

INTRODUCTION TO SPECIAL ISSUE

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This special issue of the *Stanford Journal of Civil Rights & Civil Liberties* emerges from a set of conversations here at Stanford Law School—sparked by the centennial of the Nineteenth Amendment—that also gave rise to the Stanford Center for Law and History’s 2019 conference on “Legal Histories and Legacies of the Nineteenth Amendment.” The centennial offers an occasion to explore the amendment’s complex and contradictory legacies, including not only its achievements, but also its limitations and failures. With important contributions by Professors Felice Batlan and Tracy A. Thomas, this thought-provoking special issue contributes to the ongoing national conversation.

Both Batlan and Thomas situate the Nineteenth Amendment within a much longer struggle for women’s equality—one that began well before the Amendment’s ratification in 1920 and that has continued to this day. While recognizing the historic significance of the Amendment’s formal guarantee that the right to vote “shall not be denied or abridged . . . on account of sex,”¹ the authors also explore how and why the Amendment’s revolutionary potential to promote meaningful equality for women was, right from the get-go, significantly constrained and undermined.

Batlan contextualizes the emergence of the Amendment in the long history of struggle against the common-law doctrine of coverture, which submerged the identity of married women within that of their husbands, such that married women lacked the ability to act legally in their own right (including by owning property, entering contracts, or controlling their own wages). As Batlan details, the Amendment’s formal grant to women of their own political agency was a blow against the long legacy of coverture, “the culmination of a seventy-year campaign” and “a watershed moment,”² but its promise was not in fact realized for all women. Joining those historians who have demonstrated how the Amendment’s impact divided along racial lines, such that African-American women

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1. U.S. CONST. amend. XIX.

2. Felice Batlan, “*She Was Surprised and Furious*”: *Expatriation, Suffrage, Immigration, and the Fragility of Women’s Citizenship, 1907-1940*, 15 *STAN. J. C.R. & C.L.* 315, 324 (2020).

continued to be denied the vote, especially in the Jim Crow South,³ Batlan shines particular light on the experience of immigrant women. She notes the striking fact that the Amendment was ratified in precisely the same period “in which white supremacism and xenophobia were on the rise and the U.S. passed increasing[ly] restrictive immigration and naturalization laws.”⁴ Exploring a number of immigration-related statutes passed by Congress in the early decades of the twentieth century, Batlan shows how American women who married non-citizens were systematically (and without notice) stripped of their own citizenship rights, making it impossible for them to exercise the right to vote, obtain governmental benefits, and reunite their families torn apart by war and poverty by sponsoring the immigration of children, parents, and spouses. And when in the wake of the Nineteenth Amendment, women’s rights groups succeeded in securing legislation that countered some of these draconian effects, the ensuing gains were themselves profoundly shaped by conceptions of racial fitness for citizenship, such that American women who married men from Asia continued automatically to be stripped of their own citizenship. As Batlan powerfully argues, this continuing effort to subsume American women’s citizenship within that of their immigrant husbands was a return to concepts of coverture, even as women had achieved any number of formal legal successes in their battle against coverture, including the nineteenth-century adoption of Married Women’s Property Acts (granting married women some control over their own property) and the Nineteenth Amendment’s formal guarantee of political autonomy. By drawing on the archival records of Chicago’s Immigrants’ Protective League, Batlan concludes her analysis by depicting what this return to coverture meant in real-world, human terms, recounting the heartbreaking stories of various individual women and their families who found themselves outside the protection of the law.

Like Batlan, Thomas situates the Nineteenth Amendment within a much longer struggle for women’s rights, beginning with the first major demand for women’s suffrage at the Seneca Falls Women’s Rights Convention of 1848 and continuing through the ongoing effort to achieve ratification of the Equal Rights Amendment (ERA). In Thomas’s telling, as in Batlan’s, the Nineteenth Amendment appears as the culmination of decades of effort, but also as a great disappointment, failing to achieve much to which those who campaigned for women’s equality had aspired. As Thomas emphasizes, first-wave feminists like Elizabeth Cady Stanton argued for the right to vote as but one among several legal, political, and institutional changes that would be necessary to ensure “women’s full equality and emancipation.”⁵ On this view, the subordination of women followed

3. See generally, e.g., ROSALYN TERBORG-PENN, *AFRICAN AMERICAN WOMEN IN THE STRUGGLE FOR THE VOTE, 1850-1920* (1998); MARTHA S. JONES, *ALL BOUND UP TOGETHER: THE WOMAN QUESTION IN AFRICAN AMERICAN PUBLIC CULTURE, 1830-1900* (2009).

4. Batlan, *supra* note 2, at 316.

5. Tracy A. Thomas, *More Than the Vote: The Nineteenth Amendment as Proxy for Gender Equality*, 15 STAN. J. C.R. & C.L. 349, 354 (2020).

from the ways in which four “interlocking systems”—state, family, economy, and church—all worked independently and together to ensure male supremacy.⁶ Real freedom for women thus required, in Stanton’s words, “demanding equality everywhere and the reconstruction of all institutions.”⁷ But as Thomas shows, the legal and political processes leading to the successful ratification of the Nineteenth Amendment ended up reducing the earlier demand for a radical remaking of the status quo to a much narrower demand for the vote. Although women’s rights advocates initially advanced a broad reading of the Nineteenth Amendment as ambitiously aiming for “a structural overturning of coverture laws restricting women’s political and civil rights” and even succeeded in obtaining important court decisions along these lines, the tide quickly turned.⁸ We were thus left with a narrow reading of the Amendment as guaranteeing a right to vote—a reading that, as highlighted by Batlan’s article, was not even fulfilled for all women on its own limited terms. In examining the reasons for this retreat from the earlier ambitions of the women’s rights movement, Thomas explores several causal factors, including not least, the fear of labor-oriented reformers that legal equality would undermine recent protectionist legislation targeting women. Women’s understandings of their own interests, in short, were not uniform, but instead divided along class lines—a division that, as Thomas notes, would reemerge in the battle over the ERA. Thus much like Batlan, Thomas demonstrates that the achievements (and even goals) of the Nineteenth Amendment cannot be assessed for women as a whole, but must be disaggregated along any number of lines, including race, citizenship, and socio-economic class.

While Batlan and Thomas focus first and foremost on the question of history—on how we should understand the Nineteenth Amendment in relation to the struggles that led to its ratification and implementation—they also raise profound and difficult questions regarding the present and future. As Batlan notes, we are now living through a period of renewed xenophobia, as our current presidential administration fuels the flames of ant-immigrant hatred and seeks to curb immigration, including not least the “chain migration” that enables family reunification. The parallels between the experiences of the families served by the Chicago Immigrants’ Protective League a century ago, as detailed by Batlan, and those we encounter in the newspapers today are striking and chilling. As we read about U.S. citizens who are wrongfully detained by U.S. Immigration and Customs Enforcement—with race often used as a proxy for citizenship—it is tempting to denounce these events as un-American. But both Batlan and Thomas remind us that, sadly, we have a long tradition of differentiating between the citizenship rights of different individuals on the basis of race, gender, and class.

Thomas, in turn, highlights the important parallels between the demands for

6. *Id.* at 355.

7. *Id.* at 360.

8. *Id.* at 372.

comprehensive structural reform that lay at the core of first-wave feminism and those that we see renewed today, including in the recently reenergized campaign for ratification of the ERA. Today's calls to remake the social, legal, and political order, she suggests, "ask[] nothing different than what women have been asking for one hundred and seventy years."⁹ As with Batlan's emphasis on the parallels between anti-immigrant and anti-women sentiment and legislation a century ago and our present-day environment, Thomas's emphasis on the continuous nature of unsatisfied feminist demands is, to say the least, sobering. But at the same time, historical memory and lineage can be empowering. To be reminded that we walk in the shoes of others who have come before is to hear the call to pick up the baton.

9. *Id.* at 378.