

“Men, Their Rights and Nothing More; Women, Their Rights and Nothing Less”

The 15th Amendment at 150 and the 19th Amendment at 100

Paul K. Stafford

Annually, our nation commemorates Black history in February and women’s history in March; however, in 2020 we are commemorating the anniversaries of two seminal movements culminating in the ratification of two constitutional amendments—the 150th anniversary of the 15th and the 100th anniversary of the 19th. It is no more possible to understand the significance of Black history or women’s history within the confines of a designated month than it is possible to understand the significance of these two amendments without first understanding the history of those Americans these amendments are intended to protect.

Whose America?

When explorer Christopher Columbus “discovered” the “Mundus Novus” in 1492, it had already been “discovered” by other explorers and was already inhabited by non-European men and women for centuries; however, soon after its “discovery,” America experienced a continuous influx of European colonists and African slaves upon its shores—and a continuous subjugation of non-Europeans within its land. These men, women, non-Europeans, Europeans, and slaves comprise the fabric of America’s history.

Through the Declaration of Independence, the 13 colonies formed a republic and declared the rights of its men (but not its women) and the independence of its colonists (but not its slaves), stating: “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the Pursuit of Happiness.”

The Articles of Confederation were drafted, favoring governance through state sovereignty over central authority. States were charged with the responsibility to safeguard the rights articulated in the declaration, but were less than successful in their charge. The Constitutional Convention was called, and a constitution was created. Twelve proposed amendments followed, 10 of which were ratified and became the Bill of Rights.

After the ratification of the Constitution and the Bill of Rights, the federal government did not serve as the custodian of liberty, equality and voting rights. The Bill of Rights only applied to the federal government, equal protection was a concept absent from the Constitu-

tion, and the federal government deferred to the states on voting rights. However, after the Civil War—and through the 13th, 14th, and 15th Amendments (often referred to as the “Reconstruction Amendments”)—and the 19th Amendment (referred to as the “suffrage amendment”), those protections were explicitly extended to men of all races, former slaves and women.

The “Reconstruction Amendments”

The Constitutional Convention was not intended for all Americans. Slavery remained after the ratification of the Constitution and the Bill of Rights, as did the continuing tension between Jeffersonian states’ rights and Hamiltonian federalism. During the Civil War, the Emancipation Proclamation declared free all persons held as slaves within the “rebellious states,” freeing millions of slaves in the U.S. at the time. Within this contextual focus upon liberty, the Constitution’s 13th Amendment (1865) abolished slavery in the United States.

Even with the 13th Amendment’s ratification, equality was a concept constitutionally unavailable to Blacks, made evident in *Dred Scott v. Sandford* in which the Supreme Court held that the Constitution was not intended to include citizenship for Black Americans, whether slave or free. The 14th Amendment (1868) addressed this disparity, stating that all persons born or naturalized in the United States are citizens of the U.S., and that no state shall make or enforce any law that abridges the privileges and immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process; nor deny any person the “equal protection of the laws.” The 14th Amendment goes on to penalize the inhibition of the right of male citizens to vote, but says nothing of female citizens.

The 15th Amendment (1870) states that “[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.” Together, the 13th, 14th, and 15th Amendments constitute the “Reconstruction Amendments;” however, the Compromise of 1877 saw the end of Reconstruction and the advent of Jim Crow laws in the South, which suppressed voting and effectively disenfranchised Black Americans, aided by the passage and imple-

mentation of Black Codes, generalizations perpetrated through the “Dunning School,” and the federal court’s deference to states in condoning discriminatory actions.

This overt voter intimidation and suppression continued through the civil rights movement, the Civil Rights Act of 1964, and the Voting Rights Act of 1965 and continues to have implications today through such cases as *Shelby Cty. v. Holder*.

The “Suffrage Amendment”

The women’s rights movement was born in the process of advocating for the end of slavery and the rights of Black Americans—evidenced by abolitionists Lucretia Mott and Elizabeth Cady Stanton being barred from attending the 1840 World Anti-Slavery Convention in London, which prompted the Women’s Rights Convention in Seneca Falls, New York, in 1848 that resulted in the creation of the “Declaration of Sentiments,” which demanded equality with men before the law.

In 1866, the American Equal Rights Association—dedicated to suffrage for all regardless of race or gender—was formed. After the passage of the 14th Amendment, and with conflict over whether to support the 15th Amendment, the National Woman Suffrage Association, or NWSA, focused on amendment of the Constitution, and the American Woman Suffrage Association, or AWSA, focused on amendment of state constitutions. Following the Supreme Court’s 1873 ruling in *The Slaughterhouse Cases* refusing to extend the 14th Amendment rights associated with federal citizenship to state citizenship and the court’s deference to discrimination the following year in *Minor v. Happersett*, ruling that any remedy of woman’s suffrage should be sought at the state constitutional level, suffrage efforts continued.

In 1890, the NWSA and AWSA merged to form the National American Woman Suffrage Association with Stanton as its first president. In 1896, the same year as the *Plessy v. Ferguson* decision condoning “separate but equal,” the National Association of Colored Women was formed with the goal of achieving equality for women of color. Due to the increasing political support for women’s suffrage, and due in part to the efforts of the National Woman’s Party and the 1916 election of Jeannette Rankin, of Montana, as the first woman elected to the U.S. House of Representatives, debate began on a suffrage amendment in 1918 in the U.S. House, and the amendment passed.

With the support of President Woodrow Wilson, the suffrage amendment was able to pass the U.S. Senate in 1919, using the language of the women’s suffrage amendment of 1878 and mirroring the 15th Amendment, stating that “[t]he right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.” Upon the ratification of the 19th Amend-

ment on August 18, 1920, women were granted the constitutional right to vote.

What do the Ratification Anniversaries of the 15th and the 19th Amendments Mean Today?

In this election year, the meanings ascribed to these anniversaries are varied. One meaning is undoubtedly that—although the field of candidates in a particular political contest often may not be diverse or representative of the electorate—men of color, former slaves and women must remain diligent as an informed electorate in the exercise of their enfranchisement.

For example, with numerous female candidates, two African-American candidates, an Asian-American candidate, and the first openly gay presidential candidate, the 2020 Democratic presidential primary was the most diverse field of presidential candidates in this country’s history; however, the majority of these diverse candidates did not survive long enough to see Super Tuesday. It is also worth noting that, even following the presidency of a Black American, the leading Democratic presidential candidate is a 77-year-old white male, preparing to face a 73-year-old white male in the November 2020 general election. Nonetheless—although voting rates vary among various demographics according to the type of election—a vote is a voice, and every vote matters in maintaining this republic.

A larger meaning is that the nation should respect, commemorate and be forever mindful of the historical struggle to give true meaning to its creed—being an indivisible nation, ensuring equality and espousing the inclusive concepts of liberty and justice for all—to men of all races and color through the passage of the “Reconstruction Amendments” and to women through the “Suffrage Amendment.” Americans (and American history) must recognize and respect the societal and governmental evolution each amendment represents.

Finally, in commemorating the ratifications of the 15th and the 19th Amendments, we must acknowledge both the higher calling and aspirational principles of our grand experiment in this pluralistic republic as well as reaffirm that all Americans are essential toward forming a more perfect union. Onward.

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Anti-Discrimination Rule Proposed

In February, the Louisville Bar Association and its Gender Equity Committee submitted a proposed amendment to the Kentucky Rules of Professional Conduct to address discrimination in the legal profession. Kentucky is in a minority of states that does not directly address discrimination in its professional conduct rules. The KBA Rules Committee will be considering the LBA’s proposed rule amendment and potentially voting on it at its next meeting in September. If you would like more information about the proposed rule amendment and how you can lend your support to this important initiative, please contact Lisa Anspach at lanspach@loubar.org. ■