Supplementary Material

Chapter 6: The Civil War and Reconstruction—Equality/Gender/The Supreme Court

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Minor v. Happersett, 88 U.S. 162 (1874)

Virginia Minor (1824–94), a prominent advocate of women's rights, sought to vote in the 1872 presidential election. Happersett, the local registrar of voters, refused to register Minor on the ground that Missouri law limited the ballot to "male citizens of the United States." Minor sued Happersett. She insisted that she had a constitutional right to vote under the privileges and immunities clause of the Fourteenth Amendment. After her suit was rejected by the local trial court and the Supreme Court of Missouri, Minor appealed to the Supreme Court of the United States.

The Supreme Court ruled that states could deny women the right to vote. Chief Justice Morrison Waite's opinion asserted that no citizen of the United States had a constitutional right to vote. Waite did not think significant that Missouri limited the right to vote to men, rather than property holders, tall people, or persons with college degrees. Would all such restrictions be constitutional under Minor v. Happersett *(1874)? Did constitutional reasons exist in 1874 for distinguishing restrictions on the right of women to vote from other restrictions on voting?*

The CHIEF JUSTICE delivered the opinion of the court.

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. . . [S]ex has never been made one of the elements of citizenship in the United States. In this respect men have never had an advantage over women. The same laws precisely apply to both. The fourteenth amendment did not affect the citizenship of women any more than it did of men. In this particular, therefore, the rights of Mrs. Minor do not depend upon the amendment. She has always been a citizen from her birth, and entitled to all the privileges and immunities of citizenship. The amendment prohibited the State, of which she is a citizen, from abridging any of her privileges and immunities as a citizen of the United States; but it did not confer citizenship on her. That she had before its adoption.

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The Constitution does not define the privileges and immunities of citizens. For that definition we must look elsewhere. In this case we need not determine what they are, but only whether suffrage is necessarily one of them.

It certainly is nowhere made so in express terms. The United States has no voters in the States of its own creation. The elective officers of the United States are all elected directly or indirectly by State voters. . . .

The amendment did not add to the privileges and immunities of a citizen. It simply furnished an additional guaranty for the protection of such as he already had. No new voters were necessarily made by it. Indirectly it may have had that effect, because it may have increased the number of citizens entitled to suffrage under the constitution and laws of the States, but it operates for this purpose, if at all, through the States and the State laws, and not directly upon the citizen.

It is clear, therefore, we think, that the Constitution has not added the right of suffrage to the privileges and immunities of citizenship as they existed at the time it was adopted. . . .

When the Federal Constitution was adopted, all the States, with the exception of Rhode Island and Connecticut, had constitutions of their own. . . . Upon an examination of those constitutions we find that in no State were all citizens permitted to vote. . . .

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In this condition of the law in respect to suffrage in the several States it cannot for a moment be doubted that if it had been intended to make all citizens of the United States voters, the framers of the Constitution would not have left it to implication. So important a change in the condition of citizenship as it actually existed, if intended, would have been expressly declared.

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And still again, after the adoption of the fourteenth amendment, it was deemed necessary to adopt a fifteenth, as follows: '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.' The fourteenth amendment had already provided that no State should make or enforce any law which should abridge the privileges or immunities of citizens of the United States. If suffrage was one of these privileges or immunities, why amend the Constitution to prevent its being denied on account of race, &c.? Nothing is more evident than that the greater must include the less, and if all were already protected why go through with the form of amending the Constitution to protect a part?

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Certainly, if the courts can consider any question settled, this is one. For nearly ninety years the people have acted upon the idea that the Constitution, when it conferred citizenship, did not necessarily confer the right of suffrage. If uniform practice long continued can settle the construction of so important an instrument as the Constitution of the United States confessedly is, most certainly it has been done here. Our province is to decide what the law is, not to declare what it should be.