

WOMAN SUFFRAGE

A PAPER

READ BY

EX-JUSTICE [HENRY BILLINGS] BROWN
Of the Supreme Court of the United States

BEFORE

The Ladies' Congressional Club of Washington, D. C.

APRIL, 1910

ISSUED BY

**The Massachusetts Association Opposed to the Further Extension
Of Suffrage to Women**

Pamphlets and leaflets may be obtained from the Secretary, Room 615,
Kensington Building, 687 Boylston Street, Boston, Mass.

WOMAN SUFFRAGE

Whoever seeks to effect a radical change in legislation of long standing assumes the burden of showing that the existing law is iniquitous or unjust, and that the proposed change is reasonably calculated to remedy its defects. The very fact that certain fundamental principles have prevailed under all forms of government, from a time whence no historical tradition runs to the contrary, is strong evidence of their wisdom, and suggests a continuance of the policy expressed in the homely maxim of letting well enough alone. Experimental legislation is always unsafe, and frequently produces an effect directly contrary to that intended; or, if successful in suppressing the evils sought to be remedied, raises up others, totally unsuspected before, to take their place. Such statutes are, unfortunately, too common in this country, where the Legislatures are besought to remedy every fancied evil, from the right to vote to the length of ladies' hat pins, or of sheets upon hotel beds.

From time immemorial the power to govern has been devolved upon the male population. In the few instances in which, under a local law of succession, the crown has been worn by a woman, the governing power has usually rested with her male advisors, and the physical power always with her army and navy. While this power of governing has often, in obedience to long-established customs, been exercised oppressively, and has occasionally reduced women to a position little above that of slaves, I am not aware of any such complaint against legislation in this country; and, after all, the question of woman suffrage must be determined by the state of things existing in the country to which it is proposed to apply it.

It is a mistake to suppose that either men or women have a *natural right* to vote. We are bound to distinguish between natural and political rights. They may be said to have a natural right to protection in their persons, their property and their opinions, but they

have no natural right to govern or to participate in the government of others. This is purely a creation of local law, and the extent to which it is exercised depends upon the question whether the government is absolute, oligarchical or democratic. As well might the Czar of Russia claim a natural right to govern his subjects, as for the American citizen to claim a natural right to govern others. At present the right exists in most countries, but it depends solely upon its constitution and laws.

The *laws* of nearly, if not all, of the States of this Union are even *more favorable to women* than to men. They have full control of their own property, and may sell, convey or bequeath it to whomsoever they please; while in the conveyance of his own real estate, the husband must usually obtain the consent of his wife. Women are entitled to their own earnings and may dispose of them as they please, while the husband is bound to make use of his for the support of his wife and family. He is liable for the ante-nuptial debts of his wife, while no such obligation rests upon her for her husband's debts. Women are freely admitted to all trades, employments and professions to which they are physically adapted. They are rapidly obtaining a monopoly of stenography, typewriting, telegraphy, telephony, and are competing successfully with men as saleswomen in the principal mercantile establishments, and as operatives in factories. The best schools and colleges are open to such of them as desire a higher education, until a new danger now threatens us of creating in them a distaste for manual labor, which has almost eliminated the native American girl from her natural vocation of housekeeping. Domestic service, which must be provided in every country, if social distinctions are to exist at all, is relegated to aliens and colored people, who are quick to see its advantages in higher wages, more comfortable quarters and better food, while the American girl sees in it only a fancied social inferiority to her sisters, and ekes out a precarious existence by work assumed to be more befitting her dignity. Legislation has done its worst to make this state of affairs permanent, by excluding the Oriental races, upon whom the Pacific coast relied for its most intelligent and effective domestic labor.

No such prejudice against manual labor exists among the male

population. Farmers' boys who go West to seek their fortunes are ready to turn their hands to anything that offers an immediate profit, knowing well that a faithful service in a humble position contains the best promise of promotion and ultimate wealth. That this is not a delusive hope is evidenced from the fact that many, if not the majority, of the wealthiest men in this country have risen from the ranks of manual labor.

The only tangible complaint made against our laws at present seems to consist in the fact that *women are taxed without being represented* in the Legislature. This grievance, however, is more fancied than real, -- a popular political war-cry, but to be applied with some regard for the actual facts. It is doubtless a safe proposition to assert that property owners should not be taxed without being represented. But this should be taken in connection with another principle, -- that no system of taxation or of suffrage was ever devised that did not create individual instances of injustice. For example, in the matter of age, some line must be drawn between the voting and non-voting population. In America this has been uniformly fixed at the age of twenty-one, and yet we all of us know of young men of twenty or less who are far better qualified to vote, by intelligence and the possession of property, than the great mass of those of twenty-one and upwards. But the line must be drawn, and arbitrarily drawn, somewhere, and the fact that certain boys may own millions in their own right has never been supposed to entitle them to vote, or that the denial of this right involved a violation of the principles of taxation without representation. A foreigner may possess a large fortune, and have been educated at a foreign university, but he can never vote until he has qualified by residence in this county for a certain time. The same remark may be made of the line drawn in the Southern states between the white and colored population, -- though no one would have the hardihood to deny that many colored men are superior in intelligence to some of their white brethren.

Now the number of women possessing taxable property of their own is very small, -- probably not exceeding one in twenty of the total number. While they are much fonder of money than men, they

have not the opportunity, and, except in rare cases, not the capacity for accumulation. Men love the acquirement of money for its own sake, much as a gambler loves to win at cards or stocks; but, after all, with a very indefinite idea of what they shall do with it. Beyond a certain amount it becomes a positive burden, and the possessor, as we know in many instances, is forced to give it away to get rid of it. Women, on the other hand, love money for itself, for the comforts and luxuries it will bring them. Men are the natural earners of money; women the natural spenders of it. Some men have an abnormal capacity for earning money, and I have heard it intimated that some women have an abnormal capacity for spending it. This division of earning and spending is a fortunate arrangement. If men had no women to spend their money, they would degenerate into a race of misers, with a capacity for accumulation, but with no capacity for enjoyment. Every one will recall an instance of this kind, where a multi-millionaire left an immense fortune to his wife simply because he did not know how to spend it. If women had no men to supply them with money, most of them would be reduced to the necessaries of life. Clearly those who are dependent upon their husbands for their support have no right to complain that they are taxed without representation, since, with a few possible exceptions, they have no independent property of their own subject to taxation. In the multitude of women who maintain themselves by their own exertions very few earn more than enough for their comfortable support. The residue, who have inherited taxable property from their husbands or relatives, are so few in number as to be a negligible quantity, in dividing the voting from the non-voting population. The fact that injustice may be done to one by denying her a vote is a poor excuse for forcing the right to vote upon the nineteen others, if they do not wish it. Legislation is or ought to be based upon the good of the whole, and not upon the desires of particular individuals. It is presumed to speak for the great mass of the people, and not for the exceptions.

What, then, are the chief *objections to woman suffrage*?

In this connection I wish to admit the perfect equality of the sexes in the general scheme of creation. I claim no superiority for man;

I admit none for women. I repudiate *in toto* the estimate placed upon women by Dr. Meininger in his now famous work upon "Sex and Character," the main object of which seems to be to demonstrate their hopeless inferiority, and the utter impossibility of their rising to man's intellectual level. A few extracts will exhibit the animus of the book, learned as it undoubtedly is:

"It has been exhaustively proved that the female is soulless and possesses neither ego nor individuality, personality nor freedom, character nor will. . . . Woman is neither high minded nor low minded; strong minded nor weak minded. She is opposite to all of these. Mind cannot be predicated of her at all. She is mindless; . . . and, therefore, I must again assert that the woman of the highest standard is immensely beneath the man of the lowest standard."

It seems a fitting corollary of such views that the writer should have taken his own life at the early age of twenty-three, and very soon after this remarkable book was written.

But, while conceding the equality of the two sexes, there are undeniable *differences* which it would be folly to ignore. At the basis of these differences is the physical distinction, which impresses itself almost as much upon the mind as upon the body, and contains suggestions as to the proper functions of each sex and the part each should play in the economy of nature. There are certain particulars in which the superiority of one sex over the other is plainly manifested. To man must be accorded pre-eminence: --

1. In physical strength. This is undeniable, and requires that the heavy labor of the world must be done by him;
2. The preservation of public order and safety;
3. The inauguration and management of great undertakings;
4. The dispassionate view of important questions, which we call the judicial temperament.

Does not the superiority of the male sex in these particulars contain a suggestion that they also should determine as to when great enterprises should be undertaken, and how they should be carried out? If the labor and expense incidental to the building and operation of railways and manufacturing establishments, or the construction of buildings and the improvements of streets and roads be furnished

by men, is it not reasonable to say the men should also determine when and how these projects should be made effective? If the policing of cities and the preservation of the peace is to be secured by men, should they not also judge of the necessity for particular measures? If wars are contemplated, should not the necessity for such wars be passed upon by the men who are to provide the material, to constitute the armies and to fight its battles? Would it not be absurd, if the men of the country were opposed to a particular war, that the country should be driven into it by the votes of women?

On the other hand, there are doubtless other spheres of activity in which the superiority of women is as marked as that of men in the particulars already named. They are:--

1. The management of the household and the direction of family life;
2. The rearing and education of young children;
3. The nursing of the sick, from which of late men have been completely displaced by women;
4. Their superior vitality and patient endurance of suffering;
5. Their superior natural refinement and delicacy;
6. Their intuitive perceptions, which are more accurate than those of men.

This enumeration also contains a suggestion that, in all such legislation as relates to the education of children, the establishment of public schools, the selection of teachers and of studies, women should have at least an equal voice with men. The right of women to vote upon school questions has been conferred, and I think wisely so, in nearly twenty different States; but the small extent to which that right has been exercised by the women does not augur well for its success. In a paper in advocacy of woman suffrage by the late and greatly lamented Mr. Justice Brewer, he states that while there are about 700,000 women authorized to vote in Massachusetts on school questions, the number actually voting fell from 18,000 in 1906 to 13,000 in 1907. In 189 towns, where 3,600 women were registered, not a single woman voted. In Cleveland, Ohio, the number of registered voters diminished from 6,681 in 1904 to 3,179 in 1907. If this be regarded as a fair experiment, it must be conceded a failure.

Indeed, one of the chief obstacles to the introduction of female suffrage is the *apparent indifference of the women* themselves. If there were a general sentiment among them that their rights were not being properly respected, and that their votes were really needed to protect them, I feel confident that the natural chivalry of men would rally to their support, and, irrespective of every other consideration, would cheerfully concede them the ballot. I do not, however, find among them any general demand for it. Earnest advocates, eloquent platform speakers there are undoubtedly, but in private conversation, particularly with women of the upper classes, most are actually opposed, or at best indifferent, to a change. Although the rights of women in England are not protected as they are in this country, I do not regard the riotous mobs which besiege Parliament, assault members, destroy property and court martyrdom as representative women of Great Britain. It would certainly be little to the credit of Parliament to permit itself to be hectored into the grant of suffrage by such means. A resort to similar violence would be simply impossible in any American capital.

Fashion is so much more potent a fact in the lives of women than in those of men that there could be no general participation of women of the upper classes in exercising the right of suffrage, unless it were made fashionable to do so. Once make it as fashionable to go to the polls as to a *matinée* or a *musical*, and every woman would vote, if only for the purpose of being seen. But let it be once understood that voting was unwomanly and fit only for the stronger sex, and what we may term masculine femininity, the suffrage would fall at once into the hands of the lower class and a few enthusiasts of the better sort. Considerations of fashion are rarely applied to questions of duty, but rather to those of fancy or pleasure. Indeed, considerations of duty outside of the church or domestic circle are of feebler efficacy than is generally supposed. Having found ample scope for the exercise of their peculiar functions in the family circle, women are generally content to leave the more serious questions of bread-winning and of government to the male sex. Every argument upon the subject finally comes back to the question whether nature has not answered it as effectively as certain economical questions are

answered by the law of supply and demand. While women are constantly winning their way to work formerly considered the exclusive prerogative of men, and have not only been permitted but encouraged to do so, there is after all a reserve of work which must be done by men, and in which it would be as absurd for women to participate as it would be for men to undertake the management of a family or the care of young children. A man who busies himself with such matters is looked upon with derision, while the woman who aspires to the platform or the pulpit, and desires at least to be seen in every public assemblage, is regarded as asserting merely an inherent right. Within certain limitations this is just and proper, but in the end considerations of sex are sure to assert themselves as the dominating influence. Hence, the conservative American matron and her daughters, brought up to care for family and children, according to historical ideas which have held sway since the earliest days of the distaff and the loom, are content that in matters of State men shall bear the burden. Nor do the peculiar prerogatives of women involve any question of inferiority. Of two boys, one of whom is fond of mathematics and the other of the classics, there is no question of superiority of one over the other, but simply of difference. The mathematician might be expected to make the better astronomer, engineer or contractor; the other, the better scholar or professional man, -- but both may be equally eminent in their own callings. So the particulars in which each sex is superior to the other are equally essential to the perpetuation of the race, and to the maintenance of the family, which is the basis of the whole social system.

I consider that there is a positive *danger* involved in any extension of the suffrage to large classes who have not heretofore enjoyed it. True, this is a government of the people, but not necessarily of all persons constituting the people. The word "people" is used simply to distinguish it from a despotism or oligarchy; but the power of actually governing has always rested with an exceedingly small number of men, the great body of the people being merely represented by them. It is a grave question who are entitled to be thus represented. Surely not children or persons of defective intelligence. Formerly it was only extended to property owners of greater or less amount;

then to those able to read and write, -- finally to everybody, or what is called manhood suffrage.

The results have not been altogether encouraging. While universal suffrage has been fairly successful in the country and in the small towns, in large cities the consequences have been such as to justify fully the apprehension of its opponents. Indeed, it has been so near an absolute failure that the most important political question now confronting us is how to get rid of it without sacrificing the principle of self-government. In the District of Columbia Congress exercises directly the "exclusive legislation" vested in it by the Constitution, with the result that Washington is the best governed large city in the country. Other cities have sought relief from conditions which have become intolerable by commissions appointed or elected, with apparently satisfactory results. The object in every case is to rid the city of the incubus of a popular and largely an alien vote. The inauguration of this system is really due to Texas. When Galveston was overwhelmed by the sea and nearly swept out of existence, it was felt that its upbuilding must not be entrusted to the ordinary municipal politician, but it was put into the hands of a commission of its best citizens, who would do their work solely in the interests of the public. The example of Galveston has been followed by a number of cities in the West, to the great improvement of their municipal governments.

That *experimental extensions* of the suffrage are often unwise is also shown by the fate of the fifteenth amendment of the Constitution, forbidding discriminations on account of color or race. While in the North, where the colored vote is small, no great harm has resulted, the amendment has been generally disregarded in the South, and a serious attempt to enforce it by the military arm, if persisted in, would probably have resulted in another civil war. This is meant not to express an opinion of the fifteenth amendment, but to show the danger of radical legislation, except to remedy a certain and radical evil.

It is now proposed to extend the right not simply to those who have been unjustly excluded from it, but practically to double the voting population by including a class which has never exercised

the franchise, and of whose qualifications we have no practical knowledge. I look upon the experiment as not without peril. While in the ordinary process of peaceful government no danger may be apprehended, I should fear that in critical moments the generous impulses of women might lead them far astray from the path of safety. Women are far more intense in their convictions than men, and, once an opinion is formed, are prone to overlook the obstacles in the way, the difficulties in bringing about the desired results, or even to give credit to the conscientious convictions of others. As the average man who is defeated in a lawsuit is apt to attribute the outcome either to the bribery of the judge or jury, rather than to the inherent weakness of his case, a woman who is opposed in a favorite scheme or ambition is loth to admit conscientious motives in those who oppose her. Indeed, it is a common infirmity of both men and women to have the strongest opinions concerning matters of which we really know the least, and which are the least susceptible of proof. A painful instance of this kind occurred in connection with the anti-canteen law, enacted by Congress a few years ago. Those who were in Washington at the time could not fail to appreciate the fact that the passage of the bill was procured by the efforts of crowds of perfectly respectable, upright and conscientious women, who thronged the halls of the capitol during the debate, practically overawed the members and compelled many of them to vote against their convictions rather than be charged with opposition to the cause of temperance. The consequences are said to be deplorable. Saloons of the lowest class sprang up around the reservations, and if we are to believe the almost universal testimony of army officers, drunkenness increased, arrests increased, desertions increased, though the principle that the United States should no longer be privy to the sale of liquor was fully established.

It would be interesting to inquire what have been the *practical results* of woman suffrage in the States where the experiment has been fairly tried. But, unfortunately, there is an almost total absence of data from which an intelligent opinion can be formed. It would conduce much to our enlightenment if some Legislature interested in the subject (and what Legislature is not?) should appoint a

committee of leading citizens to visit the States in which the experiment has been tried, and by correspondence with foreign countries to investigate the whole subject, to ascertain what proportion of the female population entitled to vote has actually availed itself of the privilege, and to what class it belonged; what reforms in the moral character of the people the women have brought about, or have rendered efficient aid in bringing about; whether they have improved the character of the slums, suppressed gambling; eradicated houses of ill fame; put a stop to graft and corruption in municipal life; provided employment for the poor and educational facilities for their children, -- in short, given a new and healthful impulse to civic life. If the report of this committee showed a marked improvement in these particulars, attributable to the influence of women, I, for one, would enroll myself under their banner. On the contrary, if it were shown, in a trial which much have lasted from twenty to forty years, to have been ineffective, or a mere excuse for obtaining a share of the spoils or a political prominence, I should say that a good cause for a change had not been proven.

The few statistics we have are most unsatisfactory. We know that in France, during the revolution, an effort was made to endow women with the right of suffrage, which was defeated by the conduct of the lowest class of women in invading the legislative chamber and attempting to overawe the convention; that the attempt to admit women to suffrage was subsequently renewed several times, with a similar result; that in England the registration of women has always been denied by the courts; that in Finland, a semi-independent province of the Russian empire, it has been established for several years, with the consequence, as I am informed by a person of the highest authority, of a great increase in the socialist and anarchist vote, but with little effect upon the other vote. It is but fair to say, upon the other hand, that I have heard from an esteemed lady friend resident in Finland (the Baroness Korff) that it has proved to be a success. It has also been recently adopted in Australia and New Zealand, but with what results we are not informed.

We know that an agitation in its behalf was begun in the United States about the middle of the last century; that various conventions

were held and associations organized, and finally an appeal made to the Supreme Court of the United States, which held that the right to vote had not been conferred on women by the Constitution or any of its amendments. We know that in New Jersey it was established by law in 1776 and was repealed in 1807, after an experience of thirty years, because, as reported, one election, in which the women were especially interested, was so corrupt that the courts were compelled to set it aside as fraudulent. In 1869 women were first admitted to vote in Utah, then a territory, but the act was subsequently limited, and finally repealed by Congress from fear that the attachment of women to the feature of polygamy might lead to disastrous results; but in 1895, after Utah became a State, a provision for woman suffrage was incorporated in the Constitution. We know that in 1869 it was adopted by the territory of Wyoming; that the act was repealed shortly thereafter, but the repealing act was vetoed by the Governor; and that twenty years after that, when Wyoming was admitted as a State, woman suffrage became a feature of its Constitution. Though it has been in operation for forty years very little seems to be known in other States regarding its popularity. In 1883 it was adopted by an act of the territory of Washington, but was declared invalid by the Supreme Court upon a technical ground, and when admitted as a State, in 1889, a provision in the Constitution for woman suffrage was defeated by the people. In Oregon it was three times defeated by popular vote, the adverse majority increasingly largely at each successive election. In 1896 it was adopted in Idaho, -- too recently to afford satisfactory data as to its results. In 1892 woman suffrage was adopted in Colorado, by a small majority, and it has since remained the law in that State. If we believe the recent statements of Judge Lindsey of the Juvenile Court, -- a friend of woman suffrage, -- in his article in "Everybody's Magazine," the condition of civil morality in Colorado is most deplorable. Woman suffrage there is still in its tentative stage. The experience of foreign countries, whose laws are generally much less favorable to women than our own, is an uncertain guide, since there are discriminations against women in those laws which have long since been abolished here.

The argument that the greater *gentleness* and sweetness of the

female sex will predispose to peaceful instead of warlike measures does not strike me as of great weight. Conceding their greater docility in the ordinary affairs of life, I have thought that, when they feel a deep personal interest, there was not much to choose between the two sexes. Women can answer better than I whether, for example, in family quarrels their voices are oftener for peace than their husbands; whether in an important political crisis they are less violent than men; whether the results of the civil war have been accepted as freely by southern women as by the men; whether women's conventions are more or less free of jealousies, recriminations, plots and counterplots than ordinary political conventions; or whether, in case of strikes or business disturbance, acts of violence were confined to the strong sex. I do not assume to answer these inquiries myself, but can only say that such testimony as I have heard does not always bear in the direction of peace and amity.

If I have betrayed an opinion adverse to the bestowal of female suffrage, I am sure it will not be attributed to any opposition to the advancement of the sex in anything that will contribute to the complete rounding out of their lives, or make them more valuable members of the body politic. My fear is that the right to vote will not elevate their character, but will rather minister to a growing desire of the sex to vindicate their rights by competing with men in what has heretofore been regarded as man's peculiar province. My fear is that success in this effort may do much to brush away that bloom of delicacy and refinement which from time immemorial has won the admiration and evoked the chivalry of the stronger sex; that in becoming politicians they will lose something of the instincts of motherhood; that in winning public favor they will leave behind them something of their attachment to the virtues of private life; that contact with coarse men at the polls will familiarize them with the vulgarities of politics; in short, that in becoming more like men they will become less like women. If I oppose woman suffrage it is not so much because I fear their voting as because I fear their not voting, with the result that the intelligent and educated will refrain, and leave their sex to be represented by the lowest class.

Coinciding, as I certainly do, with the efforts made during the

past century to elevate the position of women, to open new avenues of employment, and to encourage their independence of men, I am still an admirer of the ideal woman of history and romance, -- women of the type of the three Marys of the New Testament, who for nineteen hundred years have been held up to us as types of the highest womanhood; of Dorcas, who Luke says, was full of "good works and alms deeds;" of Andromache, wife of Hector, who is described as equally remarkable for her domestic virtues and for her attachment to her husband; of Cornelia, the mother of the Gracchi, whose education of her sons is said to have contributed more than nature to their eminence as Roman citizens; of Lady Jane Grey, who though a mere girl was the marvel of her age in learning and accomplishments, and whose hapless fate has for three hundred years excited the commiseration of the whole English-speaking race; of Florence Nightingale, whose energy and devotion delivered the English soldiers in the Crimea from an enemy more destructive than Russian guns, and who lived to found the system of trained nurses, -- in fine, of that long list of noble souls in whose praise poets have sung, novelists have written, and at whose feet princes and warriors of all ages have delighted to kneel.

Such are the women I regard as most truly representative of their sex, and such I hope they will continue to be for centuries to come, -- the most resplendent jewels in nature's diadem.

WASHINGTON, D.C., April, 1910