



WOMEN'S WAR

FIGHTING AND
SURVIVING THE
AMERICAN
CIVIL WAR

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Slavery and marriage were a twinned set of domestic relations with a long Anglo-American history. The law viewed slavery and marriage as symmetrical, both relations of domestic dependency. Not for nothing had proslavery ideologues in the United States relied on marriage to legitimate enslavement. But that equation or analogy could also be put to the reverse purpose: “If ‘all men are born free,’ how is that all women are born slaves,” Mary Astell astutely asked in 1700. By 1865, there was an organized feminist movement pressing that very question about the slavery of sex. Slavery and marriage had been linked for so long as twin pillars of the social and political order that conservatives feared—and radicals hoped—that the dissolution of one would transform the other. And indeed, the two relations proved difficult to untangle. “Marriage is too much like slavery not to be involved in its fate,” the proslavery sociologist George Fitzhugh had predicted in 1854.⁹⁹ If the language of the Thirteenth Amendment seems particularly cramped and ungenerous, this is in no small part owing to fears that, if not written carefully, the amendment might emancipate women as well as slaves. Charles Sumner’s draft of the amendment

wedged open that possibility. Versions of the amendment had been circulating since 1864; Francis Lieber, not surprisingly, had written one. The Senate Judiciary Committee had been working on a draft since the beginning of 1864 that copied the free-soil language of the Northwest Ordinance of 1787, language that survived in section I of the final text: “Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.” But at a key moment in the debate, Charles Sumner, the Republican senator from Massachusetts, offered something far more ambitious than the negative injunction of the free-soil conceptualization. Borrowing instead from the French Declaration of the Rights of Man and the radical republican ideas of that document, he proposed this language for the Thirteenth Amendment: “All persons are equal before the law, so that no person can hold another as a slave; and the Congress shall have the power to make all laws necessary and proper to carry this declaration into effect everywhere in the U.S.”¹⁰⁰

The implications for women and marriage were not lost on anyone. Senators roused to the defense of their own most intimate prerogatives as men and husbands. Unlike prior congressional debates over emancipation, this time the opposition was not restricted to conservative slaveholders, southerners, Democrats, or border state men. Michigan senator Jacob Howard was a Radical Republican who had voted against the 1862 measure restricting emancipation to the wives of black soldiers owned by rebels, because it did not extend to all slaveholders. But he quickly pointed out the danger of Sumner’s language: “I suppose before the law a woman would be equal to a man, a woman would be as free as a man. A wife would be equal to her husband as free as her husband before the law.” That was precisely the problem. The amendment’s advocates retreated amid such dangerous talk and

scrambled back to safer free-soil ground, issuing reassurances that the legal abolition of a master's right of property in his slave would not diminish a man's property in the service of his wife. Similar arguments surfaced in the House debate as well. One minority Democrat, opposed to uncompensated emancipation, insisted that, when it came to property rights, the Constitution must defer to local laws. Their own prerogatives as men rested on the same ground as slaveholders, he pointedly reminded his non-slaveholding colleagues: "A husband has right of property in the service of his wife," and "all these rights rest upon the same basis as a man's right of property in the service of his slaves." He had a point. Property is what the government says it is, Henry Clay once said. Commitment to the bonds of marriage—and the subjection of women—had a broad political constituency in 1865. Not surprisingly, Sumner's "explicit language of equality under the law was rejected," historian Michael Vorenberg explains, "in part on gender grounds." The dangers of emancipation for marriage law and the rights of husbands were contained.¹⁰¹

In a period of Civil War–era constitutional revision in the United States so vigorous it can be called a second founding, when the idea of the nation and its citizens was fundamentally remade, marriage was carried over, carefully, into the new order. The explicitly hierarchical relationship of "man and wife"—and deliberately asymmetrical rights and obligations it modeled—were anything but obsolete in the re-United States of America. While the Thirteenth Amendment prohibiting slavery applied to men and women both, the Fourteenth Amendment defining the rights of free people and guaranteeing all citizens of the United States "the equal protection of the laws" would not be seen to have any application to women. The Fifteenth

Amendment right of citizens to vote did not apply to American women citizens of any race. It was not until 1971 that the Supreme Court for the first time interpreted the equal protection clause to invalidate a statute that discriminated on the basis of sex.¹⁰² It took until 1920 and another amendment for US women to get the right to vote. By that point the process of black disfranchisement was so advanced that few African American women could exercise their right.¹⁰³

The subjection of sex and men's rights of property in their wives were not threatened by emancipation. Instead, they were extended—to govern the relations of the millions of new American citizens whose freedom was confirmed by the Thirteenth Amendment. With emancipation, African American men came into the rights of free men and husbands. “What he has is his own. His wife is his,” was how one white politician put it in debate over the civil rights bill. In ways that historians have not yet fully grasped, that principle would shape the raft of postwar legislation required to enforce the Thirteenth Amendment in the defeated Confederate states.¹⁰⁴ Marriage law would prove indispensable in the construction of a new postwar legal order in the South. In this the United States was no exception. Like lawmakers across the imperial world, they relied on marriage as the weight-bearing foundation of cultural and racial difference.¹⁰⁵

African American women had fought for their peoples' freedom and their own and their families' survival in the American Civil War. They played a crucial part in the historical process of emancipation and Union victory. But their story never became part of the history of that war, except in so far as they were cast as wives and dependents. In the United States, following emancipation, marriage only gained salience as a tool of public policy and federal governance. So did the value of martial manhood. As newly freed African American men moved to claim the rights of citizens amid violent resistance by whites in the

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former slave states, they relied heavily on their record of service and sacrifice as soldiers in the nation's cause. "What higher order of citizen is there than the soldier?" one group of "colored citizens of Nashville" demanded to know.¹⁰⁶ Now they were self-possessing men with wives and children to protect and represent. And the history of the Civil War on which they relied was the soldiers' version—with the story of the soldiers' wives erased.