Minor v. Happersett: A Case of Woman's Suffrage

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Woman's suffrage was initially advocated at the first Woman's Rights Convention held in Seneca Falls, New York in 1848. Suffrage was the subject of the ninth resolution adopted at the meeting. It read: "Resolve, That it is the duty of women of this country to secure to themselves their sacred right of elective franchise."[1] Though considered quite radical at the time of its adoption this resolution was to be the main theme of woman's rights conventions for the next several decades.

Woman's right to vote took new dimension in 1869. Leaders of the movement now believed that they had the right via the Fourteenth Amendment of the Constitution. Based on the new idea, Frances Minor, a lawyer and supporter of women's right, drew up a new set of resolutions. Minor was the husband of Virginia Minor, the subject of this paper. In these resolutions, he maintained that the United States Constitution had already given women the right to vote, and there was no need for any state legislature to grant the same thing.[2] To illustrate his point, he cited the citizenship clause of the Fourteenth Amendment, declaring "all persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and the state wherein they reside."[3] Therefore, in his resolution, Minor contended that even though the Constitution of the United States left the qualifications of electors to the states, it did not grant the states the right to deprive any citizens of the elective franchise. Furthermore, the Constitution declared that no state shall abridge the privileges and immunities of citizens of the United States. Therefore, any state that excluded women from the voting process on the account of sex was in violation of the spirit and the letter of the Constitution.[4]

Elizabeth Cady Stanton, one of the organizers of the Woman's Rights Convention, addressed these resolutions publicly at a Senate Judiciary Committee in Washington, D.C., January 1870. She argued that the Fourteenth Amendment could be interpreted to extend the right to vote to both blacks and women. Stanton received favorable comments from some of the senators present. Apparently, at least one state was moved by Stanton's argument. The Attorney General of Nebraska ruled that women were voters under the Fourteenth Amendment. In a move to test the validity of this interpretation, and acting with the advice of counsel, women in several states attempted to register and vote.[5]

One such woman was Virginia Minor, the president of the Missouri Woman Suffrage Association, the first organization in the world to make enfranchisement of women its sole purpose.[6] On October 15, 1872, one of the designated days for voter registration, Minor, wishing to exercise her right to vote in the upcoming general election,

attempted to register. She appeared before Reese Happersett, the duly appointed registrar, to take the oath to support the Constitutions of the United States and the State of Missouri and have her name placed on the list of registered voters. Happersett refused to allow Minor to register. He based his refusal on Article II, Section 18 of the Missouri State Constitution which declared that "only male citizens of the United States, etc. . . are permitted to vote. She was not a male citizen, but a woman!"[7]

It should not have come as a surprise to Minor that she was denied the right to register. During the years 1871 and 1872 some one hundred and fifty women tried to vote in ten states and the District of Columbia. Seventy of them did so in the District of Columbia and they, too, were unsuccessful. These women sought relief in the court system and failed there also.[8] Perhaps, the most famous of these cases involved Susan B. Anthony, a resident of Rochester, New York, who was successful enough to register and vote in the general election of 1872. Later, however, she was charged with illegally voting. According to the New York authorities, Anthony had voted in a federal election without having the lawful right to do so since the New York State Constitution limited the right of suffrage to men. She claimed she was a citizen of the United States and therefore entitled to all privileges and immunities of a citizen and that the New York Constitution violated the Fourteenth Amendment by denying her the privilege of voting. The court disagreed holding that even though Anthony believed she could vote, she was still guilty. She was fined one hundred dollars. Anthony refused to pay the fine but she did not appeal to a higher court.[9] She would leave the appellant process to others.

Myra Bradwell of Chicago, Illinois applied to the Supreme Court of Illinois for a license to practice law. Her application was denied on the grounds that she was not only a woman, but a married woman. Illinois denied women the right to hold office and forbade married women the right to make contracts.[10] Bradwell's case was appealed to the United States Supreme Court. It was argued that the right to engage in the practice of law was Bradwell's privilege as a United States citizen, and that she was denied the equal protection of the law by the Illinois Supreme Court. This was a clear violation of the Fourteenth Amendment. The United States Supreme Court did not see it that way. Justice Samuel Miller rendered the decision stating that the right to practice law was not a matter inherent in United States citizenship. Justice Joseph Bradley concurred stating that "as to women citizens, the privilege did not extend to any and every profession." Furthermore, "the paramount mission and destiny of women are to fulfilled the noble and benign offices of wife and mother. This is the law of the Creator." Man must accept this law and society must be governed by it, there were no exceptions to the rule.[11]

This decision rendered by the highest court in the land was based on the historic sphere of the woman's place in society. Virginia Minor was a woman. Why did she feel she should be granted a right that had been denied to others of her sex? Minor relied upon the very words of the United States Supreme Court as rendered in the Slaughter House Cases, the "Negro having by the Fourteenth Amendment been declared a citizen is thus made a voter in every state."[12] Surely if a former slave was now a citizen and a voter, the same should be equally true of a free white female. Was she not afforded the same privileges as the black man?

This question was addressed by three different courts, the first of which was the St. Louis County Circuit Court. Virginia was joined by her husband, Francis. As a married woman, her husband had to give his permission and join in the suit before the courts.[13] Incidently, Francis was Virginia's chief counsel in all three cases. In a petition presented to that body, Francis argued that Article II, Section 18 of the Missouri Constitution, which declared that only male citizens were entitled to vote, was repugnant and in violation of the Constitution of the United States. This was especially true of the privileges and immunities clause as well as the guarantee of every state to a republican form of government clause of Article IV., the supreme law clause of Article VI, and the citizenship and due process clauses of the Fourteenth Amendment. Based on these violations, Francis claimed that Virginia's rights had been violated and sought restitution in the amount of ten thousand dollars.[14]

Happersett's attorney, Smith P. Galt, held that the petition should be dismissed on the grounds that it did not state sufficient facts to constitute a cause of action. Virginia did not have the right to vote in the general election in November, 1872 nor did she have the right to register to vote. Furthermore, it was Happersett's duty to refuse to place Virginia's name on the list of registered voters. Galt based his arguments solely upon the stated provisions of Article II, Section 18.[15] The Circuit Court of St. Louis County concurred with Happersett and his lawyer, and denied Virginia's petition.

The Minors sought relief in the Missouri Supreme Court. In his argument before the State Court, Francis maintained that the article in question denying Virginia the right to register and vote was a case of sex discrimination and a clear conflict of the Constitution of the United States. He argued that the elective franchise was a privilege of citizenship within the meaning of the federal Constitution. "If no limitation is set by that document, then no other lesser document or inferior jurisdiction can legally place a limitation upon the franchise. States may regulate the franchise (or qualifications or electors as Constitution terms it), but cannot limit or restrict the right of suffrage." He further alleged that there "could be no half-way citizenship." As a citizen of the United states, "a woman is entitled to all the benefits of that position and liable to all its obligations. . ."[16]

Francis continued his argument by maintaining that the elective franchise was a privilege of citizenship. He justified this assertion based on the decision rendered in Corfield v. Corryell decided in lower courts in 1823. The decision held that among other things the elective franchise should be added to the list of privileges citizens of free governments may exercise. The franchise was to be regulated and established by the several states, but they were not to prohibit the franchise to citizens of the United States.[17]

Frances ended his argument without further discussion of the Fourteenth Amendment other than as it appeared in the petition. Galt, however, did mention the Amendment, stating, "the Fourteenth Amendment of the United States does not apply to the case."[18]

The Fourteenth Amendment was the main focus of the State Supreme Court's case. Did the constitution and laws of Missouri conflict with the Constitution of the United States? Specifically, did these state laws conflict with the Fourteenth Amendment? The

Court answered no, arguing that prior to the adoption of the Fourteenth Amendment, the several states, through their constitutions and laws, had the right to restrict the franchise to males. This right was a universally accepted concept and had been since the adoption of the United States Constitution, and there was no evidence to pursuade the court that this concept should be investigated by the Court now.[19] Furthermore, "at the time of the adoption of the Fourteenth Amendment the whole slave population of the South had just been freed, and were about to enter into an entirely new relation with the balance of society and were to assume new obligations and responsibilities." The Court also maintained that the framers of the Fourteenth Amendment "found it absolutely necessary that the emancipated people [should] have the elective franchise . . . in order to protect themselves against unfriendly legislature in which they could take no part. . . ." Furthermore, the Court argued that "former slave states were compelled to grant the newly freed persons the right to vote and to give them all the rights of other citizens of the respective states." The Court also maintained that "the Amendment was not intended to limit the right of suffrage of male inhabitants; rather it was intended to grant the freedmen the same rights that were secured to all citizens in the state." If white males, age twenty-one and older, were granted the right of suffrage, the Court held that black males of the same age should enjoy the same right. Moreover, it was rendered that the Fourteenth Amendment did not confer suffrage upon females and other under the age of twenty-one. If that had been the intention of the framers of the Amendment, then the word "male" would not have been included in Section 2 of the Amendment. The word female was not used, therefore the Court ruled that the states did have the authority to restrict the right of suffrage to male inhabitants.[20] The Missouri State Supreme Court sustained the decision of the St. Louis County Circuit Court.

Once again the Minors were denied their goal and again they appealed to a higher court, the Supreme Court of the United States. Nearly three years after Virginia Minor had started this action, Chief Justice Morrison Waite, speaking for a unanimous Court, concluded the action. He identified the key question of consideration before the Court. Does a woman who is a citizen of the United States and of the state of Missouri, have the right to vote under the provision of the Fourteenth Amendment even though her state limited the right of suffrage to men? One might ask first, were women citizens? The Chief Justice stated that there was no doubt that women were citizens and had been citizens since birth, and were entitled to all the privileges and immunities of citizenship. Therefore, "The Fourteenth Amendment did not affect the citizenship of women any more than it did men." What the Amendment did do, however, was to prohibit the several states of which women were citizens "from abridging any of [their] privileges and immunities as citizens of the United States, but it did not confer citizenship on [them]; that they had had since birth." If "the right to vote [was] one of the privileges of a citizen, then the Constitution and laws of Missouri [which confined] suffrage to men [were] in violation of the Constitution of the United Stated as amended and consequently void." Therefore, "the direct question was, whether all citizens [were] necessarily voters."[21]

In an effort to address the above question, Waite stated that the Constitution did not define privileges and immunities. Thus as far as this case was concern, there was no need to determine what they were, only to decide if suffrage was necessarily one of

them. "The Fourteenth Amendment did not add to privileges and immunities of a citizen. It simply furnished an additional guaranty for the protection they already had." There were no new voters created by the Amendment, even though the number of new citizens entitled to suffrage was expanded, but that was the purpose of the Amendment. Therefore, suffrage was not added to privileges and immunities because they existed at the time it was adopted. To illustrate this point Waite thought it necessary to review the constitutions of the states as they related to suffrage at the time of the adoption of the Federal Constitution. A survey revealed that not one state allowed all of its citizens to vote. Some states had property requirements, others stipulated money and property requirements, southern slave states made freedom a condition of suffrage, and all the states except New Jersey, limited the right of suffrage to males, age twenty-one and older.[22] Therefore, Waite concluded 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 implications."[23]

The Constitution of the United States had existed for nearly ninety years at the time this case was heard and, according to the Court, the people of the country had always accepted the idea that when it conferred citizenship, it did not confer the right of suffrage. If this was wrong, Waite stated, it should be changed, but not by the Court. "It was the province of the Court to decide what the laws is, not to declare what it should be." The Court could only act upon rights of women as they then existed. Consequently, the unanimous opinion was that the Constitution of the United States did not confer the right of suffrage upon anyone and it was perfectly within the rights of the state constitutions and the laws of several states to limit the right of suffrage to men alone. Therefore, the judgment of the Missouri State Supreme Court was affirmed.[24]

The Court had demonstrated that the time was not yet ripe for woman suffrage. One might conclude that the United States Supreme Court believed it was the "Negro Hour" and not the "Woman Hour". A better conclusion might be that the Court's decision had very little if anything to do with the Negro or women, the statement in the Slaughter House Cases, notwithstanding.[25] A careful examination of the majority opinion in the Slaughter House Cases, rendered by Justice Miller, indicates that more harm was done to the African American than good. Miller placed black men and women at the mercy of the state when he revived the dual citizenship doctrine. He proclaimed that there was national citizenship and a state citizenship that were distinct from each other, and they depended upon different characteristics and circumstances of the individual. Miller maintained that if the citizenship clause had been intended to protect citizen of a state against the legislative power of his own state," then "the words citizens of a state" would have been omitted. Of the privileges and immunities of the state, "only the former [were] placed under the Federal Constitution, and the latter . . .were not intended to have any protection by . . . the Amendment."[26] If it had been otherwise, Miller argued, "the result would be a decision that radically change[d] the whole theory of relations of the state and Federal government . . ." He was convinced that no such results were intended by the Congress which proposed the Amendment nor by the legislature of states which ratified it.[27] Thus, the Court's main concern was the preservation of the ante-bellum federal system.

Herein lies the issue, the Court was not ready to interfere with the power of the state. The same Court that rendered the Slaughter House decision decided the Minor Cases, Chief Justice Waite being the exception. However, Waite speaking for a unanimous Court, let it be known that the state was the key element in the Minor decision. States had the right to restrict suffrage to men because that was the way it had always been. The United States Supreme Court was not empowered to change that rule. Based on the ruling, it is safe to say that both the Slaughter House decision and Minor decision were rendered with the best
interest of the state in the minds of the justices. These judges had witnessed the forces of nationalism unleashed by the Civil War that undermined the status of the states within the federal system. The Court was in no mood to allow the Fourteenth Amendment to judicially change that system. Women would have to change the Court's mind or come to realize, which they eventually did, that it would take another amendment to obtain woman's suffrage

NOTES

1.Seneca Falls Convention's Declaration of Sentiments 1848 in Elizabeth Stanton, Susan B. Anthony, Matilda J. Gage, eds., History of Woman Suffrage, 6 vols. (New York: Arno & New York Time, 1969) I: 70-71.

2.Eleanor Flexner, Century of Struggle: The Woman's Rights Movement in the United States (Cambridge: Harvard University Press, 1959), 168.

3.U. S. Constitution, Amendment 14, Section 1.

4.Flexner, Century of Struggle, 168.

5.Carrie Chapman Catt and Nettie Rogers Shuler, Woman Suffrage and Politics (New York: Charles Scibner's Sons, 1923), 92.

6.Stanton, et al., Women Suffrage, 2: 660.

7.Virginia L. Minor's Petition in the Circuit Court of St. Louis County, December Term, (1872) in Aileen S. Kraditor, ed., Up From the Pedestal: Selected Writings in the History of American Feminism (Chicago: Quadrangle Book, 1968), 231-232.

8.Flexner, Century of Struggle, 165.

9.Howard N. Meyer, Amendment XIV: The Amendment that Refused to Die (Boston, Beacon Press, 1978), 208-209.

10.In the matter of the Application of Mrs. Myra Bradwell, 55 Ill. 535 (1869).

11.Myra Bradwell v. State of Illinois, 16 Wall. 130 (1873).

12.Slaughter House Cases, 21 L.Ed., 407 (1873).

13.Catt and Shuler, Woman Suffrage and Politics, 95.

14.Virginia Minor's Petition in Circuit Court, 232-233.

15.Demurrer In the Circuit Court of St. Louis County: Virginia Minor and Francis Minor v. Reese Happersett in Elizabeth Stanton, et al, eds., History of Woman Suffrage, II, 717.

16.Virginia L. Minor, et al, v. Reese Happersett, 53 Mo. Reports (1873), 59.

17.Ibid, 62-63. Also see Corfield v. Corryell, Fed. Case No. 3230 (1823).

18.Virginia L. Minor, et al v. Reese Happersett, 62.

19.Ibid., 63.

20.Ibid., 64-65.

21.Minor v. Happersett, 21 Wall, 170 (1875).

22.New Jersey rescinded the right of women to vote in 1807.

23.Minor v. Happersett, 175.

24.Ibid.

25.See Endnote 13.

26.Slaughter House Cases, 408

27.Ibid., 409.