

CHAPTER IV

Race, Gender, and Solidarity

The woman suffrage movement burst onto the scene in the middle of the nineteenth century as the first grassroots mass movement for universal suffrage in the United States.¹ The movement did not just focus on getting the right to vote for women. The quest for woman suffrage arose alongside, in support of, and in opposition to the fight for black political equality. After the Civil War, every state in the Union denied women the right to vote and most denied suffrage to black people.² As the legal scholar Pam Karlan observed, “[s]ex and race were . . . tied together as bases for exclusion from civic life.”³ Woman suffrage leaders argued that both exclusionary restrictions can be abolished by reforming the constitution and safeguarding voting as a fundamental right. Everyone who is a citizen of the United States, they argued, is entitled to formal participation in the political community.⁴ They articulated the most radical case for universal suffrage, even by modern standards.

Notwithstanding the normative attractiveness of their goal, the woman suffrage leaders confronted a seemingly insuperable obstacle. Republican advocates for black political equality viewed voting rights expansion as zero-sum. They argued that the country was not ready to accommodate both black and woman suffrage. Given the severity of the country’s racism and the extent of black exclusion, achieving political equality for black men was going to be hard enough. Universal suffrage, granting voting rights to women, was a step too far. After fighting a war over slavery, it was more important to secure political equality for black men than for white women. From their perspective, the country’s most pressing problem was race, not gender. Given that racial subordination was the most significant problem facing the country, the solution and focus had to be race-based.

Pushing back against that narrative, woman suffragists countered that their claims for political equality could be accommodated alongside those of black men by making suffrage universal, contingent on citizenship. This would require political elites to restructure the

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³ Pamela S. Karlan, Election Law and Gender, in *The Oxford Handbook of American Election Law*, 155 (Editor, Eugene D. Mazo).

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constitutional order. But, it would solve the problem. Black men, white women, and black women could all be included within the self-governing polity.

This chapter focuses on the lessons that can be learned from the movement's unsuccessful attempt to convince the country that suffrage ought to be guaranteed as a positive universal right of national citizenship. The debate between woman suffrage advocates and proponents of black political equality—from the end of the Civil War to the ratification of the Fifteenth Amendment—implicitly resolved around a debate over the best strategy for securing civil and political rights for black people. Proponents of black political equality advocated a race-exclusive approach because they were alarmed by the depth of the country's disdain for black people and how difficult it was going to be to get the nation to accept black people as formal members of the political community. Nineteenth-century woman suffragists championed a universalist strategy because they were concerned that they would be left behind and because they perceived that a universalist approach would best safeguard political rights.

Undoubtedly, proponents of black political equality accurately and unmistakably recognized the pervasive nature of anti-black racism. Racism has long been the metronome setting the tempo of racial inclusion. Ironically, some of the woman suffrage movement's most prominent leaders deployed racist arguments even as they were making the case for black political equality and advancing the most radical and far-reaching vision of suffrage. Republicans and advocates of black equality were right that one could not underestimate the depth of the country's racism and the obstacle it posed to addressing racial subordination. Moreover, the approach favored by woman suffrage leaders would require a more profound reconstruction of the constitutional order than the extant politics could tolerate.

Nevertheless, even accounting for the country's addiction to racial subordination, woman suffrage leaders had the better long-term approach. Their approach attacked discrimination at its foundation. Woman suffragists attempted to anchor suffrage to a fundamentally different constitutional architecture than the existing state-based model. Suffrage, they argued, is an essential component of national citizenship that cannot be denied by the state. By taking the choice of whether to grant suffrage and on what terms from the states, they

removed the very mechanism—state discretion, that served as a conduit for racial and gender discrimination.

From the end of the Civil War until the ratification of the Fourteenth Amendment, woman suffrage advocates remained hopeful that their approach would win the day. But those hopes were dashed once Congress proposed a Fourteenth Amendment that included a gender restriction for the first time in the Constitution. After the ratification of the Fourteenth Amendment, leaders of the woman suffrage movement began to abandon their argument for universal suffrage and they released their racism from its instrumentalist shackles.

The fact that they were unable to convince the country to shift its approach to voting, was a failure, but not just for the woman suffrage movement. The struggle for racial equality in voting was also a casualty of the country's failure to more fundamentally rebuild the constitutional order. Indeed, one might argue that the costs were much more consequential for black voting rights than for women suffrage. In order to appreciate both the necessity and failure of the VRA, one must understand the sometimes cooperative and sometimes rivalrous relationship between black and woman suffrage during the latter part of the nineteenth century.

the received wisdom

At the Founding, America's narrative of suffrage—its theoretical justification of its suffrage regimes—and its voting rules were influenced by what came before its creation and what it inherited.⁵ Voting was a matter of privilege and deservedness. The new nation derived its theory and practice of suffrage from England and the colonies' political practices.⁶ This is what Alexander Keyssar, a leading historian of voting, describes as "the received legacy."⁷ As Keyssar explained: "For more than a decade before the founding fathers arrived in

⁵ Keyssar, 5.

⁶ Keyssar, 5.

⁷ Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States*, 5 (2000).

Philadelphia, individual states had been writing their own suffrage laws.”⁸ Though the American conception of suffrage was admittedly broader than what it borrowed from England, the voting laws of the colonial era, which in turn shaped the voting laws of the new nation, “almost everywhere were shaped by colonial precedents and traditional English patterns of thought.”⁹

This “received wisdom,” the flavor of republicanism en vogue from the colonial era through the late eighteenth century to at least the latter part of the nineteenth century, conceptualized the franchise as a matter of deservedness.¹⁰ Voting was a privilege reserved only for those worthy of the right. Men—and only men—performed their worthiness through displays of virtue, character, intelligence, and independence.¹¹ These were men who had a stake in the polity. As the eminent American sociologist Michael Schudson explained, no one was able to vote “who has not already been recognized as a person of responsibility within the community, someone with a stake in the kingdom.”¹²

To the extent there was a characteristic expression of deservedness, it was property holder. Indeed, property ownership was the quintessential demarcation between those who deserved the franchise and those who did not.¹³ The voting laws of the states of the new nation were shaped by pre-Founding voting practices and regulations.¹⁴ As Keyssar put it: “The lynchpin of both Colonial and British suffrage regulations was the restriction of voting to adult men who owned property.”¹⁵

⁸ Keyssar, at 5.

⁹ Keyssar, at 5.

¹⁰ Keyssar, 5-6.

¹¹ Michael Schudson, *The Good Citizen: A History of American Civic Life*, 27-29.

¹² Michael Schudson, *Good Citizens and Bad History: Today's Political Ideals In Historical Perspective*, 4 *Comm. Rev.* 5 (2009).

¹³ Schudson, *The Good Citizen*, 28..

¹⁴ According to Keyssar, “in more than a third of the states, colonial restrictions on suffrage (or close approximations thereof) remained in force.” Keyssar, at 24.

¹⁵ Keyssar at 5.

The states of the new nation implemented what they learned from the colonies and England. Unsurprisingly, every state but one required property ownership or tax payments as a prerequisite to voting.¹⁶ Vermont was the only state that granted suffrage to white men without restrictions.¹⁷ Among a hodgepodge of voting restrictions, states limited suffrage to those who paid taxes, to those who were of sound mind, to those who lived in the jurisdiction for a sufficiently significant time, to those who were not convicted of a crime, to those who were of the favored religion, and of course to those who were of the preferred race and gender.¹⁸

To be clear, the revolutionary rhetoric of rights, which fueled America's break from Britain, did leave a noticeable imprint on the nation's voting laws. Compared to England and the colonies, America was a bastion of democracy. From about 1828 through the late 1850s, the Jacksonian revolution ushered in an expansion of the nation's voting laws and an unprecedented reformation of its political practices.¹⁹ A rhetoric of rights was in the air, compelling a reconsideration of the political order. It spurred a reconsideration of who belonged and who had a legitimate stake in self-government. The United States had experienced one of the most significant transformations of voting rights in its young history. Property and tax requirements had largely disappeared, and residency restrictions had been liberalized.²⁰

As the states found it necessary to expand the franchise to more and more white men, both race and gender became pawns in the game of republican virtue. Whiteness and maleness were fashioned into the iconic symbols of deservedness.²¹ They stood in for worthiness, intelligence, and good character.

¹⁶ The Good Citizen, 47.

¹⁷ <https://www.gilderlehrman.org/history-resources/essays/winning-vote-history-voting-rights>; Vermont Constitution, Chpt. II, § VI (1777), <https://sos.vermont.gov/vsara/learn/constitution/1777-constitution/>.

¹⁸ Keyssar, 325-402.

¹⁹ Keyssar, 42-52.

²⁰ Keyssar, 29-32.

²¹ Michael Warner, The Mass Public and the Mass Subject, in HABERMAS AND THE PUBLIC SPHERE 382 (Craig Calhoun ed., 1992).

But Jacksonian Democracy had its limits. Indeed, some of its critics thought the democracy moniker was ill-suited.²² Most notably, Jacksonian Democracy was notoriously racist and sexist.²³ White supremacy and patriarchy were among its key components.

If you were an able-bodied white man of sound mind and reasonable means, whether you lived in the North, the South, the East, or the West, it was never more possible for your voice to be heard. You were part of a constitutional republic. You could not be faulted for thinking that voting was a fundamental right—your fundamental right—to which you were entitled by virtue of your citizenship. Citizenship meant something, if you were a white man. You were a self-governing member of the political community.

The political language of the times was particularly instructive. When political actors in the nineteenth century invoked the phrase “universal suffrage,” they did not use the adjective in its broadest sense. “Universal” did not mean everyone; it meant everyone who mattered. Given the existing social hierarchy, it was clear that men mattered the most, and with respect to political representation, men mattered exclusively. Thus, “universal suffrage” meant suffrage for age-eligible white men.²⁴ Race and gender were, therefore, visible markers of inclusion and exclusion.

But even with respect to white men, worthiness could be, and was, questioned. Though whiteness and maleness were presumptive traits of virtue and deservedness, the presumption was rebuttable. Studying nineteenth-century voting restrictions in America, Rabia Belt, the Stanford legal scholar and historian of voting, turned her perceptive lens on a group of institutionalized Americans linked by “socioeconomic class, ability, ethnicity, and criminality.”²⁵ American jurists and legislators, Belt argued, “remixed ideas borrowed from England into a new form that ushered ‘common’ white men into the polity but” disenfranchised them “if they committed crimes and became disabled, aged without family

²² Daniel Walker Howe, *What Hath God Wrought: The Transformation of America, 1815–1848* (New York: Oxford University Press, 2007), XX.

²³ Sean Wilentz, *Rise of American Democracy*, XX.

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²⁵ Rabia Belt, *Mass Institutionalization and Civil Death*, 96 N.Y.U. L. Rev. 857, 872 (2021).

support, or lingered in poverty.”²⁶ Summarizing the complex relationship between voting and citizenship, Belt remarked, “the institutionalized disenfranchised dependent adult man was the emblematic quasi-citizen.”²⁷

Belt reminds us that the rhetoric of deservedness was suitably moldable. Maleness and whiteness were not ironclad guarantees against disfranchisement. Dependency, characterized by institutionalization for mental disability, criminality, or both, was *prima facie* and often conclusive proof of undeservedness.²⁸ The boundaries of self-governance were rigidly policed, at least in theory. Thus, even accounting for suffrage expansion during the Jacksonian era, the rhetoric of rights was bounded.

The reasons are manifold. As a point of departure, and as historian William Nelson has concisely explained, rights rhetoric did not have a precise meaning, particularly when deployed in the antebellum period.²⁹ All political actors used rights rhetoric to serve whatever political aims they wished to pursue. Indeed, political actors from opposing policy objectives used the same language and the same reasoning but came to different conclusions.³⁰ Rights rhetoric easily justified exclusions as well as inclusions.

Additionally, rights-based rhetoric was potentially too radical. It was not conducive to the prevailing, almost atavistic, impulse to maintain exclusions on the franchise based on wealth, mental disability, criminal status, gender, and age. Rights-based reasoning, if taken seriously, would inexorably lead to the exercise of suffrage by women, free black people, the feeble-minded, and others who were perceived to be evidently undeserving.

Most crucially, rights rhetoric did not fit as easily into the constitutional framework as the rhetoric of privilege and deservedness. The frame of deservedness was not only comparatively malleable, it came with the added advantage of being much more consistent

²⁶ *Id.* at 872.

²⁷ *Id.*

²⁸ *Id.* at 863, 887–88.

²⁹ William E. Nelson, *The Fourteenth Amendment: From Political Principle to Judicial Doctrine*, 13–39 (1988).

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with the state-centered approach of the Constitution. It facilitated the states' preferences to grant voting rights to almost all white men and to deny it to everyone else.

Therefore, notwithstanding the accessibility of a rights-based narrative that sometimes did and could justify the expansion of the franchise to white men on entitlement grounds, the transformation of suffrage practices took place within the terms of the dominant narrative.³¹ It was housed beneath the narrow canopy of deservedness. The idea that suffrage was a privilege granted to those who deserved it carried over from the colonial era to the formation of the United States, through the antebellum period, and into the post-Civil War era.³² Voting as a privilege was the concept that did the least damage to the constitutional structure. It, therefore, remained the prevailing orthodoxy and justified excluding those defined as undeserving.

America's ideological justification for granting or excluding the franchise in the late nineteenth century—that is, its political ideology or narrative of suffrage—compelled excluded groups to state an affirmative case that they deserved suffrage, with political equality as the prize. Political outsiders, by contrast to insiders, could not offer their citizenship as a qualification. Indeed, before the Fourteenth Amendment, they could not rely upon the idea that they were national citizens and therefore entitled to certain rights. They had to offer something else: their intelligence, industry, judgment, and stake. Moreover, reformers were operating against the backdrop of a constitutional and legal system in which voting was, at best, a negative right. The states could adopt whatever laws they wanted to. They could decide that certain bases for denying the vote, such as property, were off limits. But they could and did decide that others bases, such as gender and race, were perfectly legitimate.

the movement

This was the backdrop against which the movement for woman suffrage was operating. American political and constitutional culture made a suffrage zero-sum enterprise. When

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voting rights were up for grabs, groups on the margins were pitted against each other. It was like a game of musical chairs: someone would be left out, and the goal was not to be that someone. This zero-sum structure incentivized group antagonism and negative comparisons.³³ If you were on the outside looking in, your best case for inclusion was to argue that you were better than and more deserving than your competitors.

Notably, proponents of black man suffrage, including prominent abolitionists, bathed their arguments in unvarnished sexism. Woman suffragists were repeatedly admonished to wait their turn. The zero-sum and rivalrous structure of America's approach to suffrage expansion served as a conduit for the society's sexism and racism. It made it almost inevitable that the country would grant the right to vote to black men but deny it to women, that it would amend the constitution to functionally extend suffrage to white women but, at the same time, refuse to include black women. If they were to take advantage of this moment and secure voting rights for women, they would need to parry the argument that the only solution to racial exclusion was a racial remedy.

This zero-sum structure shaped the relationship between the woman suffrage movement and the fight for black political equality. Women and black people were making the case for self-government in a political and constitutional system that was inhospitable to their rights and practically designed to pit them against each other.³⁴ As outsiders to the political community seeking a right to political participation, women and black people had to make the case that they deserved the right to rule over themselves and others.

According to feminist historian Faye Dudden, the movement for women's equality started "in the 1830s, springing up within the ranks of activists who demanded both the immediate emancipation of the slaves *and* equal rights for free people of color—proposals so radical most Americans regarded them as sheer fanaticism."³⁵ Indeed, as Ellen Carol DuBois, a leading feminist historian of the suffrage movement, explained: "Of the moral reform

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³⁵ Faye E. Dudden, *Fighting Chance: The Struggle over Woman Suffrage and Black Suffrage in Reconstruction America*, 4 (2011).

movements, abolitionism was the most radical and contributed the most to the emerging sensibility of female assertion.”³⁶ The abolitionist movement served as an intellectual precursor and proving ground for the woman suffrage movement.³⁷ The abolitionist movement provided concrete meaning to abstract conceptions of rights. It gave women—white women but also, to a lesser extent, black women—a platform to assert themselves in the public sphere and to acquire skills as public actors.³⁸ Suffragists began to develop their intellectual ideas in conjunction with the organizing skills they developed through their involvement in the campaign against slavery.

Until the abolitionist movement, particularly radical abolitionism, neither black nor white women had an outlet for collective, public political advocacy and organizing. The ideology of separate spheres confined white women to the home and a limited set of narrowly defined domestic issues.³⁹ Though this separate spheres ideology did not limit nor define black women’s experiences as it did those of middle and upper-class white women, black women were doubly limited in their personal and collective advocacy based on their gender and race.⁴⁰ Enslaved black women were forced to occupy whatever role the slaveocracy demanded. [add a couple of sentences here about how the differences.] For white women—and, to a lesser degree, black women—abolitionism provided a bridge from the ideology of separate spheres to collective public engagement. “Women’s involvement in abolitionism developed out of traditions of pietistic female benevolence that were an accepted aspect of women’s sphere in the early nineteenth century.”⁴¹

As the first woman rights convention met at Seneca Falls in 1848, led by Elizabeth Cady Stanton, the women’s rights movement brought together three concepts—rights,

³⁶ Ellen Carol DuBois, *Outgrowing the Compact of the Fathers: Equal Rights, Woman Suffrage, and the United States Constitution, 1820-1878*, 74 *J. Am. Hist.* 836, 840 (1987)

³⁷ See DuBois, *Outgrowing the Compact of the Fathers*, 840. See also Ellen Carol DuBois, *Suffrage & Feminism*, 22 (1978).

³⁸ Rosalyn Terborg-Penn, *African-American Women in the Struggle for the Vote, 1850-1920*, 19-20.

³⁹ DuBois, *Outgrowing the Compact of the Fathers*, 843, 846 (1987).

⁴⁰ Frances Beal’s concept of double jeopardy, <http://www.hartford-hwp.com/archives/45a/196.html>.

⁴¹ DuBois, *Suffrage & Feminism* 32.

citizenship, and the franchise—to lay the theoretical foundation for their equality claims.⁴² With critical support from Frederick Douglass, Stanton narrowly prevailed on convention attendees to make suffrage part of the case for women’s equality.⁴³ Delegates agreed with Stanton that the “elective franchise” was the “first right of a citizen.”⁴⁴ Once linked, suffrage became the most representative expression of citizenship and equality for women.⁴⁵

For almost two decades, the movement for woman suffrage searched for its footing until it found traction in the early Reconstruction period.⁴⁶ The end of the Civil War was a crucial transition period. Reconstruction promised a new beginning. Eric Foner, a leading historian of the Reconstruction period, famously and perhaps optimistically described Reconstruction as a second Founding.⁴⁷ That is certainly how advocates for women’s political rights and advocates for black political equality saw it at the time.⁴⁸ Reconstruction was an occasion to reconsider rights, belonging, and political identity. Republican principles of political agency and self-government seemed ready to swamp old conceptions of suffrage based upon deservedness. “Reconstruction,” DuBois wrote, “strengthened the belief that the right to vote was a natural right.”⁴⁹ After the Civil War, she explained, “feminist activists began to refer to themselves as ‘the woman suffrage movement,’ rather than the ‘women’s rights movement.’”⁵⁰

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⁴³ Sally McMillen, *Seneca Falls and the Origins of the Women’s Rights Movement*, 93-94 (2008).

⁴⁴ Declaration of Rights and Sentiments.

⁴⁵ “For three-quarters of a century, beginning in 1848, American women centered their aspirations for freedom and power on the demand for the vote.” DuBois, *Feminism & Suffrage*, 15.

⁴⁶ “During Reconstruction the demand for woman suffrage flourished because it was the most forceful way of expressing—and the most powerful tool for achieving—women’s equality with men.” DuBois, *Outgrowing the Compact of the Fathers*, at 837; *see also id.* at 844 (“Political equality had been the first principle of the women’s rights movement for almost two decades, but it was the historical consequences of the Civil War that began to make it a political possibility.”).

⁴⁷ Eric Foner, *The Second Founding: How the Civil War and Reconstruction Remade the Constitution* (New York: WW Norton & Company, 2019).

⁴⁸ *History of Women Suffrage*, volume II, 173.

⁴⁹ DuBois, *Outgrowing the Compact of the Fathers*, 845.

⁵⁰ DuBois, *Feminism & Suffrage*, 54.

The leaders of the woman suffrage movement played an important role in ratifying the Thirteenth Amendment. Stanton and Susan B. Anthony founded the Women's Loyal National League to petition Congress to abolish slavery.⁵¹ Once the Thirteenth Amendment was proposed, Stanton and Anthony shifted their focus to ratification.⁵² Charles Sumner specifically solicited their help in pressuring Congress to pass the Amendment. "Send on the petitions," he beseeched, "they give me opportunity for speech." "You are doing a noble work."⁵³ Anthony, quoting the Scottish-born poet James Montgomery, urged potential signatories not just to abolish slavery but to: "Consign it to remorseless fire! Watch till the last faint spark expires; Then strew its ashes on the wind, Nor leave one atom wreck behind."⁵⁴ By some estimates, the League gathered approximately 500,000 signatures urging Congress to pass a constitutional amendment to abolish slavery.⁵⁵

Because of their critical role in ratifying the Thirteenth Amendment, woman suffrage leaders hoped and expected that their political allies from the abolition campaign would add women's political equality to the constitutional agenda.⁵⁶ Though the politics of Reconstruction were palpably preoccupied with race, women's rights advocates had reason to believe that this too was their time. As historian William Nelson put it: "the 1860s were a time when law seemed capable of transforming social reality."⁵⁷ Everything appeared to be up for reconsideration.

If the country was going to be reconstructed, women's political rights were certainly among the issues that needed to be reconstructed. There was no better time to give life to the conviction, articulated by the radical Republicans that "popular suffrage, as the sovereign

⁵¹ "To the Women of the Republic," address from the Women's Loyal National League supporting the abolition of slavery, January 25, 1864, SEN 38A-H20 (Kansas folder); RG 46, Records of the U.S. Senate, National Archives.

⁵² DuBois, *Feminism & Suffrage*, 53.

⁵³ *History of Woman Suffrage*, volume II, 93-94.

⁵⁴ Sally Roesch Wagner, *The Women's Suffrage Movement*, 175-76.

⁵⁵ Richard L. Hasen and Leah Litman, *Thin and Thick Conceptions of the Nineteenth Amendment Right to Vote and Congress's Power to Enforce It* (February 1, 2020), 40. Geo. L.J. 19th Amend. Special Edition, 2020, UC Irvine School of Law Research Paper No. 2019-63, U of Michigan Public Law Research Paper No. 657; United States Senate, *The Civil War: The Senate's Story* (2023). Retrieved from https://www.senate.gov/artandhistory/history/common/civil_war/WomensNationalLoyalLeague.html

⁵⁶ Eric Foner, *Reconstruction: America's Unfinished Revolution, 1863-1877* (New York: Harper Collins, 2014), 255-56.

⁵⁷ Nelson, *The Fourteenth Amendment*, 45.

power, was inherent, not bestowed.”⁵⁸ Voting was “either the supreme natural right . . . or . . . the necessary protection of all other natural rights.”⁵⁹ This was a chance to undo the negative rights approach to the franchise. It was an on-ramp for enshrining universal voting rights within the Constitution. Having abolished slavery by amending the Constitution, and as more amendments were being considered, undoing the original design was imaginable and seemed probable. Consequently, it looked like the right time to reconsider and improve women’s place in the political community. Understandably, then, woman suffrage advocates were keen to take advantage of the moment to reconstruct the political and social order by incorporating the political equality of women.

black male suffrage

For those on the margins of the constitutional system, the first-order question is often whether to make their case for inclusion based on universal principles of belonging or on the basis of their sectarian identity.⁶⁰ One could reframe this question as presenting a choice between incrementalism and radicalism or alternatively, as a choice between pragmatism and idealism. These are classical tradeoffs of social movements.⁶¹ The incrementalist strategy appeals to the internal values of the society. *This is who we are*. The political outsider is simply asking the society to apply its stated values to them. The radical strategy appeals to a principle that is external to the political community. *This is who we should be*. Radicals tend to argue for rethinking the political order *tout court* to incorporate a broader external principle.

This incrementalist-radical binary becomes messy when even incremental cases for inclusion are considered radical. It becomes even more complicated when a political order contains multiple principles, some of which are mutually inconsistent. Faced with multiple possibilities, political actors can strategically pull on the favorable principles that advance

⁵⁸ DuBois, *Outgrowing the Compact of the Fathers*, 845.

⁵⁹ *Id.*

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⁶¹ Mary Blanus, Stacey Chen, Nathan Huttner, *Bridging the Divide Between Idealism and Pragmatism*, Stanford Social Innovation Review (May 25, 2018), https://ssir.org/articles/entry/bridging_the_divide_between_idealism_and_pragmatism.

their cause and downplay others. In any event, political actors seeking social and political change must articulate a strategy, settle on a theory of change, and decide how fundamentally they intend to challenge the socio-political order.

Almost immediately after Congress passed the Thirteenth Amendment, two luminaries, and Garrisonian allies, Wendell Phillips and Elizabeth Cady Stanton, staked different strategies for suffrage reform.⁶² Republicans and the woman suffrage leaders represented different visions and strategies of social change.⁶³ At times it seemed like they were talking past one another. They perceived different possibilities for, and limits of, representative democracy.

Phillips, the great radical abolitionist and strong supporter of woman suffrage, urged the pragmatic and incremental approach: *let's extend the franchise to black men first and then we can move on to women.*⁶⁴ Phillips's strategy appealed to the constitutional regime's internal principle. The political system was already committed to the principle of universal manhood suffrage.

Functionally, maleness was a necessary qualification for political participation. Given the principle, advocates simply needed to make the case for extending that commitment to black men. This is why Representative John Franklin Farnsworth of Illinois confidently refuted the contention that voting rights should not be extended to the black men of the District of Columbia because they are not fit for self-government by reminding his colleagues of the polity's internal principle. "What should be the test as to the right to exercise the elective franchise," he asked rhetorically. "I contend," he answered, "that the only question to be asked should be, 'is he a man?' The test should be that of manhood, not that of color, or races, or class."⁶⁵

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⁶³ Dudden, *Fighting Chance*, 62 ("Activism often features debates like this, disputes between ultras who favor making bold demands (even if they remain prepared to settle for half a loaf), and incrementalists who opt for step-by-step methods and try to preempt opposition by narrowing their demands at the outset. Stanton and [Susan B.] Anthony took the first approach and Phillips the second.")

⁶⁴ *Id.*, 62-63.

⁶⁵ <https://www.gutenberg.org/cache/epub/24596/pg24596-images.html>.

Women could not access the internal principle of universal manhood suffrage because they were not men. Stanton pushed a broader radical rethinking of political equality: *let's grant the franchise to women because, like men, they too are citizens*.⁶⁶ To make the case for woman suffrage, Stanton relied on principles that were external to the political order—at least until the ratification of the Fourteenth Amendment. Her strategy was to reconstruct the political order and, in the process, reconstruct the place of women and black people in the political system.

Phillips shot the first arrow across the bow. On Tuesday, May 9, 1865, Phillips was a featured speaker at the thirty-second-anniversary celebration of the American Anti-Slavery Society. As reported by the *Standard*, the Society's weekly newspaper: "There was a very large gathering of the members and friends of the Society, the-church, notwithstanding the inclemency of the weather, being crowded beyond the capacity of its seats, many standing in the aisles during the protracted exercises."⁶⁷ Notably, those assembled included supporters of both black liberation and women's rights. William Lloyd Garrison, Elizabeth Cady Stanton, Frances Watkins Harper, Edmund Quincy, George Thompson, and other abolitionist and woman suffrage luminaries accompanied Phillips on the dais.⁶⁸

The assembled were certainly in a celebratory mood. Just four months earlier, on January 31, 1865, Congress passed the Thirteenth Amendment.⁶⁹ The abolitionists expected the Amendment to be ratified by the states in short order. Slavery would soon be abolished. Their work was nearly finished. Again from the *Standard*: "Very many of the old and long-tried friends of the slave were present, some of whom had come with the expectation that

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⁶⁷ *National Anti-Slavery Standard* (New York, New York), May 13, 1865: 2. *Readex: America's Historical Newspapers*. <https://infoweb-newsbank-com.ezp-prod1.hul.harvard.edu/apps/readex/doc?p=EANX&docref=image/v2%3A158B8D5FF09794C6%40EANX-15CA913FA79846B8%402402370-15CA29DC8758C0A8%401>.

⁶⁸ *Id.*

⁶⁹ <https://timesmachine.nytimes.com/timesmachine/1865/02/01/78738183.html?pageNumber=1>

this would be the last meeting of the Society, and rejoicing that, their work consummated, they could put off their armor, furl their banners, and sing the paeans of victory.”⁷⁰

There was singing that morning, both by a choir and by the assembled. However, if abolitionists were planning on declaring victory and retiring, Phillips, who was born in Massachusetts and graduated from both Harvard College and Harvard Law School, would soon spoil those plans.⁷¹ Phillips and Garrison were in the midst of a tug-of-war for the future of the Society. Because slavery would soon be abolished, Garrison viewed the work of the Society as accomplished and advocated for the disbanding of the Society.⁷² Phillips would soon make his case that the end of slavery did not signal abolition.

Phillips began by apologizing for his “feeble voice,” as he was battling a severe cold and would therefore offer “statements” and “not a speech.”⁷³ After getting the excuses out of the way, Phillips immediately focused the audience’s attention on the telos of abolition: the singular goal of achieving black equality. “Everything on this platform,” he declared, “is looked at in the light of the interest of the colored race. It is as Abolitionists that we meet here, and, therefore, all general considerations of citizenship are to be subordinated to Abolitionism.”⁷⁴ It is true, Phillips acknowledged: “If the anti-slavery amendment of the Constitution shall be indorsed, the parchment will guarantee to the slave his liberty.”⁷⁵

However, the Thirteenth Amendment could not have been expected to protect the rights of the newly freed black people. “Our duty as Americans and clear-sighted Abolitionists is in the re-formation of the elements of the State, so that the great forces of society shall

⁷⁰ *National Anti-Slavery Standard* (New York, New York), May 13, 1865: 2. *Readex: America's Historical Newspapers*. <https://infoweb-newsbank-com.ezp-prod1.hul.harvard.edu/apps/readex/doc?p=EANX&docref=image/v2%3A158B8D5FF09794C6%40EANX-15CA913FA79846B8%402402370-15CA29DC8758C0A8%401>.

⁷¹ <https://www.nationalabolitionhalloffameandmuseum.org/wendell-phillips.html>

⁷² Foner, *Reconstruction*, 67.

⁷³ *National Anti-Slavery Standard* (New York, New York), May 13, 1865: 2. *Readex: America's Historical Newspapers*. <https://infoweb-newsbank-com.ezp-prod1.hul.harvard.edu/apps/readex/doc?p=EANX&docref=image/v2%3A158B8D5FF09794C6%40EANX-15CA913FA79846B8%402402370-15CA29DC8758C0A8%401>.

⁷⁴ *Id.*

⁷⁵ *Id.*

guarantee the right recognized by the parchment.”⁷⁶ That can only be done if the political and economic systems are restructured to enable the formerly enslaved to protect themselves. “No freedom is real or emancipation effectual unless we arrange the forces of society that underlie law, so that they secure may to the freedmen their rights now and for all time.”⁷⁷

Phillips offered three changes that could restructure society and thereby secure the freedom of the formerly enslaved: land allocation to the newly freed people, ballot extension to black men, and a constitutional amendment recognizing black people as citizens of the United States.⁷⁸ “This United States government,” Phillips said, “stands to-day in the abnormal position of not knowing who are its own citizens.”⁷⁹ To rectify the problem, he would propose an amendment to the Constitution providing that: “no State shall at any time make a distinction of civil privileges between the children of parents living on or born on her soil, either of race, condition or color.”⁸⁰

But citizenship was not going to be enough. Until black men are entitled to political and economic self-determination, Phillips argued, they will be left “in the power of those who have always oppressed” them.⁸¹ For Phillips, “the land and the ballot are the guarantee of the Union in the hand of the black man.”⁸² Phillips remarked, perhaps as a nod to the woman suffragists in the crowd and on the stage with him, or perhaps to communicate his continued support of woman suffrage, “I hope some day to be as bold enough to add ‘sex.’”⁸³ But not yet: “this hour belongs exclusively to the negro. However, my friends, we must take up but one question at a time.”⁸⁴ Black men’s political and economic equality needed to be the priority of the nation.

⁷⁶ Id.

⁷⁷ Id.

⁷⁸ Id.

⁷⁹ Id.

⁸⁰ Id.

⁸¹ Id.

⁸² Id.

⁸³ Id.

⁸⁴ Id.

The historical record does not allow us to determine conclusively whether Phillips's declaration, that "this hour belongs exclusively to the negro," was the point of his speech. DuBois, the feminist historian, said it was "unprovoked."⁸⁵ The phrase does seem like it was uttered in passing. And without a doubt, a purpose of the speech—if not *the* purpose—was to make the case that the Society had not yet achieved its aims. Phillips certainly wanted to wrest control of the Society from Garrison and retool the abolitionist cause for a post-slavery world.

Nevertheless, whether Phillips articulated the phrase in passing or whether it was the purpose of his speech, the phrase, popularized as "this is the Negro's hour," captured perfectly the thinking of Republican political leaders. Republicans were going to pursue a race-exclusive strategy. They were going to prioritize black men's suffrage over woman suffrage.⁸⁶ It also provided a pithy rejoinder that served to dash the expectations of woman suffragists. As the twentieth-century suffragist and founder of the League of Women Voters Carrie Chapman Catt would later write with fellow suffragist Nettie Rogers Shuler, the phrase "became the universal response to the woman's appeal."⁸⁷

Woman suffragists listened with growing frustration to the rhetoric of their erstwhile partners, and they watched in alarm as the phrase morphed into public policy. The concrete import of the Republicans' strategy became clear seven months later when, on December 4, 1865, Senator and radical Republican Benjamin Wade from Ohio introduced a bill in the Thirty-Ninth Congress's first session to extend suffrage to black men in the District of Columbia.⁸⁸ The bill would grant a right to vote "without any distinction or discrimination on account of color, race, or nationality" to "each and every male person, of the age of twenty-one years and upwards, who has not been convicted of any infamous crime or

⁸⁵ DuBois, *Feminism & Suffrage*, at 60.

⁸⁶ Foner, *Reconstruction*, 255-56.

⁸⁷ Carrie Chapman Catt and Nettie Rogers Shuler, *Woman Suffrage and Politics: The Inner Story of the Suffrage Movement*, 47. New York: Charles Scribner's Sons, 1926.

⁸⁸ <https://timesmachine.nytimes.com/timesmachine/1865/12/05/82400074.html?pageNumber=4>

offence, and who is a citizen of the United States, and who shall have resided in the [District of Columbia] for the period of six months previous to any election therein.”⁸⁹

As the Thirty-Ninth Congress mulled over the D.C. voting rights bill, it was simultaneously figuring out the Fourteenth Amendment’s content and scope. The most important question before Congress was what to do about the impending obsolescence of the three-fifths compromise. The Constitution allocates seats in the House of Representatives and votes in the Electoral College based on a state’s population, giving more populous states greater electoral influence.⁹⁰ The electoral power of the Southern states was artificially inflated by enslaved people who did not have the right to vote. The 1787 Constitution mediated the power of the Southern states by adopting a compromise—reflected in Article I, section 2, clause 3 of the Constitution—that counted enslaved people as three-fifths of a person for purposes of representation and apportionment.⁹¹

The compromise was about to end with the ratification of the Thirteenth Amendment. And once it ended, which would happen twelve days into the Thirty-Ninth Congress, the formerly enslaved would be counted as whole persons for the purposes of representation. As the Scottish-American Congressman and social reformer Robert Dale Owen from Indiana put it in a letter published in the *Liberator* in 1865: “If by next Winter, slavery shall have disappeared, there will be no ‘other persons’ in the South. Her actual population will then coincide with her representative population.”⁹²

Though they would count fully, only a few black southerners would have a right to vote. Moreover, many southern states were adopting Black Codes, laws designed to reduce black people as close to enslavement as possible.⁹³ Ironically, therefore, while ratification of the Thirteenth Amendment would abolish slavery, it would also boost the political influence of

⁸⁹ Rogers speech on dc bill: https://li-proquest-com.ezp-prod1.hul.harvard.edu/legislativeinsight/docview?id=14+Stat.+375%2C+Chap.+6&type=LEG_HIST&accountid=11311

⁹⁰ U.S. Const. Art. I § 2, Art. II § 1.

⁹¹ Sean Wilentz, *No Property in Man: Slavery and Antislavery at the Nation’s Founding*, 65-67.

⁹² Robert Dale Owen letter in the *Liberator*, July 7, 1865. https://tile.loc.gov/storage-services/service/ndnp/mb/batch_mb_selene_ver01/data/sn84031524/print/1865070701/7233.pdf

⁹³ Foner, *Reconstruction*, 199 - 201.

Southern white Democrats. The Southern states—or more specifically, white Democrats in the South—would then see an increase in their congressional representation at the expense of Republicans and black people.

The Republicans wanted to avoid the cruel result of fighting a civil war and abolishing slavery only to increase the political power of white Southerners in the House and in the Electoral College at their expense and without the bulwark of political equality of the formerly enslaved. All of the states of the former Confederacy had reconstructed their governments, except for Texas, by the end of 1865.⁹⁴ These reconstructed states were expecting their representatives to be seated in Congress. In most of the states, the political ruling class was basically the antebellum ruling class, except that the Confederate leaders were excluded from leadership and voting. Moreover, black people were not allowed to vote even in these newly reconstructed states.⁹⁵ Congress had to address the problem.. As the historian William Nelson stated: “Something accordingly had to be done to insure that the Civil War did not increase the political power of the disloyal groups that had brought the war about.”⁹⁶

Owen urged black enfranchisement.⁹⁷ But he did not do so because it was the right thing to do for black people. He argued for black suffrage for a “more selfish” reason “relating to our own race.”⁹⁸ As he explained, “if the negro is admitted to vote, the Constitutional rule,” by which he meant, population equality in the House and in the Electoral College, “will operate justly. For then each voter in the South will have precisely the same political influence as a voter in the North. The unjust three-fifths principle will have disappeared forever. On the other hand, if color be deemed cause of exclusion, then *all the political power which is*

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⁹⁵ Foner, *Reconstruction*, 195.

⁹⁶ Nelson, *The Fourteenth Amendment*, at 47.

⁹⁷ Robert Dale Owen letter in the *Liberator*, July 7, 1865. https://tile.loc.gov/storage-services/service/ndnp/mb/batch_mb_selene_ver01/data/sn84031524/print/1865070701/7233.pdf

⁹⁸ *Id.*

*withheld from the emancipated slave is gained by the Southern white.*⁹⁹ The stakes could not be more clear.

Representative Thomas Allen Jenckes from Rhode Island offered one solution to the problem. On December 11, he introduced a Joint Resolution in the House proposing a constitutional amendment that would effectively abolish the Electoral College by electing the President and Vice President via a popular vote and franchise black men.¹⁰⁰ The proposal would also grant suffrage in House and presidential elections to: “Male citizens of the United States of the age of twenty-one years, not under conviction for infamous crime, who can read, and who shall have resided for one year in the State for six months in the district in which they shall offer to vote.”¹⁰¹ Section 3 of the proposal would authorize Congress “to pass laws providing for the registration of voters, for ascertaining their qualifications, for the times and manner of conducting elections and for preventing frauds therein, and for declaring their result.”¹⁰²

The Jenckes proposal brilliantly coupled popular sovereignty with black suffrage. However, there was no support in Congress for granting suffrage to black men, and no constituency for abolishing the Electoral College.¹⁰³ The Jenckes proposal was referred to the Committee on the Judiciary, after which it was never heard from again.¹⁰⁴

The fact that black suffrage was not immediately palatable politically did not change the reality that something had to be done. Once again, Owen stated the reality poetically, if not brilliantly. Congress needed a fix to the representation problem, lest “the victors on the fields of death . . . become the vanquished in the Halls of Legislation.”¹⁰⁵ On December 13,

⁹⁹ Id.

¹⁰⁰ https://tile.loc.gov/storage-services/service/ndnp/dlc/batch_dlc_cobol_ver01/data/sn83030213/00206530819/1865121401/0776.pdf

¹⁰¹ Id.

¹⁰² Id.

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¹⁰⁵ Robert Dale Owen, *Liberator*.

1865, Congress approved a Joint Committee on Reconstruction to address the issues of representation in the former Confederate states and draft the Fourteenth Amendment.¹⁰⁶

universal suffrage

Woman suffrage leaders were closely following these developments, including various proposals for the Fourteenth Amendment that were being discussed in late December of 1865.¹⁰⁷ In their *History of Woman Suffrage*, Stanton, Cady, and Matilda Joslyn Gage stated that Congressmen in Washington were keeping them well informed of proposed bills and constitutional amendments. “Robert Dale Owen, being at Washington and behind the scenes at the time, sent copies of the various bills to the officers of the Loyal league in New York, and related to them some of the amusing discussions. One of the Committee proposed ‘persons’ instead of ‘males.’ ‘That will never do,’ said another, ‘it would enfranchise all the Southern wenches.’”¹⁰⁸

Woman suffrage leaders were keenly aware that Republicans in Congress were articulating a race-not-gender strategy for the nation and the Constitution.¹⁰⁹ They were alarmed by the reality that women were being left behind and that the case for political equality would now be setback by many years, if not decades. In the words of Theodore Tilton, the editor of the *New York Independent*, they saw these as “law[s] against women.”¹¹⁰

Faced with these devastating developments, Elizabeth Cady Stanton made the case for prioritizing both white and black women and black men. On December 26, 1865, twenty days after the ratification of the Thirteenth Amendment, Stanton wrote a letter that was published in the thirtieth edition of the *National Anti-Slavery Standard*, the weekly of the

¹⁰⁶ <https://timesmachine.nytimes.com/timesmachine/1865/12/14/80310884.html?pageNumber=1>.

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¹⁰⁸ *History of Woman Suffrage*, volume II, 91.

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¹¹⁰ *History of Woman Suffrage*, volume II, 93.

abolitionist group the American Anti-Slavery Society.¹¹¹ The letter was emphatic, substantive, and racist.

Stanton advanced several significant points. “The representative women of the nation have done their uttermost for the last thirty years to secure freedom for the negro,” Stanton stated.¹¹² When black people were at the bottom of the society because of slavery, women, white women, were willing to focus on the issues of racial subjugation.¹¹³ Chattel slavery created a clear hierarchy and black people were inarguably at the very bottom of that hierarchy. Therefore, white women did their part to address black subjugation. They were enthusiastic partners in the struggle against slavery.

While the Thirteenth Amendment changed the status of black people, the status of women remained the same. “[S]o long as he [the black male slave] was the lowest in the scale of being we were willing to press *his* claims.”¹¹⁴ But black people are no longer a scorned group. “By an amendment of the Constitution . . . the black man is declared free,” Stanton stated.¹¹⁵ Black men are no longer “the lowest in the scale.”¹¹⁶ They have the full attention of the political system. The “largest and most influential political party is demanding Suffrage for him throughout the Union.”¹¹⁷ Prioritizing black liberation was justified until the ratification of the Thirteenth Amendment. Because of the Thirteenth Amendment, it is no longer necessary for white women to prioritize the equality claims of black people.¹¹⁸

¹¹¹ <https://infoweb-newsbank-com.ezp-prod1.hul.harvard.edu/apps/readex/doc?p=EANX&t=pubname%3A158B8D5FF09794C6%21National%2BAnti-Slavery%2BStandard/year%3A1865%211865/mody%3A1230%21December%2B30&year=1865&docref=image%2Fv2%3A158B8D5FF09794C6%40EANX-15CA9174526FE110%402402601-15CA29D249D19C60%402&origin=image%2Fv2%3A158B8D5FF09794C6%40EANX-15CA9174526FE110%402402601-15CA29D24806CF40%400>

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*

Given that the nation has addressed the abject condition of black people, there is no reason for women to defer their aspiration of political equality to that of black people. In fact, “the black man is still, in a political point of view, far above the educated women of the country.”¹¹⁹ Rather, women must take advantage of the door that is about to open. “[A]s the celestial gate to civil rights is slowly moving on its hinges, it becomes a serious question whether we had better stand aside and see ‘Sambo’ walk into the kingdom first.”¹²⁰ Men have told women to wait their turn. “It is all very well for the privileged order to look down complacently and tell us, ‘this is the negro’s hour; do not clog his way; do not embarrass the Republican party with any new issue; be generous and magnanimous; the negro once safe, the woman comes next.’”¹²¹ Women should no longer listen to men in the matter of their own liberation. Additionally, women—white women—should certainly not defer their own claim to political equality to support those of whom they believe are inferior to them.

Women cannot expect that black men will support women once black men get the right to vote. Women must keep in mind that black men are men, and, therefore, unreliable allies. There is no reason to believe that “the African [would] prove [to be] more just and generous than his Saxon compeers[.]”¹²² After all, “[h]ave not ‘black male citizens’ been heard to say they doubted the wisdom of extending the right of Suffrage to women?”¹²³ Women would be undermining their cause by supporting men who would more than likely “be an added power to hold [women] at bay[.]”¹²⁴ Arguing from self-interest, Stanton contented, “[a]s self-preservation is the first law of nature,” women would “be wiser to keep our lamps trimmed and burning, and when the Constitutional door is open, avail ourselves of the strong arm and blue uniform of the black soldier to walk in by his side”¹²⁵ Women should not put their self-interest second to that of black men because black men will not reciprocate.

¹¹⁹ <https://alansinger.net/wp-content/uploads/2020/01/a33.-elizabeth.-cady-stanton.pdf>

¹²⁰ [Id.](#)

¹²¹ [Id.](#)

¹²² [Id.](#)

¹²³ [Id.](#)

¹²⁴ [Id.](#)

¹²⁵ [Id.](#)

Moreover, giving black men the vote without giving it to women would be bad for both white and black women. If black men had the power over black women that white men had over white women, it would be “but another form of slavery.”¹²⁶ If black women were not as “secured in all the rights, privileges, and immunities of citizens” as black men, it would be better for black women “to be the slave of an educated white man, than of a degraded, ignorant black one.”¹²⁷

Stanton’s response was unequivocally and undoubtedly racist. Nevertheless, fully accounting for her racism, there is much to commend her substantive approach. The right strategy, Stanton maintained, was to make the franchise available to all.¹²⁸ Women and black people alike needed the franchise. The “disfranchised all make the same demand, and the same logic and justice that secures Suffrage to one class gives it to all.”¹²⁹ There is no case that can be made for granting suffrage to black men that would not equally apply to women. Thus, “[i]f our rulers have the justice to give the black man Suffrage, woman should avail herself of that new-born virtue to secure her rights; if not, she should begin with renewed earnestness to educate the people into the idea of universal suffrage.”¹³⁰ By implementing universal suffrage, the polity can address one of the weaknesses of the constitutional republic. “This is our opportunity to retrieve the errors of the past and mold anew the elements of Democracy.”¹³¹

black women

Supporters of black political equality and women’s political equality implicitly and explicitly debated the expansion of suffrage as if only black men and white women mattered. Because the fight for political equality was framed in zero-sum terms, advocates were incentivized to essentialize race or gender. This left black women on the outside looking in. In the battle for

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

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suffrage, black women were often treated as pawns to be moved when deploying them was useful for the respective advocates.

But black women did not allow themselves to be political tools for those who wished to use them for their own ends. Rather, they asserted their agency wherever and whenever possible. Reflecting on black women's quest to broaden their influence in culture, politics, and religion in the 1830s, Martha Jones, a distinguished legal historian and scholar of women's history, remarked: "With increasing frequency, African American activists were called upon to consider the public standing of women as they built institutions and developed campaigns against slavery and for civil rights."¹³²

Admittedly, black women were constrained by the double bind of racism and sexism as they attempted to create space to assert their agency. Black women were not similarly situated to either white women or black men. White women had the benefit of their race. Additionally, white women suffragists were largely middle and upper-class, and they were generally well-educated, though there were notable exceptions.¹³³ Susan B. Anthony, in particular, was one of the few nineteenth-century woman suffrage leaders who could not rely on family wealth or a husband for financial support.¹³⁴

Most black women suffragists, by contrast, were working class. Some were the descendants of free black families and were very well educated. Some, like Sojourner Truth, were deprived of any formal schooling.¹³⁵ Consequently, black women could not expect to fully redefine their social, political, legal, and economic standing with the same expectation and anticipation as white women and black men. They simply did not have the same space for redefinition.

Yet, notwithstanding the racial, gendered, social, economic, and political factors that limited their life chances, black women sought every possible opportunity to improve their socio-

¹³² Martha S. Jones, *All Bound Up Together: The Woman Question in African American Public Culture, 1830-1900*, 27 (2007).

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¹³⁴ DuBois, *Outgrowing the Compact of the Fathers*, 847.

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economic and political status. Reconstruction presented such an opportunity for almost every strata of the country, including black women. As Jones, the distinguished legal historian, explained: “The era’s sea changes opened the door to broad rethinkings of the meanings of manhood and womanhood for black Americans. Activists, male and female alike, found openings in the era of the Civil War and early Reconstruction that invited a redefinition of their relationships and standing in public culture.”¹³⁶ As Rosalyn Terborg-Penn, the pioneer-historian of black women’s history, noted, black woman suffragists, like white woman suffragists, “learned about political organizing, public speaking, and the use of tactics such as moral suasion to make political demands,” from their involvement in the abolitionist movement.¹³⁷ They were ready when Reconstruction came.

When black women made their case for full inclusion, they generally made it on the pedestal of universality, and they did so fairly early on.¹³⁸ “Black women developed their own perspective on politics and power,” Jones reminds us.¹³⁹ “We are all bound up together in one great bundle of humanity,” the well-known black woman suffragist Frances E. W. Harper famously declared.¹⁴⁰ The universal frame made it possible for black women to make the case for both their race and their gender. “Their view was always intersectional. They could not support any movement that separated out matters of racism from sexism, at least not for long.”¹⁴¹

The universal frame also created a critical space for black women to assert themselves alongside black men. Black women resisted black men’s attempts to relegate them to second-black status in black institutions. Black people in the North, in the antebellum period, courageously and admirably fought back against their political, legal, social, and economic subordination by creating institutions—churches, fraternal orders, political associations, and the like—for social and political organizing.¹⁴² Invariably, reflecting the gender hierarchy

¹³⁶ Jones, *All Bound Up Together*, 121 (2007).

¹³⁷ Rosalyn Terborg-Penn, *African American Women in the Struggle for the Vote, 1850-1920*, 20 (1998).

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¹⁴⁰ Jones, *All Bound Up Together*, 1 (2007).

¹⁴¹ Martha Jones, *Vanguard*, 8.

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that severely circumscribed the life chances of black women, these institutions were dominated by black men. In the postbellum period, these institutions spread to the South, but the gender dynamics were the same. Using their shared race as a basis of commonality, black women continually sought to claim their space as women, even as they prioritized their blackness.¹⁴³

At the same time, black women were fighting racism in institutions created by women to fight against gender subordination.¹⁴⁴ In the antebellum period, those institutions focused on women's equality and abolition. In the postbellum period, those institutions largely focused on woman suffrage. Unsurprisingly, reflecting the race dynamics that severely circumscribed their life chances, these institutions were dominated by white women and largely reflected white women's gender and class concerns. Though black women sought to create a space for themselves by emphasizing a common humanity with black men and white women, they generally remained on the outside looking in.

different strategies

Notably, the universal approach to suffrage favored by black and white women was undoubtedly more inclusive than the alternative. It would address an evident weakness of the Constitution, which left voting qualifications up to the states for both state and federal elections. But Republicans objected that universalism; granting the right to vote to all, was not politically feasible.

One could debate whether Phillips or Stanton had a better sense of what was politically feasible. Faye Dudden, a historian of women's history who studied the tension between those who supported woman suffrage and those who supported black suffrage, argued that Stanton was the better strategist.¹⁴⁵ Whatever one surmises about the respective political acumen of Republican and woman suffrage leaders, Republicans and woman suffrage leaders differed fundamentally on what they thought limited America's capacity for change.

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¹⁴⁵ Dudden, *Fighting Chance*, 75.

Republicans believed that the people were against them but that they could work within the constitutional framework, which could be amended to suit their ends, if they can get the people to go along.¹⁴⁶ Woman suffragists believed that the constitutional framework was against them but that the polity was sufficiently malleable, and they could get the people to agree to fundamental changes in constitutional structure.¹⁴⁷ And given that they had different aims in mind—suffrage for white women and suffrage for black men—they could each be correct.

Building on her suggestion that the people should be educated “into the idea of universal suffrage,” Stanton, Anthony, and Lucy Stone circulated a letter and a petition in December of 1865, on behalf of the National Woman’s Rights Committee. Stanton and the woman suffrage leaders believed that they could convince the electorate to support woman suffrage. If women, white women, made their case, they would not be turned down by their fathers and brothers.

They wanted to take their case to the people. “As the question of Suffrage is now agitating the public mind, it is the hour for Woman to make her demand.”¹⁴⁸ Stanton’s letter, along with the petition, provides a window into how white women, because of their higher position in the socio-economic hierarchy compared to black men and women, were attempting to reconcile the gap between how they saw themselves and their actual place in the socio-political order. As citizens, they expected to share the same political rights as white men, which they believed to be their birthright. If the country was not ready for woman suffrage, then there should be a campaign to inform the electorate. They believed in the capacity of the electorate to change. “Claim the uttermost,” Stanton argued.¹⁴⁹ The *Standard* captioned the petition as “A Petition for Universal Suffrage.”¹⁵⁰ The petition offered a mix

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¹⁴⁸ Elizabeth Cady Stanton, Susan B. Anthony, and Lucy Stone, Form Letter, Asking Women to Petition Congress, 1865.

¹⁴⁹ Dudden, *Fighting Chance*, 73.

¹⁵⁰ “A Petition for Universal Suffrage.” *New York Tribune* (New York, New York) XXV, no. 7713, December 26, 1865: 8. *Readex: America’s Historical Newspapers*. <https://infoweb-newsbank-com.ezp-prod1.hul.harvard.edu/apps/readex/doc?p=EANX&docref=image/v2%3A1284B46450E6EE32%40EANX->

of arguments based on democratic theory, appeals to universalism, and relying on implicit racism to support the case for woman suffrage.

They professed to be simply deploying the Republicans' own arguments against them. As Stanton, Anthony, and Gage wrote: "The Republicans had declared again and again that suffrage was a natural right that belonged to every citizen that paid taxes and helped to support the State. They had declared that the ballot was the only weapon by which one class could protect itself against the aggressions of another."¹⁵¹ Women are half the population, the drafters of the petition remarked. They are smart and native-born citizens. "In making our demand for Suffrage," the petitioners stated, "we would call your attention to the fact that we represent 15,000,000 people—one half the entire population of the country—intelligent, virtuous, native born American citizens."¹⁵² But they have no right to representation. They are "the only class who stand outside the pale of political recognition."¹⁵³

Once again, race and racism were part of their case. The petition implicitly compared the plight of women, white women, to that of black people. Even though women are categorized under the Constitution "as 'free people,'" the petitioners remarked, and are counted "as *whole* persons in the basis of representation," they "are governed without [their] consent, compelled to pay taxes without appeal, and punished for violations of law without choice of judge or juror."¹⁵⁴ This time, making the comparison more explicit, the petition beseeched: "as you are now amending the Constitution, and, in harmony with advancing civilization, placing new safeguards round the individual rights of four millions of emancipated slaves,

12BFBD1A008197C8%402402597-12BFBD1B22D8AF50%407-12BFBD1D8DBD9BD0%40A%2BPetition%2Bfor%2BUниверsal%2BSuffrage.

¹⁵¹ History of Woman Suffrage, volume II, 95.

¹⁵² *Id.*

¹⁵³ *Id.*

¹⁵⁴ Petition Asking for an Amendment of the Constitution that Shall Prohibit the Several States from Disfranchising Any of Their Citizens on the Ground of Sex; 1/29/1866; (HR 39A-H14.9); Petitions and Memorials, 1813 - 1968; Records of the U.S. House of Representatives, Record Group 233; National Archives Building, Washington, DC. [Online Version, <https://www.docsteach.org/documents/document/petition-prohibit-disfranchisement>, November 21, 2024]

we ask that you extend the right of Suffrage to Woman—the only remaining class of disfranchised citizens.”¹⁵⁵ The petition concludes, similar to Stanton’s letter, with an appeal for universality. “As all partial application of Republican principles must ever breed a complicated legislation as well as a discontented people, we would pray your Honorable Body, in order to simplify the machinery of government and ensure domestic tranquility, that you legislate hereafter for persons, citizens, tax-payers, and not for class or caste.”¹⁵⁶

The Republican advocates of black political equality thought the political order was less flexible. They took the political system as they found it and attempted to work within it. As they read the political system, it was not going to be easy to get black suffrage through much less accommodate the political equality expectations of both black people and women.¹⁵⁷ Negro Hour did not mean that the country was ready for black suffrage. It was not necessarily declaring an achievable political goal. To the contrary. The Negro’s Hour was another way of articulating what the nation owed to black people, to black men. Negro Hour reflected an aspirational goal, a normative agenda.

Advocates of black suffrage understood the depth of the country’s anti-black antipathy. The point was made forcefully by the editors of the *Standard* in their response to Stanton’s letter and the petition. “We do not conceal our conviction that this is ‘the negro’s hour,’” they declared.¹⁵⁸ They then explained what they meant. “It is an hour in which it is certainly perilous and may be fatal to relax any energy hitherto devoted to his emancipation, or to allow any fraction of our strength to be diverted to another issue.”¹⁵⁹ Black equality is not assured. It is going to take work and vigilance. Additionally, it took a civil war to get to this

¹⁵⁵ Id.

¹⁵⁶ Id.

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¹⁵⁸ *National Anti-Slavery Standard* (New York, New York), December 30, 1865: 2. *Readex: America's Historical Newspapers*. <https://infoweb-newsbank-com.ezp-prod1.hul.harvard.edu/apps/readex/doc?p=EANX&docref=image/v2%3A158B8D5FF09794C6%40EANX-15CA9174526FE110%402402601-15CA29D248F68288%401-15CA29D248F68288%40>.

¹⁵⁹ Id.

moment. “Thirty years of agitation and four years of war have created this costly opportunity. If we let it pass, it passes forever, or at any rate, for a generation.”¹⁶⁰

Unlike woman suffragists, who directed their strategy to the people, those who supported suffrage for black men depended upon political elites to achieve their aims. From their perspective, there was no better time to make progress on black political equality because “there is a strong party in Congress who can be brought to vote directly or indirectly for putting the ballot in the hands of the blacks.”¹⁶¹ By contrast, there is “no considerable portion of those votes could now be carried for an amendment to the Constitution which should include women.”¹⁶²

Republicans were realistic about the depth of the nation’s disdain for black people. They did not forget what it took just to get to this moment. They were determined not to squander this possibility. “Causes have their crises. That of the negro has come; that of the women’s rights movement has not come.”¹⁶³ Because the nation fought a war to open this aperture and because there is now a possibility to advance the cause, black suffrage and woman suffrage do not “stand on the same ground, or are entitled to equal effort at this moment.”¹⁶⁴ The Civil War and Reconstruction provided a justification for focusing the nation’s attention and making the case for black suffrage. From the perspective of the editors of the *Standard*, whom some believed were channeling Phillips, there was no similar justification for woman suffrage.

d.c. voting bill

¹⁶⁰ Id.

¹⁶¹ James M. McPherson, *The Struggle for Equality: Abolitionists and the Negro in the Civil War and Reconstruction*, 2nd ed. (1964; reprint, Princeton, N.J.: Princeton University Press, 1995), 27.

¹⁶² Id.

¹⁶³ *National Anti-Slavery Standard* (New York, New York), December 30, 1865: 2. *Readex: America’s Historical Newspapers*. <https://infoweb-newsbank-com.ezp-prod1.hul.harvard.edu/apps/readex/doc?p=EANX&docref=image/v2%3A158B8D5FF09794C6%40EANX-15CA9174526FE110%402402601-15CA29D248F68288%401-15CA29D248F68288%40>.

¹⁶⁴ Id.

Senator Wade's bill to grant voting rights to male residents of the District of Columbia did not get far in the Thirty-Ninth Congress's first session because the Republicans did not have the votes to override an expected veto by President Andrew Johnson, who was rumored to be against the proposed law.¹⁶⁵ As Massachusetts Senator Henry Wilson later explained, "We could not have carried it against the opposition of the President of the United States, and we had assurances of gentlemen who were in intimate relations with him that his signature would not be obtained. It would not have been wise for us to pass the bill if it was to encounter a veto, unless we were able to pass it over that veto."¹⁶⁶

The debate over the bill took place within a political context in which the stakes were modest but the implications significant. The bill's proponents and opponents understood that this was a dress rehearsal for a nationwide fight over voting and governance rights for black men. As Senator Morrill stated on the floor of the Senate on December 10, 1866, the fact that the bill "embraces the colored citizens of the District of Columbia" makes it "novel" and "important."¹⁶⁷ However, as important as it is to extend voting rights to black men in the District, Morrill argued, the bill is even more important than that. Extending voting rights to the District's black men could serve as a dry run for a nationwide strategy. It would be "inaugurating a policy not only strictly for the District of Columbia, but in some sense for the country at large."¹⁶⁸ This explains why "this bill has received so large a share of the public attention."

Senator Davis, an opponent, also recognized the bill's nationwide importance. In the midst of a racist diatribe, Davis remarked, "whether a few thousand negroes of this District shall vote in its elections is of very trivial importance to the people of the United States" The bill is but the camel's nose under the tent. "This contest is but an experiment, a skirmish, an entering wedge to prepare the way for a similar movement in Congress to confer the right of suffrage on all the negroes of the United States." Thus, when proponents and opponents were debating whether black men were entitled to participate in the republican experiment,

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¹⁶⁶ William H. Barnes, *History of the Thirty-Ninth Congress of the United States*, 491 (1868).

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¹⁶⁸ Charles Sumner, 13 *Works of Charles Sumner* 351, 38 (statement of Sen. Morrill) (1880).

they understood their arguments to be applicable beyond the District and to the nation as a whole.

The battle over suffrage in the District of Columbia also showed that pursuing a strategy prioritizing black political equality would be complicated. There was no consensus on what republicanism required. Did it require black male suffrage or necessarily exclude it? Did republicanism require electors that were literate or was a literacy requirement a violation of the republican principle? What about gender restrictions? Everyone had a view and once the issue was up for debate. On December 5, Representative William D. Kelley from Pennsylvania introduced the House version of the DC bill. Kelley's bill would simply remove the word "white" from voting qualification requirements for the District.¹⁶⁹ The Kelley bill was referred to the Judiciary Committee.

On December 20, Senator Willey from West Virginia offered an amendment to Senator Wade's bill to add a literacy requirement.¹⁷⁰ The Willey Amendment would grant voting rights to men who could "read the Constitution of the United States in the English language, and write his name."¹⁷¹ The following year, Senator Morrill moved to exclude "persons who may have voluntarily left the District of Columbia to give aid and comfort to the rebels in the late rebellion."

the racists

The debate over the bill provides a glimpse of how congressional leaders thought republicanism, representation, policy, and the meaning of equality. The District of Columbia bill is particularly instructive because everyone agreed that Congress had the power to promulgate whatever suffrage rules it wanted for the District. Moreover, other than the President, Congressmen did not have to persuade anyone but each other. They were their primary audience. Consequently, arguments about congressional power could not serve as a mask to hide legislators' policy preferences. The debate revealed how these leaders

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who were all by and large committed to the principle of republicanism attempted to reconcile that principle with their positions on the legitimacy or illegitimacy of exclusionary voting rules. Though both sides offered multiple arguments to support their respective positions, the core of the debate was whether the American constitutional republic was intended for the benefit of white men only.

Pamela Brandwein writes that [w]ith regard to racial belief systems in force at the time, almost all Republicans held blacks to be naturally inferior to whites.”¹⁷² She goes on to note that in “1866 the Moderates, as with Lincoln before them, rejected political rights for blacks” and “reluctantly came to accept the Fifteenth Amendment.” The debate over the District of Columbia voting rights bill tells a slightly different story, at the very least, it complicates the racism story. Importantly, the racists were in the minority. They were unfurling their racism in a losing cause and attempted to relitigate both *Dred Scott* and the Civil War. Their rhetoric seemed to be a function of their desperation and a recognition that they had no ability to persuade those who were committed to black political equality.

Take for example Representative Andrew Jackson Rogers from New Jersey, a Democrat and member of the Judiciary Committee. On December 15, 1865, Rogers penned a missive against the bill after the bill was reported out of his committee contrary to his preferences. Rogers’s objection articulated the standard arguments against black equality. Recycling the white supremacist arguments that Roger Taney deployed in *Dred Scott v. Sanford*, Rogers confidently proclaimed that the “men who made the Constitution of the United States did not intend this government for the benefit of the negro race, but made it for the benefit of white men and women and their posterity forever.”¹⁷³ In subsequent remarks on the floor, Rogers would refer to *Dred Scott* as “one of the most celebrated cases that ever came under the cognizance of that court.”¹⁷⁴

¹⁷² Pamela Brandwein, *Reconstructing Reconstruction: The Supreme Court and the Production of Historical Truth*, 27.

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¹⁷⁴ *Congressional Globe*, 196, January 11, (1866).

Rogers was clear-eyed about the effect of the bill. “It would place the negro population upon the same political basis as the whites.” Black people would become “citizens of the District, with all the political rights of any white citizen of the District.” This would not only include the right to vote but also the right to run for and hold office. Rogers found untenable the prospect of black people governing white people. “It is degrading the people and the District to permit a class of poor weak-minded negroes who have no idea of government, many of whom have just emerged from a state of slavery, to exercise the highest political privilege given to man upon earth—to wit, the elective franchise.”

Rogers argued, disingenuously, that Congress ought not take such a “radical” change without consulting white citizens, who are the real stakeholders. “This question of negro suffrage and political equality in the District ought to be submitted to a vote of the legal voters of the District.” Rogers confidently predicted that white voters would not sanction black male suffrage. “It can be said, without fear of contradiction, that there is probably not a State in the Union, except one, that would sanction negro suffrage were the question to be submitted to the people.”¹⁷⁵

Representative Benjamin Markley Boyer, a Democrat from Pennsylvania also wrapped himself in the flag of white supremacy unabashedly, though not without first acknowledging that his colleagues might find his views distasteful. He admitted that “some gentlemen in this House may pronounce the sentiment that this is a white man’s Government” “atrocious.” Moreover, he testified to having “lately heard in this Hall even the spirit of the illustrious dead condemned to everlasting fire for denying while upon earth the equality of the races.” Nevertheless, he felt “constrained notwithstanding to assume the responsibility of a respectful but firm and earnest opposition to this bill.” He conceded the power of Congress to pass the bill, but denies “the moral right of Congress to pass this bill, opposed as it is to the will of the people, and therefore in violation of the fundamental principle of popular government.”¹⁷⁶

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¹⁷⁶ Congressional Globe 175 (1866)

He argued that the bill ought to be rejected on the ground that “universal suffrage is not a natural right, nor a right which is necessarily involved in the nature of civil government.” And he vigorously disputed the proposition that black people have the capacity for self-government, though he conceded that there are exceptional black people. “But the point does not turn simply upon the inferiority of the negro race.” That is, whether black people were or were not capable of self-government was not the central issue. At bottom, the question that must be resolved is “whether this is a white man’s Government.” For Boyer, the question was already settled: “this is, and of right ought to be, a white man’s Government.” The bill’s fatal flaw was that it would “inaugurate here, upon this most conspicuous stage, the first act of the new political drama which is intended to culminate the complete political equality of the races and the establishment of negro suffrage throughout the States.”

the righteous

Scholars often highlight, rightly so, the racist legislators of the nineteenth and early twentieth centuries who fought against black equality at every turn.¹⁷⁷ However, there were others, specifically Republicans, who rose above the racial prejudices of their time, class, and people. It is important to note that many Republican leaders, including some who are not household names, offered a defense of black political equality that would be perfectly at home with our contemporary understanding of racial equality.

Representative James F. Wilson of Iowa, a Republican, is a useful example in this regard. Wilson anchored his argument in favor of racial equality fully in the Constitution. The Constitution, Wilson argued, “not only confers the indisputable power” to Congress to grant the right to vote to the black residents of the District, “it also seems to invite” the legislation. This is because the Constitution does not draw lines based on color. “Nowhere in the Constitution do we find class distinctions applied to citizens of the United States.” The Constitution protects all citizens equally: “Its ample folds envelop all citizens alike.” All citizens are entitled to the guarantees of the Constitution. “It in no way develops color of

¹⁷⁷ Id.

skin as a tenure to the rights and privileges of citizenship. The citizen, be he high or low, rich or poor, white or black, finds the Constitution of his country as full of justice to him as it is to any other.” Because the Constitution does not discriminate based on race, neither should Congress. “Why hinge the sacred right of suffrage in this District on the word ‘white,’” Wilson asked, “when the Constitution discards it entirely?” He advised his colleagues to “heed the invitation of the Constitution, and breathe the breath of true republican life into the body of our laws.”

Wilson explained why principles of republicanism supported a right to vote for the District’s black residents. Wilson noted that race-based voting restrictions were “anti-republican.”¹⁷⁸ Though the right of suffrage is a political and not a natural right, he conceded, it is, however, “no less sacred than it would be if it were a natural right. We always class it among the rights. We speak of it as the *right* of suffrage and never give it the more doubtful designation of the *privilege* of suffrage.” Suffrage is “the medium through which” citizens confer their consent to be governed. “It is the check of the citizen upon the Government.” Who “are the persons upon whom this bill will operate, if we shall place it upon the statute-book of the nation,” Wilson asked. “They are citizens of the United States and residents of the District of Columbia.” Moreover, Wilson also argued, they deserved the right to vote more so than the white residents. “In this District a white skin was not the badge of loyalty, while a black skin was. No traitor breathed the air of this capital wearing a black skin.”

In the Senate, Senator Lot M. Morrill from Maine, Chairman of the Committee on the District of Columbia made the case for political equality. On December 10, 1866, Morrill rose to introduce the bill and to offer a thoroughgoing defense of black male suffrage.¹⁷⁹ Morrill made as strong a case for black male political inclusion as one will find from a member of Congress in the nineteenth century.

The American political system, he maintained, is one based upon self-government. “We have put aside the creed of the despot,” he declared, “the monarchist, the aristocrat, and have affirmed the right and capacity of the people to govern themselves, and have staked the

¹⁷⁸ Congressional Globe, 174, January 10 (1866)

¹⁷⁹ *Id.*

national life of the issue to make it good in practice.”¹⁸⁰ Dedication to the principles of republicanism necessarily entails extending the right of self-governance to black men. “To deny any portion of the American people civil or political rights common to the citizen upon pretense of race or color,” Morrill argued, “is to ignore the fundamental principles of republicanism.”¹⁸¹ Under the core tenets of the American experiment, race is not a legitimate basis for exclusion. “We are fully committed to the rule of the people, and no question of race or color, inferiority or superiority can arise to exclude any portion.”¹⁸²

Morrill was not simply content to ground the case for black male suffrage in the tenets of republicanism, he attacked directly the white supremacist sentiment at the core of the opposition against black male suffrage. Responding to his colleagues who objected to extending suffrage to black people on the ground that self-government was for white people and was never intended for black people, Morrill emphatically declared: “No sentiment was ever uttered, here or elsewhere, better calculated to bring this nation in to contempt and to expose it to the hatred of the friends of popular government than that ‘this is a white man’s Government,’ as no statement could well be more false to its origin and history.”¹⁸³ This was not a country founded by white men for white men. As he understood it, the founding principles of the nation were not cabined by race. “The American Declaration was a declaration of the political rights of man. The principles of the American Revolution were those of universal liberty.”¹⁸⁴ Turning Justice Taney’s *Dred Scott* reasoning on its head, Morrill argued that if black men were not intended to be beneficiaries of the American quest for liberty and self-government “that immortal Declaration of political rights should have been written, ‘All white men are created equal;’ and the Puritan fathers should have rendered their gospel, ‘God hath made of one blood all white men,’ and instead of a democracy they should have set up an aristocracy to be transmitted as an inheritance to their posterity.”¹⁸⁵

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¹⁸³ The Congressional Globe, 40, December 10, 1866.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

Having vanquished white supremacy, Morrill closed his appeal by returning to the principles of republicanism. “In a nation of professed freemen whose political axioms are those of universal liberty and human rights, no public tranquility is possible while those rights are denied to portions of the American people.”¹⁸⁶ We cannot be a true Republic if we deny the right to vote to those who deserve it. Morrill then articulated the idea of the American constitutional republic as one rooted in diversity and forging commonality from difference. “We have taken into the bosom of the Republic the diverse elements of the nationalities of Europe, and are attempting to mold them into national harmony and unity, and are still inviting other millions to come to us.”¹⁸⁷ If the United States can do that with and for foreigners, it can certainly do it for its native-born inhabitants.

Morrill turned also attacked the argument that republicanism cannot apply to black people. Morrill’s response was categorical, emphatic, and drew on the masculine ideas embedded in republicanism. “The negro is a man now and hereafter in American law, politics, society, and to be treated as such.”¹⁸⁸ The Fourteenth Amendment had not been promulgated and ratified when Morrill declared that black men were men and therefore they were citizens of the polity. The black man “is a citizen, and entitled to the common rights of citizenship and to protection. . . . He is native to this country, and may stay here and bid defiance to power to remove him. . . . All attempts in this country to keep alive the old idea of orders of men, distinctions of class, noble and ignoble, superior and inferior, antagonism of races, are so many efforts at insurrection and anarchy.”¹⁸⁹ Black men are part of and beneficiaries of the American political experiment.

gender equality and instrumentalism

As forceful and emphatic as Morrill was in defending suffrage for black men, he was unwilling to extend the same right to women, at least immediately. The task of making the case for woman suffrage fell to Senator Edgar Cowan from Pennsylvania. Cowan moved to

¹⁸⁶ *Id.* at 41.

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* at 41.

¹⁸⁹ *Id.*

amend the bill by deleting the word “male,” thus extending voting rights to both the men and women of the District.¹⁹⁰ But Cowan was not a supporter of woman suffrage or black suffrage. He was a Democrat attempting to exploit the evident division between the Republicans who supported both woman and black suffrage and those who thought that black suffrage ought to take precedence.¹⁹¹

Woman suffrage leaders were accused by their former Republican of betrayal for appealing to the enemies of the Republicans, the Democrats, to take up the cause of woman suffrage.¹⁹² Republicans argued that the Democrats were insincere advocates and were simply promoting woman suffrage to undermine black male suffrage and to embarrass Republicans. Senator Henry B. Anthony from Rhode Island accused Senator Cowan of introducing the amendment “as a satire upon the bill itself, or if he had any serious intention it was only a mischievous one to injure the bill.”¹⁹³ The New York Tribune purported not to be questioning Cowan’s “sincerity,” but did so anyway. “Mr. Cowan chooses to represent himself as an ardent champion of the claim of women to the elective franchise.”¹⁹⁴ However, “the occasion which he selects for the exhibition of his new-born zeal, subjects him to the suspicion of being considerably more anxious to embarrass the bill for enfranchising the blacks, than to amend it by conferring upon women the enjoyment of the same right.”¹⁹⁵

Woman suffrage leaders were unapologetic in seeking and getting support from the Democrats. Stanton, Anthony, and Gage justified their alliance with Democrats on the ground that Republicans were hypocrites. “The Democrats readily saw how completely the Republicans were stultifying themselves and violating every principle urged in the debates on the 13th Amendment, and volunteered to help the women fight their battle.”¹⁹⁶ Republicans betrayed their own principles. “The Republicans had declared again and again that suffrage was a natural right that belonged to every citizen that paid taxes and helped to

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¹⁹³ The Congressional Globe, 55, December 11, 1866.

¹⁹⁴ The New York Tribune, [page], December 12, 1866.

¹⁹⁵ *Id.*

¹⁹⁶ History of Woman Suffrage, volume II, 95.

support the State” but were unwilling to apply that principle to women.¹⁹⁷ The Democrats were willing to call out the Republicans’ hypocrisy and to make the case on behalf of women. “The Democrats had listened to all the glowing debates on these great principles of freedom until the argument was as familiar as a, b, c, and continually pressed the Republicans with their own weapons.”¹⁹⁸

For his part, Cowan was not reticent in declaring his intentions. “It is very well known that I have always heretofore been opposed to any change of the kind contemplated by this bill.”¹⁹⁹ But, if a change was going to be made, “I propose to extend this privilege not only to males, but to females as well.”²⁰⁰ Moreover, if Congress was going to grant voting rights to anyone, he would “very much prefer . . . to allow females to participate than I would negroes.”²⁰¹ All of the arguments that were made to grant suffrage to black males applied with greater force to women. “A great many reflections have been made upon the white race keeping the black in slavery. I should like to know whether we have not partially kept the female sex in a condition of slavery, particularly that part of them who labor for a living?”²⁰²

Implicitly responding to the argument that “this is the Negro’s hour,” Cowan countered that the fight for woman suffrage “is inevitable.”²⁰³ Moreover, woman suffragists know that this is their moment. They “recognize the onward force of this movement.”²⁰⁴ They “are up to the tendencies of the times.”²⁰⁵ They “desire to keep themselves in front of the great army of humanity which is marching forward just as certainly to universal suffrage as to universal manhood suffrage.”²⁰⁶ This is the age of woman suffrage around the world.

¹⁹⁷ *Id.*

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 103.

²⁰⁰ *Id.* at 104.

²⁰¹ *Id.*

²⁰² *Id.* at 105.

²⁰³ *Id.*

²⁰⁴ *Id.* at 106.

²⁰⁵ *Id.* at 105–06.

²⁰⁶ *Id.* at 106.

Advocates of black suffrage, Cowan argued, will have no basis for refuting the demands of woman suffrage if they grant voting rights to black men. “How are you to resist [the demand for suffrage] when it is made the demand of fifteen million American females for this right, which can be granted and which can be as safely exercised in their hands as it can in the hands of negroes?”²⁰⁷ The demand for suffrage is not being made by ordinary women but by “women of the highest intellect, perhaps, on the planet, and women who are determined, knowing their rights, to maintain them and to secure them.”²⁰⁸

political equality in the district

Though Republicans did not have the votes in 1865, things changed dramatically the following year. The Republicans did extremely well in the 1866 elections and secured veto-proof supermajorities in both the House and Senate.²⁰⁹ On December 3, 1866, the first day of the Thirty-Ninth Congress’s second session, Charles Sumner encouraged the Senate “in this very first hour of its coming together, to put that bill on its passage.”²¹⁰ Notwithstanding Sumner’s urging, nothing happened on that day. The bill was not discussed by the Senate until a week later on December 10.²¹¹ On December 10, Sumner urged them to “give suffrage to the colored race in the District on this day; let us signalize this first day of actual business by finishing that great act.”²¹²

After three days of debate in the Senate, the Republicans prevailed. Congress passed the Act the next day.²¹³ On January 5, 1867, President Andrew Johnson vetoed the bill because it was not what residents of the District wanted.²¹⁴ On January 8, 1867, Congress overrode Johnson’s veto and the Act to Regulate the Elective Franchise in the District of Columbia—the Elective Franchise Act—became the law of the land.²¹⁵ On January 10, 1867 Congress also

²⁰⁷ *Id.* at 105.

²⁰⁸ *Id.*

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²¹⁰ Charles Sumner, *Works of Charles Sumner*, Vol. XIII (Lee and Shepard, Statesman Edition, 1900), 8.

²¹¹ *Id.*

²¹² *Id.*

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passed the Act to Regulate the Franchise in the Territories of the United States—the Territorial Suffrage Act—which Johnson signed on January 14, 1867.²¹⁶ The Territorial Suffrage Act made it illegal to deny “the elective franchise in any of the Territories of the United States, now, or hereafter to be organized, to any citizen thereof, on account of race, color, or previous condition of servitude.”²¹⁷

Notwithstanding the best efforts of women suffrage leaders, Phillips’s approach prevailed. Woman suffragists could not convince their former allies to support suffrage for both women and for black people. The evidence that they were on the losing side came in relatively quick succession. Congress passed the District of Columbia bill to extend voting rights to black men who resided in the District, precluding racial discrimination in voting in the territories. Then, it ratified the Fourteenth Amendment, which protected black suffrage. Two years later, Congress ratified the Fifteenth Amendment, which explicitly prohibited discrimination in voting on account of race, but not on account of gender.²¹⁸

coda

The ratification of the Fourteenth Amendment—which introduced gender for the first time in the Constitution by adding “male” to section 2 of the Fourteenth Amendment—was the clear breaking point between the woman and black suffrage movements. And whatever possibilities remained after the Fourteenth Amendment were crushed by the Fifteenth Amendment, which prohibited the denial of suffrage based on race but not gender.²¹⁹ After the ratification of the Fifteenth Amendment, the already fragile coalition between the black and woman suffrage movements was over. The fact that black men succeeded in getting the vote but women did not get the vote indicated that an appeal to broad universal status—citizenship—had limited utility.

We cannot fully understand the quest for black voting rights and the case against racial discrimination in voting without accounting for what nineteenth-century woman suffragists

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attempted to do, particularly in the five years between the end of the Civil War and through the ratification of the Fifteenth Amendment.

The success of the particularistic approach smoothed the path of racial discrimination. To articulate the obvious implication plainly, had the Fourteenth or Fifteenth Amendments created a positive and universal right to vote—which is what some woman suffragists argued for at the time—the South would not have been able to jump over the protective barrier of the Fifteenth Amendment as easily as it did. Additionally, had the framers of the Fifteenth Amendment opted for a universal positive rights approach, the Nineteenth Amendment would not have been necessary. Or, had the Nineteenth Amendment taken the form of a universal positive right, the Voting Rights Act would have been superfluous or would not have been as directive as it was. Indeed, some of those who supported the Nineteenth Amendment, like some who supported the Fifteenth, were happy to support these Amendments because they recognized that they would offer weak resistance for their rapacious impulse to discriminate against black people.

More than most of their contemporaries, they perceived the limits of these Amendments because they understood that voting rights could not be secured unless they were secured as a universal fundamental right. The Fourteenth and Fifteenth Amendments prohibited voting discrimination based on a singular category: race. Therefore, woman suffrage leaders anticipated that this particularistic approach to voting would still leave the protected group at the mercy of the states.

The content of the Fifteenth Amendment was largely determined by the structural approach of the Constitution with respect to suffrage. The negative rights approach of the Fifteenth Amendment was the best fit for the state-centered manner through which the Constitution granted voters access to the franchise for national elections. The fact that the Framers delegated to the states the authority for developing the substantive content of federal voting rights made it more-likely-than not that the Fifteenth Amendment would be cast in the mold of the narrow negative rights model. Having framed the Fifteenth Amendment within a negative-rights framework, it was unsurprising that the Nineteenth Amendment followed the same approach. Indeed, it would have been shocking had it not.

Without a universal positive right to vote, a constitutional amendment to prevent the states from discriminating against women was necessary. There was also no reason to advance a universal approach to suffrage and political participation. Notably, though black women attempted to exercise suffrage following the Fifteenth and Nineteenth Amendments, respectively, they were denied the protection of the Fifteenth Amendment because of their gender and the Nineteenth Amendment because of their race.²²⁰

By incorporating the woman's suffrage movement as a key part of our voting rights literature, we can begin to recognize the fundamental contradictions of American voting rights law and policy, which our constitutional system made possible.

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