women's movement cannot 'take possession' of a public sphere that has been enduringly reconstructed along masculinist lines"; Landes, *Women and the Public Sphere*, 202–06, quotation on 202.

<sup>116</sup> Pateman, "Fraternal Social Contract," 43.

<sup>117</sup> Hirschmann, *Rethinking Obligation*, 12. "Structural sexism" refers to "the fact that [the structure of obligation] is defined solely in voluntarist terms . . . is itself reflective of a masculinist perspective, and automatically excludes women from obligation on an epistemological level." To be fair, Hirschmann does acknowledge that the language of liberalism provided women with a means of challenging their exclusion in her "Revisioning Freedom: Relationship, Context, and the Politics of Empowerment," in *Revisioning the Political: Feminist Reconstructions of Traditional Concepts in Western Political Theory*, ed. Hirschmann and Christine Di Stefano (Boulder, Colo., 1996), 51–74.

<sup>118</sup> Landes, *Women and the Public Sphere*, 204.

<sup>119</sup> Pateman, "Feminism and Democracy," in *Disorder of Women*, 223. Pateman develops her thesis more fully in *The Sexual Contract* (Stanford, Calif., 1988).

<sup>120</sup> Juster, *Disorderly Women: Sexual Politics and Evangelicalism in Revolutionary New England* (Ithaca, 1994), 135–44, quotation on 143 (emphasis added).

result was a gendered division of rights and, concurrently, the elaboration of separate spheres ideology.<sup>121</sup>

Rights talk, however, could not be anchored to any particular usage or theory. By acknowledging the existence of women's rights, writers created the possibility that women could exploit rights discourse for themselves. By 1848, the Seneca Falls Declaration would claim, not the separate rights of woman, but the universal rights of all humanity. Women's ability to claim equal rights did not, to be sure, guarantee public recognition of those rights; that struggle would take more than a century. Yet a historical understanding of women's rights talk exposes, not the exclusivity, but the irony, of the liberal, rights-based state. Though nature was invoked to justify women's subordinate status, natural rights ideology subverted the claim. Natural rights represented the turning point, the discursive key that unlocked the possibility of women's social and political equality.

<sup>121</sup> Nancy F. Cott, *The Bonds of Womanhood: 'Woman's Sphere' in New England, 1780-1835* (New Haven, 1977); Barbara Welter, "The Cult of True Womanhood, 1820-1860," *AQ*, 18 (1966), 151-74. For a good review and critique of the literature see Kerber, "Separate Spheres, Female Worlds, Woman's Place: The Rhetoric of Women's History," *JAH*, 75 (1988), 9-39.