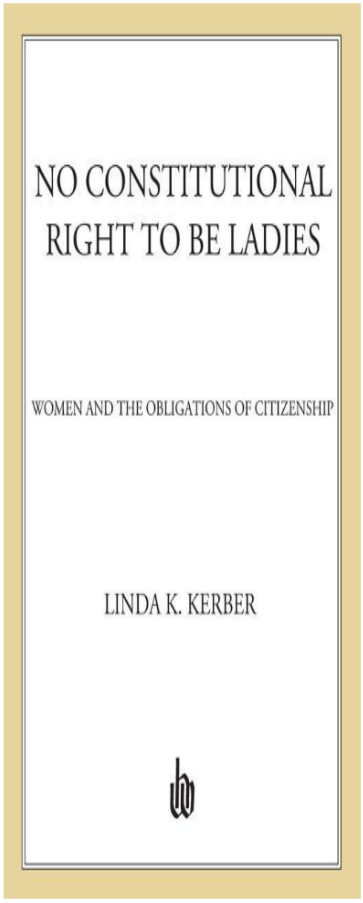

NO CONSTITUTIONAL RIGHT
TO BE LADIES

Women and the Obligations of Citizenship

LINDA K. KERBER

HILL AND WANG
A division of Farrar, Straus and Giroux • New York

PREFACE

It is often hard for an author to gauge what semiconscious need has inspired a particular book. Why this project, with its specific set of questions? Sometimes I reply—and it is a true response that when I stumbled upon an occasion, shortly after the American Revolution, when the highest court of Massachusetts ruled that a married woman's loyalty to her husband took precedence over her loyalty to the state, I recognized an intriguing story. Sometimes I reply—and this is also true—that when the University of California at Berkeley asked me to offer the three Jefferson Memorial Lectures in 1989, I thought I would base them all on that lawsuit, until I realized that only a fool could expect a substantial audience to materialize on three successive afternoons to hear about a legal skirmish in a state

court nearly two hundred years ago. The prospect of humiliation concentrates the mind. I searched for other cases that raised similar issues of obligation and state power, and when the Jefferson Memorial Lectures were over, I had the outline of a book.

But in my heart I know this book began early on a misty morning in Oakland, California, in June 1967, when my husband, whose sociological profile is virtually the same as mine—we were born within nine months of each other, to families similar in religion and ethnicity, to mothers who were teachers in the same public school system and to fathers who had roughly congruent professional aspirations; we attended the same high school, the same university, we have roughly the same amount of graduate training—when Dick, his hair cut so short his scalp showed, his body covered in olive drab, boarded a bus that would take him into the center of a war we both believed to be immoral, and I, not weeping, dressed carefully in case this would be our last memory of each other, entered the taxi that would take me to an airport, and home, where I would wait out the war in physical if not emotional safety, not ever understanding enough even to ask how it happened that the same state power that was propelling him on that bus was not also dressing me in olive drab, cutting my hair, and forcing me on that bus. Sometime that morning my need to write this book was born.

It was as a citizen that Dick went to Vietnam. And it was as a citizen that I struggled to comprehend his vulnerability and my own simultaneous invulnerability. "Citizen" is an equalizing word. It carries with it the activism of Aristotle's definition—a citizen is one who rules and is ruled in turn. Modern citizenship was created as part of the new political order courageously constructed in the era of the American Revolution. Reaching back to the Greeks and reinventing what they discovered, the founding generation produced a new and reciprocal relationship between state and citizen. They used a capacious rhetoric that ignores differences of gender, race and ethnicity, religion and class; any free person

who had not fled with the British or explicitly denounced the patriots was a citizen. After the Civil War, the Fourteenth Amendment permitted no formal categories of first-and second-class citizens. Philosophically, all persons (whether or not they are citizens) are entitled to equal protection of the laws, and all citizens are bound equally to the state in a web of rights and obligations.

Women have been citizens of the United States as long as the republic has existed. Passports were issued to them. They could be naturalized; they could claim the protection of the courts. They were subject to the laws and were obliged to pay taxes. But from the beginning American women's relationship to the state has been different in substantial and important respects from that of men. The struggles over women's suffrage between 1848 and 1920, and, in recent years, over the Equal Rights Amendment and the meaning of the "equal protection of the laws" guaranteed in the Fourteenth Amendment, have publicized the extent to which the meaning of *rights* has been linked to gender. That there is a history of gendered *obligation* is less well understood.

American political theory has traditionally had much to say about rights and little about obligation. This tendency is wholesome; emphasis on rights is the most progressive characteristic of American legal traditions, the aspect of American law and social practice that is most admired abroad and best understood at home. People unversed in legal complexity do understand that they are entitled to the right of free speech, to a right against self-incrimination, to the right of religious freedom, to the right to a jury trial, to the right to vote. The Tenth Amendment is crucial: rights not granted to the state are *reserved* to the people. It is not a bad thing to live in a system in which we have so many rights we do not list them all.

In the liberal tradition, rights are implicitly paired with obligation. The right to enjoy a trial by jury is mirrored by an obligation to serve on juries if called upon. The right to enjoy the protection of the state against disorder is linked to an obligation to bear

arms in its defense. The right to enjoy the benefits of government is linked to an obligation to be loyal to it and to pay taxes to support it.

Obligation is the means by which the state can use its power to constrain the freedoms of individual citizens. Our civic obligations are usually duties to which most of us would gladly consent in principle; we understand that the stability of our society rests on willingness to bear the burdens of citizenship. In common speech we often use the word "obligation" to mean a voluntary undertaking; we may refer to our obligation to vote, our obligation to be responsible parents. But in this book I use it only in its primary sense—to be bound, to be constrained, to be under compulsion. I treat as obligations only those duties that invite state punishment if they are not performed. (If the obligation to defend the nation were not in some measure distasteful, there would never be a need for a draft.) It has been a struggle to ensure that the burdens are fairly distributed; controversies have cropped up throughout our history and continue today. As we exercise the rights and bear the obligations of citizenship, we need to know what we are accepting, what burdens we are bearing, and in what ways rights and obligations define individual citizens' relationships to each other and to the society within which we live.

If we were to construct a "Bill of Obligations," what would it look like? Some obligations are wide-ranging, applying not only to citizens and resident aliens but to anyone on U.S. territory. Among these are the general obligation not to violate criminal laws and the obligation to observe legislative and administrative requirements (such as paying the minimum wage or not discriminating on the basis of race). In this book I treat five distinct obligations that rest on American citizens. Two are shared with all inhabitants: the obligations to pay taxes and to avoid vagrancy (that is, to appear to be a respectable working person). Two are occasionally also imposed on resident aliens: the obligation to serve on juries and the obligation to risk one's life in military service, to submit to being placed in harm's way when the state chooses. (This obligation has slipped out of

common conversation since the advent of the All-Volunteer Force in 1975, but it is a real one, and when we consider the meanings of citizenship we ignore it at our peril.) Only citizens bear the obligation to refrain from treason.

Two of these obligations are negative ones. We do not try to measure the loyalty of citizens, but we think we can know when they are traitors. Instead of an enforceable obligation to be loyal—we have no legal obligation to say the Pledge of Allegiance, for example, nor does the state normally seek to measure degrees of loyalty—we have a negative obligation to refrain from treason. Similarly, as a society we have valued work but have never insisted that every person must work. Nor can we define clearly what work is. But occasionally we declare that an individual has failed a test of appearances, and we arrest for vagrancy a person who does not appear to be working. The obligation to refrain from vagrancy is rarely noticed, for it is usually greatly outweighed by other needs that impose on us the duty of waged labor or its substitutes—the need to feed and clothe ourselves and our families, for example. Vagrancy was often invoked just after the Civil War, when emancipation altered the relationship between work and the economy. Vagrancy has been used capriciously as a device to assure a cheap labor supply or to control the most impoverished, and as a result its burdens have weighed heavily on African-American women.

If concepts of rights and obligations are to be meaningful, they must have about them the quality of solidity and fixedness. But historically they have been also fluid and negotiated. In each of these five modes, a general obligation that appears at first glance to weigh on all individuals equally turns out in practice to have been experienced differently, over the years, by men and by women. Although the founding generation brilliantly revised the definition of citizenship for their new country, they did not have the heart or the energy to reconstruct the entire legal system. Even after the Declaration of Independence, the forms and procedures of American law—the understanding of what a contract means, the manner

of probating a will, the very concept of phenomena like juries or sheriffs—all had their bases in English practice. Thirteen state constitutions, the Northwest Ordinance, and the Constitution of 1787 radically changed the relationship of state and citizen. But the United States absorbed, virtually unrevised, the traditional English system of law governing the relationship between husbands and wives.

The old law of domestic relations began from the principle that at marriage the husband controlled the physical body of the wife. (There was no concept of marital rape in American statutes until the mid-1970s.) There followed from this premise the elaborate system of *coverture*. By treating married women as "covered" by their husbands' civic identity, by placing sharp constraints on the extent to which married women controlled their bodies and their property, the old law of domestic relations ensured that—with few exceptions, like the obligation to refrain from treason—married women's obligations to their husbands and families overrode their obligations to the state.

Coverture originally encompassed relations between parents (especially father) and children and between masters and servants. The early republic did away with many of those elements, but the asymmetrical relationship outlined in "the law of baron and feme" (master and woman, or lord and lady) remained. The assumption that married women owe their primary civic obligation to their husbands persisted long after the Revolution. It continued to define relationships among men, women, and the state. It lurks behind what many people take to be the common sense of the matter in our own time.

The right to be treated like "ladies," observed Kathleen Teague in 1980, is a right "which every American woman has enjoyed since our country was born." Teague was representing the Eagle Forum, a conservative women's organization whose president was Phyllis Schlafly, at a hearing held by the Armed Services Committee of the House of Representatives. A few months before, the Soviet Union had invaded Afghanistan and President Jimmy Carter had

proposed that all men and women eighteen years of age be obliged to register for a future draft. Teague was shocked; women had never been drafted. Teague believed that the absence of an obligation to military service was tantamount to the presence of a right. Women, she said, had never been required to fight.

Do women have "a constitutional right to be treated like American ladies"? Should a woman have a freedom from civic obligation that men must fulfill? For Kathleen Teague, the right to be a lady was clearly more than a rhetorical flourish; she called upon it as a shelter from state power. She recognized that the principles of coverture were still recognizable in American law and social practice. One by one, the people we will meet in this book challenged these principles, questioning the unequal burdens placed on men and women in the practice of citizenship. They all lost their lawsuits. But one by one they revealed the hollowness of claims that coverture protected women; one by one they revealed, I believe, that the allegation that coverture shielded women from certain public burdens was likely to camouflage practices that made them more vulnerable to other forms of public and private power. One by one they revealed what the obligations of citizenship have been. This book is their story.

EPILOGUE

We spend our lives submerged in civic obligations. Most of us, most of the time, are only dimly aware of what we owe. Even taxes, which one way or another we pay daily and are high-profile political issues, are so embedded in the transactions of daily life that they often elude our consciousness. Withholding softens the blow of annual income tax returns; unless the salesclerk says "and 3 percent for the governor" as the bill is rung up, point-of-sale taxes are generally imperceptible.

Other obligations are claimed so erratically as to be virtually invisible. Although many people will receive a summons to serve on a jury at some time in their lives, the appearance of the summons is unpredictable. Most individuals who are summoned will be excused. Relatively few individuals will actually be charged with vagrancy. Only a handful of individuals over the entire course of American history have ever been accused of treason. Even in time of war and a full-scale draft, only a small proportion of Americans are obligated to perform military service.

Consciousness of civic obligation is minimized even more because obligations are often linked to and confused with rights. Gwendolyn Hoyt could not experience *her own right* to trial by a jury drawn from a cross section of the community unless *other* women were *obligated* to serve. During World War II, while the federal government was invoking Caucasian men's *obligation* to bear arms, the obligation was not demanded of Japanese-American men in relocation camps, some of whom, in turn, demanded their *right* to bear arms.

Women's civic obligations have also been vulnerable to a confusion between privilege and exclusion. It is not difficult to see why permissive rather than obligatory jury service would be regarded as a privilege, and even easier to understand that voluntary rather than obligatory military service is a

great privilege. Indeed, to rephrase W. E. B. Du Bois's pithy analysis of the "wages of whiteness," many women have thought themselves to be collecting the "wages of gender." To use Katherine Teague's language, every woman, whatever her class position, could upgrade herself to a "lady."

But the wages of gender are not privilege. They are the residue of the old system of domestic relations, the system of coverture that excused married women from civic obligation *because* married women owed their primary obligation to their husbands. Women never collected the "wages of gender." They paid the wages of gender directly to their husbands rather than directly to the state. Unless we look at the entire system of rights and obligations, we will not understand that.

Rights and obligations are reciprocal elements of citizenship. Rights are pleasing to contemplate: it is invigorating to be assured, as historian Hendrik Hartog has phrased it, that Americans share "an intense persuasion that ... when we are wronged there must be remedies, that patterns of illegitimate authority can be challenged, that public power must contain institutional mechanisms capable of undoing injustice."[1]

Obligations are less pleasing to contemplate. In the best of all possible worlds, citizens would embrace them voluntarily as welcome civic responsibilities. Indeed most citizens do indeed embrace socially responsible activities: grass-roots politics, voluntary societies, and philanthropic organizations. Democracy requires for its social glue, as Jean Bethke Elshtain correctly insists, "a mode of participation with one's fellow citizens that is animated by a sense of responsibility for one's society."[2] But if citizens could be counted on to carry out all their duties freely, as expressions of what Georgie Anne Geyer has recently called the "patriotic civic conscience," there would have been no need to make them obligatory.[3] In this book I have tried to emphasize the distinction between social duties voluntarily undertaken and obligations imposed by the state.

As long as married women were understood to owe virtually all their obligation to their husbands they could make no claims of rights against the political community. The *feme covert*, the Massachusetts Supreme Judicial Court had been told in 1805, had "no *political* relation to the *state* any more than an alien." The system of coverture filtered the claims of married women through their husbands. American political theorists recoiled from making voting—the most explicit gesture of consent—a federally protected right or an obligation of citizenship. This hesitancy helped in large measure to sustain the gendered construction of the American citizen.

The family law of the early republic retained the traditional elements that made husbands the recipients of the civic obligations of free women except the obligation to refrain from treason. The gradual deterioration of coverture was accompanied by the substitution of obligation to the state for obligations to husbands and family—understood as privilege if one approved, disability if one did not—and engendered its own debates on a timetable independent of the timing of debates about the obligations of male citizens. As women's independent rights to property, suffrage, and bodily integrity were slowly established, the complementary practices of substituting family duties for civic obligation slowly crumbled. The role of the Republican Mother, who fulfilled her civic obligations through her service to her family, substituting private choices for public obligation, had been marked as problematic as early as the 1840s by Elizabeth Cady Stanton and her colleagues. But well into the twentieth century, American law and practice continued to breathe oxygen into the customs of coverture, for all the world as though the Republican Mother were the Resusci-Annie manikin now widely used in cardiopulmonary resuscitation training.

The confusion between privileges and rights has had important consequences for the feminist movement of our own time. The agenda of Second Wave feminism, the women's movement of the late twentieth century, included many items that attacked elements of the old law of domestic relations still

vibrant after more than two hundred years. Thus a flyer for the Equal Rights March in New York City on August 26, 1970, the fiftieth anniversary of the passage of the suffrage amendment, included in its list of grievances: "Women cannot buy property without their husband's signature (they don't need yours); Women cannot be sterilized without their husband's signature (again they don't need yours)."[4] Married women had an obligation to permit their husbands sexual access to their bodies in every state until New York's marital rape statute of 1975; even now the laws defining what counts as rape within marriage are complex and erratic.

Criticism of housework was central to the rhetorical attack of the revitalized feminism of the 1970s. Many skeptics have taken that to be a criticism of domesticity itself, and conservative critics have derided feminists on these grounds. But criticism of housework was also criticism of a domesticity that was understood to substitute for other competencies. Feminists warned that the woman who had devoted herself to family obligations at the expense of all other claims would discover herself to be at great *legal* disadvantages should her marriage fail and she needed to face the world as an individual. The 1963 report of the President's Commission on the Status of Women clearly revealed that women—whether single, married, or formerly married —were severely disadvantaged in seeking credit, on the job market, or when they turned to alimony for support. Second Wave feminism was soaked with suspicion of republican motherhood and maternalist credits, permeated by skepticism that civic credits banked as wives and mothers could be reliably reclaimed, filled with anxious warnings to young women to distrust the promises of coverture.

Central to the agendas of feminism, from Elizabeth Cady Stanton's time to our own, has been a program of legal change that sought to eliminate the legacies of coverture. The ending of coverture has been an extended process, accompanied by an almost willful insistence by many scholars that coverture and the problems it raised never really existed, or existed so long ago as to be antique.[5] The political history of

voluntary rather than obligatory military service is a great privilege. Indeed, to rephrase W. E. B. Du Bois's pithy analysis of the "wages of whiteness," many women have thought themselves to be collecting the "wages of gender." To use Katherine Teague's language, every woman, whatever her class position, could upgrade herself to a "lady."

But the wages of gender are not privilege. They are the residue of the old system of domestic relations, the system of coverture that excused married women from civic obligation *because* married women owed their primary obligation to their husbands. Women never collected the "wages of gender." They paid the wages of gender directly to their husbands rather than directly to the state. Unless we look at the entire system of rights and obligations, we will not understand that.

Rights and obligations are reciprocal elements of citizenship. Rights are pleasing to contemplate: it is invigorating to be assured, as historian Hendrik Hartog has phrased it, that Americans share "an intense persuasion that ... when we are wronged there must be remedies, that patterns of illegitimate authority can be challenged, that public power must contain institutional mechanisms capable of undoing injustice."[1]

Obligations are less pleasing to contemplate. In the best of all possible worlds, citizens would embrace them voluntarily as welcome civic responsibilities. Indeed most citizens do indeed embrace socially responsible activities: grass-roots politics, voluntary societies, and philanthropic organizations. Democracy requires for its social glue, as Jean Bethke Elshtain correctly insists, "a mode of participation with one's fellow citizens that is animated by a sense of responsibility for one's society."[2] But if citizens could be counted on to carry out all their duties freely, as expressions of what Georgie Anne Geyer has recently called the "patriotic civic conscience," there would have been no need to make them obligatory.[3] In this book I have tried to emphasize the distinction between social duties voluntarily undertaken and obligations imposed by the state.

As long as married women were understood to owe virtually all their obligation to their husbands they could make no claims of rights against the political community. The *feme covert*, the Massachusetts Supreme Judicial Court had been told in 1805, had "no *political* relation to the *state* any more than an alien." The system of coverture filtered the claims of married women through their husbands. American political theorists recoiled from making voting—the most explicit gesture of consent—a federally protected right or an obligation of citizenship. This hesitancy helped in large measure to sustain the gendered construction of the American citizen.

The family law of the early republic retained the traditional elements that made husbands the recipients of the civic obligations of free women except the obligation to refrain from treason. The gradual deterioration of coverture was accompanied by the substitution of obligation to the state for obligations to husbands and family—understood as privilege if one approved, disability if one did not—and engendered its own debates on a timetable independent of the timing of debates about the obligations of male citizens. As women's independent rights to property, suffrage, and bodily integrity were slowly established, the complementary practices of substituting family duties for civic obligation slowly crumbled. The role of the Republican Mother, who fulfilled her civic obligations through her service to her family, substituting private choices for public obligation, had been marked as problematic as early as the 1840s by Elizabeth Cady Stanton and her colleagues. But well into the twentieth century, American law and practice continued to breathe oxygen into the customs of coverture, for all the world as though the Republican Mother were the Resusci-Annie manikin now widely used in cardiopulmonary resuscitation training.

The confusion between privileges and rights has had important consequences for the feminist movement of our own time. The agenda of Second Wave feminism, the women's movement of the late twentieth century, included many items that attacked elements of the old law of domestic relations still

vibrant after more than two hundred years. Thus a flyer for the Equal Rights March in New York City on August 26, 1970, the fiftieth anniversary of the passage of the suffrage amendment, included in its list of grievances: "Women cannot buy property without their husband's signature (they don't need yours); Women cannot be sterilized without their husband's signature (again they don't need yours)."[4] Married women had an obligation to permit their husbands sexual access to their bodies in every state until New York's marital rape statute of 1975; even now the laws defining what counts as rape within marriage are complex and erratic.

Criticism of housework was central to the rhetorical attack of the revitalized feminism of the 1970s. Many skeptics have taken that to be a criticism of domesticity itself, and conservative critics have derided feminists on these grounds. But criticism of housework was also criticism of a domesticity that was understood to substitute for other competencies. Feminists warned that the woman who had devoted herself to family obligations at the expense of all other claims would discover herself to be at great *legal* disadvantages should her marriage fail and she needed to face the world as an individual. The 1963 report of the President's Commission on the Status of Women clearly revealed that women—whether single, married, or formerly married —were severely disadvantaged in seeking credit, on the job market, or when they turned to alimony for support. Second Wave feminism was soaked with suspicion of republican motherhood and maternalist credits, permeated by skepticism that civic credits banked as wives and mothers could be reliably reclaimed, filled with anxious warnings to young women to distrust the promises of coverture.

Central to the agendas of feminism, from Elizabeth Cady Stanton's time to our own, has been a program of legal change that sought to eliminate the legacies of coverture. The ending of coverture has been an extended process, accompanied by an almost willful insistence by many scholars that coverture and the problems it raised never really existed, or existed so long ago as to be antique.[5] The political history of

women in the United States is generally told as three separate stories. The first is the long struggle for suffrage, successful in 1920; the second, sometimes omitted entirely, is the period 1920–70 that some historians have called "the doldrums," during which little progressive change was made; the third is the account of Second Wave feminism, energized by the Supreme Court's decision in 1971 that discrimination on the basis of sex could indeed be recognized as unequal treatment in violation of the Fourteenth Amendment.

But the political history of women in the United States is better understood as a single narrative. Different generations brought to their tasks different energies and faced different opponents, some more formidable than others. Even after suffrage, the agenda that Elizabeth Cady Stanton and her colleagues had articulated at the Seneca Falls convention in 1848 largely remained to be accomplished. Rather than describing the years after 1920 as "the doldrums," we can now see them as a period when the resistance to progressive change for women was powerful and successful. The American Medical Association had not seriously resisted suffrage, but it did fight vigorously the Sheppard-Towner legislation of the 1920s, which sought to expand prenatal care for pregnant women; the National Association of Manufacturers had not resisted suffrage, but it did fight effectively against the Child Labor Amendment; the opening of vast educational opportunities to male World War II veterans was accompanied by attacks on women for taking up classroom seats that could be held by a man. Reformers who learned their politics in the years of "the doldrums" would be indispensable to the successes of the 1970s and thereafter; they are part of the same narrative. That is why Ruth Bader Ginsburg put Dorothy Kenyon and Pauli Murray's names on her brief in *Reed v. Reed*.

Over the years, one by one, the legacies of the old law of domestic relations were attacked by the argument that difference was not privilege; that different treatment left women vulnerable, not protected. When the Supreme Court ruled in 1971 that

discrimination on the grounds of sex was unequal treatment under the law it was confirming claims that Susan B. Anthony and Virginia Minor had made a century before. Subsequently one after another of old legal distinctions between the rights and obligations of men and women fell. But many remained, hiding in the fine print of state legal codes. Not until 1992 did the Supreme Court specifically announce that it would no longer recognize the power of husbands over the bodies of their wives. That is the moment when coverture, as a living legal principle, died.[6]

When I began to write this book, I expected that I would find that succeeding generations brought successive issues to closure; that the fragility of women's independent citizenship in the early republic would be resolved by the married women's property acts of the mid-nineteenth century; that the taxation of women without representation would be resolved by the achievement of suffrage; and that only the matter of whether women would be obligated to military service remained sharply contested. But as we turn into the twenty-first century, virtually every issue remains alive, though in a somewhat different form than when Americans first encountered it.

Whether accessibility of civic opportunities is to be filtered through spousal relationships continues to be a concern for immigration lawyers; whether and how to acknowledge the relationship of spouses continues to bedevil reformers of tax codes; whether Congress should invoke the long-established Supreme Court ruling that women may be required to place their bodies in harm's way during time of war could become a lively policy question during a national emergency. The story I have told is not what historians once called "Whig history": a single narrative of progress from the era of the Revolution to the present. Instead it is a set of complex accounts, often circling on themselves, in which we are challenged to be attentive to the relationship between obligation and rights, and through which we can understand that women, like men, have always been part of the national political culture. We cannot embrace the rights without acknowledging the obligations. Nor do we have the option of limiting

ourselves to the voluntarily embraced duties; there waits a steel hand in a velvet glove to enforce obligation.

In these contests, often bitter ones, over what counts as obligation, feminists are often blamed for undermining female privilege; shortsightedly trading security for insecurity in the name of abstractions. "There was a time ... when feminism had real tasks to accomplish, real inequities to overcome," writes one critic. "Though they take the credit, feminists, radical or otherwise, actually had little to do with the progress of women in the latter half of this century."[7] Feminists today are attacked as responsible for the corruption of domestic roles, for undermining wholesome family relationships, for jeopardizing efforts to protect women in the workplace, for putting in question the traditional exclusion of women from military service.

What, opponents ask, will women get for giving up their "constitutional right to be ladies"?

I do not think that is the right question. I hope that this book has persuaded its readers that the basic obligations of citizenship have always been demanded of women; it is the *forms* and *objects* of that demand that have varied over time. Impoverished women, whether black or white, have never been able to claim the fictional "constitutional" right to be "ladies." Women with property have at least the responsibility to be realists: to ask at whose expense they have claimed that fictive right. And even if, having considered the situation, a majority of women should conclude that they do indeed want to be "ladies" and to collect the "wages of gender," as a historian I can only reply that those wages are not there to collect.

Feminists were as much the *namers* of change as they were the *makers* of change. By the time Second Wave feminists named the practices, they were naming hypocrisy. Dorothy Kenyon and Pauli Murray and Raya Dreben knew that. So did all the lawyers and legislators who examined their own states' laws for gender disparities and found husbands' privilege embedded in places like inheritance law and probate law that only experts could excavate. The quest was often archaeological, but the relics sparkled amid the

debris and they had consequences in real life.[8] Gwendolyn Hoyt learned that the hard way.

Whether one is male or female, racially marked in a system that treats Caucasians as "normal," married or single, heterosexual or homosexual, continues to have implications for how we experience the equal obligations of citizenship. How one is taxed, whether or not one's loyalty to the state is filtered through one's marital partner, whether one owes the state physically risky military service—all vary by gender. What we in our generation understand to be the fair and equal obligations of men and women is in part an abstraction enduring over time, developed out of philosophical traditions and logical argument. But it is also an understanding, still developing, that has evolved historically out of the troubles and tragedies of many men and women, some long dead, some our contemporaries.

"All men are created equal," reads the Declaration of Independence. As Abraham Lincoln said in the Gettysburg Address, those words "dedicated" the nation to a principle.[9] That principle was expanded during the Civil War to "all persons, born or naturalized in the United States," entitled by the Fourteenth Amendment to "the equal protection of the laws." There is no constitutional right to be a lady or a gentleman, excused from obligations borne by ordinary women and men. Equality is the great principle, and in Anglo-American legal tradition equality has always meant simultaneously common law and equity, sameness and difference shaped to authentic equality in the world which living people inhabit. What is experienced as equal obligation has shifted over time as social relations between men and women have shifted. The principles remain steady and inviolate, but the work of maintaining them in our lives will have no end.