Supplementary Material

Chapter 6: The Civil War and Reconstruction—Equality/Gender/The New Departure

Debate on the Memorial of Victoria C. Woodhull (1871)[1]

Victoria Woodhull (1838–1927) was a prominent advocate of women's rights. She ran for president in 1872 under the banner of the Equal Rights Party. During Reconstruction, Woodhull and many other suffragettes urged Congress to include explicit language enfranchising women in the post–Civil War amendments. When that failed, Woodhull and her allies urged Congress to pass legislation declaring that the Fourteenth and Fifteenth Amendments prohibited sex discrimination in voting. That effort gained more support from Republicans, but also failed.

The following excerpts are taken from Woodhull's petition to Congress in 1871, the majority report rejecting her call for legislation guaranteeing women the right to vote in all federal elections, and the minority opinion endorsing Woodhull's claim that the Constitution granted women the right to vote. How did the passage of the post–Civil War Amendments influence arguments for and against women's suffrage? In your opinion, was the case for women's suffrage stronger or weaker after those amendments were passed? Both Woodhull and the minority report acknowledge that women had traditionally not been allowed to vote in many places. Nevertheless, they claim that the Fourteenth Amendment committed the United States to principles that compelled governing officials to give women the ballot. Do these arguments anticipate later versions of a living constitution? Congressman John Bingham, the author of the majority report, was a vigorous supporter of African-American rights during Reconstruction.[2] How did he distinguish the rights of women from the rights of persons of color? Bingham suggested the Supreme Court should decide whether woman had voting rights. Was this a Republican effort to foist a divisive issue on to the federal judiciary?

The Memorial of Victoria C. Woodhull

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. . . [T]he right to vote is denied to women citizens of the United States by the operation of Election Laws in the several States and Territories, which laws were enacted prior to the adoption of the . . . XV. Article, and which are inconsistent with the Constitution as amended, and, therefore, are void and of no effect; but which, being still enforced by the said States and Territories, render the Constitution inoperative as regards the right of women citizens to vote.

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And whereas, no distinction between citizens is made in the Constitution of the United States on account of sex; but the XIV. Article of Amendments to it provides that "No State shall make or enforce any law which shall abridge the privileges and immunities of citizens of the United States, nor deny to any person within its jurisdiction the equal protection of the laws."

And whereas, Congress has power to make laws which shall be necessary and proper for carrying into execution all powers vested by the Constitution in the Government of the United States; and

[1] Elizabeth Cady Stanton, Susan B. Anthony, and Matilda Joslyn Gage, eds., *History of Woman Suffrage*, vol. II (Rochester, NY: Charles Mann Printing Co., 1881), 443–48, 461–82.

[2] You should also notice the majority report explicitly asserts that the post–Civil War Amendment incorporate the Bill of Rights.

to make or alter all regulations in relation to holding elections for senators or representatives, and especially to enforce, by appropiate legislation, the provisions of the said XIV Article:

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Therefore, your memorialist would most respectfully petition your honorable bodies to make such laws as in the wisdom of Congress shall be necessary and proper for carrying into execution the right vested by the Constitution in the citizens of the United States to vote, without regard to sex.

Victoria Woodhull, "To the Honorable the Judiciary Committee of the House of Representatives of the Congress of the United States,"

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. . . The subject of a monarch takes municipal immunities from the sovereign as a gracious favor; but the woman citizen of this country has the inalienable "sovereign" right of self-government in her own proper person. Those who look upon woman's status by the dim light of the common law, which unfolded itself under the feudal and military institutions that establish right upon physical power, cannot find any analogy in the status of the woman citizen of this country, where the broad sunshine of our Constitution has enfranchised all.

As sovereignty cannot be forfeited, relinquished, or abandoned, those from whom it flows the citizens are equal in conferring the power, and should be equal in the enjoyment of its benefits and in the exercise of its rights and privileges. One portion of citizens have no power to deprive another portion of rights and privileges such as are possessed and exercised by themselves. The male citizen has no more right to deprive the female citizen of the free, public, political, expression of opinion than the female citizen has to deprive the male citizen thereof.

The sovereign will of the people is expressed in our written Constitution, which is the supreme law of the land. The Constitution makes no distinction of sex. The Constitution defines a woman born or naturalized in the United States, and subject to the jurisdiction thereof, to be a citizen. It recognizes the right of citizens to vote. It declares that the 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."

Women, white and black, belong to races, although to different races. A race of people comprises all the people, male and female. The right to vote cannot be denied on account of race. All people included in the term race have the right to vote, unless otherwise prohibited. Women of all races are white, black, or some intermediate color. Color comprises all people, of all races and both sexes. The right to vote cannot be denied on account of color. All people included in the term color have the right to vote unless otherwise prohibited.

With the right to vote sex has nothing to do. Race and color include all people of both sexes. All people of both sexes have the right to vote, unless prohibited by special limiting terms less comprehensive than race or color. No such limiting terms exist in the Constitution. Women, white and black, have from time immemorial groaned under what is properly termed in the Constitution "previous condition of servitude." Women are the equals of men before the law, and are equal in all their rights as citizens. Women are debarred from voting in some parts of the United States, although they are allowed to exercise that right elsewhere. Women were formerly permitted to vote in places where they are now debarred therefrom. The naturalization laws of the United States expressly provide for the naturalization of women. But the right to vote has only lately been definitely declared by the Constitution to be inalienable, under three distinct conditions in all of which woman is clearly embraced.

The citizen who is taxed should also have a voice in the subject matter of taxation. "No taxation without representation" is a right which was fundamentally established at the very birth of our country's independence; and by what ethics does any free government impose taxes on women without giving them a voice upon the subject or a participation in the public declaration as to how and by whom these taxes shall be applied for common public use?

Women are free to own and to control property, separate and free from males, and they are held responsible in their own proper persons, in every particular, as well as men, in and out of court. Women have the same inalienable right to life, liberty, and the pursuit of happiness that men have. Why have they not this right politically, as well as men?

Women constitute a majority of the people of this country, they hold vast portions of the nation's wealth, and pay a proportionate share of the taxes. They are intrusted with the most vital responsibilities of society; they bear, rear, and educate men; they train and mold their characters; they inspire the noblest impulses in men; they often hold the accumulated fortunes of a man's life for the safety of the family and as guardians of the infants, and yet they are debarred from uttering any opinion by public vote, as to the management by public servants of these interests; they are the secret counselors, the best advisers, the most devoted aids in the most trying periods of men's lives, and yet men shrink from trusting them in the common questions of ordinary politics. Men trust women in the market, in the shop, on the highway and railroad, and in all other public places and assemblies, but when they propose to carry a slip of paper with a name upon it to the polls, they fear them. Nevertheless, as citizens, women have the right to vote; they are part and parcel of that great element in which the sovereign power of the land had birth; and it is by usurpation only that men debar them from this right. The American nation, in its march onward and upward, cannot publicly choke the intellectual and political activity of half its citizens by narrow statutes. The will of the entire people is the true basis of republican government, and a free expression of that will by the public vote of all citizens, without distinctions of race, color, occupation, or sex, is the only means by which that will can be ascertained. As the world has advanced into civilization and culture; as mind has risen in its dominion over matter; as the principle of justice and moral right has gained sway, and merely physical organized power has yielded thereto; as the might of right has supplanted the right of might, so have the rights of women become more fully recognized, and that recognition is the result of the development of the minds of men, which through the ages she has polished, and thereby heightened the lustre of civilization.

. . . It may be argued against the proposition that there still remains upon the statute books of some States the word "male" to an exclusion; but as the Constitution, in its paramount character, can only be read by the light of the established principle, *ita lex Scripta est* [the law is so written], and as the subject of sex is not mentioned, and the Constitution is not limited either in terms or by necessary implication in the general rights of citizens to vote, this right cannot be limited on account of anything in the spirit of inferior or previous enactments upon a subject which is not mentioned in the supreme law. A different construction would destroy a vested right in a portion of the citizens, and this no legislature has a right to do without compensation, and nothing can compensate a citizen for the loss of his or her suffrage its value is equal to the value of life. Neither can it be presumed that women are to be kept from the polls as a mere police regulation: it is to be hoped, at least, that police regulations in their case need not be very active. . . .

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Your memorialist complains of the existence of State laws, and prays Congress, by appropriate legislation, to declare them, as they are, annulled, and to give vitality to the Constitution under its power to make and alter the regulations of the States contravening the same.

It may be urged in opposition that the courts have power, and should declare upon this subject. The Supreme Court has the power, and it would be its duty so to declare the law: but the court will not do so unless a determination of such point as shall arise make it necessary to the determination of a controversy, and hence a case must be presented in which there can be no rational doubt. All this would subject the aggrieved parties to much dilatory, expensive and needless litigation, which your memorialist prays your honorable body to dispense with by appropriate legislation, as there can be no purpose in special arguments "ad inconitenient" enlarging or contracting the import of the language of the Constitution.

Therefore, believing firmly in the right of citizens to freely approach those in whose hands their destiny is placed under the Providence of God, your memorialist has frankly, but humbly, appealed to you, and prays that the wisdom of Congress may be moved to action in this matter for the benefit and the increased happiness of our beloved country.

Mr. BINGHAM, from the Committee on the Judiciary, made the following report

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. . . The proposition is clear that no citizen of the United States can rightfully vote in any State of this Union who has not the qualifications required by the Constitution of the State in which the right is claimed to be exercised, except as to such conditions in the constitutions of such States as deny the right to vote to citizens resident therein "on account of race, color, or previous condition of servitude."

The adoption of the XV. Amendment to the Constitution imposing these three limitations upon the power of the several States, was by necessary implication, a declaration that the States had the power to regulate by a uniform rule the conditions upon which the elective franchise should be exercised by citizens of the United States resident therein. The limitations specified in the XV. Amendment exclude the conclusion that a State of this Union, having a government republican in form, may not prescribe conditions upon which alone citizens may vote other than those prohibited. It can hardly be said that a State law which excludes from voting women citizens, minor citizens, and non-resident citizens of the United States, on account of sex, minority, or domicil, is a denial of the right to vote on account of race, color, or previous condition of servitude.

It may be further added that the 2d section of the XIV. Amendment, by the provision that "when the right to vote at any election for the choice of electors of President and Vice-President of the United States, Representatives in Congress, or executive and judicial officers of the State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, a citizen of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State," implies that the several States may restrict the elective franchise as to other than male citizens. . . .

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[I]f it had been intended that Congress should prescribe the qualifications of electors, . . . the grant would have read: "The Congress may at any time by law make or alter such regulations, and also prescribe the qualifications of electors, etc." The power, on the contrary, is limited exclusively to the time, place, and manner, and does not extend to the qualification of the electors. This power to prescribe the qualification of electors in the several States has always been exercised, and is, today, by the several States of the Union; and we apprehend, until the Constitution shall be changed, will continue to be so exercised, subject only to express limitations imposed by the Constitution upon the several States, before noticed. We are of opinion, therefore, that it is not competent for the Congress of the United States to establish by law the right to vote without regard to sex in the several States of this Union, without the consent of the people of such States, and against their constitutions and laws; and that such legislation would be, in our judgment, a violation of the Constitution of the United States, and of the rights reserved to the States respectively by the Constitution. . . .

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If however, as is claimed in the memorial referred to, the right to vote "is vested by the Constitution in the citizens of the United States without regard to sex," that right can be established in the courts without further legislation.

Mr. LOUGHRIDGE, from the Committee on the Judiciary, submitted the following as the view of the minority:

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It is claimed by many that to concede to woman the right of suffrage would be an innovation upon the laws of nature, and upon the theory and practice of the world for ages in the past, and especially an innovation upon the common law of England, which was originally the law of this country, and which is the foundation of our legal fabric. If we were to admit the truth of this, it is yet no argument

against the proposition, if the right claimed exists, and is established by the Constitution of the United States. The question is to be decided by the Constitution and the fundamental principles of our Government, and not by the usage and dogmas of the past. It is a gratifying fact that the world is advancing in political science, and gradually adopting more liberal and rational theories of government. The establishment of this Government upon the principles of the Declaration of Independence was in itself a great innovation upon the theories and practice of the world, and opened a new chapter in the history of the human race, and its progress toward perfect civil and political liberty.

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In England the theory was that in property representation, all property should be represented. Here the theory is that of personal representation, which, of course, if carried out fully, includes the representation of all property. In England, as we have seen, the owner of the property, whether male or female, was entitled to representation, no distinction being made on account of sex. If the doctrine contended for by the majority of the committee be correct, then this Government is less liberal upon this question than the government of England has been for hundreds of years, for there is in this country a large class of citizens of adult age, and owners in their own right of large amounts of property, and who pay a large proportion of the taxes to support the Government, who are denied any representation whatever, either for themselves or their property unmarried women, of whom it cannot be said that their interests are represented by their husbands. In their case, neither the English nor the American theory of representation is carried out, and this utter denial of representation is justified upon the ground alone that this class of citizens are women. Surely we cannot be so much less liberal than our English ancestors! Surely the Constitution of this Republic does not sanction an injustice so indefensible as that!

By the XIV Amendment of the Constitution of the United States, what constitutes citizenship of the United States, is for the first time declared, and who are included by the term citizen. . . .

This amendment, after declaring who are citizens of the United States, and thus fixing but one grade of citizenship, which insures to all citizens alike all the privileges, immunities and rights which accrue to that condition, goes on in the same section and prohibits these privileges and immunities from abridgment by the States. Whatever these "privileges and immunities" are, they attach to the female citizen equally with the male. It is implied by this amendment that they are inherent, that they belong to citizenship as such, for they are not therein specified or enumerated.

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We claim that from the very nature of our Government, the right of suffrage is a fundamental right of citizenship, not only included in the term "privileges of citizens of the United States," as used in the XIV. Amendment, but also included in the term as used in section 2, of article 4. . . .

. . . We do not claim that a citizen of Pennsylvania can go into Virginia and vote in Virginia, being a citizen of Pennsylvania. No person has ever contended for such an absurdity. We claim that when the citizen of the United States becomes a citizen of Virginia, the State of Virginia has neither right nor power to abridge the privileges of such citizen by denying him entirely the right of suffrage, and thus all political rights. . . .

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These privileges of the citizen exist independent of the Constitution. They are not derived from the Constitution or the laws, but are the means of asserting and protecting rights that existed before any civil governments were formed the right of life, liberty and property. Says Paine, in his *Dissertation upon the Principles of Government*:

> The right of voting for representatives is the primary right, by which other rights are protected. To take away this right is to reduce man to a state of slavery, for slavery consists in being subject to the will of another; and he that has not a vote in the election of representatives is, in this case. The proposal, therefore, to disfranchise any class of men is as criminal as the proposal to take away property.

In a state of nature, before governments were formed, each person possessed a natural right to defend his liberty, his life and his property from the aggressions of his fellow men. When he enters into the free

government he does not surrender that right, but agrees to exercise it, not by brute force, but by the ballot, by his individual voice in making the laws that dispose of, control and regulate those rights. The right to a voice in the government is but the natural right of protection of one's life, liberty and property, by personal strength and brute force, so modified as to be exercised in the form of a vote, through the machinery of a free government.

The people "ordained and established" the Constitution. Such is the preamble. "We, the people." Can it be said that the people acquire their privileges from the instrument that they themselves establish? Does the creature extend rights, privileges and immunities to the creator? No; the people retain all the rights which they have not surrendered; and if the people have not given to the Government the power to deprive them of their elective franchise, they possess it by virtue of citizenship. The true theory of this Government, and of all free governments, was laid down by our fathers in the Declaration of Independence, and declared to be "self-evident." "All men are endowed by their Creator with certain inalienable rights; among these are life, liberty, and the pursuit of happiness. That to secure these rights governments are instituted among men, deriving all their just powers from the consent of the governed." Here is the great truth, the vital principle, upon which our Government is founded, and which demonstrates that the right of a voice in the conduct of the government, and the selection of the rulers, is a right and privilege of all citizens. . . .

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When we desire to construe the Constitution, or to ascertain the powers of the Government and the rights of the citizens, it is legitimate and necessary to recur to those principles and make them the guide in such investigation. It is an oft-repeated maxim set forth in the bills of rights of many of the State constitutions that "the frequent recurrence to fundamental principles is necessary for the preservation of liberty and good government." Recurring to these principles, so plain, so natural, so like political axioms, it would seem that to say that one-half the citizens of this republican government, simply and only on account of their sex, can legally be denied the right to a voice in the government, the laws of which they are held to obey, and which takes from them their property by taxation, is so flagrantly in opposition to the principles of free government, and the theory of political liberty, that no man could seriously advocate it.

But it is said in opposition to the "citizen's right" of suffrage that at the time of the establishment of the Constitution, women were in all the States denied the right of voting, and that no one claimed at the time that the Constitution of the United States would change their status; that if such a change was intended it would have been explicitly declared in the Constitution or at least carried into practice by those who framed the Constitution, and, therefore, such a construction of it is against what must have been the intention of the framers. This is a very unsafe rule of construction. As has been said, the Constitution necessarily deals in general principles; these principles are to be carried out to their legitimate conclusion and result by legislation, and we are to judge of the intention of those who established the Constitution by what they say, guided by what they declare on the face of the instrument to be their object.

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Try this question by a consideration of the objects for which the Constitution was established, as set forth in the preamble, "to establish justice." Does it establish justice to deprive of all representation or voice in the Government one-half of its adult citizens, and compel them to pay taxes to and support a government in which they have no representation? Is "taxation without representation" justice established? "To insure domestic tranquility." Does it insure domestic tranquility to give all the political power to one class of citizens, and deprive another class of any participation in the government? No. The sure means of tranquility is to give "equal political rights to all," that all may stand "equal before the law."

"To provide for the common defense." We have seen that the only defense the citizen has against oppression and wrong is by his voice and vote in the selection of rulers and law makers. Does it, then, "provide for the common defense," to deny to one half the adult citizens of the republic that voice and vote?

"To secure the blessings of liberty to ourselves and our posterity." As has been already said, there can be no political liberty to any citizen deprived of a voice in the government. This is self-evident; it needs no demonstration. Does it, then, "secure the blessings of liberty to ourselves and our posterity," to deprive one half the citizens of adult age of this right and privilege?

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[T]the fundamental rights of citizens are not to be taken away by implication, and a constitutional provision for the protection of one class can certainly not be used to destroy or impair the same rights in another class. It is too violent a construction of an amendment, which prohibits States from, or the United States from, abridging the right of a citizen to vote by reason of race, color, or previous condition of servitude, to say that by implication it conceded to the States the power to deny that right for any other reason. . . .This is the language:

> The 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.

Here is stated, first, the existence of a right. Second, its nature. Whose right is it? The right of citizens of the United States. What is the right? The right to vote. And this right of citizens of the United States, States are forbidden to abridge. Can there be a more direct recognition of a right? Can that be abridged which does not exist? The denial of the power to abridge the right, recognizes the existence of the right. Is it said that this right exists by virtue of State citizenship, and State laws and Constitutions? Mark the language: "The right of citizens of the United States to vote;" not citizens of States. The right is recognized as existing independent of State citizenship.

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It is claimed by the committee that the second section of the XIV Amendment implies that the several States may restrict the right of suffrage as to other than male citizens. . . . The object of the second section was to fix a rule or system of apportionment for Representatives and taxation; and the provision referred to, in relation to the exclusion of males from the right of suffrage, might be regarded as in the nature of a penalty in case of denial of that right to that class. While it, to a certain extent, protected that class of citizens, it left the others where the previous provisions of the Constitution placed them. . . .

The majority of the committee say that this section implies that the States may deny suffrage to others than male citizens. If it implies anything it implies that the States may deny the franchise to all the citizens. . . .

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We are told that the acquiescence by the people, since the adoption of the Constitution, in the denial of political rights to women citizens, and the general understanding that such denial was in conformity with the Constitution, should be taken to settle the construction of that instrument. Any force this argument may have it can only apply to the original text, and not to the XIV Amendment, which is of but recent date. But, as a general principle, this theory is fallacious. It would stop all political progress; it would put an end to all original thought, and put the people under that tyranny with which the friends of liberty have always had to contend the tyranny of precedent.

. . . General understanding and acquiescence is a very unsafe rule by which to try questions of constitutional law, and precedents are not infallible guides toward liberty and the rights of man.

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It is said by the majority of the committee that "if the right of female citizens to suffrage is vested by the Constitution, that right can be established in the courts." We respectfully submit that, with regard to the competency and qualification of electors for members of this House, the courts have no jurisdiction. We, therefore, recommend to the House the adoption of the following resolution:

> Resolved, by the House of Representatives, That the right of suffrage is one of the inalienable rights of citizens of the United States, subject to regulation by the States, through equal and just laws.

That this right is included in the "privileges of citizens of the United States," which are guaranteed by section 1 of article XIV. of Amendments to the Constitution of the United States; and that women citizens, who are otherwise qualified by the laws of the State where they reside, are competent voters for Representatives in Congress.